



DEPARTMENT OF JUSTICE
Antitrust Division

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June 14, 1996

L. John Osborn, Esquire
1301 K Street, N.W.
Suite 600, East Tower
Washington, D.C. 20005

Dear Mr. Osborn:

This is in response to the request of the Transportation Claims and Prevention Council, Inc. ("TCPC") for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department of Justice's antitrust enforcement intentions with respect to TCPC's proposal to develop a Shippers' Bill of Lading ("Shippers' Bill") for volitional use by TCPC's members and motor carriers with whom they contract.

According to your application letter, motor carriers currently utilize a Uniform Bill of Lading ("Uniform Bill") in contracts with their customers. The Uniform Bill incorporates, by reference, certain carrier rates, classifications and rules, and, shippers are deemed to have constructive notice of such terms. This information must be provided to shippers on request, but you assert that, in practice, many shippers remain unaware of some of the terms that govern their transportation contracts with motor carriers.

To fill that information deficiency, TCPC proposes to develop an alternative Shippers' Bill and Common Carrier Rate Agreement that would expressly provide that all of the governing terms and rates are included in the documents and, in fact, include them. The purpose behind the proposal is to give shippers a greater opportunity to have actual knowledge, rather than constructive knowledge, of important provisions governing their shipping contracts, thereby avoiding unpleasant surprises for shippers when disputes arise.

Use of the proposed Shippers' Bill of Lading would be voluntary; it would be utilized only when shipper and carrier agreed to use it. TCPC members will not be required to use the Shippers' Bill of Lading, nor will they be urged to boycott those carriers who insist on using the current Uniform Bill of Lading or any other form of transportation contract. The proposed Shippers' Bill of Lading will not establish rates or prices. The proposed Bill and Carrier Rate Agreement will contain blank spaces so that rates and price-related terms can be negotiated by shipper and carrier. To the extent that shippers and carriers agree to use the new bill of lading, it will serve as an alternative to the Uniform Bill currently in use. Even when the new form is used, the parties will be free to alter its terms in any manner they choose.

The 500 plus members of TCPC are in a wide variety of businesses. You assert that under any plausible market definitions for motor transport, the shipper members of TCPC would account for "far less" than the 35 percent market share that the Antitrust Division uses as a safe harbor criterion for determining whether joint procurement raises antitrust concerns. Moreover, you point out that TCPC's proposed development of a Shippers' Bill raises less antitrust risk than joint procurement, since unlike the latter, it will not involve common action with respect to price.

On the basis of the information and assurances that you have provided us, the Department has no current intention of instituting antitrust enforcement action against TCPC's proposed development and publication of a Shippers' Bill and Carrier Rate Agreement that contain within them all the terms and conditions relevant to the transportation contract. The voluntary nature of the proposed standardized business forms and the fact that they do not involve any agreement among rivals as to price or price-related terms or conditions lead us to conclude that TCPC's proposed activities are not likely to cause competition concerns. Instead, they would provide shippers and carriers who choose to employ the

Shippers' Bill an alternative to the current Uniform Bill. If the utilization of a form of contract that relies more on actual knowledge than constructive knowledge reduces the cost of contract disputes, such a result could be procompetitive.

This letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of any aspect of the proposed development and publication of the Shippers' Bill proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10 (c) of the Business Review Procedure.

Sincerely,

/S/

Anne K. Bingaman