



DEPARTMENT OF JUSTICE
Antitrust Division

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Daniel R. Barney, Esq.
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1500 K Street, N.W., Suite 910
Washington, D.C. 20005-1209

Dear Mr. Barney:

This is in response to your request on behalf of the Truckload Carriers Association ("TCA") for the issuance of a business review letter pursuant to the Department of Justice Business Review Procedure, 28 C.F.R. §50.6. You have requested a statement of the Department's antitrust enforcement intentions with respect to a proposal under which TCA would conduct or initiate information exchanges amongst its member motor carriers in order to enable them to reduce their operating costs.

TCA is the national trade association of for-hire motor carriers that haul freight in full truckloads. It and its members feel that there are a number of inefficient practices that raise the cost of truckload motor carriage to the detriment of both customers and carriers. It claims that there is little reliable data on industry costs, and no forum in which truckload carriers can identify best-practice methods and processes. TCA wants to develop a "benchmark project" to help its members to identify the lowest cost or other best-performance measures in various management and operations areas, and to discover what "best practices" lead to best performance.

To obtain relevant cost and other performance information, TCA proposes to identify through questionnaires and discussions which 15-20 cost and other items would be most useful to review and use as benchmarks. You indicate that these might include, for example, such matters as the ratio of safety-related expenditures to number of highway accidents, worker's compensation costs, tractor maintenance costs, tire costs, environmental management costs, driver turnover rate, and recruitment cost per driver hired. The survey would not contain information about competitively sensitive items, such as freight rates, surcharges, credit terms, revenue or total expense per mile, service volumes or capacity, future sales or marketing

strategies, new-service plans, or customer or supplier lists.

Once the areas to be surveyed are determined, focus groups of carriers, shippers, receivers, and others would seek consensus on a uniform definition of each item. TCA, or an expert outside organization retained by TCA, would then design and conduct periodic surveys of the selected items among truckload carriers. TCA members and all other for-hire truckload carriers would be eligible to submit survey responses. The results of the surveys would be made available in aggregate form for purchase by all that had participated, with a discount for TCA members. The surveys would be conducted in compliance with the safe-harbor rules in Statement 6(A) of the Justice Department and Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care (Aug. 1996).

TCA would host periodic meetings of Best-Practice Discussion Groups to gain insights from the top performances shown in the surveys. Each Discussion Group of 15 or so truckload carrier executives would seek to identify the “best-practice” methods and processes that resulted in the top performances and to discuss how to bring their own operations closer to the highly-efficient level of the top performers. Each Discussion Group would have an announced focus on carriers in a particular annual-revenue bracket, and type of truckload operation. Each Group, however, would be open to for-hire truckload carriers of all revenue-brackets and types of operation, on a voluntary, first-come, first-served basis.

Membership in the Discussion Groups would be completely voluntary and limited to CEOs and other non-sales-and-marketing executives of truckload carriers. Each company would be allowed participate in only one Discussion Group. From time to time, government officials, shippers, suppliers, academic experts, and other individuals would be invited to attend and offer presentations to the Discussion Groups. Discussion topics at meetings would be limited to agendas reviewed by an antitrust attorney and distributed in advance. The discussions would be memorialized in minutes to be distributed after the meeting. An attorney would be present at all meetings to ensure adherence to antitrust procedural safeguards.

Individual carriers would be able to use the published survey data and, if they participated in the Best-Practice Discussion Groups, the results of those discussions to reduce inefficiencies, safety shortcomings, and other deficiencies in their own operations. If a Discussion Group believes that it has identified a new approach that will benefit truckload carriers in general, it can formally suggest that TCA launch a public, recommended-practices proceeding. TCA would then formulate and publish the proposed new approach for comment by carriers, shippers, suppliers, and others; appoint a committee to review the comments; publish a revised recommended practice; and provide an appeals process to further review the recommended practice if challenged. The use of any recommended best-practice that results from the benchmark project would be left to the unilateral voluntary decision of each participant, and TCA does not intend to enforce, coerce, or otherwise pressure carriers to adopt such practices.

You contend that there is little, if any, likelihood that TCA’s proposed information sharing and benchmarking discussions would adversely affect competition. You state that the trucking industry is unconcentrated and highly competitive. The ten largest trucking firms in 1998 accounted for only 13 percent of total U.S. trucking revenue, and the twenty-five largest

accounted for only 16 percent. You assert that the truckload sector is similarly unconcentrated; the ten largest firms accounted for only 7 percent of total sector revenues, and the twenty-five largest accounted for only 11 percent. Moreover, you suggest that there are no significant barriers to entry; indeed, the number of motor carriers increased by 19 percent from 1997 to 2000. TCA also asserts that price competition has been quite robust, exerting significant pressure on prices and revenues.

Based on the factual information and assurances that you have provided to us, it does not appear likely that the proposed benchmarking project will have anticompetitive effects. The fact that the information to be exchanged will deal with costs, subject to the prophylactic measures outlined in your letter, makes it unlikely that such exchanges will raise prices, reduce output, or cause other harm to competition. Similarly, the open procedures and the voluntary nature of any use of the information developed under the benchmarking project would seem to substantially reduce any antitrust concerns over the proposed discussions and best-practices recommendations. Moreover, to the extent that cost savings that result from TCA's proposed conduct are passed on, in whole or part, to customers, the proposed benchmarking project may have procompetitive effects.

For these reasons, the Department is not presently inclined to initiate antitrust enforcement action against TCA's proposed conduct. However, this letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right, in appropriate circumstances, to bring any enforcement action in the future if the actual operation of the proposed agreement 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 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/

John M. Nannes