



DEPARTMENT OF JUSTICE

Antitrust Division

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Joel B. Kleinman, Esq.
Dickstein, Shapiro, Morin & Oshinsky, LLP
2101 L Street, NW
Washington, DC 20037-1526

Dear Mr. Kleinman:

This letter responds to your request 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 Antitrust Division's current enforcement intentions with respect to a proposal by your client, the American Trucking Associations ("ATA"), to develop and circulate a motor carrier model contract.

The ATA is the national trade association representing the interests of motor carriers, state trucking associations, and national trucking conferences. You have stated that the ATA would like to develop and circulate a model contract to help its carrier members increase efficiency in contract negotiations, reduce transaction costs, and enhance services to shippers. According to your representations, the model contract will be made available to ATA members for use on a voluntary basis. Members may choose to use individual provisions or the model contract in its entirety for use in contract negotiations with shippers. The ATA will make it clear when circulating the model contract that use of the contract or any provision will be left to the individual determination of each company acting independently.

You indicate that all terms in the model contract for rates and charges, including fuel surcharges, loading and unloading services, detention charges, and drop charges, would be left blank for each carrier to negotiate individually with shippers. Likewise, terms in the model contract relating to limitations on liability for loss of goods and carrier insurance would be left blank for each carrier to negotiate individually with shippers. You also claim that the model contract will not cause or increase the possibility of competitors sharing competitively sensitive information.

You contend that there is little, if any, likelihood that the ATA model contract would adversely affect competition. Indeed, you assert that the creation of a model contract with standard provisions will have several procompetitive benefits. First, the optional charge provisions in the model contract will allow carriers to allocate the costs incurred with these services to the customers that use the services, which may reduce rates. Second, a model contract may reduce shipper transaction costs by simplifying the comparison of competing offers. Finally, you claim that standardized contract language could simplify interlining arrangements, under which more than one carrier handles a shipment.

Based on the representations made in your submission, the documents and information submitted in support of ATA's request, and on the information obtained during our own review, we conclude that making the ATA model contract, as described, available to its members is not likely to reduce competition. All rate-related terms are to be negotiated between the parties, and do not appear to incorporate any standard or collectively set rates or rules. Also, since the model contract will be made available to carriers to use on a voluntary basis, and since use of the contract or any of its provisions will be left to the determination of each company acting independently, carriers will remain free to compete on contract terms and provisions, as all contracts will continue to be the subject of individual negotiations. Moreover, the proposed model contract could have procompetitive effects by improving the efficiency of contract negotiations, potentially reducing rates to shippers.

For these reasons, the Department has no present intention of challenging the proposal to develop and circulate the model contract. This letter expresses the Department's current enforcement intention and is issued in reliance on the information and representations contained in ATA's submissions. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future should circulation of the model contract prove to be anticompetitive in 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,

Charles A. James
Assistant Attorney General