



4508 Burrow Drive • North Little Rock, Arkansas 72116 • Phone: 501.753.9700 • Fax: 501.753-3794

February 16, 2006

Mr. Thomas O. Barnett  
Acting Assistant Attorney General for Justice  
Department of Justice Antitrust Division  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Dear Mr. Barnett:

The purpose of this letter is two-fold:

1. First, to share with you the desires of Bell & Company, P.A., CPAs and Business Advisors (4508 Burrow Drive, North Little Rock, AR 72116) to conduct an operational and financial survey of small- and medium-sized trucking companies (generally non-public) and to share this information with both respondents and non-respondents to enable them to benchmark themselves against the aggregate information and to reduce their operating costs; and to request an Antitrust Division business review letter pursuant to 28 CFR §50.6 on the proposed survey.
2. Second, to request an Antitrust Division business review letter pursuant to 28 CFR § 50.6 on The National Association of Small Trucking Companies (NASTC) plan to co-sponsor the survey and encourage its members to participate in the survey. NASTC is an active association for small trucking companies and serves as an advocate for, a consultant to, and a source of collective buying power for its member companies. It has also become recognized as a "voice" for small trucking companies.

#### **Purpose of the Proposed Survey**

The proposed survey is designed to gauge and record activities in the areas of operations, equipment, and financial management. The results will be compiled from transport companies nationwide so that the aggregate data can be compared by company owners to benchmark their own companies. Any individual information from respondent companies will be held in strictest confidence; again, only aggregate data will be shared. The purpose of sharing the aggregate data will not be to enable transport companies to raise prices for customers, but rather to assist transport companies in lowering their costs.

Our understanding is that this is similar to a survey project that was undertaken by the Truckload Carriers Association (TCA)—a project that creates a forum in which truckload carriers can identify best practice methods and processes and to identify the lowest cost or other best performance measures. Attached for your reference is a copy of the DOJ business review letter issued to the Truckload Carriers Association in March of 2001.

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### **Data that Will be Collected**

Through a survey instrument, the following information will be collected from NASTC members and other truckload carriers by Bell & Company, P.A.:

- General company information, including: name, address, phone, owner name(s), year in which company started operations, type of carrier, and whether they carry truckload or less-than-truckload shipments.
- Equipment information, including: number of tractors and trailers, average number of tractors and trailers during the previous year, total miles run during the previous year, total loaded miles run during the previous year, total number of loads for the year, average number of empty trucks, and amount paid to drivers and/or owner/operators.
- Revenue and expenses, including: gross line-haul revenue excluding fuel surcharges, brokerage revenue, fuel surcharge revenue, brokerage settlement expenses, total operating expenses, and percentage of accounts receivable.
- Balance sheet data, including: current assets, total assets, current liabilities, and total liabilities.
- Employee information, including: driver turnover ration, number of drivers, number of office employees, number of shop employees, and average rate paid to drivers.

The surveys would not collect data about sales or marketing strategies, new service plans, or customer/supplier lists.

### **Distribution of the Data that is Collected**

After the above data is collected, the results will be made available in aggregate form for purchase by all that had participated, with a discount for NASTC members.

The information would also be presented at various times at NASTC conferences and other industry meetings. All registered participants at these conferences and meetings would be eligible to attend the presentations and resulting discussions. We are unsure if an anti-trust attorney would need to attend these meetings and await your response.

Individual carriers would be able to use the published survey data to reduce inefficiencies. The use of any recommended best practices that result from the project would be left to the unilateral voluntary decision of each participant. Neither Bell & Company nor NASTC intend to enforce, coerce, or otherwise pressure carriers to adopt such practices.

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### **Impact on Competition**

We believe there is little, if any likelihood that this proposed information sharing and benchmarking would adversely affect competition. The trucking industry is not concentrated and is highly competitive. Moreover, there are no significant barriers to entry.

We do not believe that such information sharing and exchange will raise prices, reduce output, or cause other harm to competition. In fact, if best practices are employed and efficiencies are gained, the proposed project may increase competition and lower costs among transport companies, and potentially lower prices for their customers.

### **Our Request**

We respectfully request that the Department issue a favorable business review letter for this proposed project and state its present intention not to initiate antitrust enforcement action.

Thank you in advance for your consideration. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,

Richard L. Bell, CPA, JD  
**Bell & Company, P.A.**

David Owen, President  
**National Association of Small Trucking Companies (NASTC)**

cc: Henry E. Seaton III, Esq.  
Seaton & Husk, LP