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VIA HAND DELIVERY

The Honorable Joel Klein
Assistant Attorney General
Antitrust Division
Department of Justice
Washington, D.C. 20530

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Request for Business Review of ATA Joint Venture

Dear Assistant Attorney General Klein:

Pursuant to 28 C.F.R. Section 50.6, we are writing on behalf of our client, Armored Transport Alliance ("ATA"), to request a business review determination regarding a proposed joint venture involving regional armored car company firms. This request is made pursuant to the Department's recently adopted pilot program of resolving business review requests within sixty (60) to ninety (90) days. See Trade Reg. Reports (CCH) at ¶ 50,095 (1992). We also enclose copies of non-privileged documents responsive to the categories set forth in the pilot program requirements. Because our client is anxious to proceed with its venture as soon as possible, we would greatly appreciate the Department's prompt response to this request.

OVERVIEW

Our client proposes to form a joint venture composed of approximately five (5) local armored car carriers from different areas in the United States (the "Members"). The joint venture would be known as the Armored Transportation Alliance (the "ATA"). The Members who would be invited to participate in the joint venture are small to medium-sized carriers (with fleets ranging from 20 to 250 armored cars) whose business is currently confined principally to the local area within which each is located. Because of their small size, these carriers currently cannot compete for business in the highly

concentrated market for region-wide armored transportation for banking institutions, and also cannot effectively provide service in the market for large scale service to commercial and retail establishments. The primary purpose of ATA would be to allow members to compete effectively in these markets.

The activities of the venture would include: (a) joint bidding by ATA for bank transportation business which none of its members individually could obtain; (b) sharing information about commercial and retail transportation opportunities too large for any of the Members individually to handle, and communication of bid information with respect to those opportunities between ATA and large commercial and banking customers; and (c) joint purchasing by the members of certain items (e.g., trucks, tires, software, insurance) to take advantage of volume discounts.

As detailed below, the effects of such activities would increase competition and benefit consumers in both the relevant banking and commercial armored car transportation markets. In addition, the structure of the venture would not restrict competition in any market.

MARKET CHARACTERISTICS

The Banking Armored Transportation Market:

The banking armored transportation market is highly concentrated. The largest single firm is Brinks. Brinks and Loomis Fargo are the only armored carriers with terminals located in every region and locality of the country. They have contracts with most domestic "Mega Banks" as well as major commercial customers such as JC Penney, Pep Boys and Disney.

Total 1996 annual revenues in the U.S. armored transportation market amounted to between \$1.5 to \$2 billion.¹ Based on annual revenues, Brinks has a 20.9% share in the armored transportation market, and the largest two firms have a collective market share in excess of 39.2%.

The following summarizes some relevant data² for the largest two (2) carriers in the bank market:

<u>Carrier</u>	<u>Annual Sales</u>	<u>Terminals</u>	<u>Tractors</u>	<u>Market Share</u>
Brinks - 1996	\$418,941	145	1800	20.9
Loomis Fargo - 1996	366.3	136	1770	18.3

¹ Figures obtained from Security Investing, a security industry periodical.

² The data is based on information provided by the carriers in their annual reports.

Loomis and Wells Fargo merged in 1996, forming a combined entity. Loomis revenue for 1996 was \$120 million and Wells Fargo was \$246.3 million.

The dominant armored haulers have long-term contracts with regional and nationwide "mega banks" at prenegotiated rates for service. The contracts typically call for service to a large number of branches and ATM machines in regions and localities across the country.

There are numerous substantial barriers to entry into the multi-regional banking transportation market. First and foremost, the capital investment required to compete in the market is enormous. The dominant banking haulers have extremely large fleets of armored cars (each of which costs approximately \$60,000.00) and networks of numerous terminals and vault facilities. The cost of purchasing a new fleet the size of Loomis Fargo (1,770 trucks) would be in excess of \$106 million, and Brinks' fleet (1,800) would cost over \$108 million.

The armored carriers' large fleets are necessary to meet their customers' requirements for hauling large quantities of money. Armored carriers must also have substantial backup capacity to be able to ensure their customers of reliable and safe deliveries.

Carriers with smaller operations simply cannot compete for wide area banking business on this scale. Their plight is aggravated by the merger trend in the banking industry where many local banks have been acquired by so-called "mega banks."³ These mergers have caused the local carriers to lose the ability to continue to serve their local banks. First, their fleets are too small to reliably service the cash requirements that the emerging "mega banks" need to transport. Second, their geographic reach is limited because they do not have terminals outside their localities. Any attempt to provide service outside their home base presents not only operational problems, but creates security risks for the personnel involved.

In contrast, the dominant carriers all have sophisticated computerized tracing capabilities to monitor operations on a nationwide basis, as well as the ability to maintain terminals and vaults, and operate a route structure that can serve these "mega banks." Also, because of their substantial size and buying power, the dominant armored carriers also enjoy substantial cost advantages in areas such as the purchase of equipment and insurance.

³ In the period between 1990 and 1997, mid-size banks (\$300 million to \$5 billion) decreased from 1913 to 1397 or 37%. These were often local banking institutions that had been served by the member of ATA, but the mergers have destroyed their ability to continue to serve this market. Source: Bank Mergers and Acquisitions, Charlottesville, VA.

Their large size gives the largest armored carriers a further advantage over smaller would-be competitors, in terms of convenience to the customer. Large carriers can conveniently deal with a single point of contact in a single negotiation and take care of a large proportion of their new armored car transportation needs for an extended period. In contrast, dealing with numerous smaller carriers requires customers to engage in multiple negotiations and suffer increased transactions, costs and inconvenience.

Retail and Commercial Armored Transportation Market:

The armored transportation market is highly fragmented. It is made up of hundreds of small to medium-sized carriers who operate within their regions and localities. Commercial moves most often involve less than 50 locations, and the bulk of them are much smaller (5 locations).

Commercial transportation needs are not very predictable, so long-term contracts are constantly amended. The commercial market often requires special pickups, and the customer often has to expend significant effort to engage a carrier with trucks available to handle a special assignment on short notice. Typically when the need for a commercial move arises, customers have to contact multiple carriers in the relevant area to try to secure the service they need, and then to negotiate rates once a suitable carrier is found.

When large scale commercial moves arise, the transactions costs for the customer are even higher. Because armored carriers in the market are too small to handle the largest jobs, the customer in those situations has to assemble a patchwork of different carriers to accomplish the move. This requires not only multiple calls to find trucks, but also multiple negotiations with the carriers under consideration. With large scale moves, there is currently no way to arrange service via a single point of contact.

HOW ATA WILL OPERATE

The purpose of ATA will be to engage in three categories of activities: (1) joint bidding on bank armored business too large for any member individually to handle; (2) communication to members of commercial and banking transportation opportunities, and joint bidding on armored car requirements too large for any member of ATA to handle on its own; and (3) joint purchasing in bulk of products necessary in the conduct of the vehicle transportation business.

Outside of the activities outlined above, the members of ATA will continue to do business independently of each other and of ATA. The members will always remain free to bid independently on any business they wish. In addition, the members will not be restricted in any way from bidding against ATA.

Structure of ATA:

ATA will be an association of approximately five independent armored car companies located in different, non-overlapping regions throughout the country. Membership in ATA will be confined to dependable carriers with excellent business reputations and safety records. Some of the carriers who would participate as members of ATA currently participate only in the hauling market, and others participate in both the bank and commercial markets. The largest carrier under consideration for inclusion in ATA has fewer than 100 armored cars, and the others have less than half of that number.

The estimated combined annual revenue of the ATA members will be less than \$120 million, and their combined market share is currently less than six percent (6%) of the armored transportation market. There is no precise data available to calculate the breakdown of market share between banking and commercial work. However, the volume of annual U.S. cash shipped by retail and commercial business is estimated to be as large as the volume of bank shipments. Therefore, the combined market share of the venture participants in the commercial market and the banking market should approximate six percent (6%).

It is currently anticipated that ATA will be organized as a corporation. It will be governed by a board of directors consisting of one representative from each of its members, plus any ATA officers or employees selected for service on the board. The venture will be managed on a day-to-day basis by one or more ATA officers or employees who will not be employees of or own stock in any member.

Membership in ATA will be documented by means of separate contracts between each member and ATA, and will involve no direct contractual arrangements between any ATA carriers.

ATA's Activities:

Commercial and Retail Bidding. ATA intends to establish relationships with potential customers likely to have the need for hauling currency and valuables. ATA will solicit customers by offering them a single point of contact to arrange commercial moves anywhere in the continental United States. Once a customer approaches ATA with a commercial transportation opportunity, ATA will promptly contact all of its members to inform them of the potential business. In addition, if any ATA member learns of an opportunity which the individual member cannot handle independently, ATA will (at the request of the member) contact other members to solicit their interest.

Any member who so desires may bid independently on this business. If there are members interested only in a portion of the contract, then they will transmit to ATA the quantity they wish to handle, and the price per mile they would charge. ATA would assemble the lowest price overall bid based on these responses from its members, then relay this bid to the potential customer. None of the information which ATA receives

from individual members will ever be shared with any other member, nor will the customer receive a breakdown of the bid. If the customer does not accept the bid, ATA will inform its members, and there will be no further negotiations between ATA and the customer.

It is presently contemplated that ATA and its members will communicate the information discussed above primarily by means of computer network. Such a computerized system would allow the venture internally to communicate information quickly and cost-effectively so that ATA could provide prompt responses to customer requests. As currently envisioned, the network would be structured so that the members could communicate with ATA, and vice versa, but the members would not be able to communicate with each other on the network.

Bank Bidding. ATA intends to market itself to nationwide and regional banks and as a sophisticated network of high-quality armored transportation companies with capabilities and facilities spanning every region in the country. ATA would offer a single point of contact for negotiations for these transportation services. Negotiation with banking customers would be done by ATA officers or employees, with the assistance in some cases of a representative of one of the member carriers. Only one member representative would be involved at a time in any particular negotiation.

Prior to any such negotiations, ATA will communicate separately with each of the member carriers to determine the prices and terms on which each is willing to deal with respect to bank service. Bids and negotiations will be based on this information collected by ATA, but only the ATA representative will have access to the member by member price and terms information. As with commercial business, any member is free to compete independently for any new car business, and will not be restricted from competing against an ATA bid (should it ever attain the capacity to do so).

Servicing Accounts. After it has won a contract for armored transport business, ATA will centrally manage the execution of the contract, and will continue to provide "single point of contact" service to its customers. Thus, all loss prevention, tracing and insurance on this business will be handled centrally by ATA.

This centralized administration is necessary for several reasons. First, it is the only way that the venture can provide service comparable to the larger carriers whose administration and operations are centralized. Without centralized administration, there would be no means for ATA to ensure that the network is operating efficiently and meeting the needs of its customers. Moreover, centralized administration will reduce costs and increase operational efficiencies. The resulting savings will enable the venture to deliver its services to customers at lower cost.

Joint Purchasing. The ATA board of directors will be responsible for identifying common items needed by all members to compete in the armored transportation market. This list will include many items (e.g., trucks, tires, software, insurance) which would qualify for volume discounts once members' purchases are pooled together. ATA will

negotiate and arrange discount purchases of these items on behalf of its members. Members will be free to use items purchased through this joint purchasing program in any way they choose, regardless of whether it is in their independent business or in their ATA business.

EFFECT ON COMPETITION

ATA will have significant pro-competitive effects. Chief among them is the creation of a new entrant in the highly concentrated market for nationwide bank transportation. The bank transportation market is dominated by Brinks, with over twenty percent (20%) of the market, and the largest two firms in that market who have a collective share of over thirty-nine percent (39%). Brinks and Loomis Fargo are currently the only firms to offer armored car services on a nationwide basis.

While some of the potential members of ATA currently participate in the bank transportation market, they lack the size necessary to compete against the dominant firms for large scale transportation business. ATA will enable them to pool resources, enjoy economies of scale, and compete for business which none of them individually could hope to get. In addition, courts have recognized that the unique economies achievable by a "network" of trucking firms like ATA have significant pro-competitive benefits. See Rothery Storage Van & Co. v. Atlas Van Lines, 792 F.2d 210, 212, 221 (D.C. Cir. 1986).

In 1993, the Justice Department issued a Business Review Letter stating that it would not challenge a joint venture similar to ATA proposed in the wholesale lawn and garden products distribution industry. See Business Review Letter to Robert D. Paul, Esq., re: PRIMESOURCE joint venture (January 29, 1993).

In that situation, as here, the national market was dominated by a single firm. The benefits to competition of permitting a joint venture to form and compete with the incumbent firm were acknowledged by the Department:

"[T]he proposed arrangement could have a significant pro-competitive effect by creating a second competitor for multi-regional and national distribution of lawn and garden products:

Id. at 3; see also Business Review Letter to Independent Drug Wholesalers Group (May 18, 1987).

ATA will have similar pro-competitive effects in the commercial market. There are currently only two firms who can consistently handle very large nationwide commercial moves on their own. Thus, ATA will create a new alternative to be offered to such customers: a single point of contact capable of organizing a network of trucks who can deliver the product at a single competitive price. See Broadcast Music, Inc. v. CBS,

441 U.S. 1, 20-23 (1979) (upholding horizontal venture where “resulting efficiencies created, in effect, a new product that could not otherwise exist”).

ATA’s joint purchasing program will simply allow its members to take advantage of some of the efficiencies and economies of scale enjoyed by the larger firms in the industry. These savings will enable ATA members, on their own and individually, to offer their services at lower costs, which will benefit competition. In addition, because the buying group collectively represents only a small fraction of potential purchasers of truck tires, parts, accessories, insurance and computer software, there is no risk here that the ATA members will attain monopsony power. In these circumstances, ATA’s proposed joint purchasing program will be entirely pro-competitive. See Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co., 472 U.S. 284, 295 (1985) (joint purchasing arrangements “designed to increase economic efficiency and render markets more, rather than less, competitive”).

Furthermore, ATA’s structure and method of doing business have been designed to avoid the possibility of any anti-competitive conduct by members. ATA will impose almost no ancillary restraints on its members. Existing competition and potential competition between members thus will be fully preserved, since all will remain free to bid on any business which they wish to pursue. Indeed, if they ever have the capacity to do so, they may even compete against an ATA bid. That is far more freedom than the typical “network” allows its members. See Rother, 792 F.2d at 221, 230 (where the court upheld a joint venture’s policy of terminating participating agents who engaged in moving business for their own account); see also Wisconsin Music Network v. Muzac Limited Partnership, 1993-1 Trade Cases (CCH) ¶ 70, 176 (E.D. Wis. 1992) (upholding legality of agreement restricting affiliates’ rights to market individually to large “multi-territory” customers.)

In addition, the bidding process for both bank and commercial armored car transport business has been carefully designed to safeguard against misuse by members of price information from other members. No such information relating to a particular member’s prices will ever be available to any other member. No member would communicate directly with any other members regarding prices or terms; all communications among members would be through ATA. Nor will more than one member representative ever be involved at one time in any negotiation with a customer. These procedural safeguards are exactly the sort the Department has favored in its prior Business Review determinations regarding joint ventures.⁴

⁴ See e.g., Business Review Letter to Robert D. Paul Esq. re: PRIMESOURCE (Jan. 29, 1993); Business Review Letter to the Beverage Importers’ Freight Ass’n (Aug. 24, 1989); Business Review Letter to the FRA Shippers’ Ass’n (June 17, 1988); Business Review Letter to the Columbian River Shippers’ Ass’n (March 30, 1988); Business Review Letter to the North American Shippers’ Ass’n (March 16, 1988); Business Review Letter to North Texas Regional Clearing House Ass’n (Sept. 23, 1987); Business Review Letter to American Furniture Manufacturers Ass’n (July 7, 1987); Business Review Letter to Independent Drug Wholesalers’ Group (May 18, 1987); Business Review Letter to Fashion Accessories Shippers’ Ass’n (March 26, 1987); Business Review Letter to International Beverage Shippers’ Ass’n (Dec. 13, 1985); Business Review Letter to New World Shippers’ Ass’n (Aug. 26, 1985); Business Review

Furthermore, because of the size of ATA and the structure of the markets in which it would participate, the risks of anti-competitive effects from its activities are realistically non-existent. ATA's collective share of the armored transportation market would be less than six percent (6%). As Judge Bork said in Rothery, 792 F.2d at 217;

“Analysis might begin and end with the observation that Atlas and its agents command between 5.1 and 6% of the relevant market It is impossible to believe that an agreement to eliminate competition within a group of that size can produce any of the evils of monopoly.”

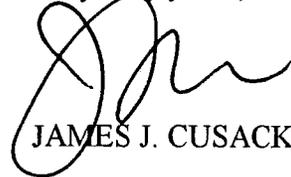
ATA would be sure to face stiff competition in both bank and commercial armored transportation markets. In the commercial market, there are literally hundreds of other haulers that customers can use, and in the bank market even ATA's collective market share is dwarfed by that of the largest firms. In addition, in the bank transportation market, virtually all of ATA's potential customers would be large and powerful buyers with many other suppliers (and other methods of transportation) from which to choose. Thus, ATA's activities in the vehicle transportation market simply could not endanger competition in any other market.

CONCLUSION

Our client is anxious to commence its venture as soon as possible. We are of course available to work with you and your staff in any way we can to assist in your evaluation of this proposal.

Thank you for your consideration of our request.

Very truly yours,



JAMES J. CUSACK

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Enclosure