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January 13, 1995

WRITER'S DIRECT DIAL NUMBER

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BY HAND

The Honorable Anne K. Bingaman
Assistant Attorney General
U.S. Department of Justice
Antitrust Division
10th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Request for Business Review: Intermodal Transportation
Discussion Forums

Dear Ms. Bingaman:

This is a request by the Intermodal Council of the American Trucking Associations, Inc. ("ATA") pursuant to 28 C.F.R. § 50.6 for an expedited business review letter from the Antitrust Division of the Department of Justice regarding proposed discussion forums for participants in the intermodal transportation industry. The Intermodal Council is a non-profit membership organization within ATA that provides information, policy advocacy, training, and other traditional trade association services to the Council's predominantly drayage-carrier and railroad members in connection with their intermodal freight transportation operations.

The ATA Intermodal Council would like to convene a series of discussion forums that would include motor carriers, railroads, ocean carriers, shippers and any other party with an interest in fostering effective intermodal freight transportation to discuss and address some of the inefficiencies that have developed in the industry resulting in intermodal shipping being a less attractive market alternative. Parties representing all segments of the intermodal industry, including the shipper customers, have expressed support for such an initiative because of their

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belief that it will enhance the quality of intermodal transportation. In addition, this project has the support of the Office of Intermodalism at the U.S. Department of Transportation.

Intermodal transportation involves, among other things, the exchange of trailers or containers loaded with freight between different modes of transportation, *e.g.*, ocean carriers, motor carriers, railroads, and air cargo carriers. A typical intermodal shipment might involve a motor carrier picking up an empty intermodal trailer from a rail ramp near the shipper, depositing the trailer at the shipper for loading, hauling the trailer back to the rail ramp for rail shipment to the destination rail ramp, where the destination motor carrier would pick up the trailer, deliver the goods to the receiver, and return the trailer to the railroad. An obvious, non-intermodal alternative for such a shipper would be to have one motor carrier make the entire haul. Intermodal shipments similarly revolve around intermodal freight transfer facilities at seaports and airports. Currently, a very small percentage of all freight is shipped intermodally.

By definition, the execution of an intermodal haul requires substantial interaction among the various transportation carriers that participate in it. Often, the trailers or containers used in intermodal transportation are owned or controlled by the railroads, ocean carriers, or shippers. Motor carriers use such equipment pursuant to so-called Equipment Interchange Agreements, which, among other things, provide motor carriers with an incentive to make timely pick-ups and deliveries, allocate between the parties the risk of damage to the equipment, and establish levels of insurability. The principal economic terms of an Equipment Interchange Agreement are "free time," which is the amount of time that a motor carrier can have possession of intermodal equipment without incurring any charges for its use, and "per diem," which is the daily rate at which a motor carrier is charged for use of the equipment once free time has expired. Such agreements also typically include terms and provisions governing: responsibility for damage and repairs, recovery for lost or stolen equipment, access to private property, indemnification clauses, and levels of insurance. Individually executed Equipment Interchange Agreements govern, for example, intermodal equipment exchanges between the 12 Class I railroads and approximately 2,000 motor carriers doing business in over 200 intermodal transfer facilities nationwide.

Currently, there exist substantial inefficiencies in the way carriers interact with one another that make intermodal transportation a potentially higher cost and less attractive market alternative to shippers than it ought to be. For example, at present, most intermodal equipment must be returned to its point of origin after use. Quite often, this results in motor carriers travelling inefficient "empty vehicle miles," when the trailer or container involved could

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have been returned to a terminal that is closer to the receiver's location or dropped at another shipper customer for loading before being returned. A more flexible practice that would allow for the pick up and return of trailers to multiple terminals and/or transloading would lead to more efficient equipment utilization. Another example involves the inefficient management of intermodal terminals. As noted, there are over 200 such terminals in the United States. The intermodal industry, however, has no standard procedures or documentation for the transfer of intermodal freight at these terminals. Many differences exist even among an individual company's facilities. No uniform bill of lading exists for intermodal shipments, and each company maintains its own equipment interchange receipts. It would greatly lower costs and improve the efficiency of intermodal terminals if a standard set of documents (e.g., receipts) were developed to be exchanged at the time of freight transfers.

In an effort to improve intermodal transportation as a market alternative, the ATA Intermodal Council proposes to convene a series of forums where issues such as those described above can be discussed and analyzed so that best practices and cost-saving measures can be identified. If such issues were resolved, the interdependent partners in the intermodal industry (motor carriers, railroads, ocean carriers, air cargo carriers, shippers, etc.) would incorporate more efficient practices into the Equipment Interchange Agreements and would adopt other sensible, cost-reducing practices for the intermodal transportation of goods. It is now very difficult for the owners of intermodal equipment (e.g., the railroads) to discern what terms and practices will serve the intermodal system most efficiently because of the enormous diversity in operations among the thousands of motor carriers and shippers that participate in intermodal transportation. It has proven unworkable and too costly for equipment owners to identify and incorporate industry practices on a transaction-by-transaction and carrier-by-carrier basis.

The purpose of the proposed Intermodal Council forums would be to conduct an open exchange of views on equipment interchange, utilization and terminal management practices and to explore possibilities for cost savings and the implementation of best practices. There would be no discussion of actual freight rates, per diem rates, or other price terms -- all of which would be left to individual carrier-to-carrier contract negotiations.

At the various forums, prominent members of the motor carrier, ocean carrier, railroad and shipping communities and of the federal government would be invited as speakers to identify inefficiencies and suggest efficient best practices. Open discussion among all forum participants would be encouraged. After each such forum, the Intermodal Council would publish

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-- first in draft form for comment by all participants -- a report of the ideas and best practices identified and make that report available to all interested parties.

Invitees to the forums would include representatives of all interested parties, including the Office of Intermodalism at the U.S. Department of Transportation, the Class I railroads, ocean carriers, intermodal motor carriers, intermodal shippers, representatives of the carriers' and shippers' trade associations, and any other interested freight transportation providers.

There exists broad support for the ATA Intermodal Council's proposed forums from the entire intermodal transportation community. The Honorable Michael Huerta, Associate Deputy Secretary and Director, Office of Intermodalism at the U.S. Department of Transportation, has expressed support to ATA for the proposed forums and indicated he would be willing to confirm this in answer to a call from the Antitrust Division. In addition, as is evident from the enclosed correspondence (in response to ATA's two-page "Concept Paper") (enclosed), formal endorsements of the proposed Intermodal Council forums have been received from Burlington Northern Railroad and the Atchison, Topeka and Santa Fe Railway Company, two of the largest railroads; Maersk Inc., a major ocean carrier; and Exel Logistics North America, an innovative shipper-logistics company and the largest third-party warehouse provider in the United States.

The proposed discussion forums would be highly procompetitive because they would help to increase the viability of intermodal transportation as an alternative for shippers and would likely lead to increased innovation in devising new processes inherent to intermodal transportation. Intermodal transportation is by its nature a cooperative enterprise: shippers, motor carriers, ocean carriers, and railroads must work together in order for the service to be available at all. As intermodalism has grown in popularity, many inefficiencies have developed in the infrastructure through which the industry's thousands of diverse participants interact to make intermodal transportation possible. The proposed discussion forums would serve to address those inefficiencies so that the entire system functions more effectively to the benefit of intermodal carriers, shippers, and consumers.

In order to guard against any possibility that the proposed forums could be used for inappropriate purposes, several procedural safeguards would be employed:

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First, all interested parties, including the shipper customers, would be invited to participate;

Second, the forums would in no way address core economic terms, such as the amount of free time to be granted or the per diems to be charged in individual Equipment Interchange Agreements, or any other topic that is competitively sensitive. Discussion at the forums would be limited to ways to achieve efficiencies and cost savings. Equipment Interchange Agreements and all other agreements among intermodal shipping partners and with shippers would continue to be the subject of individual negotiation by the relevant parties;

Third, each forum would be governed by a formal agenda of topics and issues to be discussed, and that agenda would be reviewed and approved in advance by experienced antitrust counsel. Deviations from the formal agenda would not be permitted;

Fourth, all forums would be monitored by an experienced antitrust attorney; and

Fifth, the topics and ideas discussed at the forums would be recorded in a publication produced by the ATA Intermodal Council for distribution to all interested parties.

If you require any additional information about the ATA Intermodal Council or the proposed discussion forums on intermodal transportation, please do not hesitate to call me or Daniel R. Barney, Senior Vice President and General Counsel of ATA (703/838-1899), and we will provide whatever you need promptly.

Very truly yours,



Kevin J. Arquit

Enclosures

cc: Robert E. Litan, Esq. (w/Enc.)