



U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 12 1993

Alan F. Wohlstetter, Esquire
General Counsel
Household Goods Forwarders
Association of America
1700 K. Street, N.W., Suite 301
Washington, D.C. 20006

Dear Mr. Wohlstetter:

This letter responds to your request on behalf of the Household Goods Forwarders Association of America, Inc. ("HHGFAA" or "Association") for a statement by the Department of Justice, pursuant to the Business Review Procedure, 28 C.F.R. § 50.6, of its current enforcement intentions with respect to proposed amendments to HHGFAA's by-laws. These proposed amendments relate to eligibility for, and expulsion from, Associate Membership in the Association based on the existence of certain outstanding debts owed to Associate Members.

We understand that the HHGFAA is a non-profit corporation organized to advance the interests of the household goods freight forwarder industry, primarily to handle discussions with the Department of Defense ("DoD") concerning overseas movements of household goods.^{1/} There are two classes of HHGFAA membership: Active and Associate Members. Active membership is open to household goods freight forwarders engaged in the movement of household goods via the door-to-door through container method for, but not limited to, DoD. These are the firms that compete for DoD movements and, when selected, become obligated to DoD to ensure performance of the contracts negotiated with that agency. The Association has at present about 89 Active Members, all of which are located in the United States. Active members compete for world-wide moves, and typically contract with additional firms to provide necessary supplemental services, both in the United States and overseas.

^{1/} DoD movements account for about 92 percent of all overseas moves handled by domestic household goods freight forwarders.

Associate Membership is open to any person, firm or corporation engaged, or having an interest, in the door-to-door container movement of household goods or general commodities, but which is not itself a bidder on DoD contracts and which does not therefore have direct contractual dealings with DoD. These firms generally provide supplemental goods and services to the household goods freight forwarder industry in connection with DoD moves. Examples are moving and storage companies who serve as agents, port agents, steamship or truck transportation firms, or firms that provide boxes and other materials, or that pack, warehouse, or unpack household goods. Associate Members can also be household goods freight forwarders that contract for moves with entities besides DoD, such as private companies and other government agencies. When an otherwise Active Member is the successful bidder on a non-DoD move, it becomes an Associate Member for purposes of that transaction. There are about 960 Associate Members, with approximately one-third located in the United States and the remaining two-thirds located overseas.

Article IV of the Association's by-laws currently provides a procedure for suspension or expulsion of Associate Members for good cause, including failure to pay dues or other obligations owed to the Association, failure to maintain membership qualifications, failure to comply with the terms and conditions of Associate Membership, and failure to comply with the terms and conditions of business conduct that may be adopted by the Association. The Association proposes to amend its by-laws to deny Associate Membership to firms, and to provide for the expulsion of any Associate Member, for failure to pay monies owed to any Associate Member for services performed at that Associate Member's request. In order to trigger such action, there must be a debt obligation of at least five thousand dollars (\$5,000), which has been outstanding for at least 90 days. There must also have been at least two written requests for payment, and the debt must not involve a pending legal action. The Associate Member to which this obligation is owed would be required to bring it to the attention of the Association's Executive Committee, and to document the presence of all the above requirements. The alleged delinquent party would be entitled to notice of the proceeding, copies of all documentation submitted to the Executive Committee, and a hearing. Denial of, or expulsion from, membership would require a vote of a two-thirds of a quorum of the Executive Committee, which is comprised primarily of Active Members.

You have represented that there is at present no effective means by which Associate Members can pursue claims for nonpayment for services rendered where disputes arise involving non-DoD moves. We understand that this problem is limited to non-DoD transactions, and thus affects less than ten percent of all household goods freight forwarder contracts, because DoD mediates payment disputes that arise involving its moves. You

contend that these proposed by-law amendments are an appropriate form of self-regulation and will be useful in helping to ensure that actual or potential Associate Members adhere to accepted and honest business practices in their dealings with other Associate Members by helping to exclude firms that have a poor credit history from the HHGFAA.

You have also represented that HHGFAA membership is not required in order for firms to engage in the business of household goods freight forwarding, to obtain DoD contracts for forwarding household goods, or to provide any of the goods or services normally supplied by Associate Members. You also represented that a significant portion of business in all areas is conducted by non-HHGFAA members, that is, with respect to forwarding and the provision of supplemental goods and services for both DoD and non-DoD moves, domestically and internationally. We understand that membership in the Association may be helpful, however, in obtaining referral business, particularly for firms in distant or foreign markets who are located through use of the Association's Directory. You further represented that prices will not be affected as a result of implementation of the proposed by-laws, and that the HHGFAA does not engage in any business operations, but primarily provides a vehicle for dissemination of information to its members, and represents the industry in various contexts. We understand that neither the HHGFAA nor its members are permitted to engage in collective ratemaking, nor are the Association's activities regulated by the Interstate Commerce Commission.

Based on the information you have provided and your representations, the Department has no current intention to challenge HHGFAA's proposed by-law amendments. The proposed amendments and their operation do not appear likely to be anticompetitive. This conclusion is based on your representations that the amendments do not propose to restrict output or price, that HHGFAA membership is not required for firms to engage in the various services that Associate Members typically provide, that there are a large number of firms providing, or capable of providing, supplemental goods and services to the household goods freight forwarder industry in this country and overseas. It is also based on your representation that decisions to deny or exclude firms from Associate Membership will rarely, if ever, be made by competitors of such firms. Moreover, the proposed by-law amendments contain procedural safeguards to ensure that affected parties are given notice of the nature of the complaint, the nature of any evidence, and an opportunity to respond.

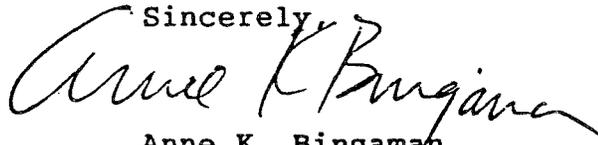
In addition, the proposed by-law amendments may have the desirable effects of facilitating the movement of household goods. Good-standing membership in the HHGFAA may assist HHGFAA members in locating and contracting with unknown firms in distant or foreign markets, based on knowledge of the

Association's criteria for the financial responsibility of its Members and the existence of a mechanism to address any disputes that may arise. By helping to avoid firms supplying supplemental goods and services that have demonstrated poor financial reliability, the proposed amendments may enhance the value of HHGFAA Associate Membership, lower the costs of securing such goods and services, and reduce the likelihood of problems or disruptions in connection with household goods movements. In addition, the proposed by-law amendments appear designed and limited in scope and application to deal with the problem you have represented to exist.

For the foregoing reasons, the Department has no present intention to challenge the adoption or implementation of the proposed HHGFAA by-law amendments. This letter expresses the Department's current enforcement intentions only. In accordance with our normal practice, the Department remains free to bring whatever action or proceeding it subsequently believes is required by the public interest if the amendments prove to be anticompetitive in purpose or effect.

This statement of the Department's enforcement intention 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 available to the public immediately. Your supporting documents will be publicly available within 30 days of the date of this letter unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,



Anne K. Bingaman
Assistant Attorney General

AKB:lj
Enclosure