



U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 8 1993

Donald Flexner, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2595

Dear Mr. Flexner:

This letter responds to the July 24, 1989 request on behalf of the Western Railroad Traffic Association (WRTA), Consolidated Rail Corporation and CSX Corporation for a statement of the Department's current enforcement intentions with respect to their proposal for WRTA to perform certain price collection and dissemination functions.^{1/}

According to the parties, WRTA is an incorporated association whose membership consists of the major railroads operating in the western United States. Although it has an ICC-approved Section 5b agreement that gives its members antitrust immunity for certain joint-line ratemaking, WRTA states that it has eliminated its collective ratemaking activities. Currently, WRTA serves primarily as a tariff publishing agent, collecting and publishing both regulated and deregulated rates in response to specific instructions from one or more of the participants in the moves to which the rates apply. Rates are maintained in computer or paper tariffs, and WRTA's publications include individual railroad, regional agency and national tariffs. WRTA provides shippers and other interested parties with access to its on-line computer and

^{1/} By letter dated August 21, 1989, the parties submitted a correction to their original request. In response to inquiries from the staff, the parties submitted supplemental clarifications and information by letters dated February 23, 1990, May 29, 1990, and October 30, 1990.

paper tariffs and files tariffs for regulated traffic with the ICC and certain state regulatory agencies.

WRTA has requested and received several business reviews from the Division previously. In October 1983, WRTA received a favorable business review for its proposal to collect carrier rates for deregulated transportation, organize the rates into price lists and disseminate the price lists to shippers and other WRTA service subscribers.^{2/} WRTA subsequently sought and received a modification of this review in 1985 to include the collection and dissemination of regulated rates and contract rates, as well as deregulated rates. The modification also covered WRTA's proposal to act as a conduit to forward requests for concurrences in changes in regulated and deregulated joint line rates from the proposing carrier to other carriers participating in a particular movement.^{3/} In addition, WRTA obtained a favorable business review from the Division for a proposal relating to the collection, coordination and publication of rate changes to reflect increases in the ICC rail carrier cost recovery index.^{4/}

In this request, the parties propose that WRTA:

continue to act as a clearinghouse for the compilation of rate adjustment instructions from any railroad that wishes to use its service. It will accept any proposed rate changes, on a scheduled or unscheduled basis, and either publish them on the requested date if they are single-line rates, or [upon request] communicate them to direct connectors of the proponent carriers.^{5/}

The proposal contemplates that WRTA would inform connecting carriers of proposed rate changes in any type of joint rate,

^{2/} Business review letter to Mark Levin, October 28, 1983 from William F. Baxter, Assistant Attorney General, Antitrust Division.

^{3/} Letter to Mark M. Levin from Elliott M. Seiden, Chief Transportation Section, Antitrust Division.

^{4/} Letter of May 22, 1984 to J. Baker, Esq. and B. Wilson, Esq. from Helmut F. Furth, Acting Assistant Attorney General, Antitrust Division.

^{5/} Letter of July 24, 1989, from James Weiss to James Rill, Assistant Attorney General, Antitrust Division, p. 3.

including a rate for which agreement, that is, concurrence, by the other participants is not legally required.^{6/} WRTA would then convey the connecting carriers' responses to the proposing carrier and if so instructed, publish the rate changes. The parties represent that WRTA will have no independent role in setting the rates and that it will limit communications about proposed rate changes to the proposing railroad and its direct connectors on the movement. Id.

Part of the parties' proposal appears to embrace conduct in which WRTA is already engaged: WRTA currently collects, lists and disseminates rate information for regulated and deregulated rates for both single-line and joint-line movements upon instructions from the participants in the movements.^{7/} Because the Division does not consider requests concerning ongoing business conduct, we decline to review this part of the parties' proposal.

The other part of the parties' proposal -- that WRTA serve as a clearinghouse for the exchange of rate information between carriers participating in joint-line movements -- entails proposed conduct. Based on the parties' representations on the structure of, and above-mentioned limitations on, their proposed joint rate exchange, the Division has no present intention to challenge its implementation under the antitrust laws.^{8/} We caution, however, that the competitive effects of fare collection and dissemination ventures often depend on the way they are actually operated and used by participants. See, e.g., United States v. Airline Tariff Publishing Company, Civ. No. 92-2854 (SSH). In accordance with normal practice, the Department reserves the right to bring an enforcement action in the future if the actual operation of the proposed joint rate exchange proves anticompetitive in purpose or effect.

Pursuant to 28 C.F.R. § 50.6, your business review request will be made publicly available immediately and any supporting

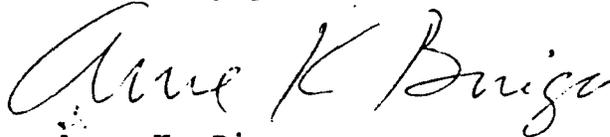
^{6/} Letter of February 23, 1990 from James R. Weiss to Donna Kooperstein, Antitrust Division.

^{7/} Letter of October 30, 1990 from Thormund A. Miller, to Donna Kooperstein.

^{8/} The Division's present enforcement intention is also based on our understanding that WRTA does not intend to publish contract rates.

data will be made 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 yours,

A handwritten signature in cursive script that reads "Anne K. Bingaman". The signature is written in black ink and is positioned above the typed name.

Anne K. Bingaman
Assistant Attorney General