



Department of Justice

DOJ 85-13

FOR IMMEDIATE RELEASE
TUESDAY, JULY 9, 1985

AT
202-633-2016

The Department of Justice announced today it did not intend to challenge a proposal by the Machinery Dealers National Association to raise revenue by requesting voluntary contributions from trucking firms that do business with its members.

The Department's position was stated in a letter signed by Charles F. Rule, Acting Assistant Attorney General in charge of the Antitrust Division, to Darryl D. McEwen, executive vice president of the association.

The association had asked the Department for a business review letter stating the Department's enforcement intention if the association carried out its proposal.

Under the proposed program the association would raise money for its activities by obtaining voluntary contributions from trucking companies which carry association members' products. Under the plan, trucking companies wishing to participate would be asked to make a voluntary monthly contribution equal to a percentage of the trucking fees paid by association members to that firm.

In exchange for any contribution, participating trucking companies would be included in a list published by the association. Each participating trucking company would be free to set the percentage for that company and could withdraw from

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the program at an time. Moreover, members would continue to determine the rates they paid for transportation independently of one another and could choose, unilaterally or in agreement with participating trucking companies carrying their goods, not to have any particular shipment counted toward that trucking company's contribution.

Under the Department's Business Review Procedure an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division would challenge that action under the antitrust laws.

A file containing the business review request and the Department's response will be made available to the public immediately and may be examined in the Legal Procedure Unit, Antitrust Division, Room 7416, Department of Justice, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review will be added to the file.

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U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUL -8 1985

Mr. Darryl D. McEwen
Executive Vice President
Machinery Dealers National
Association
1110 Spring Street
Silver Spring, Maryland 20910

Re: Business Review Request -- MDNA Contribution Plan

Dear Mr. McEwen:

This letter responds to your letter of August 13, 1984, requesting a statement from the Department of Justice of its present enforcement intentions regarding the proposed Machinery Dealers National Association (MDNA) plan to raise revenue through voluntary contributions from trucking firms. You have supplied additional details concerning the plan in telephone conversations. Based upon the information you have supplied to us and our own investigation, we have no present intention to challenge the MDNA proposal.

You have stated that the Machinery Dealers National Association is a trade association of used machinery dealers which represent approximately 500 of the 1000 machine dealers in the United States, and that its members handle 85-90% of used machinery sales nationwide. These dealers purchase used machinery from industrial producers and others and ship the machines at dealers' expense to warehouses for resale. Nearly all of these shipments are transported by common carriers using flatbed trucks, and only a small percentage require specialized handling or are shipped by rail.

You have described MDNA's proposal as a means to raise money for Association activities by obtaining voluntary contributions from trucking companies which carry MDNA's members' products. Under the plan, trucking companies wishing to participate will be asked to make a voluntary monthly contribution to the Association. The amount of the

contribution will be based on a percentage of the trucking fees paid by members. Participating trucking companies will be free to set the percentage they wish to use for calculating contributions, and they may withdraw from the program at any time. The MDNA will administer the program by obtaining bills of lading from its members concerning shipments of machinery and will then sort them by trucking company. MDNA will then notify the trucking companies each month of the volume of shipments they carried for MDNA members so they can compute their contribution to MDNA. These bills of lading will be kept confidential by MDNA, and will not be used to assess members' market shares or prices. MDNA members may agree with a trucking company participating in the program, or decide unilaterally, not to submit particular bills of lading to MDNA.

In exchange for contributions made by participating trucking companies, MDNA proposes to publish a list of the contributors and circulate it among its members. This publication will emphasize that the Association is not thereby certifying or endorsing the particular trucking firms. Moreover, you have stated that there will be no attempts by MDNA to encourage members to use the trucking company contributors or to boycott those who do not contribute.

Based upon the information you have provided, the Department has no present intention of challenging the MDNA proposal. The plan, on its face, does not lessen competition in the sale of used machinery, because it does not alone promote a coordination of the MDNA members' prices. Since there is no agreement among the MDNA members, indirect or direct, as to the price they will pay for transportation services, individual shippers are free to negotiate a competitive price. However, the MDNA contribution plan proposed here could be used as an enforcement mechanism for an agreement among MDNA members as to the price they pay for transportation services. Were the plan to be used as an aid in the coordination of MDNA members' transportation charges and thus lessen competition in the final product market for used machinery, enforcement action by the Department might be warranted.

Further, the plan appears unlikely to allow MDNA members to exercise any monopsony power against trucking companies. The information you have provided indicates that the plan was designed to increase contributions to MDNA, not to use any market power that MDNA members together might possess to affect transportation rates. MDNA members would continue to determine the rates they will pay for transportation services independently of one another. Also, our investigation disclosed that MDNA members probably account for too small a

percentage of the trucking business to have any significant effect on the market price.

In accordance with normal practice, however, the Department reserves the right to bring an enforcement action in the future if the actual operation of the MDNA proposal proves anticompetitive in purpose or effect. In particular, competitive problems could arise if MDNA members, as horizontal competitors in some final product market, come to some agreement which would, directly or indirectly, use the MDNA program to fix an input of price or in other ways eliminate competition among MDNA members.

This statement is made in accordance with the Business Review procedure of the Antitrust Division, 28 C.F.R. §50.6. Pursuant to its terms, your business review request and this response will be made publicly available on the date of this letter. Thirty days from the date of this letter all materials you submitted in support of your business review request will also be made publicly available, unless you request that any of the materials be withheld pursuant to §10(c) of the Business Review Procedures.

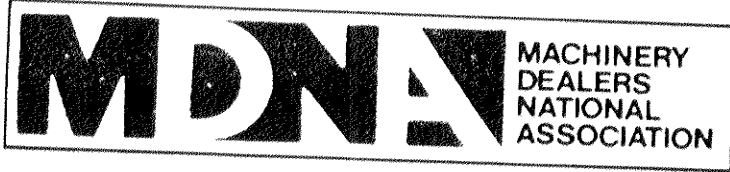
Sincerely,



Charles F. Rule
Acting Assistant Attorney General
Antitrust Division

6-31-7
8/11

Rec'd 8/15/84
J. Eiden
8/16/84



August 13, 1984

The Honorable
J. Paul McGrath
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
10th Street and Constitution Avenue, N.W.
Washington, DC 20530

Dear Mr. McGrath:

The Machinery Dealers National Association, a nonprofit trade association representing nearly 500 U.S. dealers of used metalworking machinery, requests a business review of a proposed program we have developed.

I have enclosed a brief summary. If you need additional information, please let me know.

Thank you in advance for your consideration.

Respectfully,

Darryl B. McEwen
Executive Vice President

Enclosure

DDMc:ssn

As a way to tangibly show support of MDNA and its members, all trucking firms which service the used metalworking machinery industry will be asked if they would like to participate in a new voluntary program. The firms will be asked to designate a certain percentage, and make a monthly voluntary contribution to MDNA based on the amount of volume they ship to or from MDNA members.

This is how the program would work:

1. MDNA would approach all trucking firms with this idea, but it would be up to individual trucking firms to determine if they want to participate, and how much they would like to contribute.
2. MDNA then would publish a list of all participating trucking firms, but emphasize that the association was not endorsing any of these firms, or suggesting that an MDNA member must utilize the services of these firms.
3. MDNA members would then be asked to mail copies of all bills of lading to MDNA headquarters where they would be separated by trucking firm. (This information would remain strictly confidential, and no industry member would have access to this information.) MDNA staff would then total the shipping charges by firm and invoice the company for the agreed upon percentage. At the same time, the firm would receive copies of all bills of lading on machinery they ship, and the trucking firm would be asked to send the appropriate percentage on this amount (since MDNA would not know these amounts).