



Department of Justice

85-75

FOR IMMEDIATE RELEASE
WEDNESDAY, NOVEMBER 12, 1986

AT
202-633-2016

The Department of Justice today announced that it would not challenge under the antitrust laws a circular pertaining to movement of freight arranged by a motor carrier property broker, Transportation Resources, Inc.

The Massachusetts corporation provides computer support and other services to brokers, shippers and carriers.

The Department's position was announced in a business review letter dated October 31, 1986, from Charles F. Rule, Acting Assistant Attorney General in charge of the Antitrust Division, to John P. Martel, counsel for Transportation Resources.

The circular, which is titled TRIF 100, contains standard form contractual provisions for motor carrier brokers. Motor carriers and brokers will be free to use the provisions or not as they choose. The circular does not contain any rates, charges or other matters pertaining to pricing.

Rule said that the circular does not raise competitive concerns because there is no agreement among any carriers or brokers on its terms and there has been no exchange or disclosure of competitively sensitive information.

Under the Department's business review procedure, a person or organization may submit a proposed action to the Antitrust

(MORE)



Division and receive a statement as to whether the Division will challenge the activity under the federal antitrust laws.

A file containing the business review request and the Department's response may be examined in the Legal Procedure Unit of the Antitrust Division, Room 7233, 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

OCT 31 1986

John P. Martell, Esquire
47 Main Street
Plymouth, Massachusetts 02360

Re: Business Review Request by TRI, Inc.

Dear Mr. Martell:

This letter responds to your letters of January 8, February 25, and July 25, 1986, on behalf of Transportation Resources, Inc. ("TRI"), for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6. You requested a statement of the Department's present enforcement intention with respect to TRIF 100, a circular concerning movements of freight that are arranged by a motor carrier property broker. */ For the reasons explained below, the Department has no present intention to bring suit to block the circular.

The facts, as you have presented them, are as follows. TRI is a privately owned Massachusetts corporation located in Sterling, Massachusetts, engaged primarily in computer support, systems design software sales, consulting, education, seminars and training for brokers, shippers and carriers. TRI also prepares and files tariffs with the ICC and various state agencies on behalf of small and medium-size carriers. TRI is not a rate bureau and has no immunity pursuant to 49 U.S.C. § 10706.

*/ A motor carrier property broker is "a person who, for compensation, arranges or offers to arrange the transportation of property by an authorized motor carrier." 49 C.F.R. § 1045.2(a).

The subject of your business review request is TRIF 100, a circular (or notice) published by TRI. TRIF 100 contains various provisions pertaining to movements of freight arranged by a licensed motor carrier property broker. For those carriers and brokers that wish to adopt the circular, it will provide a set of contractual provisions relating to the movement of freight arranged by the broker that will be incorporated in the agreement between the parties. TRIF 100 provides, inter alia, that contract and exempt carriers are liable for claims in the same manner as common carriers pursuant to the Interstate Commerce Act; that the broker is the agent of the carrier for collection of charges; that contract carriers must file claims within certain time limits; that certain amounts billed become commission for the broker; and that released value contractual conditions are prohibited unless the shipper consents. TRIF 100 does not contain any rates, charges, or other matters pertaining to pricing. A list of participants in the circular is to be published in a separate circular. Any party may participate in or subscribe to the circular for an annual fee.

Participants in TRIF 100 will have the free and unrestrained right to take independent action on any circular item. Firms will decide individually whether to participate in the circular; there will be no collective action. No information was collected from carriers or brokers for the preparation of the circular. No use has been made of the circular pending issuance of this business review letter.

You stated that the purpose of TRIF 100 is to promote the motor carrier brokering business by addressing concerns of shippers and carriers about such problems as double payments, questionable claims liability, and inadequate insurance. You also stated that the circular would promote uniform rules for broker-arranged moves.

As proposed, TRIF 100 does not raise competitive concerns. There has been no agreement among carriers or brokers on the terms of the circular, there has been no exchange or disclosure of competitively sensitive information, and carriers and brokers will be free to use or not to use the circular as they see fit. Based upon the information currently available to us, the Department of Justice, therefore, has no present intention of challenging TRIF 100 under the antitrust laws.

This letter expresses the Department's current enforcement intentions only. In accordance with our normal practice, the Department reserves the right to bring an enforcement action in the future if the actual operation of TRIF 100 proves anticompetitive.

This statement 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 publicly available immediately, and any supporting data will be made publicly available within thirty 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,



CHARLES F. RULE
Acting Assistant Attorney General

JOHN P. MARTELL, ESQ.

ATTORNEY AT LAW

47 MAIN STREET

PLYMOUTH, MASSACHUSETTS 02360

(617) 746-5467

January 8, 1986

Department of Justice
Antitrust Division (Transportation Branch)
414 Eleventh Street N.W.
Washington, DC 20530

Re: Tariff TRIF 100-A

Dear Sir:

We submit herewith the following documents for your review and informal opinion as to whether there is any antitrust exposure for potential participants or my client in a new tariff by Transportation Resources, Inc., the Agent, covering broker arranged motor carrier freight movement:

1. A copy of Tariff TRIF 100-A
2. The Power of Attorney form
3. A copy of the rules and regulations for the publishing of conditions tariffs and tariffs of general application proposed by Transportation Resources, Inc.

To avoid any exposure, we wish to disclose the following additional information:

- A. Transportation Resources, Inc. (TRI) is a privately owned Massachusetts corporation located in Sterling, Massachusetts. It's activities consist mainly of computer support, systems design, software sales, consulting, education, seminars and training for brokers, shippers, and carriers. It also prepares and files tariffs for small and medium size carriers with the ICC and various state agencies. It is not the tariff agent for those carriers but simply designs and produces tariffs for them independently. There is no collective action. TRI is a for-profit corporation and charges for these services.

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- B. TRI is not in the motor carrier brokering business. While an ICC License Application was filed and approved, a final Brokers License was never issued since the bond and service agents were not filed. TRI does not plan to do any licensed or exempt motor carrier brokering.
- C. The tariff is designed to give parties in a broker arranged move some general rules and conditions. It requires participating parties to issue a bill of lading. As you know, the Carmack Amendment (49 U.S.C. 11707) applies only to common carriers and brokers are using many contract carriers and exempt carriers.
- D. The tariff establishes time limits for claims and invoicing (unless controlled by law or regulations). It prevents released value contractual conditions unless the shipper consents. It establishes the broker as agent for the carrier in the payment cycle to avoid questions of shippers' paying twice.
- E. The tariff does not and will not contain any rates, charges, commission levels, costs, credit rules, or other matters pertaining to pricing. It is strictly a rules tariff similar to a mileage tariff to which any party--a shipper, carrier, broker--can become a participant.
- F. Participation is voluntary. There is no collective action. A participant may use the conditions or not use them. The participant maintains its right of independent action in all cases. Any party may be bound or refuse to be bound by the conditions by notation on the shipping documents.

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- G. TRI is not a bureau and has no exemption under 49 U.S.C 10706. Participants have no rights, votes or voice in any of TRI's activities. TRI provides the tariff as a service for a fee to anyone wishing to use it. TRI maintains the sole right to make any and all changes. Participants may withdraw if they don't like the changes but have no other rights. TRI has the sole right to cancel the tariff, providing participants with proper refunds.
- H. A list of participants will be kept current by publication in an accompanying tariff TRIF 600. This is merely a formality as is done with other service tariffs.
- I. Since brokering is new, none of the matters addressed in the tariff have been properly adjudicated. The tariff attempts to establish a contractual basis for future litigation.

Brokering activity is increasing and is bringing a highly competitive environment to transportation. The problem is hesitancy by shippers and carriers to use brokers because of fear of double payments, questionable claims liability, balance-due bills, inadequate insurance, contract rates and released value conditions. This tariff tries to address some of these issues to promote brokering and the competition it produces.

Based on the above, your informal opinion is requested as follows:

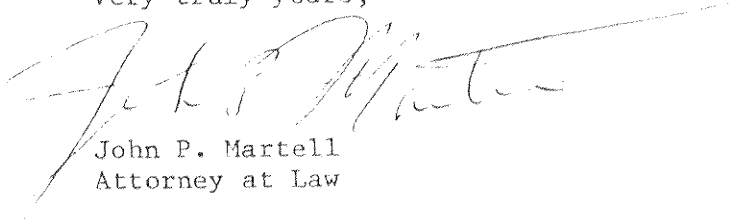
- I. Does the activity of Transportation Resources, Inc. in the publishing and sale of participations and subscriptions in tariff TRIF 100-A constitute any antitrust exposure or risk for TRI?

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- II. Do potential participants in tariff TRIF 100-A risk any exposure for violation of the antitrust laws or regulations?
- III. If there is any exposure in either I. or II. above, can any modification of the rules, changes, deletions or other actions be taken by Transportation Resources, Inc. and/or the participants to cure the defect?

The Interstate Commerce Commission is encouraging innovation in tariff filing to promote competition and has supported the growth of Motor Carrier Brokering. They have accepted this tariff for filing. Any participation in the tariff pending your review will be conditional upon your final approval.

Very truly yours,



John P. Martell
Attorney at Law

JPM:sap

enclosures

TRANSPORTATION RESOURCES, INC.

RULES AND REGULATIONS

FOR

THE PUBLISHING OF CONDITIONS TARIFFS

AND

TARIFFS OF GENERAL APPLICATION

JANUARY, 1986

P. O. BOX 452, * 33 MAIN STREET * STERLING, MA 01564

JOHN P. MARTELL, ESQ.

ATTORNEY AT LAW
47 MAIN STREET
PLYMOUTH, MASSACHUSETTS 02360
(617) 748-5467

February 25, 1986

Department of Justice
Antitrust Division
Transportation, Energy and
Agricultural Section
P. O. Box 481
Washington, DC 20044

Re: Business Opportunity Review
Transportation Resources, Inc.

Dear Sir:

On January 8, 1986, we submitted a letter for a review of a proposed business plan involving a new tariff to support ICC Licensed Brokers. This is to clarify that we request a business review of proposed conduct under 28 CFR 50.16.

We wish to explain that the proposed Tariff TRIF-100A was filed with the Commission and with the Copyright Office to protect the written content and other rights to the concept. No one has the right to use the tariff without the express permission of the tariff agent, Transportation Resources, Inc. All persons who have obtained copies of the tariff and those indicating they wish to participate in the tariff have been advised that no use can be made of the terms and conditions until we secure the Department of Justice review.

To better explain the tariff workings, the document is filed in a specific form with the Interstate Commerce Commission. In most cases, a tariff covers rates, charges, rules and regulations pertaining to pricing. However, many tariffs do not cover pricing and simply establish mileages, classifications, packaging and other matters supporting the transportation industry.

Any party may subscribe or participate in any filed tariff. A subscription means that the party simply purchases a copy of the tariff for information only--similar to purchasing a newsletter subscription. Participation means that the party pays a fee to the agent or bureau for the right to use the tariff. There is no use until the participant actively incorporates the tariff into its operations.

February 25, 1986

Transportation Resources, Inc. has filed the tariff with the ICC and several parties have purchased a subscription (a copy) at a cost of \$12.00 each. These subscribers have no rights to use the tariff and have obtained copies for information only.

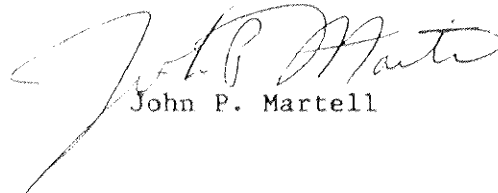
A few others have granted TRI their Power of Attorney to participate in the tariff for an annual fee of \$32.00. All participants were notified that participation in (and use of) the tariff would not commence until the Business Opportunity Review is complete. In essence, TRI is holding such funds in escrow.

We urge the Department of Justice to consider this is a matter of proposed conduct. We strongly feel that the proposed conduct is not in conflict, in any way, with the Antitrust Laws. However, since immunity in transportation has been severely limited and will probably cease altogether, the industry wishes assurances on any tariff matter as to compliance.

Brokering in transportation is increasing competition and uses of small carriers and operators. The proposed tariff will encourage the use of brokers. There is no collusive action by any parties nor does the tariff address any matters of pricing, charges or commissions.

We respectfully request a business review of proposed conduct. Please call if we can assist in any way.

Sincerely yours,



John P. Martell

JPM:mfp

JOHN P. MARTELL, ESQ.

ATTORNEY AT LAW
47 MAIN STREET
PLYMOUTH, MASSACHUSETTS 02360
(617) 746-5467

July 25, 1986

Ms. Katherine Klion
Attorney
Department of Justice
Antitrust Division
P. O. Box 481
Washington, DC 20044

RE: Transportation Resources, Inc.
Business Opportunity Review

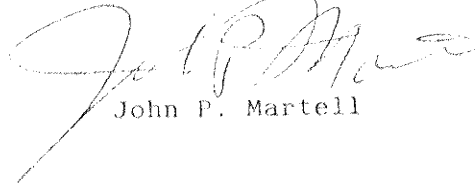
Dear Ms. Klion:

Per our telephone conversation, the Tariff TRIF-100 program which we submitted earlier this year has been changed to a circular--a simple statement of rules. The Interstate Commerce Commission asked that the tariff be withdrawn because it contained matters pertaining to contract carriers and brokers, whereas, tariffs are used only for common carriers.

Attached is a copy of the circular and rules. It provides for voluntary participation. No joint activity is involved.

Please call if you have any additional questions.

Very truly yours,



John P. Martell

JPM:mfp
Enclosure

