



Department of Justice

92-6

FOR IMMEDIATE RELEASE
FRIDAY, OCTOBER 23, 1992

AT
202-514-2007
(TDD) 202-514-1888

DEPARTMENT OF JUSTICE ISSUES BUSINESS REVIEW LETTER

WASHINGTON, D.C. -- The Department of Justice announced today it does not intend to challenge under antitrust laws the establishment of a Tanker Broker Panel, organized and administered by the Association of Ship Brokers and Agents (U.S.A.) Inc. (ASBA), to provide oil companies with market based rate estimates for intra-company cargo movements.

The Department's position was stated in a letter from Charles A. James, Acting Assistant Attorney General of the Antitrust Division, to the Secretary of the ASBA.

The ASBA had requested a business review letter stating the Department's current enforcement intention if the Tanker Broker Panel began operation.

As noted in ASBA's request, the purpose of the new service is to assist oil companies in assigning, for tax and accounting purposes, an accurate, market-based cost to voyages carrying company cargo and using company-owned ships. The ASBA will send the essential details of a request for a rate estimate to five of the eleven participating tanker brokers.

After receiving the request, the tanker brokers will formulate an estimate based on their knowledge of market

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conditions, and on the likely market rate for the past or prospective voyage. Upon receiving these five estimates, the ASBA administrator will eliminate the highest and lowest estimates and provide the oil company customer with the mean average of the remaining three estimates.

The panel will not disseminate the rate estimates to any party other than the customer, and no separate brokerage fee estimates will be sought by ASBA or provided by the brokers.

James said that although the exchange of price and other competitive information can facilitate anticompetitive coordination among competitors, there does not appear to be a substantial risk of that result in this case. In addition, James said that this service may have a procompetitive benefit for the oil company customers who currently only have one source for these type of estimates, the London Tanker Broker Panel.

Under the Department's Business Review Procedure, a person or organization may submit a proposed course of 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 may be examined in Room 3233, Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530 (Telephone: 202/514-2481). After a

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30-day waiting period, the documents supporting the business review request 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 22 1992

Ms. Virginia Redstone
Secretary
Association of Ship Brokers
and Agents (U.S.A.), Inc.
90 West Street, Suite 2021
New York, New York 10006

Dear Ms. Redstone:

This letter responds to your request on behalf of the Association of Ship Brokers and Agents (U.S.A.), Inc. ("ASBA") for a statement pursuant to the Department of Justice's Business Review Procedure (28 C.F.R. § 50.6) of the Department's current enforcement intentions regarding the ASBA's proposal to provide oil companies with market based rate estimates for intra-company cargo movements.

As we understand it, a Tanker Broker Panel is to be organized and administered by the ASBA, which is a non-profit trade association of ship brokers and agents. You have stated that the purpose of the Tanker Broker Panel is to assist oil companies in their internal cost accounting by enabling the oil companies to reflect an accurate arm's length charge for internal cargo movements. Moreover, if accepted by the IRS, you expect this service to be used for establishing a value for tax purposes of services performed for a firm by its subsidiaries.

We understand the procedure to be as follows. An oil company will submit a request to the ASBA for a rate quotation for a particular voyage that has already taken place or will take place in the near future. The ASBA will then send that request, with the customer's name omitted, to five of the participating tanker brokers. The five tanker brokers will then, independently, each formulate an estimate of what that voyage would have, or would likely, cost. The estimated rate will be expressed as a percentage of an already published standard rate, such as the AFRA (average freight rate

assessment), published by the London Tanker Brokers Association, and expressed in terms of Worldscale. The five rate estimates will be returned to the ASBA, which will arrive at an "average" rate by eliminating the highest and lowest rates and taking the mean of the three remaining rates. This average rate will be the rate provided in response to the customer's request. The customer will only see the rate estimate and will not be informed of the identity of any tanker brokers who participated in providing estimates. The tanker brokers, similarly, will not be notified of the identity or rate estimates of the other tanker brokers. ASBA will not disclose any of the rate estimates to any ASBA member or to any person other than the customer.

You have stated that the ASBA will offer this service only for international voyages, and not for Jones Act trades. The service is also intended to provide an alternative to the London Tanker Broker Panel, which is currently the only provider of this service to the major United States oil companies.

Although the exchange of price and other competitive information can facilitate anticompetitive coordination among competitors, there does not appear to be a substantial risk of that result in this case. The ASBA states it will protect the identities of the oil company customers and broker providers of this service, and will not disseminate the rate estimates to any party other than the customer, and no separate brokerage fee estimates will be sought by ASBA or provided by the brokers. We further understand that the ASBA Secretary, and ASBA officers and employees who work with the data, will be held to a strict standard of confidentiality.

Based on the above information, the Department of Justice has no current intention of instituting enforcement proceedings to challenge implementation of the ASBA's Tanker Broker Panel. This letter, however, expresses the Department's current enforcement intention 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 the Tanker Broker Panel proves anticompetitive in purpose or effect.

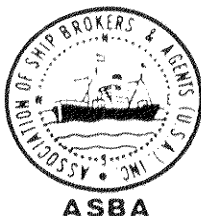
This statement of the Department's enforcement intentions is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your request and this letter will be made available to the public immediately. Your supporting documents will be made publicly

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,

A handwritten signature in black ink, appearing to read "Charles A. James". The signature is stylized with a large, sweeping initial "C" and "A".

Charles A. James
Acting Assistant Attorney General



Association of Ship Brokers and Agents (U.S.A.) Inc.
90 WEST STREET SUITE 2021 NEW YORK NY 10006 TEL (212) 385-4060

December 12, 1990

Mr. James F. Rill
Assistant Attorney General
Anti-Trust Division
Department of Justice
10th and Pennsylvania Avenue
Washington, DC 20530

Dear Mr. Rill:

We are writing to you to ask for your opinion on a service which this Association is interested in developing to offer to the major U.S. oil companies. We are describing below who we are and what we are trying to do so that we can establish from the onset that we are acting within the law and that we will not be in violation of the anti-trust laws of the United States.

To begin it should be known that this Association is a non-profit trade association of ship brokers and ship agents. The ship brokers engage mostly in the business of negotiating between a ship owner and a cargo interest the transportation of a full and complete cargo of one commodity to move on one vessel. These vessels are generally referred to as tramp ships and tramp ships will employ a piece of business any where in the world depending on the potential profitability of the business. Our brokers work to bring the owners and cargo interests (charterers) together and enable the two "principals" to agree on a price (rate) at which the business will be done. Each and every agreement (fixture) is different and is agreed upon based on many different variables, i.e. availability of similar vessels, similar cargoes, quantity, other potential business which would follow, etc. and so on. These variables establish what is referred to as the market.

The broker members of this Association (ASBA) who specialize in ships and cargoes for oil, our tanker brokers, have been approached to provide a service to the major U.S. oil companies which would establish, as per request, what would have been a market rate for a piece of business which was performed by an oil company's own ship carrying that company's own cargo. The service would be designed to provide the oil companies with a basis for their intra company billing.

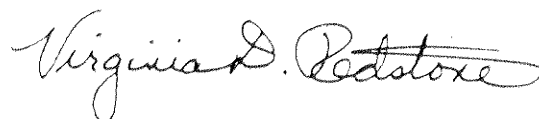
Our brokers would evaluate, based on the market intelligence that they are able to gather, what would have been the market rate and each would forward their independent evaluation to the Association's office. ASBA would then find the average of these evaluations and forward that average rate to the oil company.

We intend to charge a fee per rate request for this service, the fee to be shared, in some way, by the Association and the participating tanker broker members. We would also like to be able to, at some time, advise our members of the average rate which was established and sent to the oil company, although that is not an essential part of the service. In no way would this service have any effect on future rates.

For further clarification of what we have in mind we are enclosing the basis of our proposal which has been sent to the U.S. majors.

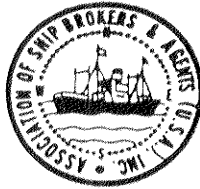
We would appreciate your ideas on this service at your earliest possible convenience and would welcome a call from you should you have any questions to be answered before you could express an opinion.

Yours very truly,

A handwritten signature in cursive script that reads "Virginia D. Redstone". The signature is written in dark ink and is positioned above the typed name.

Virginia D. Redstone
Secretary

VDR/
encl.



PROPOSED SERVICE

The tanker broker members of ASBA will be contributing to the service. There are ten tanker brokerage houses who are now a member of the Association.

Rates will be considered to be a quote from the "brokerage house", in other words, the management of each firm will appoint a senior broker to ensure that an accurate assessment is given to the Association, however, the rate will be a consensus of market information and intelligence gathered by the "house".

We expect to channel each request to five different houses with each house replying to the Association by 1500 on the third day following the request. The Association will eliminate the high and the low and return, by 1000 the following day, the average of the three remaining estimated rates to the oil company client. If a quicker response is required for any of the requests, they can be handled urgently.

It is our intention to continuously rotate the requests among the member brokers and to keep the entire process anonymous, our brokers will not know which other brokers have been contacted, allowing for our rates to be impartial. We will also not disclose to our brokers the name of the "requesting company", once we have enrolled more than one participant.

We believe that this service is simple and straight forward and will effectively accomplish the need for independent rate estimates for intra company billing.



Association of Ship Brokers and Agents (U.S.A.), Inc.
90 WEST STREET, SUITE 2021, NEW YORK, N.Y. 10006 - TEL: (212) 385-4060

February 8, 1991


Mr. Johnathan Lee
U.S. Department of Justice
Anti-Trust Division
TEA - Section
555 4th Street, N.W.
Washington, DC 20001

Dear Mr. Lee:

As promised I am enclosing a copy of our most recent Roster of Company Members and the Preamble and a few rate pages from the American Tanker Rate Schedule.

Please do not hesitate to call if you have any questions.

Very truly yours,


Virginia D. Redstone
Secretary

VDR/
encls.



Association of Ship Brokers and Agents (U.S.A.), Inc.
90 WEST STREET, SUITE 2021, NEW YORK, N.Y. 10006 - TEL. (212) 385-4060

August 9, 1991

Mr. Jonathan Lee, Attorney
Transportation, Energy and
Agriculture Section
U.S. Department of Justice
Antitrust Division
Judiciary Center Building
555 Fourth Street, NW
Washington, DC 20001

Dear Mr. Lee:

We have received your letter of May 23rd and are pleased to answer your questions about our proposed Tanker Broker Panel. We have set out below our answers in the order in which you have asked the questions.

1. It is our intention to provide a service to the major U.S. oil companies which would establish, as per request, the market rate for the carriage of cargo performed by an oil company's own ship carrying that company's own cargo. It is our revised purpose to not only quote rates on voyages that have already taken place but also for voyages that may take place in the future. There will be no geographic limitations, we will consider worldwide movements - any point to any point. We will not cover oil movements in the Jones Act market due to limitations in the size of the U.S. flag tanker fleet.

2. The primary reason for ASBA to provide the service described is to promote and enhance the presence of the tanker charter brokerage community in the United States. This service is already being provided by the London Tanker Broker Panel. By having the London community provide this service exclusively it places the American brokerage community at a competitive disadvantage. To cover administrative costs ASBA will charge a fee from which it will benefit. Although we are not aware of any federal or state rule that requires oil companies to utilize such a rate determination service it is our understanding that many of the oil companies use a third party rate determination to substantiate their intra company billing which satisfies IRS requirements.

RE: Letter to Antitrust Dept.
August 9, 1991

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3. The mechanics of this service are as we originally proposed in our letter to you of December 12, 1990 which is enclosed for your ready reference as attachment no. 1. There are now eleven (11) tanker broker members of ASBA who would participate.

4. As attachment no. 2 we have listed those companies we view as potential users of this service. We have included the full style and individual contact for each firm whom we have approached with our proposal. Also enclosed, as attachment no. 3, are copies of the form letters sent to each of the listed companies introducing the service; one dated October 1990, the other December 1990.

5. Mobil Shipping and Transportation Company and Exxon Company, International have responded to our letters. Copies of those letters are enclosed as attachment no. 4.

6. The tanker brokers who will be participating in this service are the tanker broker members of ASBA. They are:

Atlantic Chartering	McQuilling Brokerage, Inc.
Boyd, Weir & Sewell, Inc.	Odin Marine, Inc.
Dietze, Inc.	Poten & Partners, Inc.
LQM Tanker Chartering Corp.	Seabrokers, Inc.
Mallory, Jones, Lynch & Associates, Inc.	Thavenot, Inc.

Charles R. Weber Co., Inc.

7. The determination of the rate estimates will be carried out in the manner as described to ensure complete impartiality and anonymity and therefore it will be impossible for any of the participants to attempt to artificially set any price in the market place. The worldwide tanker market is very broad encompassing not only oil companies and independent ship owners but also oil traders. These parties have varied interests and are constantly negotiating the transportation of both crude and products on the open market. The supply and demand of both cargoes and ships is therefore constantly changing. It is virtually impossible for any person or group or association to attempt to fix any market rate for any particular trade route at any particular point in time.