

other contexts. In this Analysis we have described particular techniques that can show active supervision in the context of tariff filings. Such filings often involve recurring, concrete acts of private rate setting that tend to automatically trigger review on the occasion of each such filing. As noted above, however, if a rate filing remains in place for a prolonged period of time, the state will have an obligation to review the level of those rates on an ongoing basis. Similarly, there may be other industries where specific events do not trigger a review of private conduct, yet where the state has still displaced competition and therefore the state action defense would apply only where it could be shown that the conduct was being actively supervised. We believe that the review principles described here can be adapted to those circumstances as well. Evidence of active supervision then might be required, not in connection with particular events, but rather on a reasonable periodic basis. That supervision might still involve the elements discussed here, such as notice, analysis in light of the statutory purposes, and a written decision.

The proposed Order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Agreement and comments received, and will decide whether it should withdraw from the Agreement or make final the Order contained in the Agreement.

By accepting the proposed Order subject to final approval, the Commission anticipates that the competitive issues described in the Complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the proposed Order. It is not intended to constitute an official interpretation of the Agreement and proposed Order or to modify their terms in any way.

By direction of the Commission,
Commissioner Harbour not participating.

Donald S. Clark,
Secretary.

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FEDERAL TRADE COMMISSION

[File No. 021 0115]

New Hampshire Motor Transport Association; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 27, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: consentagreement@ftc.gov, as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Dana Abrahamsen, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2906.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 30, 2003), on the World Wide Web, at <http://www.ftc.gov/os/2003/10/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments

filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order with New Hampshire Motor Transport Association ("NHMTA" or "Respondent"). The Agreement is for settlement purposes only and does not constitute an admission by NHMTA that the law has been violated as alleged in the Complaint, other than jurisdictional facts, are true.

I. The Commission's Complaint

The proposed Complaint alleges that Respondent New Hampshire Motor Transport Association, a corporation, has violated and is now violating Section 5 of the Federal Trade Commission Act. Specifically, the proposed Complaint alleges that Respondent has agreed to engage, and has engaged, in a combination and conspiracy, an agreement, concerted action or unfair and unlawful acts, policies and practices, the purpose or effect of which is to unlawfully hinder, restrain, restrict, suppress or eliminate competition among household goods movers in the State of New Hampshire.

Respondent is an association organized for and serving its members, which are approximately 400 firms primarily engaged in the trucking industry, of which approximately 19 members are household goods movers that conduct business within the State of New Hampshire. One of the functions of Respondent is preparing, and filing with the New Hampshire Department of Safety's Bureau of Common Carriers, tariffs and supplements on behalf of members engaged in moving household goods. These tariffs and supplements contain rates and charges for the intrastate and local transportation of