

Complaint

IN THE MATTER OF

NEW HAMPSHIRE MOTOR TRANSPORT ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4102; File No. 0210115

Complaint, December 4, 2003--Decision, December 4, 2003

This consent order, among other things, prohibits Respondent New Hampshire Motor Transport Association – an association with, as members, approximately 400 firms primarily engaged in the trucking industry, including approximately 19 household goods movers that conduct business within the State of New Hampshire – from filing tariffs that contain rules mandating automatic price increases. The order also prohibits the respondent from engaging in activities such as exchanges of information that would facilitate member movers’ agreement to include such rules in their intrastate tariffs. In addition, the order requires the respondent to cancel all tariffs it has filed that contain rules concerning automatic rate increases; to cancel any provisions in its governing documents that permit it to engage in activities prohibited by the order; and to send a letter explaining the terms of the order to its members engaged in moving household goods.

Participants

For the Commission: *Dana Abrahamsen, Patrick J. Roach, Richard B. Dagen, John Howell and Mary T. Coleman.*

For the Respondent: *Daniel Luker, Prety, Flaherty, Beliveau & Haley.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. § 41, et seq.) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that New Hampshire Motor Transport Association (hereinafter sometimes referred to as “respondent” or “NHMTA”), an association, has violated and is now violating the provisions of Section 5 of said Act, and it appearing to the Commission that a

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proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

NATURE OF THE CASE

This matter concerns horizontal agreements among competing household goods movers that, through respondent, file tariffs for intrastate moving services in New Hampshire. The tariffs contain rules that state that participating movers must increase their rates to consumers for moving services rendered during the peak moving season. Through these tariff rules, the participating movers engage in a horizontal agreement affecting prices for their services.

RESPONDENT AND ITS MEMBERS

PARAGRAPH 1. Respondent New Hampshire Motor Transport Association is an association organized, existing, and doing business under and by virtue of the laws of the State of New Hampshire, with its office and principal place of business located at 13 West Street, Concord, New Hampshire 03301.

PARAGRAPH 2. Respondent is an association organized for and serving its members' interests, including their economic interests, by promoting, fostering and advancing the household goods moving industry in the State of New Hampshire. One of the functions of respondent is the initiation, preparation, development, dissemination and filing with the New Hampshire Department of Safety's Bureau of Common Carriers of tariffs and supplements thereto on behalf of and as agent for its members that are engaged in the transportation of household goods. Said tariffs and supplements contain rates and charges for the intrastate and local transportation of household goods and for related services, including, among other things, transporting bulky articles; packing boxes and crates; and extra charges for elevator, stair, and long distance carrying of items. (For purposes of this complaint, the term "tariff" means the publication stating the rates of a carrier for the transportation of property between points within the State of

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New Hampshire, including updates, revisions, and/or amendments, including general rules and regulations.)

PARAGRAPH 3. Pursuant to New Hampshire state law, each household goods mover is required to file a tariff with the New Hampshire Bureau of Common Carriers containing the carrier's rates, fares, or charges for the intrastate transportation of household goods. By New Hampshire law, a household goods mover is not permitted to charge a rate, fare, or charge different from those contained in its tariff or supplements thereto once the Bureau of Common Carriers has accepted it.

PARAGRAPH 4. Members of respondent are engaged, among other things, in the business of providing transportation and other services for compensation as household goods movers between points within the State of New Hampshire. Except to the extent that competition has been restrained as herein alleged, some members of respondent have been and are now in competition among themselves and with other household goods movers.

PARAGRAPH 5. The membership of NHMTA consists of approximately 400 members of which 19 members are household goods movers that conduct business within the State of New Hampshire. Those 19 NHMTA members receive compensation for intrastate and local moves. Members of NHMTA are entitled to and do, among other things, vote for and elect the directors of the association. The control, direction, and management of NHMTA are vested in the directors, who elect a President, a Vice President, and a Treasurer to carry on the day-to-day administration and management of NHMTA.

JURISDICTION

PARAGRAPH 6. The acts and practices of respondent set forth in Paragraph 7 have been and are now in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, and respondent is subject to the

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jurisdiction of the Federal Trade Commission. Among other things, the aforesaid acts and practices:

- (A) Affect the flow of substantial sums of money from the federal government, business, and other private parties to the respondent's members for rendering transportation services, which money flows across state lines;
- (B) Affect the purchase and use of equipment and other goods and services by respondent's members that are shipped in interstate commerce;
- (C) Include the use of the United States mail and other instruments of interstate commerce in furthering the agreements described below; and
- (D) Are supported by the receipt of dues and fees for publications and services from out-of-state members and others.

THE CHALLENGED CONDUCT

PARAGRAPH 7. For many years and continuing up to and including the date of the filing of this complaint, respondent, its members, its officers and directors, and others have agreed to engage, and have 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, was, or may be to unlawfully hinder, restrain, restrict, suppress or eliminate competition among household goods movers in the intrastate New Hampshire household goods moving industry.

Pursuant to, and in furtherance of, said agreement and concert of action, respondent, its members and others have engaged and continue to engage in the following acts, policies, and practices, among others:

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- (A) Participating in and continuing to participate in tariffs that contain rules whereby carriers agree to institute automatic changes to rates on file for said carriers;
- (B) Initiating, preparing, developing, disseminating, and taking other actions to establish and maintain tariff rules that have the purpose or effect of fixing, establishing, stabilizing or otherwise tampering with rates and charges for the transportation of household goods between points within the State of New Hampshire;
- (C) Filing tariffs with the New Hampshire Bureau of Common Carriers that contain rules that institute automatic changes to rates of carriers with tariffs on file with the Department of Safety; and
- (D) Initiating, organizing, coordinating, and conducting meetings or providing a forum for any discussion or agreement among competing carriers concerning or affecting tariffs that contain rules whereby carriers agree to institute automatic changes to rates on file for carriers.

PARAGRAPH 8. The acts and practices of respondent, its members and others, as alleged in Paragraph 7, have had and are now having the effects, among others, of:

- (A) Raising, fixing, stabilizing, pegging, maintaining, or otherwise interfering or tampering with the prices of household goods moves;
- (B) Restricting, restraining, hindering, preventing, or frustrating price competition in the household goods moving industry; and
- (C) Depriving consumers of the benefits of competition.

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THE VIOLATION CHARGED

PARAGRAPH 9. The acts, policies and practices of respondent, its members and others, as herein alleged, were and are to the prejudice and injury of the public and constituted and constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. The acts and practices, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourth day of December, 2003, issues its complaint against NHMTA.

By the Commission, Commissioner Harbour not participating.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of New Hampshire Motor Transport Association (“NHMTA”), hereinafter sometimes referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent New Hampshire Motor Transport Association is a not-for-profit association, organized and existing under the laws of the State of New Hampshire with its principal office and

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place of business at 13 West Street, Concord, New Hampshire 03301.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED, that for the purposes of this Order, the following definitions shall apply:

- A. "Respondent" or "NHMTA" means New Hampshire Motor Transport Association, its officers, directors, executive board, committees, representatives, agents, employees, successors and assigns;
- B. "Carrier" means a common or contract carrier of property by motor vehicle within the State of New Hampshire subject to regulation as a "Household Goods Carrier" under NH RSA 375-A or any successor statute;
- C. "Intrastate transportation" means the pickup or receipt, transportation and delivery of property hauled between points within the State of New Hampshire for compensation by a carrier authorized by the New Hampshire Bureau of Common Carriers ("NHBCC") to engage therein;
- D. "Member" means any carrier that pays dues or belongs to NHMTA or to any successor corporation;
- E. "Tariff" means the publication, including but not limited to those currently required by NH RSA 375-A, stating the rates of a carrier for the transportation of property between points within the State of New Hampshire, including

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updates, revisions, and/or amendments, and any corresponding general rules and regulations;

- F. "Rate" means a charge, payment or price fixed according to a ratio, scale or standard for direct or indirect transportation service;
- G. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

II.

IT IS FURTHER ORDERED that Respondent shall forthwith cease and desist from entering into and within 120 days after service upon it of this Order cease and desist from maintaining, directly or indirectly, any contract, agreement, understanding, plan, program, or combination, by or among carriers, to fix, stabilize, raise, maintain or otherwise set the rates charged by two or more carriers in connection with the intrastate transportation of property or related services, goods or equipment, including but not limited to:

1. Preparing, developing, disseminating or filing a proposed or existing tariff containing rules instituting automatic changes to rates charged by two or more carriers;
2. Inviting, coordinating or providing a forum for any discussion or agreement between or among competing carriers concerning automatic rate changes for the intrastate transportation of property or related services, goods or equipment;
3. Providing information to any carrier about rate changes considered or made by any other carrier prior to the time at which such rate change becomes a matter of public record with the NHBCC;

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4. Suggesting, urging, encouraging, persuading or in any way influencing members to charge, file or adhere to any existing or proposed tariff provision which affects rates, including automatic rate adjustments, or otherwise to charge or refrain from charging any particular price for any services rendered or goods or equipment provided; and
5. Maintaining any rate or tariff committee or other entity to consider, pass upon, compile, monitor, assist in the circulation of, or discuss rules pertaining to automatic rate adjustments with respect to carriers.

III.

IT IS FURTHER ORDERED that Respondent shall, within 120 days after service upon it of this Order:

1. Cancel all tariff provisions on file with the NHBCC that institute automatic changes to rates charged by two or more carriers and take such action as may be necessary to effectuate cancellation and withdrawal of such provisions;
2. Terminate any previously-executed powers of attorney and rate and tariff service agreements, between NHMTA and any carrier utilizing its services, authorizing the publication and/or filing of tariffs containing rules regarding automatic rate increases within the State of New Hampshire;
3. Cancel any provisions of NHMTA's articles of incorporation, by-laws and procedures and any other rules, opinions, resolutions, contracts or statements of policy that have the purpose or effect of permitting, announcing, stating, explaining or agreeing to any business practice enjoined by the terms of this Order; and
4. Amend NHMTA's by-laws to require members engaged in the transportation of household goods to observe the provisions of the Order as a condition of membership in NHMTA.

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IV.

IT IS FURTHER ORDERED that, within fifteen (15) days after service upon it of this Order, Respondent shall mail or deliver a copy of this Order, under cover of the letter attached hereto as "Appendix," to each member of Respondent that currently files its tariff through NHMTA, and for a period of three (3) years from the date of service of this Order, to each new member engaged in the transportation of household goods within ten (10) days of such member's acceptance by Respondent.

V.

IT IS FURTHER ORDERED that Respondent notify the Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment or sale resulting in the emergence of a successor entity, or any other proposed change in the structure or ownership of the Respondent, which may affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that Respondent shall file a written report within six (6) months of the date of service of this Order, and annually on the anniversary date of the original report for each of the five (5) years thereafter, and at such other times as the Commission may require by written notice to Respondent, setting forth in detail the manner and form in which Respondent has complied with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on December 4, 2023.

By the Commission, Commissioner Harbour not participating.

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APPENDIX

(Letterhead of the New Hampshire Motor Transport Association)

Dear Tariff Member:

The Federal Trade Commission has ordered the New Hampshire Motor Transport Association (NHMTA) to cease and desist from assisting with the filing of tariffs that contain rules calling for automatic rate increases and, in particular, the “seasonal adjustment” provision of Rule 28 of the existing tariff. A copy of the Commission’s Decision and Order is enclosed.

The terms of the Order itself are controlling, but its essential provisions are as follows:

(1) NHMTA is prohibited from filing any tariffs that have rules that call for tariff members to automatically increase their rates. Each member carrier must independently set its own rates for transportation of property or related services, goods or equipment between points within the State of New Hampshire. Tariff members may still use NHMTA as a tariff publishing agent provided that the tariff does not contain any rules calling for automatic rate increases such as the “seasonal adjustment” rule.

(2) NHMTA is prohibited from providing a forum for its tariff members for the purpose of discussing rules concerning automatic rate increases.

(3) NHMTA is prohibited from urging, suggesting, encouraging or attempting to influence in any way the rates members charge for their intrastate transportation services, including influencing members to make automatic rate adjustments. NHMTA may not provide non-public information to any carrier about rate changes ordered by another carrier.

(4) NHMTA is prohibited from maintaining any rate or tariff committee which discusses or formulates rules pertaining to

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automatic rate increases.

(5) NHMTA has 120 days to make sure that all tariffs and tariff supplements on file at the New Hampshire Bureau of Common Carriers which were filed by the NHMTA contain no rules calling for automatic rate increases and, in particular, the “seasonal adjustment” rule.

(6) NHMTA is required to amend its by-laws to require its tariff members to observe the provisions of the Order as a condition of membership in NHMTA.

Sincerely yours,

[appropriate NHMTA officer]

Enclosure

Analysis

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 or that the facts 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 household goods and for related services.

The proposed Complaint alleges that Respondent is engaged in initiating, preparing, developing, disseminating, and taking other actions to establish and maintain tariff rules which have the

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purpose or effect of fixing, establishing or stabilizing rates for the transportation of household goods in the State of New Hampshire. The proposed Complaint further alleges that Respondent files with the New Hampshire Bureau of Common Carriers tariffs containing rules that institute automatic increases to carriers' rates.

The proposed Complaint further alleges that Respondent's conduct is anticompetitive because it has the effect of raising, fixing, and stabilizing the prices of household goods moves. The acts of Respondent also have the effect of depriving consumers of the benefits of competition.

II. Terms of the Proposed Consent Order

The proposed Order would provide relief for the alleged anticompetitive effects of the conduct principally by requiring Respondent to cease and desist from its practice of filing tariffs containing rules that call for automatic increases in movers' intrastate rates.

Paragraph II of the proposed Order bars Respondent from filing a tariff that contains rules mandating automatic price increases. This provision will terminate Respondent's current practice of filing tariffs that contain such rules that are the product of an agreement among movers in the State of New Hampshire. This paragraph also prohibits Respondent from engaging in activities such as exchanges of information that would facilitate member movers' agreement to include such rules in their intrastate tariffs. For example, the order bars Respondent from providing certain non-public information to member carriers.¹

Paragraph III of the proposed Order requires Respondent to cancel all tariffs that it has filed that contain rules concerning

¹ A state statute requires carriers to keep their tariffs "open to public inspection." N.H. Rev. Stat. § 375-A:9.

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automatic rate increases. This provision will ensure that the intrastate tariffs containing such rules now on file in the State of New Hampshire will no longer be in force, allowing for future individual mover tariffs. Paragraph III of the proposed Order also requires Respondent to cancel any provisions in its governing documents that permit it to engage in activities barred by the Order.

Paragraph IV of the proposed Order requires Respondent to send a letter explaining the terms of the Order to its members engaged in moving household goods. This will make clear to members that they can no longer engage in activities prohibited by the Order.

Paragraphs V and VI of the proposed Order require Respondent to inform the Commission of any change in Respondent that could affect compliance with the Order and to file compliance reports with the Commission for a number of years. Paragraph VII of the proposed Order states that the Order will terminate in 20 years.

III. Opportunity for Modification of the Order

Should the Commission issue a final Order in this matter, Respondent can seek to modify that Order to permit it to engage in collective action regarding prices if it can demonstrate that the “state action” defense would apply to its conduct.² The Commission has recently explained in detail the factors it would consider in determining whether the state action defense is met.³

² 16 C.F.R. § 2.51.

³ See Analysis of Proposed Consent Order to Aid Public Comment in: *Indiana Household Movers and Warehousemen, Inc.* (Mar. 18, 2003) available at <http://www.ftc.gov/os/2003/03/indianahouseholdmoversanalysis.pdf>; *Iowa Movers and Warehousemen’s Association* (Aug. 1, 2003) available at <http://www.ftc.gov/os/2003/08/imwaanalysis.htm>;

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At present, Respondent would not be able to establish that its conduct is covered by the state action defense because the State of New Hampshire does not actively supervise the tariffs filed by Respondent.

IV. Opportunity for Public Comment

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 proposed 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.

and *Minnesota Transport Services Association* (Aug. 1, 2003) available at <http://www.ftc.gov/os/2003/08/mtsaanalysis.htm>.

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IN THE MATTER OF

ALABAMA TRUCKING ASSOCIATION, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9307; File No. 0210115**Complaint, July 8, 2003--Decision, July 8, 2003*

This consent order, among other things, prohibits Respondent Alabama Trucking Association, Inc. – an association with, as members, approximately 80 household goods movers that conduct business within the State of Alabama – from filing tariffs that contain collective intrastate rates. The order also prohibits the respondent from engaging in activities such as exchanges of information that would facilitate member movers in agreeing on the rates contained in their intrastate tariffs. In addition, the order prohibits the respondent from maintaining a tariff committee or agreeing with movers to institute any automatic intrastate rate increases. The order also requires the respondent to cancel all tariffs it has filed that contain intrastate collective rates; to cancel any provisions in its governing documents that permit it to engage in activities prohibited by the order; and to send its members a letter explaining the terms of the order.

Participants

For the Commission: *Dana Abrahamsen, Patrick J. Roach,
Richard B. Dagen, John Howell and Mary T. Coleman.*

For the Respondent: *James Sizemore.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. § 41, et seq.) and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Alabama Trucking Association, Inc. (hereinafter sometimes referred to as “respondent” or “ATA”), a corporation, has violated and is now violating the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows: