

**ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT
IN NEW HAMPSHIRE MOTOR TRANSPORT ASSOCIATION, FILE NO. 021-0115**

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 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 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 At

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

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

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.

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