



**DEPARTMENT OF JUSTICE**  
Antitrust Division

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February 22, 1996

William F. Young, Esquire  
Hunton and Williams  
2000 Pennsylvania Avenue, N.W.  
Suite 9000  
Washington, D.C. 20006

Dear Mr. Young:

This is in response to the request of the Automated Interchange Matching System, Inc., ("AIMS") 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 have requested a statement of the Department of Justice's antitrust enforcement intentions with respect to the AIMS proposal to establish a computerized brokerage system to facilitate the purchase and sale of one-hour blocks of electric energy.

AIMS is a not-for-profit corporation formed by 26 electric power utilities and marketers for the purpose of establishing a computerized system for trading one-hour (next hours) blocks of electric energy. Its members do business in the eastern half of the United States. Your application indicates that while much electric power is sold pursuant to long term contracts, there has been an increased tendency to buy and sell non-firm electric energy on a shorter-term basis, from one hour to several days. This power is then resold to the retail, commercial, industrial, etc. customers of the purchasing utility or marketer.

Potential transaction partners currently contact each other via telephone in the hope of reaching bilateral agreements. You suggest that this is not a very efficient means of buying or selling energy on a next-hour basis because only a few potential partners, at most, can be contacted in any attempt to buy or sell next-hour energy. As a result, according to AIMS, in any given hour "significant amounts of electric power for which there would be willing buyers and sellers are likely to go unsold because the buyers and sellers have not been able to identify each other."

To rectify this market deficiency, AIMS proposes to create a computer system that would enable its members to electronically post buy and sell orders for next-hour energy. All such quotes would have to be posted 35 minutes before the next hour (the hour for which the quotes would be applicable). The buy and sell bids would then be matched by an algorithm that paired the highest buy quote with the lowest sell quote, and so on and the matching members would be notified by 30 minutes before the next hour. The matched parties would carry out the transactions (if they chose to) pursuant to existing bilateral contracts between the parties. AIMS will have no role in the establishment of such bilateral contracts.

AIMS members will be free to buy or sell energy outside of the AIMS system and it is anticipated that substantial amounts of non-firm energy will be bought and sold outside of the system. Membership in AIMS would be open to a broad array of participants in the electric power business on a nondiscriminatory basis. While the computer system will originally be designed to handle current members, it will have the capability of expanding quickly to accommodate up to 62 members.

On the basis of the information and assurances provided by the AIMS, the Department of Justice has no current intention to challenge the proposed creation and operation of a computerized bulletin board that will facilitate real time trading of next-hour electric power. The exchange of bids and quotes for next-hour electric energy would not appear to raise any danger of price collusion or otherwise impede competition. Only the matched buyer and seller will have contemporaneous knowledge of the price for any given match.

There do not appear to be any competitively significant restrictions on access to the AIMS trading system. The fact that its members will remain free to trade electric power outside of the AIMS system and expect to do so, lessens the likelihood that utilization of the system will have any adverse competitive effect.

It is possible that the proposed computerized real-time trading of next-hour electric power will have procompetitive effects. To the extent that such trading allows more efficient producers to sell more of their output to willing buyers, pricing rivalry based on efficiency would be heightened, to the benefit of consumers.

This letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of any aspect of the proposed creation or operation of the AIMS computerized bulletin board proves to be anticompetitive in any purpose or effect.

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 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10 (c) of the Business Review Procedure.

Sincerely,

/s/

Anne K. Bingaman  
Assistant Attorney General