



**DEPARTMENT OF JUSTICE**

Antitrust Division

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Assistant Attorney General

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June Ann Sanders, Esq.  
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Atlanta, Georgia 30308-2216

Dear Ms. Sanders:

This is in response to the request of the Intermodal Committee on Efficiency ("ICE") 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 ICE's proposal to formulate and present to rail and trucking firms the views of ICE's members/intermodal marketing companies ("IMCs") about economic issues confronting the intermodal transport business.

ICE will be formed as a non-profit corporation with four members,<sup>1</sup> each of which is a firm engaged in arranging for the transportation of intermodal<sup>2</sup> shipments. IMCs are among a group of firms that quote a single intermodal rate to shippers and then coordinate the pickup, storage, transport and delivery functions necessary to move the shipped goods

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The four are GST Corporation, Manufacturer's Consolidation Service, Inc., Rail Van, Inc. and Riss Intermodal.

The term "intermodal" as used herein refers to the movement of trailers or containers via a combination of rail and motor carriage.

from origin to destination points. According to ICE's business review application, intermodal freight movements require a great deal of cooperation between the rail, trucking and IMC (or other coordinating entity). It asserts that a significant amount of inefficiency and confusion is engendered by the fact that every day thousands of intermodal containers and trailers are moved by IMCs, utilizing 2,000 different trucking companies and many railroads whose practice vary from location to location.

To foster greater intermodal cooperation and efficiency, the four IMC members of ICE propose to discuss amongst themselves common problems facing their segment of the intermodal industry and would thereafter present their consensus views on such issues to railroads and truckers, who would be free to accept or reject the ICE proposals.

Membership in ICE will be limited to the four companies previously mentioned. Additionally, you indicate that in order to guard against any possibility that ICE will be used for inappropriate collective action, the By-Laws of ICE provide the following safeguards:

1. At ICE meetings and in presentations to the carriers, there will be no discussions regarding actual freight rates charged to shipper customers or individual rates paid to railroads or trucking companies. ICE members will also not share their customer names, individual market shares, or volume amounts.
2. ICE members will remain free to leave the group at any time and to pursue their own actions and will be free to join other similar groups. Each ICE member will have the right of independent action, and each will continue to negotiate individual contracts with the carriers. There will not be a standard ICE contract that ICE members must use in their negotiations.
3. All meetings of ICE will be attended by experienced antitrust counsel to ensure that no pricing information is exchanged and that those attending the meetings fully comply with the antitrust laws. Minutes or recordings of the meetings will be kept and maintained for a minimum of three years.

Your business review request asserts that the most recent available data indicates that intermodal movements account for \$6 billion of the total \$208 billion U.S. intercity domestic market. IMCs account for approximately forty percent of the intermodal market and face

increasing competitive pressure from other providers of intermodal administrative and coordination services.

On the basis of the information and assurances provided us by ICE, the Department has no current intention to challenge the proposed creation and operation of ICE. The proposal would not appear to facilitate price collusion or any concerted refusals to deal with rail or truck carriers. ICE's members will continue to act unilaterally with respect to price and output and the parties with whom they deal will remain free to accept or reject ICE's non-price recommendations with respect to better equipment utilization or other aspects of intermodal transport. Under these circumstances, and in the absence of any evidence that ICE's conduct is intended to restrict price or output, the proposal should not have an anticompetitive effect.

It is possible that the proposal will have procompetitive effects. To the extent that it promotes a more efficient utilization of intermodal equipment or facilities, or lowers costs in some other manner, the proposed activities could advance consumer interests.

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 ICE 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