



DEPARTMENT OF JUSTICE

Antitrust Division

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November 6, 2000

Gerard S. Doyle, Esq.
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636 Morris Turnpike
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Dear Mr. Doyle:

This is in response to your request on behalf of Carrier Credit Services, Inc. ("CCS") 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 a proposal under which CCS would act as a common billing and collection agent for its customers -- ocean carriers in the U.S.-Puerto Rico trades.

CCS is a billing and collection company that is independent of the ocean carriers in the U.S.-Puerto Rico trade that CCS will target as customers. These carriers transport freight in uniform-size shipping containers that are placed on a chassis and pulled by a tractor. In the usual case, empty containers on a chassis are delivered to the shipper's (i.e., the seller of the cargo) premises where the cargo is loaded into the container. The container and chassis are then hauled to the port of shipment. At the port, the containers are lifted off of the chassis and placed in the container-ship or container-barge. At the port of discharge the process is reversed, and the containers are placed on chassis and driven to the consignee's place of business.

The carriers own (or lease) the containers and chassis. Consignees often use the containers for the temporary storage of the cargo. It is in a carrier's financial and operating interest to have its equipment returned as soon as possible. To accomplish this objective, the carriers charge the consignee an extra fee if the equipment is not returned within a certain period. These fees are called "detention and demurrage" charges. Each carrier has its own general policy with respect to when and how it calculates and assesses detention and demurrage charges. These general policies are usually set forth in the carrier's tariffs, but a carrier may enter into different detention and demurrage arrangements for different customers, by contract. Under the ICC Termination Act of 1995, the carriers are required to bill and collect all tariff charges.

According to CCS, the five primary containership and container barge ocean carriers that serve the U.S.-Puerto Rico trades are Navieras NPR, Inc., Crowley Liner Services, CSX Lines, LLC, Sea Star, LLC, and Trailer Bridge, Inc. CCS' proposal to bill and collect detention and demurrage charges is not predicated on an ability to secure all of the carriers as customers.

CCS asserts that ocean carriers in the U.S.-Puerto Rico trades have a serious problem collecting monies owed them for detention and demurrage charges, and that the ease with which shippers and consignees (*i.e.*, the ocean carriers' customers) can switch from one ocean carrier to another for subsequent shipments has the effect of increasing the shipping industry's uncollectible rate for demurrage and detention charges. It is CCS' belief, and that of its prospective customers, that many shippers and consignees who default on their detention and demurrage bills seek to obtain services from other ocean carriers, without paying the pre-existing bills.

In an effort to reduce the amount of uncollected detention and demurrage charges, CCS proposes to perform detention and demurrage billing and collection services (pursuant to the respective ocean carrier's tariff or other terms of service) and will publish the names of customers who have failed to pay their detention and demurrage charges as required, including the amount of the delinquency, and the number of days the payment is "past due". This "Delinquent List" will be circulated to all of CCS' ocean carrier customers. This will enable each ocean carrier to develop and implement its own credit and collection policies with respect to firms listed as delinquent customers. CCS will not act as a conduit for the exchange of competitively sensitive information between its carrier customers. Nor will it advise them to adopt common means of dealing with delinquent customers. Each carrier will be solely responsible for independently developing and adopting its own credit and collection policies and procedures, both in general and with respect to firms on CCS' Delinquent List. The Delinquent List information communicated to and from CCS will be limited to the names of delinquent customers, and the total amount and duration of the delinquency. There will be no disclosure of how much is owed to any particular carrier -- only the total delinquent amount owed by the customers and the duration will be reported.

There will be no direct communication between ocean carriers; all information will be exchanged through CCS in what is described as a "blind" manner, *i.e.*, neither the old nor the prospective new carrier will know the identity of the other. No information will be exchanged between or among ocean carriers about open accounts, or the general credit terms or practices of carriers, or those used in specific cases. No information relating to how carriers treat applicants with "bad" credit histories will be exchanged. When a carrier learns that a customer has defaulted on its obligation(s) to prior (unidentified) carrier(s), the inquiring carrier will be left to make an independent unilateral decision as to whether to provide service to the customer, and if so, whether to insist on any protective credit measures. To minimize the chance of "accidental"

communications between or among the ocean carriers, whether independently or inadvertently through CCS' staff, CCS' employees and CCS' customers (the ocean carriers) will be advised that the exchange of sensitive commercial information, especially credit and collection policies and procedures, may violate U.S. antitrust laws, and will not be permitted. Sanctions will include termination of employment for employees, and termination of CCS' contract with ocean carriers.

Based on the information and assurances that you have provided, it does not appear likely that CCS' proposal to collect detention or demurrage charges owed to its ocean carrier customers and to post for them a list of delinquent accounts will have an anticompetitive effect. As long as the information exchanged is restricted to that which involves payment delinquencies in the limited manner described above, CCS' activities should not reduce carrier rivalry with respect to noncredit terms. And, as long as CCS does not directly or indirectly urge or effectuate the concerted adoption of credit policies by its carrier customers, i.e., the individual carriers continue to make unilateral independent decisions as to whether, or on what terms, they will deal with firms or the Delinquent List, competitive options should not be reduced.

For these reasons, the Department is not presently inclined to initiate antitrust enforcement action against CCS' proposed conduct. However, this letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right, in appropriate circumstances, to bring any enforcement action in the future if the actual operation of the proposed agreement 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,

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A. Douglas Melamed