

Trade Regulation Reporter - Explanations, laws, rules, current developments, including trade cases, *The Health and Personal Care Distribution Conference, Inc. (HPCDC) (10-13-93)*, ¶44,093, 93-14

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¶44,093. 93-14.

This letter responds to your request of April 26, 1993, for a statement by the Department of Justice pursuant to its business review procedure, 28 C.F.R. §50.6, of its current enforcement intentions with respect to the proposed activities of The Health and Personal Care Distribution Conference, Inc. ("HPCDC"). HPCDC is a trade association whose 75 members are engaged in the distribution of drugs, medicines, toilet preparations, and related articles to wholesale and retail customers. HPCDC serves its members, *inter alia*, by disseminating information regarding improved technology and techniques for the transportation and distribution of its members' goods, to assist them individually to improve the quality and to minimize the cost of their transportation and distribution.

HPCDC proposes to undertake an information exchange program to survey its members periodically regarding their actual experience with motor carriers of general freight. This information will be provided by HPCDC's members on a voluntary basis at no charge, and will be kept confidential. It will be received and compiled by a third party that will organize and collate it, and publish the results. The published report will not identify any of the survey results with any member of HPCDC participating in the survey. Although some subcategorization of participants by broad industry grouping may be provided in the published results, these groupings will each contain at least 10 participants in order to render the results statistically reliable. The third party will publish the results of the surveys through press releases and other trade media, and it will also make the results available to HPCDC's members and non-members directly.

After careful consideration of the information you have provided, the Department has concluded that it has no present intention to challenge the proposed activities of HPCDC, as set out in this letter, on antitrust grounds. The Department would be concerned about the creation or implementation of an information exchange if it would likely facilitate the exercise of market power between and among or by HPCDC's members. HPCDC's proposed information exchange could be potentially anticompetitive if it could result in the exercise of monopsony power over transportation rates. HPCDC does not, however, at present, negotiate transportation rates collectively on behalf of any of its members, nor does it intend to utilize the survey information for such collective negotiation. Furthermore, we understand that the combined transportation budgets of all of HPCDC's members are roughly 3 percent of the national revenue of the motor carriers of general freight. Since HPCDC's members collectively purchase only a small percentage of the transportation capacity available to handle HPCDC's members' products, even if HPCDC's members attempted collectively to negotiate transportation rates, such activity would not likely enable HPCDC's members to exercise substantial monopsony power over motor carriers of general freight.

The Department would also be concerned about the creation or implementation of an information exchange if it would likely facilitate collusion or otherwise reduce competition among market participants in the purchase or sale of their products. Therefore, the Department also considered whether HPCDC's program could have the purpose or effect of increasing the likelihood that HPCDC's members participating in the program could successfully coordinate their interactions, such as by express or tacit collusion regarding prices of their products. Our review has indicated that it is unlikely that the program will facilitate HPCDC's members to coordinate their interactions. First, the products distributed by HPCDC's members have relatively high selling prices, such that the transportation cost as a percentage of the selling prices is low, ranging between 0.6 percent and 2.0 percent. Second, HPCDC has adopted certain procedures designed to safeguard against such anticompetitive efforts, including the use of an independent third party administrator and the confidential treatment of survey participants' identities and information. Since the transportation cost component of the selling prices of HPCDC's members' products is small, HPCDC's members would be unable to use the information exchange as a vehicle by which to collude on the prices of their products.

For the foregoing reasons, the Department has no present intention to challenge HPCDC's proposed information exchange program. In accordance with our normal practice, however, the Department remains

free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest, if the actual operation of the information exchange proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accordance with the Department's Business Review Procedure, 28 C.F.R. §50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made available to the public immediately. Your supporting documents will be publicly available within 30 days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,
Anne K. Bingaman
Assistant Attorney General
