



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

The Honorable Fran Ulmer
Alaska State Legislature

Dear Ms. Ulmer:

The staff of the Federal Trade Commission(1) is pleased to offer this comment on the issues raised by H.B. No. 237,

I. Interest and Experience of the Staff of the Federal Trade Commission.

The Federal Trade Commission is empowered to prevent unfair methods of competition and unfair or deceptive acts

Board-recognized pilot organizations are granted a limited exemption from state antitrust law. Recognized pilot organizations are classed with labor unions and agricultural co

they would want to avoid loss or delay because of accidents or lawsuits for damages to harbors and waterways. Private parties concerned about profits will also be concerned about safety; the policy question is whether they will be as concerned as the public interest requires.

Policies designed to promote competition should not compromise legitimate safety concerns, but safety is not necessarily inconsistent with a competitive market setting. In other transportation industries, it was also feared that permitting competition would lead to unsafe operations, as firms interested in cost-cutting would take chances to improve productivity. Those fears have not been borne out. Interstate trucking and airlines have been economically deregulated for many years now, and during the deregulated period safety has improved, not deteriorated.⁽⁴⁰⁾ In piloting ships, as in piloting airplanes, safety concerns need not be addressed only indirectly, through economic regulation. Rather, it might be more effective to address them directly. If safety concerns justify requiring all ships to use pilots of proven qualifications, those concerns can be vindicated through discipline against unsafe practices, application of competency-based pilot licensing standards, and sanctions against shipowners that fail to obey mandatory piloting requirements.

V. Marine Pilotage and the Antitrust Laws.

Pilots in Alaska and elsewhere may offer their services through joint ventures. Some have expressed concern that the antitrust laws may be applied to inhibit joint activities among pilots.⁽⁴¹⁾

The antitrust laws preserve competition in the market place by preventing restraints on competition imposed by competitors. The antitrust laws do not prohibit all joint activities among competitors, only those that restrain competition unreasonably. For example, even though they may restrict some aspects of competition, joint ventures or other cooperative efforts that enable an industry to function efficiently or to produce new services or products may not violate the antitrust laws. Some joint activity among competitors would appear to pose little risk of restraining competition. For example, a centralized billing service that does not facilitate price fixing or allocate customers among competitors may pose little threat to competition.

Association, 798 F.Supp. 1007 (D.Alaska 1990). The 1991 revisions also granted pilots a limitation on their personal liability, of \$250,000; this limitation does not apply in cases of gross negligence.

(14) Alaska Statutes §08.62.040(d). Implicitly recognizing that limiting the number of pilots would be anticompetitive, H.B. 237 would have added a proviso to this section of the law to make clear that the Board would nonetheless issue regulations and take “other actions” to restrict the number of pilot licenses issued.

(15) See Office of the Governor, Division of Policy, *Improving Alaska’s Marine Pilotage System* (1990) (“Governor’s

(31) One difficulty reportedly encountered in this process has been the reluctance of incumbent pilots to afford potential competitors the training opportunities they need to become qualified under state law. See *Board Report* at 12, 14-15. Alaska law now requires pilot associations to establish or participate in Board-approved training programs. Alaska Statutes §08.62.175(b)(5). Even without that legal requirement, ships' agents and operators, which have a direct interest in promoting competition, might protect that interest by permitting or even requiring that the pilots they hire help train new ones.

(42) For examples of situations in which antitrust law has been applied to refusals to deal and “boycotts,” see *FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 458 (1986) (refusal to supply x-rays for insurers’ cost-control review); *Klor’s, Inc. v. Broadway-Hale Stores*, 359 U.S. 207 (1959) (refusal to supply competing discounter); *Radiant Burners, Inc. v. Peoples Gas Light & Coke Co.*, 364 U.S. 656 (1961) (refusal to sell gas for use in competitor’s burners); *Medlin v. Professional Rodeo Cowboys Ass’n*, 1992-1 Trade Cas. [CCH] ¶69,787 (D.Colo. 1991) (barring cowboys who had competed in non-sanctioned events).

(43) See *Beltone Electronics Corp.*, 100 F.T.C. 68, 204 (1982); see also *United States v. Dairymen, Inc.*, 1985-1 Trade Cas. [CCH] ¶66,638, at 66, 156 (6th Cir.), *cert. denied*, 474 U.S. 822 (1985); *Kohler Co. v. Briggs & Stratton Corp.*, 1986-1 Trade Cas. [CCH] ¶67,047 (E.D.Wis. 1986).