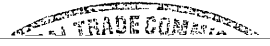


UNITED STATES OF AMERICA



[REDACTED]

Administrative Law Judge to consolidate actions when they involve a common

grounds that the agreements on price are covered by the state action defense.¹ That defense will

competition and that the state has engaged in "active supervision" of the market. 51-311-

[T]he practice of collective rate publication easily fits the classic description of a "naked price restraint." Since *United States v. Socony-Vacuum Oil Co.* 310 U.S.

fixing among competitors is a *per se* violation of Section 1 of the Sherman Act.

United States v. Southern Motor Carriers Rate Conference, 467 F. Supp. 171, 186 (D.D.C.)

which held that in light of states' status as sovereigns and given basic principles of federalism, Congress would not have intended that the Sherman Act to apply to the activities of states themselves. 317 U.S. 341 (1943). As the Court explained:

We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by the legislature. *Parker v. Brown*, 317 U.S. 349, 350 (1943).

under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.

Id. at 350-51.

This basis for state action immunity was reaffirmed by the Supreme Court in *FTC v.*

Ticor Title Insurance Co. where the Court emphasized. "Our decision [in *Parker*] was grounded

1. Prong One - Clear Articulation

One common legal issue will be whether respondents meet prong one of the *Midcal* test. In each instance, respondent will have the burden of identifying the relevant statutes and showing that their respective state has clearly articulated the goal of replacing competition with a state regulatory scheme. As described below, each state has similar household goods moving statutes.

2. Prong Two - Active Supervision

The second common legal issue under the state action defense is whether the three

Midcal, which requires active state supervision of private parties. The active supervision test

displace the free market with regulation, our insistence on real compliance

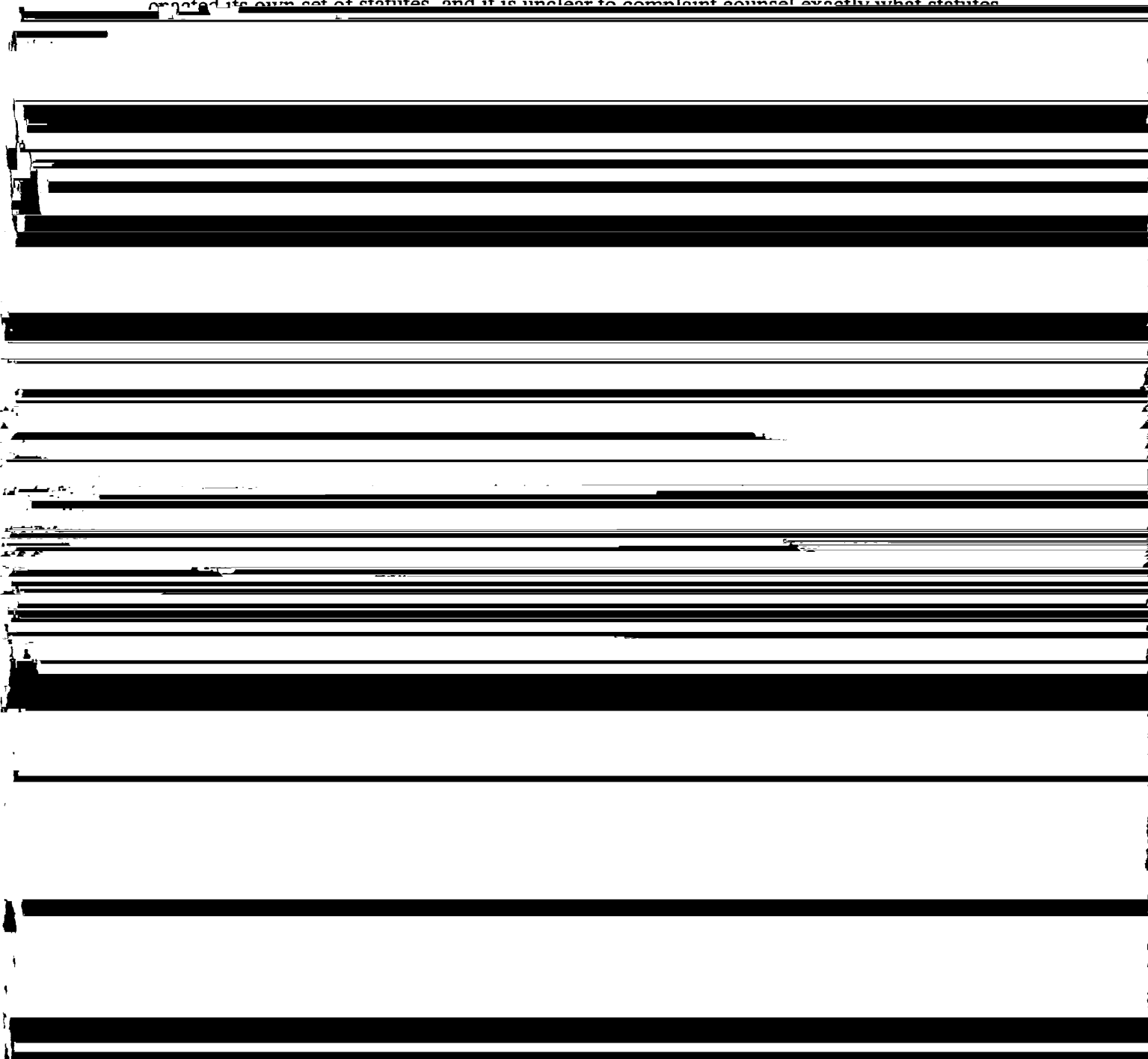
These three matters also concern common issues of fact. Specifically, all three involve moving tariffs which constitute agreements on price. In addition, under the state action defense, it is expected that respondents will attempt to meet their burden of showing first, that similar statutes in the three states clearly express an intent on the part of the state to displace

competition. Further, it is expected that each respondent will attempt to show that its state's

[REDACTED]

B. Common Facts Regarding Prong One

Respondents are expected to attempt to carry their burden of establishing a state action defense. Under prong one, respondents will have to show that their respective states have clearly articulated an intent to replace competition with a regulatory scheme. While each state has enacted its own set of statutes, and it is unclear to complaint counsel exactly what statutes



C. Common Facts Regarding Prong Two

If, as expected, respondents take on the burden of showing that their rate setting

agreements have been actively encouraged by state officials, each respondent will be attempting

to show narrow instances of state activity. Based on prior case law, the Commission has identified

Consolidating these matters will result in significant judicial economy. First, because

[REDACTED]

cases by one law judge could achieve some cost savings.” *In re Chrysler Motors Corp., et al.*, Docket Numbers 9072, 9073, 9074, 1976 FTC LEXIS 448, *9 (March 19, 1976). *See also, In re Motor Up Corp., et al.*, Docket Numbers 9291, 9292, (June 11, 1999).

V. Conclusion

Under rule 3.41(b)(2), the Administrative Law Judge is authorized to consolidate actions when they involve a common question of law or fact in order to avoid unnecessary costs and

delays. The captioned matters involve common fundamental questions of law and substantially similar facts. As a result, in the interests of judicial economy, these three matters should be

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
)

ALABAMA TRUCKING)
ASSOCIATION, INC.,)
)

a corporation.)
)

Docket No. 9307

In the Matter of)
)
)

MOVERS CONFERENCE OF)
MISSISSIPPI, INC.,)
)

a corporation.)
)

Docket No. 9308

In the Matter of)
)
)

KENTUCKY HOUSEHOLD)
GOODS CARRIERS)
ASSOCIATION, INC.,)
)

a corporation.)
)

Docket No. 9309

ORDER CONSOLIDATING CASES FOR DISCOVERY AND HEARING

Rules of Practice, and

IT APPEARING TO THE COURT that the captioned cases involve common issues of

fact and law, and that consolidating them would conserve judicial resources, it is hereby

[REDACTED]

CERTIFICATE OF SERVICE

This is to certify that on July 25, 2003, I caused a copy of the attached Complaint Counsel's Motion to Consolidate to be served upon the following persons by facsimile, U. S. Mail or Hand-Carried:

Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable D. Michael Chappell
Federal Trade Commission
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Washington, DC 20580

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Dana Abrahamsen