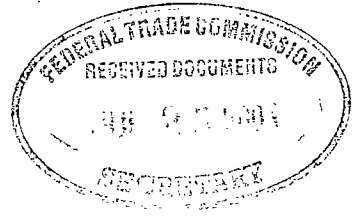


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
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ALABAMA TRUCKING)
ASSOCIATION, INC.,)

a corporation.)
_____)

Docket No. 9307 ✓

In the Matter of)
)

MOVERS CONFERENCE OF)
_____)

Docket No. 9308

a corporation.)
_____)

In the Matter of)
)

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

a corporation.)
_____)

Docket No. 9309

COMPLAINT COUNSEL'S MOTION TO CONSOLIDATE

authorizes the Administrative Law Judge to consolidate actions when they involve a common

question of law or fact in order to avoid unnecessary costs and delays. The captioned matters

require respondent to prove two things: that the state has clearly articulated a policy to displace competition and that the state has engaged in "active supervision" of the rates filed by respondents.

[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. 150, 60 S.Ct. 811, 84 L.Ed. 1129 (1940), it has been established law that price 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. 471, 486 (N.D.Ga. 1979), *aff'd* 702 F.2d 543 (5th Cir. Unit B 1983), *rev'd on other grounds* 471 U.S. 48 (1985).

Similarly, the Commission held in *Mass. Movers*, "It is beyond cavil that agreements among competitors to set price levels or price ranges are *per se* illegal under the antitrust laws." *Massachusetts Furniture and Piano Movers Ass'n*, 102 F.T.C. 1176, 1224 (1983).

The Commission opinion in *Ticor* stated that the rate setting activity of the title insurance bureaus was:

. . . inherently suspect and an appropriate candidate for *per se* analysis, under the reasoning we employed previously in *Massachusetts Board of Registration in Optometry*.

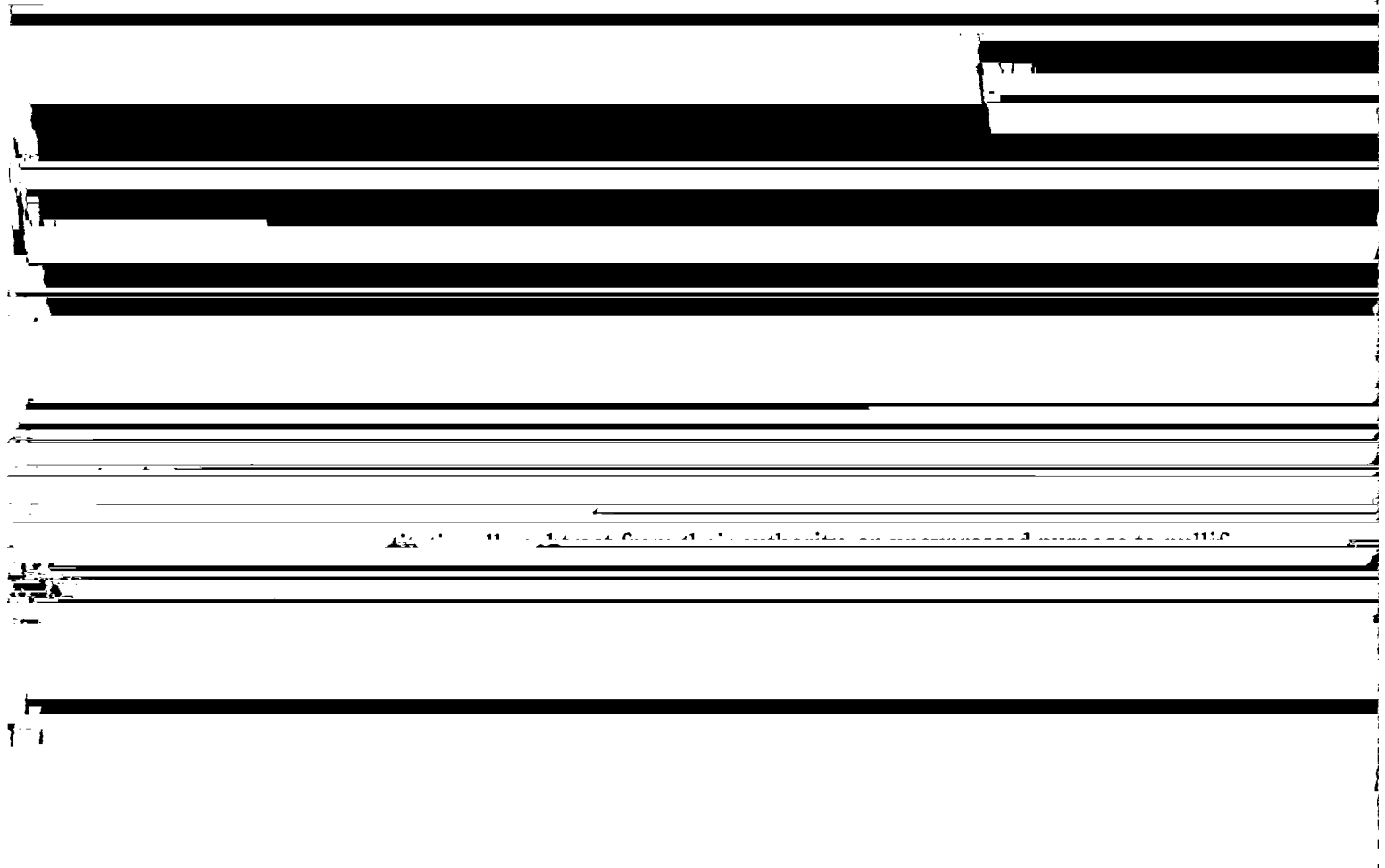
Ticor Title Insurance Company et al., 112 F.T.C. 344 at 424 (1989). The Commission's decision was affirmed by the Supreme Court, which stated, "This case involves horizontal price fixing . . .

... antitrust offense is more pernicious than price fixing." *FTC v. Ticor Title Insurance Co.*



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. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may



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1. Prong One - Clear Articulation

One common legal issue will be whether respondents meet prong one of the MCD 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 respondents can carry their heavy burden of showing that their actions satisfy the second prong of

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

with both parts of the *Midcal* test will serve to make clear that the State is responsible for the price fixing it has sanctioned and undertaken to control.

Id. at 636.

The Commission has recently issued guidance on this prong of the state action defense.

In accepting a settlement from the Indiana Household Goods Movers Association, the Commission stated in its Analysis to Aid Public Comment that:

[C]lear articulation requires that a State enunciate an affirmative intent to displace competition and to replace it with a stated criterion. Active supervision requires

the State to examine individual private conduct, pursuant to that regulatory regime, to ensure that it comports with that stated criterion. Only then can the

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

activity in the three states clearly evinces an intent on the part of the state to disclos

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

[REDACTED]

C. Common Facts Regarding Prong Two

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

agreements have been actively supervised by state officials, each respondent will be attempting to show common types of state activity. Based on prior case law, the Commission has identified many factual elements that it would expect a respondent to address in attempting to show adequate supervision. First, respondents will need to show that procedures are in place in their

respective states. As the Commission has stated, “respondent would need to show that the State had in place an administrative body charged with the necessary review of filed tariffs and capable of developing an adequate factual record.” Indiana Analysis at 6. Also respondent would be expected to show that the state has provided interested parties with adequate notice with regard to collective rates. Indiana Analysis at 7. Further, respondent will need to assess the extent to which the state has issued a written decision when approving or disapproving rates. *Id.* In each of these three states, these similar issues will be examined because each state has a regulatory body in place that receives respondents’ tariff filings.

In addition, each respondent will be required to show that its collective rates were subject

Consolidating these matters will result in significant judicial economy. First, because these respondents carry out similar functions in the same industry and all three matters involve the same legal issue, consolidation will avoid unnecessary duplication of effort. Moreover,

scheduling conflicts that otherwise could slow all three proceedings. If consolidation is granted,

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

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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 consolidated. A proposed order is attached.

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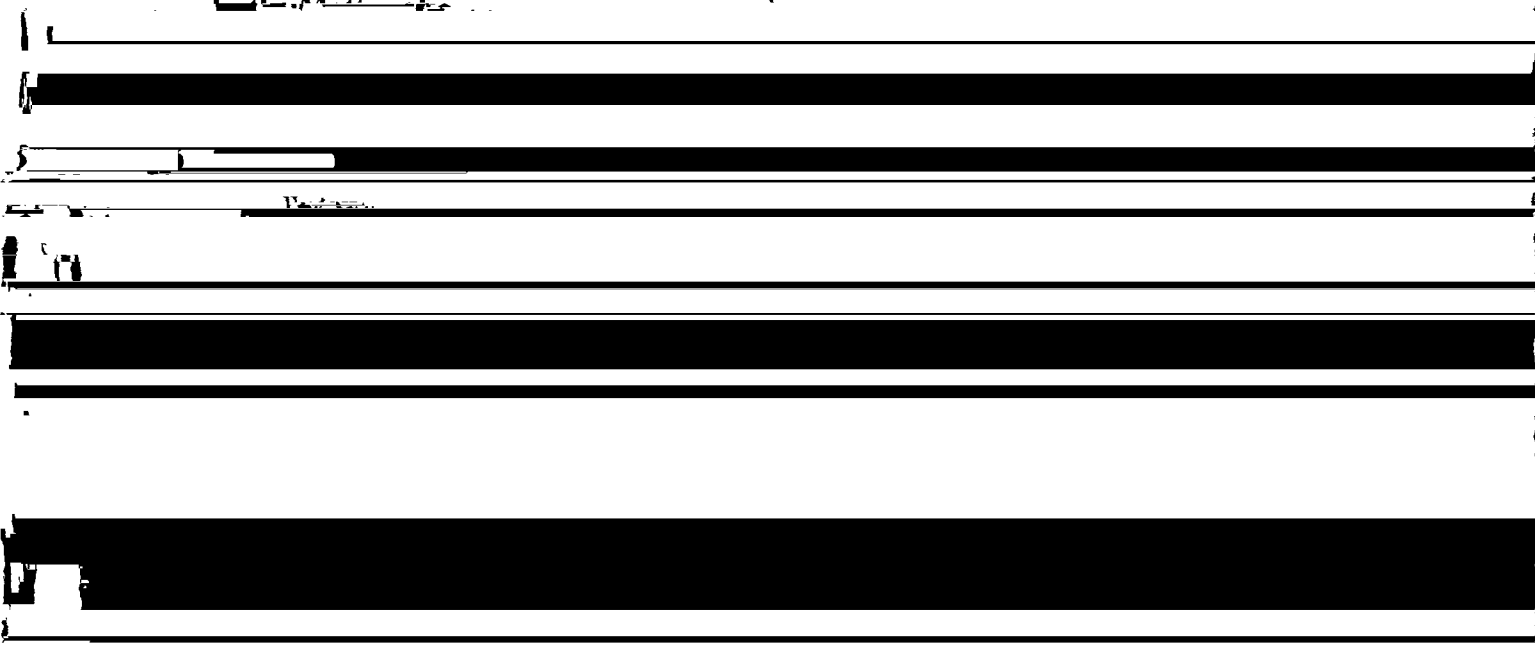
In the Matter of)
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MOVERS CONFERENCE OF)
MISSISSIPPI, INC.,)
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a corporation.)
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Docket No. 9308

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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

ORDERED that the captioned cases are consolidated for purposes of hearing before _____, Administrative Law Judge. The Administrative Law Judge may issue further orders as necessary to ensure the orderly and efficient administration of discovery and hearing.

Stephen J. McGuire

Chief Administrative Law Judge

D. Michael Chappell

Administrative Law Judge

Dated: _____, 2003

CERTIFICATE OF SERVICE

Counsel's Motion to Consolidate to be served upon the following persons by facsimile,
U. S. Mail or Hand-Carried:

The Honorable Stephen J. McGuire