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CASES

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PUBLIC

UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

Docket No. 9309

In the Matter of

KENTUCKY HOUSEHOLD GOODS CARRIERS ASSOCIATION, INC.

AMICUS CURIAE BRIEF OF

This amicus curid	ae brief is submitted by the Kentucky Office of the Attorney General
(the Attorney General) fo	or the Commonwealth of Kentucky in support of the initial decision and
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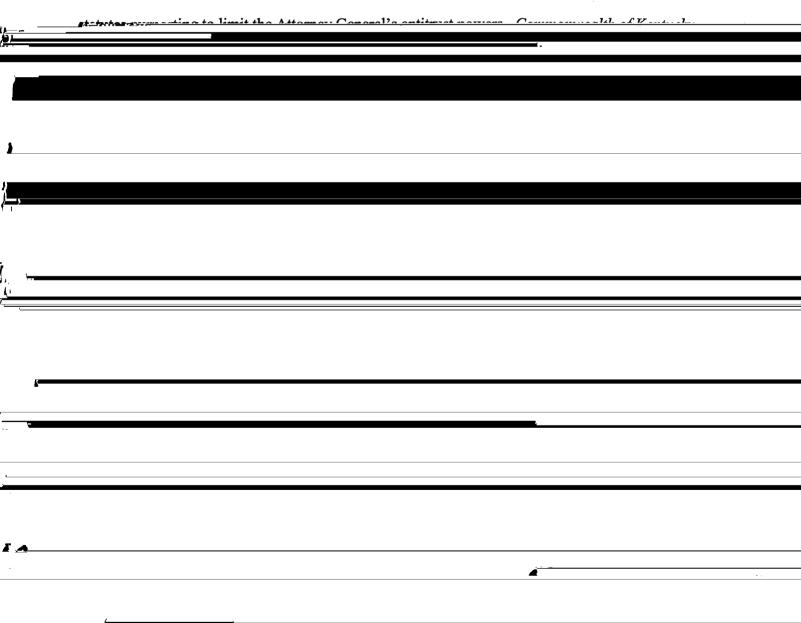
The attorney general has a long history of aggressive antitrust enforcement, including

1	filing an amicus curiag hrief along with thirty-two sister states hefore the II S Sunreme Court	
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otherwise, or conspiracy, in restraint of trade or commerce in this Commonwealth shall be unlawful.

(2) It shall be unlawful for any person or persons to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce in this Commonwealth.

Enforcement of the Consumer Protection Act by the Attorney General is provided for in KRS 367.190(1). Additionally the Attorney General is a Constitutional officer, and is by statute the chief law officer and advisor to the Commonwealth of Kentucky. KRS 15.020. Finally the Kentucky Supreme Court in a certification of law has opined that KRS 15.020 supercedes other



Respondent's extended discussion of supposed conflicts between state and federal law misses the point. The discussion by respondent of Kentucky statutes underlying this case ignores the Kentucky Constitution and a long line of Kentucky Supreme Court constitutional decisions relating to interference with market-based pricing by private parties pursuant to state sanction. Extended discussion of the statutory price-setting system underlying this case is simply inapposite, since the system would surely fail to pass muster under existing Kentucky constitutional jurisprudence.

	constitutional jurisprudence.		7 - 7
	As discussed below. Kentucky has a very high consti	initional standard for interference	<u>. </u>
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(Ky. 1958), a case predating the passage of the Consumer Protection Act, Kentucky's highest court unanimously held unconstitutional the part of the "Fair Trade Act" purporting to allow enforcement of a minimum retail price agreement on non-signatories to the contract. "[T]his statute, we think, is a legislative invasion of the broad constitutional liberty of the people to pagries and nectoot their proportioned engage in fair trade " 216 S W 2d at 361. The court

Mission and applicate of Hauten Duran 217110 7/1 /11/42) and the them appendix decided	
case of California Liquor Dealers v. Midcal Aluminum, 445 U.S. 97 (1980), the court found such	
price-fixing to be a violation of the Sherman Act:	
In the California wine case [Midcal] the State did nothing but	
enforce prices fixed by private individuals. In the instance of	
Kenthicless the State participates in fiving prices only to the extent	
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that it adds statutory minimum mark-ups to prices fixed by private	
	In the California wine case [Midcal] the State did nothing but

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	As we have previously said, the statutory purpose of the law, is to
	mearcant manageding and unfair anasticas in the sale of mills and
	milk products. As we have also said, the law is in reality and in
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CONCLUSION

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CERTIFICATE OF SERVICE

	Thin is to certify that on Anguert 30.2004 I caused a copy of	Amious Curias Rrief of the
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	Commenced the of Ventucky to be served upon the fellowing person	a.
'	Commonwealth of Kentucky to be served upon the following person	
	by hand delivery to:	
	The Commissioners	
	<u>un n. 1 1 m 1 0</u>	
	via Office of the Secretary, Room H-159	
	Federal Trade Commission 600 Pennsylvania Avenue, NW	
	Washington, DC 20580	
	overnight courier to:	\$
	-	
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