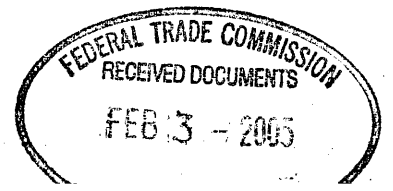
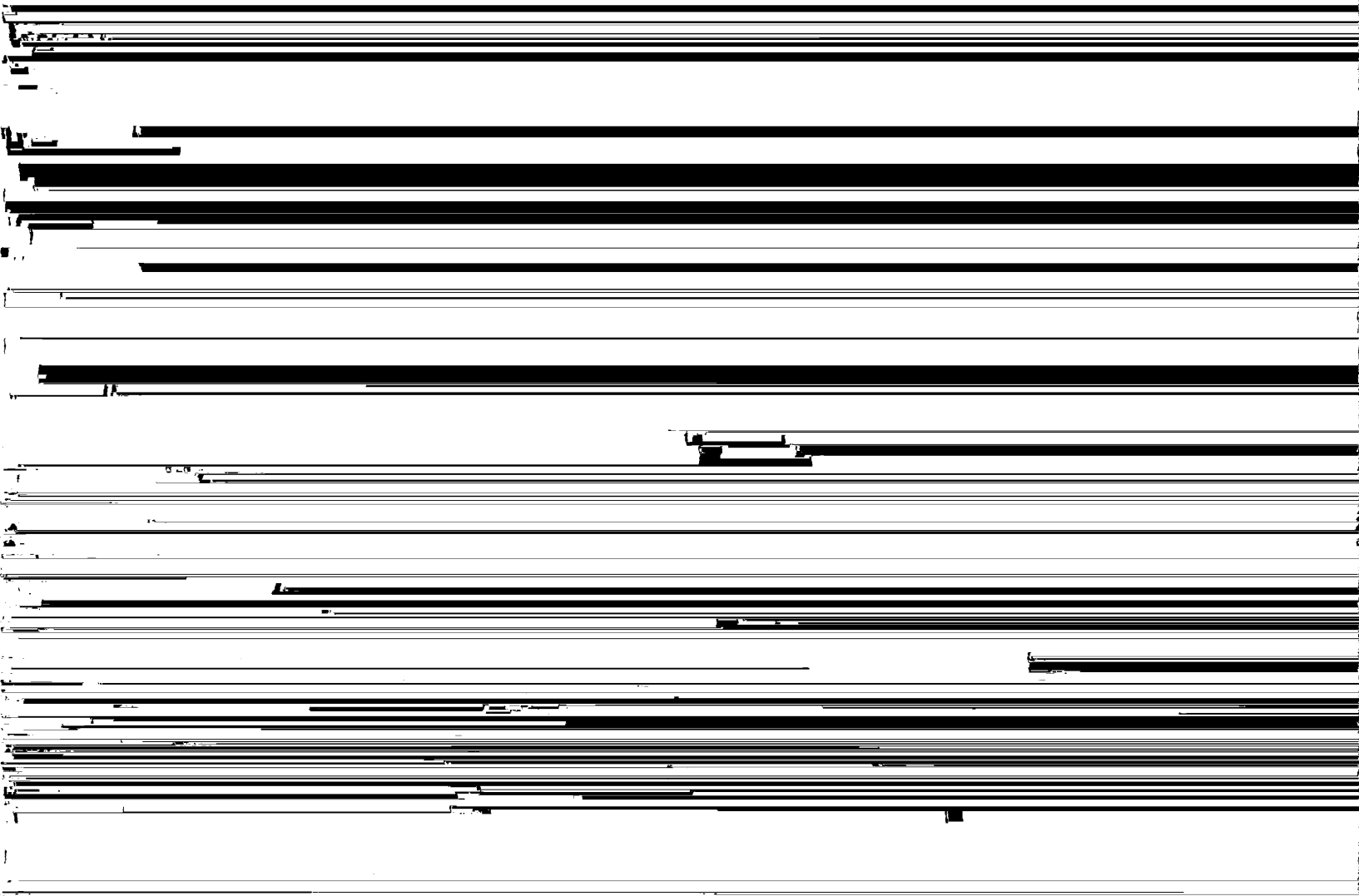


**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**



COMMISSIONERS

DIVISION OF



**Thomas B. Leary  
Pamela Jones Harbour  
Jon Liebowitz**

In the Matter of )  
)  
)  
KENTUCKY HOUSEHOLD )  
GOODS CARRIERS )  
ASSOCIATION, INC., )  
)  
)

**Docket No. 9309**

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FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman  
Orson Swindle  
Thomas B. Leary  
Pamela Jones Harbour  
Jon Liebowitz

In the Matter of )  
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KENTUCKY HOUSEHOLD  
GOODS CARRIERS

Docket No. 9309

COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENT'S

notes that have been changed for decades by the O2 model...

Kentucky Association. This Motion is filed...

below and circumvent a finding of liability. In the event that the KTC, at some future time, may in fact implement a program of active supervision for household goods moving rates, then any

assessment of those changed circumstances should occur in the fashion outlined at 11-21

delete final disposition" of the case, and asked Defendant to





¶ 36-40: CC Answering Brief at 5-6. Moreover, Respondent has successfully increased the rates

in that tariff 81 times without objection. *See*, CC Answering Brief at 2; ID at 46. The main issue

by KTC officials. The Administrative Law Judge found a total lack of supervision and held

*Massachusetts Board of Registration in Optometry*, 110 F.T.C. 549 (1988). the state repealed the

regulations that were the subject of the Commission's complaint, but the Commission decided

*In the Matter of Ticonderoga, Inc.* 110 F.T.C. 244, 444 (1988) C-1 1-1

aside an order.<sup>11</sup>

**III. THE INFORMATION SUBMITTED BY RESPONDENT SHOWS THAT THE ANTITRUST VIOLATION CONTINUES AND THAT THE KTC CONTINUES**

**TO ALLOW HORIZONTAL AGREEMENTS ON PRICE TO TAKE EFFECT UNSUPERVISED.**

The record evidence in this case establishes that for many years the members of the Kentucky Association have set prices through a collectively-set tariff. The materials submitted by the Respondent in support of its Motion, taken on their face,<sup>12</sup> show that this collective rate-setting is continuing, and that the KTC continues to permit collective rates to go into effect without the requisite active supervision.

**A. THE COLLECTIVE RATE-SETTING THAT FORMS THE ANTITRUST VIOLATION HERE IS CONTINUING.**

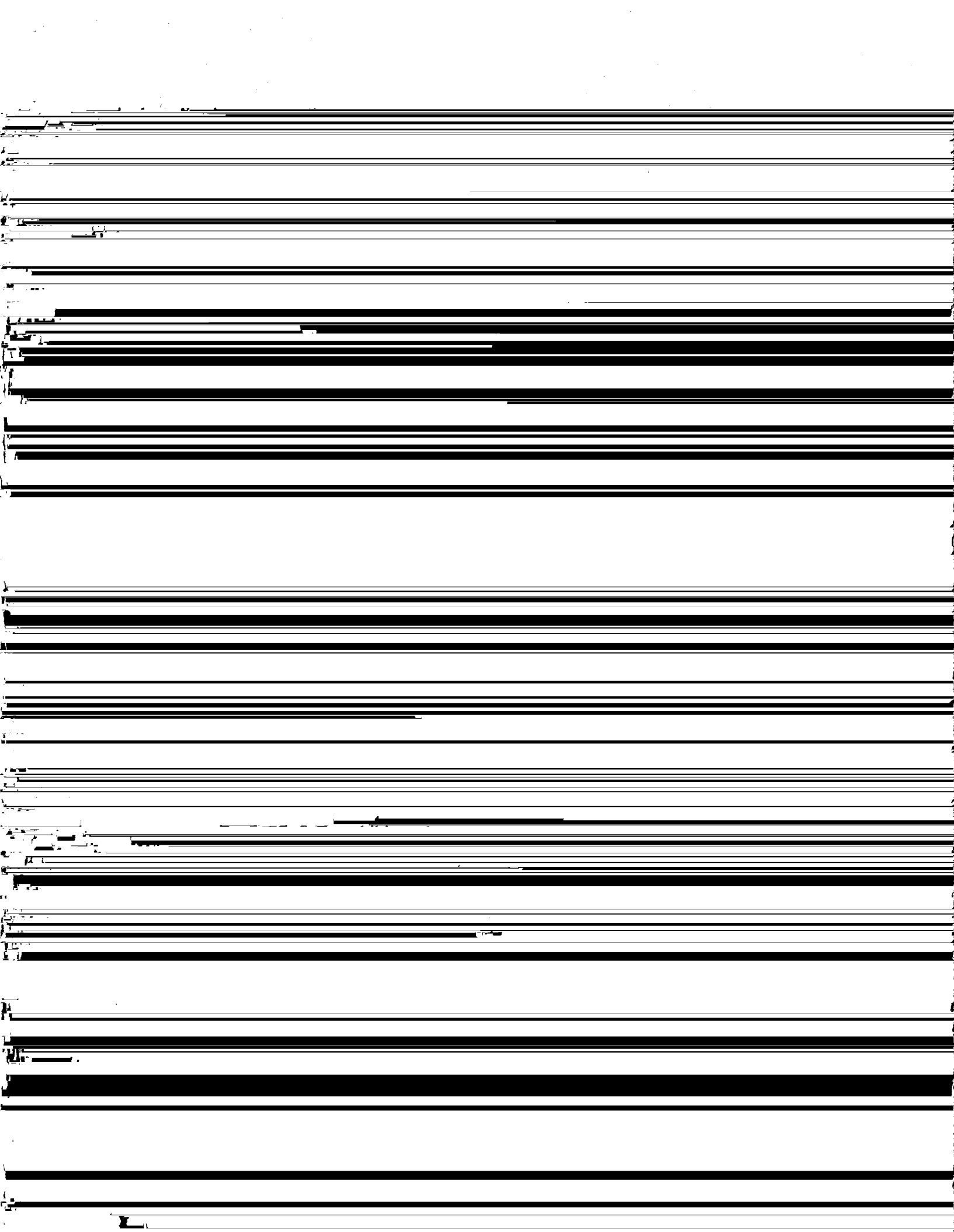
Sixty years ago, the United States Supreme Court held that collective rate setting

competitors are horizontal agreements on price that, absent an applicable defense, constitute a violation of federal antitrust law. *Georgia v. Pennsylvania R.R.*, 324 U.S. 439 (1945). While



Kentucky Association issued a "Tariff Bulletin" notifying all of its members when the KTC permitted Larry's Movers rate changes to become effective. Tolson Decl. Exhibit J. Although the materials filed with the Motion do not reflect whether any similar notification was issued to 1

copies with respect to the other members.



... (Telco Deal #9) and submit a letter from Mr. Deard of the KTC

1

indicating that revenue and cost reports from regulated motor carriers for the year 2004 will be

submitted to be filed with the KTC by April 1, 2005. (Telco Deal Exhibit C) But the

supervise collective rate-setting activity by simply requesting the information it needs to evaluate

the reasonableness of rates; it must obtain the information and use it to make a meaningful

independent decision concerning the overall reasonableness of the rates.

More specifically, with respect to the particular rate changes made in the Kentucky Association's recent collective rate filings, the materials filed by the Respondent fail to establish active supervision by the KTC. According to the Respondent, the "Justification" for the various rate changes contained in Supplement 85 was contained in a cover letter that accompanied the



of the seven firms did the KTC seek further information before permitting the rates to go into effect. Tolson Decl. ¶ 12-13, Exhibits G, H, I & J.<sup>22</sup>

While this modest degree of scrutiny by the KTC exceeds that in the past, it is far short of

history of unsupervised collective rate-setting.<sup>23</sup>

**C. ANY SHIFT OF POLICY BY THE KTC TO BEGIN ACTIVE SUPERVISION IS  
APPARENTLY FEAR FROM BEING FULLY IMPLEMENTED**

in this case. What the information submitted by Respondent shows, at most, is that the KTC is

but now beginning to rethink its approach.

31 31 11

As discussed above, the evidence in this record shows that, despite a statutory

requirement that the VTC have procedures that assure that revenues "respectively revenues and

were not sent to the KTC (Tolson Decl. Exhibit G) and higher rates for six of the seven affected

Dependent has provided the FTC with

Indeed, there is no indication that the state has ever willfully violated its duty.

information such as written findings will contain. Defendant states that

November 1, 2004, allowing Larry's Movers to raise rates constitutes a KTC "written decision."  
(Tolson Decl. ¶ 13). But that letter contains no articulation of the reasons for the KTC's decision  
or of the standard it applied. It simply declares that the firm's proposed increase "appears"  
reasonable. Tolson Decl. Exhibit I.

## 6. CONDUCT HEARINGS.

The record evidence shows that no hearings were held by the KTC

#### IV. CONCLUSION

Complaint Counsel urge the Commission to deny the Respondent's Motion for a stay, and

Association. The materials filed by the Respondent, rather than justifying a stay of this proceeding, confirm that the unsupervised collective rate-setting by the Kentucky Association is ongoing. The activities of the KTC with respect to the recent collective rate-setting by the

Commission Rule 2.51, 16 C.F.R. § 2.51. In the meantime, however, the ongoing collective rate-setting by the Kentucky Association is a decades-long antitrust law violation that should be stopped.

Respectfully submitted,

[REDACTED]



**CERTIFICATE OF SERVICE**

This is to certify that on February 3, 2005, I caused a copy of Complaint Counsel's Opposition to Respondent's Motion for Stay of Proceedings pending Action by Kentucky Transportation Cabinet to be served upon the following persons by facsimile, U.S. Mail or Hand-Carried:

by hand delivery to:

The Commissioners  
U.S. Federal Trade Commission

via Office of the Secretary, Room H-159  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

by mail delivery and fax to:

James C. McMahon  
Brodsky, Altman & McMahon, LLP  
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(212) 986-6905 *facsimile*

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