

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

)	
In the Matter of)	
)	
MINNESOTA TRANSPORT)	Docket No. C-4097
SERVICES ASSOCIATION,)	
)	
a corporation.)	
)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of Minnesota Transport Services Association (“MTSA”), hereinafter sometimes referred to as “Respondent,” and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement

and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Minnesota Transport Services Association is a corporation organized and existing under the laws of the State of Minnesota with its principal office and place of business at 1821 University Avenue, Suite S-213, St. Paul, Minnesota 55104.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED, that for the purposes of this Order, the following definitions shall apply:

- A. "Respondent" or "MTSA" means Minnesota Transport Services Association, its officers, executive board, committees, representatives, agents, employees, successors and assigns;
- B. "Carrier" means a common carrier of property by motor vehicle;
- C. "Intrastate transportation" means the pickup or receipt, transportation and delivery of property hauled between points within the State of Minnesota for compensation by a carrier authorized by the Minnesota Department of Transportation to engage therein;
- D. "Member" means any carrier or other person that pays dues or belongs to MTSA or to any successor corporation;
- E. "Tariff" means the publication stating the rates of a carrier for the transportation of property between points within the State of Minnesota, including updates, revisions, and/or amendments, including general rules and regulations;
- F. "Rate" means a charge, payment or price fixed according to a ratio, scale or standard for direct or indirect transportation service;
- G. "Collective rates" means any rate or charge established under any contract, agreement, understanding, plan, program, combination or conspiracy between two or more competing carriers, or between any two or more carriers and Respondent; and

- H. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

II.

IT IS FURTHER ORDERED that Respondent, a corporation, its successors and assigns, and its officers, agents, representatives, directors and employees, directly or through any corporation, subsidiary, division or other device, shall forthwith cease and desist from entering into and within 120 days after service upon it of this Order cease and desist from adhering to or maintaining, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy to fix, stabilize, raise, maintain or otherwise interfere or tamper with the rates charged by two or more carriers for the intrastate transportation of property or related services, goods or equipment, including but not limited to:

1. Knowingly preparing, developing, disseminating or filing a proposed or existing tariff that contains collective rates for the intrastate transportation of property or other related services, goods or equipment;
2. Providing information to any carrier about rate changes considered or made by any other carrier employing the publishing services of Respondent prior to the time at which such rate change becomes a matter of public record;
3. Inviting, coordinating or providing a forum (including publication of an informational bulletin) for any discussion or agreement between or among competing carriers concerning rates charged or proposed to be charged by carriers for the intrastate transportation of property or related services, goods or equipment;
4. Suggesting, urging, encouraging, persuading or in any way influencing members to charge, file or adhere to any existing or proposed tariff provision which affects rates, or otherwise to charge or refrain from charging any particular price for any services rendered or goods or equipment provided;
5. Maintaining any rate or tariff committee or other entity to consider, pass upon or discuss intrastate rates or rate proposals; and
6. Preparing, developing, disseminating or filing a proposed or existing tariff containing automatic changes to rates charged by two or more carriers.

III.

IT IS FURTHER ORDERED that Respondent shall, within 120 days after service upon it of this Order:

1. Cancel all tariffs and any supplements thereto on file with the Minnesota Department of Transportation that establish collective rates for transportation of property or related services, goods or equipment by common carriers in the State of Minnesota and take such action as may be necessary to effectuate cancellation and withdrawal;
2. Terminate all previously executed powers of attorney and rate and tariff service agreements, between it and any carrier utilizing its services, authorizing the publication and/or filing of intrastate collective rates within the State of Minnesota;
3. Cancel those provisions of its articles of incorporation, by-laws and procedures and every other rule, opinion, resolution, contract or statement of policy that has the purpose or effect of permitting, announcing, stating, explaining or agreeing to any business practice enjoined by the terms of this Order; and
4. Amend its by-laws to require members of MTSA to observe the provisions of the Order as a condition of membership in MTSA.

IV.

IT IS FURTHER ORDERED that, within fifteen (15) days after service upon it of this Order, Respondent shall mail or deliver a copy of this Order, under cover of the letter attached hereto as "Appendix," to each current member of Respondent, and for a period of three (3) years from the date of service of this Order, to each new member within ten (10) days of each such member's acceptance by Respondent.

V.

IT IS FURTHER ORDERED that Respondent notify the Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation which may affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that Respondent shall file a written report within six (6) months of the date of service of this Order, and annually on the anniversary date of the original report for each of the five (5) years thereafter, and at such other times as the Commission may require by

written notice to Respondent, setting forth in detail the manner and form in which it has complied with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on September 15, 2023.

By the Commission, Commissioner Harbour not participating.

Donald S. Clark
Secretary

SEAL
ISSUED: September 15, 2003

APPENDIX

(Letterhead of the Minnesota Transport Services Association)

Dear Member:

The Federal Trade Commission has ordered Minnesota Transport Services Association (MTSA) to cease and desist its collective tariff rate-making activities. A copy of the Commission's Decision and Order is enclosed.

In order that you may readily understand the terms of the Order, we have set forth its essential provisions, although you must realize that the Order itself is controlling, rather than the following explanation of its provisions:

(1) MTSA is prohibited from engaging in any collective rate-making activities, including the proposal, development or filing of tariffs which contain any collectively formulated rates for intrastate transportation services. Each member carrier must independently set its own rates for transportation of property or related services, goods or equipment between points within the State of Minnesota but may use MTSA as a tariff publishing agent for members' independently established rates.

(2) MTSA is prohibited from providing a forum for its members for the purpose of discussing rates.

(3) MTSA is prohibited from urging, suggesting, encouraging or in any way attempting to influence the rates members charge for their intrastate transportation services; MTSA may not provide non-public information to any carrier about rate changes ordered by another carrier.

(4) MTSA is prohibited from maintaining any rate or tariff committee which discusses or formulates intrastate rates or rate proposals.

(5) MTSA is given 120 days to cancel all tariffs and tariff supplements containing collective rates currently in effect and on file at the Minnesota Department of Transportation which were prepared, developed or filed by MTSA.

(6) MTSA is required to amend its by-laws to require its members to observe the provisions of the Order as a condition of membership in MTSA.

Sincerely yours,

[appropriate MTSA officer]

Enclosure