



Federal Trade Commission

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TESTIMONY OF
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THE FEDERAL TRADE COMMISSION
BEFORE THE
NEW JERSEY DIVISION OF CONSUMER AFFAIRS

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This testimony presents the views of the New York Regional Office and the Bureau of Competition of the Federal Trade Commission. The views expressed are not necessarily those of the Commission or of any individual Commissioner.

My name is Michael Joel Bloom. I am the Regional Director of the New York Regional Office of the Federal Trade Commission. I appreciate the opportunity to testify today on the proposed rules implementing the Public Movers and Warehousemen Licensing Act.

The testimony I will present is that of the staff of the New York Regional Office and the Bureau of Competition of the Federal Trade Commission. The views I express are not necessarily those of the Commission or of any individual Commissioner.

Our comments pertain primarily to provisions of the rules calling for the semiannual filing of tariffs containing the rates that public movers will charge for their services. We applaud the stated objective of the rules -- to "assure the informed and competitive delivery of moving and warehousing services."¹ However, we believe that the rules, if revised in certain respects, might better accomplish this laudable goal.

Accordingly, we wish to point out certain administrative reforms that, if adopted, would allow consumers to receive the benefits of additional price and service competition among movers. For example, we believe that consumers would benefit if movers were permitted to change their tariff rates more

¹ See the "Social Impact" statement set forth in the preamble to the proposed rules.

frequently than twice per year. Consumers would also benefit if movers were allowed to offer promotional pricing, including binding estimates and demand-sensitive discounts.

I. Introduction

Before addressing these issues specifically, I would like to make some introductory remarks.

The Federal Trade Commission is charged by Congress with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting interstate commerce.² Pursuant to this mandate, the Commission seeks to serve the public interest by, among other things, protecting the marketplace from unreasonable restraints of trade. Consistent with these purposes, the staff of the Commission have provided comments to federal, state, and local legislative and administrative bodies to advocate competition-based approaches to various policy issues. The Commission has had considerable experience in evaluating competitive problems and issues in the moving industry, including issues relating to the formulation of tariffs and state regulation. This experience is derived both from FTC enforcement initiatives³ and from industry studies and

² 15 U.S.C. § 45 et seq.

³ In Massachusetts Furniture & Piano Movers Ass'n, the Commission found that the ratemaking activities of a movers' trade association reflected an agreement among competitors to set

analyses by FTC staff.⁴ Accordingly, in response to your public notice inviting comment, the staff of the New York Regional Office and the Bureau of Competition offers these remarks on the proposed rules governing the public moving industry in New Jersey.

II. Background

By way of background, I wish to note some of the regulatory history of the moving industry in New Jersey. As you know, New Jersey has generally permitted competition in intrastate trucking without price regulation or restriction on entry. However, New Jersey has regulated one category of trucking - the public moving of household goods, office goods, and special commodities. Prior to 1981, the Public Utilities Act empowered the Board of Public Utilities to "[f]ix just and reasonable . . . rates" for public movers.⁵

prices or price ranges and constituted a per se violation of the antitrust laws. 102 F.T.C. 1176 (1983), rev'd on other grounds, 773 F. 2d 391 (1st Cir. 1985).

⁴ See, e.g., Diane S. Owen, "Deregulation in the Trucking Industry," Bureau of Economics, Federal Trade Commission, May 1988. This FTC Staff Report found that federal deregulation of contract trucking of general freight has led to substantially lower costs and more efficient, reliable, and innovative service. The Report states that "[o]verall . . . shippers and carriers have coped well and shown innovative skill in dealing with the increased complexity of the trucking market after deregulation, bringing into question the need for rate bureaus to simplify and stabilize rates."

⁵ N.J.Stat.Ann. § 48:2-21(b).

In 1981, this public utility form of regulation was supplanted by the New Jersey Public Movers and Warehousemen Licensing Act.⁶ The Act allows relatively easy entry and enables movers to determine their own rates and to change them by filing new tariffs. This considerable relaxation of regulatory constraints represents substantial progress toward providing consumers with the benefits of a marketplace unencumbered by impediments to price and service competition. However, the Act has, in certain respects, been interpreted in a manner that may prevent consumers from enjoying the benefits of competition. These interpretations, which I will discuss specifically, are reflected in the rules now proposed to implement the Act.

III. Regulations Restraining Movers' Pricing Flexibility

A. The Prohibition of Demand-Sensitive Rates and Binding Estimates Is Contrary to the Interests of Consumers

The Act provides that public movers must file tariffs with the state and may charge only the "compensation" specified in them, except that discounts and rebates to persons 62 years or older are expressly permitted.⁷ This provision, which requires

⁶ N.J.Stat.Ann. § 45:14D-1 et seq. (hereafter "the Act").

⁷ N.J.Stat.Ann. § 45:14D-14(b). In addition to apparently sanctioning the provision of off-tariff discounts to persons 62 or older, the statute seems implicitly to authorize the granting of selective price reductions provided that they are not "undue or unreasonable." ("It shall be unlawful for any mover or

essentially that filed tariffs notify the public of the compensation to be charged, has been interpreted by the New Jersey Advisory Board of Public Movers and Warehousemen to preclude various forms of promotional pricing. This interpretation seems to be based on the belief that permitting such promotional pricing would render the tariffs too imprecise to satisfy the statutory requirement that the compensation to be charged be specified. Further, New Jersey's regulatory authorities have not permitted movers to specify in their tariffs rates that vary depending upon some predictable factor, such as anticipated demand. Thus, for example, a mover could not offer lower rates during a month of low demand, such as February, even if the mover were expressly to set forth the lower rate in its filed tariff.⁸

The Advisory Board also has banned the use of binding estimates. This prohibition applies even if the tariff were to provide that the binding estimate cannot be higher than the

warehouseman to make, give, or cause any undue or unreasonable preference or advantage to any particular person...or to subject any particular person...to any undue or unreasonable prejudice or disadvantage.") N.J.Stat.Ann. § 45:14D-13.

⁸ Discounts corresponding to seasonal changes in demand are referred to in the moving industry as "seasonal discounts." The current system, which allows new rates to become effective on May 1 and November 1, permits some rate flexibility that may correspond to limited seasonal changes in demand. Semiannual rate changes, however, cannot reflect seasonal demand changes that occur more frequently than twice a year.

charge to the customer that otherwise would result from application of the filed rates.

As I mentioned a moment ago, the proposed rules appear to codify these interpretations;⁹ they do not adopt the kind of flexible regulatory regime that we believe would be more attuned to the overall purpose of the Act - to foster price and service competition.

The proposed rules require that movers provide consumers with estimates through completion of an "estimated cost of services" form, a sample copy of which accompanies the rules. As the rules state, the estimate is to be given "as an educated predictor of the cost for the services to be rendered."¹⁰ The availability of such an "educated predictor" is important insofar as it enables consumers to avoid a difficult and sometimes fruitless effort to compare the total cost of moving services offered by two or more movers who may use different -- and not directly comparable -- costing methods.¹¹ Therefore, we support

⁹ N.J.Admin.Code 13:44D-3.1(e), printed in 20 N.J. Reg. 2364 (Sept. 19, 1988).

¹⁰ N.J.Admin.Code 13:44D-4.1(a)(2).

¹¹ For example, a review of filed tariffs indicates that movers may assess differing charges for scores of items ranging from packing materials of various shapes and sizes, to packing services, to special carrying charges for unusually heavy or cumbersome items, to appliance disconnection and re-connection, to the van, driver, and helpers. One mover may seek higher charges than another for some items and lower charges than that same other mover for other items, making comparison by the

the notion that estimates should be clearly presented to consumers to enable them to anticipate their costs. Indeed, we believe that, to the extent permitted by statute, the rules should go further to allow movers to provide consumers with binding estimates.

The availability of binding estimates and demand-sensitive discounts, such as seasonal discounts, could stimulate competition among movers and provide substantial benefits to consumers. Prohibiting these options may deprive some consumers of a price advantage for purchasing services during periods of the year when the cost of providing those services is low; deny consumers the valuable up-front price information and bargaining power that comes with binding estimates; and increase the risks consumers must bear with respect to movers' under-estimation of poundage or cubic feet of goods to be moved.¹²

consumer of likely total costs cumbersome and uncertain. Further, the essential method of calculating significant costs may vary from mover to mover. Some movers may charge for transportation on an hourly basis whereas others may use a weight and mileage basis. The use of different costing methods may greatly increase the difficulty and reduce the reliability of consumer projection and comparison of movers' total charges.

¹² The cost of a typical move will depend upon events that cannot be predicted with certainty. For instance, the weight of a particular load can only be estimated until it is placed on a scale. The prohibition of binding estimates forces the customer to bear the risk associated with unpredictable contingencies even when the mover might better be able to assume the risk, either because it is less risk averse than the customer or because it can do so more efficiently (for example, by spreading its risks among its customers).

It is also important to note that the prohibition of binding estimates may, ironically, create a consumer protection problem by encouraging some movers to offer deceptive "low-ball" estimates knowing that they will not be bound. This is particularly paradoxical in view of the pro-consumer objectives of both the Act and the rules.

The statutory requirement that movers adhere to published tariffs - a requirement that may have been designed to provide consumers of moving services with notice of the prices they will pay - may not require the regulatory prohibition of demand-sensitive discounts, or even of binding estimates. A mover could specify rates in its filed tariffs that vary depending upon anticipated changes in demand. Similarly, the fact that a mover has chosen to use binding estimates could be clearly communicated in its filed tariff. Permitting these practices might well satisfy the requirements of the statute.

To the extent that the Division of Consumer Affairs believes that the restrictions on these forms of pricing are not compelled by the Act, we recommend that it consider modifying its rules to allow this pricing flexibility. If, however, the Division of Consumer Affairs believes that these or any of the other restrictions discussed in these comments are compelled by the Act, we respectfully suggest that the Division may wish to call the noted anticompetitive effects to the attention of the New

Jersey legislature for its consideration of appropriate amendments.

B. Requirements for Semiannual Tariff Filing Restrain
Competition

The Act contains another provision that has been interpreted by regulatory officials in a manner that inhibits competition. The Act provides that movers "shall file their tariffs . . . semiannually."¹³ The rules require every mover to file "a tariff or tariffs" no later than April 1 and no later than October 1 of each year;¹⁴ these tariffs become effective on May 1 and November 1, respectively.¹⁵ Hence, a mover cannot deviate from the rates contained in its tariff for six months after the rates become effective, even if the mover is losing customers to other movers who filed lower rates. Further, a mover cannot institute a price change more quickly than thirty days after providing notice of the change.¹⁶

¹³ N.J.Stat.Ann. § 45:14D-14(a).

¹⁴ N.J.Admin.Code 13:44D-3.1(a).

¹⁵ N.J.Admin.Code 13:44D-3.1(b).

¹⁶ Because a mover must file a tariff at least one month before it becomes effective and tariffs remain in effect for six months, a mover must commit itself to rates for at least seven months.

These constraints on the frequency of tariff revisions prevent movers from adjusting prices rapidly in response to changes in demand and encourage movers to use a risk-averse pricing strategy. For example, a mover probably would be disinclined to file low prices that would be effective for six months for fear of under-estimating what its costs will be several months later, especially when it cannot precisely anticipate its future costs. In addition, if tariff requirements increase the risks of doing business, some firms may be deterred from entering the moving industry. These constraints also deprive movers of the constant stream of competitive pricing information that operates in unregulated markets to inform sellers of changes in supply and demand conditions. As a result, consumers are denied the benefit of a market in which prices closely track costs and in which the supply of moving services is produced efficiently to satisfy demand.

In addition, the requirement is likely to induce movers to file their tariffs essentially simultaneously, on or about April 1 and October 1 of each year, and could thereby facilitate anticompetitive rate agreements among movers. Requiring suppliers to adhere to filed price schedules can encourage collusive behavior by enabling a cartel to police a price-fixing agreement more easily. To the extent that some firms may be tempted to engage in collusive pricing, a regulatory requirement

that encourages simultaneous filing may increase the danger of anticompetitive price coordination.

IV. Regulations Inhibiting Price Competition Are Unnecessary

The requirements that I have discussed, individually and in combination, create a pricing rigidity that is likely to distort the marketplace in a variety of ways. In particular, the effective proscription of rates responsive to demand impairs the ability of movers to use their facilities efficiently and thereby increases the total cost of moving services.

We believe that these costly regulatory constraints on the public moving industry are not justified. Indeed, the relaxation in 1981 of formal price and entry restrictions apparently reflects a realization that the market could function competitively and that the industry did not warrant public utility regulation. This same insight should suggest that the remaining constraints are unnecessary and in fact counterproductive.

V. Summary and Conclusions

In summary, we believe that the frequency with which a mover may revise its rates should not be limited, so long as consumers can obtain correct information about applicable charges, and that consumers should not be deprived of the full benefits of mover pricing flexibility, including the availability of binding estimates and published demand-sensitive discounts, such as seasonal discounts.

The Division of Consumer Affairs may want to consider, in conjunction with its promulgation of new rules, regulatory reforms that would allow each mover to change its prices more frequently than semiannually and implement its revised rates more quickly. This type of system, sometimes called "file and go," would increase considerably the pricing flexibility of New Jersey movers and would thereby eliminate many of the deficiencies of the current scheme. These reforms, which would allow such promotional pricing as demand-sensitive discounting, combined with measures that would allow movers to offer binding estimates, would go a long way toward fully realizing the pro-competitive and pro-consumer objectives of both the Act and the rules.

I hope you find these comments of assistance. Please let me know if I can provide any additional information or analysis.