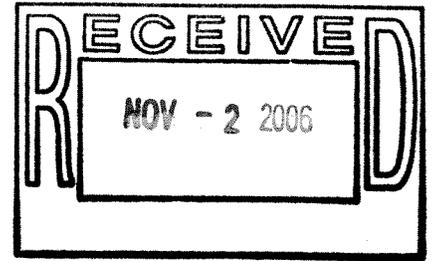




November 1, 2006

Andrew J. Heimert
Executive Director & General Counsel
Antitrust Modernization Commission
1 120 G Street, N.W.
Suite 810
Washington, D.C. 20005



Re: Immunities and Exemptions, Hearing on the Shipping Act

Dear Mr. Heimert:

The Intermodal Association of North America, Inc. (IANA) appreciates this opportunity to respond to certain inaccurate and misleading comments contained in the statement of the Intermodal Motor Carriers Conference of the American Trucking Associations (IMCC) regarding the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA) presented at the October 18, 2006 hearing on the Shipping Act.

IANA is the national trade association of intermodal transportation providers, industry suppliers and customers who come together with the common goal of promoting the benefits of intermodal service, and advocating issues that are complimentary to multi-modal transportation. IANA's more than 700 member companies include: intermodal drayage and highway motor carriers, railroads, water carriers, third party logistics providers, ports, equipment manufacturers and leasing companies, and other industry service suppliers. IANA is the only national organization that represents the combined interests of the intermodal freight industry.

As pertinent, IANA is also the administrator of a uniform contract that governs the interchange of intermodal equipment and cargo among its participants. This contract establishes a set of industry-developed processes and rules that oversee the care, custody and liabilities associated with the handling of equipment by motor carriers, on behalf of ocean and rail carriers and equipment leasing companies (equipment providers). More than 6,500 motor carriers and some 58 equipment providers are current participants in the Agreement, and represent over ninety (90) percent of the intermodal freight market. The UIIA activities are conducted pursuant to a Business Review Letter provided by the U.S. Department of Justice.

In the section of its statement entitled "Intermodal Trucking-Maritime Container Transportation Overview," the IMCC undertakes to describe the nature of the UIIA. It generally notes that the UIIA provides "standard-uniform provisions for the non-commercial aspects" of the interchange arrangement, and that the "commercial aspects (rates, per diem, free time, demurrage, equipment loss and repair, etc)." are left to the individual equipment provider addenda to the Agreement.

It is then summarily stated that the addenda are "issued to participating motor carriers following a cursory review" by the UIIA's administrative body, the Intermodal Interchange Executive Committee (IIEC). This portrayal of the process is inaccurate in a number of material respects.

As previously noted by the IMCC, the UIIA does not include any commercial terms. However, subsequent statements by this group seem to imply otherwise. A relationship is drawn between the “uniform increases in container related fees, per diem, and reduction in terminal storage-dwell times” and the UIIA process. Consequently, IANA would like to clarify for the record that commercial terms are not and cannot be the subject of collective consideration under the UIIA, and as such, are not included in any review conducted by the IIEC, contrary to what was stated in the IMCC’s submission.

In addition, the IMCC’s characterization of addenda review as “cursory”, i.e. hasty or superficial, betrays a lack of familiarity with the process. Such review, restricted to non-commercial terms, is governed by the Administrative Procedures to the UIIA and involves a formal process, including a mechanism that allows for the identification of addenda terms and conditions that are in conflict or are inconsistent with the provisions of the UIIA and an opportunity to discuss and resolve any such language prior to an addendum becoming effective. In the event that conflicting and/or inconsistent language is not modified that portion of the addendum is rejected.

Equally specious is the contention that through the addenda, motor carriers are required “to meet arbitrary operational procedures.” Absent is any identification of specific arbitrary operational procedures and the IMCC again implies a connection between these practices and the UIIA, of which there is none. However, it should be noted that in the course of conducting the review of addenda language, arbitrary operational procedures most likely would conflict with and/or be inconsistent with provisions in the UIIA and not pass the scrutiny of the review process.

In the section of its statement entitled “Existing Antitrust Exemption Impacts,” the IMCC infers a direct relationship between the antitrust protection afforded to West Coast Marine Terminal Operators under FMC Agreement No. 201143 and the participation of ocean carrier members of the IIEC in administering the UIIA - “Since the inception of the.....West Coast MTO Agreement,marine carrier members of the UIIA executive committee have begun to vote in blocbased on decisions made outside of the committee.” This contention is a serious allegation against the efficacy of the UIIA and against the integrity of the industry representatives that serve on the IIEC, and is particularly troublesome in that not a single example is given so that a factual response can be made to the allegation.

In any event, it must be pointed out that one of the most sweeping changes to the UIIA occurred on January 17, 2005, and involved the revision of Section F. of the Agreement entitled “Liability, Indemnity, and Insurance.” The members of the IIEC approved the modification of Section F. 4, to limit the indemnification the motor carriers provide to equipment providers solely to those claims, etc., caused by or resulting from the motor carrier’s intentional acts or negligent use or maintenance of the equipment during the interchange period. That revision, agreed to by all the modes, eliminated the indemnification that the motor carriers previously undertook for the actions of others. There has been no attempt, under the UIIA, to “severely marginalize motor carrier interests,” as the IMCC contends.

Lastly, the IMCC offers no tangible examples in support of its contention that the operation of the UIIA has been “severely hampered.” Participation in the Agreement is at its highest levels, and both motor carriers and equipment providers continue to be able to submit to the IIEC: proposed changes to the UIIA, requests for interpretations of Agreement provisions, and questions concerning specific actions of participants under the Agreement.

Andrew J. Heimert
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IANA's sole purpose in submitting these comments is to ensure that the record reflects a correct statement of the scope of the UIIA, as well as its significance and responsiveness to the intermodal industry, and that the misleading statements made by the IMCC are clarified. Should the Antitrust Modernization Commission wish any further information on the UIIA or the Intermodal Association of North America, IANA would be happy to comply with any such request.

Respectfully submitted,



Joanne F. Casey
President and CEO
Intermodal Assn. of North America and

Chairman
Intermodal Interchange Executive Committee
Uniform Intermodal Interchange and Facilities
Access Agreement