



FEDERAL TRADE COMMISSION FINDS AIC VIOLATED U.S. ANTITRUST LAWS, BUT DISMISSES NON-PRICE CHARGES

by: Jefferson C. Glassie, Partner
Jenner & Block, Washington, D.C.¹

The Federal Trade Commission ("FTC") held in a decision entered in the spring of this year that the International Association of Conference Interpreters ("AIIC") violated the United States antitrust laws by engaging in a "long standing, comprehensive scheme to eliminate price competition on virtually all aspects of conference interpreting." In a unanimous decision, the FTC held that certain price and fee related restrictions were *per se* illegal, and the Commission imposed an order on AIIC and its members against conducting such activities. However, the FTC also dismissed other charges against AIIC rules relating to workday length, interpreter team size, professional address, portable equipment, advertising, package deals, exclusivity, trade names, double dipping, and other services.

This ruling has caused a great deal of discussion in the translation and interpretation communities. The basic ruling on price-related factors is consistent with decades of U.S. antitrust jurisprudence. Dismissal of charges with respect to non-price related rules represents a victory for the AIIC and arguably make such practices lawful, although it must be understood that the FTC dismissed those charges based on failure of the FTC lawyers to demonstrate that AIIC had market power or to present sufficient evidence that the challenged activities had anti-competitive affects. Therefore, translators and interpreters following those rules still must be cautious in taking such actions. A brief explanation of the FTC decision follows.

After rejecting arguments by the AIIC's lawyers that the FTC should not even have jurisdiction over AIIC activities in the United States, Commissioner Christine Varney, writing for the FTC, had little difficulty in finding that the price and fee related rules imposed under the AIIC's governing rules were *per se* illegal. Thus, it is clearly illegal for codes of ethics and rules of associations -- and for translators and interpreters to agree upon -- "restraints that prevent price competition, including minimum daily rates, an 'invisible day' preventing lower remuneration for shorter meetings, specified payment for travel, rest, briefing, and non-working days, a mandate that all interpreters at a conference be paid the same, standardized payments for full fare travel expenses, uniform per diem allowances, cancellation and recording fees, and restrictions on pro bono work and the payment of commissions."

The AIIC was formally ordered to cease and desist from creating, formulating, compiling, publishing, recommending, endorsing, or authorizing lists or schedules of fees, fee reports, fee

¹ Mr. Glassie serves as General Counsel to the American Translators Association. The comments provided in this article are general in nature and should not be considered legal advice or opinion.

guidelines, suggested fees, proposed fees, fee sheets, standards fees, recommended fees. The AIC was also prohibited from entering into agreements to fix, stabilize, or raise fees for interpretation of translation services, and other actions related to the findings of violations noted above. The FTC order specifically permits compiling or distributing accurate aggregate historical market information concerning fees, as long as such information reflects transactions completed more than one year before the date the information was compiled and is not conducted within three days following the date of the order. Significantly, the FTC order recognizes that it is not impermissible to collect or publish inter-governmental fee schedules if the publication states the qualifications and requirements for a person to be eligible for such fees.

The order also requires that the AIC regulate meetings at which such matters may be discussed, amend its governing rules to affect the intention of the order, distribute to all members and affiliates copies of the order and other documents required by the FTC, and distribute to all new officers, directors, and members copies of all such documentation. The AIC is also under compulsion to file reports and maintain records for FTC inspection for a period of ten years following the date of the order. A copy of the announcement that must be distributed is provided at the end of this article.

It is also extremely important to note the findings related to non-price related factors. The lawyers for AIC apparently had represented that some of these rules were important enough that AIC would not appeal from a FTC order if four of the challenged rules were found not to violate the law, specifically the length of day, team size, professional address, and portable equipment rules. The FTC did not find these four rules to violate the antitrust laws. In addition, the FTC determined that the other alleged non-price restraints were not violations, in large part because no market power was proven, but also on the grounds that the FTC lawyers had not provided sufficient evidence to demonstrate any competitive effects. In fact, the FTC stated that "the record in this case is virtually devoid of evidence of anti-competitive effects flowing from the non-price restraints." Commission Varney noted that many of the witnesses testified to protections and efficiencies that were reasonably intended to promote translation services in a competitive manner and may be justified by market factors as well as maintaining the quality of services provided.

It should be stressed, however, that the FTC's refusal to find violations does not mean that rules enforcing such conduct by translators or interpreters would always be permissible; indeed, they remain suspect to the extent that they may have anti-competitive effects. Nonetheless, given the FTC's decision, it would be reasonable to conclude that such actions should not constitute violation of the antitrust laws.

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Announcement: The Federal Trade Commission, an agency of the Government of the United States of America, has determined that certain rules and practices of the International Association of Conference Interpreters ("AIC") violate the antitrust laws of the United States.

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Members are advised that agreements between competitors on rates and fees violate the antitrust laws of the United States and may violate the laws of other countries. Other agreements between competitors on matters other than rates and fees may also violate the antitrust laws of the United States or of other countries. Individuals who enter into such agreements may be subject to criminal penalties and fines under the laws of the United States of America. 15 U.S.C. § 1; 18 U.S.C. § 2371. Individuals who enter into such agreements may also be civilly liable to persons injured in their business or property as a result of violations of the antitrust laws. 15 U.S.C. § 15.

AIC and its United States region are now subject to an order issued by the United States Federal Trade Commission. The order prohibits AIC, including its regions and organizational subdivisions, from engaging in various practices that would lessen competition in the United States. Copies of this order are attached to this announcement. (Copies of the FTC decision may be obtained from ATA headquarters).

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