



LOGISTICS STRATEGIES

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DEPARTMENT OF JUSTICE NOW INVESTIGATING UPS AND FEDEX

As we have been reporting over the past several months, UPS and FedEx have both made a business decision not to allow their customers to engage Third Party Consultants in parcel carrier contract negotiations. This is quite interesting since the utilization of Third Party Consultants for pricing negotiations, for all modes of transportation has been growing steadily over the past decade or so. It is even more interesting when you count the fact that UPS Freight and FedEx Freight, (the parcel Giants' general freight operations), not only work closely with Third Party Consultants in truck pricing and contract negotiations, but welcome them as a valued resource for new business opportunities. They don't seem to have a problem with the Third Party Consultants in trucking negotiations. Is it because they benefit greatly from these relationships? Shippers have relied heavily on Third Party Consultants for years to help them better manage their transportation and logistics expenses, and we expect that trend to grow in the future.

As we have also reported, one of the industry's leading Third Party Parcel Negotiators, AFMS filed a lawsuit against both FedEx and UPS several months ago seeking in part, treble damages because the suit claims the decision by FedEx and UPS not only violates Antitrust Laws, but they also believe collusion is involved. That's because this policy was announced by the duopoly of UPS and FedEx and implemented right around the same time.

Well apparently the furor over these policies of the nations leading parcel carriers has now garnered the attention of the Department of Justice. DOJ recently contacted both UPS and FedEx to advise them that they are in fact looking into these allegations.

According to a UPS spokesperson, the lawsuit is "trying to punish UPS for working directly with its customers", noting how hilarious it is that one allegation could be considered collusion. "It's pretty evident that we strongly compete", the UPS spokesperson went on to say. The spokesperson for FedEx, Maury Lane simply stated they have in fact been notified of the DOJ's investigation and that they fully intend to cooperate. And the Justice Department for their part, as expected has declined comment.

In a recent CNBC report, Herb Greenberg stated that the DOJ "probe is part of a broader, more interesting story about how FedEx and UPS may be

attempting to recoup profits lost by shippers using consultants to save money". In fact, according to the lawsuit filed by AFMS, between 2007 and 2009 its customers alone saved over \$100 Million when their contracts were renegotiated by AFMS on behalf of their customers. "The use of consultant-generated discounts has reinvigorated price competition between UPS and FedEx" the AFMS lawsuit stated. The success of AFMS' negotiations, as well as negotiations handled by dozens of other Third Party Parcel Negotiators over the years has in fact impacted both UPS and FedEx's bottom lines. So, is it now time for a payback?

What's also interesting is that the comment made by UPS attempts to downplay the fact that so far there is only "one" allegation of collusion and that came from the AFMS lawsuit. DOJ may think otherwise and there may very well be merit to these and other allegations, and that is precisely why DOJ is now investigating this situation.

The stark reality is that shippers that utilize the services of UPS and FedEx may be negatively affected financially by these recent actions. Shippers should be allowed to hire any consultant they wish to help them better manage their business. This includes the ability to have their parcel contracts benchmarked by industry experts and to re-negotiate their contracts to improve their pricing and service, only if they are entitled to such reductions. But the problem for most shippers is they have no way of knowing if they are entitled to lower rates unless they do engage a Third Party Negotiator.

While UPS and FedEx attempt to maintain a firm stance on this issue, a very interesting fact is now surfacing. And that fact is that UPS and FedEx may allow shippers to utilize the services of Third Party Negotiators when it is in UPS and FedEx's best interest. The bottom line is that if a shipper objects to this stance and tells FedEx and/or UPS they want to work with a third party, the parcel carriers will usually agree. This new business strategy therefore might appear to be a bullying tactic from both UPS and FedEx and one that may be easily reversed when contested, or certainly when it meets the parcel giants' needs. At the very least it may be discriminatory against smaller parcel shippers that may not have the volume clout or expertise to challenge UPS and FedEx's stand.

To prove this point, here is a snapshot of both UPS and FedEx's internal policy on the matter.

FedEx Policy: The district sales manager is instructed to appeal to a director or VP level employee if he/she feels that not working with the consultant will damage the customer relationship, or if the Third Party Consultant provides an opportunity to win an entrenched competitor customer. Another confidential source at FedEx said the policy is "posturing" and that FedEx will back down if shippers call its bluff. The source went on to say, "We simply cannot afford to walk away from business".

UPS' Policy: UPS' policy is to negotiate directly with its customers and not Third Party Consultants. However, the policy can be appealed at the discretion of the sales team with approval of the director of sales. In these cases, UPS will require a signed Third Party Confidentiality Agreement between UPS, the shipper and the Third Party Negotiator. This too is interesting since this confidentiality agreement has been required by UPS for years when the Third Party Negotiators are involved in the negotiation process. So what's changed? If the Third Party Confidentiality Agreement worked in the past, why doesn't it work now?

We find it hard to believe that we have not seen more shippers voicing their opinions on this matter. It is quite possible, however that many have in fact been voicing their opinion and perhaps directly to the Department of Justice. We would not be surprised to see some Class Action lawsuits popping up in the near future by various shipper groups as these investigations continue. Shippers just can't allow these actions to continue without taking a stand. The biggest obstacle however is that many smaller shippers are not even aware that UPS and FedEx have taken this stance.

Many Third Party Negotiators continue to provide their clients with consultative services to gain the same bottom line results for their shipper customers, while

at the same time by-passing any UPS and/or FedEx self serving scrutiny. As their client's internal pricing and contract experts, they lead and advise their clients throughout the Bid Process starting with Pre-Contract Savings Analysis; Bid Preparation with Precise Price Targets; Contract Benchmarking; Negotiation Strategy; and Carrier Bid Comparisons. The bottom line for all parcel shippers is annual savings ranging from 15-25% and oftentimes more, of their annual parcel spend. For this reason, many CPA firms and business consultants continually recommend these Third Party Negotiators to their clients. For further information, please contact Tony Nuzio at 516-822-1183, ext. 312 or tnuzio@icclogistics.com.

Please take a moment to check out ICC's Blog @ <http://www.logisticsstrategies.com> to check out previous articles.

GOOD NEWS/BAD NEWS: POSTAGE RATES ON THE RISE, AGAIN

The good news is that the postal service has not taken an increase in almost two years, (gee, it seems like yesterday). The bad news is that the rates are going up on April 11, 2011. Want some more good news? The increased rates, which will affect First Class Mail, Standard Mail, Periodicals, Package Services and Extra Services, will ONLY be increased by 1.741%. This is because the increase is based on a price cap calculated by the Postal Rate Committee using Consumer Price Index data.

The Postal Service seems to be battling a consistent uphill climb attempting to make itself "profitable". Many folks continue to push for privatization of the Post Office operations. Might that be an option? Also, the USPS will be taking some big steps in the near future as it looks to become a player in the \$100+ Billion dollar small parcel business. It already partners with UPS and FedEx in "Last Mile" deliveries for certain UPS and FedEx service offerings.

If you would like to view the new increased rates by shipment type, you can do so on line at Postal Explorer at pe.usps.com.

SOME MORE GOOD NEWS: CONTAINER SHIP OVERCAPACITY WILL KEEP OCEAN RATES LOW, FOR NOW

According to industry analysts' forecasts, ocean carriers will face overcapacity for at least another 12 months as the supply of new and larger ships outpaces slower cargo demand. The expectation is for the global container fleets to expand at an annual rate of only 8.7% over the next two years with 1.2 Million 20 foot equivalent units due to be delivered in 2011 and an additional 1.33 million TEU's expected in 2012.

On the other side of the coin is the prediction that cargo demand is expected to slow significantly to below 8% in 2011 compared to an estimate of 13.6% in 2010, (the final numbers still have not been calculated). The downward demand in the fourth Quarter of 2010 has already started to erode ocean carriers' load factors. One of the offsetting factors to these potential lower rates will obviously be the continuing increase in fuel costs which are always passed on to the shippers. We do not believe however that the increase in fuel will have any major impact on increasing rates in the ocean shipping arena.

It will be interesting to see how much pressure President Obama put on the Chinese Government during their recent meetings here in the US. There is a great need for the US to seek increased exports to China and the US needs to apply as much pressure as it can on the Chinese Government. The US must strongly voice its displeasure with many of the anti-US Trade regulations now imposed by the Chinese Government. Don't hold your breath, however!

WORKING ON THE RAILROAD: RAILROAD CARLOAD AND INTERMODAL VOLUME UP IN 2010

The Association of American Railroads recently reported that carload and intermodal shipping volume increased in 2010 over 2009 levels however the increase did not bring volumes up to the pre-recession totals. Some more good news, bad news!

"Like the economy in general, rail traffic in 2010 recovered some lost ground, but not nearly all of it," reported AAR Senior VP, John T. Gray. "That being said, monthly rail traffic increases were broad based, supporting the idea that economic recovery likewise is broad based." Here are some highlights from the AAR report:

- Total Carload Volume was 14, 820,128, up 7.3% over 2009 levels
- Intermodal volume was 11,282,336, up 14.2% over 2009 levels
- Increases were the largest since the initial record keeping in 1998, however increases were the second lowest on record after 2009
- Increase was equivalent to roughly 20,000 additional trains in 2010 over 2009
- Coal shipments represented 45.4% of the carload traffic, up 1.2% over 2009 levels.