



DEPARTMENT OF JUSTICE
Antitrust Division

ANNE K. BINGAMAN
Assistant Attorney General

Main Justice Building
10th & Constitution Ave., N.W.
Washington, D.C. 20530
(202) 514-2401 / (202) 616-2645 (f)
antitrust@justice.usdoj.gov (internet)
<http://www.usdoj.gov> (World Wide Web)

September 29, 1995

Brock R. Landry, Esquire
Jenner & Block
Suite 1200
601 Thirteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Landry:

This is in response to the request of the Metal Building Manufacturers Association ("MBMA") for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department of Justice's enforcement intentions with respect to MBMA's proposal to make company certification under the American Institute of Steel Construction ("AISC") Metal Building Certification Program a condition of MBMA membership.

MBMA is a trade association that seeks to promote the use of metal buildings. Among its activities, it sponsors research on various safety issues relating to the use and/or design of metal buildings and works with governmental bodies that regulate the design and construction of such buildings. You indicate that membership in MBMA is open to all manufacturers of metal building "systems", *i.e.*, those who provide customers an integrated combination of components and assemblies that form a building, as distinguished from firms that supply individual building components.

AISC is an organization that participates in a number of technical programs relating to fabricated steel production (involving high-rise structures as well as the low-rise structures where metal building system manufacturers have been most successful). The AISC Metal Building Certification Program does not certify individual products. Instead, it evaluates the capabilities of a manufacturer to meet public safety requirements based on the manufacturer's engineering policies, practices, procedures, and quality assurance standards and controls. AISC administers the certification program, but hires independent engineers to conduct the on-site inspections. AISC certification is open to all metal building manufacturers; membership in MBMA has not been, and will not be, a precondition for AISC certification under MBMA's proposal. AISC has established procedures for appeals, reevaluation and recertification for firms that don't initially meet its standards.

You have asserted that over the years a number of cities have adopted differing certification requirements for the design or construction of metal buildings, and that these differing requirements may impose burdensome and unnecessary costs on metal building manufacturers. To help municipalities develop safer and more uniform standards for metal building design and construction,

MBMA has worked with AISC for a number of years to develop the latter's current certification programs. You have indicated the belief that MBMA's efforts to persuade governmental authorities to adopt more uniform certification standards will be enhanced if MBMA membership is conditioned on AISC certification. MBMA's proposal is thus designed to enhance its credibility with regulatory authorities as well as to promote safety.

Based on the information and assurances provided by MBMA, the Department has no current intention to challenge the proposal to make certification under the AISC program a condition of MBMA membership. The proposal would not appear to have the effect of facilitating price collusion or reducing output. To the extent that your assertion that membership in MBMA is not necessary to compete for metal building systems contracts is accurate, exclusion from MBMA would not prevent a firm from competing in the market. The fact that AISC certification has been, and will continue to be available to nonmembers of MBMA further supports your assertion that the purpose of the AISC certification program and MBMA's proposal is not to restrain competition, but to promote safety and the development of more uniform municipal building ordinances. Under these circumstances, and in the absence of any evidence that the AISC certification program is being administered in a manner that unreasonably restrains rivals, the MBMA proposal should not have an anticompetitive effect.

It is possible that the proposal will have procompetitive effects. To the extent that it promotes safety, or lower costs by making compliance with the law cheaper, it should advance consumer interests.

This letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of any aspect of the proposed membership requirement proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10 (c) of the Business Review Procedure.

Sincerely,

/S/

Anne K. Bingaman
Assistant Attorney General