



DEPARTMENT OF JUSTICE
Antitrust Division

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Paul H. Vishny, Esq.
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Suite 2900
30 North LaSalle Street
Chicago, Illinois 60602

Dear Mr. Vishny:

This is in response to your request on behalf of the Association of Independent Corrugated Converters ("AICC") 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 antitrust enforcement intentions with respect to a proposal by AICC to establish a model pursuant to which its members could enter into joint selling arrangements with other non-rival members.

AICC is a trade association made up of non-publicly-traded manufacturers of corrugated paper packaging material. You assert that AICC's members collectively account for only 15-20 percent of all corrugated paper packaging materials sold in the United States. While some of its members have multiple plants, others do not. You suggest that transportation cost considerations limit sales from any manufacturing plant to customers located within a 150 mile radius from the plant.

According to your application, there are a number of corrugated paper customers who only want to purchase from corrugated suppliers who have a sufficient number of plants to efficiently supply the customer's national or regional needs ("national" or "regional" accounts). AICC believes that its members, as a result of their small size and limited number of plants, have

lost a significant amount of national and regional account business to larger multiplant manufacturers.

To remedy its members' competitive disadvantage, AICC proposes to establish a joint selling model that would allow its members to form joint selling entities ("JSE") that could efficiently sell to national and regional accounts. Under the AICC model, one member would organize the JSE and select other members, who were not rivals of the lead members in any market, to help it bid on national or regional accounts. The lead member would negotiate the contract with a national or regional account and subcontract portions of the work to the other participants in the JSE or invite bids from other members. No other member of the JSE would be advised of the prices quoted by any other member or of the price quoted by the lead member to the customer. Only the lead member would negotiate with the potential customers. The JSE would not contain any member that is capable of meeting, by itself, the needs of the national or regional customer. The lead member would not solicit a bid from any other member for a portion of a customer's business that the lead member could itself supply. Participation in any JSE would be voluntary; and could be terminated by any member who had satisfied its contractual obligation to specific customers. Participation in a JSE for one contract would not preclude a member from bidding against the JSE, either singularly or as part of another JSE, for other customers. Various JSE's could compete against each other and no JSE would identify its existence or membership to any other JSE.

On the basis of the information and assurances that you have provided to us, it does not appear that AICC's proposal to promote joint sales of national and regional account services by nonrival manufacturers would raise risks to competition. In so concluding we express no opinion as to the accuracy of AICC's assertion that transportation costs limit a corrugated paper manufacturer's ability to effectively compete to a radius of 150 miles from the plant. This letter is limited to situations in which the manufacturer members of the joint selling venture do not compete with each other in any area of the United States. That status, the independence retained by AICC's members, and the pledged limitation on price communications should provide adequate assurance that AICC's proposal will not restrain competition.

To the extent that AICC's proposal enables its members to compete more effectively for national or regional account business it could have a procompetitive effect.

For these reasons, the Department is not presently inclined to initiate antitrust enforcement action against AICC's proposal. This letter, however, 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 the proposed joint selling program 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,

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JOEL I. KLEIN
Assistant Attorney General