DEPARTMENT OF JUSTICE
Antitrust Division

JOEL I. KLEIN
Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202) 514-2401 / (202) 616-2645 (f)

antitrust@justice.usdoj.gov (internet)
http://www.usdoj.gov (World Wide Web)

March 8, 2000

Garret G. Rasmussen, Esq.
Patton Boggs LLP
2550 M Street, N.W.
Washington, DC 20037-1350

Dear Mr. Rasmussen:

This letter responds to your request on behalf of Containers America LLC ("Containers America") 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's current antitrust enforcement intention with respect to the proposed creation and operation of Containers America as a joint selling and purchasing vehicle for five regional manufacturers of steel drums.[1]

Each of the five members of Containers America manufactures steel drums at a single plant. You assert that because of the high cost of shipping steel drums, a manufacturer in most cases, can only efficiently compete for sales within a 100-200 mile radius of its plant. As a result, you contend that Containers America's five single-plant

---

[1] The five steel drum manufacturers who would participate in the contemplated joint venture are CP Louisiana, Inc. (New Orleans, La.), Nesco Containers Corporation (Fenton, Missouri, a suburb of St. Louis), North Coast Container Corp. (Cleveland, Ohio), General Steel Drum Corp. (Charlotte, North Carolina), and Trilla Steel Drum Company (Chicago, Illinois).

members are at a significant competitive disadvantage vis-a-vis their larger multi-plant rivals in selling to national and multi-regional customers who desire to acquire their steel drum requirements from a single supplier. This competitive disadvantage threatens to become more significant for Containers America's members because of what you perceive to be an increasing trend on the part of national and multi-regional customers to sole-source their supplies. You assert that while Containers America's members "are frequently the low bidders in their respective regions, none has ever won a national supply contract," and that each of the members has lost, or is faced with the prospect of losing, customers to rival manufacturers that can offer a national contract. All price discussions among the members would be limited to information necessary to prepare national or multi-regional bids, and the members will not exchange any other non-public information. The members would be free to bid independently outside of the joint venture and would continue to act independently of each other in seeking business within their own regions.

The five members of Containers America together currently sell approximately five million of the thirty-five million steel drums sold in the United States, or approximately fourteen percent of the total. In comparison, the largest steel drum manufacturer in the United States, Van Leer, accounts for about twenty percent of nationwide sales. Grief, the second largest manufacturer accounts for fifteen percent. Russell Stanley accounts for ten to fifteen percent of such sales. All three are multi-plant manufacturers.

You indicate that the desire to use Containers America as a joint purchasing agent stems from the availability of quantity discounts on the steel and other products needed to manufacture steel drums. You assert that large multi-plant manufacturers purchase the necessary material inputs at significantly lower prices than can be obtained by the proposed joint venture's individual members, and that such inputs make up more than fifty percent of the costs of steel drums. As a result, you claim that the larger manufacturers have a substantial cost advantage over single-plant manufacturers. To overcome this cost disadvantage, Containers America proposes to purchase sufficient quantities of various steel and other inputs to qualify for quantity discounts. It estimates that potential savings from the proposed joint purchasing could exceed ten percent of total costs. Members would not be required to purchase through Containers America, but might be asked to specify how much of a particular input they would buy at a particular price and to agree to use common specifications.

You contend that the five member steel drum manufacturers should not be viewed as significant rivals of one another. While one may bid against another occasionally in special limited circumstances, you contend that the fact that all of the members' plants are more than 300 miles from the nearest member's plant precludes them from competing against one another in all but a few special cases. Indeed, you state that "relatively few" sales are made more than even 200 miles from a plant. In addition, you note that all but one of the five members face substantial competition from firms located in their markets who are not members of the joint venture.[2]

Based on the information and assurances that you have provided us, the Department does not believe that the proposed joint selling and purchasing by Containers America will have

---

[2] CP Louisiana has six non-member rivals located in the area within 300 miles of its plant and has a 15% share of that market. North Coast has five such rivals within 200 miles of its plant and has a 30% market share. General Steel Drum has two non-member rivals located in North Carolina and has a 30% market share. Trilla has five such rivals located in Chicago and a 35% share of that market. Nesco is the only manufacturer located in the St. Louis area; it has only 60% of that market because certain large purchasers located in the St. Louis area have national contracts with out-of-region manufacturers that are willing to ship steel drums into the St. Louis area as part of those contracts.

anticompetitive effects. In so concluding, we express no opinion as to the accuracy of Containers America's assertion that transportation costs limit a steel drum manufacturer's ability to effectively compete to a radius of 100-200 miles from a plant. Our competitive assessment is based on the conclusion that the joint venture's members are at most only occasional rivals under special limited circumstances and, even then, their price decisions are influenced by non-member rivals rather than by each other. This assumption is based on your statements that none of the members have a plant within 300 miles of another member's plant; that the great bulk of each member's sales are within 200 miles of its plant; that members generally face substantial local competition from rivals who will not be part of the joint venture; and that each member will continue to compete independently of the others for business that can be served from their own plants.

Since none of the members has been successful to date in landing a national contract, any exchange of pricing information relative to national or multi-regional customers should not have any adverse competitive effect in the market for such customers. Moreover, since the price discussions among the members will be limited to information necessary to prepare bids on national and multi-regional contracts, not regional markets that can be served by individual members, and members generally face significant competition from non-member rivals for local regional business, we would not expect those price discussions or the common input costs that could result from the proposed joint purchasing to diminish local regional price rivalry. Nor do we believe that the proposed joint purchasing raises any danger of oligopsonistic pricing. The fact that Containers America's members collectively account for slightly less than fifteen percent of United States steel drum sales means that it is unlikely that they could exercise oligopsony power with respect to the steel, paint or other supplies that they purchase. This seems particularly true because the steel drum industry accounts for only a small percentage of the rolled steel and paint products sold in the United States.

Finally, we note that to the extent that the contemplated joint selling and/or purchasing activities provide steel drum customers with additional purchasing options or lower their costs, the proposed conduct could have procompetitive effects.

This letter expresses the Department’s current enforcement intentions, and is predicated on the accuracy of the information and assertions that you have presented to us. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actual activities of Containers America or its members prove to be anticompetitive in any purpose or effect in any steel drum market, be it regional or national, or in any supply market for the industry.

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 thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the business review procedure.

Sincerely,

\S\

Joel I. Klein