



## DEPARTMENT OF JUSTICE

Antitrust Division

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*Acting Assistant Attorney General*

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Dear Mr. Davis:

This is in response to your request on behalf of the Russell-Stanley Corporation ("R-S") 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 Russell-Stanley under which it, in response to the desire of large customers for single source bids, would organize joint sales ventures made up of firms that did not compete with Russell-Stanley.

Russell-Stanley manufactures steel drums from plants located in New Jersey and Texas.<sup>1</sup> Most steel drums are 55 gallon containers used by customers to ship chemical and petroleum products. You've asserted that because of transportation costs, most steel drums are delivered to customers located within 300 miles of the plant at which the drums are manufactured.

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<sup>1</sup> It also manufactures plastic drums from five plants in the United States, but consistent with your request of November 5, 1996 this business review letter relates only to the sale of steel drums.

Apparently, it is the custom of large customers to solicit proposals from potential suppliers on a yearly basis. Manufacturers quote unit prices for specific time periods. After agreement, the customer requests delivery, from time to time, of specific quantities at the agreed-on price. Recently, certain large customers of steel drums have informed Russell-Stanley that they would like to consolidate their purchases of steel drums on a global or national basis. Instead of negotiating with a number of steel drum manufacturers, these large customers want to negotiate with one entity on price, product specifications and other terms. You indicate that one or more of Russell-Stanley's competitors have a sufficient number of manufacturing plants that they can provide single source or "global" purchasing to large customers desirous of that service. In order to remain competitive with these rivals, Russell-Stanley proposes to organize and lead joint venture selling efforts that would afford centralized purchasing efficiencies to large customers.

Under its proposed course of action, Russell-Stanley would act as the prime contractor and make a national bid to service those customers that desire to negotiate with a single source for their entire U.S. needs for steel drums. Russell-Stanley would manufacture and deliver that portion of the customer's steel drum order that it could do so efficiently. Where transportation costs precluded efficient delivery from Russell-Stanley's plants, it would pay another steel drum manufacturer (as its subcontractor) to make and deliver the drums to the customer. None of the subcontractors would be firms with whom Russell-Stanley competed in the sale of steel drums; i.e., none would have plants sufficiently close to either of Russell-Stanley's two steel drum manufacturing plants to allow them to compete with Russell-Stanley anywhere in the United States. The only price information exchanged between Russell-Stanley and its subcontractors would be the price quoted by the subcontractor to Russell-Stanley for use by the latter in formulating its national bid. Russell-Stanley would not inform any subcontractor of the price terms offered to the national customer in Russell-Stanley's national account bid.

On the basis of the information and assurances that you have provided to us, it does not appear that Russell-Stanley's proposal to use firms with whom it does not compete as subcontractors in offering national account services would raise risks to competition. In so concluding we express no opinion as to the accuracy of Russell-Stanley's assertion that transportation costs limit a steel drum manufacturer's ability to effectively compete to a radius of 300 miles from the plant. This letter is limited to situations in which the subcontractors utilized are firms

that have not competed with Russell-Stanley in any area of the United States. That status and the pledged limitation on price communications should provide adequate assurance that Russell-Stanley's proposal to sell steel drums on a national account basis will not restrain competition.

To the extent that Russell-Stanley's proposal enables it to more effectively compete for the national account business of large steel drum customers and/or enables the latter to achieve significant purchasing efficiencies, it could have a pro-competitive effect.

For these reasons, the Department is not presently inclined to initiate antitrust enforcement action against Russell-Stanley'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,

Joel I. Klein  
Acting Assistant Attorney General