



DEPARTMENT OF JUSTICE

Antitrust Division

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Douglas W. Macdonald, Esq.
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
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Dear Mr. Macdonald:

This letter responds to your request 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 Antitrust Division's current enforcement intentions with respect to the proposal of the American Welding Society ("the Society") to adopt a standard that includes specifications for assuring the interoperability of the various devices that make up a robotic welding cell.

You indicate that the Society has approximately 50,000 individual and 300 corporate members. The individual members are employed in a wide range of industries, including manufacturing, fabrication, transportation, energy, aerospace, and shipbuilding. The corporate members are large manufacturers of welding equipment and supplies, as well as end users of welding related equipment. One of the most important of the Society's activities is the publication of technical codes, standards, specifications, guides, and recommended practices related to welding and joining. These publications are developed by technical committees of the Society. These committees are comprised of Society members who serve on a volunteer basis. The Society is accredited as a standards developer by the American National Standards Institute.

The proposed standard at issue here involves specifications for assuring the interoperability of the various devices that make up a "robotic welding cell." You have informed us that a robotic welding cell is made up of several pieces of equipment or devices that work together to produce a weld on an automated basis. In order for the cell to weld, the devices in the cell must communicate with each other. Currently, most welding equipment communications use dedicated wires, one per message type, bundled into a cable. Cables are connected to the equipment with connectors that are unique to each piece, and unique to individual vendors' preferences. Therefore, to put together a welding cell, someone must act as an integrator and ensure that interfaces of the equipment are compatible with each other. Once an integrator has developed a solution for a particular set of equipment, it becomes expensive to change any component because each component has a unique interface, and because similar components of

different vendors have different interfaces.

The costs of interface incompatibility fall hardest on the purchasers of welding cells, but also affect integrators and small specialty equipment makers. The purchasers make significant investments when they purchase a particular cell. When a particular piece of equipment in the cell becomes obsolete, the purchaser of the cell may incur high costs to adapt a new device, or have to buy a whole new cell. Small, specialty equipment makers may face the task of implementing several interfaces for their devices to meet different integrators' needs.

According to your submission, the need for a specification for the transfer of information between devices in a robotic welding cell was recognized by the Society's A9B Subcommittee on the Exchange of Welding Information Between Intelligent Systems at a meeting in August 1998. At a meeting in April 1999, members of the Subcommittee, who were representatives of the Lincoln Electric Company ("Lincoln"), offered to allow the Subcommittee to use a Lincoln product, called "ArcLink," as the basis for the specification. Lincoln offered to provide technical assistance to anyone interested in implementing the standard, and has agreed not to enforce any patent or proprietary rights to ArcLink in connection with use of the specification. In June 1999, the members of the Subcommittee from Lincoln gave another presentation on ArcLink. At the next meeting, in September 1999, the Subcommittee heard a presentation on DeviceNet, an alternative product to ArcLink that is promoted by the Open DeviceNet Vendors Association. Lincoln prepared and submitted a paper to the Subcommittee entitled, "ArcLink vs. DeviceNet," and the Open DeviceNet Vendors Association submitted a written reply.

Several members of the Subcommittee, most notably representatives from the Miller Electric Company ("Miller"), expressed a preference for DeviceNet. Miller has argued that DeviceNet is widely accepted and used in manufacturing facilities in many industries, while ArcLink is not. Miller argued that this fact, coupled with the fact that ArcLink is a proprietary product of Lincoln, would result in the Subcommittee developing a standard that would not be accepted by industry. Arguing in the alternative, Miller alleged that if the standard does gain acceptance, it would give Lincoln a competitive advantage. After discussion and consideration of the technical merits and conflicting views submitted to it, the Subcommittee decided to proceed with an interoperability standard based on ArcLink's technology rather than that of DeviceNet.

The utilization of any standard adopted by the Society will be voluntary. Purchasers and manufacturers will remain free to purchase or produce robotic welding cells that do not satisfy the Society's standard.

The Society has phrased its business review request to the Division in the following manner:

“Assuming that the Subcommittee adheres to the procedures mandated by the American National Standards Institute, and assuming the Committee has a reasonable and good faith basis to believe, from a technical standpoint, that ArcLink is preferable as the basis for the specification, we request a statement of the Antitrust Division’s current enforcement intentions should the Society proceed with the development of the specification described herein, based on ArcLink rather than DeviceNet, even if adoption of the specification would give Lincoln a competitive advantage and even if the technology within the specification is not currently widely used in the industry.”

The Department is not in the business of picking winners and losers. We leave that to the marketplace. Our review is not based on whether we think one standard is better or worse than another. We do not bless a standard. Instead in this instance we look to see whether the process of standard-setting has been abused to seek an unfair competitive advantage and whether the proposed standard is the product of any anticompetitive conduct on the part of the organization or its members. Based on the information that you have provided to us, the Department has no present inclination to challenge the Society’s adoption of the standard endorsed by its Committee. There is always a possibility that adoption of any standard, by private or public entities, could have some adverse effect on some competitors. To the extent that a product standard gains adherence by producers or consumers those products that fail to comply with the standard may suffer in the market place. However, the courts and antitrust enforcement authorities have recognized that standards can promote consumer welfare by reducing costs and facilitating competitive entry. As a result, the antitrust legality of private standards is determined under a rule of reason analysis in which the potentially anticompetitive effects of a standard are balanced against its potentially beneficial effects. Antitrust enforcement concerns arise only when the former outweigh the latter.

At the present time, the Department does not possess the information that it would need to determine whether the standard that the Society is considering would have a net anticompetitive effect under the rule of reason test. In answering the precise questions that you have posed to us, however, we can say that the fact that the proposed standard is based on technology that is not widely-used does not by itself render the proposed standard unreasonably anticompetitive. Nor does the fact that adoption of the proposed standard might give some producers some advantage over others automatically compel a conclusion that competition will be unreasonably restrained in the future.

The Department’s present disinclination to challenge the Society’s proposed standard is based on several factors. We are not aware of any evidence that would lead us to conclude that the proposed standard is the product of any anticompetitive conduct on the part of the Society or its members. The Society is made up of producers and consumers of robotic welding systems, and there is little reason to believe that the latter would knowingly deprive themselves of reasonable competitive options. Moreover, this would not appear to be a situation where the

Society, without knowledge, has allowed its procedures to be abused by a member seeking an unfair competitive advantage. You indicate that the Society's standard-setting procedures are open and transparent and that its Committee has carefully considered the technological and competitive implications of adopting a standard based on the contending technologies. Moreover, the owner of the intellectual property rights to be incorporated by the proposed standard has agreed to waive such rights in connection with adherence to that standard. In these circumstances, the Department will not presume that the Society and its varied membership have incorrectly determined that the proposed standard would best serve 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 standard 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/

Charles A. James