



DEPARTMENT OF JUSTICE

Antitrust Division

R. HEWITT PATE

Acting 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)

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William Jibilian, Esquire
Attorney-At-Law
1720 Mars Hill Road
Suite 8, #305
Acworth, Georgia 30101

Dear Mr. Jibilian:

This letter responds to your request on behalf of BroChem Marketing, Inc. ("BroChem"), 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 antitrust enforcement intentions with respect to a proposed Chemical Information System ("CIS") that would be made available to chemical distributors seeking information on the product lines of chemical producers. In response to competitive concerns about the CIS as originally proposed, you submitted revised documents and information on behalf of BroChem, substantially modifying the original proposal. The analysis and conclusions of the Department in this business review are applicable only to the most recently submitted version of the CIS, which addresses the Department's concerns and which is considered to supersede all earlier versions.

Based on information you provided, we understand BroChem is a corporation established under the laws of the State of Texas. According to your representations, BroChem will establish a CIS based on various information provided by chemical producers throughout the United States and possibly, in a few cases, abroad. This information will then be made available to wholesale chemical distributors throughout the United States via a computer database. The information that the chemical producers will provide to BroChem will be the same information that the chemical producers currently provide directly to the chemical distributors. BroChem, however, will reorganize the data and present it in a more user-friendly format. The chemical distributors will use the information in marketing chemical products that the chemical producers provide. BroChem will charge both the chemical producers and the chemical distributors a fee to use the database.

You indicate that the database will contain many types of information, including, but not necessarily limited to: product names, producer names, chemical names and synonyms, other producers of the same products, and prices. Chemical producers will be able to access the database for the information they have provided to BroChem, and chemical distributors will be able to access the database for the information on the chemical products they are selling.

At the Department's request, BroChem has modified its original proposal to ensure that price-sensitive information is not accessible to competitors or others who should not have access to it. Specifically, as indicated in your letter dated November 18, 2002, BroChem will establish computer safeguards to ensure that each chemical producer can access only the data that the producer has provided to BroChem, and that each chemical distributor has access only to information regarding products that the chemical producers have authorized the distributor to market.

In addition, in BroChem's original proposal, it sought to calculate and include in the CIS sample "less-than-truckload" price schedules in the approximately 15 percent of cases in which chemical producers do not themselves already provide such prices for their products. Because BroChem would be doing this in some cases for competing products, the Department was concerned that the sample schedules could provide a mechanism for establishing focal points for tacit price coordination. To address this concern, BroChem now proposes to include formulas that merely assist individual chemical distributors in mathematically calculating prices based on variable information that each distributor will input independently, including desired margin. As indicated by sample electronic database schedules submitted on March 5, 2003, BroChem represents that the CIS will include these formulas and will not include price schedules suggested and calculated by BroChem. Thus, BroChem represents that the CIS will not contain pricing information added by BroChem that could act as a focal point for price coordination.

BroChem claims that the proposed CIS will produce various procompetitive efficiencies. For example, BroChem expects the CIS will make it more efficient for chemical distributors to market their products by collecting in one place information that would otherwise require many different inquiries to acquire. In addition, BroChem anticipates that easier access to the information should eliminate a large percentage of time-consuming, costly telephonic communications between chemical producers and distributors. Although BroChem did not provide any estimation of the total dollar amount of such efficiencies, and hence the Department expresses no opinion on their magnitude, it appears reasonable, given the relatively large number of chemical suppliers and chemical distributors throughout the United States, that procompetitive efficiencies could occur as a result of BroChem's operations.

Based upon the representations made in support of BroChem's modified proposal, and on the information obtained during our own review, we conclude that the revised CIS is not likely to reduce competition. Therefore, the Department has no present intention to challenge the proposed operations of BroChem. In accordance with our normal practice, however, we remain free to bring whatever action or proceeding we subsequently come to believe is required by the public interest, if BroChem's operations prove to be anticompetitive in 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. In addition, any supporting data that you do not timely identify to be confidential business information under Paragraph (10) of the Business Review Procedure will also be made publicly available 30 days from the date of this letter.

Sincerely,

R. Hewitt Pate
Acting Assistant Attorney General