



DEPARTMENT OF JUSTICE

Antitrust Division

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Mark D. Alcorn, Esq.
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Re: Woodwork Institute of California Request for Business Review Letter

Dear Mr. Alcorn:

This letter responds to your request, on behalf of the Woodwork Institute of California ("WIC"), 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 enforcement intentions with respect to a proposal under which WIC would conduct a cost survey of manufacturers of architectural millwork (the "Survey") and publish the Survey results (the "Survey Results") for the purpose of identifying objective performance measures and best practices within its industry.

Based on information you provided, we understand WIC is a voluntary membership association in the architectural millwork industry, an industry comprised of manufacturers of exposed woodwork, cabinetry, wall paneling, trim and countertops primarily for commercial and institutional applications. WIC estimates there are approximately 800 manufacturer participants in this industry nationwide, and approximately 600 suppliers to those manufacturers. WIC membership consists of approximately 270 manufacturer members and 190 supplier members located primarily in California and the Western United States. Members range from sole proprietorships to large companies, with a majority of members being very small (less than \$600,000 in sales per year).

WIC represents that competition in the architectural millwork industry is relatively strong (the top ten architectural millwork firms nationwide represent approximately five percent of the total market) and that entry is relatively easy (low capital requirements and minimal regulatory

barriers). Architectural millwork is generally purchased locally to minimize shipping expenses and to accommodate local/regional millwork preferences.

You indicated that in an effort to reduce costs of architectural millwork firms, WIC proposes to invite all architectural millwork manufacturers that wish to participate (whether or not members of WIC) to submit certain historical cost information to an independent third party who will compile and perform statistical analysis on the data and publish it in the Survey Results. The Survey Results will be copyrighted by WIC, but available to anyone for purchase (free for Survey-participating WIC members; \$99 for non-participating WIC members; \$25 for participating non-WIC members; \$199 for nonmember, non-participants). The conducting of the Survey will be publicized through WIC's web site.

The stated purpose of the Survey is to establish benchmarks and best practices so that each manufacturer will be better able to identify those areas in which it has the greatest potential to reduce costs, improve efficiency, and improve the quality and value of the service it offers to customers. The Survey will be managed by an independent entity, TOC Management Services, a not-for-profit human resources association in Redding, CA. All data submitted by architectural firms to the Survey manager will be more than three months old at the time the results of the Survey are disseminated. The Survey manager will be instructed not to disseminate data on any particular statistical point unless (a) at least five companies submit data on that point and (b) no individual company's data represents 25 percent or more, on a weighted basis, of that statistical point. For example, data will not be segregated into East Coast or West Coast geographic areas if fewer than five companies operate in those areas. In addition, the Survey manager will be instructed not to disseminate data on any particular statistical point unless the data is sufficiently aggregated that recipients would not be able to identify the data supplied by any individual company. No pricing information will be included in the Survey, nor will it include any information about plans for new equipment, redeployment of existing equipment or marketing. No data of any kind will be exchanged directly between or among the individual companies. WIC has agreed to remove any request for or reference to forecasted data (e.g., forecasted sales) from the Survey.

WIC does not believe that the Survey Results will help market participants understand each other's detailed operational techniques or practices, because that data is not being collected, and because the identities of Survey participants will not be tied to the Survey Results.

To the extent that information is exchanged in accordance with the statements and commitments in the materials submitted to the Department, the Survey should not have any anticompetitive effects. The use of any "best practice" developed will be voluntary. Moreover, the limited nature of the proposed cooperation – historic cost information on an aggregated basis with no discussion of pricing or other sales-related conduct – should limit any risk that the data exchanged could lead to concerted pricing. Based on the information and assurances that you have provided to us, the Department has no current intention to challenge the proposed Survey that you have described. 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 information exchange proves to be anticompetitive in any purpose or effect.

WIC claims that the proposed Survey may have procompetitive effects. To the extent that its reduces costs for architectural millwork firms, we anticipate that the proposal may lead to lower prices and expanded output, to the benefit of consumers.

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,

/s/

R. Hewitt Pate
Assistant Attorney General