U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 5 1992

Charles F. Rule, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

Dear Mr. Rule:

This letter responds to your request, dated February 8, 1991, as supplemented by letters dated July 24 and August 12, 1991 on behalf of Affiliated Distributors ("AD") a Pennsylvania corporation, for a statement of the current enforcement intentions of the Department of Justice with respect to a proposal by AD to organize and coordinate efforts of its members, who are distributors of electrical equipment, to bid for the business of national accounts.

You have represented that AD's members are approximately 170 electrical equipment wholesale distributing companies with approximately 510 branches around the country. Though representatives of AD members comprise a majority of the board of directors of AD, the stock of AD is owned entirely by David Weisberg and members of his family, none of whom are engaged in the business of distribution of electrical equipment, and the organization is operated by the family.

AD's members are local or regional distributors which typically have locations in one or two states. By your best estimate AD's members account for about eight percent of the annual dollar volume of sales of electrical equipment in the United States, although AD only supplies a small portion of its members' purchases. Their competition includes thousands of other distributors. The largest of AD's competitors are four national "chains" each of which has over 100 locations around the country. None of these chains, however, by your estimate, accounts for more than six percent of domestic sales.

At the present time the principal activity of AD is assisting members in procuring electrical equipment from suppliers at favorable prices. AD wishes to expand its services to enable members to compete more effectively for national accounts.

National accounts are typically manufacturers with locations in several different parts of the country that prefer to enter into contracts with a single supplier to furnish electrical equipment to the various locations. The advantages of such contracts may include reduced transaction costs, lower prices and enhanced service and delivery. We believe that the number of customers that prefer to do business on this basis is increasing. Members of AD are presently unable to compete with the national chains who obtain most of this business.

AD proposes to create and operate a program which will permit its members to compete for national accounts. To ensure that AD only bids for contracts that its members are not currently able to bid, AD will prohibit members from taking part in an AD joint venture if they are independently capable of serving the contract and AD will bid solely for the business of accounts which require delivery from local warehouses in three or more locations that are separated by 250 miles or more. The program will be operated and managed by AD, not by its members.

Affiliates will be required to indicate their interest in any particular bid approximately a week before it is due. Until such time and in any case when they do not participate in an AD bid, they are free to compete against AD by forming their own bidding group or by competing to serve a particular location of the customer.

AD will ask each affiliate capable of and interested in participating in the bid to provide, confidentially, its minimum gross operating margin, given the expected volume of the contract. If the information supplied by the member meets the terms, including the planned profit margin, of the proposed bid, the member will be included in the bid. If the member is willing to participate and qualifies for the bid, AD will disclose its proposed bid to that member; no other members will be furnished that information.

AD will submit bids for national contracts with a list of participating AD members. The list will include all qualified AD member bidders who are interested in participation, including those whose service areas overlap. If the customer accepts the bid it will choose the AD members that will service its various locations.

Though it contemplates that national contract bids will contain a single price to which all AD members will be bound, AD will accommodate customers who desire a range of prices for different locations. In such cases AD may submit bids with the lowest possible price at each servicing location.

AD also contemplates that its bids will not normally provide for centralized billing or inventory; individual members will invoice the end user. However, if it appears that AD must offer centralized inventory, bookkeeping and billing services in order to compete effectively for national accounts it may expand the program to provide for them. And while, AD does not now contemplate that it will submit revised bids, where end-users wish to negotiate subsequent to the submission of an original bid it may revise the program to provide for negotiation if it seems necessary to compete effectively.

In all its communications with AD's members it will not disclose to any AD member the prices that other AD members are charging or intend to charge. Any AD affiliate participating in a particular bid will be required to commit not to disclose bid information to anyone but AD or the customer. If a bid is lost, AD may solicit information from vendors and AD members to enhance its opportunities to compete effectively on subsequent bids. AD will discuss aggregated bid data, however, only with affiliates that participated in that bid.

Each national contract that AD bids will be treated as a discrete account. Participation in one AD national contract bid does not oblige AD members to participate in any other bid nor does it prevent a member from competing against AD on other national contract bids.

Based on the information currently available to us, the Department of Justice has no current intention to challenge the implementation of the proposed program. By enabling AD members to compete for national accounts that they could not otherwise serve, the program could enhance competition. The arrangement appears to be structured in a way to minimize the possibility that the program could facilitate collusion among members. Negotiations will be conducted independently by AD, not by its members, and members will not learn of quotations submitted by other individual members.

The statements in this letter are based on the information currently available to us, and are limited to the current enforcement intentions of the Department of Justice regarding the proposed joint bidding arrangement described in your letters. The Department reserves the right to institute enforcement action in the future if the actual operations of the program proves anticompetitive in purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 506, a copy of which is enclosed. 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 have requested, or request, that any of the material be withheld pursuant to subparagraph 10(c) of the Business Review Procedure.

Sincerely,

James F. Rill
Assistant Attorney General

Enclosure