U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

JAN 29 1993

Robert D. Paul, Esquire
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

Dear Mr. Paul:

This letter responds to your request, dated September 11, 1992, as supplemented by letters dated October 26, 1992, October 27, 1992, October 29, 1992, and December 3, 1992, for a statement by the Department of Justice, pursuant to the Business Review Procedure, 28 C.F.R. § 50.6, of its current enforcement intentions with regard to the formation of PRIMESOURCE, a joint venture of fifteen wholesale distributors of lawn and garden products.[1/] Under the proposed arrangement, PRIMESOURCE would organize, coordinate and negotiate bids on multi-regional and national mass-merchandiser accounts for its member distributors. PRIMESOURCE would also administer and coordinate advertising and promotional programs, and would provide centralized billing and shipping.

You have represented that the reason for the formation of the joint venture is to enable PRIMESOURCE's members to compete for multi-regional and national mass merchandise accounts. At present none of PRIMESOURCE's members has the capacity to provide service to all locations of such accounts, which prefer to do business with distributors that can provide centralized bidding and administrative functions. Indeed, at least one national mass-merchandiser has excluded PRIMESOURCE members from bidding, selecting instead the only national distributor in operation.

We understand that, while day-to-day management would be delegated to officers and employees, none of whom would have

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1/ As a group, in 1991, PRIMESOURCE distributors accounted for $345 million in wholesale sales of lawn and garden products, compared to industry sales in 1990 of $20.7 billion.

any interest in the member distributors or hold any stock in PRIMESOURCE, negotiations for bids would involve some distributor participation. A single, designated member distributor would represent PRIMESOURCE along with an unaffiliated PRIMESOURCE representative on each negotiation. Different distributors may be involved with different customers or in successive negotiations with the same account, but only one distributor representative would be involved at any one time. You have represented that such distributor involvement would create efficiencies by reducing the number of PRIMESOURCE employees needed to deal with the accounts, and by reducing administration and travel costs.

We further understand that negotiations would be conducted as follows. The unaffiliated PRIMESOURCE representative would communicate with PRIMESOURCE's members to determine available prices and other terms for the account. Thereafter, the representative, along with the single member distributor, would conduct the negotiations. Once negotiations have concluded, the unaffiliated representative would submit the bid information to the other distributors. Throughout this process there would be no direct communication among the member distributors about prices and other terms; only the unaffiliated representative would be authorized to discuss prices or other terms with the member distributors.

You have represented that if a multi-regional or national mass-merchandise outlet lies in a geographic market where more than one member distributor is present, PRIMESOURCE would select one distributor to provide sales and service to the account based on (1) customer preference, (2) prior experience with the customer, (3) the economy of servicing the customer, (4) the qualifications of the distributor, (5) the level of prior and ongoing service to the customer, and (6) the primary servicing area of the distributor. Each member distributor, however, would be free to participate in the negotiated terms with the mass-merchandise outlets in its area or refrain from participation in the joint arrangement and to conduct unilateral negotiations with any account at any time.

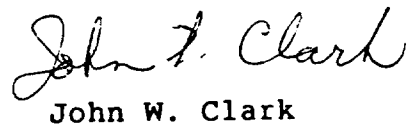
After careful consideration of the information you have provided, the Department of Justice has concluded that it has no present intention to challenge the implementation of the proposed program on antitrust grounds. While the Department would be concerned if the effect of the proposed conduct would be to increase the likelihood that PRIMESOURCE or any of its members could successfully coordinate their actions, resulting in higher prices charged to retailers or lower prices paid to manufacturers, the Department has concluded that the proposed venture is unlikely to have such effects. First, the number of other distributors in each market, the presence of local buying groups, and the ability of manufacturers to sell directly to retailers ensures that PRIMESOURCE will not likely be able to exercise market power in the market for distribution of lawn and garden products. Second, PRIMESOURCE'S size

relative to the industry and the manufacturers' direct sales capability make it unlikely that the venture would be able to exercise market power in the purchase of products from manufacturers. Furthermore, the transaction appears to be structured so as to safeguard against unnecessary coordination by competing distributors by limiting use of bid information to a single distributor and by utilizing an unaffiliated representative for pricing information. Moreover, the proposed arrangement could have a significant procompetitive effect by creating a second competitor for multi-regional and national distribution of lawn and garden products.

This letter expresses the Department's current enforcement intention only. In accordance with our normal practices, however, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if actual operations of any aspect of the program proves anticompetitive in purpose or effect.

This statement of the Department's enforcement intentions is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made available to the public 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,



John W. Clark
Acting Assistant Attorney General

Enclosure