



DEPARTMENT OF JUSTICE
Antitrust Division

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Mr. Jerry J. Jasinowski
President
National Association of Manufacturers
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1790

Dear Mr. Jasinowski:

This letter responds to your request on behalf of the National Association of Manufacturers ("NAM") 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 current antitrust enforcement intentions regarding two proposed information exchange programs designed to facilitate and expedite the efforts of many manufacturers to resolve the Year 2000 computer transition problems that confront them. Based on the information and assurances that you have provided and the conditions indicated below, the Department has no current intention to challenge the information exchanges proposed by the NAM.

It is well known that many firms currently utilize computer systems designed with software programmed to operate with data fields that use two digits to indicate a given year. As a consequence, on January 1, 2000 these computer programs may interpret the double zero as either the year 1900 or zero rather than the year 2000. There is wide-spread concern that, unless remedied, this problem could occasion a breakdown in many computerized information systems

utilized in a wide variety of U.S. industries. Similar concerns have been expressed with respect to certain governmental activities. Indeed, the President has established a Council on the Year 2000 Conversion to encourage government and private industry to take the steps necessary to resolve potential Year 2000 transition problems in advance of January 1, 2000.

NAM is the nation's oldest and largest broad-based industrial trade association. Its nearly 14,000 member companies and subsidiaries, including 10,000 small manufacturers, employ approximately 85 percent of all manufacturing workers and produce over 80 percent of the nation's manufactured goods. More than 158,000 additional businesses are affiliated with the NAM through its Associations Council and National Industrial Council. Membership in NAM is open to three classes of members: manufacturing, manufacturing associations and cooperating. Cooperating members include individuals, firms, associations or corporations such as banks, insurance companies, consulting, advertising, architectural, legal or accounting firms who are not manufacturers, but who specialize in servicing manufacturers or manufacturing associations.

NAM is in the process of building an internet web site with a directory of companies and their Year 2000 information. End-users will be able to search this directory by a variety of criteria, including company name, contact name, city/state and product/service category (e.g., "machinery," "software," etc.). The resulting detail screen will include at least three URLs (Uniform Resource Locators)--for the company's home page, Year 2000 information page, and product-specific Year 2000 information pages. All information relating to Year 2000 problems and solutions will be maintained on the web sites of participating companies and organizations, and will be linked through the NAM's central directory and search engine.

Firms will update their own records with the appropriate company information. They will register with the NAM directory, assign their own username, and maintain their own company information in a secure environment. Once registered, firms will be given their own password to access and change their company-specific information. Such information will include the name of the company, some brief descriptive information, and the URL links to their own web pages. The information on the company or organizational web sites linked to the NAM directory will consist of a variety of possible materials. Some will identify hardware, software or other products that are believed to be "Year 2000 compliant." Others will identify items that clearly are not compliant, or that are undergoing remediation efforts that may not be completed by January 1, 2000. Still others may identify items that it is believed will produce varying levels of failure in Year 2000.

End users will be able to access this information individually, or exchange it with other end-users, on an unrestricted basis. NAM membership will not be a condition of access to the Year 2000 information. NAM will have no control over the extent to which information placed

on its Year 2000 web site will be shared by and among companies, organizations or members of the public. Under this program, companies in a wide variety of industries will be able to review the Year 2000 information of their competitors, suppliers and customers. Information made available to interested persons through the NAM directory will be available for downloading or printing, and it is expected that such information will be distributed individually from company to company and through group or association distributions.

NAM will solicit input into the Year 2000 directory from among its members, as well as from other groups that might be interested in notifying their members of the availability of the directory. Its intention is to keep the directory as open as possible to create a data base with web site information relating to Year 2000 compliance from all types of companies. In addition, vendors whose products or services are discussed on linked web sites will have the opportunity to provide their own perspective on their own web sites, which will also be linked to the NAM directory. NAM hopes that this free dissemination of information will enable users to make informed decisions on their own about handling their Year 2000 problems.

NAM also seeks to promote exchanges of Year 2000 information between firms on a bilateral basis because it believes that "companies with information about Year 2000 compliance also want to share it directly between themselves, with or without using the NAM directory." It deems it likely that information from vendors responding to requests from users will be shared with other users, and that such information will include (1) the results of Year 2000 testing on existing equipment, facilities or computer systems, (2) actual solutions to Year 2000 problems that have been identified or suggested, (3) the names of vendors who can provide information about various Year 2000 problems or solutions, and (4) problems that have been identified with purported solutions to Year 2000 problems.

NAM asserts that this type of bilateral information sharing--on a company-to-company basis--is most important for companies that are not linked to the Internet or that are not proficient in its use or the use of the NAM directory. NAM believes that a substantial number of companies, particularly small and medium-sized manufacturers, do not have the time or resources to be fully integrated with Internet communications, and will have to rely on other communications methods that are not as easily distributable to large groups of people.

Based on the information provided to us by NAM and the nature of the information to be exchanged, i.e., related solely to Year 2000 computer conversion issues, the Department does not believe the proposed conduct will have anticompetitive effects. To be sure, the Department would be concerned if parties, under the guise of a Year 2000 remedial program, exchanged price or other competitively-sensitive information, agreed not to compete for particular business, agreed not to deal with certain suppliers or entered into other anticompetitive agreements. It is our opinion, however, that such potentially anticompetitive actions are not necessary to any

“good faith” effort to identify or remedy Year 2000 computer conversion problems. Moreover, we believe that information exchanges that are limited to identifying and remedying Year 2000 computer transition problems either in general or in relation to specific hardware or software are not likely to be anticompetitive because such limited information exchanges should not reduce price or innovation rivalry, or lessen competition in the procurement of computers or computer services.

It is, in fact, possible that information exchanges limited to identifying and/or remedying Year 2000 conversion problems could be procompetitive. If there is insufficient time and/or skilled personnel to enable many firms to remedy their Year 2000 computer conversion problems in a timely manner, information exchanges such as those that NAM proposes could increase output by reducing redundant efforts and fostering more efficient prioritization of the remedial work that must be done.

This letter expresses the Department’s current enforcement intentions, and is predicated on the accuracy of the information and assertions that you have presented to us. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actual activities of NAM or the participants in the proposed information exchanges prove 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 thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the business review procedure.

Sincerely,

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Joel I. Klein