DIGEST OF BUSINESS REVIEWS

1998

98-A* Apparel Industry Partnership 10/31/96

Clothing Standards Program

Facts: The Apparel Industry Partnership ("Partnership"), an informal association consisting of representatives from footwear and apparel companies, as well as labor, consumer, and human rights organizations, proposed to discuss and decide how to develop standards to be used to inform and assure U.S. consumers that products have been made under decent and humane conditions. (The actual articulation, promulgation, and monitoring of any such standards is not the subject of the instant business review request.) In the course of the discussions, no participant will seek or disclose competitively sensitive nonpublic information and no participant will disclose data from which such information might be discerned. Counsel will be present at all Partnership meetings and a written agenda and written minutes will be produced for each meeting.

Response: The most likely anticompetitive effect of such discussions is the exchange of competitively sensitive information. Provided that the discussions are conducted in accordance with the facts presented, and provided further that direct competitors are not placed together in small working groups where communications are likely to be more detailed than in meetings of all participants, the risk of anticompetitive harm should be small. Moreover, consumers have expressed a desire to know the conditions under which products are manufactured, and the dissemination of accurate information about these conditions could meet this marketplace demand. The Department has no present intention to challenge the proposal.

(* Inadvertently omitted from 1996 Reviews.)

98-B* National Elevator Industry, Inc. 5/30/97

Escalators Joint Venture
Standards Program

Facts: The National Elevator Industry, Inc. ("NEII") is a trade association whose 34 members include virtually all major domestic manufacturers and installers of escalators. NEII is proposing to participate in the development of a more comprehensive escalator safety performance standard than the current American Society of Mechanical Engineers ("ASME") escalator standard, ASME A.17.1, which establishes a standard for the clearance that should exist on each side of the escalator step between the step tread and adjacent skirt panel. NEII proposes to set up a joint venture relationship with an independent consultant who, after discussing the issues with NEII members and outsiders, will create a concept for developing a performance standard that measures the potential for step-skirt entrapment and a methodology for the measurement and verification of compliance with the standard. That standard will be submitted to NEII's Central Code Committee, which will determine whether to submit the standard to ASME for review and adoption under that organization's standard making procedures. The joint venture will not involve the exchange of any price or output information.

Response: Since the proposed new standard has not yet been developed, we can express no opinion as to its likely competitive effects. To the extent, however, that NEII's proposed joint venture to establish a new escalator performance safety standard will neither involve the exchange of competitively sensitive information, nor be designed to disadvantage non-members, it should not in itself raise competitive concerns. The Department has no present intention to challenge the proposal.

(* Inadvertently omitted from 1997 Reviews.)

98-C* MPEG LA, L.L.C./ 6/26/97
Cable Television Laboratories, Inc./
Trustees of Columbia University/
Fujitsu Limited/
General Instrument Corp./
Lucent Technologies, Inc./
Matsushita Electric Industrial Co., Ltd./
Mitsubishi Electric Corp./
Philips Electronics N.V./
Scientific Atlanta, Inc./
Sony Corp.

Video Information Patent Licensing

Facts: The Trustees of Columbia University, Fujitsu Limited, General Instrument Corp., Lucent Technologies, Inc., Matsushita Electric Industrial Co., Ltd., Mitsubishi Electric Corp., Philips Electronics N.V., Scientific Atlanta, Inc., and Sony Corp. (collectively the "Licensors"), Cable Television Laboratories, Inc. ("CableLabs"), and MPEG LA, L.L.C. proposed an arrangement pursuant to which MPEG LA would assemble and offer a package license under the patents of the Licensors that are "essential" to compliance with the video and/or systems parts of the MPEG-2 standard[1]--which will be applied in many different products and services in which video information is stored and/or transmitted, including cable, satellite and broadcast television, digital versatile discs, and telecommunications--and distribute royalty income among the Licensors.

Response: As with any aggregation of patent rights for the purpose of joint package licensing, commonly known as a patent pool, an antitrust analysis of this proposed licensing program must examine both the pool's expected competitive benefits and its potential competitive hazards. In particular, one expects that a patent pool may provide competitive benefits by integrating complementary technologies, reducing transaction costs, clearing blocking positions, and avoiding costly infringement litigation. At the same time, some patent pools can restrict competition, whether among intellectual property rights within the pool, downstream products incorporating the pooled patents or in innovation among parties to the pool. In this instance, the agreements for the licensing of MPEG-2 essential patents are likely to provide significant cost savings to Licensors and licensees alike, substantially reducing the time

[1] The MPEG-2 standard concerning systems describes: (a) a syntax and semantics for combining separate video and audio bitstreams into a single bitstream, either a "program" stream for storage on a medium such as a digital versatile disc, or a "transport" stream for transmission of multiple programs, and (b) a demultiplexer for breaking the bitstream down into its constituent video and audio bitstreams. The MPEG-2 standard concerning video describes: (a) a common syntax and semantics of a bitstream containing compressed video, and (b) a decoder for decompressing the bitstream.

and expense that would otherwise be required to disseminate the rights to each MPEG-2 essential patent to each would-be licensee. Moreover, the proposed agreements that will govern the licensing arrangement have features designed to enhance the usual procompetitive effects and mitigate potential anticompetitive dangers. The limitation of the patent license portfolio to technically essential patents and the use of an independent expert to be the arbiter of that limitation reduces the risk that the patent pool will be used to eliminate rivalry between potentially competing technologies. Potential licensees will be aided by the provision of a clear list of the portfolio patents, the availability of the patents independent of the portfolio, and the warning that the portfolio may not contain all essential patents. The conditioning of licensee royalty liability on actual use of the portfolio patents, the clearly stated freedom of licensees to develop and use alternative technologies, and the imposition of obligations on licensees' own patent rights that do not vitiate licensees' incentives to innovate, all serve to protect competition in the development and use of both improvements on, and alternatives to, MPEG-2 technology. The Department has no present intention to challenge the proposal.

(* Inadvertently omitted from 1997 Reviews.)

98-1 Depot Direct, Inc. 1/8/98

Industrial Products Group Purchasing/Sales

Facts: Depot Direct, Inc. ("DD") proposes to be an independent, for profit enterprise established by investors to buy and resell industrial products to distributors, vendors and end-users of fluid power and motion control systems. DD initially will be owned by 18 investors who are knowledgeable about the markets involved. DD will purchase industrial products from individual manufacturers on a negotiated basis. All pricing negotiations with manufacturers will be conducted by company representatives who are not employed by any investor/distributor or customer of DD. The terms of such purchases will be kept confidential from customers and industry investors. DD will sell to five general categories of customers: authorized distributors (selected by a manufacturer), resellers, end-use customers, consolidators and integrators. DD will play no role in any manufacturer's selection of its authorized distributors, nor will it involve itself in determining the terms or conditions on which any distributor resells the products supplied by DD. All customers will remain free to purchase any product carried by DD from any other source of their choosing. If DD's business plans are fully realized, its purchases would account for less than 10 percent of U.S. purchases of the product lines on average, and would not exceed 18 percent of any product line.

Response: It does not appear that the initial organization or planned operation of DD would raise antitrust concerns. The procedures proposed to ensure that DD will be managed and operated as an entity independent of its customers and investors, the preservation of customer's purchasing prerogatives, and the measures that will be adopted to keep pricing information confidential should avoid antitrust risks of either a horizontal or vertical nature. Moreover, DD's predicted share of the affected product markets would not be large enough to enable it to exercise either monopsony purchasing power vis a vis its product manufacturer suppliers or market power as a seller to its various customers. To the extent the DD's operations are characterized by efficiencies that generate cost savings for its customers, its activities could have the procompetitive effect of increasing output. The Department has no present intention to challenge the proposal.

98-2 Keystone and Conemaugh Electric Power Plants 1/30/98

Electrical Power Joint Venture

Facts: Eleven electric power utilities located in Pennsylvania, New Jersey, Maryland and Delaware formed two joint ventures to finance, construct, and operate four coal-fired steam electric generation units at the Keystone and Conemaugh plants in western Pennsylvania. Their total capacity constitutes less than six percent of capacity and less than 10 percent of the weekly peak load of the generating capacity located in the four-state region. The owners of the joint ventures are all members of the Pennsylvania-New Jersey-Maryland Interconnection Association ("PJM"), which operates as a regional economic dispatch center with its dispatchers selecting, on an hourly basis, the cheapest (based on regulatory "cost" concepts) source of energy available from any Pool member or other Pool participant to serve the next increment of demand for electricity. FERC, in 1996, changed the way in which power pools like PJM must operate in the future. Among the changes PJM wishes to make is to permit each PJM pool participant to bid to supply energy to PJM at any price that Pool participant deems appropriate, rather than at cost. This would mean that the joint ventures' price bids would compete with those of their individual members. To avoid the risk that the joint ventures might be used as conduits for collusion between or among their owner/rivals, they and their owners will observe information flow limitations designed to avoid anticompetitive information exchanges. All owners of the joint ventures have pledged to adhere to a Code of Conduct that expressly enjoins them from discussing with each other their independent prices, marketing plans, costs and other competitively significant information.

Response: It does not appear that the joint ventures' proposal to bid their electric power output on a price, rather than regulated cost, basis will have any anticompetitive effect. Since the joint ventures' capacity would not be sufficient to supply even 10 percent of the market, it is unlikely that they could determine market prices by themselves. Moreover, the proposed restrictions on information flows between the joint ventures and their owners and between the owners inter se should, if effective, prevent the owners from using the joint ventures as conduits for anticompetitive information exchanges. The Department has no present intention to challenge the proposal.

98-3 Interactive Travel Services Association 2/3/98

Travel Services Trade Association

Facts: Ten companies involved in offering travel services via computers to consumers desire to form a trade association. The proposed trade association would engage in the following activities: (1) identification and discussion of common industry practices; (2) promotion of consumer protection; (3) education of consumers as to the features and benefits of on-line travel services; (4) education of travel suppliers re the same; (5) presentation of industry views to governmental bodies; (6) serving as an information clearinghouse; and (7) conducting market research. The Association will not attempt to influence its members' pricing or other competitive activities. Nor will it attempt to force members to adhere to positions or standards espoused by the Association. The information gathering and research activities of the Association will be limited so as not to include any company-specific competitively sensitive information. Such information exchanges and market research will be reviewed by antitrust counsel, and the Association currently plans to make its information and research available to all persons free of charge through its website.

Response: To the extent that the Association confines its activities to those described, and does not allow itself or its members to exchange price, customer or other competitively sensitive information, neither its establishment nor its activities would raise risks to competition. Moreover, if the Association is successful in increasing consumer knowledge of the relative benefits of on-line travel services, its actions could increase output and competition to the benefit of consumers. The Department has no present intention to challenge the proposal.

98-4 Armored Transport Alliance 3/12/98

Transportation Services Group Purchasing/Sales

Facts: Five armored transport carriers propose to form the Armored Transport Alliance ("ATA"). ATA is intended to permit armored transport providers currently capable of providing service on a local or small regional basis to compete for large regional or national customers by serving as a joint sales agent for its members. It would communicate to its members the potential for joint bidding on jobs beyond the capability of individual members and solicit member interest in such joint bids. ATA would put together joint bids on the basis of one-on-one discussions with individual members. No competitively sensitive information would be exchanged amongst members relative to any joint bid. All members would remain free not to participate in a joint bid and even to bid against ATA for any job. ATA would also serve as a non-exclusive joint purchasing agent for items used by its members, e.g., trucks, tires, software and insurance, in an attempt to secure economies of scale. All members of ATA would continue to pursue all of their selling and purchasing activities independently of each other except for the joint bids and purchases made through ATA.

Response: The proposed joint venture would enable its small armored transport service provider members to serve customers they currently can not service efficiently. To the extent this cooperation creates an additional option for customers, ATA's marketing efforts could be procompetitive. We would be concerned if ATA's operations led to a diminution of rivalry amongst its members for business they can serve on an individual basis. Nevertheless, if ATA does not allow itself or its members to exchange price, customer or other competitively sensitive information, neither its establishment nor its activities should raise risks to competition.

The proposed joint purchasing by ATA on behalf of its members should not have any adverse effects on competition. Its members would appear to purchase such a small share of commonly-used items as to make it unlikely that ATA would be able to exercise any undue market power vis-a-vis suppliers of such items. To the extent that the proposed joint purchasing by ATA resulted in economies of scale or scope that reduced the costs of its members, such efficiencies could have the procompetitive effect of increasing output and reducing prices to customers. The Department has no present intention to challenge the proposal.

98-5 AHA Pharmaceutical Roundtable 3/20/98

Health Care
Biomedical Research

Joint Research Project

Facts: The Pharmaceutical Roundtable ("PRT") of the American Heart Association ("AHA") proposed changes to PRT operations, which were the subject of a business review in 1989 when the PRT was formed.[1] The PRT sponsors and funds basic biomedical research in the cardiovascular field by independent researchers. It proposed changes to: (1) increase the annual contribution of PRT members to $1 million; (2) decrease the terms of its members' agreements from five years to three years; and (3) use members' contributions also to fund targeted research in specific areas of interest in the cardiovascular field.

Response: Legitimate research ventures are not usually on balance anticompetitive, particularly in the case of joint ventures to perform basic, non-appropriable research. The PRT, which has been and will remain essentially a funding device, appears to constitute such a joint venture. Knowledge obtained from research funded by the PRT will continue to be made public. Moreover, the PRT's proposed operations appear to contain sufficient limitations to prevent significant anticompetitive spill-over effects in any market, including the market for biomedical research. The Department has no present intention to challenge the proposal.

[1] Business Review letter 89-4.

98-6 Personal Communications Industry Association 3/25/98

Telecommunications Information Exchange

Facts: The Personal Communications Industry Association ("PCIA"), a trade association that seeks to advance the interests of firms that provide wireless and mobile communications services, proposed to establish and operate a Site Search Clearinghouse ("SSC"), an information exchange system designed to facilitate the identification of opportunities for the joint acquisition, construction and/or operation of wireless communications antenna sites. A member carrier seeking to begin an expansion program would submit location information for its proposed antenna sites to PCIA for entry into the SSC database. The SSC system would identify any instances in which one of the proposed locations overlaps a location entered into the database by another carrier within the last six months. In such situations, the SSC system would notify both carriers of the potential co-location opportunity. It would then be up to each individual carrier to determine whether to pursue a possible bilateral co-location arrangement with the other carrier. All licensed wireless carriers will be permitted to participate in the SSC system, whether or not they are members of PCIA, on fair and reasonable terms.

Response: The limited nature of the information that would be exchanged through the SSC system leads to the conclusion that such exchanges are not likely, by themselves, to have anticompetitive effects, nor would the exchanged information be likely to lead to or facilitate other ancillary or independent agreements that would lessen competition. The fact that a carrier has entered the active site acquisition/construction phase in a particular geographic area within its licensed market is not particularly sensitive information and generally becomes publicly known within a relatively short period of time. The SSC system will not be used to exchange competitively sensitive long-range plans for system implementation and enhancement. Moreover, it is possible that the information exchange could have a procompetitive effect. To the extent that regulatory officials are either requiring co-location or seeking to minimize the number of antenna sites, the proposal could reduce the regulatory barriers to entry and thereby facilitate greater competition against the incumbent phone and cellular carriers. The joint acquisition, construction and operation of antenna facilities might also engender cost savings that, in a competitive environment, could flow, at least in part, to consumers. The Department has no present intention to challenge the proposal.

98-7 Securities Industry Association 7/1/98

Securities Information Exchange

Facts: The Securities Industry Association ("SIA") is an association of nearly 800 securities firms active in all markets and in all phases of corporate and public finance. The SIA has developed a comprehensive program to coordinate the Year 2000 remediation efforts of its members. As part of this program SIA proposed two types of information exchanges. The first would involve gathering information from manufacturers and vendors of computer software, hardware, and chips regarding their efforts to ensure that their products will be Year 2000 compliant. Once compiled, this information will be made available to, and exchanged by, SIA members. The second type of information exchange would involve exchanges among SIA members concerning topics such as (1) the results of product tests performed on their systems, (2) methods of remediating Year 2000 problems inherent in particular products, and (3) information about various vendors and their products. The information would be shared among SIA members and others that are part of the industry's Year 2000 project, such as regulators, exchanges, depositories and clearing companies. To the extent possible, only factual information about testing and experiences will be exchanged. Neither SIA nor its members will recommend in favor of, or against, the products of particular vendors. SIA members will decide as individual entities how, or even whether, each will use the information.

Response: The information exchanges should not diminish competition amongst SIA members. No pricing or customer information will be disclosed. Nor is there any conduct that would directly lessen competition in the procurement of computer services. The information to be exchanged about vendors will be stated in an objective, nonjudgmental manner. No recommendations will be made. Nor will collective procurement action be taken; i.e., there will be no collective boycotts. Moreover, it does not appear that the proposed information exchange would reduce competition amongst hardware, software or chip vendors. Finally, the proposed collaboration may even be necessary to avoid serious disruption of the securities trading system. However, even if the proposed collaboration were not necessary for this purpose, it could still reduce costs and/or speed up resolution of Year 2000 issues. Either type of benefit could redound to the benefit of investors and thus be viewed as output enhancing, i.e., procompetitive. The Department has no present intention to challenge the proposal.

98-8 National Association of Manufacturers 8/14/98

Manufacturing Information Exchange

Facts: The National Association of Manufacturers ("NAM") is the nation's oldest and largest broad-based industrial trade association, with nearly 14,000 member companies and subsidiaries. NAM proposed two information exchange programs designed to facilitate and expedite the efforts of many manufacturers to resolve Year 2000 computer transition problems. NAM is in the process of building an Internet web site with a directory of companies and their Year 2000 information. 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 maintain their own company information in a secure environment. 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. 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. NAM also seeks to promote exchanges of Year 2000 information between firms on a bilateral basis. 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.

Response: Though 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 that such potentially anticompetitive actions are not necessary to any "good faith" effort to identify or remedy Year 2000 conversion problems. 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 such information exchanges could increase output by reducing redundant efforts and fostering more efficient prioritization of the remedial work that must be done, which would be procompetitive. The Department has no present intention to challenge the proposal.

98-9 Textile Energy Association 9/4/98

Electrical Power Group Purchasing

Facts: The members of the Textile Energy Association ("TEA") will be firms engaged in businesses in or related to the textile industry. TEA proposed to purchase some or all of its members energy needs through a joint purchasing agent in response to the eventual deregulation of energy markets in the U.S. TEA believes that a joint purchasing agent will enable it to reduce the significant transaction and information costs associated with purchasing power in a deregulated market. TEA will choose the joint purchasing agent and negotiate with it a "prototype" contract for the benefit of all members. Each member will sign separate "adoption" agreements. The agent will provide various forms of service relating to the purchase of energy and, on an individualized basis, may offer analysis of the members' energy needs. The agent will purchase various forms of energy for the members including electricity, gas, compressed air, chilled water, etc., at the lowest possible cost. The purchasing agent will be independent of TEA's members. It will collect members' information about their energy needs and will negotiate on behalf of the group. The members will not communicate any information inter se. The agent will only provide such aggregated information to individual members as is necessary for them to determine whether they want to participate in particular joint procurements. In addition, TEA's individual members will remain free to purchase all, or part, of their energy requirements independently of the joint venture. The members will continue to conduct all other aspects of their businesses independently of one another.

Response: It does not appear that the aggregation of their purchases would give TEA's members any market power with respect to the purchase of any source of energy. Even if the joint purchasing agent purchased all of its members' needs, it would account for no more than 2.1 percent of all industrial energy consumed in the Southeast and only 1.43 percent of all industrial energy consumed in the U.S. Nor would the aggregate demand of TEA's potential members exceed 10 percent in any individual fuel market. Moreover, the contemplated joint purchasing is not likely to reduce horizontal competition amongst TEA's members by eliminating rivalry with respect to such a large input that output price rivalry might be reduced since the aggregate energy purchases of all TEA's members constitute but seven percent of their revenues. The prophylactic measures that will be adopted by TEA to prevent potentially anticompetitive information exchanges between its members should substantially reduce any risk that the joint purchasing of energy will adversely affect competition in the various textile markets. To the extent that the contemplated joint purchasing reduces the costs of energy to TEA's members, it could have the procompetitive effect of increasing output for the benefit of consumers. The Department has no present intention to challenge the proposal.

98-10 The Heritage Alliance/ 9/15/98
Lackawanna Physicians Organization

Medical Services Physician Network Joint Venture
Health care

Facts: Two independent practice organizations in northeastern Pennsylvania (principally Lackawanna County) proposed to merge to form a nonexclusive risk-bearing multi-specialty physician network and associated management services organization ("MSO") to contract with payers for the provision of physician services. The Heritage Alliance's members were 90 primary care physicians ("PCPs") practicing in six counties, while the Lackawanna Physician's Organization consisted of 167 specialists and 23 PCPs, all located in Lackawanna County. Negotiated terms for physician compensation would be either capitation or fee schedules from which 15 percent would be withheld pending accomplishment of efficiency goals. Contracts would be negotiated through the MSO, which would also market the Network's services and provide medical management services and practice management support. An actuarial firm might eventually develop a fee schedule for various payers based on demographic and market conditions, but in no case would prices charged by individual physicians be solicited or communicated to other physicians, or used to set fees for the Network. The Network would limit its membership to no more than 30 percent of the non-employed pediatricians or any other specialists currently constituting less than 30 percent of the group in any relevant geographic market, and would add no members in any specialty where the group already represented more than 30 percent of physicians in the area.

Response: Members of the Network propose to share substantial financial risk , and it appears that the establishment of common prices is reasonably necessary to achieve anticipated efficiencies. Thus, a Rule of Reason analysis is appropriate. The Network would account for approximately 39 percent of non-pediatrician PCPs in Lackawanna County, the primary geographic market, and 28 percent of pediatricians. These percentages are not likely to cause substantial adverse competitive effects in this market. However, a rise in the 39 percent figure might cause concern. As for specialists, in eight of 27 medical specialties represented, the Network will account for more than 50 percent of Lackawanna County physicians. While these numbers might also be cause for concern, they represent the pre-merger composition of Lackawanna Physicians Organization, which does not appear to have caused competitive harm at those levels. In general, payers interviewed supported formation of the Network and did not consider anticompetitive effects likely. In addition, the Network could well provide significant competition to another physician network operating in Lackawanna County. The Department has no present intention to challenge the proposal.

98-11 Koninklijke Philips Electronics, N.V./ 12/16/98
Sony Corporation of Japan/
Pioneer Electronic Corporation of Japan

Digital Versatile Discs Patent Licensing

Facts: Koninklijke Philips Electronics, N.V., Sony Corporation of Japan and Pioneer Electronic Corporation of Japan have proposed an arrangement pursuant to which Philips will assemble and offer a package license under the patents of Philips, Sony and Pioneer (collectively, the "Licensors") that are "essential" to manufacturing Digital Versatile Discs ("DVDs") and players in compliance with the DVD-ROM and DVD-Video formats, and will distribute royalty income among the Licensors.

Response: As with any aggregation of patent rights for the purpose of joint package licensing, commonly known as a patent pool, an antitrust analysis of this proposed licensing program must examine both the pool's expected competitive benefits and its potential competitive hazards. In particular, one expects that a patent pool may provide competitive benefits by integrating complementary technologies, reducing transaction costs, clearing blocking positions, and avoiding costly infringement litigation. At the same time, some patent pools can restrict competition, whether among intellectual property rights within the pool, downstream products incorporating the pooled patents or in innovation among parties to the pool. Based on the information and assurances provided to the Department, it appears that the proposed arrangement is likely to combine complementary patent rights, thereby lowering the costs of manufacturers that need access to them in order to produce DVD discs and players, and is not likely to impede competition either in the licensing or development of technology for use in making DVDs, players or products that conform to alternative formats, or in the markets in which DVDs and players compete. The Department has no present intention to challenge the proposal.

98-12 Association of Independent Corrugated Converters 12/23/98

Paper Products Group Sales

Facts: The Association of Independent Corrugated Converters ("AICC"), a trade association made up of non-publicly-traded manufacturers that collectively account for 15-20 percent of all corrugated paper packaging materials sold in the United States, propose to establish a model pursuant to which its members could enter into joint selling arrangements with other non-rival members. Some AICC members have multiple plants, others do not. There are a number of corrugated paper customers who only want to purchase from corrugated suppliers who have a sufficient number of plants to efficiently supply the customer's national or regional needs. Thus AICC would allow its members to form joint selling entities ("JSE"). One member would organize the JSE and select other members, who were not rivals of the lead manufacturer in any market, to help it bid on national or regional accounts. The lead member would negotiate the contract with a national or regional account and subcontract portions of the work to the other participants in the JSE or invite bids from other members. No other member of the JSE would be advised of the prices quoted by any other member or of the price quoted by the lead member to the customer. The JSE would not contain any member that was capable of meeting, by itself, the needs of the national or regional customer, nor would the lead member solicit a bid from any other member for a portion of a customer's business that the lead member could itself supply. Participation in any JSE would be voluntary and could be terminated by any member who had satisfied its contractual obligation to specific customers. Various JSEs could compete against one another and no JSE would identify its existence or membership to another JSE.

Response: It does not appear that the proposal to promote national and regional account services by nonrival manufacturers would raise risks to competition. To the extent that the proposal enables its members to compete more effectively for national or regional account business it could have a procompetitive effect. The Department has no present intention to challenge the proposal.