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WRITER'S DIRECT EXTENSION

September 19, 1996

Anne K. Bingaman, Esq.
Assistant Attorney General
Antitrust Division
Department of Justice
Washington, D.C. 20350

Dear Ms. Bingaman:

This firm represents Russell-Stanley Corp. ("Russell-Stanley"). On behalf of Russell-Stanley, we request a statement by the Department of Justice of its present enforcement intentions concerning a proposed program whereby national and international manufacturers of industrial steel and plastic drums, including Russell-Stanley, would submit, at the customer's request, joint global bids to serve national and international accounts. The facts concerning Russell Stanley's involvement in the steel and plastic drum markets are considered separately.

The Steel Drum Market

Russell-Stanley manufactures and sells steel drums from manufacturing plants located in New Jersey and Texas. Most steel drums are 55 gallon containers and generally are sold to customer locations within 300 miles from the manufacturing plant due to transportation costs. No license is involved in steel drum production. These drums are typically used to ship chemical and petroleum products. Product information concerning steel drums is enclosed.

Larger customers usually request proposals for drums with particular specifications in specific quantities on a yearly basis. Manufacturers quote unit prices good for specific time periods. Customers will then request delivery from time to time of specific quantities. Smaller customers do the same but are subject to spot pricing.

At its Woodbridge, New Jersey plant, Russell-Stanley primarily competes with a much larger Dutch-owned drum manufacturer Van Leer Containers, Inc. ("Van Leer") and several smaller manufacturers who truck into the market from the Pittsburgh area. At its Houston, Texas plant, Russell-Stanley competes with several manufacturers, including Greif Brothers Containers, Southline Container, Evans Cooperage and Van Leer.

The Plastic Drum Market

Russell-Stanley is licensed by Mauser Werke GmbH ("Mauser"), a German company, to manufacture and sell "L Ring" industrial plastic drums in the United States pursuant to technology on which Mauser holds one or more United States patents. These drums are used to transport a variety of substances including chemicals, petroleum products and food products. Product information concerning the "L Ring" plastic drum is enclosed.

Russell-Stanley sells the plastic drums, most of which are 55 gallon tight-head containers, from six manufacturing plants located in New Jersey, West Virginia, California, Illinois, Texas and Louisiana. Because of transportation costs, drum manufacturers, including Russell-Stanley, generally do not deliver to customer locations more than 300 miles from their manufacturing plant. As with steel drums, many of Russell-Stanley's customers are large multi-national corporations. Russell-Stanley estimates that it sells approximately thirty percent of the 55 gallon plastic drums sold in the United States.

There are two other Mauser licensees of "L Ring" tight-head plastic drums that serve the United States -- Florida Drum Company, Inc. ("Florida Drum") and Hunter Drums Limited ("Hunter"), a Canadian company, and another, Vanguard Container Corp. ("Vanguard"), which is licensed to manufacture and sell open head

plastic drums in the United States.[1] Florida Drum primarily serves the southeast United States and Hunter sells its plastic drums in the Buffalo and Detroit areas. Together, Florida and Hunter sell approximately eight percent of the 55 gallon plastic drums sold in the United States. Russell-Stanley competes with Hunter and Florida in many limited areas where their respective geographic areas overlap.

There is also a very significant international market for the "L Ring" plastic drums licensed by Mauser. For example, Mauser itself manufactures plastic drums from its six manufacturing plants in Germany. Additionally, plastic drums are manufactured and sold by approximately forty-three Mauser licensees in many countries throughout the world. A list of Mauser licensees is enclosed. Because of the transportation costs noted above, i.e. drum manufacturers generally do not sell to customers more than 300 miles from their manufacturing plant. Russell-Stanley does not compete with either Mauser or any of its licensees in the United States other than Florida, Hunter, and in open tops, Vanguard.

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[1] Vanguard sells its open top drums primarily along the eastern seaboard in competition with Russell-Stanley's open top drum which technologically is different from the Vanguard drum.

Competitive Necessity for the Proposed Joint Venture

Recently, multi-national drum purchasers have advised Mauser (and Russell-Stanley) that they would like to consolidate their purchase of steel drums and "L Ring" plastic drums on a global basis. Essentially, instead of negotiating with a host of companies throughout the world, multi-national purchasers want to deal with one entity to obtain price, product specifications and potential rebates for all of their global drum needs. Needless to say, companies in the United States that cannot respond to this customer need are at a significant competitive disadvantage.

Several competitors of Russell-Stanley, including Van Leer, already offer global purchasing to consumers. Van Leer operates 43 steel and plastic manufacturing plants throughout the world. Russell Stanley estimates that Van Leer produces 16% of steel drums and 6% of plastic drums in the United States.

Russell-Stanley believes that it will be unable to effectively compete in the global marketplace if it fails to participate in a joint venture that offers this service. In fact, Russell-Stanley's reluctance to participate in a global bidding arrangement without prior guidance from the Department of Justice has resulted in at least one lost multi-national account and the loss of two more are threatened.

Russell-Stanley will not engage in any practice that constitutes an impermissible restraint of trade or otherwise violates the letter or the spirit of the antitrust laws. However, Russell-Stanley must compete in the marketplace and it believes joint global bidding is essential to its success. Accordingly, Russell-Stanley proposes the global bidding plan presented below and requests that the Justice Department state its present enforcement intentions. Please note that steel and plastic drums are treated differently.

The Steel Drum Proposal

As noted above, multi-national customers are seeking a mechanism to obtain a global bid from Russell-Stanley and other steel drum manufactures. Upon a request from a customer for a global bid, Russell-Stanley would either (i) direct that customer to contact Mauser and advise Mauser of its product demand and Mauser would serve as the prime contractor or (ii) serve as the prime contractor and form the selling venture. In either event, the prime contractor would then communicate with other steel drum manufacturers in the United States and throughout the world to compile a global bid. Quotations would be made based upon local conditions. However, an overall global percent rebate may be offered to the customer.

If changes to the joint bid are necessary, the prime contractor would communicate directly with the participating steel drum manufacturers. Under no circumstances would Russell-Stanley communicate with any of its steel drum competitors in the United States concerning price. As noted above, because of transportation costs, Russell-Stanley does not compete with Mauser. If the global bid were accepted the participating steel drum manufacturers would supply the steel drums and the prime contractor would bill the customer.

In essence, Russell-Stanley or Mauser would act as the prime contractor and subcontract the production to the appropriate steel drum manufacturers. Thus, a multi-national purchaser would communicate solely with the prime contractor without the inconvenience of negotiating separate deals throughout the world.

The Plastic Drum Proposal

As discussed below, the proposal regarding the sale of "L Ring" plastic drums is slightly different because Russell-Stanley, Florida Drum and Hunter are all Mauser licensees and compete in certain limited areas of the United States.[2] However, the basic framework remains the same. Thus, a multi-national customer

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[2] As noted above, Vanguard, a Mauser licensee in the United States, makes open top plastic drums. Russell-Stanley's proposal does not involve the sale of open tops.

seeking a global bid from any of Russell-Stanley, Florida or Hunter would be directed to contact Mauser and apprise Mauser of its product demand. Mauser would then communicate with its United States licensees and its other licensees throughout the world to compile a global bid.

At no point would Russell-Stanley, Florida Drum or Hunter communicate with each other concerning the price of the global bid. Moreover, these companies would not be permitted to communicate directly with each other concerning any price revisions to the initial bid.

Generally, the vast majority of plastic drums offered in the United States through a global bid by Russell-Stanley would be to customer locations that neither Florida Drum nor Hunter (or Vanguard) serve. However, if a customer desires to purchase "L Ring" plastic drums in the geographic areas where Russell-Stanley, Hunter and Florida Drum do compete any of those companies would be free to participate in the global bid or withdraw from the joint arrangement and conduct unilateral negotiations with the customer.

Russell-Stanley's proposal does not violate the Antitrust Laws

Russell-Stanley believes that its proposed global bidding arrangement for both steel and plastic drums does not violate federal antitrust laws, especially as it is mandated by customer demand and is necessary to compete in the market for both steel and

plastic drums. Moreover, concerning plastic drums, Russell-Stanley, Florida Drum and Hunter are all Mauser licensees. Thus, they manufacture and sell the same product and only compete in two very limited areas of the United States. Allowing these Mauser licensees to join forces to submit a global bid upon customer demand will enhance efficiency, lower operating costs and foster interbrand competition with other drum manufacturers. In any event, the existence of significant interbrand competition in the drum industry obviates any potential harm to the consumer.

Furthermore, Russell-Stanley's proposal is similar to a joint bidding proposal that the Department of Justice stated it would not challenge in a recent business review letter. See Business Review Letter dated January 29, 1993 from John W. Clark, Acting Assistant Attorney General, Antitrust Division, concerning PRIMESOURCE. There, fifteen wholesale distributors of lawn and garden products created PRIMESOURCE, an entity that organized, coordinated and negotiated bids on large accounts for its member distributors. Like Russell-Stanley's proposal, none of the distributors communicated directly about price or other terms and distributors had the opportunity to compete in areas in which their markets overlapped.

Mr. Clark stated that the Department of Justice had no present intention to challenge the PRIMESOURCE proposal:

> 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.

Mr. Clark's letter was consistent with other business review letters issued by the Department of Justice concerning joint bid proposals. See Business Review Letter dated May 18, 1987 from Charles F. Rule, Acting Assistant Attorney General, Antitrust Division, to Marc L. Fleischaker, Esq. (Department of Justice would not challenge a proposed arrangement for the joint submission of bids to national accounts by members of the Independent Drug Wholesalers Group on behalf of its member local and regional wholesalers of pharmaceutical products); Business Review Letter dated April 22, 1985 from Charles F. Rule, Acting Assistant Attorney General, Antitrust Division, to Robert A. Lipstein, Esq.

(Department of Justice would not challenge a proposal by U.S.D. Corporation allowing its independent distributors to bid jointly to supply U.S.D. fire safety and industrial safety equipment to national accounts).

Russell-Stanley believes that its proposal is consistent with these previous Business Review Letters issued by the Department of Justice. It is also necessary to compete in the global market for steel and plastic drums. Accordingly, we respectfully request a Business Review Letter stating that the Department of Justice has no present intention to challenge Russell-Stanley's proposal.

I will be pleased to discuss this proposal further or provide the Department of Justice with any additional information. Thank you for your attention to this matter.

Very truly yours,

Alan E. Davis