

Legal Requirements and Guidelines for Members in the U. S. and Canada

Contributed by Paul H. Vishny, Esq., D'Ancona & Pflaum, Chicago

In May of 1998, AICC asked the Antitrust Division of the United States Department of Justice to review a proposed model whereby AICC members may form one or more joint selling entities (JSEs) to serve national or regional accounts. In December 1998, the Department of Justice issued an AICC Business Review Letter, which approved the model as outlined in the points below. It should be noted here that the DoJ's Letter is based on this model, and any joint selling agreements which do not follow the provisions below, while not necessarily illegal, will not enjoy the benefit of the Letter's protection. All members should therefore seek legal counsel if they are serving multi-location customers in alliance with other corrugated converting companies to ensure that these arrangements and practices present no risk of violation of the provisions of the antitrust laws.

The DoJ's Business Review Letter contains the following provisions for serving customers with multiple locations. A brief explanation is provided to help explain its intent. Very simply, one general member or a third party constitutes the "lead member" of a group of companies who will jointly sell to one or more national accounts. The lead member of each group within a joint selling group will select the members of such group.

1. As stated above, the lead member of each group may establish the group but: (a) each member of the group shall remain free at all times to compete with the group for the business of any customer, except for those bids or orders for which the member participates in the group; (b) the proposed customer will be advised of each group member and the customer shall have the right to decline to deal with any member of the group; (c) only the lead member will negotiate pricing with the proposed customer. When operating under the DoJ letter (but not the Canadian letter) no group member may compete with the lead member in any market.
2. The lead member may (i) negotiate a contract with the proposed customer and subcontract out portions of the work to the members of the group or (ii) invite bids from proposed members of the group, which the lead member can accept or reject.
3. No member of the group will be advised of the prices quoted by any other member of the group nor of the price at which the lead member proposes or agrees to sell products to the proposed customer.
4. Participation in the program or in any group will be voluntary and can be terminated at anytime by any member, subject to the rights and obligations of parties to a contractual obligation.
5. No member of the group may be a company that has the capacity (e.g. personnel, capability, equipment and specialty products) to meet the national (or regional, as the case may be) requirements of the proposed customer in a satisfactory manner.

6. The lead member will not submit a bid or seek a quote from any member of the group for delivery to any proposed customer location where the lead member is capable of meeting the requirements of the customer in a satisfactory manner.

7. The various joint selling groups will be free to compete with each other.

8. Each joint selling group will be independent of every other joint selling group. The makeup of joint selling groups will not be identified to the AICC nor will any one joint selling group identify its existence or its membership to any other joint selling group.

It should be noted that in May of 1999 AICC received a similar approval from the Canadian Bureau of Competition in Ottawa. AICC members in Canada can also participate in joint selling entities to serve multiple-location customers, making the FirstPak network a North American venture.