



Department of Justice

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FOR IMMEDIATE RELEASE
FRIDAY, MARCH 3, 1989

AT
202-633-2016
(TDD) 202-786-5731

The Department of Justice today announced that it does not intend to challenge under the antitrust laws a proposal by the Polyisocyanurate Insulation Manufacturers Association Inc. (PIMA) to organize a Foam Research and Development Committee to investigate, discuss and evaluate substitutes for chlorofluorocarbon foam blowing agents (CFCs) in the manufacture of rigid polyisocyanurate laminate board insulation products.

The Department's position was stated in a business review letter from Charles F. Rule, Assistant Attorney General in charge of the Antitrust Division, to Wendell B. Alcorn, Jr., counsel for PIMA.

PIMA's regular membership is limited to companies engaged in the manufacture of rigid polyisocyanurate laminate board insulation products. Firms engaged in the business of supplying materials to the polyisocyanurate manufacturers can become associate members. PIMA proposes to form a Foam Research and Development Committee to engage in plant-scale applications testing of possible substitutes for CFCs in manufacture of polyisocyanurate foam insulation. Members will be free to pursue independent development of alternative blowing agents, and any

(MORE)





Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 28 1989

Wendell B. Alcorn, Jr., Esquire
Cadwalader, Wickersham & Taft
100 Maiden Lane
New York, New York 10038

Re: Business Review Request: Polyisocyanurate
Insulation Manufacturers Association

Dear Mr. Alcorn:

This letter responds to your request, on behalf of the Polyisocyanurate Insulation Manufacturers Association, Inc. ("PIMA"), 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 Antitrust Division's current enforcement intentions with respect to the proposed organization of a Foam Research and Development Committee. You state that the Committee would investigate, discuss and evaluate substitutes for chlorofluorocarbon foam blowing agents ("CFCs") for use in the manufacture of rigid polyisocyanurate laminate board insulation products. Based on the information contained in your letters of November 13, 1987 and April 4, 1988, and information provided by other sources, the Department has no current intention to challenge the proposed arrangement.

PIMA is a not-for-profit corporation organized under the laws of the State of Delaware. Regular membership is open to any manufacturer of rigid polyisocyanurate laminate board insulation products. Associate membership is open to any entity engaged in the business of supplying materials to the polyisocyanurate manufacturers. Its regular members currently include the three largest manufacturers of foam insulation board and five others, accounting for approximately 80 percent of the total domestic sales of the product. Current associate members include two of the five United States manufacturers of CFCs.

CFCs are used to blow rigid and flexible polyisocyanurate foam, for refrigeration and air-conditioning, and as solvents to clean electronic parts. The rigid foam board produced by PIMA members is used as insulation in roofs and walls of new and renovated buildings.

CFCs are believed to deplete stratospheric ozone, possibly causing harmful increases in ultraviolet radiation. For this reason, the Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol"), signed by the United States and 30 other countries in September 1987, provides for a freeze on CFC consumption at 1986 levels effective July 1, 1989, a 20 percent cut in consumption by mid-1993, and a 50 percent cut by mid-1998. The Environmental Protection Agency has announced regulations that will restrict CFC use to achieve the levels mandated by the Montreal Protocol. We understand that a substantial likelihood exists that PIMA members will experience serious shortages or large price increases for CFCs in the future as a result of EPA regulation implementing the Protocol.

The PIMA Committee will not engage in original research to find new substitutes for CFCs for use as blowing agents in the production of polyisocyanurate foam. Rather, the Committee will evaluate new blowing agents for this use, by engaging in plant-scale, applications testing of substitute candidates, testing the acceptability of the resulting product for its end uses (e.g., conformance to fire codes and insulating performance), and arranging for testing by third-party testing organizations such as Underwriters Laboratories. PIMA also may make technical recommendations to its members. These will be limited to reports of the efficacy of plant-scale utilization of substitute products.

Members will be free to pursue independent development of alternatives, and any PIMA technical recommendations will not be binding on members. Meetings will be attended by legal counsel and will be open to the public. Under PIMA's antitrust compliance guidelines, participants will not discuss manufacturing costs, prices, company-specific business strategies, or other proprietary or confidential business information. With regard to its technical recommendations, PIMA will establish procedures to ensure the opportunity for all interested parties to provide comments and complaints regarding proposed recommendations.

The joint activity proposed by PIMA does not appear to pose any threat to competition. Although in some cases members of a joint venture formed to comply with government regulations may have an incentive purposely to suppress innovation, under current circumstances -- notably the likelihood of restrictions in the availability of CFCs regardless of what action PIMA takes -- it appears unlikely that PIMA members would deliberately choose to delay development and introduction of CFC substitutes. Furthermore, based on your representations, the

proposed conduct does not appear likely to facilitate price fixing or otherwise reduce competition among participants in the sale of their products. PIMA members will continue to have the incentive and the ability to engage in individual development projects.

Moreover, the proposed venture will likely generate significant efficiencies through the coordination of testing activity and the elimination of duplicate projects. The operation of the Committee may also bring about an increase in the information it is intended to produce. To the extent that such information developed privately becomes public, for example in the course of testing by third-party testing organizations, opportunities for free riding would be created and incentives to make such private investments are reduced. Sharing the costs of obtaining the information therefore tends to increase, rather than decrease, the incentive for firms to invest.

Based upon your representations, PIMA's proposal to organize a Foam Research and Development Committee appears unlikely to reduce competition. The Department of Justice thus has no current intention to challenge the conduct described in your proposal.

This letter expresses the Department's current enforcement intention only. In accordance with our normal practice, the Department reserves the right to bring an enforcement action in the future if the actual operation of the Committee proves anticompetitive in 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 available within 30 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,



Charles F. Rule
Assistant Attorney General

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November 13, 1987

The Honorable Charles F. Rule
Assistant Attorney General
U.S. Department of Justice
Constitution Avenue and Tenth St. N.W.
Washington, D.C. 20530

Dear Mr. Rule:

This is a request for a business review letter pursuant to the Business Review Procedure of the Department of Justice, 28 C.F.R. §50.6. This request is submitted on behalf of the Polyisocyanurate Insulation Manufacturers Association, Inc. ("PIMA"). PIMA requests a statement of the Department's present enforcement intention with regard to PIMA's plan to organize a committee, the Foam Research and Development Committee ("Committee"), whose function will be to investigate, discuss and evaluate substitute foam blowing agents used in the manufacture of rigid polyisocyanurate laminate board insulation products. The currently used foam blowing agent is chlorofluorocarbon ("CFC"). The Environmental Protection Agency intends to adopt regulations which will restrict the use of CFC, thereby minimizing the emission of CFC into the atmosphere.

PIMA AND ITS MEMBERS

PIMA presently consists of the regular and associate members listed in Exhibit A annexed hereto.

Regular membership in PIMA is open to any individual, company, corporation or other form of enterprise in interstate or foreign commerce of the United States that is regularly engaged

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in the business of basic manufacture of rigid polyisocyanurate laminate board insulation products.

Associate membership is defined as including any individual, company or corporation not eligible for regular membership but engaged in the business of supplying materials to the polyisocyanurate manufacturers.

PIMA is dedicated to the promotion and welfare of the industry's products.

PIMA was incorporated as a not-for-profit membership corporation under the laws of the State of Delaware in December, 1986. Membership in the Association is expected to grow. Copies of the Articles of Incorporation and By-Laws are enclosed with this request.

The regular members of PIMA manufacture and market polyisocyanurate insulation products for use in the roofs and walls of residential and commercial buildings. The associate members of PIMA supply the chemical raw materials from which the insulation is produced. The CFCs now commonly employed by the manufacturers for use as blowing agents are:

CFC-11 trichlorofluoromethane

CFC-12 dichlorodifluoromethane

CFCs are used to "blow" the foam, but more importantly provide the excellent insulation value which these products possess. A recently adopted international protocol has called for a restriction in the availability of CFC because it is believed that these chemicals are in part responsible for the depletion of stratospheric ozone, particularly over the Antarctic region. If the EPA regulation adopted domestically calls for a ban or severe restriction of CFC, the polyisocyanurate industry may disappear, since no substitute chemical blowing agent has yet been identified. CFC suppliers estimate a time period of seven to ten years before such substitutes are commercially available.

The insulation products produced by the regular members of PIMA compete against other types of insulation materials not dependent upon CFCs. Examples of competitive products are:

fiberglass insulation;
expanded polystyrene;
fiberboard sheathing and
perlite.

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Thus the threat posed by EPA regulations to limit the availability of CFC before a substitute is ready for foam blowing portends a substantial lessening of competition.

NEED FOR AND OBJECTIVE OF THE COMMITTEE

None of the CFC suppliers have available a suitable foam blowing agent which will perform exactly as the CFC now used. The present state of the art does not permit a sufficiently rapid development of a substitute without cooperative research efforts among the chemical suppliers and the insulation manufacturers. The foam manufacturers find themselves caught between the perceived need of the EPA to regulate CFC emissions on an accelerated agenda and the individual chemical suppliers to develop and test generic CFC substitutions in time to save the industry.

STRUCTURE AND PROCEDURES OF THE COMMITTEE

The Committee will comprise both regular and associate members of PIMA represented by their engineers or others qualified to address the questions related to substitute CFCs. The meetings of the Committee will be public and open to participation by any interested individual or firm qualified to discuss the relevant technical issues, whether or not the individual or firm is a member of PIMA. Minutes will be maintained that will be made available to any member of the public on request. Agendas will be prepared in advance of all Committee meetings, which will be confined to the subjects of the agendas.

Legal counsel of PIMA will be present at all meetings of the Committee, as well as at all meetings of PIMA dealing with recommendations by the Committee. Any voluntary technical recommendations by the Committee will require approval by PIMA before promulgation.

To assure a full hearing of all interests, the policies and procedures recommended by the Staff of the Bureau of Consumer Protection of the Federal Trade Commission in its April 19, 1983 Report on "Standards and Certification" will be followed wherever applicable.

In particular, the Committee will consider and decide questions raised by any written complaints concerning its recommendations in a timely manner. The Committee will specify in writing the reasons for its conclusions and the grounds for

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reaching such conclusions. If a decision is made that a complaint is justified in whole or in part, the Committee will describe what action it intends to take in light of the justified aspects of the complaint and will provide a timetable for completing that action. Although it is extremely unlikely that any restraints of trade could appear to arise in connection with the proposed activity, each of the Committee's recommendations will contain a statement that the Committee will consider and decide all written complaints about any perceived restraints allegedly caused by the recommendation or any interpretation thereof, and also will contain the address for submitting complaints and obtaining further information about complaint processing. The Committee will promptly provide to all persons who complain, either orally or in writing, information on how complaints are handled by the Committee, including how to submit complaints and evidence and how and when decisions are made. Any complaint regarding a decision by the Committee with respect to a recommendation will be appealable within a specified period of time to PIMA which will respond to that appeal in writing within a specified period of time.

COMPETITIVE CONSIDERATIONS

Any technical recommendations by the Committee that are approved and promulgated by PIMA will be voluntary. As recommendations, they will not be binding on the industry, nor on any member of PIMA, nor on the particular members of the Committee itself. There would be no penalty for deviation from the Committee's recommendations, nor would there be any limitation on the introduction by any member of PIMA or the Committee of other innovations with different technical parameters. There would not be any mutual or interdependent promises among the members of the industry, of PIMA, or of the Committee to adhere to its recommendations.

PIMA has adopted antitrust compliance guidelines that will be followed in the Committee's deliberations that provide, among other things, that participants shall not discuss at Committee meetings or information gatherings in conjunction with Committee meetings, costs, prices, company-specific business strategies, or any other proprietary or confidential business information.

The single purpose of this effort is to establish recommendations that will permit firms, to the extent they unilaterally and voluntarily choose to do so, to achieve and maximize the benefits that flow from cooperative research toward the development of acceptable substitute CFC blowing agents which

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would enable compliance with anticipated EPA regulations. Acceptable substitute CFC blowing agents will have many desirable, pro-competitive consequences for the insulation industry, its suppliers and the users of its products.

CONCLUSION

On the basis of the foregoing representations, we respectfully request that the Department of Justice provide PIMA with a statement of its present enforcement intention with respect to the planned activities described above. The Committee intends to organize and hold its first substantive session in the fall of 1987, or as soon thereafter as a positive response from you is received. Therefore, we shall be pleased to confer with you at your earliest convenience and to provide any additional information or analysis you may require concerning this request.

Thank you for your attention to this matter.

Very truly yours,

Wendell B. Alcorn Jr.
Wendell B. Alcorn, Jr.

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April 4, 1988

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Re: PIMA - DOJ Business Review Letter

Dear Ms. Free:

This responds, on behalf of the Polyisocyanurate Insulation Manufacturers Association, Inc., to the questions you posed in our telephone conversation of March 22, 1988.

1. With regard to the scope of the research planned, the joint committee will engage in plant-scale, applications testing of substitute candidates. The committee will not engage in original research to find new substitute raw materials. The applications testing will be done by members of the committee or by a third-party testing organization.

2. There will be no information exchange among the members of the joint research committee as to manufacturing costs -- including the costs of raw materials.

3. The technical recommendations that may result from the joint research undertaking will be limited to reports of the efficacy of plant-scale utilization of substitute products.

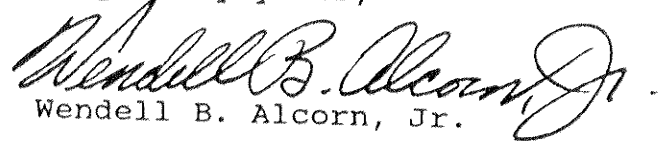
Melissa P. Free, Esq.

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April 4, 1988

I trust the foregoing is sufficient additional information to permit action on PIMA's pending request for a business review letter. Please do not hesitate to let me know if I may be of further help.

Very truly yours,

A handwritten signature in cursive script that reads "Wendell B. Alcorn, Jr." with a small flourish at the end.

Wendell B. Alcorn, Jr.

WBAjr:laf