



U.S. DEPARTMENT OF JUSTICE
Antitrust Division

MAKAN DELRAHIM
Assistant Attorney General

RFK Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
(202)514-2401 / (202)616-2645 (Fax)

April 16, 2020

Robert L. Sacks
Kane Kessler, P.C.
666 Third Avenue
New York, NY 10017-4041

Re: The Association of Independent Commercial Producers Business
Review Request

Dear Mr. Sacks:

This letter responds to your request, made on behalf of the Association of Independent Commercial Producers (“AICP”), for the issuance of a business review letter pursuant to the Department of Justice’s Business Review Procedure, 28 C.F.R. § 50.6. Specifically, you have requested a statement of the Department’s present enforcement intentions with respect to the AICP’s proposal to develop and operate an online platform that would allow advertisers to submit bid specifications for the purpose of soliciting and reviewing bids from independent companies that produce and post-produce commercials on various media platforms. Based on the information and representations you provided, and for the reasons explained below, the Department does not presently intend to challenge the operation of the proposed bidding platform.

I. Factual Background

All facts set forth in this section regarding the AICP, AICP Services, Inc. (“ASI”) and the proposed bidding platform are based on your representations to the Department.

The AICP is a New York not-for-profit corporation. It is a trade association that represents the interests of companies that produce and post-produce commercials on various media platforms (e.g., broadcast and cable television, the Internet, and other platforms) for advertisers and advertising agencies. AICP general members are production and post-production companies. AICP associate members are companies that

supply equipment and other services in the production and post-production processes. ASI is a wholly-owned subsidiary of AICP. ASI is a Delaware for-profit corporation.

II. The Proposed Bidding Platform

ASI is developing and plans to operate a bidding platform that would allow subscribers (primarily advertisers and advertising agencies) to solicit and receive bids from production and post-production companies for commercial advertisements. The AICP through ASI would own all of the equity interests in the proposed platform.

You have represented that the proposed bidding platform would work as follows: a subscriber to the platform would initiate the bidding process by uploading to the platform comprehensive bid specifications on which all bidders would base their bid estimates. Each subscriber independently would set the terms for its bid specifications. The bid specifications would include an outline of the various phases of production comprising the commercial job, and, at the subscriber's option, specific budget parameters for the production. The subscriber independently would identify the bidders to be invited to participate in the bidding process for the job. Once invited, the subscriber would have the option to disclose to the approved bidders the identities of the other bidders.

Each approved bidder would only be able to access the specifications relevant to its proposed bid and each responsive bid would remain private to the bidder and the subscriber. No bidder would be able to access another bidder's submission and data. Bidders' submissions and data would not be aggregated, except for the sole purpose of the subscriber's review of the bid submissions. Once the bid process is completed, the platform would allow the subscriber to compare and assess bids in a uniform format. That would allow subscribers to award bids in an efficient manner. After the subscriber has awarded a bid, the subscriber retains access to only the winning bid's data for analysis and review. The bidding platform would not retain, collect, or aggregate any bidding data. The bidder's data only would be available to each specific bidder.

You represent that participation in the proposed bidding platform would be voluntary and nonexclusive. The platform would be available on a nondiscriminatory basis to AICP members and nonmembers. All subscribers and participating production and post-production companies would be free to use other bidding platforms or to compete with the proposed bidding platform either individually, or through other entities.

III. Analysis of the Proposed Bidding Platform

The aggregation and exchange of price and other competitive information can facilitate anticompetitive coordination among competitors. In this case, however, there does not appear to be a substantial risk of that result because the proposed platform would not be used to compile, communicate, or disseminate pricing, transactional, bid, or other competitive information among subscribers, bidders, or third parties. ASI will institute and maintain firewalls that would prevent participating subscribers, bidders, and third parties from accessing nonpublic competitive information.

First, you have represented that any nonpublic information or bid specifications that a subscriber uploads to the bidding platform would only be shared with or made available to those entities that the subscriber has invited to participate in the bidding process. The platform would not be used to facilitate communications among subscribers or among bidders. The uploaded data would not be shared with other subscribers, other bidders, AICP members, or any other third parties. Second, you have represented that any bids submitted in response to a subscriber's bid specification, including prices, data, or other competitive information, would not be shared with other subscribers, other bidders, AICP members, or any other third parties. Third, you have represented that bidders would only be able to access or see their own bids. Finally, the ASI employees who work with the proposed platform will be held to a strict standard of confidentiality. Neither ASI nor the AICP will access, compile, aggregate, or use any subscriber specification data or information or any bidding information or data submitted to the platform.

You have also represented that for subscribers and bidders, participation in the service will be nonexclusive. There will be no restrictions on the ability of a subscriber or bidder to join or participate in competing services.

IV. Conclusion

Based on your representations and the documents and information submitted in support of your request, the Department has no present intention to challenge the operation of the AICP's online bidding platform.

This letter expresses the Department's current enforcement intention and is predicated on the accuracy of the information that you have presented to us, as well as any additional qualifications set forth in this letter.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6, and subject to the limitations and reservations of rights therein. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data you submitted will be made publicly available within thirty (30) days of the date of this letter, unless you request that

April 16, 2020

4

part of the material be withheld in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

/s/ Makan Delrahim

Makan Delrahim
Assistant Attorney General