



U.S. Department of Justice

Antitrust Division

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January 14, 2000

Jonathan W. Cuneo, Esquire
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Re: Comment on proposed Final Judgment in United States v. Imetal, et al.,
Civil No. 99 1018 (D.D.C., filed April 26, 1999)

Dear Mr. Cuneo:

This letter responds to your August 10, 1999 letter commenting on the proposed Final Judgment in U.S. v. Imetal, et. al., Civil No. 99-1018 (D.D.C., filed April 26, 1999), which is currently pending in federal district court in the District of Columbia. The Complaint in the case charged that Imetal's acquisition of English China Clays ("ECC") would substantially lessen competition in a number of relevant markets, including in the manufacture and sale of paper-grade ground calcium carbonate ("GCC") in the southeastern United States. The proposed Final Judgment would settle the case by requiring divestitures in all the relevant markets alleged. With respect to paper-grade GCC, the proposed Final Judgment requires that Imetal divest its interest in the limited partnership through which it participates in that market, and also divest substantial reserves for the use of that entity.

In your letter, you expressed concern that the proposed Final Judgment did not go far enough to eliminate the effects of Imetal's acquisition of ECC in the market for paper-grade GCC in the southeastern United States. Specifically, you characterize the mandated divestiture as requiring Imetal to "spin off certain assets in the hope that another firm will have sufficient economic incentives to enter the market," and resulting in "the replacement of two existing competitors with a single more powerful competitor -- and a competitor to be created."

I disagree with your characterization of the market structure that would result from the proposed Final Judgment, and thus with the fundamental premise of your comments. Before Imetal announced its plans to acquire ECC, there were two competitors in the manufacture and sale of paper-grade GCC in the southeastern United States: ECC and Alabama Carbonates. After Imetal's acquisition of ECC, there are still the same two viable competitors in this market. The competitive issue arose because Imetal had a 50%

interest in ECC's only competitor, Alabama Carbonates. The proposed Final Judgment, by requiring Imetal to divest its interest in Alabama Carbonates, ensures that the two competitors that existed before the acquisition will continue to exist as competitors after the acquisition. Alabama Carbonates does not need to "enter the market"; it is already in the market. The remedy provided for in the proposed Final Judgment means that Imetal's acquisition of ECC results in no change in the number of firms selling paper-grade GCC in the southeastern United States, no change in concentration, and no change in the HHI for that market.

As you are aware, Alabama Carbonates has historically competed in this market by contracting for its raw materials. Since its inception, it has purchased the feedstock for its wet-processing operations from its joint venturer, Georgia Marble (Imetal). With Imetal's acquisition of ECC, however, if Alabama Carbonates were to continue this arrangement, it would be dependent on its only competitor for its source of supply. The proposed Final Judgment requires Imetal to continue to provide feedstock for the Alabama Carbonates operation, if requested, for up to three years, to permit Alabama Carbonates a reasonable amount of time in which to become independent of Imetal. In addition, recognizing that the company might well decide that the optimum way to achieve that independence is through vertical integration, and that a lack of adequate reserves would be a substantial barrier to such integration, the proposed Final Judgment also requires that Imetal divest substantial reserves of GCC for use by Alabama Carbonates.

Specifically, the proposed Final Judgment requires that Imetal divest sufficient reserves so that Alabama Carbonates will have enough feedstock to make 500,000 tons a year of GCC for thirty years. The United States specified this quantity of reserves in the proposed Final Judgment because we concluded, based on our investigation, that 500,000 tons was an efficient scale for a dry processing plant, and that a business would need to be assured a 30-year supply of reserves in order to justify the investment required to build a dry processing plant. This provision is not intended to limit Alabama Carbonates to competing at its current capacity -- rather, it provides the reserves for the company to operate efficiently far into the future. Moreover, there is nothing in the decree that limits in any way the company's ability to expand its operations, including seeking additional reserves.

The United States strongly believes that the divestitures in the proposed Final Judgment relating to paper-grade GCC and other injunctive relief will alleviate the competitive concerns alleged in the Complaint. The divestiture of Imetal's interest in the Alabama Carbonates joint venture and the reserves needed to build a viable dry processing plant ensures that there will be no reduction in the pre-acquisition competition. The two competitors that existed before the acquisition will continue to exist. The requirement that Imetal divest reserves eliminates what could have been a substantial barrier to Alabama Carbonates' continuing to compete without being dependent on Imetal for feedstock for its operations. And finally, the transition agreement assures that Alabama Carbonates will be able to continue as a competitor in the short term while it takes the steps necessary to eliminate its historical dependence on Imetal. The term of that transition agreement was set based on the United States' conclusion, from its investigation, that three years would be sufficient for the joint venture to make the

transition to independence. The proposed Final Judgment does provide a mechanism for extending that term, however, if this assumption proves incorrect. In addition, the requirement that the terms of the transition agreement be substantially similar to the supply agreement that existed before the acquisition, and subject to approval by the United States, should provide sufficient protection against the kinds of conduct that you have expressed concern about.

Thank you for bringing your concerns to our attention. I trust you appreciate that we have given them due consideration, and hope this response will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

/s/

J. Robert Kramer II
Chief, Litigation II Section