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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA 2010 NOV 29 P 4:15

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UNITED STATES OF AMERICA
Department of Justice, Antitrust Division
450 5th Street, N.W., Suite 8700
Washington, D.C. 20530,

Plaintiff,

v.

GRAFTECH INTERNATIONAL LTD.
2900 Snow Road
Parma, Ohio 44130

and

SEADRIFT COKE L.P.
8618 Highway 185 North
Port Lavaca, Texas 77979,

Defendants.

Case: 1:10-cv-02039
Assigned To : Collyer, Rosemary M.
Assign. Date : 11/29/2010
Description: Antitrust

DECK TYPE: Antitrust

DATE STAMP:

COMPLAINT

Plaintiff, the United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action against defendants GrafTech International Ltd. ("GrafTech") and Seadrift Coke L.P. ("Seadrift") to obtain a permanent injunction and other relief to remedy the harm to competition caused by GrafTech's acquisition of Seadrift. Plaintiff alleges as follows:

I. NATURE OF THE ACTION

1. GrafTech is one of the largest producers of graphite electrodes in the world. On April 1, 2010, GrafTech agreed to acquire the 81.1 percent of Seadrift that it does not already

own for approximately $308.1 million. Seadrift produces petroleum needle coke, the primary input in the production of graphite electrodes.

2. Historically, GrafTech has sourced the majority of its petroleum needle coke from Seadrift's competitor, ConocoPhillips Company ("Conoco"). At various times, there have been constraints in the supply of needle coke. Beginning January 1, 2001, GrafTech and Conoco formalized their relationship by negotiating two, nearly-identical, long-term supply agreements for petroleum needle coke supplied from Conoco's two production facilities, in Lake Charles, Louisiana, and South Killinghorne, England (collectively referred to hereinafter as "Supply Agreement").

3. The Supply Agreement provides each party with the ability to audit the books, records, and documents of the other to ensure compliance. Though the "termination clause" of the Supply Agreement was recently activated, notice of termination essentially locks in the terms of the Supply Agreement for three years. During this period, Conoco must provide petroleum needle coke to GrafTech on a most-favored-nation ("MFN") basis, meaning that prices to GrafTech may not exceed the lowest price charged by Conoco to its other customers. To ensure compliance with the MFN guarantee, GrafTech could demand to audit Conoco documents reflecting the company's costs, pricing to specific customers, volume of production to each customer and other commercially sensitive terms of sale.

4. GrafTech's acquisition of Seadrift effectively would allow GrafTech to determine Seadrift's capacity and utilization rate for the production and supply of petroleum needle coke. The acquisition would also provide Seadrift with direct access to all of the information GrafTech collects via the Supply Agreement with Conoco. This would allow access to verified, customer-specific pricing and production information between two petroleum needle coke competitors,

Seadrift and Conoco. Such control over Seadrift and access to information could facilitate tacit coordination of prices or output. Thus, the merger would remove a significant barrier to collusion among suppliers of petroleum needle coke, enhancing GrafTech's, Seadrift's and Conoco's ability to coordinate prices and output, with the likely effect of increased prices or reduced supply to consumers, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE DEFENDANTS

5. Headquartered in Parma, Ohio, GrafTech, through its graphite power systems division, is the largest manufacturer of graphite electrodes ("graphite electrodes") sold in the United States. GrafTech has no U.S. production facility, but produces graphite electrodes for sale in the United States at some of its international facilities, located in Mexico, Brazil, Africa, France and Spain. GrafTech's revenues from the sale of graphite electrodes were approximately $483 million in 2009.

6. Seadrift, headquartered in Port Lavaca, Texas, is one of two domestic manufacturers of petroleum needle coke, the key input product in the manufacture of graphite electrodes in North America. Seadrift produces petroleum needle coke for sale to customers producing graphite electrodes sold in the United States from a single manufacturing plant, also located in Port Lavaca. The Port Lavaca plant has an annual production capacity of approximately 150,000 metric tons of petroleum needle coke, representing approximately 19 percent of worldwide petroleum needle coke capacity.

III. JURISDICTION AND VENUE

7. The United States brings this action against defendants GrafTech and Seadrift under Section 15 of the Clayton Act, 15 U.S.C. § 25, as amended, to prevent GrafTech from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

8. Defendant GrafTech manufactures, sells and provides services related to graphite electrodes sold in the United States and in the flow of interstate commerce. GrafTech's manufacture, sale and provision of services related to graphite electrodes substantially affect interstate commerce. Defendant Seadrift produces and sells petroleum needle coke in the United States in the flow of interstate commerce, and those activities substantially affect interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. § 25 and 28 U.S.C. §§ 1331 and 1337.

9. Defendants have consented to venue and personal jurisdiction in this judicial district.

V. TRADE AND COMMERCE

A. Relevant Market

10. Petroleum needle coke, a crystalline form of carbon derived from decant oil, is the key ingredient in, and is used only in, the production of graphite electrodes. Graphite electrode producers such as GrafTech combine petroleum needle coke with pitch adhesives and other inputs to form cylinders that are shot through with electricity and baked to produce graphite electrodes. Graphite electrodes are then assembled into columns using connecting pins and sold to steel manufacturers for use in furnaces and foundries. Steel manufacturers dip the graphite electrodes into the belly of an electric arc furnace and use the graphite electrodes as a conductor

to shoot electricity into the furnace, heating the furnace and melting scrap steel.

11. Graphite electrodes oxidize and gradually are consumed. They are replaced about every eight hours. Graphite electrodes that oxidize too quickly or break while in use reduce the efficiency of the furnace and, in the case of breakage, require the electric arc furnace to be shut down so the fragments can be extracted from the molten steel, which imposes a significant cost on steel producers. The quality of the petroleum needle coke used to make the graphite electrode is the most important factor in preventing breakage or accelerated consumption of graphite electrodes.

12. Petroleum needle coke, relative to other varieties of coke, is distinguished by its needle-like structure and its quality, which is measured by the presence of impurities, principally sulfur, nitrogen and ash. The needle-like structure of petroleum needle coke encourages expansion along the length of the electrode, rather than the width, which reduces the likelihood of fractures. Impurities reduce quality because they increase the coefficient of thermal expansion and electrical resistivity of the graphite electrode, which can lead to uneven expansion and a build-up of heat and causes the graphite electrode to oxidize rapidly and break. Petroleum needle coke is typically low in these impurities. In order to minimize fractures caused by disproportionate expansion over the width of an electrode, and minimize the effect of impurities, large-diameter graphite electrodes (18 inches to 32 inches) employed in high-intensity electric arc furnace applications are comprised almost exclusively of petroleum needle coke.

13. An alternative form of needle coke is produced from coal tar pitch. Pitch needle coke ("pitch coke") tends to include more impurities than petroleum needle coke. Pitch coke can be used to make graphite electrodes, but it must be processed differently, is more costly and time-consuming to produce, and typically results in a lower quality graphite electrode. Pitch

coke cannot be blended with petroleum needle coke. Because of these disadvantages, most producers of large-diameter graphite electrodes do not use pitch coke as an input.

14. Anode coke, like petroleum needle coke, is a derivative of decant oil, but it lacks the needle-like structure of petroleum needle coke. Instead, anode coke particles are spherical and cause a graphite electrode to expand across the width rather than just the length of the electrode. This pattern of expansion makes fractures more likely, particularly in large-diameter graphite electrodes, the greater width of which exaggerates the effect. Although producers may blend anode coke with petroleum needle coke to produce graphite electrodes, most producers carefully restrict the amount of anode coke used in graphite electrode production and do not use significant quantities of anode coke in the production of large-diameter graphite electrodes.

15. Petroleum needle coke customers can and do obtain petroleum needle coke from multiple sources worldwide. Petroleum needle coke is produced at manufacturing facilities located in the United States, England and Japan. Each facility ships petroleum needle coke internationally, and transportation costs comprise a small fraction of the cost of petroleum needle coke. Petroleum needle coke purchasers typically pay the same price for petroleum needle coke regardless of the location of the production facility or the destination.

16. A small but significant increase in the price of petroleum needle coke would not cause customers to substitute volumes of pitch needle coke or anode coke sufficient to make such a price increase unprofitable. Accordingly, worldwide production and sale of petroleum needle coke is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. Competitive Effects

1. Market Structure and Supply Relationships

17. Four significant firms operating out of five facilities worldwide produce petroleum needle coke. There have been instances in which demand has exceeded available supply; artificial restrictions on output could lead to supply constraints and higher prices. Conoco has the largest production capacity of all petroleum needle coke producers, and is the only manufacturer with two production facilities, including a plant in South Killinghorne, England and another in Lake Charles, Louisiana. Conoco's two plants collectively represent 55 percent of worldwide petroleum needle coke capacity. Seadrift owns a single plant in Port Lavaca, Louisiana. Seadrift is the second-largest producer of petroleum needle coke, with approximately 19 percent of capacity. It historically has sold petroleum needle coke to most of the major graphite electrode producers. GrafTech's acquisition of Seadrift would enable it to alter Seadrift's capacity and utilization rates. Two other producers each operate a plant in Japan; historically, the Japanese producers have not significantly increased the amount of petroleum needle coke they ship into the United States from year to year.

18. Conoco supplies nearly every graphite electrode manufacturer in the world with some portion of the manufacturer's petroleum needle coke requirements, including GrafTech and all of its graphite electrode competitors. Even following its acquisition of Seadrift, GrafTech intends to continue to purchase petroleum needle coke from Conoco. All major graphite electrode producers have multiple plants worldwide, and typically rely upon either Conoco or Seadrift for some portion of their petroleum needle coke requirements. Supply agreements are typically negotiated annually for the following year, with sporadic monthly purchases as-needed to fill gaps between projected and real demand.

2. GrafTech-Conoco Long-Term Supply Relationship

19. Over the past ten years, GrafTech has been engaged in a long-term supply arrangement with Conoco, buying the vast majority of its petroleum needle coke requirements from Conoco's South Killinghorne and Lake Charles facilities. The Supply Agreement includes a target range for the volume of purchases by GrafTech from each Conoco plant, and is modified annually to record negotiated price terms for the coming year.

20. The Supply Agreement includes a clause entitled "Audit Rights," which permit Conoco and GrafTech to audit each other's books, records and documents. The audit rights do not exclude contemporaneous books, records and documents.

21. The Supply Agreement also includes a "termination clause," which is activated upon notice by either party. When activated, the termination clause requires the Supply Agreement to continue for a period of three years, with modified volume commitments and pricing terms. GrafTech's obligations to buy petroleum needle coke from Conoco are based on past purchase volumes and decline each year by a set percentage. Conoco, in turn, must grant GrafTech MFN pricing for that three-year period, which requires that GrafTech's prices shall be no higher than the lowest price charged by Conoco for the relevant grade of petroleum needle coke among all of its petroleum needle coke customers.

22. On September 27, 2010, Conoco notified GrafTech that it intended to terminate the Supply Agreement. Activation of the termination clause converted the price term to MFN pricing. The audit rights clause remains unchanged.

23. Even after the three-year period remaining under the Supply Agreement expires, GrafTech intends to continue to contract with Conoco for a substantial volume of petroleum needle coke. Such a relationship could expose GrafTech to information regarding Conoco's

pricing, supply and output. GrafTech could utilize such information to coordinate petroleum needle coke pricing and output.

3. Impact of GrafTech's Merger with Seadrift

24. On April 1, 2010, GrafTech agreed to acquire the outstanding majority interest in Seadrift. When announcing the proposed acquisition, GrafTech also described various improvements that it intended to make to the Seadrift facility, including expansion in available capacity, in anticipation of using a significant volume of Seadrift's production following the acquisition.

25. The audit rights clause provides GrafTech access to Conoco's facilities, books, records and documents to ensure compliance with the Supply Agreement. The MFN clause now requires that Conoco charge to GrafTech prices no higher than the lowest price it offers to other graphite electrode producers. To ensure compliance with the MFN, GrafTech could request to audit Conoco's books, records and documents reflecting prices charged to specific graphite electrode customers. Such an audit also could reveal Conoco's costs, production, terms of sale and related commercial information. Access to invoices and billing records, for example, would provide direct information about volume sold, prices charged and the credit terms under which payment was collected for individual customers.

26. Once Seadrift is acquired by GrafTech, it will have access to the same information as GrafTech under the Supply Agreement, including any information arising from GrafTech's access to Conoco's facilities and audits of Conoco's contemporaneous books, records and documents. Because Conoco sells petroleum needle coke to nearly every graphite electrode producer in the world, the scope of that access is essentially market-wide.

27. Consequently, post-merger, GrafTech would be able to exercise rights under the Supply Agreement at the behest of Seadrift, Conoco's competitor. Indeed, the activation of the MFN clause maximizes GrafTech's ability to verify the prices that Seadrift's primary competitor charges to specific petroleum needle coke customers, and the volume of petroleum needle coke promised to each customer. The merger would allow the exploitation of those rights by Seadrift. Such access by a competitor could facilitate a tacit understanding between Seadrift and Conoco about the prices that should be charged to each customer, or the rate of output of each facility. Further, the ability to verify a competitor's contemporaneous, customer-specific production and pricing would eliminate the incentive and opportunity to deviate from any such understanding, as detection would be likely, removing another barrier to coordination.

28. Accordingly, the MFN and audit rights clauses would substantially reduce competition in the petroleum needle coke market, which likely would lead to higher prices and reduced output, in violation of Section 7 of the Clayton Act.

29. Even in the absence of the MFN and Audit Rights, however, the ongoing supply relationship between GrafTech and Conoco could provide GrafTech (and hence Seadrift) with inappropriate competitive information regarding pricing, supply and output. Such information could enhance the potential for price and output coordination.

V. VIOLATION ALLEGED

30. GrafTech's acquisition of Seadrift, by permitting access to verified, customer-specific production, pricing and related commercial information by competitors Seadrift and Conoco under the terms of the Supply Agreement, and possibly other supply arrangements,

would substantially reduce competition and likely increase prices and reduce output in the petroleum needle coke market in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

VI. REQUESTED RELIEF

31. Plaintiff requests that this Court:

a. Adjudge and decree that GrafTech's acquisition of Seadrift would violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. Compel GrafTech to strike the audit and MFN clauses from the Supply Agreement;

c. Prohibit GrafTech from including in future contracts with Conoco any term that conveys an audit right, MFN pricing, or otherwise allows the exchange of third-party production, pricing and related commercial information between GrafTech and Conoco;

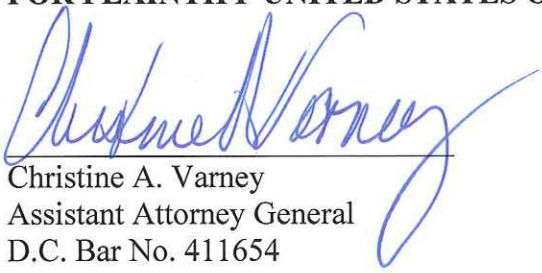
d. Award Plaintiff the cost of this action; and

e. Grant Plaintiff such other and further relief as the case requires and the Court deems just and proper.

Dated: November 29, 2010

Respectfully Submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:



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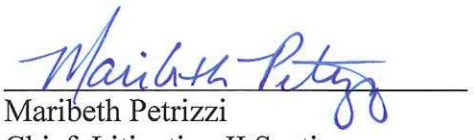

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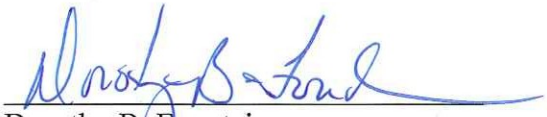

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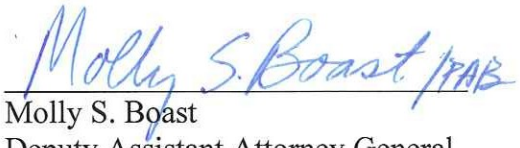

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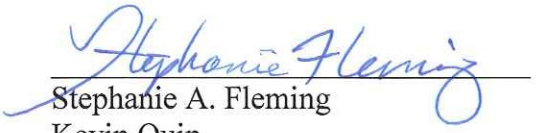

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