

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HERAEUS ELECTRO-NITE CO., LLC,

Defendant.

CASE NO.: 1:14-cv-00005-JEB

JUDGE: Boasberg, James E.

FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on January 2, 2014, the United States and Defendant Heraeus Electro-Nite Co., LLC (“Heraeus”), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Heraeus agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Heraeus to assure that competition is substantially restored;

AND WHEREAS, the United States requires Heraeus to divest certain assets and take certain other actions for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Heraeus has represented to the United States that the divestiture required below can and will be made and that Heraeus will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Heraeus under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. “Heraeus” means defendant Heraeus Electro-Nite Co., LLC, a Delaware corporation with its headquarters in Langhorne, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Minco” means Midwest Instrument Company, Inc., a Wisconsin corporation with its headquarters in Hartland, Wisconsin, its successors and assigns, and its subsidiaries,

divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “S&I” means single-use sensors and instruments used to measure and monitor the temperature and chemical composition of molten steel.

D. “Acquirer” means Keystone Sensors, LLC or another entity to which Heraeus divests the Divestiture Assets.

E. “Keystone” means Keystone Sensors, LLC, a Delaware corporation headquartered in Cranberry Township, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. “Divestiture Assets” means all assets of Heraeus that (1) were acquired from Minco pursuant to the Asset Purchase Agreement between the companies dated August 29, 2012 (and subject to the conditions and limitations specified in that agreement), and (2) are located in the United States or Mexico, including, but not limited to:

1. The former Minco facilities located at 541 Industrial Drive, Hartland, Wisconsin and at 2735 E. Oakland Avenue, Johnson City, Tennessee;
2. All remaining assets from the former Minco facility, located at Avenida Letra D No. 1005, Monterrey, Mexico;
3. All remaining tangible assets, including, but not limited to, all manufacturing equipment, tooling and fixed assets, personal property, remaining finished or partially finished inventory, office furniture, materials, supplies, other tangible property, and all other assets, used in connection with the Divestiture Assets; all licenses, permits and

authorizations issued by any governmental organization relating to the Divestiture Assets; all teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Divestiture Assets, including supply agreements; all customer lists, accounts, and credit records; all repair and performance records and all other records relating to the Divestiture Assets; and

4. All intangible assets, including, but not limited to, all intellectual property, including, but not limited to, patents, licenses and sublicenses, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Heraeus provides to its own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to S&I, including, but not limited to, designs of experiments and the results of successful and unsuccessful designs and experiments.

III. Applicability

This Final Judgment applies to Heraeus, as defined above, and all other persons in active concert or participation with Heraeus who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Divestiture

A. Heraeus is ordered and directed, within sixty (60) calendar days after the signing of the Asset Preservation Stipulation and Order in this matter, to divest the Divestiture Assets in

a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period not to exceed thirty (30) calendar days, and shall notify the Court in such circumstances. Heraeus agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. Notwithstanding the provisions of Paragraph IV.A, upon written request from Heraeus, the United States, in its sole discretion, may agree to exclude from the Divestiture Assets any portion thereof that the Acquirer, at its option, elects not to acquire.

C. Heraeus shall offer to furnish to the Acquirer, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Heraeus shall make available such information to the United States at the same time that such information is made available to any other person.

D. Heraeus shall provide the Acquirer and the United States with the name, job title and other contact information relating to all Heraeus personnel in the United States who were formerly employed by Minco, excluding shareholders and former shareholders of Minco, to enable the Acquirer to make offers of employment. Heraeus shall also provide the Acquirer and the United States with the name, last job title, and last known address and other contact information for former employees of Minco or Heraeus in the United States whose employment ended on or after January 1, 2012, to enable the Acquirer to make offers of employment to such

persons. Heraeus shall not interfere with any negotiations by the Acquirer to employ any such current or former Heraeus or Minco employee described in this section.

E. Heraeus shall permit the Acquirer to have reasonable access to personnel and to make inspections of the physical facilities included in the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Should the Acquirer elect to acquire the Johnson City, Tennessee and/or Hartland, Wisconsin facilities that Heraeus acquired from Minco, Heraeus shall assign the lease(s) to these facilities to the Acquirer, subject to the landlord(s) permission, and shall not interfere with any negotiations between the Acquirer and the landlord(s) concerning assignment of the lease(s).

G. At the option of the Acquirer, Heraeus shall enter into an agreement to provide training and technical support regarding the operation of any purchased Divestiture Asset to the personnel of the Acquirer.

H. Heraeus shall warrant to the Acquirer that each asset that is currently operational will be operational on the date of sale.

I. Heraeus shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

J. Heraeus shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Heraeus will not undertake, directly or indirectly,

any challenge to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

K. At the option of Heraeus, the Acquirer shall provide Heraeus with a non-exclusive, non-transferable license for the intangible assets described in II(F)(4), above, that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, distribution, and/or sale of S&I.

L. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business of the development, production, sale and service of S&I in the United States. The divestiture shall be accomplished in such a way so as to satisfy the United States, in its sole discretion, that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment,

- (1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of the development, production, sale and service of S&I; and
- (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and Heraeus gives Heraeus the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If Heraeus has not divested the Divestiture Assets within the time period specified in Section IV(A), Heraeus shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Heraeus any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Heraeus shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Heraeus must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Heraeus, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the

Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Heraeus and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Heraeus shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Heraeus shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Heraeus shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Unless the Acquirer is Keystone, within two (2) business days following execution of a definitive divestiture agreement, Heraeus or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Heraeus. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Heraeus, the proposed Acquirer, any other third party, or the

trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer of the Divestiture Assets. Heraeus and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Heraeus, the Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Heraeus and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Heraeus' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Heraeus under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Heraeus shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Preserving and Maintaining Divestiture Assets

Until the divestiture required by this Final Judgment has been accomplished, Heraeus shall take all steps necessary to comply with the Asset Preservation Order entered by this Court. Heraeus shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Waiver of Noncompete Agreements

A. Heraeus shall waive any existing noncompete agreement or other restrictive covenant that may bind any former employee of either Heraeus or Minco in the United States, without imposing any financial penalty on any such employee. Heraeus shall, no later than twenty-one (21) calendar days after the filing of the Complaint in this matter, provide each such former employee with written notice of the waiver and provide copies of each such waiver to the United States.

B. For a period of two years following Heraeus' agreement to the terms of this Final Judgment, Heraeus shall not require any employee in the United States to agree to a noncompete restriction or other restrictive covenant as a condition of severance or any other agreement relating to an employee's termination of employment.

C. This provision shall not apply to any current or former shareholder of Minco.

X. Use of Equipment

Heraeus shall allow customers, and shall so notify them, to use without consequence Heraeus products and equipment in the testing and/or qualification of any S&I, including waiving any contractual restrictions or the imposition of any warranty- or usage-related defenses to claims that may arise.

XI. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Heraeus shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the

name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Heraeus has taken to solicit buyers for the Divestiture Assets, and to provide required information to the prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Heraeus, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Heraeus shall deliver to the United States an affidavit that describes in reasonable detail all actions Heraeus has taken and all steps Heraeus has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Heraeus shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Heraeus' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Heraeus shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, the Asset Preservation Order, or any related orders, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from

time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Heraeus, be permitted:

- (1) access during Heraeus' office hours to inspect and copy, or at the option of the United States, to require Heraeus to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Heraeus, relating to any matters contained in this Final Judgment; and
- (2) to interview, either informally or on the record, Heraeus' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Heraeus.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Heraeus shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the

United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Heraeus to the United States, Heraeus represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Heraeus marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give Heraeus ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIII. Notification

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), Heraeus, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in any entity engaged in the development, production, sale or service of S&I in the United States during the term of this Final Judgment.

Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about the development, production, sale and service of S&I. Notification shall be provided at least thirty (30) calendar

days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, Heraeus shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XIV. No Reacquisition

During the term of this Final Judgment, Heraeus may not reacquire any part of the Divestiture Assets purchased by the Acquirer.

XV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XVI. Expiration of Final Judgment

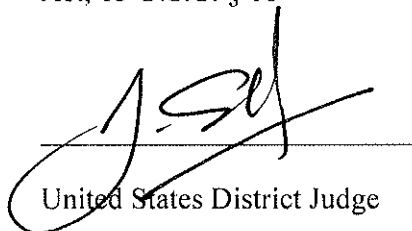
Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XVII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: April 7, 2014

Court approval subject to procedures
of Antitrust Procedures and Penalties
Act, 15 U.S.C. § 16



United States District Judge