

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, )  
Plaintiff, )  
 )  
v. )  
 )  
IMETAL, )  
DBK MINERALS, INC., )  
ENGLISH CHINA CLAYS, PLC, and )  
ENGLISH CHINA CLAYS, INC., )  
Defendants. )  
\_\_\_\_\_ )

Civil No: 99 1018  
Judge Gladys Kessler  
Filed: April 26, 1999

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H. MATTHEW-VERLINDINGSTON  
U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

**COMPETITIVE IMPACT STATEMENT**

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. NATURE AND PURPOSE OF THE PROCEEDING**

On April 26, 1999, the United States filed a civil antitrust Complaint alleging that the proposed acquisition of English China Clays, plc ("ECC") by IMETAL ("Imetal") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, with respect to four relevant products. The Complaint alleges that Imetal and ECC are two of five U.S. producers of water-washed kaolin; two of four U.S. producers of calcined kaolin for use in paper-making; the only two producers in

the Southeastern United States of ground calcium carbonate ("GCC") in slurry form for the paper industry ("paper-grade GCC"); and the two leading U.S. producers of fused silica. The request for relief seeks: (1) a judgment that the proposed merger would violate Section 7 of the Clayton Act; (2) injunctive relief preventing consummation of the proposed acquisition; (3) an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

When the Complaint was filed, the United States also filed a proposed Final Judgment and a Hold Separate Stipulation and Order that would settle the lawsuit. The proposed settlement permits Imetal to acquire ECC, but requires divestitures that will preserve competition in the four relevant product markets alleged in the Complaint. The proposed Final Judgment orders defendants to divest production facilities and associated assets, as defined in the proposed Final Judgment, for water-washed kaolin, calcined kaolin, and fused silica, to divest Imetal's interest in Alabama Carbonates, L.P., a joint venture that makes paper-grade GCC, and to divest substantial GCC reserves. Defendants must accomplish these divestitures within one hundred and eighty (180) calendar days after the filing of the proposed Final Judgment in this matter, or five (5) days after notice of the entry of the proposed Final Judgment by the Court, whichever is later, to purchasers acceptable to the Antitrust Division of the United States Department of Justice ("DOJ"). If the defendants do not do so within the time frame in the proposed Final Judgment, a trustee appointed by the Court would be empowered for an additional six months to sell those assets. If the trustee is unable to do so in that time, the Court could enter such orders as it shall deem appropriate to carry out the purpose of the trust which may, if necessary, include extending the trust and the trustee's appointment by a period requested by the United States.

In addition, under the terms of the Hold Separate Stipulation and Order, defendants must hold specified assets to be divested separate and apart from their other businesses until the required divestitures have been accomplished. Defendants must, until the required divestitures are accomplished, preserve and maintain the specified assets to be divested as saleable and economically viable ongoing concerns.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## **II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION**

### **A. The Defendants and the Proposed Transaction**

Imetal is a French corporation with headquarters in Paris, France. It produces building materials, industrial metals, and industrial minerals worldwide. In the United States, Imetal produces kaolin through its DBK Minerals, Inc. subsidiary ("DBK") at a plant in Dry Branch, Georgia and at a plant in Jeffersonville, Georgia; dry-processed GCC through The Georgia Marble Company ("Georgia Marble"), a subsidiary of DBK, at a number of locations throughout the United States, including its plant in Sylacauga, Alabama; paper-grade GCC through a joint venture, Alabama Carbonates, L.P., in Sylacauga, Alabama, in which Georgia Marble has a 50 percent ownership interest; and fused silica, through its C-E Minerals, Inc. subsidiary at a plant in Greeneville, Tennessee. In 1997, Imetal reported total sales in excess of 10 billion French francs.

ECC is a United Kingdom Corporation with headquarters in Reading, England. It produces industrial minerals, pigments and chemicals worldwide. In the United States, ECC produces kaolin through its English China Clays, Inc. subsidiary at two plants in Sandersville, Georgia and at a plant in Wrens, Georgia; and paper-grade GCC at a plant in Sylacauga, Alabama and at plants in Maryland and Wisconsin. In addition, in 1998, ECC purchased Minco Acquisition Corporation, a company that produces fused silica and fused magnesia at plants in Midway, Tennessee. In 1997, ECC reported total sales of about 850 million pounds Sterling.

On January 11, 1999, Imetal announced a cash tender offer for all of the shares of ECC. This transaction, which would increase concentration in the already highly concentrated markets for water-washed kaolin clay, calcined kaolin clay and fused silica in the United States, and would increase concentration in the already highly concentrated market for paper-grade GCC in the Southeastern United States, precipitated the government's suit.<sup>1</sup>

## B. The Markets

### Water-Washed Kaolin

Kaolin is a clay consisting of a crystalline hydrated aluminum silicate, usually found as the mineral kaolinite. The clay is mined in open pit quarries, and processed using crushing and grinding equipment. Water-washed kaolin is treated with water and flotation, which removes impurities and separates the kaolin by particle size. It is sold in a number of different grades, differentiated generally by particle size and brightness.

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<sup>1</sup>On April 27, 1999, Imetal consummated its cash tender offer, subject to the terms of the proposed settlement filed in this case.

The vast majority of water-washed kaolin is used in paper-making, both as a pigment in coating formulations and as a filler in the body of paper. In coating formulations, kaolin is typically used in conjunction with other pigments, such as GCC. The kaolin has unique properties, however, and the other pigments are typically used as a complement, rather than a replacement, for water-washed kaolin. Kaolin is used as a filler primarily in paper that is made using an acid process, where calcium carbonate fillers cannot generally be used.

Thus, for many paper companies, no good substitute exists for water-washed kaolin. A small but significant increase in the price of water-washed kaolin would not cause a significant number of paper customers currently purchasing water-washed kaolin to substitute other products.

Much of the world's highest quality kaolin deposits are found in a relatively small area in Georgia. All of the U.S. producers of water-washed kaolin are located in Georgia, and sell products from their plants in Georgia throughout the United States.

#### Calcined Kaolin

Calcined kaolin is water-washed kaolin that has been further processed by calcining or baking at a temperature of about 1000 degrees Centigrade under controlled conditions. The high temperature alters the structure of the water-washed kaolin, resulting in a whiter and brighter kaolin that has a higher refractive index. Because of its higher brightness, calcined kaolin is used in paper-making applications that require greater opacity than that provided by water-washed kaolin. Calcined kaolin costs more than twice as much as regular water-washed kaolin.

For many paper customers, no good substitute exists for calcined kaolin. A small but significant increase in the price of calcined kaolin would not cause a significant number of paper customers currently purchasing calcined kaolin to substitute other products.

All of the U.S. producers of calcined kaolin for paper-making are located in Georgia, and sell their products from plants in Georgia to paper companies throughout the United States.

#### *GCC for Paper Coating Applications*

Natural calcium carbonate is typically found in the ground in marble or limestone deposits. The stone is quarried and then processed through a series of screening and dry grinding steps into particles of various sizes, ranging down to about two (2) microns. The dry-processed GCC can also be further ground using a wet-grinding process into particle sizes as small as one (1) micron or less. GCC varies in color depending on the reserves from which it is quarried. The purest GCC comes from calcitic marble deposits. These high bright deposits are scarce, and some of the finest high bright deposits are located in the Sylacauga, Alabama area.

Paper-making requires the brightest white GCC. The vast majority of GCC sold for paper-making is wet-processed and sold in slurry form. Most of the GCC consumed in paper-making is used for coating applications. Precipitated calcium carbonate (PCC) is also used in paper-making, but most PCC used in paper-making is used as filler. GCC is preferred over PCC in coating applications because of its runnability, higher printability and gloss.

A small but significant increase in the price of GCC would not cause a significant number of paper customers currently purchasing GCC for coating applications to substitute other products.

Paper-grade GCC, unlike water-washed and calcined kaolin, is produced in a number of locations throughout the United States. Because of high transportation costs, sales of GCC tend to be regional rather than nationwide.

### Fused Silica

Fused silica is formed by melting pure non-crystalline silicon dioxide at high temperatures. This process creates a material with a low coefficient of thermal expansion which improves resistance to extreme heat, corrosion, abrasion, and electrical non-conductivity. Fused silica is used in sophisticated applications such as investment castings and epoxy molding compounds used in the electronics industry, as well as in refractory applications.

There are no economical substitutes for fused silica. A small but significant increase in the price of fused silica would not cause a significant number of current fused silica customers to substitute other products. Domestic producers of fused silica generally have a single plant, and sell their products throughout the United States.

### C. Harm to Competition as a Result of the Proposed Transaction

#### Water-washed Kaolin

Imetal and ECC compete with each other in the development, production and sale of water-washed kaolin in the United States -- a market which is now highly concentrated and would become substantially more concentrated as a result of the proposed acquisition. There are only five U.S. producers of water-washed kaolin. ECC is the largest, and Imetal is the third largest. The proposed transaction would reduce the number of firms making water-washed kaolin to four and create a single firm with well over 50% of domestic production capacity. The acquisition would consolidate the industry into two large players -- the combined Imetal/ECC

and Engelhard Corp. -- and two relatively small players -- Thiele Kaolin Company and J.M. Huber. It would eliminate the direct competition between Imetal and ECC that has benefited consumers, and likely lead to higher prices through increased opportunities for coordination and from the elimination of a significant competitor in an oligopolistic market.

Moreover, new entry into the development, production and sale of water-washed kaolin is unlikely to occur and unlikely to be timely or sufficient to defeat a post-acquisition price increase. Building a water-washed kaolin plant could cost \$100 million or more and take a minimum of two years. In addition, entry into the production of water-washed kaolin would require the location, testing and acquisition of substantial kaolin reserves to justify the investment in the plant.

#### Calcined Kaolin

The market for calcined kaolin for paper-making is even more concentrated than is the market for water-washed kaolin. There are only four producers, and ECC and Imetal are the second and third largest, respectively. (Engelhard is the industry leader and Thiele is the smallest participant.) The proposed transaction would reduce the number of firms making calcined kaolin for paper-making to only three, eliminating the direct competition between Imetal and ECC that has benefited consumers. The acquisition would likely lead to higher prices for calcined kaolin for paper-making.

New entry is unlikely to occur and would not be timely or sufficient to defeat a post-acquisition price increase. To be an effective competitor, any new entrant would require at least two calciners with substantial capacity (estimated at 85,000 to 100,000 tons annually) in order to be able to supply large paper customers' requirements and to be considered a credible source.

Construction of a single calciner (with the necessary attendant infrastructure) could cost a minimum of \$30 million and require at least two years, sometimes much longer, for permitting and construction. In addition, any entrant not already in the water-washed kaolin business would also face the barriers to entry into that business.

*GCC for Paper Coating*

There are only four firms that make paper-grade GCC in the United States: Omya, Inc., ECC, Alabama Carbonates, and Columbia River Carbonates (in Washington State). Only two of these firms are located in the Southeastern United States. One is ECC and the other is Alabama Carbonates, which is a joint venture owned 50% by Omya and 50% by Imetal's Georgia Marble. Both are in Sylacauga, Alabama.

Imetal and ECC compete in the sale of paper-grade GCC in the Southeastern United States. ECC has substantial high bright reserves of GCC in the Sylacauga area, which it quarries and processes at its Sylacauga plant. The plant does both dry processing and wet processing, and sells wet-processed GCC in slurry form for use in paper-making. Georgia Marble has many hundreds of years of GCC reserves in the Sylacauga area, which it quarries and dry processes at its Sylacauga plant, across the street from the ECC plant. Georgia Marble does not have a wet processing plant, but it has a 50% interest in the Alabama Carbonates joint venture, which has a wet processing plant right next to the Georgia Marble facility.

Alabama Carbonates was formed as a joint venture between Georgia Marble and Omya in 1990 for the purpose of selling paper-grade GCC in thirteen states in the southeastern U.S. Under the terms of the joint venture, both Omya and Georgia Marble agreed to sell paper-grade

GCC in the designated area only through the joint venture.<sup>2</sup> Georgia Marble supplies the raw material which it quarries, crushes, washes, and dry processes into feedstock suitable for the wet processing plant at an agreed-upon price. Omya operates the wet-processing plant, sells the paper-grade GCC and collects a fee for these services.

Transport costs for GCC are high. As a result, GCC sales, unlike sales of water-washed and calcined kaolin, tend to be regional. ECC and Alabama Carbonates are the only companies that compete directly with each other for sales of paper-grade GCC in the Southeastern United States.

The proposed transaction would likely result in unilateral price increases to customers in the Southeastern United States. Entry is unlikely to occur, and would not be timely or sufficient to defeat a post-acquisition increase in the price of paper-grade GCC. The only other producer of paper-grade GCC is Omya, which would have no incentive to ship into the Southeast for the purpose of defeating its own price increase and, in any event, is barred from doing so by the terms of its joint venture agreement.<sup>3</sup> A de novo entrant would have to acquire substantial high bright reserves in the Southeast, establish a quarry and build a processing plant. While the quarry and plant would require considerable expenditures of money and take substantial time, the most significant barrier is obtaining appropriate reserves. Paper-grade GCC requires high bright reserves, which are a scarce resource and are generally believed to be largely unavailable in the Southeast because they are owned primarily by Georgia Marble and ECC.

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<sup>2</sup>There is a limited exception in the joint venture agreement for certain pre-existing customers of the venturers.

<sup>3</sup>Columbia River Carbonates, the fourth producer of paper-grade GCC, is another joint venture in which Omya is a participant.

### Fused Silica

Imetal and ECC are the two leading producers of fused silica in the United States. They account for more than 80% of domestic fused silica production, and more than 95% of the fused silica sold in the United States for investment castings. The two companies compete significantly with each other, and are each other's only meaningful competition in sales of fused silica for investment castings. The only other producer, Pemco, accounts for a tiny percentage of sales.

Imetal and ECC face competition from other domestic producers and from imports in sales of fused silica for refractories. Overall, however, according to the defendants' documents, the two firms account for almost two-thirds of total fused silica sales.

The proposed transaction would eliminate the direct competition between Imetal and ECC that has benefited consumers, and would create a single firm with a virtual monopoly in the sales of fused silica for investment castings and an overwhelming share of total domestic sales of fused silica. This concentration would likely result in unilateral price increases to consumers of fused silica.

Aluchem, Inc., an industrial minerals company, has announced plans to build a new plant in Alabama that will be capable of making fused silica. This planned entry by Aluchem, Inc. is not likely to be sufficient to deter an anticompetitive price increase, however. New entry is very difficult, time consuming and costly, and sufficient new entry is unlikely to occur and would not be timely or sufficient to defeat a post-acquisition fused silica price increase.

### III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment requires substantial divestitures with respect to each of the products that is the subject of the Complaint. These divestitures are designed to ensure that the competition that would be eliminated by the proposed acquisition will be preserved and maintained. Under the terms of the proposed Final Judgment, defendants must accomplish these divestitures within one hundred and eighty (180) calendar days after the filing of that proposed Final Judgment, or five (5) days after notice of the entry of the proposed Final Judgment by the Court, whichever is later, to a purchaser acceptable to United States. If defendants fail to divest the assets within this period, a trustee, selected by the United States, will be appointed by the Court to sell the assets. Section VI of the proposed Final Judgment, which provides for the appointment of a trustee, contains a "Crown Jewel" provision that empowers the trustee to sell additional assets if necessary to effect certain of the divestitures.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. After the trustee's appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if any divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust and the term of the trustee's appointment.

#### Kaolin

With respect to water-washed and calcined kaolin, Section IV of the proposed Final Judgment requires defendants to divest the Sandersville No. 1 water-washed kaolin plant of

ECC, with an annual capacity of 850,000 tons, and to divest two calciners, with a minimum annual capacity of 85,000 - 100,000 tons. Alternatively, defendants may at their option sell the DBK plant in Dry Branch, Georgia. This plant includes both a water-washed kaolin plant with capacity of slightly over one million tons, and a calcined kaolin plant.

In all cases, the plant divestiture requires divestiture of all tangible and intangible assets used in connection with those plants, and divestiture of sufficient kaolin reserves to operate the plant at full capacity for 20 years.

Currently, DBK has two plants: the DBK plant, and a 300,000 ton capacity plant in Jeffersonville, Georgia, which it acquired in 1997 when it purchased Nord Kaolin Co. The Jeffersonville plant is largely idled, except for the calcined plant at that location. The proposed transaction thus would give the combined company about 1 million tons more water-washed kaolin capacity than ECC had before the tender offer. Divestiture of the DBK plant would eliminate any increase in concentration in water-washed kaolin resulting from the acquisition. The Sandersville No. 1 plant is only slightly smaller than the DBK plant. In plaintiff's view, it is sufficiently close to DBK's stand-alone capacity that a purchaser of that plant could be an effective replacement for DBK in the market.

With respect to calcined kaolin, ECC currently has 4 calciners, with a total capacity of about 200,000 tons, making calcined kaolin for paper-making. DBK currently has 3 calciners, with a total capacity of about 105,000 tons, devoted to this product. Even after the required divestiture, the proposed transaction would result in some increased concentration in capacity for calcined kaolin for paper-making. From what plaintiff learned during the course of its investigation, however, the required divestiture should be sufficient for the purchaser to be a

viable, effective new entrant into that market. Accordingly, plaintiff concluded that this divestiture is likely to substantially mitigate any anticompetitive effects of the proposed transaction with respect to calcined kaolin for paper-making.

*GCC for paper-coating*

With respect to paper-grade GCC, Section IV of the proposed Final Judgment requires defendants to divest Georgia Marble's interest in the Alabama Carbonates limited partnership.<sup>4</sup> Pending divestiture of Georgia Marble's interest in Alabama Carbonates, the Hold Separate Stipulation and Order requires Imetal to resign its seats on the Alabama Carbonates Management Committee and to assign to its joint venturer its right to name committee members.

Section IV of the proposed Final Judgment also requires defendants to divest sufficient GCC reserves for Alabama Carbonates to operate at its maximum stated contractual capacity of 500,000 tons for 30 years. These reserves must be economically recoverable, located in the Sylacauga, Alabama area, and of minimum pureness quality suitable for paper-grade GCC. Defendants must divest these reserves to the purchaser of Georgia Marble's interest, to Omya, or to Alabama Carbonates.

The divestiture of reserves is designed to ensure that Alabama Carbonates will be able to operate independently of Georgia Marble. Currently, Alabama Carbonates relies on Georgia Marble for its raw material and for all dry processing of its feedstock. Such dependence on the company that, after the proposed transaction, will be its only competitor, raises obvious

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<sup>4</sup>Under the provisions of the proposed Final Judgment, defendants must divest this interest to a purchaser or purchasers acceptable to the United States. Under the terms of the limited partnership agreement, however, Georgia Marble's joint venturer, Omya, has a contractual right to prior notice of any sale of the interest and a right to match any offer for that interest.

competitive problems. In order to operate independently the limited partnership must have its own reserves and its own processing facilities. The plaintiff concluded as a result of its investigation that 30 years' reserves was the minimum that the limited partnership would need to consider making the required investments in processing facilities.

The proposed Final Judgment permits defendants, in calculating the quantity of reserves required to be divested, to take into account any economically recoverable reserves Omya already owns, uses or has an option on in the Sylacauga area that are of suitable quality and are available to Alabama Carbonates. The proposed Final Judgment further provides that, if Alabama Carbonates, Omya, or the purchaser of Georgia Marble's interest in Alabama Carbonates cannot agree with the defendants (or with the trustee if the trustee is the seller) on the amount of GCC Reserves to be divested to provide 500,000 tons of feedstock for 30 years, or cannot agree on the fair market value of those reserves, they may submit those issues to binding arbitration. Section IX of the proposed Final Judgment sets forth the procedures to be followed in the event of such arbitration.

This provision for arbitration is designed to address two somewhat different concerns. First, defendants maintain that Omya already has extensive high bright GCC reserve holdings in the Sylacauga area and that Alabama Carbonates therefore does not need substantial additional reserves in order to be a viable independent competitor. As a result of its investigation, the United States disagreed and was unwilling to agree to a proposed settlement without a sufficient divestiture of GCC reserves to enable the joint venture to be a viable independent competitor. The arbitration provision permitted the parties to reach a settlement agreement that satisfies the United States' competitive concerns, while at the same time providing defendants with a

mechanism for assuring themselves that they are protected against an unnecessary sale of their reserves.

Second, given the contractual provisions of the Alabama Carbonates limited partnership agreement, there is a high likelihood that defendants will have no choice but to sell the GCC reserves to Omya. In such a situation, where there is a single buyer, the market forces that operate in a typical negotiation on price are absent. Defendants sought the option of arbitration to provide them a modicum of protection in their negotiations. There is precedent for this in other Antitrust Division consent decrees that have ordered divestiture to a particular buyer.

In addition to the divestiture provisions outlined above, Section IV of the proposed Final Judgment requires defendants, at the option of Alabama Carbonates, to supply the joint venture with feedstock for a period up to three years. This provision is designed to provide Alabama Carbonates with a reasonable transition period to make the investment required for it to be self-sufficient in the long term. The proposed Final Judgment further requires defendants to erect a firewall (Section VIII) during the term of any such supply contract, to ensure that no one at the combined Inetal/ECC with responsibility for paper-grade GCC receives any competitively sensitive information about Alabama Carbonates' requirements or purchases.

#### *Fused Silica*

Section IV of the proposed Final Judgment requires defendants to divest the fused silica plant of ECC, together with all tangible and intangible assets used in connection with the plant. This divestiture would eliminate any anticompetitive effects of the proposed transaction with respect to fused silica.

ECC acquired this fused silica plant within the last year when it acquired Minco. Minco also operates a fused magnesia plant, at the same location, that defendants wish to retain. The two plants are separate businesses and there is no overlap between ECC and Imetal with respect to fused magnesia, so retention of the fused magnesia businesses should not pose a problem under Section 7 of the Clayton Act. It may be, however, that the two plants together are more readily saleable than is the fused silica plant alone. For this reason, Section VI of the proposed Final Judgment provides that if the fused silica plant goes to a trustee for sale, the trustee may also sell the fused magnesia plant (together with all tangible and intangible assets used in connection with that plant).

#### **IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS**

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

#### **V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT**

The United States and defendants have stipulated that the proposed Final Judgment may

be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

J. Robert Kramer, II  
Chief, Litigation II Section  
Antitrust Division  
United States Department of Justice  
1401 H Street, N.W., Suite 3000  
Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, with respect to kaolin, simply requiring divestiture of the DBK plant. Divestiture of the DBK plant has two advantages over divestiture of the Sandersville No. 1 water-washed kaolin plant: (1) it would essentially put the purchaser in the same position as Imetal before the tender offer; and (2) unlike Sandersville No. 1, the DBK plant has been operated as a stand-alone business and has a clear track record as such.

The United States ultimately adopted the framework of the proposed Final Judgment, however, because it concluded that a divestiture of the Sandersville No. 1 plant could, under the proper circumstances, effectively redress the likely anticompetitive effects of the proposed transaction. During the course of the investigation, defendant ECC entered into pre-settlement negotiations and signed a preliminary Letter of Intent with Thiele Kaolin Company for the sale of the Sandersville No. 1 plant. A purchase by Thiele would cause higher concentration than would result if the Sandersville No. 1 plant were sold to a firm outside the kaolin industry. However, both defendants and Thiele argued that the additional capacity would permit Thiele to better compete for large paper customers against the two industry leaders. While the United States did not "pre-approve" a sale to Thiele -- the parties did not have a definitive agreement, and their Letter of Intent did not address at all some issues that would be important to plaintiff's evaluation of any proposed sale -- plaintiff concluded that a divestiture of the type contemplated in the Letter of Intent could satisfy the United States' competitive concerns with respect to water-washed kaolin. Plaintiff therefore concluded that defendants should be permitted to try to divest the Sandersville No.1 plant if they so chose.

The United States also considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Imetal and ECC. The United States is satisfied that the divestitures required by the proposed Final Judgment will facilitate continued viable competition in the four relevant product markets alleged in the Complaint and will effectively prevent the anticompetitive effects that the Complaint alleges would result from the proposed acquisition.

## **VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT**

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider--

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448, 1458-62 (D.C. Cir. 1995). The

courts have recognized that the term "'public interest' take[s] meaning from the purposes of the regulatory legislation." NAACP v. Federal Power Comm'n, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve "free and unfettered competition as the rule of trade," Northern Pacific Railway Co. V. United States, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. United States v. American Cyanamid Co., 719 F.2d 558, 565 (2d Cir.1983), cert. denied, 465 U.S. 1101 (1984); United States v. Waste Management, Inc., 1985-2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."<sup>5</sup> Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

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<sup>5</sup>119 Cong. Rec. 24598 (1973). See United States v. Gillette Co., 406 F. Supp. 713, 715 (D.Mass.1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. §16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988), quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981). See also Microsoft, 56 F.3d 1448 (D.C. Cir.1995). Precedent requires that:

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.<sup>6</sup>

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. Armour & Co., 402 U.S. 673, 681 (1971).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a proposed final

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<sup>6</sup> United States v. Bechtel, 648 F.2d at 666 (citations omitted)(emphasis added); see United States v. BNS, Inc., 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); United States v. Gillette Co., 406 F. Supp. at 716. See also United States v. American Cyanamid Co., 719 F.2d at 565.

judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."<sup>7</sup>

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<sup>7</sup> United States v. American Tel. and Tel Co., 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983), quoting United States v. Gillette Co., supra, 406 F. Supp. at 716; United States v. Alcan Aluminum, Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985).

### VIII. DETERMINATIVE DOCUMENTS

The only determinative document, within the meaning of the APPA, that was considered by the United States in formulating the proposed Final Judgment is the preliminary Letter of Intent between defendant ECC and Thiele Kaolin Company, a copy of which is attached as Exhibit A.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Dated: May \_\_, 1999.

Respectfully submitted,

Patricia G. Chick  
Patricia G. Chick  
D.C. Bar # 266403  
Trial Attorney  
U.S. Department of Justice  
Antitrust Division  
1401 H Street, N.W., Suite 3000  
Washington, DC 20530  
Telephone: (202) 307-0946  
Facsimile: (202) 514-9033

Exhibit A

## LETTER OF INTENT

This Letter of Intent (the "LOI") is entered into as of April 1, 1999 by and between Thiele Kaolin Company, a Georgia corporation ("TKC"), and English China Clay PLC, a United Kingdom corporation ("ECC"). TKC and ECC are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### 1. Purpose.

1.1 TKC and ECC hereby express their intent to negotiate in good faith to enter into, or cause their affiliates to enter into, a transaction whereby TKC or its affiliate would purchase from ECC's subsidiary, Anglo-American Clay Corporation, the asset and a quantity of kaolin reserves that ECC refers to as Plant 1 Hydrous (the "Transaction"), subject to the consummation of Imetal UK's tender offer for the outstanding shares of ECC (the "Imetal Offer"). Reference to ECC shall include Anglo-American, and reference to TKC shall include TKC's purchasing entity, as appropriate.

1.2 The Parties currently contemplate that the Transaction price will be not more than \$24 million and that the sale will include a quantity of approximately 4.6 million tons of crude reserves (the "Reserves"), and approximately \$4.2 million of inventories of crude, work in process and finished product, subject to purchase price adjustment if the levels change. TKC will also assume certain of ordinary course liabilities associated with Plant 1 Hydrous. Attachment A to this LOI outlines the current state of negotiations in greater detail.

1.3 Following the execution of this LOI by ECC and after consummation of the Imetal Offer, TKC will have the right to conduct due diligence both as to the Transaction and related matters and as to Plant 1 Hydrous, the applicable Reserves and the related affairs of ECC. ECC agrees to cooperate with TKC's due diligence process as reasonably requested by TKC. Without limiting the generality of the previous sentence, ECC will provide TKC with all data, documents, agreements, financial statements and other information reasonably requested by TKC to support its due diligence and will similarly give TKC access to ECC's physical facilities as reasonably requested by TKC. Notwithstanding the foregoing, ECC will provide immediately reasonable information regarding the Reserves and employee benefits, and will make available certain information on environmental matters. Nothing in this LOI requires ECC to disclose to TKC prior to closure of the Imetal Offer any information (such as price lists) that ECC reasonably believes could, in TKC's possession, have a material adverse effect on ECC if the Imetal Offer does not close.

1.4 Notwithstanding this Section 1, neither Party shall have any liability to the other for failure to successfully develop, negotiate, arrange or complete the Transaction. In addition, the Parties acknowledge that approval by each Party's Board of Directors will be a condition to the closing of the Transaction. In particular, the Parties acknowledge that ECC is entering into this LOI in connection with the Imetal Offer. Sections 2 to 6 shall be binding

upon the Parties and Sections 3, 4 and 6 shall survive the termination of this LOI in accordance with their terms unless superseded by definitive agreements for the Transaction.

2. **Exclusivity.** Each Party agrees to discuss and pursue the development of the Transaction exclusively with the other Party during the term of this LOI and hereby waives any and all rights to otherwise pursue the Transaction during the term of this LOI, either individually or with third parties; provided, however, that if, in the judgment of ECC, the U.S. Department of Justice ("DOJ") will require that ECC seek another purchaser for Plant 1 Hydrous or a disposition of other assets in lieu of the Transaction, ECC shall be entitled to take all actions necessary in its judgment to satisfy such requirement including selling Plant 1 Hydrous to another purchaser. ECC will promptly notify TKC of developments regarding the DOJ's requirements. If and when, in ECC's judgment, the DOJ has indicated that a sale to Thiele will satisfy DOJ's requirements, the proviso in the ~~preceding~~<sup>above</sup> sentence shall be of no further effect.

### 3. **Confidentiality.**

3.1 "Confidential Information" means any and all technical, financial or business data and information of or about a Party relating to its individual businesses, other than Trade Secrets. For the purposes hereof, information shall not be treated as, and shall not be deemed to be, Confidential Information, if such information: (a) has been or becomes generally available to the public other than as a result of a disclosure by the other Party in violation of Section 3.3; (b) was available to the other Party on a non-confidential basis prior to its disclosure hereunder; (c) has been or becomes available to the other Party on a non-confidential basis when the source of such availability is entitled, to the best of that Party's knowledge, to make such disclosure to the receiving Party; or (d) is or was developed by or for the other Party independently of and without reference to information disclosed to that Party hereunder.

3.2 "Trade Secrets" means information or data of or about a Party, including without limitation technical or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, products, plans, or lists of actual or potential customers, clients, distributees, or licensees, that: (a) derive economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from their disclosure or use; and (b) are the subject of efforts that are reasonable under the circumstances to maintain their secrecy. To the extent that the foregoing definition is inconsistent with a definition of "trade secret" mandated under applicable law, the latter definition shall govern for purposes of interpreting the Parties' obligations under this LOI.

3.3 Through exercise of their rights and performance of their obligations under this LOI, the Parties will be exposed to Trade Secrets and Confidential Information. The Parties, moreover, acknowledge and agree that any unauthorized disclosure or use of any of the Trade Secrets or Confidential Information would be wrongful and would likely result in immediate and irreparable injury to the other Party. Without prejudice to other remedies, the Parties

agree to the granting of injunctive relief by a court of competent jurisdiction for a breach of this Section 3 without proof of actual damages. Except as required in order to perform their obligations or exercise their rights under this LOI, neither Party shall, without the express prior written consent of the other Party, redistribute, market, publish, disclose or divulge to any other person or entity, or use or modify for use, directly or indirectly in any way for any person or entity; (a) any Confidential Information during the term of this LOI and for a period of three (3) years following the expiration or termination of this LOI; and (b) any Trade Secrets at any time during or after the term of this LOI during which such information or data shall continue to constitute a "trade secret" under applicable law. Each Party shall immediately notify the other Party of any unauthorized disclosure or use of any Trade Secrets or Confidential Information of which it becomes aware.

3.4 Each Party agrees to assure that its affiliates, associates, vendors, subcontractors, employees, agents, advisors and consultants to whom it discloses any Confidential Information or Trade Secrets of the other party abide by the restrictions set forth in Section 3.3.

3.5 Any press releases, publications or public communications describing or concerning this LOI, the Transaction, either Party or affiliates thereof shall be approved by the non-releasing Party prior to release, subject to any applicable laws directly or indirectly requiring such press releases, publications or public communications that do not allow or permit time for such prior approval. In any event, all such descriptions should consist only of general descriptive information, except as otherwise required by applicable laws or allowed by approval of such Party.

3.6 Nothing in this Section 3 will prohibit disclosure of information by ECC or TKC to domestic and foreign antitrust authorities in connection with seeking approval for the Metal Offer. Each Party will notify the other of each proposed disclosure of Confidential Information or Trade Secrets under this Section 3.6.

3.7 In the event this LOI terminates without the entry into definitive documentation for the Transaction, upon request each Party will return to the other Party or destroy all Confidential Information or Trade Secrets in the possession of such Party or the persons described in Section 3.4, which were provided to any of them by the other Party, including, without limitation, all copies, computer files, and audio recordings.

3.8 This Section 3 supersedes the Confidentiality Agreement, dated February 19, 1999 between ECC International Inc. and TKC and shall apply to all Confidential Information and Trade Secrets disclosed by the Parties to each other under that Agreement.

4. Costs. Each of the Parties shall bear all of its own costs incurred by it or its counsel, accountants, agents, or other advisers, in connection with its respective due diligence investigation or other undertakings under this LOI (including, without limitation, salaries of personnel, travel, lodging and other expenses related to their performance of services for the

Transaction). Any fees and expenses of any finder or broker retained by or on behalf of a Party will be paid by such Party.

5. **Term.** Unless otherwise terminated earlier by either Party, the term of this LOI shall expire on the earlier to occur of (a) 42 calendar days following the date on which the Imetal Offer is declared wholly unconditional, (b) the termination of the Imetal Offer, (c) the decision by Imetal to enter into other divestiture transactions in lieu of the Transaction in accordance with the DOJ's requirements, or (d) the execution and delivery of the definitive agreements for the Transaction. If satisfactory and timely progress towards a definitive agreement is being made, the Parties will consider in good faith a reasonable extension of the 42-day period in clause (a).

6. **Miscellaneous.**

6.1 This LOI shall be governed by the laws of the State of Georgia, United States of America.

6.2 All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given upon delivery, if delivered in person, by telephone, facsimile, telex or cable, or on the second business day after sending, if sent, by reputable international overnight courier service to the following addresses set forth next to each Party's signature hereto.

6.3 This LOI may be amended or changed only by an agreement in writing signed by each of the Parties. It may be executed in multiple counterparts each of which shall constitute an original, but all of which together shall constitute one and the same instrument. This LOI constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all other written or oral agreements and discussions thereon between them.

6.4 Either Party's failure to enforce any provision of this LOI shall not be construed as a waiver of any such provision as to any future violation hereof, nor prevent that Party from enforcing the other provisions of this LOI.

6.5 The Parties agree that this LOI by itself does not create any relationship, corporation, partnership, association, joint stock company, business trust or joint venture involving the Parties. The Parties also agree that neither of them shall have the authority to assume or create any obligation on behalf of the other Party. The Parties agree that neither this LOI nor any information provided pursuant to it constitutes any representation or warranty of any kind whatsoever, express or implied.

6.6 Should any provision of this LOI be judged to be illegal, unenforceable or in conflict with any law by a court of competent jurisdiction, such provision shall be deemed severed herefrom and the validity of the remainder of this LOI shall not be affected thereby.

6.6 Should any provision of this LOI be judged to be illegal, unenforceable or in conflict with any law by a court of competent jurisdiction, such provision shall be deemed severed herefrom and the validity of the remainder of this LOI shall not be affected thereby.

6.7 Notwithstanding any provision of this LOI, neither Party will be liable to the other Party for indirect, incidental or consequential damages under, arising out of, due to or in connection with its performance or nonperformance of this LOI or any of its obligations herein.

The Parties hereto have executed this LOI on the dates indicated below effective as of the date first above written.

Thiele Kaolin Company

English China Clay PLC

By: William H. Williams  
Name: WILLIAM H. WILLIAMS  
Title: PRESIDENT  
Address: P.O. Box 1053  
SANDERSVILLE GA 31082  
Telephone: 912/532-3251  
Fax: 912/532-4469

By: \_\_\_\_\_  
Name: Dudley C. Rowe  
Title: Group Executive Vice President  
Address: 100 Mansell Court East, Suite 300  
Roswell, Georgia 30076  
Telephone: (770) 645-3301  
Fax: (770) 645-3769

6.7 Notwithstanding any provision of this LOI, neither Party will be liable to the other Party for indirect, incidental or consequential damages under, arising out of, due to or in connection with its performance or nonperformance of this LOI or any of its obligations herein.

The Parties hereto have executed this LOI on the dates indicated below effective as of the date first above written.

Thiele Kaolin Company

English China Clay PLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_

By: Dr. Rowe  
Name: Dorothy C. Rowe  
Title: Group Executive Vice President  
Address: 100 Mansell Court East, Suite 300  
Roswell, Georgia 30076  
Telephone: (770) 645-3301  
Fax: (770) 645-3769

ATTACHMENT A TO THE  
ECC/TKC LETTER OF  
INTENT DATED 04/01/99

CERTAIN PROPOSED TERMS OF THE ASSET PURCHASE AGREEMENT

The following terms reflect discussions to date between the Parties. ECC acknowledges that TKC has not yet conducted a due diligence investigation with respect to the transaction and that all of the proposed terms are subject to further negotiation.

1. **Plant and Assets.** The assets would include all the equipment, land, buildings and support infrastructure comprising its Plant 1 Hydrous production facility, with a rated capacity of approximately 850K tons of hydrous kaolin per year. Certain assets are described in more detail in Appendix I. Plant 1 Hydrous and assumed liabilities associated therewith do not include assets and liabilities relating to the kaolin mining and calcining operations at Sandersville, Georgia, commonly referred to as Plant 1 Calcined.

2. **Reserves.** Assets of Plant 1 Hydrous would also include 6 years of coarse and fine crude reserves in Washington and Wilkinson County (with exception of Dixon (leased) reserves, which are in Glascock County) to ensure no interruptions in production of Plant 1 Hydrous (the "Reserves"). The relevant Reserves are outlined in the following table:

	Coarse K tons	Fine K tons
<b>1st 2-Year Block</b>		
WS Sheppard	200	
Jordan (leased)	100	
F Wiggins	500	
Youngblood-Pt. 1 (leased)		750
Block Total	800	750
<b>2<sup>nd</sup> 2-Year Block</b>		
M Bridges	500	
RM Brown Est. (Part 1)	300	
Youngblood-Pt-2(leased)		750
Block Total	800	750
<b>3<sup>rd</sup> 2-Year Block</b>		
RM Brown Est. (Part 2)	300	
RM Brown	500	
Dixon (leased)		575
Ennis		175
Block Total	800	750

The WS Sheppard tonnage included in the first 2-year block would be mined and loaded by ECC and TKC would pay \$4.42 per ton for these services (This includes overburden and mining cost.)

The leases related to the Reserves would be assigned to TKC and it would become responsible for future royalty payments.

### 3. Intellectual Property

ECC would grant to TKC a non-exclusive, non-assignable, royalty-free license to use in Plant 1 Hydrous [or in any currently existing TKC facility] at least the following: all intellectual property necessary to make the products listed in Appendix II hereto. The specific intellectual property would be identified in the course of TKC's due diligence.

### 4. Assumed Liabilities

TKC would assume ordinary course liabilities and obligations relating solely to Plant 1 Hydrous, including without limitation: (i) current year's ad valorem taxes as to the purchased assets (subject to proration), (ii) operating contracts and outstanding bids (subject to negotiating satisfactory arrangements with contracts covering both Plant 1 Hydrous and other ECC operations), (iii) the leases relating to the Reserves specified in Section 2 above. The specific contracts, leases and other matters will be identified in the course of TKC's due diligence.

### 5. Plant Facility Arrangements

a. Contracting/Sharing. While most equipment can be cleanly separated, some contracting/sharing would be necessary. ECC has identified the areas involved as follows.

(i) Two large spray dryers located within the calcine operations provide feed for the hydrous big bagging facility. ECC proposes to contract to dry material provided by TKC at an agreed upon toll rate. The charge would be based on volume, and ECC would not know specific grade and destination of product.

(ii) The Hydrous Apron Dryer requires propane during natural gas curtailment periods, which are infrequent and normally occur during extended cold weather. The propane system is located within the Plant 1 Calcined and is used predominately to supply propane for calciners during curtailment periods. ECC proposes to provide propane to TKC during these periods at cost.

(iii) The calciners and spray dryers within the Plant 1 Calcined require a small amount of fuel oil during the curtailment periods referred to in (ii) above. The storage and distribution system is located within Plant 1 Hydrous. ECC proposes that TKC would provide fuel oil to ECC during these periods at cost.

Other areas may be identified in the course of TKC's due diligence.

b. Division. ECC has identified the following areas that will require division at the closing of the Transaction. They are mainly related to utilities and impound water treatment. The

table below lists the areas along with ECC's proposed solutions. Other areas may be identified in the course of TKC's due diligence.

Area	Proposed Solution
Electricity	<ul style="list-style-type: none"> <li>Georgia Power to bill ECC and TKC separately based on metered usage.</li> </ul>
Natural Gas	<ul style="list-style-type: none"> <li>Install separate gas line from main to service Plant 1 Hydrous.</li> </ul>
Waste Impounds	<ul style="list-style-type: none"> <li>Doolittle-West Impound would be included in the sale.</li> <li>Imetal would retain the Rawlings Impound and install a separate transfer station in order to separate flows.</li> </ul>
Water Wells	<ul style="list-style-type: none"> <li>Four wells (#2, #3, #4, #5) would be included in the sale.</li> <li>ECC would retain #6 Well.</li> <li>Would need agreement for TKC to supply ECC water during emergency/well downtime periods.</li> </ul>
I.T., DCS Equipment, Telephone System	<ul style="list-style-type: none"> <li>Separated at closing of the Transaction.</li> </ul>

#### 6. Third Party Arrangements

There are third-party arrangements that may require modification at the closing of the Transaction. The table below lists the principal arrangements that ECC has identified, along with ECC's proposed modifications:

a. Contract Bagging -- 30k: The Georgia Port Authority performs big bagging that is in excess of the overall capacity of ECC kaolin facilities located in Sandersville. A long-term contract is in place. ECC anticipates no problem assigning the portion for Plant 1 Hydrous to TKC with no loss of capability.

b. Breakbulk shipments through Savannah -- 74k: Storage & Handling rates are included within the bagging contract. ECC anticipates no problem splitting the contract. The products are destined for South America, Japan & South Africa.

c. Dry Bulk through Colonial Terminals -- 130k: A total of 130k is shipped. 63k of lump product (1 grade) and 67k of spray dried product (2 grades). Storage silos are leased under long term contract. ECC anticipates no problem assigning the appropriate number of silos to TKC (The estimate is 5). The products are destined for Canada, Europe and Japan.

d. Three Rivers (Quebec) inclusive of shipping contract 63k -- lump bulk product: A storage and handling contract is in place. An assignment clause exists. The contract covers vessel discharge, storage and makedown and provides for redelivery. ECC proposes to work with TKC

and a possible modification would be to assign the portion of warehouse and shipping contracts related to Plant 1 Hydrous volume to TKC.

e. Rotterdam -- 15k spray dried bulk storage (1 grade): Storage space is used in Rotterdam. ECC has several bunkers available on short-term lease from a third party. Imetal proposes to cause its Dutch subsidiary Euroclay to sell its Rotterdam-based infrastructure for a price to be agreed upon.

f. Kotka (Finland) -- 9k Spray dried bulk storage (1 grade): Storage in Kotka is leased on behalf of Euroclay. Imetal proposes to cause Euroclay to transfer the lease to TKC.

g. Ishinomaki (Japan) -- 25k spray dried storage and makedown (1 grade): Storage and makedown are owned and operated by ECC. ECC proposes to offer an all-inclusive price for ship discharge, one bunker and makedown.

h. Bulk and Breakbulk Ocean Freight to Japan and Europe: ECC has requirement contracts to Japan and Europe with Star Shipping and Mineral Shipping respectively. ECC proposes an agreed transition period to enter into a three-way negotiation to ensure current rates and services are passed onto TKC.

i. Domestic shipments: All dry bulk is shipped in railroad supplied equipment. Slurry is shipped in leased tank cars. ECC proposes to assign the appropriate number of leases to TKC. This would include the removal of ECC logos (where applicable). The total number of tank cars is estimated 500 to 600.

Other such arrangements may be identified during the course of TKC's due diligence.

#### 7. Employment Matters

Employees involved in production and direct support at Plant 1 Hydrous are expected to be offered employment by TKC or TKC's purchase entity. The specific employees will be identified during the course of TKC's due diligence.

#### 8. Alphalux 91

TKC will toll produce for ECC up to 25,000 tons per year of Alphalux 91.

\* \* \* \* \*

APPENDIX I

<u>Equipment</u>	<u>Number</u>
Blunging Systems	3
Float Plant	1
Ozone Generator	1
Ozone Contactor	2
Magnetic Separators	4
-3 - 84 inch Conventional	
-1 - 120 inch Super Conducting	
Bird Centrifuges	7
Sandgrinders	8
Disc Nozzle Centrifuges	3
Bleach Tracks	6
Rotary Vacuum Filters	36
Apron Dryer	1
Spray Dryers	2
Slurry Plants	2
Evaporator	1
Big Bagger System	1
Small Bagger System	1
Waste Treatment Impound	1

## APPENDIX II

### Products

#### Paper Applications:

##### Coated:

Alphacote  
Alphagloss  
Betacote  
Alphalux 91  
Astraglaze  
Astraplate

#### Non-Paper Applications:

Eccatex 500/501  
Eccatex 510/511  
Eccatex 520/521  
Eccatex 531  
Eccatex 560/561  
Eccatex 600  
Eccatex 610/611  
Eccatex 620/621

##### Filler:

Acme  
Astrafil 90  
Astraplate  
93-1900