

roads and sidewalks during the fall and winter months of the year. The combination would also eliminate substantial competition in the production and sale of food grade evaporated salt purchased by food processors for use in making baked, dried, frozen and canned foods and snacks. Without injunctive relief, Cargill's acquisition of Akzo likely would result in substantial increases in the prices paid by governments and consumers for services and products that use rock deicing and food grade evaporated salt.

II. JURISDICTION, VENUE, and STANDING

3. This action is filed by the United States under Sections 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The states of New York and Ohio and the Commonwealth of Pennsylvania bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

4. Cargill and Akzo produce rock deicing and food grade evaporated salt at locations throughout the United States and ship it to customers throughout the United States. The activities Cargill and Akzo engage in to produce and sell rock deicing and food grade evaporated salt are in the flow of interstate commerce, and substantially affect interstate commerce. The Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to Section 12

of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337.

5. Defendant Cargill produces and sells rock deicing and food grade evaporated salt in this District from facilities located in Watkins Glen and Cayuga, New York. Venue is proper in this District under 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

6. Defendant Akzo produces and sells rock deicing and food grade salt in this District from facilities located in Watkins Glen and Retsof, New York. Venue is proper in this District under 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

III. DEFENDANTS

7. Akzo is a corporation organized and existing under the laws of The Netherlands. Akzo Nobel, Inc., Akzo's United States subsidiary, is headquartered in Chicago, Illinois, and the subsidiary's salt business, Akzo Nobel Salt, Inc., has its headquarters in Clarks Summit, Pennsylvania. Akzo produces a large number of products including decorative coatings, pharmaceuticals, and salt. Akzo's salt operations are located throughout the United States, and in 1995, reported total US salt sales of about \$370 million.

8. Cargill is a Minnesota corporation with its corporate headquarters in Wayzata, Minnesota. It produces a wide variety of products, including grain, flour, fertilizer, and salt. Its salt production facilities are located throughout the United States, and in 1995, it had about \$250 million in revenues from US sales of salt.

IV. REDUCED COMPETITION IN ROCK DEICING SALT

A. RELEVANT PRODUCT MARKET

9. Bulk deicing salt is a medium to coarse grade of rock or solar salt, which is typically bought and applied by state, county and municipal governments (and their subdivisions) to melt snow and ice on public roads and sidewalks. Bulk deicing salt has a unique combination of highly desirable features: low cost, general availability and superior ice and snow melting capabilities. Alternative products such as abrasives (e.g., sand and ashes) and magnesium or potassium chloride are either significantly more expensive, not readily available, or generally do not perform as well as bulk deicing salt.

10. As a general proposition, rock or solar salt can be used for bulk deicing purposes. As a practical matter, solar salt does not perform well in the low winter temperatures prevalent during winter months throughout the Northeast.

11. For these reasons, in the Northeast region of the United States, there are no good substitutes for the use of rock salt for bulk deicing purposes.

12. The production and sale of rock salt for bulk deicing purposes ("rock deicing salt") is a relevant product market for purposes of analyzing the effects of the acquisition under the Clayton Act.

B. RELEVANT GEOGRAPHIC MARKET

13. Rock deicing salt is a heavy, but relatively low value product. Transportation costs comprise a substantial portion of the delivered price of that product, and hence limit the areas to which it can be shipped economically. As a result, the geographic location of rock salt mines and associated transportation costs create regional markets for the sale of rock deicing salt.

14. For government entities located in western Pennsylvania and Massachusetts, upstate New York, eastern Ohio, and Vermont ("the Northeast Interior Market"), the choice of suppliers of rock deicing salt is fairly limited, given the relative distance and isolation of that area from other rock salt producing locations.

15. Historically, virtually all rock deicing salt sold in the Northeast Interior Market was produced by Akzo's Retsof, New York mine and by Cargill's South Lansing, New York mine. In 1994, Akzo's Retsof mine flooded. Before closing the mine, Akzo salvaged as much salt as it could, creating a huge stockpile outside the mine. It also acquired mining rights and permits for a large salt deposit in nearby Hampton Corners, New York, and planned to increase production of rock salt at its Cleveland, Ohio mine to sell in the Northeast Interior Market.

16. With the closure of the Retsof mine, the only deicing suppliers capable of effectively competing in the sale of rock deicing salt in the Northeast Interior Market were, in addition

to Cargill: Akzo, from its rock salt mine located near Cleveland, Ohio and its Retsof Stockpile; North American Salt Company ("NAMSCO"), from a rock salt mine located in Goderich, Ontario; and Morton International, Inc. ("Morton"), from rock salt mines in Canada and Cleveland, Ohio. Customers in this region of the country are located sufficiently inland that it would not be economical for them to purchase deicing salt from other sources, such as imported rock salt landed in port cities.

17. Because they have low delivered costs compared to producers in other, more distant locations, current suppliers of rock deicing salt to customers in the Northeast Interior Market could impose a small but significant and nontransitory price increase without losing significant sales to salt producers in other areas.

18. The Northeast Interior Market is a relevant geographic market for the purposes of analyzing this acquisition under the Clayton Act.

C. COMPETITION AND ENTRY

19. Akzo and Cargill are two of only four significant competitors in the production and sale of rock deicing salt in the Northeast Interior Market. Bidding by Akzo is an important constraint on pricing by Cargill.

20. Using a measure of market concentration called the HHI, defined and explained in Appendix A, a combination of Akzo and Cargill would substantially increase concentration in the Northeast Interior Market of rock deicing salt. Cargill's

proposed acquisition of Akzo would, if consummated, increase the HHIs in the Northeast Interior Market, based on the number of capable bidders, from about 2500 to 3700.

21. Successful de novo entry into the production and sale of rock deicing salt would be difficult, time-consuming and costly. A new rock salt mine would take over two years to construct and would cost in excess of \$90 million. For that reason, de novo entry would not be timely to prevent or constrain a post-acquisition increase in prices of rock deicing salt.

D. HARM TO COMPETITION

22. Currently, purchases of rock deicing salt rely on the ongoing, vigorous competition between Akzo and Cargill, which has led to lower prices. The proposed acquisition will reduce from 4 to 3 the number of producers of rock deicing salt in the Northeast Interior Market. The reduction in the number of firms able to submit viable competitive bids likely will result in an increase in prices paid by state and local governments for rock deicing salt and therefore will violate Section 7 of the Act.

V. REDUCED COMPETITION IN FOOD GRADE EVAPORATED SALT

A. RELEVANT PRODUCT MARKET

23. Food grade evaporated salt, unlike rock or solar salt, is a highly refined salt specifically made for adding to food intended for human consumption. Because of its high purity, it is the only salt approved by the United States Department of Agriculture ("USDA") for use as an additive in food for human consumption. Food grade evaporated salt is bought and used by

food processors as a spice to enhance the flavor and help preserve, bind or develop the color of baked, frozen, dried or canned foods.

24. There are no good substitutes for food grade evaporated salt for the vast majority of food processors. Other types of salt are not as pure, and by adding that salt to food intended for human consumption, a food processor would risk contaminating its product, and perhaps experience an expensive and time-consuming product liability suit, if any consumer were injured as a result of that product contamination.

25. Food grade evaporated salt is a relevant product market for purposes of analyzing this acquisition under the Clayton Act.

B. RELEVANT GEOGRAPHIC MARKET

26. Food grade evaporated salt is produced at various locations in the United States. Akzo, Cargill and other producers located east of the Rocky Mountains ship food grade salt throughout this area. Akzo serves this area from plants located in St. Claire, Michigan; Akron, Ohio; and Watkins Glen, New York. Cargill serves the area from plants in Beaux Bridge, Louisiana; Hutchinson, Kansas; and Watkins Glen, New York. Virtually all food grade evaporated salt produced east of the Rocky Mountains is used there. There are virtually no shipments of food grade evaporated salt into areas west of the Rocky Mountains, or vice versa. Nor are there imports from abroad to areas east of the Rocky Mountains.

27. Because they have low delivered costs compared to producers in other, more distant locations, current producers of food grade evaporated salt east of the Rocky Mountains could impose a small but significant and nontransitory price increase to customers in that area without losing sales to salt producers from other, more distant areas.

28. The area of the United States east of the Rocky Mountains ("East of the Rockies") is a relevant geographic market for the purposes of analyzing this acquisition under the Clayton Act.

C. COMPETITION AND ENTRY

29. Akzo and Cargill are direct competitors in the production and sale of food grade evaporated salt East of the Rockies. A combination of Cargill and Akzo would substantially increase concentration in the production and sale of food grade evaporated salt East of the Rockies. Using sales or production capacity as a measure of the market shares of producers of food grade evaporated salt, concentration, as measured by HHIs, would increase from about 2400 to 3800, or roughly 1400 points.

30. Successful de novo entry into the production and sale of food grade evaporated salt is difficult, time consuming and costly. In addition to the difficulties in obtaining necessary permits, constructing an evaporated salt plant would take over two years to design and build and would cost in excess of \$45 million. In addition, in order to successfully market food grade evaporated salt, a new entrant must acquire a reputation for

consistent production of high purity evaporated salt, which reputation typically requires many years to develop. Entry therefore would not be timely, likely or sufficient to prevent or constrain a post-merger increase in prices for food grade evaporated salt.

D. HARM TO COMPETITION

31. But for the proposed acquisition, Cargill would continue to compete aggressively against Akzo for sales of food grade evaporated salt East of the Rockies. Cargill's acquisition of Akzo is likely to enhance the ability of the remaining competitors to engage in coordinated interaction that harms customers. The substantial reduction in competition following Cargill's acquisition of Akzo will likely result in higher prices for food grade evaporated salt, and would therefore violate Section 7 of the Clayton Act.

VI. VIOLATION ALLEGED

32. The effect of Cargill's proposed acquisition of Akzo is to lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

33. The transaction likely will have the following effects among others:

- a. competition generally in the production and sale of rock deicing salt in the Northeast Interior Market would be lessened substantially;

- b. actual and future competition between Cargill and Akzo in the production and sale of rock deicing salt in the Northeast Interior Market will be eliminated;
- c. competition generally in the sale of food grade evaporated salt in the East of the Rockies market would be lessened substantially;
- d. actual and future competition between Cargill and Akzo in the sale of food grade salt in the East of the Rockies Market will be eliminated;
- e. prices for food grade evaporated salt in the East of the Rockies Market and for rock deicing salt in the Northeast Interior Market would likely increase.

VII. REQUESTED RELIEF

Plaintiffs request:

1. That the proposed acquisition by Cargill of Akzo be adjudged to violate Section 7 of the Clayton Act;
 2. That the defendants be permanently enjoined from carrying out the Asset Purchase Agreement, dated December 11, 1996, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the salt businesses or assets of Cargill and Akzo;
 3. That plaintiffs be awarded their costs of this action;
- and

4. That plaintiffs have such other relief as the Court may deem just and proper.

Dated: April 21, 1997.

Respectfully submitted,

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APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.