

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA
U.S. Department of Justice
Antitrust Division,
450 5th Street NW
Suite 8000
Washington DC 20001,

Plaintiff,

v.

GENERAL ELECTRIC CO.,
41 Farnsworth Street
Boston MA 02210,

and

BAKER HUGHES INCORPORATED,
2929 Allen Parkway, Suite 2100
Houston TX 77019,

Defendants.

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the acquisition of Baker Hughes Incorporated (“Baker Hughes”) by General Electric Co. (“GE”) and to obtain other equitable relief. The United States alleges as follows:

I. NATURE OF THE ACTION

1. GE’s acquisition of Baker Hughes would combine two of the leading providers of refinery process chemicals and services in the United States. Refineries process crude oil and natural gas extracted from wells (“hydrocarbons”) into finished products like gasoline. To

perform this process, refineries rely on a variety of special chemicals, collectively known as refinery process chemicals, to remove salts, solids, metals, and other impurities from the hydrocarbons and to prevent corrosion and damage to refinery equipment. Refineries rely on process chemical and service providers to evaluate the specific hydrocarbons flowing into their refineries and to formulate and apply customized chemical solutions to ensure the safe and efficient processing of those hydrocarbons. To develop the chemical solutions needed to address current and future challenges, these service providers maintain dedicated research and development facilities.

2. Failures can be costly. If the refinery process chemical and service provider selects the wrong chemicals or fails to provide adequate and timely service, the result may be millions of dollars in lost production or damage to the refinery's equipment. For these reasons, oil and gas refiners choose a provider based on a number of factors that include not just pricing but the provider's experience, ability to offer timely and high-quality service, and research and development capabilities.

3. GE and Baker Hughes vigorously compete to win the business of oil and gas refiners. If the transaction is allowed to proceed, this competition will be lost, and the merged firm will control over 50% of the market, leading to higher prices, reduced service quality, and diminished innovation.

4. Accordingly, as alleged more specifically below, the acquisition, if consummated, would likely substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

II. DEFENDANTS AND THE TRANSACTION

5. Defendant GE is a New York corporation headquartered in Boston, Massachusetts. GE is a large, diversified corporation that, among other lines of business, supplies the oil and gas industry with refinery process chemicals and services through its GE Water & Process Technologies business unit. GE generated \$16 billion in revenues from oil- and gas-related products and services in 2015.

6. Defendant Baker Hughes is a Delaware corporation headquartered in Houston, Texas. Baker Hughes supplies the oil and gas industry with refinery process chemicals and services through its Downstream Chemicals business, which is part of Baker Hughes's Chemicals and Industrial Services organization. Baker Hughes's 2015 revenues were \$15.7 billion.

7. Pursuant to a Transaction Agreement and Plan of Merger dated October 30, 2016 ("Transaction"), GE will acquire Baker Hughes.

III. JURISDICTION AND VENUE

8. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

9. Defendants provide refinery process chemicals and services in the flow of interstate commerce, and their provision of refinery process chemicals and services substantially affects interstate commerce. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

10. Defendants have consented to venue and personal jurisdiction in the District of Columbia for the purpose of this matter. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. 1391(b) and (c).

IV. RELEVANT MARKET

11. The provision of refinery process chemicals and services is a relevant product market and line of commerce under Section 7 of the Clayton Act. Oil and gas refiners have no reasonable substitutes for refinery process chemicals and services. Because oil and gas refiners have no reasonable alternatives to refinery process chemicals and services, few, if any, would substitute to other products in response to a price increase.

12. Oil and gas refiners choose from those suppliers that have service staff and support infrastructure in their local area. GE and Baker Hughes have such infrastructure and compete with one another for customers in local areas throughout the United States. One well-accepted methodology for assessing whether a group of products and services sold in a particular area constitutes a relevant market under the Clayton Act is to ask whether a hypothetical monopolist over all the products sold in the area would raise prices for a non-transitory period by a small but significant amount, or whether enough customers would switch to other products or services or purchase outside the area such that the price increase would be unprofitable. *Fed. Trade Comm'n & U.S. Dep't of Justice Horizontal Merger Guidelines* (2010). A hypothetical monopolist of refinery process chemicals and services in the United States likely would impose at least a small but significant price increase because few if any customers would substitute to purchasing other products or to purchasing outside the United States. Therefore, the provision of refinery process chemicals and services in the United States is a relevant market under Section 7 of the Clayton Act.

V. LIKELY ANTICOMPETITIVE EFFECTS

13. The relevant market is highly concentrated and would become more concentrated as a result of the Transaction. GE's share of the refinery process chemicals and services market in the United States is approximately 20% while Baker Hughes's is approximately 35%.

14. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index ("HHI").¹ Market concentration is one useful indicator of the likely competitive effects of a merger. The more concentrated a market and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition. Markets in which the HHI is above 2,500 points are considered highly concentrated. Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power.

15. The refinery process chemicals and services market in the United States currently is highly concentrated, with an HHI over 2,900. The Transaction would increase the HHI by about 1,450, rendering the Transaction presumptively anticompetitive. *Fed. Trade Comm'n & U.S. Dep't of Justice Horizontal Merger Guidelines* (2010).

16. Defendants are two of a few firms that have the technical capabilities and expertise to provide refinery process chemicals and services in the United States. Defendants vigorously compete on price, service quality, and product development, and customers have benefitted from this competition.

¹ See U.S. Dep't of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.3 (2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>. The HHI 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 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

17. The Transaction would eliminate the competition between Defendants to provide refinery process chemicals and services in the United States. After the Transaction, GE would gain the incentive and ability to raise its bid prices significantly above competitive levels, reduce its investment in research and development, and provide lower levels of service.

VI. ABSENCE OF COUNTERVAILING FACTORS

18. Entry by a new provider of refinery process chemicals and services or expansion of existing marginal providers would not be timely, likely, and sufficient to prevent the substantial lessening of competition caused by the elimination of Baker Hughes as an independent competitor.

19. Successful entry into the provision of refinery process chemicals and services in the United States is difficult, costly, and time consuming. An entrant would need to develop local infrastructure, a full line of chemicals designed for refineries, and a track record of successfully treating the products processed by refineries. Because of the significant investment oil and gas refiners make in acquiring hydrocarbons to process and the high costs of any problem or delay, refinery oil and gas refiners are unlikely to switch away from established providers, making it difficult for new refinery process chemical and service providers to enter the market.

20. Defendants cannot demonstrate cognizable and merger-specific efficiencies that would be sufficient to offset the Transaction's anticompetitive effects.

VII. VIOLATION ALLEGED

21. The effect of the Transaction, if consummated, would likely be to lessen substantially competition for refinery process chemicals and services in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Unless restrained, the Transaction would likely have the following effects, among others:

- a) competition in the market for refinery process chemicals and services in the United States would be substantially lessened;
- b) prices for refinery process chemicals and services in the United States would increase;
- c) the quality of refinery process chemicals and services in the United States would decrease; and
- d) innovation in the refinery process chemicals and services market in the United States would diminish.

VIII. REQUESTED RELIEF

22. The United States requests that this Court:

- a) Adjudge GE's proposed acquisition of Baker Hughes to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
- b) Permanently enjoin and restrain Defendants from consummating the proposed acquisition by GE of Baker Hughes or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine GE and Baker Hughes;
- c) Award the United States its costs for this action; and

d) Award the United States such other and further relief as the Court deems just and proper.

Dated: June 12, 2017

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:



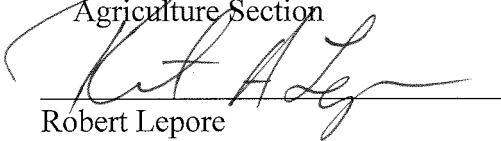
Andrew C. Finch
Acting Assistant Attorney General



Patricia A. Brink
Director of Civil Enforcement



Kathleen S. O'Neill
Chief
Transportation, Energy &
Agriculture Section



Robert Lepore
Assistant Chief
Transportation, Energy &
Agriculture Section



Tracey Chambers
Jeremy Evans (DC Bar # 478097)
Chinita Sinkler
Trial Attorneys
U.S. Department of Justice
Antitrust Division
Transportation, Energy &
Agriculture Section
450 5th Street, NW, Suite 8000
Washington DC 20530
(202) 616-1650
tracy.fisher@usdoj.gov