

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No: 99 1018 GK
)	
)	
IMETAL,)	
DBK MINERALS, INC.,)	
ENGLISH CHINA CLAYS, PLC, and)	
ENGLISH CHINA CLAYS, INC.,)	
Defendants.)	

PLAINTIFF'S CONSENT MOTION FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. §§ 16 (b)-(h), plaintiff United States moves for entry of the proposed Final Judgment filed April 26, 1999 in this civil antitrust proceeding. The Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. The Competitive Impact Statement filed in this matter on May 24, 1999 explains why entry of the proposed Final Judgment would be in the public interest. A Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired is attached to this Motion (at Tab 1).

I.

Background

The United States filed this civil antitrust action on April 26, 1999, alleging that a proposed acquisition of English China Clays, plc (“ECC”) by IMETAL (“Imetal”) would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Imetal and ECC compete in the manufacture and sale of water-washed kaolin, calcined kaolin, and fused silica in the United States, and in the sale of paper-grade ground calcium carbonate (“GCC”) in the southeastern United States, and that the combination of the two firms would substantially lessen competition and tend to create a monopoly in those four relevant markets.

Shortly before the suit was filed, a proposed settlement was reached that permitted Imetal to acquire ECC, while preserving competition in the four markets in which the transaction would raise significant competitive concerns. At the same time it filed the Complaint, the United States filed a proposed Final Judgment embodying the settlement, and a Hold Separate Stipulation and Order.

The proposed Final Judgment orders Imetal 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 through which Imetal participates in the market for paper-grade GCC, and to divest substantial GCC reserves. The divestitures must be acceptable to the United States, and must be completed within one-hundred and eighty (180) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, unless the United States agrees to an

extension of time. (Since more than 180 days have elapsed since the filing of the Complaint, the latter date is applicable.) If the divestitures are not completed within this time period, the Court, upon application of the United States, is to appoint a trustee selected by the United States to sell the assets.

The Hold Separate Stipulation and Order (“Stipulation”) requires that the defendants hold certain specified assets to be divested separate and apart from their other businesses. Defendants must also preserve and maintain the specified assets to be divested as saleable and economically viable ongoing concerns, until the divestitures mandated by the Final Judgment have been accomplished.¹

The Stipulation also provided that the proposed Final Judgment was to be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this 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.

Compliance with the APPA

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment. 15 U.S.C. § 16(b). In this case, the comment period terminated on August 10, 1999.

¹In July, 1999 defendants reached agreement on a divestiture of water-washed kaolin and calcined kaolin assets. The United States reviewed the proposed divestiture and approved it in October 1999. Also in October 1999, defendants reached agreement on a divestiture of fused silica assets and presented that agreement for review and approval by the United States. That review has been delayed pending the parties’ renegotiation of some critical terms of the agreement, but the United States has been told to expect a revised agreement this month, and would anticipate completing its review of the proposed divestiture soon thereafter. Negotiations on the divestiture of Imetal’s GCC reserves and its ownership interest in Alabama Carbonates are ongoing; the United States expects that defendants will present an agreement for its review shortly.

The United States received one comment on the proposed Final Judgment, and filed that comment and its response to it with the Court on January 14, 2000. The comment and the United States' response were also published in the Federal Register on February 7, 2000. The procedures required by the APPA prior to entry of the proposed Final Judgment are completed. The Certificate of Compliance attached to this Motion demonstrates that all the requirements of the APPA have been met. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.²

III.

Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine whether the 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.

²As the Court is aware, the party that filed the single comment on the proposed Final Judgment has also moved to intervene, or in the alternative to appear as amicus curiae, in the Court's public interest determination. Simultaneously with this filing, the United States is filing its opposition to that motion to intervene.

15 U.S.C. 16(e).

In its Competitive Impact Statement previously filed with the Court, the United States has explained the meaning and proper application of the public interest standard under the APPA and incorporates those statements here by reference.

The public, including affected competitors and customers, has had opportunity to comment on the proposed Final Judgment as required by law. There has been no showing that the proposed settlement constitutes an abuse of the Justice Department's discretion or that it is not within the zone of settlements consistent with the public interest.

IV.

Conclusion

For the reasons set forth in this Motion and in the Competitive Impact Statement, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The Final Judgment will remedy the anticompetitive effects of the challenged transaction. Therefore, the United States respectfully requests that the proposed Final Judgment filed in this case on April 26, 1999 be entered by the Court.

Counsel for defendants has informed plaintiff that defendants consent to the entry of the proposed Final Judgment in this matter.

Dated: February 17, 2000

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Plaintiff's Consent Motion for Entry of Final Judgment, and the attached Certificate of Compliance with the APPA, to be served by first class mail, postage prepaid, this 17th day of February, 2000, on:

George M. Chester, Jr., Esquire
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Washington, D.C. 20004-7566
Counsel for All Defendants

and that I caused a courtesy copy of this motion to be delivered by first class mail, postage prepaid, this same day, to counsel for PACE, which has sought to intervene in this Tunney Act proceeding:

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