

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	Civil No. 90-C-2631
Plaintiff,	)	
	)	
v.	)	Filed: 5/8/90
	)	
	)	Judge Plunkett
NORTH AMERICAN SALT COMPANY,	)	
	)	
Defendant.	)	

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the violations by the defendant, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. North American Salt Company transacts business and maintains offices in the Northern District of Illinois.

## II.

### DEFINITIONS

3. "Rock salt" means salt (sodium chloride) in a solid form which is mined from underground salt deposits.

4. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the relevant 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 2600 (30 squared + 30 squared + 20 squared + 20 squared = 2600). The HHI, which takes into account the relative size and number of the firms in a market, reaches 10,000 in the case of a monopoly and approaches zero when a market is occupied by a large number of firms of relatively equal size. The HHI increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

5. "Central United States" means the area that encompasses Kansas, Nebraska, Missouri, Iowa, central and eastern South Dakota, southern Minnesota, and western Illinois.

6. "East Central market" means the portion of the central United States that encompasses eastern Missouri and Iowa, southern Minnesota, and western Illinois.

7. "West Central market" means the portion of the central United States that encompasses Kansas, Nebraska, western Missouri and Iowa, and central and eastern South Dakota.

### III.

#### THE DEFENDANT

8. North American Salt Company ("NAMSCO") is made a defendant herein. NAMSCO is a corporation organized and existing under the laws of the state of Delaware, with its principal offices in Mission, Kansas. NAMSCO is a successor of Carey Salt Holdings, Inc. ("CSH"), and it owns or controls the assets and companies owned or controlled by CSH. Hereinafter, any allegation about NAMSCO concerning matters occurring before March 30, 1990, refers to NAMSCO's predecessors, including CSH.

9. NAMSCO produces and distributes salt products, including rock salt. It reported net sales of about \$51 million in 1988. NAMSCO is a holding company which participates in the production and sale of rock salt throughout the central United States primarily through two wholly-owned subsidiaries, Carey Salt, Inc. ("Carey"), which was acquired by NAMSCO in August of 1988, and American Salt Company ("American"), which was acquired by NAMSCO seven months prior. Both the American salt operations in Lyons, Kansas and the Carey salt operations in Hutchinson, Kansas include underground rock salt mines and rock salt processing facilities and equipment. The acquisition of Carey (hereinafter referred to as the "American/Carey merger") resulted in NAMSCO controlling the rock salt businesses of Carey and American.

10. On March 30, 1990, NAMSCO purchased the Canadian salt production facilities and related distribution assets of Domtar Inc. ("Domtar"). As the transaction was initially

structured, NAMSCO also would have acquired Domtar's rock salt mine in Cote Blanche, Louisiana and related distribution assets. Domtar sells rock salt produced at its Cote Blanche mine for highway deicing applications in the East Central market. Although NAMSCO did not purchase Domtar's Cote Blanche mine and related assets, it continues to express an interest in acquiring those assets.

#### IV.

##### TRADE AND COMMERCE

11. Salt is a low-value, high-bulk commodity which is an essential input in a wide variety of end uses. Rock salt is the least pure and least expensive type of salt available in the central United States. Rock salt generally is used in the central United States in applications where rock salt is capable of filling a salt need and cost is the primary purchasing criterion, such as highway deicing and certain agricultural feed applications.

12. Deicing rock salt, which is applied to roadways to melt ice and snow, is the largest segment of rock salt usage by volume. Deicing rock salt generally is of a medium grain size and contains an anti-caking additive. Government entities, such as state departments of transportation and city street departments, are the primary purchasers of deicing salt. Purchases are typically made annually on a competitive bid basis. Deicing salt is considered an indispensable safety item. Alternative deicing products are significantly more expensive than rock salt in the central United States, and

deicing purchasers in the central United States do not view any other means of ice control as an economic substitute for rock salt. A small but significant nontransitory increase in the price of deicing rock salt would not cause these purchasers to replace rock salt with other deicing products.

13. Agricultural applications account for the second largest segment of rock salt usage by volume in the central United States. Agricultural rock salt generally is of a fine grain size. Salt is an essential nutrient in the diets of livestock and poultry. Agricultural salt purchasers include feed mix companies, agricultural cooperatives and farmers. The agricultural purchasers in the central United States who currently buy rock salt do so because rock salt meets their salt specifications and is significantly less expensive than other available types of salt. A small but significant nontransitory increase in the price of rock salt for agricultural applications would not cause these purchasers to replace rock salt with other types of salt.

14. Transportation costs comprise a substantial portion of the delivered price of rock salt and limit the area which is served by each rock salt mine. The only rock salt mines capable of serving the West Central market at competitive delivered prices are located in Kansas. Rock salt mines capable of serving the East Central market are located in two production regions: Kansas and Louisiana. Louisiana producers barge rock salt up the Mississippi River system to serve

customers located in the East Central market, while Kansas producers ship rock salt by rail or truck transportation to customers located throughout the West Central and East Central markets.

15. Only three rock salt mines are located in Kansas, the American mine, the Carey mine and one independently owned mine. Domtar's Cote Blanche mine is one of only three rock salt mines located in Louisiana.

16. The delivered price of Kansas deicing rock salt in the West Central market, and the delivered price of Kansas and Louisiana deicing rock salt in the East Central market, are substantially less than the delivered prices of other types of salt, such as vacuum pan evaporated salt, solar salt, or rock salt imported from Chile or produced at mines in other North American production regions. The delivered price of Kansas agricultural rock salt in the West Central market, and the delivered price of Kansas and Louisiana agricultural rock salt in the East Central market, are substantially less than the delivered prices of all other types of salt. In the event of a small but significant nontransitory increase in the f.o.b. mine prices of Kansas deicing and agricultural rock salt destined for the West Central market, or of Kansas and Louisiana deicing and agricultural rock salt destined for the East Central market, the delivered prices for that salt in the respective markets would continue to be substantially less than the

delivered prices of other types of salt. Increases in the f.o.b. mine prices of deicing and agricultural rock salt would cause few, if any, purchasers to begin substituting other types of salt for Kansas deicing or agricultural rock salt in the West Central market, or for Kansas and Louisiana deicing or agricultural rock salt in the East Central market.

17. The production and sale of deicing rock salt and the production and sale of agricultural rock salt constitute lines of commerce and relevant product markets for antitrust purposes. The West Central market and the East Central market constitute relevant geographic markets for antitrust purposes.

18. Before the American/Carey merger, American and Carey were direct competitors in the production and sale of deicing rock salt and agricultural rock salt throughout the West Central and East Central markets.

19. The West Central markets for the production and sale of deicing rock salt and agricultural rock salt were highly concentrated before the American/Carey merger and became substantially more concentrated as a result of the merger. The merger reduced from three to two the number of independent rock salt producers able to sell deicing rock salt and agricultural rock salt at competitive delivered prices throughout the West Central market. The HHI demonstrates the high concentration in the West Central markets for the production and sale of deicing rock salt and agricultural rock salt. If the HHI is calculated

by assigning equal market shares to the rock salt producers serving these markets, the American/Carey merger increased the HHI by 1667 points, from 3333 to 5000. If the HHI is calculated by assigning market shares based on the capacity of the rock salt producers serving the markets, the merger increased the HHI by 1280 points, from 3728 to 5008. A market with an HHI of 1800 points is considered highly concentrated.

20. The American/Carey merger has increased concentration in the East Central markets for the production and sale of deicing rock salt and agricultural rock salt by reducing from seven to six the number of firms supplying deicing rock salt throughout the market and from six to five the number of firms supplying agricultural rock salt throughout the market. If the HHIs for these East Central markets are calculated by assigning equal market shares to the firms able to supply the applicable type of rock salt throughout the market, the merger has increased the HHI for the deicing rock salt market by 238 points, from 1429 to 1667, and increased the HHI for the agricultural rock salt market by 333 points, from 1667 to 2000. If the HHIs are calculated by assigning market shares based on the capacity of the firms able to supply the applicable type of rock salt throughout the market, the American/Carey merger has increased the HHI for the deicing rock salt market by 46 points, from 2150 to 2196, and increased the HHI for the agricultural rock salt market by 73 points,



from 2736 to 2809. The acquisition by NAMSCO of Domtar's Cote Blanche mine would further increase concentration in the East Central market for the production and sale of deicing rock salt.

21. Substantial time and expense is required to establish a rock salt mine and a marketing and distribution network for the production and sale of deicing and agricultural rock salt. New entry into the production of deicing and agricultural rock salt for sale in the West Central and East Central markets is therefore unlikely to deter noncompetitive performance in these markets.

22. NAMSCO is engaged in business in numerous states, and it regularly sells substantial quantities of rock salt in interstate commerce through both American and Carey. NAMSCO's production and sale of rock salt is within the flow of and substantially affects interstate commerce.

23. At the time of the American/Carey merger, American and Carey were both engaged in interstate commerce, and their activities substantially affected interstate commerce. At the time of the merger, American and Carey both engaged in business in numerous states and both sold in interstate commerce substantial quantities of agricultural and deicing rock salt produced at their respective Kansas mines.

V.

VIOLATIONS ALLEGED

24. The American/Carey merger occurred on August 19, 1988, when an affiliate of American acquired all of the salt operations of Carey, including its rock salt mine and related assets in Hutchinson, Kansas. Following the merger, American and Carey became wholly-owned subsidiaries of NAMSCO.

25. The effect of the American/Carey merger may be to substantially lessen competition in the West Central and East Central markets for the production and sale of deicing rock salt and agricultural rock salt, in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) actual and potential competition between American and Carey in the production and sale of deicing rock salt and agricultural rock salt in the two geographic markets has been eliminated; and
- (b) competition generally in the production and sale of deicing rock salt and agricultural rock salt in the two geographic markets may be substantially lessened.

26. NAMSCO has expressed an interest in acquiring Domtar's Cote Blanche mine and related assets, and Domtar has previously expressed a willingness to sell its Cote Blanche mine and related assets to NAMSCO.

27. The effect of an acquisition by NAMSCO of Domtar's Cote Blanche mine and related assets may be to substantially lessen competition in the East Central market for the production and sale of deicing rock salt, in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) actual and potential competition between NAMSCO and Domtar in the production and sale of deicing rock salt in the East Central market would be eliminated; and
- (b) competition generally in the production and sale of deicing rock salt in the East Central market may be substantially lessened.

VI.

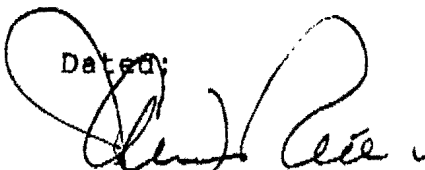
PRAYER

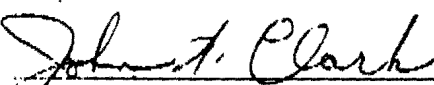
WHEREFORE, plaintiff prays:

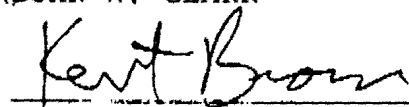
1. That the Court adjudge and decree that the American/Carey merger is in violation of Section 7 of the Clayton Act;
2. That the Court adjudge and decree that the acquisition by NAMSCO of Domtar's Cote Blanche mine and related assets would violate Section 7 of the Clayton Act;
3. That NAMSCO be ordered to divest to a qualified purchaser all of its interest in either American's rock salt business or Carey's rock salt business;

4. That NAMSCO be enjoined from acquiring Domtar's Cote Blanche mine unless NAMSCO first divests to two different qualified purchasers all of its interest in both American's rock salt business and Carey's rock salt business;
5. That the plaintiff have such other and further relief as the Court may deem just and proper; and
6. That the plaintiff recover the costs of this action.

Dated:

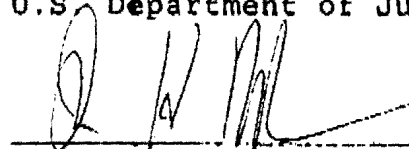
  
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