

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.)	

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of defendant North American Salt Company ("NAMSCO") in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On May 8, 1990, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, challenging the August 1988 acquisition of Carey Salt, Inc. ("Carey") by NAMSCO, through one of its predecessors, as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Both Carey and another NAMSCO subsidiary, American Salt Company ("American"), produce rock salt, a type of dry salt (sodium

chloride) that is mined from underground salt deposits for use in highway deicing, agricultural feed and other applications. The complaint alleges that the effect of NAMSCO's acquisition of Carey (hereinafter the "American/Carey merger") may be to substantially lessen competition in the production and sale of deicing rock salt and agricultural rock salt in two geographic markets in the the central United States: (1) a "West Central" market encompassing Kansas, Nebraska, western Missouri and Iowa, and central and eastern South Dakota; and (2) an "East Central" market encompassing eastern Missouri and Iowa, southern Minnesota, and western Illinois. The complaint requests that NAMSCO be ordered to divest to a qualified purchaser all of its interest in either Carey's rock salt mine and related assets in Hutchinson, Kansas or American's rock salt mine and related assets in Lyons, Kansas.

In addition, the complaint requests that NAMSCO be enjoined from acquiring another rock salt mine in which it has expressed interest, the Cote Blanche, Louisiana mine of Domtar Inc. ("Domtar"), unless NAMSCO first divests to two different qualified purchasers all of its interests in both Carey's and American's rock salt businesses in Kansas. The complaint alleges that Domtar sells deicing rock salt produced at its Cote Blanche mine in the East Central market in competition with deicing rock salt produced at Carey's and American's mines. NAMSCO's acquisition of Domtar's Cote Blanche mine

would further reduce competition in the East Central deicing rock salt market unless NAMSCO first divests its interests in both Carey's and American's rock salt businesses in Kansas.

The United States and NAMSCO have agreed that the proposed Final Judgment, which embodies the relief requested in the complaint, may be entered after compliance with the Antitrust Procedures and Penalties Act, unless the United States withdraws its consent. NAMSCO has agreed to comply with the provisions of the proposed Final Judgment pending its approval by the Court. Entry of the proposed Final Judgment will terminate this civil action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Judgment and to punish violations of the Judgment.

II.

EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS

1. The Acquisition

The American/Carey merger occurred on August 19, 1988, when an affiliate of American acquired all of the salt operations of Carey. Following the merger, American and Carey became wholly-owned subsidiaries of NAMSCO's predecessor, Carey Salt Holdings, Inc. ("CSH") (hereinafter "NAMSCO" refers to NAMSCO, CSH and all other predecessors of NAMSCO). The American/Carey merger combined under NAMSCO's ownership Carey's rock salt mine and other salt operations in Hutchinson, Kansas and American's rock salt mine and other salt operations in

Lyons, Kansas, about 30 miles from Hutchinson. In 1988, NAMSCO reported net sales of about \$51 million from its salt operations.

On March 30, 1990, NAMSCO purchased the Canadian salt production facilities and related distribution assets of 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. However, NAMSCO and Domtar restructured the transaction to exclude the Cote Blanche mine and related assets in order to resolve antitrust concerns expressed by the United States Department of Justice. NAMSCO continues to express an interest in acquiring the Cote Blanche mine, and Domtar has previously expressed a willingness to sell the mine to NAMSCO.

2. Market Conditions

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.

The largest segment of rock salt usage by volume in the central United States is deicing salt, which is applied to roadways to melt ice and snow. 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. These government entities typically purchase deicing salt 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 area do not view any other means of ice control as an economic substitute for rock salt.

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 purchasers in the central United States who currently buy rock salt for animal feed applications do so because rock salt meets their salt specifications and is significantly less expensive than other available types of salt. A small but significant increase in the price of agricultural rock salt would not cause these purchasers to replace rock salt with other types of salt.

Transportation costs comprise a substantial portion of the delivered price of rock salt and limit the area that is served by the mines in each rock salt production region. The mines in the Kansas and Louisiana production regions are the only mines capable of serving customers in the central United States with deicing and agricultural rock salt at competitive

delivered prices. Carey's mine in Hutchinson and American's mine in Lyons are two of only three rock salt mines in Kansas. There are also three rock salt mines in Louisiana, including Domtar's Cote Blanche mine.

The Kansas mines ship rock salt by rail or truck transportation throughout the West Central and East Central markets. The Louisiana mines barge rock salt up the Mississippi River to customers located in the East Central market. The Kansas and Louisiana mines compete with one another in the East Central market, but the Kansas mines are the only mines able to serve the West Central market.

The delivered prices of Kansas deicing and agricultural rock salt in the West Central market, and the delivered prices of Kansas and Louisiana deicing and agricultural rock salt in the East Central market, are substantially less than the delivered prices of other types of salt, including vacuum pan evaporated salt, solar salt, imported rock salt, and rock salt from other North American production regions. These other types of salt would continue to be substantially more expensive than rock salt in the central United States in the event of small but significant nontransitory increases 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.

Deicing and agricultural purchasers of Kansas and Louisiana rock salt in the central United States buy such rock salt primarily because it is the least expensive salt available to them. Because Kansas and Louisiana rock salt would continue to be the least expensive available salt in the event of small but significant nontransitory increases in the f.o.b. mine prices, such price increases would cause few, if any, deicing and agricultural purchasers to begin substituting other types of salt for Kansas rock salt in the West Central market, or for Kansas and Louisiana rock salt in the East Central market.

The complaint alleges that 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 complaint further alleges that the West Central market and the East Central market constitute relevant geographic markets for antitrust purposes.

The West Central markets for the production and sale of deicing rock salt and agricultural rock salt, served by the Kansas mines, 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 serve these markets at competitive delivered prices. The resulting increase in concentration is demonstrated by the Herfindahl-Hirschman Index ("HHI"), an indicator of market concentration. If the HHI is calculated by assigning equal market shares to the firms that serve the West Central deicing

and agricultural rock salt markets, the merger increased the HHI by 1667 points, from 3333 to 5000. If the HHI is calculated by assigning market shares based on the relative capacity of each firm that serves 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.

In the East Central markets, served by the Kansas and Louisiana mines, the American/Carey merger has increased concentration by reducing from seven to six the number of firms able to supply deicing rock salt throughout the area, and from six to five the number of firms able to supply agricultural rock salt throughout the area. The merger has increased the HHI for the East Central deicing rock salt market by 238 points, from 1429 to 1667 (if equal market shares are assigned to the firms serving the market), or by 46 points, from 2150 to 2196 (if market shares are assigned based on the relative capacity of each firm serving the market). The HHI for the East Central agricultural rock salt market has increased by 333 points, from 1667 to 2000 (if equal shares are assigned to the firms serving the market), or by 73 points, from 2736 to 2809 (if shares are assigned based on the firms' relative capacities). The acquisition by NAMSCO of Domtar's Cote Blanche mine would further increase concentration in the East Central deicing rock salt market.

The complaint alleges that 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 therefore is unlikely to deter noncompetitive performance in the West Central and East Central rock salt markets.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT AND ITS ANTICIPATED EFFECTS ON COMPETITION

The United States brought this action because, as described above, 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. The proposed Final Judgment will restore competitive conditions in these deicing and agricultural rock salt markets to the status quo that existed before the American/Carey merger by requiring NAMSCO to divest one of its two Kansas rock salt businesses to a qualified purchaser approved by the United States. The proposed Judgment provides additional protection for competitive conditions in the East Central deicing rock salt market by enjoining NAMSCO from acquiring Domtar's Cote Blanche mine unless NAMSCO first divests to two different qualified purchasers all of its interests in both of its Kansas rock salt businesses.

Section IV.A. of the proposed Final Judgment requires NAMSCO to divest to a qualified purchaser all of its interest in either Carey's rock salt mine and related assets in Hutchinson (the "Hutchinson rock salt business) or American's rock salt mine and related assets in Lyons (the "Lyons rock

salt business"). Section II.J. defines "qualified purchaser" as a prospective purchaser of the Hutchinson or Lyons rock salt business who demonstrates to the satisfaction of the United States that (1) it is purchasing the business for the purpose of competing effectively in the production and sale of rock salt, (2) it has the managerial, operational and financial capability to operate the purchased business as an effective competitor in the production and sale of rock salt, and (3) following the purchase, it will not have or plan to have any interest in any other Kansas or Louisiana rock salt mine. The United States' review of the purchaser's qualifications under this provision will ensure that the rock salt business is divested to a firm possessing the intention and ability to compete effectively in the production and sale of deicing and agricultural rock salt in the East Central and West Central markets.

The proposed Judgment specifies that a divestiture may not be made to Cargill, Inc. without the prior written approval of the United States. In addition, Section VIII. prohibits NAMSCO from financing all or any part of any purchase made pursuant to the proposed Judgment without the United States' prior written consent.

Section IV.G. of the proposed Judgment obligates NAMSCO to use its best efforts to accomplish the required divestiture quickly. If NAMSCO has not accomplished the divestiture by August 15, 1990, or within any extension granted by the United States in the event of ongoing negotiations between NAMSCO and

a prospective purchaser, then Stephens Inc. of Little Rock, Arkansas will be appointed to act as trustee with full power and authority to effect the required divestiture. The trustee will divest the Hutchinson rock salt business, unless the United States and NAMSCO have agreed that the trustee will instead divest the Lyons rock salt business. Under Sections V.A. and V.B., the trustee must use its best efforts to accomplish the divestiture within six months, at such price and on such terms as are then obtainable.

Pursuant to Section VI.G. of the proposed Judgment, if the trustee has not accomplished the divestiture within six months after its appointment, the trustee must file with the Court and the parties a report detailing the trustee's efforts to accomplish the divestiture, its views as to why the divestiture has not been accomplished, and its recommendations for any action necessary to complete the divestiture. The United States and NAMSCO will have an opportunity to make additional recommendations to the Court. The Court will then extend the trust and the term of the trustee's appointment and enter whatever additional orders may be necessary to ensure that the divestiture is accomplished within the next three months or as soon thereafter as possible. The Court's orders may include supplementing the rock salt business to be divested with additional assets or facilities of NAMSCO. The trust will not terminate until the required divestiture is consummated.

Section VI.A. of the proposed Judgment enjoins NAMSCO from acquiring any interest in Domtar's Cote Blanche mine and related assets. As provided in Section VI.B., the injunction will expire in the event that NAMSCO (1) completes the divestiture ordered in Section IV.A., and (2) also divests to a second qualified purchaser all of its interest in whichever of its two rock salt businesses it has not already divested pursuant to Section IV.A.

Section VII.A. of the proposed Judgment establishes the procedure for review and approval of any proposed divestiture under Section IV.A. or Section VI.B.(2). NAMSCO or the trustee, whichever is then responsible for effecting a divestiture, must notify the United States of any proposed divestiture. The United States may then request additional information from the trustee, NAMSCO, and the proposed purchaser. Within thirty days after receiving notice of the proposed divestiture or within fifteen days after receiving all of the additional requested information, whichever is later, the United States will notify NAMSCO and the trustee (if applicable) if it objects to the proposed divestiture. If the United States objects, then the divestiture may not be consummated. If the United States does not object to a proposed divestiture, then the divestiture may be consummated, subject only to NAMSCO's limited right to object to a divestiture proposed by the trustee on the ground of the trustee's malfeasance, as specified in Section V.B.

The proposed Judgment contains several provisions that are intended to facilitate a purchaser's efforts to assume control over the divested business and begin competing effectively in the production and sale of rock salt to all of the customers that were served by the business before the divestiture. Once a divestiture has been consummated under Section IV.A., NAMSCO is obligated by Section IV.D. of the proposed Judgment to provide the purchaser with any requested technical assistance that is useful in the operation of the divested business. The purchaser must reimburse NAMSCO for its costs in providing such services. In addition, within one month of the divestiture's consummation, Section IV.E. requires NAMSCO to notify customers of the divested business that the business has been sold to the purchaser. NAMSCO must also provide the purchaser with information about any NAMSCO employees who have responsibilities related to the divested business (including sales personnel), and must make such employees available for interviews by the purchaser, during office hours, within the twenty-day period immediately preceding the closing date of the divestiture.

Until the divestiture ordered in Section IV.A. is completed, Section IX. of the proposed Judgment requires NAMSCO to preserve all facilities and assets included in the Hutchinson and Lyons rock salt businesses and refrain from taking any action that would jeopardize the sale of either business.

Section XII. provides that the proposed Judgment will expire on the tenth anniversary of the completion of the divestiture ordered in Section IV.A.

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 attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), entry of the proposed Final Judgment would have no prima facie effect in any subsequent private lawsuit that may be brought against NAMSCO.

V.

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

The United States and NAMSCO have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least 60 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 wants to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. 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:

Kent Brown, Chief
Midwest Field Office
Antitrust Division
U.S. Department of Justice
Room 3820, Kluczynski Federal Building
230 South Dearborn Street
Chicago, Illinois 60604

Under Section XI. of the proposed Final Judgment, the Court will retain jurisdiction over this matter for the purpose of enabling the United States or the defendants to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment provides all of the relief necessary to cure the Clayton Act violation alleged in the complaint. The American/Carey merger eliminated one competitor in the West Central and East Central markets for the production and sale of deicing rock salt and agricultural rock salt. The divestiture to a qualified purchaser of one of NAMSCO's rock salt mines in Kansas, as ordered in Section IV.A. of the proposed Judgment, will create a new competitor in these deicing and agricultural rock salt markets, thereby restoring competitive conditions in the markets to their premerger status. The proposed Judgment further protects competition in the East Central deicing rock salt market by ensuring that NAMSCO will not acquire Domtar's mine in Cote Blanche, Louisiana so long as NAMSCO retains any ownership interest in either of its Kansas mines.

The United States did not seriously consider any alternatives to the proposed Final Judgment. Although the proposed Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act, 15 U.S.C. § 15(b)-(h), have been satisfied, the public will benefit immediately from the safeguards in the Judgment because NAMSCO has stipulated to comply with the Judgment's terms pending its entry by the Court.

VII.

DETERMINATIVE DOCUMENTS

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Respectfully submitted,

Dated:

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