UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, 1401 H Street, NW Suite 3000 Washington, DC 20530 Plaintiff, v. IMETAL, Tour Maine-Montparnasse 33, Avenue du Maine Paris, France DBK MINERALS, INC., Rt. 1 - Box 468D Dry Branch, GA 31020 ENGLISH CHINA CLAYS, PLC, 1015 Arlington Business Park Reading, England RG74SA, and ENGLISH CHINA CLAYS, INC., 100 Mansell Court East Suite 300 Roswell, Georgia 30076 Defendants.	)	CASE NUMBER 1:99CV01018 JUDGE: Gladys Kessler DECK TYPE: Antitrust DATE STAMP: 4/26/99

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendants.

1. The United States seeks to prevent the proposed acquisition by defendant Imetal of defendant English China Clays, plc ("ECC"), which would substantially lessen competition in four separate markets. Imetal and ECC are two of five U.S. producers of water-washed kaolin; two of four U.S. producers of calcined kaolin for use in paper-making; the only two producers in

the southeastern United States of ground calcium carbonate (“GCC”) in slurry form for the paper industry ("paper-grade GCC"); and the two leading U.S. producers of fused silica. If the acquisition were permitted, Imetal would account for over 40 percent of the water-washed and calcined kaolin sold in the United States for paper-making; would own or have an interest in all of the paper-grade GCC production capacity in the southeastern United States; and would account for more than 80 percent of the fused silica produced in the United States.

2. The acquisition would eliminate the direct competition between Imetal and ECC that has benefited consumers by giving them the lowest possible prices, more innovation, and better quality products. Imetal’s acquisition of ECC substantially increases the opportunity for the remaining kaolin producers to coordinate to raise prices to the detriment of consumers. Because of the small number of competitors, higher prices are likely to result from the elimination of a significant competitor in the kaolin markets even without coordination. In addition, due to the dominant position Imetal would have with respect to paper-grade GCC sold in the southeastern United States and with respect to fused silica, the threat of unilateral price increases in these markets as a result of this acquisition is particularly high.

I.

JURISDICTION AND VENUE

3. This action is filed by the United States under Section 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.

4. Imetal and ECC produce and sell water-washed kaolin, calcined kaolin, paper-grade GCC, fused silica and other products in interstate commerce. The Court has subject matter jurisdiction over this action and 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. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(d).

II.

THE DEFENDANTS

6. Imetal is a French corporation with headquarters in Paris, France. It produces building materials, industrial metals, and industrial minerals worldwide. Imetal produces kaolin in the United States through its DBK Minerals, Inc. subsidiary ("DBK") at a plant in Dry Branch, Georgia and at a plant in Jeffersonville, Georgia. Imetal produces dry-processed GCC through The Georgia Marble Company ("Georgia Marble"), a subsidiary of DBK, at a number of locations throughout the United States, including its plant in Sylacauga, Alabama. It produces paper-grade GCC through a joint venture, Alabama Carbonates, L.P., in Sylacauga, Alabama, in which Georgia Marble has a 50 percent ownership interest. Imetal produces fused silica through its C-E Minerals, Inc. subsidiary at a plant in Greeneville, Tennessee. In 1997, Imetal reported total sales in excess of 10 billion French francs.

7. ECC is a United Kingdom Corporation with headquarters in Reading, England. It produces industrial minerals, pigments and chemicals worldwide. ECC produces kaolin in the United States through its English China Clays, Inc. subsidiary at two plants in Sandersville, Georgia and at a plant in Wrens, Georgia. ECC produces paper-grade GCC at a plant in Sylacauga, Alabama and at plants in Maryland and Wisconsin. In 1998, ECC purchased Minco

Acquisition Corporation, a company that produces fused silica and fused magnesia at plants in Midway, Tennessee. ECC reported total sales of about 850 million pounds Sterling in 1997.

III.

TRADE AND COMMERCE

A. The Relevant Product Markets

Water-Washed Kaolin

8. Kaolin is a clay consisting of a crystalline hydrated aluminum silicate, usually found as the mineral kaolinite. Much of the world's highest quality kaolin deposits are found in Georgia. Crude kaolin is usually mined in open pit quarries, and processed using crushing and grinding equipment. Water-washed kaolin is treated with water and flotation, which removes impurities and separates the kaolin by particle size.

9. Water-washed kaolin is used as a pigment in coating formulations for printing paper and as a filler in the body of paper. It is also used as a filler in paints, adhesives, caulks and sealants. Water-washed kaolin is used in paper because of its optical properties (i.e., brightness, gloss and opacity). Water-washed kaolin also adds ink receptivity, smoothness, and strength to paper. Annual domestic sales of water-washed kaolin for use in paper-making are in excess of $250 million.

10. For many paper companies, no good substitute exists for water-washed kaolin. Since GCC and precipitated calcium carbonate ("PCC") are not suitable generally for paper made under an acid process, they cannot be substituted for water-washed kaolin used as filler in paper made in an acidic solution. GCC and PCC have been substituted for water-washed kaolin used as filler in paper made in an alkaline process, but a major segment of the paper industry

does not use the alkaline process. While GCC, and to some extent PCC, are used in paper coating formulations, they are used as a complement, rather than a replacement, for water-washed kaolin.

11. A small but significant increase in the price of water-washed kaolin would not cause a significant number of paper customers currently purchasing water-washed kaolin to substitute other products.

12. The development, production, and sale of water-washed kaolin is a line of commerce and a relevant product market within the meaning of the Clayton Act.

Calcined Kaolin

13. Calcined kaolin is water-washed kaolin that has been further processed by calcining or baking at temperatures of about 1000 degrees Centigrade under controlled conditions. The heat treatment alters the structure of the water-washed kaolin, resulting in a whiter and brighter kaolin that has a higher refractive index.

14. Because of its higher brightness, calcined kaolin is used in paper-making applications where greater opacity than that provided by water-washed kaolin is required. It is also used as a filler in specialty applications such as paints. Calcined kaolin costs more than twice as much as regular water-washed kaolin. Annual domestic sales of calcined kaolin for use in paper-making are estimated to be well in excess of $100 million.

15. The production of calcined kaolin requires a significant investment in calciners. Constructing an economical calciner for paper-making costs over $30 million and takes more than two (2) years.

16. For many paper customers, no good substitute exists for calcined kaolin. A small but significant increase in the price of calcined kaolin would not cause a significant number of paper customers currently purchasing calcined kaolin to substitute other products.

17. The development, production, and sale of calcined kaolin for paper-making is a line of commerce and a relevant product market within the meaning of the Clayton Act.

GCC for Paper Coating Applications

18. Natural calcium carbonate is typically found in the ground, in its purest form in marble or limestone deposits. The stone is quarried and then processed through a series of screening and dry grinding steps into particles of various sizes, ranging down to about two (2) microns. The dry-processed GCC can also be further ground using a wet-grinding process, into particle sizes as small as one (1) micron or less. GCC varies in color depending on the reserves from which it is quarried. The purest GCC comes from calcitic marble deposits. These high bright deposits are scarce, and some of the finest high bright deposits are located in the Sylacauga, Alabama area.

19. The vast majority of GCC sold for paper-making is wet-processed and sold in slurry form. Paper-grade GCC generally requires the brightest white GCC. Based on information provided by the defendants, annual domestic sales of paper-grade GCC are in excess of $60 million.

20. Most of the GCC used in paper-making is used for coating applications, while most of the PCC used in paper-making is used as filler. GCC is preferred over PCC in coating applications because of its runnability, higher printability and gloss.

21. A small but significant increase in the price of GCC would not cause a significant number of paper customers currently purchasing GCC for coating applications to substitute other products.

22. The development, production, and sale of GCC for paper coating applications is a line of commerce and a relevant product market within the meaning of the Clayton Act.

Fused Silica

23. Fused silica is formed by melting pure non-crystalline silicon dioxide at high temperatures. This process creates a material with a low coefficient of thermal expansion which improves resistance to extreme heat, corrosion, abrasion, and electrical non-conductivity. Fused silica is used in sophisticated applications such as investment castings and epoxy molding compounds used in the electronics industry, as well as in refractory applications. According to information provided by the defendants, domestic sales of fused silica are between $40 and $50 million annually.

24. There are no economical substitutes for fused silica. A small but significant increase in the price of fused silica would not cause a significant number of current fused silica customers to substitute other products.

25. The production and sale of fused silica is a line of commerce and a relevant product market within the meaning of the Clayton Act.

B. The Relevant Geographic Markets

Water-Washed and Calcined Kaolin

26. Water-washed kaolin and calcined kaolin producers sell to paper companies located throughout the United States. Imports by foreign producers of water-washed kaolin and

calcined kaolin for use in paper-making account for a very small percent of sales in the United States. Except for some Brazilian deposits, most kaolin deposits located outside the United States are of lower quality and are more expensive to mine than the deposits in Georgia.

27. The United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act. Throughout the United States, customers are likely to pay higher prices for water-washed and calcined kaolin for use in paper-making as a result of the acquisition, and consumers would not be able to substitute products sold by foreign producers in the face of a small but significant price increase by domestic producers.

GCC for Paper Coating Applications

28. ECC produces GCC for paper coating applications at its plant in Sylacauga, Alabama. Imetal produces dry-processed GCC at its plant in Sylacauga, Alabama, that is supplied as feedstock to the wet slurry processing plant, also located in Sylacauga, of Alabama Carbonates, L.P., a joint venture owned 50 percent each by Imetal and Omya, Inc. The joint venture plant processes the feedstock into paper-grade GCC for sale in thirteen (13) southeastern states: North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Kentucky, Mississippi, Louisiana, Arkansas, Missouri, Texas, and Virginia (hereinafter the "Southeast")

29. Paper mills located in the Southeast rely upon paper-grade GCC plants in this area for their supply of paper-grade GCC for coating applications. Due to high transportation costs, very little paper-grade GCC is shipped into the Southeast from plants located outside the Southeast. Paper-grade GCC producers located outside the Southeast are unlikely to expand sales substantially into the Southeast.

30. The Southeast is a relevant geographic market within the meaning of Section 7 of the Clayton Act. Customers located in the Southeast are likely to pay higher prices for GCC for paper coating applications as a result of this acquisition, and they would not be able to substitute products sold by producers outside the Southeast in the face of a small but significant price increase by producers in the Southeast.

Fused Silica

31. Imetal and ECC sell fused silica to customers located throughout the United States. Imports by foreign producers of fused silica are limited in quantity, and there are virtually no imports of fused silica used in investment castings or epoxy molding compounds.

32. The United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act. Throughout the United States, customers are likely to pay higher prices for fused silica as a result of the acquisition, and consumers would not be able to substitute products sold by foreign producers in the face of a small but significant price increase by domestic producers.

IV.

ANTICOMPETITIVE EFFECT AND ENTRY

Water-Washed Kaolin

33. The proposed acquisition will significantly reduce competition in the production and sale of water-washed kaolin in the United States. ECC accounts for about 27 percent of domestic water-washed kaolin capacity, while Imetal accounts for about 15 percent. After the acquisition, the combined entity will have about a 42 percent market share. Post-merger, two producers would control more than 65 percent of the domestic water-washed kaolin market.

34. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), defined and explained in Appendix A, combining Imetal's and ECC's businesses would substantially increase the already high concentration in the water-washed kaolin market. Based on 1998 capacity, the HHI for the water-washed kaolin market is about 2130. After the proposed acquisition, the HHI would increase by about 810 points, resulting in a post-merger HHI of about 2940.

35. The proposed acquisition will facilitate coordinated pricing activity among water-washed kaolin producers and will increase the likelihood of anticompetitive price increases for consumers. The products of the various water-washed kaolin producers are only slightly differentiated, and price is an important dimension of competition. The combination of Imetal and ECC's water-washed kaolin businesses would result in a substantial reduction in competition, increase the risk of coordinated action, and likely result in higher water-washed kaolin prices.

36. Significant new entry into the development, production and sale of water-washed kaolin is difficult, time consuming, and costly. Constructing a water-washed kaolin plant could cost $100 million or more and take a minimum of two years. In addition, entry into the production of water-washed kaolin requires the location, testing and acquisition of substantial kaolin reserves to justify the investment in the plant. Therefore, new entry is unlikely to occur and unlikely to be timely or sufficient to defeat a post-acquisition water-washed kaolin price increase.

Calcined Kaolin

37. The proposed acquisition will significantly reduce competition in the production and sale of calcined kaolin for use in paper-making in the United States. ECC accounts for about 28 percent of domestic calcined kaolin capacity used in paper-making, while Imetal accounts for about 15 percent. After the acquisition, the combined entity will have about a 43 percent market share. Post-merger, two producers would control about 85 percent of the domestic calcined kaolin capacity used in paper-making.

38. Combining Imetal's and ECC's businesses would substantially increase the already high concentration in the market for calcined kaolin used in paper-making. Based on 1998 capacity, the HHI for this market is about 2970. After the proposed acquisition, the HHI would increase by about 840 points, resulting in a post-merger HHI of about 3810.

39. The proposed acquisition will facilitate coordinated pricing activity among producers of calcined kaolin used in paper-making and will increase the likelihood of anticompetitive price increases for consumers. The products of the various calcined kaolin producers are only slightly differentiated, and price is an important dimension of competition. The combination of Imetal's and ECC's calcined kaolin businesses would result in a substantial reduction in competition, increase the risk of coordinated action, and likely result in higher prices of calcined kaolin used in paper-making.

40. Significant new entry into the development, production and sale of calcined kaolin is very difficult, time consuming, and costly. Not only would an entrant not already in the water-washed kaolin business have to undergo the same investment in time and money to obtain reserves and build a plant as would an entrant into water-washed kaolin, but it would also have

to invest the time and money to build calciners. Construction of one calciner (with the necessary attendant infrastructure) could cost a minimum of $30 million and require at least two years for permitting and construction. However, to be an effective competitor, any new entrant would require at least two calciners in order to have the flexibility that paper customers require, and thus the cost of entry would be higher. Therefore, new entry is unlikely to occur and unlikely to be timely or sufficient to defeat a post-acquisition increase in the price of calcined kaolin for paper-making.

GCC for Paper Coating Applications

41. The proposed acquisition will significantly reduce competition in the production and sale of GCC for paper coating in the Southeast. ECC and Imetal are the only two firms that process high quality GCC reserves for making paper-grade GCC in the Southeast. ECC and Alabama Carbonates, in which Imetal has a 50 percent interest, are the only two firms that manufacture and sell paper-grade GCC in the Southeast. The combination of Imetal and ECC would result in a substantial reduction in competition, increasing the risk of coordinated action, and likely result in higher prices of paper-grade GCC in the Southeast.

42. Significant new entry into the production and sale of paper-grade GCC is very difficult. Reserves that contain the high-brightness characteristics required for paper-grade GCC are scarce and may be unavailable in the Southeast. It could cost at least $20 million and take a minimum of two years to acquire the necessary permits and establish the infrastructure to extract and dry process those reserves for use in paper-grade GCC at a minimum efficient scale. Constructing a wet-processing facility of minimum efficient scale to make and sell the paper-grade GCC in slurry form could cost many times that amount. Therefore, new entry is unlikely

to occur and unlikely to be timely or sufficient to defeat a post-acquisition increase in the price of paper-grade GCC in the Southeast.

Fused Silica

43. The proposed acquisition will significantly reduce competition in the production and sale of fused silica in the United States. Based on information provided by the defendants, ECC accounts for more than 25 percent of domestic fused silica production, while Imetal accounts for over 55 percent. After the acquisition, the combined entity will account for more than 80 percent of domestic production of fused silica.

44. Combining Imetal's and ECC's businesses would substantially increase the already high concentration in the domestic fused silica market. Based on information provided by ECC concerning estimated 1997 sales, the HHI for the fused silica market is about 2700. After the proposed acquisition, the HHI would increase by more than 1800 points, resulting in a post-merger HHI in excess of 4600. The combination of Imetal's and ECC's fused silica businesses would result in a substantial reduction in competition and likely result in higher fused silica prices.

45. Aluchem, Inc., an industrial minerals company, has announced plans to build a new plant in Alabama that will be capable of making fused silica. This planned entry by Aluchem, Inc. is not likely to be sufficient to deter an anticompetitive price increase, however. New entry is very difficult, time consuming, and costly, and sufficient new entry is unlikely to occur and unlikely to be timely or sufficient to defeat a post-acquisition fused silica price increase.

V.

VIOLATIONS ALLEGED

46. Imetal has announced a cash tender offer to acquire all of the stock of ECC, thus gaining ownership of all of ECC's businesses worldwide, including its United States operations producing and selling water-washed kaolin, calcined kaolin, paper-grade GCC, and fused silica.

47. The effects of the proposed transaction may be substantially to lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

48. The transaction will have the following effects, among others:

a. actual and potential competition between Imetal and ECC in the markets for water-washed kaolin, calcined kaolin, paper-grade GCC, and fused silica will be eliminated;

b. competition generally in the above-described markets will be substantially lessened; and

c. prices consumers pay for water-washed kaolin, calcined kaolin, paper-grade GCC, and fused silica are likely to increase.

VI.

REQUESTED RELIEF

The United States requests:

1. That Imetal be temporarily restrained and preliminarily enjoined from carrying out its announced cash tender offer for ECC;

2. That the proposed acquisition of ECC by Imetal be adjudged to be in violation of Section 7 of the Clayton Act;

3. That Imetal be permanently enjoined from carrying out its announced cash tender offer for ECC, and that Imetal and ECC be permanently enjoined from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of Imetal and ECC;

4. That the United States be awarded the costs of this action; and

5. That the United States have such other relief as the Court may deem just and proper.

Dated: April 26, 1999

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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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 highly concentrated. Transactions that increase the HHI by more than 100 points in highly 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.