

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 88-8403
)	
ENGELHARD CORPORATION)	
and FILTROL CORPORATION,)	11/1/88
)	
Defendants.)	

VERIFIED 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 relief preventing Engelhard Corporation from acquiring Filtrol Corporation and complains and alleges as follows:

I. JURISDICTION AND VENUE

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

2. Engelhard Corporation is licensed to do business and is doing business in the Eastern District of Pennsylvania, within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

3. Filtrol Corporation is licensed to do business and is doing business in the Eastern District of Pennsylvania, within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

II. DEFINITIONS

4. "Fluid catalytic cracker," "FCC," or "cat cracker" means certain large petroleum refining equipment that is used to break down or "crack" heavy hydrocarbon molecules contained in crude oil. Fluid catalytic crackers cost many millions of dollars and are found in most modern petroleum refineries. Fluid catalytic cracking is used to produce approximately one-third of all gasoline refined in the United States.

5. "FCC catalyst" means any chemical catalyst used in conjunction with a fluid catalytic cracker to break down heavy hydrocarbon molecules into lighter molecules that make up light petroleum products like gasoline.

6. "HHI" means the Herfindahl-Hirschman Index, a 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 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). 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.

III. THE DEFENDANTS

7. Engelhard Corporation ("Engelhard") is made a defendant. Engelhard is a corporation organized and existing under the laws of the state of Delaware, with its principal offices in Edison, New Jersey. Engelhard manufactures FCC catalyst at a plant in Attapulgus, Georgia. Engelhard's sales of FCC catalyst in 1987 were \$92 million, and its market share of thirty-two percent makes it the second largest producer of FCC catalyst in the United States. Engelhard is engaged in interstate commerce and in activities substantially affecting interstate commerce.

8. Filtrol Corporation ("Filtrol") is made a defendant. Filtrol is a corporation organized and existing under the laws of the state of Delaware, with its principal offices in Oakland, California. It is a wholly-owned subsidiary of Kaiser Clay & Catalyst Corporation, which in turn is a wholly-owned subsidiary of Kaiser Aluminum and Chemical Corporation, a wholly-owned subsidiary of KaiserTech Limited. Filtrol manufactures FCC catalyst in a plant near Los Angeles, California. Filtrol's sales of FCC catalyst in 1987 were \$57.4 million, and its market

share of eighteen percent makes it the third largest producer of FCC catalyst in the United States. Filtrol is engaged in interstate commerce and in activities substantially affecting interstate commerce.

IV. TRADE AND COMMERCE

9. The manufacturing process for FCC catalyst is highly sophisticated and specialized. Very greatly simplified, groups of zeolites, microscopic particles containing pores of definite size, are attached to a "matrix" or "binder," which forms the heart of the catalyst particle. FCC catalyst is used in cat crackers to facilitate the chemical reaction that breaks down heavy hydrocarbon molecules.

10. The buyers of FCC catalyst are petroleum refiners. Quality, consistency of performance, and yield of specific types of light petroleum products (such as gasoline) are the primary concerns among refiners in the selection of an FCC catalyst.

11. Only FCC catalyst can be used in the operation of a cat cracker. In addition, a small but significant and nontransitory increase in the price of FCC catalyst would not cause a significant number of customers to substitute any other method of producing gasoline for cat cracking.

12. No manufacturer of any other product could switch manufacturing facilities from their present use to the manufacture of FCC catalyst within one year in response to a

small but significant and nontransitory increase in the price of FCC catalyst.

13. Manufacturers of FCC catalyst sell and compete with one another for sales throughout the United States. No significant imports of FCC catalyst are made into the United States.

14. The manufacture and sale of FCC catalyst constitutes a line of commerce and a relevant product market, and the United States as a whole is a section of the country and a relevant geographic market in which FCC catalyst is sold, within the meaning of Section 7 of the Clayton Act.

15. Only five companies manufacture and sell FCC catalyst in the United States. The proposed acquisition of Filtrol by Engelhard would reduce the number to four and would make Engelhard the largest seller of FCC catalyst, controlling about one-half of all domestic sales. After the proposed acquisition, only two firms would control about eighty-four percent of all sales of FCC catalyst in the United States.

16. At present, the HHI for the manufacture and sale of FCC catalyst in the United States is 2636, based on 1987 sales. The proposed acquisition would increase the HHI by 1141 points to 3777. A market with a post-acquisition HHI of 1000 is moderately concentrated, and a market with a post-acquisition HHI of 1800 is highly concentrated.

17. Entry into the manufacture and sale of FCC catalyst is not easy because of, inter alia, the financial cost and the time

required to develop the necessary technology to produce FCC catalyst, to plan the manufacture and sale of FCC catalyst, to construct physical facilities suitable for the manufacture of FCC catalyst, to establish a technical sales force, and to market a new FCC catalyst. Foreign producers of FCC catalyst cannot make significant sales into the United States without constructing manufacturing facilities in the United States at a significant cost both in time and in money.

18. Manufacturers of FCC catalyst ship and sell substantial quantities of FCC catalyst across state lines to locations throughout the United States. They also purchase equipment and supplies from states other than the state in which their product is manufactured, and that equipment and those supplies are regularly shipped across state lines. The production and sale of FCC catalyst are within the flow of and substantially affect interstate commerce.

V. VIOLATION ALLEGED

19. On May 6, 1988, Engelhard and Filtrol entered into an option agreement pursuant to which Engelhard paid KaiserTech Limited for an option to purchase the voting stock in Filtrol for approximately \$50 million.

20. Engelhard has notified plaintiff that it may exercise its option to acquire Filtrol on Wednesday, November 2, 1988.

21. The effect of the acquisition of Filtrol by Engelhard may be substantially to lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) Actual and potential competition between Engelhard and Filtrol in the market for the manufacture and sale of FCC catalyst in the United States will be eliminated;

(b) Competition generally in the market for the manufacture and sale of FCC catalyst in the United States may be substantially lessened.

IV. PRAYER

WHEREFORE, plaintiff prays:

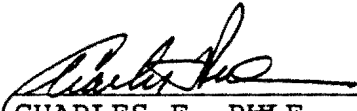
1. That preliminary and permanent injunctions be issued preventing and restraining the defendants and all persons acting on their behalf from exercising the option alleged in paragraph 19 or from going forward with any other plan or agreement by which Engelhard would merge with or acquire Filtrol, its capital stock, or any of its assets.

2. That the proposed acquisition be adjudged a violation of Section 7 of the Clayton Act.

3. That the plaintiff have such other and further relief as the nature of this case may require and as this Court may deem just and proper.

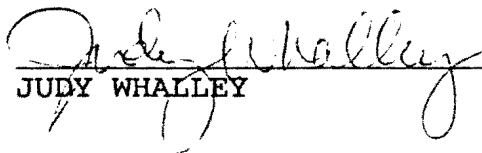
4. That the plaintiff recover the costs of this action.

Dated:



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VERIFICATION OF COMPLAINT

I, Robert W. Wilder, declare:

1. I am an attorney with the Antitrust Division of the United States Department of Justice, Antitrust Division.

2. The foregoing complaint for and on behalf of the United States of America was duly prepared under the direction of the Attorney General of the United States. The facts stated therein have been assembled by authorized employees and counsel for the United States of America. The allegations therein are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the above is true and correct.

ROBERT W. WILDER