

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
450 Fifth Street, NW
Washington, DC 20530,

Plaintiff,

v.

THIRD POINT OFFSHORE FUND, LTD.
c/o Cayman Corporate Center
27 Hospital Road
George Town, Grand Cayman KY1-9008
Cayman Islands,

Civil Action No.

THIRD POINT ULTRA LTD.
c/o Maples Corporate Services (BVI) Ltd.
Kingston Chambers, P.O. Box 173
Road Town, Tortola
British Virgin Islands,

THIRD POINT PARTNERS QUALIFIED
L.P.
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801, and

THIRD POINT LLC
390 Park Avenue, 19th Floor
New York, NY 10022,

Defendants.

**COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF FOR FAILURE
TO COMPLY WITH THE PREMERGER REPORTING AND WAITING
REQUIREMENTS OF THE HART-SCOTT RODINO ACT**

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil antitrust action to obtain monetary relief in the form of civil penalties and

injunctive relief against Defendants Third Point Offshore Fund, Ltd. (“Third Point Offshore”), Third Point Ultra Ltd. (“Third Point Ultra”), Third Point Partners Qualified L.P. (“Third Point Partners”) (collectively, “Defendant Funds”) and Third Point LLC (collectively with Defendant Funds, “Defendants”). Plaintiff alleges as follows:

INTRODUCTION

1. The Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a (“HSR Act” or “Act”) is an essential part of modern antitrust enforcement. It requires the buyer and the seller of voting securities or assets in excess of a certain value to notify the Department of Justice and the Federal Trade Commission and to observe a waiting period prior to consummating the acquisition. This waiting period provides the federal antitrust agencies with an opportunity to investigate and to seek an injunction to prevent the consummation of acquisitions that are likely to be anticompetitive.

2. Each Defendant Fund violated the HSR Act’s notice and waiting requirements when it acquired voting securities of DowDuPont Inc. (“DowDuPont”) on August 31, 2017, as a result of the consolidation of Dow Chemical Company (“Dow”) and E.I du Pont de Nemours and Company (“DuPont”).

3. The Court should assess an appropriate civil penalty and injunctive relief for these violations of the HSR Act’s requirements.

JURISDICTION AND VENUE

4. This Court has jurisdiction over Defendants and over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. § 18a(g), and pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and over Defendants by virtue of Defendants’ consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final

Judgment in this District.

5. Venue is properly based in this District by virtue of Defendants' consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

THE DEFENDANTS

6. Defendant Third Point Offshore is an offshore fund organized under the laws of the Cayman Islands with its registered office at Walkers Corporate Limited, Corporate Centre, 27 Hospital Road, George Town, Grand Cayman KY1-9008, Cayman Islands.

7. Defendant Third Point Ultra is an offshore fund organized under the laws of the British Virgin Islands with its registered office at Maples Corporate Services (BVI) Ltd., Kingston Chambers, P.O. Box 173, Road Town, Tortola, British Virgin Islands. The Investment Manager of Defendant Third Point Ultra has its office at 390 Park Avenue, 19th Floor, New York, NY 10022.

8. Defendant Third Point Partners is a limited partnership organized under the laws of the State of Delaware, with its principal place of business at Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

9. Defendant Third Point LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 390 Park Avenue, 19th Floor, New York, NY 10022. Defendant Third Point LLC makes all the investment decisions on behalf of the Defendant Funds, including deciding whether to file notifications pursuant to the HSR Act and preparing the notification forms on behalf of each of the Defendant Funds.

10. Defendants are engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the

Clayton Act, 15 U.S.C. §18a(a)(1). At all times relevant to this Complaint, each Defendant had total assets in excess of \$16.2 million.

OTHER ENTITIES

11. DowDupont is a corporation organized under the laws of the State of Delaware with its principal place of business at 2030 Dow Center, Midland, MI 48674. DowDuPont is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. §18a(a)(1). At all times relevant to this Complaint, DowDuPont had annual net sales in excess of \$161.5 million.

THE HART-SCOTT-RODINO ACT AND RULES

12. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the federal antitrust agencies and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a) and (b). The HSR Act's notification and waiting period requirements are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is intended to provide the federal antitrust agencies with an opportunity to investigate a proposed transaction and to determine whether to seek an injunction to prevent the consummation of a transaction that may violate the antitrust laws.

13. The HSR Act's notification and waiting period requirements apply to acquisitions that meet the HSR Act's thresholds, which are adjusted annually. During the period of 2017 relevant to this Complaint, the HSR Act's reporting and waiting period requirements applied to transactions that would result in the acquiring person holding more than \$80.8 million of voting securities, non-corporate interests, or assets, if certain size of person tests were met, except for

certain exempted transactions.

14. Pursuant to Section 7A(d)(2) of the HSR Act, 15 U.S.C. § 18a(d)(2), the Federal Trade Commission promulgated rules to carry out the purpose of the HSR Act. 16 C.F.R. §§ 801-03 (“HSR Rules”). The HSR Rules, among other things, define terms contained in the HSR Act.

15. Section 801.2(a) of the HSR Rules, 16 C.F.R. § 801.2(a), provides that “[a]ny person which, as a result of an acquisition, will hold voting securities” is deemed an “acquiring person.”

16. Section 801.1(a)(1) of the HSR Rules, 16 C.F.R. § 801.1(a)(1), provides that the term “person” means “an ultimate parent entity and all entities which it controls directly or indirectly.”

17. Section 801.1(a)(3) of the HSR Rules, 16 C.F.R. § 801.1(a)(3), provides that the term “ultimate parent entity” means “an entity which is not controlled by any other entity.”

18. Section 801.2(d)(1)(i) of the HSR Rules, 16 C.F.R. § 801.2(d)(1)(i), provides that “mergers and consolidations are transactions subject to the act and shall be treated as acquisitions of voting securities.”

19. Section 801.13(a) of the HSR Rules, 16 C.F.R. § 801.13(a), provides that “all voting securities of the issuer which will be held by the acquiring person after the consummation of an acquisition shall be deemed voting securities held as a result of the acquisition.”

20. Section 802.21 of the HSR Rules, 16 C.F.R. § 802.21, provides that, when a person files under the HSR Act to acquire voting securities from an issuer and observes the waiting period, that person may acquire additional voting securities of the same issuer for five years after the end of the waiting period so long as it does not exceed any higher threshold as a

result of the combined purchases.

21. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. For violations occurring on or after November 2, 2015, and assessed after August 1, 2016, the maximum amount of civil penalty is \$40,000 per day, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701 (further amending the Federal Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 81 Fed. Reg. 42,476 (June 30, 2016). As of January 22, 2018, the maximum penalty amount was further increased to \$41,484 per day for civil penalties assessed after that date. 83 Fed. Reg. 2903 (Jan. 22, 2018).

22. Section 7A(g)(2) of the Clayton Act, 15 U.S.C. § 18a(g)(2), provides that if any person fails substantially to comply with the notification requirement under the HSR Act, a district court may grant such equitable relief as the court in its discretion determines necessary or appropriate, upon application of the Federal Trade Commission or the Assistant Attorney General.

VIOLATIONS ALLEGED

23. Plaintiff alleges and incorporates paragraphs 1 through 22 as if set forth fully herein.

24. On December 11, 2015, Dow and DuPont entered into a Merger Agreement pursuant to which Dow and DuPont would consolidate into a single company, to be called DowDuPont.

25. On June 10, 2016, Dow and DuPont issued their Final Proxy

Statement/Prospectus for the consolidation. That document disclosed that, upon completion of the transaction, Dow and DuPont would cease to have their common stock publicly traded and that shareholders would own shares in DowDuPont and would not directly own any shares of Dow or DuPont.

26. On June 15, 2017, Dow and DuPont issued a joint press release stating that they had received antitrust clearance from the U.S. Department of Justice and that the transaction was on track to close in August 2017.

27. On August 4, 2017, Dow and DuPont issued a joint press release setting a closing date of August 31, 2017 for the transaction. The press release also stated that shares of Dow and DuPont would cease trading at the close of the New York Stock Exchange on August 31 and shares of DowDuPont will begin trading on September 1, 2017.

28. As of August 31, 2017, Defendant Third Point Offshore held 6,446,300 voting securities of Dow, Defendant Third Point Ultra held 4,376,813 voting securities of Dow, and Defendant Third Point Partners held 2,540,700 voting securities of Dow.

29. On August 31, 2017, Dow and DuPont completed the consolidation pursuant to the Merger Agreement of December 11, 2015, as amended on March 31, 2017. As a result of the consolidation, all holders of Dow and DuPont voting securities received voting securities of DowDuPont.

30. On August 31, 2017, each Defendant Fund received voting securities of DowDuPont valued in excess of \$80.8 million. Defendant Third Point Offshore acquired 6,446,300 voting securities of DowDuPont valued at approximately \$429.6 million. Defendant Third Point Ultra acquired 4,376,813 voting securities of DowDuPont valued at approximately \$291.7 million. Defendant Third Point Partners acquired 2,540,700 voting securities of

DowDuPont valued at approximately \$169.3 million.

31. Each Defendant Fund is its own ultimate parent entity within the meaning of the HSR Rules and had its own obligation to comply with the notification and waiting period requirements of the HSR Act and the HSR Rules.

32. The transactions described in Paragraph 30 were subject to the notification and waiting periods of the HSR Act and the HSR Rules. The HSR Act and HSR Rules in effect during the time period relevant to this proceeding required that each Defendant Fund file a notification and report form with the Department of Justice and the Federal Trade Commission and observe a waiting period before acquiring and holding an aggregate total amount of voting securities of DowDuPont in excess of \$80.8 million.

33. Previously, on April 7, 2014, each Defendant Fund had filed under the HSR Act to acquire voting securities of Dow and had observed the waiting period. Section 802.21 of the HSR Rules does not exempt the Defendant Funds' acquisitions of DowDuPont voting securities because DowDuPont is not the same issuer as Dow within the meaning of the HSR Rules. Among other things, for example, DowDuPont competes in additional lines of business from those in which Dow competed.

34. Although required to do so, each Defendant Fund failed to file and observe the waiting period prior to acquiring DowDuPont voting securities.

35. Defendant Third Point LLC had the power and authority to file a notification under the HSR Act on behalf of each of the Defendant Funds.

36. On November 8, 2017, each Defendant Fund filed a notification and report form under the HSR Act with the Department of Justice and the Federal Trade Commission reflecting their acquisitions of DowDuPont voting securities. The waiting period relating to these filings

expired on December 8, 2017.

37. Each Defendant Fund was in violation of the HSR Act each day during the period beginning on August 31, 2017, and ending on December 8, 2017.

38. Defendants are currently under a court decree, also in the District Court of the District of Columbia, resulting from allegations that they previously violated the HSR Act in connection with acquisitions of voting securities of Yahoo! Inc. (“Yahoo”). Specifically, on August 24, 2015, the United States filed a complaint for equitable relief alleging that Defendants’ acquisitions of Yahoo voting securities in August and September of 2011 violated the HSR Act. At the same time, the United States filed a Stipulation signed by Defendants and a proposed Final Judgment that included provisions imposing certain injunctive relief against Defendants, including the requirement that Defendants maintain a compliance program. That Final Judgment was entered by that court on December 18, 2015. *U.S. v. Third Point Offshore Fund, Ltd., et al.*, Case 1:15-CV-01366.

REQUEST FOR RELIEF

Wherefore, the Plaintiff requests:

1. That the Court adjudge and decree that each Defendant Fund violated the HSR Act, 15 U.S.C. § 18a, as alleged in this Complaint and that each Defendant Fund was in violation of the Act on each day of the period from August 31, 2017, through December 8, 2017;
2. That the Court order each Defendant Fund to pay to the United States an appropriate civil penalty as provided by the HSR Act, 15 U.S.C. § 18a(g)(1), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 84 FR 3980 (Feb. 14, 2019);

3. That the Court adjudge and decree that Defendant Third Point LLC had the power and authority to prevent the violations by the Defendant Funds and that relief against Third Point LLC is necessary and appropriate in order to ensure future compliance with the HSR Act by the Defendant Funds;

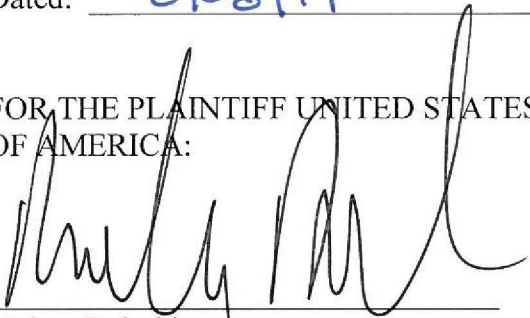
4. That the Court issue an appropriate injunction preventing future violations by Defendants as provided by the HSR Act, 15 U.S.C. § 18a(g)(2);

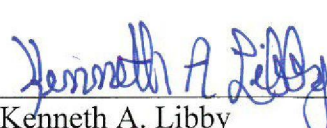
5. That the Court order such other and further relief as the Court may deem just and proper; and

6. That the Court award the Plaintiff its costs of this suit.

Dated: 8/28/19

FOR THE PLAINTIFF UNITED STATES
OF AMERICA:


Makan Delrahim
Assistant Attorney General
Department of Justice
Antitrust Division
Washington, DC 20530


Kenneth A. Libby
Jennifer Lee
Kelly Horne
Special Attorneys