PUBLIC

031-0191

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
ARCH COAL, INC., a corporation,	)	
NEW VULCAN COAL HOLDINGS, LLC, a limited liability company,	)	Docket No. 9316
and	)	
TRITON COAL COMPANY, LLC, a limited liability company.	)	

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondents Arch Coal, Inc. (“Arch”), a cor

11. On March 30, 2004, the Commission authorized the commencement of an action under Section 13(b) of the FTC Act to seek a preliminary injunction barring the Acquisition during the pendency of administrative proceedings.

RELEVANT MARKET

12. The relevant product markets in which the competitive effects of the proposed Acquisition may be assessed are SPRB coal and any narrower markets therein.

13. The price differential between 8800 Btu SPRB coal and 8400 Btu SPRB coal depends on the demand and supply balance for each of the two products. Consequently, supply restrictions by producers of 8800 Btu SPRB coal, relative to the growing demand for the product, can cause the price of 8800 Btu SPRB coal to increase relative to the price of 8400 Btu SPRB coal.

GEOGRAPHIC MARKET

14. The relevant geographic market within which to assess the competitive effects of the proposed Acquisition is the SPRB (and any narrower markets therein). The SPRB is the only area with mines to which customers can turn for supply of SPRB coal, and Tier 1 of the SPRB is the only area with mines to which customers can turn for supply of 8800 Btu SPRB coal. The Acquisition will adversely affect electricity customers in areas throughout the United States.

COAL FROM THE SPRB

15. Coal is a leading energy source in the United States. Coal-fired generating plants account for about 92% of all coal consumption and about 50% of all electric power produced in the United States. Of the approximately 1.1 billion tons of coal produced annually in the United States, about one-third is produced in the SPRB, which is located in Wyoming. SPRB coal is burned by electric generators in at least 26 states, including generators extending from Oregon to Arizona in the west, to Lake Michigan, Georgia, and Alabama in the east. Electric generators account for virtually all consumption of SPRB coal. In 2003, mines in the SPRB produced about 363 million tons of coal with an approximate value in excess of $2 billion.

16. The SPRB is a source of low sulfur coal that has an energy content of between approximately 8300 and 8800 British Thermal Units ("Btus") per pound. SPRB coal is lower in sulfur than most coals mined in the United States and is one of the few coals that comply with the current sulfur emission limits imposed on coal-fired generators by the 1990 Clean Air Act. SPRB coal is also low in ash and sodium content. These properties, combined with exceptionally low mining costs, give SPRB coal a strong economic advantage in supplying many electric generators compared to coal produced in other regions of the United States.

THE THREE TIERS IN THE SPRB

17. SPRB coal suppliers and customers have established two distinct price points for SPRB coal based on the heat content of the coal – 8800 Btu and 8400 Btu. Coal contracts

Most generating plants burning SPRB coal that were brought on line in the last 20 years are designed specifically to burn SPRB coal and cannot economically burn other coal. Prior to the greater the distance from the SPRB to a customer's generating facility, the more uneconomical it is for a customer with a given type of generator that is burning 8800 Btu SPRB coal to switch to 8400 Btu SPRB coal in response to an increase in the mine price of 8800 Btu SPRB coal.

27. Performance problems associated with burning 8400 Btu SPRB coal make use of this coal uneconomic for some 8800 Btu SPRB coal customers. When low-Btu coal is used to fuel a boiler designed to burn higher Btu coal, more coal must be moved through the boiler to

competitors.

36. Respondents and others, including Kiewit, recognized that consolidation in the SPRB has led and will lead to producer restraint and higher SPRB prices.

37. Detailed information regarding SPRB coal market and competitor output, sales, prices, capacity, forecasts, and plans is readily available to mine owners through the trade press and through other public and private sources of information.

38. Behavior by the major SPRB producers facilitates coordination. The major SPRB producers regularly signal their intent with respect to coal production, and competitors keenly follow these signals and ascertain whether production announcements are actually implemented. This signaling includes open communications by coal companies and coal company executives at investor conferences and trade association meetings and through press releases and statements in the trade press.

39. Arch has been a leading proponent of limiting SPRB coal production. With the acquisition of Triton, Arch will have greater incentive and ability to limit supply of SPRB coal from the mines it already owns and those it would acquire. Arch has publicly encouraged SPRB competitors to restrict output to stabilize or increase prices for SPRB coal. Arch's output restriction and signals concerning output and prices facilitate coordination by reducing uncertainty among Arch's SPRB competitors. For example:

a. On May 18, 2000, Arch announced its plans to reduce production at Coal Creek in a press release in which Arch President and CEO Steven Leer stated, "We are committed to earning an adequate return for our shareholders, and we will not resume higher levels of production at Coal Creek until such a return is possible." Speaking at the Western Coal Council's Spring Forum on May 23, 2000, before an audience that included Arch's competitors, Mr. Leer noted that overproduction had eroded coal prices. Mr. Leer urged coal suppliers to "Produce Less Coal" in response to the problem of oversupply. Advocating cutbacks in coal production, Mr. Leer said that coal companies would benefit from matching supply and demand and that Arch, Kennecott, and Peabody were all moving to reduce production. He stressed to his audience that "Arch has been conscientious" in reducing capacity, including idling Coal Creek (removing 10 million tons per year of output and idling 18 million tons per year of capacity) and limiting expansion at Black Thunder to about 60 million tons per year (the original plan had called for about 80 million tons per year).

b. At an April 17, 2001, Western Coal Transportation Association meeting, Mr. Leer delivered the keynote address to the group, which included his competitors and customers. In that speech, Mr. Leer explained that the reason for the price increase in the SPRB was the "supply/demand balance," due, in part, to the fact that in the "Southern PRB, [there were] fewer producers, so greater potential for discipline." Even though coal prices had more than doubled from the previous year, Mr. Leer defended his and his competitors' decisions to constrain supply – "We've had offers to open up Coal Creek Mine for one year at extremely attractive pricing. And the answer is no. I think other producers are in the same boat." Arch's message got through to Triton, and indeed was discussed within a few days internally among Triton's management.

pricing levels. . . . We continue to believe that the current market has far more upside potential than downside."

e. Throughout 2002 and into 2003, Mr. Leer continued to tout the benefits of restricting production. On April 21, 2003, one month before Arch announced it was acquiring Triton, Mr. Leer stated in a release announcing Arch's First Quarter 2003 results that "we continue to believe that our strategic decision to leave uncommitted tons in the ground, rather than sell them at a price that does not provide an adequate return, is sound." At the same time, Mr. Leer reaffirmed privately that Arch had been doing the right thing by restricting production and cautioned that Arch's ability to continue to lead the charge would depend on gaining market support. However, Mr. Leer warned that if prices did not improve soon, Arch would ramp up the mines to full production. Such a ramp-up would send Arch's competitors a strong signal that Arch was prepared to punish other producers if they failed to support Arch's output curtailment initiative.

40. Arch's SPRB competitors also understand the importance of limiting production to tighten the supply/demand balance in the market and have signaled their own production intentions. For example:

a. Privately, an executive of a major SPRB producer observed, in May 2000, that while the company could not enter into express or implied understandings with its competitors as to market matters influencing or affecting price, it could set a rational, independent example for the PRB industry. The company examined the message it would send to the PRB industry by curtailing expansion and expressed hope that competitors would consider these factors in their own market behavior, in light of preclusion, under antitrust law, of express or implied understandings or communications on these topics.

b. Irl Engelhardt, Chairman and CEO of Peabody Coal, made the following statement in his April 25, 2000, speech to the Western Coal Transportation Association:

"The growing demand for Powder River Basin coals should point to robust market conditions. The opposite is true;ket conditi9xcign2sAress orr5cloedstarmiccom

- Also in 1999, Peabody delayed a 30-million-ton-per-year capacity expansion at North Antelope/Rochelle "until margins will generate the proper returns;" and

- In April 2000, Peabody idled a truck/shovel fleet at Caballo, reducing output by 8 million tons per year, "until market conditions improve."

c. In an internal evaluation of its own SPRB coal supply strategy, another major SPRB producer noted with interest Mr. Engelhardt's speech, including his statements regarding the damage oversupply had wrought and Peabody's output reductions until market conditions improve.

d. On May 8, 2000, a few days after the Engelhardt speech, Kennecott issued a press release announcing its intent to "temporarily curtail production" at its mines. A week later, on May 15, 2000, Coal Outlook reported that "these reductions would come from the Cordero Rojo complex, 5.5 million tons; Jacobs Ranch, 2 million tons; and Colowyo, 500,000 tons." The article quotes Kennecott's president Gary Goldberg as stating that Kennecott elected to curtail output "rather than accept prices that do not provide a return on its investment."

e. Communications among the major SPRB producers are not limited to speeches, but include direct conversations concerning expansion plans and mine operations. Competitors also discuss with one another supply contracts with individual customers. In considering how to respond to a customer's expressed interest in purchasing coal, a major SPRB producer drew on its discussions with Arch personnel regarding the customer's future purchase commitments with Arch. Discussions between competitors also involve SPRB price projections and the SPRB supply and demand balance.

f. Triton, well aware of the cutbacks by the three largest of the five SPRB producers, ordered the development of plans for the public announcement – at a May 15, 2000, speech to a Coaltrans conference – of its own plan to reduce production at North Rochelle until pricing improved. But Triton ultimately decided to expand output at the North Rochelle mine rather than cut back its production. Triton continued to operate the North Rochelle mine at close to full practical capacity until after entering into the acquisition agreement with Arch, entering into a joint defense agreement with Arch, and engaging in due diligence discussions with Arch. More recently, Triton also has indicated that it has plans to reduce production at the North Rochelle mine.

b. It would combine the two firms that hold the principal sources of excess capacity in the SPRB and would bring under Arch's control the principal source of excess capacity for production of 8800 Btu SPRB coal.

c. It would combine two among only four producers in Tier 1 of the SPRB, would substantially increase concentration in 8800 Btu SPRB coal and result in high concentration among 8800 Btu coal producers, would eliminate the existing substantial competition between Arch and Triton, and would substantially reduce competition in 8800 Btu SPRB coal.

d. It would increase the likelihood of coordination in the market for SPRB coal (and narrower markets therein), a market that is already susceptible to coordination. Following the Acquisition, Arch could more easily coordinate profitably with either or both of the other two remaining major producers to restrict output, limit capacity expansion, or raise price as demand for SPRB coal continues to grow. The Acquisition would make coordination among SPRB producers, and among producers of 8800 Btu SPRB coal, easier, more likely, more successful, and more durable.

ENTRY CONDITIONS

48. Entry into the relevant markets would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition.

VIOLATIONS CHARGED

COUNT I -- ILLEGAL ACQUISITION

49. The allegations contained in Paragraphs 1-48 are repeated and realleged as though fully set forth here.

50. The effect of the Acquisition may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

COUNT II -- ILLEGAL ACQUISITION AGREEMENT

51. The allegations contained in Paragraphs 1-48 are repeated and realleged as though fully set forth here.

52. Arch and Triton, through the Agreement described in Paragraph 8, have engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

NOTICE

Proceedings on the charges asserted against you in this complaint will be held before an Administrative Law Judge (ALJ) of the Federal Trade Commission, under Part 3 of the Commission's Rules of Practice, 16 C.F.R. Part 3. A copy of Part 3 of the Rules is enclosed

A hearing on the complaint will begin on the sixth day of July, 2004, at 10:00 A.M. in Room 532, or such other date as determined by the ALJ. At the hearing, you will have the right to contest the allegations of the complaint and to show cause why a cease and desist order should not be entered against you.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Merger and Purchase Agreement described in Paragraph 8 violates Section 5 of the Federal Trade Commission Act, as amended, or that the proposed acquisition challenged in this proceeding would, if consummated, violate Section 7 of the Clayton Act, as amended, or Section 5 of the Federal Trade Commission Act, as amended, the Commission may order such relief against respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. An order to cease and desist from any action to effect the acquisition by Arch of any assets or securities of Triton.

2. Rescission of the Merger and Purchase Agreement between respondents.

3. Divestiture of an ongoing, operating business, including all assets, tangible and intangible, including, but not limited to, all intellectual property, knowhow, trademarks, trade names, research and development, and customer contracts.

4. Such other or additional relief as is necessary to ensure the creation of one or more viable, competitive, independent entities to compete against Arch in the relevant markets.