

Analysis of the Complaint and Proposed Consent Order to Aid Public Comment Occidental Petroleum Corporation and Vulcan Materials Company, File No. 051-0009

I. Introduction

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Occidental Chemical Company (“OxyChem”) and Vulcan Materials Company (“Vulcan”) (collectively “Respondents”). The Consent Agreement is intended to resolve anticompetitive effects stemming from OxyChem’s proposed acquisition of the chemical assets of Vulcan. The Consent Agreement includes a proposed Decision and Order (“Order”) which requires Respondents to divest Vulcan’s facility in Port Edwards, Wisconsin and assets relating to the research, development, marketing, sales, and production of chemicals produced at the facility including chlorine, caustic soda (sodium hydroxide), KOH (potassium hydroxide), APC (anhydrous potassium carbonate), and hydrochloric acid (“Port Edwards business”). The Order calls for divestiture of the Port Edwards business to ERCO Worldwide (“ERCO”) or, in the event the Commission requires rescission of such acquisition, another approved buyer. The Consent Agreement also includes an Order to Maintain Assets, which requires Respondents to preserve the Port Edwards business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Consent Agreement, if finally accepted by the Commission, would settle charges that OxyChem’s proposed acquisition of Vulcan’s chemical assets may have substantially lessened competition in the markets for KOH, potassium carbonate, and APC. The Commission has reason to believe that OxyChem’s proposed acquisition of Vulcan’s Port Edwards business would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

II. The Proposed Complaint

According to the Commission’s proposed complaint, the relevant product markets in which to analyze the effects of OxyChem’s proposed acquisition of Vulcan’s chemical assets are the production and sale of KOH, potassium carbonate, and APC. KOH is the raw material for the production of many potassium chemicals, such as potassium permanganate, citrate, acetate, cyanide, benzoate, iodide, and sorbate. The largest end use of KOH is the production of potassium carbonate, commonly known as potash. End uses for potassium carbonate include nutrition supplements for dairy cattle, video glass for television and computer monitors, other specialty glass, potassium silicates, fertilizers, gas processing, industrial intermediaries, photographic development processes, detergents; and food products. Potassium carbonate can be produced in liquid or flake (solid) form. Over 90% of total potcarb production in the United States is of the flake form, known as APC. For most APC customers, liquid potassium carbonate is not an economically viable substitute.

The proposed complaint alleges that the markets for KOH, potcarb, and APC are highly concentrated and that OxyChem and Vulcan have been the primary competitors in these markets for many years and are the only producers of APC in the U.S. As the proposed Complaint describes, customers have relied on the competition between these companies to maintain competitive pricing

levels. The proposed complaint alleges that OxyChem's proposed acquisition of Vulcan's chemical assets would reduce competition by eliminating direct competition between these two companies. The proposed complaint further alleges that entry into the relevant markets would not be timely,

or Hold Separate Trustee in other FTC matters.

Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully divested the Port Edwards business, Respondents are required to submit a verified written report describing how they are complying, have complied, and intend to comply with the terms of the Order. Further, within thirty (30) days after the date this Order is issued, and annually for ten (10) years on the anniversary of the date this Order is issued, Respondent OxyChem must submit a verified written report to the Commission describing how it is complying, has complied, and intends to comply with the terms of the Order. Finally, within thirty (30) days after the date this Order is issued and annually for two (2) years on the anniversary of the date this Order is issued, Respondent Vulcan shall submit to the Commission a verified written report describing how it has complied, is complying, and will comply with this Order; however, if either Paragraph II.B or Paragraph V of the Order come into effect, Respondent Vulcan shall submit annual reports for five (5) years on the anniversary of the date this Order is issued.

IV. Opportunity for Public Comment

The proposed Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement's proposed Order and Order to Maintain Assets.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement, the proposed Order, or the Order to Maintain Assets, or in any way to modify the terms of the Consent Agreement, the proposed Order, or the Order to Maintain Assets.