

Analysis of the Agreement Containing Consent Order to Aid Public Comment
In the Matter of K+S Aktiengesellschaft,
File No. 091-0086, Docket No. C-

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from K+S Aktiengesellschaft ("K+S"), and its subsidiary, International Salt Company LLC ("ISCO"), that is designed to remedy the anticompetitive effects that would otherwise result from K+S's proposed acquisition of Morton International, Inc. ("Morton"), from The Dow Chemical Company ("Dow"). Under the terms of the proposed Consent Agreement, K+S is required to divest assets related to its bulk de-icing salt business in Maine to an up-front buyer, Eastern Salt Company, Inc. ("Eastern Salt" or "Maine Purchaser"), and to divest assets related to its bulk de-icing sa

III. The Proposed Complaint

According to the Commission's proposed Complaint, the relevant product market in which to assess the competitive effects of the proposed Acquisition is the sale and delivery of bulk de-icing salt. The evidence indicates that there are no practical substitutes for bulk de-icing salt to melt snow and ice. The relevant geographic markets in which to assess the impact of the proposed Acquisition are the states of Maine and Connecticut.

The relevant markets are highly concentrated. ISCO and Morton are the two principal bidders in the states of Maine and Connecticut for the sale and delivery of bulk de-icing salt. Post acquisition, the combined entity will have a market share exceeding 70 percent in both Maine and Connecticut. Post-merger HHIs for Maine and Connecticut are 5,142 and 5,834, and the acquisition will increase HHI levels by 1,914 and 2,642, respectively. These market concentration levels far exceed the thresholds set forth in the *Horizontal Merger Guidelines* and thus create a presumption that the proposed merger will create or enhance market power.

Entry into the relevant markets is difficult because, among other things, there is a lack of acceptable stockpile space along the coasts of Maine and Connecticut. As a result, new entry sufficient to achieve a significant market impact within two years is unlikely.

Finally, the Complaint alleges that the proposed Acquisition will reduce competition in the relevant markets by eliminating direct and substantial competition between ISCO and Morton, and by increasing the likelihood that ISCO would increase prices either unilaterally or through coordinated interaction with the few remaining firms in the relevant markets.

IV.

The Commission has preliminarily determined that Granite State is a well-qualified buyer of the Connecticut Divestiture Assets and is well situated to replace the competition Morton provided in the state. Granite State has experience supplying de-icing salt to customers in a number of states along the East Coast. The Consent Agreement requires ISCO to provide Granite State with a three-year supply of bulk de-icing salt at no more than ISCO's costs. The supply requirement will ensure that Granite State has a supply of salt in Connecticut during the 2010-2011 and 2011-2012 bid cycles while Granite State develops the necessary supply arrangements to serve Connecticut customers in subsequent years. With the divested assets, Granite State will be well positioned to compete for future business in Connecticut and to deliver salt to customers in a timely manner.

The proposed Consent Agreement requires that the divestitures occur no later than twenty (20) days after the Acquisition is consummated. However, if ISCO divests the assets to Eastern Salt or Granite State during the public comment period, and if, at the time the Commission decides to make the Order final, the Commission notifies K+S or ISCO that either purchaser is not an acceptable acquirer or that the asset purchase agreement with the Maine Purchaser or Connecticut Purchaser is not an acceptable manner of divestiture, then ISCO must immediately rescind the transaction in question and divest those assets to another buyer within six (6) months of the date the Order becomes final.