

ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER
TO AID PUBLIC COMMENT
In the Matter of Nufarm Limited., File No. 081-0130

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Nufarm Limited ("Nufarm" or "Respondent") to remedy the anticompetitive effects stemming from Nufarm's acquisition of A.H. Marks Holding Limited ("A. H. Marks"). Under the terms of the Consent Agreement, Nufarm is required to divest to Commission-approved buyers certain A. H. Marks assets, including regulatory permits and intellectual property, and take certain additional measures to restore competition in the markets for three phenoxyherbicide products: MCPA, MCPP-p, and 2,4DB.

On March 5, 2008, Nufarm acquired A. H. Marks. Both parties held, and had access to, regulatory approvals from the United States Environmental Protection Agency ("EPA") to sell MCPA, MCPP-p, and 2,4DB in the United States. The Commission's complaint alleges that the acquisition and acquisition agreement violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45, by lessening competition in the United States markets for the sale of the phenoxy herbicides: MCPA, MCPPP, and 2,4DB.

The Consent Agreement has been placed on the public record for thirty (30) days for receipt of 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 from the proposed Consent Agreement, modify it, or make final the Consent Agreement's proposed Decision and Order.

II.

III. Entry

Entry into the markets for MCPA, MCPP-p and 2,4DB would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the acquisition. In order to obtain approval to sell herbicides for use on crops, turf, or lawns in the United States, the Environmental Protection Agency ("EPA") requires manufacturers to submit extensive environmental and toxicology testing data. Herbicide manufacturers often generate such data by forming industry task forces to share the costs of testing. Later entrants are often required to compensate members of the task force to obtain intellectual property rights to existing testing data by either purchasing the rights to the data or obtaining a seat on the task force. The costs associated with obtaining either the testing data or a task force seat to enter the markets for MCPA, MCPP-p, and 2,4DB are high compared to the limited potential sales revenues available to an entrant in each of these markets. Additionally, obtaining EPA approval for the manufacture and sale of each of the relevant products can take several years due to the presence of regulatory barriers. As a result, entry into each relevant market would require substantial sunk costs that would make

For both MCPA and MCPP-p, the purchase of a task force seat and EPA registration will permit each divestiture purchaser to enter and compete in these markets. By acquiring A.H. Mark's task force seat and EPA registration, the divestiture purchaser will obtain EPA approval to distribute the herbicide in the United States and certify additional manufacturing sources of the herbicides. In addition to the task force seat and EPA registration, Nufam is r

MCPp assets to a trustee in the event Nufarm fails to c