

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

_____)
In the Matter of)
)
NUFARM LIMITED, a corporation.) Docket No. C-4298
)
_____)

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Nufarm Limited (“Nufarm”), a corporation subject to the jurisdiction of the Commission, entered into an agreement, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, pursuant to which Nufarm acquired all the shares of A.H. Marks Holding Limited (“A. H. Marks”) in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by binding two leading

(2,4DB) to a duopoly. The merger is likely to result in higher prices and other anticompetitive effects.

II. THE RESPONDENT

2. Respondent Nufarm is a corporation organized and existing under the laws of Australia, with its office and principal place of business located at 103-105 Pipe Road, Laverton North, Victoria 3026. Nufarm has two subsidiaries in the United States, Nufarm Americas and Nufarm Turf and Specialty, both located at 150 Harvester Drive, Suite 200, Burr Ridge, IL 60527.
3. Nufarm manufactures, markets, and distributes crop protection products, including herbicides, fungicides and insecticides in the United States. It is one of the world's leading producers and distributors of phenoxy herbicides such as MCPA, MCPP-p, and 2,4DB.

III. THE ACQUIRED COMPANY

4. Prior to the acquisition, A. H. Marks was a corporation organized and existing under the laws of the United Kingdom, with its office and principal place of business located at Wyke, Bradford, West Yorkshire, BD 12 9EJ, England, United Kingdom.
5. A.H. Marks produced and exported phenoxy herbicides to the United States.

IV. THE ACQUISITION

6. On or about March 4, 2008, Nufarm, pursuant to an agreement with A.H. Mark's shareholders ("the Acquisition Agreement"), acquired all the issued shares of A. H. Marks ("the Acquisition").

V. JURISDICTION

7. At all times r400 Tc18.5400 TD0.0000 0.0000 cm0.00 0.00 0.00 rgBT72.0000 336.2400 TD/F9 12.0000

10. The relevant product markets in which to analyze the Acquisition include the manufacture and sale of these three phenoxy herbicides:

- a. MCPA or 2-methyl-4-chlorophenoxyacetic acid.
- b. MCPP-p or 2-(4-chloro-2-methylphenoxy) propanoic acid.
- c. 2,4DB or 4-

X. ENTRY CONDITIONS

15. Entry into the MCPA, MCPP-p and 2,4DB markets would not be timely, likely, or sufficient to prevent or defeat the anticompetitive effects of the Acquisition.

16. In order to enter the MCPA, MCPP-p or 2,4DB markets, a new entrant would need, among other things, access to supply of the herbicides and the requisite regulatory approvals from federal and state agencies to market the products in the United States. To obtain the necessary regulatory approvals, the entrant would have to submit and periodically update extensive environmental and toxicological testing data. The costs of entering the relevant markets for MCPA, MCPP-p, and 2,4DB are high compared to the limited potential sales volume, the cost to several, e.g., 7-10% of the total sales of the product, and the high cost of the product.