ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER
TO AID PUBLIC COMMENT
In the Matter of Carlyle Partners IV, L.P., File No. 071 0203

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order from Carlyle Partners IV, L.P. ("Respondent"). The Consent Agreement is intended to resolve anticompetitive effects stemming from Carlyle's proposed acquisition of the world-wide sodium silicate and silicas business from INEOS Group Limited ("INEOS"). Carlyle participates in the sodium silicate market world-wide through PQ Corporation, which it owns. PQ is the largest producer of sodium silicate in the United States. The Consent Agreement includes a proposed Decision and Order which requires Respondent to divest PQ's sodium silicate plant and business located in Utica, Illinois. The proposed Decision and Order also requires the licensing of all intellectual property related to the production of sodium silicate at the Utica plant.

The Decision and Order calls for divestiture of PQ's Utica, Illinois plant to Oak Hill Acquisition Company, LLC ("Oak Hill"), or another Commission-approved buyer in the event that Oak Hill is determined not to be acceptable. The Consent Agreement, if finally accepted by the Commission, would settle charges that the proposed acquisition may substantially lessen competition in the market for sodium silicate in the Midwest United States. The Commission has reason to believe that Respondent's proposed acquisition would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

II. The Proposed Complaint

According to the Commission's proposed complaint, the relevant product market in which to analyze the effects of INEOS' sale of assets to Carlyle is the market for the sale and manufacture of sodium silicate. Sodium silicate has a variety of direct uses and is also consumed in the production of downstream silicate derivatives, also referred to as silicas. According to the Commission's complaint, sodium silicate does not, in its various end-uses, have close substitutes that constrain its pricing. The relevant geographic market is the Midwest United States. Sodium silicate, which is generally sold in an aqueous solution form that is 65% water, exhibits strong regional markets because of high transportation costs relative to the value of the product.

The proposed complaint alleges that the market for sodium silicate is highly concentrated and that the acquisition reduces the number of competitors in the Midwest United States market from four to three. According to the proposed complaint, the acquisition combines PQ, the largest competitor, with INEOS, the third largest competitor, which hold 50% and 12% market shares as measured by plant capacity, respectively. The HHI in this market would increase by 1181, to 4674.

The proposed complaint alleges that the proposed acquisition would reduce competition by eliminating direct competition between these two companies. The proposed complaint further states that the market for sodium silicate is conducive to coordination due to several structural features, including the facts that sodium silicate is a homogenous product and pricing information is readily available. Furthermore, evidence suggests that competitors behave as if the market were essentially a duopoly in which the top two producers, PQ and Occidental, operate with a high level of mutual interdependence. Based on the level of concentration and the competitive conditions, the Commission's complaint alleges that the acquisition would make coordinated interaction more likely, leading to higher prices for sodium silicate. The proposed complaint further alleges that entry into the relevant market would not be timely, likely, or sufficient to deter or offset the proposed acquisition's adverse competitive effects.

III. Terms of the Proposed Order

Under the proposed Decision and Order, Carlyle will divest its Utica, Illinois sodium silicate business to Oak Hill within five (5) days of the INEOS acquisition. Oak Hill is a new entity that has been created for the purpose of acquiring the Utica plant. The principal owner of Oak Hill has been involved in entrepreneurial investments in a number of industries over the past twenty five years, including in the chemicals, software, telecommunications, construction, real estate, and energy industries.

The consent order has several major operative provisions. Section II.A. of the Order requires PQ to divest the Utica plant to an up-front purchaser, Oak Hill Acquisition Company, LLC, in accordance with the provisions of the Asset Purchase Agreement, within five days of consummating the acquisition of INEOS. Section II.A. also gives the Commission the authority to require PQ to divest the Utica plant to another purchaser, should the Commission deem Oak Hill not to be acceptable; and to direct PQ to accept any remedial provisions it may add to the Order after initial acceptance. Section II.D. requires Respondents to make available to Oak Hill or other purchaser, at no greater than direct cost, such personnel, assistance and training as is necessary to enable the purchaser to operate the Utica plant in substantially the same manner as PQ operated plant, for a period of two years after divestiture. Section II.E. requires Respondents to enter into an employee services agreement covering certain union employees at the Utica plant to facilitate their continued employment at that the plant under the new ownership. Section III.A. allows the Commission to appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities. Section IV.A. allows the Commission to appoint a Divestiture Trustee should PQ fail to fully comply with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey assets required by the Order. Section V.B. requires Respondents to submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Order, on a regular basis until Respondents have fully achieved the divestiture. Section VII requires Respondents to notify the Commission of any change in their corporate structure that may affect compliance obligations arising out of the Order. Pursuant to Section IX, the Order has a ten year term.

IV. Opportunity for Public Comment

The proposed Decision and 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.

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and the proposed Decision and Order.