

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

_____)
)
In the Matter of)
)
K+S Aktiengesellschaft,)	Docket No. C-
a corporation,)	
)	
and)	
)	
International Salt Company LLC,)	
a limited liability company.)	
_____)

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent K+S Aktiengesellschaft (“K+S”), a corporation, parent of Respondent International Salt Company LLC (“ISCO”), and The Dow Chemical Company (“Dow”), a corporation, both subject to the jurisdiction of the Commission, have agreed to an acquisition of Morton International, Inc. (“Morton”), from Dow in violation of 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, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I.

RESPONDENTS

1. Respondent K+S is a German stock corporation, organized, existing, and doing business under and by virtue of the laws of Germany, with its office and principal place of business located at Bertha-von-Suttner Str. 7, 34131 Kassel, Germany.
2. Respondent ISCO is a Delaware limited liability company, existing, and doing business under and by virtue of the laws of the United States as a wholly-owned subsidiary of

K+S, with its offices and principal place of business located at 655 Northern Boulevard, Clarks Summit, Pennsylvania 18411.

3. K+S is, and at all relevant times herein has been, engaged in “commerce” as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is an entity whose business is in or affects “commerce” as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.
4. ISCO is, and at all relevant times herein has been, engaged in “commerce” as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is an entity whose business is in or affects “commerce” as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II.

THE PROPOSED TRANSACTION

5. Pursuant to a Stock Purchase Agreement dated April 1, 2009 (the “Agreement”), K+S proposes to acquire Morton, from Dow, for approximately \$1.675 billion (the “Acquisition”).

III.

THE RELEVANT MARKETS

6. The relevant product market in which to analyze the effects of the Acquisition is the sale and delivery of bulk de-icing salt.
7. The relevant geographic areas in within which to analyze the effects of the Acquisition are the states of Maine and Connecticut.

IV.

STRUCTURE OF THE MARKET

8. The markets for the sale and delivery of bulk de-icing salt to customers in Maine and Connecticut are highly concentrated as measured by the Herfindahl-Hirschman Index (“HHI”). Post acquisition, a combined ISCO and Morton will have a market share in excess of 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 out in the *Horizontal Merger Guidelines* and thus create a presumption that the proposed merger will create or enhance market power.

9. ISCO and Morton are actual and substantial competitors in the relevant markets. They are two of a small number of firms in the relevant markets and are the principal bidders for the sale and delivery of bulk de-icing salt to customers in the states of Maine and Connecticut. The percentage of bids won by ISCO and Morton exceeds 50 percent for each of these states during each of the last three years.

V.

ENTRY CONDITIONS

10. Entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition as set forth in Paragraph 11 below. Entry into the relevant markets is a difficult process because of, among other things, the lack of acceptable stockpile space along the coasts of Maine and Connecticut upon which to store bulk de-icing road salt. As a result, new entry into the relevant markets sufficient to achieve a significant market impact within two years is unlikely.

VI.

EFFECTS OF THE ACQUISITION

11. The effect of the Acquisition, if consummated, may be to substantially lessen competition and tend to create a monopoly in the relevant markets in violation of 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, in the following ways, among others:
 - (a) by eliminating actual, direct, and substantial competition between ISCO and Morton in the markets for the sale and delivery of bulk de-icing salt in Maine and Connecticut;
 - (b) by increasing the ability of ISCO to raise prices unilaterally in the markets for the sale and delivery of bulk de-icing salt in Maine and Connecticut; and
 - (c) by increasing the likelihood of coordinated interaction among ISCO and the few remaining firms in the markets for the sale and delivery of bulk de-icing salt in Maine and Connecticut.

VII.

VIOLATIONS CHARGED

12. The Agreement described in Paragraph 5 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

13. The Acquisition described in Paragraph 5, if consummated, would constitute a violation of 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of _____, _____, issues its Complaint against said Respondents.

By the Commission.

SEAL

Donald S. Clark
Secretary