

**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)
) **Docket No. C-**
NUFARM LIMITED, a corporation.)
)
_____)

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, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, 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. SUMMARY

1. In March 2008, Nufarm acquired A.H. Marks in a transaction combining two leading manufacturers of phenoxy herbicides. The acquisition resulted in Nufarm obtaining monopoly positions in two phenoxy herbicide markets (MCPA and MCPP-p) and reduced a third market (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 relevant herein, Nufarm has been, and is now, a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44; and at all times relevant herein, Nufarm has been, and is now, engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

8. At all times relevant herein, A.H. Marks was a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44; and at all times relevant herein, A.H. Marks was engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

VI. RELEVANT PRODUCT MARKET

9. Phenoxy herbicides, which include MCPA, MCPP-p, and 2,4DB, are widely used to eliminate broadleaf weeds from lawns, fields and crops. Specifically, MCPA, or products containing MCPA, are used frequently on wheat and barley crops, as well as on grass. MCPP-p, or products containing MCPP-p, are frequently used on grass. 2,4DB, or products containing 2,4DB, are used on peanut and alfalfa crops.

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-(2,4-dichlorophenoxy) butyric acid, 4-(2,4-dichlorophenoxy) butanoic acid.

VII. RELEVANT GEOGRAPHIC MARKET

11. The relevant geographic area within which to analyze the effects of the Acquisition is the United States.

VIII. STRUCTURE OF THE MARKET

12. The Acquisition merged the only competitors in the markets for MCPA and MCPP-p and two of only three competitors in the 2,4DB market.
13. The Acquisition substantially increased concentration in the already highly concentrated MCPA, MCPP-p, and 2,4DB markets.

IX. COMPETITIVE EFFECTS

14. The Acquisition may have substantially lessened competition in the relevant markets by, among other things:
- a. Eliminating actual, direct, and substantial, competition between Nufarm and A.H. Marks;
 - b. Reducing the number of competitors in the MCPA and MCPP-p markets from two to one, creating monopolies in the markets for both products, and giving Nufarm substantial market power;
 - c. Reducing the number of competitors in the 2,4DB market from three to two and giving Nufarm substantial market power;
 - d. Facilitating the ability of Nufarm to exercise unilateral market power in the markets for MCPA, MCPP-p and 2,4DB;
 - e. Reducing Nufarm's incentives to improve service or product quality or to pursue further innovation; and
 - f. Allowing Nufarm, unconstrained by effective competition, to increase prices.

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 revenues available to an entrant. As a result, entry into each of the relevant markets would require substantial sunk costs that would likely make entry unprofitable. New entry into the relevant markets sufficient to achieve significant market impact within two years is therefore unlikely to occur.

17. In addition, Nufarm's contracts with The Dow Chemical Company and joint venture with Aceto Corp. restricted these firms' competitive activities in the markets for MCPA and 2,4-DB and posed additional barriers to entry.

XI. VIOLATIONS CHARGED

18. The Acquisition Agreement described in Paragraph 6 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and the Acquisition described in Paragraph 6 constitutes 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 _____, 2010, issues its complaint against said respondent.

By the Commission.

Donald S. Clark
Secretary