UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, U.S. Department of Justice Antitrust Division 1401 H Street, NW Suite 3000 Washington, DC 20530, *Plaintiff,* v. DNH INTERNATIONAL SARL, 23 Avenue Monterey L-2086 Luxemburg; DYNO NOBEL, INC., 50 S. Main Street Salt Lake City, UT 84144; EL PASO CORPORATION, 1001 Louisiana Street Houston, TX 77002; and COASTAL CHEM, INC., 1001 Louisiana Street Houston, TX 77002, *Defendants.*	CASE NUMBER 1 : 03CV02486 JUDGE: Gladys Kessler DECK TYPE: Antitrust DATE STAMP: 12/02/2003

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain injunctive relief against defendants, and alleges as follows:

1. DNH International Sarl ("DNH") intends to acquire, through its wholly-owned

subsidiary Dyno Nobel, Inc. ("Dyno"), certain assets associated with the nitrogen products businesses of El Paso Corporation ("El Paso"). The assets to be acquired include two industrial grade ammonium nitrate ("IGAN") manufacturing facilities owned by Coastal Chem, Inc. ("Coastal"), a wholly-owned subsidiary of El Paso. One of these facilities is located in Battle Mountain, Nevada, and the other is in Cheyenne, Wyoming.

2. Dyno and Coastal sell IGAN in the United States. IGAN is an essential ingredient in nearly all blasting agents. Coastal and one other firm are the primary suppliers of IGAN consumed in the western United States and western Canada ("Western North America"), accounting for over 75 percent of all plant capacity regularly used to make IGAN for sale in that region. Dyno, which owns a 50 percent interest in an IGAN production facility near Salt Lake City, Utah, is the best located of a few fringe IGAN suppliers in Western North America.

3. Unless the proposed acquisition is enjoined, Dyno's acquisition of Coastal's Battle Mountain and Cheyenne IGAN production facilities will substantially lessen competition in the production of IGAN for sale in Western North America, and consumers of IGAN in that region likely will pay higher prices as a result of the reduced competition.

I.

JURISDICTION AND VENUE

4. This Complaint is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

5. DNH, through Dyno, and El Paso, through Coastal, produce and sell IGAN in the flow of interstate commerce. DNH's and El Paso's activities in producing and selling IGAN

substantially affect interstate commerce. This Court has jurisdiction over the subject matter of this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

6. DNH, Dyno, El Paso, and Coastal have consented to personal jurisdiction and venue in this judicial district.

II.

DEFENDANTS

7. DNH is a Luxembourg corporation with its headquarters in Oslo, Norway. DNH is one of the world's largest producers of explosives. In 2002, DNH reported total sales of approximately $630 million. Dyno, a subsidiary of DNH, is a Delaware corporation with its principal place of business in Salt Lake City, Utah. Dyno, one of the two largest producers of IGAN in North America, reported 2002 sales of about $316 million.

8. El Paso is a Delaware corporation with its headquarters in Houston, Texas. El Paso is the leading provider of natural gas services and the largest pipeline company in North America. In 2002, El Paso reported sales of roughly $12 billion. Coastal, a subsidiary of El Paso, is a Delaware corporation with its principal place of business in Houston, Texas. Coastal, one of the two largest producers of IGAN in Western North America, reported 2002 sales of approximately $146 million.

III.

THE PROPOSED TRANSACTION

9. Pursuant to an Asset Purchase Agreement dated August 6, 2003, Dyno, a wholly-owned subsidiary of DNH, intends to acquire certain assets of the nitrogen products businesses

owned by El Paso's subsidiaries. The assets to be acquired include Coastal's IGAN manufacturing facilities in Battle Mountain, Nevada and Cheyenne, Wyoming.

IV.

TRADE AND COMMERCE

A. The Relevant Product Market

10. IGAN, which is in the form of low-density, porous prills (or granules), is used to make blasting agents, one of two types of explosives for industrial uses like mining and construction. The other type is high explosives like dynamite, which are much more expensive than blasting agents. The principal physical difference between high explosives and blasting agents is in their sensitivity to detonation; a high explosive can be detonated with only a blasting cap, while blasting agents are detonated using high explosives. Blasting agents, which accounted for nearly all of the explosives sold in North America last year, are used principally to mine coal, rock and other nonmetals, and metals such as gold and copper. Blasting agents constitute a relatively small portion of the costs of mining and the other industrial uses to which they are put.

11. Virtually all blasting agents used in North America contain ammonium nitrate in the form of IGAN, and essentially all IGAN sold in North America is used to make blasting agents. The most widely used blasting agent is known as ANFO, which is made by soaking IGAN in fuel oil (Ammonium Nitrate plus Fuel Oil). Although ammonium nitrate is also available in an agricultural grade, which is in the form of high-density prills, the more porous IGAN prills are used to make ANFO. The greater porosity of the IGAN prill allows for significantly better absorption of the fuel oil and makes an explosive with a much higher

sensitivity to detonation. IGAN is also used to make explosive slurries, gels, and emulsions, which can be used as blasting agents either alone or in combination with ANFO.

12. A small but significant increase in the price of IGAN would not cause consumers of IGAN to use sufficiently less IGAN so as to make such a price increase unprofitable. Accordingly, the production and sale of IGAN is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Market

13. IGAN typically is shipped to customers in bulk either by rail or by truck. Freight costs are a significant component of the total delivered price of IGAN and limit the geographic area that an IGAN production facility profitably can serve. In addition, IGAN degrades over time as moisture in the air causes it to "cake," rendering it much less economical to use as an ingredient to make blasting agents. Also, the more IGAN is handled between production and use, the more the IGAN prills break down into unusable fine particles.

14. El Paso, through Coastal, produces IGAN at two facilities, one located in Battle Mountain, Nevada and the other in Cheyenne, Wyoming. IGAN produced at these facilities is sold within Western North America. DNH, through Dyno, owns a 50 percent interest in an IGAN plant near Salt Lake City, Utah (known as the "Geneva plant") from which it supplies IGAN into Western North America. Only three other firms own facilities that regularly produce IGAN for sale in the eleven contiguous western-most states in the United States and the Canadian provinces of British Columbia, Alberta, and Saskatchewan ("Western North America"). One of those three firms is Orica Limited ("Orica"), which owns the remaining 50 percent interest in the Geneva plant and also owns an IGAN facility located in Alberta,

Canada. The other two facilities are located in Benson, Arizona and Manitoba, Canada.

15. No other firm owns an IGAN production facility from which it supplies IGAN on a regular basis to Western North America. Apart from the facilities referenced in paragraph 14 above, the IGAN facilities closest to Western North American customers are located along the Mississippi River. The additional transportation costs needed to supply Western North America from these facilities, coupled with the increased risk of degradation of the IGAN due to prolonged shipping and handling, significantly limit the ability of these distant facilities to supply IGAN to Western North America.

16. A small but significant increase in the price of IGAN produced for sale in Western North America would not cause consumers of IGAN in Western North America to purchase sufficient amounts of IGAN produced at facilities not already regularly supplying IGAN to Western North America that such a price increase would be unprofitable. Accordingly, Western North America is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects

17. Two firms account for over 80 percent of IGAN sales in Western North America. After the proposed acquisition, the two dominant firms together would control about 90 percent of sales, with Dyno and Coastal combined having a share of about 50 percent. Total sales of IGAN in Western North America exceed 750,000 tons annually, or over $150 million a year.

18. Concentration in the Western North American IGAN market would increase significantly if DNH, through Dyno, acquired Coastal's IGAN production facilities in Battle Mountain and Cheyenne. The proposed acquisition would increase the Herfindahl-Hirschman

Index ("HHI"), a measure of market concentration defined and explained in Appendix A, by approximately 220 points, based on plant capacity, resulting in a post-merger HHI of roughly 3400, well in excess of levels that ordinarily would raise significant antitrust concerns.

19. IGAN-containing blasting agents are used primarily in four industries in North America: coal mining, which accounted for about 70 percent of total consumption in the United States in 2002; quarrying and nonmetal mining (13 percent); metal mining (8 percent); and construction (8 percent). In Western North America, most IGAN-containing blasting agents are consumed in mines located in one of three areas: the Powder River Basin in Wyoming (coal mines); Northern Nevada (gold mines); and the so-called "Four-Corners Area" surrounding the junction of Utah, Colorado, New Mexico, and Arizona (coal mines).

20. The two leading producers of IGAN sold in Western North America, Coastal and Orica, have facilities that are well-positioned to supply the Powder River Basin and Northern Nevada. The Geneva plant, which has a capacity of about 100,000 tons/year and is equally owned by Orica and Dyno, is located roughly equidistant from Northern Nevada, the Powder River Basin, and the Four-Corners Area and is well-positioned to serve all three areas.

21. The proposed transaction would combine Coastal's Battle Mountain and Cheyenne facilities with Dyno's 50 percent interest in the Geneva plant, thus eliminating independent competition from Dyno, the best located of three fringe IGAN producers that supply Western North America. Unlike the Geneva plant, which is centrally located to all three primary IGAN-containing blasting agent-consuming areas in Western North America, the two remaining fringe firms are located at the outer reaches of the relevant geographic market.

22. Purchasers of IGAN in Western North America have benefitted from competition

between Dyno and Coastal through lower prices for IGAN. By acquiring Coastal's Battle Mountain and Cheyenne IGAN production facilities, DNH would eliminate that competition.

D. Entry Unlikely to Deter a Post-Acquisition Exercise of Market Power

23. Successful entry into the IGAN market in Western North America would not be timely, likely, or sufficient to deter any coordinated exercise of market power as a result of the transaction.

24. Significant barriers prevent de novo entry into the production of IGAN for sale in Western North America. De novo entry would be a lengthy process. The two most time-consuming steps – construction of the IGAN plant itself and the obtaining of permits needed to construct the plant – would take over two years. Also, economies of scale in plant capacity are significant. To be successful, a new entrant likely would require a facility that could produce at least one-quarter of total IGAN sales in Western North America. An IGAN facility with that capacity would cost over $70 million. All of these factors make entry unlikely in response to a small but significant increase in IGAN prices.

V.

VIOLATIONS ALLEGED

25. DNH's proposed acquisition from El Paso of Coastal's IGAN production facilities in Battle Mountain, Nevada and Cheyenne, Wyoming, likely will lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

26. The transaction likely will have the following anticompetitive effects, among others:

a. Competition generally in the production of IGAN for sale in Western North America will be substantially lessened;

b. Actual and potential competition between Dyno and Coastal in the production of IGAN for sale in Western North America will be eliminated; and

c. Prices for IGAN produced for sale in Western North America likely will increase.

27. Unless prevented, the acquisition by DNH of Coastal's Battle Mountain and Cheyenne IGAN production facilities would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

VI.

REQUESTED RELIEF

28. Plaintiff requests:

a. That DNH's proposed acquisition from El Paso of Coastal's IGAN production facilities in Battle Mountain, Nevada and Cheyenne, Wyoming, be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;

b. That defendants and all persons acting on their behalf be permanently enjoined and restrained from carrying out any contract, agreement, understanding, or plan, the effect of which would be to combine DNH and Coastal's Battle Mountain and Cheyenne IGAN production facilities;

c. That plaintiff recover the costs of this action; and

d. That plaintiff receive such other and further relief as the case requires and this Court may deem proper.

Dated: December 2, 2003.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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APPENDIX A

HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* §1.51.