



DEPARTMENT OF JUSTICE
Antitrust Division

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Raymond A. Jacobsen, Jr., Esquire
Howery & Simon
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2402

Dear Mr. Jacobsen:

This is in response to the request of Baker Hughes Inteq, Dresser Industries, Inc. and M-1 Drilling Fluids for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department of Justice's antitrust enforcement intentions with respect to the proposal of the three requesting firms to form a joint venture entity that would procure and transport barite from China.

Barite is a soft dense, chemically inert material that is used as a weighing agent in oil well-drilling fluids to counteract certain pressures that result from well-drilling and operation. China is the world's largest barite producer, accounting for about a third of total production. About 60 percent of barite used in drilling fluids purchased in the U.S. is imported. Seventy percent of that amount (or 42 percent of U.S. consumption) comes from China.

According to your business review application, firms seeking to import barite from China have recently encountered several serious problems. You assert that, recently, supplies of Chinese barite have failed to meet the quality requirements of U.S. purchasers. As a result, U.S. producers have had to undertake expensive actions to counteract the reduced quality of the Chinese barite. U.S. purchasers also have encountered shipping reliability problems with respect to Chinese barite. Promised shipments have been diverted at the last minute.

To remedy these supply problems relating to Chinese barite, the three firms propose to establish a joint venture corporation that will purchase barite from Chinese suppliers on behalf of the three firms, provide for quality-testing before shipment from China, try to improve the quality control methods of suppliers of the Chinese barite and/or arrange for shipment from China to the facilities of the three firms. The joint venture entity will resell the Chinese barite to its owners at cost.

The three firms would be required to purchase Chinese barite exclusively through their joint venture purchasing agent. They would, however, continue to independently purchase non-Chinese barite.

Negotiations on behalf of the joint venture will be conducted by that venture's employees or an independent party hired by the joint venture rather than by employees of the owner firms. Communications between the joint venture's negotiators and an owner firm will be kept confidential, i.e., not shared with other owner firms. All meetings of the joint venture's board of directors will be monitored by counsel, and discussions thereat will be limited to publicly-available information related to Chinese barite.

The applicants contend that the joint-purchasing venture approach will enable its members to share the costs of quality-testing the Chinese barite prior to procurement, and will increase their ability to persuade Chinese suppliers to improve their own quality controls. You also contend that by aggregating their purchases of Chinese barite, the three firms will attain quantity discounts and more control over transportation reliability. The latter benefit would enable them to reduce their inventories (currently kept at an artificially high level because of transportation reliability concerns) and the costs thereof.

On the basis of the information and assurances provided to us by the three firms, the Department of Justice has no current intention to challenge the proposed creation and operation of a joint venture entity that would purchase Chinese barite on behalf of the three firms. The joint venture would not possess market power as a purchaser of shipping space in the China-U.S. trade since you assert that the current and anticipated shipments of the three member firms would constitute far less than the 35 percent market share that the Department has used as a safe harbor criterion for determining the antitrust legality of shippers' associations and other types of joint-purchasing agents.

Based on your assurances, and the procedures that the joint venture will employ, we also have concluded that the proposed conduct will not have an anticompetitive effect in the finished product/service markets in which the three firms compete as sellers -- the oil well-drilling fluids and services markets. In some cases, joint-purchasing can give rivals a sufficiently high degree of common costs as to increase the likelihood that the joint venture's members could successfully coordinate their interactions, such as by express or tacit collusion, regarding price or output of their finished products/services. You assert that barite accounts for less than 20 percent of the selling price of the drilling fluid in which it is incorporated and considerably less than 20 percent of the packages of goods and services often sold to oil-drilling services customers. In addition, the commonly purchased barite would not account for all of the barite used by the three firms. Imports of Chinese barite account for only about 42 percent of barite used by U.S. drilling fluids producers. Based on this information and assurances, the proposed joint venture would produce common costs that are below the 20 percent of the price of the sold finished product that the Department uses as a safe harbor in determining whether joint-purchasing may raise a significant risk of collusion in the sale of the finished product. The procedures proposed to limit communication of information amongst the three firms and the fact that Chinese suppliers will remain free to sell barite to other U.S. firms further reduce the risk that the proposed joint-purchasing agent will have any anticompetitive effect in the sale of drilling fluid or oil-drilling services.

Finally, you assert that the joint venture's purchasing activities in China "would have no direct, substantial and foreseeable adverse effect on the U.S.". To the extent that is true, those procurement activities would not implicate interests cognizable under the United States' antitrust laws. Whether the antitrust interests of other countries might be implicated is an issue beyond our purview. We would be concerned if the joint procurement activities in China had adverse competitive effects on the price or supply of barite or barite-containing products in the U.S. or restricted other U.S. firms' operations in China, but you have assured us that there would be no

such effects. Based on your representation, we have no present intention to challenge the proposed conduct.

To the extent that the proposed joint-purchasing venture enables the three firms to overcome some of the quality and reliability problems that they have been experiencing recently with respect to obtaining barite from China, it could have procompetitive effects. By reducing the extra-costs currently being incurred by the three firms to overcome their quality and reliability concerns, the proposed joint-purchasing venture could result in reduced costs and increased output.

This letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of any aspect of the proposed joint-purchasing of Chinese barite by the three firms proves to be anticompetitive in any purpose or effect relating to interests protected by the United States' antitrust laws.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10 (c) of the Business Review Procedure.

Sincerely,

/s/

Anne K. Bingaman
Assistant Attorney General