FEDERAL TRADE COMMISSION

[File No. 971–0118]

Degussa Aktiengesellschaft, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 2, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joseph Krauss, FTC/H–386, Washington, D.C. 20580. (202) 326–2713.

SUPPLEMENTARY INFORMATION: Pursuant to Section 69(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 30, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order from Degussa Aktiengesellschaft and Degussa Corporation (collectively ''Degussa''). The proposed Order is designed to remedy anticompetitive effects stemming from a proposed transaction between Degussa and E.I. du Pont de Nemours & Co. (''DuPont''). On July 30, 1997, representatives of Degussa and DuPont signed a Letter of Intent setting out the elements of a proposed transaction whereby Degussa would require, inter alia, the assets of DuPont's worldwide hydrogen peroxide business, including its North American production facilities in Memphis, Tennessee; Maitland, Ontario; and Gibbons, Alberta, in exchange for $325 million. The parties have since proposed a modified transaction, whereby Degussa will acquire only DuPont's production facility in Gibbons, Alberta, and DuPont will retain its facilities in Memphis, Tennessee, and Maitland, Ontario.

The Agreement Containing Consent Order, if finally accepted by the Commission, would settle charges that the acquisition, as originally proposed, may have substantially lessened competition in the North American hydrogen peroxide market. The Commission has reason to believe that Degussa's original proposal to acquire DuPont's hydrogen perxide business, if consummated, would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The proposed complaint, described below, relates the basis for this belief.

The proposed Order has been placed on the public record for sixty (60) days for reception of comments from interested persons. After sixty (60) days the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The Proposed Complaint

According to the Commission's proposed complaint, Degussa Aktiengesellschaft is a German corporation with worldwide sales exceeding $8.7 billion in 1997, which is engaged in, inter alia, the development and manufacture of chemicals, pharmaceutical specialties, and precious metals. Degussa Corporation, a wholly-owned subsidiary of Degussa A.G., manufactures and distributes widely diverse products in the markets for chemicals, pigments, metals, and dental materials in the United States, Canada, and Mexico. Among these products is hydrogen peroxide. In 1996, Degussa has sales in excess of $2.3 billion, to which sales of hydrogen peroxide contributed $65 million. DuPont is a publicly-traded corporation with reported revenues in 1996 of $43.8 billion and net income of $3.6 billion. DuPont is one of the largest chemical companies in the world, operating about 175 manufacturing and processing facilities in approximately 70 countries. DuPont is engaged in diverse businesses, including chemicals, fibers, films, polymers, petroleum, agricultural products, biotechnology, and pharmaceuticals. In 1996, DuPont posted sales of hydrogen peroxide of $156 million in North America.

According to the proposed complaint, the relevant line of commerce in which to analyze the effects of Degussa's proposed acquisition of Dupont's hydrogen peroxide production assets is the market for hydrogen peroxide, and the relevant geographic market is North America. The Commission's proposed complaint further alleges that the North American market for hydrogen peroxide is highly concentrated, and that the originally proposed acquisition would have increased concentration, as measured by the Herfindahl-Hirschman Index, by close to 600 points, to a level of over 2500. With the acquisition as modified, in which Degussa would acquire only DuPont's Gibbons plant, the level of the HHI would actually decrease. The proposed complaint charges that de novo entry or fringe expansion into the relevant market would require a substantial sunk investment and a significant period of time, such that new entry would be neither timely, likely, nor sufficient to deter or counteract anticompetitive effects of the originally proposed acquisition.

The proposed complaint alleges that the acquisition, as originally proposed, would likely lead to a substantial lessening of competition in the North American hydrogen peroxide market. The acquisition would substantially increase concentration in a market that is already highly concentrated. The increased concentration would enable the firms remaining in the market to engage more successfully and more completely in coordinated interaction. The complaint cites several bases for this conclusion. Significantly, there is a long history of collusion, both tacit and express, among the firms that would remain after the proposed acquisition, involving hydrogen peroxide and its derivative products. In addition, evidence demonstrates that competitive information in the North American hydrogen peroxide market is sufficiently available to allow producers to engage in coordinated interaction. Practices such as public announcement of price increases, and the use of meeting competition clauses in contracts, serve to make competitive information available. There is also evidence of a strong degree of mutual interdependence among hydrogen peroxide producers, and evidence of market tendencies toward coordination and forbearance. For example, sales of hydrogen peroxide among producers are made with some frequency, and in some cases appear to be intended to avoid competitive conflicts. Finally, the complaint also cites projections in documents that prices would be higher after the acquisition than they otherwise would have been.

The Proposed Order

The proposed Order contains a provision that requires Degussa to obtain the prior approval of the Commission of an acquisition of either of the two plants that DuPont would retain. In addition, it contains a provision that requires Degussa to provide prior notification to the Commission before consummating an acquisition of any other North American hydrogen peroxide production facilities, unless such acquisition must be reported under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, 15 U.S.C. 18a (''HSR''). This provision specifically requires that Degussa comply with HSR-like premerger notification and waiting periods.

In accord with the Commission's Statement of Policy Concerning Prior Approval and Prior Notice Provisions, 60 FR 39,745 (Aug. 3, 1995), reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13,241, the prior approval provision ensures that the Commission will have the appropriate mechanism with which to review the originally proposed acquisition, which appeared likely to have anticompetitive effects. The prior notice provision, in addition, ensures that the Commission will obtain notification of hydrogen peroxide acquisitions by Degussa, including potential acquisitions in Canada, that may raise antitrust concerns but would not be reportable under HSR. The prior approval and prior notification provisions therefore afford the Commission ample opportunity to guard against such potentially anticompetitive acquisitions.

The purpose of this analysis is to invite public comment concerning the proposed order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–8764 Filed 4–2–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 981–0076]

The Williams Companies, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 2, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phillip Broyles, FTC/S–2105, Washington, DC 20580. (202) 326–2805.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 27, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted from The Williams Companies, Inc. (''Williams,'' or ''Proposed Respondent'') an Agreement Containing Consent Order (''Proposed Consent Order''). The Proposed Consent Order remedies the likely anticompetitive effects in two product markets arising from certain aspects of Williams' proposed acquisition of MAPCO Inc. (''MAPCO'').

II. Description of the Parties and the Transaction

Williams, headquartered in Tulsa, Oklahoma, is a multinational company doing business in the energy and communications industries. Williams operates natural gas processing plants in Wyoming and pipelines that supply prepare to the upper Midwest. During 1997, Williams had total revenues of approximately $4.4 billion.

MAPCO, also with headquarters in Tulsa, Oklahoma, is involved in the energy industry. One of its principal businesses is the production, shipment, and sale of natural gas liquids, such as propane, butane, and natural gasoline. In 1997, MAPCO had sales and operating revenues of approximately $3.8 billion.

On November 23, 1997, Williams and MAPCO entered into an agreement and plan of merger under which MAPCO will be acquired by Williams. Under the agreement, each share of MAPCO common stock will be exchanged for shares of Williams common stock plus preferred stock purchase rights.

III. The Proposed Complaint and Consent Order

The Commission has entered into an agreement containing a Proposed Consent Order with Williams in settlement of a proposed complaint alleging that the proposed acquisition violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and that consummation of the acquisition would violate Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act. The complaint alleges that the acquisition will lessen competition in the following markets: (1) the transportation by pipeline and terminaling of propane to (a) central Iowa, including Des Moines and Ogden; (b) northern Iowa and southern Minnesota, including Clear Lake and Sanborn, Iowa, and Mankato,