

Complaint

IN THE MATTER OF

**THE LUBRIZOL CORPORATION
AND
THE LOCKHART COMPANY****CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL
TRADE COMMISSION ACT**

*Docket C-4254; File No. 071 0230
Complaint, April 7, 2009 – Decision, April 7, 2009*

This consent order addresses the acquisition by the Lubrizol Corporation of certain assets from the Lockhart Company, which reduced competition in the market for rust preventives containing oxidates. The companies are the two largest providers of oxidates in the United States. The order requires Lubrizol to divest assets it acquired from Lockhart to Additives International LLC (AI). The transferred assets consist of a non-exclusive license to manufacture 28 former Lockhart rust preventive formulas that contain oxidates, including testing data relating to the formulas and the right to use the Lockhart trademarks and trade name for a period of two years after the date the order becomes final. Lockhart must also lease a portion of its Flint plant to AI and maintain the plant in good working order for the duration of the lease. AI also acquired from Lockhart a right of first refusal to purchase the plant. Lubrizol must release its right of first refusal to purchase Lockhart's oxidizer. The order also requires Lubrizol to execute a waiver of the non-compete provision of the acquisition agreement with Lockhart. The provision in the agreement prohibited Lockhart, for a period of five years from the date of the purchase agreement, from directly or indirectly engaging in any business competitive with the assets it sold to Lubrizol. The order also prohibits Lubrizol from acquiring any or all of AI without prior Commission approval. The acquisition of the former Lockhart formulas and the lease of the Lockhart plant by AI decrease the normal barriers a new entrant would face and remedies the anticompetitive effects of the previously executed acquisition.

Participants

For the Commission: *Daniel P. Ducore, Leonard L. Gordon,
Alan Loughnan, Nancy Turnblacer, and Theodore Zang, Jr.*

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For the *Respondents: Elizabeth Grove, Lubrizol in-house counsel; and Thomas A. Donovan, Kirkpatrick & Lockhart Preston Gates Ellis LLP.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that respondent The Lubrizol Corporation (“Lubrizol”), a corporation subject to the jurisdiction of the Commission, acquired certain assets of The Lockhart Company (“Lockhart”), a corporation subject to the jurisdiction of the Commission, 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 The Lubrizol Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 29400 Lakeland Boulevard, Wickliffe, Ohio 44092.

2. Respondent The Lockhart Company is a corporation organized, existing and doing business under and by virtue of the laws of Pennsylvania, with its principal office at 2873 West Hardies Road, Gibsonia, Pennsylvania 15044.

3. Respondents are, and at all times herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affect “commerce” as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

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II. THE ACQUISITION

4. Pursuant to an asset purchase agreement dated February 7, 2007, Lubrizol acquired certain assets from Lockhart, including assets relating to oxidates such as intellectual property, contracts, purchase orders, customer lists and records, product formulae and processes, and goodwill, for \$15.6 million (“the Acquisition”).

5. The purchase agreement included a non-competition agreement that prohibited Lockhart, for a period of five years from the date of the purchase agreement, from directly or indirectly engaging in any business competitive with the assets it sold to Lubrizol. Lubrizol subsequently indicated that this provision barred Lockhart from leasing its plant in Flint, Michigan, to another oxidate manufacturer.

III. THE RELEVANT MARKET

6. For the purposes of this Complaint, the relevant product market in which to evaluate the effects of the Acquisition is oxidate for use as a rust preventive additive. Oxidates include products composed of or containing oxidates, products derived from oxidates, and those products’ functional equivalents (collectively “oxidates”).

7. For the purposes of this Complaint, the relevant geographic market in which to evaluate the effects of the Acquisition is the United States of America.

8. Purchasers of Lubrizol’s oxidates have no economic alternative to purchasing these products.

IV. THE STRUCTURE OF THE MARKET

9. Lubrizol and Lockhart are, by a large margin, the two largest providers of oxidates in the United States. Consequently, the United States market for oxidates is highly concentrated, with a pre-acquisition Herfindahl-Hirschman Index (“HHI”) of 7,007. Prior to the Acquisition, Lubrizol and Lockhart dominated the market for

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oxidates, and, together accounted over 98% of sales in the U.S. market for oxidates. The Acquisition created a monopoly in this market and increased HHI concentration by 2,672, resulting in a post-acquisition HHI of 9,679.

10. Lubrizol and Lockhart were actual and substantial competitors in the relevant market.

V. ENTRY CONDITIONS

11. New entry into the relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition set forth in Paragraph 14 below.

12. New entry into the relevant market is a difficult process because of, among other things, the time and costs associated with building a plant capable of producing oxidates, obtaining the necessary regulatory permits for the plant, research and development of formulae, and the lengthy testing period necessary to attain customer approval for new oxidate products. As a result, entry into the market sufficient to achieve a significant market impact within two years is unlikely.

13. Lubrizol's plant in Painesville, Ohio, and Lockhart's plant in Flint, Michigan, are the only two plants in the United States that currently have the equipment capable of oxidizing products at the requisite pressure necessary to produce quality products.

VI. ANTICOMPETITIVE EFFECTS

14. The Acquisition substantially lessened competition in the following ways:

- a. it eliminates actual, actual potential, and perceived potential competition between Lubrizol and Lockhart;
- b. it removes Lockhart, the only alternative source of oxidates in the relevant market;

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- c. it thwarts entry by restricting the use of Lockhart's Flint plant or equipment;
- d. it creates a monopoly in the relevant market;
- e. it leads to increased prices for the relevant product;
- f. it increases Lubrizol's market power in the relevant market; and
- g. it allows Lubrizol to exercise its market power unilaterally in the relevant market.

VII. VIOLATIONS CHARGED

15. The Acquisition described in Paragraph 5 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45 and a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventh day of April, 2009, issues its Complaint against Respondents.

By the Commission.

Decision and Order

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition of various product lines of chemical additives used to make rust preventives and other assets by The Lubrizol Corporation (“Respondent Lubrizol”) from The Lockhart Company (“Respondent Lockhart”) (collectively referred to as “Respondents”), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

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1. Respondent The Lubrizol Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of Ohio, with its office and principal place of business located at 29400 Lakeland Boulevard, Wickliffe, OH 44092.

2. Respondent The Lockhart Company is a corporation organized, existing and doing business under and by virtue of the laws of Pennsylvania, with its office and principal place of business located at 2873 West Hardies Road, Gibsonia, PA 15044.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Lubrizol” means The Lubrizol Corporation its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Lubrizol Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Lockhart” means The Lockhart Company, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries (including Lockhart Chemical Company), divisions, groups and affiliates controlled by The Lockhart Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.

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- D. “Additives International” means Additives International LLC, a limited liability corporation, organized, existing and doing business under and by virtue of the laws of Ohio, with its office and principal place of business located at 635 Chicago Ave., #104, Evanston, IL 60602.
- E. “Flint Plant” means the Lockhart manufacturing facility located at 4302 James P. Cole Boulevard, Flint, Michigan 48505.
- F. “Flint Plant Lease Agreement” means the October 6, 2008, lease agreement between Additives International and Lockhart Chemical Company, as amended on January 6, 2009, and that includes, among other things, an option for Additives International to acquire all or part of the Flint Plant and an option for Additives International to renew and extend the lease.
- G. “Flint Plant Leased Area” means those areas described in Paragraph 1 of the Flint Plant Lease Agreement including, but not limited to, calcium sulfonate reactors, a calcium sulfonate filter press, additive blend tanks, storage and blend tanks, shared use of the oxidation reactor, shared use of laboratory space and hot room, and 4800 square feet of warehousing space, including shared use of the loading dock.
- H. “Flint Plant Lessee” means Additives International or any other Person who leases the Flint Plant Leased Area pursuant to this Order.
- I. “Flint Plant Operational Areas” means the:
 - 1. areas appurtenant to and used in the operation of the Flint Plant Leased Area including, but not limited to, loading and unloading areas, storage areas for inputs and inventory, at the Flint Plant;

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2. areas for the use of employees working at the areas leased pursuant to the Flint Plant Lease Agreement, similar to those areas available to Respondent Lockhart employees working at the Flint Plant, including, but not limited to, exits and entrances, parking areas, machine rooms, work rooms, break rooms, bathrooms, and locker rooms;
 3. existing easements and rights of way relating to the leased areas;
 4. related facilities required for the storage of products produced at the Flint Plant by the Flint Plant Lessee.
- J. “Lockhart Oxidates” means the products listed on Non-Confidential Exhibit A to this Order that were previously manufactured and sold by Respondent Lockhart and acquired from Respondent Lockhart by Respondent Lubrizol, whether or not currently manufactured or sold by Respondent Lubrizol.
- K. “Lockhart Oxidates Assets” means
1. the non-exclusive rights to use trademarks, trade names, domain names, service marks and copyrights Relating To the Lockhart Oxidates solely to describe Additives International products as comparable, functionally equivalent, or chemically equivalent to the pertinent Lockguard product [Product No.] orally, in communications with individual customers, or on Additives International’s website for a period of two years after the date on which the order becomes final, if such products are made using the Lockhart formulae transferred pursuant to this Paragraph I.K.2;
 2. a copy of all processes, batch sheets, material data safety sheets, formulae, methods, quality control procedures, trade secrets, technology, know-how, inventions and

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tangible or intangible proprietary information or material received by Lubrizol from Lockhart, including, but not limited to, technical information, processes, procedures, and methods Relating To the Lockhart Oxidates; and

3. a copy of all existing data and information relating to any of Respondent Lockhart's or Respondent Lubrizol's approvals, clearances, licenses, registrations, permits, franchises, product registrations or authorizations issued by any federal, state, municipal, or foreign authority, or any third party test house, registrar or certification body Relating To the Lockhart Oxidates including, without limitation, all clinical trial data, filings, engineering and design documentation, manufacturing and test results and procedures.
- L. "Material Confidential Information" means competitively sensitive, proprietary, and all other information that is not in the public domain owned by or pertaining to a Person or a Person's business, and includes, but is not limited to, all customer lists, price lists, contracts, cost information, marketing methods, patents, technologies, processes, or other trade secrets.
- M. "Person" means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, division, or department, or other business or legal entity.
- N. "Relating To" means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to.

II.

IT IS FURTHER ORDERED that Respondent Lubrizol shall,

- A. Remove and rescind any prohibition or restraint including, but not limited to, any non-compete agreements, on the sale

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or use of all or any part of Respondent Lockhart's Flint Plant for the manufacture and sale of any products produced at the Flint Plant by Additives International or any other Person;

- B. Within thirty (30) days after the date this Order becomes final, divest to Additives International the Lockhart Oxidates Assets.

III.

IT IS FURTHER ORDERED that:

- A. Respondent Lockhart shall Lease the Flint Plant in good faith to Additives International, pursuant to and in accordance with the Flint Plant Lease Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Additives International or to reduce any obligations of Respondent under such agreement), and such agreement, if approved by the Commission, is incorporated by reference into this Order and made a part hereof as Confidential Appendix B.
- B. For the length of time during which Respondent Lockhart leases the Flint Plant to the Flint Plant Lessee, Respondent Lockhart shall:
 - 1. except as requested by the Flint Plant Lessee, take such actions as are necessary to prevent the destruction, removal, wasting, deterioration, or impairment of the Flint Plant Leased Area and the Flint Plant Operational Area, *provided, however* Respondent Lockhart shall not be responsible for changes to or problems of the Flint Plant Leased Area and the Flint Plant Operational Area caused by the Flint Plant Lessee; *provided, further, however*, Respondent Lockhart shall give the Flint Plant Lessee sixty (60) days prior notice of any facility

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maintenance, including ordinary and regular maintenance, when such maintenance may affect the operation of the Flint Plant Leased Area and the Flint Plant Operational Area; *provided, further, however*, in the event Respondent Lockhart cannot give the Flint Plant Lessee sixty (60) days prior notice, then Respondent Lockhart shall notify the Flint Plant Lessee as soon as it first notifies any persons at the Flint Plant regarding maintenance or problems that may affect the operation of the Flint Plant Leased Area and the Flint Plant Operational Area; and

2. maintain the Flint Plant Leased Area and the Flint Plant Operational Area in the same general way in which it maintains the other areas at the Flint Plant owned by Respondent Lockhart (to the extent the Flint Plant Lessee complies with the lease terms) including, but not limited to, the uninterrupted provision of utilities and services.
- C. Respondent Lockhart shall not, directly or indirectly, discuss with, or provide, disclose or otherwise make available to, Respondent Lubrizol, or any person working on behalf of Respondent Lubrizol, any Material Confidential Information Relating To the Flint Plant Lessee's manufacture or sale of products at the Flint Plant.
- D. The purpose of this Order is to remedy the lessening of competition alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that, for the term of this Order, Respondent Lockhart shall not, without providing advance written notification to the Commission in the manner described in this paragraph directly or indirectly modify, change or amend the Flint Plant Lease Agreement. *Provided, however*, advance written notice is not required if the Flint Plant Lease Agreement is being

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terminated because Additives International is acquiring all of the Flint Plant.

Said advance written notification shall contain (i) a detailed description of the proposed modification, change, or amendment to such agreements, or acquisition and (ii) documents discussing the reasons for the proposed modification, change, or amendment, or acquisition (hereinafter referred to as “the Notification”). Respondents shall provide the Notification to the Commission, with a copy to the Commission’s Compliance Division of the Bureau of Competition, at least thirty (30) days prior to instituting the modifications, changes, or amendments (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not institute changes to the agreements until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

V.

IT IS FURTHER ORDERED that, for the term of this Order, Respondent Lubrizol shall not acquire, without prior Commission approval, all or any part of Additives International.

VI.

IT IS FURTHER ORDERED that:

- A. The Commission may, at any time after the Order becomes final, appoint a Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in

Decision and Order

writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor. Respondents shall comply with the terms of Paragraph VI.B. and VI.C. after the appointment of the substitute Monitor pursuant to Paragraph VI.F.

- B. Not later than ten (10) days after appointment of a Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the terms of this Order in a manner consistent with the purposes of this Order ("Monitor Agreement").
- C. No later than one (1) day after the Monitor Agreement is approved pursuant to Paragraph VI.B., Respondents shall, pursuant to the Monitor Agreement and to this Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his or her duties and responsibilities in a manner consistent with the purposes of this Order.
- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to, assuring that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order.

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2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order.
4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with their obligations under this Order. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order.
5. The Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in

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any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor.

7. Respondents shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by Respondents, with respect to the performance of Respondents' obligations under this Order.
 8. Within one (1) month from the date the Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under this Order.
 9. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, or if the Monitor is otherwise unable to perform his or her duties, the Commission may

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appoint a substitute Monitor in the same manner as provided in this Paragraph VI.

- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

VII.

IT IS FURTHER ORDERED that:

- A. Thirty (30) days after the date this Order becomes final, each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the terms of this Order.
- B. If Respondent Lockhart sells the Flint Plant to Additives International, then within thirty (30) days of such sale, Respondent Lockhart shall submit a written report setting forth in detail the terms, including the contract for sale of the property, on which the Flint Plant was sold to Additives International.
- C. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, until the Order terminates, each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which the Respondent is complying and has complied with this Order. Respondents shall submit at the same time a copy of these reports to the Monitor, if any Monitor has been appointed.

VIII.

Decision and Order

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of that Respondent;
- B. Any proposed acquisition, merger, or consolidation of that Respondent; or
- C. Any other change in that Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

IX.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to each Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, each Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission to:

- A. access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

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X.

IT IS FURTHER ORDERED that this Order shall terminate on April 7, 2019.

By the Commission.

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NON-CONFIDENTIAL EXHIBIT ALOCKHART OXIDATES*

LG 1216-47
LG 8000
LG 8000Z
LG 8002
LG 8020
LG 8022
LG 8080
LG 8085
LG 8855
LG 8870
LG 9005
LG 9008
LG 9009
LG 9010
LG 9013
LG 9015
LG 9017
LG 9020
LG 9021
LG 9024
LG 9025
LG 9056
LG 9057
LG 9060
LG 9070
LG 9072
LG 9075
LG 9080

* Product names may have a letter such as a "S" or "W" and all variations on each product name are intended to be included in this list.

Analysis to Aid Public Comment

**CONFIDENTIAL EXHIBIT B
Flint Plant Lease Agreement**

**[Redacted From Public Record
But Incorporated By Reference]**

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

I. Introduction

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from The Lubrizol Corporation and The Lockhart Company (“Respondents”). The Consent Agreement is intended to resolve anticompetitive effects stemming from The Lubrizol Corporation’s (“Lubrizol”) acquisition of certain assets of The Lockhart Company (“Lockhart”) in the United States market for rust preventives containing oxidates. Under the terms of the proposed Consent Agreement, Lubrizol is required to divest assets it acquired from Lockhart to Additives International LLC (“AI”).

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

Pursuant to an Asset Purchase Agreement dated February 7, 2007, Lubrizol acquired from Lockhart a product line of chemical

Analysis to Aid Public Comment

additives used to make rust preventives for approximately \$15.6 million (“Acquisition”). The Asset Purchase Agreement also included a non-competition agreement that prohibited Lockhart, for a period of five years from the date of the purchase agreement, from directly or indirectly engaging in any business competitive with the assets it sold to Lubrizol. The Commission’s complaint alleges that the Acquisition violated 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, by lessening competition in the market for rust preventives containing oxidates sold to metalworking firms, automotive parts suppliers, and other entities. The proposed Consent Agreement would remedy the alleged violation by replacing the competition that has been lost in this market as a result of the Acquisition.

II. The Parties

Lubrizol is a specialty chemical manufacturer that produces and supplies products designed for use in the global transportation, industrial, and consumer markets. Lubrizol manufactures products such as additives, ingredients, resins, and compounds, which customers use as rust preventives and in other ways to improve the quality of their end-use products. Prior to the Acquisition, Lubrizol was the leading maker of oxidates in North America. Lubrizol, headquartered in Wickliffe, Ohio, operates facilities in 29 countries, including production facilities in 20 countries and laboratories in 13 countries. In FY2007, Lubrizol had approximately \$4.5 billion in revenue.

Lockhart, a private corporation headquartered in Flint, Michigan, was the second leading maker of oxidates in North America. Lockhart previously manufactured specialty chemicals including corrosion and lubricity additive packages, soluble bases, coating intermediates, and petroleum sulfonates and oxidates that serve the metalworking and coatings industries. Lockhart’s metalworking product line included oxidates, natural, synthetic and gelled sulfonates, corrosion inhibitors and lubricity agents, emulsifier

Analysis to Aid Public Comment

packages, grease additives, esters, soaps, semi-finished coatings, and rust preventives.

III. Oxidates

Oxidates are waxy petroleum-based substances that are normally solid at room temperature and are used in chemical formations designed to be applied to metal for rust prevention purposes. Oxidates may be further processed into soaps of oxidates and esters, which have the same rust preventive abilities as oxidates and are also used in chemical blends. In addition to their excellent rust preventive properties, oxidates are inexpensive and long-lasting compared to other rust preventive additives in the market. Due to oxidates' low costs and superior rust-preventing properties, they have become the "gold-standard" in long-term rust and corrosion protection. Oxidates are purchased by chemical formulators who use them to formulate rust protection and corrosion-inhibiting additives.

The relevant geographic market in which to assess the impact of the Acquisition is the United States. Foreign importers of oxidates face tariffs and other obstacles that increase their prices and make United States customers less likely to rely on foreign sources.

The market for oxidates is highly concentrated, with Lubrizol, and previously, Lockhart, being the top two providers of oxidates in the United States. While a few fringe firms exist, oxidates customers do not regard them as suitable alternatives to Lubrizol and Lockhart.

The acquisition of Lockhart's oxidate line by Lubrizol substantially lessened competition in the oxidate market. Through the Acquisition, Lubrizol removed its last substantial competitor in the market. Before the Acquisition, customers benefitted from the rivalry between Lubrizol and Lockhart in the form of lower prices, innovative products, and better service in and support. In addition, the Acquisition thwarted entry by restricting the use of Lockhart's Flint, Michigan, plant and equipment through the non-competition agreement.

Analysis to Aid Public Comment

New entry or fringe expansion into the market for the manufacture of oxidates sufficient to counteract the competitive effects of the Acquisition is unlikely to occur within two years. To enter the market, a firm needs to invest in assets such as equipment, production know-how, supplier relationships, and infrastructure. The market for oxidates is not expanding and it is likely a new entrant would not be able to establish enough sales to achieve the minimum viable scale to make entry economically feasible. In addition, the formulations for oxidates and other rust preventatives go through extensive testing and certification processes. Due to the time and expense of testing, customers are reticent to change suppliers absent exigent circumstances.

IV. Consent Agreement

Under the terms of the Consent Agreement, Lubrizol is required to transfer certain assets to AI. The transferred assets consist of a non-exclusive license to manufacture twenty-eight former Lockhart rust preventive formulas that contain oxidates, including testing data relating to the formulas and the right to use the Lockhart trademarks and trade name for a period of two years after the date upon which the Decision and Order becomes final. Under the terms of the Consent Agreement, Lockhart must also lease a portion of its Flint plant to AI and maintain the plant in good working order for the duration of the lease. Lubrizol must also release its right of first refusal to purchase Lockhart's oxidizer. AI also acquired from Lockhart a right of first refusal to purchase the plant.

The Consent Agreement also requires Lubrizol to execute a waiver of the non-compete provision of the Acquisition Agreement. Specifically, Section II.A. of the Decision and Order requires Lubrizol to "[r]emove and rescind any prohibition or restraint including, but not limited to, any non-compete agreements, on the sale or use of all or any part of Respondent Lockhart's Flint Plant for the manufacture and sale of any products produced at the Flint Plant by [AI] or any other Person." Finally, the Consent Agreement

Analysis to Aid Public Comment

prohibits Lubrizol from acquiring any or all of AI without prior Commission approval.

The Commission believes that this Consent Agreement establishes AI as a viable competitor in the oxidate market and substantially restores the competition lost as a result of the transaction. The acquisition of the former Lockhart formulas and the lease of the Lockhart plant by AI decreases the normal barriers a new entrant would face and remedies the anticompetitive effects of the previously executed Acquisition.

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and the proposed Decision and Order, and does not modify their terms in any way. Further, the proposed Consent Agreement has been entered into for settlement purposes only, and does not constitute an admission by Respondents that they violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

Complaint

IN THE MATTER OF

**NATIONAL ASSOCIATION OF MUSIC
MERCHANTS, INC.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4255; File No. 001 0203
Complaint, April 8, 2009 – Decision, April 8, 2009

This consent order addresses allegations that the National Association of Music Merchants (NAMM), a trade association of more than 9000 manufacturers, distributors, and dealers of musical instruments and related products, arranged and encouraged the exchange among its members of competitively sensitive information that had the purpose, tendency, and capacity to facilitate price coordination and collusion among competitors. The order prohibits NAMM from encouraging, advocating, coordinating, or facilitating in any manner the exchange of information among musical instrument manufacturers and dealers relating to the retail price of musical instruments or the conditions pursuant to which any manufacturer or dealer will deal with any other manufacturer or dealer. The order also prohibits NAMM from facilitating any musical instrument manufacturer or dealer in entering into or enforcing any agreement between or among musical instrument manufacturers or dealers relating to the retail price of any musical instrument or the conditions pursuant to which any manufacturer or dealer will deal with any other manufacturer or dealer. In addition, the order requires NAMM to institute an antitrust compliance program; it requires the review by antitrust counsel of all written materials and prepared remarks by any member of NAMM's board of directors, employee, or agent of NAMM relating to price terms and minimum advertised price policies; the provision by antitrust counsel of appropriate guidance on compliance with the antitrust laws; and annual training of NAMM's board of directors, agents, and employees concerning NAMM's obligations under the Order. The order does not interfere with the ability of NAMM to engage in legitimate trade association activity, including its sponsorship of trade shows and other events. It explicitly excludes from its prohibitions the ordinary commercial activities of NAMM's members on the show floor and the publication or dissemination of aggregated survey data, the sharing of best practices and training materials, and the communication of information relating to creditworthiness, product safety, and warranty issues.