

**ANALYSIS OF AGREEMENT CONTAINING  
CONSENT ORDER TO AID PUBLIC COMMENT**  
*In the Matter of The Lubrizol Corporation and The Lockhart Company*  
*File No. 071 0230*

**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 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 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 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.

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 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.