

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)
U.S. Department of Justice)
Antitrust Division)
450 5th Street, NW)
Suite 8000)
Washington, DC 20001)
)
<i>Plaintiff,</i>)
)
v.)
)
ECOLAB INC.)
370 Wabasha St. North)
St. Paul, MN 55102, and)
)
PERMIAN MUD SERVICE, INC.,)
3200 Southwest Freeway)
Houston, TX 77027,)
)
<i>Defendants.</i>)

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the acquisition of Permian Mud Service, Inc., (“Permian”), by Ecolab Inc. (“Ecolab”), and to obtain other equitable relief. The United States complains and alleges as follows:

I. NATURE OF THE ACTION

1. Ecolab’s acquisition of Permian would combine the two leading providers of production chemical management services for deepwater oil and gas wells (“deepwater PCMS”) in the U.S. Gulf of Mexico (“Gulf”). Deepwater PCMS providers design, produce, and apply

specially formulated chemical solutions to oil or gas wells to facilitate hydrocarbon production and protect well infrastructure.

2. Permian's wholly owned subsidiary, Champion Technologies, Inc. ("Champion"), and Ecolab's wholly-owned subsidiary, Nalco Company ("Nalco"), are the two largest suppliers of deepwater PCMS in the Gulf and vigorously compete head-to-head to win the business of oil and gas exploration and production companies ("E&P companies"). If the transaction is allowed to proceed, this competition will be lost and the merged firm will control approximately 70% of the market, leading to higher prices, reduced service quality, and diminished innovation.

3. Accordingly, as alleged more specifically below, the acquisition, if consummated, would likely substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. THE PARTIES AND THE TRANSACTION

4. Ecolab is a Delaware corporation headquartered in St. Paul, Minnesota. Nalco, its wholly-owned subsidiary, is headquartered in Naperville, Illinois and supplies the oil and gas industry with deepwater PCMS through its Energy Services Division. Ecolab generated \$1.87 billion in revenues from oil and gas-related products and services in 2011. Nalco is currently the largest supplier of deepwater PCMS in the Gulf.

5. Permian is a Texas corporation headquartered in Houston, Texas. Permian provides specialty chemicals and services to the oil and gas industry and generated \$1.25 billion in revenues in 2011. Permian's wholly-owned subsidiary, Champion, is also a Texas corporation and is currently the second largest provider of deepwater PCMS in the Gulf.

6. Pursuant to an agreement dated October 11, 2012, Ecolab agreed to purchase Permian for \$2.2 billion. The Defendants amended the Agreement and Plan of Merger on

November 28, 2012 (“First Amendment”), on November 30, 2012 (“Second Amendment”) to exclude certain assets and adjust the purchase price to \$2.16 billion, and again on December 28, 2012 (“Third Amendment”).

III. JURISDICTION AND VENUE

7. The United States brings this action pursuant to 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.

8. Ecolab and Permian provide deepwater PCMS in the flow of interstate commerce and their provision of deepwater PCMS substantially affects interstate commerce. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

9. Ecolab and Permian have consented to venue and personal jurisdiction in this judicial district.

IV. TRADE AND COMMERCE

A. The Provision of Deepwater PCMS in the Gulf

10. E&P companies rely on the services of deepwater PCMS providers to facilitate the safe and efficient production of oil and gas from deepwater wells in the Gulf. Throughout the production process, deepwater PCMS providers treat wells with blends of chemicals to prevent naturally occurring material, such as scale, paraffin, and hydrates, from blocking the flow of hydrocarbons to the production platform; protect the well’s infrastructure from corrosion and damage; enable the E&P company to efficiently separate the mix of oil, water, and gas produced by the well; and remove or neutralize unwanted substances, such as hydrogen sulfide gas, from the production.

11. Although onshore and shallow water wells also require PCMS, deepwater wells (wells drilled in water depths greater than 1,000 feet) generally present challenging production issues due to the complex infrastructure of many deepwater wells and the high temperatures and pressures often found in deepwater wells.

12. Due to the time and expense required to construct a new production platform in deepwater, E&P companies frequently opt to build “subsea wells,” which can connect to existing offshore production platforms up to 70 miles away, instead of “dry-tree” wells, which must be stationed very close to the production platform. Deepwater PCMS providers must deliver chemicals to subsea wellbores through “umbilicals,” which are clusters of extremely narrow chemical injection, hydraulic, and fiber-optic lines that extend from the production platform to the well. Because of the complexities of this delivery system and the expense of repairing a chemical line clogged by impure or unstable chemicals, E&P companies impose strict qualification and quality control requirements on chemicals administered through umbilicals.

13. Strings of narrow piping called “flow lines” transport oil and gas from a subsea well to the production platform. Because flow lines run along the seafloor, they expose the produced oil, water, and gas to cold temperatures that cause solids to form and block the flow line. Deepwater PCMS providers must specially formulate chemicals for deepwater subsea wells that inhibit the formation or accumulation of solids during prolonged exposure to seafloor temperatures.

14. Deepwater wells often share characteristics that complicate production (*e.g.*, high pressures and temperatures), but each deepwater well has unique characteristics that determine its production challenges. E&P companies rely on PCMS providers to assess these characteristics and develop formulations specific to each well. When devising a treatment

program, PCMS providers consider the makeup of the well's hydrocarbons, formation rock, and water; as well as conditions the hydrocarbons and chemicals will face inside the well and during production, such as extreme temperatures and pressures. PCMS providers test potential formulations in laboratories that can replicate conditions inside the well before settling on the chemical formulations, application techniques, and level of service they will recommend for a specific project.

15. A deepwater PCMS provider needs a strong staff of experts to successfully compete in the deepwater Gulf. E&P customers hire PCMS providers to assess and solve their production challenges and continuously manage the well's treatment. They expect PCMS providers to have highly trained and knowledgeable employees to monitor each well on an ongoing basis, devise new treatment programs when circumstances change, and prepare recommendations for potential opportunities. PCMS providers also require subject matter experts who can develop new products and technologies that are effective in whatever novel environments E&P companies operate.

16. E&P companies typically procure deepwater PCMS through a formal or informal bidding process. Potential suppliers are asked to submit a proposal including the recommended treatment plan; test results to support the treatment plan; prices; past experiences with similar well-conditions; safety records; information on the company's supply chain, training programs, lab facilities, and R&D programs; and the resumés or experience levels of proposed service personnel.

17. Customers choose a PCMS provider based on a number of factors, including, but not limited to, the efficacy of the proposed treatment program, price, the provider's prior track record servicing deepwater wells, and the provider's ability to offer timely and competent

service. Customers also consider the provider's research and development ("R&D") program and ability to advise on the optimal well design of new projects.

18. Although deepwater PCMS represents a fraction of an E&P company's overall cost of production, the costs associated with delay or failure are high. If the deepwater PCMS provider selects the wrong chemicals or fails to adequately monitor or service the well, it can cost the customer millions in lost production or compromise the well's infrastructure.

19. Because of the value of deepwater wells and the risks of improper treatment, some customers will only accept a bid for a particular project from a supplier whom it has thoroughly vetted and pre-qualified. As a result, deepwater PCMS providers sometimes compete to be designated as preferred or pre-qualified suppliers. Preferred suppliers may then bid against each other for specific projects.

20. There are often only two or three bidders for each deepwater PCMS contract in the Gulf, and the bidders typically know whom they are competing against for a particular project. Nalco and Champion are the two largest deepwater PCMS providers in the Gulf and compete head-to-head on a substantial number of deepwater PCMS opportunities.

B. The Provision of Deepwater PCMS Is a Relevant Product Market

21. The provision of deepwater PCMS is a relevant product market and line of commerce under Section 7 of the Clayton Act. E&P companies are unlikely to forego use of PCMS providers or switch to PCMS providers that only have experience onshore or in shallow water in response to a small but significant and non-transitory increase in deepwater PCMS prices.

22. The risks of not using a PCMS provider, or using a PCMS provider without deepwater operations or experience, greatly outweigh the potential cost savings. Deepwater

wells present unique production issues and operational challenges. The costs of a clogged umbilical line are substantial, while the cost of deepwater PCMS is a small fraction of the E&P company's total operational costs. Improper deepwater PCMS treatment can force an E&P company to replace a chemical line, shutdown production to make repairs, or forego the profits of full production rates achievable through proper PCMS treatment.

23. Deepwater PCMS are not reasonably interchangeable with onshore or shallow water PCMS. Because deepwater basins have unique characteristics and well infrastructure, providers of onshore or shallow water PCMS typically do not have the relevant know-how and experience required to effectively treat deepwater wells. Although there are some subsea wells in shallow water, they are typically closer to the production platform than deepwater subsea wells, so the operational difficulties engendered by umbilicals and flow lines are often less severe in shallow water. Additionally, the geological characteristics of shallow-water areas of the Gulf differ from its deepwater areas, so PCMS providers active in shallow water do not have the same familiarity or experience with the formation rocks or hydrocarbons found in deepwater. Importantly, because deepwater operations differ, onshore and shallow water PCMS providers also typically lack a complete suite of chemicals that can tolerate umbilical injection or the high pressures and temperatures typically found in deepwater wells and the necessary lab and filtration equipment to develop and qualify a chemical for umbilical injection or deepwater use.

C. The U.S. Gulf of Mexico Is a Relevant Geographic Market

24. The U.S. Gulf of Mexico is a relevant geographic market for the provision of deepwater PCMS under Section 7 of the Clayton Act. E&P companies operating in the Gulf are unlikely to switch to a PCMS provider without local infrastructure or Gulf-specific deepwater

experience and expertise in the event of a small but significant and non-transitory increase in price.

25. E&P companies operating deepwater wells in the Gulf require their PCMS suppliers to have local infrastructure, such as distribution centers, blending facilities, analytical laboratories and sales and technical personnel, so that the PCMS provider can have the resources it needs nearby to monitor the well and quickly address production challenges. These E&P companies will not select a deepwater PCMS provider that lacks the Gulf-based infrastructure necessary to effectively service their projects.

26. Although experience in another deepwater basin may be relevant to deepwater Gulf operations, each deepwater basin presents unique production challenges resulting from its unique combination of hydrocarbons, produced water, and geological characteristics. PCMS providers operating in other deepwater basins are unlikely to have the depth of experience with the particular production challenges that frequently affect deepwater wells in the Gulf. Customers are unlikely to entrust their wells to PCMS providers without this essential experience.

D. Market Participants

27. The defendants are the two largest providers of deepwater PCMS in the Gulf. One additional firm has significant deepwater PCMS experience in the Gulf and regularly competes against Nalco and Champion for deepwater PCMS opportunities. A handful of other firms provide deepwater PCMS but lack the robust track record, requisite personnel, and proven product lines that make Champion and Nalco successful competitors. Additionally, these other firms do not compete for the majority of deepwater PCMS opportunities.

V. LIKELY ANTICOMPETITIVE EFFECTS

A. Market Shares and Concentration

28. The relevant market is highly concentrated and would become more concentrated as a result of the proposed transaction. Based on 2012 revenues, Champion's share of the deepwater PCMS market in the Gulf was 34% while Nalco's was 38%.

29. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index ("HHI").¹ Market concentration is often one useful indicator of the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that a transaction would result in a meaningful reduction in competition that would result in harm. Markets in which the HHI is above 2,500 points are considered highly concentrated. Transactions that increase the HHI by more than 200 points in highly concentrated markets will be presumed likely to enhance market power.

30. The deepwater PCMS market in the Gulf currently is highly concentrated, with an HHI of over 2,900. The proposed merger would significantly increase the HHI by 2,607, rendering the transaction presumptively anticompetitive.

B. Likely Anticompetitive Effects

31. Ecolab's acquisition of Permian would combine their respective subsidiaries, Nalco and Champion, the two leading deepwater PCMS providers in the Gulf, creating a

¹ See U.S. Dep't of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.3 (2010), *available at* <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>. The HHI 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 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

dominant firm with a greater than 70% market share. Nalco and Champion vigorously compete on price, terms of sale, service quality, and product development. They have spurred each other to develop and improve products, performance and technology, and customers have benefitted from this competition. The transaction would eliminate the head-to-head competition between Nalco and Champion to provide deepwater PCMS in the Gulf.

32. Nalco and Champion provide deepwater PCMS to wells with similar production issues in similar water depths and are two of the few firms that have the manpower, technical capabilities and expertise to service the Gulf's most challenging wells. Nalco and Champion routinely bid against each other on the same deepwater projects in the Gulf and are considered by many E&P customers to be close substitutes.

33. Customers differentiate among deepwater PCMS providers on the basis of price, reputation, service quality, product effectiveness, and other factors. Nalco's acquisition of Champion would eliminate many customers' preferred alternative to Nalco and reduce the number of preferred or capable bidders on many projects from three to two. Post-acquisition, Nalco would gain the incentive and ability to profitably raise its bid prices significantly above pre-acquisition levels, reduce its investment in R&D, or provide lower levels of service.

34. The response of the remaining deepwater PCMS firm would not be sufficient to constrain an exercise of market power by Nalco after the acquisition. Having removed its closest substitute for many customers, Nalco would be aware that many customers now have a stronger preference for it as a supplier, allowing Nalco to raise prices above pre-acquisition levels, relax its service standards, and scale back its efforts to innovate. Deepwater PCMS providers in the Gulf that lack an established track record and experienced personnel are not invited to bid on many projects.

VI. ENTRY AND EFFICIENCIES

35. Entry by a new PCMS service provider or expansion of existing marginal suppliers would not be timely, likely, and sufficient to prevent the substantial lessening of competition caused by the elimination of Champion as an independent competitor.

36. Successful entry into the provision of deepwater PCMS in the Gulf is difficult, costly, and time consuming. To compete, a deepwater PCMS supplier must have local infrastructure, a full line of production chemicals designed for deepwater use, experienced staff, and a track record of successfully treating deepwater wells in the Gulf. Because of the significant investment E&P companies make in deepwater wells and the high costs of any problem or delay, these firms disfavor the risks of using new suppliers or switching between established suppliers, making it difficult for new PCMS providers to enter the market or grow their business.

37. Developing a track record of successfully treating deepwater wells in the Gulf is arduous and takes substantial time. E&P companies typically avoid the cost and delay involved in evaluating and monitoring a new supplier unless the existing supplier exhibits poor performance over a long period of time. Additionally, many E&P companies refuse to be the first customer to use a new deepwater PCMS provider, while others will only use a deepwater PCMS provider after the provider has developed a track record over a number of years.

38. A potential entrant may also face problems acquiring sufficient manpower to expand its business or enter at all. E&P companies require deepwater PCMS providers to commit a number of personnel with significant deepwater experience to the well, and also expect the provider to staff its laboratories and R&D facilities with deepwater experts. It takes existing

deepwater PCMS providers years to train employees before they can accumulate deepwater experience and expertise.

39. Defendants cannot demonstrate cognizable and merger-specific efficiencies that would be sufficient to offset the transaction's anticompetitive effects.

VII. VIOLATION ALLEGED

40. The effect of Ecolab's proposed acquisition of Permian if it were consummated, would likely be to lessen substantially competition for deepwater PCMS in the Gulf in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Unless restrained, the transaction would likely have the following effects, among others:

- a) competition in the market for deepwater PCMS in the Gulf would be substantially lessened;
- b) prices for deepwater PCMS in the Gulf would increase;
- c) the quality of deepwater PCMS services in the Gulf would decrease; and
- d) innovation in the deepwater PCMS market in the Gulf would diminish.

VIII. REQUESTED RELIEF

41. Plaintiff requests that this Court:

- a) Adjudge Ecolab's proposed acquisition of Permian to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
- b) Permanently enjoin and restrain Defendants from consummating the proposed acquisition by Ecolab of Permian or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Ecolab and Permian;

- c) Award the United States its costs for this action; and
- d) Award the United States such other and further relief as the Court deems just and proper.

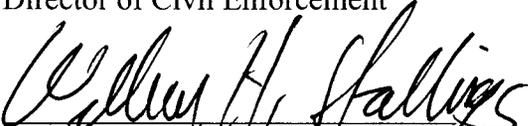
Dated: April 8, 2013

Respectfully submitted,

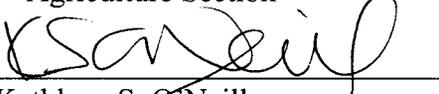
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