

1. GC-96-031, Notice of amendments to Parts 201 and 207 of Rules of Practice and Procedure (Title VII matters).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 25, 1996.

Donna R. Koehnke,
Secretary.

[FR Doc. 96-16612 Filed 6-25-96; 2:43 pm]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Georgia-Pacific Corp.; Proposed Consent Judgments

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(c)-(h), the United States publishes below the comment received on the proposed final judgment in *United States v. Georgia-Pacific Corp.*, Civil Action No. 96-164, filed in the United States District Court for the District of Delaware, together with the United States' response to that comment.

Copies of the comment and response to comment are available for inspection and copying in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: (202) 514-2481), and at the office of the Clerk of the United States District Court for the District of Delaware. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,
Director of Operations.

June 7, 1996.

Morgan A. Chivers,
Chairman of the Board and Chief Operating Officer, Continental Gypsum Company,
265 Distribution Street, Port Newark,
New Jersey 07114

Re: United States v. Georgia-Pacific Corporation, Civil Action No. 96-164 (D. Del., March 29, 1996)

Dear Mr. Chivers: This letter responds to your letters dated April 30, 1996 and May 21, 1996 commenting on the proposed Final Judgment in the above-referenced antitrust case, which challenges the acquisition of the gypsum business of Domtar Inc. ("Domtar") by Georgia-Pacific Corporation ("GP"). The Complaint alleges that the acquisition violates Section 7 of the Clayton Act, 15 U.S.C. § 18, because its effects may be to lessen substantially competition in the production and sale of gypsum board in the Northeast Region of the United States. As defined in the Complaint, the Northeast

Region encompasses the twelve eastern seaboard states from Maine through Virginia and Washington, D.C. Under the proposed Final Judgment, GP is required to divest to one or more purchasers its Buchanan, New York and Wilmington, Delaware gypsum board plants and related tangible and intangible assets. GP must accomplish the divestitures within 150 calendar days after the date on which the proposed Final Judgment was filed (March 29, 1996).

In your April 30 letter, you noted that Continental Gypsum Company is a small independent gypsum board manufacturer which commenced production on August 23, 1995 and did not obtain expected levels of production and sales until April 1996. You expressed two concerns about the provisions on the proposed Final Judgment. One concern arises from the requirement that GP "use all reasonable efforts to maintain and increase sales of gypsum board" at the Buchanan and Wilmington plants until the divestitures of these facilities have been accomplished. GP also is required to "maintain at 1995 or previously approved levels, whichever are higher, promotional, advertising, sales, marketing and merchandising support" for gypsum board sales at these two plants. You believe that complying with these provisions could have a "predatory" effect on Continental and possibly force Continental out of the market, particularly if demand stays the same or falls in 1996.

We do not believe these provisions will have an adverse effect on competition in the gypsum wallboard market. The provision were intended to prevent GP from taking any actions that might jeopardize the competitive viability of the Buchanan and Wilmington plants pending divestiture. To ensure continued viability, GP must use all "reasonable efforts" to maintain sales at existing levels or to increase sales during the divestiture period. This requirement imposes no greater obligation on GP than could reasonably be expected if the plants were not candidates for divestiture. Moreover, Continental could reasonably anticipate that any prospective purchaser would operate the Buchanan and Wilmington plants in a similar manner after the divestiture period. Thus, any loss of sales by Continental from operating the plants in the manner required by the proposed Final Judgment would result from competitive, not anticompetitive, forces.

Your second concern arises from the requirement that GP, at the option of the purchaser or purchasers, enter into a supply contract for gypsum rock and/or gypsum linerboard paper sufficient to meet all or part of the capacity requirements of the Buchanan and Wilmington plants over a period up to ten (10) years. The proposed final Judgment expressly provides that the terms and conditions of any such supply contract "must be related reasonably to market conditions for gypsum rock and/or gypsum linerboard paper." You noted that Continental currently purchases some of its paper requirements from GP and that it views GP as a potential source of its gypsum rock requirements. You are concerned that the supply contracts provided for in the Final Judgment will "seriously restrict" Continental's ability to source these vital raw materials.

We do not believe that the supply contracts mandated in the Final Judgment would have any adverse competitive effect on Continental, should a purchaser or purchasers elect to negotiate such contracts with GP. As an initial matter, it should be noted that GP currently is supplying the Buchanan and Wilmington plants with gypsum rock and linerboard paper and (presumably) would continue to do so in the absence of the Department's challenge to the Domtar acquisition. Thus, allowing the purchaser or purchasers of these facilities to contract for a long-term source of these raw materials from GP would not mean that the amount of such materials GP has available to sell to others in the industry would be any less than would otherwise be the case. Moreover, should GP decide to sue its own resources to supply gypsum rock and paper to the two Domtar facilities that it is acquiring in the Northeast Region—Domtar's Newington, New Hampshire and Camden, New Jersey plants—the gypsum rock and paper that presently are being supplied to these facilities from third party sources would become available on the market. Accordingly, there is no net reduction in gypsum rock or paper available to the industry as a result of GP entering into supply contracts for the Buchanan and/or Wilmington plants, and the ability to enter into these contracts, if needed, should greatly facilitate the divestiture of the two plants. In addition, it is important to recognize that the supply contracts provided for in the Final Judgment will be the result of arms-length negotiations reflecting market conditions; it is unlikely, in these circumstances, that the purchaser or purchasers will gain undue advantage over other market participants as a result of these contracts.

We appreciate you bringing your concerns about the proposed Final Judgment to our attention and hope that the foregoing analysis has helped to alleviate them. While we understand your position, we believe that the proposed Final Judgment offers the best feasible solution to the anticompetitive effects posed by GP's acquisition of Domtar's gypsum business in the Northeast Region. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letters and this response will be published in the Federal Register and filed with the Court.

Sincerely,

J. Robert Kramer, II
Chief, Litigation II Section.

May 21, 1996.

Mr. J. Robert Kramer,
Litigation II Section, Antitrust Division, U.S.
Department of Justice, 1401 H St., N.W.,
Suite 3000, Washington D.C. 20530.

Re: U.S.A. v. Georgia Pacific Corporation
Civil Action No.: 96-164.

Dear Mr. Kramer: This letter shall serve as additional comments of the Continental Gypsum Company comment letter to you of April 30, 1996:

In the April 30, 1996 letter we expressed our fear that the Final Judgment mandate that Georgia Pacific maintain or increase sales and production to 1995 levels would cause predatory actions by Georgia Pacific against

Continental Gypsum Company, that now appears to be the case

In the past 45 days we have had extreme pressure to lower pricing levels to distributors in our prime market area. While the pricing at our outer sales regions i.e., Maryland, Virginia, Delaware, western Pennsylvania, have been relatively strong, the New Jersey and Metropolitan New York are off significantly. In each and every case, we find we must meet a Georgia Pacific price to maintain a reasonable level of business. Continental Gypsum is clearly being targeted by Georgia Pacific. Further, it is our opinion that Georgia Pacific has been caused to such action by reason of the Final Judgment mandate that they maintain a level of business that totally ignores consideration that a new competitor (Continental Gypsum) is now in the market.

The allegations that are made here can be documented and will be documented at your request.

Again, I would request that you give consideration to our recommendation to amend the Final Judgment as proposed in our April 30, letter. For Continental Gypsum to remain viable we must have some relief from this matter.

Respectfully,

Morgan A. Chivers,
Chairman of the Board & C.O.O.

Rhyne Simpson, Jr.,
President.

April 30, 1996.

Mr. J. Robert Kramer,
*Litigation II Section, Antitrust Division, U.S.
Department of Justice, 1401 H St., N.W.,
Suite 3000, Washington, D.C. 20530.*

Re: U.S.A. v. Georgia Pacific Corporation
Civil Action No.: 96-164.

Dear Mr. Kramer: The following are the comments of Continental Gypsum Company relating to the above referenced case:

Background

Continental Gypsum Company is the only small independent manufacturer of gypsum wallboard in the United States. The Company was formed January 26, 1995 to lease the former Atlantic Gypsum Company facility located at Port Newark, New Jersey. The plant had been idled for approximately six years as a result of bankruptcy and foreclosure proceedings. The founders of Continental Gypsum are Morgan A. Chivers and Rhyne Simpson, Jr. both of whom are its major stockholders. About thirty (30) percent of the outstanding stock is owned by wallboard distributors and applicators from the region. After a rather lengthy negotiation with the Port Authority of NY&NJ, Continental Gypsum gained occupancy of the facility on June 1, 1995. Production commenced on August 23, 1995 and the gypsum wallboard is marketed in the region under the trade name MoreRock. Because of numerous engineering deficiencies with the plant equipment and the unusually harsh winter, the plant did not obtain expected levels of production and sales until late April 1996. (see attached shipping report)

Comments

Continental Gypsum finds two major mandates in the Final Judgment that are onerous and do in fact threaten the viability of this new company. They are as follows:

IX. PRESERVATION OF ASSETS—page 14 paragraph B “Defendant shall use all reasonable efforts to maintain and increase sales of gypsum board produced at its Buchanan and Wilmington plants, and defendant shall maintain at 1995 or previously approved levels, whichever are higher.” * * * This mandate obviously ignores the additional capacity that Continental Gypsum has brought to the region. It is not possible that Continental could bring at least 270,000 MSF of supply into the market without competitors giving up a portion of their market share. The Buchanan and Wilmington plants are in fact situated in the heart of Continentals prime market. The mandate that they maintain sales at 1995 levels, or higher, basically implies that there is no room in the market for Continental.

IV. DIVESTITURES—page 5, paragraph A. sub. (iii) “at the option of the purchaser or purchasers, enter into a supply contract for gypsum rock (which may or may not include transportation) and/or gypsum linerboard paper sufficient to meet all or part of the capacity requirements of the Buchanan and Wilmington plants over a period up to (10) years;” * * * Continental currently purchases some of its linerboard paper from Georgia Pacific’s Delair, N.J. papermill. Additionally, Georgia Pacific is considered to be a primary source of gypsum ore and in fact did quote on our ore requirements for the 1996 calendar year. The mandate that Georgia Pacific provide the purchaser(s) with supply contracts for the gypsum rock and gypsum linerpaper will seriously restrict Continentals ability to source these vital raw materials both in the present and in the future.

Summation

The overall thrust of the Final Judgment appears to be concerning the concentration of supply with only a few manufactures within the region. While the concentration of supply should be of concern, the far more important factor influencing competitive pricing is the fundamental law of supply relative to demand. This is clearly evidenced by the fact that prices eroded up to \$15.00/MSF within the first three months of Continental’s entry into the market. In fact, Continental Gypsum is the only player that brings new supply into the region. The divestiture of Buchanan and Wilmington does nothing towards creating more supply. A more compelling case can be made that if Continental Gypsum is forced into closure that the consumer would be damaged far more than the creation of change of ownership of two plants.

It is further our concern that the Final Judgment gives Georgia Pacific license to become predatory against Continental and if Continental is forced to closure, then the Buchanan and Wilmington plants will have more value as a result of the divestiture mandate.

In conclusion, for the aforementioned reasons, we believe that the Final Judgment be amended by:

(1) Rescinding the mandate that Georgia Pacific maintain 1995 levels of sales (or higher) during the 150 day divestiture period. The only mandate should be that Georgia Pacific should not be allowed to transfer any sales from Buchanan and Wilmington to their other plants, namely Camden, N.J. and the Newington, N.H.

(2) Continental Gypsum should be afforded the same opportunity to negotiate supply agreements with Georgia Pacific for the purchase of gypsum ore and gypsum linerpaper on an equal basis of the purchaser(s) of the Buchanan and Wilmington plants.

Thank you very much for your consideration in this matter.

Respectfully,

Morgan A. Chivers,
Chairman of the Board & C.O.O.

Rhyne Simpson, Jr.,
President.

Justin M. Dempsey.

The attached document was not able to be published in the Federal Register. A copy can be obtained from the U.S. Department of Justice, Legal Procedures Office at 325 7th Street, N.W., Room 215, Washington, D.C. 20530 (telephone: 202-514-2481).

[FR Doc. 96-16445 Filed 6-26-96; 8:45 am]

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DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 21, 1996.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub.L. 104-13; 44 U.S.C. Chapter 35). A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O’Malley ([202] 219-5095). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call [202] 219-4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Departmental Management, Office of Management and Budget, Room 10235, Washington, DC 20503 ([202] 395-7316), within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary