

Complaint

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IN THE MATTER OF
INTERNATIONAL PAPER COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT

Docket 6676. Complaint, Nov. 6, 1956—Decision, June 25, 1957

Consent order requiring the world's largest integrated paper company—with productive capacity more than three times as great as its largest competitor—charged with violation of Sec. 7 of the Clayton Act by its acquisition of the second largest producer of lumber in the Pacific Northwest and the corporation holding a majority of its stock, to divest itself within ten years of the stock interest held by the acquired companies in a major competitor in the West Coast market; forbidding it to acquire any interest in any competing mill for the next ten years; and requiring it to sell to independent purchasers during the same period, 40% of the paper and paperboard production of its proposed Pacific Coast mill.

Mr. L. E. Creel, Jr., and Mr. William R. MaHanna for the Commission.

Davis, Polk, Wardwell, Sunderland & Kiendl, by Mr. Ralph M. Carson and Mr. George A. Brownell, of New York, N. Y., and Howrey and Simon, by Mr. Edward F. Howrey and Mr. Joseph B. Kennedy, Jr., of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act (15 U.S.C. Title 15, Sec. 18), as amended and approved December 29, 1950, hereby issues its complaint, charging as follows:

PARAGRAPH 1. Respondent International Paper Company is a corporation organized in 1941 and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 220 East 42nd Street, New York, New York.

The present company was formed by the consolidation of 18 paper companies located throughout New England and Northern New York in 1898. It was then called the International Paper & Power Company. In 1941 the International Paper & Power Company consolidated and changed its name to International Paper Company (hereinafter called International). A substantial part of International's production facilities were obtained through acquisition of other companies.

Respondent, directly and through its various subsidiaries, is engaged, among other things, in the business of producing and selling pulp, paper and paper products. Respondent, International, ranks as the world's largest paper company. Its capacity to produce paper and paperboard is more than three times as great as its largest competitor. It is now and for many years has been the price leader of the paper and paperboard industry. It is the leading producer of kraft board and ranks as a leading manufacturer in newsprint, dissolving pulp, book and bond papers, kraft papers, groundwood and towel papers. It produces from about one-quarter to one-half of the country's total production of many types of paper and paperboard. For example, in 1954 it produced almost one-third of the total kraft liner board production in the United States.

Respondent is also one of the largest owners of forest-land in the United States. The enterprise is a self-contained integrated unit in that it controls forestlands and conducts logging operations; produces its own pulp requirements; manufactures substantially all types of paper and paperboard; converts paper into paper products; and sells pulp, paper, paperboard and paper and paperboard products to converters, jobbers and other customers. Other activities include the production of fiberboard, insulating building board and plywood; also the operation of a machine shop, coal mines, saw mills, and a steam electric plant. The active subsidiaries of International are engaged in one or more phases of the business described or in activities related thereto.

As of July 1, 1956, respondent's mills, for the manufacture of its various products, were located in twenty states of the United States and in three provinces in Canada. It has sixteen paper and pulp mills in the United States and six paper and pulp mills in Canada. In addition to these primary mills it also has fourteen shipping container plants, two of which are located in Canada, and ten milk container plants, as well as many other facilities for converting paper and paper products.

As of July 1, 1956, respondent owned or had access to 21,084,809 acres of forestland in the United States and Canada. In the United States respondent owns 4,540,593 acres and leases 387,456 acres which is several times as large as the holdings of any of its principal competitors in the pulp and paper industry. In Canada respondent owns 1,248,409 acres and holds Government licenses on 14,905,351 acres. Respondent's forestlands in the United States are located in nine southern states and in four northeastern states.

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During the six year period from January 1, 1950, to December 31, 1955, respondent's net sales increased from \$498,415,714 to \$796,421,637, an increase of 59.8 percent. During this same period its total assets rose from \$408,840,630 to \$620,057,436, an increase of 51.7 percent; and its net profit increased from \$66,647,151 to \$83,105,016, an increase of 24.7 percent. International's rate of return on stockholders' investment after taxes for the years 1954 and 1955 were higher than that of the three next largest integrated companies in the paper and paperboard industry.

Prior to and since November 5, 1956, respondent has been and is now engaged in substantially every facet of the paper and paperboard industry; it has produced and is now producing virtually all types of pulp, paper and paperboard, and also converted products from paper and paperboard.

Respondent purchases materials used in the manufacture of its paper and paper products, as described in subparagraph eight of Paragraph 1 herein, in commerce, as "commerce" is defined in the Clayton Act, and offers to sell, sells and distributes said products in said commerce in several of the states of the United States to converters, wholesalers and other purchasers of pulp, paper, paperboard and converted products.

PAR. 2. The Long-Bell Lumber Corporation, prior to November 5, 1956, was a corporation organized in 1924 and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at 926 Grand Avenue, Kansas City, Missouri. It was a holding corporation whose assets consisted of cash and 50.61 percent of the stock of the Long-Bell Lumber Company.

PAR. 3. The Long-Bell Lumber Company, prior to November 5, 1956, was a corporation, organized in 1884, doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at 926 Grand Avenue, Kansas City, Missouri.

The Long-Bell Lumber Company, hereinafter referred to as Long-Bell, and its subsidiaries, operated in substantially every phase of the lumber industry from ownership of standing timber to the operation of retail building supply yards.

Long-Bell also ranked as the second largest producer of lumber in the Pacific Northwest, and as one of the leading producers of plywood. Its major products were dressed and treated lumber, plywood, flooring, doors and various other lumber products. It also produced chips from saw mill residuals and other material suitable for the manufacture of pulp. As of December 31, 1955, it owned

and operated 100 retail lumber yards and six jobbing establishments through which all types of building materials were distributed. These facilities were located in the States of Arkansas, Colorado, Kansas, Missouri, New Mexico, Oklahoma, Oregon, Texas and Washington. Long-Bell operated lumber producing plants at Longview, Washington, Weed and Etna, California, Gardiner, Reedsport, Vaughn, Austa and Vernonia, Oregon, Sheridan, Arkansas, and at Quitman, Mississippi. Its plywood plants were located at Longview, Washington, Weed, California, and Vaughn and Gardiner, Oregon.

As of December 31, 1955, Long-Bell owned a total of 467,672 acres of forestland. Of these lands, 87,000 acres were in the State of Washington, 160,000 acres in Oregon, 60,000 acres in California, and an aggregate of 160,672 acres in the States of Arkansas, Louisiana, Oklahoma and Texas. This land contained approximately 2,704,000,000 board feet of merchantable timber of which 2,600,000,000 board feet, mostly Douglas fir, were located in the three Pacific Coast states. In 1955 Long-Bell produced a total of 514,912,225 board feet of lumber and manufactured 138,459,280 square feet of plywood.

During the six year period from January 1, 1950, to December 31, 1955, Long Bell's net sales increased from \$102,179,867 to \$105,748,975. For this same period its total assets increased from \$68,136,697 to \$90,654,941, showing an increase of 33 percent.

During 1955 Long-Bell had under investigation and consideration a proposed plan to engage in the production of kraft pulp and paper in connection with the operation of its timber resources and mills on the West Coast. It had received favorable reports to the effect that a pulp mill with a capacity to produce 200-300 tons per day of kraft fourdrinier linerboard could be profitably erected and operated. Due to the acquisition, hereinafter set forth, of Long-Bell by International, the proposed plan to erect a mill was not considered further.

Long-Bell purchased materials, including logs, used in the manufacture of lumber and lumber products, as described in subparagraph three of Paragraph 3 herein, in commerce, as "commerce" is defined in the Clayton Act, and offered to sell, sold and distributed said products in said commerce in several of the states of the United States to jobbers, wholesalers and other purchasers.

PAR. 4. On or about November 5, 1956, respondent's stockholders and the stockholders of Long-Bell Lumber Corporation and Long-Bell voted upon and approved a plan of merger which had previously been adopted by the boards of directors of the said

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corporations. In accordance with this merger plan 900,000 shares of authorized but unissued stock of International was exchanged for all or substantially all of the outstanding shares of common stock of the Long-Bell Lumber Corporation and Long-Bell. The approximate value of the International stock to be exchanged is \$117,000,000.

PAR. 5. International proposes to build additional facilities to produce pulp, paper and paper products which will substantially utilize the timber assets obtained from Long-Bell by the aforesaid acquisition from the Long-Bell Lumber Corporation and Long-Bell. The proposed additional facilities are as follows:

(1) Erection of a newsprint and bleached board mill near Pine Bluff, Arkansas. This proposed mill will produce newsprint at the rate of 130,000 tons annually, and bleached board at the rate of 165,000 tons annually.

(2) Erection of a 400-500 ton per day kraft board mill in western Oregon. The annual capacity of this proposed mill would be from 130,000 to 165,000 tons.

(3) Erection of a shipping container plant at San Jose, California, with an annual rate of production from 17,000 to 20,000 tons.

(4) Erection of a milk container plant at Turlock, California. This proposed plant would have a capacity of approximately 10,000 to 12,000 tons annually.

The eleven western states, Washington, Oregon, California, Idaho, Utah, Nevada, Montana, Wyoming, Colorado, Arizona and New Mexico, comprise a separate marketing area for the sales of paperboard and coarse papers. The construction of the proposed kraft mill in Oregon will be International's first facility for the production of paper and paperboard in this western market.

When all of the above proposed mills are completed International's total paper and paperboard production in the United States will be increased by 15.4 percent and its bleached board production by 43.1 percent. International's production of newsprint for both the United States and Canada will be increased by 14.3 percent.

PAR. 6. The effect of the aforesaid acquisition by respondent of the Long-Bell Lumber Corporation and Long-Bell may be substantially to lessen competition or to tend to create a monopoly in the lines of commerce, as "commerce" is defined in the Clayton Act, in which respondent and the said acquired companies were engaged.

More specifically, the aforesaid effects include, among others, the actual or potential lessening of competition or a tendency to create a monopoly in that the acquisition of Long-Bell by International:

(1) May substantially lessen competition in the western states by foreclosing the probable entry of Long-Bell, as well as other potential entrants into the paper industry and also lessen the opportunities for existing paper companies to expand.

(2) May substantially lessen competition in the western states by reason of leverage which may be exerted by the utilization of the large natural and financial resources and the extensive operations International now has in other markets.

(3) May substantially lessen competition in the western states by resulting in the entry into that market of a seller which is unlikely to engage in price competition.

(4) May substantially lessen competition or tend to create a monopoly by the increase of International's share of the country's production for various paper products and thereby substantially lessen the proportion held by competitors.

(5) May substantially lessen competition or tend to create a monopoly in the nation as a whole by the increase of the present dominant position of International in the paper and paperboard industry.

PAR. 7. The foregoing acquisition, acts and practices of respondent, as herein alleged, constitute a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18), as amended and approved December 29, 1950.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 6, 1956, charging Respondent with increasing its present dominant position in the paper and paperboard industry by the acquisition of Long-Bell Lumber Corporation and Long-Bell Lumber Company, thereby tending substantially to lessen competition or to create a monopoly in commerce, in violation of the antimerger provision of § 7 of the Clayton Act (U.S.C. Title 15, § 18), as amended and approved December 29, 1950.

On May 10, 1957, Respondent, its counsel, and counsel supporting the complaint entered into an Agreement Containing Consent Order To Divest And To Cease And Desist, which was approved by the Director and the Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the Hearing Examiner for consideration.

Respondent International Paper Company is identified in the agreement as a New York corporation, with its office and principal place of business located at 220 East 42nd Street, New York, New York.

Respondent admits all the jurisdictional facts alleged in the complaint and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondent, in the agreement, waives any further procedure before the Hearing Examiner and the Commission; the making of findings of fact or conclusions of law; and all the rights it may have to challenge or contest the validity of the order to divest and to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to divest and to cease and desist as contained in the agreement shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by Respondent that it has violated the law as alleged in the complaint.

The order contained in the agreement does not require the Respondent, International Paper Company, to divest itself of the assets of the Long-Bell Lumber Corporation or the Long-Bell Lumber Company, which it acquired in 1956. It does, however, require Respondent to divest itself of all the stock in the Longview Fibre Company which it acquired through the acquisition of the Long-Bell Lumber Company.

In support of the proposed order submitted in the agreement, counsel in support of the complaint state that in the light of all the circumstances of which they are aware, the order will afford the public immediate and adequate relief, and competition will be well served thereby. They also point out that the proposed order prohibiting future acquisitions appears to assure a source of supply for smaller non-integrated converters and wholesalers, and thereby affords competitors at the production, conversion and jobbing levels ample time to reappraise the market and plan their future development.

On the basis of counsel's statement, it appears that the agreement and order contained therein constitute a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the Hearing Examiner accepts the Agreement Containing Consent Order To Divest And To Cease And Desist; finds that the Commission has jurisdiction over the Respondent and

over its acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That Respondent, International Paper Company, shall divest itself absolutely, in good faith, of all the stock in Longview Fibre Company which was acquired through the merger of The Long-Bell Lumber Corporation and The Long-Bell Lumber Company with Respondent. As an initial step in such divestiture Respondent shall forthwith transfer said stock to a bank or trust company to be approved by the Commission as voting trustee, under a voting trust agreement in a form to be approved by the Commission. Such divestiture shall be completed by sale of said stock within ten years from the date of this order. Respondent shall not sell any such stock, directly or indirectly, to any officer, director, employee, agent or subsidiary of, or anyone otherwise directly or indirectly under the control or influence of, Respondent or any of its officers or directors.

It is further ordered, That for a period of ten years from the date of the issuance of this order by the Federal Trade Commission, Respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, by merger, consolidation, purchase of physical assets, or acquisition of stock or other share capital, any interest in any paper or paperboard mill located in any present state of the United States which competes with any mill of Respondent.

It is further ordered, That for a period of ten years from the date of the issuance of this order by the Federal Trade Commission, Respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, by merger, consolidation, purchase of physical assets, or acquisition of stock or other share capital, any interest in any plant located in any present state of the United States which produces products made or converted from paper or paperboard and which competes with any plant of Respondent.

It is further ordered, That from the date of the commencement of commercial production at its proposed paper and paperboard mill in the Pacific Coast area and until ten years from the date of this order Respondent shall cease and desist from supplying paperboard manufactured at such mill to any purchaser, or to any converting plant owned or controlled by Respondent unless Respondent shall comply with the following conditions:

Prior to the commencement of each calendar year in which paperboard is to be supplied, Respondent shall contract to sell during such calendar year to non-integrated wholesalers, non-integrated con-

verters and other non-integrated purchasers located in the eleven Western state area (meaning in each case purchasers who are not engaged, nor to the knowledge of Respondent controlled by others engaged, in such area in the manufacture of paperboard of a type and grade similar to that manufactured at such mill of the Respondent), a number of tons of paperboard equal to 40% of the tons of paperboard expected to be produced at such mill during the calendar year, provided, that if a lesser amount of such paperboard is so contracted to be sold prior to the commencement of such calendar year, then a number of tons of paperboard equal to the balance of such 40% shall be made available by the Respondent to non-integrated purchasers of the character described above who thereafter make written request to purchase any part thereof during such calendar year, to the extent and subject to the terms set forth below:

1. The number of tons included in such balance shall be reduced at the end of each month during such calendar year by the number of tons for which contracts of sale are made during such month, or by an amount equal to one-twelfth of the original balance, whichever is greater;

2. All contracts of sale shall be subject to Respondent's standard credit requirements, shall be at Respondent's standard prices, and on its standard terms and conditions, in such area, and in weights, finishes and roll widths regularly made at such mill. No such contract need call for deliveries at a rate disproportionate to the uncontracted for expected production of paperboard at such mill during the balance of such year.

It is further ordered, That from the date of the commencement of commercial production at its proposed paper and paperboard mill in the Pacific Coast area and until ten years from the date of this order Respondent shall cease and desist from supplying paper manufactured at such mill to any purchaser, or to any converting plant owned or controlled by Respondent, unless Respondent shall comply with the following conditions:

Prior to the commencement of each calendar year in which paper is to be supplied, Respondent shall contract to sell during such calendar year to non-integrated wholesalers, non-integrated converters and other non-integrated purchasers located in the eleven Western state area (meaning in each case purchasers who are not engaged, nor to the knowledge of Respondent controlled by others engaged, in such area, in the manufacture of paper of a type and grade similar to that manufactured at such mill of the Respondent), a number of tons of paper equal to 40% of the tons of paper expected to be produced at such mill during the calendar year, pro-

vided, that if a lesser amount of such paper is so contracted to be sold prior to the commencement of such calendar year, then a number of tons of paper equal to the balance of such 40% shall be made available by the Respondent to non-integrated purchasers of the character described above who thereafter make written request to purchase any part thereof during such calendar year to the extent and subject to the terms set forth below:

1. The number of tons included in such balance shall be reduced at the end of each month during such calendar year by the number of tons for which contracts of sale are made during such month, or by an amount equal to one-twelfth of the original balance, whichever is greater;

2. All contracts of sale shall be subject to Respondent's standard credit requirements, shall be at Respondent's standard prices, and on its standard terms and conditions, in such area, and in weights, finishes and roll widths regularly made at such mill. No such contract need call for deliveries at a rate disproportionate to the uncontracted for expected production of paper at such mill during the balance of such year.

It is understood, That not all the paper and paperboard to be supplied to non-integrated buyers under this order need be produced at Respondent's Pacific Coast mill, but shall be paper and paperboard of similar types and grades.

It is further understood, That the number of tons of paper and the number of tons of paperboard expected to be produced during a calendar year at such mill shall be determined for purposes of this order by a bona fide estimate by the Respondent until one full calendar year has elapsed after the commencement of commercial operations at such mill, and thereafter shall be deemed to be the number of tons of paper and the number of tons of paperboard that were produced during the immediately preceding calendar year at such mill.

Jurisdiction is retained so that Respondent may at any time hereafter petition the Commission for construction or modification of this order, which the Commission will consider and, upon proper showing by Respondent, allow to the extent it finds such construction or modification to be warranted and consistent with § 7 of the Clayton Act.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 25th day

of June, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That Respondent International Paper Company, a corporation, shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to divest and to cease and desist.

Decision

IN THE MATTER OF
APOLLO COMPANY, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6741. Complaint, Mar. 12, 1957—Decision, June 26, 1957*

Consent order requiring a manufacturer in Detroit, Mich., to cease preticketing its boys' and men's belts with fictitious and exaggerated price figures, thereby placing in the hands of retail outlets a means for deceiving the purchasing public as to the usual retail price.

Mr. Harry E. Middleton, Jr., for the Commission.

Mr. Irwin I. Cohn, of Detroit, Mich., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

In this proceeding, Apollo Company, Inc., a corporation, and Henry L. Ziff, hereinafter called respondents, are charged with fictitious pre-ticketing of boys' and men's belts which it manufactures.

After issuance and service of the complaint, the respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of the matters complained about. The agreement has been approved by the Director and Assistant Director of the Bureau of Litigation.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondents waive further procedural steps before the Hearing Examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement; and the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

The Hearing Examiner having considered the agreement and proposed order and being of the opinion that the acceptance thereof will