

Decision

IN THE MATTER OF
CROWN ZELLERBACH CORP.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF
THE CLAYTON ACT

Docket 6180. Complaint, Feb. 15, 1954—Decision, Dec. 26, 1957

- Order requiring the nation's second largest producer of paper and paper products with headquarters in San Francisco, to divest itself of, and restore as a competitive entity in the paper trade, a major competitor it acquired in 1953 through exchange of common stock, in violation of section 7 of the Clayton Act as amended;
- Providing that no property to be divested be sold to anyone who at the time of divestiture was a stockholder or otherwise connected with respondent or its affiliates;
- Requiring it to refrain from cutting, removing, or selling any timber or forest residuals from lands acquired in the aforesaid acquisition; and
- Requiring it to submit within 60 days a plan for compliance with the order, specifying the time in which it could reasonably carry out the divestiture, whereupon the Commission would fix the date by which compliance must be effected.

Mr. L. E. Creel, Jr., Mr. Dwight L. Carhart, Mr. J. Wallace Adair, and William N. Early, for the Commission.

Mr. Philip S. Ehrlich, Mr. R. J. Hecht, and Mr. Philip S. Ehrlich, Jr., of San Francisco, Calif.; and Sullivan & Cromwell, by Mr. Arthur H. Dean, Mr. Howard T. Milman, Mr. Marvin Schwartz, and Mr. Jerome Gotkin, of New York, N.Y., for respondent.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is based upon a complaint charging the respondent Crown Zellerbach Corp., a corporation, with violation of section 7 of the Clayton Act, as amended, and approved December 29, 1950, by reason of its acquisition of St. Helens Pulp & Paper Co., a corporation. This proceeding is now before the undersigned hearing examiner for final consideration on the complaint, answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions, together with briefs and reply briefs presented by counsel. The hearing examiner has given consideration to the proposed findings as to the facts and conclusions submitted by both parties and briefs in support thereof, and all findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded are herewith rejected, and the hearing examiner, having considered the record herein and being now fully advised in the premises, makes the

following findings as to the facts and conclusions drawn therefrom and order:

I. CROWN ZELLERBACH CORPORATION

1. Respondent Crown Zellerbach Corp. (hereinafter referred to as Crown) is a corporation organized under and by virtue of the laws of the State of Nevada with its principal office and place of business located at 343 Sansome Street, San Francisco, Calif.

2. Crown Zellerbach Corp. was incorporated under the name Zellerbach Corp. on August 28, 1924. At that time it was engaged in the paper business as a wholesale paper merchant. In 1928 it merged with Crown Willamette Paper Co. and became Crown Zellerbach Corp. At the time of this merger, Crown Willamette was engaged in the manufacture of coarse papers and newsprint with mills at Camas, Wash.; West Linn and Lebanon, Oreg.; and Floriston, Calif.; and controlled the Pacific Mills, Ltd., in British Columbia.

3. Respondent, directly or through its subsidiaries, is engaged principally in the production and in the sale and distribution of pulp, paper, and paper products in interstate commerce, and is one of the largest manufactures of pulp and paper in the world, ranking second in the production of paper and paper products in the United States. Respondent is a fully integrated producer of pulp, paper, and paper products in the United States and through Canadian subsidiaries is an integrated producer of pulp, paper, paper products, plywood, lumber, and lumber products in Canada. In its operations in the United States, respondent owns and controls timber reserves and conducts logging operations; produces its own pulp requirements; manufactures paper of various kinds; converts paper into paper products and sells paper and paper products to converters, jobbers, and others.

4. Respondent produces unbleached and bleached groundwood, sulphite and sulphate (kraft) pulp. A small amount of this pulp is sold to other paper and paperboard manufacturers, but the major portion is manufactured into paper by the company.

5. The papers manufactured by respondent consist of the following major grades: newsprint, groundwood papers, gloss book paper, towel paper, machine glazed and machine finish wrapping papers, butcher papers, gumming papers, waxing papers, bag papers, multiwall sack papers, envelope papers, other converting papers, other kraft papers, napkins, toilet and facial tissues, and specialty paperboard. Some of these products are sold in finished form for consumer uses, others to manufacturers and converters for further fabrication, and the balance is converted by the company into various products for consumer use.

6. Respondent owns and operates a number of mills for the produc-

tion of paper. All of these mills have one or more pulp mills as part of their plant facilities except the new mill at Antioch, Calif., which will use pulp shipped from Canada and the mill at Los Angeles, Calif., which uses pulp shipped from respondent's Camas mill. These mills are as follows:

CAMAS, WASH. This mill has fourteen paper machines which produce fine paper and substantially all grades of trade coarse paper. Paper capacity: 710 tons per day.

WEST LINN, OREG. This mill has ten paper machines producing principally newsprint and gloss book paper, groundwood specialties, sulphite wrapping papers and toweling. Paper capacity: 620 tons per day.

PORT ANGELES, WASH. This mill has three paper machines making newsprint. Paper capacity: 445 tons per day.

LEBANON, OREG. This mill has two paper machines producing wrapping paper specialties. Paper capacity: 55 tons per day.

PORT TOWNSEND, WASH. This mill has two paper machines, one of which produces kraft board and the other of which produces kraft bag and wrapping paper. Paper capacity: 335 tons per day.

ANTIOCH, CALIF. Scheduled to begin production in September 1956. This mill will have daily capacity to produce 310 tons per day.

LOS ANGELES, CALIF. In November 1955, respondent began producing sanitary tissues on an unique paper machine in its Los Angeles converting plant. Capacity is 20 tons per day. Pulp is converted to packaged consumer products in a single-line operation.

7. Respondent has facilities for converting part of its paper production into such paper products as bags, multiwall shipping sacks, toilet paper, towels, napkins, facial tissue, waxed papers, gummed paper tape and asphalt laminated paper. At West Linn, Oreg., and Camas and Port Townsend, Wash., converting operations are integrated with paper production. Respondent has additional converting facilities at Harlingen, Tex.; San Leandro, Calif.; Los Angeles, Calif.; and North Portland, Oreg.

8. In addition to its paper mills in the West, respondent has a small paper mill and converting plant at Carthage, N.Y. It also acquired through its merger with Gaylord Container Corp. on November 30, 1955, mills at Bogalusa, La., Baltimore, Ohio, and Dresden, Ohio, and several converting plants outside the West.

9. As of April 30, 1952, respondent owned approximately 500,000 acres of high-quality forest growth sites in Oregon and Washington. These forests, of different ages, are distributed among the best growing forest lands in the Pacific Northwest. Of the total forest lands owned,

approximately 175,000 acres are mature or old growth forests, carrying an estimated volume of 6,500 million board feet; approximately 51,000 acres are so-called second growth forest ranging from 60 to 100 years old and carrying an estimated merchantable stand of 3 billion board feet; and approximately 36,000 acres 40- to 60-year old forests of presently premerchantable size. With the exception of approximately 10,000 acres, all of the remaining acreage is fully stocked with young premerchantable size timber ranging in age from 5 to 40 years. In addition to the above timberlands owned in fee, respondent has cutting rights of satisfactory duration on approximately 20,000 acres of mature old growth forestlands carrying an estimated volume of 500 million board feet.

10. Respondent has extensive holdings in Canada. Through its subsidiaries, respondent owns in fee or controls in various forms of tenure approximately 920,000 acres of timberlands in British Columbia. Respondent owns 99 percent of Crown Zellerbach Canada Ltd., formerly Pacific Mills, Ltd., which is a fully integrated mill producing pulp, paper, and paper products which are sold in Canada and in the export markets. In 1953, respondent acquired the Canadian Western Lumber Co., Ltd., one of the largest producers of lumber in the British Commonwealth. This company is a 97 percent owned subsidiary of the respondent. The timber holdings of Canadian Western as of March 23, 1953, consisted of an estimated 3,500 million board feet of high quality sawmill and pulp timber. It also holds approximately 500 million board feet of timber located in the interior of British Columbia not readily accessible because of excess transportation costs. Canadian Western and Crown Zellerbach Canada Ltd. jointly own the Elk Falls Co., Ltd., which company owns and operates a newsprint mill with capacity of 240 tons per day and a designated ultimate capacity of 320 tons per day. In addition, Crown Zellerbach Canada Ltd., has four wholly owned subsidiaries, each of which are Canadian corporations: Hudson Paper Co., Ltd.; Canadian Boxes, Ltd.; Northern Pulpwood Ltd.; and Badwater Towing Company Ltd.

11. Respondent also owns a one-third interest in the Elk River Timber Co., Ltd., with operations on Vancouver Island, British Columbia, and a 50-percent interest in the Owikeno Lake Timber Co. Ltd., a nonoperating company owning timber surrounding Owikeno Lake, British Columbia. The Elk River Timber Co., Ltd., is operating on a combination of timberlands owned in fee and long-term cutting rights. It is estimated that the latter company has an operating life expectancy of from 15 to 20 years at an annual production rate of approximately 40 million board feet per year. The Owikeno Lake

Timber Co., Ltd., owns timber carrying an estimated volume of 600 million board feet.

12. The Zellerbach Paper Co. is a wholly-owned jobber subsidiary of the respondent which distributes fine papers, newsprint, trade coarse papers and a great variety of merchandise of the type sold in variety stores, such as school supplies, stationery, picnic supplies, notions, bobby pins and electric appliances, in California, Oregon, Washington, Arizona, Nevada, Idaho, Utah, and Montana. Zellerbach Paper Co.'s 1953 purchases of paper from respondent accounted for the following percentages of respondent's Western sales: wrapping paper, 27.8 percent; converting papers, 3.9 percent; bags, 16.4 percent; miscellaneous consumer products, 3.9 percent.

13. Prior to January 17, 1956, respondent held a substantial stock interest in Fibreboard Products, Inc., a corporation engaged with its subsidiaries principally in the manufacture and sale of boxboard, pulpboard, fiber shipping cases, boxes and cartons, paper milk bottles, oyster and ice cream pails, paper tubes and cans, fiber wallboard, egg case fillers and other paper products, and glass containers. On January 17, 1956, respondent sold its interest in Fibreboard Products, Inc., for \$37,800,000, which had consisted of 40 percent preferred shares, 44 percent class A common, and 50 percent class B common (voting). Respondent's investment in Fibreboard had cost approximately \$5,200,000. The redemption of Fibreboard shares produced a capital gain of approximately \$24,500,000, after Federal capital gains tax.

14. On November 30, 1955, the Gaylord Container Corp. was merged into respondent by an exchange of stock and became a division of the respondent. Gaylord has produced sulphate and bleached sulphate pulp and semichemical pulp. It has manufactured and sold various types of corrugated and solid fiber shipping boxes, packing and shipping materials, container liners, bag paper, bleached and unbleached specialties, laminated asphalt waterproof paper, bags, etc. Gaylord's paper and paperboard mills were located at Bogalusa, La., and at Baltimore and Dresden, Ohio; converting plants were located at Bogalusa, La.; Dallas and Houston, Tex.; St. Louis, Mo.; Milwaukee, Wis.; Baltimore, Ohio; Beaver Falls, Pa.; Jersey City, N.J.; Greenville, S.C.; Atlanta, Ga.; and Tampa and Miami, Fla. In 1952, Gaylord's net sales were \$85,798,000 and its total net assets at the end of the year, \$60,042,000. The acquisition of Gaylord added 480,000 acres of intensively managed forest lands to respondent's timber holdings. None of this timber, however, was located in the Western States.

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15. The total assets of respondent and its subsidiaries prior to the acquisition of St. Helens were \$243 million. Consolidated sales were \$253 million. These figures, however, include substantial sales and assets in Canada and the sales and assets of Zellerbach Paper Co.

16. Sales of respondent and its subsidiaries in the year ended December 31, 1955, were \$414 million, which includes the substantial sales of respondent's Canadian subsidiaries, the sales of Zellerbach Paper Co., and the sales of the new Gaylord division. The magnitude of the sales of Zellerbach Paper Co. is indicated by its sales in the fiscal year ended April 30, 1955, of approximately \$90 million. The sales of the Gaylord division were \$87 million. The sales of respondent's Canadian subsidiaries are not separately given, but they accounted for 22 percent of respondent's consolidated net income after taxes.

17. On December 31, 1955, respondent's total assets were \$418 million. This figure reflects the \$69 million increase in assets resulting from the merger with Gaylord Container Corp. on November 30, 1955.

18. In the fiscal year ending April 30, 1953, respondent produced paper and board as follows: 395,383 tons of newsprint and other printing papers; 332,343 tons of wrapping papers; 115,976 tons of tissues and sanitary papers; and 50,682 tons of paperboard. Over the five-year period ending April 30, 1952, respondent's mills have expanded their output by more than a quarter million tons, or approximately 37 percent. During the 15-year period ending April 30, 1952, its production has increased nearly 80 percent.

19. During the 11-year period from May 1, 1942, to April 30, 1953, respondent's net sales increased from \$84,656,362 to \$252,765,012, and its net income increased from \$7,543,287 to \$21,889,705.

II. ST. HELENS PULP & PAPER CO.

20. St. Helens Pulp & Paper Co. (hereinafter referred to as St. Helens) a corporation organized in 1924, was, prior to June 5, 1953, doing business under and by virtue of the laws of the State of Oregon (commercial operations began January 1, 1927), with its principal office and place of business located at St. Helens, Oreg.

21. St. Helens was engaged primarily in the manufacture and in the sale and distribution in interstate commerce of bleached and unbleached kraft papers, including machine finished and machine glazed papers, wrapping papers, butcher papers, gumming papers, waxing papers, multiwall waxing papers, envelope papers, and converted items such as bags and towels.

22. St. Helens was a fully integrated mill as it owned and controlled timber reserves, conducted some logging operations, produced most of

its own pulp requirements, manufactured kraft paper of various grades, converted some of its paper into paper products, and sold paper and paper products to converters, jobbers and others, principally in the 11 Western States, through its sales agency, the Graham Paper Co. of St. Louis, Mo. Since its inception, St. Helens had a contract with Graham Paper Co., paper merchants of St. Louis, Mo., pursuant to which Graham sold St. Helens' entire output as St. Helens' sole and exclusive selling agent.

23. St. Helens owned approximately 117,000 acres of timberland containing an estimated stand of 520 million board feet of timber in Oregon and Washington. On March 17, 1953, the retail value of St. Helens' timberland was estimated to be \$8 million. In addition, it owned cutting rights on timberlands with an estimated stand of 30 million board feet and had the first right of refusal at the current market price on the log production of a logging company which owns an estimated 200 million board feet of pulp-type timber near the timber holdings of St. Helens.

24. The St. Helens mill had a capacity for manufacturing paper of approximately 180 tons per day, or approximately 60,000 tons per year, prior to an expansion program which was inaugurated around 1948. The St. Helens mill has operated at near capacity for several years, and its production of paper and paper products for the past five calendar years was:

	<i>Tons</i>
1952.....	59,449
1951.....	64,728
1950.....	56,178
1949.....	56,053
1948.....	55,124

III. ST. HELENS' MODERNIZATION PROGRAM

25. In November 1948, the St. Helens mill had reached a condition where certain major repairs and replacements had become necessary and a modernization program consisting principally of repairs and replacement was authorized by the directors at an estimated cost of \$1,406,000. This was increased on December 20, 1949, to include a bleaching plant at an estimated cost of \$285,000. On November 21, 1950, while some of this work was still in progress, a more comprehensive modernization program was submitted which was expected to effect a saving of not less than \$622,000 per year, involving an estimated expenditure of \$3,600,000.

26. On June 19, 1951, the directors were informed that the cost of the modernization program would be approximately \$5 million, and the management was authorized to negotiate a loan for \$4 million

which was done by obtaining a \$3 million loan from the Prudential Insurance Co. of America, and \$1 million loan from the United States National Bank. From time to time the vice president reported to the directors commitments made on the reorganization program and the amounts paid.

27. The directors of St. Helens at a meeting held August 19, 1952, made a complete review of the modernization and expansion program on which commitments had been made in the amount of \$5,500,000 and upon which \$3,500,000 had been paid. A revised estimate was submitted showing the estimated cost of the entire modernization program as being \$8,875,000 and that its completion would require additional financing of \$2 million.

28. At a subsequent meeting on September 24, 1952, the directors unanimously voted that the modernization and expansion program be continued up to the limit of the funds available. They also instructed the president to negotiate with the Beloit Iron Works relative to some relief on the contract to rebuild the No. 1 paper machine. The president was unable to arrive at a complete settlement with the Beloit Iron Works, but they did suspend all work on their orders without penalty as 80 percent of the Beloit orders were cast and 50 percent were machined.

29. An analysis of expenditures and a summary of funds available, prepared for the board of directors, showed that, as of September 1952 there were available \$6,613,680 to meet the cost then incurred in the modernization program, including a balance of more than \$3 million to be expended after June 30, 1952. This figure excluded the cost of rebuilding the No. 1 machine auxiliary equipment, building alterations and the lime kiln, but included the equipment already provided by Beloit for the No. 1 paper machine.

30. At a meeting on October 21, 1952, the directors determined that one individual should handle the financing of the modernization program and elected J. W. Fish, one of the directors, to handle this matter. Mr. Fish later reported on January 20, 1953, that he had contacted the United States National Bank and the Prudential Insurance Co. of America and that at the time they were willing to go along with the additional financing, but that in the meantime other matters had come up which postponed the negotiations and it was thought that this money might not be available at the present time. At this meeting, J. W. Fish was authorized to act on behalf of the company in negotiating with corporations inquiring as to the possible acquisition of St. Helens. Prior to this the company had had in-

quiries from the Marathon Corp. and Olin Industries, but nothing came of these inquiries.

IV. THE ACQUISITION OF ST. HELENS

31. St. Helens' board of directors on February 17, 1953, entered into a memorandum of intent which provided that respondent would offer to exchange its own common stock for the shares of St. Helens, and in June 1953 respondent acquired substantially all of St. Helens' stock in exchange for 339,806 shares of its own common stock valued at approximately \$9,557,000. St. Helens was fully merged into respondent pursuant to the laws of Oregon and Nevada on September 12, 1955.

32. In its official statement (CX 4) respondent asserted that the exchange ratio was fair and reasonable whether tested singly or by all of the factors of comparative per share earnings, dividends, market values, and book values. The following table summarizes the factors taken into consideration in arriving at the proposed exchange offers. These figures have been adjusted to reflect the stock split-up and to place respondent's common stock on the basis of equivalent fractional shares to be offered for each share of St. Helens' stock.

	<i>St. Helens Exchange Offer</i>	
	<i>Crown (Adjusted)</i>	<i>St. Helens</i>
Earnings per share—average last 5 years.....	* \$3. 07	\$2. 73
Dividends paid per share—average last 5 years.....	1. 10	. 89
Market values—average of the high and low for the 14 months ended Feb. 28, 1953.....	24½%	18¾%
Book values per share at Dec. 31, 1952.....	\$21. 73	\$23. 60

* Based on earnings of the company for the 4 years and 8 months ended December 31, 1952.

33. The reasons for the acquisition as explained by the respondent in its official statement to stockholders was as follows:

* * * St. Helens owns a paper mill located at St. Helens, Oreg., in which it produces bleached and unbleached kraft papers and bags, and also owns substantial timberlands, the majority of which are adjacent to or almost intermingled with timber holdings of the company.

* * * * *

The timber holdings of St. Helens would not only complement but would also advantageously supplement the company's timber holdings, since St. Helens has substantial holdings of hemlock, spruce and other high-grade species in age classifications in which the company is somewhat deficient in its United States holdings. A major reconstruction program is now underway at the St. Helens mill, which will modernize its facilities and increase its capacity. If the St. Helens exchange

offer is completed, the company would continue to serve St. Helens' present customers and, when the reconstruction program is completed, it would also have substantial additional tonnage for its own immediate market requirements. This additional tonnage would enable the company to supply the increasing requirements of its customers while its proposed major new expansion program, involving in part a new unit at the Elk Falls mill, is under development.

34. Another major interest of respondent in acquiring St. Helens' mill was its bleaching capacity which would permit respondent to concentrate its bleaching at St. Helens and omit a bleach plant at any new mill. It enabled respondent to proceed with the construction of its new Antioch mill without incurring the complications and expenses that would have been incurred otherwise to provide for the production of both bleached and unbleached papers at the Antioch mill.

35. As of May 31, 1953, St. Helens had spent the following sums on the modernization and expansion program authorized in 1950:

Pulp mill building-----	\$559, 734
Pulp mill rebuild-----	1, 077, 434
Bleach system rebuild-----	874, 256
Electrical equipment for pulp mill and bleach system rebuild-----	222, 345
Recovery department addition-----	1, 706, 106
Beater room rebuild-----	508, 277
B.R. basement, motor generator D.C. supply-----	34, 406
Finishing room addition-----	81, 526
New water treatment plant-----	603, 385
Mill water distribution-----	88, 876
Total cost-----	5, 756, 345
No. 1 paper machine deposit (work suspended)-----	479, 859
Grand total-----	6, 236, 204

36. Subsequent to the acquisition, respondent proceeded with the St. Helens modernization program, amending it to provide additional capacity. In so doing respondent spent the following sums to complete the items unfinished on June 5, 1953, as follows:

Recovery system-----	\$771, 575
Pulp mill-----	1, 660, 613
No. 1 paper machine-----	3, 238, 990
Steam plant-----	190, 015
Water system-----	234, 356
Beater room-----	114, 251
	6, 209, 800

37. In addition to the items listed above, respondent made major replacements on the No. 2 machine—added a third Fourdrinier paper

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machine increasing the paper capacity of St. Helens mill up to 350 tons per day. These and other improvements are listed as follows:

Lime kiln.....	\$ 459, 507
Finishing department.....	287, 751
No. 3 paper machine.....	5, 623, 661
Lighting modernization.....	29, 247
No. 2 paper machine.....	136, 283
Shipping department.....	224, 409
Bleach plant.....	61, 583
Wood supply.....	525, 640
Yard improvements.....	102, 684
Electrical improvements.....	583, 208
Real estate.....	57, 044

8, 091, 017

V. FINANCIAL STATUS OF ST. HELENS

38. On March 31, 1953, prior to the acquisition of St. Helens by respondent, the capitalization of St. Helens stood at \$13,637,782, consisting of the following items:

Capital stock.....	\$3, 998, 680
Surplus.....	5, 539, 102
Long-term loans.....	4, 100, 000

13, 637, 782

39. St. Helens made a profit in every year of its operation from 1927 to 1952, inclusive, except in 1932 when it sustained a loss of \$33,181. For the 26 years its total profits were more than \$13,000,000. Beginning in 1929, St. Helens paid dividends in every year except 1932.

40. During the 10-year period from 1943 to 1952 St. Helens' annual earnings per share ranged from a low of 66 cents in 1945 to a high of \$3.56 in 1948. During the same period St. Helens' dividends per share ranged from 50 cents to \$1.50. Complete record of yearly earnings and dividends are as follows:

Year	Earnings per share, common stock	Dividends per share, common stock
1943.....	\$0. 89	\$0. 50
1944.....	. 79	. 50
1945.....	. 66	. 50
1946.....	1. 62	. 65
1947.....	3. 54	. 95
1948.....	3. 56	1. 10
1949.....	1. 90	. 75
1950.....	2. 41	. 85
1951.....	3. 04	1. 00
1952.....	2. 73	. 75

41. During the 10-year period from January 1, 1943, to December 31, 1952, St. Helens' net sales increased from \$5,435,053 to \$9,258,508, and its net income increased from \$357,754 to \$638,534. This latter amount is less than the reported figure for December 31, 1952, of \$1,090,940, since this included a rebate of excess profits taxes for prior years and the proceeds of a life insurance policy on the life of the company's late president. As of December 31, 1952, its total assets were \$15,223,754, and its net worth was \$9,436,441.

VI. THE PAPER INDUSTRY

42. Paper is a matted or felted sheet of fiber formed on a fine wire screen from a water suspension. The fiber stock from which paper is made is called the pulp or furnish. In 1953, wood pulp accounted for 66 percent of the furnish for the production of paper; wastepaper accounted for 30 percent; the balance was straw and other materials.

43. Wood pulp is produced from wood by chemical or mechanical treatment. The mechanical process is used to produce groundwood used in making newsprint and printing paper.

44. In the chemical treatment of wood to produce pulp, three major processes are used:

1. The sulphite process in which wood chips are cooked in an acid liquid, the active ingredients of which are sulphur dioxide and bisulphite of lime. This was the leading process until 1938 and is still in large-scale use.

2. The sulphate or kraft process in which the main chemical used is sodium sulphate. This process permits the use of types of wood unsuitable for pulping by the sulphite process, particularly the southern pines and Douglas fir. It generally makes a stronger paper than sulphite pulp, and by 1953 it accounted for 55 percent of all wood pulp used in making paper.

3. The semi-chemical process, which is a still later development, has as its main advantage that it can use hardwoods which are not generally suitable for sulphite or kraft pulp production.

45. The natural color of paper made from sulphite pulp is manila. The natural color of kraft is the familiar brown grocery bag. If necessary, these pulps can be bleached up to a high white. They can be colored by the addition of dyes, but in bleaching, kraft paper loses most of its strength advantages over sulphite paper.

46. All types and grades of paper are manufactured on one or two basic types of paper machine, the Fourdrinier machine and the cylinder machine. On the Fourdrinier machine, the pulp or stock, at a low concentration suspension in water, flows from a headbox

through a slice or opening onto a moving endless belt of wire cloth, where the paper web is formed and much of the water removed. It then passes through presses which remove further excess water, to the drier section where the water is evaporated by steam heat until the desired dryness is achieved. It then passes through a calendar section which gives the desired finish to the paper. The cylinder machine is characterized by the use of wire covered cylinders on which the web of paper is formed, these cylinders being partly immersed and rotated in vats containing a dilute stock suspension. The machine may consist of one or several cylinders, permitting the simultaneous production of different layers of paper. The rest of the machine is essentially the same as the Fourdrinier machine.

47. The Harper and Yankee machines are modifications of the Fourdrinier and are used as alternatives to the regular Fourdrinier for the manufacture of lightweight papers. The Yankee machine, using one highly polished large steam-heated drying cylinder instead of several smaller ones, can produce an M.G. (machine glaze finish) on the side of the sheet next to the drier. An M.F. (machine finish paper) is one with any finish other than M.G.

48. Standard Fourdrinier machines are used for the production of every type and grade of paper except that they are little used in the production of nonbending board, cardboard and wet machine board. Yankee Fourdriniers are used principally in the production of tissue grades and Census coarse paper, with some use in fine paper, special industrial paper, absorbent paper and building paper. Cylinder machines are used for every grade of paper listed by the U.S. census except newsprint and book paper.

49. In the West, where there is a smaller percentage of old machines than in the nation as a whole, there is also a smaller percentage of cylinder machines. The term "West" as used in this decision refers to the region defined by the U.S. Bureau of the Census comprising the 11 Western States, namely: the Pacific Coast States (Washington, Oregon, and California) and the Mountain States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, and Nevada). The West has 89 Fourdrinier machines and 38 cylinder machines. Thirty-one of the cylinder machines in the West make roofing felt, boxboard, and similar products in nonintegrated mills using nonwood pulp or waste paper pulp rather than kraft or sulphite wood pulp. Only seven cylinder machines, mostly old ones, make paper from wood pulp in integrated mills. Of the 89 Fourdrinier machines in the West, however, 81 are used for the production of paper and paperboard, and almost all of these 81 machines are in integrated mills.

50. The several types and grades of paper vary from each other in basis weight, thickness, color, finish, and sometimes in special characteristics such as wet strength, sizing, or porosity. Basis weight, as herein used, is the weight in pounds of a ream of paper (500 sheets) measuring 24 x 36 inches.

51. The Fourdrinier machine is adjustable within wide limits. By adjusting the slice, papers of different basis weights or thickness can be made on the same machine. By introducing bleached or unbleached pulp into the headbox, the same machine can make bleached or unbleached paper. By variations in the beating or preparation of the pulp, different strength or porosity characteristics can be given to the paper. Dyes can be added to the pulp for producing a complete range of colored papers. Sizing can be added either in the stock solution or at a size press. The paper can be finished in different ways by adjustment of the calendar stacks.

52. The Fourdrinier machine has no inherent limitations as to the type of paper it can produce, except that each machine has an upper and lower basis weight limitation, depending upon its maximum and minimum machine speed and its maximum and minimum drying capacity. In addition to these upper and lower basis weight limits, paper machine production begins to decline when the basis weight is lowered to the point that even at maximum speed, the machine cannot make as much paper as can be dried by the drier section. This production decline typically occurs at about 40 to 50 pounds basis weight.

53. All 81 Fourdrinier machines in the West now producing paper and paperboard can make 40-pound paper, and 58 of them can also make 126-pound paper. Only rarely is special equipment required for the production of any grade of trade coarse paper. A size press is desirable for certain grades, and most modern machines in the West have a size press; when they do not, the size can be added to the pulp before it reaches the machine head box.

54. An integrated pulp and paper mill costs about \$85,000 per ton of daily capacity to build. A 260-ton mill would cost about \$24 million; a larger mill is proportionally less expensive; a 450-ton mill would cost about \$30,300,000.

VII. LINE OF COMMERCE

55. In trade usage and as defined in "The Dictionary of Paper," grades of paper are given broad definitions and fall within three mutually exclusive grades: coarse, fine, and newsprint. The U.S. Bureau of the Census in its Paper and Board Classification Guide

(RX1, RX62, pp. 34-52) separates the broad trade definition of coarse papers into coarse paper, special industrial paper, sanitary tissue paper, tissue paper, except sanitary and thin paper, container board, bending board, special paper board stock, nonbending board, and cardboard, and paper products made therefrom.

56. The respondent introduced into evidence as respondent's exhibit 62, a series of tabulations which contains at pages 28 through 33 a comparative table outlining the coarse papers sold by St. Helens and by Crown Zellerbach for the year 1953 in the 11 Western States. This exhibit sets out the census grades of paper sold by St. Helens at or about the time of its acquisition. While the respondent acquired substantially all of the stock of St. Helens in June 1953, and later merged St. Helens into respondent on September 12, 1955, the record indicates that no substantial change was made in the paper and paper products produced by St. Helens during the year 1953. This is further borne out by the fact that a comparison of respondent's exhibit 62 with Commission's exhibit 168A-B, which is a comparative chart of production of census coarse papers in the 11 Western States for 1952 between St. Helens and other producers of paper, shows that the papers sold by St. Helens in the years 1952 and 1953 were substantially the same.

57. Respondent's exhibit 62, pages 28 through 33, is based upon information obtained from the Census Bureau showing the report of production in the 11 Western States by respondent and St. Helens of the papers falling within the census categories. This exhibit indicates that at the time of acquisition, St. Helens produced papers falling within all the census categories covering trade coarse papers. In 1953, St. Helens produced 48,155 tons of census coarse papers which was approximately 84 percent of its production. The remaining 16 percent was distributed among the other census categories as follows: special industrial paper, 3,052 tons; sanitary tissue, 1,513 tons; tissue paper, except sanitary and thin, 2,858 tons; container board 413 tons; bending board, 166 tons; and special paperboard stock, 1,460 tons.

58. The total industry production of census coarse papers in the West for the year 1953 was 437,384 tons of which respondent accounted for 225,276 tons or 51.5 percent and St. Helens accounted for 48,155 tons or 11.0 percent, making a total production of the two together of 62.5 percent.

59. The total industry production of census category special industrial paper in the West for the year 1953 was 53,099 tons, of which respondent accounted for 43,382 tons, or 81.7 percent; and St. Helens accounted for 3,052 tons, or 5.7 percent, making a total production for the two together of 87.4 percent.

60. The total industry production of census sanitary tissue in the West for 1953 was 112,536 tons, of which respondent accounted for 76,532 tons, or 68 percent; and St. Helens accounted for 1,513 tons, or 1.4 percent, making a total production of the two together of 69.4 percent.

61. The total industry production of census category tissue paper, except sanitary and thin, in the West for the year 1953 was 36,052 tons, of which respondent accounted for 13,211 tons, or 36.7 percent; and St. Helens accounted for 2,858 tons or 7.9 percent, making a total production of the two together of 44.6 percent.

62. The total industry production of census category container board in the West for the year 1953 was 587,708 tons of which respondent accounted for 56,729 tons, or 9.6 percent; and St. Helens accounted for 413 tons, or .1 percent, making a total production of the two together of 9.7 percent.

63. The total industry production of census category bending board in the West for the year 1953 was 448,020 tons, of which respondent accounted for 9,761 tons, or 2.2 percent; and St. Helens accounted for 166 tons, or .04 percent, making a total production of the two together of 2.24 percent.

64. The total industry production of census special paperboard stock in the West for the year 1953 was 130,619 tons, none of which was produced by Crown, and St. Helens accounted for only 1,460 tons, or 1.1 percent.

65. On July 8, 1955, the respondent submitted a list purporting to be all the producers of paper in the western area at or about the time of the acquisition of St. Helens, who sold papers competitive with those sold by St. Helens. These producers were as follows:

- Columbia River Paper Co.
- Container Corp. of America
- Fibreboard Products, Inc.
- Inland Empire Paper Co.
- Longview Fibre Co.
- Oregon Pulp & Paper Co.
- Pacific Coast Paper Mills of Washington, Inc.
- Potlatch Forests, Inc.
- Publishers Paper Co.
- St. Regis Paper Co.
- Scott Paper Co.
- Simpson Logging Co.
- Weyerhaeuser Timber Co.

Decision

Representatives of these respective companies were called as witnesses and introduced in evidence testimony or exhibits showing their production of census coarse paper for the years 1952 and 1954. A tabulation of the production information obtained through these witnesses was prepared and offered in evidence as Commission's exhibit 168 A-D, including the production figures for census coarse papers of respondent and St. Helens for the years 1952 and 1954. The California Container Corp., Division of Container Corporation of America, and Pacific Coast Paper Mills did not produce any papers under the census coarse paper category.

66. Based upon the testimony of the witnesses and the data produced, there were 10 western producers of census coarse papers in 1952, but 4 of the 10 produced only insignificant quantities. Four western producers accounted for 94.2 percent of the western production of census coarse papers in 1952, and three accounted for 93.9 percent in 1954.

67. The total industry production of census coarse papers in the West for the year 1952 was 443,152 tons, which was distributed among the western producers as follows:

	<i>Tons</i>	<i>Percent</i>
Crown Zellerbach Corp.....	226,430	51.1
St. Helens.....	53,821	12.1
Longview Fibre Co.....	77,749	17.5
St. Regis Paper Co.....	59,851	13.5
Oregon Pulp & Paper Co. and Columbia River Paper Co.	14,700	3.3
Publishers Paper Co.....	7,471	1.7
Potlatch Forests, Inc.....	1,400	0.3
Inland Empire Paper Co.....	1,008	0.2
Fibreboard Products, Inc.....	435	0.1
Simpson Paper Co.....	287	0.1

The tabulation of Simpson Paper Co. contains 272 tons kraft white wove envelope which was listed as a coarse paper.

68. The total industry production of census coarse papers in the West for the year 1954 was 455,934 tons, which was distributed among the western producers as follows:

	<i>Tons</i>	<i>Percent</i>
Crown Zellerbach Corp.....	242,539	53.2
Former St. Helens.....	49,317	10.8
Longview Fibre Co.....	80,108	17.6
St. Regis Paper Co.....	56,068	12.3
Oregon Pulp & Paper Co. and Columbia River Paper Co.	14,540	3.2
Publishers Paper Co.....	6,929	1.5
Potlatch Forests, Inc.....	4,990	1.1
Inland Empire Paper Co.....	681	0.1
Fibreboard Products Co.....	81	-----
Simpson Paper Co.....	377	0.1
Weyerhaeuser Timber Co.....	304	0.1

The tabulation of Simpson Paper Co. contains 335 tons kraft white wove envelope which was listed as a coarse paper.

69. In 1952 in the 11 Western States, respondent, Longview, and St. Helens were the principal producers of coarse paper, with St. Regis, Oregon Pulp & Paper and Columbia River Paper Co., and Publishers Paper Co. being important producers only for a limited array of papers.

70. Longview produced substantially the same range of papers as was produced by St. Helens. It converted a substantial portion of its production of converting papers and sold most of its jobbing papers to one jobber, Blake, Moffitt & Towne. In areas where Blake, Moffitt & Towne did not operate it sold only to two other jobbers: Carpenter Paper Co. and Dixon & Co. These three jobbers were large and important jobbing outlets in the Western States.

71. Respondent, St. Helens, and Longview met only limited competition from some of the other west coast producers of census coarse papers. The census coarse papers produced by other western mills in both 1952 and 1954 are as follows:

1. St. Regis Paper Co. produced principally unbleached kraft shipping sack paper, a small quantity of grocers and variety bag papers, and, in the bleached category, small amounts of shipping sack paper, other bag paper, and cup stock.

2. Oregon Pulp & Paper Co. and Columbia River Paper Co. confined their production of coarse paper largely to glassine, greaseproof and vegetable parchment paper, and bleached envelope stock, most of their output being designated as converting papers.

3. Publishers Paper Co. produced only papers in the census "Other coarse paper" category. Its production was exclusively wrapping paper.

4. Potlatch Forests, Inc., produced principally two grades of bleached converting paper, waxing stock and other converting paper.

5. Inland Empire Paper Co.'s production with respect to wrapping paper was principally in the census "Other coarse paper" category.

6. Fibreboard Products, Inc.'s production was reported in the same category.

7. In 1954, Inland Empire Paper Co. produced a small quantity of envelope stock.

8. Simpson Paper Co.'s production of coarse paper was limited to bleached envelope stock.

9. Weyerhaeuser Timber Co.'s paper production in 1954 was grocers and variety bag paper.

VIII. THE WESTERN MARKET

72. The geographic areas of effective competition for western producers may be analyzed in terms of the sales policies of St. Helens, respondent, and other western producers, and in terms of the buying habits of converters, paper merchants and other purchasers in the Western States.

73. Respondent sold from 80 to 85 percent of its products comparable to those produced by St. Helens in the 11 Western States and competed very aggressively with St. Helens in that trade area. The bulk of respondent's western sales other than exports was concentrated in the three Pacific Coast States. In 1952, 63 percent of its wrapping paper was sold in the Pacific Coast States and 14 percent in the Mountain States; 86.4 percent of its converting paper was sold in the Pacific Coast States and 1.5 percent in the Mountain States; and 69.2 percent of its bags were sold in the Pacific Coast States and 15.4 percent in the Mountain States. The proportions were similar in 1953: 62.6 percent of the wrapping paper in the Pacific Coast States and 14.1 percent in the Mountain States; 89.5 percent of the converter paper in the Pacific Coast States and 1.4 percent in the Mountain States; and 68.2 percent of the bags in the Pacific Coast States, and 16.7 percent in the Mountain States.

74. St. Helens was engaged in competition directly and primarily in the 11 Western States. In 1952, St. Helens made 85 percent of its domestic sales in the 11 Western States and about 15 percent outside of the 11 Western States. St. Helens' primary market was the Pacific Coast States, which accounted for 88.7 percent of its sales within the 11 Western States in 1952 and for 75.4 percent of its U.S. sales. St. Helens' sales in the Mountain States in 1952 amounted to \$955,000, which was 11.3 percent of its sales in the 11 Western States and 9.6 percent of its total domestic sales. Although St. Helens sold regularly in the export trade, its total sales for export in 1952 were less than \$500,000.

75. With the exception of three Atlantic coast customers and one small converter located in Denver, Longview Fibre Co.'s market for converting papers was confined primarily to converters located in the three Pacific Coast States. Longview sold approximately 85 percent of its jobbing papers to Blake, Moffitt & Towne, which operates primarily in the Pacific Coast States, with additional sales in the intermountain and Rocky Mountain areas to Carpenter Paper Co. and Dixon & Co.

76. Western mills producing coarse papers and coarse paper products sold their production principally in the 11 Western States, with their

largest markets concentrated in the three Pacific Coast States. Western supplies of coarse paper and coarse paper products have come principally and primarily from western mills.

77. Mills producing coarse papers not located in the West were at a serious disadvantage in attempting to sell western buyers because of the high freight charges and also the preference as expressed by a number of witnesses for the purchase of merchandise from western suppliers. Furthermore, an eastern supplier would be handicapped in filling orders unless a complete warehouse stock was maintained. Certain eastern suppliers, International Paper Co. and Hudson Paper Co., did make limited sales in the western area, principally in the Los Angeles area. Sales of other eastern suppliers was sporadic and of no significance insofar as the line of commerce in this proceeding is involved.

78. The rapid growth in the western market has enabled western mills to operate substantially at capacity throughout the war and postwar periods. This condition has persisted even in the presence of substantial increases in capacity by western mills since the end of the Second World War.

79. The failure of western production to keep pace with the growing demand of the western market, has created a limited opportunity for eastern suppliers to enter the western market despite the handicap of high transportation costs.

IX. COMPETITIVE CHARACTERISTICS OF THE WESTERN MARKET

80. The western coarse paper industry is characterized by price leadership. Western producers followed the prices established by respondent without reference to their costs of production. Respondent in turn, in establishing prices or price changes, followed the prices of the eastern market with the result that delivered prices in both the East and the West were substantially the same.

81. Respondent placed its coarse paper customers on an allotment in June 1955 on the basis of their 1954 purchases. The allotment program was made on a grade basis, and the customer could not transfer his allotment from one grade to another if his customers' paper requirements changed. Within a few weeks thereafter, respondent instructed its salesmen to accept orders (subject to approval of respondent's headquarters) for grades which the customer had not purchased in 1954 or for grade quantities in excess of 1954 purchases in that grade, so long as the customer's total order did not exceed 1954 purchases. This allotment was due to the fact that at that time the demand was greater than mill capacity.

82. Prior to the acquisition, St. Helens scheduled short runs of papers to fill particular orders. Following the acquisition, respondent increased the minimum quantities in which paper and paper products had to be ordered if the purchaser were to obtain the minimum prices, and on occasion refused to fill small quantity orders. Respondent also refused to sell paper distributors in marketing areas where respondent already had a jobber customer. Respondent also adopted the policy of making deliveries for paper distributors only in the market area in which the paper distributor maintained a warehouse, and would not ship direct to such distributor's customers located in other areas, thereby placing a burden upon such a distributor to reship to his particular customers on purchases made from respondent.

X. ECONOMIC SURVEY—COMMISSION'S EXHIBIT 176

83. Subsequent to the issuance of the complaint herein, the Bureau of Economics of the Federal Trade Commission, pursuant to authorization by the Commission, made a survey by sending out questionnaires to coarse paper jobbers, converters and wholesale grocers, located in 11 Western States, under section 6 of the Federal Trade Commission Act.

84. A tabulation of the replies received was identified and offered in evidence, by counsel supporting the complaint, as Commission's exhibit 62. Objection was made to the receipt of this exhibit in evidence because the basic material, namely the reports of the various converters and jobbers on which the survey was based, had not been made available to the respondent for use in cross-examination. This objection was sustained by the hearing examiner, and an interlocutory appeal was taken from this ruling to the Commission, and the Commission, after consideration of said appeal, issued its order dated May 16, 1955, directing that the basic information and work papers be made available to the respondent and remanded the case to the hearing examiner for further proceedings in accordance with its decision.

85. Thereafter, Commission's exhibit 62 was again offered in evidence and was received by the hearing examiner.

86. Subsequent thereto, certain corrections and deletions were made in the survey as brought out by the testimony and pointed out by counsel for respondent and as a result of rulings of the hearing examiner. This survey, so corrected, was substituted for Commission's exhibit 62, which was withdrawn, and was received in evidence as Commission's exhibit 176.

87. In its order and opinion of May 16, 1955, the Commission further provided that:

"No information secured on FTC forms EE-1 or EE-2 that can be identified with reporting companies shall be admitted into the public record for any purpose."

This provision of the order of the Commission was strictly construed by counsel supporting the complaint, and the answers to the questionnaires, which served as a basis for the survey, were not offered in evidence in this proceeding in camera or otherwise. This has greatly hampered the cross-examination and the making of an intelligible record in this proceeding. Where errors in a specific report have been pointed out on cross-examination, the hearing examiner, in the absence of the report or the figures involved being placed in evidence, is precluded from making a factual determination as to the extent of the errors or their significance with relation to the survey as a whole.

88. It was stated in the survey, Commission's exhibit 176, appendix I, that said survey was prepared pursuant to a resolution of the Commission authorizing the collection of data for the purpose of ascertaining market characteristics and to prepare statistical compilations of the results for use in the present proceeding. It was stated by Dr. Barnes, the witness under whose direction and supervision this survey was made, that it was not a share of the market survey and was not prepared to show a share of the market. In view of this, it must be concluded that the survey is instead a factual survey which shows that a specified number of jobbers or converters purchased a specified quantity of a particular paper from each of several suppliers.

89. In making corrections on Commission's exhibit 176, Dr. Barnes altered the figures supplied by certain reporting companies based upon information contained in field reports. To this extent the exhibit ceases to be a survey of reports of jobbers and converters and becomes a document based upon the independent judgment of Dr. Barnes and his staff. Corrections were made without prior consultation with the reporting companies or the calling of representatives of such companies as witnesses to clarify such possible discrepancies.

90. In preparing the questionnaires used in making the survey, special categories of papers were adopted which were considered to cover the various papers sold by St. Helens before and after the acquisition. In so doing the census definitions with which the trade is familiar were abandoned. This procedure has resulted in confusion among the reporting companies and has raised serious question as to the correctness or value of the survey in its various divisions.

91. In view of the questionable probative value of this economic survey, no consideration has been given it in making this decision.

CONCLUSIONS

1. Section 7 of the Clayton Act, as amended by Congress in 1950, was enacted for the purpose of overcoming the deficiencies of the original section 7, as indicated by court decisions, and to reestablish the concept of Congress that the Clayton Act was designed to reach mergers not subject to the rigid requirements of the Sherman Act.

2. The portion of section 7, as amended, applicable to this proceeding reads as follows:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

3. The term "in any line of commerce" which was inserted in section 7, as amended, was defined by the Senate Judiciary Committee as intended to reach those acquisitions which substantially lessen competition as well as those which tend to create a monopoly, if they have this specified effect in any line of commerce whether or not that line of commerce is a large part of business of any of the corporations involved in the acquisition.¹

4. The term "any section of the country" was clarified by the Senate Judiciary Committee in the following statement:

What constitutes a section will vary with the nature of the product. Owing to the differences in the size and character of markets, it would be meaningless, from an economic point of view, to attempt to apply for all products a uniform definition of section, whether such a definition were based upon miles, population, income, or any other unit of measurement. A section which would be economically significant for a heavy, durable product, such as large machine tools, might well be meaningless for a light product, such as milk.

As the Supreme Court stated in *Standard Oil Co. v. U.S.* (337 U.S. 293), "Since it is the preservation of competition which is at stake, the significant proportion of coverage is that within the area of effective competition."

In determining the area of effective competition for a given product, it will be necessary to decide what comprises an appreciable segment of the market. An appreciable segment of the market may not only be a segment which covers an appreciable segment of the trade, but it may also be a segment which is largely segregated from, independent of, or not affected by the trade in that product in other parts of the country.

It should be noted that although the section of the country in which there may be a lessening of competition will normally be one in which the acquired

¹ Senate Report 1775, 81st Congress, p. 5.

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company or the acquiring company may do business, the bill is broad enough to cope with a substantial lessening of competition in any other section of the country as well.²

5. The area of effective competition as shown by the foregoing findings of fact is the 11 Western States. It is in this area that both the respondent and St. Helens sold the greater volume of papers produced by them. The attempt by respondent in its proposed findings and briefs to extend the area of effective competition to the entire nation is an attempt to revert to the decisions applicable to section 7 of the Clayton Act prior to the amendment and is contrary to the facts developed in this proceeding, contrary to the expressed provisions of the statute, and contrary to the expressed intention of Congress in the adoption of the amendment of section 7.

6. The line of commerce involved in this proceeding is the various papers falling within the census category of coarse papers. About 84 percent of the production of St. Helens was census coarse papers. Respondent produced 51.5 percent of the total of census coarse papers produced in the 11 Western States. Consequently census coarse papers is the line of commerce principally affected by the acquisition. The attempt by respondent in its proposed findings and briefs to extend the line of commerce to practically all categories is not in accord with the facts in this proceeding. Since the greater portion of the production of both respondent and St. Helens was in the category of census coarse papers, the area of effective competition as to products would be within that category.

7. At the time of the acquisition of St. Helens, Crown, Longview Fibre Co., and St. Helens were the principal producers of coarse papers in the West and accounted for 80.7 percent of the production of census coarse papers in the 11 Western States. In 1954, after the acquisition, two companies, Crown and Longview, produced 81.6 percent of census coarse papers in the 11 Western States. The percentage of production of Longview remained substantially the same, while the percentage of the respondent increased to 64 percent, including St. Helens' production.

8. The removal of St. Helens from the competitive picture through its acquisition by respondent, removed one of the three principal producers of census coarse papers in the West, and left only two sources of supply for the greater portion of census coarse papers which were available to converters and jobbers. This greatly enhanced the dominant position of respondent in the western market.

9. Prior to the acquisition of St. Helens, jobbers in the 11 Western States had two significant sources of supply for coarse papers that

² Senate Report 1775, 81st Congress, 2d Session, pp. 5-6.

could be relied upon by them. The Longview Fibre Co. was not available to jobbers generally as it sold most of its jobbing paper and paper products to three jobbers. Subsequent to the acquisition, paper jobbers generally were dependent for all practical purposes on respondent for a source of supply. Respondent through its division, Zellerbach Paper Corp., competed with all jobbers for sales at the consumer level. As a result of the acquisition, these western jobbers are in the precarious position of being dependent upon a company as a source of supply which was in fact an active competitor and which could suddenly decide that it wished to make all the profit possible in the sale of paper and dispose of its entire production through its own jobbing division. If the respondent should adopt this policy, it would, in effect, put independent jobbers of coarse paper in the 11 Western States out of business.

10. As far as the converter is concerned, he had two sources of supply from which he could obtain coarse papers after the acquisition. However, both of these sources—Crown and Longview—converted a substantial portion of their production. A decision by respondent to convert all of its coarse papers produced for converting purposes would have the effect of forcing most of the independent converters in the West out of business. The futility of converters and jobbers relying upon Longview Fibre Co. for their supply is borne out by the fact that while respondent had 30 Fourdrinier machines in operation at the time of the acquisition, Longview had only 4 Fourdrinier machines. The total capacity of Longview was 850 tons per day, two-thirds of which was container board for use in making shipping cartons.

11. Prior to its acquisition by respondent, St. Helens was an independent source of converting grades which supplied many converters, who are now forced to look principally to their competitors for their supply of converting papers.

12. Respondent's latent power to control the economic life of jobbers and converters in the 11 Western States was demonstrated by the system of allocations it imposed in the spring of 1955. Respondent informed each jobber and converter customer of the tonnage of each grade of paper which they would be allowed to purchase. While it is true that such reduction was necessitated by a shortage of paper, it nevertheless points up the power of respondent to set and enforce allocations and its ability to hinder, restrict, and destroy competition if so inclined.

13. Respondent's policy of refusing to make deliveries in any location except to places deemed by respondent to be within the

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jobber's selling area, even though freight charges for deliveries directly to the jobber's customer may have been cheaper or no greater than the delivery cost directly to the jobber, reveals the power in the possession of Crown to prevent growth on the part of the small jobber. This has hindered and prevented competition by the small jobber in that it has prevented expansion by him. The service by direct shipments to the jobber's customers was an advantage which the jobber enjoyed when St. Helens was a separate entity. This practice tended to restrain and restrict competition to the benefit of such distributors' competitors, including Zellerbach Paper Co.

14. Prior to the acquisition, St. Helens made no limitations on the size of orders or the length of runs of paper. This was an advantage to the small jobber and customer who could not afford to purchase or use large quantities. After the acquisition, respondent placed a limitation on the size of orders, particularly for specialty papers, which prevented the jobber or customer from purchasing the quantities formerly purchased from St. Helens.

15. While St. Helens did not engage in the sale of substantial amounts of timber, and while timber does not come within the line of commerce involved in this proceeding, the acquisition of 117,000 acres of timberland outright, plus first right of refusal to cutting rights on a substantial additional acreage upon the acquisition of St. Helens, served to enhance the dominant position held by respondent.

16. Since neither respondent nor St. Helens sold pulp, but instead consumed their pulp production in the manufacture of their products, pulp cannot be considered as a line of commerce for the purposes of this proceeding, although the acquisition of the pulp facilities at the St. Helens plant by respondent did to some extent tend to increase its dominant position in the industry in the 11 Western States.

17. At the time of its acquisition, St. Helens was well along toward completion of a soundly conceived modernization and expansion program. The cost of the program had increased substantially from its original inception, due partly to an enlargement of the program and partly to inflated material and equipment costs. St. Helens had financed \$4 million of its expansion program on the basis of bank and insurance loans. It required an additional \$2 million in loans to complete the program as finally planned. The additional financing was available. As of December 31, 1952, its total assets were \$15,223,754, and its net worth \$9,436,441. By reference to earnings and dividend payments, as set out in the findings herein, it is evident that St. Helens was not in a failing condition at the time of its

acquisition by the respondent or that the sale of the company was necessary to its continued operation.

18. The fact that western producers followed the leadership of respondent in pricing their paper is a clear indication of the dominant position held by respondent in the western market. Respondent in turn, by following the prices of eastern producers, made certain that such eastern producers could not compete satisfactorily in the western market because of the necessity of absorbing freight in order to be competitive pricewise.

19. In the course of its defense, the respondent maintained that the flexibility of the Fourdrinier machine is a deterrent to any producer attempting to obtain a competitive advantage by unduly increasing his share of the market in any grade or type of paper since competitive producers had the ability to undertake production of the same types or grades of paper. Such contention cannot be used to justify or excuse an acquisition which has a present serious impact upon competition. As of October 1, 1955, there were 89 Fourdrinier machines in operation in the West, 34 of which were operated by the respondent. All of these machines are now engaged in the manufacture of types or grades of paper for which there is a present customer demand and for which types and grades of paper sales organizations have been developed to sell. In the opinion of the hearing examiner, while flexibility of these machines is recognized, it does not have any serious impact upon the competitive situation existing in the West so far as the acquisition of St. Helens is concerned, nor does it have any serious impact upon the present dominant position of the respondent.

20. Respondent has also claimed in its proposed findings and briefs that its share of the western market has decreased from 33.4 percent in 1947, to 27.3 percent in 1953, although its own production increased from 568,068 tons to 744,455 tons, exclusive of St. Helens and that the addition of St. Helens production increased respondent's share of western production in 1953 to 29.4 percent. In arriving at these percentages, respondent included papers never produced by St. Helens, some of which could not even be produced by it, and all of the papers were not within the line of commerce involved in this proceeding. For example, statement of 1953 production included newsprint, groundwood paper, machine-coated printing and converting paper, bag paper, fine paper, and cardboard. The total of these papers not produced by St. Helens amounted to approximately 47 percent of respondent's total production for 1953. The industry total also included construction paperboard and construction building board which was not produced by either respondent or St. Helens.

Such evidence is of no value to prove a declining share of the market involved, and is not relevant where a substantial supplier has been removed from the market with a consequent enhancement of the dominant position held by respondent in the relevant market.

21. In addition, respondent in its defense has introduced economic evidence with reference to potential production in the future and in this connection made projections of disposable income and future consumption to 1975. Such projections, however, are based upon the assumption that conditions will remain the same as they are at present and that there will be no decline in the national economy over a long term in the future. Such evidence is merely speculative and cannot be used to justify or excuse an acquisition which has a present serious impact upon competition. Furthermore, it is recognized that increases in new production usually come from existing firms in the industry since potential new producers will tend to be deterred from entering the industry because of the relatively concentrated competition to be faced in marketing their products and the difficulty in marshalling the factors of production. The respondent with its present paper capacity and its present sales organization would as an existing firm be expected to increase its production to keep abreast of increased demand. This is particularly evident if it be considered that during the past four years respondent has acquired St. Helens Pulp & Paper Co., Canadian Western Lumber Co., Ltd., and Gaylord Container Corp.

22. Evidence has been introduced as to the acquisition of Long-Bell Lumber Co. by International Paper Co., submitted for approval by stockholders on October 17, 1956. The International Paper Co. is an eastern company and is the largest in the United States. The reasons for the merger as set out in notice to stockholders was the opportunity to establish facilities for the production of paper and board in the west coast area, and the construction of a mill in Oregon which will initially produce bleached and unbleached paper and paperboard, and eventual production of newsprint. This acquisition is now the subject matter of a complaint filed by the Commission under section 7 of the Clayton Act. Regardless of the outcome of this proceeding before the Commission, the erection of this mill is now only in the planning stage and it will be some time before its completion. It can reasonably be expected that respondent will in the meantime continue its expansion policies to meet this added competition and that this mill, if established, will not materially affect respondent's present dominant position in the West.

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Order

23. The acquisition of St. Helens by respondent had the effect of substantially lessening competition and tending to create a monopoly in the relevant line of commerce in violation of section 7 of the Clayton Act, as amended.

ORDER

It is ordered, That the respondent, Crown Zellerbach Corp., a corporation, and its officers, directors, agents, representatives, and employees shall divest itself absolutely, in good faith, of all assets, properties, rights and privileges, including but not limited to timberlands, cutting rights, timber, plant, machinery, equipment, trade names, trademarks and good will acquired by Crown Zellerbach Corp. as a result of the acquisition by Crown Zellerbach Corp. of the stock or share capital of the St. Helens Pulp & Paper Co., together with so much of the plant machinery, buildings, improvements, and equipment of whatever description that has been installed or placed on the premises of the St. Helens plant by respondent as may be necessary to restore St. Helens Pulp & Paper Co. as a competitive entity in the paper trade, as organized and in substantially the basic operating form it existed at or around the time of the acquisition.

It is further ordered, That in such divestment no property above mentioned to be divested shall be sold or transferred, directly or indirectly, to anyone who at the time of the divestiture is a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the control or influence of, respondent or any of respondent's subsidiaries or affiliated companies.

It is further ordered, That pending the divestiture herein ordered, respondent, Crown Zellerbach Corp., a corporation, its officers, agents, representatives and employees shall refrain from:

1. Cutting or removing any timber or forest residuals on or from lands owned or upon which cutting rights were possessed which were acquired and held by Crown Zellerbach Corp. as a result of the acquisition by Crown Zellerbach Corp. of the stock or share capital of the St. Helens Pulp & Paper Co.

2. Offering for sale, selling or distributing any timber, forest residuals or cutting rights from lands acquired and held by Crown Zellerbach Corp. as a result of the acquisition by Crown Zellerbach Corp. of the stock or share capital of the St. Helens Pulp & Paper Co.

It is further ordered, That respondent, Crown Zellerbach Corp., shall, within sixty (60) days from the date of the service upon it of this order, submit in writing, for the consideration and approval of the Federal Trade Commission, its plan for compliance with this

order, such plan to include the date within which compliance can be effected, the time for compliance to be hereafter fixed by order of the Commission, jurisdiction being retained for these purposes.

OPINION OF THE COMMISSION

By Tait, Commissioner:

The complaint in this proceeding charges respondent with violating the provisions of section 7 of the Clayton Act (15 U.S.C., sec. 18), as amended,¹ by acquisition of St. Helens Pulp & Paper Co., a corporation. The hearing examiner found that the allegations of the complaint were sustained and issued an order requiring divestiture. This matter is before the Commission upon the cross-appeals of respondent and counsel supporting the complaint. Respondent principally contends in its appeal that certain essential findings of the hearing examiner are not supported by the evidence and that the form of the order contained in the initial decision is unreasonable as to several requirements. Counsel supporting the complaint contend that the order is not sufficiently broad in scope to accomplish the purposes of the statute.

Respondent, Crown Zellerbach Corp., a corporation (sometimes hereinafter referred to as Crown), directly and through its subsidiaries, is engaged principally in the production and in the sale and distribution of pulp, paper, and paper products. It ranks as one of the largest producers of paper and paper products in the United States. Crown is a fully integrated producer of pulp, paper, and paper products in the United States, and through Canadian subsidiaries is an integrated producer of pulp, paper, paper products, plywood, lumber, and lumber products in Canada. In its United States operations, respondent owns and controls timber reserves; produces its own pulp requirements; manufactures various kinds of paper; converts paper into paper products; and sells paper and paper products to converters, jobbers and others. Crown owns and operates western mills in Camas, Wash.; West Linn, Oreg.; Port Angeles, Wash.; Lebanon, Oreg.; Port Townsend, Wash.; Antioch, Calif.; and Los Angeles, Calif.

¹ Section 7 reads in pertinent part as follows:

"That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

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Net sales of respondent and its subsidiaries in the year ended December 31, 1955, were \$414,080,000. In the fiscal year ended April 30, 1953, respondent produced paper and paperboard as follows:

395,383 tons of newsprint and other printing papers;

332,343 tons of wrapping papers;

115,976 tons of tissues and sanitary papers; and

50,682 tons of paperboard.

During the 11-year period from May 1, 1942, to April 30, 1953, respondent's annual net sales increased from \$84,656,362 to \$252,765,012.

St. Helens Pulp & Paper Co. (referred to hereinafter as St. Helens) was, prior to the acquisition, a corporation doing business by virtue of the laws of the State of Oregon, with its principal office and place of business located at St. Helens, Oreg. It was a fully integrated mill, owning and controlling its own timber reserves, producing most of its own pulp requirements, manufacturing various kinds of paper, converting paper into paper products, and selling paper and paper products to converters, jobbers, and others.

On February 17, 1953, Crown entered into a memorandum of intent with the board of directors of St. Helens which provided that respondent would offer to exchange its own common stock for the shares of St. Helens, and in 1953, respondent acquired substantially all of St. Helens stock in exchange for 339,806 shares of its own common stock, valued at approximately \$9,557,000. St. Helens was fully merged into respondent on September 12, 1955.

Among respondent's arguments on this appeal are the following:

(1) That the line of commerce is trade coarse paper² rather than census coarse paper³ as determined by the hearing examiner;

(2) That the appropriate section of the country is the Nation or at least the area west of the Mississippi River rather than the 11 Western States (sometimes hereafter referred to as the West), as determined by the hearing examiner;⁴

(3) That the acquisition of St. Helens does not have the potentiality of adverse competitive consequences prohibited by section 7.

² Trade coarse paper is a term used to cover the following classifications of paper: wrapping, bag, sack and converting papers, special industrial papers, sanitary tissue and other tissue papers, and paperboard, which includes containerboard, bending board, and other paperboard categories.

³ Census coarse paper includes those papers defined by the Bureau of the Census as coarse papers and includes wrapping papers, bag and sack papers and other converting papers.

⁴ The 11 Western States are as follows: the Pacific Coast States, Washington, Oregon, California, and the Mountain States, Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, and Nevada.

Considering the first contention, it is noted that the phrase "in any line of commerce," as used in section 7, is comprehensive and means that if the forbidden effect or tendency is produced in one out of all of the various lines of commerce, the words "in any line of commerce" literally are satisfied. *United States v. E. I. du Pont de Nemours & Co.*, 353 U.S. 586; H.R. Rep. No. 1191, 81st Cong., 1st Sess. (1949); S. Rep. No. 1775, 81st Cong., 2d Sess. (1950).

In this connection, a question for determination is whether or not the coarse paper line, including wrapping, bag and sack papers and converting papers, which the hearing examiner refers to as census coarse papers, is a "line of commerce" within the meaning of the Clayton Act.

All such papers are in a relatively allied line, particularly in respect to markets and end uses. They generally relate to the packaging and wrapping field where a flexible type packaging material is appropriate or desirable. Wrapping papers, as the name implies, are made and used primarily for wrapping; they are produced in many sizes, colors, finishes, weights and other specifications appropriate for this field. Similar considerations apply as to bag and sack papers and other converting papers. Such factors as physical characteristics, markets, prices, and uses, all or in part tend to distinguish these papers from other papers and paperboard.

Distinctions among individual types of paper or paperboard are readily apparent. As an example, one of the papers which respondent would include with the relevant product is container board, a separate category in the broad line of trade coarse papers. Container board is used in the manufacture of boxes, particularly the corrugated paper box. This is ordinarily a heavier paper than the usual run of wrapping and bag papers. Container board also utilizes a high proportion of waste paper as compared with the coarse wrapping and bag papers, resulting generally in a lower quality paper. In addition, these particular papers involve different markets. Container board is made into boxes and sold to manufacturers of products requiring strong, lightweight shipping containers. Wrapping papers and bags (the converted product) are generally sold in markets which include paper jobbers, wholesalers, such as grocery wholesalers, and large consumers, such as chain grocers, ultimately to be used in large part by retailers for packaging or wrapping at the point of sale to the consumer. Moreover, there is evidence of price variations as between such categories of paper or paperboard. These and other differ-

entiating factors illustrate the distinctiveness of the competitive fields involved in the broad trade coarse paper line.

It is argued by the respondent that some of the papers in the coarse wrapping, bag, sack, and converting paper field are substantially similar to some of the papers in other fields and that since they may be used interchangeably, the product line of commerce should not be so narrowly defined. The nature of many papers indicates that they are unsuitable generally for any purpose other than that for which they are made, such as toilet tissue. On the other hand, some papers such as certain container boards and certain wrapping papers might replace each other in use, but the evidence indicates that there is little such substitution in actual practice.

It is our opinion, in view of the foregoing considerations, that the coarse paper line relating generally to coarse wrapping papers, bag and sack papers and converting papers is a sufficiently distinct product line to be a "line of commerce" within the meaning of section 7. To the extent that the hearing examiner relied on factors other than those mentioned in this opinion in determining the relevant line of commerce, the initial decision does not represent the view of the Commission.

Relative to respondent's contention as to the section of the country, we are satisfied that in this instance the 11 Western States, as found by the hearing examiner, is an appropriate section. This area constitutes the greater natural market for the western producers of the relevant product and it is the market in which both Crown and St. Helens made the majority of their sales of this product.

In 1952, 85 percent of St. Helens' domestic sales were in the 11 Western States. The Pacific Coast States alone accounted for 88.7 percent of its sales within the 11 Western States and 75.4 percent of its sales in the United States. Respondent also sold 80 to 85 percent of its products comparable to those produced by St. Helens in the 11 Western States with the greater portion being sold in the Pacific Coast States. In 1952, 63 percent of respondent's wrapping paper, 86.4 percent of its converting paper and 69.2 percent of its bags were sold in the Pacific Coast States, while 14 percent of its wrapping paper, 1.5 percent of its converting paper and 15.4 percent of its bags were sold in the Mountain States.

It may be fairly concluded with consideration given to all the evidence that sales of the papers involved in this proceeding in the 11 Western States from producers outside this area were relatively

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insignificant. The record shows that western supplies of the relevant coarse papers and the products into which they are converted have come primarily from western mills. Factors such as the preferences of purchasers and particularly the high cost of shipping over long distances have resulted in effectively separating the West as a competitive area from the rest of the country with respect to the relevant product line.

The evidence is likewise sufficient to show that the three Pacific Coast States, California, Oregon, and Washington, constitute a section of the country, within the meaning of section 7, for much the same reasons. This is where the great bulk of the domestic sales, of the papers involved, by Crown and St. Helens were concentrated. For the purpose of this decision, however, the 11 Western States will be regarded as the appropriate section.

The relevant market here is a substantial market. Papers in the coarse wrapping, bag, sack and converting paper field accounted for 437,384 tons of the production in the West in 1953, which was 36.3 percent of the total paper produced in the area exclusive of paperboard.

In terms of the relevant market, a further question for consideration is whether the effect of the acquisition may be substantially to lessen competition or tend to create a monopoly. Both Crown and St. Helens were substantial producers of the coarse wrapping, bag, sack, and converting papers. About 84 percent of the production of St. Helens was in this line and, other than for newsprint and printing papers, over 50 percent of Crown's production. Such papers accounted for about 30 percent of all grades of paper and paperboard produced by Crown. In 1953, the production in tons of Crown and St. Helens of these papers as compared with other trade coarse papers was as follows:

Category of paper	Industry total in West	Crown	Crown's percent- age of total	St. Helens	St. Helens percent age of total
Coarse paper.....	437,384	225,276	51.5	48,155	11.0
Special industrial papers.....	53,099	43,382	81.7	3,052	5.7
Sanitary tissue.....	112,536	76,532	68	1,513	1.4
Other tissue paper.....	36,052	13,211	36.7	2,858	7.9
Container board.....	587,708	56,729	9.6	413	.1
Bending board.....	448,020	9,761	2.2	166	.04
Special paper board stock.....	130,619	-----	-----	1,460	1.1

The total industry production in the West of the coarse papers in the wrapping, bag and allied paper field for 1954 was 455,934 tons. This was shared among the various western producers as follows:

	<i>Tons</i>	<i>Per- cent</i>
Crown Zellerbach Corp.....	242, 539	53. 2
Former St. Helens.....	49, 317	10. 8
Longview Fibre Co.....	80, 108	17. 6
St. Regis Paper Co.....	56, 068	12. 3
Oregon Pulp & Paper Co. and Columbia River Paper Co.....	14, 540	3. 2
Publishers Paper Co.....	6, 929	1. 5
Potlatch Forests, Inc.....	4, 990	1. 1
Inland Empire Paper Co.....	681	. 1
Fibreboard Products Co.....	81	
Simpson Paper Co.....	377	. 1
Weyerhaeuser Timber Co.....	304	. 1

Crown and St. Helens prior to the acquisition were competing in the sale of the relevant product in the West. At the time of the acquisition, there were only 10 producers of such products in the West, and 4 of the 10 manufactured only small quantities. In 1952, Crown, St. Helens, Longview Fibre Co., and St. Regis Paper Co., in combination, produced 94.2 percent of the total; in 1954, 93.9 percent of the total. Of the four, only Crown, St. Helens and Longview Fibre Co. sold a relatively broad line of wrapping papers, bag papers and allied papers which was of particular importance to the jobbing trade. St. Regis sold only a limited selection of such papers. Its production was principally in bleached shipping sack paper. Longview Fibre Co., while it produced and sold a relatively broad line, converted a substantial portion of its production and sold jobbing papers to only three jobbers.

Respondent produced 51.5 percent and St. Helens 11.0 percent of the relevant product in the West in 1953, for a total of 62.5 percent of the western production. This clearly constituted a predominant share of the market considering its relative isolation. One immediate result of the acquisition was to remove from the western supplier market an important, fully integrated competitor having its own timber reserves, pulp manufacturing and converting facilities and fully developed sales outlet to the trade. Another immediate result was to increase significantly the size of respondent in the relevant line of commerce in which it already had a commanding lead.

Respondent, a company which produced in the West in 1953, 56.2 percent of all the paper produced in the area and 27.3 percent of the paper and paperboard production combined, was by far the leading

producer in the relevant line of papers with 51.5 percent of the total. In 1954, the year following the acquisition, of the 455,934 tons of the relevant papers produced, Crown manufactured 242,539 tons, or 53.2 percent, plus 49,317 tons or 10.8 percent through St. Helens, for a total of 64 percent. Only two western competitors produced any significant volumes of such papers in this year. These were Longview Fibre Co. with 80,108 tons or 17.6 percent of the total and St. Regis Paper Co. with 56,068 tons or 12.3 percent.

Crown's position has been additionally enhanced as a result of the acquisition because through its jobber division, Zellerbach Paper Co., it is now competing with many more jobbers for which it has become a major supplier. The record demonstrates that jobbers must have a dependable source of supply of a wide range of papers in the relevant line to be competitive. Very few producers in the West supplied a substantially broad line of such papers, and suppliers outside the West were generally unreliable sources, particularly in times of paper shortages. Clearly, with the elimination of St. Helens, western jobbers generally have been severely restricted as to sources from which the relevant papers may be purchased. It likewise appears that many converters which formerly could look to St. Helens for purchases of the relevant papers must now depend upon Crown as a primary source of supply, a company which is a major competitor since Crown converts a substantial share of its production.

There is little to suggest in this record that the competition represented by St. Helens will be effectively replaced in the foreseeable future by other paper mills. Respondent has listed a number of companies which it regards as new entrants to the market since 1949. Some of the companies referred to as new entrants do not as yet have mills producing in the West and others either do not produce the papers in the line here relevant or they produce generally in selective categories of papers. One such company is St. Regis, whose principal production in the pertinent line was in the category of shipping sack paper.

There is no indication that any new firm will produce a relatively broad line of the coarse papers so as to become a substantial supplier for jobbers and converters, nor is there any indication that any new supplier will offer the form of competition such as evidenced by the extra services which it had been customary for the St. Helens mill to provide. Under the circumstances, it does not appear that new entrants will measurably offset the lessening of competition apparent in this record.

Respondent points out that, in 1947, Crown accounted for 33.4 percent of the total western production of all grades of paper and paper-

board and that by 1953 its share was reduced to 29 percent. In the same period, however Crown's own production increased from 568,068 tons to 744,455 tons, exclusive of St. Helens. These production statistics cover, of course, the full range of paper and paperboard produced in the West. There is no substantial evidence that respondent's position has so declined in the line of papers relevant to this inquiry.

The record contains evidence to the effect that many paper-making machines in use in the West are capable of producing a relatively wide range of papers and paperboard. While this may indicate a potential for increased competition from paper companies now producing papers other than those involved in this proceeding, it does not appear that this is a substantial factor to be considered. Many paper mills produce in those areas of competition for which they are most appropriately equipped. Economic factors control to a large extent the types of papers which will be produced in particular mills. From the circumstances presented in this record, it does not appear likely that substantial shifts in production are to be expected, at least under ordinary market conditions.

Respondent argues that the coarse wrapping, bag and allied paper line was one which St. Helens itself planned to abandon, so that the acquisition could not have a substantial effect on competition. While St. Helens planned to produce other types of papers, the testimony indicates that it also planned to continue to supply its customers' needs of the same papers it had been making, particularly its jobber customers.

Considering all the factors, we conclude that the effect of this acquisition may be substantially to lessen competition or tend to create a monopoly in the relevant line of commerce and, as such, is in violation of section 7 of the Clayton Act.

Respondent argues that since St. Helens was in some financial difficulty as a result of its modernization program, it was not an effective competitor but, rather, was in a failing condition. Under these circumstances, respondent contends that the Commission cannot find the acquisition to be in violation of section 7, citing as authority *International Shoe Co. v. Federal Trade Commission*, 280 U.S. 291. In that case, the facts disclose a corporation with resources so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure. Such is not the case here.

As of December 31, 1952, St. Helens' total assets were \$15,223,754, and its net worth was \$9,436,441. St. Helens' annual net sales in the 10-year period between January 1, 1943, and December 31, 1952, in-

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creased from \$5,435,053 to \$9,258,508. Its annual net income during the same period increased from \$357,754 to \$638,534, the latter amount not including proceeds from insurance on life of the company's late president or credit in connection with the excess profits tax. From 1943 to 1952 St. Helens' earnings per share of common stock ranged from a low of \$0.66 in 1945 to a high of \$3.56 in 1948, with earnings of \$2.73 in 1952, which earnings apparently are based on net profits, including the aforementioned excess profits tax refund and the proceeds from the life insurance policy. Beginning in 1929, St. Helens paid dividends in every year except 1932. There are no facts in this record to clearly indicate that St. Helens would have been unable to complete its modernization program. We are of the opinion that St. Helens had been and was at the time of the acquisition an effective competitor, and that there is no sufficient reason to believe that it was in a failing or bankrupt condition.

The hearing examiner, during the course of this proceeding, denied respondent's motion to strike from evidence an economic survey identified in the record as Commission's exhibit 176. Respondent now requests that we order this evidence stricken from the record. However, no substantial reason has been advanced to warrant its being stricken.⁵ In the initial decision, the hearing examiner gave the survey no consideration because he believed it to be of questionable probative value. Nor have we relied upon it in making our decision. Respondent seems to argue in substance that if the Commission agrees the survey is lacking in probative value and should not be considered, it then follows it should be stricken. We cannot agree with such contention. We are of the opinion that the survey evidence should remain in the record.

Respondent additionally objects to a number of the hearing examiner's conclusions. It is believed that such objections have been answered in substance by our determination of the principal questions raised on this appeal.

Finally to be considered in connection with both appeals are the arguments of respondent and counsel supporting the complaint with respect to the requirements of the order.

Respondent contends that the order is unreasonable chiefly because it requires divestiture of a property which respondent has substantially added to or improved. It is noted that Crown has added new ma-

⁵ The Administrative Procedure Act, section 7(c), Public Law 404, 79th Cong. (1946) : The Attorney General's Manual on the Administrative Procedure Act, p. 76 (1947) and citations therein.

chinery and improvements to the St. Helens property valued at \$14,300,817, as found by the hearing examiner; but, clearly, the broad purpose of the statute cannot be thwarted merely because respondent has commingled its own assets with those of the acquired firm. However, it is not believed that the order should necessarily require the divestiture of all such assets added to the property by the respondent if the divestment may be otherwise accomplished without destroying the operating condition and organization of the acquired mill, substantially as it existed at or around the time of the acquisition.

Respondent suggests that, under the circumstances, it would be appropriate for the order to require Crown to submit, within a reasonable time, a plan for compliance. Such a procedure appears to have considerable merit in this instance and we believe the order should so provide. It is our further opinion that in said plan for compliance, respondent should specify the time in which it can reasonably carry out the divestiture. The Commission will thereafter fix the date within which compliance is to be effected.

We have also considered respondent's objection to the order that the disqualification of Crown's stockholders may preclude most potential investors. We believe that the order will contain no unreasonable restriction if it is modified to make clear that present stockholders may be qualified as purchasers if they dispose of such stock holdings in Crown prior to the actual divestiture.

Counsel supporting the complaint argue principally that the order permits piecemeal selling of the St. Helens property and that to be effective it should require divestiture in such a manner that St. Helens will be restored as the competitive factor it was prior to the acquisition. As previously indicated, we are of the opinion that the order should require the substantial restoration of the competitive entity destroyed. A remedy of this nature is necessary since one of the adverse effects of the acquisition was to remove St. Helens as a competitor, and, by so doing, to severely restrict the sources of supply of western jobbers and converters. To permit piecemeal sale of the property would only partially correct the harm that has been rendered to competition.

It is directed, therefore, that the order contained in the initial decision be modified in accordance with the views herein expressed.

The appeals of both respondent and counsel supporting the complaint are granted to the extent indicated in this opinion, and otherwise denied.

Mr. Kern did not participate in the decision of this matter.

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FINAL ORDER

This matter having come on to be heard upon the cross-appeals of respondent and counsel supporting the complaint from the hearing examiner's initial decision and upon the briefs and oral argument of counsel in support thereof and in opposition thereto; and

The Commission having rendered its decision denying in part and granting in part both the appeal of respondent and of counsel supporting the complaint, and having directed that the order contained in the initial decision be modified in accordance with its views as therein expressed:

It is ordered, That the order contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That the respondent, Crown Zellerbach Corp., a corporation, and its officers, directors, agents, representatives, and employees shall divest itself absolutely, in good faith, of all assets, properties, rights and privileges, including but not limited to timberlands, cutting rights, timber, plant, machinery, equipment, trade names, trademarks and good will acquired by Crown Zellerbach Corp. as a result of the acquisition by Crown Zellerbach Corp. of the stock or share capital of the St. Helens Pulp & Paper Co., together with so much of the plant machinery, buildings, improvements and equipment of whatever description that has been installed or placed on the premises of the St. Helens plant by respondent as may be necessary to restore St. Helens Pulp & Paper Co. as a competitive entity in the paper trade, as organized and in substantially the basic operating form it existed at or around the time of the acquisition.

It is further ordered, That in such divestment no property above mentioned to be divested shall be sold or transferred, directly or indirectly, to anyone who at the time of the divestiture is a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the control or influence of, respondent or any of respondent's subsidiaries or affiliated companies.

It is further ordered, That pending the divestiture herein ordered, respondent, Crown Zellerbach Corp., a corporation, its officers, agents, representatives and employees shall refrain from:

1. Cutting or removing any timber or forest residuals on or from lands owned or upon which cutting rights were possessed which were acquired and held by Crown Zellerbach Corp. as a result of the acquisition by Crown Zellerbach Corp. of the stock or share capital of the St. Helens Pulp & Paper Co.

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2. Offering for sale, selling or distributing any timber, forest residuals or cutting rights from lands acquired and held by Crown Zellerbach Corp. as a result of the acquisition by Crown Zellerbach Corp. of the stock or share capital of the St. Helens Pulp & Paper Co.

It is further ordered, That respondent, Crown Zellerbach Corp., shall, within sixty (60) days from the date of the service upon it of this order, submit in writing, for the consideration and approval of the Federal Trade Commission, its plan for compliance with this order, such plan to include the date within which compliance can be effected, the time for compliance to be hereafter fixed by order of the Commission, jurisdiction being retained for these purposes.

It is further ordered, That the findings, conclusions and order, as modified, contained in the initial decision be, and they hereby are, adopted as those of the Commission.

Commissioner Kern not participating.

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IN THE MATTER OF

NATIONAL PAPER TRADE ASSOCIATION OF THE
UNITED STATES, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 5592. Complaint, Oct. 5, 1948—Decision, Dec. 27, 1957*

Order dismissing complaint as to certain respondents, in conformity with the decree of the Court of Appeals for the Second Circuit of January 9, 1957, 240 F. 2d 341, which set aside insofar as it related to those respondents, the Commission's cease and desist order of September 24, 1954, 51 F.T.C. 307, prohibiting concerted price fixing for fine and wrapping paper.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Earl W. Kintner, *Mr. Floyd O. Collins* and *Mr. Peter J. Dias* for the Commission.

Barshay & Frankel, of New York City, for Shuttleworth Wollny Co., Inc. and Fred Free, Jr.

Wechsler & Solodar, of New York City, for Imperial Bag & Paper Co., Inc. and Liberty Bag & Paper Co.

Javits, Levitan & Held, of New York City, for Robins Paper Co. of Baltimore City.

SUPPLEMENTAL ORDER DISMISSING THE COMPLAINT AS TO CERTAIN
RESPONDENTS AND STRIKING THEIR NAMES FROM THE ORDER TO CEASE
AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, answers of certain respondents, substitute answers of other respondents, testimony relating to certain respondents and documentary evidence and stipulations relating to other respondents, in support of and in opposition to the allegations of the aforesaid complaint, taken before a hearing examiner of the Commission theretofore duly designated by it; and the hearing examiner having thereafter filed his recommended decision in which he concluded that all of the respondents, with the exception of respondents Robert Engel and Graham Paper Co. had violated section 5 of the Federal Trade Commission Act as alleged; and the matter having thereafter come on to be heard by the Commission on the complaint, as amended, the answers, substitute answers, evidence, stipulations, recommended decision of the hearing examiner