

Complaint

IN THE MATTER OF
GEORGIA-PACIFIC CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 2 (C) OF THE CLAYTON ACT

Docket C-2356. Complaint, March 1, 1973—Decision, March 1, 1973.

Consent order requiring a Portland, Oregon, manufacturer, seller and distributor of a variety of wood and paper products, and its Crossett, Arkansas, wholly-owned subsidiary, a supplier of general industrial equipment, among other things to cease receiving brokerage allowances.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, have been and are violating the provisions of Subsection (c) of Section 2 of the Clayton Act, as amended, (15 U.S.C. Section 13) hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Georgia-Pacific Corporation hereinafter referred to as "Georgia-Pacific," is, and has been, a corporation organized, existing and doing business under the laws of the State of Georgia with its present office and principal place of business located at 900 S.W. Fifth Avenue, Portland, Oregon.

PAR. 2. Respondent Tri-State Mill Supply Company, Inc., hereinafter referred to as "Tri-State," is, and has been, a corporation organized, existing and doing business under the laws of the State of Delaware with its present office and principal place of business located in Crossett, Arkansas.

PAR. 3. Georgia-Pacific is engaged in the manufacture, sale, and distribution of a wide variety of products including, but not restricted to, soft wood plywood, plywood specialties, lumber, gypsum products, chemicals, wood by-products, and a variety

of paper and paper products including board, newsprint, tissues, toweling, napkins, and paper. Among its other activities, Georgia-Pacific owns and operates respondent Tri-State.

In the course and conduct of its business, Georgia-Pacific is and has been purchasing for use, consumption and for resale, products, materials and supplies in commerce, as "commerce" is defined in the Clayton Act, as amended, which products, materials, and supplies it purchases from sellers located in several States of the United States. The said products, materials, and supplies are then caused by Georgia-Pacific to be transported from the sellers' place of business in the various States of the United States to its warehouses and facilities located in various other States of the United States. Thus, there has been and is now a continuous course of trade in commerce in the purchase of said products, materials, and supplies by Georgia-Pacific.

PAR. 4. Tri-State is engaged in the supply of general industrial equipment and materials to Georgia-Pacific and other users. It operates eleven warehouses and sales outlets in the States of Oregon, Arkansas, California, Louisiana, Texas and Mississippi. Tri-State was acquired by Georgia-Pacific in 1962. Between 1962 and 1968 approximately 89 percent of the capital stock of Tri-State was owned by Georgia-Pacific and another subsidiary controlled by Georgia-Pacific. Since 1968 when Georgia-Pacific purchased the remaining outstanding stock, Georgia-Pacific and the other subsidiary controlled by Georgia-Pacific have owned all of the stock of Tri-State. Tri-State has thusly been directly or indirectly controlled by Georgia-Pacific since 1962 and Georgia-Pacific has since that time dominated and directed the practices and policies of Tri-State.

In the course and conduct of its business, Tri-State is and has been engaged in furnishing products to purchasers located in various States of the United States, which products, when purchased and when sold have been transported from facilities in various States of the United States to Tri-State's own facilities and those of other purchasers located in various other States of the United States. In so doing Tri-State is and has engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, and has been continuously so engaged for several years last past.

PAR. 5. In connection with such purchases in commerce as have been described hereinabove, respondents Georgia-Pacific and Tri-State have collected and received and are now collecting

and receiving, directly and indirectly, commissions, brokerage, or other compensation, or allowances or discounts in lieu thereof, from firms selling to Georgia-Pacific and there have been and are many different and varied arrangements and agreements among and between Tri-State, Georgia-Pacific and their suppliers for the receipt and collection of same. Such commissions, brokerages, and other compensations, or allowances or discounts in lieu thereof, have been received from their suppliers, among other ways, in the form of discounts, rebates, credits, direct payments, and, on particular transactions, as the difference between the amount that Tri-State has remitted to the seller and the amount that Georgia-Pacific has remitted to Tri-State. Many of the sales by suppliers to Georgia-Pacific wherein said commissions, brokerages, and other compensations, or allowances or discounts in lieu thereof, were paid to Tri-State and Georgia-Pacific, originated in previous arrangements with the suppliers initiated by Georgia-Pacific either solely or in conjunction with Tri-State. In all such cases, shipments were made directly from the supplier to Georgia-Pacific, or to Tri-State as a special Georgia-Pacific order, except in consignment and credit balance arrangements.

Concurrently with the receipt by respondents of such commissions, brokerages, and other compensations, or allowances or discounts in lieu thereof, Tri-State has been rendering to respondent Georgia-Pacific services and other valuable considerations, including, but not limited to, purchasing services, cost savings, and dividend payments.

PAR. 6. Certain of the aforementioned arrangements for the receipt of commissions, brokerages, services, and other compensations, or allowances or discounts in lieu thereof, operated substantially in the following manner and under the following circumstances.

A manufacturer entered into an agreement with Georgia-Pacific and Tri-State whereby it maintained a stock of its products on a credit balance with Tri-State. On purchases by Georgia-Pacific from this stock, and on purchases by Georgia-Pacific from the manufacturer, one percent was allowed to Tri-State as a brokerage, commission, or other compensation, or allowance or discount in lieu thereof. Prices were negotiated directly between the manufacturer and Georgia-Pacific.

For many years last past Tri-State has accepted lamps on a consignment basis from an electrical equipment manufacturer as

that manufacturer's agent. Substantial amounts of these lamps were sold to Georgia-Pacific. The difference between the amount that Tri-State paid the manufacturer and Tri-State's price to Georgia-Pacific constitutes commissions, brokerages, or other compensations.

In late 1970 a contract was negotiated between a chemical supplier and Georgia-Pacific wherein Tri-State was designated a buyer and the chemical supplier was designated a seller of certain chemicals. A two and one half percent brokerage fee based on the volume of Georgia-Pacific purchases was received by Georgia-Pacific, from the chemical supplier, one and one half percent of which was credited to Tri-State and one percent of which was retained by Georgia-Pacific. For the first two quarters of 1971, purchases of a dollar value of \$32,052.79 were made by Georgia-Pacific from this supplier. A total brokerage of \$801.32 was paid to Georgia-Pacific upon the said purchases, which sum was split as above described.

For several years last past, an arrangement has existed between a number of subsidiaries of a major manufacturer and Georgia-Pacific for the supply of refractories, fire brick and related supplies to Georgia-Pacific. Pursuant to such arrangement, Georgia-Pacific placed orders with the manufacturer for shipment directly from it to Georgia-Pacific. Tri-State has received by discount a 5 percent commission, brokerage, or other compensation, or allowance or discount in lieu thereof, on the sale by the manufacturer to Georgia-Pacific.

PAR. 7. The aforesaid acts and practices of respondents, and each of them, in receiving and accepting from suppliers anything of value as a commission, brokerage, or other compensation, or allowances or discounts in lieu thereof, paid or provided to the other party to the transaction, either directly or indirectly, or to an agent, representative, or other intermediary subject to the direct or indirect control of a party to the transaction, are in violation of Subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished

thereafter with a copy of a draft of complaint which the Seattle Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Subsection (c) of the Clayton Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe the respondents have violated the said Act; and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Georgia-Pacific Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 900 S.W. Fifth Avenue, Portland, Oregon.

Respondent Tri-State Mill Supply Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in Crossett, Arkansas.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Georgia-Pacific Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the

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purchase of industrial supplies, equipment, machinery, or other products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Receiving or accepting services, monies or anything of value from Tri-State Mill Supply Company, Inc., or any intermediary, agent, representative or broker in connection with the purchase by said respondent of industrial supplies, equipment, machinery, or other products when such intermediary, agent, representative or broker is receiving or accepting anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, from the seller while acting for, or in behalf of, or subject to the direct or indirect control of said respondent.

2. Receiving or accepting directly or indirectly from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase by said respondent of industrial supplies, equipment, machinery or other products.

It is further ordered, That respondent Tri-State Mill Supply Company, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the purchase of industrial supplies, equipment, machinery, or other products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of industrial supplies, equipment, machinery, or other products, for its own account or where said respondent is the agent, representative or intermediary acting for, or in behalf of, or subject to the direct or indirect control of, the buyer.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale

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resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiaries which may affect compliance obligations arising out of the order, or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they will comply with this order.

IN THE MATTER OF

BERKSHIRE HANDKERCHIEF CO., INC., ET AL.