

IN THE MATTER OF
LOUISIANA-PACIFIC CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket C-2956. Complaint, Feb. 27, 1979 — Decision, Feb. 27, 1979

This consent order, among other things, requires a Portland, Ore. firm engaged in harvesting and converting timber into various wood products, including medium density fiberboard (MDF) and particleboard, to divest, within two years to a Commission-approved buyer, the Rocklin MDF plant, which firm acquired through its merger with the Fiberboard Corporation; and offer the new buyer the opportunity to purchase from the firm, for five years, a limited amount of the raw materials necessary to manufacture MDF. Additionally, the order prohibits the firm, for ten years, from acquiring, without prior agency approval, any entity engaged in the manufacture of particleboard or MDF.

Appearances

For the Commission: *James Egan.*

For the respondent: *William E. Willis, Sullivan & Cromwell, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent, subject to the jurisdiction of the Commission, has entered into a merger agreement which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, that said agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 4(b), stating its charges in the following Count I.

The Federal Trade Commission, having further reason to believe that the above-named respondent also has violated and is violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, through the acquisition of the stock and/or assets of various corporations, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b), of the Federal

Trade Commission Act, 15 U.S.C. 45(b), stating its charges in the following Count II.

COUNT I

I. Louisiana Pacific Corporation

PARAGRAPH 1. Louisiana Pacific Corporation (L-P) is a corporation organized under the laws of the State of Delaware with its principal place of business located at 1300 S.W. Fifth Ave., Portland, Oregon.

PAR. 2. L-P is a diversified, integrated forest products company. It grows and harvests timber which it then converts to various wood products, including lumber, plywood, particleboard, veneer, pulp and wood chips. In 1977 L-P had total shipments of particleboard in excess of \$56 million and total sales of lumber in excess of \$330 million.

PAR. 3. In 1977 L-P had net sales in excess of \$794 million and net income in excess of \$60 million.

II. Fibreboard Corporation

PAR. 4. Fibreboard Corporation (F-B) is a corporation organized under the laws of the State of Delaware with its principal place of business located at 55 Francisco St., San Francisco, California.

PAR. 5. F-B is a diversified, integrated forest products company. It grows and harvests timber, which it then converts to various wood products, including lumber, plywood, medium density fiberboard (MDF), pulp and wood chips. It is also involved in the manufacture and sale of container products and insulation. F-B's total shipments of MDF in 1977 exceeded \$10 million and its total sales of forest products exceeded \$51 million.

PAR. 6. In 1977 F-B had net sales in excess of \$227 million and net income in excess of \$1.2 million.

III. Jurisdiction

PAR. 7. At all times relevant herein L-P and F-B have been engaged in the manufacture and sale of various products, including those products relevant to this complaint, in interstate commerce and are engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and each is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. The Merger Agreement

PAR. 8. On March 22, 1978 L-P and F-B entered into a merger agreement which provides, inter alia, for the merger of F-B into L-P. The merger agreement further provides that, upon consummation of the merger, F-B will become a wholly-owned subsidiary of L-P. The value of the transaction is in excess of \$56 million.

V. Trade and Commerce

PAR. 9. The relevant markets are:

- a. The manufacture in the United States of particleboard and MDF, and the sale thereof.
- b. The manufacture in the Western Region of the United States of particleboard and MDF, and the sale thereof.
- c. The manufacture in the Pacific Coast Region of the United States of particleboard and MDF, and the sale thereof.

PAR. 10. The Western Region of the United States as used herein includes the States of Arizona, California, Colorado, Idaho, Montana, New Mexico, Oregon, Nevada, Utah, Washington and Wyoming. Of these states particleboard and/or MDF is actually produced only in the States of California, Idaho, Montana, New Mexico, Oregon and Washington. The Pacific Coast Region of the United States as used herein includes the States of California, Oregon and Washington.

PAR. 11. Concentration in each of the relevant markets enumerated in Paragraph 9 of this complaint is already high and increasing.

PAR. 12. Barriers to entry into each of the relevant markets enumerated in Paragraph 9 of this complaint are already high and increasing.

VI. Actual Competition

PAR. 13. L-P and F-B are now and have been since at least 1975 actual competitors of each other in each of the relevant markets enumerated in Paragraph 9 of this complaint, and actual competitors of others engaged in each of the relevant markets enumerated in Paragraph 9 of this complaint.

PAR. 14. L-P is the largest manufacturer, by capacity, of particleboard/MDF in the United States, accounting, in 1978, for approximately 12.4 percent of all capacity in that market. In 1978 F-B had approximately 1.3 percent of the total capacity in that market. In terms of actual production, L-P was the second largest producer in 1977 accounting for approximately 11.1 percent of all particleboard/MDF produced in the United States. In that same year F-B

accounted for approximately 1.3 percent of total production in that market.

PAR. 15. L-P is the largest manufacturer, by capacity, of particleboard/MDF in the Western Region of the United States, accounting, in 1978, for approximately 14.5 percent of all capacity in that market. In 1978 F-B was ranked twelfth in that market in terms of capacity with approximately 2.9 percent of the total. In terms of actual production, L-P was the third largest producer in 1977 accounting for approximately 14.1 percent of all particleboard/MDF produced in the Western Region of the United States. In the same year F-B ranked thirteenth in terms of production accounting for 2.9 percent of the market.

PAR. 16. L-P is the third largest manufacturer, by capacity, of particleboard in the Pacific Coast Region of the United States accounting in 1978, for approximately 11.4 percent of all capacity in that market. In 1978 F-B was ranked eleventh in that market in terms of capacity with approximately 3.3 percent of the total. In terms of actual production, L-P was the fourth largest producer in 1977 accounting for approximately 10.0 percent of all particleboard/MDF produced in the Pacific Coast Region of the United States. In the same year F-B ranked twelfth in terms of production accounting for approximately 3.5 percent of the market.

VII. Effects; Violations Charged

PAR. 17. The effects of the proposed acquisition may be to substantially lessen competition or tend to create a monopoly in the relevant markets enumerated in Paragraph 9 of this complaint in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- (a) actual competition between L-P, F-B and others in the manufacture and sale of particleboard/MDF will be eliminated; and
- (b) concentration in the manufacture and sale of particleboard/MDF will be increased and the possibilities for eventual deconcentration may be diminished.

COUNT II

VIII. Louisiana-Pacific Corporation

PAR. 18. The allegations as set forth in Paragraphs 1 through 3,

inclusive of Count I are hereby incorporated by reference and made a part of Count II as if rewritten herein.

IX. Evans Products Company

PAR. 19. Evans Products Company is a corporation organized under the State of Delaware with its principal place of business located at 1121 S.W. Salmon St., Portland, Oregon.

PAR. 20. Evans Products Company is engaged in the manufacturing, marketing and retailing of building materials including lumber, plywood, plywood specialties, and precut homes, and the manufacturing, marketing and leasing of transportation and industrial equipment. In 1975, its last full year of particleboard production, Evans Products Company had particleboard shipments in excess of \$9 million.

X. Georgia-Pacific Corporation

PAR. 21. Georgia-Pacific Corporation ("G-P") is a corporation organized under the laws of the State of Delaware with its principal place of business located at 900 S.W. Fifth Ave., Portland, Oregon.

PAR. 22. G-P is a diversified integrated forest products company. It grows and harvests timber which it then converts to various wood products, including lumber, plywood, particleboard and wood chips. In 1975 G-P had particleboard shipments in excess of \$31 million.

XI. Jurisdiction

PAR. 23. The allegations as set forth in Paragraph 7 of Count I which relate to L-P are hereby incorporated by reference and made part of Count II as if fully rewritten herein.

PAR. 24. At all times relevant herein Evans Products and G-P have been engaged in the manufacture and sale of various products, including those products relevant to this complaint, in interstate commerce and are engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

XII. The Acquisitions

PAR. 25. On April 2, 1976, L-P purchased from Evans Products Company a particleboard plant in Missoula, Montana for \$11,798,000 (including plant and related assets).

PAR. 26. On August 30, 1976, L-P leased a particleboard plant from G-P at Ukiah, California ("Ukiah") for a period of five years at an

average annual payment of \$480,000. L-P has the option to purchase the plant at the end of 3 years.

XIII. Trade and Commerce

PAR. 27. The relevant markets are:

- a. The manufacture in the United States of particleboard and MDF, and the sale thereof.
- b. The manufacture in the Western United States of particleboard and MDF, and the sale thereof.
- c. The manufacture in the Pacific Coast Region of the United States of particleboard and MDF, and the sale thereof.

PAR. 28. The allegations as set forth in Paragraph 10 of Count I are hereby incorporated by reference and made a part of Count II as if rewritten herein.

PAR. 29. At the time of the acquisitions by L-P of the Missoula particleboard plant and the Ukiah particleboard plant, the manufacture of particleboard/MDF and the sale thereof in the relevant markets as enumerated in Paragraph 27 of this complaint was highly concentrated and increasing.

PAR. 30. Barriers to entry into the manufacture and sale of particleboard/MDF are substantial and are increasing.

XIV. Actual Competition

PAR. 31. At the time of the acquisitions, L-P and Evans Products Company were and had been since at least 1975, actual competitors of each other in the relevant markets as enumerated in Paragraph 27, subparts a. and b. of this complaint and actual competitors of others engaged in the relevant markets as enumerated in Paragraph 27, subparts a and b, of this complaint.

PAR. 32. At the time of the acquisitions, L-P and G-P were and had been since 1975, actual competitors of each other in the relevant markets as enumerated in Paragraph 27 of this complaint, and actual competitors of others engaged in the relevant markets as enumerated in Paragraph 27 of this complaint.

PAR. 33. In 1975, the year preceeding the acquisitions L-P accounted for approximately 5.3 percent of all particleboard/MDF production in the United States; 3.9 percent of all particleboard/MDF production in the Western Region of the United States and 4.6 percent of all particleboard/MDF production in the Pacific Coast Region of the United States. In that same year, G-P's Ukiah plant accounted for 1.6 percent of all particleboard production in the

United States; 3.3 percent of all particleboard/MDF production in the Western Region of the United States and 3.9 percent of all particleboard/MDF production in the Pacific Coast Region of the United States. In that same year, Evans Products Company accounted for 2.9 percent of all particleboard/MDF production in the United States and 6.1 percent of all particleboard/MDF production in the Western Region of the United States.

XV. Effects, Violations Charged

PAR. 34. The effects of the acquisitions may be to substantially lessen competition or tend to create a monopoly in the relevant markets enumerated in Paragraph 27 of this complaint in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- (a) actual competition between L-P, G-P, Evans Products Company and others in the manufacture and sale of particleboard/MDF has been eliminated; and
- (b) concentration in the manufacture and sale of particleboard/MDF has been increased and the possibilities for eventual deconcentration have been diminished.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with a violation of the Federal Trade Commission Act and the Clayton Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all 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 respondent 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 considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in

that respect, and having thereupon accepted the executed agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following findings and enters the following order:

1. Respondent Louisiana-Pacific Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business at 1300 S.W. Fifth Ave., Portland, Oregon.

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

ORDER

For the purpose of this order, the following definitions shall apply:

(a) "Particleboard" is a flat panel product consisting of particles of wood bonded together with a synthetic resin or other suitable bonding system by a process in which the interparticle bond is created by the bonding systems, as further described in Commercial Standard CS236-66, published by the United States Department of Commerce, National Bureau of Standards, and as reported under the Standard Industrial Classification Manual No. 24921.

(b) "Medium density fiberboard" is a dry-formed panel product manufactured from lignocellulosic fibers, combined with a synthetic resin or other suitable binder, by the application of heat and pressure in which the interfiber bond is substantially created by the added binder, as further described in the standard published by the National Particleboard Association, N.P.A. 4-73, and as reported under the Standard Industrial Classification Manual No. 24997.

(c) The "Rocklin MDF plant" consists of land, plant, property, equipment and machinery presently owned and operated by Fibreboard Corporation for the manufacture of medium density fiberboard at Rocklin, California, to be acquired by respondent as a result of its merger with Fibreboard Corporation, including all additions, replacements and improvements thereto hereafter made by respondent.

I

It is ordered, That respondent, its officers, directors, agents, representatives and employees shall, absolutely and in good faith

divest, within two (2) years from the date this order becomes final, subject to the prior approval of the Federal Trade Commission, all rights, title and interest in and to the Rocklin MDF plant acquired by respondent as a result of its merger with Fibreboard Corporation.

II

It is further ordered, That in connection with any divestiture of the said Rocklin MDF plant, respondent will offer to any prospective acquirer the right to enter into a contract to buy from respondent (or its subsidiary Fibreboard Corporation) for use in said plant at Rocklin, California wood residue raw materials of the type currently being supplied by Fibreboard Corporation's internal operations to said plant, which contract will include provisions substantially as follows:

- (a) the contract will continue for a minimum of five (5) years;
- (b) prices will be market prices existing in the the area during the contract term for similar wood residue raw materials; and
- (c) quantities to be sold in each year will equal at least the total quantity of said wood residue raw materials heretofore supplied to said plant from Fibreboard Corporation's own internal operations in the year 1977, or which will be supplied in the year 1978, or double the total quantity of said materials so supplied in the first six months of 1978, whichever is greatest.

III

It is further ordered, That none of the assets and properties required to be divested by respondent pursuant to Paragraph I above, shall be divested directly or indirectly to anyone who is, at the time of divestiture, an officer, director, employee, or agent of, or under the control, direction or influence of respondent, or who owns or controls more than one percent of the capital stock of respondent.

IV

It is further ordered, That respondent shall cease and desist for a period of ten (10) years from the date this order becomes final from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Commission, (1) the whole or any part of the stock or share capital or any concern, corporate or noncorporate, engaged at the time of acquisition in any State of the United States in the manufacture of (a) particleboard, or (b) medium density fiberboard, or (2) a manufacturing plant or facility engaged

at the time of acquisition in any State of the United States in the manufacture of (a) particleboard, or (b) medium density fiberboard. Any exercise hereafter by respondent of its option to purchase the Ukiah, California particleboard plant presently operated by respondent pursuant to a lease shall not be prohibited by this paragraph.

V

It is further ordered, That respondent shall within one (1) year from the date this order becomes final, and every sixty (60) days after one (1) year until respondent has fully complied with the provisions of Paragraphs I and II of this order, submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which respondent intends to comply or has complied with this order. All compliance reports shall include a summary of contacts or negotiations with anyone for the specified assets, the identity of all such persons, and copies of all written communications to and from such persons.

VI

It is further ordered, That respondent notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of the order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or the creation or dissolution of subsidiaries.

Complaint

93 F.T.C.

IN THE MATTER OF
LANCASTER COLONY CORPORATION, ET AL.

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket 9119. Complaint, Oct. 25, 1978 — Dismissal Order, March 6, 1979

This order dismisses the complaint against two manufacturers of machine-made glassware alleging violations of Section 7 of the Clayton Act, and Section 5 of the Federal Trade Commission Act. The Commission, in dismissing the complaint, held that under the unique circumstances presented in this case, further proceedings in the matter are not in the public interest.

Appearances

For the Commission: *Edward T. Colbert* and *William D. Mitchell*.

For the respondents: *Richard Murphy* and *Fred A. Summer*, *Dunbar, Kiezel & Murphy*, Columbus, Ohio, *Edward Wolf*, *J.B. Rather* and *R.W. Davis*, *White & Case*, New York City and *John W. Barnum*, *White & Case*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have entered into an acquisition agreement which, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, that said agreement already constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), stating its charges as follows:

I

Definition

PARAGRAPH 1. For the purpose of this complaint, the following definition shall apply: "Machine-made glassware" means all moderately-priced soda-lime glass beverageware, tableware, food preparation glassware, and novelty and ornamental glassware items produced by machine.