THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Department of Justice Antitrust Division 1401 H Street, NW, Suite 4000 Washington, DC 20530, Plaintiff, v. ABITIBI-CONSOLIDATED INC. 1155 Metcalfe Street Suite 800 Montréal, QC H3B 5H2 Canada and BOWATER INCORPORATED 55 E. Camperdown Way Greenville, SC 29601, Defendants.	CASE NO: JUDGE Case: 1:07-cv-01912 Assigned To : Collyer, Rosemary M. Assign. Date : 10/23/2007 Description: Antitrust

COMPLAINT

The United States of America, acting under the direction of the Acting Attorney General of the United States, brings this civil action to enjoin the proposed merger of Defendants Abitibi-Consolidated Inc. ("Abitibi") and Bowater Incorporated ("Bowater"). The United States alleges as follows:

I. NATURE OF THE ACTION

1. On January 29, 2007, Abitibi and Bowater announced plans to merge into a new company to be called AbitibiBowater Inc. in a transaction valued at $1.6 billion.

2. Abitibi and Bowater are the two largest newsprint producers in North America. The combination of these two firms will create a newsprint producer three times larger than the next largest North American newsprint producer. After the merger, the combined firm will have the incentive and ability to withdraw capacity and raise newsprint prices in the North American newsprint market.

3. Unless the proposed transaction is enjoined, Defendants' merger will substantially lessen competition in the production and sale of newsprint, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. JURISDICTION AND VENUE

4. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

5. Both Defendants produce and sell newsprint in the flow of interstate commerce. Defendants' production and sale of newsprint substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25 and 28 U.S.C. §§ 1331, 1337(a), and 1345.

6. Defendants have consented to venue and personal jurisdiction in this judicial district.

III. DEFENDANTS TO THE PROPOSED TRANSACTION

7. Abitibi, the largest newsprint supplier in North America, is a Canadian corporation with its principal place of business in Montréal, Quebec, Canada. Abitibi produces and sells newsprint to customers around the world. Abitibi owns and operates, either solely or with other firms, eleven paper mills in the United States and Canada that currently produce newsprint, as well as one mill in the United Kingdom. In 2006, Abitibi's total sales were approximately $4.85 billion, including approximately $1.7 billion in aggregate North American newsprint sales.

8. Bowater, the second-largest newsprint supplier in North America, is incorporated in Delaware with its principal place of business in Greenville, South Carolina. Bowater owns and operates, either solely or with other firms, eight paper mills in the United States and Canada that currently produce newsprint, as well as one mill in South Korea. In 2006, Bowater's total sales were approximately $3.53 billion, including approximately $1.1 billion in aggregate North American newsprint sales.

IV. TRADE AND COMMERCE

A. The Relevant Market

1. Product Market: Newsprint

9. Newsprint is the lowest grade of uncoated groundwood paper (i.e., paper manufactured from mechanically processed pulp). In 2006, approximately 9.745 million metric tonnes of newsprint were sold in North America. Newspaper publishers purchase more than 80 percent of the available newsprint supply to print newspapers. Some newsprint also is used in

the production of direct mail and newspaper inserts.

10. Newspaper publishers have no close substitutes for newsprint to use for printing newspapers. Newsprint is generally the least expensive paper grade. In addition, publishers' newspaper presses are optimized for newsprint and cannot be modified to use other paper grades without incurring significant costs.

11. Newsprint used for other purposes constitutes only a small share of total sales. While a small but significant increase in the price of newsprint may cause some customers for these other uses to switch to other grades of groundwood paper or otherwise reduce their consumption of newsprint, those losses would not be sufficient to make such a price increase unprofitable.

12. For these reasons, demand for newsprint is highly inelastic with respect to changes in price. Accordingly, the production and sale of newsprint is a distinct line of commerce and a relevant product market within the meaning of the Clayton Act.

2. Geographic Market: North America

13. The relevant geographic market for the sale of newsprint is no smaller than the United States and Canada ("North America"). Newsprint can be transported within the United States and Canada at a sufficiently low cost and in such a timely and reliable manner that an attempt to increase price anticompetitively in any smaller region of the United States or North America would prove unprofitable. In the event of such an attempted price increase, customers could readily and economically shift their purchases to newsprint producers throughout North America.

14. The relevant geographic market is no broader than North America. Foreign imports account for approximately two percent of North American newsprint consumption. Transportation costs of importing newsprint are relatively high, and customers are concerned about the reliability of foreign newsprint supply. Consequently, a small but significant increase in the price of newsprint will not likely cause customers to purchase sufficient volumes of additional newsprint from outside of North America to make such a price increase unprofitable.

15. Accordingly, North America is a relevant geographic market within the meaning of the Clayton Act.

B. <u>Anticompetitive Effects</u>

16. The proposed transaction likely will substantially reduce competition in the North American newsprint market. Abitibi and Bowater are the two largest producers of newsprint in North America and compete directly against one another to produce and sell newsprint. Abitibi and Bowater currently own approximately 25 percent and 16 percent of capacity, respectively, which will result in a post-merger share of over 40 percent.

17. Demand for newsprint in the North American market has declined over the last several years at a rate of approximately 5 to 10 percent per year because of a significant decline in demand for newspapers. As a result, North American newsprint producers have closed, idled, or converted some of their newsprint capacity. This decline in the demand for newsprint is projected to continue, and the resulting excess newsprint capacity will likely lead Defendants and their competitors to close, idle, or convert more newsprint mills.

18. But for the merger, following the anticipated demand-based reductions in

capacity, neither Abitibi nor Bowater acting alone would be of sufficient size to profitably increase the price of newsprint by reducing its own output through strategically closing, idling, or converting its capacity.

19. The proposed transaction would combine Defendants' large share of newsprint capacity, thereby expanding the quantity of newsprint sales over which the merged firm would benefit from a price increase. This would provide the merged firm with an incentive to close capacity sooner than it otherwise would to raise prices and profit from the higher margins on its remaining capacity.

C. <u>Neither Supply Responses Nor Entry Will Defeat an Exercise of Market Power</u>

20. Neither the combined firm's North American competitors, nor producers from outside of the North American market, can, individually or collectively, increase their newsprint sales to North American customers to make a price increase by the merged firm unprofitable. Additionally, entry by a new competitor would not be timely, likely, or sufficient to defeat an exercise of market power by the merged firm. The merged firm will therefore have both the incentive and the ability to impose an anticompetitive price increase.

21. While some North American newsprint competitors currently have some limited excess capacity, that capacity will be reduced by the closure or conversion of unprofitable newsprint mills or machines in response to falling demand for newsprint. Once this newsprint capacity exits the market, the merged firm then will be able profitably to exercise market power.

22. North American newsprint competitors would not defeat an anticompetitive price increase by restarting their closed or idled newsprint capacity in response to such a price increase.

The increased revenue from restarting a machine or mill would not outweigh the start-up costs, particularly in a declining market.

23. Producers currently manufacturing other coated and uncoated grades of paper are not likely to switch to producing newsprint in response to a price increase. Declining demand for newsprint has caused several producers to invest substantial capital to convert machines that had previously been producing newsprint to machines that produce grades of paper that return higher margins. These producers would not find it profitable to switch back to newsprint to defeat an exercise of market power by the merged firm.

24. North American newsprint producers currently export some of their newsprint. Some of these newsprint exports likely would be directed back to the North American market in response to a price increase. However, this repatriation of newsprint will be insufficient, even in combination with other competitive responses, to discipline an exercise of market power by the combined firm. Abitibi and Bowater collectively produce over 65 percent of the newsprint exported from North America and would have no incentive to repatriate such exports. In addition, most of the remaining exports by North American producers are sold pursuant to long-term sales arrangements and relationships and therefore are unlikely to be repatriated in response to a price increase in North America.

25. Successful entry into the manufacturing and distribution of newsprint is difficult, time consuming, and costly. New entry requires investing hundreds of millions of dollars in equipment and facilities, extensive environmental permitting, and the establishment of a reliable distribution system and work force. Particularly given that demand for newsprint is declining in

North America, a new entrant would not find it profitable to build a new newsprint mill in response to a price increase, and could not do so within two years.

26. Accordingly, neither entry nor industry supply responses to a price increase for newsprint in North America will deter the likely exercise of market power by the combined firm.

V. VIOLATION ALLEGED

27. The likely effect of the proposed merger of Abitibi and Bowater may be substantially to lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. Section § 18.

28. Unless restrained, the proposed transaction likely will have the following effects, among others:

(a) competition likely will be lessened substantially in the production and sale of newsprint in North America;

(b) actual and potential competition between Abitibi and Bowater in the production and sale of newsprint in North America will be eliminated; and

(c) prices charged for newsprint in North America likely will increase.

VI. REQUESTED RELIEF

31. The United States requests that:

(a) the proposed transaction be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) Defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed transaction or from entering into or carrying out any contract, agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of Defendants;

(c) Plaintiff be awarded its costs for this action; and

(d) Plaintiff receive such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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