

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALTIVITY PACKAGING LLC
1500 Nicholas Blvd.
Elk Grove Village, IL 60007, and

GRAPHIC PACKAGING INTERNATIONAL, INC.,
814 Livingston Court
Marietta, GA 30067,

Defendants.

Case: 1:08-cv-00400
Assigned To : Sullivan, Emmet G.
Assign. Date : 3/5/2008
Description: Antitrust

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed merger of Graphic Packaging International, Inc. (“Graphic”) and Altivity Packaging, LLC (“Altivity”). The United States alleges as follows:

I. NATURE OF THE ACTION

1. On July 10, 2007, Altivity and Graphic announced plans to combine their businesses in a transaction valued at \$1.75 billion. Altivity and Graphic are respectively the first and fourth largest producers of coated recycled boxboard (“CRB”) in the United States and Canada (hereinafter, “North America”). CRB is a type of paperboard used to make folding cartons used in consumer and commercial packaging, such as cereal boxes. Both companies are also major integrated producers of folding cartons made from CRB (hereinafter, “CRB folding

cartons"). The total annual volume of CRB supplied to the packaging industry in North America is valued at approximately \$1.6 billion.

2. The proposed merger of Graphic and Altivity would create a single firm in control of approximately 42 percent of the total supply of CRB in North America and would likely result in increased prices of CRB. The resulting increases in CRB prices would have the further effect of increasing the prices of CRB folding cartons.

3. Unless the transaction is enjoined, the proposed merger of Graphic and Altivity would likely substantially lessen competition in the supply of CRB in North America, 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. 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.

5. Graphic and Altivity produce and sell CRB and CRB folding cartons in the flow of interstate commerce, and their production and sale of CRB and CRB folding cartons substantially affect interstate commerce. Defendants have consented to venue and personal jurisdiction in this judicial district.

III. THE DEFENDANTS

6. Altivity, a Delaware limited liability company headquartered in Elk Grove Village, Illinois, is the largest CRB producer in North America. Altivity is also a major North American producer (or "converter") of folding cartons made from CRB and other types of

paperboard. Altivity owns and operates five paperboard mills that produce CRB and 24 folding carton converting plants in North America. Altivity's CRB mills have a combined annual production capacity of approximately 722,000 tons, or about 27 percent of total North American CRB supply. In 2006, Altivity had total sales of approximately \$2 billion, including approximately \$660 million in North American sales of CRB and CRB folding cartons.

7. Graphic, the fourth-largest CRB producer in North America, is incorporated in Delaware and has its principal place of business in Marietta, Georgia. In North America, Graphic owns and operates one CRB paperboard mill, the single largest CRB mill in North America, as well as 19 folding carton converting plants that produce folding cartons from CRB and other types of paperboard. Graphic's CRB mill has a total annual production capacity of approximately 390,000 tons, or about 15 percent of total North American CRB supply. In 2006, Graphic's total sales were approximately \$2.4 billion, including approximately \$357 million in North American sales of CRB and CRB folding cartons.

8. Graphic also is the largest North American producer of coated unbleached kraft ("CUK"), another type of paperboard. Graphic operates two CUK mills with a total annual production capacity of approximately 1.3 million tons, or about 55 percent of total North American CUK supply. In 2006, Graphic had approximately \$1 billion in North American sales of CUK and CUK folding cartons.

IV. RELEVANT MARKET

A. Relevant Product Market

9. CRB is a type of paperboard (often called a "substrate" in the packaging industry) made from recycled paper. CRB is manufactured by forming and building up multiple layers (or "plies") of recycled fiber, and then applying a clay coating to the top layer. The clay-coated top

layer provides CRB with a smooth surface for good graphics printability. The bottom layer is left in the natural color of the recycled fiber, typically a greyish or brownish hue, depending on the type of fiber used (grey, if recycled newsprint is used; brown, if recycled corrugated boxes are used). CRB is an intermediary product that undergoes conversion into folding cartons.

10. CRB is the preferred paperboard substrate for a wide range of relatively low-cost folding carton applications, including dry food cartons such as cereal boxes. CRB typically is the single largest cost component of such folding cartons, accounting for as much as 65 percent of the cost of the folding carton.

11. Uncoated recycled boxboard ("URB") is a lower-grade and lower-cost paperboard compared to CRB. Major uses of URB are in the construction industry (as backing for gypsum wallboard) and in making paperboard cores and tubes (such as industrial cores for winding rolls of paper and other flexible materials, commercial mailing tubes, and tubes for paper towels and toilet paper rolls). URB is not a close substitute for CRB in folding carton applications because it lacks the smooth coated surface needed for good graphics printability.

12. CUK is a clay-coated paperboard made from virgin wood pulp rather than recycled paper, and has a brown-colored back. CUK has greater strength and wet-resistance than CRB and is more expensive than CRB on a price per ton basis. The large majority of CUK produced in North America is used to make beverage carriers (beer and soft-drink cartons) and refrigerated and frozen food packaging, where it is valued for its high strength and wet-resistance properties. Graphic is the larger of the only two North American CUK producers. Altivity does not produce CUK.

13. Solid bleached sulfate ("SBS") is another type of paperboard made from virgin wood pulp. Produced from bleached white pulp, SBS is the most expensive and highest grade of

paperboard used in the folding carton industry. SBS has a bright white finish on both sides, in contrast to CUK's brown back and CRB's grey or brown back. SBS affords the best printing surface of the paperboard grades, and is thus preferred despite its higher cost when superior printability is required. Consequently, SBS is often used to make cartons for higher-priced consumer goods, such as pharmaceuticals, cosmetics, and health and beauty products. When appropriately coated, SBS is also used in certain types of packaging that comes into direct contact with food, again due to manufacturer and consumer preferences for its white appearance. Neither Graphic nor Altivity produces SBS.

14. Because of the price and performance distinctions between CRB and the other folding carton substrates, few customers of CRB and CRB folding cartons consider URB, CUK, or SBS to be economical substitutes for CRB. Further, even where another substrate can provide acceptable performance at a similar price, few customers will switch from their existing substrate to an alternative substrate because doing so is time consuming, costly, and risky. The customer must first qualify the alternative substrate, and switching often requires modification of folding carton converting equipment and end-users' packaging lines. Customers of CRB and CRB folding cartons likely would not switch to URB, CUK, SBS, or any other potential substitutes in response to a small but significant and non-transitory increase in CRB prices to an extent that would make such a price increase unprofitable. Accordingly, CRB constitutes a relevant product market within the meaning of the Clayton Act.

15. Based on relative price and performance for some customers, CUK is the next closest substitute for CRB, and any switching by CRB customers to another substrate in response to a small but significant and non-transitory increase in CRB prices would primarily be to CUK.

As alleged in paragraph 14, switching by some customers to CUK would not be sufficient to make a CRB price increase unprofitable, for reasons including that the two producers of CRB are currently operating at near-capacity. If such switching to CUK would constrain a CRB price increase, however, CRB and CUK would constitute a relevant product market within the meaning of the Clayton Act, and the relevant market would be no larger than CRB and CUK.

B. Relevant Geographic Market

16. North America is a relevant geographic market for the supply of CRB, and for the supply of CRB and CUK, within the meaning of the Clayton Act. Due to relatively high transportation costs, unfavorable currency exchange rates, and other cost and marketing disadvantages to importing foreign CRB, CUK, or potential substitutes for CRB or CUK into North America, a small but significant increase in the prices of CRB produced in North America would not likely cause foreign suppliers to increase North American sales in sufficient volumes to make such a price increase unprofitable.

V. ANTICOMPETITIVE EFFECTS

17. Since 2005, the North American CRB market has experienced significant producer consolidations, including CRB mill closures that have caused the removal of hundreds of thousands of tons of CRB production capacity. As a result, the market has become highly concentrated, with Altivity and Graphic becoming the first and fourth largest of only four major producers. The recent producer consolidations and capacity reductions in North America have resulted in high capacity utilization rates by the remaining producers, and have significantly constrained the market supply of CRB.

18. If the proposed merger of Graphic and Altivity is permitted to occur, the North American CRB market would become substantially more concentrated. The combination of

Graphic and Altivity would control approximately 42 percent of total North American CRB supply. The market would have only three major competitors controlling a collective market share of approximately 86 percent. Using a standard concentration measure called the Herfindahl-Herschman Index (or "HHI," defined and explained in Appendix A), the proposed merger would substantially raise market concentration in a highly concentrated market, producing an HHI increase of approximately 788 and a post-merger HHI of approximately 2745.

19. Even if the relevant product market were broader than CRB and included CUK, the proposed merger of Graphic and Altivity would also substantially increase concentration in the North American market. The merger would produce a single firm controlling approximately 49 percent of total North American supply of CRB and CUK, combining Graphic's 35 percent and Altivity's 14 percent. The four remaining major competitors would have a collective market share of approximately 94 percent. The merger would substantially raise market concentration in a highly concentrated market, producing an HHI increase of approximately 991 and a post-merger HHI of approximately 3155.

20. The proposed merger would produce a further substantial consolidation of the North American CRB market and eliminate significant head-to-head competition between Graphic and Altivity, substantially lessening competition and likely causing higher CRB prices than there would be without the merger. These CRB price increases are also likely to cause increases in the prices of CRB folding cartons.

21. Producers of CUK are not likely to defeat an increase in the price of CRB after the merger of Graphic and Altivity. Graphic produces more than half of the CUK sold in North America, and would not have an incentive to undermine a post-merger increase in the price of CRB. The only other North American CUK producer is operating at nearly full capacity and

would not increase its sales of CUK or other potential substitutes for CRB by an amount sufficient to undermine a post-merger increase in CRB prices.

VI. ABSENCE OF COUNTERVAILING FACTORS

22. Supply responses from competitors or potential competitors will not prevent the likely anticompetitive effects of the proposed merger. Existing North American CRB producers face capacity and other operational limitations that would constrain them from significantly expanding output in response to a post-merger Graphic-Altivity increase in the price of CRB. Further, to the extent that they have any additional capacity to produce more CRB, these producers would likely support a Graphic-Altivity price increase by raising their own prices.

23. Foreign producers import into North America small quantities of CRB and potential substitutes for CRB. The ability of foreign paperboard producers to expand imports into North America is limited by their commitments to home and other markets that are more profitable than North America, as well as significant transportation, currency exchange, and other disadvantages and competitive constraints to importing into North America. Thus, the potential for expansion of foreign supply, by itself or in combination with other supply responses, would not likely be sufficient to constrain a small but significant and non-transitory North American CRB price increase.

24. New entry into the production and sale of CRB or CUK is costly and time consuming. Among other things, entry would require investments of over \$100 million and two years or more to construct and install production equipment and facilities. New entry is not likely to occur on a timely or sufficient basis in response to a small but significant and non-transitory post-merger CRB price increase in North America.

25. The anticompetitive effects of the proposed Graphic-Altivity merger are not likely to be eliminated or mitigated by any efficiencies that may be achieved by the merger.

VII. VIOLATION ALLEGED

26. The United States hereby incorporates paragraphs 1 through 25.

27. The proposed merger of Graphic and Altivity would likely substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and would likely have the following effects, among others:

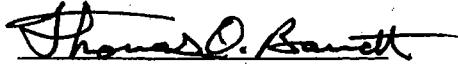
- (a) actual and potential competition between Graphic and Altivity for CRB sales would be eliminated; and
- (b) competition generally in the North American market for CRB (or in a North American market for CRB and CUK) would be substantially lessened.

PRAYER FOR RELIEF

The United States requests:

- 1. That the proposed acquisition be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
- 2. That the Defendants be permanently enjoined and restrained from carrying out the proposed merger or from entering into or carrying out any other agreement, understanding, or plan by which Graphic would acquire, be acquired by, or merge with, any of the other Defendants;
- 3. That the United States be awarded costs of this action; and
- 4. That the United States have such other relief as the Court may deem just and proper.

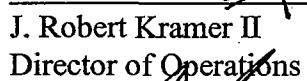
Respectfully submitted,



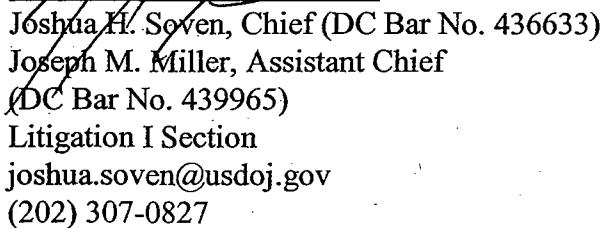
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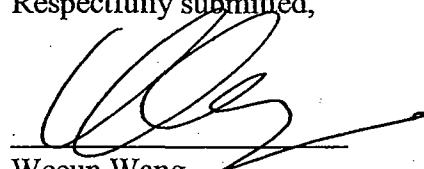
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APPENDIX A

APPENDIX A

Herfindahl-Hirschman Index

“HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30%, 30%, 20%, and 20%, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*