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11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16

17 v.

18 DOMTAR INC.;
19 DOMTAR INDUSTRIES, INC.;
20 DOMTAR GYPSUM AMERICA, INC.;
21 THE FLINTKOTE COMPANY, INC.;
22 AND GENSTAR GYPSUM PRODUCTS COMPANY,
23

24 Defendants.
25

Civil Action No. C 87-0689 RF

Filed: 2/25/87

COMPETITIVE IMPACT
STATEMENT

26 The United States, pursuant to Section 2(b) of the
Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C.
§ 16(b)-(h), files this Competitive Impact Statement relating
to the proposed Final Judgment submitted for entry in this
civil antitrust proceeding.

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I.

NATURE AND PURPOSE OF THE PROCEEDING

On February 25, 1987, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, challenging the acquisition of Genstar Gypsum Products Company ("Genstar Gypsum") by Domtar Industries, Inc. ("DII"), as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Prior to the acquisition, Genstar Gypsum was a wholly owned indirect subsidiary of The Flintkote Company, Inc. ("Flintkote"). Flintkote is a wholly owned indirect subsidiary of Imasco Enterprises, Inc. ("IEI"), which, in turn, is a wholly owned subsidiary of Imasco Limited ("Imasco"). DII is a wholly owned subsidiary of Domtar Inc. ("Domtar"). The complaint names as defendants Domtar, DII, Domtar Gypsum America, Inc. ("DGAI"), a wholly owned subsidiary of DII, Flintkote and Genstar Gypsum. The complaint alleges that the effect of the merger may be substantially to lessen competition in the manufacture and sale of gypsum board in the Pacific Southwest market. As defined in the complaint, the Pacific Southwest market consists of the southern portion of the state of California, the southern portion of the state of Nevada and the state of Arizona.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the

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1 proposed Final Judgment would terminate this action, except
2 that the Court would retain jurisdiction to construe, modify,
3 and enforce the proposed Final Judgment and to punish
4 violations thereof.

5 II.

6 EVENTS GIVING RISE TO THE ALLEGED VIOLATION

7 Under the terms of a Stock Purchase Agreement dated
8 October 10, 1986, Domtar proposes to acquire all of the stock
9 of Genstar Gypsum from Flintkote. Domtar will be free to
10 consummate the acquisition after midnight February 25, 1987.
11 Domtar, through its subsidiaries, competes with Genstar Gypsum
12 in the manufacture and sale of gypsum board in the Pacific
13 Southwest market, and elsewhere. In the Pacific Southwest
14 market, Domtar, through DGAI, operates a gypsum board plant in
15 Long Beach, California, and Genstar Gypsum operates a gypsum
16 board plant in Las Vegas, Nevada.

17 Gypsum board is material that consists primarily of a
18 solid, flat core of processed gypsum between two sheets of
19 paper surfacing. It is used principally for constructing
20 interior walls and ceilings in commercial and residential
21 buildings.

22 The complaint alleges that the sale by manufacturers of
23 gypsum board constitutes a line of commerce, or relevant
24 product market, for antitrust purposes, and that the Pacific
25 Southwest market constitutes a section of the country, or

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1 relevant geographic market. Within this geographic area, the
2 complaint alleges the effect of the merger may be substantially
3 to lessen competition in the manufacture and sale of gypsum
4 board.

5 Gypsum board consumers located in the Pacific Southwest
6 market historically have been served almost exclusively by
7 gypsum board manufacturing plants located in that market.
8 Demand for gypsum board in the Pacific Southwest market is
9 currently high. Prices have increased by approximately 44
10 percent since 1983, and most or all of the gypsum board
11 manufacturing plants located in the market are operating at or
12 near full capacity. Even at the cyclically high prices at
13 which gypsum board currently is being sold in the Pacific
14 Southwest market, only three manufacturers whose plants are
15 located outside of that market have been selling significant
16 amounts of gypsum board into the market. Two of these firms
17 are located in New Mexico: Centex American Gypsum Co., Inc.
18 ("Centex"), Albuquerque, New Mexico, and Western Gypsum Co.
19 Inc. ("Western"), Santa Fe, New Mexico. When demand slackens,
20 and prices in the market decline, neither these nor other firms
21 will be able profitably to sell gypsum board in the market from
22 plants located outside of the market. The third firm is
23 Georgia Pacific Corporation ("Georgia Pacific"). Georgia
24 Pacific has recently been shipping gypsum board into the
25 Pacific Southwest market from plants outside the market but

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1 only in anticipation of constructing a plant in the market in
2 Las Vegas, Nevada beginning in 1987. Upon completion of the
3 Las Vegas plant, Georgia Pacific is expected to cease shipments
4 from outside the market.

5 The sale by manufacturers of gypsum board in the Pacific
6 Southwest market is highly concentrated. Domtar is the fifth
7 largest firm in the Pacific Southwest market with a market
8 share of approximately 11.0 percent, while Genstar Gypsum is
9 the sixth largest firm with a market share of approximately
10 10.9 percent, as measured by total manufacturing capacity of
11 the gypsum board plants located within the Pacific Southwest
12 market and the Centex and Western plants, and the anticipated
13 capacity of the Georgia Pacific plant identified above. If
14 Domtar were to acquire Genstar Gypsum, it would become the
15 second largest firm in the Pacific Southwest market with a
16 market share of 21.9 percent. The Herfindahl-Hirshman Index, a
17 measure of market concentration calculated by squaring the
18 market share of each firm competing in the market and then
19 summing the resulting numbers, would increase 240 points to
20 1747.

21 III.

22 EXPLANATION OF THE PROPOSED FINAL JUDGMENT

23 The proposed Final Judgment requires that Domtar, including
24 its subsidiaries, divest its entire interest in Genstar
25 Gypsum's Pacific Southwest Operations, consisting of Genstar

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1 Gypsum's Las Vegas gypsum board plant and gypsum quarry, its
2 sales and marketing organization in California, Arizona and
3 Nevada, and its warehouse and sales office in Vernon,
4 California. The divestiture is to be absolute and
5 unconditional and to occur within six months of the filing of
6 the Final Judgment. If Domtar cannot accomplish the required
7 divestiture within the above period, the proposed Final
8 Judgment provides that, upon application by the plaintiff, the
9 Court shall appoint a trustee to sell the Pacific Southwest
10 Operations.

11 The Pacific Southwest Operations must be divested to a
12 purchaser or purchasers who can and will operate them as a
13 viable, ongoing business that can compete effectively in the
14 relevant market. Domtar will take all reasonable steps
15 necessary to accomplish divestiture and shall cooperate with
16 bona fide prospective purchasers and the trustee.

17 Coincident with entering into the proposed Final Judgment,
18 defendants have agreed to a Stipulated Hold Separate Order
19 requiring that they maintain the Pacific Southwest Operations
20 as an independent, viable business with its assets, management
21 and operations separate, distinct and apart from Domtar's
22 operations, until the mandated divestiture has been
23 accomplished. The Stipulated Hold Separate Order is
24 incorporated by reference in the proposed Final Judgment.

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1 Under the terms of the Stipulated Hold Separate Order,
2 until the Pacific Southwest Operations are divested, they shall
3 be managed by, William E. Nilson, a general manager appointed
4 by Domtar and approved by plaintiff. The general manager shall
5 have complete managerial responsibility for the Pacific
6 Southwest Operations, subject to the provisions of the proposed
7 Final Judgment and the Stipulated Hold Separate Order. Other
8 than to assure compliance with the proposed Final Judgment and
9 as expressly permitted by the Stipulated Hold Separate Order,
10 the general manager shall not consult with Domtar or its
11 subsidiaries with respect to the management of the Pacific
12 Southwest Operations. Further, Domtar and its subsidiaries
13 shall not influence or attempt to influence, directly or
14 indirectly, any operational or financial decisions of the
15 Pacific Southwest Operations.

16 If a trustee is appointed, the proposed Final Judgment
17 provides that Domtar will pay all costs and expenses of the
18 trustee. The trustee's commission will be structured so as to
19 provide an incentive for the trustee to accomplish the
20 divestiture as quickly as possible and at the best price and
21 terms reasonably obtainable. If after six months from the date
22 of the trustee's appointment the required divestiture has not
23 been accomplished, the trustee, and the defendants, if they
24 elect to, shall make recommendations to the Court and the Court

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1 shall enter such orders as it deems appropriate to effect
2 divestiture.

3 The divestiture of the Pacific Southwest Operations will
4 maintain those operations as a significant independent
5 competitor in the Pacific Southwest market and eliminate the
6 adverse effect on competition in that market alleged in the
7 complaint.

8 Plaintiff and defendants have stipulated that the proposed
9 Final Judgment may be entered by the Court at any time after
10 compliance with the APPA. The proposed Final Judgment
11 constitutes no admission by any party as to any issue of fact
12 or law. Under the provisions of Section 2(e) of the APPA,
13 entry of the proposed Final Judgment is conditioned upon a
14 determination by the Court that the proposed Final Judgment is
15 in the public interest.

16 IV.

17 REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

18 Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that
19 any person who has been injured as a result of conduct
20 prohibited by the antitrust laws may bring suit in federal
21 court to recover three times the damages the person has
22 suffered, as well as costs and reasonable attorneys fees.
23 Entry of the Final Judgment will neither impair nor assist the
24 bringing of any private antitrust damage actions. Under the

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1 provisions of Section 5(a) of the Clayton Act, 15 U.S.C.
2 § 16(a), the Final Judgment has no prima facie effect in any
3 private lawsuit that may be brought against the defendants.

4 V.

5 PROCEDURES AVAILABLE FOR MODIFICATION OF
6 THE PROPOSED FINAL JUDGMENT

7 As provided by the APPA, any person wishing to comment upon
8 the Final Judgment may, within the statutory 60-day comment
9 period, submit written comments to Anthony V. Nanni, Chief,
10 Litigation I Section, Antitrust Division, U.S. Department of
11 Justice, 555 4th Street, N.W., Washington, D.C. 20001. These
12 comments and the Department's responses will be filed with the
13 Court and published in the Federal Register. All comments will
14 be given due consideration by the Department, which remains
15 free to withdraw its consent to the Judgment at any time prior
16 to entry. The Judgment provides that the Court retains
17 jurisdiction over this action and any party may apply to the
18 Court for any order necessary or appropriate for its
19 modification, interpretation, or enforcement.

20 VI.

21 ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

22 As an alternative to the proposed Final Judgment, the
23 United States considered seeking a preliminary injunction to
24 block Domtar's acquisition of, and merger with, Imasco's gypsum
25 operations. The United States decided to accept the proposed

1 Final Judgment rather than seek to enjoin the acquisition
2 because it concluded, for the reasons stated above, that the
3 divestiture of the Pacific Southwest Operations should maintain
4 those operations as an independent, viable competitor in the
5 Pacific Southwest market and prevent the merger from having any
6 anticompetitive effect.

7 In this regard, the United States considered whether it was
8 necessary to require that Genstar Gypsum's mill for
9 manufacturing gypsum board paper in Vernon, California be
10 divested as a part of the Pacific Southwest Operations in order
11 to make them a viable business. The United States decided that
12 such additional divestiture was unnecessary. The investigation
13 conducted by the United States disclosed that the purchaser of
14 the Las Vegas plant will be able to obtain gypsum board paper
15 from a number of alternative sources located both inside and
16 outside of the Pacific Southwest market, including both other
17 gypsum board manufacturers as well as an independent paper
18 company.

19 The proposed Final Judgment achieves the objective of the
20 lawsuit and also saves the United States the expense of
21 litigation. The anticompetitive effect alleged in the
22 complaint was the lessening of competition in the manufacture
23 and sale of gypsum board in the Pacific Southwest market. In
24 other parts of the country, the merger will be, at worst,
25 competitively neutral. The required divestiture will preserve

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1 competition in the Pacific Southwest market. Thus, the United
2 States believes that entry of the proposed Final Judgment is in
3 the public interest.

4 VII.

5 DETERMINATIVE MATERIALS AND DOCUMENTS

6 There are no materials or documents that the United States
7 considered to be determinative in formulating this proposed
8 Final Judgment. Accordingly, none are being filed with this
9 Competitive Impact Statement.

10 Respectfully submitted,

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12 JOHN SCHMOLL

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14 PETER H. GOLDBERG

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16 JOSEPH ALLEN

17 Attorneys
18 United States Department of Justice

19 Dated:

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