

walls and ceilings in residential and commercial buildings in the United States. No good, reasonably interchangeable substitutes exist for gypsum board.

4. In 1995, United States Gypsum Company, National Gypsum Company, Domtar, and the defendant, the four largest producers and sellers of gypsum board in the United States, accounted for about 90 percent of gypsum board capacity in the Northeast Region.

5. Georgia-Pacific's acquisition of Domtar would increase concentration in the production and sale of gypsum board and would increase substantially the likelihood of anticompetitive price coordination by gypsum board producers and substantially increase the likelihood of higher prices in the Northeast Region.

I. JURISDICTION AND VENUE

6. This action is filed under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the violation by defendant, as hereinafter alleged, of Section 7 of the Clayton Act, 15 U.S.C. § 18.

7. Georgia-Pacific sells gypsum board and other products in interstate commerce. The Court has jurisdiction over this action and over the defendant pursuant to 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337. Since Georgia-Pacific transacts business in this District, venue is proper in this District under 28 U.S.C. § 1391(c).

II. THE DEFENDANT AND DOMTAR

8. Georgia-Pacific, a Georgia corporation headquartered in Atlanta, Georgia, owns ten gypsum board plants and three gypsum linerboard paper mills (which produce paper used in the manufacture of gypsum board), located throughout the United States. Georgia-Pacific has the annual capacity to produce about 3.1 billion square feet of gypsum board. In 1995, Georgia-Pacific's United States gypsum board sales totaled about \$251 million.

9. Domtar, a major North American pulp and paper manufacturer, is a Canadian corporation headquartered in Montreal, Quebec, Canada. Domtar, through its wholly-owned United States subsidiaries, Domtar Gypsum, Inc. and Domtar Industries, Inc. (a direct parent of Domtar Gypsum, Inc.), owns nine gypsum board plants in the United States and four gypsum board plants in Canada. Domtar has the annual capacity in North America to produce about four billion square feet of gypsum board. In 1995, Domtar's United States gypsum board sales totaled about \$221 million.

III. THE TRANSACTION

10. Georgia-Pacific proposes to acquire the gypsum business of Domtar in a cash transaction valued at \$350 million dollars.

11. Pursuant to an Asset Purchase Agreement dated November 8, 1995, Georgia-Pacific agreed to acquire all of the gypsum manufacturing operations of Domtar and its subsidiaries. In the United States, Georgia-Pacific will acquire Domtar's nine

gypsum board plants, one gypsum paper mill and two plants producing gypsum joint treatment. The purchase price for the United States assets is approximately \$280 million cash. Georgia-Pacific also proposes to acquire Domtar's four Canadian gypsum board plants, one Canadian gypsum plaster plant, one Canadian gypsum joint treatment plant, a Canadian gypsum products warehouse, and Domtar's 49 percent interest in a gypsum quarry in Mexico that supplies gypsum rock to United States companies. The purchase price is \$70 million for the Canadian and Mexican assets.

12. Pursuant to a Share Purchase Agreement dated November 8, 1995, among Georgia-Pacific, Domtar, Domtar Gypsum, Inc., and Domtar Industries, Inc., Georgia-Pacific agreed to acquire all the capital stock of Domtar Gypsum Inc., headquartered in Ann Arbor, Michigan.

IV. TRADE AND COMMERCE

13. Gypsum board consists primarily of a solid, flat core of processed gypsum rock sandwiched between two sheets of linerboard paper. It is produced and sold in standard widths, lengths and thicknesses, with one-half inch, 5/8 inch and 5/16 inch as the most commonly produced thicknesses, and 12 feet by 4 feet as the most commonly produced size. Gypsum board produced by different manufacturers does not differ significantly in quality, appearance, or use.

14. Producers of gypsum board sell to building supply dealers, mass merchandisers, buying cooperatives, wholesalers, housing manufacturers, mobile home fabricators and contractors.

Relevant Product Market

15. Gypsum board differs from all other construction materials in physical composition, functional characteristics, customary uses, means of production and pricing. Plaster, panel board, lumber and other building products lack gypsum board's fire protection, ease of application, smooth surface finish and low cost.

16. A small but significant and nontransitory increase in gypsum board prices would not cause a significant number of customers to substitute other products for gypsum board.

17. The production and sale of gypsum board are a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

Relevant Geographic Market

18. Geographic markets for the production and sale of gypsum board are regional. Gypsum board is heavy, bulky and expensive to ship relative to its value. It is also subject to breakage in transport when handled excessively.

19. Transportation costs are a substantial portion of the delivered price of gypsum board. The delivered cost of gypsum board increases significantly the more distant the customers are from the producing plant. As a result, most gypsum board is sold within a 500 mile radius from the producing plant.

20. The demand for gypsum board varies across geographic regions throughout the United States, since demand is driven primarily by local housing starts, the level of new commercial

construction, and the repair and remodeling of existing buildings. Demand for gypsum board may vary also over time in any one geographic region. When demand climbs, gypsum board prices and the manufacturers' profits tend to be high, and customers may be placed on allocation; when demand drops, prices and profits tend to decrease. Persistent price differences for gypsum board exist from one region of the country to another.

21. Georgia-Pacific produces gypsum board for sale in the Northeast Region primarily at its Buchanan, New York and Wilmington, Delaware plants. Domtar produces gypsum board for sale in the Northeast Region primarily at its Newington, New Hampshire and Camden, New Jersey plants.

22. Gypsum board plants located in the Northeast Region account for the majority of sales to gypsum board consumers in the Northeast Region, and sales of gypsum board from plants outside the Northeast Region are comparatively small. To maintain supplier loyalty in times of allocation, many gypsum board customers continue to purchase gypsum board from local producers even when local prices are higher than prices prevailing in other geographic regions. These customers wish to ensure their supply during upturns in the local Region when demand for gypsum board may exceed supply.

23. Gypsum board buyers in the Northeast Region cannot constrain prices by purchasing gypsum board from customers outside the Northeast Region. Such purchases are not practicable because of the high cost of shipping gypsum board and because most buyers

receive gypsum board on a short, "as needed," time frame rather than maintain substantial gypsum board inventories. Substantially all gypsum board is shipped to customers by the producers and sold on a delivered price basis in the Northeast Region.

24. Due to distance, high freight cost, lack of excess capacity and customer loyalty, gypsum board producers with plants located outside the Northeast Region could not constrain a small but significant and nontransitory price increase in the Northeast Region.

25. The Northeast Region is a section of the country or relevant geographic market within the meaning of Section 7 of the Clayton Act.

Anti-Competitive Effects and Entry

26. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), defined and explained in Appendix A, a combination of Georgia-Pacific and Domtar would substantially increase concentration in the already highly concentrated Northeast Region. The approximate post-merger HHI for gypsum board in the Northeast Region, based on 1995 production capacity of firms with plants located in the Northeast Region and shipments by distant producers to the Northeast Region, would be over 2700 with a change in the HHI of over 400 points. After the acquisition, the three largest producers and sellers would control about 90 percent of the Northeast Region's gypsum board production capacity.

27. The proposed acquisition will facilitate coordinated pricing activity among the gypsum board manufacturers serving the Northeast Region and will increase the likelihood of anticompetitive price increases for consumers. Gypsum board is a homogeneous product, and price is an important dimension of competition. Important price, cost and capacity information is widely available among industry participants. Manufacturers' price changes are announced publicly well in advance of their implementation. Manufacturers which do not sell or currently sell small amounts of gypsum board in the Northeast Region from plants located either within or without the Northeast Region, have insufficient excess capacity or are too distant from the Northeast Region to economically sell enough gypsum board to customers in the Northeast Region to defeat an anticompetitive price increase. Consequently, as a result of this transaction, consumers in the Northeast Region face the danger that gypsum board prices will increase.

28. Successful entry into the production and sale of gypsum board is difficult, time consuming and costly. A new efficient gypsum board plant would cost over \$40 million to build (including the cost of land, regulatory approvals and equipment) and would not be operational for several years from the time of site selection. The equipment needed to manufacture gypsum board is custom-engineered and would take at least two years to design, manufacture, and install.

29. Entry into the gypsum board business is made more difficult by the existence of longstanding customer relationships and the need to establish a reputation for good quality product and reliability in fulfilling customer orders in times of strong and weak demand.

V. HARM TO COMPETITION

30. The effects of the proposed transaction between Georgia-Pacific and Domtar may be to lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

31. The transaction would have the following effects, among others:

- a. competition generally for the production and sale of gypsum board in the Northeast Region will be lessened substantially;
- b. actual and potential competition between Georgia-Pacific and Domtar for the production and sale of gypsum board in the Northeast Region will be eliminated;
- c. coordinated pricing activity among producers and sellers of gypsum board in the Northeast Region will be facilitated; and,
- d. prices for gypsum board in the Northeast Region are likely to increase.

VI. REQUESTED RELIEF

Plaintiff requests:

1. That the proposed acquisition of the gypsum manufacturing operations of Domtar and its subsidiaries and the acquisition of the capital stock of Domtar Gypsum, Inc. by Georgia-Pacific be adjudged to violate Section 7 of the Clayton Act;

2. That the defendant be permanently enjoined from carrying out the Asset Purchase Agreement, dated November 8, 1995, and Share Purchase Agreement, dated November 8, 1995, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of Georgia-Pacific and Domtar;

3. That Plaintiff be awarded the costs of this action; and
4. That Plaintiff have such other relief as the Court may deem just and proper.

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APPENDIX A

DEFINITION OF "HHI"

The Herfindahl-Hirschman Index ("HHI"), a commonly accepted measure of Market concentration, 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 thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms with relatively equal market shares. The HHI increases both as the number of firms in the market decreases and as the disparity in market share among those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.