

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Owens-Illinois Glass Co., U.S. District Court, N.D. Ohio, 1963 Trade Cases ¶70,808, (Jul. 8, 1963)

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United States v. Owens-Illinois Glass Co.

1963 Trade Cases ¶70,808. U.S. District Court, N.D. Ohio, Western Division. Civil No. 7686. Entered July 8, 1963. Case No. 1310 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquiring Competitors—Acquisition of Box Manufacturer by Glass Container Manufacturer—Divestiture—Consent Judgment.—A manufacturer of glass containers was required under the terms of a consent judgment to divest itself of an acquired fiber box manufacturer as a going concern.

For the plaintiff: Lee Leovinger, Assistant Attorney General, Donald F. Melchior, Harry N. Burgess, John M. O'Donnell and Marvin Spaeth, Attorneys, Department of Justice.

For the defendant: Fred E. Fuller, Leslie Henry, James A. Sprunk of Fuller, Seney, Henry & Hodge, Ross W. Shumaker, Robert B. Gosline of Shumaker, Loop & Kendrick, Richard W. McLaren of Chadwell, Keck, Kayser, Ruggles & McLaren, Jesse Climenko, and Leo Schwartz.

Final Judgment

KLOEB, District Judge [*In full text*]: Plaintiff, United States of America, havint, Owens-Illinois Glass Company by its attorneys, having appeared and filed its answer to the complaint, denying the substantive allegations thereof, and plaintiff and defendant by their respective attorneys having consented to the entry of this Final Judgment herein;

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and without any admission by any party in respect to any such issue and upon the consent of the parties hereto, the Court being advised and having considered the matter, it is hereby

Ordered, adjudged and decreed as follows :

I

[Clayton Act]

This Court has jurisdiction of the subject matter of this action and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes", commonly known as the Clayton Act. The complaint states claims upon which relief may be granted under Section 7 of said Act.

II

[Definitions]

As used in this Final Judgment:

(A) "Owens-Illinois" means defendant, Owens-Illinois Glass Company, a corporation organized and existing under the laws of the State of Ohio with its principal office at Toledo, Ohio, and its subsidiaries.

(B) "National" means the former National Container Corporation, a Delaware corporation, which was merged into Owens-Illinois on October 4, 1956, and the corporations which were subsidiaries of National at the time of the merger.

(C) "Subsidiary" of any corporation means a second corporation of which over 50% of the voting power is held directly or indirectly by such first corporation.

(D) "Containerboard" means paperboard classified as linerboard, corrugating medium, and chip and filler board, made principally from woodpulp, waste paper or paperboard, straw, or a combination thereof, and primarily for use in the manufacture of fibre boxes.

(E) "Fibre boxes" means corrugated and solid fibre boxes used for packaging and shipment of various packaged and bulk products, interior packing for such boxes and related corrugated fibre products, made from containerboard.

(F) "Person" means any individual, partnership, corporation, association or other legal entity.

(G) "Eligible Purchaser" means any person approved by plaintiff, or the Court after notice to the plaintiff and opportunity to be heard.

III

[*Applicability*]

The provisions of this Final Judgment applicable to Owens-Illinois shall apply to each of its subsidiaries, successors and assigns, and to each of its directors, officers, agents, employees or any other person acting under, through or for such defendant, when acting in any such capacity. The provisions of this Final Judgment shall not apply or relate to the activities or operations of Owens-Illinois outside of the continental limits of the United States. None of the provisions of this Final Judgment shall apply to any person or persons who acquire from Owens-Illinois any of the properties disposed of pursuant to this Final Judgment.

IV

[*Divestiture Required*]

Owens-Illinois is hereby ordered and directed, subject to the terms and conditions of this Final Judgment:

(A) To dispose of as a unit to an Eligible Purchaser the following properties, which are properties acquired from National with additions and modifications since such acquisition:

1. Its Jacksonville paperboard mill, located at Jacksonville, Florida, including real estate, buildings, machinery, tools and equipment.
2. Five certain fibre box manufacturing plants having an aggregate minimum capacity of approximately 235,000 M sq. ft. per month, on the basis of Owens-Illinois operating experience, and a 120-hour week or equivalent thereof. The identity of and pertinent information as to said plants shall be disclosed to any bona fide prospective purchaser, under the conditions provided in Paragraph (I) of this Section.
3. Inventories at the properties to be disposed of on hand at the time of disposition.
4. At the option of the purchaser, approximately 209,000 acres of woodlands and associated buildings and equipment as described in Appendix A to this Final Judgment.

(B) Disposal of the properties described in Paragraph (A.) of this Section shall be of such properties in full operating condition as they now are, subject to changes and additions and betterments made up to the time of disposal in the normal course of business or in the interest of improved operating conditions or new business opportunities. Owens-Illinois shall use its best efforts to maintain each of such properties at not less than the standards of operational performance in effect on the date of this Final Judgment.

(C) Owens-Illinois shall reasonably cooperate with the purchaser in the employment of personnel associated with the operation and management of the properties described in Paragraph (A) of this Section whom the purchaser may desire to employ and shall release from any employment contract any persons who, within a reasonable

time, not to exceed 60 days after the consummation of the disposal, notify Owens-Illinois of their desire to accept such employment.

(D) Owens-Illinois shall dispose of the properties described in Paragraph (A.) of this Section to any Eligible Purchaser who offers to pay the fair market value of such properties determined as herein provided, adjusted for additions and retirements subsequent to the date as of which the determination of fair market value was made as shown by the books of account of Owens-Illinois, plus included inventories at Owens-Illinois book value at time of disposal. Forthwith upon the entry of this Final Judgment, Owens-Illinois shall employ a person or persons acceptable to plaintiff and Owens-Illinois as an appraiser to make, within one year from the date of the entry of this Final Judgment, a determination of the fair market value as a unit of the properties described in Paragraph (A) 1, 2 and 4, and as a unit of the properties described in Paragraph (A) 1 and 2. Fair market value of each of said two units so determined shall be that of each unit as a going enterprise for the manufacture and sale of paperboard and fibre boxes, but not less than replacement cost new less depreciation of the various properties for the purposes to which they are now devoted. Promptly upon completion Owens-Illinois shall file copies of such determination with the Anti Trust Division of the Department of Justice. In the event more than one Eligible Purchaser makes an offer of purchase which conforms to the provisions of this Final Judgment at substantially the same time, disposal shall be made to the one making the better offer, as determined by Owens-Illinois.

(E) If the purchaser does not elect to acquire the woodlands described in Paragraph (A) 4 of this Section, Owens-Illinois shall offer the purchaser a contract, effective at the time of disposal of the other properties described in said Paragraph (A), for the purchase of pulpwood from Owens-Illinois in a level annual amount not less than 5500 cords nor more than 55,000 cords, for a period of up to ten years, on terms substantially as set forth in the draft of pulpwood contract filed with the Department of Justice.

(F) The purchaser, as a part of the acquisition, shall assume and perform. the contract for supply of pulpwood to the Jacksonville mill between Owens-Illinois and its subsidiary, Owens-Illinois of the Bahamas, Ltd., and, as a part of the acquisition, shall have the option to assume and agree to perform the contract between Owens-Illinois and J. M. Carter, et al., as such contracts are in effect on the date of this Final Judgment or as modified by the parties thereto prior to the time of disposal, provided that such modifications do not materially change the provisions of such contracts, except that the term[s] of the Carter contract may be extended up to five years.

(G) The purchaser, as a part of the acquisition, shall also enter into a contract covering the transportation of pulpwood supplied under the Owens-Illinois of the Bahamas contract, in substantially the form filed with the Department of Justice.

(H) Owens-Illinois shall offer to transfer to any purchaser, together with the properties referred to in Paragraph (A) of this Section, its rights under handling and warehouse arrangements at Edgewater, New Jersey, and any other locations on the Atlantic seaboard, then used by it in connection with the sale to others of containerboard produced at the Jacksonville mill, which transfer shall include inventory at such locations.

(I) Owens-Illinois shall make known the availability of the properties ordered to be disposed of by ordinary and usual means for the sale of a business or plant. Owens-Illinois shall furnish to bona fide prospective purchasers copies of the papers referred to in Paragraphs (D), (E), (F) and (G), of this Section, and shall furnish to bona fide prospective purchasers such other information regarding such properties, and shall permit them to have access to, and to make such inspection of, the properties as are reasonably appropriate; provided that such need not be done when in the judgment of Owens-Illinois any pending negotiation with another bona fide prospective purchaser hereunder would be prejudiced.

(J) The disposal ordered and directed by this Section IV shall be made in good faith and shall be absolute, unqualified and unconditional; none of the properties so ordered to be disposed of shall be directly or indirectly disposed of to any person acting for or under the control of Owens-Illinois or to anyone who will after the disposal be an officer, director, agent or employee of Owens-Illinois; provided that the properties may, at the election of Owens-Illinois, be disposed of to a subsidiary if the voting shares of such subsidiary so received by Owens-Illinois shall be promptly distributed pro rata to its common shareholders, and it does not have a director, officer or employee in common with Owens-Illinois, and no such director, officer or employee together with any affiliate

or associate of such director, officer or employee as those terms are presently defined in Rule 405 of Regulation C of the General Rules and Regulations of the Securities and Exchange Commission under the Securities Act of 1933, shall receive as a result of such distribution the beneficial interest in more than five per cent of the voting shares so distributed; and provided further that Owens-Illinois may accept and enforce any bona fide lien, mortgage, deed of trust or other form of security on said properties given for the purpose of securing to Owens-Illinois full payment of any unpaid purchase price.

(K) Within 30 days after the completion of the disposal herein directed, Owens-Illinois shall file with the Court and serve upon Assistant Attorney General in charge of the Anti-Trust Division a report showing the final consummation of such disposal and the nature thereof.

V

[Failure to Accomplish Divestiture]

If defendant Owens-Illinois has not divested itself of all of said properties pursuant to Section IV of this Final Judgment as therein provided for, within four years after the expiration of the one-year period provided by Section IV (D) in which to complete the appraisal therein referred to, plaintiff may, at any time thereafter, and upon reasonable notice to defendant Owens-Illinois, move this Court for an order requiring defendant Owens-Illinois to divest itself of any or all of such properties in any manner and upon any terms and conditions as the Court determines to be (a) fair and reasonable to defendant Owens-Illinois, and (b) necessary and appropriate to effectuate the primary objective of this Final Judgment, to accomplish such divestiture,.

VI

[Reports]

Following the entry of this Final Judgment, Owens-Illinois shall upon request of the Assistant Attorney-General in charge of the Anti-Trust Division, made not oftener than quarter-annually, render reports to said Assistant Attorney General, outlining in reasonable detail the efforts made by Owens-Illinois to dispose of properties as required by this Final Judgment. Such reports shall be deemed confidential and shall not be disclosed to others than members of the staff of the Department of Justice concerned with this matter, except upon order of this Court.

VII

[Inspection]

For the purpose of securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Anti-Trust Division, and on reasonable notice to Owens-Illinois at its principal office, be permitted (1) reasonable access, during the office hours of Owens-Illinois, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Owens-Illinois relating to any of the matters contained in this Final Judgment, and (2) subject to the reasonable convenience of Owens-Illinois and without restraint or interference from it, to interview officers or employees of Owens-Illinois, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, Owens-Illinois, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Anti-Trust Division, and upon reasonable notice made to its principal office, shall submit such reasonable reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of court proceedings to which the United States of

America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by Law.

VIII

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Appendix A

Woodlands referred to in Paragraph (A)4 of Section IV

Approximately 209,000 acres of woodlands owned by or leased to Owens-Illinois Glass Company. Under conditions existing at the date of the entry of the Final Judgment to which this is Appendix A, such woodlands would be all of those owned by or leased to Owens-Illinois Glass Company situated in the following areas in the State of Florida, with approximate acreage as follows:

Levy County (4,166 acres owned, 40,194 acres leased); Dixie County (37,231 acres owned) ; Flagler County (20,716 acres owned); St. Johns County (29,323 acres leased); Marion and Putman Counties and Townships 9, 10, 11 and 12 South, Range 21 East, and Townships 9, 10, 11 and 12 South, Range 22 East, in Alachua County (77,487 acres owned).

In the event that, prior to disposition pursuant to said Judgment, additional small tracts of woodlands are purchased or leased by Owens-Illinois in the immediate vicinity of the areas above described, such tracts shall, at the request of Owens-Illinois, be added to the woodlands above described. If prior to such disposition Owens-Illinois purchases or leases substantial additional acreage of woodlands in the areas above described or in areas from which pulpwood can in the opinion of Owens-Illinois be more practically supplied to the Jacksonville mill of Owens-Illinois than to its Valdosta (IClyattville), Georgia mill, Owens-Illinois may make substitutions for any parts of the lands above described so as to provide for the disposition of approximately 209,000 acres of woodlands which when considered as a whole are, in the opinion of Owens-Illinois, fairly allocable to the Jacksonville mill.

Said owned and leased lands are to be transferred together with land improvements, buildings, structures and equipment used in operation, maintenance, planting and protection, owned by or leased to Owens-Illinois at time of disposition; subject to any then existing defects in title, to provisions of and assumption of leases without future liability of Owens-Illinois, to reimbursement of advances and prepayments, and to reservation by Owens-Illinois of all oil and gas and other minerals and rights relating thereto held by Owens-Illinois.