

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. West Virginia Pulp and Paper Co., U.S. District Court, S.D. New York, 1966 Trade Cases ¶71,652, (Feb. 10, 1966)

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United States v. West Virginia Pulp and Paper Co.

1966 Trade Cases ¶71,652. U.S. District Court, S.D. New York. Civil No. 60 Civ. 3324. Entered February 10, 1966. Case No. 1557 in the Antitrust Division of the Department of Justice.

Acquisitions—Manufacturer-Customer—Sales of Paper—Consent Decree.—A paper producer was prohibited, for as long as it owned any shares of capital stock of an envelope producer, from selling any paper to the envelope producer, except in emergency situations or during a 15-month transitional period.

Acquisitions—Divestiture—Permission to Request—Consent Decree.—The court, under a consent judgment, could, on the motion of the government at any time after five years and after hearing, order a paper producer to divest itself of any stock it owns in an envelope producer, provided that, if such order should issue, divestiture would be effective two years after the order.

For the plaintiff: Donald F. Turner, Assistant Attorney General, William D. Kilgore, Jr., Lewis Bernstein, and Philip L. Roache, Jr., Attorneys, Department of Justice.

For the consenting defendant: Debevoise, Plimpton, Lyons & Gates.

Final Judgment

SUGARMAN, District Judge: Plaintiff, United States of America, having filed its complaint herein on August 25, 1960, and defendant, West Virginia Pulp and Paper Company, having filed its answer to such complaint, denying the substantive allegations thereof, on October 6, 1960, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment herein;

Now, therefore, before the taking of any testimony on the merits and without trial or adjudication of any issue of fact or law on the merits herein, and without any admission by either party in respect of any such issue, and upon the consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as a Final Judgment herein as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof 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 a claim upon which relief may be granted under Section 7 of such Act.

II

[Definitions]

As used in this Final Judgment:

(A) "USE" shall mean United States Envelope Company and any successor thereto resulting from a consolidation, merger or sale of all or substantially all its assets.

(B) "West Virginia" shall mean defendant, West Virginia Pulp and Paper Company and any successor thereto resulting from a consolidation, merger or sale of all or substantially all its assets.

III

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[*Applicability*]

The provisions of this Final Judgment applicable to West Virginia shall also apply to each of its directors, officers, agents and employees, when acting on behalf of West Virginia, and to its subsidiaries, and to all other persons in active concert or participation with West Virginia who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[*Sale of Paper*]

West Virginia is enjoined and restrained for so long as it continues to own any shares of capital stock of USE, from selling any paper to USE, except as follows:

(A) During a transition period of not more than fifteen (15) months from the date hereof, West Virginia may sell paper to USE provided that there shall be no increase in the percentage of USE's paper requirements measured in tons supplied by West Virginia during such transition period from such percentage during the preceding fifteen-month period.

(B) If, as a result of an emergency situation, e.g., catastrophe, strike, war, national emergency, etc., USE shall be unable after reasonable diligent effort to purchase from its then regular suppliers a grade of paper at the price generally prevailing for such grade, (1) in the quantities required, (2) for delivery to such point as is desired, and (3) for delivery at such time as is desired, then West Virginia may sell such grade of paper to USE at such prevailing price in such quantities as shall reasonably be necessary to satisfy USE's requirements during such emergency situation and until such regular suppliers are again able to satisfy such requirements or until alternative sources of supply other than West Virginia can be found by USE to satisfy such requirements, whichever shall first occur.

V

[*Certification*]

West Virginia shall furnish to plaintiff within thirty (30) days following the end of each of its fiscal years during which it continues to own any of the capital stock of USE, a certified statement that it has not sold any paper to USE during such fiscal year or setting forth the quantity of paper sold during such fiscal year, the dates of such sales and the justification therefor. Such statements 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.

VI

[*Divestiture Motion*]

On motion by plaintiff at any time after five years, if at such time West Virginia owns, directly or indirectly, any of the out-standing capital stock of USE, the Court, after hearing on notice, may order divestiture of such stock, provided that should such order issue, divestiture shall be effective two years from the date of such order.

VII

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court for the purpose of enabling either party to this Final Judgment to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions hereof (excepting, however, that plaintiff may not move pursuant to Paragraph VI hereof prior to the expiration of five years from the date hereof), for the enforcement of compliance herewith and for the punishment of violations hereof.