P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. Comments should refer to *In re Asarco LLC*, Case No. 05–21207 (Bankr. S.D. Tex.), and DJ Ref. No. 90–11–3–08633.

The proposed Settlement Agreement may be examined at: (1) The Office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Christi, TX 78476–2001; (2) the Region 6 Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202; and (3) the Region 7 Office of the United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, KS 66101. During the comment period, the proposed Settlement Agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decree.html.* A copy of the proposed Settlement Agreement may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to the referenced case and D.J. Reference No. 90–11–3–08633, and enclose a check in the amount of $4.25 for the Settlement Agreement (21 pages at 25 cents per page reproduction costs), made payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–5581 Filed 11–7–07; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Abitibi-Consolidated, Inc. and Bowater Incorporated; Proposed Final Judgment and Competitive Impact Statement*

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Asset Preservation Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Abitibi-Consolidated, Inc. and Bowater Incorporated,* Civ. Action No. 1:07CV01912. On October 23, 2007, the United States filed a Complaint alleging that the proposed merger between Abitibi-Consolidated Inc. (''Abitibi'') and Bowater Incorporated would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the acquisition would substantially reduce competition for the production, distribution, and sale of newsprint in the United States. Specifically, the Complaint alleges that the merger would enhance the merged firm's ability and incentive to reduce their combined newsprint output and anticompetitively raise newsprint prices in the United States. The proposed Final Judgment, also filed on October 23, 2007, requires the parties to divest Abitibi's Snowflake, Arizona newsprint mill. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Asset Preservation Stipulation and Order, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 215, Washington, DC 20530 (202–514–2481), on the Internet at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee.

Public comment is invited within sixty (60) days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joseph Miller, Assistant Chief, Litigation I Section, Antitrust Division, Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (202–307–0001).

J. Robert Kramer II,

Director of Operations, Antitrust Division.

The United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, Plaintiff, v. Abitibi-Consolidated Inc., 1155 Metcalfe Street, Suite 800, Montréal, QC H3B 5H2, Canada, and Bowater Incorporated, 55 E. Camperdown Way, Greenville, SC 29601, Defendants; Case No.:_____.

Case: 1:07-cv-01912, Assigned To: Collyer, Rosemary M., Assign. Date: 10/23/2007, Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Acting Attorney General of the United States, brings this civil action to enjoin the proposed merger of Defendants Abitibi-Consolidated Inc. (''Abitibi'') and Bowater Incorporated (''Bowater''). The United States alleges as follows:

I. Nature of the Action

1. On January 29, 2007, Abitibi and Bowater announced plans to merge into a new company to be called AbitibiBowater Inc. in a transaction valued at $1.6 billion.

2. Abitibi and Bowater are the two largest newsprint producers in North America. The combination of these two firms will create a newsprint producer three times larger than the next largest North American newsprint producer. After the merger, the combined firm will have the incentive and ability to withdraw capacity and raise newsprint prices in the North American newsprint market.

3. Unless the proposed transaction is enjoined, Defendants' merger will substantially lessen competition in the production and sale of newsprint, 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.

5. Both Defendants produce and sell newsprint in the flow of interstate commerce. Defendants' production and sale of newsprint substantially affect interstate commerce. 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.

6. Defendants have consented to venue and personal jurisdiction in this judicial district.

III. Defendants to the Proposed Transaction

7. Abitibi, the largest newsprint supplier in North America, is a Canadian corporation with its principal place of business in Montréal, Quebec, Canada. Abitibi produces and sells newsprint to customers around the world. Abitibi owns and operates, either solely or with other firms, eleven paper mills in the United States and Canada that currently produce newsprint, as well as one mill in the United Kingdom. In 2006, Abitibi's total sales were approximately $4.85 billion, including

approximately $1.7 billion in aggregate North American newsprint sales.

8. Bowater, the second-largest newsprint supplier in North America, is incorporated in Delaware with its principal place of business in Greenville, South Carolina. Bowater owns and operates, either solely or with other firms, eight paper mills in the United States and Canada that currently produce newsprint, as well as one mill in South Korea. In 2006, Bowater's total sales were approximately $3.53 billion, including approximately $1.1 billion in aggregate North American newsprint sales.

IV. Trade and Commerce

A. The Relevant Market

1. Product Market: Newsprint

9. Newsprint is the lowest grade of uncoated groundwood paper (i.e., paper manufactured from mechanically processed pulp). In 2006, approximately 9.745 million metric tonnes of newsprint were sold in North America. Newspaper publishers purchase more than 80 percent of the available newsprint supply to print newspapers. Some newsprint also is used in the production of direct mail and newspaper inserts.

10. Newspaper publishers have no close substitutes for newsprint to use for printing newspapers. Newsprint is generally the least expensive paper grade. In addition, publishers' newspaper presses are optimized for newsprint and cannot be modified to use other paper grades without incurring significant costs.

11. Newsprint used for other purposes constitutes only a small share of total sales. While a small but significant increase in the price of newsprint may cause some customers for these other uses to switch to other grades of groundwood paper or otherwise reduce their consumption of newsprint, those losses would not be sufficient to make such a price increase unprofitable.

12. For these reasons, demand for newsprint is highly inelastic with respect to changes in price. Accordingly, the production and sale of newsprint is a distinct line of commerce and a relevant product market within the meaning of the Clayton Act.

2. Geographic Market: North America

13. The relevant geographic market for the sale of newsprint is no smaller than the United States and Canada (''North America''). Newsprint can be transported within the United States and Canada at a sufficiently low cost and in such a timely and reliable manner that an attempt to increase price anticompetitively in any smaller region of the United States or North America would prove unprofitable. In the event of such an attempted price increase, customers could readily and economically shift their purchases to newsprint producers throughout North America.

14. The relevant geographic market is no broader than North America. Foreign imports account for approximately two percent of North American newsprint consumption. Transportation costs of importing newsprint are relatively high, and customers are concerned about the reliability of foreign newsprint supply. Consequently, a small but significant increase in the price of newsprint will not likely cause customers to purchase sufficient volumes of additional newsprint from outside of North America to make such a price increase unprofitable.

15. Accordingly, North America is a relevant geographic market within the meaning of the Clayton Act.

B. Anticompetitive Effects

16. The proposed transaction likely will substantially reduce competition in the North American newsprint market. Abitibi and Bowater are the two largest producers of newsprint in North America and compete directly against one another to produce and sell newsprint. Abitibi and Bowater currently own approximately 25 percent and 16 percent of capacity, respectively, which will result in a post-merger share of over 40 percent.

17. Demand for newsprint in the North American market has declined over the last several years at a rate of approximately 5 to 10 percent per year because of a significant decline in demand for newspapers. As a result, North American newsprint producers have closed, idled, or converted some of their newsprint capacity. This decline in the demand for newsprint is projected to continue, and the resulting excess newsprint capacity will likely lead Defendants and their competitors to close, idle, or convert more newsprint mills.

18. But for the merger, following the anticipated demand-based reductions in capacity, neither Abitibi nor Bowater acting alone would be of sufficient size to profitably increase the price of newsprint by reducing its own output through strategically closing, idling, or converting its capacity.

19. The proposed transaction would combine Defendants' large share of newsprint capacity, thereby expanding the quantity of newsprint sales over which the merged firm would benefit from a price increase. This would provide the merged firm with an incentive to close capacity sooner than it otherwise would to raise prices and profit from the higher margins on its remaining capacity.

C. Neither Supply Responses Nor Entry Will Defeat an Exercise of Market Power

20. Neither the combined firm's North American competitors, nor producers from outside of the North American market, can, individually or collectively, increase their newsprint sales to North American customers to make a price increase by the merged firm unprofitable. Additionally, entry by a new competitor would not be timely, likely, or sufficient to defeat an exercise of market power by the merged firm. The merged firm will therefore have both the incentive and the ability to impose an anticompetitive price increase.

21. While some North American newsprint competitors currently have some limited excess capacity, that capacity will be reduced by the closure or conversion of unprofitable newsprint mills or machines in response to falling demand for newsprint. Once this newsprint capacity exits the market, the merged firm then will be able profitably to exercise market power.

22. North American newsprint competitors would not defeat an anticompetitive price increase by restarting their closed or idled newsprint capacity in response to such a price increase. The increased revenue from restarting a machine or mill would not outweigh the start-up costs, particularly in a declining market.

23. Producers currently manufacturing other coated and uncoated grades of paper are not likely to switch to producing newsprint in response to a price increase. Declining demand for newsprint has caused several producers to invest substantial capital to convert machines that had previously been producing newsprint to machines that produce grades of paper that return higher margins. These producers would not find it profitable to switch back to newsprint to defeat an exercise of market power by the merged firm.

24. North American newsprint producers currently export some of their newsprint. Some of these newsprint exports likely would be directed back to the North American market in response to a price increase. However, this repatriation of newsprint will be insufficient, even in combination with other competitive responses, to discipline an exercise of market power by the combined firm. Abitibi and Bowater collectively produce over 65

percent of the newsprint exported from North America and would have no incentive to repatriate such exports. In addition, most of the remaining exports by North American producers are sold pursuant to long-term sales arrangements and relationships and therefore are unlikely to be repatriated in response to a price increase in North America.

25. Successful entry into the manufacturing and distribution of newsprint is difficult, time consuming, and costly. New entry requires investing hundreds of millions of dollars in equipment and facilities, extensive environmental permitting, and the establishment of a reliable distribution system and work force. Particularly given that demand for newsprint is declining in North America, a new entrant would not find it profitable to build a new newsprint mill in response to a price increase, and could not do so within two years.

26. Accordingly, neither entry nor industry supply responses to a price increase for newsprint in North America will deter the likely exercise of market power by the combined firm.

V. Violation Alleged

27. The likely effect of the proposed merger of Abitibi and Bowater may be substantially to lessen competition in interstate trade and commerce in violation of section 7 of the Clayton Act, 15 U.S.C. section 18.

28. Unless restrained, the proposed transaction likely will have the following effects, among others:

(a) Competition likely will be lessened substantially in the production and sale of newsprint in North America;

(b) actual and potential competition between Abitibi and Bowater in the production and sale of newsprint in North America will be eliminated; and

(c) prices charged for newsprint in North America likely will increase.

VI. Requested Relief

31. The United States requests that:

(a) The proposed transaction be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) Defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed transaction or from entering into or carrying out any contract, agreement, understanding, or plan, the effect of which would be to combine the businesses or assets of Defendants;

(c) Plaintiff be awarded its costs for this action; and

(d) Plaintiff receive such other and further relief as the Court may deem just and proper.

Respectfully submitted.

Deborah A. Garza (DC Bar No. 395259),
Acting Assistant Attorney General, Antitrust Division.

James J. O'Connell (DC Bar No. 464109),
Acting Deputy Assistant Attorney General, Antitrust Division.

J. Robert Kramer II,
Director of Operations, Antitrust Division.

Joseph Miller (DC Bar No. 439965),
Assistant Chief, Litigation I Section, Antitrust Division.

Karl D. Knutsen, Ryan Danks, Mitchell Glende, Seth A. Grossman, N. Christopher Hardee (DC Bar No. 458168), David Kelly, Ihan Kim, Rebecca A. Perlmutter,
Attorneys, U.S Department of Justice, Antitrust Division, Litigation I Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 514–0976.

Dated: October 23, 2007.

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Abitibi-Consolidated Inc.* and *Bowater Incorporated, Defendants;* Case No.:_____, Judge:_____, Deck Type: Antitrust, Date Stamp:_____.

Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on October 23, 2007, and Plaintiff and Defendants, Abitibi-Consolidated Inc. (''Abitibi'') and Bowater Incorporated (''Bowater''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under section 7 of the Clayton Act, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means the entity or entities to whom Defendants divest some or all of the Divestiture Assets.

B. ''Abitibi'' means Defendant Abitibi-Consolidated Inc., a Canadian corporation with its headquarters in Montréal, Quebec, Canada, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Bowater'' means Defendant Bowater Incorporated, a Delaware corporation with its headquarters in Greenville, South Carolina, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Newsprint'' means the lowest grade of uncoated groundwood paper (i.e., paper manufactured from mechanically processed pulp), regardless of its basis weight. It is primarily used in the production of newspaper, but also used in some advertising inserts, comic books, trade publications, and direct mail, among other end-use products.

E. ''Divestiture Assets'' means:

(1) Abitibi's Snowflake, Arizona newsprint mill, located at Spur 277 North, Snowflake, Arizona 85937;

(2) All tangible assets used in the mill listed in section II(E)(1), including all assets relating to research and development activities, manufacturing equipment, tooling and fixed assets, real property (leased or owned), personal property, inventory, newsprint reserves, office furniture, materials, supplies, docking facilities, on- or off-site warehouses or storage facilities relating to the mill, Apache Railway Company assets; all licenses, permits and authorizations issued by any governmental organization relating to the mill; all contracts, agreements, leases (including renewal rights), commitments, certifications, and understandings relating to the mill, including supply agreements; all customer lists, contracts, accounts, and

credit records relating to the mill; all interests in, and contracts relating to, power generation; all repair and performance records and all other records relating to the mill; and

(3) all tangible assets used in the development, production, servicing, distribution, and sales of products manufactured by the mill listed in section II(E)(1), including but not limited to all contractual rights, patents, licenses and sublicenses, intellectual property, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided to the employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the mill, including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

III. Applicability

A. This Final Judgment applies to Defendants, as defined above, and all other persons in active concert or participation with Defendants who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with section IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets that include the Divestiture Assets, they shall require, as a condition of the sale or other disposition, that the purchaser agrees to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within 120 calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by the Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Unless the United States otherwise consents in writing, Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that customarily are provided in a due diligence process except such information or documents subject to the attorney-client or work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Unless the United States otherwise consents in writing, Defendants shall provide the Acquirer and the United States information relating to personnel involved in production, operations, and sales at the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any employee of the Divestiture Assets whose primary responsibility is production, operations, or sales at the Divestiture.

D. Unless the United States otherwise consents in writing, Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, and other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer of the Divestiture Assets that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. At the option of the Acquirer, Defendants shall enter into a fiber supply contract for old newsprint (ONP) sufficient to meet 25% of the Acquirer's needs for a period of up to three (3) years from the date of the divestiture. The terms and conditions of any such contract must be reasonably related to market conditions for old newsprint and the purchase price shall be set at the prevailing market price.

H. At the option of the purchaser and upon approval by the United States, in its sole discretion, Defendants may enter into a transition services agreement based upon commercial terms and conditions. Such an agreement may not exceed twelve (12) months from the date of the Divestiture. Transition services may include information technology support, information technology licensing, computer operations and data processing support, logistics support, and such other services as are reasonably necessary to operate the Divestiture Assets.

1. For the period from the date of the filing of the Complaint in this matter until one (1) year after the sale of the Divestiture Assets, Defendants shall make available and deliver to the Divestiture Assets within seven (7) business days the spare ceramic center roll from Abitibi's Thorold, Ontario newsprint mill if: (a) the Acquirer or the person identified in Section V(K), whomever is in control of the Divestiture Assets at the time, determines that the Divestiture Assets' PM 3 machine requires a new ceramic center roll and (b) the Divestiture Assets' permanent spare ceramic center roll, which has already been ordered, has not been delivered. If Defendants become obligated to deliver the spare ceramic center roll, then they may identify a suitable alternative ceramic center roll and request permission from the United States, in its sole discretion, to deliver the alternative center roll to the Divestiture Assets in place of the Thorold center roll. Such permission must be in writing. In any event, Defendants must deliver the Thorold center roll or an approved substitute to the Divestiture Assets within seven (7) business days of being notified of the need for the Thorold roll. Defendants will no longer be obligated to provide a ceramic center roll to the Divestiture Assets if either of the ceramic center rolls in Thorold's PM 6 or PM 7 machines break before the Divestiture Assets require a new ceramic center roll.

J. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other

permits relating to the operation of the Divestiture Assets.

K. Unless the United States otherwise consents in writing, any divestiture pursuant to section IV, or by trustee appointed pursuant to section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as a viable, ongoing business engaged in producing, distributing, and selling newsprint, that the Divestiture Assets will remain viable, and that the divestiture of such asset will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to section IV or section V of this Final Judgment,

(1) Shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the production, distribution, and sale of newsprint; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between Acquirer and Defendants gives Defendants the ability to unreasonably raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively in the production, distribution, and sale of newsprint.

V. Appointment of Trustee To Effect Divestitures

A. If Defendants have not divested the Divestiture Assets within the time period specified in section IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of section IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to paragraph V(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objection by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under section VI.

D. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the Divestiture Assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice, or within

twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, or the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendant's limited right to object to the sale under section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under section IV or section V shall not be consummated. Upon objection by Defendants under paragraph V(C), a divestiture proposed under section V shall not be consummated unless approved by the Court.

VII. Asset Preservation

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants shall take not action that would jeopardize the divestiture ordered by this Court.

VIII Affidavits

A. Within twenty (20) calendar days of filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until divestitures have been completed under section VI or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with section VI or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during the period. Each such affidavit shall also include a description to the efforts Defendants have take to solicit buyers for the Divestiture Assets, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B.. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps they have implemented on an ongoing basis to comply with section VII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

IX. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the United States's option, to require Defendants to provide electronic or hard copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

X. Notification of Future Transactions

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the ''HSR Act''), Defendants shall not, without notifying the United States, directly or indirectly acquire any assets or any interest, including any financial, security, loan, equity, or management interest, in any of Defendants' jointly-owned newsprint mills or machines if the value of such acquisition exceeds $2,000,000. Defendants are exempted from this notice provision if either (1) from the date of the filing of the Complaint in this matter, the acquisition accounts for less than a 5% change in any interest and does not change control in any of Defendants' jointly-owned mills or machines, or (2) the acquisition is the direct result of an asset swap between one of Defendants' jointly-owned mills or machines to another of Defendants' mills or machines of the same character, and (3) such transaction is not otherwise subject to the requirements of the HSR Act. This notification requirement shall run for a period of ten (10) years from the entry of this Final Judgment.

Provided, however, that the following transactions shall be exempt from the notice requirement: (1) Defendants further investing in a pre-existing jointly-owned mill or machine on a pro-rata basis with Defendants' partner(s); and (2) loans (including guarantees and security interests on loans) for the following purposes, provided that they do not enable any distribution from the joint venture to Defendants or Defendants' joint venture partner(s) that

would not have otherwise occurred: (i) Capital expenditures relating to pre-existing jointly-owned mills or machines, (ii) working capital transactions of the same character that Defendants have engaged in over the past ten (10) years; (iii) debt repayment or refinancing which does not impact equity share or the relative effective return between Defendants and their partner(s); and (iv) mergers or acquisitions other than those relating to newsprint mills or machines.

B. Such notification shall be provided to the United States in the same format as, and per the instructions relating to, the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about newsprint, and the required filing fee under the HSR Act shall be waived. Notification shall be provided at least thirty (30) days prior to acquiring any such assets or interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. This section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this section shall be resolved in favor of filing notice.

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the court, entry of this Final Judgment is in the public interest.

Date:_____

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge.

The United States District Court for the District of Columbia

United States of America, Plaintiff, v. Abitibi-Consolidated Inc. and Bowater Incorporated, Defendants; Case No.:_____.

Case: 1:07–cv–01912, Assigned To: Collyer, Rosemary M., Assign Date: 10/23/2007, Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 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.

I. Nature and Purpose of the Proceeding

Defendants Abitibi-Consolidated Inc. (''Abitibi'') and Bowater Incorporated (''Bowater'') entered into a merger agreement, dated January 29, 2007, pursuant to which Defendants would merge to create a new company, AbitibiBowater Inc. The United States filed a civil antitrust complaint on October 23, 2007, seeking to enjoin the proposed merger. The Complaint alleges that the likely effect of the merger would be to lessen competition substantially in the production and distribution of newsprint in North America in violation of section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in higher newsprint prices in the United States. At the same time the Complaint was filed, the United States also filed an Asset Preservation Stipulation and Order (''Stipulation'') and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the merger.

Under the proposed Final Judgment, which is explained more fully in section III, Defendants are required to divest Abitibi's Snowflake, Arizona, newsprint mill, which has approximately 375,000 metric tonnes of newsprint manufacturing capacity. Until the mill is sold and operated under the new ownership, Defendants must take certain steps to ensure that the mill and its accompanying assets, as defined in the proposed Final Judgment (hereafter, the ''Divestiture Assets''), are operated as ongoing, economically viable, and competitive assets.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. Defendants and the Proposed Transaction

Abitibi and Bowater both produce, distribute, and sell newsprint and other groundwood paper throughout the world. Defendants also produce other pulp and wood-related products, operate sawmills, and own or lease timberlands throughout the United States and Canada.

Abitibi is a Canadian company with its headquarters in Montréal, Quebec, Canada. In 2006, Abitibi reported total sales of approximately $4.85 billion. Its North American newsprint sales were approximately $1.7 billion. Abitibi is the largest newsprint producer in North America. It owns approximately 25 percent of North American capacity.

Bowater is incorporated in Delaware, and has its headquarters in Greenville, South Carolina. In 2006, Bowater reported total sales of approximately $3.53 billion. Its North American newsprint sales were approximately $1.1 billion. Bowater is the second largest newsprint producer in North America. It owns approximately 16 percent of North American capacity.

Defendants publicly announced their proposed transaction on January 29, 2007. The new company, AbitibiBowater Inc., will be headquartered in Montréal, Quebec, Canada, but it will be incorporated in Delaware and listed on both NYSE and Toronto stock exchanges.

B. The Competitive Effects of the Transaction on the Newsprint Market

1. Newsprint is the Relevant Product Market

The Complaint alleges that the production, distribution, and sale of newsprint is a relevant product market within the meaning of section 7 of the

Clayton Act. Newspapers are printed on newsprint. Newsprint is an uncoated groundwood paper made by a mechanical pulping process without the use of chemical additives, such as bleach. Newsprint can also be made, partly or entirely, from recovered fiber, such as old newsprint and old magazines. Because of the production process and lack of additives, newsprint is the lowest quality and generally least expensive grade of groundwood paper.[2]

Newspaper publishers, who buy more than 80 percent of all newsprint sold in the United States, have no close substitutes to use for printing newspapers because of newsprint's price and physical characteristics, such as its strength and opacity. In addition, because publishers' newsprint presses are optimized to use newsprint, switching to another grade of paper would be costly.

Newsprint used for other purposes, primarily the production of direct mail and newspaper inserts, constitutes only a small share of total newsprint sales. If newsprint prices were to increase by a small but significant amount, some customers for these other uses might switch to other grades of groundwood paper or otherwise reduce their consumption of newsprint. Those losses, however, would not be sufficient to make such a price increase unprofitable.[3] For these reasons, demand for newsprint is highly inelastic to changes in price. Accordingly, the production, distribution, and sale of newsprint is a line of commerce and a relevant product market.

2. Relevant Geographic Market: North America

The Complaint alleges that the relevant geographic market is no smaller than the United States and Canada (''North America'').[4] Newsprint can be transported within the United States and Canada at a sufficiently low cost and in such a timely and reliable manner that an attempt to increase price in any smaller region of the United States or North America would prove unprofitable. In the event of such an attempted price increase, customers could readily and economically shift their purchases to newsprint producers throughout North America. In addition, national newspaper buying groups, which account for over 70 percent of all newsprint purchases throughout the United States, create a North American pricing structure. Price differences across regions within the United States have been small and short-lived, as supply has shifted rapidly to restore parity marketwide.

The Complaint also alleges that the relevant geographic market is no broader than North America. Newsprint mills located in Canada and the United States account for approximately 98 percent of North American newsprint consumption. Transportation costs of importing newsprint are high, and customers are concerned about the reliability of foreign newsprint supply. Consequently, a small but significant increase in the price of newsprint will not likely cause customers to purchase sufficient volumes of additional newsprint from outside North America to make such a price increase unprofitable. Accordingly, North America is a relevant geographic market.

3. Anticompetitive Effects of the Merger

The Complaint alleges that the proposed merger likely will substantially reduce competition to supply newsprint in the United States. Abitibi and Bowater are the two largest North American newsprint producers, and they directly compete against one another to produce and sell newsprint. Abitibi and Bowater currently own approximately 25 percent and 16 percent of North American newsprint capacity, respectively, which will result in a post-merger share of over 40 percent.[5]

North American newsprint demand has declined over the last several years at a rate of approximately 5 to 10 percent per year because of a significant decline in demand for newspapers. As a result, North American newsprint producers have closed or idled capacity and converted some of their newsprint machines to produce other grades of paper. This decline in demand for newsprint is projected to continue, and the resulting excess newsprint capacity likely will lead Defendants and their competitors to close, idle, or convert more newsprint mills.

But for the merger, neither Defendant acting alone would be of sufficient size to profitably increase the price of newsprint by reducing its own output through strategically closing, idling, or converting its capacity.

The combination enhances Defendants' incentives to exercise market power because the merged firm will control a greater base of capacity over which the merged firm would benefit from an increase in newsprint prices after strategically closing, idling, or converting some of its capacity. Without Snowflake's capacity, the merged firm would not be of sufficient size to be able to recoup the losses from such strategic closures through increases in prices on its remaining newsprint production. The divestiture of Snowflake would adequately address the likelihood that the proposed merger substantially would reduce competition for newsprint in the United States.

4. Neither Supply Responses Nor Entry Will Defeat the Exercise of Market Power

Neither the combined firm's North American producers, nor competitors from outside of the North American market, can, individually or collectively, increase their newsprint sales to North American customers to make a price increase by the merged firm unprofitable. Entry by a new competitor would not be timely, likely, or sufficient to defeat an exercise of market power by the merged firm. The merged firm will therefore have both the incentive and the ability to impose an anticompetitive price increase.

While North American newsprint competitors currently have some limited excess capacity, that capacity will be reduced by the closure or conversion of unprofitable newsprint mills or machines in response to falling demand for newsprint. Once this capacity exits the market, the merged firm then will be able profitably to exercise market power.

North American newsprint competitors would not defeat an anticompetitive price increase by restarting their closed or idled capacity. The increased revenue from restarting a closed mill or machine would not

[2] There are two primary newsprint basis weights, 30 pound (48.8 gsm) and 27.7 pound (45 gsm), the lighter of which has a higher yield. The differences between the two weights are not material to product market definition because prices for each basis weight track each other, newspaper publishers can use either weight in their presses, and newsprint manufacturers can produce either weight on the same newsprint machines without incurring switching costs.

[3] Defendants also produce higher-grade groundwood paper and would be able to recapture some of the revenue lost from newsprint in these other groundwood grades.

[4] The United States did not fully investigate whether Mexico should be included in the North American market because the inclusion or exclusion of Mexico does not change the analysis. Mexico is not a significant producer of newsprint, it does not export significant amounts of newsprint to the United States, and the industry does not consider Mexico to be part of the North American market.

[5] The 40 percent market share represents the merged firm's newsprint capacity over which it would be able to profit from an anticompetitive price increase. This share does not include approximately nine percent of North American newsprint capacity attributable to Abitibi and Bowater through joint-venture relationships and a sales management contract. This volume is not relevant to the competitive effects analysis because, under the structure of these arrangements, Defendants would not be able to benefit from a price increase on this capacity.

outweigh the start-up costs, particularly in a declining market.

North American producers with the capacity to make higher-grade groundwood paper are not likely to switch production from those grades into newsprint production in response to a price increase. Declining demand for newsprint has caused several producers to invest substantial capital to convert newsprint machines to produce more profitable value-added grades of paper. These producers would not find it profitable to switch from producing higher grades back to newsprint to defeat an exercise of market power by the merged firm.

Some North American producers export a portion of their newsprint capacity. Some of these newsprint exports likely would be directed back to the North American market in response to a price increase. However, this repatriation of newsprint will be insufficient, even in combination with other competitive responses, to discipline an exercise of market power by the combined firm. Abitibi and Bowater collectively produce 65 percent of North American newsprint exports, and would have no incentive to repatriate their exports to defeat a price increase. In addition, most of the remaining exports by North American producers are sold pursuant to long-term sales arrangements and relationships and, therefore, are unlikely to be repatriated in response to a price increase.

Greenfield entry is highly unlikely. A new North American newsprint mill or machine would cost in excess of a hundred million dollars. Particularly given that demand for newsprint is declining in North America, a new entrant would not find it profitable to build a new newsprint mill in response to a price increase, and could not do so within two years.

Accordingly, expansion, repatriation, and entry would not be timely, likely, or sufficient to deter an anticompetitive price increase by the merged firm.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment provides for the divestiture of Abitibi's Snowflake, Arizona, newsprint mill to a buyer acceptable to the United States, in its sole discretion, to preserve competition for newsprint in the United States. Snowflake is located in northeastern Arizona. In 2006, Snowflake produced over 330,000 metric tonnes of newsprint on two machines. Snowflake is one of the most efficient and profitable newsprint mills in North America. Plans to improve the Snowflake mill's efficiency in coming years with investments in energy and machinery are already underway. Snowflake's size and cost position ensure that its divestiture to a competitor of the merged firm will preserve competition in the North American newsprint market.

As part of its investigation, the United States considered market shares, costs of production, the extent of industry excess capacity, and future reductions in newsprint demand in analyzing whether the merger would cause an anticompetitive increase in newsprint prices. As discussed in Section II.B.3, if Defendants were allowed to merge without a divestiture, the merged firm would be able to close its capacity strategically, allowing the merged firm to raise newsprint prices and recoup its lost profits on its combined output. Divesting Snowflake, however, will reduce the capacity over which the merged firm could profit to a level at which it would not have the ability to close capacity strategically.

Snowflake uses 100 percent recycled fiber and Abitibi currently supplies the snowflake mill with approximately 25 to 30 percent of its fiber requirements. At the option of the Acquirer, the proposed Final Judgment requires Defendants to enter into a supply contract for up to 25 percent of Snowflake's old newsprint requirements at the prevailing market price for up to three years from the date of the divestiture. Similarly, at the option of the Acquirer, and upon the approval of the United States, the proposed Final Judgment also requires Defendants to provide certain transition services for up to twelve (12) months as part of the divestiture.

In merger cases where the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. Section IV of the proposed Final Judgment requires Defendants to complete the divestiture within 120 days after the filing of the Complaint in this matter. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business than can compete effectively in the relevant market. The United States, in its sole discretion, may grant one or more extensions of time, not to exceed sixty (60) calendar days in total. Defendants must use their best efforts to accomplish the divestiture as expeditiously as possible.

If Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, a trustee shall be appointed by the Court upon the application of the United States. If a trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. If the divestiture has not been accomplished at the end of the six months, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Finally, the proposed Final Judgment sets forth the process for and the circumstances when Defendants must notify the United States of the acquisition of any mill or machine or any interest in a mill or machine, if the value of such exceeds $2,000,000, that is currently jointly-owned by either Abitibi or Bowater with any third party. This notification requirement applies to certain transactions not otherwise subject to the reporting and waiting period requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and runs for ten years from entry of the Final Judgment. The provision is intended to ensure that any such acquisition does not undermine the benefits that the divestiture of the Snowflake mill will bring to the market.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available For Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Joseph Miller, Assistant Chief, Litigation I Section, 1401 H St. NW., Suite 4000, Antitrust Division, United States Department of Justice, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed final Judgment, a full trial on the merits against Defendants. The United States could have continued the investigation and sought preliminary and permanent injunctions against Abitibi and Bowater's proposed merger. the United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition in the market identified by the United States and that such a remedy would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, uncertainty, and expense of a trial.

In developing this relief, the United States considered a number of divestiture alternatives and determined that the divestiture of the Snowflake mill, under the circumstances, was the best solution given the size and efficiency of the Snowflake mill. The analysis conducted by the United States indicates that the Snowflake mill is among the largest and most profitable mills in the United States. The location of the mill to be divested is not competitively significant because the evidence does not support the conclusion that the relevant geographic market is narrower than North America.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 11 (D.D.C. 2007)(concluding that the 2004 amendments ''effected minimal changes'' to scope of review under Tunney Act, leaving review ''sharply proscribed by precedent and the nature of Tunney Act proceedings'').[6]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995). With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interest affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[7] In making its public interest determination, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations because this may only reflect underlying weakness in the government's case or concessions made during negotiation.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (''noting the need for courts to be deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effort of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Court approval of a consent decree requires a standard more flexible and less strict than that appropriate to court adoption of a litigated decree following

[6] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e)(2004), *with* 15 U.S.C. 16(e)(1)(2006).

[7] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ''within the reaches of public interest.'' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982)(citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Commc'ns*, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what the Congress that enacted the Tunney Act in 1974 intended, as Senator Tunney then explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[8]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: October 23, 2007.

Respectfully submitted,

Karl D. Knutsen, Ryan Danks, Mitchell Glende, Seth A. Grossman, N. Christopher Hardee (DC Bar No. 458168), David Kelly, Ihan Kim, Rebecca A. Perlmutter,

Attorneys, U.S. Department of Justice, Antitrust Division, Litigation I Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 514–0976.

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[8] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.'').

DEPARTMENT OF LABOR

Bureau of International Labor Affairs, Request for Information on Efforts by Certain Countries To Eliminate the Worst Forms of Child Labor

AGENCY: The Bureau of International Labor Affairs, United States Department of Labor.

ACTION: Request for information on efforts by certain countries to eliminate the worst forms of child labor.

SUMMARY: This notice is a request for information for use by the Department of Labor in preparation of an annual report on certain trade beneficiary countries' implementation of international commitments to eliminate the worst forms of child labor. This will be the seventh such report by the Department of Labor under the Trade and Development Act of 2000 (TDA).

DATES: Submitters of information are requested to provide two (2) copies of their written submission to the Office of Child Labor, Forced Labor and Human Trafficking at the address below by 5 p.m., December 7, 2007.

ADDRESSES: Written submissions should be addressed to Tina McCarter at the Office of Child Labor, Forced Labor and Human Trafficking, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5317, Washington, DC 20210 or may be sent via e-mail to *mccarter.tina@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Tina McCarter or Charita Castro, Bureau of International Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, at (202) 693–4843, fax: (202) 693–4830, or via e-mail to *mccarter-tina@dol.gov* or *castro.charita@dol.gov.* The Department of Labor's international child labor reports can be found on the Internet at *http://www.dol.gov/ILAB/media/reports/iclp/main.htm* or can be obtained from the Office of Child Labor, Forced Labor and Human Trafficking.

SUPPLEMENTARY INFORMATION: The Trade and Development Act of 2000 [Pub. L. 106–200] established a new eligibility criterion for receipt of trade benefits under the Generalized System of Preferences (GSP), Caribbean Basin Trade and Partnership Act (CBTPA), and Africa Growth and Opportunity Act (AGOA). The TDA amends the GSP reporting requirements of the Trade Act of 1974 (Section 504) [19 U.S.C. 2464] to require that the President's annual report on the status of internationally recognized worker rights include ''findings by the Secretary of Labor with respect to the beneficiary country's implementation of its international commitments to eliminate the worst forms of child labor.'' Title II of the TDA and the TDA Conference Report [Joint Explanatory Statement of the Committee of Conference, 106th Cong.2d.sess. (2000)] indicate that the same criterion applies for the receipt of benefits under CBTPA and AGOA, respectively.

In addition, the Andean Trade Preference Act (ATPA) as amended and expanded by the Andean Trade Promotion and Drug Eradication Act (ATPDEA) (Pub. L. 107–210, Title XXXI) includes as a criterion for receiving benefits ''[w]hether the country has implemented its commitments to eliminate the worst forms of child labor as defined in section 507(6) of the Trade Act of 1974.''

Scope of Report

Countries and non-independent countries and territories presently