



Department of Justice

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WWW.JUSTICE.GOV TTY (866) 544-5309

AT
(202) 514-2007

JUSTICE DEPARTMENT REACHES \$5 MILLION SETTLEMENT WITH FLAKEBOARD, ARAUCO, INVERSIONES ANGELINI AND SIERRAPINE FOR ILLEGAL PREMERGER COORDINATION

Department Obtains Civil Penalties of \$3.8 Million and Disgorgement of \$1.15 Million

WASHINGTON —The department today announced a settlement with Flakeboard America Limited; its parent companies, Celulosa Arauco y Constitución S.A. and Inversiones Angelini y Compañía Limitada; and SierraPine. The settlement requires the companies to pay a combined \$3.8 million in civil penalties for violating the Hart–Scott–Rodino (HSR) Act of 1976. In addition, for violating Section 1 of the Sherman Act, Flakeboard must disgorge \$1.15 million in illegally obtained profits and both Flakeboard and SierraPine must establish antitrust compliance programs and agree to certain restrictions.

The settlement resolves the department's allegations that Flakeboard, Arauco and SierraPine engaged in illegal premerger coordination while Flakeboard's proposed acquisition of three SierraPine mills was under antitrust review by the Department of Justice.

Flakeboard and SierraPine abandoned the proposed acquisition on Sept. 30, 2014, after the department expressed concerns about the transaction's likely anticompetitive effects in the production of medium-density fiberboard (MDF). MDF is a manufactured wood product widely used in furniture, kitchen cabinets, and decorative mouldings.

The department today filed, in U.S. District Court for the Northern District of California, a civil antitrust complaint alleging violations of the HSR Act (Section 7A of the Clayton Act) and Section 1 of the Sherman Act. At the same time, the department filed an agreement that, if approved by the court, would resolve the lawsuit.

"Companies proposing to merge must remain separate and independent during the government's investigation," said Bill Baer, Assistant Attorney General of the Department of Justice's Antitrust Division. "These two competitors did not. Instead they closed a plant and allocated customers when they should have been competing vigorously. As a result both companies are paying substantial civil penalties and Flakeboard is being forced to surrender the ill-gotten profit it gained from violating the antitrust laws."

According to the complaint, before the proposed acquisition, SierraPine operated particleboard mills in Springfield, Oregon, and Martell, California, that competed directly with Flakeboard's particleboard mill in Albany, Oregon. Particleboard is an unfinished wood product that is widely used in countertops, shelving, low-end furniture, and other finished products. The Springfield and Martell mills were included in the proposed acquisition along with a third SierraPine mill that produced MDF. The

complaint alleges that after announcing the proposed acquisition on Jan. 14, 2014, and before the expiration of the HSR Act's mandatory premerger waiting period, Flakeboard, Arauco, and SierraPine illegally coordinated to close SierraPine's particleboard mill in Springfield, Oregon, and move the mill's customers to Flakeboard. This unlawful coordination led to the permanent shutdown of the Springfield mill on March 13, 2014, and enabled Flakeboard to secure a significant number of Springfield's customers for its Albany mill. The defendants' conduct constituted an illegal agreement to restrain trade in violation of Section 1 of the Sherman Act, and prematurely transferred operational control, and therefore beneficial ownership, of SierraPine's business to Flakeboard in violation of the HSR Act.

The HSR Act requires companies planning acquisitions or mergers that meet certain thresholds to file premerger notification documents with the department and the Federal Trade Commission. The HSR Act also requires that the merging parties observe a mandatory waiting period before proceeding with the transaction. If the government determines that a transaction violates the antitrust laws, it may seek to block that transaction before the waiting period expires. Each party is subject to a maximum civil penalty of \$16,000 per day for each day they violate the HSR Act.

The complaint alleges that the defendants' HSR Act violation occurred from January 17, 2014, when Flakeboard and SierraPine began coordinating on the closure of the Springfield mill, until the expiration of the waiting period on Aug. 27, 2014. The companies cooperated with the investigation by voluntarily providing the department with evidence of their unlawful premerger conduct, which was a significant factor in the department's decision to reduce the maximum HSR penalty. The \$1.15 million in disgorgement under the Sherman Act represents a reasonable approximation of the ill-gotten profit Flakeboard received as a result of the parties' coordination to close Springfield and move the mill's customers to Flakeboard.

Flakeboard is a Delaware corporation with its U.S. headquarters in Fort Mill, South Carolina. Flakeboard's parent company is Celulosa Arauco y Constitución (Arauco), which is held by Inversiones Angelini y Compañía Limitada, a Chilean corporation headquartered in Santiago, Chile, and the ultimate parent entity named on the HSR filing.

SierraPine is a California limited partnership headquartered in Roseville, California.

As required by the Tunney Act, the proposed settlement, along with the department's competitive impact statement, will be published in the Federal Register. Any person may submit written comments concerning the proposed settlement during a 60-day comment period to Peter Mucchetti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 450 5th Street, N.W., Suite 4100, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the U.S. District Court for the District of Columbia may enter the proposed final judgment upon finding that it is in the public interest.

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