

STATE OF MAINE  
SOMERSET, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.

STATE OF MAINE, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 SCOTT PAPER CO., a foreign )  
 corporation with offices )  
 located in Fairfield, )  
 Somerset County, Maine, )  
 )  
 Defendant )

COMPLAINT FOR VIOLATION  
OF ANTITRUST LAWS

INTRODUCTION

1. The Attorney General brings this action in the public interest to enjoin Defendant from continuing to engage in a combination or agreement in restraint of trade with respect to the purchase of saw logs.

JURISDICTION AND PARTIES

2. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. § 152, 5 M.R.S.A. § 209 and 10 M.R.S.A. § 1104.

3. Plaintiff, State of Maine, is a sovereign state and brings this action by and through the Attorney General pursuant to his enforcement responsibilities under the antitrust laws, including 5 M.R.S.A. § 207 and 10 M.R.S.A. § 1101.

4. Defendant Scott Paper Co. is a foreign corporation with offices located in Fairfield, Somerset County, State of Maine.

NATURE OF TRADE AND COMMERCE

5. The woods industry within the State of Maine supports two major types of production: the manufacture of paper from pulpwood and the manufacture of lumber from saw logs.

6. The market for the purchase of pulpwood is differentiated from the market for the purchase of saw logs by a number of factors, including the following:

a. Pulpwood is generally small diameter wood which is not suitable for the production of lumber;

b. Saw logs, while they can be used in the paper-making process, have more value when processed into lumber;

c. The market for the purchase of pulpwood is limited to a small number of paper mills which require substantial capital investment; and

d. The market for the purchase of saw logs encompasses a large number of sawmills which require a significantly lower amount of capital investment than is required to enter the paper-making industry.

7. Defendant Scott Paper Co. operates major paper mills in Hinkley, Somerset County, Maine (hereinafter referred to as the Somerset Mill), and Westbrook, Cumberland County, Maine.

Scott Paper Co. is also a major landowner in the State of Maine and, specifically, within Somerset County. Scott Paper Co. does not own or operate any sawmills within the State of Maine.

8. For a number of reasons including, but not limited to, the following, Defendant Scott Paper Co. has substantial market power in the purchasing of pulpwood in Somerset and Piscataquis Counties, as well as in other areas of the State of Maine:

- a. The size and location of the Somerset Mill;
- b. The substantial land holdings of Scott Paper Co. in Somerset County and other counties within this State;
- c. The speed and efficiency of the scaling and unloading operations at the Somerset Mill;
- d. The acceptance by the Somerset Mill of tree length logs rather than four foot or eight foot logs; and
- e. The acceptance by the Somerset Mill of smaller diameter and poorer quality wood than is accepted by other competing paper mills.

9. Traditionally, logging contractors (persons who cut and then sell pulpwood and saw logs to paper mills and sawmills) have sold saw logs to sawmills located in Maine or the Province of Quebec either directly or through wood brokers (persons who sell saw logs or pulpwood for contractors for a commission).

10. In the late spring of 1985, Scott Paper Co. initiated a saw log brokerage program through which Scott Paper Co.

purchased saw logs from contractors or other brokers and sold those logs to Maine or Quebec sawmills.

VIOLATION

11. Defendant has purchased or attempted to purchase saw logs from contractors and brokers through various means of coercion including, but not limited to, the following:

a. Conditioning or threatening to condition the purchase of pulpwood from contractors upon the sale by those contractors of saw logs to Scott Paper Co.; and

b. Terminating, reducing or failing to renew or threatening to terminate, reduce or fail to renew pulpwood contracts with contractors when those contractors failed to sell saw logs or a sufficient quantity of saw logs to Scott Paper Co.

12. Defendant's conduct as described above has had the following effects, among others:

a. Contractors and brokers who supply pulpwood to Scott Paper Co. have been coerced into selling saw logs to Scott Paper Co. and have been denied the benefits of a competitive market; and

b. Saw log brokers have been unable to obtain the saw logs sold to Scott Paper Co. as a result of the above described practices and have suffered significant loss of business.

13. Scott Paper Co. has sold a substantial volume of saw logs through its log brokerage program.

14. As a result of Scott Paper Co.'s operation of its saw log brokerage program, certain Maine sawmills have been unable to obtain a sufficient supply of saw logs and have suffered significant loss of business.

15. Defendant's conduct as described in this Complaint constitutes a conspiracy or combination in restraint of trade in violation of 10 M.R.S.A. § 1101 and an unfair method of competition in violation of 5 M.R.S.A. § 207.

REQUEST FOR RELIEF

WHEREFORE, the State of Maine requests this Court to enter the following orders and judgments:

1. An order enjoining Defendant from engaging in any conspiracy or combination in restraint of trade or any unfair methods of competition with respect to the sale of saw logs produced within the State of Maine.

2. An order enjoining Defendant Scott Paper Co. from operating a log brokerage program within the State of Maine for a period of five years.

3. An order enjoining Defendant Scott Paper Co. from operating a saw log brokerage program within the State of Maine after the expiration of five years unless Defendant Scott Paper Co. completely separates the operation and control of the saw log brokerage program from the activities of Scott Paper Co. with respect to the purchase of pulpwood.

4. An order that Defendant pay the Department of the Attorney General the costs of the investigation of this matter and the costs of this suit pursuant to 5 M.R.S.A. § 209.

5. An order for such additional relief as may be just and equitable.

DATED: *November 25, 1987*

Respectfully submitted,

JAMES E. TIERNEY  
Attorney General

JAMES T. KILBRETH  
Deputy Attorney General



STEPHEN H. WESSLER  
Assistant Attorney General  
Chief, Consumer & Antitrust Division



FRANCIS ACKERMAN  
Assistant Attorney General  
State House Station #6  
Augusta, Maine 04333  
207-289-3661

Attorneys for the State of Maine

REC'D & FILED  
NANCY A. DESJARDIN

NOV 25 1987

CLERK OF COURTS  
KENNEBEC COUNTY

STATE OF MAINE  
SOMERSET, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.

STATE OF MAINE, )  
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 Plaintiff )  
 )  
 v. )  
 )  
 SCOTT PAPER COMPANY, a )  
 Pennsylvania corporation )  
 with offices located in )  
 Fiarfield, Somerset County, )  
 Maine, )  
 )  
 Defendant )

CONSENT DECREE

Plaintiff, State of Maine, having filed its Complaint on November 25, 1987, and Plaintiff and Defendant having consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein and for purposes of settlement only and without this Decree constituting any evidence against, or an admission by, any party with respect to such issues; now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered and decreed as follows:

I. DEFINITIONS

A. "Contractor." The term "contractor", as used in this Consent Decree, shall refer to those persons who cut pulpwood and sawlogs from land owned by others and then sell that pulpwood and sawlogs to pulp mills and sawmills.

B. "Brokers." The term "brokers", as used in this Consent Decree, shall refer to persons who purchase sawlogs or pulpwood from contractors and then resell the sawlogs or pulpwood to sawmills or pulp mills.

C. "Sawlog Brokerage Program." The term "sawlog brokerage program", as used in this Consent Decree, shall mean an organized or established program under which Defendant arranges (whether through purchase or otherwise) the transfer of sawlogs from contractors or brokers to saw mills for a consideration.

D. "Northeast Timberlands." The term "Northeast Timberlands", as used in this Consent Decree, shall refer to the administrative unit of Scott Paper Company within the State of Maine which has responsibility for the supply of pulpwood to the S.D. Warren Company pulp mill at Hinckley, Maine.

II. JURISDICTION

This Court has jurisdiction over the subject matter of this action.



III. RELIEF

A. Injunctions

1. Defendant, its officers, servants and employees and agents are hereby enjoined, pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. § 1104, from entering into any arrangement, agreement, combination or conspiracy with any person under which the purchase of pulpwood from any contractor or broker is conditioned or tied by any means to the sale of sawlogs by such contractor or broker to Defendant.

2. Defendant, its officers, servants and employees and agents are hereby enjoined, pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. § 1104, from operating a sawlog brokerage program within this State unless the following conditions have been satisfied:

(a) the purchase of pulpwood by Defendant within this State shall be handled by an individual or individuals (hereinafter referred to as the "pulpwood buyer(s)") who are separate and distinct from the individual or individuals responsible for the purchase of sawlogs for Defendant within this State (hereinafter referred to as the "sawlog buyer(s)");

(b) neither the pulpwood buyer(s) nor the sawlog buyer(s) shall be placed under the supervision and control of the other, but each may be under

the common supervision of a third individual or individuals, if said third individual(s) does not routinely have substantial and direct responsibility for negotiating contracts with contractors or brokers either for the purchase of sawlogs or the purchase of pulpwood;

(c) Except for contracts negotiated pursuant to the proviso in subparagraph (d) below (combined sales), Defendant shall stagger, by a period of at least one month, the dates upon which pulpwood contracts and sawlog contracts with the same contractor or broker shall become effective, if Defendant, by standard practice, generally makes such contracts effective on particular dates; however, nothing in this paragraph shall prohibit Defendant from negotiating contracts with any particular contractor or broker containing an effective date other than those regularly established by Defendant's standard practice;

(d) the pulpwood buyer(s) and the sawlog buyer(s) shall not:

(i) meet together with contractors or brokers for the purpose of negotiating or discussing contracts for the purchase of pulpwood or saw logs;

(ii) travel together to any meeting with contractors or brokers at which pulpwood or sawlog contracts are to be negotiated or discussed,

provided, however, that nothing in this Consent Decree shall prevent Defendant or any of its employees from considering, discussing, negotiating or entering into contracts for the purchase of both sawlogs and pulpwood from any contractor or broker who makes a proposal to Defendant, which is not solicited by Defendant, for the sale or possible sale of both products. Whenever Scott receives such a proposal, it shall make a report to the Assistant Attorney General in charge of the Consumer and Antitrust Division on a form attached hereto as Exhibit A by mailing such form to him or her at State House Station 6, Augusta, Maine 04333, by the end of the business week next following the receipt by Scott of the proposal;

(e) Nothing in this Consent Decree shall prevent Defendant or any of its employees from considering, discussing, negotiating or entering into contracts for the purchase of tree length logs, standing timber or stumpage (whether by timber deed or otherwise), or land.

B. Notice to Contractors and Brokers

Commencing no later than December 31, 1987 and continuing at least one time each year on or about December 31 of each year thereafter, Defendant shall mail to each contractor or broker with whom it has entered into a contract for the purchase of pulpwood or a contract for the purchase of sawlogs at any time during the two years immediately preceding the date of such mailing, at his or her last known residence or post office box address, by certified mail, return receipt requested, a notice (in both French and English) in the form attached hereto as Exhibit B summarizing the terms of this Consent Decree. Defendant shall also submit such form to each contractor or broker on each occasion when Defendant first submits a proposed contract to such contractor or broker for purchase of sawlogs or pulp. Defendant shall maintain records sufficient to establish its compliance with the provisions of this paragraph and shall make those records available for inspection by the Attorney General at his request upon reasonable notice during normal business hours.

C. Notice to Employees of Defendant

1. Defendant shall provide each of its employees who have any responsibility for the negotiation of pulpwood contracts or sawlog contracts with contractors or brokers, within 15 days of the date of this Consent Decree, a notice summarizing the terms of this Consent Decree, in a form attached hereto as Exhibit C.

2. Defendant shall provide the notice described in paragraph 1 above to any employee who obtains responsibility for the negotiation of pulpwood contracts or sawlog contracts subsequent to the date of this Decree within seven days of the date on which that employee assumes that responsibility.

3. On or about each anniversary date of this Decree, Defendant shall provide all employees with responsibility for the negotiation of pulpwood contracts or sawlog contracts with the notice described in paragraph 1 above.

4. The notice described in paragraph 1 through 3 shall be signed and dated before a Notary Public by each employee receiving the notice.

5. Defendant shall retain the original notices signed by its employees and shall provide its employees with a copy of each notice. Defendant shall make the original notice available for inspection by the Attorney General at his request upon reasonable notice during normal business hours.

D. Reimbursement for Portion of Investigative Costs

Defendant shall reimburse the State of Maine the sum of \$5,404.12 for a portion of the State's costs of investigating this matter.

IV. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders or directions as

may be necessary or appropriate for the construction or carrying out of this Consent Decree, for the modification of or termination of any the provisions hereof and for the enforcement of compliance herewith.


V. TERMINATION OF DECREE

This Decree and the obligations created thereunder shall terminate five years from the date on which the Consent Decree is entered onto the docket of the Superior Court.

Consented to on behalf of the State of Maine by:

JAMES E. TIERNEY  
Attorney General

Dated: *November 25, 1987*

  
STEPHEN L. WESSLER  
Assistant Attorney General  
Chief, Consumer & Antitrust Div.  
State House Station 6  
Augusta, Maine 04333  
(207) 289-3661

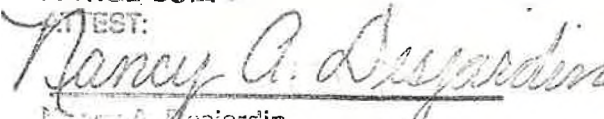
Attorney for Plaintiff

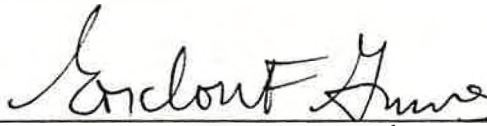
Consented to on behalf of the Defendants by:

Dated: *November 25 1987*

A TRUE COPY

WITNESSETH:

  
Nancy A. Desjardins  
Clerk of Courts

  
GORDON F. GRIMES, Esquire  
Bernstein, Shur, Sawyer & Nelson  
One Monument Square  
P.O. Box 9729  
Portland, Maine 04104  
(207) 774-1200

Attorney for Defendant

It is hereby ordered and decreed as is set forth above.

Dated: *November 25, 1987*

  
JUSTICE, SUPERIOR COURT

EXHIBIT A

REPORTING FORM: COMBINED SALES  
SOLICITED BY CONTRACTOR

Name of Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Date on which contractor solicited a combined sale of saw logs and pulpwood: \_\_\_\_\_

Approximate volume of saw logs and pulpwood which contractor indicated he wanted to sell:

(a) Saw logs: \_\_\_\_\_

(b) Pulpwood: \_\_\_\_\_

Location of land on which contractor is or will be cutting:

\_\_\_\_\_

Was a contract signed with the contractor for the purchase of saw logs or pulpwood?

Date of contract(s)

(a) Saw logs: \_\_\_\_\_

(b) Pulpwood: \_\_\_\_\_

DATED:

\_\_\_\_\_  
SIGNATURE OF PERSON FILLING OUT FORM

EXHIBIT B

NOTICE

On November 25, 1987, the Department of the Attorney General of the State of Maine and Scott Paper Company entered into a Consent Decree, approved by the Somerset County Superior Court, which settled an antitrust claim by the State that Scott allegedly engaged in an arrangement under which the purchase of pulpwood from contractors or brokers was conditioned or tied to sale of sawlogs by such contractors or brokers to Scott. The Consent Decree specifically acknowledged that Scott did not admit that it or its employees had violated any antitrust laws, but nevertheless provided for settlement of the lawsuit as follows:

1. Scott may continue to operate its sawlog brokerage program, but is enjoined from entering into any arrangement under which the purchase of pulpwood from any broker or contractor is conditioned or tied by any means to the sale of sawlogs by such contractor or broker to Scott. Scott has agreed that the pulpwood buyer and the sawlog buyer will be different persons who do not directly report to one another, and who operate independently. Except as described in paragraph 2 below, the pulpwood buyer and the sawlog buyer shall not meet at the same time with contractors or brokers to



negotiate contracts for the purchase of sawlogs or the purchase of pulpwood.

2. Nothing in the Consent Decree, however, limits the ability of Scott or its employees to consider, discuss, negotiate or enter into contracts for the purchase of both sawlogs and pulpwood from any contractor or broker who makes a proposal to Scott, which is not solicited by Scott, for the sale or possible sale of both products.

As a term of the mutual settlement to which the State and Scott agreed, Scott will pay \$5,402.12 for a portion of the State's costs in investigating this matter, specifically in transcribing the testimony taken of present and former Scott employees. The State did not request payment of any civil penalty because Scott conducted in good faith a corporate antitrust compliance program.

The Consent Decree will remain in effect for five years, during which time Scott will make periodic distributions of this notice.

EXHIBIT C

NOTICE

On November 25, 1987, the State of Maine and Scott Paper Company entered into a Consent Decree, approved by the Somerset County Superior Court, which settled an antitrust claim by the State that Scott allegedly engaged in an arrangement under which the purchase of pulpwood from contractors or brokers was conditioned or tied to sale of sawlogs by such contractors or brokers to Scott. The Consent Decree specifically acknowledged that Scott did not admit that it or its employees had violated any antitrust laws, but nevertheless provide for settlement of the lawsuit as follows:

1. Scott may continue to operate its sawlog brokerage program but is enjoined from entering into any arrangement under which the purchase of pulpwood from any broker or contractor is conditioned or tied by any means to the sale of sawlogs by such contractor or broker to Scott.

2. Scott has agreed that (a) the pulpwood buyer and the sawlog buyer will be different persons who do not directly report to one another, and (b) they will not travel to or conduct any meeting together with contractors or brokers for the purpose of negotiating or discussing contracts for the purchasing of sawlogs or pulpwood.

3. The Consent Decree does not prevent either the pulpwood buyer or the sawlog buyer from considering, discussing, negotiating or entering into contracts for the purchase of (a) both sawlogs and pulpwood from any contractor or broker who makes a proposal to Scott, which is not solicited by Scott, for the sale or possible sale of both products, or (b) tree length logs, standing timber or stumpage (whether by timber deed or otherwise), or land.

4. Whenever Scott receives a proposal of the type described in paragraph 3(a) immediately above, the buyer receiving such proposal shall make a report to the Assistant Attorney General in charge of the Antitrust Division on the form required by the Consent Decree, by the end of the business week next following the receipt by Scott of the proposal.

5. Scott will make periodic distributions of a notice in the form required by the Consent Decree to those contractors or brokers designated to receive such in the Consent Decree. Scott will also submit such notice to each contractor or broker on each occasion when Scott first submits a proposed contract to such contractor or broker for purchase of sawlogs or pulpwood.

The Consent Decree will terminate five years from the date on which it is entered onto the docket of the Superior Court.

I certify that I have received a copy of the above notice.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

Signed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1987.

\_\_\_\_\_  
NOTARY PUBLIC