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STONE CONTAINER SETTLES FTC CHARGES

Agency Alleges Industry-Wide Invitation To Raise Prices

The world's leading manufacturer of linerboard, a corrugated box component, has agreed to settle Federal Trade Commission charges that it attempted to orchestrate an industry-wide price increase, in violation of federal antitrust laws. The FTC alleged that, following a failed attempt to increase the price it charged for linerboard in 1993, Chicago-based Stone Container Corporation temporarily shut down production at its own mills and bought up competitors' excess inventory as part of an intentional effort to build industry support for a price increase. The agreement to settle the charges would bar Stone from urging any competitor to raise or fix the price charged for linerboard.

"This was a serious attempt to manipulate the market so that the industry could reach agreement on a future price increase," said William J. Baer, Director of the FTC's Bureau of Competition. "This is the kind of conduct that, if successful, impairs competition and injures consumers."

Stone operates linerboard manufacturing plants in eight states, in addition to 60 box plants. Corrugated boxes are made of linerboard, used for the inner and outer facing of the box, and corrugated medium, the fluted inner material. Approximately 90 percent of U.S.-produced goods are shipped in corrugated packaging.

According to the FTC complaint detailing the allegations in this case, in March 1993, Stone withdrew its price increase announcement when competitors failed to follow suit. The FTC said that Stone attributed the failure of the price increase to excess industry inventory, which creates an incentive for firms to reduce prices. Stone Container responded by contriving a scheme to invite a coordinated industry price increase, the FTC alleged.

Stone developed a plan to take downtime at its plants, to reduce its production by approximately 187,000 tons at the same time it was purchasing 100,000 tons of linerboard inventory from competitors and to reduce its own inventory by 87,000 tons, the FTC alleged. This was the largest voluntary reduction in output in the history of the U. S. linerboard industry. To implement the plan, Stone contacted competing companies to determine which held unneeded inventory and then purchased excess inventory from several, the agency said. In both private conversations and public statements the executives of Stone Container signaled their intention to take mill downtime and reduce industry-wide inventories and their belief that doing so would build support for a price increase. According to the FTC complaint, the actions and statements constituted an invitation by Stone to its competitors to join a coordinated price increase. If accepted, the invitation would result in higher prices, reduced output and consumer injury, the complaint alleges.

The chairman and chief executive officer of Stone Container has stated that the cost to the company of taking massive mill downtime was approximately $26 million, but that this investment was beneficial for the company and the linerboard industry. He has characterized the company's strategy as an "unqualified success" that helped to "jump start" an industry-wide price increase in October of 1993, the FTC said.

The agreement to settle the FTC charges would prohibit Stone from requesting, suggesting or entering any agreements with competitors to raise, fix or stabilize prices or price levels. The order also would prohibit Stone from engaging in other joint pricing action with regard to third-party sales for linerboard.

The Commission vote to accept the proposed consent agreement for a public comment period was 4-1, with Commissioner Orson Swindle dissenting. In his dissenting statement Commissioner Swindle said, "I have voted against the Commission's acceptance of a consent agreement in this case because I do not believe that the facts unearthed and presented in the investigation support the allegation that Stone Container ('Stone') invited its competitors 'to join a coordinated price increase.' ... As I see it, the acts and communications of Stone alleged in the complaint, as well as other evidence in this case, do not sufficiently support the Commission's theory of violation. Commissioner Swindle questioned the complaint's assertion that Stone's actions "were undertaken with anticompetitive intent and without an independent legitimate business reason," and he concluded, "I am unable to place on Stone's actions (and its explanations of them) the sinister characterization that would permit me to condemn its otherwise justifiable actions. I am concerned that the Commission's decision in this case may deter corporate officials from making useful public statements (e.g., in speeches to investors or presentations to securities analysts) that candidly address industry conditions, individual firms' financial situations, and other important subjects."

A majority statement by Chairman Robert Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson stated, "While there may be some difference of view on the facts in this matter, we agree with Commissioner Swindle that there can be no implied invitation to collude when the actions that amount to the invitation are justified by business considerations. ... As the Analysis to Aid Public Comment emphasizes, however, it would have been more economical for Stone Container to keep its plants open than to purchase inventory from competitors, and competitors would have recognized that fact. This conduct and other statements by Stone Container made clear that its goal was to manipulate industry supply conditions to invite a coordinated price increase. It is for these reasons that we accept the consent agreement for public comment."

An announcement regarding the proposed consent agreement will be published in the Federal Register shortly. The agreement will be subject to public comment for 60 days, after which the Commission will decide whether to make it final. Comments should be addressed to the FTC, Office of the Secretary, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

NOTE: A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of $11,000.

Copies of the complaint, consent agreement and an analysis to assist public comment are available from the FTC's web site at *http://www.ftc.gov* and also from the FTC's Consumer Response Center, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; 202-326-3128; TTY for the hearing impaired 1-866-653-4261. Consent agreements subject to public comment also are available by calling 202-326-3627. To find out the latest news as it is announced, call the FTC NewsPhone recording at 202-326-2710.

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