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The Director
Operations 1
Anti-Dumping Commission
Customs House
5 Constitution Avenue
Canberra
Australian Capital Territory 2601

Canberra Office
6/2 Brindabella Circuit
Brindabella Business Park
Canberra International Airport
Australian Capital Territory 2609
+61 2 6163 1000

Brisbane Office
Level 4, Kings Row Two
235 Coronation Drive
Milton, Brisbane
Queensland 4064
+61 7 3367 6900

Australia

facsimile: +61 2 6162 0606
email: info@moulislegal.com
www.moulislegal.com



commercial + international

By email

Dear Director

Alleged dumping of newsprint from Korea and France Comments on submission by Norske Skog

As you know we act for Jeonju Paper Corporation (“Jeonju”) in this matter.

We refer to submission No.021 on the public record of this investigation, being the letter from Norske Skog (“the Applicant”) dated 20 August 2014.

The Applicant’s letter responds to submissions from other interested parties, including Jeonju, regarding the question of whether allegedly dumped imports of newsprint from France and Korea caused material injury to the Australian industry.

Jeonju wishes to again preface its comments by stating that it has not engaged in dumping of the goods under consideration, and that its comments are not meant to detract from that proposition.

Jeonju welcomes the opportunity to exchange views with the Applicant in relation to the Australian newsprint market. Indeed, in some minor respects, there does appear to be some common ground. However, our client does not accept many of the Applicant’s contentions. Our client therefore wishes to reassert and/or clarify some of its submissions in this matter, in order for the Anti-Dumping Commission (“the Commission”) to gain a fuller understanding about the relevant market conditions and to properly assess the Applicant’s claims.

Our client’s comments are arranged as follows:

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A Relevant injury considerations and non-attribution of injury

The Applicant's letter acknowledges the overall decline in the size of the market as being a significant factor affecting its performance, and agrees that these and other factors unrelated to dumping have caused it injury. Clearly, this significant factor must be considered to have had a significant impact on the Applicant's financial position. We do not know how the Applicant could contend otherwise, and indeed it does not:

Norske Skog has been very clear in its application to acknowledge that it is operating in a declining market and that the market decline has impacted Norske Skog's profit and profitability... Norske Skog has in fact survived in the declining market by increasing exports, reducing costs and closing production capacity. ... Over the longer-term, Norske Skog will continue to reduce costs and adjust production capacity and ensure it delivers value to its Australian customers....¹

However, the Applicant's letter also directly claims that these other factors are "simply not relevant" to the question of whether alleged dumping has caused material injury:

Submissions on behalf of Bowater Korea, Jeonju Paper Corporation, and Seven West Media attribute material injury sustained by the Australian industry to declines in demand in newsprint in Australia... There may be injury from factors other than dumping that have impacted the Australian industry's performance during the investigation period, however, the key consideration for the Commission is whether dumping has caused material injury.

...

It is Norske Skog's view that many of the points raised in the submissions are simply not relevant to the Commission's investigation and the time period covered by the investigation...²

We agree with the Applicant's comments that its performance has been impacted by the overall condition of the market. However we cannot at all agree with the suggestion that the points raised by Jeonju and others about the impact of other factors on the Australian industry are not relevant. They are absolutely relevant. Injury caused by factors not related to dumping are relevant considerations in determining that alleged dumping has not caused material injury to the Australian industry. The principle of non-attribution does not mean that injury caused by other factors is to be ignored. To the contrary, such injury reduces the extent of the injury that can properly be said to have been caused by dumping.

Jeonju requests the Commission to exercise care to ensure that any injury caused by factors not related to dumping is not attributed to the alleged dumping.

In reply to the Applicant's comment that "there appears to be little effort in the public submissions" to defend against the Applicant's dumping allegation, our client responds by again advising the Applicant that it has not engaged in any dumping. Jeonju will continue to provide full cooperation to the Commission in order to vindicate its position.

B Interchangeability of the Applicant's products and imported products

The Applicant's letter refers to "several submissions suggesting that 42gsm newsprint produced by Norske Skog was not interchangeable with imported newsprint made from 100% recycled paper", and claims that "this issue was specifically raised by Jeonju and SMM".

Jeonju wishes to make clear that it has not suggested that its newsprint was not interchangeable, in a literal sense, with that produced by the Applicant. Rather, Jeonju's position is that there are important

¹ Norske Skog letter, page 2.

² Norske Skog letter, page 1.

variances in performance between its product and the Australian industry's product, and not just "occasional variances in performance"³ as the Applicant would have you believe. The two types of product – Jeonju's and the Applicant's – are clearly and distinctly different from the perspectives of their production processes and their physical characteristics and, resultantly, from the user/customer's perspective.

Although our client does appreciate that there is now common ground between it and the Applicant as to the fact that there are product variations, it does not accept that the significance of these variations can be sidelined or downplayed. As has been presented by Jeonju in its submission, Jeonju's newsprint "*support[s] and promote[s] the most economical business operations of Jeonju's newsprint customers from the perspective of optimal cost and efficiency of production*". This is due to its high level of recycled content and its superior quality. This view has been validated, from an independent customer's perspective, by a number of other submissions on the public record, including the Seven West Media ("WAN") submission.

The clear and valuable feedback that has been provided by interested parties on these issues is crucial and cannot be ignored. The Applicant's insistence that "*the only issue was the final price*" is misplaced. It must be understood that the purchasing decision from the perspective of a newsprint publisher is not simply about the price of the newsprint as an input. Customers must consider a range of factors, and things like the overall cost and efficiencies of the usage of one kind of newsprint instead of another, and supply diversification, are two of those factors. Indeed, in this case it appears to have been soundly proven that these factors have been the ruling considerations in the purchasing decisions of Jeonju's customers.

C The "skate" delivery system

We note the Applicant's comments regarding the skate system and its effect as a barrier to competition.⁴ Jeonju considers that these comments actually support Jeonju's submission on this issue. In particular, the Applicant's remarks regarding its role in the development of a system that its major customers have now been using for over 20 years, coupled with the Applicant's predominant market share and the "tied" relationship with the customers that use the system that it has developed, highlight both the extent of the barrier that other suppliers face in supplying the same customers, and its effectiveness over a long period.

The Applicant has also said this:

The transport vehicles used for delivery of Norske Skog's newsprint to skate compatible press sites are all owned by a number of private transport companies. Any newsprint importer is able to access these private companies to transport their newsprint.

This is misleading, because the Applicant was influential in the creation of the system, continues to be favoured in its availability, and continues to utilise it under long term contract. The skate system has indeed been an important and useful market advantage for the Applicant.

Jeonju's comments are not meant to be taken as some kind of protest about the "fairness" of such a barrier. If the Applicant has a legitimate advantage in the way it conducts its business, then it is entitled to use that advantage to its commercial benefit. Instead, our submission is that Jeonju did not compete with the Applicant in those major markets where the skate system has been deployed, and in fact considered itself to be effectively excluded from competing by reason of the deployment of that system. Therefore any injury the Applicant claims to have suffered in relation to those markets cannot be said to have been caused by newsprint exported by Jeonju.

³ Norske Skog letter, page 2.

⁴ Norske Skog letter, page 3.

D Reduction of imports from New Zealand

The Applicant's letter makes the following disclosure:

Further to the note above, it is clear to Norske Skog that there would have been an opportunity in earlier years than the current application where damage was clearly evident to our Australasian business results. However, Norske Skog's response to the declining market share was to reduce imports from its New Zealand operation. Reducing the NZ imports had the effect of making the Australian operations appear to avoid injury. In reality Norske Skog's combined Australian and New Zealand business has suffered injury resulting from dumped imported newsprint into Australia for many years. Norske Skog has waited until there was clear evidence effecting only its Australian manufacturing operations before proceeding with a formal application for measures.

With respect, we find this to be bizarre.

The anti-dumping system is intended to address injury caused to an Australian industry. A self-help policy of increasing throughput here in Australia, by not importing, is not something that a company should think about doing simply to prove that it is being injured by dumping. It is something that a company would do to improve its Australian financial position and to stop being injured by imports from New Zealand.

The Applicant says that this transference of production to Australia gave the appearance that it was not being injured by dumped imports. This confuses us because a company is either injured by dumped imports or it is not. It occurs to us that one reason why it would be of concern to the Applicant that it "*appear[ed] to avoid injury*" is that it would have preferred to present the appearance that it was being injured, in order to seek protection through the initiation of an investigation such as this one.

If that is the Applicant's motivation then the Commission is requested to be doubly careful in its examination of the Applicant's claims.

E Competition with Norske Skog in a limited way

The Applicant's expressed concern regarding the reference in Jeonju's submission to the fact that the "*overwhelming majority*" of Jeonju's exports were to states other than NSW and Victoria. Jeonju can advise that the term was not used loosely. Jeonju did make a small volume of sales to other markets, however this does not detract from Jeonju's submission that it did not compete for business against the Applicant in an injurious way. The business of the major publishers in the major Australian eastern seaboard markets is dominated, if not 100% controlled, by the Applicant.⁵

Indeed, we wish to return to our client's original submission to the Commission regarding the Applicant's injury allegations, and remind the Commission of the data provided in Table 1 thereof, in order to emphasise the limited degree of competition between Jeonju and the Applicant and the purchasing behaviour of Jeonju's customers.

The POI in this matter is from 1 April 2013 to 31 March 2014. In that period only one "adverse" change occurred to the demand for the Applicant's newsprint that relates to the supply of Jeonju's newsprint. This change was [CONFIDENTIAL TEXT DELETED – commercial information], with the remainder staying with the Applicant (previously the 100% supplier). In [CONFIDENTIAL TEXT DELETED – commercial information], and [CONFIDENTIAL TEXT DELETED – number]% stayed with the Applicant (previously also the 100% supplier).

The reasons given by News Corporation itself for the awarding of part of its requirements to imported newsprint are clearly stated in the verification report. First:

⁵ Jeonju submission, pages 10 and 11.

[The Commission was] informed that following a senior management change approximately three years ago NEWS changed supply strategies and considered that a second supplier of newsprint essential to mitigate the risk of supply chain disruptions. NEWS also noted that it is common practice to have more than one supplier of newsprint to mitigate against shortages. Given that NSIA is the only domestic producer, importing newsprint is the only option for NEWS to diversify its supply of newsprint.

And secondly:

NEWS informed us that 42gsm newsprint is slightly more expensive but due to the benefits of additional square metres of newsprint per one tonne roll, there is a slight yield benefit to buying the thinner product. Additional benefits are also associated with logistics– greater amount of newspapers per tonne. This translates to more papers per bundle.

We can see from this that News Corporation decided to source newsprint from overseas as an imperative commercial policy, and then when it had made that decision it selected Jeonju amongst those importers it could have sourced from as its other supplier.

We see nothing about this decision-making process that suggests that Jeonju took business away from the Applicant through price undercutting. Instead, we see this as being the result of a decision by News Corporation that it had to diversify its supply lines, and that it decided that its import supplier would be Jeonju based on the efficiencies of the usage of Jeonju's product *as compared to other import suppliers*. If News Corporation had already decided that it had to have an alternative supplier, and if there is only one Australian industry supplier, then the decision to award part of its requirements to Jeonju was a decision which discriminated amongst import suppliers, and not one that discriminated against the Applicant.

Apart from the News Corporation business, Jeonju [CONFIDENTIAL TEXT DELETED – commercial information].

[CONFIDENTIAL TEXT DELETED – commercial information] to WAN, which the Applicant has not supplied since 2010. In relation to the WAN contract, WAN has in our view made it quite clear why it had already decided, before the POI, not to source from the Applicant. The Commission has recorded WAN's responses in this regard in the relevant verification report as follows:

However, in regards to performance on the newspapers printing & inserting machinery, WAN described the imported goods as having better performance.

WAN described the domestically produced newsprint as containing virgin pulp (i.e. pulp manufactured and used for the first time, as opposed to recycled pulp). WAN indicated that virgin pulp has some disadvantages on the WAN machinery in the newspaper production process.

WAN indicated the recycled paper performed better during the inserting process. WAN indicated that recycled paper folds better and when inserts (magazines, brochures, features) are assembled into the paper they are less likely to fall out.

An additional benefit of the better fold is that the paper tends to present better in the bundle. WAN described this as the top pages of the paper looking fresh and appealing as opposed to potentially wrinkled and damaged because of the outer cover detaching from the remainder of the newspaper during the post printing processes

Due to these aspects of the recycled paper, WAN found a reduction in its spoilage (Confidential Attachment 4).

We expect that redacted portions of the verification report provide further insights as to WAN's decision making processes. Further to that, WAN has also advised the Commission:

Our client submits that it raised the production issues with [a representative of the Applicant]

- product performance manager of the applicant, in 2007 and 2008 - and specifically discussed the production problems of loose cover slippage, keyhole shape, front page curl and consequent efficiency losses as a result of using NSIA's product exclusively. NSIA has, to date, been unable to address these issues and continues to only offer virgin fibre newsprint to WAN.

Moreover, as Jeonju stated in its original submission:

Based on Jeonju's market intelligence and information, in the latest round of tenders conducted by WAN (October 2013), Jeonju's bid was priced higher compared with other suppliers, and the bid from the Applicant was amongst the lowest. Despite this, Jeonju was ultimately successful in having a contract awarded to it.

[CONFIDENTIAL TEXT DELETED – commercial information] to APN in Queensland. An important fact that is not reflected in the verification report of APN is that Jeonju actually lost APN's business during the POI to competition from the Applicant and, according to the verification report, a "significant supplier of newsprint... not from a country included in this dumping investigation". Jeonju understands this significant supplier to be an Indonesian supplier. Indeed, it is curious as to why Indonesia has not been included in the investigation when imports from Indonesia are generally considered to be the cheapest on the market. But what is more important is that any "injurious" effect of the importation from Indonesia and its impact on the competitive market price of newsprint must not be attributed to the imports from Jeonju.

In summary, News Corporation (supply diversification) and WAN (product type) have made their positions clear. Also, in relation to WAN, its rejection of the Applicant's virgin fibre newsprint offering predates the POI. [CONFIDENTIAL TEXT DELETED – commercial information] – Jeonju lost its position entirely, to the Applicant and an Indonesian competitor, in the POI.

Given this matrix of facts and reported opinions, injury caused to the Applicant by reason of price competition from Jeonju is simply not evident.

Jeonju supports healthy competition in the Australian newsprint market. Competition generates efficiency and innovation. It challenges companies to adapt and respond to the needs of the market. Jeonju submits that the dumping laws and regulations are not a mechanism to be used by a domestic monopoly producer to insulate itself from fair competition from imported products.

Regrettably, it would seem that the Applicant does not see things the same way. We ask the Commission to recognise the reality of the market situation and to accept the clear evidence that has been provided by Jeonju and its present and past customers about Australian market participation and purchasing behaviours.

In so doing we submit that the outcome must be that Jeonju cannot be said to have caused any injury to the Australian industry by reason of the pricing of the newsprint that it has exported to Australia.

Yours sincerely



Charles Zhan
Lawyer