

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. C-3917
)	
v.)	Filed: April 11, 1972
)	
M. P. M., INC., and)	
PRE-MIX CONCRETE, INC.,)	Equitable Relief Sought
)	
Defendants.))	

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the defendants named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain violation by the defendants, as herein-after alleged, of Section 7 of the Act, as amended (15 U.S.C. § 18).

2. Defendants M. P. M., Inc. and Pre-Mix Concrete, Inc., transact business and are found within the District of Colorado.

II

DEFENDANTS

3. M. P. M., Inc. (hereinafter referred to as "MPM"), a corporation organized under the laws of the State of

Colorado with its principal place of business in Denver, is made a defendant herein. MPM was organized on May 29, 1970, by Burton C. Boothby, Thomas W. Meade, and L. C. Fulenwider, the owners of Mobile Concrete, Inc., a Colorado corporation engaged in the ready mixed concrete business in the Denver Metropolitan Area.

4. Pre-Mix Concrete, Inc. (hereinafter referred to as "Pre-Mix"), is made a defendant herein. Pre-Mix is a corporation organized under the laws of the State of Colorado with its principal place of business in Denver.

III

DEFINITION

5. As used herein, the term "Denver Metropolitan Area" shall refer to the Counties of Adams, Arapahoe, Denver, and Jefferson in the State of Colorado.

IV

TRADE AND COMMERCE

6. Pre-Mix is engaged in the production and sale of ready mixed concrete in the Denver Metropolitan Area. Its sales of ready mixed concrete for 1969 amounted to over \$3 million. In 1969, Pre-Mix accounted for about 16.5 percent of the ready mixed concrete sold in the Denver Metropolitan Area, and ranked as the third leading seller of ready mixed concrete in this area.

7. Prior to the transactions which are the subject matter of this complaint, Mobile Concrete, Inc. (hereinafter referred to as "Mobile"), was engaged in the production and sale of ready mixed concrete in the Denver Metropolitan Area.

Mobile's sales of ready mixed concrete for 1969 amounted to over \$2.7 million, and it ranked as the fourth leading seller of ready mixed concrete in the Denver Metropolitan Area with 14.8 percent of the market.

8. The ready mixed concrete industry in the Denver Metropolitan Area is highly concentrated. In 1969, the total sales of ready mixed concrete in this area exceeded \$18 million, and the sales of the four leading producers and sellers accounted for approximately 73 percent of this total.

9. Ready mixed concrete is a mixture of cement and other materials such as sand, stone, water, and at times, additives. The mixture is widely used in the construction and improvement of various types of structures and their appurtenances. Cement is the basic ingredient in the production of ready mixed concrete and represents over 50 percent of the total cost of materials used in its production.

10. In 1969, firms engaged in the production and sale of ready mixed concrete in the Denver Metropolitan Area purchased cement at a cost over \$7.7 million. Pre-Mix and Mobile purchased over \$2.4 million of this cement. Over 54 percent of the cement purchased by Pre-Mix and Mobile in 1969 was produced in Wyoming, Oklahoma and Texas and was delivered, by the suppliers thereof, to Pre-Mix and Mobile. The producers and sellers of ready mixed concrete in the Denver Metropolitan Area are conduits through which cement flows in interstate commerce from the states in which it is produced to the ready mixed concrete production facilities maintained by the producers and sellers in the Denver.

Metropolitan Area where it is batched into ready mixed concrete and from there delivered to construction sites.

11. In the conduct of their business activities, including the production and sale of ready mixed concrete in the Denver Metropolitan Area, Pre-Mix, MPM, and Mobile have been engaged in interstate commerce.

V

VIOLATION ALLEGED

12. On June 12, 1970, MPM acquired the assets of Pre-Mix. Shortly after the acquisition of Pre-Mix by MPM, Pre-Mix and Mobile began joint operations.

13. On November 12, 1971, Pre-Mix exchanged its capital stock for all of the capital stock of Mobile.

14. The effect of the asset acquisition and exchange of stock described in paragraphs 12 and 13 may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act in the following ways among others:

- (a) actual and potential competition between Pre-Mix and Mobile in the production and sale of ready mixed concrete in the Denver Metropolitan Area has been eliminated;
- (b) actual and potential competition generally in the production and sale of ready mixed concrete in the Denver Metropolitan Area has been substantially lessened; and

- (c) concentration in the production and sale of ready mixed concrete in the Denver Metropolitan Area has been substantially increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid acquisition of assets and exchange of stock described in paragraphs 12 and 13 be declared to be in violation of Section 7 of the Clayton Act.
2. That MPM and Pre-Mix be required to divest themselves of all assets and control of Mobile.
3. That MPM and Pre-Mix, their affiliates, successors and assigns, their officers, directors, owners, agents, employees and all other persons acting or claiming to act on their behalf be enjoined from directly or indirectly acquiring the stock or assets of any person, company or corporation producing and selling ready mixed concrete in the Denver Metropolitan Area.
4. That plaintiff have such other, further and different relief as the Court may deem just and proper.

5. That plaintiff recover its costs of this action.

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