

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA
Department of Justice
Antitrust Division
1401 H Street, NW
Suite 3000
Washington, D.C. 20530,

Plaintiff,

v.

VULCAN MATERIALS COMPANY
1200 Urban Center Drive
Birmingham, AL 35242,

and

FLORIDA ROCK INDUSTRIES, INC.
155 East 21st Street
Jacksonville, FL 32206,

Defendants.

Case: 1:07-cv-02044
Assigned To : Sullivan, Emmet G.
Assign. Date : 11/13/2007
Description: Antitrust

DECK TYPE: Antitrust

DATE STAMP:

COMPLAINT

Plaintiff United States of America ("United States"), acting under the direction of the Acting Attorney General of the United States, brings this civil antitrust action to obtain equitable and other relief against defendants Vulcan Materials Company ("Vulcan") and Florida Rock Industries, Inc. ("Florida Rock") to prevent Vulcan's proposed acquisition of Florida Rock. Plaintiff complains and alleges as follows:

I. NATURE OF THE ACTION

1. On February 19, 2007, Vulcan and Florida Rock signed a definitive agreement for Vulcan to acquire Florida Rock in a cash-and-stock transaction valued at approximately \$4.6 billion. The total blended cash-and-stock consideration for this transaction is approximately \$68 per share.

2. Vulcan and Florida Rock both produce and distribute in the United States building materials, including, among other things, construction aggregates (which includes coarse aggregate) and ready mix concrete. Vulcan is the largest supplier of construction aggregates in the United States. Florida Rock is also a leading supplier of construction aggregates in the United States. Combined, Vulcan and Florida Rock will have construction aggregates reserves totaling approximately 13.9 billion tons.

3. The United States brings this action to prevent the proposed acquisition of Florida Rock by Vulcan because it would substantially lessen competition in the production, distribution, and sale of coarse aggregate in and around Atlanta, Georgia; Columbus, Georgia; Chattanooga, Tennessee; and South Hampton Roads, Virginia, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. PARTIES TO THE PROPOSED TRANSACTION

4. Defendant Vulcan is a New Jersey corporation with its principal place of business in Birmingham, Alabama. Vulcan produces, distributes, and sells, among other products, construction aggregates, ready mix concrete, hot mix asphalt, and asphalt coating to customers in 21 states, the District of Columbia, and Mexico.

5. Vulcan is the largest producer of construction aggregates in the United States. It has over 300 facilities for the production and distribution of construction aggregates and other products. In 2006, Vulcan shipped approximately 255 million tons of construction aggregates, the majority of which were coarse aggregate. In 2006, Vulcan reported total sales of approximately \$3 billion.

6. Defendant Florida Rock is a Florida corporation with its principal place of business in Jacksonville, Florida. Florida Rock produces, distributes, and sells in the Southeastern and mid-Atlantic states, among other products, construction aggregates, ready mix concrete, prestressed concrete, and cement.

7. Florida Rock is one of the largest United States suppliers of construction aggregates. In 2006, Florida Rock shipped approximately 45 million tons of construction aggregates, the majority of which was coarse aggregate. In 2006, Florida Rock reported total sales of approximately \$1.4 billion.

III. JURISDICTION AND VENUE

8. Plaintiff United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

9. Defendants produce, distribute, and sell coarse aggregate and other products in the flow of interstate commerce. Defendants' activities in producing, distributing, and selling these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

10. Defendants have consented to venue and personal jurisdiction in this judicial district.

IV. TRADE AND COMMERCE

A. The Relevant Product Market

11. Construction aggregates consist primarily of crushed stone, gravel, and sand produced from natural deposits of various materials and removed from quarries, mines, or pits.

12. Coarse aggregate is a type of construction aggregates. Coarse aggregate is crushed stone produced at quarries or mines and used for, among other things, road base and the production of ready mix concrete and asphalt. Coarse aggregate typically is mixed with other materials to produce ready mix concrete and asphalt. Different sizes of coarse aggregate are needed to meet different project specifications.

13. There are no reliable substitutes for coarse aggregate because it differs from other products in its physical composition, functional characteristics, customary uses, consistent availability, and pricing. To the extent that any substitutes exist, customers already use these to the full extent possible in light of the limits on their availability and the amounts that can be used in a given product, and could not use more of them in place of coarse aggregate in response to an increase in the price of coarse aggregate.

14. A small but significant post-acquisition increase in the price of coarse aggregate would not cause the purchasers of coarse aggregate to substitute another product or otherwise reduce their usage of coarse aggregate in sufficient quantities so as to make such a price increase unprofitable.

15. Accordingly, the production, distribution, and sale of coarse aggregate is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Markets

16. Coarse aggregate is a bulky, heavy, and relatively low-value product. The cost of transporting coarse aggregate is high compared to the value of the product.

17. Transportation costs limit the distance coarse aggregate can be economically transported from a quarry or mine to a job site or a ready mix concrete or asphalt plant. The geographic area within which a coarse aggregate supplier can compete most vigorously thus is limited by the cost of hauling the coarse aggregate. As a result, the competitiveness of a coarse aggregate supplier in a given area is limited by its distance from customer plants or project sites relative to other suppliers.

18. Florida Rock owns and operates a coarse aggregate quarry located in Cedarton, Georgia, known as the Six Mile quarry. This quarry serves a geographic area that includes, among other areas, all or part of Floyd, Polk, Haralson, and Bartow Counties in Georgia (hereafter referred to as “Northwest Atlanta”). Customers with plants or jobs within Northwest Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan’s Adairsville, Bartow, and Rockmart quarries and from another competitor’s quarry located in Cartersville, Georgia. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in Northwest Atlanta because they are too far away and the hauling costs are too great.

19. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in Northwest Atlanta would not cause those customers to

procure coarse aggregate from quarries farther away than those identified in paragraph 18 in sufficient quantities so as to make such a price increase unprofitable.

20. Florida Rock owns and operates a coarse aggregate quarry located in Yorkville, Georgia, known as the Paulding quarry. This quarry serves a geographic area that includes, among other areas, all or part of Paulding, Douglas, Carroll, Haralson, Polk, and Cobb Counties in Georgia (hereafter referred to as “West Atlanta”). Customers with plants or jobs within West Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan’s Villa Rica, Kennesaw, and Lithia Springs quarries and from the quarries of other competitors located in Dallas, Georgia, and Douglasville, Georgia. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in West Atlanta because they are too far away and the hauling costs are too great.

21. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in West Atlanta would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 20 in sufficient quantities so as to make such a price increase unprofitable.

22. Florida Rock owns and operates a coarse aggregate quarry located in Tyrone, Georgia, known as the Tyrone quarry. This quarry serves a geographic area that includes, among other areas, all or part of Fulton, Coweta, Fayette, and Clayton Counties in Georgia (hereafter referred to as “Southwest Atlanta”). Customers with plants or jobs within Southwest Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan’s Madras quarry and from another competitor’s quarry located in Tyrone,

Georgia. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in Southwest Atlanta because they are too far away and the hauling costs are too great.

23. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in Southwest Atlanta would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 22 in sufficient quantities so as to make such a price increase unprofitable.

24. Florida Rock owns and operates a coarse aggregate quarry located in Riverdale, Georgia, known as the Forest Park quarry. This quarry serves a geographic area that includes, among other areas, all or part of Fulton, Clayton, Henry, DeKalb, and Fayette Counties in Georgia (hereafter referred to as “South Atlanta”). Customers with plants or jobs within South Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan’s Red Oak quarry and from another competitor’s quarry located in College Park, Georgia. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in South Atlanta because they are too far away and the hauling costs are too great.

25. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in South Atlanta would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 24 in sufficient quantities so as to make such a price increase unprofitable.

26. Florida Rock owns and operates a coarse aggregate quarry located in Zotella, Georgia, known as the Griffin quarry. This quarry serves a geographic area that includes, among other areas, all or part of Spalding and Henry Counties in Georgia (hereafter referred to as

“Southeast Atlanta”). Customers with plants or jobs within Southeast Atlanta may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan’s Stockbridge quarry. In addition, Vulcan is in the process of opening a new quarry in Butts County, Georgia, expected to be operational in 2008, from which it plans to serve, among other areas, customers in all or part of Southeast Atlanta. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in Southeast Atlanta because they are too far away and the hauling costs are too great.

27. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in Southeast Atlanta would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 26 in sufficient quantities so as to make such a price increase unprofitable.

28. Florida Rock owns a majority interest in a company that owns and operates a coarse aggregate quarry located in Columbus, Georgia, known as the Columbus quarry. This quarry serves a geographic area that includes, among other areas, all or part of Muscogee and Harris Counties in Georgia (hereafter referred to as “Columbus”). Customers with plants or jobs within Columbus may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan’s Barin quarry and from another competitor’s quarry located in Midland, Georgia. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in Columbus because they are too far away and the hauling costs are too great.

29. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in Columbus would not cause those customers to procure coarse

aggregate from quarries farther away than those identified in paragraph 28 in sufficient quantities so as to make such a price increase unprofitable.

30. Florida Rock owns and operates a coarse aggregate quarry located in Chattanooga, Tennessee, known as the Jersey Pike quarry. This quarry serves a geographic area that includes, among other areas, all or part of Hamilton County in Tennessee (hereafter referred to as “Chattanooga”). Customers with plants or jobs within Chattanooga may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan’s Chattanooga quarry and from another competitor’s quarries located in Chattanooga and Ringgold, Georgia. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in Chattanooga because they are too far away and the hauling costs are too great.

31. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in Chattanooga would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 30 in sufficient quantities so as to make such a price increase unprofitable.

32. Florida Rock owns and operates a coarse aggregate quarry located in Richmond, Virginia, known as the Richmond quarry, a coarse aggregate quarry located in Havre de Grace, Maryland, known as the Havre de Grace quarry, and a barge-served distribution yard located in Chesapeake, Virginia, known as the Gilmerton yard. Florida Rock also operates a distribution yard owned by a third party located in Chesapeake, Virginia. Via these distribution yards, Florida Rock serves a geographic area that includes, among other areas, all or part of the cities of Norfolk, Suffolk, Portsmouth, Chesapeake, and Virginia Beach in Virginia (hereafter referred to

as “South Hampton Roads”). Customers with plants or jobs within South Hampton Roads may, depending on the location of their plant or job sites, also economically procure coarse aggregate from Vulcan rail and barge terminals supplied by Vulcan’s Richmond, Lawrenceville, and Skippers quarries. Other quarries cannot on a regular basis compete successfully for customers with plants or jobs in South Hampton Roads because they do not have appropriate distribution facilities in the area and/or quarries similarly proximate to rail lines or navigable water sources.

33. A small but significant post-acquisition increase in the price of coarse aggregate to customers with plants or jobs in South Hampton Roads would not cause those customers to procure coarse aggregate from quarries farther away than those identified in paragraph 32 in sufficient quantities so as to make such a price increase unprofitable.

34. Accordingly, the relevant geographic markets, within the meaning of Section 7 of the Clayton Act, are locations of coarse aggregate customers in: Northwest Atlanta, West Atlanta, Southwest Atlanta, South Atlanta, Southeast Atlanta, Columbus, Chattanooga, and South Hampton Roads.

C. Anticompetitive Effects

1. The Proposed Transaction Will Harm Competition in the Markets for Coarse Aggregate in the Relevant Geographic Markets.

35. Price competition between Vulcan and Florida Rock in the production, distribution, and sale of coarse aggregate has benefited customers.

36. In Southeast Atlanta and South Hampton Roads, the proposed acquisition will eliminate the competition between Vulcan and Florida Rock and reduce the number of suppliers of many specifications of coarse aggregate from two to one. In Southeast Atlanta, the acquisition

will also eliminate the competition between Florida Rock and Vulcan that would result from the opening of Vulcan's new quarry in Butts County.

37. In Northwest Atlanta, Southwest Atlanta, South Atlanta, Columbus, and Chattanooga, the proposed acquisition will eliminate the competition between Vulcan and Florida Rock and reduce the number of coarse aggregate suppliers from three to two generally, and for some customers and projects from two to one.

38. In West Atlanta, the proposed acquisition will eliminate the competition between Vulcan and Florida Rock and reduce the number of coarse aggregate suppliers from four to three generally, and for some customers and projects from three to two.

39. The proposed acquisition will substantially increase the likelihood that Vulcan will unilaterally increase the price of coarse aggregate to a significant number of customers in Northwest Atlanta, West Atlanta, Southwest Atlanta, South Atlanta, Southeast Atlanta, Columbus, Chattanooga, and South Hampton Roads.

40. The response of other coarse aggregate suppliers in the relevant geographic markets would not be sufficient to constrain a unilateral exercise of market power by Vulcan after the acquisition because those suppliers likely would not have sufficient capacity and/or incentives to increase production and sales enough to defeat an anticompetitive price increase by Vulcan. State permits and county zoning restrictions in many cases limit quarries' hours of operation and/or production levels, and many coarse aggregate suppliers face practical limitations on the amount of truck traffic their facilities can handle. Moreover, because coarse aggregate mined from quarries is a depletable natural resource and every quarry has finite reserves, every sale by a supplier today represents a tradeoff against future sales.

41. In addition, and notwithstanding competitor responses, post-merger Vulcan will be able to increase prices to those customers that have plants or job sites for which both a Vulcan quarry and a Florida Rock quarry are closer than any other quarries producing coarse aggregate meeting their specifications. Coarse aggregate suppliers know the locations of their competitors' quarries and the distance from their own quarries and their competitors' quarries to a customer's plant or job site. Generally, because of transportation costs, the farther a supplier's closest competitor is from a job site, the less price competition that supplier faces for that project. Post-acquisition, in instances where Vulcan and Florida Rock quarries would be the closest quarries to a customer's plant or project and the next closest coarse aggregate supplier's plant is farther from the customer's plant or project, the combined firm, using the knowledge of its competitors' quarry locations, would be able to charge such customers higher prices.

42. Without the constraint of competition between Vulcan and Florida Rock, the combined firm will have a greater ability to exercise market power by raising prices to customers for whom Vulcan or Florida Rock were sources of coarse aggregate.

43. In addition, Vulcan's elimination of Florida Rock as an independent competitor in the production, distribution, and sale of coarse aggregate is likely to facilitate anticompetitive coordination among the remaining coarse aggregate suppliers in Northwest Atlanta, West Atlanta, Southwest Atlanta, South Atlanta, Columbus, and Chattanooga. Coarse aggregate is homogeneous and suppliers have access to information about competitors' output, capacity, and costs. Given these market conditions, eliminating one of the few coarse aggregate competitors is likely to further increase the ability of the remaining competitors to coordinate successfully.

44. The transaction therefore will substantially lessen competition in the production, distribution, and sale of coarse aggregate in the relevant geographic markets. This is likely to lead to higher prices for the ultimate consumers of coarse aggregate, in violation of Section 7 of the Clayton Act.

2. Entry is Not Likely to Deter the Exercise of Market Power.

45. Timely and successful entry into the production, distribution, and sale of coarse aggregate is unlikely in the relevant geographic areas.

46. Securing the proper site for a coarse aggregate quarry or mine is difficult, time-consuming, and costly. It requires the investigation and extensive testing of candidate sites, as well as negotiating necessary land transfers, leases, and/or easements. The location of a quarry, mine, or yard is important due to the high cost of transporting coarse aggregate, but there are few sites, especially in metropolitan areas, on which to locate coarse aggregate operations.

47. Due to the geology in South Hampton Roads, coarse aggregate for most applications in South Hampton Roads is produced outside the area. For an entrant to compete effectively in South Hampton Roads with a combined Vulcan and Florida Rock, that entrant must pair a new or existing rail- or water-served quarry with a distribution yard in the South Hampton Roads area that is capable of receiving coarse aggregate from such a quarry. Rail- or water-served quarries situated to compete effectively in South Hampton Roads, and the proper sites for distribution yards to serve those quarries, are scarce.

48. Obtaining necessary zoning variances and governmental permits for a coarse aggregate quarry or mine also can be difficult, time-consuming, and costly. In metropolitan areas, land of the necessary size and geology often is already utilized or does not have the

appropriate zoning, and obtaining zoning variances can be extremely difficult. Attempts to open a new coarse aggregate quarry or mine, especially in metropolitan areas (such as West Atlanta, Southwest Atlanta, South Atlanta, Columbus, Chattanooga, and South Hampton Roads) but also frequently in rural areas, often face fierce public opposition. This public opposition can prevent a coarse aggregate quarry or mine from opening or make opening it much more time-consuming and costly. In addition, state and federal water, air quality, and other permitting process requirements must be met.

49. Even after a quarry or mine site is acquired and properly zoned and permitted, the owner must spend significant time and resources to prepare the land and install the equipment necessary to run the operation.

50. Therefore, entry by any other firm into the coarse aggregate market in the relevant geographic areas will not be timely, likely, or sufficient to defeat an anticompetitive price increase.

V. VIOLATIONS ALLEGED

51. The proposed acquisition of Florida Rock by Vulcan would substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

52. Unless restrained, the transaction will have the following anticompetitive effects, among others:

- a. actual and potential competition between Vulcan and Florida Rock in the production, distribution, and sale of coarse aggregate in the relevant geographic markets will be eliminated;

- b. competition generally in the production, distribution, and sale of coarse aggregate in the relevant geographic markets will be substantially lessened; and
- c. prices for coarse aggregate in the relevant geographic markets likely will increase.

VI. REQUEST FOR RELIEF

53. Plaintiff requests that:

- a. Vulcan's proposed acquisition of Florida Rock be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;
- b. defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Vulcan with the operations of Florida Rock;
- c. plaintiff be awarded its costs for this action; and

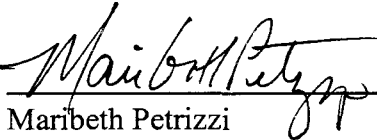
d. plaintiff receive such other and further relief as the Court deems just and proper.

Respectfully submitted,

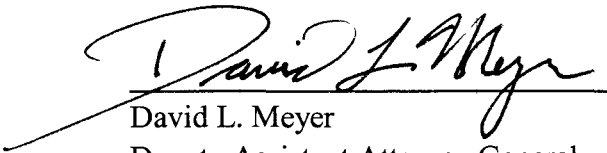
FOR PLAINTIFF UNITED STATES OF AMERICA:



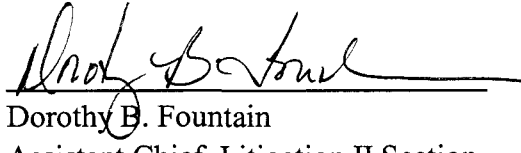
Thomas O. Barnett
Assistant Attorney General
D.C. Bar #426840



Maribeth Petrizzi
Chief, Litigation II Section
D.C. Bar #435204



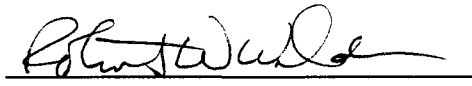
David L. Meyer
Deputy Assistant Attorney General
D.C. Bar #414420



Dorothy B. Fountain
Assistant Chief, Litigation II Section
D.C. Bar #439469



Patricia A. Brink
Deputy Director of Operations



Robert W. Wilder
Helena Gardner
Christine A. Hill (D.C. Bar #461048)
Leslie Peritz
Lowell Stern (D.C. Bar #440487)
James S. Yoon (D.C. Bar #491309)
Attorneys
United States Department of Justice
Antitrust Division, Litigation II Section
1401 H Street, NW, Suite 3000
Washington, D.C. 20530
(202) 307-6336

Dated: November 13, 2007