

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARTIN MARIETTA MATERIALS, INC.;
CSR LIMITED;
CSR AMERICA, INC.; and
AMERICAN AGGREGATES CORPORATION,

Defendants.

Civil No.: IP97-854C-T/G

Filed: May 27, 1997

COMPLAINT

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

1. The United States brings this antitrust action to prevent the proposed acquisition by Martin Marietta Materials, Inc. (Martin) of American Aggregates Corporation (American Aggregates) from CSR America, Inc. (CSR America) which is a subsidiary of CSR Limited (CSR). The acquisition threatens to harm purchasers of aggregate in Marion County, Indiana.
2. With its acquisition of American Aggregates, Martin will eliminate its most significant competitor in the market for aggregate in Marion County, become the dominant entity in the market, and acquire the power to increase prices in the market.

I.

JURISDICTION AND VENUE

3. This action is filed under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. The defendants transact business in this District. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

5. The defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. § 22 and 28 U.S.C. §§ 1331 and 1337.

II.

DEFINITIONS

6. "Aggregate" means crushed stone and gravel produced at quarries, mines, and gravel pits used to manufacture asphalt concrete and ready-mix concrete.

7. "Asphalt concrete" means material that is used principally for paving and is produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate.

8. "Ready-mix concrete" means a material used in the construction of buildings, highways, bridges, tunnels, and other products and is produced by mixing a cementing material (commonly portland cement) and aggregate with sufficient water to cause the cement to set and bind.

9. "Hot-mix plant" means a plant that produces asphalt concrete.

10. "Concrete plant" means a plant that produces ready mix concrete.

11. "Marion County" refers to Marion County, Indiana. Indianapolis, Indiana is located in Marion County.

III.

DEFENDANTS

12. Martin is made a defendant herein. Martin is a North Carolina corporation with headquarters in Raleigh, North Carolina. In the State of Indiana and 18 other states, one of Martin's principal businesses is extracting, processing, and selling aggregate. In Marion County, Martin operates a quarry known as the Kentucky Avenue Quarry which produces aggregate.

13. American Aggregates is made a defendant herein. American Aggregates is a Delaware corporation with headquarters in Dayton, Ohio. In the States of Indiana, Ohio, and Michigan, American Aggregates' principal business is extracting and processing aggregate. In Marion County, American Aggregates operates a quarry known as the Harding Street Quarry which produces aggregate. It operates a second quarry in Hamilton County, Indiana known as the 96th Street Quarry which is in close proximity to Marion County.

14. CSR American is made a defendant herein. CSR America is a Georgia corporation with headquarters in Atlanta, Georgia. In North America, CSR America has construction and building materials operations. American Aggregates is a wholly owned subsidiary of CSR America. Through American Aggregates, CSR America is a provider of construction materials, including aggregate, in the State of Indiana and other Midwestern states.

15. CSR is made a defendant herein. CSR is a company formed under the laws of Australia, with headquarters in Sydney, New South Wales. CSR is an international manufacturer,

producer, and supplier of construction materials, sugar, and bauxite with operations in Australia, the United Kingdom, Asia, North America, and New Zealand. CSR America is a wholly owned subsidiary of CSR. Through CSR America and American Aggregates, CSR is a provider of construction materials, including aggregate, in the State of Indiana and other Midwestern states.

IV.

TRADE AND COMMERCE

16. Aggregate is a stone product used to manufacture asphalt concrete and ready mix concrete.

17. Aggregate differs from all other types of stone products in its physical composition, functional characteristics, customary uses, and pricing. Manufacturers of asphalt concrete and ready mix concrete do not view other types of stone products as good substitutes.

18. The production and sale of aggregate used to manufacture asphalt concrete and ready mix concrete constitutes a line of commerce and a relevant market for antitrust purposes. Manufacturers of asphalt concrete and ready mix concrete recognize aggregate as a distinct product.

19. Aggregate is a low-priced commodity that is very heavy and bulky. Transportation costs comprise a substantial portion of the price per ton of aggregate and hence limits the areas to which it can be shipped economically. As a result, the geographic location of aggregate quarries, mines and gravel pits and associated transportation costs create regional markets for the sale of aggregate which generally are no larger than an urban area or a small region of a state.

20. Producers of aggregate located in Marion County or in close proximity to Marion County sell and compete with each other for sales of aggregate within Marion County. Martin

serves Marion County through its quarry known as the Kentucky Avenue Quarry in Marion County. American Aggregates services Marion County from its quarry known as the Harding Street Quarry in Marion County and from its quarry known as the 96th Street Quarry, which is located just outside of Marion County in Hamilton County. Producers of aggregate that are not located in Marion County or in close proximity to Marion County do not sell a significant amount of aggregate for use within Marion County.

21. Marion County and its immediate outlying areas constitutes a section of the country and a relevant geographic market for antitrust purposes.

22. American Aggregates and Martin are the only producers of aggregate in Marion County and are two of only three significant producers in close proximity to Marion County. American Aggregates and Martin sell the vast majority all of the aggregate used to manufacture asphalt concrete and ready mix concrete for road and highway construction projects in Marion County contracted for by the Indiana Department of Transportation and local jurisdictions within Marion County. The Indiana Department of Transportation, through its contracts for highway construction, is indirectly the largest purchaser of aggregate in Marion County.

23. The acquisition of American Aggregates by Martin would create a dominant aggregate company in Marion County. It would reduce the number of significant competitors operating aggregate facilities in Marion County or in close proximity to Marion County from three to two, and significantly reduce the number of competitors supplying aggregate used to manufacture asphalt concrete and ready mix concrete manufactured for highways in Marion County.

24. After the acquisition, Martin would control the aggregate market in Marion

County, and it would have market power to increase the price of aggregate in Marion County. In response to such increase in price, purchasers could not switch to another producer of aggregate.

25. Establishing a new, successful aggregate production facility in or in close proximity to Marion County is difficult, time-consuming and costly. To be cost competitive in Marion County, an aggregate production facility must be able to produce large amounts of consistent quality aggregate in close proximity to the hot-mix plants and concrete plants where the aggregate will be used. Environmental and zoning permits must be obtained to operate an aggregate production facility. State and local zoning provisions make it very difficult to open an aggregate production facility in Marion County or in close proximity to Marion County. It would likely take between two to five years to license and build an aggregate production in Marion County or in close proximity to Marion County and cost up to \$35 million. It is unlikely that timely and sufficient entry will occur in the aggregate market in Marion County to forestall Martin's acquisition of American Aggregates from substantially lessening competition.

26. Aggregate produced in or close proximity to Marion County is used to manufacture asphalt concrete and ready mix concrete, which are used to pave and repair roads that are part of a network of interconnecting highways throughout the United States over which motor vehicles move in a continuous and uninterrupted stream of interstate commerce from and through one state to another. The construction and maintenance of some of these highways is financed directly or indirectly by the federal government. A substantial amount of the nation's goods move in interstate commerce over these highways.

27. Substantial quantities of equipment and material used in the production of aggregate in Marion County is purchased from sources outside the State of Indiana and shipped

across state lines into the State of Indiana. Substantial quantities of money move across state lines from one state to another as a direct result of the defendants' business activities related to the sale of aggregate in Marion County.

28. The aggregate production and sales activities engaged in by the defendants are within the flow of, and substantially affect, interstate commerce.

V.

VIOLATION ALLEGED

29. On February 21, 1997, the defendants notified the United States that they had entered into a letter of intent providing for Martin to acquire all of the outstanding voting securities of American Aggregates, excluding its Michigan operations, from CSR America which is wholly owned by CSR. The purchase price is approximately \$234.5 million.

30. The effect of the proposed transaction is likely substantially to lessen competition in the production and sale of aggregate in Marion County in violation of Section 7 of the Clayton Act in the following ways:

a. competition in the market for the production and sale of aggregate in Marion County will be substantially lessened;

b. actual and potential competition between Martin and American Aggregates in the market for the production and sale of aggregate in Marion County will be eliminated;

c. actual and potential competition in the market for the production and sale of aggregate used to manufacture asphalt concrete and ready mix concrete for highway construction projects built for the Indiana Department of Transportation in Marion County

and local jurisdictions located in Marion County will be substantially lessened; and

d. prices for aggregate in Marion County are likely to increase.

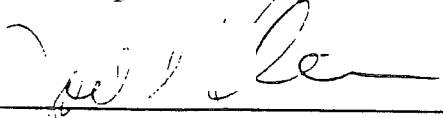
VI.

REQUESTED RELIEF

Plaintiff's request:

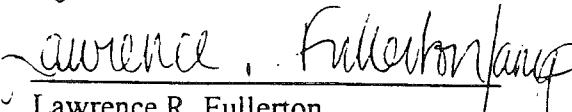
1. That the proposed acquisition of American Aggregates by Martin be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act;
2. That the defendants be permanently enjoined from carrying out their letter of intent dated December 20, 1996, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of the defendants;
3. That the plaintiffs have such other and further relief as the case requires and the Court deems proper; and
4. That the plaintiffs recover the costs of this action.

~~Dated: April 16, 1997~~



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