

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, and
STATE OF CONNECTICUT, ex rel.
RICHARD BLUMENTHAL, ATTORNEY
GENERAL,

Plaintiffs,

v.

OLDCASTLE NORTHEAST, INC.;
CRH plc;
TILCON, INC.; and
BTR plc,

Defendants.

Civil No.: 396-CV01749

Filed: September 3, 1996

COMPLAINT

The United States of America and the State of Connecticut, by their attorneys and acting under the direction of the Attorney General of the United States and the Attorney General of the State of Connecticut, bring this civil antitrust action to obtain equitable relief against the defendants named herein and complain and allege as follows:

1. The United States and the State of Connecticut bring this antitrust action to prevent the proposed acquisition by CRH plc (CRH) through Oldcastle Northeast, Inc. (Oldcastle) of Tilcon, Inc. (Tilcon) from BTR plc (BTR). The acquisition threatens to harm purchasers of asphalt concrete in the greater Hartford area.

2. With its acquisition of Tilcon, Oldcastle will eliminate its most significant competitor in the market for asphalt concrete in the greater Hartford area, 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 Sections 15 and 16 of the Clayton Act, 15 U.S.C. § 25, and 15 U.S.C. § 26, 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 sand, gravel, and crushed stone produced at quarries or sand and gravel pits.

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

9. As used herein the term "greater Hartford area" refers to the following cities and towns in Connecticut: Hartford, New Britain, Newington, Wethersfield, Farmington, West Hartford, Bloomfield, Windsor, South Windsor, East Hartford, Manchester, Glastonbury, Windsor Locks, East Granby, Plainville, Rocky Hill, Enfield, Avon, Ellington, and East Windsor.

III.

DEFENDANTS

10. Oldcastle is made a defendant herein. Oldcastle is a Delaware corporation with headquarters in Washington, D.C. In the State of Connecticut and other Northeastern states, two of Oldcastle's principal businesses are manufacturing and selling asphalt concrete and extracting and processing aggregate. In the greater Hartford area, Oldcastle operates hot-mix plants which produce asphalt concrete and a quarry which produces aggregate.

11. CRH is made a defendant herein. CRH is a company formed under the laws of the Republic of Ireland, with headquarters in Dublin. CRH is an international manufacturer and supplier of construction materials with operations in Ireland, the United Kingdom, Mainland Europe, North America, and Argentina. Oldcastle is a wholly owned subsidiary of CRH. Through Oldcastle, CRH is a provider of construction materials, including aggregates and asphalt concrete, in the State of Connecticut and other Northeastern states.

12. Tilcon is made a defendant herein. Tilcon is a Delaware corporation with headquarters in New Britain, Connecticut. In the State of Connecticut and other Northeastern

states, two of Tilcon's principal businesses are manufacturing and selling asphalt concrete and extracting and processing aggregate. In the greater Hartford area, Tilcon operates hot-mix plants that produce asphalt concrete and quarries that produce aggregate.

13. BTR is made a defendant herein. BTR is a company formed under the laws of the United Kingdom with headquarters in London, England. BTR manufactures and produces a variety of goods and services on an international basis. One of BTR's principal businesses is supplying construction materials. Tilcon is a wholly owned subsidiary of BTR. Through Tilcon, BTR is a major provider of construction materials, including aggregates and asphalt concrete, in the State of Connecticut and other Northeastern states.

IV.

TRADE AND COMMERCE

14. Asphalt concrete is used principally to pave roads and is also used to pave parking lots, driveways, and airport runways.

15. Asphalt concrete differs from all other paving material in its physical composition, functional characteristics, customary uses, means of production and pricing. Buyers and sellers of asphalt concrete do not view other paving materials as good substitutes for asphalt concrete.

16. The manufacture and sale of asphalt concrete constitutes a line of commerce and a relevant market for antitrust purposes. Manufacturers and buyers of asphalt concrete and other paving materials recognize asphalt as a distinct product.

17. Manufacturers of asphalt located in the greater Hartford area sell and compete with each other for sales of asphalt concrete within the greater Hartford area. Manufacturers of

asphalt concrete located outside the greater Hartford area do not sell a significant amount of asphalt concrete for use within the greater Hartford area.

18. The greater Hartford area constitutes a section of the country and a relevant geographic market for antitrust purposes.

19. Oldcastle (operating through The Balf Company in Connecticut) and Tilcon are the two largest producers of asphalt concrete in the greater Hartford area and are the only producers of asphalt concrete in the greater Hartford area that own their own sources of aggregate for manufacturing asphalt concrete for highway projects. They are also the only manufacturers of asphalt concrete located in the greater Hartford area that supply asphalt concrete for highway construction projects built by the Connecticut Department of Transportation in the greater Hartford area. The Connecticut Department of Transportation is the largest purchaser of asphalt concrete in the greater Hartford area.

20. The acquisition of Tilcon by Oldcastle would create a dominant asphalt concrete company in the greater Hartford area. It would reduce the number of competitors operating hot-mix plants in the greater Hartford area from three to two and reduce the number of competitors supplying asphalt concrete for highway construction projects built by the Connecticut Department of Transportation in the greater Hartford area from two to one.

21. After the acquisition, Oldcastle would control the asphalt concrete market in the greater Hartford area, and it would have market power to increase the price of asphalt concrete in the greater Hartford area. In response to an increase, purchasers could not switch to another

producer of asphalt concrete. The only alternative manufacturer of asphalt concrete in the greater Hartford area (Sales Construction) would have its only source of aggregate in the greater Hartford area controlled by Oldcastle.

22. Establishing a new, successful hot-mix plant in the greater Hartford area is difficult, time-consuming and costly. Environmental and zoning permits must be obtained to operate hot-mix plants. Communities in the greater Hartford area are generally opposed to issuing zoning permits for a hot-mix plant. To be cost competitive in the greater Hartford area, a potential hot-mix plant entrant must own a supply of aggregate in close proximity to the location where the hot-mix plant will be situated. Environmental and zoning permits must be obtained to open a quarry or a pit that will supply the aggregate. Connecticut zoning provisions make it very difficult to open a quarry or sand and gravel pit in the greater Hartford area. Estimates of the time it would take to open a hot-mix plant without an aggregate supply in the greater Hartford area are 3-5 years. Estimates of the cost of opening a hot-mix plant are \$2 million to \$3 million. It is unlikely that timely and sufficient entry will occur in the asphalt concrete market in the greater Hartford area to forestall Oldcastle's acquisition of Tilcon from substantially lessening competition.

23. Asphalt concrete manufactured in the greater Hartford area is 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.

24. Substantial quantities of equipment and material used in the manufacturing of asphalt concrete in the greater Hartford area is purchased from sources outside the State of Connecticut and shipped across state lines into the State of Connecticut. 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 manufacture and sale of asphalt concrete in the greater Hartford area.

25. The asphalt concrete manufacturing and sales activities engaged in by the defendants are within the flow of, and substantially affect, interstate commerce.

V.

VIOLATION ALLEGED

26. On June 19, 1996, the defendants notified the United States that they had entered into a letter of intent providing for CRH through Oldcastle to acquire all of the outstanding voting securities of Tilcon Inc. from BTR. The purchase price is approximately \$270 million.

27. The effect of the proposed transaction is likely to substantially lessen competition in the manufacture and sale of asphalt concrete in the greater Hartford area in violation of Section 7 of the Clayton Act in the following ways:

- a. competition in the market for the manufacture and sale of asphalt concrete in the greater Hartford area will be substantially lessened;
- b. actual and potential competition between Oldcastle and Tilcon in the market for the manufacture and sale of asphalt concrete in the greater Hartford area will be eliminated;

- c. actual and potential competition in the market for the manufacture and sale of asphalt concrete for highway construction projects built by the Connecticut Department of Transportation in the greater Hartford area will be eliminated; and
- d. prices for asphalt concrete in the greater Hartford area are likely to increase.

VI.

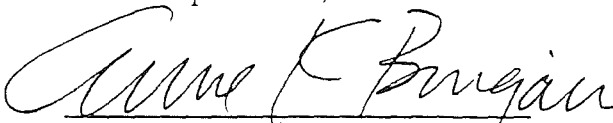
REQUESTED RELIEF

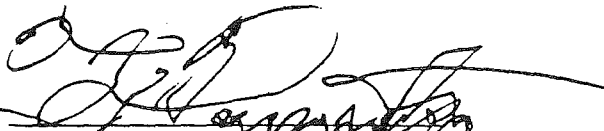
Plaintiffs' request:

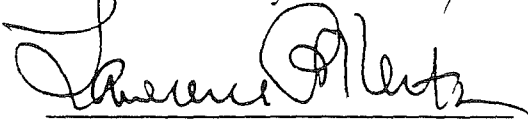
1. That the proposed acquisition of Tilcon by Oldcastle be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act;
2. That the defendants be permanently enjoined from carrying out their letter of intent dated June 19, 1996, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of the defendants;
3. CRH be ordered to give sixty (60) days notice to the U.S. Department of Justice, Antitrust Division and the Connecticut Attorney General's Office concerning any intent to acquire ownership or control of the stock or assets of any other manufacturer of asphalt concrete in the greater Hartford area;
4. That the plaintiffs have such other and further relief as the case requires and the Court deems proper; and

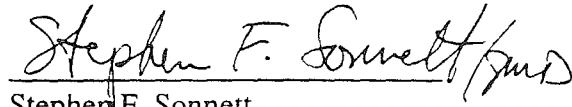
5. That the plaintiffs recover the costs of this action.


Dated: September 3, 1996

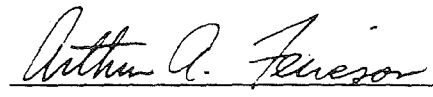

Anne K. Bingaman
Assistant Attorney General

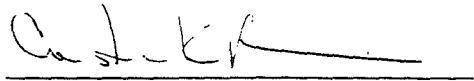

Frederick H. Parmenter


Lawrence R. Fullerton



Stephen F. Sonnett

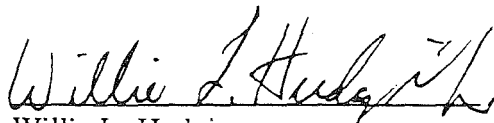

Charles E. Biggio


Arthur A. Feiveson


Constance K. Robinson

Attorneys
U.S. Department of Justice
Antitrust Division
City Ctr. Bldg., Rm. 3000
1401 H Street, N.W.
Washington, D.C. 20530
(202) 307-0620


J. Robert Kramer II


Willie L. Hudgins

Richard Blumenthal
Attorney General of Connecticut

Attorneys
U.S. Department of Justice
Antitrust Division

Christopher F. Droney
United States Attorney

By _____
Steven M. Rutstein
Assistant Attorney General
Attorney General's Office of the
State of Connecticut
Federal Bar No: CT09086

By _____
Carl J. Schuman
Assistant United States Attorney
District of Connecticut
Federal Bar No. CT 05439