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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 INDUSTRIAL ASPHALT;
17 HUNTMIX, INC.;
18 CALMAT CO.; and
19 COAST ASPHALT, INC.,

20 Defendants.

Civil No. 85-4631JGD(JRx)

COMPETITIVE IMPACT
STATEMENT

JAN 27 1987

21 The United States, pursuant to Section 2(b) of the Antitrust
22 Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h),
23 files this Competitive Impact Statement relating to the proposed
24 Final Judgment submitted for entry in this civil antitrust
25 proceeding.

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I.

NATURE AND PURPOSE OF THE PROCEEDING

On July 15, 1985, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, and under Section 4 of the Sherman Act, 15 U.S.C. § 4, challenging the December 20, 1983 merger of Huntmix, Inc. with Industrial Asphalt Inc., as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint names as defendants Industrial Asphalt, the new entity resulting from the merger; Huntmix, Inc.; Coast Asphalt, Inc., the successor to Industrial Asphalt Inc.; and CalMat Co., a part owner of Huntmix, Inc. The Complaint alleges that the effect of the merger may be substantially to lessen competition in the markets for the manufacture and sale of asphalt concrete in the greater Los Angeles area and in western San Diego County. The Complaint seeks divestiture from and reorganization of the new entity resulting from the merger and an injunction preventing defendants from merging with other asphalt concrete manufacturers in the relevant geographic areas for ten years.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the proposed Final Judgment.

1 II.

2 EVENTS GIVING RISE TO THE ALLEGED VIOLATION

3 On December 20, 1983, Huntmix, Inc. and Industrial Asphalt
4 Inc. merged their asphalt concrete businesses by forming a
5 partnership, 50% owned by each, to control both businesses. They
6 named the partnership "Industrial Asphalt." Before the merger,
7 Huntmix, Inc. and Industrial Asphalt Inc. had competed with each
8 other in the manufacture and sale of asphalt concrete in the
9 greater Los Angeles area and in western San Diego County.
10 Industrial Asphalt Inc. had also engaged in the asphalt concrete
11 business at other locations in California, Nevada, and Arizona.

12 Asphalt concrete is the black material used to pave city
13 streets, parking lots, driveways, airport runways, and highways.
14 Asphalt concrete is produced by heating and combining asphalt
15 cement (also referred to in the industry as "liquid asphalt" or
16 "asphalt oil") and aggregate. A plant that produces asphalt
17 concrete is commonly referred to as a "hot-mix plant."

18 In the greater Los Angeles area before the merger, Industrial
19 Asphalt Inc. was the largest supplier of asphalt concrete and
20 Huntmix, Inc. was the second or third largest supplier. As
21 measured by production, Industrial Asphalt Inc.'s market share for
22 1983 was approximately 24% and Huntmix, Inc.'s was approximately
23 17%. As a result of the merger, this market became highly
24 concentrated. The Herfindahl-Hirschman Index, a measure of market
25 concentration calculated by squaring the market share of each firm
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1 competing in the market and then summing the resulting numbers,
2 increased by more than 700 points to over 2100.

3 In western San Diego County before the merger, Industrial
4 Asphalt Inc. and Huntmix, Inc. were two of the five largest
5 suppliers of asphalt concrete. Industrial Asphalt Inc.'s market
6 share based on production and sales for 1983 was approximately 18%
7 and Huntmix, Inc.'s was approximately 11%. Industrial Asphalt
8 Inc.'s 18% market share included asphalt concrete it marketed that
9 was produced at a hot-mix plant in Lakeside, California not owned
10 by it. As a result of the merger, this market also became highly
11 concentrated. The Herfindahl-Hirschman Index increased by more
12 than 250 points to over 2400.

13 The Complaint alleges that the manufacture and sale of asphalt
14 concrete constitutes a line of commerce (product market) for
15 antitrust purposes and that the greater Los Angeles area and
16 western San Diego County constitute sections of the country
17 (geographic markets). Within each of these two geographic areas,
18 the Complaint alleges, based upon the increase in concentration
19 and other facts, the effect of the merger may be substantially to
20 lessen competition in the manufacture and sale of asphalt concrete.

21 III.

22 EXPLANATION OF THE PROPOSED FINAL JUDGMENT

23 Plaintiff and defendants have stipulated that the proposed
24 Final Judgment may be entered by the Court at any time after
25 compliance with the APPA. The proposed Final Judgment constitutes
26 no admission by any party as to any issue of fact or law. Under

1 the provisions of Section 2(e) of the APPA, entry of the proposed
2 Final Judgment is conditioned upon a determination by the Court
3 that the proposed Final Judgment is in the public interest.

4 The proposed Final Judgment requires defendants to divest
5 their entire interest in three hot-mix plants in the greater Los
6 Angeles area, absolutely and unconditionally, within six months of
7 the entry of the Final Judgment. If defendants cannot accomplish
8 the required divestiture within the above period, the proposed
9 Final Judgment provides that, upon application by the plaintiff,
10 the Court shall appoint a trustee to sell the three hot-mix plants.

11 One of the three plants to be divested is the former Huntmix,
12 Inc. hot-mix plant in Upland, California ("Upland plant").
13 Defendants and the trustee have an option regarding the identity
14 of the two remaining hot-mix plants to sell. Defendants must
15 divest: (a) either the former Industrial Asphalt Inc. hot-mix
16 plant in Orange, California ("Orange plant") or the former
17 Huntmix, Inc. hot-mix plant in Anaheim, California ("Santa Ana
18 Canyon plant") and (b) either the former Huntmix, Inc. hot-mix
19 plant on East Arrow Highway in Irwindale, California ("Arrow
20 Highway plant") or the former Huntmix, Inc. hot-mix plant on East
21 Los Angeles Street in Irwindale, California ("Durbin plant"). The
22 proposed Final Judgment requires that with each of the plants to
23 be divested there will be a ten-year agreement that defendant
24 CalMat Co. will supply aggregate from its pits on at least as
25 favorable terms as to Industrial Asphalt. With the Orange plant
26 to be divested there will be an option to sublicense an alternate

1 hot-mix plant site adjacent to an Orange County gravel pit. The
2 divestiture of this plant site will provide a purchaser of the
3 Orange assets with an alternative location for the existing Orange
4 plant, or for a replacement plant, should the ground lease on the
5 current plant site be terminated.

6 The three hot-mix plants must be divested to a purchaser or
7 purchasers who can and will operate each as a viable, ongoing
8 business that can compete effectively in the relevant market. The
9 defendants will take all reasonable steps necessary to accomplish
10 divestiture and shall cooperate with bona fide prospective
11 purchasers and the trustee.

12 The proposed Final Judgment provides that defendants will
13 warrant to the purchaser or purchasers of the three hot-mix plants
14 that the assets will be operational on the date of sale. Until
15 the required divestiture has been accomplished, the defendants
16 must preserve the assets subject to divestiture, including both
17 the physical facilities and all permits and rights to operate.
18 Defendants must keep separate bookkeeping records for each plant
19 subject to divestiture, and, except for the Arrow Highway plant
20 which is not currently operating, must continue to operate the
21 plants as going businesses and use all reasonable efforts to
22 maintain them as competitive entities.

23 If a trustee is appointed, the proposed Final Judgment
24 provides that defendants will pay all costs and expenses of the
25 trustee. The trustee's commission will be structured so as to
26 provide an incentive for the trustee based on the price obtained

1 and the speed with which divestiture is accomplished. If after
2 eleven months from the date of the trustee's appointment the
3 required divestiture has not been accomplished, the trustee and
4 the parties shall make recommendations to the Court and the Court
5 shall enter such orders as it deems appropriate to effect
6 divestiture.

7 The divestiture of these three hot-mix plants will add at
8 least one additional significant competitor in the greater Los
9 Angeles area and thereby restore competition to that market.

10 With respect to competition in the manufacture and sale of
11 asphalt concrete in western San Diego County, the proposed Final
12 Judgment contains an injunctive provision designed to minimize the
13 danger of the merged entity acting as the principal seller of the
14 output of a hot-mix plant in Lakeside, California operated by
15 Asphalt, Inc.

16 At one time Industrial Asphalt Inc. and Asphalt, Inc. were
17 both part owners of this hot-mix plant. By agreement, Industrial
18 Asphalt Inc. was the principal seller of the output of the plant.
19 Asphalt, Inc. operated the plant and used a portion of the output
20 in its contracting business. In 1981, the then-owner of
21 Industrial Asphalt Inc., a predecessor to Chevron Corporation,
22 attempted to sell the company, but due to a failure of a condition
23 of the sales transaction, Industrial Asphalt Inc.'s part ownership
24 of the Lakeside asphalt plant was not transferred to the new
25 owner. It remained with what is now Chevron Corporation. Despite
26 the failure to transfer this plant interest along with the rest of

1 the company, Industrial Asphalt Inc. and its successor, the entity
2 created by the subject merger, have continued as the de facto
3 marketers of the output of the plant.

4 The proposed Final Judgment addresses this Lakeside plant
5 marketing arrangement. The merged entity is enjoined by the
6 proposed Final Judgment from entering into any exclusive agreement
7 regarding the Lakeside plant, such as one designating the merged
8 entity as sole selling agent; from acquiring, merging with,
9 managing or operating the plant; and from interfering with price
10 or output decisions by the plant's owners. The injunctive
11 provision is to be applicable for ten years from the date of entry
12 of the proposed Final Judgment.

13 This relief is adequate to solve the competitive problem
14 resulting from the acquisition in western San Diego County. Since
15 the merged entity will not be able to control the Lakeside plant's
16 output, the Lakeside plant will become, in effect, an independent
17 source of asphalt concrete in the western San Diego area. It
18 should be a competitively significant source, especially because
19 of its favorable location in the market. It is located near the
20 center of the western San Diego County market, and can effectively
21 compete with the two hot-mix plants, currently owned by Industrial
22 Asphalt, which are located near the northern and southern edges of
23 the market.

24 The proposed Final Judgment also prohibits defendants from
25 acquiring or merging with any other hot-mix plants in the greater
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1 Los Angeles area or western San Diego County for ten years from
2 the date of entry of the proposed Final Judgment.

3 IV.

4 REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

5 Section 4 of the Clayton Act (15 U.S.C. § 15) provides that
6 any person who has been injured as a result of conduct prohibited
7 by the antitrust laws may bring suit in federal court to recover
8 three times the damages the person has suffered, as well as costs
9 and reasonable attorney fees. Entry of the Final Judgment will
10 neither impair nor assist the bringing of any private antitrust
11 damages actions. Under the provisions of Section 5(a) of the
12 Clayton Act (15 U.S.C. § 16(a)), the Final Judgment has no prima
13 facie effect in any private lawsuit that may be brought against
14 the defendants.

15 V.

16 PROCEDURES AVAILABLE FOR MODIFICATION OF
17 THE PROPOSED FINAL JUDGMENT

18 As provided by the APPA, any person wishing to comment upon
19 the Final Judgment may, within the statutory 60-day comment
20 period, submit written comments to Gary R. Spratling, Chief, San
21 Francisco Office, Antitrust Division, U.S. Department of Justice,
22 450 Golden Gate Avenue, Box 36046, San Francisco, California
23 94102. These comments and the Department's responses will be
24 filed with the Court and published in the Federal Register. All
25 comments will be given due consideration by the Department, which
26 remains free to withdraw its consent to the Judgment at any time

1 prior to entry. The Judgment provides that the Court retains
2 jurisdiction over this action and any party may apply to the Court
3 for any order necessary or appropriate for its modification,
4 interpretation, or enforcement.

5 VI.

6 ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

7 As an alternative to the divestiture of three hot-mix plants
8 in the greater Los Angeles area that is required by the proposed
9 Final Judgment, the United States considered requiring divestiture
10 of a greater or lesser number of plants. After consideration, the
11 United States concluded that the requirement to divest three
12 hot-mix plants in the greater Los Angeles area achieves the basic
13 objective of the litigation for the greater Los Angeles area
14 market: substantial, meaningful divestiture to reduce market
15 concentration. Moreover, the three parts of greater Los Angeles
16 where the proposed Final Judgment requires divestiture of hot-mix
17 plants are the only areas where former Huntmix, Inc. and former
18 Industrial Asphalt Inc. hot-mix plants are currently operated by
19 the merged entity in close proximity to one another. Thus, the
20 proposed relief will add one or more new competitors at those
21 locations where the competitive impact of the merger is greatest.
22 Accordingly, the United States concluded that the requirement that
23 Industrial Asphalt divest three plants was appropriate to restore
24 competition.

25 As an alternative to the injunctive relief with respect to the
26 Lakeside plant that is required by the proposed Final Judgment,

1 the United States considered requiring divestiture of one of the
2 two hot-mix plants in western San Diego County that are wholly
3 owned by Industrial Asphalt. After consideration, the United
4 States concluded that relief with respect to the centrally located
5 Lakeside plant would enhance competition more than would the
6 divestiture of either of these two wholly owned plants, which are
7 located at the northern and southern edges of the western San
8 Diego County market. The central location of the Lakeside plant
9 allows its output to be a strong competitive force throughout the
10 western San Diego County market.

11 The United States also considered a provision in the proposed
12 Final Judgment to enjoin Industrial Asphalt, beginning one year
13 from the date of entry of the judgment, from purchasing asphalt
14 concrete produced at the Lakeside plant from Chevron Corporation.
15 The purpose of the provision would have been directly to prevent
16 Industrial Asphalt from marketing any of the plant's output,
17 thereby giving greater incentive to the owner of that plant to use
18 a new marketer for the output of that plant or to sell the plant
19 to a new owner that would not have the historical ties with
20 Industrial Asphalt. After consideration, the United States
21 concluded that this provision placed an undue cost on Chevron
22 Corporation, a third party to the litigation, and would not be
23 needed to assure that the output of the Lakeside plant was not
24 controlled by Industrial Asphalt. Specifically, the United States
25 concluded that the current provisions of the proposed Final
26 Judgment, which preclude Industrial Asphalt from acting as

1 exclusive selling agent for the plant, or otherwise controlling
2 the output or pricing decisions of that plant, would prevent
3 Industrial Asphalt from exercising the type of control over
4 Lakeside which would remove it as a potential independent source
5 of asphalt in the western San Diego County market.

6 Finally, the United States considered two provisions intended
7 to facilitate new entry into the relevant markets. One provision
8 would have required defendant CalMat Co. to supply aggregate from
9 its pits to all hot-mix plants so requesting on at least as
10 favorable terms as to Industrial Asphalt. The second provision
11 would have required defendant Calmat Co. to make available hot-mix
12 plant sites for new entry at three specified locations in the
13 greater Los Angeles area. After consideration, the United States
14 concluded that these two provisions, which would have involved the
15 government in significant regulation of competitive activity in
16 the market, were unnecessary to restore competition. The United
17 States concluded that the divestiture of three plants in the
18 greater Los Angeles area, the Lakeside plant injunctive
19 provisions, and the other relief currently in the proposed Final
20 Judgment would be sufficient to remedy the potential
21 anticompetitive effects of the merger challenged by the complaint.

22 VII.

23 DETERMINATIVE MATERIALS AND DOCUMENTS

24 There are no materials or documents that the United States
25 considered to be determinative in formulating this proposed Final
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1 Judgment. Accordingly, none are being filed with this Competitive
2 Impact Statement.

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4 Dated:

5 Respectfully submitted,

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