

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Industrial Asphalt, Huntmix, Inc., CalMat Co., and Coast Asphalt, Inc., U.S. District Court, C.D. California, 1987-2 Trade Cases ¶67,826, (Apr. 16, 1987)

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United States v. Industrial Asphalt, Huntmix, Inc., CalMat Co., and Coast Asphalt, Inc.

1987-2 Trade Cases ¶67,826. U.S. District Court, C.D. California, Civil No. 85-4631JGD(JRx), Entered April 16, 1987, Case No. 3275, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions: Joint Ventures: Asphalt Concrete: Divestiture: Future Acquisitions.— A joint venture formed by the merger of two competing sellers of asphalt concrete in the greater Los Angeles area and western San Diego County was required to divest plants and assets under the terms of a consent decree. For a period of 10 years, acquisition of any asphalt concrete assets or stock in the two markets was prohibited without the consent of the Department of Justice.

For plaintiff: Charles F. Rule, Actg. Asst. Atty. Gen., Judy Whalley, Gary R. Spratling, Howard J. Parker, Joel S. Sanders, Patricia J. Falk, Attys. Antitrust Div., Dept. of Justice, San Francisco, Cal. **For defendants:** Michael J. Shockro, of Latham & Watkins, Los Angeles, Cal.

Final Judgment

Davies, D.J.: Plaintiff, United States of America, having filed its Complaint herein on July 15, 1985, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged, and Decreed as follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against each defendant under [Section 7 of the Clayton Act](#), as amended ([15 U.S.C. §18](#)), and under [Section 1 of the Sherman Act](#) ([15 U.S.C. §1](#)).

II

Definitions

As used in this Final Judgment:

- A. "Aggregate" means rock, sand, and gravel suitable for mixture in asphalt concrete.
- B. "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 rock, sand, or gravel.
- C. "Assets to be Divested" means all the assets identified in Sections IV.A and IV.B, below.
- D. "CalMat" means CalMat Co., a Delaware corporation with its principal place of business in Los Angeles, California.

E. "Coast Asphalt" means Coast Asphalt, Inc., a Delaware corporation with its principal place of business in Los Angeles, California.

F. "Greater Los Angeles area" means that area of Los Angeles County, San Bernardino County, Riverside County, and Orange County with the following boundaries: on the west, the Pacific Ocean and the border between Los Angeles County and Ventura County; on the north, a line running through the intersection of Interstate 5 and Interstate 210 near Sylmar, California, due west to the Los Angeles County border and due east to the San Bernardino County border, and then southerly to the southeastern corner of the Angeles National Forest, and then due east to Interstate 15E/215; on the east, Interstate 15E/215; and on the south, a line running from the intersection of Interstate 405 and Interstate 5 due west to the Pacific Ocean and from the intersection of Interstate 405 and Interstate 5 northeasterly to the intersection of Interstate 15E/215, California State Highway 60 and California State Highway 91.

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

H. "Huntmix" means Huntmix, Inc., a California corporation with its principal place of business in Van Nuys, California.

I. "Industrial Asphalt" means Industrial Asphalt, a California partnership with its principal place of business in Van Nuys, California.

J. "Ownership interest" means all right, title, and interest, including but not limited to both fee and leasehold interests.

K. "Western San Diego County" means that area of San Diego County with the following boundaries: on the west, the Pacific Ocean; on the north, California State Highway 78; on the east, a line running due south from the intersection of California State Highways 78 and 67 near Ramona, California, to the Mexican border; and on the south, the Mexican border.

III

Applicability

A. The provisions of this Final Judgment apply to the defendants, to their successors and assigns, to their subsidiaries, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets in the greater Los Angeles area or western San Diego County involved in the production of asphalt concrete, or in the extracting, processing, and selling of aggregate, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

Divestiture of Assets

A. Industrial Asphalt is hereby ordered and directed to divest, to an eligible purchaser or eligible purchasers, all of its ownership interest in all of the real and personal property used in the production and sale of asphalt concrete at:

1. either its plant located at 454 North Prospect Street, Orange, California (the "Orange Plant Assets") or its plant located at 24000 Santa Ana Canyon Road, Anaheim, California (the "Santa Ana Canyon Plant Assets");
2. its plant located at 19th Street and Campus Avenue, Upland, California (the "Upland Plant Assets"); and
3. either its plant located at 1380 East Arrow Highway, Irwindale, California (the "Arrow Highway Plant Assets") or its plant located at 13130 E. Los Angeles Street, Irwindale, California (the "Durbin Plant Assets").

Industrial Asphalt will warrant to the purchaser or purchasers of such assets that such assets will be operational on the date of sale, with its liability limited to repairing or replacing defects under the warranty. The Orange Plant Assets to be divested shall include the Sublicense Option Agreement executed on May 20, 1986 by Industrial Asphalt and Owl Rock Products Co., which provides an option to sublicense a site suitable for the operation of the Orange Plant Assets or a hot-mix plant of comparable batch capacity on Owl Rock Products Co.'s rock, sand, and gravel property on Gypsum Canyon Road in Orange County.

B. As part of any divestiture of plant assets under this Final Judgment, CalMat Co. shall agree that, for a period of ten (10) years from the date of divestiture, it shall, on request, supply aggregate to any purchaser or purchasers of such assets, from any of its aggregate producing sites in the greater Los Angeles area and western San Diego County then supplying aggregate to Industrial Asphalt, as long as CalMat is producing aggregate at that site, at f.o.b. prices and on other terms and conditions of sale that are at least as favorable as the f.o.b. price and other terms and conditions of sale at which aggregate of similar quantity and quality is sold at the same time by CalMat from that particular site to Industrial Asphalt. Provided, however, that nothing in this section IV.B shall preclude CalMat from conditioning the sale of aggregate to any such person on the reasonable approval of that person's credit. In the case of a shortage of aggregate, an interruption of the supply of aggregate, or other force majeure events, CalMat shall allocate aggregate to such persons on a reasonable and nondiscriminatory basis among all of its customers.

C. Unless plaintiff otherwise consents, divestiture under Sections IV.A and IV.B shall be made to a purchaser or purchasers who shall demonstrate to the plaintiff or, failing the plaintiff's approval, to the Court that (1) the purchase is for the purpose of competing in the manufacture and sale of asphalt concrete and (2) the purchaser or purchasers has or have the managerial, operational, and financial capability to compete in the manufacture and sale of asphalt concrete.

D. Industrial Asphalt shall take all reasonable steps to accomplish quickly the divestiture contemplated by Sections IV.A and IV.B.

V

Appointment of Trustee

A. In the event that Industrial Asphalt has not divested all of its ownership interests required by Section IV.A within six (6) months from the date of entry of this Final Judgment, the Court shall, on application of the plaintiff, appoint a trustee to effect the remainder of the divestiture required by Section IV.A. Such appointment shall become effective not more than forty-five (45) days following the filing of the petition. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Section IV. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Industrial Asphalt shall not object to a sale by the trustee on any grounds other than malfeasance.

B. If Industrial Asphalt has not divested all of the ownership interests required by Section IV.A within five (5) months of the date of entry of this Final Judgment, the plaintiff and Industrial Asphalt shall immediately notify each other in writing of the names and qualifications of not more than two (2) nominees for the position of the trustee who shall effect the required divestiture. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within thirty (30) days of the exchange of names, plaintiff shall notify the Court of the person upon whom the parties agreed, and the Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, plaintiff shall furnish the Court the names of each party's nominees. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of Industrial Asphalt, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for

its services, all remaining money shall be paid to Industrial Asphalt and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. The defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Assets to be Divested, and Industrial Asphalt shall develop financial or other information relevant to such assets as the trustee may request. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. If the trustee has not accomplished such divestiture within twelve (12) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment.

VI

Notification

A. Industrial Asphalt or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Industrial Asphalt. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in any of the Assets to be Divested, together with full details of the same. Within fifteen (15) days after receipt of the notice, the plaintiff may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Industrial Asphalt or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, plaintiff shall notify in writing Industrial Asphalt and the trustee, if there is one, if it objects to the proposed divestiture. If the plaintiff fails to object within the period specified, or if the plaintiff notifies in writing Industrial Asphalt and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Industrial Asphalt's limited right to object to the sale under Section V.A. Upon objection by the plaintiff or by Industrial Asphalt under Section V.A, the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, Industrial Asphalt shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV of this Final Judgment. Each such affidavit shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in any of the Assets to be Divested, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Industrial Asphalt shall maintain full records of all efforts made to divest the Assets to be Divested.

VII

Preservation of Assets

A. Subject to Sections VII.E and VII.F, Industrial Asphalt shall preserve, hold, and, with the exception of the Arrow Highway Plant Assets, continue to operate as going businesses the Assets to be Divested. Industrial Asphalt shall use all reasonable efforts to maintain the Assets to be Divested as competitive entities, with the exception of the Arrow Highway Plant Assets, and shall not sell or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefor), the Assets to be Divested, except that such component as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for an Asset to be Divested. This provision includes but is not limited to: preserving all asphalt concrete plants, and their aggregate supply and right and ability to operate at the sites where they are located; preserving all air pollution and operating permits (including proceeding with such application or operation as is necessary to renew or make permanent any temporary permits); and preserving all administrative and support facilities.

B. Subject to Sections VII.E and VII.F, Industrial Asphalt shall preserve the Assets to be Divested except those replaced with newly acquired assets in the ordinary course of business, in a state of repair equal to their state of repair as of January 3, 1984.

C. Subject to Section VII.F, Industrial Asphalt shall identify separately for each asphalt concrete plant referred to in Section IV.A all assets or replacements for or proceeds therefrom that were used in the production and sale of asphalt concrete at such plant prior to the formation of Industrial Asphalt.

D. Subject to Section VII.F, Industrial Asphalt shall keep a separate bookkeeping record of the income and debits attributable to each asphalt concrete plant referred to in Section IV.A.

E. Industrial Asphalt shall be excused from its failure to preserve, hold, operate, repair, or replace any asset when such failure is attributable to causes beyond its reasonable control, including explosion, fire, flood, storm or other acts of God, governmental regulation or the loss of Industrial Asphalt's right to operate at a plant's current location. In the event such a cause occurs, Industrial Asphalt promptly will provide notice thereof to plaintiff.

F. The requirement that Industrial Asphalt take certain steps to preserve and identify assets as set forth in Sections VII.A, VII.B, VII.C, and VII.D shall terminate with respect to:

1. the Orange Plant Assets and the Santa Ana Canyon Plant Assets when the divestiture required by this Final Judgment of either the Orange Plant Assets or the Santa Ana Canyon Plant Assets has been accomplished;
2. the Upland Plant Assets when the divestiture required by this Final Judgment of the Upland Plant Assets has been accomplished; and
3. the Arrow Highway Plant Assets and the Durbin Plant Assets when the divestiture required by this Final Judgment of either the Arrow Highway Plant Assets or the Durbin Plant Assets has been accomplished.

VIII

Future Acquisitions

A. The defendants are enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from merging with, or directly or indirectly acquiring any assets or stock of, any other person engaged in whole or in part in the production of asphalt concrete in the greater Los Angeles area or western San Diego County without the prior written consent of plaintiff or, if such consent is refused, without the approval of the Court after an affirmative showing by the defendants that the effect of any such acquisition will not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

B. Defendants are enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from: acquiring any interest in the asphalt concrete plant located in Lakeside, California, operated by Asphalt Inc. (the "Lakeside plant"); managing or operating, directly or indirectly, the Lakeside plant; acting as sole selling or buying agent for, or entering into any other exclusive agreement with, any person that holds

an ownership interest in the Lakeside plant with respect to the Lakeside plant; or interfering with or impeding the Lakeside plant owners' ability to sell the output from that plant to whomever and at whatever price and on whatever other terms and conditions of sale that they choose.

C. Nothing in this Section VIII shall prohibit defendants from acquiring property, equipment, or materials from any source in the ordinary course of their businesses or from holding or acquiring one percent (1%) or less of the voting securities of any person engaged in whole or in part in the production of asphalt concrete in the greater Los Angeles area or western San Diego County.

IX

Compliance Inspection

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their respective principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview officers, employees, and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants at their respective principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiff, that defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and that defendant marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to that defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

X

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance with this Final Judgment, or for the punishment of violations of this Final Judgment.

XI

Term

This Final Judgment will expire ten (10) years after the date of its entry or earlier upon the granting of a motion for termination made by plaintiff.

XII

Public Interest

Entry of this Final Judgment is in the public interest.