

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Owensboro River Sand & Gravel Co., Inc., and Transit-Mix Concrete Co., U.S. District Court, W.D. Kentucky, 1979-1 Trade Cases ¶62,519, (Jan. 25, 1979)

[Click to open document in a browser](#)

United States v. Owensboro River Sand & Gravel Co., Inc., and Transit-Mix Concrete Co.

1979-1 Trade Cases ¶62,519. U.S. District Court, W.D. Kentucky, Civil Action No. 77-0110-0(G) Entered January 25, 1979.

(Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 52298). Case No. 2605, Antitrust Division, Department of Justice.

## Sherman Act

**Price Fixing: Exchange of Information: Ready-Mix Concrete: Consent Decree.**— Two ready-mix concrete producers in Kentucky were barred by a consent decree from fixing prices and exchanging information concerning prices, conditions, price changes and future prices in connection with the sale of ready-mix concrete or any other product. The exchange of information prohibition should not apply to *bona fide* transactions, joint bids or quotations or to the advertising to the public or trade in general.

**For plaintiff:** John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, and John A. Weedon, Attys., Dept. of Justice, Donald S. Scherzer, William A. LeFaiver, and Robert M. Dixon, Attys., Dept. of Justice, Cleveland, Ohio. **For defendants:** Myron N. Krotinger, of Burke, Haber & Berick, Cleveland, Ohio, William L. Wilson, Sr., of Wilson, Wilson & Plain, Owensboro, Ky., for Owensboro River Sand & Gravel Co., Inc.; T. Kennedy Helm, III, of Stites, McElwain & Fowler, Louisville, Ky., for Transit-Mix Concrete Co.

## Final Judgment

GORDON, D. J.: Plaintiff, United States of America, having filed its Complaint herein on July 22, 1977, and defendants, having appeared and responded to the Complaint, and the plaintiff and defendants by their respective attorneys having consented to the making and 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 any admission by any party with respect to any issue of fact or law herein:

Now, therefore, before any testimony or evidence has been taken herein and upon said consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

### [ Jurisdiction ]

This Court has jurisdiction of the subject matter herein and of the parties thereto. The Complaint states claims against the defendants upon which relief may be granted under [Section 1 of the Sherman Act](#) (15 U. S. C. §1).

II

### [ Definitions ]

As used in this Final Judgment:

(A) "person" means any individual, corporation, partnership, firm, association or other business or legal entity;

(B) “ready mix concrete” means a mixture of cement and other materials, such as sand, stone, water and, at times, additives, which is used in the construction and improvement of various types of roadways, structures and appurtenances.

### III

#### **[ Applicability ]**

The provisions of this Final Judgment applicable to each of the defendants shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, 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.

### IV

#### **[ Price Fixing ]**

Each defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining, furthering, enforcing or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan, program, combination or conspiracy with any person to determine, fix, raise, stabilize or maintain prices or other terms or conditions for the sale of ready mix concrete or any other product to any third person in the Commonwealth of Kentucky.

### V

#### **[ Exchange of Information ]**

Each defendant is enjoined and restrained from, directly or indirectly:

- (A) communicating to any person prices at which, or terms or conditions upon which, ready mix concrete or any other product is then being sold or offered for sale by said defendant;
- (B) communicating to any person information concerning:
  - (1) future prices at which, or terms or conditions upon which, ready mix concrete or any other product will be sold or offered for sale by said defendant;
  - (2) consideration by said defendant of changes or revisions in the prices at which, or the terms or conditions upon which, said defendant sells or offers to sell ready mix concrete or any other product;
- (C) requesting from any person any information which said defendant could not communicate without violating subparagraphs (A) and (B) of this Section V.

### VI

#### **[ Business Transactions ]**

Nothing in Section V of this Final Judgment shall prohibit any defendant from:

- (A) formulating or submitting with any person a bona fide joint bid or quotation, when the submission of such joint bid or quotation has been requested by or is known to the purchaser;
- (B) communicating information to any person in the course of, and related to, negotiation for, or entering into, or carrying out a bona fide purchase or sale transaction with such other person;
- (C) advertising to the public or trade generally present or future prices at which, or terms or conditions upon which ready mix concrete or any other product is then being, or will be sold or offered for sale.

### VII

#### **[ Bid Affidavits ]**

---

©2018 CCH Incorporated and its affiliates and licensors. All rights reserved.

Subject to Terms & Conditions: [http://researchhelp.cch.com/License\\_Agreement.htm](http://researchhelp.cch.com/License_Agreement.htm)

Each defendant is ordered and directed for a period of five (5) years from the date of entry of this Final Judgment to affix to every written bid or quotation submitted by said defendant for ready mix concrete or any other product or any combination thereof a written certification, in substantially the form set forth in Appendix A attached hereto, signed by an officer or employee of such defendant having authority to determine the price or prices bid or quoted and responsible for the preparation of bids or quotations, that said bid or quotation was not the result, directly or indirectly, of any discussion, communication, agreement, understanding, plan or program, whether formal or informal, between such defendant and any other person, which is prohibited by the provisions of this Final Judgment.

## VIII

### [ Notice ]

Each defendant is ordered and directed to:

(A) within thirty (30) days after the date of entry of this Final Judgment, furnish a copy thereof to each of its officers and directors, and also to any employee having pricing authority or responsibility in connection with the sale of ready mix concrete or any other product in the Commonwealth of Kentucky;

(B) furnish a copy of this Final Judgment to each new officer, director, and also to any employee having pricing authority or responsibility in connection with the sale of ready mix concrete or any other product in the Commonwealth of Kentucky within thirty (30) days after employment;

(C) attach to each copy of this Final Judgment furnished pursuant to subsections (A) and (B) of this Section VIII a statement, in substantially the form set forth in Appendix B attached hereto, advising each person of his obligations and of such defendant's obligations under this Final Judgment, and of the penalties which may be imposed upon him and/or upon such defendant for violation of this Final Judgment; and

(D) to file with this Court and serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (A) and (C) of this Section VIII.

## IX

### [ 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 shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

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

(2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers, employees, directors, partners or agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant 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.

No information or documents obtained by 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, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c) (7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

**X**

**[ Retention of Jurisdiction ]**

Jurisdiction is retained 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 or carrying out of this Final Judgment, for the modification of any of the provisions hereof, or for the enforcement of compliance therewith, and punishment of violations thereof.

**XI**

**[ Public Interest ]**

Entry of this Final Judgment is in the public interest.