

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Metro Denver Concrete Assn., Pre-Mix Concrete, Inc., Walt Flanagan and Co., Ready Mixed Concrete Co., Jefferson Transit Mix Co., Mobile Concrete, Inc., and Suburban Reddi-Mix Co., U.S. District Court, D. Colorado, 1972 Trade Cases ¶73,819, (Feb. 28, 1972)

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United States v. Metro Denver Concrete Assn., Pre-Mix Concrete, Inc., Walt Flanagan and Co., Ready Mixed Concrete Co., Jefferson Transit Mix Co., Mobile Concrete, Inc., and Suburban Reddi-Mix Co.

1972 Trade Cases ¶73,819. U.S. District Court, D. Colorado. Civil Action No. C-2478. Entered February 28, 1972. Case No. 2125, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Allocation of Territories—Ready Mix Concrete—Dissolution of Trade Association.—A ready mix concrete supplier's organization and five of its members were enjoined from agreeing to fix prices for ready mix concrete; from submitting collusive or rigged bids; dividing, allocating or apportioning markets or communicating price or contract terms information to any other person before the information is made public. In addition, the parties were ordered to dissolve the supplier's association and each of the suppliers was enjoined from joining or participating in the activities of any trade association whose activities are inconsistent with the consent order. For a period of five years the suppliers were ordered to submit a certification with each bid that it was not the result of an agreement with any other party. See ¶ 3050, 4630, 4680.

For plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Robert J. Ludwig, John E. Sarbaugh, Bertram M. Long, John L. Burley, Carolyn J. McNeill, and William F. Costigan, Dept. of Justice.

For defendants: Donald C. McKinlay, for Metro Denver Concrete Assn., Earl A. Jinkinson, for Pre-Mix Concrete, Inc., Benjamin F. Stapleton, for Walt Flanagan and Co., Holmes Baldridge, for Ready Mixed Concrete Co. and Jefferson Transit Mix Co., John Evans, for Suburban Reddi-Mix Co.

Final Judgment

ARRAJ, D. J.: Plaintiff, United States of America, having filed; its Complaint herein on. August 6, 1970, and plaintiff and defendants, Metro Denver Concrete Association; Pre-Mix Concrete, Inc.; Walt Flanagan and Company; Ready Mixed Concrete Company; Jefferson Transit Mix Co.; and Suburban Reddi-Mix Company, by their respective attorneys having each consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting evidence or admission by plaintiff or defendants, or any of them, in respect to any such issue;

Now, Therefore, before any testimony has been taken and without trial or adjudication of or finding on any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto, and the Complaint states claims upon which relief may be granted against the consenting defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" commonly known as the Sherman Antitrust Act, as amended.

II

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[*Definitions*]

As used in this Final Judgment:

A “Person” means any individual, corporation, partnership, association, firm or other business or legal entity;

B “Ready mix concrete” means a product resulting from a combination of cement and other materials, such as sand, stone, water and, at times, other additives;

C “Ready mix concrete supplier” means a person who is engaged in the business of producing and selling ready mix concrete;

D “Corporate defendants” means Pre-Mix Concrete, Inc.; Walt Flanagan and Company; Ready Mixed Concrete Company; Jefferson Transit Mix Co. and Suburban Reddi-Mix Company.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant, to its successors and assigns, to each of their respective officers, directors, agents, servants, and employees, and to all persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[*Prohibitions*]

Each consenting defendant is enjoined and restrained individually and collectively from entering into, adhering to, enforcing or claiming any rights under, any contract, agreement, understanding, plan or program with any person, directly or indirectly, to:

A Fix, establish, determine, maintain, stabilize, increase or adhere to prices, discounts or other terms or conditions of sale of ready mix concrete to any third person;

B Submit collusive or rigged bids or quotations for the sale of ready mix concrete ;

C Divide, allocate or apportion markets, territories or customers, or refrain from soliciting any customer;

D Communicate to or exchange with any other person selling ready mix concrete any actual or proposed price, price change,, discount, or other term or condition of sale at or upon which ready mix concrete is to be, or has been, sold to any third person prior to the communication of such information to the public or trade generally.

V

[*Dissolution of Association*]

A The corporate defendants are each ordered and directed, within sixty (60) days after the entry of/ this Final Judgment, to institute and to prosecute with due diligence, appropriate proceedings, to dissolve and disband the defendant Metro Denver Concrete Association, and within seventy-five (75) days to file with the Court and plaintiff an affidavit of compliance herewith.

B The corporate defendants are each enjoined and restrained from joining, belonging to or participating in any activities of any trade association, organization or industry group with knowledge that the activities or objectives of any such trade association, organization or industry group are inconsistent with any of the terms of this Final Judgment.

VI

[*Certification of Bids*]

Each corporate defendant is ordered and directed for a period of five (5) years from and after the date of entry of this Final Judgment to furnish simultaneously with each bid or quotation required to be sealed which is submitted

by it for the sale of ready mix concrete, a certification, in substantially the form set forth in the Appendix hereto, by an official of such defendant knowledgeable about and having authority to determine the price or prices bid or quoted, that said bid or quotation was not the result, directly or indirectly, of any agreement, understanding, plan or program between such defendant and any other person selling ready mix concrete.

VII

[*Informing Customers*]

Within sixty (60) days of the entry of said Final Judgment each corporate defendant shall distribute a copy of this Final Judgment to each of its customers who has established credit with and has purchased ready mix concrete from such corporate defendant within the past twelve (12) months; and within seventy-five (75) days of the entry of said Final Judgment each corporate defendant shall make an affidavit of compliance herewith to the Court and plaintiff.

VIII

[*Inspection and Compliance*]

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege (a) reasonable access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, servants or employees of such defendant, who may have counsel present, regarding any such matters. Any defendant, upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section VIII 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 court of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX.

[*Jurisdiction Retained*]

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

Appendix

The undersigned hereby certifies that, to his best knowledge and belief, the annexed bid has not been prepared in collusion with any other producer of ready mix concrete and that the prices, discounts, terms and conditions thereof have not been communicated by or on behalf of the bidder to any person other than the recipient of such bid and will not be communicated to any person prior to the official opening of said bid. This certification may be treated for all purposes as if it were a sworn statement made under oath, and is made subject to the provisions of 18 U. S. C. 1001, relating to the making of false statements.

Notice of Voluntary Dismissal of Complaint as to the Defendant Mobile Concrete, Inc.

To: Attorneys for the Defendants

Please Take Notice that the United States of America, by its attorneys, hereby dismisses without prejudice this action as to defendant Mobile Concrete, Inc., pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, and states the reasons for dismissal as follows:

1. On August 6, 1970 plaintiff filed this complaint against Metro Denver Concrete Association and 6 ready mix concrete companies, including Mobile Concrete, Inc. alleging a combination and conspiracy in unreasonable restraint of interstate trade and commerce in the sale of ready mix concrete in the Metropolitan Denver area, in violation of [Section 1 of the Sherman Act](#).
2. Defendant Mobile Concrete, Inc., as of the date of this notice, has not served plaintiff with its answer or with a motion for summary judgment.
3. In November 1971, Dayton Denious, counsel for Mobile Concrete, Inc. and Pre-Mix Concrete, Inc. reported to plaintiff that Mobile Concrete, Inc. and Pre-Mix Concrete, Inc. were merged on November 12, 1971 with Pre-Mix Concrete, Inc. being the surviving corporation, and the records of the State of Colorado confirm this merger.
4. Pre-Mix Concrete, Inc., the surviving corporation, has consented to be enjoined from engaging in the aforesaid activities and other related activities by the Final Judgment filed in this Court on; no useful purpose would be achieved by attempting to also enjoin, Mobile Concrete, Inc., the merged corporation.