

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. New York Trap Rock Corporation, Wilson P. Foss, Jr. and Wilson P. Foss, III., U.S. District Court, S.D. New York, 1950-1951 Trade Cases ¶62,838, (May 25, 1951)

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United States of America v. New York Trap Rock Corporation, Wilson P. Foss, Jr. and Wilson P. Foss, III.
1950-1951 Trade Cases ¶62,838. U.S. District Court, S.D. New York. Civil No.48-170. Dated May 25, 1951.

Sherman Antitrust Act

Sherman Antitrust Act

Sherman Antitrust Act and Clayton Act

Consent Judgment—Restraints on Purchasers.—A consent judgment enjoins a manufacturer of coarse aggregate and inorganic dust filler from entering into agreements restricting a purchaser in the sale or use of aggregates of defendants' competitors or restricting a purchaser in the use of other types of coarse aggregates; from requiring a purchaser of aggregates, as a condition to such purchase, to purchase other commodities of the defendants; and from restricting the use or resale of any commodity sold by defendants or conditioning a sale by the requirement that the purchaser shall restrict the use by any third person of any facilities of such purchaser used in transporting or storing coarse aggregates or inorganic dust filler.

Consent Judgment—Allocation of Customers and Territories—Restraints on Competition.—A consent judgment enjoins a manufacturer of coarse aggregates and inorganic dust filler from entering into agreements with competitors allocating customers or territories, excluding any person from the production of coarse aggregates or inorganic dust filler, and refraining from competition or leaving any person free from competition.

Consent Judgment—Coercion of Purchasers—Acquisition of Competitors and Lands.—A consent judgment enjoins defendants from coercing purchasers to refrain from purchasing or using coarse aggregates produced, distributed or sold by others than the defendants. The defendants are enjoined from acquiring in whole or in part the business of any existing or future person which engaged in competition with defendants in the production or sale of crushed stone in the New York Metropolitan Area, and from acquiring any existing quarry or other lands containing deposits of stone capable of conversion into crushed stone, except that within two years, defendants may acquire such lands adjacent to existing quarries of defendants but not to exceed fifteen acres in the total aggregate, and after two years, defendants may acquire such quarries or other lands but only to the extent necessary to maintain its quarries and reserves at a level not to exceed their level as of January 1, 1947.

For the plaintiff: H. G. Morison, Assistant Attorney General; Sigmund Timberg, George B. Haddock, Melville C. Williams, and Lester L. Jay, Special Assistants to the Attorney General; Irving H. Saypol, United States Attorney; and John V. Leddy, Trial Attorney.

For the defendants: Davies, Hardy, Schenck and Soons.

Final Judgment

CONGER, District Judge: The complainant, United States of America, having filed its complaint herein on November 19, 1948; the defendants having appeared and filed their amended answer to such complaint denying the substantive allegations thereof; all parties hereto by their attorneys herein having severally consented to the entry of this final judgment herein without trial or adjudication of any issue of fact or law herein and without an admission by any party in respect of any such issue;

Now, therefore, before any testimony has been taken herein and without trial or adjudication of any issue of fact or law herein and upon consent of all parties hereto, it is hereby

Ordered, adjudged and decreed:

I.

[*Jurisdiction*]

That this Court has jurisdiction of the subject matter of this action and of the parties hereto; that the complaint states a cause of action against each of the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890 entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and acts amendatory thereof and supplementary thereto.

II.

[*Scope of Provisions*]

The provisions of this judgment, applicable to any defendant, shall apply to such defendant and each of its officers and directors and subsidiaries, and to each of its or his agents, employees, successors and assigns, and to each person acting or claiming to act under, through or for them or any of them.

III.

[*Definitions*]

When used in this judgment:

1. The term "coarse aggregate" means any hard fragmented material capable of use for mixing with mortar to form concrete, including crushed stone, gravel, crushed slag, crushed concrete and cinders.
2. The term "inorganic dust filler" means pulverized crushed stone used in the manufacture of asphalt.
3. The term "New York Metropolitan Area", as herein employed, refers to the counties of New York, Bronx, Kings, Queens, Richmond, Nassau and Suffolk, all in the State of New York.

IV.

[*Practices Enjoined*]

The defendants are jointly and severally restrained and enjoined:

1. From entering into any contract, agreement or understanding and from adhering to, maintaining, furthering or enforcing any provisions of any contract, agreement or understanding providing for, or for the purpose or having the effect of:
 - (a) preventing any purchaser or user of coarse aggregates or inorganic dust filler from, or restricting him in, the purchase, sale or use of coarse aggregates distributed or sold by others than New York Trap Rock Corporation;
 - (b) preventing any purchaser or user of coarse aggregates or inorganic dust filler from, or restricting him in, the purchase, sale or use of other types of coarse aggregates;
 - (c) requiring any purchaser or user of coarse aggregates or inorganic dust filler, as a condition to purchasing, selling or using any commodity purchased, distributed or sold by New York Trap Rock Corporation to purchase any other commodity produced, distributed or sold by New York Trap Rock Corporation;
 - (d) preventing, restricting or limiting in any manner the subsequent use, resale or disposition of any commodity produced, distributed or sold by New York Trap Rock Corporation;
 - (e) conditioning the sale of any commodity produced, distributed or sold by New York Trap Rock Corporation by the requirement that the purchaser shall prohibit or restrict the use by any third person of any facilities of such purchaser, used or useful in transporting, distributing, stevedoring, handling or storing coarse aggregates or inorganic dust filler.

2. From entering into any contract, agreement or understanding and from adhering to, maintaining, furthering or enforcing any provisions of any contract, agreement or understanding with any competitive producer, seller or distributor of coarse aggregates or inorganic dust filler providing for, or for the purpose or having the effect of:

(a) allocating customers or allocating, dividing or restricting territories, fields, or markets for the production, sale or distribution of coarse aggregates or inorganic dust filler;

(b) excluding any person from or restricting or limiting any person in the production, sale or distribution of coarse aggregates or inorganic dust filler;

(c) refraining from competition or leaving any person free from competition in any territory, field, or market in the production, sale or distribution of coarse aggregates or inorganic dust filler.

V.

[Coercion of Purchasers and Acquisition of Competitors and Lands Enjoined]

The defendants are jointly and severally restrained and enjoined:

1. From refusing to sell, threatening to refuse to sell, or by any other means compelling or coercing any purchaser or user of coarse aggregates to refrain from purchasing or using, or to restrict his purchase or use of, coarse aggregates produced, distributed or sold by others than New York Trap Rock Corporation.

2. From acquiring, either in whole or in part, either directly or indirectly, the business of any other existing or future person, firm or corporation which engaged in competition with defendant New York Trap Rock Corporation in the production and sale of crushed stone in the New York Metropolitan Area.

3. (a) From acquiring, either in whole or in part, either directly or indirectly, any existing quarry or other lands containing deposits of stone capable of conversion into crushed stone, or any interest in such quarry or lands, except that:

(1) within two (2) years from the date of the entry of this judgment, New York Trap Rock Corporation may acquire quarries or other lands containing deposits of stone, adjacent to existing quarries of said corporation, but not in excess of fifteen (15) acres in the total aggregate; and

(2) after two (2) years from the date of the entry of this judgment, New York Trap Rock Corporation may acquire such quarries or other lands containing deposits of stone, but only up to the extent necessary to maintain its quarries and reserves at a level not to exceed their level as of January 1, 1947.

The defendants shall maintain adequate records of all changes in quarries and reserves, and in any proceeding respecting this paragraph (a), the defendants shall have the burden of establishing that the said level of January 1, 1947 was not exceeded.

(b) After said two year period the defendants may, upon thirty day's notice to the Attorney General, petition this Court for an exception to the provisions of paragraph 3(a) of this Section V. If upon the hearing of such petition said defendant shall establish to the satisfaction of the Court that a proposed acquisition will not tend to deter or restrict competition in the production, sale or distribution of coarse aggregates in the New York Metropolitan Area the Court may, subject to such conditions as it deems necessary or appropriate, enter an order granting an exception to the provisions of paragraph 3(a) of this Section V.

(c) The provisions of this subdivision 3 of Paragraph V shall apply only to quarries and lands now or hereafter supplying or capable of supplying, in the normal course of business, the New York Metropolitan Area.

[Inspection and Compliance]

VI.

For the purpose of securing compliance with this judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendants, be permitted (a) access, during office hours of the defendants, to all books, ledgers,

accounts, correspondence, memoranda and other records and documents in the possession of or under the control of the defendants relating to any of the matters contained in this judgment; and (b) without restraint or interference from the defendants, to interview officers or employees of any defendant, who may have counsel present, regarding any such matters; and (c) upon such request, the defendants shall submit such reports concerning matters directly related to compliance with this judgment as may from time to time be reasonably necessary to check compliance with the provisions of this judgment or which otherwise may be directly related to matters prohibited or required to be done under the terms of this judgment, provided, however, that information obtained by the means permitted in this Section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States of America is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

[*Jurisdiction Retained*]

VII.

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary and appropriate for the construction or carrying out of this judgment, for the amendment, modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.