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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF IDAHO

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 MONROC, INC. ;
15 IDAHO CONCRETE PIPE COMPANY, INC. ;
16 and FLYNN SAND & GRAVEL, INC.,
17 Defendants.

Civil No. 1-75-176

filed NOV 19 1976

COMPETITIVE
IMPACT STATEMENT

18 Pursuant to Section 2(b) of the Antitrust Procedures
19 and Penalties Act [15 U.S.C. § 16(b)], the United States
20 hereby submits this Competitive Impact Statement relating
21 to the proposed consent judgment submitted for entry in
22 this civil antitrust proceeding.

23 I. NATURE OF THE PROCEEDING

24 On October 16, 1975 the United States filed a civil
25 complaint under Section 4 of the Sherman Act [15 U.S.C. § 4],
26 alleging that defendants Monroc, Inc., Idaho Concrete Pipe
27 Company, Inc., and Flynn Sand & Gravel, Inc., violated
28 Section 1 of the Sherman Act [15 U.S.C. § 1]. The complaint
29 alleges that defendants and various co-conspirators engaged
30 in a combination and conspiracy in unreasonable restraint
31 of interstate trade and commerce, the substantial terms of
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1 which were to fix, maintain and stabilize prices and delivery
2 charges on the sale of ready-mix concrete in the so-called
3 Nyssa-Ontario market, which consists of the cities of Nyssa
4 and Ontario, Oregon, and surrounding communities in eastern
5 Oregon and southwestern Idaho which are served by the
6 defendant firms from their ready-mix concrete plants in
7 Nyssa and Ontario.

8 Entry by the Court of the proposed consent judgment will
9 terminate the action, except insofar as the Court will retain
10 jurisdiction over the matter for possible further proceedings
11 which might be required to interpret, modify or enforce the
12 judgment, or to punish alleged violations of any of the
13 provisions of the judgment.

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15 **II. DESCRIPTION OF THE PRACTICES**
INVOLVED IN THE ALLEGED VIOLATION

16 Ready-mix concrete is a building material consisting
17 of a mixture of cement, sand or gravel, and water, which is
18 produced by the defendants and sold to building contractors
19 and subcontractors, farmers, governmental entities and
20 other persons for use in various types of construction
21 projects. Typically, defendants sell and deliver ready-mix
22 concrete in mixer trucks which vary in capacity from 7 to 10
23 cubic yards of concrete; the mixed concrete is priced either
24 on a delivered basis to the customer's jobsite (with delivery
25 included in the price of the concrete) or on an "F.O.B. plant"
26 basis, under which the cubic yard of concrete is priced at
27 the supplier's plant, with a separate hourly charge for the
28 use of the supplier's concrete mixer truck.

29 The defendant firms are: Monroc, Inc., of Salt Lake
30 City, Utah which operates a ready-mix concrete plant in
31 Ontario, Oregon; Idaho Concrete Pipe Company, Inc., of
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1 Nampa, Idaho which operates a concrete plant under the
2 name Oregon Concrete Products Company in Nyssa, Oregon;
3 and Flynn Sand & Gravel, Inc., which operates a concrete
4 business in Ontario, Oregon.

5 The complaint in this case alleges that the defendant
6 firms, through their representatives engaged in a conspiracy
7 to fix, maintain and stabilize the prices they charged for
8 ready-mix concrete, and to fix, maintain and stabilize the
9 charges they imposed for delivery of ready-mix concrete in
10 the Nyssa-Ontario market, between 1973 and at least September
11 of 1974. According to the allegations in the complaint,
12 the alleged conspiracy was formed in a series of meetings
13 and telephone communications between representatives of the
14 defendants, during which prospective price changes and
15 pricing practices were discussed and agreed upon. The
16 complaint also alleges that the defendants actually instituted
17 prices and delivery charges pursuant to the alleged agreement.
18 The charged conspiracy is alleged to have had the following
19 effects: that prices and delivery charges for ready-mix
20 concrete in the Nyssa-Ontario market were fixed, maintained
21 and stabilized at artificial and non-competitive levels;
22 that competition in the sale or delivery of ready-mix
23 concrete was restricted; and that Nyssa-Ontario market
24 purchasers of ready-mix concrete were deprived the benefits
25 of free and open competition among the defendants.

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27 III. EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

28 The United States and the defendants have stipulated
29 that the proposed consent judgment, in the form negotiated
30 by and between the parties, may be entered by the Court at
31 any time after compliance with the Antitrust Procedures and
32 Penalties Act. The stipulation between the parties provides

1 that there has been no admission by any party with respect
2 to any issue of fact or law. Under the provisions of
3 Section 2(e) of the Antitrust Procedures and Penalties Act,
4 entry of the proposed judgment is conditioned upon a
5 determination by the Court that the proposed judgment
6 is in the public interest.

7 A. Prohibited Conduct

8 The proposed judgment will prohibit each of the
9 defendants from entering into or adhering to any agreement,
10 understanding or plan with any other persons to fix,
11 maintain or stabilize prices, discounts or other terms or
12 conditions for the sale of ready-mix concrete. Further,
13 the judgment will prohibit any of the defendants from
14 submitting collusive, rigged or non-competitive bids or
15 quotations for the sale of ready-mix concrete, as well as
16 prohibiting the defendants from fixing, raising, stabilizing,
17 or maintaining any agreed upon charges for the delivery of
18 ready-mix concrete. The judgment also bars the defendants
19 from communicating or exchanging any information regarding
20 actual or proposed prices, discounts, delivery charges or
21 other terms or conditions for the sale of ready-mix concrete
22 before the time such information is made available to the
23 general public.

24 The proposed judgment requires each defendant to
25 independently and individually review and recompute its
26 current prices, discounts, delivery charges and other terms
27 and conditions for the sale of ready-mix concrete in the
28 Nyssa-Ontario market. Also, in connection with this
29 independent price review, each defendant is required to
30 submit to the United States a written report, fully
31 explaining the methodology used by such defendant in
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1 recomputing its prices, and setting forth its prices and
2 other charges before and after the recomputation.

3 Each defendant will be required, within 60 days after
4 entry of judgment, to serve a copy of the proposed judgment,
5 if it is approved by the Court, upon each of its officers,
6 directors, and partners (if any); and upon each of its
7 employees or agents who have any responsibility for the
8 sale of ready-mix concrete. Moreover, if any new officers,
9 directors, partners, employees or agents are employed by a
10 defendant in the future, the employing defendant must serve
11 a copy of the judgment on such person within 60 days after
12 such person becomes employed. These service provisions
13 should help to prevent future violations of the judgment
14 by making each responsible employee individually aware of
15 the judgment and its prohibitions.

16 B. Scope of the Proposed Judgment

17 The proposed consent judgment will expressly
18 provide the maximum coverage permitted by law; by its terms
19 the judgment applies to each defendant and to each of their
20 officers, directors, partners, agents, employees,
21 subsidiaries, successors and assigns, and to all other
22 persons who act in concert with any of the defendants,
23 provided that such persons have actual notice of the judgment,
24 by personal service or otherwise. Unless the Court either
25 modifies or vacates all or a part of the proposed judgment,
26 the defendants are forever bound by its prohibitions.
27 The judgment would apply to the defendants' activities
28 wherever they may occur, although certain administrative
29 provisions of the judgment are specifically limited to
30 the Nyssa-Ontario market.
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1 C. Effect of the Proposed Judgment on Competition

2 The relief encompassed in the proposed consent
3 judgment is designed to prevent any recurrence of the
4 activities alleged in the complaint. By requiring each
5 defendant to independently review and recompute its prices
6 and other charges, the decree is designed to ensure that
7 current price levels are re-established at independent
8 (i.e., non-collusive) and competitive levels. The prohibiting
9 language of the judgment will ensure that future price
10 actions of the defendants will be independently determined,
11 without the restraining and artificial influences which
12 result from meetings and agreements between competitors.

13 The judgment provides two methods for determining
14 the defendants' compliance with the terms of the judgment.
15 First, on motion of the government or on the Court's own
16 motion, responsible officials of each defendant may be called
17 before the Court to give testimony regarding a defendant's
18 compliance with the judgment. Second, the government is
19 given access, upon reasonable notice, to the records of the
20 defendants, to examine these records for possible violations
21 of the judgment.

22 It is the opinion of the Department of Justice that
23 the proposed consent judgment provides fully adequate
24 provisions to prevent future violations of the antitrust laws
25 by these defendants, and to ensure that the ready-mix concrete
26 prices of the defendants are determined in a competitive
27 atmosphere. In the Department's view, disposition of the
28 lawsuit without further litigation is appropriate in that the
29 proposed judgment provides all the relief which the govern-
30 ment sought in its complaint; the additional expense of the addi-
31 tional litigation would therefore not result in additional public
32 benefit.

1 IV. REMEDIES AVAILABLE TO POTENTIAL
2 PRIVATE LITIGANTS

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

14 V. PROCEDURES AVAILABLE FOR MODIFICATION
15 OF THE PROPOSED JUDGMENT

16 As provided by the Antitrust Procedures and Penalties
17 Act, any person believing that the proposed judgment should
18 be modified may submit written comments to Anthony E. Desmond,
19 Antitrust Division, U.S. Department of Justice, 450 Golden
20 Gate Avenue, San Francisco, California 94102, within the
21 60-day period provided by the Act. These comments, and the
22 Department's responses to them, will be filed with the Court
23 and published in the Federal Register. All comments will be
24 given due consideration by the Department of Justice, which
25 remains free to withdraw its consent to the proposed judgment
26 at any time prior to its entry if it should determine that
27 some modification of it is necessary. The proposed judgment
28 provides that the Court retains jurisdiction over this action,
29 and the parties may apply to the Court for such order as may
30 be necessary or appropriate for its modification,
31 interpretation or enforcement.

1 VI. ALTERNATIVES TO THE PROPOSED CONSENT JUDGMENT

2 This case does not involve any unusual or novel issues
3 of fact or law which might make litigation a more desirable
4 alternative than entry of this consent decree. The
5 Department considers the substantive language of the
6 judgment to be of sufficient scope and effectiveness to
7 make litigation on relief unnecessary, as the judgment
8 provides all relief which was requested in the complaint.

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10 VII. OTHER MATERIALS

11 No materials and documents of the type described in
12 Section 2(b) of the Antitrust Procedures and Penalties Act
13 [15 U.S.C. § 16] were considered in formulating this
14 proposed judgment.

15 Dated: NOV 19 1976

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19 GARY R. SPRATLING

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22 JOHN F. YOUNG

23 Attorneys, Department of Justice
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