

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil No. C79-11
 v.)
) Judge Thomas D. Lambros
 THE CLEVELAND BUILDERS SUPPLY)
 COMPANY;)
 THE COLLINWOOD SHALE BRICK &) Filed: July 22, 1980
 SUPPLY CO.;)
 CARR BROS., INC.;)
 MEDINA SUPPLY COMPANY;)
 OSBORNE, INC.;)
 ALPHA CONCRETE CORPORATION)
 (formerly SOUTH EUCLID)
 CONCRETE COMPANY); and)
 WESTVIEW CONCRETE CORP.,)
)
 Defendants.)

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On January 3, 1979, the United States filed a civil antitrust Complaint alleging that seven corporations had conspired to fix prices in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The Complaint alleges that, beginning at least as early as 1972 and continuing thereafter at least until early 1976, the defendants engaged in a combination and conspiracy to fix, raise, stabilize, and maintain the prices of ready-mix concrete in the Cleveland area (Cuyahoga County).

The Complaint seeks a judgment by the Court that the defendants engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act. It also asks the Court to enjoin and restrain the defendants from such activities in the future. The defendants named in the Complaint are: The Cleveland Builders Supply Company; The Collinwood Shale Brick & Supply Co.; Carr Bros., Inc.; Medina Supply Company; Osborne, Inc.; Alpha Concrete Corporation (formerly South Euclid Concrete Company); and Westview Concrete Corp.

All the defendants in this action have previously pleaded nolo contendere to criminal charges concerning the same combination and conspiracy alleged in this action. Defendant Medina Supply Company was named in a criminal misdemeanor Indictment; the remaining six defendants were named in a criminal felony Indictment. The Court has made preliminary sentencing determinations, but has not yet made a final decision on sentences. This civil case had been held in abeyance until the criminal charges were resolved.

II

DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

Ready-mix concrete is a mixture of cement and other materials, such as sand, stone, water, and, at times, additives. During the period covered by the Complaint, the defendants produced and sold ready-mix concrete in the Cleveland area to contractors, builders, and others on the basis of written or oral price quotations rendered to such customers. These customers used ready-mix concrete in the construction, repair, alteration, and improvement of highways and other paved surfaces, and governmental, institutional, commercial, industrial, and residential foundations and structures.

During the period specified in the Complaint, the defendants were the leading ready-mix concrete suppliers in the Cleveland area. During the four-year period from January 1972 through December 1975, the defendants had total gross sales of ready-mix concrete from plants in the Cleveland area of approximately \$83 million.

The Complaint alleges that the defendants engaged in an illegal combination and conspiracy beginning at least as early as 1972 and continuing thereafter at least until early 1976, which consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators to fix, raise, stabilize, and maintain the prices of ready-mix concrete in the Cleveland area.

The Complaint further alleges that the combination and conspiracy had the following effects, among others:

- (a) prices of ready-mix concrete in the Cleveland area were fixed, raised, stabilized, and maintained at artificial and non-competitive levels;
- (b) competition in the sale of ready-mix concrete in the Cleveland area was restrained; and
- (c) customers in the Cleveland area were deprived of the benefits of full, free, and open competition in the market for ready-mix concrete.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Final Judgment states that it constitutes no admission by any party with respect to any issue of fact or law. Under the provisions of the Antitrust

Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest. Accordingly, Section XIII of the proposed Final Judgment states that entry of this Final Judgment is in the public interest.

The proposed Final Judgment enjoins any direct or indirect renewal of the type of conspiracy alleged in the Complaint. Specifically, Section IV provides that the defendants are 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, establish, fix, raise, stabilize, maintain, or adhere to prices or other terms or conditions for the sale of ready-mix concrete to any third person.

Section V further enjoins the defendants from communicating with each other or with any other ready-mix concrete company about the prices or terms of sale of ready-mix concrete.

Since ready-mix concrete producers often sell ready-mix concrete to each other, and since they sometimes advertise or publicize their prices, there are two limited exceptions to the prohibitions set forth in Sections IV and V of the proposed Final Judgment. These exceptions, contained in Section VI of the proposed Final Judgment, provide that nothing in Sections IV or V of the Judgment shall prohibit the defendants from communicating information for a bona fide purchase or sale or from advertising prices of ready-mix concrete to the public or trade generally.

Section VII of the proposed Final Judgment orders each defendant, for a period of five (5) years from the date of entry of the Judgment, to affix to every written bid or quotation for ready-mix concrete a written certification that the bid or quotation was not the result of any discussion, communication, agreement, understanding, plan, or program between the defendant and any other person.

Section VIII of the proposed Final Judgment orders the defendants to furnish a copy of the Final Judgment to each of their officers and other persons who has any responsibility for the pricing or sale of ready-mix concrete. Successors of those persons are also to be furnished a copy of the Judgment. Each copy of the Judgment so provided will have attached a statement informing the recipient that a violation of the Final Judgment could result in a fine for the company and a fine and imprisonment for the individual. Section VIII also requires each defendant to hold a meeting every year for ten years at which the persons described above are instructed on their obligations and their company's obligations under the Final Judgment. The defendants are required to monitor compliance of those persons with the Final Judgment.

The proposed Final Judgment is applicable to each of the defendants and to their 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 the Final Judgment by personal service or otherwise (Section III). Section IX of the proposed Final Judgment requires that, if a defendant sells the assets of its ready-mix concrete business, the purchaser must agree to be bound by the Final Judgment and must so inform the Court and the United States.

Section XII makes the Final Judgment effective for ten years from the date of its entry.

Standard provisions similar to those found in other antitrust consent judgments are contained in Section I (jurisdiction of the Court), Section X (investigation and reporting requirements), and Section XI (retention of jurisdiction by the Court).

It is anticipated that the relief provided by the proposed Final Judgment will have a salutary effect on competition in the ready-mix concrete market in the Cleveland area. Not only have the defendants been enjoined from future collusive behavior, but they are also required to provide copies of the Final Judgment to each of their officers and other persons having any responsibility for the sale or pricing of ready-mix concrete. In addition, those people must meet annually to be instructed about their responsibilities under the Judgment. It is anticipated that these provisions will reduce the possibility of future violations.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed Final Judgment, any potential private plaintiff that might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable relief that it may have had if the Final Judgment had not been entered. The Final Judgment may not be used, however, as prima facie evidence in private litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments within the 60-day period provided by the Act to John A. Weedon, Chief, Great Lakes Field Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216-522-4070). These comments and the Department's responses to them will be filed with the Court and published in the Federal Register.

All comments will be given due consideration by the Department of Justice. The Department remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should determine that some modification is necessary. Further, Section X of the proposed Final Judgment provides that the Court retains jurisdiction over this action for the life of the Final Judgment and that the parties may apply to the Court for such order as may be necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment after its entry.

VI

. ALTERNATIVES TO THE
PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment. Consequently, none is being filed pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b).

Respectfully submitted,

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