
IN THE MATTER OF

IDEAL CEMENT COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 8678. Complaint, Jan. 26, 1966—Decision, May 19, 1966

Consent order requiring the second largest portland cement manufacturing

³ This further paragraph of the order is not in derogation of the rest of the order, which applies generally to *all* officers, agents, employees, etc., including Elizabeth Michelson, in any such capacity now or in the future.

company in the country with headquarters in Denver, Colo., to divest itself within two years of a Houston, Texas, ready-mixed concrete company, acquired in March 1965, in violation of the Federal Trade Commission Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I. DEFINITIONS

1. For the purpose of this complaint the following definitions shall apply:

a. "Portland cement" includes Types I through V of portland cement as specified by the American Society for Testing Materials. Neither masonry nor white cement is included.

b. "Ready-mixed concrete" includes all portland cement concrete which is manufactured and delivered to a purchaser in a plastic and unhardened state. Ready-mixed concrete includes central-mixed concrete, shrink-mixed concrete and transit-mixed concrete.

c. "The Houston Area" consists of Harris County, Texas.

II. IDEAL CEMENT COMPANY

2. Ideal Cement Company, hereinafter referred to as "Ideal," is a corporation organized and existing under the laws of the State of Colorado with its principal offices located at 821 Seventeenth Street, Denver, Colorado.

3. Ideal, the largest or second largest portland cement manufacturing company in the United States, operates eighteen portland cement manufacturing plants and nine distribution terminals located in sixteen different States. In 1964, Ideal had sales of approximately \$125 million, assets of about \$187 million and net income of about \$14 million.

4. In the State of Texas, Ideal operates a portland cement manufacturing plant at Galena Park, near Houston. In 1964, the total shipments of portland cement by this plant amounted to approximately 3.8 million barrels; about 1.4 million barrels, or approximately 37%, were shipped to customers located in the Houston Area.

5. Ideal is and for many years has been engaged in the ship-

ment of portland cement across States lines. Ideal is engaged in commerce, as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

III. BUILDERS SUPPLY CO. OF HOUSTON

6. Builders Supply Co. of Houston, hereinafter referred to as "Builders Supply," is a corporation organized and existing under the laws of the State of Texas with its principal office and place of business located at 3707 Chimney Rock, Houston, Texas.

7. At the time of the acquisition, Builders Supply was engaged in the production and sale of ready-mixed concrete in the Houston Area, operating three ready-mixed concrete plants. In 1964, Builders Supply had sales of approximately \$4 million, assets of about \$1.2 million and net income of about \$223,000.

8. Builders Supply was, at the time of the acquisition, one of the five largest producers of ready-mixed concrete and one of the five largest consumers of portland cement in the Houston Area. In 1964, Builders Supply sold approximately 216,000 cubic yards of ready-mixed concrete and consumed about 323,000 barrels of portland cement.

IV. THE ACQUISITION

9. On or about March 22, 1965, Ideal acquired all of the issued and outstanding stock of Builders Supply in exchange for 155,166 shares of Ideal's common stock. The acquisition of Builders Supply by Ideal was an act or practice in commerce within the meaning of the Federal Trade Commission Act.

V. NATURE OF TRADE AND COMMERCE

10. Portland cement is a material which in the presence of water binds aggregates, such as sand and gravel, into concrete. Portland cement is an essential ingredient in the production of ready-mixed concrete. There is no practical substitute for portland cement in the production of concrete.

11. The portland cement industry in the United States is substantial. In 1964, there were about 52 cement companies in the United States operating approximately 181 plants. Total shipments of portland cement in that year amounted to approximately 365 million barrels, valued at about \$1.1 billion.

12. Cement manufacturers sell their portland cement to consumers such as ready-mixed concrete companies, concrete products companies, and to contractors and building materials dealers.

However, on a national basis, approximately 57% of all portland cement is shipped to firms engaged in the production and sale of ready-mixed concrete.

13. In recent years, there has been a significant trend of mergers and acquisitions by which ready-mixed concrete companies in major metropolitan markets in various portions of the United States have become integrated with portland cement companies. Since 1959, there have been at least 35 such acquisitions.

14. In the Houston Area the trend toward vertical integration is well advanced. Three of the five largest portland cement consumers in this area have become integrated, (two by acquisition,) with portland cement companies since 1961. More than 40% of the market for portland cement in the Houston Area has been potentially foreclosed by vertical integration.

15. Each vertical merger or acquisition which occurs in the portland cement industry potentially forecloses competing cement manufacturers from a segment of the market otherwise open to them and places great pressure on competing manufacturers likewise to acquire portland cement consumers in order to protect their markets. Thus, each such vertical acquisition may form an integral part of a chain reaction of such acquisitions—contributing both to the share of the market already foreclosed, and to the impetus for further such acquisitions.

VI. VIOLATION CHARGED

16. The effect of the acquisition of Builders Supply by Ideal, both in itself and by aggravating the trend of vertical mergers and acquisitions, may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of portland cement and ready-mixed concrete in the United States as a whole and various parts thereof, including the State of Texas and the Houston Area, in the following ways, among others:

- a. Ideal's competitors may have been and/or may be foreclosed from a substantial segment of the market for portland cement.
- b. The ability of Ideal's nonintegrated competitors effectively to compete in the sale of portland cement and ready-mixed concrete has been and/or may be substantially impaired.
- c. The entry of new portland cement and ready-mixed concrete competitors may have been and/or may be inhibited or prevented.
- d. The production and sale of ready-mixed concrete, now a decentralized, locally controlled, small business industry, may be

Order

69 F.T.C.

come concentrated in the hands of a relatively few manufacturers of portland cement.

Now therefore, The acquisition of Builders Supply by Ideal constitutes an unfair act or practice in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having issued its complaint on January 26, 1966, charging the respondent named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, and the respondent having been served with a copy of that complaint; and

The respondent and counsel for the Commission having executed an agreement containing a consent order, an admission of all the jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules, and such agreement having been certified to the Commission by the hearing officer pursuant to Section 3.15(c) (9) of said rules; and

The Commission having duly determined that in the circumstances presented the public interest would be served by waiver here of the provision of Section 2.4(d) of its Rules that the consent order procedure shall not be available after issuance of complaint; and

The Commission having considered the aforesaid agreement and having determined that it provides an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made, and the following order is entered:

1. Respondent Ideal Cement Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 821 Seventeenth Street, Denver, Colorado.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That respondent Ideal Cement Company (hereinafter "Ideal") divest, unto a purchaser or purchasers approved by

762

Order

the Federal Trade Commission, all stock and/or assets acquired by Ideal as the result of its acquisition of Builder's Supply Co. of Houston, together with all additions thereto and replacements thereof: *Provided, however*, That Ideal may, at its option, retain ownership of the approximately thirty-one acre site on which the acquired Chimney Rock ready-mixed concrete plant is situated, and the improvements to this real property that are unrelated to the production and distribution of ready-mixed concrete: *Provided further*, That if Ideal elects to retain said real property and improvements, it shall lease to the purchaser of the Chimney Rock plant so much of said real property as is necessary for the efficient operation of the Chimney Rock plant for a term, which, if all renewal options are exercised, will extend for a period of at least ten years. *It is further ordered*, That Ideal begin to make good faith efforts to divest said stock and/or assets promptly after the effective date of this Order, and that it continue such efforts to the end that the divestiture thereof be accomplished within two (2) years.

II

It is further ordered, That, pending divestiture, Ideal not make any changes in any of the aforesaid stock and/or assets which would impair their present capacity for the production and sale of ready-mixed concrete, or other products produced, or their market value.

III

It is further ordered, That, in the aforesaid divestiture, none of the stock and/or assets be sold or transferred, directly or indirectly, to any person who is at the time of divestiture an officer, director, employee or agent of, or under the control or direction of, Ideal or any of its subsidiaries or affiliates, or to any person who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Ideal or any of its subsidiaries or affiliates.

IV

It is further ordered, That Ideal, within sixty (60) days of the effective date of this Order, and every sixty (60) days thereafter until it has fully complied with the provisions of Paragraphs I through III of this Order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, and/or has complied with this Order. All compliance reports shall include, among

other things that will be from time to time required, a summary of all contacts and negotiations with potential purchasers of the stock and/or assets to be divested under this Order, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.
