

IN THE MATTER OF
LONE STAR CEMENT CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket C-1075. Complaint, June 17, 1966—Decision, June 17, 1966

Consent order forbidding a major portland cement manufacturing company with headquarters in New York City, to renew its 4-year lease by which it acquired nine ready-mixed concrete sites, plants, and related equipment in the Dallas-Fort Worth area and to cease using the acquired company's trade name in its operations.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated the provisions of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. §§18, 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 designated by the American Society for Testing Materials. Neither masonry nor white cement is included.

(b) "Ready-Mixed Concrete" includes all portland cement concrete 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 Dallas-Fort Worth Area" includes the Counties of Denton, Collin, Dallas, Tarrant, Ellis and Johnson in the State of Texas.

II. LONE STAR CEMENT CORPORATION

2. Respondent Lone Star Cement Corporation, hereinafter referred to as "Lone Star," is a corporation organized and existing under the laws of the State of Maine, with its principal office located at 100 Park Avenue, New York, New York.

3. Lone Star, the largest or second largest portland cement manufacturing company in the United States, operates fifteen portland cement manufacturing plants and thirteen distribution terminals located in thirteen different States. Through acquired subsidiaries, Lone Star is also engaged in the production and sale of ready-mixed concrete, concrete products and mineral aggregates. In 1964, Lone Star had sales of approximately \$155 million, assets of about \$217 million and net income of about \$14 million.

4. In the State of Texas, Lone Star operates cement manufacturing plants at Dallas, Houston and Maryneal, and distribution terminals at Amarillo, Corpus Christi and Orange. Portland cement manufactured by these plants, which have an annual capacity to manufacture about 10 million barrels of portland cement, is marketed principally in the State of Texas. The Dallas-Fort Worth area is an important metropolitan market for the output of these plants.

5. Lone Star is and for many years has been engaged in the shipment of portland cement across State lines. Lone Star is engaged in commerce, as "commerce" is defined in the Clayton Act and Federal Trade Commission Act.

III. WESCO MATERIALS CORPORATION AND WAMIX, INC.

6. Wesco Materials Corporation, hereinafter referred to as "Wesco," is a corporation organized and existing under the laws of the State of Texas, with its principal office and place of business at 1201 Main Street, Dallas, Texas. At the time of the acquisition, Wesco was engaged in the production and sale of mineral aggregates in North Central Texas.

7. Wamix, Inc., hereinafter referred to as "Wamix" is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business at 1201 Main Street, Dallas, Texas. Wamix was, at the time of the acquisition, a wholly-owned subsidiary of Wesco.

8. At the time of the acquisition Wamix was principally engaged in the production and sale of ready-mixed concrete in the Dallas-Fort Worth Area. In 1964, the ready-mixed concrete properties acquired by Lone Star from Wamix sold 495,000 cubic yards of ready-mixed concrete and consumed 607,000 barrels of portland cement.

9. Wesco and Wamix were, prior to the acquisitions, engaged in commerce, as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

IV. THE ACQUISITIONS

10. On or about January 4, 1965, Lone Star acquired from Wesco its aggregate production facilities in North Central Texas as well as its interests in certain other aggregate production facilities and property in the same area. For these production facilities and property interests Lone Star paid in excess of \$3.5 million.

11. On or about January 4, 1965, Lone Star acquired from Wamix, by lease for a period of four years, nine ready-mixed concrete plants in the Dallas-Fort Worth Area. The total consideration for this lease amounts to \$1.4 million.

12. The Wesco and Wamix acquisitions by Lone Star were acts or practices in commerce within the meaning of the Federal Trade Commission Act.

V. THE NATURE OF TRADE AND COMMERCE

13. 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.

14. The portland cement industry in the United States is substantial. In 1964, there were approximately 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.

15. 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.

16. 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.

17. In the Dallas-Fort Worth Area the trend toward vertical integration is well advanced. Additional vertical acquisitions have been made and a large ready-mixed concrete company is integrating backward by constructing its own cement plant. More than 40% of the market for portland cement in the Dallas-Fort Worth Area has been potentially foreclosed to competing cement manufacturers as the result of vertical integration.

18. 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. VIOLATIONS CHARGED

19. The effect of the acquisitions of Wesco and Wamix by Lone Star, as hereinbefore described, both in themselves and by aggravating the trend toward vertical integration between suppliers and consumers of portland cement, may be substantially to lessen competition or to tend to create a monopoly in the production 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 Dallas-Fort Worth Area, in the following ways, among others:

a. Lone Star's competitors may have been and/or may be foreclosed from a substantial segment of the market for portland cement.

b. The ability of Lone Star's non-integrated 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 become concentrated in the hands of a relatively few manufacturers of portland cement.

Now therefore, the acquisitions of Wesco and Wamix by Lone Star are in violation of Section 7 of the Clayton Act, as amended, and constitute unfair acts or practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, 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

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Lone Star Cement Corporation is a corporation organized, existing and doing business under the laws of the State

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of Maine, with its office and principal place of business located at 100 Park Avenue, New York, New York.

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, Lone Star Cement Corporation (hereafter "Lone Star"), refrain from renewing any and all leases by which Lone Star acquired, on or about January 4, 1965 from Wamix, Inc., nine ready-mixed concrete sites, plants and related equipment, including ready-mixed concrete mixer trucks, in the Dallas-Ft. Worth Area, said sites, plants and related equipment described generally as follows:

Wamix No. 1	2221 Irving Boulevard, Dallas, Texas.
Wamix No. 2	On Worcola Street in North Central Dallas.
Wamix No. 3	On Floyd Road in North Dallas.
Wamix No. 6	In Carrollton, Dallas County, Texas.
Wamix No. 8	On Banning Street in Oak Cliff.
Wamix No. 9	On Parkdale Street in Southeast Dallas.
Wamix No. 21	On West Freeway in Fort Worth.
Wamix No. 22	Near Euless, Tarrant County, Texas.
Wamix No. 23	In 5200 Block of Hemphill Street in Fort Worth.

It is further ordered, That on or before the expiration of such leases on January 4, 1969, Lone Star cease operation of said assets and cease using the name or word "Wamix" in any of its operations.

II

It is further ordered, That, within sixty (60) days after it has fully complied with the provisions of this Order, Lone Star submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it has complied with this Order.

Complaint

IN THE MATTER OF

DOLLAR VITAMIN PLAN, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 8636. Complaint, Aug. 11, 1964—Decision, June 24, 1966*

Order requiring a New York City marketer of "Vitasafe" vitamin capsules, to cease making false and exaggerated claims concerning the efficacy of their vitamin products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Dollar Vitamin Plan, Inc., a corporation, and Vitasafe Corporation, a corporation, and Samuel Josefowitz, Gerald Glaeser, Adolf W. Goldschmidt, individually and as officers of said corporations, and Henry D. Cohen, Benjamin W. Lerner, Leon Potash and William H. Sylk, individually, and Maxwell Sackheim—Franklin Bruck, Inc., a corporation, and Robert Sackheim, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Dollar Vitamin Plan, Inc., is a corporation organized and existing under the laws of the State of New York with its office and principal place of business at 23 West 61st Street, in the city of New York, State of New York.

Respondent Vitasafe Corporation is a corporation organized and existing under the laws of the State of New York with its office and principal place of business at 23 West 61st Street, in the city of New York, State of New York. It is a wholly owned subsidiary of Dollar Vitamin Plan, Inc.

Respondents Samuel Josefowitz, Gerald Glaeser, and Adolf W. Goldschmidt are officers of the corporate respondents Dollar Vitamin Plan, Inc., and Vitasafe Corporation and each participates in the formulation, direction and control of the acts and practices of said corporations including the acts and practices hereinafter