

Complaint

IN THE MATTER OF
MISSOURI PORTLAND CEMENT COMPANY
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
CLAYTON ACT, SEC. 7

Docket 8783. Complaint, June 10, 1969—Decision, March 12, 1973.

Consent order requiring a St. Louis, Missouri, producer of portland cement, among other things to divest itself of the stocks and assets of Botsford Ready Mix Company. The order further prohibits respondent from making any acquisitions not falling within certain Federal Trade Commission guidelines in the ready mix concrete or concrete products industry for a period of ten years without prior Federal Trade Commission approval.

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, 15 U.S.C. Sec. 18, 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. "Kansas City area" consists of the counties of Cass, Clay, Jackson and Platte, Missouri and the counties of Johnson and Wyandotte, Kansas.

II. MISSOURI PORTLAND CEMENT COMPANY

2. Missouri Portland Cement Company (hereinafter Missouri Portland), is a corporation organized and existing under the laws of the State of Missouri with its principal office located at 7751 Carondelet Avenue, St. Louis, Missouri.

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3. Missouri Portland is principally engaged in the manufacture and sale of portland cement from plants in St. Louis, Missouri, Sugar Creek, (Kansas City), Missouri and Joppa, Illinois. In 1966, Missouri Portland had net sales of \$24,090,078, net earnings of \$3,649,243, and as of December 31, 1966, assets of \$54,863,110.

4. The Kansas City area is one of the principal markets for portland cement manufactured at Missouri Portland's Sugar Creek (Kansas City), Missouri plant. Missouri Portland has sold portland cement in the Kansas City area since approximately 1908. In 1965 Missouri Portland's Sugar Creek (Kansas City), Missouri plant shipped almost 2.2 million barrels of portland cement of which almost 1.1 million barrels were shipped to customers in the Kansas City area. Missouri Portland has been one of the two leading portland cement suppliers to the Kansas City area since at least 1961.

5. At all times relevant herein, Missouri Portland was engaged in selling and shipping portland cement in interstate commerce and is a corporation engaged in commerce, as "commerce" is defined in the Clayton Act.

III. BOTSFORD READY MIX COMPANY

6. Botsford Ready Mix Compay (hereinafter Botsford) was prior to February 15, 1965, a corporation organized and existing under the laws of the State of Missouri with its principal office located in Kansas City, Missouri.

7. Since 1956, Botsford has been engaged in the production and sale of ready mixed concrete in the Kansas City area and elsewhere in the United States and on February 15, 1965, was operating four ready mixed concrete plants in the Kansas City area. For the fiscal year ended June 30, 1965, Botsford had sales of \$3,283,074, net earnings of \$39,922, and as of November 30, 1964, total assets of \$1,056,790.81.

8. Botsford (including its subsidiary, Botsford Concrete Company, Inc., which was merged into Botsford on or about June 30, 1964) has been one of the leading producers of ready mixed concrete and consumers of portland cement in the Kansas City area since 1961 and in 1965 sold over 268,000 cubic yards of ready mixed concrete and consumed over 370,000 barrels of portland cement.

9. At all times relevant herein, Botsford was engaged in selling

and shipping ready mixed concrete and purchasing portland cement in interstate commerce and was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act.

IV. ACQUISITION

10. On February 15, 1965, Missouri Portland, through its wholly-owned subsidiary, Block Investment Corporation, purchased all of the issued and outstanding capital stock of Botsford for \$900,000.

V. NATURE OF TRADE AND COMMERCE

11. 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 manufacture of concrete and it represents about 60 percent of the material cost and over one-third of the total cost of manufacturing, distributing and selling ready mixed concrete, the only form in which concrete is sold as a commodity.

12. The portland cement industry in the United States is substantial. In 1966, there were about 50 portland cement companies in the United States operating approximately 184 plants. Total shipments of portland cement in that year amounted to approximately 390 million barrels, valued at about \$1.2 billion.

13. Portland cement manufacturers sell their portland cement to consumers such as ready mixed concrete companies, concrete product manufacturers, contractors and building material dealers. On a national basis, approximately 60 percent of all portland cement is shipped to firms engaged in the production and sale of ready mixed concrete. However, in heavily populated metropolitan areas, the percentage of portland cement consumed by ready mixed concrete companies is generally higher. In general, portland cement consumers have not been integrated or affiliated with portland cement manufacturers. Each has operated independently on a vendor-vendee basis.

14. 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 40 such acquisitions.

15. Each vertical merger or acquisition which occurs in the portland cement industry potentially forecloses competing port-

land 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.

16. In the Kansas City area the trend toward vertical integration is well advanced. Four of the leading ready mixed concrete sellers and portland cement consumers in this area have become integrated with portland cement companies since 1963 through acquisition. More than 40 percent of the market for portland cement in the Kansas City area has been potentially foreclosed by vertical integration.

VI. EFFECTS OF THE ACQUISITION

17. The effect of the acquisition of Botsford, 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 (1) portland cement and (2) ready mixed concrete in the United States as a whole and various parts thereof, including the Kansas City area, in the following ways, among others:

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

b. The ability of Missouri Portland'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, usually a decentralized, locally controlled, small business industry, has become concentrated in the hands of a relatively few manufacturers of portland cement.

VII. VIOLATION CHARGED

18. The acquisition by Missouri Portland of Botsford constitutes a violation of Section 7 of the Clayton Act, as amended.

DECISION AND ORDER

The Federal Trade Commission having initiated a complaint charging that the respondent named in the caption hereof has violated the provisions of Section 7 of the Clayton Act, as amended; 15 U.S.C. 18, and

Respondent, by letter dated November 20, 1972, while this matter was pending on appeal from the initial decision of July 25, 1972, submitted an executed consent agreement; and

The Commission, by Order issued December 19, 1972, having withdrawn this matter from adjudication pursuant to Section 2.34(d) of its rules, with the understanding that, in the event the proposed consent agreement should finally be accepted and approved, then the initial decision in this matter be vacated and set aside; and

The executed agreement contains a consent order, an admission by respondent of all the jurisdictional facts set forth in the complaint which the Commission issued, 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 alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter pursuant to Section 2.34(b) of its rules, and having determined on the basis of such comments that Paragraphs IV, V, VI and VII should be added, and respondent having agreed to such additions, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent, Missouri Portland Cement Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 7751 Carondelet Avenue, St. Louis, Missouri.

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

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ORDER

I

It is ordered, That respondent, Missouri Portland Cement Company, a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns, within one (1) year from the date this order becomes final, divest, absolutely, subject to the approval of the Federal Trade Commission, all stock, assets, properties, rights and privileges, tangible and intangible, including, but not limited to, all plants, equipment, machinery, inventory, customer lists, trade names, trademarks and goodwill, acquired by respondent, as a result of the acquisition of the stock of Botsford Ready Mix Company, together with all additions and improvements thereto and replacements thereof of whatever description, so as to assure that there is established a separate and viable competitor engaged in the business of producing and selling ready mixed concrete. The five plants to be divested are those located at First and Broadway, 5600 East 500 Highway, and 86th and Wayne, in Jackson County, Missouri, and at Muncie and Lenexa in the State of Kansas.

II

It is further ordered, That pending divestiture, respondent shall not make or permit any deterioration or changes in any of the plants, machinery, equipment, buildings, or other property or assets to be divested which would impair their present capacity or market value.

III

It is further ordered, That none of the stock, assets, properties, rights or privileges required to be divested be transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of, or under the control or direction of, Missouri Portland Cement Company, or any of its subsidiaries or affiliates or who owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of voting stock of Missouri Portland Cement Company, or any of its subsidiaries or affiliates.

IV

It is further ordered, That with respect to the divestiture required herein, nothing in this order shall be deemed to pro-

hibit respondent from accepting consideration which is not entirely cash and from accepting and enforcing a loan, mortgage, deed of trust or other security interest for the purpose of securing to respondent full payment of the price, with interest, received by respondent in connection with such divestiture; *Provided, however*, That should respondent by enforcement of such security interest, or for any other reason, regain direct or indirect ownership or control of any of the divested plants, land or equipment, said ownership or control shall be redvested subject to the provisions of this order, within one year from the date of reacquisition.

V

It is further ordered, That either (a) for a period of two years from the date of divestiture of any ready mixed concrete plant or group of plants required by this order, or (b) for so long as respondent retains, directly or indirectly, a bona fide lien, mortgage, deed of trust, or other security interest in any of the property, plants, or equipment divested, whichever is longer, respondent may provide no more portland cement to that plant or group of plants than an amount, in tons, equal to thirty percent (30 percent) of the portland cement consumed by the plant or group of plants during the calendar year immediately preceding that in which divestiture is made, *Provided, however*, That if the purchaser elects, and the Commission approves, respondent may supply up to 75 percent of such consumption of portland cement.

VI

It is further ordered, That either (a) for a period of two years from the date of divestiture required by this order or (b) for so long as respondent retains, directly or indirectly, such a bona fide lien, mortgage, deed of trust, or other security interest in any of the property, plants, or equipment divested, whichever is longer, respondent shall not sell or deliver, directly or indirectly, ready mixed concrete in the Kansas City area as defined in the complaint, excluding Platte County, Missouri.

VII

It is further ordered, That respondent shall not install or operate any additional ready mixed concrete plant in the Kansas City area as defined in the complaint, excluding Platte County,

Missouri, for a period beginning with the date this order is accepted by the Federal Trade Commission and continuing until two years from the date of divestiture required by this order.

VIII

It is further ordered, That for a period of ten (10) years from the date this order becomes final respondent shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, the whole or any part of the share capital or other assets of any corporation engaged in the sale of ready mixed concrete or concrete products within respondent's present or future marketing area for portland cement or which purchased in excess of 10,000 barrels or 1,880 tons of portland cement in any of the five (5) years preceding the merger.

IX

It is further ordered, That respondent shall, within sixty (60) days from the date of service of this order, and every sixty (60) days thereafter until divestiture is fully effected, submit to the Commission a detailed written report of its actions, plans, and progress in complying with the divestiture provisions of this order, and fulfilling its objectives. All reports shall include, among other things that will be from time to time required, a summary of all contacts and negotiations with any person or persons interested in acquiring the stock, assets, properties, rights or privileges to be divested under this order, the identity of each such person or persons, and copies of all written communications to and from each such person or persons.

X

It is further ordered, That the initial decision dated July 25, 1972 be, and hereby is, vacated.*

Commissioner MacIntyre not participating.

*The initial decision is not reproduced herein, but copy thereof is available on request from Legal and Public Records, Federal Trade Commission, Washington, D.C.

Complaint

IN THE MATTER OF
LITTON INDUSTRIES, INC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
CLAYTON ACT, SECTION 7

*Docket 8778. Complaint, April 10, 1969—Decision, March 13, 1973.**

Opinion and order requiring a Beverly Hills, California, large conglomerate corporation with a broadly diversified product area and a worldwide operation, among other things to divest itself of its stock interest in Triumph-Werke Nurnberg, A.G. and Adlerwerke A.G.; and to cease and desist for a period of ten years from making acquisitions in the typewriter or typewriter parts or accessories manufacturing industry within the United States without prior Federal Trade Commission approval.

COMPLAINT

The Federal Trade Commission, having reason to believe Litton Industries, Inc., a corporation subject to the jurisdiction of the Commission, has acquired 98.5 percent of the stock of Triumph-Werke Nurnberg, A. G., 82 percent of the stock of Adlerwerke A. G., and all of the stock of their associated companies (hereinafter collectively referred to as "Triumph-Adler") in violation of Section 7 of the Clayton Act (15 U.S.C. Section 18), hereby issues this Complaint stating its charges in those respects as follows:

I

DEFINITIONS

1. Typewriters are manual and electric, office and portable machines for writing in characters similar to those produced by printer's type by means of key-board-operated types.

2. (a) *Standard Typewriters* are typewriters designed primarily for ordinary office typewriter uses, excluding special purpose typewriters such as office composing, stencil-cutting, reproduction and continuous form handling typewriters.

*By order issued April 20, 1973, the Commission extended the effective date of the decision and order for seven days until March 20, 1973, and tolled for seven days until May 24, 1973, the statutory time period within which respondent may petition for review of the Commission's decision and order. The same order granted complaint counsel an extension of time until April 27, 1973, within which to file a reply to respondent's petition and brief for reconsideration of the order of divestiture. See p. 1424 herein.