

IN THE MATTER OF
CARGILL, INCORPORATED

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

Docket 9005. Complaint, Jan. 21, 1975—Order, Dec. 2, 1975

Order dismissing complaint issued against a Minneapolis, Minn., well-diversified, closely-held corporation challenging its acquisition of stock in Missouri Portland Cement Company Inc. Respondent divested its interest in Missouri Portland, Aug. 28, 1975.

Appearances

For the Commission: *Joseph S. Brownman, Theodore M. Jones, Jr.*
and *Laurence O. Masson.*

For the respondent: *Gordon Spivack, Lord, Day & Lord, New York*
City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. §41, *et seq.*) and the Clayton Act (15 U.S.C. §12, *et seq.*) and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Cargill, Incorporated, a corporation, more particularly described and referred to herein as

respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45) and Section 7 of the Clayton Act, as amended (15 U.S.C. §18) 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 as follows:

I

DEFINITIONS

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

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

b. The St. Louis marketing area consists of the counties of Franklin, Jefferson, St. Charles and St. Louis in the State of Missouri; and the counties of Madison, St. Clair, Clinton and Monroe in the State of Illinois.

c. The Kansas City marketing area consists of the counties of Cass, Clay, Jackson, Platte and Ray in the State of Missouri; and the counties of Johnson and Wyandotte in the State of Kansas.

d. The Memphis marketing area consists of the counties of Shelby and Tipton in the State of Tennessee; the county of Crittenden in the State of Arkansas; and the county of De Soto in the State of Mississippi.

e. The Omaha marketing area consists of the counties of Douglas and Sarpy in the State of Nebraska; and the county of Pottawattamie in the State of Iowa.

f. The Mississippi Valley area consists of those areas capable of being serviced by cement plants or distribution terminals located on the Mississippi River and its navigable tributaries.

II

CARGILL, INCORPORATED

PAR. 2. Respondent Cargill, Incorporated is a closely held corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its home office and principal place of business located at the Cargill Building, Minneapolis, Minn.

PAR. 3. For the fiscal year ending May 31, 1973, respondent had net sales of approximately \$5.3 billion and a net income of approximately

\$107.8 million. Respondent's net worth as of May 31, 1973, was approximately \$352.4 million.

PAR. 4. Among other activities, respondent engages in grain trading, vegetable oil processing, animal feeds production, corn wet-milling, rock salt mining, copra and flax trading, chemical production, poultry processing, ore and metal trading, insurance underwriting; and the international trading of salt, flour and molasses.

PAR. 5. In 1932 respondent formed Cargo Carriers, Inc., a subsidiary corporation, to operate river barges and tow boats for the transportation of bulk commodities on inland waterways. At the present time Cargo Carriers, Inc., owns and operates numerous barges capable of transporting bulk commodities on inland waterways. Respondent also owns several ocean-going ships capable of transporting bulk commodities across sea trading routes. With little or no modification to existing vessels, respondent's barges and ocean-going ships are capable of being used to transport portland cement and materials necessary for the manufacture of portland cement.

PAR. 6. In carrying out its grain trading business, respondent owns and/or operates an extensive network of grain elevators throughout the United States. Many of respondent's elevators are located adjacent to navigable inland waterways, thereby providing respondent with the capability of receiving bulk goods and commodities from barges and loading bulk goods and commodities onto barges for shipment through inland waterways. With some modification to existing facilities, respondent's grain elevators are capable of serving as storage and/or sales points for portland cement.

PAR. 7. At all times relevant herein, respondent has been a corporation engaged in the purchase or sale of products in interstate commerce and is engaged in substantial "commerce" as that term is defined in the Clayton Act, as amended, and the Federal Trade Commission Act, as amended.

III

MISSOURI PORTLAND CEMENT COMPANY, INC.

PAR. 8. The Missouri Portland Cement Company (hereinafter referred to as "Missouri Portland") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located in St. Louis, Mo.

PAR. 9. Missouri Portland is now and for many years has been engaged in the production and sale of portland cement. For the year ending Dec. 31, 1973, Missouri Portland's total sales were approximate-

ly \$51,000,000 of which sales of portland cement were approximately \$44,000,000. As of Dec. 31, 1973, the book value of Missouri Portland's stock was approximately \$45,532,611; and total assets were approximately \$64,521,272. Missouri Portland presently has over 1,450,000 shares of outstanding common stock, traded on the New York Stock Exchange.

PAR. 10. Missouri Portland produces portland cement at each of three plants located in Independence, Mo.; St. Louis, Mo. and Joppa, Ill. The company distributes and sells portland cement from eight warehouse terminal points located in Memphis, Tenn.; Decatur, Ala.; Nashville, Tenn.; Owensboro, Ky.; Louisville, Ky.; Omaha, Neb.; Peoria, Ill. and Chicago, Ill. Each of the eight warehouse terminals is located at a navigable river in order that cement may be shipped in bulk form by barge carrier. The portland cement is stored at each of the warehouse terminals in silos, or storage elevators, for future delivery to customers in these and other areas.

PAR. 11. The production and sale of portland cement in the metropolitan marketing areas of St. Louis, Kansas City, Memphis and Omaha is highly concentrated, and Missouri Portland enjoys a substantial or dominant share of portland cement sales in each of these areas.

PAR. 12. At all times relevant herein, Missouri Portland has been engaged in the purchase or sale of products in interstate commerce and is engaged in substantial "commerce" and the Federal Trade Commission Act, as amended.

IV

THE ACQUISITION

PAR. 13. On or about Dec. 19, 1973, respondent filed an "Invitation for Tenders" with the U.S. Securities and Exchange Commission and publicly advertised its offer to buy all of the outstanding shares of Missouri Portland common stock at a price of \$30 per share. At the time, Missouri Portland stock was selling for approximately \$24 per share on the New York Stock Exchange.

PAR. 14. The cash required of respondent to purchase all of the outstanding common stock of Missouri Portland is estimated to be about \$43,500,000. As of approximately Apr. 30, 1974, respondent had acquired about 18 percent of the outstanding common stock of Missouri Portland.

NATURE OF TRADE AND COMMERCE

PAR. 15. Portland cement is a material which in the presence of water binds "coarse aggregate," such as crushed stone or gravel, and "fine aggregate," such as sand, into concrete. Portland cement is essential for the manufacture of ready mix concrete, prestressed concrete products and concrete block.

PAR. 16. The portland cement industry in the United States overall is substantial. In 1972, approximately 50 companies operating 170 plants shipped approximately 83 million tons to consumers. This cement is valued at approximately \$1.6 billion.

PAR. 17. Portland cement manufacturers sell their portland cement to consumers such as ready mixed concrete companies, prestressed concrete products manufacturers, concrete block producers, contractors and building materials dealers. Approximately 60 percent of all portland cement is shipped to firms engaged in the production and sale of ready mixed concrete, although in heavily populated areas, the percentage is often higher.

PAR. 18. In a substantial number of significant marketing areas, the production and sale of portland cement is highly concentrated. In the St. Louis, Kansas City, Memphis, and Omaha areas, in each of which Missouri Portland does business, the four largest firms account for approximately 80 percent or more of portland cement sales.

PAR. 19. More than 50 percent of the portland cement industry's plant capacity is owned by multi-plant companies, and the 10 largest producers of portland cement account for approximately 50 percent of the total cement production in the United States.

PAR. 20. Since 1950, approximately 34 portland cement manufacturing companies have been acquired. These acquisitions involved approximately 45 individual portland cement plants with a total capacity of nearly 100 million barrels, or approximately 20 million tons. This amount equalled 30 percent of the total industry capacity in 1950 and 20 percent of the total industry capacity by 1965. The various acquisitions have caused the number of portland cement companies in the U.S. to decline, thereby contributing to increased concentration. Since 1950, the 20 largest portland cement companies' share of portland cement manufacturing capacity in the United States increased from approximately 73 percent to 83 percent.

VI

EFFECTS OF THE ACQUISITION

PAR. 21. The effect of respondent's acquisition of a substantial amount of the stock of Missouri Portland, may be substantially to lessen competition or tend to create a monopoly in the manufacture and sale of portland cement in the St. Louis, Kansas City, Memphis and Omaha areas; in the Mississippi Valley area, and in the Nation as a whole, for each of the following reasons, among others:

a. Respondent will have been eliminated as a substantial potential entrant in the business of the manufacture, sale and distribution of portland cement.

b. The entry of any other potential competitors in the business of the manufacture, sale and distribution of portland cement will or may be prevented, delayed or inhibited.

PAR. 22. The acquisition by respondent corporation of Missouri Portland stock constitutes a violation of Section 7 of the Clayton Act, as amended (15 U.S.C. §18) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45).

ORDER GRANTING MOTION TO DISMISS COMPLAINT

This matter is before us upon the administrative law judge's certification of respondent's motion to dismiss the complaint in view of respondent's divestiture of its interest in the Missouri Portland Cement Company, Inc. (Missouri Portland), on Aug. 28, 1975.

Upon consideration of the matter, the Commission has determined that further proceedings challenging respondent's acquisition of stock in Missouri Portland would not be in the public interest. Accordingly,

It is ordered, That the complaint in this matter be, and it hereby is, dismissed.

Commissioner Dixon not participating, and Commissioner Hanford dissenting.
