

CRANE CO., ET AL.

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Complaint

IN THE MATTER OF
CRANE CO., ET AL.

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

Docket C-2959. Complaint, April 5, 1979 — Decision, April 5, 1979

This consent order, among other things, requires a New York City manufacturer and seller of various products to cause the Medusa Corporation to divest itself completely of its Dixon, Ill. cement plant, together with whatever assets associated with the plant that may be necessary to maintain the facility as an effective competitor in the production and sale of portland cement. The order further prohibits respondents from acquiring the whole or part of the assets of any firm engaged in the production or sale of portland cement without prior Commission approval.

Appearances

For the Commission: *James S. Teborek and Bert L. Slonim.*

For the respondent: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Thomas Mellon Evans ("T.M. Evans") presently influences the management of Crane Co. ("Crane"), H.K. Porter, Inc. ("Porter") and its subsidiary, Missouri Portland Cement Company ("MPC"), that Crane presently owns approximately forty-four (44%) percent of the shares of Medusa Corporation ("Medusa"), that Crane intends to tender for any and all of the outstanding shares of Medusa stock, that Crane's present ownership of Medusa capital stock, its acquisition of additional capital stock of Medusa, or the merger of Medusa with Crane violates or would violate individually or collectively, 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, and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, 5(b), of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(b), 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

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cement as specified by the American Society for Testing Materials. Neither masonry nor white cement is included.

b. "Chicago Metropolitan Area" ("CMA") refers to that area of the State of Illinois composed of the counties of Cook, DuPage, Lake, McHenry, Kane and Will, including any and all independent cities, towns, or other political units located therein.

c. "Peoria Metropolitan Area" ("PMA") refers to that area of the State of Illinois composed of the counties of Peoria, Woodford and Tazewell, including any and all independent cities, towns, or other political units located therein.

II. Crane Co.

2. Crane is a corporation organized and existing under the laws of the State of Illinois with its principal office at 300 Park Ave., New York.

3. Crane manufactures and sells a variety of products, including pollution control devices, plumbing and related building materials, aircraft systems and accessories, and various other products through its subsidiaries.

4. In its fiscal year ended December 31, 1977, Crane had total net sales of \$1,113,000,000, with total assets of \$836,895,000. Net income for 1977 totaled \$66,171,000.

III. Thomas Mellon Evans and the H. K. Porter Company

5. Approximately 12% of Crane's shares are owned by its largest shareholder T.M. Evans. Another 3% or more is held directly or indirectly by T.M. Evans' three sons or by corporations, charitable or otherwise, controlled by T.M. Evans or of which T.M. Evans serves as officer or trustee.

6. Mr. T.M. Evans also owns approximately 62% of the shares of Porter, a corporation organized and existing under the laws of the State of Delaware with principal offices at 1500 Porter Building, Pittsburgh, Pa.

7. In 1977, Porter's net sales totaled \$113,683,000, with net income for 1977 of approximately \$10,277,000. Through its wholly-owned subsidiary, MPC, which it acquired in 1976, Porter is engaged in the manufacture of portland cement.

8. MPC is a corporation organized and existing under the laws of the State of Delaware with its principal offices at 7711 Carondelet Ave., St. Louis, Missouri. MPC produces portland cement at plants located in Missouri and in Illinois. MPC operates distribution terminals in the Chicago and Peoria Metropolitan Areas, Tennessee,

Kentucky, Nebraska, and Alabama. In 1977, MPC's net sales totaled \$67,411,000, with net income of \$2,476,000. MPC's total assets were valued at \$81,073,000.

9. Mr. T.M. Evans serves as a Director and Chairman of the Board of Crane, Director and Chairman of the Executive Committee of Porter and, until August 18, 1978, as a Director of MPC. Mr. T.M. Evans' three sons have stock holdings and or managerial positions in Crane, Porter and/or MPC.

IV. Medusa Corporation

10. Medusa is a corporation organized and existing under the laws of the State of Ohio, with its principal office at 3615 Warrensville Center Road, Shaker Heights, Ohio.

11. Medusa produces and sells portland cement, brick, asphalt and a variety of other highway construction materials or aggregates. Medusa also engaged in highway safety construction and asphalt paving. In 1977, Medusa's total revenues were approximately \$243,000,000 with an operating profit of \$29,000,000.

12. Medusa produces portland cement at plants located in Georgia, Illinois, Michigan, Ohio and Pennsylvania and operates nine distribution terminals including two located in the Chicago Metropolitan Area. In 1977, Medusa's sales of portland cement exceeded \$100,000,000.

V. Jurisdiction

13. At all times relevant herein MPC and Medusa have been engaged in the production and sale of portland cement in interstate commerce and MPC, Crane, and Medusa are engaged in commerce as "commerce" is defined in the Clayton Act, as amended, 15 U.S.C. 12, *et seq.* and each is a corporation whose business is in or affects commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*

VI. The Initial Acquisition

14. On or about August 15, 1978, Crane acquired approximately 514,000 shares of Medusa's common stock thus increasing its holdings to approximately 600,000 shares or 20% of Medusa's outstanding shares.

VII. The Tender Offer

15. On or about September 28, 1978, Crane purchased an additional 700,000 shares of Medusa's common stock, approximately

24% of Medusa's outstanding shares, pursuant to a tender offer the terms of which are set forth in the Schedule 14D-1 filed by Crane with the Securities and Exchange Commission on or about September 5, 1978.

VIII. The Merger Agreement

16. On or about August 31, 1978, Crane and Medusa entered into an agreement in principle to merge upon the completion of Crane's tender offer. On or about November 14, 1978 Crane announced that it had abandoned its announced intention to merge with Medusa.

IX. The Exchange Offer

17. On or about November 14, 1978, Crane announced that it intended to make an exchange offer for any and all of the outstanding shares of Medusa stock where Crane would offer \$10.00 in cash and \$40.00 in principal amount of Crane's subordinated debentures for each Medusa share tendered.

X. Trade and Commerce

18. The relevant line of commerce is the manufacture and sale of portland cement.

19. A relevant section of the country or geographic market is the area of present competition between Medusa and MPC and various geographic markets thereof, including but not limited to CMA and PMA.

XI. Actual Competition

20. MPC and Medusa are and have been for many years actual competitors in the manufacture and sale of portland cement within certain geographic markets, including CMA and PMA.

XII. Effects; Violations Charged

21. The effect of T.M. Evans' stockholdings and managerial positions in Crane and Porter may be to substantially lessen competition or tend to create a monopoly or to constitute an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

22. The effects of Crane's present holdings of Medusa's shares, and its pending tender offer for additional Medusa shares may be to substantially lessen competition or tend to create a monopoly in 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, in the following ways, among others:

- (a) actual competition between MPC and Medusa in the manufacture and sale of portland cement may be eliminated;
- (b) actual competition between competitors generally in the manufacture and sale of portland cement may be lessened;
- (c) concentration in the manufacture and sale of portland cement may be increased and the possibilities for eventual deconcentration may be diminished;
- (d) mergers or acquisitions between other portland cement producers may be fostered, thus causing a further substantial lessening of competition or tendency toward monopoly in the manufacture and sale of portland cement; and
- (e) barriers to entry into the manufacture and sale of portland cement may be increased.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional office and the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act and the Clayton Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues

its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Crane Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 300 Park Ave., in the City of New York, State of New York.

Respondent Thomas M. Evans is an individual whose business address is the same as that of Crane Co.

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

ORDER

It is ordered, That respondents — Crane Co., (“Crane”) a corporation, its successors and assigns, and its officers and directors, and Thomas M. Evans, an individual, his successors and assigns — in connection with the acquisition by Crane, a corporation engaged in commerce as “commerce” is defined in the Clayton Act, as amended, 15 U.S.C. 12, *et seq.*, of stock in Medusa Corporation (“Medusa”) a corporation engaged in commerce as “commerce” is defined by the Clayton Act, as amended, 15 U.S.C. 12, *et seq.*, which acquisition is in or affects commerce as “commerce” is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*:

I

Within fifteen (15) months from the date of service of the consent order upon respondents, and subject to the prior approval of the Federal Trade Commission, respondents shall cause Medusa’s cement plant located at Dixon, Illinois and such other of Medusa’s assets associated with that plant as may be necessary, so that the plant may operate as a going concern and effective competitor in the production and sale of portland cement.

II

It is further ordered, That respondents shall not cause or permit the destruction, removal or impairment of any of the assets to be divested in accordance with Paragraph I of the consent order except in the ordinary course and operation of Medusa’s business and except for normal wear and tear.

III

It is further ordered, That if the divestiture of assets required by

Paragraph I of the consent order is to be accomplished by a spin-off, then:

(a) Respondents shall cause Medusa to transfer the assets to be divested to a new corporation, whose stock is wholly-owned by Medusa, and then Medusa shall distribute that stock to Medusa's shareholders in proportion to their ownership of Medusa stock. Crane shall promptly thereafter distribute its share of the stock of the newly created corporation either to Crane's shareholders in proportion to their ownership of Crane stock or through a public offering to be completed within three months.

(b) No person who is an officer, director or executive employee of Crane or Porter or who owns or controls directly or indirectly more than one (1) percent of the stock of Crane or Porter shall be an officer, director or executive employee of the new corporation.

(c) Neither Thomas M. Evans nor any other person who is an officer, director or executive employee of Crane shall own or control, directly or indirectly, more than one (1) percent of the stock of the new corporation.

(d) Any person who must sell or dispose of stock interest in Crane or H.K. Porter or the new corporation in order to comply with subparagraphs (b) or (c) shall do so within one hundred eighty (180) days after the date on which distribution of the stock of the new corporation is made to stockholders of Crane.

IV

It is further ordered, That for a period of five (5) years from the date of service of the consent order upon respondents, respondents shall cease and desist from acquiring directly or indirectly, by any device or through any corporation, subsidiary or otherwise:

(a) the whole or any part of the assets of any firm engaged in the production or sale of portland cement;

(b) any equity securities in excess of three (3) percent of the outstanding shares of such securities of any firm engaged directly or indirectly in the production or sale of portland cement, except that respondents shall be permitted to acquire Crane, Porter or Medusa stock without restriction;

without the prior approval of the Federal Trade Commission.

V

It is further ordered, That for any company in which respondents

own securities pursuant to Paragraph IV of this order, respondents, their designees, agents, nominees, or representatives shall not seek or accept representation on the Board of Directors of such company.

VI

It is further ordered, That nothing in this consent order shall prevent Evans & Company, a registered securities broker-dealer, from trading in the securities of any firm engaged in the production or sale of portland cement in the ordinary course of its business for:

- (a) those of its customers who are not affiliates or subsidiaries of respondents;
- (b) respondents acquiring securities pursuant to paragraph IV.

VII

A. *It is further ordered,* That respondents distribute a copy of this order to all operating divisions of said corporation.

B. *It is further ordered,* That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

C. *It is further ordered,* That within sixty days and every sixty days thereafter until Medusa has divested absolutely the assets required by the consent order, respondents shall submit a detailed written report of their actions, plans and progress in complying with Paragraphs I, II and III of the consent order, and in fulfilling the objectives of these provisions.

D. *It is further ordered,* That annually on the anniversary date of the service of the consent order, for a period of five years, respondents shall submit a detailed written report of their actions in complying with Paragraphs IV and V of the consent order, and in fulfilling the objectives of these provisions.

IN THE MATTER OF
GAC CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-2523. Decision, July 23, 1974 — Modifying Order, April 17, 1979

This order modifying an order to cease and desist issued on July 23, 1974, 39 FR 34021, 36960; 84 F.T.C. 163, requires the incorporation of the terms of the 1974 order within any GAC plan of reorganization under provisions of the Bankruptcy Act confirmed by the Bankruptcy Court. Upon such confirmation, the modified order requires the company to establish a \$10,000,000 accrual Reserve Fund to be used to defray costs of building individual septic tanks or wells in the northern section of Golden Gates Estates, and to reimburse those whose land is found to be unsuitable for homesites. Because of GAC's poor financial condition, the company is only required to develop a portion of Golden Gates Estates, rather than the entire subdivision, as previously mandated; and is provided with additional time in which to fulfill its contractual obligations to land owners. The modified order further requires GAC to provide financial compensation or alternate homesites to those owning property in the area to be left undeveloped.

ORDER MODIFYING ORDER TO CEASE AND DESIST

The Commission on February 13, 1979, issued its order to show cause why this proceeding should not be reopened and its order of July 23, 1974 (hereafter sometimes referred to as "the Commission Order of 1974"), modified.

Respondents having filed an answer consenting to the proposed changes of the Commission Order of 1974, and the Commission having considered the comments filed by interested persons,

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the show cause order subject to, and contingent upon, satisfaction of all of the following conditions:

(1) the incorporation of the terms of the Commission Order of 1974, as modified, within any plan of reorganization of the respondent confirmed by the Bankruptcy Court in the aforesaid Chapter X proceedings (hereafter referred to as the "plan of reorganization") such incorporation to be without any alterations, substitutions, changes or deletions of the Commission Order of 1974, as modified;

(2) the incorporation of an express provision within any plan of reorganization of the respondent confirmed by the Bankruptcy Court in the aforesaid Chapter X proceedings that the reorganized company which is created thereby shall be subject to the requirements of the Commission Order of 1974, as modified;