

IN THE MATTER OF
LONE STAR INDUSTRIES, INC., ET AL.

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

Docket 9122. Complaint, Jan. 25, 1979 — Decision, Aug. 23, 1979

This consent order requires a Greenwich, Conn. manufacturer of portland cement and masonry cement, and the Keystone Portland Cement Co., an Allentown, Pa. competitor, among other things, to provide the Commission with evidence that their acquisition agreement has been terminated, and all non-public documents exchanged during negotiations returned. Respondents are also required to provide the Commission with 60 days' advance notice and liberal discovery rights, should merger plans be resumed before Dec. 31, 1981.

Appearances

For the Commission: *Bert L. Slonim* and *Nicholas P. Kostopulos, Jr.*

For the respondents: *Melvin C. Garbow* and *D. Bonderman*, *Arnold & Porter*, Washington, D.C. for Lone Star Industries, Inc. and *Ralph W. Brenner* and *T. Michael Mather*, *Montgomery, McCracken, Walker & Rhodes*, Philadelphia, Pa. for Keystone Portland Cement Co.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents, each subject to the jurisdiction of the Commission, have entered into a merger agreement, which, if consummated, would violate 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; that said agreement constitutes a violation of 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, and Section 5(b) of the Federal Trade Commission Act, 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. The term "portland cement" means Types I through V of portland cement as specified by the American Society for Testing Materials.

b. The term "masonry cement" means masonry cement as defined by the American Society for Testing Materials.

c. The term "three-state regional market" refers to Eastern Pennsylvania, New Jersey and Delaware.

d. The term "Eastern Pennsylvania" refers to that part of Pennsylvania identified by the Bureau of Mines as Eastern Pennsylvania.

II. LONE STAR INDUSTRIES, INC.

2. Lone Star Industries, Inc. ("Lone Star") is a corporation organized and existing under the laws of the State of Delaware with its principal office at One Greenwich Plaza, Greenwich, Connecticut.

3. Lone Star manufactures and sells a variety of construction-related products, including cement, concrete, home improvement fixtures and lumber.

4. In 1977, Lone Star, the nation's largest cement producer, operated (domestically) nine cement production plants in eight states, including a plant in Nazareth, Pennsylvania.

5. In the fiscal year ending December 31, 1977, Lone Star had total assets of \$667,538,000 and total net sales of \$864,905,000, which generated a net income of \$29,710,000.

III. KEYSTONE PORTLAND CEMENT CO.

6. Keystone Portland Cement Company ("Keystone") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal office at 2200 Hamilton St., Allentown, Pennsylvania.

7. Keystone is a one-plant company with a 660,000-ton cement production facility located at Bath, Pennsylvania, which is four miles away from Lone Star's Nazareth plant. Keystone manufactures and sells cement and also sells construction aggregates and coal.

8. In the fiscal year ending December 31, 1977, Keystone had total assets of \$16,817,444 and total net sales of \$16,673,677, which generated a net income of \$176,992.

IV. JURISDICTION

9. At all times relevant herein, Lone Star and Keystone have been engaged in the production and sale of portland cement and masonry cement in or affecting interstate commerce and said companies are engaged in or are affecting commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, 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. 44.

V. THE MERGER AGREEMENT

10. On or about October 20, 1978, Lone Star and Keystone entered into a merger agreement whereby Keystone's assets would be sold to Lone Star for \$7.5 million plus an assumption of Keystone's disclosed liabilities. The merger is scheduled for consummation on January 30, 1979.

VI. TRADE AND COMMERCE

11. The relevant lines of commerce are the manufacture and sale of portland cement and the manufacture and sale of masonry cement.

12. The relevant sections of the country are the areas of present competition between Lone Star and Keystone, including but not limited to the three-state regional market.

13. The manufacture and sale of portland cement is concentrated, with the combined market shares of the four largest firms estimated to be approximately 50.5%.

14. The manufacture and sale of masonry cement is concentrated, with the combined market shares of the four largest firms estimated to be approximately 68.8%.

VII. ACTUAL COMPETITION

15. Lone Star and Keystone are presently and have been for many years actual competitors in the manufacture and sale of portland cement and masonry cement within certain geographic markets and submarkets thereof, including but not limited to the three-state regional market.

VIII. EFFECTS: VIOLATIONS CHARGED

16. The effects of the agreement, if consummated, may be substantially to 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 Lone Star and Keystone in the manufacture and sale of portland cement and masonry cement will be eliminated;
- b. actual competition between competitors generally in the manu-

facture and sale of portland cement and masonry cement may be lessened;

c. Keystone will be eliminated as an actual substantial independent competitor in the manufacture and sale of portland cement and masonry cement;

d. concentration in the manufacture and sale of portland cement and masonry cement will be increased, and the possibilities for eventual deconcentration may be diminished; and

e. mergers or acquisitions between other portland cement and masonry cement producers may be fostered, thus causing a further substantial lessening of competition in the manufacture and sale of portland cement and masonry cement.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; 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 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 alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Lone Star Industries, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Greenwich Plaza, in the City of Greenwich, State of Connecticut.

2. Respondent Keystone Portland Cement Co., is a corporation

organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 2200 Hamilton St., in the City of Allentown, Commonwealth of Pennsylvania.

3. 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

I

It is ordered, That Lone Star Industries, Inc. ("Lone Star") and Keystone Portland Cement Company ("Keystone") shall forthwith provide evidence that the acquisition agreement between them has been and is terminated and further, that any and all non-public documents provided by either Lone Star or Keystone to the other in connection with the acquisition agreement be returned. This paragraph shall not relieve any party from any obligation of confidentiality imposed by agreement between them or by operation of law.

II

It is further ordered, That until December 31, 1981 neither Lone Star nor Keystone shall acquire, directly or indirectly, all or any part of the assets (except in the ordinary course of business), or securities of the other until sixty (60) days following the receipt by the Director of the Bureau of Competition of the Federal Trade Commission of written notice of the proposed acquisition, which notice shall specifically refer to this order. If during the first thirty (30) days of the aforesaid sixty (60) day period, the Commission staff has issued any discovery request (including requests for the production of documents or witnesses) to either Lone Star or Keystone to which a complete response has not been made on or before the fiftieth (50th) day of the aforesaid sixty (60) day period, then the proposed acquisition shall not be consummated until ten (10) days after a complete response to such discovery request has been made. Neither the aforesaid sixty (60) day period nor the discovery provisions of this paragraph are in derogation of any of the rights conferred upon the Commission by statute or rule, and shall not be construed as supplanting any of these rights.

III

It is further ordered, That Lone Star and Keystone each shall notify the Commission at least (30) days prior to any proposed corporate

change such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change, which may affect compliance obligations arising out of this order.

IV

It is further ordered, That Lone Star and Keystone each shall, within sixty (60) days after service upon it of this order file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

Commissioners Clanton and Pitofsky did not participate.

IN THE MATTER OF

ITT CONTINENTAL BAKING COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.
5 AND SEC. 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-2989. Complaint Aug. 24, 1979 — Decision, Aug. 24, 1979

This order, among other things, requires a Rye, N.Y. manufacturer and seller of bakery products to cease disseminating advertisements which contain unsubstantiated comparative claims regarding the dietary fiber content of "Fresh Horizons" bread and other such food products; or which fail to include a statement disclosing that fiber ingredient in Fresh Horizons is derived from tree pulp. Such statement is required for two and one-half years in all advertisements for food products containing wood fiber. The order also prohibits the company from representing that an ingredient in Fresh Horizons or in other food products has been recommended or approved by a doctor or scientist unless that party has been fully informed of the ingredient's identity and derivation. Additionally, respondent is required to review and conform to the terms of the order all advertising claims for bakery and/or cereal-based products prepared or financed by its corporate parent.

Appearances

For the Commission: *Maryanne S. Kane, Robert L. Patterson and Sandra N. Hammer.*

For the respondent: *Gordon Thomas, Rye, N.Y.*

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 ITT Continental Baking Company, Inc. ("ITT Continental"), a corporation, hereinafter referred to as respondent, has 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. ITT Continental is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located on Halstead Ave., Rye, New York.

PAR. 2. Respondent ITT Continental, a wholly-owned subsidiary of International Telephone and Telegraph Corporation, is now and has been engaged in the manufacturing, advertising, offering for sale, sale and distribution of a bakery product designated by the trade name,