

*It is further ordered,* That each of the respondents herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF

NATIONAL PORTLAND CEMENT COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF  
THE CLAYTON ACT

*Docket 8654. Complaint, Jan. 22, 1965—Decision, Mar. 31, 1967*

Order dismissing complaint, vacating initial decision and terminating a divestiture proceeding against a Philadelphia manufacturer of portland cement, because the respondent no longer owns any of the assets or stock of the Ryan Ready Mixed Concrete Corporation whose acquisition by the respondent was the basis for this proceeding.

COMPLAINT

The Federal Trade Commission has reason to believe that National Portland Cement Company has acquired the stock and assets of Ryan Ready Mixed Concrete Corporation and its affiliate N. Ryan Company, Incorporated in violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18) as amended, and therefore, pursuant to Section 11 of said Act, it issues this complaint, stating its charges in that respect 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. "The New York City metropolitan area" consists of the

five boroughs of the City of New York and the New York counties of Nassau, Suffolk and Westchester.

## II

### NATIONAL PORTLAND CEMENT COMPANY

2. National Portland Cement Company (National), respondent herein, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal office located at 1842 Fidelity-Philadelphia Trust Building, Philadelphia, Pennsylvania.

3. Respondent is principally engaged in the manufacture and sale of portland cement from its plant at Brodhead, Pennsylvania. In 1963, National had sales of \$4,407,058, assets of \$5,338,371, and net income of \$332,290.

4. The New York City metropolitan area is one of the principal markets for portland cement manufactured in National's plant. In 1962, the total shipments of portland cement from this plant amounted to 1,370,600 barrels, of which approximately 17% was shipped to customers located in the New York City metropolitan area.

5. At all times relevant herein, National was a corporation engaged in commerce, as "commerce" is defined in the Clayton Act.

## III

### RYAN READY MIXED CONCRETE CORPORATION AND N. RYAN COMPANY

6. Prior to September 23, 1963, Ryan Ready Mixed Concrete Corporation (Ryan) and its affiliate N. Ryan Company, Incorporated (N. Ryan), were corporations organized and existing under the laws of the State of New York, with principal offices located at 491 Smith Street, Brooklyn, New York.

7. At the time of the acquisition Ryan was, and for many years had been, engaged in the production and sale of ready-mixed concrete in the New York City metropolitan area. For the fiscal year ending February 28, 1963, Ryan had sales of \$10,937,593, assets of \$3,280,567 and net profits of \$268,041.

8. Ryan operated five ready-mixed concrete plants in the New York City metropolitan area. Ryan is one of the four largest producers of ready-mixed concrete, and one of the four largest consumers of portland cement, in the New York City metropolitan area. During 1962, Ryan consumed 958,305 barrels of portland

cement and sold approximately 697,000 cubic yards of ready-mixed concrete.

9. At the time of the acquisition, N. Ryan was, and for many years had been, operated as the associated purchasing company for Ryan. For the fiscal year ending April 30, 1963, N. Ryan had sales of \$6,531,032, assets of \$1,708,050, and net profits of \$187,345.

10. At all times relevant herein, Ryan and N. Ryan were corporations engaged in commerce, as "commerce" is defined in the Clayton Act.

#### IV

##### ACQUISITION

11. On or about September 23, 1963, National acquired all the outstanding capital stock of Ryan and N. Ryan by exchanging therefor 57,000 shares of National common stock and 7,000 shares of National Class B Preferred Stock.

#### V

##### THE NATURE OF TRADE AND COMMERCE

12. Portland cement is a material which in the presence of water binds aggregates, such as sand and gravel, into concrete. Portland cement is the essential ingredient in the manufacture of ready-mixed concrete. There is no practicable substitute for portland cement in the manufacture of concrete.

13. The portland cement industry in the United States is substantial. In 1963, there were about 51 cement companies in the United States operating approximately 182 plants. Total shipments of portland cement in that year amounted to 349,321,000 barrels having a value of \$1,116,555,000.

14. On a national basis, approximately 57% of all portland cement is shipped to companies engaged in the production of ready-mixed concrete. In the heavily populated metropolitan areas, the percentage of portland cement consumed by ready-mixed concrete companies is generally higher. Ready-mixed concrete producers are the only businesses engaged in the sale of concrete as a commodity.

15. Due to such factors as transportation costs and the necessity of supplying competitive delivery service to consumers, the effective market area of portland cement production and distribution facilities is limited. Similar considerations limit the market area for ready-mix companies.

16. Cement producers sell their portland cement to consumers, such as ready-mixed concrete companies, manufacturers of concrete products, contractors and building materials dealers. In the past such consumers, in general, have not been integrated or affiliated with portland cement producers.

17. In recent years there has been a trend of mergers and acquisitions by which ready-mixed concrete companies in major metropolitan areas in various portions of the United States have become integrated with portland cement companies. As ready-mix companies have been acquired by producers of cement, competing cement producers have sought to acquire other cement consumers in order to protect their markets against the actual or expected foreclosure caused by these acquisitions, and to prevent additional foreclosure of their markets as a result of future such acquisitions by their competitors. Thus each acquisition by a cement producer of a substantial consumer of portland cement forms an integral part of a chain reaction of acquisitions—contributing both to the share of the market already foreclosed by acquisitions, and to the impetus for further such acquisitions.

18. Three of the five largest ready-mixed concrete producers in the New York City metropolitan area have, since 1960, become integrated, through acquisition, with portland cement companies.

## VI

### VIOLATION OF SECTION 7

19. The effect of the acquisition of Ryan Ready Mixed Concrete Corporation and N. Ryan Company, Incorporated by National Portland Cement Company, both in itself and by aggravating the trend towards 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 New York City metropolitan area, in adjoining markets, or in the United States as a whole, in the following ways, among others:

(a) Competitors of respondent may have been or may be foreclosed from a substantial share of the market for portland cement.

(b) The entry of new sellers of portland cement and ready-mixed concrete may be inhibited or prevented.

(c) The ability of nonintegrated competitors of respondent effectively to compete in the sale of portland cement may be substantially impaired.

(d) As an integrated manufacturer and seller of portland ce-

ment and ready-mixed concrete respondent has achieved or may achieve a decisive competitive advantage over its competitors which are engaged only in the manufacture and sale of portland cement, or ready-mixed concrete.

(e) The production of ready-mixed concrete, now a decentralized, locally controlled, small business industry, may become concentrated in the hands of a relatively few producers of portland cement.

Now, therefore, the acquisition of Ryan and N. Ryan by National Portland Cement Company, as above alleged, constitutes a violation of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18), as amended.

*Mr. Robert L. Heggen, Mr. Joel Davidow and Mr. Alan C. Schneeberger* supporting the complaint.

*Cadwalader, Wickersham & Taft*, by *Mr. George D. Reycraft, Mr. P. Jay Flocken*, and *Mr. Charles B. Degnan*, of New York, N.Y., for respondent National Portland Cement Company.

*White & Case*, by *Mr. Edgar E. Barton, Mr. Scott E. Bohon*, and *Mr. Thomas J. Maroney*, of New York, N.Y., for respondent United States Steel Corporation.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

IN THE MATTER OF

NATIONAL PORTLAND CEMENT COMPANY

*Docket No. 8654*

and

IN THE MATTER OF

UNITED STATES STEEL CORPORATION

*Docket No. 8655\**

MAY 20, 1966

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\* Final order of Dec. 2, 1968, reported in 74 F.T.C. 1270, 1319.

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## STATEMENT OF PROCEEDINGS

These are two separate proceedings, instituted by the issuance of separate complaints, charging each of the above-named respondents with having violated Section 7 of the Clayton Act, as amended, by acquiring the stock or assets of a ready-mixed concrete producer in the New York City metropolitan area. After the filing of their respective answers by respondents, separate prehearing conferences were held in each proceeding, *viz*, on May 5 and August 3, 1965, in Docket No. 8654, and on May 20 and August 4, 1965, in Docket No. 8655. Prehearing Orders embodying the results of said conferences were issued by the undersigned hearing examiner on June 4 and August 30, 1965, in Docket No. 8654, and on June 15 and August 30, 1965, in Docket No. 8655. An application by respondent National Portland Cement Company to take the deposition of a prospective industry witness, and for the issuance of a subpoena duces tecum in connection therewith, was granted by order of the undersigned dated May 28, 1965. On motion of the proposed deponent, the undersigned, by order dated August 25, 1965, quashed the aforesaid subpoena duces tecum except as to a portion of one specification. A further application by said respondent to take the depositions of a number of additional industry witnesses, and for the issuance of subpoenas duces tecum in connection therewith, was denied by order of the undersigned dated August 27, 1965, without prejudice to the right of said respondent to renew such application at a subsequent stage of the proceeding, upon a proper showing. No further application for the taking of the depositions of said witnesses was made by respondent.<sup>1</sup> An application by counsel supporting the complaint to take the deposition of a proposed witness in the United States Steel Corporation proceeding was granted by order of the undersigned dated September 23,

<sup>1</sup> Respondent National Portland Cement Company originally requested leave to take the depositions of 38 witnesses. At the close of the evidence in support of the complaint, said respondent indicated that it intended to renew its application to take some of said depositions. However, it subsequently advised the examiner by letter dated November 5, 1965, that it had decided not to proceed with the taking of any further depositions (Tr. 898, 1145, Doc. No. 8654).

