

Amended Complaint

80 F.T.C.

IN THE MATTER OF

LEHIGH PORTLAND CEMENT COMPANY

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

Docket 8680. Amended Complaint, April 24, 1967—Decision, June 7, 1972

Consent order requiring the third largest manufacturer of portland cement with headquarters in Allentown, Pa., to divest itself of 11 plants in Virginia, 6 plants in Florida, and 22 once acquired, but no longer owned, plants in Florida, Kentucky and Virginia, if respondent regains ownership or control. As for the ready-mixed concrete plants the order requires that they be kept in operating condition prior to divestiture, that respondent not add other ready-mixed concrete plants for two years in any county where acquired plants are to be divested. The order also prohibits acquisition of other ready-mixed concrete and concrete product industries for a period of 10 years without prior Federal Trade Commission approval.

AMENDED 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, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. §§ 18, 45, and that a proceeding in respect thereof would be in the public interest, issues this amended 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. "The Miami Area" consists of Dade County, Broward County and Palm Beach County, Florida.

d. "The Orlando Area" consists of Orange, Brevard and Seminole Counties, Florida.

e. "The Jacksonville Area" consists of Duval County, Florida.

f. "The Louisville Area" consists of Jefferson County, Kentucky, and Clark and Floyd Counties, Indiana.

g. "The Lexington Area" consists of Fayette County, Kentucky.

h. "The Washington Area" consists of District of Columbia, Arlington and Fairfax Counties, Virginia and city of Alexandria, Virginia and Montgomery and Prince Georges Counties, Maryland.

II LEHIGH PORTLAND CEMENT COMPANY

2. Lehigh Portland Cement Company, hereinafter referred to as "Lehigh," is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal offices located at Allentown, Pennsylvania.

3. Lehigh, the third largest portland cement manufacturing company in the United States, operates thirteen portland cement manufacturing plants and sixteen distribution terminals located in seventeen different states. In 1964, Lehigh had sales of approximately \$83 million, assets of about \$161 million, and net income of about \$6 million.

4. In the State of Florida, Lehigh operates portland cement manufacturing plants at Bunnell (near Jacksonville), and Miami. The total shipments of portland cement from these two plants, in 1964, amounted to approximately 1,402,564 barrels, and 1,647,202 respectively. The Jacksonville area and the Orlando area are important metropolitan markets, accounting for 22 percent and 15 percent respectively of the total shipments from the Bunnell plant. Approximately 48 percent of the total shipments of the Miami plant were shipped to customers located in the Miami area.

5. In the State of Indiana, Lehigh operates one portland cement manufacturing plant at Mitchell. The total annual capacity of this plant is approximately 2.7 million barrels. The Louisville and Lexington, Kentucky Areas are important metropolitan markets for Lehigh's Mitchell plant.

6. In the State of Virginia, Lehigh operates a portland cement plant at Fordwick and in the State of Maryland, Lehigh operates a portland cement plant at Union Bridge. The total annual capacity of these two plants is approximately 5.14 million barrels. The Washington area is an important metropolitan market for Lehigh.

7. Lehigh is and for many years has been engaged in the shipment of portland cement across state lines. Lehigh is engaged in commerce, as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

III. MATERIALS SERVICE CORP. AND ABC CONCRETE CO.

8. Materials Service Corp., hereinafter referred to as "Materials Service," was a corporation organized and existing under the laws

Amended Complaint

80 F.T.C.

of the State of Florida, with its principal office and place of business located at 1707 N. Orange Blossom Trl., Orlando, Florida. ABC Concrete Co., hereinafter referred to as "ABC," was a division of Materials Service with its principal office and place of business located at 57 S. Edgewood Ave., Jacksonville, Florida.

9. At the time of its acquisition by Lehigh, Materials Service (and its ABC Division) were engaged in the production and sale of ready-mixed concrete in the Orlando and Jacksonville areas, respectively, operating from five to seven ready-mixed concrete plants. Materials Service and ABC were substantial consumers of portland cement.

10. Materials Service was, at the time of the acquisition, engaged in commerce, as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

IV. THE ACQUISITION OF MATERIALS SERVICE CORP.

11. During the month of July 1965, Lehigh acquired the stock or assets of Materials Service. The acquisition of Materials Service by Lehigh was an act or practice in commerce within the meaning of the Federal Trade Commission Act.

V ACME CONCRETE CO.

12. Acme Concrete Co., hereinafter referred to as "Acme," was a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at 5700 N.W. 37 Avenue, Miami, Florida.

13. At the time of the acquisition by Lehigh, Acme was engaged in the production and sale of ready-mixed concrete in the Miami Area, operating about seven ready-mixed concrete plants. Acme was a substantial consumer of portland cement.

14. Acme was, at the time of the acquisition, engaged in commerce, as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

VI THE ACQUISITION OF ACME CONCRETE CO.

15. During the month of July, 1965, Lehigh acquired the stock or assets of Acme. The acquisition of Acme by Lehigh was an act or practice in commerce within the meaning of the Federal Trade Commission Act.

VII FALLS CITY CONCRETE & STONE COMPANY, INC.

16. Falls City Concrete & Stone Company, Inc., hereinafter referred to as "Falls City," was a corporation organized and existing under the

laws of the State of Kentucky, with its principal office and place of business located at Fern Creek, Kentucky.

17. At the time of its acquisition by Lehigh, Falls City was engaged in the production and sale of ready-mixed concrete in the cities of Louisville, Lexington and Frankfort, Kentucky and surrounding towns. Falls City was a substantial consumer of portland cement.

18. Falls City was, at the time of its acquisition, engaged in commerce, as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

VIII ACQUISITION OF FALLS CITY CONCRETE & STONE COMPANY, INC.

19. On January 7, 1966, Lehigh acquired one hundred per cent of the outstanding common stock of Falls City. The acquisition of Falls City by Lehigh was an act or practice in commerce within the meaning of the Federal Trade Commission Act.

IX VIRGINIA CONCRETE CO., INC.

20. Virginia Concrete Co., Inc., hereinafter referred to as "Virginia Concrete," was a corporation organized and existing under the laws of the State of Virginia, with its principal office and place of business located at Shirley Highway & Edsall Road, Springfield, Virginia.

21. At the time of its acquisition by Lehigh, Virginia Concrete was engaged in the production and sale of ready-mixed concrete in the Washington Area, operating nine ready-mixed concrete plants. Virginia Concrete is one of the four largest producers of ready-mixed concrete and one of the four largest consumers of portland cement in the Washington area.

22. Virginia Concrete was, at the time of the acquisition, engaged in commerce, as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

X THE ACQUISITION OF VIRGINIA CONCRETE CO., INC.

23. On or about July 23, 1965, Lehigh acquired the stock or assets of Virginia Concrete. The acquisition of Virginia Concrete by Lehigh was an act or practice in commerce within the meaning of the Federal Trade Commission Act.

X-A THE ACQUISITION OF CEMENT BLOCK INDUSTRIES OF MIAMI, INC.

Sometime after July in 1965, Lehigh acquired the stock or assets, or both the stock and assets of Cement Block Industries of Miami, Inc., hereinafter referred to as "CBI." The acquisition of CBI by Lehigh was an act or practice in commerce within the meaning of the Federal Trade Commission Act.

CBI was a corporation organized and existing under the laws of the State of Florida, with its principal office and place of business located at 4490 S.W. 74th Avenue, Miami, Florida.

At the time of its acquisition by Lehigh, CBI and its affiliates were engaged in the production and sale of ready-mixed concrete, cement blocks, and masonry materials in the greater Miami area, operating a ready-mixed concrete plant there. CBI was a substantial consumer of portland cement.

CBI, at the time of the acquisition, was engaged in commerce, as "commerce" is defined in the Clayton and Federal Trade Commission Acts.

XI NATURE OF TRADE AND COMMERCE

24. 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 production of ready-mixed concrete. There is no practical substitute for portland cement in the production of concrete.

25. The portland cement industry in the United States is substantial. In 1964, there were about 52 cement companies in the United States operating approximately 181 plants. Total shipments of portland cement in that year amounted to approximately 365 million barrels, valued at about \$1.1 billion.

26. Cement manufacturers sell their portland cement to consumers such as ready-mixed concrete companies, concrete products companies, and to contractors and building materials dealers. However, on a national basis, approximately 57 percent of all portland cement is shipped to firms engaged in the production and sale of ready-mixed concrete.

27. 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 35 such acquisitions.

28. The acquisition of ABC is the second acquisition of a substantial portland cement consumer by a portland cement manufacturer in the Jacksonville Area since 1962.

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

XII VIOLATIONS CHARGED

30. The effect of the acquisition of Materials Service (and its ABC Division) by Lehigh, 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 portland cement and ready-mixed concrete in the United States as a whole and various parts thereof, including the State of Florida, the Orlando area, and the Jacksonville area, in the following ways, among others:

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

b. The ability of Lehigh'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, now a decentralized, locally-controlled, small business industry, may become concentrated in the hands of a relatively few manufacturers of portland cement.

31. The effect of the acquisition of Acme by Lehigh, 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 portland cement and ready-mixed concrete in the United States as a whole and various parts thereof, including the State of Florida and the Miami area, in the following ways, among others:

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

b. The ability of Lehigh'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, now a decentralized, locally-controlled, small business industry, may become concentrated in the hands of a relatively few manufacturers of portland cement.

32. The effect of the acquisition of Falls City by Lehigh, 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 portland cement and ready-mixed concrete in the United States as a whole and various parts thereof, including the State of Kentucky and the Louisville and Lexington areas, in the following ways, among others:

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

b. The ability of Lehigh'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, now a decentralized, locally-controlled, small business industry, may become concentrated in the hands of a relatively few manufacturers of portland cement.

33. The effect of the acquisition of Virginia Concrete by Lehigh, 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 portland cement and ready-mixed concrete in the United States as a whole and various parts thereof, including the States of Maryland and Virginia, the District of Columbia and the Washington area, in the following ways, among others:

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

b. The ability of Lehigh'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, now a decentralized, locally-controlled, small business industry, may become concentrated in the hands of a relatively few manufacturers of portland cement.

34. The effect of the acquisition of CBI by Lehigh, 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 portland cement and ready-mixed concrete in the United States as a whole and various parts