

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Richter Concrete Corp. and Hilltop Concrete Corp., U.S. District Court, S.D. Ohio, 1972 Trade Cases ¶74,151, (Oct. 20, 1972)

United States v. Richter Concrete Corp. and Hilltop Concrete Corp.

1972 Trade Cases ¶74,151. U.S. District Court, S.D. Ohio, Western Division. Civil Action No. 7755. Entered October 20, 1972. Case No. 2137, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Rigged Bids—Ready-Mix Concrete—Consent Decree.—Two ready-mix concrete suppliers were barred by a consent decree from fixing the price of ready-mix concrete, from submitting rigged bids for the sale of the product, or from exchanging price information. Suggesting prices is also prohibited, as well as disclosing any intention of submitting a bid. Joint ventures are allowed for jobs that no one of the firms could singly perform. For a period of five years, all bids must be accompanied by a certification that the bid is not the result of any agreement between the bidding firm and any other supplier.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Carl L. Steinhouse, Attys., Dept. of Justice, Frank B. Moore, Joseph J. Calvert, David F. Hils and William F. Costigan, Attys., Dept. of Justice, Antitrust Div., Cleveland, Ohio.

For defendants: Murray S. Monroe, Cincinnati, Ohio; Joseph H. Head, Jr., Cincinnati, Ohio, for Hilltop Concrete Corp.; John M. Kunst, Jr., Cincinnati, Ohio, for Richter Concrete Corp.

Final Judgment

HOGAN, D. J.: Plaintiff, United States of America, having filed its Complaint herein on November 16, 1970, and plaintiff and defendants by their respective attorneys having each consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting evidence or admission by plaintiff or defendants, or any of them, in respect to any such issue;

Now, Therefore, before any testimony has been taken and without trial or adjudication of or finding on any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

Ordered, Adjudged, and Decreed as follows:

I.

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and of the parties hereto, and the Complaint states claims upon which relief may be granted against the defendants under Section I of the Act of Congress of July 2, 1890 (15 U. S. C. 1), commonly known as the Sherman Act, as amended.

II.

[Definitions]

As used in this Final Judgment:

(A) "Person" shall mean any individual, corporation, partnership, firm, association or other business or legal entity.

(B) "Ready mix concrete" means a mixture of cement and other materials, such as sand, stone, and water and, at times, additives, which mixture is delivered in mixer trucks and is widely used in the construction and improvement of various types of structures and their appurtenances.

(C) "Ready mix concrete supplier" means a person who is engaged in the business of producing and selling ready mix concrete.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply also to its subsidiaries, successors, assigns, directors, officers, agents, servants and employees, and to all persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise; provided, however, that this Final Judgment shall not apply to transactions or activity solely between a defendant and its directors, officers, employees, parent company, subsidiaries, or any of them, when acting in such capacity.

IV.

[*Price Competition*]

Each defendant is enjoined and restrained, individually and collectively, from entering into, adhering to, maintaining, furthering, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any other person, directly or indirectly, to:

- (A) Fix, determine, establish, maintain, stabilize, increase, or adhere to prices, discounts or other terms or conditions for the sale of ready mix concrete to any third person;
- (B) Eliminate or suppress price competition in the sale of ready mix concrete;
- (C) Submit collusive or rigged bids or quotations for the sale of ready mix concrete;
- (D) Communicate to or exchange with any other person selling ready mix concrete any information concerning any actual or proposed price, price change, discount, or other term or condition of sale at or upon which ready mix concrete is to be, or has been, sold to any third person prior to the communication of such information to the public or trade generally.

V.

[*Bidding*]

Each defendant is enjoined and restrained, individually and collectively, from directly or indirectly:

- (A) Urging, influencing or suggesting to any other ready mix concrete supplier that he quote or charge specified prices or other terms or conditions of sale for ready mix concrete to any third person;
- (B) Disclosing to or exchanging with any other ready mix concrete supplier, prior to the opening of bids submitted for the supplying of ready mix concrete:
 - 1. The intention to submit or not to submit a bid, or
 - 2. The content of any bid.

VI.

[*Joint Ventures*]

Nothing herein shall be deemed (a) to prohibit any *bona fide* and arm's length purchase or sale negotiations between any defendant and any supplier of any component of ready mix concrete, or (b) to enjoin either defendant from entering into, participating in, or maintaining with any other supplier of ready mix concrete or with any one acting for or in behalf of any other supplier of ready mix concrete, a joint venture agreement whereby a single bid will be submitted and the assets and facilities of each of the parties thereto will be combined for the sale and installation of ready mix concrete of such monetary value or in such quantities that each party to the joint venture could not singly bid on or perform the contract. Provided, however, that such joint ventures shall not

be used or permitted to circumvent or evade any of the other provisions of this Final Judgment or to implement other activities in derogation thereof.

VII.

[*Certifications*]

Each Defendant is ordered and directed for a period of 5 years from and after the date of entry of this Final Judgment to furnish a certification simultaneously with each bid or quotation for the sale of ready-mix concrete which is required to be sealed and which is submitted by it to any governmental body or agency thereof or for any job to be let by any such governmental body or agency thereof. Said certification, in substantially the form set forth in the appendix hereto, shall be by an official of such Defendant knowledgeable about and having authority to determine the price or prices of such bid or quotation, to the effect that said bid or quotation was not the result, directly or indirectly, of any agreement, understanding, plan or program between such Defendant and any other persons selling ready-mix concrete.

VIII.

[*Sale Terms*]

Within sixty (60) days of the entry of this Final Judgment each defendant is ordered and directed, individually and independently:

(A) To review, determine and establish its prices and other terms and conditions of sale for ready mix concrete, on the basis of its independent judgment; provided, however, that compliance with the provisions of this Paragraph VIII (A) and (B) shall not be required if within such sixty (60) day period an affidavit signed by the officer or officers responsible for the determination of such prices, terms and conditions is filed with this Court (with a copy to the Assistant Attorney General in charge of the Antitrust Division) stating that such defendant, prior to the effective date of this Final Judgment and subsequent to November 16, 1970, reviewed, determined and announced the prices, discounts, or terms and conditions of such ready mix concrete in accordance with the requirements of this Section.

(B) To withdraw its then current price lists, if any, and adopt and publish price lists, if any are used, arrived at pursuant to subparagraph (A) above.

IX.

[*Reports*]

For a period of 10 years from the date of entry of this Final Judgment each defendant is ordered to file with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps it has taken during the prior year to advise the defendant's appropriate officers, directors, employees and members of its and their obligation under this Final Judgment.

X.

[*Access to Records*]

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege (a) reasonable access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, servants or employees of such defendant, who may have counsel present, regarding any such matters. Any defendant, upon such written request of the

Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section X shall be divulged by any representatives of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction of or the carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations hereof.

Appendix

The undersigned hereby certifies that, to his best knowledge and belief, the annexed bid has not been prepared in collusion with any other producer or seller of ready mix concrete and that the prices, discounts, terms and conditions thereof have not been communicated by or on behalf of the bidder to any such person other than the recipient of such bid and will not be communicated to any such person prior to the official opening of said bid. This certification may be treated for all purposes as if it were a sworn statement made under oath, and is made subject to the provisions of 18 U. S. C. 1001 relating to the making of false statements.