

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA
United States Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 20530,

and

STATE OF MARYLAND
Attorney General's Office
200 St. Paul Place, 19th Floor
Baltimore, Maryland 21202,

Plaintiffs,

v.

MARTIN MARIETTA MATERIALS, INC.
2710 Wycliff Road
Raleigh, North Carolina 27607,

LG PANADERO, L.P.
630 Fifth Avenue, 30th Floor
New York, New York 10111,

PANADERO CORP.,
200 W. Forsyth Street, 12th Floor
Jacksonville, Florida 32202,

PANADERO AGGREGATES HOLDINGS, LLC,
200 W. Forsyth Street, 12th Floor
Jacksonville, Florida 32202,

and

BLUEGRASS MATERIALS COMPANY, LLC
200 W. Forsyth Street, 12th Floor
Jacksonville, Florida 32202,

Defendants.

COMPLAINT

Plaintiffs, the United States of America (“United States”), acting under the direction of the Attorney General of the United States, and the State of Maryland, acting by and through the Attorney General of Maryland, bring this civil antitrust action against Defendants to enjoin Martin Marietta Materials, Inc.’s (“Martin Marietta”) proposed acquisition of Bluegrass Materials Company, LLC (“Bluegrass”). Plaintiffs allege as follows:

I. INTRODUCTION

1. On June 26, 2017, Martin Marietta and Bluegrass announced a definitive agreement under which Martin Marietta would acquire Bluegrass for \$1.625 billion. The merger would expand the reach of one of the largest aggregate producers in the United States and create a combined firm with annual total revenues of approximately \$4 billion.

2. Aggregate is a key input in asphalt and ready mix concrete and is used to build roads, highways, bridges, and other construction projects. The proposed acquisition would eliminate head-to-head competition between Martin Marietta and Bluegrass in supplying aggregate to customers in and immediately around Forsyth and north Fulton County, Georgia, and in and immediately around Washington County, Maryland. For a significant number of customers in these areas, Martin Marietta and Bluegrass are two of only three competitive sources of aggregate qualified by the respective states’ Departments of Transportation (“DOT”). Elimination of competition between Martin Marietta and Bluegrass in these areas likely would give Martin Marietta the ability to raise prices or decrease the quality of service provided to these customers.

3. As a result, Martin Marietta’s proposed acquisition of Bluegrass likely would substantially lessen competition for DOT-qualified aggregate in and immediately around Forsyth

and north Fulton County, Georgia, and in and immediately around Washington County, Maryland, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. THE PARTIES AND THE PROPOSED TRANSACTION

4. Defendant Martin Marietta is a North Carolina corporation with its headquarters in Raleigh, North Carolina. Martin Marietta is a leading supplier of aggregate and heavy building materials in the United States, with operations in 26 states. In 2017, Martin Marietta had net sales of \$3.9 billion.

5. Defendant Bluegrass is a Delaware limited liability company with its headquarters in Jacksonville, Florida. Bluegrass operates 17 rock quarries, one sand plant, and two concrete manufacturing plants across Kentucky, Tennessee, South Carolina, Georgia, Pennsylvania, and Maryland.

6. Defendant Panadero Aggregates Holdings, LLC (“Panadero Aggregates”) is a Delaware limited liability company with its headquarters in Jacksonville, Florida. Panadero Aggregates was formed to acquire, develop, and operate aggregate and other construction materials businesses. Panadero Aggregates is the owner of Bluegrass.

7. Defendant Panadero Corp. (“Panadero”) is a Delaware corporation with its headquarters in Jacksonville, Florida. Panadero is a wholly-owned subsidiary of LG Panadero and is the majority owner of Panadero Aggregates. Panadero, which reported consolidated net sales of \$199.5 million in 2016, was formed to acquire, develop, and operate aggregate and other construction materials businesses.

8. Defendant LG Panadero, L.P. (“LG Panadero”) is a Delaware limited partnership headquartered in New York, New York. LG Panadero is the owner of Panadero.

9. Pursuant to the Securities Purchase Agreement dated June 23, 2017, Martin Marietta would acquire Panadero and Panadero Aggregates, including Bluegrass, from LG Panadero for \$1.625 billion.

III. JURISDICTION AND VENUE

10. The United States brings this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. §§ 4 and 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

11. The State of Maryland brings this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The State of Maryland, by and through the Attorney General of Maryland, brings this action as *parens patriae* on behalf of the citizens, general welfare, and the general economy of the State of Maryland.

12. Defendants produce and sell aggregate in the flow of interstate commerce. Defendants' activity in the production and sale of aggregate substantially affects interstate commerce. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

13. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c).

IV. TRADE AND COMMERCE

A. Aggregate Is an Essential Input for Many Road and Construction Projects

14. Aggregate is a category of material used for road and construction projects. Produced in quarries, mines, and gravel pits, aggregate is predominantly limestone, granite, or

other dark-colored igneous rock. Different types and sizes of rock are needed to meet different specifications for use in asphalt concrete, ready mix concrete, industrial processes, and other products. Asphalt concrete consists of approximately 95 percent aggregate, and ready mix concrete is made of up of approximately 75 percent aggregate. Aggregate thus is an integral input for road and other construction projects.

15. For each construction project, a customer establishes specifications that must be met for each application for which aggregate is used. For example, state DOTs, including the Georgia and Maryland DOTs, set specifications for aggregate used to produce asphalt concrete, ready mix concrete, and road base for state DOT projects. State DOTs specify characteristics such as hardness, durability, size, polish value, and a variety of other characteristics. The specifications are intended to ensure the longevity and safety of the roads, bridges and other projects for which aggregate is used.

16. State DOTs qualify quarries according to the end uses of the aggregate, to ensure that the stone used in an application meets the necessary specifications. In addition, state DOTs test the aggregate at various points: at the quarry before it is shipped; when the aggregate is sent to the purchaser to produce an end product such as asphalt concrete; and after the end product has been produced. Many cities, counties, commercial entities, and individuals in Georgia and Maryland have adopted their respective state DOT-qualified aggregate specifications when building roads, bridges, and other construction projects in order to optimize the longevity of their projects.

B. Transportation Is a Significant Component of the Cost of Aggregate

17. Aggregate is priced by the ton and is a relatively inexpensive product, with prices typically ranging from approximately five to twenty dollars per ton. A variety of approaches are

used to price aggregate. For small volumes, aggregate often is sold according to a posted price. For large volumes, customers typically either negotiate prices for a particular job or negotiate yearly requirements contracts, seeking bids from multiple aggregate suppliers.

18. In areas where aggregate is locally available, it is transported from quarries to customers by truck. Truck transportation is expensive, and transportation costs can become a significant portion of the total cost of aggregate.

C. Relevant Markets

1. State DOT-Qualified Aggregate Is a Relevant Product Market

19. Within the broad category of aggregate, different types and sizes of stone are used for different purposes. For instance, aggregate qualified for use as road base may not be the same size and type of rock as aggregate qualified for use in asphalt concrete. Accordingly, aggregate types and sizes are not interchangeable with one another and demand for each is separate. Thus, each type and size of aggregate likely is a separate line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

20. State DOTs qualify aggregate for use in road construction and other projects in that particular state. DOT-qualified aggregate meets particular standards for size, physical composition, functional characteristics, end uses, and availability. A customer whose job specifies aggregate qualified by a particular state's DOT cannot substitute aggregate or other materials that have not been so qualified.

21. Although numerous narrower product markets exist, the competitive dynamic for most types of state DOT-qualified aggregate is nearly identical, as a quarry can typically produce all, or nearly all, types of DOT-qualified aggregate for a particular state. Therefore, most types of DOT-qualified aggregate for a particular state may be combined for analytical convenience

into a single relevant product market for the purpose of evaluating the competitive impact of the acquisition.

22. A small but significant increase in the price of state DOT-qualified aggregate would not cause a sufficient number of customers to substitute to another type of aggregate or another material so as to make such a price increase unprofitable. Accordingly, the production and sale of Georgia DOT-Qualified Aggregate and Maryland DOT-Qualified Aggregate (hereinafter “DOT-Qualified Aggregate”) are distinct lines of commerce and relevant product markets within the meaning of Section 7 of the Clayton Act.

2. The Relevant Geographic Markets Are Local

23. Aggregate is a relatively low-cost product that is bulky and heavy. As a result, the cost of transporting aggregate is high compared to the value of the product.

24. When customers seek price quotes or bids, the distance from the quarry to the project site or plant location will have a considerable impact on the selection of a supplier, due to the high cost of transporting aggregate relative to the low value of the product. Suppliers know the importance of transportation costs to a potential customer’s selection of an aggregate supplier; they know the locations of their competitors, and they often will factor the cost of transportation from other suppliers into the price or bid that they submit.

25. The primary factor that determines the area a supplier will serve is the location of competing quarries. When quoting prices or submitting bids, aggregate suppliers will account for the location of the project site or plant, the cost of transporting aggregate to the project site or plant, and the locations of the competitors that might bid on a job. Therefore, depending on the location of the project site or plant, suppliers are able to adjust their bids to account for the distance other competitors are from a job.

a. The Forsyth and North Fulton County Area Is a Relevant Geographic Market

26. Martin Marietta operates the Forsyth quarry in Suwanee, Georgia, and Bluegrass owns and operates the Cumming quarry in Cumming, Georgia. Customers in and immediately around Forsyth County and Fulton County north of the Chattahoochee River (hereinafter referred to as the “Forsyth and North Fulton County Area”) are served by both the Forsyth and Cumming quarries. Customers with plants or jobs in the Forsyth and North Fulton County Area may, depending on the location of their plant or job sites, economically procure Georgia DOT-Qualified Aggregate from the Forsyth and Cumming quarries, or from quarries operated by a third firm located in Norcross, Buford, and Ball Ground, Georgia. Other more distant quarries cannot compete successfully on a regular basis for a significant number of customers with plants or jobs in the Forsyth and North Fulton County Area because they are too far away and transportation costs are too great.

27. Customers likely would be unable to switch to suppliers outside the Forsyth and North Fulton County Area to defeat a small but significant price increase. Accordingly, the Forsyth and North Fulton County Area is a relevant geographic market for the production and sale of Georgia DOT-Qualified Aggregate within the meaning of Section 7 of the Clayton Act.

b. The Washington County Area Is a Relevant Geographic Market

28. Martin Marietta owns and operates the Boonsboro quarry in Boonsboro, Maryland, and the Pinesburg quarry in Williamsport, Maryland, and Bluegrass owns and operates the Beaver Creek quarry in Hagerstown, Maryland. The Boonsboro, Pinesburg, and Beaver Creek quarries each serve customers in and immediately around Washington County, Maryland (hereinafter referred to as the “Washington County Area”). Customers with plants or

jobs in the Washington County Area may, depending on the location of their plant or job site, economically procure Maryland DOT-Qualified Aggregate from the Boonsboro, Pinesburg, or Beaver Creek quarries, or from a quarry operated by a third firm located in nearby Chambersburg, Pennsylvania. Other more distant quarries cannot compete successfully on a regular basis for customers with plants or jobs in the Washington County Area because they are too far away and transportation costs are too great.

29. Customers likely would be unable to switch to more distant suppliers outside of the Washington County Area to defeat a small but significant price increase. Accordingly, the Washington County Area is a relevant geographic market for the production and sale of Maryland DOT-Qualified Aggregate within the meaning of Section 7 of the Clayton Act.

D. Martin Marietta's Acquisition of Bluegrass Is Anticompetitive

30. Vigorous competition between Martin Marietta and Bluegrass on price and customer service in the production and sale of DOT-Qualified Aggregate has benefitted customers in the Forsyth and North Fulton County Area and in the Washington County Area.

31. In each of these areas, the competitors that constrain Martin Marietta and Bluegrass from raising prices on DOT-Qualified Aggregate are limited to those who are qualified by the Georgia and Maryland DOTs to supply aggregate and can economically transport the aggregate into these areas. As alleged above, for a significant number of customers in each area, there is only one other firm that produces DOT-Qualified Aggregate and can economically serve customers at their plants or job sites. The proposed acquisition will eliminate the competition between Martin Marietta and Bluegrass and reduce from three to two the number of suppliers of DOT-Qualified Aggregate for a significant number of customers in each area.

32. For a significant number of customers in each area, a combined Martin Marietta and Bluegrass will have the ability to increase prices for DOT-Qualified Aggregate and decrease service by limiting availability or delivery options. DOT-Qualified Aggregate producers know the distance from their own quarries and their competitors' quarries to a customer's job site. Generally, because of transportation costs, the farther a supplier's closest competitor is from a job site, the higher the price and margin that supplier can expect for that project. Post-acquisition, in instances where Martin Marietta and Bluegrass quarries are the closest locations to a customer's project, the combined firm, using the knowledge of its competitors' locations, will be able to charge such customers higher prices or decrease the level of customer service.

33. The response of other suppliers of DOT-Qualified Aggregate will not be sufficient to constrain a unilateral exercise of market power by Martin Marietta after the acquisition.

34. The proposed acquisition will therefore substantially lessen competition in the market for DOT-Qualified Aggregate in the Forsyth and North Fulton County Area and in the Washington County Area and will likely lead to higher prices and reduced customer service for consumers of such products, in violation of Section 7 of the Clayton Act.

E. Difficulty of Entry

35. Timely, likely, and sufficient entry in the production and sale of DOT-Qualified Aggregate in the Forsyth and North Fulton County Area and in the Washington County Area is unlikely, given the substantial time and cost required to open a quarry.

36. Quarries are particularly difficult to locate and permit. First, securing the proper site for a quarry is challenging and time-consuming. Finding land with the correct rock composition requires extensive investigation and testing of candidate sites, as well as the

negotiation of necessary land transfers, leases, and/or easements. Further, the site must be close to customer plants and likely job sites given the high cost of transporting aggregate.

37. Second, once a suitable location is chosen, obtaining the necessary permits is difficult and time-consuming. Attempts to open a new quarry often face fierce public opposition, which can prevent a quarry from opening altogether or make the process of opening it much more time-consuming and costly.

38. Third, even after a site is acquired and permitted, the owner must spend significant time and resources to prepare the land for quarry operations and purchase and install the necessary equipment.

39. Because of the cost and difficulty of establishing a quarry, entry will not be timely, likely or sufficient to mitigate the anticompetitive effects of Martin Marietta's proposed acquisition of Bluegrass.

V. VIOLATION ALLEGED

40. Martin Marietta's proposed acquisition of Bluegrass likely will substantially lessen competition in the production and sale of DOT-Qualified Aggregate in the Forsyth and North Fulton County Area and in the Washington County Area, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

41. Unless enjoined, the proposed acquisition likely will have the following anticompetitive effects, among others:

(a) actual and potential competition between Martin Marietta and Bluegrass in the production and sale of DOT-Qualified Aggregate in the Forsyth and North Fulton County Area and in the Washington County Area will be eliminated; and

(b) prices for DOT-Qualified Aggregate in the Forsyth and North Fulton County Area and in the Washington County Area likely will increase and customer service likely will decrease.

VI. REQUESTED RELIEF

42. Plaintiffs request that this Court:

(a) adjudge and decree that Martin Marietta's acquisition of Bluegrass would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) preliminarily and permanently enjoin and restrain the Defendants and all persons acting on their behalf from consummating the proposed acquisition of Bluegrass by Martin Marietta, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine Martin Marietta with Bluegrass;

(c) award Plaintiffs their costs for this action; and

(d) award Plaintiffs such other and further relief as the Court deems just and proper.

Dated: April 25, 2018

FOR PLAINTIFF UNITED STATES OF AMERICA:


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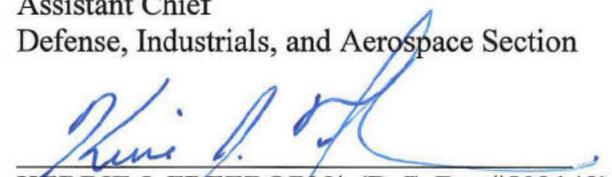

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