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FEDERAL TRADE COMMISSION

[File No. 151 0200]

HeidelbergCement AG and Italcementi S.p.A.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before July 20, 2016.

ADDRESSES: Interested parties may file a comment at https://ftcpublic.commentworks.com/ftc/heidelbergitalcementiconsent/ online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "HeidelbergCement AG and Italcementi S.p.A. - Consent Agreement; File No. 151 0200" on your comment and file your comment online at https://ftcpublic.commentworks.com/ftc/heidelbergitalcementiconsent/ by following the instructions on the web-based form. If you prefer to file your comment on paper, write "HeidelbergCement AG and Italcementi S.p.A. - Consent Agreement; File No. 151 0200" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal

Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: James Southworth (202-326-2822), Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 17, 2016), on the World Wide Web, at http://www.ftc.gov/os/actions.shtm.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 20, 2016. Write "HeidelbergCement AG and Italcementi S.p.A. - Consent Agreement; File No. 151 0200" on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at http://www.ftc.gov/os/publiccomments.shtm. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at https://ftcpublic.commentworks.com/ftc/heidelbergitalcementiconsent/ by following the instructions on the web-based form. If this Notice appears at http://www.regulations.gov/#!home, you also may file a comment through that website.

If you file your comment on paper, write "HeidelbergCement AG and Italcementi S.p.A. - Consent Agreement; File No. 151 0200" on your comment and on the envelope, and mail your

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at http://www.ftc.gov to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 20, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at http://www.ftc.gov/ftc/privacy.htm.

Analysis of Agreement Containing Consent Orders to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") designed to remedy the anticompetitive effects resulting from the proposed acquisition of Italcementi S.p.A. ("Italcementi") by HeidelbergCement AG ("Heidelberg") (collectively, "Respondents" or "the parties"). Heidelberg and Italcementi compete to sell portland cement in the United States through their respective subsidiaries, Lehigh Hanson, Inc. ("Lehigh") and Essroc Cement Corp. ("Essroc"). Under the terms of the proposed Consent Agreement, the Respondents are required to divest Italcementi's cement plant in Martinsburg, West Virginia, along with up to ten cement terminals and all related assets to a buyer approved by the Commission (the "Martinsburg Assets"). In addition to the cement plant, the Martinsburg Assets include the following terminals that Essroc has used to distribute cement manufactured at Martinsburg: Ashland, Virginia; Baltimore, Maryland; Bessemer, Pennsylvania; Chesapeake, Virginia; Frederick, Maryland; Leetsdale, Pennsylvania; and Newport News, Virginia. Two additional Essroc terminals located in Columbus and Middlebranch, Ohio are required to be divested at the option of the buyer and subject to the prior approval of the Commission. In addition to these nine terminals that historically serve Essroc's Martinsburg cement plant, Respondents are required to divest to the buyer of the Martinsburg Assets Lehigh's cement terminal in Solvay, New York. Finally, the Consent Agreement requires Essroc to divest its cement terminal in Indianapolis, Indiana to Cemex, Inc. ("Cemex").

The Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the Consent Agreement and the comments received, and decide whether it should withdraw from the Consent Agreement, modify it, or make final the Decision and Order ("Order").

THE TRANSACTION

Pursuant to a Share Purchase Agreement dated July 28, 2015, Heidelberg proposes to acquire 100% of Italcementi's voting shares in a two-step transaction. First, Heidelberg has agreed to acquire approximately 45% of Italcementi voting securities held by Italmobiliare S.p.A. The aggregate consideration for these shares totals approximately $1.9 billion. Following the closing of the Share Purchase, Heidelberg will launch a mandatory public cash tender offer for the remaining outstanding shares of Italcementi, for an expected purchase price of approximately $2.3 billion. The total value of Italcementi shares to be acquired is thus approximately $4.2 billion.

The Commission's Complaint alleges that the proposed transaction, 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, by substantially lessening competition in certain regional markets in the United States for the manufacture and sale of portland cement. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the proposed acquisition.

THE PARTIES

Headquartered in Germany, Heidelberg is the second-largest global producer of cement, ready-mix concrete, and aggregates. It operates eighty-five cement plants in more than forty countries around the globe. Heidelberg operates as Lehigh in the United States, where it has twelve cement plants, one slag cement grinding facility, two cement-grinding facilities, and thirty-nine cement terminals.

Italcementi is an Italian public corporation that operates in the United States through its subsidiary, Essroc. Worldwide, Italcementi is the fourth-largest producer of cement. Essroc operates six cement plants and twenty-one cement terminals in North America.

THE RELEVANT PRODUCTS AND STRUCTURE OF THE MARKETS

In the United States, both parties manufacture and sell portland cement. Portland cement is an essential ingredient in making concrete, a cheap and versatile building material. Because portland cement has no close substitute and the cost of cement usually represents a relatively small percentage of a project's overall construction costs, few customers are likely to switch to other products in response to a small but significant increase in the price of portland cement.

The primary purchasers of portland cement are ready-mix concrete firms and producers of concrete products. These customers usually pick up portland cement from a cement company's plant or terminal in trucks. Because portland cement is a heavy and relatively cheap commodity, transportation costs limit the distance customers can economically travel to pick up cement. The precise scope of the area that can be served by a particular plant or terminal depends on a number of factors, including the density of the specific region and local transportation costs.

Due to transportation costs, cement markets are local or regional in nature. The relevant geographic markets in which to analyze the effects of the proposed acquisition on portland cement competition are (1) Baltimore-Washington and surrounding areas; (2) Richmond, VA and surrounding areas; (3) Virginia Beach-Norfolk-Newport News and surrounding areas (i.e., Hampton Roads); (4) Syracuse, NY metropolitan and surrounding areas; and (5) Indianapolis and surrounding areas. Each of the relevant markets is highly concentrated, and the merger would reduce the number of competitively significant suppliers from three to two in each of the markets.

ENTRY

Entry into the relevant portland cement markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the proposed transaction. It is costly and time consuming to enter a new geographic market. Constructing a new portland cement plant of sufficient size to be competitive would likely cost over $300 million and take more than five years to permit, design, and build; even the expansion of an existing facility would likely cost hundreds of millions of dollars and take four or more years to complete. Building competitive cement distribution terminals is also difficult and time consuming. It can take more than two years to acquire a suitable location, obtain the necessary permits, and complete construction of a competitive terminal in the relevant markets. Given the difficulties of entry, it is unlikely that any new entry could be accomplished in a timely manner in the relevant markets to defeat a likely price increase caused by the proposed acquisition.

EFFECTS OF THE ACQUISITION

Unless remedied, the proposed merger would likely result in harm to competition in each of the relevant portland cement markets. Those markets are already highly concentrated. By reducing the number of significant competitors, the merger would result in an effective duopoly in each relevant market. As explained below, the evidence shows that absent the required divestitures, the merger would likely both produce unilateral and coordinated effects in the relevant markets.

For many customers in the relevant markets, the parties are the two most proximate suppliers, and other rival cement suppliers are more distant and thus have higher shipping costs. The merger would likely force these customers to pay higher prices by eliminating their ability to play one party off against the other in individual negotiations to obtain better cement prices.

After the acquisition, the merged party could effectively target customers for whom the merged parties are the nearest competitors with price increases. The merged party could also target customers that prefer to buy cement from multiple sources to protect against supply disruptions with price increases because the merger would leave such customers with only two significant suppliers.

The proposed transaction is also likely to enhance the likelihood of coordinated interaction by reducing the number of significant suppliers in relevant markets that are already vulnerable to coordination. The relevant markets are vulnerable because they are highly concentrated; cement is a homogenous product; and sales are small, frequent, and usually not made pursuant to long-term contracts. The markets also exhibit a high degree of transparency: competitors are commonly aware of each other's production capacities, costs, sales volumes, prices, and customers. The evidence indicates that the merging firms already closely monitor competitors' cement pricing and sales, which facilitates coordination.

THE CONSENT AGREEMENT

The proposed Consent Agreement eliminates the competitive concerns raised by Heidelberg's proposed acquisition of Italcementi by requiring the divestiture of one party's cement operations in each of the relevant markets. Italcementi is required to divest a cement plant in Martinsburg, West Virginia, including its quarry and all other related assets, together with up to ten cement distribution terminals in Maryland, Virginia, Pennsylvania, and Ohio, to a Commission-approved buyer or buyers, at no minimum price, within 120 days of closing of the proposed transaction. Furthermore, Heidelberg is required to divest its distribution terminal in Solvay, New York, and all related assets to the Commission-approved buyer of the Martinsburg Assets, in order to remedy the competitive effects of the proposed acquisition in the Syracuse market. Finally, Essroc must divest its cement distribution terminal in Indianapolis and all related assets to Cemex within ten days of the closing of the proposed transaction to remedy the competitive effects of the proposed acquisition in the Indianapolis market.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the proposed acquisition. If the Commission determines that any of the identified buyers is not an acceptable acquirer, the proposed Order requires the parties to divest the assets to a Commission-approved acquirer within ninety days of the Commission notifying the parties that the proposed acquirer is not acceptable. If the Commission determines that the manner in which any divestiture was accomplished is not acceptable, the Commission may direct the parties, or appoint a divestiture trustee, to effect such modifications as may be necessary to satisfy the requirements of the Order.

The Consent Agreement also contains an Order to Maintain Assets to protect the viability, marketability, and competitiveness of the divestiture asset packages until the assets are divested to a buyer or buyers approved by the Commission.

To ensure compliance with the proposed Order, the Commission has agreed to appoint an Interim Monitor to ensure that Heidelberg and Italcementi comply with all of their obligations pursuant to the Consent Agreement and to keep the Commission informed about the status of the transfer of the rights and assets to appropriate purchasers.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark
Secretary.

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