

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney

In the Matter of)
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)
HOLCIM LTD.,)
a public limited company;)
) Docket No. C-4519
and)
)
LAFARGE S.A.,)
a corporation.)
)
)
_____)

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Holcim Ltd. (“Holcim”) of Respondent Lafarge S.A. (“Lafarge”) (collectively, “Respondents”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and Order to Hold Separate and Maintain Assets (“Hold Separate Order”), and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Holcim is a public limited company registered in Switzerland, with its office and principal place of business located at Zürcherstrasse 156, Jona, 8645 Canton of St. Gallen, Switzerland. Holcim’s principal U.S. subsidiary, Holcim (US) Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its U.S. headquarters and principal place of business located at 24 Crosby Drive, Bedford, MA 01730.
2. Respondent Lafarge is a *société anonyme* organized, existing, and doing business under and by virtue of the laws of France, with its office and principal place of business located at 61 rue des Belles Feuilles, Paris, France. Lafarge’s principal U.S. subsidiary, Lafarge North America Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its U.S. headquarters and principal place of business located at 8700 W. Bryn Mawr Avenue, Suite 300 S, Chicago, IL 60631.
3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Holcim” means Holcim Ltd., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Holcim Ltd., including Holcim (US) Inc. and Holcim (Canada) Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Lafarge” means Lafarge S.A., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Lafarge S.A., including Lafarge North America, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- O. “Commission” means the Federal Trade Commission.
- P. “Direct Costs” means cost not to exceed the cost of labor

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that receives the prior approval of the Commission, and in a manner that receives the prior approval of the Commission.

Provided, however, that such Acquirer(s) shall have received all necessary approvals from the Canada Competition Bureau to acquire the Canada/Great Lakes Assets and the Trident Assets prior to the applicable Divestiture Date(s);

- B. *Provided, that,* if prior to the date this Order becomes final, Respondents have divested the Assets To Be Divested pursuant to Paragraph II.A.1.-4. and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:
1. Any Proposed Acquirer identified in Paragraph II.A.1.-4. is not an acceptable Acquirer, then Respondents shall, within five days of notification by the Commission, rescind such transaction with that Proposed Acquirer, and shall divest such assets, absolutely and in good faith, at no minimum price, to an Acquirer and in a manner that receives the prior approval of the Commission, within 90 days of the date the Commission notifies Respondents that such Proposed Acquirer is not an acceptable Acquirer; or
 2. The manner in which any divestiture identified in Paragraph II.A.1.-4. was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee pursuant to Paragraph V. of this Order, to effect such modifications to the manner of divesting those assets to such Acquirer (including, but not limited to, entering into additional agreements or arrangements, or modifying the relevant Divestiture Agreement) as may be necessary to satisfy the requirements of this Order.
- C. All Remedial Agreement(s) approved by the Commission:
1. Shall be deemed incorporated by reference into this Order, and any failure by Respondents to comply with the terms of any such Remedial Agreement(s) shall constitute a violation of this Order; and
 2. Shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligation of Respondents under such agreement. If any term of any Remedial Agreement(s) varies from the terms of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order.
- D. At the option of each Acquirer, and subject to the prior approval of the Commission, Respondents shall enter into a Transition Services Agreement for a term extending up to two years following the relevant Divestiture Date, which agreement may be terminated at any time by the Acquirer without penalty upon commercially reasonable notice to Respondents.

- B. Respondents shall devise and implement measures to protect against the storage, distribution, and use of Material Confidential Information that is not permitted by this Order, the Hold Separate Order, or the Remedial Agreement(s). These measures shall include, but not be limited to, restrictions placed on access by persons to information available or stored on any of Respondents' computers or computer networks.
- C. Notwithstanding anything else in paragraph III of this Order and subject to the Hold Separate Order, Respondents may use and disclose Material Confidential Information:
 - 1. In the ordinary course of business in the operation of Respondents' retained businesses and assets if:
 - a. The Material Confidential Information relates both to the Assets To Be Divested and to Respondents' retained businesses or assets;
 - b. The Divestiture Agreement permits Respondents to retain Material Confidential Information that also relates to Respondents' retained businesses or assets; and
 - c. Respondents protect against the disclosure or use of such Material Confidential Information in the same way Respondents protect against the disclosure or use of Respondents' other confidential information;
 - 2. For the purpose of performing Respondents' obligations under this Order, the

IV.

IT IS FURTHER ORDERED that:

A. The Commission appoints ING Financial Markets LLC as Monitor, and approves the agreement between the Monitor and Respondents, attached as Appendix V (“Monitor Agreement”) and Non-Public Appendix V-1 (“Monitor Compensation”). The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Remedial Agreement(s).

B. The Monitor’s duties and responsibilities shall include the following, among other responsibilities that may be required:

1. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;
2. The Monitor shall serve until such time as Respondents have complied fully with all of their obligations under the Remedial Agreement(s);
3. The Monitor shall have the power and authority to Monitor Respondents’ compliance with this Order and the Remedial Agreement(s);
4. The Monitor shall have power and authority to review and audit, at the Respondents’ sole cost and expense, the books and records of Respondents to determine whether Respondents have complied fully with their obligations under the Order and the Remedial Agreement(s);
5. The Monitor shall exercise such power and authority and carry out his or her duties and responsibilities in a manner consistent with the purposes of this Order and in consultation with the Commission and its staff;
6. The Monitor shall review all reports submitted to the Commission by Respondents under this Order and, within thirty (30) days from the date the Monitor receives a report, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Order and the Remedial Agreement(s); and,
7. The Monitor shall provide written reports to the Commission every 60 days, or upon a schedule -28.65 -1.15 Td [(M)-5(o)-m()Tj [(a)4(nd)-4(er) Tw [(t)-6(h)-4(e d)-4(er)]TJ

Agreement, any modification of the Monitor Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after the appointment of the Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant requirements of this Order and the Remedial Agreement(s) in a manner consistent with the purpose of this Order. If a substitute Monitor is appointed, Respondents shall consent to the terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor as set forth in this Paragraph.
- G. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.
- H. A Monitor appointed pursuant to this Order may be, but need not be, the same person appointed as the Divestiture Trustee pursuant to Paragraph V. of this Order and as Hold Separate Monitor appointed pursuant to the Hold Separate Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondents have not divested all of the Assets To Be Divested in the time and manner required by Paragraph 2(i)-(j) of the Order, the Commission may, in its discretion, appoint a Trustee to hold and manage the Assets To Be Divested on behalf of the Commission. The Trustee shall be appointed by the Commission and shall hold the Assets To Be Divested in trust for the Commission. The Trustee shall be subject to the supervision and control of the Commission and shall report to the Commission on a regular basis. The Trustee shall be responsible for the safekeeping and management of the Assets To Be Divested and shall be liable to the Commission for any loss or damage to the Assets To Be Divested. The Trustee shall be entitled to reasonable compensation for its services. The Trustee shall be appointed by the Commission and shall hold the Assets To Be Divested in trust for the Commission. The Trustee shall be subject to the supervision and control of the Commission and shall report to the Commission on a regular basis. The Trustee shall be responsible for the safekeeping and management of the Assets To Be Divested and shall be liable to the Commission for any loss or damage to the Assets To Be Divested. The Trustee shall be entitled to reasonable compensation for its services.

financial or other information as any Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede any Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time under this Paragraph for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

- d. Any Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner that receives the prior approval of the Commission and to an Acquirer that receives the prior approval of the Commission as required by this Order; *provided, however*, if any Divestiture Trustee receives bona fide offers for any asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within five (5) days after receiving notification of the Commission's approval.
- e. Any Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. Any Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. Any Divestiture Trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of any Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
- f. Respondents shall indemnify any Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities

fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.

- g. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 - h. The Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestitures.
 - i. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- C. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of any Divestiture Trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.
- E. The Divestiture Trustee appointed pursuant to this Paragraph may be, but need not be, the same person as the Monitor appointed under this Order and as Hold Separate Monitor appointed pursuant to the Hold Separate Order.

VI.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order is issued, and every thirty (30) days thereafter until the completion of the last divestiture required by this Order, Respondents shall submit to the ComssReIT IS6()TJ ph 2.84 0 Td ()Tj EMC /H1 <</2 Tc 0.0c 0.0c 6t7nte M

negotiations for the divestitures and the identity

provided by Respondents at the request of the authorized representative(s) of the Commission and at the expense of the Respondents; and

- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

APPENDIX I

Buzzi Divestiture Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX II

Eagle Divestiture Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX III

Essroc Divestiture Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX IV

Summit Divestiture Agreement

[Redacted From the Public Record Version, But Incorporated By Reference]

APPENDIX V

Monitor Agreement

APPENDIX V-1

Monitor Compensation

[Redacted From the Public Record Version]