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# UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

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COMMISSIONERS: Edith Ramirez, Chairwoman Maureen K. Ohlhausen Terrell McSweeny

In the Matter of

HEIDELBERGCEMENT AG, a corporation; 2. Respondent Ital cementi is incorporated and organized under the laws of Italy, having its seat in Bergamo, registered with Bergamo Chamber of Commerce under no. 00637110164, with its registered business address at Via Camozzi 124, 24121 Bergamo, Italy. Ital cementi principal U.S. subsidiary, Essroc Cement Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its offices and principal place of business located at 3251 Bath Pike, Nazareth, PA 18064.

3. Each Respondent is, and at all times relevant herein has been, engaged in commerce, a s defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as commerce is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

#### II. THE PROPOSED ACQUISITION

4. Pursuant to a Share Purchase Agreement dated July 28, 2015, Heidelberg proposes to acquire -part transaction (the Acquisition First, 7. For the purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the Acquisition on the portland cement market are:

- a. Baltimore, MD-Washington, D.C and surrounding areas;
- b. Richmond, VA and surrounding areas;
- c. Virginia Beach-Norfolk-Newport News, VA and surrounding areas;
- d. Syracuse, NY and surrounding areas; and
- e. Indianapolis, IN and surrounding areas.

# IV. THE STRUCTURE OF THE MARKETS

8. Respondents Heidelberg and Italcementi are significant participants in each of the relevant markets, and each relevant market is already highly concentrated. The Acquisition would further increase concentration levels, resulting in the merged company having enhanced market power as a supplier of portland cement in each relevant market. The Acquisition would remove competition between Respondents, and reduce the number of competitively significant suppliers from three to two in each of the relevant markets.

# V. ENTRY CONDITIONS

9. New entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. Building a new plant or distribution terminal of sufficient scale requires significant sunk costs and is challenging because of the extensive permitting that is required. Because of the various obstacles that must be overcome, it would take more than two years for a firm to accomplish the steps required to enter and achieve a significant impact

- a. the merged company would unilaterally exercise market power in the relevant markets;
- b. the remaining firms in the relevant markets would engage in collusion or coordinated interaction between or among each other; and
- c. consumers would be forced to pay higher prices or accept reduced service.

#### VII. VIOLATIONS CHARGED

11. The Agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

12. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission, on this seventeenth day of June, 2016, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark Secretary

SEAL: