UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of **LAFARGE S.A.,** a corporation, **BLUE CIRCLE INDUSTRIES PLC,** a corporation, **BLUE CIRCLE NORTH AMERICA INC.,** a corporation, and **BLUE CIRCLE INC.,** a corporation.	)	**PUBLIC** Docket No. C-4014 File No. 001-0112

PETITION OF LAFARGE S.A.
TO REOPEN AND SET ASIDE ORDER

Lafarge S.A. ("Lafarge" or "Respondent"[1]) hereby requests that the Decision and Order finalized on August 10, 2001 by the United States Federal Trade Commission (the "Commission") in the above-captioned matter (the "Order"[2]) be reopened and set aside pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.51.

Lafarge's only on-going obligations under the Order are ancillary to its divestiture of Blue Circle's lime business. With the recent sale of its 40% stake in a competing firm, Carmeuse North America BV, Lafarge is not active (either directly or through an indirect

1 As of July 12, 2001, Respondents Blue Circle Industries plc, Blue Circle North America Inc., and Blue Circle Inc. (collectively, "Blue Circle") became wholly-owned subsidiaries of Lafarge and are therefore included in "Lafarge" and "Respondent."

2 All capitalized terms used but not defined in this petition have the meanings assigned to such terms in the Order.

ownership stake) in the production or sale of lime in the United States. As explained below, this significant change in circumstance removes the only remaining competition issue that the Order was intended to resolve and, as a consequence, eliminates the need for the Order and renders the Order no longer in the public interest.

I. Background

On January 8, 2001, Lafarge and Blue Circle entered into an agreement pursuant to which Lafarge would acquire all of the outstanding common stock of Blue Circle PLC that it did not already own for approximately $3.8 billion. Following an investigation under the Hart-Scott-Rodino Act, the Commission entered into a consent agreement with the parties permitting the transaction to be consummated subject to certain commitments set out in the Order. The Complaint filed by the Commission in connection with the consent agreement alleged that, absent the Order, the proposed merger would likely lead to anticompetitive effects in the cement and lime businesses. The Order was intended to eliminate the risk of these alleged anticompetitive effects.

All of Lafarge's obligations relating to the cement business were completed in a timely manner,[3] and Lafarge has no remaining obligations under the Order relating to the cement business.[4]

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3 *See* Seventh Report of Lafarge S.A. Regarding its Compliance with the Agreement Containing Consent Orders and the Decision and Order Relating to Lafarge S.A.'s Acquisition of Blue Circle Industries PLC (filed February 25, 2005).

4 Lafarge's principal obligations under the Order relating to cement were: (1) to divest Blue Circle's cement business in the Great Lakes Region to a Commission-approved buyer, provide technical assistance to the acquirer for a period of up to six months, and allow the acquirer to hire employees of the Great Lakes Assets (Order at ¶ II); and (2) to divest Blue Circle's cement terminal in Syracuse, New York to Glens Falls Lehigh Cement Company ("Glens Falls"), provide technical assistance to Glens Falls for up to six months, and allow Glens Falls to hire certain employees (Order at ¶ III).

With respect to the lime business, the Order required Blue Circle to acquire 100% ownership of its Calera, Alabama lime plant from its joint venture partner Chemical Lime, after which Lafarge, as the new owner of Blue Circle, had to divest the Calera lime plant (and related assets) to a Commission-approved buyer, provide technical assistance to the buyer for up to six months, and allow the buyer to hire certain employees (Order at ¶ IV). Blue Circle acquired 100% ownership of the Calera lime plant from Chemical Lime on July 12, 2001, and Lafarge subsequently divested the Lime Assets to Peak Investments, L.L.C. ("Peak") in accordance with the terms of the Order.[5]

Lafarge's only remaining obligations under the Order are ancillary to its divestiture of the lime business. These obligations include: the filing of compliance reports (Order at ¶ IX), providing prior notification to the Commission of changes in Lafarge's corporate structure (Order at ¶ X), providing the Commission access to Lafarge's records and employees as necessary (Order at ¶ XI), and refraining from the disclosure of certain non-public information relating to the Lime Assets other than as expressly authorized in the Order (Order at ¶ V).

The Order also provides that the Commission may, at its discretion, appoint an Independent Auditor for the Lime Assets to serve at Lafarge's expense for a period of up to ten years. (Order at ¶ VI) The Commission approved William Troutman as Independent Auditor on February 14, 2002, and Mr. Troutman continues to serve in that capacity.

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5 *Id.*

II. Standard for Reopening and Modification

Pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51(b) of the Commission's Rules of Practice, 16 C.F.R. § 2.51(b), the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. The Commission has indicated that "[a] satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition."[6]

Alternatively, the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires.[7] To meet the "public interest" test, a respondent must "make a *prima facie* showing of a legitimate 'public interest' reason or reasons justifying relief."[8] Once such a showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm.[9]

6 Time Warner Inc., Docket No. C-3709, at 5, *citing* 15 U.S.C. § 45(b), S. Rep. No. 96-500, 96th Cong., 1st Sess. 9 (1979) (significant changes or changes causing unfair disadvantage) (emphasis added). *See also* Eli Lilly and Company, Docket No. C-3594, Order Reopening and Setting Aside Order, at 2 (May 13, 1999); Louisiana-Pacific Corporation, Docket No. C-2956, Letter to John C. Hart at 4 (unpublished) (June 5, 1986).

7 *Id.*

8 *Id.* (quoting 65 Fed. Reg. 50636, 50637 (Aug. 21, 2000)).

9 *See* Digital Equipment Corp., Docket No. C-3818, *citing* 16 C.F.R. § 2.51; Hart Letter at 5; Damon Corporation, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), 1979-83 Transfer Binder, FTC Complaints and Orders, (CCH) ¶22,007, p. 22,585; Damon Corporation, 101 F.T.C. 689, 692 (1983).

We explain below why the Commission should reopen and modify the Order under either test.

III. Changed Circumstances Eliminate the Need for the Order

The significant changed condition of fact that requires the Commission to reopen the Order is Lafarge's sale of its entire 40% stake in Carmeuse North America BV to Carmeuse S.A. on December 22, 2004.[10] This is a significant change in circumstance because, as a result of this sale, Lafarge is no longer a participant in the market for lime in the Southeast region of the United States.[11] This eliminates the risk of anticompetitive harm that the Order sought to prevent.

Prior to Lafarge's acquisition of Blue Circle, Blue Circle was a direct participant in the lime business in the Southeast region through a lime plant at its larger Calera, Alabama site, where the bulk of Blue Circle's operation was devoted to cement production. At the same time, Lafarge S.A. held a 40% stake in a joint venture with Carmeuse S.A., known as Carmeuse North America BV, which owned eleven lime facilities in the United States, including a facility in Saginaw, Alabama. Lafarge was not at the time, and is not currently, otherwise active in the lime business in the United States. Other than potentially repurchasing the Calera Lime Assets, as discussed below, Lafarge has no present intention of entering the lime business in the Southeast region of the United States.[12]

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10 This changed fact is documented in the Affidavit of Eric Olsen, attached as Exhibit A, and in the Lafarge S.A. and Carmeuse S.A. press releases, attached as Exhibit B.

11 The Complaint alleged a relevant geographic market of the "Southeast" region of the United States (defined as consisting of Alabama, Georgia and Florida).

12 *See* Affidavit of Eric Olsen, at ¶ 5, attached as Exhibit A.

Blue Circle's lime plant at the Calera site was operated by a joint venture between Blue Circle and Chemical Lime, a company also separately active in the lime business in the Southeast region. The Order required Blue Circle to acquire 100% control of the joint venture and the Lime Assets, after which Lafarge was obligated to divest the Lime Assets to a Commission-approved buyer. The purpose of this divestiture was to remedy the potential harm to competition that the Commission alleged might arise if Lafarge S.A. controlled the Blue Circle lime plant at Calera while holding a 40% interest in Carmeuse North America BV, which was also active in the lime business in the Southeast region of the United States.[13]

The Commission approved Lafarge's divestiture of the Lime Assets to Peak, and on December 31, 2001, the transaction was consummated, thereby satisfying the divestiture requirements of Part IV of the Order. Peak is currently operating the Lime Assets.

Because the Lime Assets are located on the premises of the larger Blue Circle cement facility in Calera, an Independent Auditor was appointed to monitor compliance with Part IV of the Order. With Lafarge's sale of its interest in Carmeuse North America BV, however, there is no longer a risk that Lafarge's incentives to comply with its contractual obligations to Peak are distorted by the fact that it owns a substantial ownership interested in a competing business. Rather, with Lafarge's exit from the lime business, the ongoing relationship between Lafarge and Peak is an ordinary commercial one that will continue to be governed by the set of transaction agreements, including an on-going supply agreement, that was carefully reviewed and approved by the Commission. While disputes may arise between the parties under those agreements, as they may in any commercial relationship where two parties share resources

13 *See* Analysis of the Complaint and Proposed Consent Order to Aid Public Comment – Lafarge S.A. and Blue Circle Industries PLC, June 18, 2001, at http://www.ftc.gov/os/2001/06/larfargeana.pdf.

or facilities, there is no risk that such disputes will arise as a result of Lafarge seeking to create an advantage for a rival lime business in which it holds a substantial ownership interest. In short, there is no longer any antitrust rationale for the presence of an Independent Auditor.

Since the divestitures required by the Order have been completed and the Independent Auditor is no longer needed to guard against anticompetitive harm, there is no need for the remaining ancillary provisions of the Order to remain in place. As there is no longer any competitive justification for its remaining obligations under the Order, Lafarge respectfully requests that the Order be set aside in its entirety, or, alternatively, that Parts IV, VI, IX, X, and XI be set aside.

IV. <u>The Public Interest Would Be Served by Setting Aside the Order</u>

Although the Commission may reopen and set aside the Order on the basis of changed facts alone, it may also do so on the basis that setting aside the Order serves the public interest. Here, the public interest would be served by setting aside the Order.

First, the public interest is not served by having an Order in place where no underlying competitive issue remains. As discussed above, with Lafarge's exit from the lime business, there is no antitrust rationale to keep the Order in place. Any involvement by the Commission to mediate contractual disputes or to monitor ongoing compliance in the absence of an underlying antitrust concern would impose unnecessary costs on the Commission and lead to diversion of its limited resources, which is not in the public interest. Indeed, as in respect of the

Commission's policy to sunset outdated consent orders, eliminating orders that no longer have an antitrust rationale is pro-competitive.[14]

Second, leaving the Order in place is harmful to the public interest because it could impede the most economically efficient use of the overall Calera site. Currently, Peak is operating its lime plant from within Lafarge's larger Calera site, where both lime and cement operations draw from the same limestone quarry, which Lafarge owns and operates. The cement operations at Calera is, and has always been, the dominant use of the site, currently accounting for more than 80% of total output.[15] Peak receives limestone from Lafarge pursuant to the terms of the Lime Rock Supply Agreement, which sets out in detail, among other things, the quantity and quality of limestone to be delivered.[16]

The Order does not expressly address the issue of whether Lafarge may reacquire the Lime Assets, and to the extent the Order is considered ambiguous in this regard, any uncertainty would be eliminated by the Commission setting aside the Order. If Lafarge repurchased the Lime Assets from Peak and integrated the cement and lime operations at the Calera site, it would be able to put the limestone quarry to its highest and best use while avoiding the inherent duplication of costs associated with having two companies sharing a site. More specifically, if Lafarge ran the entire Calera site as a unified operation as Blue Circle did for many years before the sale to Peak, it could allocate limestone between the cement and lime

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14 *See* FTC Press Release, August 9, 1995 (announcing new sunset policy, Chairman Pitofsky commented that "clearing the marketplace of outdated orders can often be one of the most pro-competition and pro-consumer activities an agency can perform").

15 The annual production of the cement plant is approximately 1.4 million short tons of clinker, and the annual production of the lime plant is approximately 300,000 short tons of lime.

16 The Lime Rock Supply Agreement was reviewed and approved by the Commission as part of the divestiture of the Lime Assets to Peak.

operations in the most economically efficient manner, and would have the flexibility to vary that allocation in response to market forces. As a result, the overall net output of that site – in terms of cement and lime taken together – would be more efficient and thus lower cost. In the competitive markets for lime and cement, these efficiency gains would redound to the benefit of consumers.

Although Lafarge cannot quantify precisely the entire value of the potential efficiency gains from combining the cement and lime operations (which would in any event vary over time based on exogenous market conditions), Lafarge estimates that even apart from the more efficient allocation of limestone, it could reduce direct costs of the lime operation

[REDACTED]

This is a substantial savings for a lime business that, based on the years immediately preceding the sale of the Lime Assets to Peak, had annual net sales of approximately $**[REDACTED]** million.

While Lafarge and Peak may be able to achieve certain efficiencies working together, and continuing in their current relationship may ultimately be optimal, the Commission should permit the outcome to be determined by market forces now that there is no underlying antitrust rationale for intervening in the relationship.[17] As the Order remains an impediment to the potential consolidation of the Calera site, it should be set aside.

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17 The repurchase of the Lime Assets would not raise any competitive concern because Lafarge has exited the lime business. If Lafarge repurchased the Lime Assets, there would be no change in market concentration.

V. Conclusion

For the foregoing reasons, Lafarge respectfully requests that the Commission set aside the Order in its entirety, or, alternatively, set aside Lafarge's obligations under Parts IV, VI, IX, X, and XI of the Order.

Dated: April 29, 2005

Respectfully submitted,

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Facsimile: 202-974-1999

Counsel for Lafarge S.A.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of	)	**PUBLIC**
	)	
LAFARGE S.A.,	)	
a corporation,	)	
	)	
BLUE CIRCLE INDUSTRIES PLC,	)	Docket No. C-4014
a corporation,	)	File No. 001-0112
	)	
BLUE CIRCLE NORTH AMERICA INC.,	)	
a corporation, and	)	
	)	
BLUE CIRCLE INC.,	)	
a corporation.	)	
	)	

PETITION OF LAFARGE S.A.
TO REOPEN AND SET ASIDE ORDER

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of **LAFARGE S.A.,** a corporation, **BLUE CIRCLE INDUSTRIES PLC,** a corporation, **BLUE CIRCLE NORTH AMERICA INC.,** a corporation, and **BLUE CIRCLE INC.,** a corporation.	)	Docket No. C-4014 File No. 001-0112

AFFIDAVIT OF ERIC C. OLSEN IN SUPPORT OF THE PETITION OF LAFARGE S.A. TO REOPEN AND SET ASIDE ORDER

I, Eric C. Olsen, being first duly sworn, do hereby affirm and state as follows:

1. I am the Executive Vice President and Chief Financial Officer of Lafarge North America Inc., a company located at 12950 Worldgate Drive, Suite 500, Herndon, Virginia, 20170.

2. Lafarge North America is a majority-owned subsidiary of Lafarge S.A. ("Lafarge").

3. I have actual authority to make the statement in this affidavit on behalf of Lafarge.

4. On December 22, 2004, Lafarge sold its entire 40% stake in Carmeuse North America BV to Carmeuse S.A.

5. Other than potentially repurchasing the Calera Lime Assets, Lafarge has no present intention of entering the lime business in the Southeast region of the United States.

By: Ed [signature]

Eric C. Olsen
Executive Vice President and
Chief Financial Officer

Subscribed and sworn to before me
this 28th day of April 2005.

Ava C. Blair [signature]

Notary Public

My commission expires: 10-31-06

Ava C. Blair
NOTARY PUBLIC
Commonwealth of Virginia
My Commission Expires
OCTOBER 31, 2006

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of	)	**PUBLIC**
	)	
LAFARGE S.A.,	)	
a corporation,	)	
	)	
BLUE CIRCLE INDUSTRIES PLC,	)	Docket No. C-4014
a corporation,	)	File No. 001-0112
	)	
BLUE CIRCLE NORTH AMERICA INC.,	)	
a corporation, and	)	
	)	
BLUE CIRCLE INC.,	)	
a corporation.	)	
	)	

PETITION OF LAFARGE S.A.
TO REOPEN AND SET ASIDE ORDER

EXHIBIT B

LAFARGE

PRESS RELEASE

Euronext: LG, NYSE: LR

Paris, December 22, 2004

Lafarge announces sale of its 40% minority stake in Carmeuse North America BV

Lafarge today announces that it has completed the sale of all its 40% stake in Carmeuse North America BV to Carmeuse, for US$ 140M. Lafarge had been a minority shareholder within Carmeuse North America since 1998.

Carmeuse North America is a producer of lime and limestone products serving the United States and Canada.

Lafarge, the world leader in building materials, holds top-ranking positions in all four of its Divisions: Cement, Aggregates & Concrete, Roofing and Gypsum. Lafarge employs 75,000 people in 75 countries. In 2003, the Group posted sales of €13.6 billion and operating profit on ordinary activities of €1.9 billion.

Further information is available on the web site at www.lafarge.com.

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CARMEUSE
NATURAL CHEMICALS

Dec. 22nd, 2004

PRESS RELEASE

CARMEUSE is pleased to announce the purchase from Lafarge of the 40 % participation owned by this latter in Carmeuse North America (CNA) for an aggregate of 140 million US$.

The 60/40 joint venture CNA was created in 1999, both Carmeuse and Lafarge bringing in their lime operations in Canada and in the USA.

CNA went into a severe financial crisis between 2000 and 2002. The company is currently realising a successful turnaround.

CNA is operating 14 plants in North America and is market leader in that area. The company will achieve in 2004 a turnover of 450 million US$ realising a profit before taxes of some 20 to 25 million US$.
The acquisition of the Lafarge' participation in CNA, is part of Carmeuse strategy to integrate completely strategical lime operations owned in North America and Europe.
The Group has already been successful by taking full control of the Central European activities (Czech Republic, Slovakia, Romania and Hungary) through purchase in 2003 of the lime assets owned by Heidelberger Zement.

The full integration of the North American operations achieving about 50 % of the activity of the Group is therefore a major step in this strategy.
The Carmeuse' Group will finance the transaction by refinancing CNA' debt (including a subordinated debt owned by Carmeuse) but also by sale of non core assets eventually combined with equity reinforcement.

Those supporting operations to de-leverage the Group are in advanced negotiation phase and the Group target is to finalise complete refinancing no later than end June 2005.

The Carmeuse' Group is targeting to reach a total Net Debt/EBDITA ratio around 2 after successful implementation of its refinancing program of 2005.

Present Net Debt / EBDITA ratio is at 2.4 based on the 30/9/2004 accounts and will temporarily increase up to 2.9 by the year end, including the acquisition of Lafarge' CNA' participation but before disposal of assets or equity reinforcement.

The Carmeuse Group is an international lime producer selling worldwide 10 million tons of lime and above 14 million tons of limestone with consolidated yearly revenues close to 900 million €.
On Sept. 2004 and for the 9 months' period, the Group consolidated revenues reach 665 million € with a net profit close to 30 million €.

For any further information, please contact
Mr Yves Willems (yves.willems@carmeuse.be) – Group General Director
or Mr Marc Fichelle (marc.fichelle@carmeuse.be) – Group Corporate Finance
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