

**UNITED STATES OF AMERICA**  
**BEFORE THE FEDERAL TRADE COMMISSION**

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In the Matter of	)	
	)	
<b>HOLCIM LTD.,</b>	)	Docket No. C-4519
a public limited company;	)	
	)	File No. 141 0129
and	)	
	)	
<b>LAFARGE S.A.,</b>	)	
a corporation.	)	
_____	)	

**PETITION OF LAFARGEHOLCIM FOR APPROVAL OF AMENDMENTS  
RELATED TO THE ESSROC DIVESTITURE AGREEMENT**

Pursuant to Section 2.41 of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41 (2016), LafargeHolcim Ltd.<sup>1</sup> hereby petitions the Commission to approve amendments to agreements ancillary to the Essroc Divestiture Agreement, which was redacted from the public record but incorporated by reference into the Decision and Order (the “Order”) in the above-captioned matter.

The proposed amendments (the “Amendments”) revise a Barging Agreement and a Throughput Agreement (the “Agreements”), and are necessary to resolve a dispute between Holcim (US) Inc. (“Holcim”) and Essroc Cement Corp. (“Essroc”) regarding the interpretation of a technical measurement term used in the Agreements. Attached Confidential Appendix A is the amendment to the Barging Agreement. Attached Confidential Appendix B is the

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<sup>1</sup> LafargeHolcim is the successor entity to Holcim Ltd.

amendment to the Throughput Agreement. The Amendments have been submitted to Philip M. Comerford Jr., the Commission-appointed Monitor Trustee. This petition and the attached Confidential Appendix C, a copy of a letter from Holcim and Essroc, describe the resolution of the parties' dispute and the terms of the Amendments in greater detail.

Pursuant to Section 21 of the Federal Trade Commission Act, 15 U.S.C. §57b-2, and the Commission's Rules of Practice 4.10-4.11, 16 C.F.R. §§4.10-4.11, Holcim hereby requests that all of the redacted information, including the Confidential Appendices be treated by the Commission as strictly confidential and not be made available to the public. The Appendices contains Holcim and Essroc's commercially and competitively sensitive information, and disclosure of the information to the public will prejudice Holcim and Essroc. Holcim requests that the Commission inform Holcim immediately if the Commission cannot treat the confidential information contained in this petition as confidential in order to provide Holcim an opportunity to seek appropriate relief.

**I. Summary of Proposed Amendments to the Agreements**

On July 7, 2014, Holcim Ltd. and LaFarge S.A. entered into a Business Combination Agreement under which Holcim Ltd. proposed to make a public exchange offer in accordance with the provisions of French laws to acquire all of the issued and outstanding shares of Lafarge S.A. in exchange for Holcim Ltd. shares valued, at the time of entering into the agreement, at approximately \$25 billion. On May 4, 2015, the Commission issued a complaint alleging that the transaction would substantially lessen competition or tend to create a monopoly in specified portland and slag cement markets. On the same day, the Commission accepted an Agreement Containing Consent Orders, including a proposed Decision and Order and an Order to Hold

Separate and Maintain Assets, resolving the charges in the complaint. Following a public comment period, the Commission approved the final Order on June 11, 2015.

The Commission's Decision and Order in the above-captioned matter required Holcim to divest the Camden Slag Plant and the Everett Terminal to Essroc, in accordance with the Essroc Divestiture Agreement referenced as Appendix III. The Essroc Divestiture Agreement was withheld from the public record. In conjunction with the Essroc Divestiture Agreement, Holcim and Essroc entered into a Barging Agreement, under which Holcim is required to make barging services available to Essroc up to a certain threshold. A dispute later arose between Holcim and Essroc as to the interpretation of a technical term relating to the measurement of that threshold. To resolve the dispute, Holcim and Essroc have agreed to a clarification of the measurement term. As part of the resolution of this interpretation issue, Holcim also agreed to sell certain additional assets to Essroc. This commercial resolution necessitated other technical changes to the Barging Agreement, and the related Throughput Agreement, to reflect the change in the measurement term. As part of the Amendments, Holcim and Essroc intend to enter into a Settlement to release and waive claims related to the dispute. The Settlement is attached as Confidential Appendix D.

As detailed above and in the attached Appendix C, the Amendments are necessary to resolve a commercial dispute regarding the interpretation of a technical term in the Agreements, which are ancillary to the Essroc Divestiture Agreement. LafargeHolcim is unaware of any reason that the Amendments would hinder the remedial purposes of the Order. To the contrary, expeditious approval of the Amendments will facilitate the remedial purposes of the Order and allow the parties to begin operating under the new interpretation more quickly, bringing to an

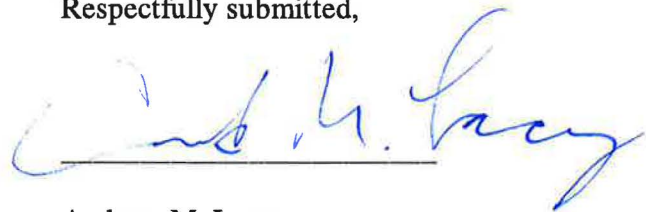
end a substantial burden on the parties' day-to-day operations as to the Agreements that the dispute has created.

**II. Conclusion**

For the foregoing reasons, LafargeHolcim respectfully requests that the Commission approve the proposed Amendments as soon as practicable.

Respectfully submitted,

Dated: May 19, 2017



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**CONFIDENTIAL APPENDIX A**

Barging Agreement amendment  
(Redacted)

**CONFIDENTIAL APPENDIX B**

Throughput Agreement amendment  
(Redacted)

**CONFIDENTIAL APPENDIX C**

Letter dated May 10, 2017 to Paul Frangie (FTC) and Philip M. Comerford Jr. (ING Financial Markets LLC) from Holcim (US) Inc. and Essroc Cement Corp.  
**(Redacted)**

**CONFIDENTIAL APPENDIX D**

Settlement Agreement  
(Redacted)