1710230

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Joseph J. Simons, Chairman**
Maureen K. Ohlhausen
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter

In the Matter of	)	
	)	**Docket No. C-**
CRH plc,	)	
a public limited company.	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission") initiated an investigation of the proposed merger of Respondent CRH plc ("CRH") and Ash Grove Cement Company. The Commission's Bureau of Competition prepared and furnished to Respondent the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondent 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.

Respondent and the Bureau of Competition executed an agreement ("Consent Agreement") containing (1) an admission by Respondent of all the jurisdictional facts set forth in the draft complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings, and issues the following Decision and Order ("Order"):

1. Respondent CRH plc is a public limited company organized, existing, and doing business under, and by virtue of, the laws of Ireland, with its office and principal place of business located at Stonemason's Way, Rathfarnham, Dublin 16, D16KH51, Ireland. CRH's United States address for service of process, the complaint, and the Decision and Order is CRH Americas, Inc. (formerly Oldcastle, Inc.), 900 Ashwood Parkway, Suite 600, Atlanta, Georgia 30338.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

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

A. "CRH" means CRH plc, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by CRH (including Ash Grove Cement Company after the Merger), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Commission" means the Federal Trade Commission.

C. "Acquirer" means any Person that acquires any of the Building Materials Assets pursuant to this Order.

D. "Building Materials Assets" means the Cement Assets, Gravel Assets, and Limestone Assets.

E. "Building Materials Business" means the Cement Business, Gravel Business, and Limestone Business.

F. "Building Materials Employee" means any full-time, part-time, or contract individual employed by CRH at any time and whose job responsibilities relate or related to any Building Materials Business.

G. "Cement" means any of the products produced by the Cement Business.

H. "Cement Acquisition Agreement" means the Asset Purchase Agreement by and among Oldcastle Materials Cement Holdings, Inc., CRH Americas Materials, Inc., GCC Three Forks, LLC, and GCC of America, Inc., dated as of May 11, 2018, including related ancillary agreements, amendments, exhibits, and schedules.

I. "Cement Assets" means all of Respondent's right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to the Cement Business, including, but not limited to, the Designated Assets; *provided, however*, that the Cement Assets need not include any of (i) the Retained Assets or (ii) any assets that would otherwise be part of the Cement Assets if not needed by Acquirer and the Commission approves the divestiture without such assets.

J. "Cement Business" means all business activities conducted by CRH prior to the Merger Date at or relating to CRH's Three Forks, Montana cement facility, including but not limited to researching, developing, manufacturing, and selling cement and other products.

K. "Confidential Information" means any and all of the following information:

1. all information that is a trade secret under applicable trade secret or other law;

2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, software and computer software and database technologies, systems, structures, and architectures;

3. all information concerning the relevant business, including historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials; and

4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information Designated above;

Provided, however, that Confidential Information shall not include information that (i) was, is, or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

L. "Consent" means any approval, consent, ratification, waiver, or other authorization.

M. "Contract" means any agreement, contract, lease, license agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding with third parties.

N. "Designated Assets" means:

1. all real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;

2. all Tangible Personal Property, including any Tangible Personal Property removed from any location of a relevant business since the date of the announcement of the Merger and not replaced;

3. all inventories;

4. all Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;

5. all Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable;

6. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence, and other similar documents and Records, and copies of all personnel Records (to the extent permitted by law); and

7. all intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondent (to the extent transferable or licensable), going concern value, goodwill, and telephone and telecopy listings.

O. "Divestiture Agreement" means the:

1. Cement Acquisition Agreement or any other agreement between Respondent (or between a Divestiture Trustee) and an Acquirer relating to the divestiture of any of the Cement Assets that has been approved by the Commission pursuant to this Order; including any related ancillary agreements, amendments, exhibits, and schedules;

2. Gravel Acquisition Agreement or any other agreement between Respondent (or between a Divestiture Trustee) and an Acquirer relating to the divestiture of any of the Gravel Assets that has been approved by the Commission pursuant to this

Order; including any related ancillary agreements, amendments, exhibits, and schedules; and

3. Limestone Acquisition Agreement or any other agreement between Respondent (or between a Divestiture Trustee) and an Acquirer relating to the divestiture of any of the Limestone Assets that has been approved by the Commission pursuant to this Order; including any related ancillary agreements, amendments, exhibits, and schedules.

P. "Divestiture Trustee" means the Person appointed by the Commission pursuant to Paragraph VI. of this Order.

Q. "GCC" means GCC Three Forks, LLC, a limited liability corporation organized, existing, and doing business under, and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 600 S. Cherry Street, 10th Floor, Glendale, Colorado 80246.

R. "Governmental Authorization" means any Consent, license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.

S. "Gravel Acquisition Agreement" means the Agreement of Purchase and Sale of Assets by and between OMG Midwest, Inc. and Martin Marietta Materials, Inc., dated as of May 11, 2018, including related ancillary agreements, amendments, exhibits, and schedules.

T. "Gravel Assets" means all of Respondent's right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to the Gravel Business, including, but not limited to, the Designated Assets; *provided, however*, that the Gravel Assets need not include any of (i) the Retained Assets or (ii) any assets that would otherwise be part of the Gravel Assets if not needed by Acquirer and the Commission approves the divestiture without such assets.

U. "Gravel Business" means all business activities conducted by CRH prior to the Merger Date at or relating to CRH's sand and gravel facilities located at (i) 10710 N. 312th, Circle Valley, Nebraska 68064 (KMG pit), (ii) 26245 West Center Road, Waterloo, Nebraska 68069 (Graske pit); and 2501 N. 264th Street, Waterloo, Nebraska 69069 (Eihlers reserves), including but not limited to researching, developing, manufacturing, and selling sand, gravel, and other products.

V. "Hamm" means Hamm, Inc., a wholly-owned subsidiary of Summit Materials, LLC, is a corporation organized, existing, and doing business under, and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 609 Perry Place, Perry, Kansas 66073.

W. "Intellectual Property" means all intellectual property, including (i) commercial names, all assumed fictional business names, trade names, "doing business as" (d/b/a names), registered and unregistered trademarks, service marks and applications, and trade dress; (ii) all patents, patent applications and inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all rights in mask works; (v) all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; (vi) and all rights in internet web sites and internet domain names presently used.

X. "Limestone Acquisition Agreement" means the Agreement of Purchase and Sale of Assets by and between APAC-Kansas, Inc. and Hamm, Inc., dated as of May 14, 2018, including related ancillary agreements, amendments, exhibits, and schedules.

Y. "Limestone Assets" means all of Respondent's right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to the Limestone Business, including, but not limited to, the Designated Assets; *provided*, *however*, that the Limestone Assets need not include any of (i) the Retained Assets or (ii) any assets that would otherwise be part of the Limestone Assets if not needed by Acquirer and the Commission approves the divestiture without such assets.

Z. "Limestone Business" means all business activities conducted by CRH prior to the Merger Date at or relating to CRH's:

1. Limestone facilities and reserves located at 23775 W. 159th Street, Olathe, Kansas 66061 (Olathe Quarry), 1600 West 151st Street, Olathe, Kansas 66061 (Lone Elm Quarry), and 8811 West 247th Street, Louisburg, Kansas 66053 (Louisburg Quarry), including but not limited to, researching, developing, mining, manufacturing, and selling limestone and other products;

2. Asphalt facilities located at the Louisburg Quarry and Olathe Quarry, including but not limited to, researching, developing, manufacturing, and selling asphalt and other products; and

3. Construction and demolition landfill in Olathe, Kansas.

AA. Martin Marietta means Martin Marietta Materials, Inc., a corporation organized, existing, and doing business under, and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 2710 Wycliff Road, Raleigh, North Carolina 27607.

BB. "Merger" means the merger of CRH and Ash Grove Cement Company as described in the Agreement and Plan of Merger by and among CRH plc, AMAT Venture, Inc., Ash Grove Cement Company and Venture Stockholder Representative, LLC (solely with respect to Article IX), dated as of September 20, 2017.

CC. "Merger Date" means the date the Merger is completed.

DD. "Person" means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.

EE. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

FF. "Retained Assets" means:

1. The regional office located at 7415 W. 130th Street, Suite 300, Overland Park, Kansas 66213; and all other corporate or regional offices that are not located in the Three Forks, Montana; Omaha, Nebraska; or Kansas City, Missouri metropolitan areas unless such other office is primarily related to one or more Building Materials Business;

2. cement terminals located in Lethbridge, Canada, and Edmonton, Canada;

3. corporate, business, or other names of CRH, or any logo, trademark, service mark, domain name, trade or other name or any derivation thereof of CRH or e-mail addresses that contain such names;

4. software that can readily be purchased or licensed from sources other than Respondent and that has not been materially modified (other than through user preference settings);

5. enterprise software that Respondent used primarily to manage and account for businesses other than the Building Materials Business;

6. the portion of any Record that contains information about any business other than the business divested to an Acquirer; and

7. any Record that Respondent has a legal, contractual, or fiduciary obligation to retain the original; *provided, however*, that Respondent shall provide copies of the Record and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes.

GG. "Tangible Personal Property" means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

HH. "Transitional Services" means any service relating to any Building Materials Business that CRH provides from a property or facility that is not included in the Building Materials Assets that is reasonably necessary for an Acquirer to operate any aspect of a Building Materials Business, including but not limited to, payroll, employee benefits, accounting, IT systems, distribution, warehousing, access to know-how, use of trademarks or trade names, or other logistical, administrative, or operational support or training; *provided, however*, Transition Services does not include providing cement terminal or throughput services.

II.

IT IS FURTHER ORDERED that:

A. No later than 10 days from the Merger Date, Respondent shall divest the Cement Assets, absolutely and in good faith, to GCC pursuant to the Cement Acquisition Agreement; *provided, however,* that if Respondent has divested the Cement Assets to GCC prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that:

1. GCC is not acceptable as the Acquirer of the Cement Assets, then Respondent shall immediately rescind the Cement Acquisition Agreement, and shall divest the Cement Assets no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or

2. The manner in which the divestiture to GCC was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications (that shall be incorporated into a revised Cement Acquisition Agreement) to the manner of divestiture of the Cement Assets as the Commission may determine are necessary to satisfy the requirements of this Order.

B. No later than 10 days from the Merger Date, Respondent shall divest the Gravel Assets, absolutely and in good faith, to Martin Marietta pursuant to the Gravel Acquisition Agreement; *provided, however,* that if Respondent has divested the Gravel Assets to Martin Marietta prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that:

1. Martin Marietta is not acceptable as the Acquirer of the Gravel Assets, then Respondent shall immediately rescind the Gravel Acquisition Agreement, and shall divest the relevant assets no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or

2. The manner in which the divestiture to Martin Marietta was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications (that shall be incorporated into a revised Gravel Acquisition Agreement) to the manner of divestiture of the Gravel Assets as the Commission may determine are necessary to satisfy the requirements of this Order.

C. No later than 10 days from the Merger Date, Respondent shall divest the Limestone Assets, absolutely and in good faith, to Hamm pursuant to the Limestone Acquisition Agreement; *provided, however,* that if Respondent has divested the Limestone Assets to Hamm prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that:

1. Hamm is not acceptable as the Acquirer of the Cement Assets, then Respondent shall immediately rescind the Limestone Acquisition Agreement, and shall divest the Limestone Assets no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or

2. The manner in which the divestiture to Hamm was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications (that shall be incorporated into a revised Limestone Acquisition Agreement) to the manner of divestiture of the Limestone Assets as the Commission may determine are necessary to satisfy the requirements of this Order.

D. Respondent shall obtain all Governmental Authorizations and Consents from any Person that are necessary to transfer any of the Building Materials Assets no later than the date that such assets are divested; *provided, however,* that in the event that Respondent is unable to obtain any Governmental Authorization, Respondent shall provide such assistance as Acquirer may reasonably request in Acquirer's efforts to obtain a comparable authorization.

E. In connection with the divestiture of any of the Building Materials Assets or any portion of the Building Materials Assets, Respondent shall:

1. At the option of any Acquirer (exercised at any time up to 3 months after such assets are divested) and in a manner that receives the prior approval of the Commission, provide Transitional Services to the Acquirer for up to 12 months after divestiture of the applicable assets;

2. At the option of the Acquirer of the Cement Assets and in a manner that receives the prior approval of the Commission:

(a) Purchase Cement from the Acquirer as a customer for 36 months after divestiture of the Cement Assets; and

(b) Provide terminaling and throughput services to the Acquirer at Respondent's cement terminals relating to the Cement Business in Lethbridge and Edmonton, Alberta, Canada for 36 months after divestiture of the Cement Assets; and

3. Provide the assistance set forth in Paragraphs II.E.1. and 2. (collectively "Transitional Assistance") on terms and conditions sufficient to conduct the applicable Building Materials Business in a manner consistent with the operation of such business prior to the Merger Date (including the ability to develop new products, increase sales of current products, and make reasonable modifications to and maintain the competitiveness of the applicable Building Materials Business);

Provided, however, that Respondent shall give priority to an Acquirer's requirements for Transitional Assistance over Respondent's own requirements and take all actions that are reasonably necessary to ensure uninterrupted Transitional Assistance;

Provided further that (i) an Acquirer may terminate any or all Transitional Assistance at any time upon commercially reasonable notice and without cost or penalty and (ii) at an Acquirer's request, Respondent shall file with the Commission any request for prior approval to extend the term of any Transitional Assistance needed to achieve the purposes of this Order; and

Provided further that Respondent shall not seek to limit the damages (such as indirect, special, and consequential damages) which an Acquirer would be entitled to receive in the event of Respondent's breach of any agreement relating to Transitional Assistance.

F. For a period of 2 years after the divestiture of any of the Building Materials Assets, Respondent shall not solicit or induce any Building Materials Employee who has accepted an offer of employment with an Acquirer to terminate such employment; *provided, however,* that Respondent may (i) advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees or (ii) hire employees if employment has been terminated by an Acquirer or who apply for employment with Respondent, so long as such employees were not solicited by Respondent in violation of this paragraph.

G. The purpose of the divestiture of the Building Materials Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Merger by Respondent and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. Respondent shall cooperate and assist with an Acquirer's due diligence investigation of the applicable Building Materials Business and Building Materials Assets, including but not limited to, access to any and all personnel, properties, contracts, authorizations, documents, and information customarily provided as part of a due diligence process.

B. Respondent shall:

1. No later than 10 days before Respondent executes a Divestiture Agreement for any of the Building Materials Assets (i) identify each relevant Building Materials Employee, (ii) allow an Acquirer to inspect the personnel files and other documentation of each relevant Building Materials Employee, to the extent permissible under applicable laws; and (iii) allow an Acquirer an opportunity to meet with any relevant Building Materials Employee outside the presence or hearing of Respondent;

2. Remove any contractual impediments that may deter any Building Materials Employee from accepting employment with an Acquirer, including, any non-compete or confidentiality provision of an employment contract;

3. Not offer any incentive to any Building Materials Employee to decline employment with an Acquirer or otherwise interfere, directly or indirectly, with the recruitment, hiring, or employment of any Building Materials Employee by an Acquirer; and

4. Provide each Building Materials Employee with a financial incentive as necessary to accept an offer of employment with an Acquirer, including vesting all current and accrued benefits under Respondent's retirement plans as of the date of transition of employment with an Acquirer for any Building Materials Employee who accepts an offer of employment from an Acquirer.

For purposes of this Paragraph III., "Acquirer" shall include any Person with whom Respondent engages in negotiations to acquire any of the Building Materials Assets.

IV.

IT IS FURTHER ORDERED that:

A. Respondent shall (i) not disclose (including as to Respondent's employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondent relating to any Building Materials Assets, Building Materials Business, and the post-divestiture Building Materials Business; *provided, however*, that Respondent may disclose or use such Confidential Information in the course of:

1. Performing its obligations or as permitted under this Order, the Order to Maintain Assets, or any Divestiture Agreement; or

2. Complying with financial, regulatory, or other legal obligations, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Building Materials Assets or Building Materials Business or as required by law.

B. If disclosure or use of any Confidential Information is permitted to Respondent's employees or to any other Person under Paragraph IV.A. of this Order, Respondent shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

C. Respondent shall enforce the terms of this Paragraph IV. as to its employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph IV., including implementation of access and data controls, training of its employees, and all other actions that Respondent would take to protect their own trade secrets and proprietary information.

V.

IT IS FURTHER ORDERED that:

A. William Hill ("Monitor") shall serve to monitor Respondent's compliance with all of its obligations and perform all of its responsibilities as required by this Order and any Divestiture Agreement.

B. Respondent shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order:

1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order and (ii) act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission;

2. Respondent shall (i) ensure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order;

3. The Monitor (i) shall serve at the expense of Respondent, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

4. Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable 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 the Monitor's gross negligence or willful misconduct; and

5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.

C. The Monitor shall report in writing to the Commission concerning Respondent's compliance with this Order (i) every 30 days after the Merger Date for a period of 6 months (ii) every 90 days thereafter until Respondent has completed its obligations to provide Transitional Assistance, including a report ("Final Report") no later than 10 days after Respondent has completed such obligations, and (iii) at any other time as requested by the staff of the Commission.

D. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

E. The Monitor's power and duties shall terminate 10 business days after the Monitor has completed his Final Report, or at such other time as directed by the Commission.

F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld:

1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within 5 days after notice by the staff of the Commission to Respondent of the identity of any substitute Monitor, then Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and

2. Respondent shall, no later than 5 days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph V.

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.

VI.

IT IS FURTHER ORDERED that:

A. If Respondent has not fully complied with the divestiture and other obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest any of the Building Materials Assets and perform Respondent's other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor.

B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

D. Within 10 days after appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or other action required by the Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Building Materials Assets and perform Respondent's other obligations in a manner that satisfies the requirements of this Order;

2. The Divestiture Trustee shall have 12 months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the 12 month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court;

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph VI. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however,* if the Divestiture Trustee receives bona fide offers 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 Respondent from among those approved by the Commission; *provided further, however,* that Respondent shall select such entity within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, 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. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, 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 the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the 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;

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable 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 or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph VI.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VI.E.5. of this Order;

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order;

8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every 60 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and

9. Respondent 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.

F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

G. If the Commission determines that a 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 VI.

H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

VII.

IT IS FURTHERED ORDERED that:

A. If GCC, Martin Marietta, or Hamm do not acquire the Building Materials Assets as described in this Order, Respondent shall set forth the manner in which it will accomplish the relevant divestiture and other obligations under this Order in one or more agreements with one or more other Acquirers and submit such agreements to the Commission for prior approval.

B. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondent to comply with the terms of the Divestiture Agreement shall constitute a violation of this Order; *provided, however*, that the Divestiture Agreement shall not limit, or be construed to limit, the terms of the Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondent cannot fully comply with both, Respondent shall comply with the Order.

C. Respondent shall not modify, replace, or extend the terms of the Divestiture Agreement after the Commission issues this Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

VIII.

IT IS FURTHER ORDERED that:

A. Respondent shall:

1. No later than 5 days after the Merger Date, notify the Commission via email at bccompliance@ftc.gov of the Merger Date; and

2. No later than 10 days after the divestiture of any of the Building Materials Assets has been completed, (a) notify the Commission of the date such divestiture closed and (b) submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov.

B. Respondent shall submit verified written reports ("Compliance Reports") in accordance with the following:

1. Respondent shall submit:

(a) Interim Compliance Reports 30 days after this Order is issued and every 30 days thereafter until Respondent has fully complied with the provisions of Paragraphs II.A.-C. of this Order; and

(b) Annual Compliance Reports one year after the date this Order is issued and annually thereafter for the next nine years on the anniversary of that date; and

(c) Additional Compliance Reports as the Commission or its staff may request.

2. Each Compliance Report shall set forth in detail the manner and form in which Respondent intends to comply, is complying, and has complied with this Order, including, as applicable:

(a) the status of the divestiture and transfer of the Building Materials Assets;

(b) if GCC, Martin Marietta, or Hamm do not acquire the relevant Building Materials Assets as set forth in this Order, a description of all substantive contacts with any proposed substitute acquirer; and

(c) a description of any dispute between Respondent and an Acquirer under this Order or a Divestiture Agreement.

C. Respondent shall verify each Compliance Report with a notarized signature or sworn statement or in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or other officer or employee specifically authorized to perform this function. Respondent shall submit an original and two copies of each Compliance Report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondent shall provide a copy of each Compliance Report to the Monitor if the Commission has appointed one in this matter.

IX.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least 30 days prior to:

A. Any proposed dissolution of Respondent CRH plc;

B. Any proposed acquisition, merger, or consolidation of Respondent CRH plc; or

C. Any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

X.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and

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

XI.

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: