

PUBLIC VERSION

IN THE MATTER OF CEMEX, S.A. de C.V.

DOCKET NO. C-4131

Federal Trade Commission

Application for Approval of Divestiture

Clifford H. Aronson
Ian G. John
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036
(212) 735-3000

Attorneys for Cemex, S.A. de C.V.

TABLE OF CONTENTS

	<u>Page</u>
Introduction.....	1
I. Description of The Acquirer	2
A. The Acquirer's Name and Address.....	2
B. The Acquirer's Officers.....	3
C. Description of Acquirer's Business	4
II. Description of Proposed Divestiture.....	5
III. An Analysis of How the Divestiture Would Affect Competition in the Relevant Market and Achieve the Remedial Purposes of the Decision and Order	7
A. Effects on the Relevant Market.....	7
B. Achieving the Remedial Purposes of the Order.....	8
Conclusion	10

INDEX OF EXHIBITS

- Exhibit A: Asset Purchase Agreement and Related Agreements (Confidential)
- Exhibit B: Taiheiyo Annual Report, Financial Statements and Other Publicly-Available Information Concerning Its Business
- Exhibit C: Publicly-Available Information Concerning CPC's Business
- Exhibit D: Cemex Documents that Discuss the Divestiture (Confidential)
- Exhibit E: **[REDACTED]**

Application for Approval of Divestiture

Introduction

Cemex, S.A. de C.V. ("Cemex") submits this application for approval of divestiture pursuant to Section 2.41(f) of the Federal Trade Commission's ("FTC" or "Commission") Rules of Practice and Procedure, 16 C.F.R. § 2.41 (2005), and the Decision and Order in the above-captioned matter ("Order"). Cemex seeks approval for its proposed divestiture of certain RMC Group PLC ("RMC") ready mix concrete facilities, along with the other assets identified in Appendix A of the Order (collectively "Ready Mix Concrete Divestiture Assets"), to California Portland Cement Company ("CPC"), pursuant to an asset purchase and agreement and related agreements, dated May 23, 2005 (collectively, "the Asset Purchase Agreement"), copies of which are attached hereto as Exhibit A.¹

Cemex's divestiture of the Ready Mix Concrete Divestiture Assets to CPC would accomplish the Order's objectives by: (i) ensuring that the number of ready mix concrete competitors in the alleged relevant geographic area – metropolitan Tucson, Arizona – will remain unaltered following Cemex's acquisition of RMC; and

¹ Pursuant to F.T.C.A. §§ 6(f), 21(c) (codified as amended at 15 U.S.C.A. §§ 46(f), 57b-2(c)), as well as the applicable provisions of the Freedom of Information Act, 5 U.S.C.A. § 552, Cemex requests that certain of the exhibits attached hereto (the "Confidential Exhibits") be treated by the Commission as strictly confidential and not be made available to the public. These materials contain confidential and sensitive commercial and financial information that neither Cemex nor CPC disclose in the ordinary course of their businesses. The disclosure of such confidential information could cause harm to Cemex, CPC and/or the Ready Mix Concrete Divestiture Assets.

(ii) remedying the lessening of competition alleged in the Commission's Complaint.

See Order ¶ II.E.

As explained in greater detail below, CPC is a particularly suitable purchaser for the Ready Mix Concrete Divestiture Assets. It not only is familiar with the ready mix business, having operated ready mix assets in other parts of the United States, but is also vertically integrated into cement production, with a major manufacturing plant located in Arizona, the customers of which are ready mix concrete firms located throughout Arizona. [REDACTED] The net result of the proposed divestiture is that competition for the production and sale of ready mix concrete in the Tucson, Arizona area will remain significant and vigorous following the proposed divestiture.

I. Description of California Portland Cement Company

A. The Acquirer's Name and Address

California Portland Cement Company
2025 East Financial Way
Suite 2000
Glendora, California 91741-4692
(626) 852-6200

B. The Acquirer's Officers

Pursuant to publicly available information, the following individuals serve as CPC's officers:

- Michio Kimura, Chairman of the Board;
- James A. Repman, President & Chief Executive Officer;
- John H. Renninger, Senior Vice President, General Counsel & Secretary;
- James A. Wendoll, Senior Vice President & Chief Financial Officer;
- Robert M. West, General Manager – Ready Mix Division;
- John H. Bennett, Jr., Vice President – Environmental Matters;
- J. Michael Burton, Vice President & Chief Accounting Officer;
- William Klawitter, Vice President – Sales, Catalina Pacific Concrete;
- John D. Clemente, Vice President – Human Resources;
- Rick Patton, Senior Vice President – Operations, Cement Division;
- Mary C. Hernandez, Vice President – Communication & Information Services;
- Steven A. Regis, Vice President – Engineering Services; and
- Paul Moore, Vice President – Operations, Catalina Pacific Concrete.

See Exhibit B, infra at n. 2, at 32; see also <http://www.calportland.com/>

ourleaders.htm.

C. Description of the Acquirer's Business

CPC is a wholly-owned (indirect) subsidiary of Taiheiyo Cement Corporation ("Taiheiyo"), which is headquartered in Tokyo, Japan.² CPC is headquartered in Glendora, California and currently manufactures and sells aggregates, portland cement and ready mix concrete in the Western United States. In addition to a cement plant in Rillito, Arizona, it also operates, among other things, two cement plants in California, three cement terminals in California and Nevada, as well as nine ready mix concrete sites in California.

CPC has extensive experience in manufacturing and delivering ready mix concrete through its subsidiary, Catalina Pacific Concrete Corporation, experience which will be readily transferable to the operations it has agreed to purchase from Cemex. In California, CPC has a fleet of over 150 ready mix trucks, delivering concrete shipments from six facilities in the Los Angeles area and three sites in the Orange County region. CPC's concrete facilities are state-of-the-art and many of its staff, according to its website, are fully certified by the American Concrete Institute or Concrete Technologists. CPC also readily adheres to National Ready Mix Concrete Association standards.³ In addition, CPC sells its cement to a multitude of

² For more information concerning Taiheiyo, *see* Exhibit B attached hereto, which contains copies of Taiheiyo's most recent annual report, recent financial statements, and other publicly-available information from its website.

³ For more information concerning CPC, *see* Exhibit C attached hereto, which contains

ready mix concrete firms throughout the Western United States, giving it an enormous understanding of the business and supply and demand conditions.

II. Description of the Proposed Divestiture

In its Complaint, the FTC alleges that the effects of Cemex's acquisition of RMC may be to substantially lessen competition and tend to create a monopoly in the manufacture and sale of ready mix concrete in Tucson, Arizona in 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. Complaint ¶ 16. Cemex agreed to resolve the FTC's objections to the consummation of the Acquisition by entering into an Agreement Containing Consent Orders, in which it committed to divest the Ready Mix Concrete Divestiture Assets to a firm approved by the FTC within six months of the Acquisition Date.

Cemex hereby proposes to divest the Ready Mix Concrete Divestiture Assets to CPC in accordance with the Asset Purchase Agreement, which contains a complete description of the assets to be divested.⁴ As more fully described in Schedule A to the Asset Purchase Agreement, Cemex has agreed to sell the following assets **[REDACTED]**:

publicly-available information from CPC's website.

⁴ See Exhibit A. Cemex also attaches at Exhibit D its documents that discuss the divestiture, which include correspondence between Cemex and CPC.

Ready Mix Concrete Facilities

- 10200 W. Tangerine Road, Marana, Arizona 85653;
- 6601 N. Casa Grande Highway (Orange Grove), Tucson, Arizona 85743;
- 9301 S. Swan Road, Tucson, Arizona 85706;
- 11800 E. Valencia Road, Tucson, Arizona 85747;
- 409 Camino Ramanote, Rio Rico, Arizona 85648;

Aggregate Facilities

- 6601 N. Casa Grande Highway (Orange Grove), Tucson, Arizona 85743;
- 11800 E. Valencia Road, Tucson, Arizona 85747;
- 409 Camino Ramanote, Rio Rico, Arizona 85648;

Asphalt Concrete Facility

- 6601 N. Casa Grande Highway (Orange Grove), Tucson, Arizona 85743; and

[REDACTED]

III. An Analysis of How the Divestiture Would Affect Competition in the Relevant Market and Achieve the Remedial Purposes of the Decision and Order

A. Effects on the Relevant Market

The proposed divestiture will not adversely affect competition in the sale of ready mix concrete in Tucson, Arizona because, upon consummation of the sale of the Ready Mix Concrete Divestiture Assets to CPC, there will be the exact same number of competitors that existed prior to Cemex's acquisition of RMC. According to the Complaint, before the proposed transaction, three firms supplied ready mix concrete in Tucson, Arizona. *See* Complaint, ¶ 11. By transferring RMC's Tucson-area operations to CPC, the proposed divestiture will ensure that at least three firms will continue to supply ready mix concrete in the Tucson area. CPC will simply replace RMC, and the competitive environment that existed prior to the transaction will be maintained.

Because Cemex plans to transfer all of RMC's Tucson-area ready mix concrete assets to CPC and because CPC is currently not in the ready mix concrete business in Tucson, neither the Acquisition nor the divestiture will change concentration regardless of the metric used. In fact, the divestiture will increase ready mix concrete competition in Tucson by allowing CPC to vertically integrate downstream and thereby increase the efficiency of its to be acquired Tucson operations. At the very least, CPC will be able to reduce the Ready Mix Concrete

Divestiture Assets' cement acquisition transaction costs. These savings should allow CPC to enhance output of the Ready Mix Concrete Divestiture Assets. CPC's history of success in the ready mix concrete industry as well as its general familiarity with the Tucson ready mix concrete marketplace will enable it to be a highly effective competitor from the moment it acquires the Ready Mix Concrete Divestiture Assets.

B. Achieving the Remedial Purposes of the Order

The remedial purposes of the Order are: (i) "to ensure the[] continued operation [of the Ready Mix Concrete Divestiture Assets] in the same manner and engaged in the same businesses in which the RMC Ready Mix Concrete Businesses were engaged as of the time of the announcement of the Acquisition;" and (ii) "to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint." Order ¶ II.E. The proposed divestiture will satisfy both purposes.

By putting the Ready Mix Concrete Divestiture Assets in the hands of an independent owner with the resources and expertise to maintain it as an ongoing, effective competitor, the proposed divestiture will restore any actual or potential competition that allegedly would have been lost but for the divestiture. Three firms existed prior to the acquisition and, if approved, three firms will exist after the proposed divestiture. "The competitive environment that existed prior to the acquisition is maintained," thereby satisfying the criterion the Commission noted in its

Analysis of Agreement Containing Consent Orders to Aid Public Comment. As noted above, the divestiture would not change concentration in the relevant market.

CPC is uniquely qualified to acquire and maintain (and probably increase) the competitiveness of the Ready Mix Concrete Divestiture Assets.

[REDACTED]⁵ As a result, CPC should be able to make the ownership transfer seamless for the Ready Mix Concrete Divestiture Assets' employees and customers. (CPC will shortly be making its own submission, including a confidential business plan, in support of this application.)

⁵ **[REDACTED]**

Conclusion

Because the proposed divestiture of the Ready Mix Concrete Divestiture Assets to CPC is procompetitive, in the public interest and accomplishes the stated goals of the Order, Cemex respectfully petitions the Commission for approval to sell the Ready Mix Concrete Divestiture Assets to CPC.

Dated: June 7, 2005

Respectfully submitted,



Clifford H. Aronson
Ian G. John
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, New York 10036
(212) 735-3000

Attorneys for Cemex, S.A. de C.V.