

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

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

_____)	
In the Matter of)	
)	
HOLCIM LTD.,)	Docket No. C-4519
a public limited company;)	
)	
and)	
)	
LAFARGE S.A.,)	
a corporation.)	
_____)	

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Holcim Ltd. (“Holcim”) of Respondent Lafarge S.A. (“Lafarge”) (collectively, “Respondents”), and Respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”) containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters this Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent Holcim is a public limited company registered in Switzerland, with its office and principal place of business located at Zürcherstrasse 156, Jona, 8645 Canton of St. Gallen, Switzerland. Holcim’s principal U.S. subsidiary, Holcim (US) Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its U.S. headquarters and principal place of business located at 24 Crosby Drive, Bedford, MA 01730.
2. Respondent Lafarge is a *société anonyme* organized, existing, and doing business under and by virtue of the laws of France, with its office and principal place of business located at 61 rue des Belles Feuilles, Paris, France. Lafarge’s principal U.S. subsidiary, Lafarge North America Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its U.S. headquarters and principal place of business located at 8700 W. Bryn Mawr Avenue, Suite 300 S, Chicago, IL 60631.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Hold Separate Order, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Allocated Shared Contracts” means contracts between Respondents and Summit that allocate the contract rights and obligations of the Shared Contracts to promote the competitive and viable operation of the Bettendorf Terminal and the Davenport Plant after the Divestiture Date in a manner that achieves the purposes of the Decision & Order.
- B. “CCB Consent Agreement” means the agreement between Respondents and the Canada Competition Bureau dated as of __, which requires that: (a) Respondents divest Holcim’s “Alberta Business” and “Canada Business,” as those terms are defined in the agreement, including among other assets the Canada/Great Lakes Assets and the Trident Assets; and (b) Respondents keep the “Alberta Business” and the “Canada Business” separate from the rest of Respondents’ operations following the Acquisition Date.

- C. “Decision and Order” means:
1. the Proposed Decision and Order contained in the Consent Agreement in this matter until issuance and service of a Final Decision and Order by the Commission; and
 2. the Final Decision and Order issued and served by the Commission.
- D. “Hold Separate Business” means the Canada/Great Lakes Assets and the Trident Assets.
- E. “Hold Separate Business Employee” means any employee or agent of the Hold Separate Businesses (other than a Support Services Employee).
- F. “Hold Separate Business Manager” means the Chief Executive Officer of Holcim (Canada) Inc., or such alternative manager as selected by the Hold Separate Monitor, in consultation with Commission staff.
- G. “Hold Separate Period” means the period from the Acquisition Date until the Divestiture Date of the Hold Separate Business.
- H. “Orders” means the Decision and Order and this Hold Separate Order.
- I. “Replacement Contracts” means contracts relating to the same subject matter of the Shared Contracts that provide the Respondents and Summit each with contract rights and obligations that are substantially equivalent in the aggregate to those contract rights and obligations in the Shared Contracts, and that promote the competitive and viable operation of the Bettendorf Terminal and the Davenport Plant after the Divestiture Date in a manner that achieves the purposes of the Decision & Order.
- J. “Required Inputs” means raw materials, Cement, Slag or any other input products used by the Hold Separate Business in the ordinary course of business and in accordance with past practice.
- K. “Shared Contracts” means the contracts relating both to divested businesses and retained businesses that are defined as “Shared Contracts” in the Summit Divestiture Agreement.
- L. “Support Services” means assistance with respect to the operation of the Hold Separate Business, including, but not limited to: (i) human resources and administrative services such as payroll processing and employee benefits; (ii) preparation of tax returns, environmental health and safety services; (iii) financial accounting and reporting services; (iv) legal, licensing, and audit services; (v) licensing and regulatory compliance in any jurisdiction in which it does business; (vi) maintenance and oversight of information technology systems and other computerized or electronic systems and databases; (vii) processing of accounts payable and accounts receivable; (viii) supply,

procurement, and related services, including supply of Required Inputs; (ix) public relations and public affairs services; (x) construction and development services; (xi) safety and security services; and (xii) procurement and renewal of insurance and related services. Support Services includes any assistance provided to the Hold Separate Business at any time within twenty four (24) months prior to the commencement of the Hold Separate Period, and in addition, any other assistance or support reasonably required during the Hold Separate Period to achieve the purposes of this Hold Separate Order and the Decision and Order.

- M. “Support Services Employee” means any of Respondents employees or agents tasked with providing Support Services under this Hold Separate Order.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall operate, or cause to be operated, the Assets To Be Divested in the ordinary course of business and in accordance with past practice. Respondents shall take such actions as are necessary to maintain the full viability, marketability, and competitiveness of the Assets To Be Divested, minimize any risk of loss of competitive potential for the Assets To Be Divested, and prevent the destruction, removal, wasting, deterioration, or impairment of the Assets To Be Divested, except for ordinary wear and tear. Included in these obligations, Respondents shall, without limitation:
1. Maintain and operate the Assets To Be Divested in the ordinary course of business and consistent with past practice (including regular repair and maintenance efforts);
 2. Not sell, transfer, encumber, or otherwise impair the Assets To Be Divested (other than in the manner prescribed in the Decision and Order), nor take any action (or fail to take any action) that lessens the full economic viability, marketability, or competitiveness of the Assets To Be Divested, or that would cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws or regulations;
 3. Use best efforts to preserve the existing relationships and good will with suppliers, customers, employees, and others having business relationships with the Assets To Be Divested;
 4. Maintain staffing levels and a work force of equivalent size, training and expertise associated with each of the Assets To Be Divested in the ordinary course of business;
 5. Maintain the books and records of the Assets To Be Maintained;

6. Make any payment required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations associated with the Assets To Be Divested in the ordinary course of business and in accordance with past practice;
 7. Provide the Assets To Be Divested with sufficient financial and other resources to:
 - (a) Operate and staff the Assets To Be Divested in the ordinary course of business and in accordance with past practices;
 - (b) Perform all maintenance to, and repair of, the Assets To Be Divested in the ordinary course of business and in accordance with past practice;
 - (c) Carry on capital projects, physical plant improvements, and business plans as are already underway or planned, including but not limited to any existing or planned renovation, remodeling, or expansion projects;
 - (d) Maintain the viability, competitiveness, and marketability of Assets To Be Divested; and
 - (e) Perform any other obligations as required by the Decision and Order and this Hold Separate Order.
 8. Prior to the Divestiture Date, for each of the Shared Contracts, and in each case subject to the approval of the Hold Separate Monitor (in consultation with Commission staff), negotiate Replacement Contracts or Allocated Shared Contracts in place of each of the Shared Contracts
- B. During the Hold Separate Period, Respondents shall:
1. Keep the Hold Separate Business separate, apart, and independent of Respondents' other businesses and assets as required by this Hold Separate Order, and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business; and
 2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business or any of its operations, or the Hold Separate Monitor, except to the extent that Respondents must exercise direction and control over the Hold Separate Business as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, the Decision and Order, the CCB Consent Agreement, and applicable laws.

- C. The purpose of this Hold Separate Order is to: (i) maintain and preserve the Assets To Be Divested as viable, competitive, and ongoing businesses until the divestitures required by the Decision and Order are achieved; (ii) maintain and preserve the Hold Separate Business as a viable, competitive, and ongoing business independent of Respondents during the Hold Separate Period; (iii) assure that no Material Confidential Information is exchanged between Respondents and the Hold Separate Business, except in accordance with the provisions of this Hold Separate Order; (iv) prevent interim harm to competition pending the relevant divestitures; and (v) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

The Commission appoints ING Financial Markets LLC as Hold Separate Monitor to monitor and supervise the management of the Hold Separate Business and ensure that Respondents comply with their obligations under this Hold Separate Order and the Decision and Order.

- A. Respondents shall enter into the agreement with the Hold Separate Monitor, attached to the Decision and Order as Appendix V, that shall become effective no later than one (1) day after the date this Hold Separate Order is issued, and that transfers to and confers upon the Hold Separate Monitor all rights, powers, and authority necessary to permit the Hold Separate Monitor to perform his or her duties and responsibilities pursuant to this Hold Separate Order in a manner consistent with the purposes of this Hold Separate Order and the Decision and Order and in consultation with Commission staff; and shall require that the Hold Separate Monitor act in a fiduciary capacity for the benefit of the Commission:
1. The Hold Separate Monitor shall have the responsibility for:
 - (a) monitoring the organization of the Hold Separate Business; supervising the management of the Hold Separate Business by the Hold Separate Business Manager; maintaining the independence of the Hold Separate Business; and monitoring Respondents' compliance with their obligations pursuant to this Hold Separate Order and the Decision and Order; and,
 - (b) Reviewing Replacement Contracts and Allocated Shared Contracts and determining, in consultation with Commission staff, whether these contracts comply with this Hold Separate Order;

2. The Hold Separate Monitor shall act in a fiduciary capacity for the benefit of the Commission. Subject to all applicable laws and regulations, the Hold Separate Monitor shall have full and complete access to all personnel, books, records, documents, and facilities of the Hold Separate Business, and to any other relevant information as the Hold Separate Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Hold Separate Business. Respondents shall develop such financial or other information as the Hold Separate Monitor may reasonably request;
3. The Hold Separate Monitor shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Monitor's duties and responsibilities;
4. The Commission may require the Hold Separate Monitor and each of the Hold Separate Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Hold Separate Monitor's duties;
5. Respondents may require the Hold Separate Monitor and each of the Hold Separate Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; *provided, however,* that such agreement shall not restrict the Hold Separate Monitor from providing any information to the Commission;
6. The Hold Separate Monitor shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities;
7. Respondents shall indemnify the Hold Separate Monitor and hold it harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Monitor'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 the Hold Separate Monitor's malfeasance, gross negligence, willful or wanton acts, or bad faith.
8. Thirty (30) days after the date the Acquisition is completed, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order and Respondents'

compliance with their obligations under the Hold Separate Order and the Decision and Order.

B. If the Hold Separate Monitor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld, as follows:

1. If Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Hold Separate Monitor within five (5) business days after notice by the staff of the Commission to Respondents of the identity of the proposed substitute Hold Separate Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor.
2. Respondents shall, no later than five (5) days after the Commission appoints a substitute Hold Separate Monitor, enter into an agreement with the substitute Hold Separate Monitor that, subject to the approval of the Commission, confers on the substitute Hold Separate Monitor all the rights, powers, and authority necessary to permit the substitute Hold Separate Monitor to perform, its, his, or her duties and responsibilities on the same terms and conditions as provided in Paragraph III. of this Hold Separate Order;

Provided, that, if the CCB removes, or fails to appoint, ING Financial Markets LLC as the monitor under the CCB Consent Agreement, the Commission may remove the Hold Separate Monitor and appoint, in consultation with the CCB, a substitute Hold Separate Monitor under this Paragraph.

C. The Hold Separate Monitor shall serve through the Hold Separate Period; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

D. The Commission may on its own initiative or at the request of the Hold Separate Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Hold Separate Order.

E. A Monitor appointed pursuant to this Hold Separate Order may be, but need not be, the same Person appointed as the Monitor and/or Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that:

- A. Respondents shall cooperate with, and take no action to interfere with or impede the ability of: (i) the Hold Separate Monitor, (ii) any Hold Separate Business Employee, or (iii) any Support Services Employee, to perform his or her duties and responsibilities consistent with the terms of this Hold Separate Order and the Decision and Order;
- B. Respondents shall continue to provide, or offer to provide, Support Services and Required Inputs to the Hold Separate Business as were being provided to the Hold Separate Business by Respondents prior to the Acquisition Date;
 - 1. For Support Services and Required Inputs that Respondents provided to the Hold Separate Business prior to the Acquisition Date, Respondents may charge no more than the same price, if any, charged by Respondents for such Support Services and Required Inputs in the ordinary course of business and in accordance with past practice;
 - 2. For any other Support Services and Required Inputs that Respondents may provide to the Hold Separate Business, Respondents may charge no more than Respondents' Direct Cost for the same or similar Support Services or Required Inputs; and
 - 3. Notwithstanding the above, the Hold Separate Business shall have, in consultation with the Hold Separate Monitor, the ability to acquire Support Services or Required Inputs from persons other than Respondents.
- C. Respondents shall not permit:
 - 1. Any of its employees, officers, agents, or directors, other than (i) any Hold Separate Employees, and (ii) any Support Services Employees, to be involved in the operations of the Hold Separate Business, except to the extent otherwise provided in this Hold Separate Order.
 - 2. Any Hold Separate Employee to be involved, in any way, in the operations of Respondents' businesses other than the Hold Separate Business.
- D. Respondents shall provide the Hold Separate Business with sufficient financial and other resources as may be required to fulfill Respondents' obligations and responsibilities under the Orders, and as may reasonably be requested by the Hold Separate Monitor, to:

1. Operate the Hold Separate Business as it was prior to the Acquisition Date (including efforts to generate new business) consistent with the ordinary course practices of the Hold Separate Business in place prior to the Acquisition Date;
2. Perform all maintenance to, and replacements or remodeling of, the assets of the Hold Separate Business in the ordinary course of business and in accordance with past practice and with current plans;
3. Carry on such capital projects, physical plant improvements, and business plans as are already under way or planned for which all necessary regulatory and legal approvals have been obtained, including, but not limited to, existing or planned renovation, remodeling, and expansion projects; and
4. Maintain the viability, competitiveness, and marketability of the Hold Separate Business.

Such financial resources to be provided to the Hold Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however,* that, consistent with the purposes of the Decision and Order, the Hold Separate Monitor may, in consultation with Commission staff, direct the Hold Separate Business Employees to reduce in scale or pace any capital or research and development project of the Hold Separate Business, or substitute any capital or research and development project of the Hold Separate Business for another of the same cost.

- E. Respondents shall provide each Hold Separate Business Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Hold Separate Business pending divestiture. Such incentives shall include a continuation of all employee benefits (or employee benefits of substantially equivalent value), including funding of regularly scheduled raises and bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Hold Separate Business until the Divestiture Date, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order.
- F. No later than ten (10) days after the date the Acquisition Date, Respondents shall establish and implement procedures, subject to the approval of the Hold Separate Monitor, covering the management, maintenance, and independence of the Hold Separate Business consistent with the provisions of this Hold Separate Order.
- G. No later than ten (10) days after the date the Acquisition Date, Respondents shall circulate to Hold Separate Business Employees, Support Services Employees, and to persons who are employed in Respondents' businesses that compete with the Hold

Separate Business, a notice of the requirements of this Hold Separate Order, the Decision and Order, and the Consent Agreement, in a form approved by the Hold Separate Monitor in consultation with Commission staff, including copies of the Hold Separate Order and the Decision and Order.

V.

IT IS FURTHER ORDERED that:

- A. After the Acquisition Date, Respondents' employees, other than employees of the Hold Separate Business and Support Services Employees, shall not receive, or have access to, or use or continue to use any Material Confidential Information of the Hold Separate Business except in the course of:
1. Performing their obligations or as permitted under this Hold Separate Order or the Decision and Order;
 2. Performing their obligations under the Divestiture Agreements;
 3. Negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence; and
 4. Complying with financial reporting requirements, obtaining legal advice, defending legal claims, conducting investigations, or enforcing actions threatened or brought against the Hold Separate Business, or as required by law. Notwithstanding the above, Respondents may receive aggregate financial and operational information relating to the Hold Separate Business only to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws and regulations of the United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, and to comply with this Hold Separate Order or in complying with or as permitted by the Decision and Order. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this Hold Separate Order.

For purposes of this Paragraph V.A., Respondents' employees that provide Support Services or that staff the Hold Separate Business shall be deemed to be performing obligations under this Hold Separate Order.

- B. If access to or disclosure of Material Confidential Information of the Hold Separate Business to Respondents' employees is necessary and permitted under Paragraph V.A. of this Hold Separate Order, Respondents shall:

1. Implement and maintain a process and procedures, as approved by the Hold Separate Monitor, such approval not to be unreasonably withheld, pursuant to which Material Confidential Information of the Hold Separate Business may be disclosed or used only:
 - a. to or by those employees who require such information;
 - b. to the extent such Material Confidential Information is required; and
 - c. after such employees have signed an appropriate agreement in writing to maintain the confidentiality of such information.
 2. Enforce the terms of this Paragraph V. as to any of Respondents' employees and take such action as is necessary to cause each such employee to comply with the terms of this Paragraph V., including training Respondents' employees and taking all other actions that Respondents would take to protect their own trade secrets and proprietary information.
- C. Respondents shall implement, and maintain in operation, a system, as approved by the Hold Separate Monitor, of access and data controls to prevent unauthorized access to or dissemination of Material Confidential Information of the Hold Separate Business, including, but not limited to, the opportunity by the Hold Separate Monitor, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.
- D. No Hold Separate Business Employee shall receive or have access to, or use or continue to use, any non-public, confidential information relating to Respondents' businesses (not subject to the Hold Separate Order), except such information as is necessary to maintain and operate the Hold Separate Business.

VI.

IT IS FURTHER ORDERED that within thirty (30) days after this Hold Separate Order is issued, and every thirty (30) days thereafter until this Hold Separate Order terminates, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Hold Separate Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Hold Separate Order.

VII.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

- A. Dissolution of such Respondent;
- B. Acquisition, merger or consolidation of such Respondent; or
- C. Any other change in such 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 Hold Separate Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondents related to compliance with this Hold Separate Order, which copying services shall be provided by Respondents at its expense; and
- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. With respect to each of the Assets To Be Divested, the day after Respondents' (or a Divestiture Trustee's) completion of the divestiture as described in and required by the Decision and Order.

Provided, however, that if the Commission, pursuant to Paragraph II.B. of the Decision and Order, requires the Respondents to rescind any of the divestitures contemplated by any Divestiture Agreement, then, upon rescission, the requirements of this Hold Separate

Order shall again be in effect with respect to the relevant Assets To Be Divested until the day after Respondents' (or a Divestiture Trustee's) completion of the divestiture(s) of the relevant Assets To Be Divested.

By the Commission, Commissioner Wright dissenting.

Donald S. Clark
Secretary

SEAL
ISSUED: May 4, 2015