
In the Matter of

**HEIDELBERGCEMENT AG,
a corporation;**

and

**ITALCEMENTI S.p.A,
a corporation.**

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) **File Number: 1510200**
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AGREEMENT CONTAINING CONSENT ORDERS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent HeidelbergCement AG (“Heidelberg”) of Respondent Italcementi S.p.A. (“Italcementi”), hereinafter referred to as “Proposed Respondents,” and it now appearing that Proposed Respondents are willing to enter into this Agreement Containing Consent Orders (“Consent Agreement”) to divest certain assets and providing for other relief:

IT IS HEREBY AGREED by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Heidelberg is a corporation organized, existing, and doing business under and by virtue the laws of Germany, having its registered seat in Heidelberg, registered with the commercial register of the local court of Mannheim under no. HRB 330082, with its registered business address at Berliner Straße 6, 69120 Heidelberg, Germany. Heidelberg’s principal U.S. subsidiary, Lehigh Hanson, 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 300 East John Carpenter Freeway, Irving, TX 75062.
2. Proposed Respondent Italcementi is a corporation organized, existing, and doing business under and by virtue of the laws of Italy, having its seat in Bergamo, registered with Bergamo Chamber of Commerce under no. 00637110164, with its registered business address at Via Camozzi 124, 24121 Bergamo, Italy. Italcementi’s principal U.S. subsidiary, Essroc Cement Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its U.S. headquarters and principal place of business located at 3251 Bath Pike, Nazareth, PA 18064.
3. Proposed Respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.

4. Proposed Respondents waive:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's Decision and Order and Order to Maintain Assets, both attached hereto and made a part hereof, contain statements of findings of fact and conclusions of law;
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order and Order to Maintain Assets entered pursuant to this Consent Agreement; and
 - d. Any claim under the Equal Access to Justice Act.
5. Because there may be interim competitive harm, the Commission may issue its Complaint and Order to Maintain Assets in this matter at any time after it accepts this Consent Agreement for public comment.
6. Not later than thirty (30) days after this Consent Agreement is signed by the Proposed Respondents, the Proposed Respondents shall each submit an initial compliance report, pursuant to Section 2.33 of the Commission Rules, 16 C.F.R. § 2.33. Each compliance report shall set forth in detail the manner in which the Proposed Respondents have complied, are complying, and will comply with the Consent Agreement, the Order to Maintain Assets, and the Decision and Order. The proposed Respondents shall provide sufficient information and documentation to enable the Commission to determine independently that the Proposed Respondents are in compliance with the Consent Agreement and each of the Orders.
7. Each compliance report shall be either verified by a notarized signature or sworn statement or self-verified in a manner set forth in 28 U.S.C. § 1746. Section 2.41(a) of the Commission's Rules of Practice requires that an original and two copies of all compliance reports be filed with the Commission. The Proposed Respondents shall file an original report and one copy with the Secretary of the Commission, and shall send at least one copy directly to the Bureau of Competition's Compliance Division. The copy provided to the Compliance Division may be provided in electronic format.
8. This Consent Agreement, and any compliance reports filed pursuant to this Consent Agreement, shall not become part of the public record of the proceeding unless and until the Consent Agreement is accepted by the Commission. This Consent Agreement, if it is accepted by the Commission, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify each Proposed Respondent, in which event the Commission will take such action as it may consider appropriate, or issue or amend its Complaint (in such form as the circumstances may require) and issue its Decision and Order, in disposition of the proceeding.

9. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.
10. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (a) issue and serve its Complaint corresponding in form and substance with the draft Complaint here attached; (b) issue and serve its Order to Maintain Assets; and (c) make information public with respect thereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Proposed Respondents, issue the attached Decision and Order containing an order to divest and providing for other relief in the disposition of the proceeding.
11. When final, the Decision and Order and Order to Maintain Assets shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time as provided by statute for other orders. The Decision and Order and Order to Maintain Assets shall become final upon service. Delivery of the Complaint, the Decision and Order, and the Order to Maintain Assets to a Proposed Respondent by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a), including, without limitation, delivery to an office within the United States of the counsel for a Proposed Respondent identified on this Consent Agreement, shall constitute service. Proposed Respondents waive any rights they may have to any other manner of service. Proposed Respondents also waive any right they may otherwise have to service of any Appendices attached or incorporated by reference into the Decision and Order or Order to Maintain Assets, if Proposed Respondents are already in possession of copies of such Appendices, and agree that each is bound to comply with and will comply with the Decision and Order and the Order to Maintain Assets to the same extent as if it had been served with copies of such Appendices.
12. The Complaint may be used in construing the terms of the Decision and Order and the Order to Maintain Assets, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order, the Order to Maintain Assets, or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order or the Order to Maintain Assets.
13. By signing this Consent Agreement, Proposed Respondents represent and warrant that they can fulfill all the terms of the Order to Maintain Assets and accomplish the full relief contemplated by the attached Decision and Order (including effectuating the required divestiture, as well as any necessary assignments or transfers) and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement are parties to this Consent Agreement or within the control of parties to this Consent Agreement.

14. Proposed Respondents agree that they shall interpret the Divestiture Agreements, as that term is used in the Decision and Order, in a manner that is fully consistent with all of the relevant provisions and remedial purposes of the Decision and Order.
15. Proposed Respondents have read the draft of the Complaint, the Decision and Order, and the Order to Maintain Assets. Proposed Respondents understand that once the Decision and Order and Order to Maintain Assets have been issued, the Proposed Respondents will be required to file one or more compliance reports showing that the Proposed Respondents have fully complied with the Decision and Order and the Order to Maintain Assets.
16. Proposed Respondents agree to comply with the terms of the proposed Decision and Order and Order to Maintain Assets from the date such Respondent signs this Consent Agreement. Proposed Respondents further understand that each may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order and of the Order to Maintain Assets after such Orders become final.

<p>HeidelbergCement AG</p> <hr/> <p>[name] Chief Executive Officer HeidelbergCement AG</p> <p>Dated: _____</p> <hr/> <p>[name] [Chief Legal] HeidelbergCement AG</p> <p>Dated: _____</p> <hr/> <p>David P. Wales JonesDay Attorneys for HeidelbergCement AG</p> <p>Dated: _____</p> <p>Italcementi S.p.A.</p> <hr/> <p>[name] Chairman and Chief Executive Officer Italcementi S.p.A.</p> <p>Dated: _____</p> <hr/> <p>Mark W. Nelson Cleary Gottlieb Steen & Hamilton LLP Attorney for Italcementi S.p.A.</p> <p>Dated: _____</p>	<p>FEDERAL TRADE COMMISSION</p> <hr/> <p>James E. Southworth Peter Colwell Joseph R. Neely Attorneys Bureau of Competition</p> <p>Approved:</p> <hr/> <p>Michael R. Moiseyev Assistant Director, Mergers I Division Bureau of Competition</p> <hr/> <p>James R. Weiss Deputy Assistant Director, Mergers I Division Bureau of Competition</p> <hr/> <p>Deborah L. Feinstein Director Bureau of Competition</p>
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