**ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDERS
TO AID PUBLIC COMMENT**

In the Matter of HeidelbergCement AG and Italcementi S.p.A.
File No. 151-0200, Docket No. C-4579

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") designed to remedy the anticompetitive effects resulting from the proposed acquisition of Italcementi S.p.A. ("Italcementi") by HeidelbergCement AG ("Heidelberg") (collectively, "Respondents" or "the parties"). Heidelberg and Italcementi compete to sell portland cement in the United States through their respective subsidiaries, Lehigh Hanson, Inc. ("Lehigh") and Essroc Cement Corp. ("Essroc"). Under the terms of the proposed Consent Agreement, the Respondents are required to divest Italcementi's cement plant in Martinsburg, West Virginia, along with up to ten cement terminals and all related assets to a buyer approved by the Commission (the "Martinsburg Assets"). In addition to the cement plant, the Martinsburg Assets include the following terminals that Essroc has used to distribute cement manufactured at Martinsburg: Ashland, Virginia; Baltimore, Maryland; Bessemer, Pennsylvania; Chesapeake, Virginia; Frederick, Maryland; Leetsdale, Pennsylvania; and Newport News, Virginia. Two additional Essroc terminals located in Columbus and Middlebranch, Ohio are required to be divested at the option of the buyer and subject to the prior approval of the Commission. In addition to these nine terminals that historically serve Essroc's Martinsburg cement plant, Respondents are required to divest to the buyer of the Martinsburg Assets Lehigh's cement terminal in Solvay, New York. Finally, the Consent Agreement requires Essroc to divest its cement terminal in Indianapolis, Indiana to Cemex, Inc. ("Cemex").

The Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the Consent Agreement and the comments received, and decide whether it should withdraw from the Consent Agreement, modify it, or make final the Decision and Order ("Order").

THE TRANSACTION

Pursuant to a Share Purchase Agreement dated July 28, 2015, Heidelberg proposes to acquire 100% of Italcementi's voting shares in a two-step transaction. First, Heidelberg has agreed to acquire approximately 45% of Italcementi voting securities held by Italmobiliare S.p.A. The aggregate consideration for these shares totals approximately $1.9 billion. Following the closing of the Share Purchase, Heidelberg will launch a mandatory public cash tender offer for the remaining outstanding shares of Italcementi, for an expected purchase price of approximately $2.3 billion. The total value of Italcementi shares to be acquired is thus approximately $4.2 billion.

The Commission's Complaint alleges that the proposed transaction, if consummated, would violate 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, by substantially lessening competition in certain regional markets in the United States for the manufacture and sale of portland cement. The proposed Consent Agreement will remedy the alleged violations by preserving the competition that would otherwise be eliminated by the proposed acquisition.

THE PARTIES

Headquartered in Germany, Heidelberg is the second-largest global producer of cement, ready-mix concrete, and aggregates. It operates eighty-five cement plants in more than forty countries around the globe. Heidelberg operates as Lehigh in the United States, where it has twelve cement plants, one slag cement grinding facility, two cement-grinding facilities, and thirty-nine cement terminals.

Italcementi is an Italian public corporation that operates in the United States through its subsidiary, Essroc. Worldwide, Italcementi is the fourth-largest producer of cement. Essroc operates six cement plants and twenty-one cement terminals in North America.

THE RELEVANT PRODUCTS AND STRUCTURE OF THE MARKETS

In the United States, both parties manufacture and sell portland cement. Portland cement is an essential ingredient in making concrete, a cheap and versatile building material. Because portland cement has no close substitute and the cost of cement usually represents a relatively small percentage of a project's overall construction costs, few customers are likely to switch to other products in response to a small but significant increase in the price of portland cement.

The primary purchasers of portland cement are ready-mix concrete firms and producers of concrete products. These customers usually pick up portland cement from a cement company's plant or terminal in trucks. Because portland cement is a heavy and relatively cheap commodity, transportation costs limit the distance customers can economically travel to pick up cement. The precise scope of the area that can be served by a particular plant or terminal depends on a number of factors, including the density of the specific region and local transportation costs.

Due to transportation costs, cement markets are local or regional in nature. The relevant geographic markets in which to analyze the effects of the proposed acquisition on portland cement competition are (1) Baltimore-Washington and surrounding areas; (2) Richmond, VA and surrounding areas; (3) Virginia Beach-Norfolk-Newport News and surrounding areas (i.e., Hampton Roads); (4) Syracuse, NY metropolitan and surrounding areas; and (5) Indianapolis and surrounding areas. Each of the relevant markets is highly concentrated, and the merger would reduce the number of competitively significant suppliers from three to two in each of the markets.

ENTRY

Entry into the relevant portland cement markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the proposed transaction. It is costly and time consuming to enter a new geographic market. Constructing a new portland cement plant of sufficient size to be competitive would likely cost over $300 million and take more than five years to permit, design, and build; even the expansion of an existing facility would likely cost hundreds of millions of dollars and take four or more years to complete. Building competitive cement distribution terminals is also difficult and time consuming. It can take more than two years to acquire a suitable location, obtain the necessary permits, and complete construction of a competitive terminal in the relevant markets. Given the difficulties of entry, it is unlikely that any new entry could be accomplished in a timely manner in the relevant markets to defeat a likely price increase caused by the proposed acquisition.

EFFECTS OF THE ACQUISITION

Unless remedied, the proposed merger would likely result in harm to competition in each of the relevant portland cement markets. Those markets are already highly concentrated. By reducing the number of significant competitors, the merger would result in an effective duopoly in each relevant market. As explained below, the evidence shows that absent the required divestitures, the merger would likely both produce unilateral and coordinated effects in the relevant markets.

For many customers in the relevant markets, the parties are the two most proximate suppliers, and other rival cement suppliers are more distant and thus have higher shipping costs. The merger would likely force these customers to pay higher prices by eliminating their ability to play one party off against the other in individual negotiations to obtain better cement prices. After the acquisition, the merged party could effectively target customers for whom the merged parties are the nearest competitors with price increases. The merged party could also target customers that prefer to buy cement from multiple sources to protect against supply disruptions with price increases because the merger would leave such customers with only two significant suppliers.

The proposed transaction is also likely to enhance the likelihood of coordinated interaction by reducing the number of significant suppliers in relevant markets that are already vulnerable to coordination. The relevant markets are vulnerable because they are highly concentrated; cement is a homogenous product; and sales are small, frequent, and usually not made pursuant to long-term contracts. The markets also exhibit a high degree of transparency: competitors are commonly aware of each other's production capacities, costs, sales volumes, prices, and customers. The evidence indicates that the merging firms already closely monitor competitors' cement pricing and sales, which facilitates coordination.

THE CONSENT AGREEMENT

The proposed Consent Agreement eliminates the competitive concerns raised by Heidelberg's proposed acquisition of Italcementi by requiring the divestiture of one party's cement operations in each of the relevant markets. Italcementi is required to divest a cement plant in Martinsburg, West Virginia, including its quarry and all other related assets, together with up to ten cement distribution terminals in Maryland, Virginia, Pennsylvania, and Ohio, to a Commission-approved buyer or buyers, at no minimum price, within 120 days of closing of the proposed transaction. Furthermore, Heidelberg is required to divest its distribution terminal in Solvay, New York, and all related assets to the Commission-approved buyer of the Martinsburg Assets, in order to remedy the competitive effects of the proposed acquisition in the Syracuse market. Finally, Essroc must divest its cement distribution terminal in Indianapolis and all related assets to Cemex within ten days of the closing of the proposed transaction to remedy the competitive effects of the proposed acquisition in the Indianapolis market.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the proposed acquisition. If the Commission determines that any of the identified buyers is not an acceptable acquirer, the proposed Order requires the parties to divest the assets to a Commission-approved acquirer within ninety days of the Commission notifying the parties that the proposed acquirer is not acceptable. If the Commission determines that the manner in which any divestiture was accomplished is not acceptable, the Commission may direct the parties, or appoint a divestiture trustee, to effect such modifications as may be necessary to satisfy the requirements of the Order.

The Consent Agreement also contains an Order to Maintain Assets to protect the viability, marketability, and competitiveness of the divestiture asset packages until the assets are divested to a buyer or buyers approved by the Commission.

To ensure compliance with the proposed Order, the Commission has agreed to appoint an Interim Monitor to ensure that Heidelberg and Italcementi comply with all of their obligations pursuant to the Consent Agreement and to keep the Commission informed about the status of the transfer of the rights and assets to appropriate purchasers.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.