

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

**COMMISSIONERS:**      **Edith Ramirez, Chairwoman**  
                                  **Maureen K. Ohlhausen**  
                                  **Terrell McSweeney**

**In the Matter of**

**HEIDELBERGCEMENT AG,**  
                          **a corporation;**

**and**

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

**Docket No. C-4579**

**COMPLAINT**

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent HeidelbergCement AG (“Heidelberg”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Italcementi S.p.A. (“Italcementi”), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate 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, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

**I. RESPONDENTS**

1. Respondent Heidelberg is a corporation incorporated and organized under 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. Respondent Italcementi is incorporated and organized under 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 offices and principal place of business located at 3251 Bath Pike, Nazareth, PA 18064.

3. Each Respondent is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

## **II. THE PROPOSED ACQUISITION**

4. Pursuant to a Share Purchase Agreement dated July 28, 2015, Heidelberg proposes to acquire 100% of Italcementi's voting shares in a two-part transaction (the "Acquisition"). First, Heidelberg agreed to acquire approximately 45% of Italcementi voting securities held by Italmobiliare S.p.A. (the "Share Purchase"). The total consideration for the Share Purchase is approximately \$1.9 billion, to be paid in a combination of cash and newly issued Heidelberg voting shares. Second, after the Share Purchase, Heidelberg agreed to initiate a mandatory public cash tender offer for the remaining shares of Italcementi, with an expected purchase price of approximately \$2.3 billion. The total value of the Italcementi shares that Heidelberg will acquire is approximately \$4.2 billion. The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

## **III. THE RELEVANT MARKETS**

5. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture, import, and sale of portland cement, including, but not limited to, blended cement, masonry cement, mortar, and clinker.

6. Portland cement is the essential binding ingredient in concrete. A fine, usually gray powder, portland cement is a chemical combination of calcium, silicon, aluminum, iron, and small amounts of other ingredients. Users mix portland cement with water and aggregates (crushed stone, sand, or gravel) to form concrete, a fundamental building material that is widely used in residential, non-residential, and public infrastructure construction projects.

7. For the purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the Acquisition on the portland cement market are:

- a. Baltimore, MD-Washington, D.C and surrounding areas;
- b. Richmond, VA and surrounding areas;
- c. Virginia Beach-Norfolk-Newport News, VA and surrounding areas;
- d. Syracuse, NY and surrounding areas; and
- e. Indianapolis, IN and surrounding areas.

#### **IV. THE STRUCTURE OF THE MARKETS**

8. Respondents Heidelberg and Italcementi are significant participants in each of the relevant markets, and each relevant market is already highly concentrated. The Acquisition would further increase concentration levels, resulting in the merged company having enhanced market power as a supplier of portland cement in each relevant market. The Acquisition would remove competition between Respondents, and reduce the number of competitively significant suppliers from three to two in each of the relevant markets.

#### **V. ENTRY CONDITIONS**

9. New entry into the relevant markets would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. Building a new plant or distribution terminal of sufficient scale requires significant sunk costs and is challenging because of the extensive permitting that is required. Because of the various obstacles that must be overcome, it would take more than two years for a firm to accomplish the steps required to enter and achieve a significant impact in the relevant markets.

#### **VI. EFFECTS OF THE ACQUISITION**

10. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets 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, by eliminating actual, direct, and substantial competition between Respondents Heidelberg and Italcementi and reducing the number of significant competitors in each relevant market; thereby increasing the likelihood that:

- a. the merged company would unilaterally exercise market power in the relevant markets;
- b. the remaining firms in the relevant markets would engage in collusion or coordinated interaction between or among each other; and
- c. consumers would be forced to pay higher prices or accept reduced service.

## **VII. VIOLATIONS CHARGED**

11. The Agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

12. The Acquisition described in Paragraph 4, if consummated, would constitute a 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.

**WHEREFORE, THE PREMISES CONSIDERED,** the Federal Trade Commission, on this seventeenth day of June, 2016, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark  
Secretary

SEAL: