

**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

ORDER TO MAINTAIN ASSETS

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”) (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 Order (“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 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 had reason to believe that the Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place the Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent 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. 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. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the definitions used in the Consent Agreement and the Decision and Order shall apply. In addition, the Assets To Be Maintained are defined as the Martinsburg Cement Business, the Optional Terminals, and the Indianapolis Terminal.

II.

- A. Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Maintained, and shall not cause the wasting or deterioration of any of them. Respondents shall not cause the Assets To Be Maintained to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber, or otherwise impair the viability, marketability, or competitiveness of the Assets To Be Maintained. Respondents shall conduct or cause to be conducted the business of the Assets To Be Maintained in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Maintained in the ordinary course of business and in accordance with past practice.
- B. Respondents shall operate the Assets To Be Maintained in the ordinary course of business consistent with past practices and Respondents' business, strategic, and capital plans. Respondents shall use best efforts to keep the organization and properties of the Assets To Be Maintained including current business operations, physical facilities, working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Assets To Be Maintained, and shall not transfer any employees from any of the Assets To Be Maintained to any of Respondents' assets or businesses that Respondents will not divest. Included in the above obligations, Respondents shall, without limitation:
1. Maintain all operations and products at each of the terminals within the Assets To Be Maintained;
 2. Not transfer inventory from the Assets To Be Maintained, other than in the ordinary course of business consistent with past practices;
 3. Not terminate or modify any lease of any trucks, railcars, barges, or other vessels used to transport or store Cement within or relating to the Assets To Be Maintained, other than in the ordinary course of business consistent with past practices;
 4. Not terminate or modify in any material respect any contract, agreement, policy, or practice relating to the production, transportation, supply, or sale of Cement produced at Respondents' plants or provided from Respondents' terminals that will not be divested pursuant to the Order to or for the Assets To Be Maintained, other than in the ordinary course of business consistent with past practices;
 5. Not terminate or modify in any material way any contract, agreement, policy, or practice relating to the production, transportation, supply, or sale of Cement at the Assets To Be Maintained or provided from terminals within the Assets To Be Maintained to or for any of Respondents' plants or terminals that will not be divested pursuant to this Order, other than in the ordinary course of business consistent with past practices;

6. Maintain the books and records of the Assets To Be Maintained consistent with past practices; and,
7. Not change or modify in any material respect the existing pricing, discounts, credit terms, delivery terms and charges, or other terms and conditions applicable to the suppliers and customers of the Assets To Be Maintained, other than changes in the ordinary course of business consistent with past practices.

III.

IT IS HEREBY ORDERED that:

- A. William Hill shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents, and attached as Appendix I (“Monitor Agreement”) to the Decision and Order. The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s);
- B. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 1. The Monitor shall have the power and authority to monitor Respondents’ compliance with the divestiture and related requirements of this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s), and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders and in consultation with the Commission;
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission; and,
 3. The Monitor shall serve until the completion of all divestitures required by the Decision and Order.
- C. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents’ personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents’ compliance with its obligations under this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s).

- D. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s).
- E. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- F. No later than (1) day after the date the Acquisition is consummated, Respondents shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondents' compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s), in a manner consistent with the purposes of the orders.
- G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph III.G., the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph III.F. of this Order to Maintain Assets.
- H. Respondents shall report to the Monitor in accordance with the requirements of this Order to Maintain Assets or the Decision and Order, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents' obligations under this Order to Maintain Assets and the Decision and Order. Within thirty (30) days from the date the Monitor receives the first such report, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the orders.
- I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement. Provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commission.

- J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
 - 1. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after the notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
 - 2. Not later than ten (10) days after the appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant terms of this Order to Maintain Assets, the Decision and Order, and the Remedial Agreement(s) in a manner consistent with the purposes of the orders and in consultation with the Commission.

IV.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondents;
- B. Any proposed acquisition, merger, or consolidation of Respondents; or
- C. Any other change in the Respondents, including but not limited to assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order to Maintain Assets.

V.

IT IS FURTHER ORDERED that within thirty (30) days after this Order to Maintain Assets is issued, and every thirty (30) days thereafter until this Order to Maintain Assets 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 Order to Maintain Assets. Respondents shall submit at the same time a

copy of their reports concerning compliance with this Order to Maintain Assets to the Monitor. 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 Order to Maintain Assets.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order to Maintain Assets, which copying services shall be provided by Respondents at the request of the authorized representative(s) of the Commission and at the expense of Respondents; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets 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 of Assets To Be Divested, 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 or all of the divestitures contemplated by any Divestiture Agreement, then, upon rescission, the requirements of this Order to Maintain Assets 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, as described in and required by the Decision and Order.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: June 17, 2016