PUBLIC VERSION
Docket No. C-4579

UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **HEIDELBERGCEMENT AG,** **a corporation;** **and** **ITALCEMENTI S.p.A,** **a corporation.**	**Docket No. C-4579** **File No. 151 0200**

APPLICATION FOR APPROVAL OF DIVESTITURE OF MARTINSBURG

Pursuant to Section 2.41(f) of the Federal Trade Commission's (the "Commission") Rules of Practice and Procedure, 16 C.F.R. § 2.41(f), and Section II of the Decision & Order issued by the Commission on August 15, 2016 (the "D&O"), HeidelbergCement AG ("Heidelberg") and Italcementi S.p.A. ("Italcementi") hereby petition the Commission to approve the divestiture of the Martinsburg Cement Business[1] to Argos USA LLC, a subsidiary of Cementos Argos S.A. ("Argos"), upon the terms and subject to the conditions of the agreement dated August 17, 2016 (the "Divestiture Agreement") provided with this Application as Confidential Appendix A.

[1] All capitalized terms not defined herein have meanings given to them in the Decision & Order issued by the Commission on August 15, 2016.

I. Introduction

On June 10, 2016, Respondents and the Commission executed an Agreement Containing Consent Orders ("Consent Agreement") that included a proposed Decision & Order and an Order to Maintain Assets ("OMA") to settle the Commission's charges relating to Heidelberg's acquisition of Italcementi. On June 16, 2016, the Commission accepted the Consent Agreement for public comment, and shortly thereafter Heidelberg completed the acquisition of approximately 45% of Italcementi voting securities.[2] After a public comment period, the Commission subsequently approved the final D&O on August 15, 2016.

Paragraph II.B of the D&O requires Heidelberg and Italcementi to divest the Martinsburg Cement Business. Pursuant to this obligation, Heidelberg and Italcementi have sought diligently and quickly to identify a buyer that would satisfy the purposes of the D&O. On August 17, 2016, Heidelberg entered into the Divestiture Agreements to sell the Martinsburg Cement Business to Argos for a total base purchase price of $660,000,000.

Heidelberg and Italcementi desire to complete the proposed divestiture to Argos as soon as possible following Commission approval. Prompt consummation will further the purposes of the D&O and is in the interests of the Commission, the public, Heidelberg and Italcementi, and Argos. A prompt closing will allow Argos to move forward with its business plans for the competitive operation of the Martinsburg Cement Business. It will also allow Heidelberg and Italcementi to fulfill their obligations under the D&O. Heidelberg and Italcementi accordingly request that the Commission promptly commence the period of public comment pursuant to

[2] Heidelberg plans to acquire 100% of the voting shares of Italcementi in a two-step transaction: first, by acquiring a 45% shareholding in Italcementi from Italmobiliare S.p.A., and second, by acquiring the remaining shares through a mandatory public cash tender offer. Heidelberg expects the entire Italcementi transaction will be completed in the second half of 2016.

Section 2.41(f)(2), 16 C.F.R. § 2.41(f)(2), and grant this Application by approving the divestiture of the Martinsburg Cement Business to Argos as soon as practicable after the period for public comment closes.

II. **The Proposed Divestiture**

On August 17, 2016, subject to the Commission's approval, Heidelberg, through its U.S. subsidiary, Lehigh Hanson, Inc., entered into a binding and definitive Divestiture Agreement to sell the Martinsburg Cement Business to Argos for $660 million, subject to inventory and other adjustments. The Divestiture Agreement includes an Asset Purchase Agreement for the Martinsburg Cement Business as well as certain ancillary agreements regarding, *inter alia*, supply and transition services.

Paragraph I.LL of the D&O describes the assets that Heidelberg and Italcementi are required to divest. The scope of the Asset Purchase Agreement is consistent with this obligation. All of Heidelberg's rights, title, and interest in and to all assets, tangible and intangible, relating to the Martinsburg Cement Business will be acquired by Argos, as required by the D&O.

Additionally, consistent with Paragraph II.C of the D&O, Heidelberg will provide certain transition services to Argos to facilitate the divestiture and Argos' integration of the assets. The scope of these transition services is consistent with both the D&O and the services required by Argos during the first twenty-four months of Argos' ownership and operation of the Martinsburg Cement Business, and can be terminated by Argos at any time upon commercially reasonable notice.

III. **Argos Is Well-Qualified to Be a Viable Competitor**

Argos is a qualified and viable purchaser of the Martinsburg Cement Business. As an independent, leading producer of construction materials, Argos has the industry experience, operational capability, and financial wherewithal to ensure the Martinsburg Cement Business will remain a strong, competitive business. Accordingly, the proposed divestiture will accomplish the purposes of the D&O by ensuring the continuation of the Martinsburg Cement Business as ongoing, viable facilities engaged in the cement business.

A. Argos Has Proven Expertise Operating Cement Businesses

Argos is a global construction materials company. Argos was founded in 1934 as Argos Cement Company, and since then has grown to become a leading cement, concrete, and aggregates producer in North, Central, and South America with over 9,200 employees and annual revenues exceeding $2.9 billion.

Argos has a proven track record in cement. Argos today operates 9 integrated cement plants in Colombia, 3 in the United States, and 1 in Honduras; 9 clinker mills located in the United States, Haiti, Panama, the Dominican Republic, Honduras, French Guiana, and Suriname; and 24 ports and terminals located throughout North, Central, and South America. Argos' total installed capacity exceeds 21.5 million tons of cement per year.

Argos began producing cement in the United Sates in 2011, after its acquisition of the Calera, Alabama and Harleyville, South Carolina cement plants from Lafarge. Since then, Argos has grown to become a leading cement producer in the Southeast and a leading ready-mix concrete producer throughout the country, with total U.S. sales exceeding $1.3 billion in 2015.

Based on Argos' history of success in the cement industry, Heidelberg and Italcementi fully believe that Argos has the expertise to operate the Martinsburg Cement Business in a similarly successful and competitive manner.

B. Argos Does Not Compete With the Martinsburg Cement Business

Argos' acquisition of the Martinsburg Cement Business raises no competitive concerns. While Argos operates cement plants in the Southern and Southeast United States today, it operates no cement assets in the mid-Atlantic region today, including any of the markets in which the Martinsburg Cement Business operates. As a result, the addition of the Martinsburg Cement Business is a natural extension of Argos' existing footprint.

C. Argos Has A Successful History of Integrating Assets

Argos has a long track record of successfully integrating assets into its operations. For example, in just the last five years, Argos has acquired cement and ready-mix plants located in the Southern U.S. from Lafarge for $760 million (2011), and cement and ready-mix assets located in Florida from Vulcan Materials Company for $720 million (2014), as well as numerous acquisitions in Central and South America.

Moreover, Argos has a history of improving and expanding its integrated assets. In 2014, Argos initiated a $56 million expansion of the Harleyville, South Carolina cement plant, including adding nearly 500,000 tons in grinding capacity and enabling production of new types of cementitious products. Heidelberg and Italcementi believe this history of successful acquisitions and subsequent development will enable Argos to equally succeed with the Martinsburg Cement Business.

IV. Conclusion

There is every reason to believe that Argos will be a viable and competitive owner of the Martinsburg Cement Business. Argos is an experienced and well-established global construction material producer. Moreover, Argos' acquisition of these assets does not raise competitive issues; to the contrary, the Martinsburg Cement Business is highly complementary to Argos' existing U.S. footprint.

The proposed divestiture of the Martinsburg Cement Business to Argos will accomplish the purposes of the D&O and the Commission's goals. Accordingly, Heidelberg and Italcementi seek expeditious Commission approval of the proposed divestiture to Argos as soon as possible after expiration of the public comment period.

Request for Confidential Treatment

This application, including exhibits, contains confidential and competitively sensitive information relating to the divestiture of the Martinsburg Cement Business. Pursuant to Section 4.2(d)(4) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.2(d)(4), Heidelberg and Italcementi are submitting two versions of this Application. The confidential version contains nonpublic or commercially or competitively sensitive information. The public version redacts confidential information. Pursuant to Sections 6(f) and 21(c) of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2(c), and Sections 2.41(f)(4), 4.9(c) and 4.10(a)(2) of the Commission's Rules of Practice, 16 C.F.R. §§ 2.41(f)(4), 4.9(c) and 4.10(a)(2), Heidelberg and Italcementi request that all nonpublic or commercially or competitively sensitive information contained in the Application be treated by the Commission as strictly confidential and not be made available to the public. The disclosure of such information may prejudice Heidelberg, Italcementi, and Argos.

Respectfully submitted,

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Dated: September 16, 2016

CONFIDENTIAL APPENDIX A

Asset Purchase Agreement among Lehigh Hanson, Inc., Essroc Cement Corp., Argos US, LLC, and Cementos Argos S.A., dated August 17, 2016, and related agreements

[REDACTED FROM PUBLIC VERSION]