

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

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Maureen K. Ohlhausen
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter

In the Matter of)	
)	
CRH plc,)	Docket No. C-4653
a public limited company.)	
)	

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 CRH plc (“CRH”), a company subject to the jurisdiction of the Commission, has agreed to acquire Ash Grove Cement Company (“Ash Grove”), 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. RESPONDENT

1. Respondent CRH is a public limited company registered in Ireland, with its office and principal place of business located at Stonemason’s Way, Rathfarnham, Dublin 16, D16KH51, Ireland. CRH’s principal U.S. subsidiary, CRH Americas, Inc. (formerly Oldcastle, 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 900 Ashwood Parkway, Suite 600, Atlanta, Georgia, 30338.

2. Ash Grove is a closely held company 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 11011 Cody Street, Overland Park, Kansas, 66210.

3. Respondent and Ash Grove are, and at all times relevant herein have 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 an Agreement and Plan of Merger dated September 20, 2017 (“Agreement”), CRH proposes to acquire 100 percent of the existing voting securities of Ash Grove in a transaction valued at approximately \$3.5 billion (the “Acquisition”). 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 lines of commerce in which to analyze the effects of the Acquisition are the manufacture, import, and sale of:

- a. portland cement, including, but not limited to, blended cement, masonry cement, mortar, and clinker;
- b. sand and gravel; and
- c. crushed limestone.

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

7. Sand and gravel are widely used in materials for the construction industry, including in concrete, road base, asphalt, and construction fill. These aggregates are dredged from river banks and shallows then sent to a processing plant for washing and sizing.

8. Crushed limestone is a sedimentary rock used as an input in cement, concrete, asphalt, metal refining, construction base, and a wide variety of other construction products. Crushed limestone is produced by mining the limestone in quarries, breaking it into smaller pieces using specialized crushing equipment, and screening it to sort it by size.

9. For the purposes of this Complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the portland cement market is Montana.

10. For the purposes of this Complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the sand and gravel market is Omaha, Nebraska/Council Bluffs, Iowa.

11. For the purposes of this Complaint, the relevant geographic area in which to analyze the effects of the Acquisition on the crushed limestone market is Johnson County, Kansas.

IV. THE STRUCTURE OF THE MARKETS

12. Respondent and Ash Grove 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 becoming the largest supplier of portland cement, sand and gravel, or crushed limestone in each relevant market.

- a. CRH and Ash Grove are two of three significant suppliers of portland cement to customers in the Montana market, and operate the only two cement plants in Montana;
- b. CRH and Ash Grove are the two leading suppliers of sand and gravel to customers in the Omaha, Nebraska/Council Bluffs, Iowa market;
- c. CRH and Ash Grove are the two largest suppliers of crushed limestone in the Johnson County, Kansas market and are located adjacent to one another.

V. ENTRY CONDITIONS

13. 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. The cost to construct a new portland cement plant of sufficient size to be competitive would likely cost over \$500 million and take more than five years. Building rail cement distribution terminals can take more than two years and several million dollars, and requires a firm to have a cement plant in sufficiently close proximity to economically supply the terminal by rail.

14. New entry into the sand and gravel markets may take over two years to complete. Sand and gravel entrants face significant barriers because federal and local permits are required before they can commence operation, and the permitting process can exceed two years.

15. Opening a new quarry to mine and process crushed limestone in Kansas City typically costs \$3 to 4 million and takes about five years to accomplish. Additionally, Johnson County has not approved a new quarry site in more than twenty-five years due to public opposition. Given the difficulties of entry in these three relevant markets, it is unlikely that any new entry could be accomplished in a timely manner to defeat a likely price increase caused by the proposed acquisition.

VI. EFFECTS OF THE ACQUISITION

16. 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 Respondent CRH and Ash Grove and reducing the number of significant competitors in each relevant market, thereby increasing the likelihood that the merged company would unilaterally exercise market power in the relevant markets and consumers would be forced to pay higher prices. Moreover, if consummated, the Acquisition would leave only one alternative supplier of cement in Montana, increasing the likelihood that the remaining firms in the relevant markets to engage in collusion or coordinated interaction between or among each other.

VII. VIOLATIONS CHARGED

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

18. 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 twelfth day of June, 2018 issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: