

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)
) Docket No. C-4653
CRH plc,)
a public limited company.)
_____)

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed merger of Respondent CRH plc (“CRH”) and Ash Grove Cement Company. The Commission’s Bureau of Competition prepared and furnished to Respondent the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondent 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.

Respondent and the Bureau of Competition executed an agreement (“Consent Agreement”) containing (1) an admission by Respondent of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its Complaint, makes the following jurisdictional findings and issues the following Order to Maintain Assets:

1. Respondent CRH plc is a public limited company organized, existing, and doing business under, and by virtue of, the laws of Ireland, with its office and principal place of business located at Stonemason's Way, Rathfarnham, Dublin 16, D16KH51, Ireland. CRH's United States address for service of process, the complaint, and the Decision and Order is CRH Americas, Inc. (formerly Oldcastle, Inc.), 900 Ashwood Parkway, Suite 600, Atlanta, Georgia 30338.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order to Maintain Assets, the following definitions shall apply (to the extent any capitalized term appearing in this Order to Maintain Assets is not defined below, the term shall be defined as that term is defined in the Decision and Order contained in the Consent Agreement):

- A. "CRH" means CRH plc, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by CRH (including Ash Grove Cement Company after the Merger), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Commission" means the Federal Trade Commission.
- C. "Acquirer" means any Person that acquires any of the Building Materials Assets pursuant to the Decision and Order.
- D. "Asset Maintenance Period" means for each of the Building Materials Assets, the period commencing on the date this Order to Maintain Assets is issued by the Commission and ending on the respective date of divestiture of each Building Materials Assets.
- E. "Building Materials Assets" means the Cement Assets, Gravel Assets, and Limestone Assets.
- F. "Building Materials Business" means the Cement Business, Gravel Business, and Limestone Business.
- G. "Building Materials Employee" means any full-time, part-time, or contract individual employed by CRH at any time and whose job responsibilities relate or related to any Building Materials Business.

H. “Confidential Information” means any and all of the following information:

1. all information that is a trade secret under applicable trade secret or other law;
2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, software and computer software and database technologies, systems, structures, and architectures;
3. all information concerning the relevant business, including historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials; and
4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information described above;

Provided, however, that Confidential Information shall not include information that (i) was, is, or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

I. “Consent” means any approval, consent, ratification, waiver, or other authorization.

J. “Decision and Order” means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
2. Final Decision and Order issued by the Commission in this matter following the issuance and service of a final Decision and Order by the Commission.

K. “Governmental Authorization” means any consent, license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.

- L. “Merger” means the merger of CRH and Ash Grove Cement Company as described in the Agreement and Plan of Merger by and among CRH plc, AMAT Venture, Inc., Ash Grove Cement Company and Venture Stockholder Representative, LLC (solely with respect to Article IX), dated as of September 20, 2017.
- M. “Merger Date” means the date the Merger is completed.
- N. “Orders” means this Order to Maintain Assets and the Decision and Order.
- O. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.

II.

IT IS FURTHER ORDERED that during the Asset Maintenance Period:

- A. Respondent shall operate the Building Materials Assets and Building Materials Business in the ordinary course of business consistent with past practices, including but not limited to:
 - 1. Maintaining the (i) Building Materials Assets and Building Materials Business in substantially the same condition (except for normal wear and tear) existing at the time Respondent signs the Consent Agreement, and (ii) relations and good will with suppliers, customers, landlords, creditors, agents, and other having business relationships with the Building Materials Business and Building Materials Assets;
 - 2. Providing the Building Materials Business with sufficient financial and other resources to (i) operate the Building Materials Business and Building Materials Assets at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans, sales and promotional activities in place prior to the Merger Date; (ii) perform all maintenance to, and replacements or remodeling of, the assets of the Building Materials Business in the ordinary course of business and in accordance with past practice and current plans; (iii) carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to, existing or planned renovation, remodeling, or expansion projects; and
 - 3. Preserving the Building Materials Business and Building Materials Assets as an ongoing business and not take any affirmative action, or fail to take any action within Respondent’s control, as a result of which the viability, competitiveness, and marketability of the Building Materials Business and Building Materials Assets would be diminished.
- B. Respondent shall obtain all Governmental Authorizations and Consents from any Person

that are necessary to transfer any of the Building Materials Assets no later than the date that such assets are divested; *provided, however*, that in the event that Respondent is unable to obtain any Governmental Authorization, Respondent shall provide such assistance as Acquirer may reasonably request in Acquirer's efforts to obtain a comparable authorization.

C. Respondent shall cooperate and assist with an Acquirer's due diligence investigation of the relevant Building Materials Assets and Building Materials Business, including but not limited to access to any and all personnel, properties, contracts, authorizations, documents, and information customarily provided as part of a due diligence process.

D. Respondent shall:

1. No later than 10 days before Respondent executes a Divestiture Agreement for any of the Building Materials Assets (i) identify each relevant Building Materials Employee, (ii) allow an Acquirer to inspect the personnel files and other documentation of each relevant Building Materials Employee, to the extent permissible under applicable laws; and (iii) allow an Acquirer an opportunity to meet with any relevant Building Materials Employee outside the presence or hearing of Respondent;
2. Remove any contractual impediments that may deter any Building Materials Employee from accepting employment with an Acquirer, including, any non-compete or confidentiality provision of an employment contract;
3. Not offer any incentive to any Building Materials Employee to decline employment with an Acquirer or otherwise interfere, directly or indirectly, with the recruitment, hiring, or employment of any Building Materials Employee by an Acquirer; and
4. Provide each Building Materials Employee with a financial incentive as necessary to accept an offer of employment with an Acquirer, including vesting all current and accrued benefits under Respondent's retirement plans as of the date of transition of employment with an Acquirer for any Building Materials Employee who accepts an offer of employment from an Acquirer.

For purposes of Paragraphs II.C and II.D., "Acquirer" shall include any Person with whom Respondent engages in negotiations to acquire any of the Building Materials Assets.

III.

IT IS FURTHER ORDERED that:

- A. Respondent shall (i) not disclose (including as to Respondent's employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondent relating to the Building Materials Assets, Building Materials Business, and the post-divestiture Building Materials Business; *provided, however*, that Respondent may disclose or use such Confidential Information in the course of:
 - 1. Performing its obligations or as permitted under the Orders or any Divestiture Agreement; or
 - 2. Complying with financial, regulatory, or other legal obligations, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Building Materials Assets or Building Materials Business or as required by law.
- B. If disclosure or use of any Confidential Information is permitted to Respondent's employees or to any other Person under Paragraph III.A. of this Order to Maintain Assets, Respondent shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph III.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondent shall enforce the terms of this Paragraph III. as to its employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph III., including implementation of access and data controls, training of its employees, and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

IV.

IT IS FURTHER ORDERED that:

- A. William Hill ("Monitor") shall serve to monitor Respondent's compliance with all of its obligations and responsibilities as required by this Order, Decision and Order, and any Divestiture Agreement.
- B. Respondent shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order to Maintain Assets:

1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order and (ii) act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission;
 2. Respondent shall (i) ensure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with the Orders or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to the Orders;
 3. The Monitor (i) shall serve at the expense of Respondent, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 4. Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 the Monitor's gross negligence or willful misconduct; and
 5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, 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.
- C. The Monitor shall report in writing to the Commission (i) every 30 days after the Merger Date and (ii) at any other time as requested by the staff of the Commission, concerning Respondent's compliance with the Orders.
- D. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- E. The Monitor's power and duties under this Order to Maintain Assets shall terminate when this Order to Maintain Assets terminates, at which time the Monitor's power and duties shall continue as set forth under the Decision and Order, or at such other time as directed by the Commission.

- F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld:
1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within 5 days after notice by the staff of the Commission to Respondent of the identity of any substitute Monitor, then Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and
 2. Respondent shall, no later than 5 days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order to Maintain Assets on the same terms and conditions as provided in this Paragraph IV.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

V.

IT IS FURTHER ORDERED that:

- A. Respondent shall:
1. No later than 5 days after the Merger Date, notify the Commission via email at bccompliance@ftc.gov of the Merger Date; and
 2. No later than 10 days after the divestiture of any of the Building Materials Assets has been completed, (a) notify the Commission of the date such divestiture closed and (b) submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov.
- B. Respondent shall submit verified written reports (“Compliance Reports”) in accordance with the following:
1. Respondent shall submit interim Compliance Reports 30 days from the date Respondent signs the Consent Agreement (as set forth in the Consent Agreement) and every 30 days thereafter until this Order to Maintain Assets terminates; and
 2. Each Compliance Report shall set forth in detail the manner and form in which Respondent intends to comply, is complying, and has complied with this Order to Maintain Assets, including, as applicable:

- (a) the status of the divestiture and transfer of the Building Materials Assets;
 - (b) if GCC, Martin Marietta, or Hamm do not acquire the relevant Building Materials Assets as set forth in this Order to Maintain Assets, a description of all substantive contacts with any proposed substitute acquirer; and
 - (c) a description of any dispute between Respondent and an Acquirer under this Order to Maintain Assets or a Divestiture Agreement.
- C. Respondent shall verify each Compliance Report with a notarized signature or sworn statement or in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or other officer or employee specifically authorized to perform this function. Respondent shall submit an original and two copies of each Compliance Report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondent shall provide a copy of each Compliance Report to the Monitor if the Commission has appointed one in this matter.

Provided, however, that after the Decision and Order in this matter is issued, the compliance reports required by this Paragraph V. may be consolidated with and submitted to the Commission on the same timing as the compliance reports required by the Decision and Order.

VI.

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) preserve the Building Materials Assets and Building Materials Business as a viable, competitive, and ongoing business until the divestitures required by the Decision and Order are achieved; (ii) prevent interim harm to competition pending the divestitures and other relief; and (iii) help remedy any anticompetitive effects of the proposed Merger as alleged in the Commission's Complaint.

VII.

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

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

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate:

- A. Three 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. Three business days after the date that Respondent completes the divestiture required by Paragraphs II.A.-C. of the Decision and Order; *provided, however*, that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate three business days after the Decision and Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: June 12, 2018