

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

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

In the Matter of)
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 CEMEX, S.A. de C.V.,) **Docket No. C -**
 a corporation.))
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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Cemex, S.A. de C.V. (“Cemex”), hereinafter referred to as “Respondent,” of RMC Group PLC (“RMC”), and Respondent 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 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; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent 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 Respondent that the law has been violated as alleged in such Complaint, or that the facts as 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 hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Cemex is incorporated as a stock corporation with variable capital

- G. "Aggregate(s)" means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture Ready Mix Concrete and Asphalt Concrete.
- H. "Asphalt Concrete" means a paving material produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with Aggregate.
- I. "Divestiture Agreement" means any agreement that receives the prior approval of the Commission between Respondent and an Acquirer (or between a Divestiture Trustee appointed pursuant to Paragraph III. of this Order and an Acquirer) related to the Ready Mix Concrete Divestiture Assets required to be divested pursuant to Paragraph II. (or Paragraph III.) of this Order.
- J. "Divestiture Trustee" means the Divestiture Trustee appointed pursuant to Paragraph III. of this Order.
- K. "Effective Date of Divestiture" means the date on which Respondent (or a Divestiture Trustee) divests to an Acquirer the Ready Mix Concrete Divestiture Assets completely and as required by Paragraph II. (or by Paragraph III.) of this Order.
- L. "Hold Separate" means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- M. "Hold Separate Monitor" means the Person appointed pursuant to Paragraph II. of the Hold Separate.
- N. "Material Confidential Information" means competitively sensitive, proprietary and all other information that is not in the public domain owned by or pertaining to a Person or a Person's business, and includes, but is not limited to, all customer lists, price lists, cost information, marketing methods, patents, technologies, processes, or other trade secrets. The Ready Mix Concrete Divestiture Assets shall be considered a Person separate from Respondent (as defined in this Order and the Hold Separate) and RMC for this purpose.
- O. "Person" means any individual, partnership, association, firm, company, corporation, or other business entity.
- P. "Ready Mix Concrete" means a building material used in the construction of buildings, highways, bridges, tunnels, and other projects that is produced by mixing a cementing material (commonly, but not limited to, Portland cement) and Aggregate with sufficient water to cause the cement to set and bind.

(viii) all rights of RMC relating to the RMC Ready Mix Concrete Businesses under any warranty and guarantee, express or implied;

(ix) all books, records, and files held by RMC relating to the RMC Ready Mix Concrete Businesses;

(x) all rights in and to inventories of products, raw materials, supplies, and parts, including work-in-process and finished goods held by RMC and used in the RMC Ready Mix Concrete Businesses;

(xi) all customer and vendor lists, catalogs, sales promotion literature, and advertising materials held by RMC and used in the RMC Ready Mix Concrete Businesses; and

(xii) all items of prepaid expense held by RMC and used in the RMC Ready Mix Concrete Businesses;

provided, however, that the Ready Mix Concrete Divestiture Assets do not include the Excluded Assets identified in Appendix B to this Order.

R. “RMC Ready Mix Concrete Businesses” means the research, development, manufacture, distribution, or sale of Ready Mix Concrete, and the related research, development, production, manufacture, distribution, or sale of Aggregates and/or Asphalt Concrete, at or by the facilities, quarries, mines, gravel pits, aggregate reserves, plants, and other buildings listed in Appendix A to this Order.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest the Ready Mix Concrete Divestiture Assets absolutely and in good faith, at no minimum price, to a single Acquirer, within six (6) months of the Acquisition Date.
- B. Respondent shall divest the Ready Mix Concrete Divestiture Assets only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Until the Effective Date of Divestiture, Respondent shall take such actions as are necessary to maintain the viability and marketability of the Ready Mix Concrete Divestiture Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of the Ready Mix Concrete Divestiture Assets, except for ordinary

the selection of the proposed Divestiture Trustee.

approval of the Commission and only to an Acquirer that receives the prior approval of the Commission; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.

5. In the event that the Divestiture Trustee determines that he or she is unable to divest the Ready Mix Concrete Divestiture Assets in a manner consistent with the Commission's purpose as described in Paragraph II. of this Order, the Divestiture Trustee may divest such additional assets of Respondent and effect such arrangements as are necessary to satisfy the requirements of this Order.
6. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of the Ready Mix Concrete Divestiture Assets as required by this Order.
7. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's 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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
8. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Ready Mix Concrete Divestiture Assets.

Paragraph II. and III. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondent shall include in its reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning its obligations under this Order.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of Respondent, (2) acquisition, merger, or consolidation of Respondent, or (3) any other change in Respondent that may affect compliance obligations arising out of this Order, including but not limited to assignment, the creation or dissolution of subsidiaries, or any other change in Respondent.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent 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 Respondent related to compliance with this Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

Appendix A

RMC Ready Mix Concrete facilities to be divested pursuant to this Order:

- 10200 W. Tangerine Road, Marena, Arizona 85653
- 6601 N. Casa Grande Highway, Tucson, Arizona 85743
- 9301 S. Swan Road, Tucson, Arizona 85706
- 11800 E. Valencia Road, Tucson, Arizona 85747
- 409 Camino Ramanote, Rio Rico, Arizona 85648

RMC Aggregate facilities to be divested pursuant to this Order:

- 6601 N. Casa Grande Highway, Tucson, Arizona 85743
- 11800 E. Valencia Road, Tucson, Arizona 85747
- 409 Camino Ramanote, Rio Rico, Arizona 85648

RMC Asphalt Concrete facility to be divested pursuant to this Order:

- 6601 N. Casa Grande Highway, Tucson, Arizona 85743

Appendix B

The following are the Excluded Assets:

1. cash and cash equivalents;
2. any U.S. insurance policies that do not apply exclusively to the Ready Mix Concrete Divestiture Assets and prepaid expenses for any such U.S. insurance policies;
3. the following pension plans: The Savings and Retirement Plan for Employees of RMC USA, Inc. and Affiliated Companies; RMC USA, Inc. Amended and Restated Nonqualified Executive Savings Plan; and Savings & Retirement Plan for Employees of Tucson Ready-Mix, Inc.;
4. subject to item 5 below, intellectual property that is not used exclusively in the Ready Mix Concrete Divestiture Assets, provided, however, that, to the extent such intellectual property is used in the Ready Mix Concrete Divestiture Assets, Respondents shall grant the Acquirer a perpetual, nonexclusive, paid-up (royalty-free) license to use such intellectual property in the operation of the Ready Mix Concrete Divestiture Assets;
5. all rights, including the right to use, in or to any trade name and trademark whether or not registered in any country in the world which includes the term "RMC" or the "RMC" design; *provided, however*, that the Acquirer shall have rights to use the "RMC" trade name and trademark for a transition period of three months following the Effective Date of Divestiture;
6. any books and records that Respondent are required by law to retain, so long as RMC delivers at least one copy thereof to the Acquirer; and
7. all refunds, rebates, or similar payments of taxes to the extent such taxes were paid by or on behalf of RMC prior to the Effective Date of Divestiture.

