

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to sections 92 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34 as amended;

AND IN THE MATTER OF the proposed acquisition by Lafarge S.A. of Blue Circle Industries plc, a company engaged in the construction materials business.

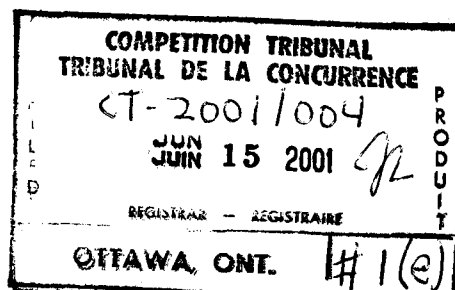
B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

and

LAFARGE S.A.



Respondent

AFFIDAVIT OF MICHAEL SULLIVAN

I, Michael Sullivan of the City of Ottawa, Province of Ontario, Public Servant, **MAKE OATH AND SAY:**

1. I am a Senior Competition Law Officer at the Competition Bureau, Mergers Branch.
2. I have worked as a Competition Law Officer at the Competition Bureau since late 1982, and have worked in the Mergers Branch from November 1994 to the present and prior to that from 1988 to 1992.

3. I have participated in or led nine investigations of mergers concerning the cement and related construction materials industries since 1988.

4. On February 10, 2000, Lafarge S.A. (“Lafarge”) of Paris, France made an unsolicited offer through the London U.K. stock exchange to acquire all the shares of Blue Circle Industries plc

(“Blue Circle”) of the U.K. Under the terms of the London stock exchange rules, Lafarge’s bid had to be accepted by the majority of Blue Circle’s shareholders by May 3, 2000. The bid was opposed by the Board of Directors and senior management of Blue Circle.

5. I was the Senior Officer in respect of this matter in February 2000, when the Commissioner first received notice under section 114 of the *Competition Act* by Lafarge S.A. of the then proposed offer.

6. Based on my prior knowledge of the cement and construction industries in Ontario and the specific facts relevant to the then proposed transaction, I believed that a merger of Lafarge and Blue Circle would raise serious competition concerns in certain markets in Ontario which warranted a thorough investigation and careful consideration of the impact of the potential remedy issues, including the remedies proposed by Lafarge.

7. I assembled an investigative team consisting of another competition law officer, an enforcement support officer, and an economist from the Economic Policy and Enforcement Division of the Competition Bureau. An inquiry was commenced under section 10 of the *Competition Act*. I requested, and was assigned, legal counsel from the Competition Law Division of the Department of Justice. Thereafter, I identified and retained two industry experts to assist in the Bureau’s investigation, one in respect of the cement and related concrete products industry and another for the aggregates industry.

8. Given the significant U.S. sales of both Lafarge and Blue Circle from Canadian cement production facilities, contact with the Federal Trade Commission of the United States (“FTC”) was initiated early in the investigation and the parties to the then proposed merger provided letters permitting the co-operation and the sharing of information otherwise barred by the confidentiality provisions of the *United States Hart-Scott Rodino Antitrust Improvement Act 1976*. Contact with DGIV of the European Commission and securities regulators in the United Kingdom was also initiated.

9. The investigation encompassed:

i) reviewing information provided by Lafarge and Blue Circle under section 114 of the *Competition Act*;

ii) reviewing information provided voluntarily by Lafarge and Blue Circle;

iii) attending separate meetings with counsel and representatives of Lafarge and Blue Circle;

iv) telephone discussions and attending meetings with representatives of the FTC as well as the review of documents, including transcripts of depositions, provided to the Competition Bureau by the FTC;

v) telephone interviews with Ontario government officials regarding the regulatory process in respect of licensing an aggregate extraction operation;

vi) meetings and discussions with the above mentioned industry experts as well as reviewing their interim reports;

vii) over 24 telephone, as well as two in-person, interviews with producers of cement, ready mix concrete and other precast concrete products, aggregates, asphalt and paving road construction (hereinafter "asphalt/paving"); and

viii) the issuance of over 12 questionnaires to aggregates producers and the review of responses.

10. At the conclusion of the investigation process in April 2000, I concluded that the only effective remedy that would eliminate the likely substantially lessening of competition in the cement and related concrete materials markets affected would be the divestiture of substantially all of Blue Circle's cement and related concrete products businesses in Canada as well as the related transportation, sales and distribution assets, including the Detroit grinding facility and U.S. distribution terminals.

11. On April 28, 2000, the Bureau issued a news release in respect of an agreement whereby Lafarge agreed to divest all of Blue Circle's cement business and the vast majority of its related construction materials businesses in Canada to resolve the Bureau's competition concerns, including "such asphalt and aggregates assets as the Commissioner shall require.

12. On May 3, 2000, Lafarge announced that an insufficient number of Blue Circle shares had been tendered to Lafarge thus ending the bid.

13. On July 25, 2000, Lafarge Canada Inc. ("Lafarge Canada") and Kilmer Van Nostrand Co. Limited ("KVN") announced Lafarge Canada's proposed acquisition of KVN's wholly-owned subsidiary, The Warren Paving & Materials Group Limited (Warren) (hereinafter referred to as the "Lafarge/Warren transaction"). Lafarge Canada is a wholly-owned subsidiary of Lafarge Corporation in the United States. Lafarge holds a majority equity interest in Lafarge Corporation. Warren produced aggregates and operated an asphalt business in Ontario, Alberta,

Saskatchewan and British Columbia. The Lafarge /Warren transaction was substantially completed on December 20, 2000. Consequently, Lafarge Canada's market position with respect to aggregates in Ottawa-Carleton, Brockville, Cornwall, Belleville, GTA, Tri-City Area, London, Sault Ste. Marie, Thunder Bay and Barrie, Ontario increased relative to its position in the Spring of 2000. With respect to asphalt/paving, the Lafarge /Warren transaction increased Lafarge Canada's market position in the Tri-City Area, London and Barrie, Ontario.

14. On January 8, 2001, Lafarge announced that it had reached an agreement with Blue Circle management to buy the 77.4% of shares in Blue Circle that it did not already own. At or about that time, counsel for Lafarge advised Mr. Robert Lancop, an Assistant Deputy Commissioner of Competition in the Mergers Branch, that Lafarge would fully respect the agreement in principle noted at paragraph 11 above. In November 2000, I had been assigned to head the Mergers Notification Unit, and responsibility for the matter was transferred to, Mr. John Pecman, another Senior Competition Law Officer.

15. The Lafarge/Warren transaction described in paragraph 13 above, necessitated further review of the Ontario aggregates and asphalt/ paving as well as related road construction markets.

16. Mr. Pecman has advised, and I verily believe, that he constituted a team as described in paragraph 7. above. I have been advised by Mr. Pecman, and verily believe, that the investigation he supervised in respect of the aggregates and asphalt/paving markets in Ontario, encompassed essentially the same activities as those enumerated in paragraphs 9(i) to 9(vi) above. Additionally Mr. Pecman's investigation included:

- i) over 30 interviews with aggregate industry participants and/or customers;
- ii) reviewing both written responses to information requests from industry participants as well as detailed submissions from two competitors;
- iii) in-person interviews with Lafarge and Blue Circle officials;
- iv) retention of an aggregate industry expert and review of his detailed reports, followed by on-site inspections of many Blue Circle aggregate operations;
- v) review of the Ontario pre-cast concrete structure and cold-patch asphalt markets which had not been addressed during the investigation in 2000;
- vi) communication and exchange of draft documents with the FTC to co-ordinate divestiture packages as well as draft consent orders, hold-separate arrangements and related documents; and

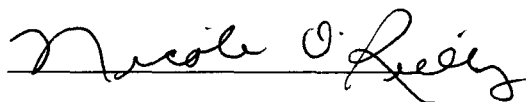
vii) telephone interviews with the Trustee/mMonitor candidate, Mr. Daniel Somes.

17. On April 11, 2001, the Competition Bureau issued a press release announcing that the Bureau would not challenge the proposed acquisition of Blue Circle by Lafarge as a result of the divestitures and hold-separate arrangements negotiated, and that the Commissioner of Competition would, with the consent of Lafarge, seek an order from the Competition Tribunal.

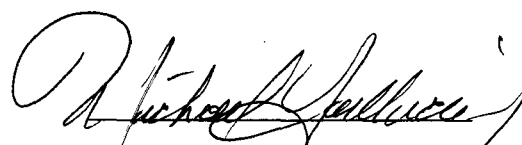
18. At the beginning of June, Mr. Pecman commenced new duties within the Competition Bureau, and I resumed responsibility for the carriage of this matter.

19. I believe that the Statement of Grounds and Material Facts accurately reflects the findings of the Bureau's investigation.

SWORN BEFORE ME, at the City of Hull,)
in the Province of Quebec,)
this 15th day of June 2001.)
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BETWEEN:

The Commissioner of Competition

Applicant

- and -

Lafarge S.A.

Respondent

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