



Reference: *Commissioner of Competition v. Lafarge S.A.*, 2001 Comp. Trib. 022

File no.: CT2001004

Registry document no.: 3

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,

IN THE MATTER OF an application by the Commissioner of Competition for an Order pursuant to section 104 of the *Competition Act*,

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)

Decided on the basis of the written record.

Member: McKeown J. (Chairman)

Date of order: 20010619

Order signed by: McKeown J.



**INTERIM CONSENT ORDER**

[1] FURTHER to the application (the “Consent Proceeding”) of the Commissioner of Competition (the “Commissioner”) pursuant to sections 92 and 105 of the *Competition Act* (“Act”) for an order directing the divestiture of certain assets owned by affiliates of Blue Circle Industries plc in Canada and certain other remedies in respect of this matter.

[2] AND FURTHER to the application of the Commissioner in the Consent Proceeding for an interim order pursuant to sections 92 and 104 of the Act;

[3] AND ON READING the notice of application dated June 15, 2001, the motion for a consent interim order, and the draft consent interim order, the affidavits of Messrs. Sullivan and Palsson, and the consent of the parties;

[4] AND ON DETERMINING that this is an appropriate case for the issuance of an interim order pursuant to sections 92 and 104 of the Act;

THE TRIBUNAL ORDERS THAT:

### **Definitions**

[5] For the purposes of this order, the following definitions shall apply:

(a) “Acquisition” means the proposed acquisition by Lafarge of Blue Circle as described in a Merger Agreement dated January 8, 2001 between Lafarge and Blue Circle;

(b) "Affected Businesses" means the Great Lakes Package, Great Lakes Aggregates Package, Other Aggregates Package and the Asphalt and Paving Package, save the assets identified in Schedule “B” - Excluded Assets” hereto, including all rights, titles and interests in and to all assets, properties, business and goodwill, tangible or intangible, used to operate the said businesses in the ordinary course and in accordance with past practice, including but not limited to (i) all real property (together with appurtenances, licenses and permits) owned, leased or otherwise held by Blue Circle and used to operate the said businesses; (ii) all personal property owned, leased or otherwise held by Blue Circle and used to operate the said businesses; (iii) all intellectual property owned by or licensed to Blue Circle and used in respect of the operation of the said businesses, including but not limited to, trademarks, patents, mask works, copyrights, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technological know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas, (iv) all rights of Blue Circle relating to the said businesses under any contract entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners; (v) all governmental approvals, consents, licenses, permits, waivers, or other authorizations held by Blue Circle and used to operate the said businesses; (vi) all rights of Blue Circle relating to the said businesses under any warranty and guarantee, express or implied; (vii) all books, records, and files held by Blue Circle relating to the said businesses; (viii) all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies held by Blue

Circle and used to operate the said businesses; (ix) all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods held by Blue Circle and used in respect of the operation of the said businesses; (x) all customer and vendor lists, catalogues, sales promotion literature, and advertising materials held by Blue Circle and used in the operation of the said businesses; (xi) all rights in and to quarries and pits (together with appurtenances, licenses and permits) owned, leased or otherwise held by Blue Circle and used to operate the said businesses; and, (xii) all items of prepaid expense held by Blue Circle and used in respect of the operation of the said businesses.

(c) “Affected Business(es) Employees” means employees of Blue Circle who worked at least one hundred (100) work days for the relevant Affected Business(es) during the twelve month period prior to the date of Divestiture of the Affected Business(es);

(d) “Asphalt and Paving Package” means all of the businesses identified as such in Schedule “A” hereto;

(e) “Blue Circle” means Blue Circle Industries plc, a corporation existing under the laws of England and Wales, and affiliates thereof;

(f) “Blue Circle Fonthill Aggregate Operation” means Blue Circle’s aggregates production facilities located at Fonthill, in the Town of Pelham, Region of Niagara, including the lands known as the “Haist Land” “Haist Parcel A”, “Haist Parcel B”, Washutta Lands”, “Park Street”, “Collins Land”, “Woodgate Land”, and “Haun Land”;

(g) “Commissioner” means the Commissioner of Competition appointed pursuant to section 7 of the *Competition Act*;

(h) “Confidential Information” means competitively sensitive or proprietary information relating to the Affected Businesses not independently known to Lafarge or its affiliates, including, without limiting the generality of the foregoing, any such customer lists, price lists, marketing methods or other trade secrets that relate to the said businesses;

(i) “Divest” means to implement a Divestiture(s);

(j) “Divestiture(s)” means the sale, transfer, assignment, redemption or other disposition necessary to ensure that, by completion of the Divestiture(s), Lafarge has, directly or indirectly, no remaining right, title or interest in the Affected Business(es) inconsistent with the intent of the Draft Consent Order;

(k) “Excluded Assets” means the assets identified in Schedule “B”, hereto which need not be included in any Divestiture of the Affected Businesses;

(l) “Final Divestiture” means the Divestiture which results in the circumstances described in paragraph 8 of the Draft Consent Order;

- (m) “Great Lakes Aggregates Package” means all of the businesses identified as such in Schedule “A” hereto;
- (n) “Great Lakes Package” means all of the businesses identified as such in Schedule “A” hereto, including, for greater certainty, all of Blue Circle’s rights, titles and interests in and to the Great Lakes Slag Joint Venture;
- (o) “Great Lakes Slag Joint Venture” means the joint venture between Blue Circle and St. Lawrence Cement, Inc. (“St. Lawrence”) as set forth in the Share Purchase and Shareholder Agreement by and among St. Lawrence, Blue Circle Canada Inc. and Great Lakes Slag Inc., dated March 27, 2000;
- (p) “Independent Manager(s)” means the Independent Manager(s) of the Affected Business(es) appointed pursuant to paragraphs 7 or 8 of this order and any employees, agents or other persons acting for or on behalf of the Independent Manager(s) with respect to any matter referred to in this order;
- (q) “Lafarge” means Lafarge S.A., a corporation existing under the laws of France;
- (r) “Monitor” means any Monitor appointed pursuant to paragraphs 21 or 22 of this order, and any employees, agents or other persons acting for or on behalf of the Monitor with respect to any matter referred to in this order;
- (s) “Other Aggregates Package” means all of the businesses identified as such in Schedule “A” hereto;
- (t) “Person” means any natural person, corporation, association, firm, partnership or other business or legal entity;
- (u) “Purchaser(s)” means the person(s) or entity(ies) who will purchase any, or all, of the Affected Businesses in accordance with the procedure for Divestiture set out in the draft Consent Order;
- (v) “Respondent” means Lafarge;
- (w) “Trustee” means any trustee appointed pursuant to paragraph 23 or 26 of the Draft Consent Order, and any employees, agents or other Persons acting for or on behalf of the Trustee with respect to any matter referred to in this order.

## **Application**

[6] The provisions of this order shall apply to:

- (a) the Respondent;

(b) each division, subsidiary or other Person controlled by the Respondent, and each officer, director, employee, agent or other Person acting for or on behalf of the Respondent with respect to any matter referred to in this order save the Affected Businesses;

(c) the successors and assigns of the Respondent and all other Persons acting in concert or participating with it with respect to the matters referred to in this order, save the Affected Businesses, who shall have received actual notice of this order;

(d) The Independent Manager(s) of the Affected Businesses or any substitute Independent Manager(s) appointed pursuant to paragraph 8 herein, and each employee, agent or other Person acting for or on behalf of the Independent Manager with respect to any matter referred to in this order; and

(e) Daniel E. Somes or any other individual appointed herein as Monitor pursuant to paragraph 21 herein below, or any substitute Monitor(s) appointed pursuant to paragraph 22 herein below, and each employee, agent or other Person acting for or on behalf of such Monitor with respect to any matter referred to in this order.

### **Independent Manager(s)**

[7] Effective immediately upon the date that the Acquisition is closed, the Commissioner shall appoint an independent manager(s) (the “Independent Manager(s)”) of the Affected Businesses to manage and operate the said businesses independently of the Respondent, as specified herein, pending the Divestiture of the said businesses and/or a final determination of the Consent Proceeding. Lafarge shall be responsible for all fees and expenses properly charged or incurred by the Independent Manager(s), which may include economic incentives dependent on the financial performance of the Affected Businesses if there are also sufficient incentives for the Independent Manager to operate the Affected Businesses pursuant to the terms set out in paragraph 9 below.

[8] In the event an Independent Manager ceases to act in his or her capacity as such then the Respondent shall select a substitute(s) Independent Manager, subject to the approval of the Monitor. This order shall apply to any substitute Independent Manager appointed pursuant to this paragraph.

### **Independent Management of the Affected Businesses**

[9] Pending final determination of the Consent Proceeding, or until further order of the Competition Tribunal, the Independent Manager(s) shall take all necessary steps and give all necessary instructions to cause the Affected Businesses under his or her management, and any servants or agents of such Affected Businesses or the Independent Manager(s), to:

(a) operate such Affected Businesses independently of the Respondent;

(b) operate such Affected Businesses in compliance with all applicable laws;

- (c) maintain all material permits and approvals necessary for the operation of such Affected Businesses;
- (d) use commercially reasonable efforts to maintain and enhance the competitiveness and the customer base of such Affected Businesses and in particular, continue to solicit business and to submit bids in response to tenders as they arise;
- (e) maintain and hold such Affected Businesses in good condition and repair, normal wear and tear excepted, and to standards at least equal to those maintained by Blue Circle prior to the date of this order;
- (f) establish all fees, deductions, discounts, credits or allowances with respect to the goods and services provided by such Affected Businesses;
- (g) take all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of such Affected Businesses at the level that existed prior to the date of this order, save as required by prudent management of such Affected Businesses;
- (h) ensure that such Affected Businesses do not engage in any type of business other than the type of business conducted by those businesses as of the date of this order;
- (i) not communicate any Confidential Information related to such Affected Businesses to the Respondent, including each division, subsidiary or other Person controlled by the Respondent, or any other Person, save the Commissioner, except as permitted herein;
- (j) not knowingly take or allow to be taken any action that materially and adversely affects the competitiveness, assets, operations or financial status of such Affected Businesses;
- (k) not materially curtail marketing, sales, promotional or other activities of such Affected Businesses in connection with the solicitation of existing or prospective customers save as required by prudent management of such Affected Businesses;
- (l) not, to any material extent, relocate, destroy or dismantle any fixed assets of such Affected Businesses;
- (m) not, to any material extent, enter into any agreement to lease or otherwise encumber any assets of such Affected Businesses, or real property occupied by such Affected Businesses to or in favour of any other Person save as required by prudent management of such Affected Businesses;
- (n) not, to any material extent, alter, or cause to be altered, the management of such Affected Businesses as it existed prior to the date of this order, except as may be necessary to comply with the terms of this order or to replace employees that may resign, and save as required by prudent management of such Affected Businesses; or

(o) not terminate or alter any current employment, salary or benefit agreements for any employees working in such Affected Businesses, to any material extent, save as required by prudent management of such Affected Businesses.

[10] Subject to the approval of the Monitor, the Independent Manager shall have authority to enter into or renew customer contracts in relation to the Affected Businesses under his or her management, in the name of the business(es).

[11] The Respondent shall, if necessary, contribute working capital with respect to the Affected Businesses to permit the applicable Affected Business(es) to continue to operate at standards at least equal to those existing at the date of the Acquisition and may contribute funds for significant capital expenditures in consultation with the Independent Manager of the applicable Affected Business(es) and any Monitor thereof.

[12] Notwithstanding any other provision of this order, the Independent Manager is permitted, with the approval of the Monitor, to use the managerial, administrative and operational (including maintenance) resources of the Respondent for the following services:

- (a) public affairs/media relations services;
- (b) legal services;
- (c) information systems services, including construction, maintenance and support of all SAP and other computer systems;
- (d) to maintain, in accordance with Canadian and U.S. generally accepted accounting principles (as applicable), separate and adequate financial ledger books and records of material financial information with respect to the Affected Businesses;
- (e) preparation of tax returns and other audit services;
- (f) human resources and payroll services;
- (g) processing of accounts payable;
- (h) security services;
- (i) technical support;
- (j) occupational health and safety, including medical services such as drug testing;
- (k) environmental permitting and liability, and any other regulatory compliance services;
- (l) insurance, including notification of claims for which coverage is sought;
- (m) financial accounting services, including banking;

- (n) engineering services, including engineering, design and maintenance of plants and terminals;
- (o) real estate services, including the identification and development of new sites;
- (p) procurement of goods and services utilized in the ordinary course of business by the Affected Business(es); and
- (q) transportation and other logistics services.

The Respondent shall ensure that all personnel providing such services retain and maintain all Confidential Information received for purposes of providing the above services on a confidential basis, and, except as is permitted by this order, such Persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any Person whose employment involves any of Respondent's businesses other than the applicable Affected Businesses. Such personnel shall be required to execute a confidentiality agreement to said effect. Nothing in this order, however, shall require the Respondent or the Independent Manager to hold separate the operations, assets or personnel used to provide such services.

**[13]** The Independent Manager(s) shall not communicate any Confidential Information acquired in the performance of the Independent Manager's duties under this order to any Person except to the extent required or permitted by this order. The Independent Manager will execute a customary confidentiality agreement in this respect.

**[14]** The Independent Manager(s) may provide Confidential Information to the following Persons: (a) any Person employed by Ernst and Young, the external auditors of Blue Circle; (b) any Person employed by Deloitte & Touche, the external auditors of Lafarge and (c) senior accountants employed by Lafarge or Blue Circle or their affiliates (the "Permitted Persons") only for the purposes of preparing standard financial and regulatory reports, tax returns and benefits administration and to comply with applicable law and governmental authorities in Canada, the United States, France and the United Kingdom (the "Permitted Purposes") and provided that:

- (i) prior to disclosure of any Confidential Information, each Permitted Person shall execute a confidentiality undertaking in the form of the Confidentiality Annex attached hereto; and
- (ii) the Permitted Persons shall use the Confidential Information only for the Permitted Purposes and shall not disclose such information to any other Person, whether or not an employee of the Respondent.

**[15]** Each Independent Manager is bound by the terms of this order but shall otherwise not be subject to liability for any act or omission arising out of his or her Independent Manager duties pursuant to this order, save to the extent such liability results from malfeasance, gross negligence or bad faith by the Independent Manager and subject to paragraph 13.



[16] The Respondent shall not directly or indirectly receive or have access to, or use or continue to use any Confidential Information relating to the Affected Businesses, except as may be necessary to comply with the terms of this order or as permitted by this order, and except to the extent that necessary information is exchanged in the course of consummating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating and meeting obligations under agreements to Divest assets pursuant to the Consent Order and engaging in related due diligence.

[17] Notwithstanding the above, this order does not preclude disclosure to, or receipt by, the Respondent of summaries in aggregate form such as revenue summaries, cash receipt summaries and tonnage summaries, provided that no Confidential Information is disclosed.

[18] The Respondent shall:

(a) take all reasonable steps to ensure that the Affected Businesses are independent of the Respondent, including transferring to the Independent Manager all rights, powers and authorities necessary for the Independent Manager to perform his or her duties and responsibilities under this order;

(b) not exercise any direction or control, direct or indirect, over the management or operations of the Affected Businesses or influence the marketing of the Affected Businesses except to the extent that the Respondent must exercise such direction and control to assure compliance with this order and except as otherwise provided in this order; and

(c) cause the operational manager(s) of the Affected Businesses to follow the reasonable instructions and directions of the Independent Manager given pursuant to the provisions of this order.

[19] Except as provided in this order and the Draft Consent Order, the Respondent shall not employ or make offers of employment to any Affected Business(es) Employee during the term of this order. The Purchaser of the Affected Business(es) shall have the option of offering employment to such Affected Business(es) Employees pursuant to the terms of the Draft Consent Order. After the expiry of this order, the Respondent may offer employment to the Affected Business(es) Employees who have not been offered employment or have been terminated by the Purchaser of such Affected Business(es). The Respondent shall not interfere with the employment of the Affected Business(es) Employees by the Purchaser of such Affected Business(es); shall not offer any incentive to said employees to decline employment with the Purchaser of such Affected Business(es) or accept other employment with the Respondent; and shall remove any impediments that may deter Affected Business(es) Employees from accepting employment with the Purchaser of such Affected Business(es) including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with the Affected Business(es) Employees that would affect the ability of such Affected Business(es) Employees to be employed by the Purchaser of such Affected Business(es).

[20] For a period of one (1) year commencing on the date of the Divestiture of the Affected Business(es), the Respondent shall not employ or make offers of employment to any Affected Business(es) Employees who have been offered employment with the Purchaser of such Affected Business(es), unless such individuals have been terminated by the Purchaser of such Affected Business(es).

### **Monitor**

[21] Upon issuance of this order, the Commissioner shall appoint Daniel E. Somes to serve as the person responsible for monitoring Lafarge's and the Independent Manager(s)' compliance with this order in respect of the Affected Businesses. Lafarge shall be responsible for all fees or expenses properly charged or incurred by Monitor Somes, or any substitute for Monitor Somes, appointed pursuant to paragraph 22 herein below.

[22] In the event that the Monitor, appointed pursuant to paragraph 21 above, is unable to perform monitoring duties under the terms of this order because of death, disability, termination for cause or any other reason, the Commissioner may appoint a substitute Monitor(s), provided that such appointment occurs more than 10 days after the Commissioner notifies Lafarge of the proposed substitute Monitor, including sufficient details for purposes of Lafarge's consideration of the proposed appointment. In the event that Lafarge objects to the Commissioner's appointment of a proposed substitute Monitor, Lafarge may apply to the Competition Tribunal for appropriate relief on five days notice to the Commissioner setting out the grounds for the objection. This order shall apply to any substitute Monitor appointed pursuant to this paragraph.

[23] For the purposes of monitoring compliance by the Respondent and the Independent Manager(s) with this order, subject to any valid claim to a legally recognized privilege, the Respondent and the Independent Manager(s) shall respond to requests for information by a Monitor appointed pursuant to paragraphs 21-22 above, and shall give the Monitor access to all information, records and documents of the Respondent relating to the Affected Businesses for which the Monitor is responsible, in the manner described below.

[24] For the purposes of monitoring the compliance by the Respondent and the Independent Manager(s) with this order, subject to any valid claim to a legally recognized privilege, the Monitor may request access to:

- (a) the premises of the Affected Businesses for which he or she is responsible;
- (b) any information relating to the financial records, operations and assets of the Affected Businesses for which he or she is responsible; and
- (c) meetings of the management of the Affected Businesses for which he or she is responsible.

[25] Where a request under paragraph 24 is made, the Respondent and the Independent Manager shall, if necessary, take all reasonable steps to promote compliance with the request.

[26] The Respondent shall not exert or attempt to exert any influence, direction or control over a Monitor appointed pursuant to paragraphs 21-22 which may adversely affect the discharge of the Monitor's duties under the terms of this order.

[27] If a Monitor appointed pursuant to paragraphs 21-22 considers that the Respondent or the Independent Manager(s) is in default of any of the terms of this order, the Monitor shall immediately notify the Commissioner of the breach, who shall forthwith give notice to the Respondent and the Independent Manager setting out the particulars of such default.

[28] A Monitor appointed pursuant to paragraphs 21-22 shall provide to the Commissioner, upon request, a written report in affidavit form relating to the Monitor's efforts to carry out the terms of this order and the Respondent's and the Independent Manager(s)' compliance with this order.

[29] A Monitor appointed pursuant to paragraphs 21-22 is bound by the terms of this order but shall not otherwise be subject to liability for any act or omission pursuant to the terms of this order, save to the extent that such liability results from malfeasance, gross negligence or bad faith by the Monitor and subject to Paragraph 30. This order shall not be construed as providing the Monitor with ownership, management, possession, charge or control of the Affected Businesses.

[30] A Monitor appointed pursuant to paragraphs 21-22 shall execute a customary confidentiality agreement in which the Monitor will undertake not to disclose any Confidential Information acquired in the performance of the Monitor's duties to any Person except to the extent required or permitted by this order.

[31] If the Monitor advises the Commissioner that the Respondent is in default of any of the terms of this order, or if the Commissioner otherwise believes such to be the case, then for the purpose of determining or securing compliance with this order, subject to any valid claim to a legally recognized privilege, and upon written request, the Respondent shall permit any duly authorized representative of the Commissioner:

(a) upon a minimum of three (3) days notice to the Respondent, access during office hours of the Respondent, to inspect and copy all books, ledgers, accounts, correspondence, memorandum, and other records and documents in the possession or under control of the Respondent relating to compliance with this order; and

(b) upon a minimum of eight (8) days notice to the Respondent, and without restraint or interference from the Respondent, to interview directors, officers or employees of the Respondent on matters in the possession or under the control of the Respondent relating to compliance with this order.

## **General**

[32] The Respondent shall immediately provide a copy of this order to the senior managers of the Affected Businesses, and shall request that such managers operate and manage the Affected Businesses in accordance with the terms of this order.

[33] The Respondent shall request that Lafarge Canada Inc. immediately provide a copy of this order to the senior managers of the Lafarge Canada Inc. operations in Ontario and that Lafarge Canada Inc. direct such managers to operate and manage the operations for which they are responsible in accordance with the terms of this order.

[34] The Respondent shall provide a copy of this order to any persons who are authorized to have access to Confidential Information pursuant to paragraphs 12-16 above.

[35] Notices, reports or other communications required or permitted pursuant to this order shall be in writing and shall be considered to be given if dispatched by confirmed personal delivery or facsimile transmission to the parties listed in the Service List Annex to this order.

[36] This order does not prohibit anyone from providing Confidential Information to the Commissioner for purposes of the administration or enforcement of the *Competition Act*, including for the purposes of this proceeding.

[37] If the Commissioner's approval is sought pursuant to this order and such approval is not granted, or if a decision of the Commissioner is unreasonably delayed or withheld, the Respondent may apply to the Competition Tribunal for approval.

[38] The parties are at liberty to apply to the Competition Tribunal with respect to any issue concerning this order.

## **Term of Interim Order**

[39] This order shall come into force on the date that the Acquisition is closed and shall remain in effect until Final Divestiture or further order of the Competition Tribunal.

DATED at Toronto, this 19<sup>th</sup> day of June, 2001.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) W. P. McKeown

**COMPETITION TRIBUNAL  
COMMISSIONER OF COMPETITION**

vs.

**LAFARGE S.A.**

**CONFIDENTIALITY UNDERTAKING**

**IN CONSIDERATION** of being provided with Confidential Information relating to the Affected Businesses as defined in the Consent Interim Order of the Competition Tribunal dated 1, 2001 (the "Order"),

I, \_\_\_\_\_, of the City of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, agree to strictly maintain the confidentiality of all such documents and information.

**I HEREBY CONFIRM** that I have read the Order and I agree to be bound by the Order.

**I HEREBY UNDERTAKE** that I shall not disclose any confidential documents or information that relate to this Affected Business(es) that may be provided to me to any other person, except as expressly permitted by the Order, and that I shall not use any such documents or information for any purpose other than those expressly permitted by the Order.

**I HEREBY ACKNOWLEDGE** that any breach of this undertaking by me will be considered to be a breach of the Order.

**DATED** at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

Witness:

Print Witness Name

Print Name

**[41] SERVICE LIST ANNEX**

**SERVICE LIST**

THE COMMISSIONER:

**André Brantz**  
**John Symes**  
Department of Justice  
Competition Law Division  
Place du Portage, Phase 1  
50 Victoria Street, 22<sup>nd</sup> Floor  
Hull, Quebec K1A 0C9  
Telephone: (819) 997-3325  
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Counsel to the Commissioner of Competition

THE RESPONDENTS:

**Lawson A. W. Hunter, Q.C.**  
**Randall J. Hofley**  
**Susan M. Hutton**

Stikeman Elliott  
1600 – 50 O'Connor Street  
Ottawa, Ontario  
K1P 6L2

Telephone: (613) 234-4555  
Facsimile: (613) 230-8877

Counsel to Lafarge S.A.

THE MONITOR:

**Daniel E. Somes**  
4287 Marin Woods, Apt. E  
Port Clinton, Ohio  
U.S.A. 43452

[42] SCHEDULE "A"

**AFFECTED BUSINESSES**

**A. GREAT LAKES PACKAGE**

*Cement Assets*

1. The cement plant located at Bowmanville, Ontario, including any pits, quarries and lands located at Bowmanville, Ontario
2. The cement plant located at St. Marys, Ontario including any pits, quarries and lands located at St. Marys, Ontario
3. The grinding facilities and terminal located at Detroit, Michigan;
4. The following

**Terminals:**

Buffalo, New York

Cleveland, Ohio

Grand Rapids, Michigan

Green Bay, Wisconsin

Milwaukee, Wisconsin

Schoolcraft, Michigan

Waukegan, Illinois;

**Barges:**

Lewis G. Harriman (U.S. Flag)

St. Marys Barge #1 (Canadian Flag)

St. Marys Barge #2 (Canadian Flag)

St. Marys Barge #3 (Barbados Flag)

**Tugs:**

“Sea Eagle II” Tug for St. Marys Barge #2; and

5. Hutton Transport Limited

***Ready Mix Assets***

1. Barrie, Ontario
2. Belleville, Ontario
3. Blenheim, Ontario
4. Bowmanville, Ontario
5. Brampton, Ontario
6. Brantford, Ontario
7. Burlington, Ontario
8. Caledon, Ontario
9. Cambridge, Ontario
10. Cobourg, Ontario
11. Elora, Ontario
12. Guelph, Ontario
13. Hamilton, Ontario
14. Hanover, Ontario
15. Hull, Quebec
16. Ingersoll, Ontario
17. Kingston, Ontario
18. London, Ontario
19. Maple, Ontario



20. Milton, Ontario
21. Mount Forest, Ontario
22. New Hamburg, Ontario
23. Newmarket, Ontario
24. Niagara (Thorold), Ontario
25. Ottawa (Gloucester), Ontario
26. Ottawa (Kanata), Ontario
27. Perth, Ontario
28. Peterborough, Ontario
29. Sarnia, Ontario
30. Scarborough, Ontario
31. St. Thomas, Ontario
32. Sutton, Ontario
33. Toronto (Bathurst and Etobicoke), Ontario
34. Toronto (Leaside), Ontario
35. Wallaceburg, Ontario
36. West Lorne, Ontario
37. Whitby, Ontario
38. Windsor, Ontario
39. Woodstock, Ontario

**B. GREAT LAKES AGGREGATES PACKAGE**

1. Mississauga, Ontario, being the leased Blue Circle Aggregates Canada head office located at 7145 West Credit Avenue, Building 1, Suite 200; and

The aggregates operations and/or lands located at:

2. Cambridge, Ontario, being the owned or leased lands known as “KW Blair”, “Ayr”, “Brown”, “Dance”, “Dabrowski” and “David”, all located in the Township of North Dumfries, Regional Municipality of Waterloo;
3. Sunderland, Ontario, being the “Sunderland Plant” and the “Cannington Pit” located in Brock Township, Municipality of Durham and the owned land known as “Woodville” located in the City of Kawartha Lake, Township of Mariposa, County of Victoria;
4. Aberfoyle, Ontario being the “South Pit”, “Silt Pond”, “Main Pit” and the owned or leased lands known as “Mason”, “Guthrie”, “Coburn”, “Edgington”, “Mast”, “Duscharme”, “McMillan”, “McNally”, “Martinello” and “Tikal” all located in the Township of Puslinch, County of Wellington;
5. Brighton, Ontario, being the “Main Plant”, “South Plant” and the lands known as “McDonnell”, “Whitehouse” and “Widdicks” all located in the Township of Brighton, County of Northumberland; and
6. North London, Ontario, being the owned or leased lands known as “Crich”, “Fanshawe”, “Takla/Cooper”, and “Fanshawe Heights”, all located in the City of London, County of Middlesex, and “Dehaan (Purple Hill Pit)”, “McLaughlin”, “Mills”, “McKay”, “UTRCA (Archery)”, UTRCA (Fanshawe Heights)”, “McGuffin”, ”Stone”, “Thamesford” and “Dorchester” all located in the Municipality of Thames Centre, County of Middlesex, and the licensed lands known as “D. Kittmer-Harrington 1”, and “F. Kittmer-Harrington 2” both located in the Township of Zorra, County of Oxford, and as “Diocese”, “UTCRA-Sugarbush” and “Sims” located in the Municipality of Thames Centre, County of Middlesex.

### **C. OTHER AGGREGATES PACKAGE**

The aggregates operations and/or lands located at:

1. Acton, Ontario being the “Acton Quarry” and the owned lands known as “Taro” both located in the Town of Halton Hills, Regional Municipality of Halton;
2. Putnam, Ontario, being the owned lands known as “Wallis” and the licensed land known as “Szorenyi” both located in the Township of North Dorchester, County of Middlesex, and the leased “Woodstock Pit” and the owned lands known as “Ross”, “Langford” and “Willford” all located in the Township of Southwest Oxford, County of Oxford;

3. Brantford, Ontario, being the owned or leased lands known as “Brittain”, “Johnson”, “Reid”, “Cornell”, “Henniger”, “Greenwood”, “Scofield”, the “Western Region Office”, “Nemeth”, “Galt Malleable”, “Moon”, “Johnson Nemeth”, “Wilde”, “Chowhan”, “Bluebird”, “Grisenthwaite”, “Leach”, “Pottruff”, “Ruttan”, “Potruff (Garth)” all located in the City of Brantford, County of Brant;
4. Mosport, Ontario being the owned land located in the Municipality of Clarington (formerly Township of Clarke), Regional Municipality of Durham; and
5. Wakefield, Quebec, being the owned “Wakefield Pit” located in the Township of Wakefield, Registration Division of Gatineau.

**D. ASPHALT AND PAVING (ROAD CONSTRUCTION) PACKAGE**

1. TCG Asphalt & Construction Inc., including leased lands known as “Brittain” in the City of Brantford, County of Brant, leased lands on Jetstream Road and on Clarke Road both in the City of London, County of Middlesex, and leased lands known as “Takla/Cooper” in the City of London, County of Middlesex.

**[43] SCHEDULE “B”**

**EXCLUDED ASSETS**

1. cash and cash equivalents;
2. any U.S. insurance policies that do not apply exclusively to the Affected Business(es) and prepaid expenses for any such U.S. insurance policies;
3. sporting tickets (to the Toronto Blue Jays, Toronto Raptors, Toronto Maple Leafs, Ottawa Senators) and any interest in the Ottawa Senators hockey club;
4. the following pension plans: (i) Blue Circle Inc. Savings Plan for Salaried Employees; (ii) Blue Circle Inc. Savings Plan for Blue Circle Cement Hourly Employees; and (iii) Blue Circle Inc. Pension Plan;
5. subject to item 6 below, intellectual property that is not used exclusively in the Affected Business(es), provided, however, that, to the extent such intellectual property is used in the Great Lakes Package, Lafarge shall grant the Purchaser of the Great Lakes Package a perpetual nonexclusive, paid-up (royalty-free) license to use such intellectual property in the operation of the businesses in the Great Lakes Package;
6. 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 “BLUE CIRCLE” or the “BLUE CIRCLE” design or the term “NEWCEM” or the “NEWCEM” design; provided, however, that the Purchaser of the Great Lakes Package shall have rights to use the “BLUE CIRCLE” trade name and trademark and the “NEWCEM” trade name and trademark for a transition period of three months following the Divestiture of the Great Lakes Package;
7. any titles, leases, licenses or other rights to or in real property other than the real property comprising the assets identified as the Affected Business(es) at Schedule “A” hereto.
8. any books and records related to assets not being divested to the Purchaser of the Affected Business(es);
9. any books and records that Lafarge is required by law to retain, so long as Blue Circle delivers at least one copy thereof to the Purchaser of the Affected Business(es);
10. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Blue Circle prior to the date of Divestiture of the Affected Business(es); and,
11. QPR Corp., including the leased lands known as “Brittain” and “Western Region Office” in the City of Brantford, County of Brant.

COUNSEL

For the applicant:

**The Commissioner of Competition**

André Brantz

John Symes

For the respondent:

**Lafarge S.A.**

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