CT-~~01~~ 2001/004

PUBLIC

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

CONSENT ORDER IMPACT STATEMENT

COMPETITION TRIBUNAL
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OTTAWA, ONT. #1 (i)

PUBLIC

CONSENT ORDER IMPACT STATEMENT

1. This Statement is filed by the Commissioner of Competition (the "Commissioner") pursuant to ss. 76 *et seq* of the *Competition Tribunal Rules*. It describes the circumstances surrounding and the anticipated effect on competition of the Draft Consent Order ("DCO") submitted by agreement of the Parties to this proceeding.

I. THE NATURE AND PURPOSE OF THE PROCEEDING

2. The Commissioner files with this Consent Order Impact Statement, a Notice of Application with a Statement of Grounds and Material Facts, a DCO, the Affidavits of Messrs. M. Sullivan and H. Palsson, and the required Consents, and makes this Application pursuant to sections 92 and 105 of the *Competition Act* (the "Act"). A motion for a Consent Interim Order is also filed pursuant to section 104 of the Act.

3. Lafarge S.A. has made a bid to acquire all the remaining outstanding shares of Blue Circle Industries plc it does not already own (the "Proposed Transaction"). Both Lafarge S.A. and Blue Circle Industries plc, through affiliates, are engaged in, amongst other businesses, the cement, ready-mix concrete ("RMC"), aggregates and asphalt/paving (road construction) businesses in Canada. Having regard to concerns expressed by the Commissioner about the likely effects of the Proposed Transaction on competition in Canada, Lafarge has agreed to divest certain operations pertaining to these businesses.

4. The settlement reached between the Commissioner and Lafarge S.A. is designed to eliminate the substantial lessening of competition which would likely have arisen in certain markets in which both Lafarge S.A. and its affiliates ("Lafarge") and Blue Circle Industries plc and its affiliates ("Blue Circle") have operations. The Commissioner requests that the Competition Tribunal give effect to this settlement through approval of the DCO.

5. The settlement provides that Lafarge will divest Blue Circle's cement operations in Ontario and related U.S. assets, the large majority of Blue Circle's RMC and aggregates operations, predominantly, in Ontario, and Blue Circle's hot-mixed asphalt/paving (road construction) operations in Brantford and London, Ontario. In addition, the settlement provides that in the Niagara Peninsula area the "Fonthill" pit will supply aggregates at commercially reasonable and non-discriminatory prices and terms. As explained below, these measures are intended to preserve competition which would likely have been otherwise

substantially lessened in the relevant markets as a result of the Proposed Transaction.

II. THE PROPOSED TRANSACTION

6. On January 8, 2001, Lafarge S.A. announced a bid to acquire the 77.4 percent of the equity in Blue Circle Industries plc that it did not already own. The offer has the approval of the Board of Directors of Blue Circle Industries plc and is subject to approval being granted, *inter alia*, by relevant competition authorities.

III. THE ALLEGED EFFECTS OF THE PROPOSED TRANSACTION ON COMPETITION

A. Introduction

7. The Commissioner assessed the likely competitive effects of the "Proposed Transaction" in respect of the following product and geographic markets: (1) the cement market in Ontario; (2) the 38 local ready-mix concrete ("RMC") markets in Ontario and the 1 RMC market in Quebec in which Lafarge and Blue Circle both conduct RMC businesses; (3) the aggregates markets in which both Lafarge and Blue Circle have licensed reserves, being: the East and West Greater Toronto Areas ("GTA"), Guelph/Kitchener-Waterloo/Cambridge ("Tri-City"), London, Niagara Peninsula, Cobourg/Belleville, Simcoe, Ottawa-Hull, Brantford/Paris, and Stratford; (4) the asphalt/paving (road construction) market in Ontario; (5) cold patch asphalt market in Ontario; (6) the pre-cast concrete market in Ontario; and (7) the concrete pipe market in Ontario.

8. The Commissioner examined the likely impact on competition of the Proposed Transaction, and particularly the likely effect on prices if Blue Circle were to effectively exit from the markets as a result of the Proposed Transaction. Finally, the Commissioner considered possible remedies.

B. The Cement Market

9. The relevant product market is cement. The relevant geographic market for cement is Ontario.

(i) Overview of the Cement Industry

10. Cement comes in bulk or bagged forms. Bulk cement represents approximately 90 percent of the total volume of cement sold in Canada. The major end user of

bulk cement is the ready-mix concrete industry. Approximately 70 percent of the bulk cement produced is used for ready-mix concrete.

11. Cement is produced at relatively large plants and is then transported directly to customers or to terminals for distribution to more distant geographic areas. Most cement producers in the region surrounding the Great Lakes have access to waterside terminals. Barges are used to supply more distant areas within the Great Lakes region of the United States and Canada.

12. There is a high degree of vertical integration between cement manufacturing, ready-mix concrete, and aggregates. The leading cement firm in a particular region is frequently also the leading ready-mix concrete manufacturer, or a major aggregates producer, or all three.

(ii) Position of Lafarge and Blue Circle in the Ontario Cement Market

13. Lafarge and Blue Circle each have two of a total of six cement plants located in Ontario. The six cement plants' capacity, both in respect of clinker and finish grinding capacity, are listed by company in Table 1.

Table 1. The Estimated Market Share of Cement Companies in Ontario in 1999. (000s metric tonnes)

Company	Clinker Capacity	Share (percent)	Finish Grinding	Share (percent)
Blue Circle	**2365**	**34.52**	**1839**	**28.48**
Bowmanville	1622		1213	
St. Mary's	743		626	
St. Lawrence(Holderbank)	**1762**	**25.72**	**2009**	**31.11**
Mississauga	1762		2009	
Lafarge	**1495**	**21.82**	**1864**	**28.86**
Bath	987		1090	
Woodstock	508		774	
Essroc (Cementi)	**1229**	**17.94**	**746**	**11.55**
Picton	1229		746	
Total	**6851**	**100.00**	**6458**	**100.00**

Source: Portland Cement Association: U.S. and Canadian Portland Cement Industry: Plant Information Summary, December 31, 1999.

(iii) Likely Effect of the Proposed Transaction on Competition in the Ontario Cement Market

14. The Proposed Transaction would likely substantially lessen competition in the Ontario cement market for several reasons. First, the Proposed Transaction would lead to Lafarge holding a post-merger share of approximately 57 percent of both clinker and finish grinding capacity in Ontario. Second, barriers to entry in relation to cement production are significant such that it is unlikely that a new entrant would begin production in Ontario within 2 years of the Proposed Transaction. Third, only three firms would remain in the Ontario cement market post-merger. Fourth, demand for cement is price-inelastic. Fifth, the pre-merger Herfindahl-Hirschsman Index ("HHI") is 2735, which would increase to 4379 post-merger.

15. On the basis of the foregoing, absent the proposed remedy, the Proposed Transaction is likely to lead to a substantial lessening of competition in the Ontario cement market.

16. The remedy proposed in the DCO requires that Lafarge divest all of the Canadian cement business of Blue Circle including the two cement plants and related limestone quarries, related Canadian and U.S. distribution facilities, and all sales, administration and distribution related thereto (save a small unused former cement terminal in Coniston, Ontario). The proposed remedy, coupled with the ready-mix concrete divestitures discussed in part C below, will be effective in removing the substantial lessening of competition in the Ontario cement market, which would otherwise have been likely to result from the Proposed Transaction.

C. The Ready-Mix Concrete Markets

17. The relevant product market is RMC. The relevant geographic markets are the municipalities and surrounding areas in, predominantly, Ontario where both Lafarge and Blue Circle RMC operations are located.

(i) Overview of the Ready-Mix Concrete Industry

18. Ready-mix concrete ("RMC") refers to concrete that has been pre-mixed at a concrete plant and then transported to the point of use in special mixer trucks. RMC is a very heavy, bulky, and perishable product. This necessitates short delivery runs from the point of production to the point of consumption. RMC

operators consider one hour in the truck to be a practical upper limit of their geographic reach, or 50-100 kilometres depending on local traffic conditions.

19. As noted above, the Ontario cement industry is typically vertically integrated downstream into RMC, with approximately 50 to 60 percent of cement sales made to internal or affiliated RMC operations in Ontario.

(ii) Position of Lafarge and Blue Circle in the Relevant RMC Markets

20. Lafarge has 53 wholly-owned RMC operations in Ontario, and 6 additional RMC operations in Ontario through its interest in Innocon, a 50/50 joint venture in the GTA with Essroc. Blue Circle has 40 RMC operations in Ontario, and 1 RMC operation in Quebec.

21. Lafarge and Blue Circle compete in all but two local markets in Ontario: Orillia and Bracebridge. The RMC markets in which Lafarge and Blue Circle compete are identified in Schedule "A" of the DCO.

22. Lafarge and Blue Circle are leading firms in RMC in the relevant markets where they overlap. Each would generally have a market share in the range of [ ] percent. Each of the overlapping markets may be characterized as an oligopoly with a relatively small number of market participants, and CR4s in excess of 65 percent.

(iii) Likely Effect of the Proposed Transaction on Competition in the Relevant RMC Markets

23. The competitive impact of a merger between two leading firms in the relevant RMC markets at issue would be substantial. The merged firm would generally have a market share, based on sales, well in excess of 35 percent and the markets would have CR4s in excess of 65 percent.

24. Some barriers to entry into RMC production exist, particularly for RMC used in industrial and commercial applications where continuous pours and quality control and testing are more important. There are also strategic barriers to expansion associated with having to compete with your cement supplier and other vertically integrated competitors.

25. In addition, there is an important vertical relationship between the Blue Circle cement plants and its RMC operations. The Blue Circle cement plants would be

at a competitive disadvantage in Ontario without the majority of the RMC operations as an outlet for their cement.

26. Absent the proposed remedy described below, the Proposed Transaction is likely to lessen competition substantially in the identified RMC markets where Lafarge's and Blue Circle's RMC operations compete.

27. To remedy the substantial lessening of competition, the DCO requires that the Blue Circle RMC operations in the identified RMC markets be divested with the cement assets. The proposed remedy will be effective in removing any substantial lessening of competition in the identified RMC markets.

D. The Aggregates Markets

28. The relevant product market is aggregates. The relevant geographic markets are the local areas in which Lafarge and Blue Circle both have licensed aggregates reserves and/or production operations.

(i) Overview of the Aggregates Industry

29. Aggregates are granular material, of mineral, natural or artificial origin between 8 and 88 mm in size, originating either from alluvial deposits, or from larger rocks and other materials, or sand. Aggregates are used in asphalt, RMC, road base, drainage and other construction applications. To be competitive in aggregates production, an aggregates production facility must be able to produce sufficient amounts of consistent quality aggregates in close proximity to asphalt and/or RMC operations or other sources of demand (e.g. large construction projects or road construction projects for which asphalt or concrete may be manufactured on-site).

30. While most aggregates can be processed to meet the requirements of a particular customer, on the basis of supply side substitutability, end-use and price, aggregates can be divided into three broad relevant product groups: (a) specification concrete and asphalt aggregate from quarries -- known as "washed granulars", "clears", or "stone"; (b) granular aggregate from sand and gravel deposits, also known as "unwashed granulars", or "gravel"; and (c) sands or "fines. The Commissioner concludes that the production and sale of specification concrete and asphalt aggregates from quarries is a relevant product market for antitrust purposes. The Commissioner concludes that the production and sale of granular aggregate from sand and gravel deposits is a relevant product market for antitrust purposes. The Commissioner concludes that the

production and sale of sand is a relevant product market for antitrust purposes. However, in Ontario, most aggregates producers and many aggregates operations produce aggregates from at least two of the three groups of aggregates identified above. Thus, while the different groups of aggregates identified above could comprise separate markets, the analysis of this Proposed Transaction does not change if these groups of aggregates are treated as a single product market for purposes of these proceedings.

31. Aggregates are shipped limited distances, with specification aggregates travelling a maximum of approximately 100 kilometres from a quarry and granular aggregates and sand travelling a maximum of approximately 50 to 60 kilometres from sand and gravel deposits. Consequently, the geographic markets analyzed by the Commissioner are those in which both Lafarge and Blue Circle have licensed aggregates reserves: the GTA West,[1] GTA East, Guelph/Kitchener-Waterloo/Cambridge ("Tri-City"),[2] London,[3] the Niagara Peninsula, Brantford/Paris, Cobourg/Belleville,[4] Simcoe,[5] Ottawa-Hull and Stratford. The single Blue Circle aggregates site in the Stratford area is to be divested with Blue Circle's St. Marys cement facility, eliminating that aggregates market as a concern of the Commissioner.

(ii) Position of Lafarge and Blue Circle in Relevant Aggregates Markets and the Likely Effect Therein of the Proposed Transaction

32. To calculate market shares, the Commissioner had regard to both licensed reserves of aggregates held by each firm in the market and recent sales figures of those firms.

33. Estimated pre-merger and post-merger shares of licensed aggregates reserves in these markets are set out below in Table 2.

Table 2: Share Estimates of Licensed Aggregates Reserves in Relevant Markets

Relevant Market	Lafarge - Pre-merger Share	Blue Circle Pre-Merger Share	Pre-Merger CR4	Lafarge - Post-Merger Share

[1]GTA - the municipalities of Halton, Peel, York, Durham, Victoria, and Dufferin. Yonge Street divides GTA East and GTA West.
[2]Tri-City - the municipalities of Waterloo, Hamilton-Wentworth and Wellington.
[3]London - the municipalities of Oxford, Essex, Elgin, Perth and Middlesex.
[4]Cobourg/Belleville - the municipalities of Northumberland and Hastings.
[5]Simcoe - the municipalities of Simcoe and Grey.

GTA West	[ ]%	[ ]%	[ ]	[ ]%
GTA East	[ ]%	[ ]%	[ ]	[ ]%
Tri-City	[ ]%	[ ]%	[ ]	[ ]%
London	[ ]%	[ ]%	[ ]	[%
Niagara Peninsula	[ ]%	[ ]%	[ ]	[ ]%
Brantford/Paris	[ ]	[ ]	[ ]	[ ]%
Cobourg/Belleville	[ ]%	[ ]%	[ ]	[ ]
Simcoe	[ ]%	[ ]%	[ ]	[ ]%
Ottawa/Hull	[ ]%	[ ]%	[ ]	[ ]%

34. Pre-merger, Lafarge generally has shares of aggregates reserves exceeding 35 percent, and the CR4s in these have been estimated by the Commissioner to vary between 70% and 94%.

35. Estimated pre-merger and post-merger shares of aggregates sales in these markets are set out below in Table 3.

Table 3: Share Estimates of Aggregates Sales in Relevant Markets

Relevant Market	**Lafarge Share of 2000 Sales**	**Blue Circle Share of 2000 Sales**	**Lafarge Post-Merger Share of 2000 Sales**
GTA West	[ ]%	[ ]%	[ ]%
GTA East	[ ]%	[ ]%	[ ]%
Tri-City	[ ]%	[ ]%	[ ]%
London	[ ]%	[ ]%	[ ]%
Niagara Peninsula	[ ]%	[ ]%	[ ]%
Brantford/Paris	[ ]%	[ ]%	[ ]%
Cobourg/Belleville	[ ]%	[ ]%	[ ]%

Simcoe	[ ]%	[ ]%	[ ]%
Ottawa-Hull	[ ]%	[ ]%	[ ]%

36. Barriers to entry to develop a new greenfield aggregate facility are high, particularly close to urban areas where the time required to receive the necessary permits can be significant. Barriers to expansion are not as high as barriers to *de novo* entry. Existing aggregate operations can, in general, increase licensed reserves within two to four years of getting the rights to the land adjacent to their property.

GTA West and GTA East

37. As regards the GTA West, the divestiture of Blue Circle's "Acton" and "Aberfoyle" operations is sufficient to remove the likelihood of a substantial lessening of competition resulting from the Proposed Transaction. Acton sells very little aggregates to Blue Circle RMC operations compared to its total production, such that the DCO does not require that it be sold to the Cement/RMC buyer. The "Aberfoyle" operations, on the other hand, sell significant quantities of aggregates to Blue Circle's RMC operations and therefore the DCO requires that these operations be, first, offered to the Cement/RMC buyer. The only remaining Blue Circle operation in GTA West is in "Caledon". Pursuant to an agreement with Armbro Construction Ltd., Lafarge will only retain a 50% production interest in the Caledon operation. Lafarge's retention of a 50% production interest in the Caledon operation would not likely substantially lessen competition in this market.

38. As regards GTA East, the DCO requires the divestiture of all of Blue Circle's aggregates operations in that region. Blue Circle's "Sunderland" aggregates operation sells a significant portion of its output to Blue Circle RMC operations. Therefore, the DCO requires that this operation be first offered to the Cement/RMC buyer. Blue Circle's "Mosport" reserves are to be divested but need not first be offered to the Cement/RMC buyer.

Tri-City

39. The acquisition of Blue Circle aggregates operations in the Tri-City market is likely to substantially lessen competition in that market. Both of Blue Circle's "Aberfoyle" (see above) and "Cambridge" operations sell significant portions of

their output to Blue Circle RMC operations. Therefore, the DCO requires that those operations be first offered to the Cement/RMC buyer.

London

40. The acquisition of all three of Blue Circle's aggregate operations in the London market would substantially lessen competition. Lafarge's retention of the "Byron" operations would, however, only increase its licensed reserves market share by [ ] percentage points, bringing Lafarge's licensed reserve market share to approximately [ ] percent, and its share of sales based on 2000 estimates to approximately [ ] percent. Competition in London will not be substantially lessened as a result of the acquisition by Lafarge of the Bryon operation. The DCO requires that the North London sites and reserves be first offered to the Cement/RMC buyer. While the DCO requires that the Putnam operations, as well as its interest in the Woodstock pit, be sold, they need not first be offered to the Cement/RMC buyer.

Niagara Peninsula

41. In the Niagara Peninsula, Lafarge will acquire the "Fonthill" sand deposit from Blue Circle. With the acquisition, Lafarge replaces Blue Circle as the principal supplier of sand in the Niagara Peninsula, as the Fonthill deposit is the only licensed sand reserve in the Niagara peninsula. The potential anti-competitive impact of this acquisition hinges on Lafarge's ability to leverage it into other product lines. The potential for anti-competitive effects resulting from this acquisition is effectively dealt with by the DCO's requirement that the Fonthill operation supply aggregates on a non-discriminatory basis.

Cobourg/Belleville

42. The acquisition of Blue Circle's "Brighton" operations is likely to substantially lessen competition in the Cobourg/Belleville aggregates market. This operation sells significant portions of its output to Blue Circle RMC operations. Therefore, the DCO requires that the Brighton operations, first, be offered to the Cement/RMC buyer.

Simcoe

43. Lafarge's acquisition of the Orillia RMC facility and aggregates pit will only increase Lafarge's licensed reserve market share by [ ] percentage points. The

Orillia quarry had a minimal market impact pre-merger. The acquisition will not substantially lessen competition in Simcoe.

Ottawa-Hull

44. Although the former Blue Circle Ottawa quarry has already been sold, Blue Circle still owns a sand deposit in Wakefield, Quebec. While Wakefield's share of reserves is small, Lafarge already has, as indicated above, the leading share of Ottawa-Hull reserves. As a result, Lafarge's acquisition of Blue Circle's Wakefield reserve is likely to substantially lessen competition and the DCO requires that the Wakefield, Quebec reserve be divested but need not, first, be offered to the Cement/RMC buyer.

Brantford/Paris

45. Lafarge's acquisition of Blue Circle's three aggregates operations in the region is likely to substantially lessen competition in the Brantford/Paris market. Given the relatively low portion of sales from these sites to Blue Circle RMC operations, the DCO requires that these three operations be divested but need not first be offered to the Cement/RMC buyer.

(iii) Summary

46. In summary, absent the proposed remedy, Lafarge's acquisition of Blue Circle's aggregates operations in the GTA West, GTA East, Tri-City, London, the Niagara Peninsula, Cobourg/Belleville, Brantford/Paris and Ottawa-Hull markets is likely to lessen competition substantially in those areas. This substantial lessening of competition will be eliminated by the implementation of the DCO. Pursuant to the DCO, the divestiture of aggregates assets falls into two distinct groups, the "Great Lakes Aggregates Package" and the "Other Aggregates Package". The Great Lakes Aggregates Package must, first, be offered to the buyer of the Blue Circle cement and ready-mix operations ("Great Lakes Package") who may choose to purchase these assets should it believe such purchase necessary to make it competitive with the other integrated cement companies. Operationally, these assets go well together because there are significant internal aggregates sales to the Blue Circle RMC operations to be divested as part of the Great Lakes Package.

47. The operations identified as the Other Aggregates Package are to be offered to independent buyers as well as to the purchaser of the Great Lakes Package. If the purchaser of the Great Lakes Package buys these assets, this will replicate the

pre-merger situation. If the Other Aggregates Package is sold to a new entrant it will result in the same or an increased number of competitors in some local markets.

E. Asphalt/Paving (Road Construction)

48. The relevant product market is asphalt and paving. The relevant geographic markets are the two areas, London and Brantford, where Blue Circle and Lafarge compete.

(i) Overview of Asphalt/Paving Industry

49. The asphalt business is the supply of sand, gravel, stone chips and asphalt used in the building, surface treating, repair and resurfacing of provincial, county, township and municipal roads. Paving essentially involves laying asphalt in road construction projects for provincial, municipal, and other governments, and private works for commercial entities (roads in new subdivisions, parking lots, and driveways).

50. The vast majority of road construction, including paving, contracts are made by public or private tenders.

51. There are barriers to entry into asphalt/paving production.

52. There is an important vertical link between asphalt/paving and aggregates production. Asphalt/paving together with other road construction activities accounts for well over half of the output of most aggregates operations.

53. Blue Circle's asphalt/paving business, TCG Asphalt & Construction Inc. ("TCG"), is located in Brantford and London, Ontario. It produces hot-mixed asphalt for internal use and, to some extent, for sale to third parties. Asphalt itself could form a separate product market, given its unique functional characteristics as compared to concrete, however, given that Lafarge's own asphalt/paving business (formerly Warren Paving, which it acquired in 2000) also supplies its own asphalt, it is unnecessary in the context of the Proposed Transaction to treat them separately.

54. Asphalt laid by pavers is produced at both fixed and portable plants. Pavers with fixed plants generally operate on a regional basis, *i.e.* in a territory that can extend up to 150 kilometres from their plant. Hot-mixed asphalt can be transported for 2 to 4 hours without deteriorating.

(ii) Position of Lafarge and Blue Circle in Relevant Asphalt/Paving Markets and Likely Competitive Effects

55. Lafarge and Blue Circle compete in asphalt/paving in two local markets, Brantford and London, Ontario. In these local markets, each company has fixed asphalt plants, is a leading asphalt/paving provider, and is each other's principal competitor.

56. Lafarge and Blue Circle each would generally have a market share in the range of [to] percent, based on past sales. CR4s in each of Brantford and London would be over 65 percent. Absent the proposed remedy, the acquisition of Blue Circle's TCG subsidiary would substantially lessen competition in the relevant markets.

57. To remedy the substantial lessening of competition in the two asphalt/paving markets, the DCO requires that TCG be divested.

F. Cold-Patch Asphalt

58. "Cold patch" asphalt allows for the repair of potholes, significant cracks, ruts, *etc.* regardless of the weather outside. There are two types of cold patch asphalt, premium or high-performance (hereinafter "Premium") and regular. QPR Corp., a Blue Circle company, makes and sells Premium cold patch asphalt, in liquid and bulk forms in Ontario, Quebec, New Brunswick and Nova Scotia. Lafarge Canada Inc. recently began selling a Premium bulk cold patch asphalt, in Ontario, alone. Under any available estimate of market share, as a recent (and small) entrant, Lafarge Canada Inc. is not an effective or strong competitor to the market leaders in the Premium cold patch asphalt business in Ontario. Accordingly, the Commissioner concludes that the acquisition of QPR Corp. is not likely to prevent or lessen competition substantially in respect of this market.

G. Pre-Cast Concrete

59. Pre-cast concrete structures are used in large construction/engineering projects such as high rise buildings, low and mid-rise apartment buildings, hotels, motels, parking garages, and nursing homes. Lafarge competes with Blue Circle in the provision of only one of these products. However, the extent of the competitive overlap between the parties is minimal. Thus, the Proposed Transaction is not likely to prevent or lessen competition in pre-cast concrete markets in Ontario.

H. Concrete Pipe

60. Concrete pipe serves as a conduit for irrigation, water supply lines, sanitary sewers, culverts, and storm drains. Lafarge and Blue Circle are already the 50/50 owners of Centennial Concrete and Pipe Products Inc., which company supplies concrete pipe in Ontario. The Proposed Transaction simply results in Lafarge acquiring the remaining 50 percent share of this company. There are several effective competitors remaining in the Ontario concrete pipe market. Thus, the Proposed Transaction is not likely to prevent or lessen competition substantially in respect of the concrete pipe market in Ontario.

IV. DESCRIPTION AND ANTICIPATED IMPACT OF THE DRAFT CONSENT ORDER

61. By way of summary, the DCO requires:

    (a) the divestiture of all of the Canadian cement business of Blue Circle, including the two cement plants and their limestone quarries, related Canadian and U.S. distribution facilities, and all sales administration and distribution related thereto,[6] together with all of the Canadian RMC operations of Blue Circle that overlap, in any significant way, with those of Lafarge, being all Blue Circle RMC operations in Ontario, except those in Orillia and Bracebridge, and 1 RMC operation in Quebec (the "Great Lakes Package");

    (b) the divestiture of the Mississauga, Ontario Blue Circle Aggregates Canada leased head office and of the aggregates operations and/or lands of Blue Circle located at Cambridge, Sunderland/Kawartha Lake, Aberfoyle, Brighton, and North London, Ontario, to be, first, offered to the purchaser of the Great Lakes Package described in subparagraph (a) (the "Great Lakes Aggregates Package");

    (c) the divestiture of the Blue Circle aggregates operations and/or lands located at Acton, Putnam, Brantford, and Mosport, Ontario and at Wakefield, Quebec (the "Other Aggregates Package");

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[6] With the exception of an unused cement terminal at Coniston, Ontario, which is not, and is not likely to be used in the cement business.

(d) the divestiture of TCG, including leased lands in Brantford and London, Ontario (the "Asphalt and Paving (Road Construction) Package");

(e) that the Fonthill aggregates operation offers to supply aggregate products to all purchasers at commercially reasonable and non-discriminatory prices and terms; and

(f) that Lafarge proceed with subparagraphs (a) to (d) according to the divestiture procedure set out in the DCO.

62. With respect to the Ontario cement market and local RMC markets in, predominantly, Ontario ("Great Lakes Package"), the remedy proposed in the DCO will be effective in removing the substantial lessening of competition which would otherwise have been likely to result in these markets from the Proposed Transaction. Linking the divestiture of Blue Circle's cement business in Ontario to the divestiture of the vast majority of Blue Circle's RMC businesses in, predominantly, Ontario will permit the purchaser of these businesses to achieve the necessary scale of production to be competitive in the Ontario cement market. As well, the DCO requires that the Great Lakes Aggregates Package be, first, offered to the buyer of the Great Lakes Package and can be purchased by the buyer should it conclude that it requires these assets in order to be competitive with other integrated cement companies.

63. The DCO will also eliminate the substantial lessening of competition in the local aggregates markets included in the "Other Aggregates Package" that would otherwise arise from the Proposed Transaction, by requiring divestiture to the buyer of the Great Lakes Package or a third party, because the Other Aggregates Package is comprised of the core assets of the Blue Circle aggregates business, which was profitably run as an independent operating unit. Thus, the remedies proposed in the DCO will be effective in removing the substantial lessening of competition in these aggregates markets that would otherwise have been likely to result from the Proposed Transaction.

64. Similarly, in regard to the asphalt/paving (road construction) markets in London and Brantford, Ontario, the DCO requires the divestiture of TCG, a subsidiary of Blue Circle. This requirement of the DCO will be effective in removing the substantial lessening of competition that would otherwise arise in relation to asphalt/paving in London and Brantford, Ontario, as it comprises Blue Circle's entire hot-mixed asphalt and paving business in Ontario.

65. The divestiture procedure features of the DCO require that the Commissioner approve any divestiture of the above-referenced businesses ("Affected Businesses", as defined in the DCO) and makes provision for divestiture by a Trustee if the businesses are not divested by Lafarge within 180 days of the closing of the Proposed Transaction. The former requirement provides the Commissioner and the Competition Tribunal with assurance that divestitures that would not remove the likelihood of a substantial lessening of competition in a relevant market will not arise. The latter provision provides a strong incentive for Lafarge to accomplish the divestitures in a timely manner.

V. ALTERNATIVES TO THE SETTLEMENT

66. As an alternative to the DCO, the Commissioner considered contested litigation seeking divestitures in the relevant markets. The Commissioner has accepted the DCO for a number of reasons. First, the Commissioner is satisfied from his review of this transaction and related matters that the proposed divestitures will eliminate the substantial lessening of competition which would otherwise have arisen from the Proposed Transaction. Second, the Commissioner believes that the proposed divestitures should result in sales of the Affected Businesses to effective competitors with a sufficient scale and scope of business to prevent any possible exercise of market power in the markets concerned. Third, the DCO provides for divestitures which are consistent with those the Commissioner understands are being considered, on consent, by the U.S. Federal Trade Commission given the competitive impact of the Proposed Transaction in the U.S. Fourth, the DCO provides a timelier and more certain outcome for customers of cement, RMC, aggregates and asphalt/paving in the relevant markets. Finally, the DCO provides a timelier and more certain outcome for Lafarge and minimizes the intrusion into its contractual relations with other parties, in order that it may proceed with the remainder of the Proposed Transaction.

VI. CONCLUSION

67. For the reasons presented herein, the Commissioner recommends the settlement and asks the Competition Tribunal to issue the DCO.

CT-01

PUBLIC

THE COMPETITION TRIBUNAL

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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

CONSENT ORDER IMPACT STATEMENT

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