Statement of the Federal Trade Commission
In the Matter of Holcim Ltd. And Lafarge S.A.
FTC File No. 141-0129
May 8, 2015

The Federal Trade Commission has voted to accept a settlement to resolve the likely anticompetitive effects of Holcim Ltd.'s ("Holcim") proposed $25 billion acquisition of Lafarge S.A. ("Lafarge"). We have reason to believe that, absent a remedy, the proposed acquisition is likely to substantially reduce competition in the manufacture and sale of portland cement and slag cement. As we explain below, we believe the proposed remedy, tailored to counteract the likely anticompetitive effects of the proposed acquisition without eliminating any efficiencies that might arise from the combination of the two companies, is in the public interest.[1]

Holcim is a Switzerland-based, vertically integrated global building materials company, with products that include cement, clinker, concrete, lime, and aggregates. Lafarge is a France-based, vertically integrated global building materials company that primarily produces and sells cement, aggregates, and ready-mix concrete.

The merged company will be the world's largest cement manufacturer, with combined 2014 revenues of approximately $35 billion and operations in more than 90 countries. Our competitive concerns pertain to specific geographic markets in the United States where Holcim and Lafarge each make significant cement sales. The proposed merger would likely harm competition for the distribution and sale of portland cement, an essential ingredient in making concrete, in 12 local or regional markets. It would also threaten to lessen competition for the distribution and sale of slag cement, a specialty cement product used in certain applications, in two other regional markets.

The merger would create a merger to monopoly in some of the challenged relevant markets, while in others at most three competitors would remain post-merger. Absent a remedy, the Herfindahl-Hirschman Index ("HHI") in each of these markets would exceed 3,400, making every market highly concentrated according to the 2010 Horizontal Merger Guidelines.[2] The increase in HHI in each market would exceed 900, well above the 200-point change necessary to trigger the Guidelines' presumption that the merger is "likely to enhance market power."[3] There is no evidence rebutting this presumption. If anything, the evidence suggests that the estimates of market concentration understate our concerns.

In each of the relevant markets at issue, there is evidence that unilateral anticompetitive effects are likely. Substantial evidence demonstrates that, for many customers in the relevant areas, the merging firms are their preferred suppliers and that customers have benefitted from

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[1] Chairwoman Ramirez, Commissioner Brill, Commissioner Ohlhausen, and Commissioner McSweeny join in this statement.
[2] *See* 2010 HORIZONTAL MERGER GUIDELINES § 5.3. The threshold at which a market is considered "highly concentrated" under the Guidelines is 2,500.
[3] *Id*.

substantial head-to-head competition between the parties in negotiating prices for portland and slag cement. Customers in every single one of the affected markets expressed concern that their inability to play the merging parties off each other would diminish their ability to obtain better prices or other favorable terms. As the Guidelines note, a combination of two competing sellers "can significantly enhance the ability and incentive of the merged entity to obtain a result more favorable to it, and less favorable to the buyer, than the merging firms would have offered separately absent the merger."[4] In addition, the evidence demonstrates that not all of the remaining suppliers in the relevant markets provide customers with practical alternatives to the merging parties for a variety of reasons, including capacity constraints, lack of distribution assets to supply new customers, and downstream vertical integration.[5]

The evidence also suggests that the proposed acquisition would increase the ability and incentives of the combined firm and other market participants to engage in coordinated behavior that would result in harm to consumers. The relevant markets have characteristics that make them susceptible to coordination. They are highly concentrated; the products are homogeneous; overall market elasticity is low; customer switching costs are low; and sales are relatively small, frequent, and usually not made pursuant to long-term contracts. There is also a high degree of transparency in these markets. Competitors are aware of each other's production capacities, costs, sales volumes, prices, and customers. Our concern about the potential for coordinated effects in these markets is heightened by evidence that cement suppliers, including the same global firms that compete in these markets, have expressly colluded in other geographic markets with similar characteristics.[6] By reducing the number of significant competitors to only two or three, the proposed merger would make it easier for the remaining firms to coordinate, monitor compliance with, and retaliate against potential deviation from, a coordinated scheme. We therefore have reason to believe that the merger may enhance the vulnerability to coordinated effects that already exists in the relevant markets.[7]

In his dissent, Commissioner Wright takes issue with our decision to seek a remedy in six markets, going to great lengths to argue that we are improperly relying solely on the increase in market concentration to justify our action, that we are creating new presumptions of harm, that

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[4] *Id*. § 6.2.

[5] For instance, ready-mix concrete producers are often unwilling to purchase cement from their rivals.

[6] *See*, *e.g.*, Press Release, European Commission, The Court of Justice Upholds in Substance the Judgment Delivered by the Court of First Instance in 2000 Concerning the Cement Cartel, Jan. 7, 2004, *available at* http://europa.eu/rapid/press-release_CJE-04-2_en.htm (announcing fines of EUR 100 million on cement suppliers for collusion); Press Release, German Federal Cartel Office, Highest fine in Bundeskartellamt History is Final, April 10, 2013, *available at* http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/10_04_2013_BGH-Zement.html (announcing fines of EUR 380 million on Lafarge, Holcim, and others for collusion); Philip Blenkinsop, *Belgian Competition Regulator Fines Cement Groups*, Aug. 31, 2013, *available at* http://www.reuters.com/article/2013/08/31/belgium-cement-idUSL6N0GW05U20130831 (reporting EUR 14.7 million in fines levied by the Belgian Competition Council on Holcim and others for collusion); Press Release, Polish Office of Competition and Consumer Protection, UOKiK Breaks Cement Cartel, Dec. 12, 2013, *available at* https://uokik.gov.pl/news.php?news_id=10754&news_page=1 (announcing decision of Poland's Court of Competition and Consumer Protection to impose fines of PLN 339 million (~$93 million) on cement suppliers for collusion involving Lafarge and others); *see generally* MERGER GUIDELINES § 7.2.

[7] *See* MERGER GUIDELINES § 7.1.

we lack a "credible basis" on which to conclude that the merger may enhance the vulnerability of the relevant markets to coordination, and that our action is otherwise inconsistent with the Guidelines. We respectfully disagree with Commissioner Wright's various characterizations of the Commission's statement in this matter. The Guidelines make clear that a substantial increase in concentration caused by a merger continues to be a significant factor in merger analysis because highly concentrated markets with only two or three large firms are more likely to lead to anticompetitive outcomes.[8] Economic theory and empirical research bear this out.[9] As a result, we view the evidence in a merger that reduces the number of firms in a relevant market to two or three differently from a merger that only reduces the number of firms to six or seven. Where, as here, a proposed merger significantly increases concentration in an already highly concentrated market, a presumption of competitive harm is justified under both the Guidelines and well-established case law.[10]

Moreover, despite Commissioner Wright's assertion to the contrary, our investigation went beyond consideration of market concentration and application of the Guidelines presumption of competitive harm and, as noted above, produced additional evidence supporting our belief that the effect of the proposed acquisition would be to substantially lessen competition and harm cement customers in the relevant markets. On coordinated effects, we found numerous characteristics of the market making it vulnerable to collusion. It is particularly troubling that existing cement suppliers have expressly colluded in other geographic markets with similar characteristics. We also examined whether other market factors, such as the possibility of entry or expansion, might alleviate our competitive concerns. The evidence demonstrates the presence of high barriers to entry for both portland cement and slag cement, including significant capital

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[8] *Id.* § 2.1.3 ("Mergers that cause a significant increase in concentration and result in highly concentrated markets are presumed to be likely to enhance market power, but this presumption can be rebutted by persuasive evidence showing that the merger is unlikely to enhance market power."). *See also* Carl Shapiro, *The 2010 Horizontal Merger Guidelines: From Hedgehog to Fox in Forty Years*, 77 ANTITRUST L.J. 701, 708 (2010) (explaining that the Guidelines' flexible approach "certainly does *not* mean that they reject the use of market concentration to predict competitive effects, as can be seen in Sections 2.1.3 and 5," that the Guidelines "recognize that levels and changes in market concentration are more probative in some cases than others," and that "the Agencies place considerable weight on HHI measures in cases involving coordinated effects") (emphasis in original).

[9] *See, e.g.*, Steven C. Salop, *The Evolution and Vitality of Merger Presumptions: A Decision-Theoretic Approach* 11 (Georgetown Law Faculty Publications and Other Works, Working Paper No. 1304, 2014), *available at* http://scholarship.law.georgetown.edu/facpub/1304 ("[V]arious theories of oligopoly conduct—both static and dynamic models of firm interaction—are consistent with the view that competition with fewer significant firms on average is associated with higher prices.… Accordingly, a horizontal merger reducing the number of rivals from four to three, or three to two, would be more likely to raise competitive concerns than one reducing the number from ten to nine, *ceteris paribus*."); Steffen Huck, et al., *Two Are Few and Four Are Many: Number Effects from Experimental Oligopolies*, 53 J. ECON. BEHAVIOR & ORG. 435, 443 (2004) (testing the frequency of collusive outcomes in Cournot oligopolies and finding "clear evidence that there is a qualitative difference between two and four or more firms"); Timothy F. Bresnahan & Peter C. Reiss, *Entry and Competition in Concentrated Markets*, 99 J. POL. ECON. 977, 1006 (1991) (finding, in a study of tire prices, that "[m]arkets with three or more dealers have lower prices than monopolists or duopolists," and noting that, "while prices level off between three and five dealers, they are higher than unconcentrated market prices").

[10] *See* MERGER GUIDELINES § 2.1.3; *Chicago Bridge & Iron Co. v. FTC*, 534 F.3d 410, 423 (5th Cir. 2008) ("Typically, the Government establishes a *prima facie* case by showing that the transaction in question will significantly increase market concentration, thereby creating a presumption that the transaction is likely to substantially lessen competition."); *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 716 (D.C. Cir. 2001) (merger to duopoly creates a rebuttable presumption of anticompetitive harm through direct or tacit coordination).

costs and regulatory requirements. Entry sufficient to deter or counteract the likely harm from the proposed transaction would thus be neither timely nor likely.

In the face of our competitive concerns, based on what we had learned about the nature and conditions of the relevant markets, the parties proposed divestitures to remedy our concerns in each of those markets. The parties did not comply with our Second Requests. While continued investigation may have produced more evidentiary support for our complaint, including those markets for which Commissioner Wright dissents, we do not think such a course would have been justified. We have ample evidence to support our allegations of anticompetitive harm and had no reason to burden the parties with the expense and delay of further inquiry for the sole purpose of obtaining additional, cumulative evidence. Nor would further inquiry have been a good use of Commission resources.

Merger analysis is necessarily predictive. The evidence in this case provides us with sufficient reason to believe that the proposed acquisition is likely to substantially reduce competition, and there is no evidence of countervailing efficiencies that weigh against the remedy. We believe that the public interest is best served by remedying the competitive concerns as set forth in our proposed consent order.