

IN THE MATTER OF

CANADA CEMENT LAFARGE LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF
THE CLAYTON ACT

Docket C-3100. Complaint, Dec. 21, 1982—Decision, Dec. 21, 1982

This consent order requires a Montreal, Canada producer of cement, among other things, to fully divest itself of a Chattanooga, Tenn. cement manufacturing plant and specified terminals associated with it within eighteen (18) months of the date the order becomes final to a Commission-approved purchaser. For five years, the respondent must offer to sell to the purchaser of the plant and terminals, twenty thousand tons of cement annually. Further, respondent must offer technical assistance for operation of the plant and terminals. Respondent is required to offer specific tonnages of clinker and cement to independent buyers on an annual basis for five years. Should respondent fail to divest itself of the Tennessee plant within the specified time period, it must then sell an Alabama plant and associated terminals within a twelve (12) month period.

Appearances

For the Commission: *Jerry A. Philpott, Jeffrey Behm, Martha Oppenheim, Allen Hickey and Franklin M. Lee.*

For the respondents: *R. Bruce MacWhorter and Edward H. Tuck, Shearman & Sterling, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Canada Cement Lafarge Ltd. ("Canada Cement Lafarge"), a corporation subject to the jurisdiction of the Commission, intends to acquire all of the outstanding common stock of General Portland Inc. ("General Portland"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21, and Section 5(b) of the Federal Trade Commission Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

I. Definitions

1. For the purpose of this complaint the following definitions shall apply:

a. *Cement* means portland cement Types I through V, as specified by the American Society for Testing and Materials.

b. *Clinker* means the intermediate product in the cement manufacturing process produced by crushing raw materials (primarily limestone, shale, clay, slate, silica, sand or iron ore) and then burning the mixture in high temperature rotary kilns.

c. *Relevant Markets* means the *Inland Market* and the *Florida Market*, as defined herein.

1. *Inland Market* means northern and eastern Alabama, Georgia, southeastern Tennessee and northern Florida.

2. *Florida Market* means the peninsular region of the State of Florida.

II. Canada Cement LaFarge

2. Canada Cement Lafarge is an approximately 54 percent-owned subsidiary of Lafarge Coppee S.A. Canada Cement Lafarge is engaged primarily in the production and sale of cement, including sales to purchasers in the Florida Market.

3. Lafarge Coppee S.A. is a French corporation with its principal executive offices at 28, rue Emile-Menier, 75116 Paris, France. LaFarge Coppee S.A. is the third largest manufacturer and seller of cement in the world. In 1980, Lafarge Coppee S.A. sold approximately 250,000 tons of clinker to purchasers in the Florida Market.

4. In 1980, Canada Cement Lafarge had total sales of approximately \$711,100,000 (Canadian) and total assets in 1980 of approximately \$853,700,000 (Canadian).

5. Citadel Cement Corporation is a wholly-owned subsidiary of Canada Cement Lafarge. Citadel Cement Corporation (a corporation organized and existing under the laws of Maryland) has its principal place of business at 2700 Cumberland Parkway, Atlanta, Georgia.

6. Citadel Cement Corporation owns a cement plant in the U.S. located at Demopolis, Alabama and sells cement in the Inland Market.

III. General Portland

7. General Portland is a corporation organized and existing under the laws of the State of Delaware, with its principal office at 12700 Park Central Place, Dallas, Texas.

8. General Portland is primarily engaged in the production and sale of cement.

9. In 1980, General Portland had cement sales of approximately \$281,100,000 and total assets in 1980 of \$320,800,000.

10. General Portland has cement plants located in Texas, Florida, Tennessee, California, Ohio, Kansas, and Pennsylvania. General Portland's Tennessee plant sells cement in the Inland Market. General Portland's Florida plants sell cement in the Florida market.

IV. Jurisdiction

11. At all times relevant herein General Portland and Canada Cement Lafarge have been engaged in the production and sale of cement in interstate commerce and General Portland and Canada Cement Lafarge are engaged in commerce as "commerce" is defined in the Clayton Act, as amended, 15 U.S.C. 12, *et seq.*, and each is a corporation whose business is in or affects commerce as "commerce" is defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*

V. The Acquisition

12. On or about October 2, 1981, Canada Cement Lafarge made a cash tender offer to acquire any or all of the outstanding common stock of General Portland at \$47.00 (U.S.) per share for a total price of approximately \$326 million (U.S.).

VI. Trade and Commerce

13. The relevant lines of commerce are the manufacture and sale of cement.

14. The relevant sections of the country are the Inland Market and the Florida Market.

VII. Actual Competition

15. General Portland and Canada Cement Lafarge are actual competitors in the relevant lines of commerce in the relevant sections of the country.

VIII. Effects

16. The effects of the proposed acquisition may be to substantially lessen competition or to tend to create a monopoly in the relevant lines of commerce in the Relevant Markets in violation of Section 7

of the Clayton Act, as amended, 15 U.S.C. 18, and the acquisition constitutes an unfair method of competition and unfair act or practice within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

- (a) actual competition between General Portland and Canada Cement Lafarge in the manufacture and sale of cement in the Relevant Markets may be eliminated;
- (b) actual competition among competitors generally in the manufacture and sale of cement in the Relevant Markets may be lessened;
- (c) concentration in the manufacture and sale of cement in the Relevant Markets may be increased and the possibilities for eventual deconcentration may be diminished;
- (d) mergers or acquisitions between other cement producers in the Relevant Markets may be fostered, thus causing a further substantial lessening of competition or tendency toward monopoly in the manufacture and sale of cement; and
- (e) barriers to entry into the manufacture and sale of cement in the Relevant Markets may be increased.

Violations Charged

17. By reason of the foregoing, the proposed acquisition by Canada Cement Lafarge of the outstanding common stock of General Portland would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition of the common stock of General Portland Inc. ("GP") by Canada Cement Lafarge Ltd. ("CCL"), and CCL and its parent, Lafarge Coppee S.A. ("Lafarge") having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge CCL and Lafarge with violations of the Federal Trade Commission Act and the Clayton Act; and

CCL, Lafarge, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by CCL and Lafarge of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the

signing of said agreement is for settlement purposes only and does not constitute an admission by CCL and Lafarge that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that CCL and Lafarge have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Canada Cement Lafarge Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at 606 Cathcart, Montreal, Quebec, Canada H3B 1L7.

2. Lafarge Coppee S.A. is a French corporation with its principal executive offices at 28, rue Emile-Menier, 75116 Paris, France. Lafarge Coppee S.A. owns approximately 54% of the voting capital stock of Canada Cement Lafarge Ltd.

3. General Portland Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its principal executive offices located at 12700 Park Central Place, Dallas, Texas.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Canada Cement Lafarge Ltd., and the proceeding is in the public interest.

ORDER

For the purpose of this Order:

- a. *Respondents* means Canada Cement Lafarge Ltd., a corporation organized, existing and doing business under the laws of Canada with its office and principal place of business located at 606 Cathcart, Montreal, Quebec, Canada H3B 1L7; Lafarge Coppee S.A., a French corporation with its principal executive offices located at 28, rue Emile-Menier, 75116 Paris, France; and their subsidiaries and the successors and assigns of their businesses.

- b. *Subsidiary* means any corporation in which Respondents own,

either directly or indirectly, more than fifty percent (50%) of the outstanding shares of a class of securities having voting power to elect a majority of the Board of Directors of the corporation (whether or not any other class of security has or might have voting powers by reason of the happening of a contingency).

c. *Chattanooga Plant* means the cement manufacturing plant located at Chattanooga, Tennessee, presently owned or leased by General Portland Inc., and all assets associated with the plant as may be necessary for the plant to operate as a going concern and a viable competitor in the production and sale of cement. It does not include the Specified Terminals defined in (e) below.

d. *Demopolis Plant* means the cement manufacturing plant presently owned or leased by Respondents at Demopolis, Alabama, (and divestiture of the Demopolis plant shall include the granting of option(s) to acquire any or all of the associated distribution terminals at Birmingham, Alabama; Mobile, Alabama; Doraville, Georgia; Atlanta, Georgia; Bainbridge, Georgia; and New Orleans, Louisiana) and all other assets associated with the plant as may be necessary for the plant to operate as a going concern and a viable competitor in the production and sale of cement.

e. *Specified Terminals* means the distribution terminals in Knoxville, Tennessee; Atlanta, Georgia; Columbus, Georgia; and Tallahassee, Florida, all presently owned or leased by General Portland Inc., and the distribution terminal in Birmingham, Alabama, presently owned or leased by Respondents.

f. *Cement* means portland cement Types I through V, as specified by the American Society for Testing and Materials.

g. *Clinker* means the intermediate product in the cement manufacturing process produced by crushing raw materials (primarily limestone, shale, clay, slate, silica, sand or iron ore) and then burning the mixture in high temperature rotary kilns.

h. *Plant Area* means each area in the United States within a 300 mile radius of any cement plant owned or leased by Respondents in either the United States or Canada. For any acquisition(s) of assets subject to Paragraph VIII of this Order, *Plant Area* shall be determined as of the date of such acquisition(s).

i. *Independent Buyer* means any cement manufacturer other than Respondents.

I

It is ordered, That Respondents, their officers, directors, agents, representatives, and employees, within eighteen months from the

date on which this Order becomes final, shall divest themselves, absolutely, in good faith, of all right, title and interest in the Chattanooga Plant together with all additions and improvements thereto. If, at the expiration of eighteen months from the date on which this Order becomes final, Respondents have not divested the Chattanooga Plant, and no application for approval by the Commission of the divestiture of the Chattanooga Plant is pending, then Respondents shall either (1) divest the Chattanooga Plant within three months; or (2) divest the Demopolis Plant within twelve months; *provided, however*, that if at the expiration of eighteen months from the date on which this Order becomes final, an application for divestiture of the Chattanooga Plant is pending, the additional time that Respondents have to divest the Chattanooga Plant (three months) or the Demopolis Plant (twelve months) shall not begin to run, and an obligation to sell the Demopolis Plant shall not accrue, until and unless the pending application is finally disapproved by the Commission. Divestiture shall be made to an acquirer approved by the Commission.

II

It is further ordered, That as part of any divestiture of the Chattanooga Plant, Respondents shall offer to the proposed acquirer option(s) to acquire Respondents' rights, title and interest in the Specified Terminals and all of their right, title and interest to the surface and mineral rights to, and all improvements upon, the approximately 3,000 acres of land located in McMinn County near Calhoun, Tennessee, on the Hiawassee River and presently owned or leased by General Portland Inc.

III

It is further ordered, That for a period of five years from the date of their divestiture of the Chattanooga Plant, Respondents shall offer to sell at commercially reasonable wholesale prices, terms and conditions 20,000 tons of cement annually to the acquirer of the Chattanooga Plant.

IV

It is further ordered, That for a period of five years from the date of their divestiture of the Chattanooga Plant, Respondents shall offer to provide technical assistance to the acquirer of that plant at commercially reasonable prices, terms and conditions. If an acquirer

of the Chattanooga Plant requests technical assistance within a three year period from the date of his acquisition of the Chattanooga Plant for a modernization or replacement project extending beyond the five year period, and agrees to commercially reasonable prices, terms and conditions, Respondents shall provide that technical assistance for a reasonable time to complete the project.

V

It is further ordered, That for a period of five years from the date that this Order becomes final, Respondents shall offer to sell, or sell, including sales pursuant to contracts in force at the time this Order becomes final, to Independent Buyers with a cement manufacturing or grinding plant or distribution terminal in Florida for shipments to or delivery in Florida at commercially reasonable wholesale prices, terms and conditions: (1) at least 250,000 tons of cement annually; and (2) at least 250,000 tons of clinker annually.

VI

It is further ordered, That Respondents shall not be required to divest the Demopolis Plant in the event that, as a result of events beyond the control of Respondents, the said Chattanooga Plant has ceased to exist physically or to be operable as a plant for the production of cement.

VII

It is further ordered, That pending divestiture of the properties required by Paragraph I of this Order, or that may be divested under Paragraph II of this Order, Respondents shall not cause or permit the wasting or deterioration of such properties, in any manner which may impair the marketability or viability of any such properties, except for normal wear and tear or in the ordinary course of operation.

VIII

It is further ordered, That for a period of ten years Respondents shall not acquire, without the prior approval of the Commission, any cement manufacturing or grinding plant or distribution terminal in South Carolina, Georgia, Alabama, Tennessee and Florida or in any Plant Areas in which Respondents, at the time of the acquisition, are then engaged in the manufacture of cement.

IX

It is further ordered, That within one hundred and twenty days from the date on which this Order becomes final, and every one hundred and twenty days thereafter until they have fully complied with Paragraphs I and II of this Order, Respondents shall submit in writing to the Commission a verified report setting forth in such detail as the Commission staff shall request the manner and form in which they intend to comply, are complying or have complied therewith.

X

It is further ordered, That within sixty days from the date on which this Order becomes final, and annually thereafter upon each anniversary of the date on which this Order becomes final until the expiration of the prohibitions in Paragraph VIII of this Order, Respondents shall submit in writing to the Commission verified reports listing all acquisitions of any equity interest in, and mergers with, any business entity, corporate or noncorporate, engaged in the production of cement in the United States, the date of each such acquisition or merger, and such additional information relating thereto as may from time to time be requested.

XI

It is further ordered, That with respect to Paragraphs III and V of this Order, Respondents shall maintain adequate records to be furnished upon request of the staff of the Commission, which evidence compliance with the provisions of this Order, including, but not limited to records showing: the amount of cement or clinker sold pursuant to Paragraphs III or V of this Order, the identity of the purchasing persons and the prices, terms and conditions of the sale of such cement or clinker.

XII

It is further ordered, That Respondents shall notify the Commission at least thirty days prior to any proposed corporate changes which may affect compliance obligations arising out of this Order, such as dissolution, assignment or sale resulting in the emergence of successor corporations.

Modifying Order

100 F.T.C.

IN THE MATTER OF

AMERICAN MEDICAL ASSOCIATION

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 9064. Final Order, Oct. 12, 1979—Modifying Order, Dec. 22, 1982*

This order reopens the proceeding and modifies Paragraph IV(A) of the Commission's order issued on Oct. 12, 1979 (94 F.T.C. 701), *modified* May 19, 1982 (99 F.T.C. 440). The modification eliminates the requirement that the AMA utilize first class mail to send a copy of the order to its members.

MODIFICATION OF DECISION AND ORDER

The American Medical Association ("AMA") has requested that the Commission modify its Order in Docket No. 9064 to relieve AMA of its obligation under Paragraph IV(A) of the Order to send by first-class mail a copy of a letter, Appendix A to the Order, to each of its present members.

After duly considering AMA's petition, the Commission on December 22, 1982 determined that public interest considerations warrant reopening of the order, and that Paragraph IV(A) should be modified to relieve AMA of the obligation to send the required letter by first-class mail. Accordingly,

It is ordered, That the proceeding be, and it hereby is, reopened.

It is ordered, That the Order be, and it hereby is, modified by substituting for Paragraph IV(A) of the Order, the following:

IV

It is further ordered, That respondent American Medical Association:

A. Send by mail under separate cover a copy of a letter in the form shown in Appendix A to this Order to each of its present members and to each constituent and component organization of respondent, within sixty (60) days after this Order becomes final.