

Interlocutory Orders, Etc.

IN THE MATTER OF

**CRH PLC,
OLDCASTLE, INC.,
OLDCASTLE ARCHITECTURAL, INC.,
ROBERT SCHLEGEL,
AND
PAVESTONE COMPANY, LP**

Docket No. 9335 Order, January 29, 2009

Order granting complaint counsel's and respondents' joint motion to dismiss the complaint.

ORDER DISMISSING COMPLAINT

On January 14, 2009, the Federal Trade Commission issued the Administrative Complaint in this matter, having reason to believe that Respondents CRH plc ("CRH"), Oldcastle, Inc. (wholly owned by CRH), and Oldcastle Architectural, Inc. (an indirect subsidiary of CRH) -- and Robert Schlegel and Pavestone Company, LP (collectively, "Pavestone") -- had entered into an acquisition agreement which, if consummated, would violate 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. Complaint Counsel and the Respondents have now filed a Joint Motion to Dismiss Complaint, which states that the Respondents have decided not to proceed with the proposed acquisition by Oldcastle Architectural, Inc. of the Pavestone companies -- and that CRH has withdrawn its Hart-Scott-Rodino Notification and Report Forms filed for the proposed transaction -- and requests that the Commission dismiss the complaint.¹

¹ *Joint Motion to Dismiss Complaint* (January 15, 2009) ("Joint Motion"), available on the Adjudicative Proceedings page for this case at <http://www.ftc.gov/os/adjpro/d9335/index.shtm>.

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The Commission has determined to dismiss the Administrative Complaint without prejudice as the most important elements of the relief set out in the Notice of Contemplated Relief in the Administrative Complaint have been accomplished without the need for further administrative litigation.² In particular, the Respondents have announced that they have decided not to proceed with the proposed acquisition, and CRH has withdrawn its Hart-Scott-Rodino Notification and Report Forms filed for the proposed transaction. As a consequence, the Respondents would not be able to effect the proposed transaction without filing new Hart-Scott-Rodino Notification and Report Forms.

For the foregoing reasons, the Commission has determined that the public interest warrants dismissal of the Administrative Complaint in this matter. The Commission has determined to do so without prejudice, however, because it is not reaching a decision on the merits. Accordingly,

² See *In the Matter of Inova Health System Foundation, and Prince William Health System, Inc.*, Docket No. 9326, Order Dismissing Complaint (June 17, 2008), available at <http://www.ftc.gov/os/adjpro/d9326/080617orderdismisscmpt.pdf>; accord, *In the Matter of Red Sky Holdings LP, and Newpark Resources, Inc.*, Docket No. 9333, Order Dismissing Complaint (December 10, 2008), available at <http://www.ftc.gov/os/adjpro/d9333/081210redskycmpt.pdf>; *In the Matter of Equitable Resources, Inc., Dominion Resources, Inc., Consolidated Natural Gas Company, and The Peoples Natural Gas Company*, Docket No. 9322, Order Dismissing Complaint (January 31, 2008) (Public Version), available at <http://www.ftc.gov/os/adjpro/d9322/080204complaint.pdf>; *In the Matter of Swedish Match North America Inc., and National Tobacco Company, L.P.*, Docket No. 9296 (*Swedish Match*), Order Dismissing Complaint (January 4, 2001), available at <http://www.ftc.gov/os/2001/01/swedishdismisscmp.htm>; *In the Matter of H.J. Heinz Company, Milnot Holding Corporation, and Madison Dearborn Capital Partners, L.P.*, Docket No. 9295 (*H.J. Heinz*), Order Dismissing Complaint (December 4, 2001), available at <http://www.ftc.gov/os/2001/12/heinzorder.pdf>.

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IT IS ORDERED THAT the Administrative Complaint in this matter be, and it hereby is, dismissed without prejudice.

By the Commission.

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IN THE MATTER OF**POLYPORE INTERNATIONAL, INC.***Docket No. 9327 Order, February 2, 2009*

Order granting complaint counsel's motion for court enforcement of a subpoena directed to Nippon Sheet Glass and certified to the Commission on January 23, 2009.

ORDER

On January 23, 2009, Complaint Counsel filed a Motion for Certification to the Commission for Court Enforcement of a subpoena in this matter, in order for Complaint Counsel to conduct a deposition of Nippon Sheet Glass ("NSG") in Japan. On January 28, 2009, Complaint Counsel filed a Supplemental Statement of Counsel. By email dated January 29, 2009, to the Office of Administrative Law Judges, Respondent indicated that it does not oppose Complaint Counsel's motion. On January 29, 2009, Administrative Law Judge D. Michael Chappell certified Complaint Counsel's motion to the Commission, with the recommendation that the Commission facilitate the procedures necessary to conduct a voluntary deposition of NSG's corporate representative in Japan. The Commission has determined to grant Complaint Counsel's motion. Accordingly,

IT IS ORDERED THAT the Acting General Counsel of the Commission or his delegate be, and he or she hereby is, authorized, pursuant to Section 9 of the Federal Trade Commission Act, and directed to take appropriate action to enforce complaint counsel's subpoena to Nippon Sheet Glass.

By the Commission.