

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

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In the Matter of)	
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CEMEX S.A. de C.V.,)	Docket No. C-4131
a corporation.)	
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)	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Cemex S.A. de C.V. (“Cemex”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire RMC Group PLC (“RMC”), 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Cemex is incorporated as a stock corporation with variable capital organized under the laws of the United Mexican States with its office and principal place of business located at Av. Ricardo Margáin Zozaya #325, Colonia del Valle Campestre, Garza García, Nuevo León, Mexico 66265. Respondent Cemex operates all of its business in the United States through its wholly owned subsidiary, Cemex Corp., which operates all of its business through its wholly owned subsidiary, Cemex Inc. Cemex Inc. has its principal place of business on 840 Gessner Road, Suite 1400, Houston, Texas 77024.

2. Respondent, among other things, is engaged in the manufacture and sale of ready-mix concrete and aggregates in Tucson, Arizona.

3. Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. §12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE ACQUIRED COMPANY

4. RMC is a public limited company organized under the laws of England and Wales with registered number 249776 whose registered principal office is located at RMC House, Coldharbour Lane, Thorpe, Egham, Surrey TW20 8TD, United Kingdom. RMC operates all of its business in the United States through its wholly owned subsidiary, RMC USA, Inc., which has its headquarters at One Glenlake Parkway, Suite 600, Atlanta, GA 30328.

5. RMC, among other things, is engaged in the manufacture and sale of ready-mix concrete and aggregates in Tucson, Arizona.

6. RMC is, and at all times herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. THE PROPOSED ACQUISITION

7. Pursuant to an Implementation Agreement dated September 27, 2004, Cemex proposed to acquire 100 percent of the existing shares of RMC for approximately \$5.8 billion (the “Acquisition”).

IV. THE RELEVANT MARKET

8. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture and sale of ready-mix concrete.

9. Ready-mix concrete is a construction material used to build various structures, including buildings, highways, bridges, tunnels, and numerous other projects. Ready-mix concrete is produced at local plants by mixing a cementitious material, typically Portland cement, and aggregates (crushed rocks) with water to form a slurry. In certain construction projects, silica sand is combined with aggregate to produce different types of ready-mix concrete. A chemical reaction induced by the combination of cement and water causes the mixture to harden and gain strength.

10. For the purposes of this Complaint, metropolitan Tucson, Arizona is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce. Ready-mix concrete is a perishable product. If ready-mix concrete is not delivered to customers in a timely manner, typically less than one hour, it begins to harden and lose utility. Hence, ready-mix concrete is generally sold within 10 to 20 miles of the plant where it is mixed, although the precise distance may vary depending on traffic patterns and infrastructure. Transportation costs also can limit the distance ready-mix concrete can be shipped. In Tucson, Arizona each competitor has spaced plants within 20 miles of its other plants, creating a network capable of serving the entire Tucson metropolitan area.

V. THE STRUCTURE OF THE MARKET

11. The Tucson, Arizona market for ready-mix concrete is highly concentrated, whether measured by Herfindahl-Hirschman Index or two or four firm concentration ratios. Aside from Cemex and RMC, only one other company in Tucson, Arizona supplies ready-mix concrete. Accordingly, the Acquisition would significantly increase concentration in the Tucson, Arizona market for ready-mix concrete, leaving Cemex as the dominant supplier.

12. Cemex and RMC are actual competitors in the relevant market.

VI. ENTRY CONDITIONS

13. New entry into the relevant market is difficult due to a limited availability in the relevant area of the vital raw materials, aggregates and cement, necessary for ready-mix concrete production. In Tucson, Arizona, aggregates sufficient to supply a new ready-mix concrete operation are not available for purchase. A new entrant, therefore, would have to acquire its own local source of aggregates. In Tucson, Arizona, however, viable concrete aggregate reserves are scarce. Even if such reserves can be acquired, it would take in excess of two years to develop aggregate facilities of the scale necessary to serve the relevant market. Additionally, the supply of cement in Tucson, Arizona is constrained by a very limited number of cement suppliers.

14. New entry into the relevant market has not occurred in more than 10 years.

15. New entry into the relevant market sufficient to deter or counteract the anticompetitive effects described in Paragraph 16 would not occur in a timely manner because it would take over two years to enter and achieve significant market impact.

VII. EFFECTS OF THE ACQUISITION

16. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Cemex and RMC in the Tucson, Arizona market for ready-mix concrete;
- b. by increasing the likelihood that the remaining ready-mix suppliers in Tucson, Arizona would engage in coordinated interaction that harms consumers;
- c. by reducing incentives to improve service or product quality in the Tucson, Arizona market for ready-mix concrete; and

d. by increasing the likelihood that customers would be forced to pay higher prices for ready-mix concrete in Tucson, Arizona.

VII. VIOLATIONS CHARGED

17. The Acquisition described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

18. The Acquisition described in Paragraph 7, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this eleventh day of February, 2005, issues its Complaint against said Respondent.

By the Commission, Chairman Majoras recused.

Donald S. Clark
Secretary

SEAL: