

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

In the Matter of)
)
CRH plc,)
a corporation,)
)
Oldcastle, Inc.,)
a corporation,)
)
Oldcastle Architectural, Inc.,)
a corporation,)
)
Robert Schlegel,)
an individual,)
)
and)
)
Pavestone Company, LP,)
a limited partnership.)
_____)

Docket No. 9335

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Respondents CRH plc, Oldcastle, Inc., and Oldcastle Architectural, Inc. (collectively, "Oldcastle"), and Robert Schlegel and Pavestone Company, LP (collectively, "Pavestone") have 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, and it appearing to the Federal Trade Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

SUMMARY

1. The proposed transaction would combine the two largest and closest competitors in the manufacture and sale of drycast concrete hardscapes to national home centers in numerous markets in the United States and to commercial customers in the Dallas, Houston, and San Antonio, Texas markets. Drycast concrete hardscapes are used in landscape construction projects ranging from residential driveways, patios, and garden walls, to athletic stadiums and arenas. They include drycast interlocking concrete pavers (“pavers”), drycast concrete segmented retaining wall blocks (“SRWs”), and other drycast concrete patio products (collectively, “drycast concrete hardscapes”). Unless the proposed transaction is enjoined or otherwise prevented, the combination of Oldcastle and Pavestone would create a dominant firm, eliminate the unique competition between these firms, and result in higher prices and reduced quality, innovation, and services to national home centers and, ultimately, to “Do-It-Yourself” (“DIY”) consumers across the country who purchase the products at national home centers, as well as to Dallas, Houston, and San Antonio, Texas area contractors, dealers, and distributors (collectively, “commercial customers”). The national home centers include, but are not limited to, The Home Depot, Lowe’s, and Wal-Mart, which have locations in various regions of the U.S. and which collectively sell the majority of drycast concrete hardscapes to retail customers.

2. Drycast concrete hardscapes are distinct from other landscaping products and materials, such as asphalt, stamped concrete, gravel, clay brick, poured concrete, natural stone, or timbers in appearance, quality, durability, and functionality. Project designers, contractors, manufacturers, distributors, and other industry participants see little, if any, cross-price elasticity between drycast concrete hardscapes and other materials. Rather than substituting across landscaping products in response to small changes in the prices of those materials, customers of national home centers have aesthetic and performance preferences in selecting a particular landscaping product. Similarly, when setting their retail prices for drycast concrete hardscapes, national home centers almost exclusively monitor the drycast concrete hardscape products sold at other national home centers, indicating that these large retailers also do not consider other products to be close substitutes for drycast concrete hardscapes. The national home centers focus on each other’s sales of drycast concrete hardscapes because small variations in the prices of other landscaping products do not significantly affect the sales of drycast concrete hardscapes and because the DIY customers of the national home centers are materially different from the customers of commercial outlets.

3. Drycast concrete hardscapes sold to national home centers differ from those sold to commercial customers. Products sold to national home centers are generally lighter, lower-end products suitable for DIY consumers to use in performing relatively small, uncomplicated home improvement projects. In contrast to the commercial products, installation of the DIY products requires little, if any, professional expertise. Thus, the DIY customers of the national home centers are also different from the customers of commercial retail outlets.

4. Drycast concrete hardscapes are heavy products, and thus costly to transport. As a result, generally it is not cost-effective or competitively viable to transport these products farther

than 200 miles to a national home center, or 150 miles to a commercial customer, from a manufacturing plant.

PARTIES AND JURISDICTION

OLDCASTLE

5. Respondent CRH plc is the for-profit parent company of an international group of companies, engaged, among other things, in the manufacture and supply of a wide range of building materials. CRH plc is a public company incorporated and headquartered in the Republic of Ireland, and listed on the Irish Stock Exchange, the London Stock Exchange, and the New York Stock Exchange. CRH plc operates in over 34 countries.

6. Respondent Oldcastle, Inc. is CRH plc's U.S. agent, and is wholly owned by CRH plc. Oldcastle, Inc. is a for-profit corporation, with North American operations in all 50 states, the District of Columbia, and four Canadian provinces. Oldcastle, Inc. is organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters and principal place of business at 375 Northridge Road, Suite 350, Atlanta, Georgia 30350.

7. Respondent Oldcastle Architectural, Inc. ("Oldcastle Architectural") is wholly owned by Oldcastle, Inc., and is an indirect subsidiary of CRH plc. Oldcastle Architectural is the Oldcastle entity engaged in the manufacture and sale of drycast concrete hardscapes in North America, and the Oldcastle entity that is party to the acquisition agreement here. Oldcastle Architectural is a for-profit corporation, with North American operations in 38 states, the District of Columbia, and two Canadian provinces. It is organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters and principal place of business at 375 Northridge Road, Suite 250, Atlanta, Georgia 30350.

8. Oldcastle and its relevant operating entities are, and at all relevant times have been, engaged in activities in or affecting "commerce" as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

PAVESTONE

9. Respondent Robert Schlegel, an individual, is the ultimate parent of the Pavestone companies, including Pavestone Company, LP, which are organized as limited liability companies and limited partnerships, the interests and assets of which Oldcastle proposes to acquire. Mr. Schlegel is doing business at 4835 LBJ Freeway, Suite 700, Dallas, Texas 75244.

10. Respondent Pavestone Company, LP is a limited partnership organized and existing under the laws of Texas. Its headquarters and principal place of business are located at 4835 LBJ Freeway, Suite 700, Dallas, Texas 75244. Pavestone operates in approximately 40 states and the District of Columbia.

11. Pavestone and its relevant operating subsidiaries are, and at all relevant times have been, engaged in activities in or affecting “commerce” as defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

THE PROPOSED ACQUISITION

12. Pursuant to an agreement dated March 11, 2008, Oldcastle Architectural, Inc. intends to acquire the interests and assets of Pavestone for more than \$540 million, including cash, an earn-out, and stock.

AFFECTED MARKETS

13. Drycast concrete hardscapes manufacturers bid annually to supply national home centers, across different regions in the United States. An individual manufacturer’s bid price is determined both by head-to-head competition among the drycast concrete manufacturers and by local retail competition among national home centers in each bid area. For this reason, the relevant geographic markets within which to assess the competitive effects of the acquisition range from areas as small as individual metropolitan areas to as large as individual states.

14. Oldcastle and Pavestone supply national home centers in 40 overlapping states and the District of Columbia. Contained within this area are approximately 300 Metropolitan Statistical Areas (“MSAs”). The acquisition thus would affect national home centers in 40 states and the District of Columbia, and smaller areas contained therein.

15. The acquisition also would affect commercial paver and SRW customers in the areas of Dallas, Houston, and San Antonio, Texas.

CONCENTRATION

16. Oldcastle and Pavestone together account for approximately 90 percent of drycast concrete hardscape sales to national home centers in the United States, and over 75 percent of drycast concrete hardscape sales to commercial customers in the state of Texas. While individual market shares in any particular MSA or state vary, Respondents have significant combined market shares in all relevant geographic markets.

17. Each of the relevant geographic markets is highly concentrated with Oldcastle and Pavestone typically the largest suppliers and each other’s closest competitor for the provision of drycast concrete hardscapes to national home centers and the provision of pavers and SRWs to Texas commercial customers. Post-acquisition, Oldcastle would have a dominant market share in each of the relevant geographic markets. In fact, across the numerous overlap markets, Oldcastle’s post-acquisition market share and the increase in concentration resulting from the acquisition would be well above the level at which the acquisition is presumptively unlawful.

**THE ACQUISITION WOULD SUBSTANTIALLY
LESSEN COMPETITION IN NATIONAL HOME CENTER MARKETS**

18. Oldcastle and Pavestone are the largest and closest competitors in the manufacture and sale of drycast concrete hardscapes to national home centers. Oldcastle and Pavestone compete head-to-head in numerous markets for national home center business. As the only two national-scale suppliers of drycast concrete hardscapes, they are able to leverage their economies of scale to offer lower prices than smaller drycast concrete hardscapes suppliers. Oldcastle and Pavestone also provide national home centers with a broad range of drycast concrete hardscapes, offer a large number of exclusive and innovative products, and provide price discounts and other advertising and marketing allowances based on national volumes. In addition, Oldcastle and Pavestone provide an array of support services to national home centers, including, among other things, full category management, marketing aids, and customer training.

19. The head-to-head competition between Oldcastle and Pavestone in the relevant markets has resulted in lower prices to national home centers, and ultimately, consumers. The proposed acquisition would eliminate this direct price competition and likely would result in higher prices, lower quality, and fewer innovative products to national home centers and consumers.

20. The presence of Oldcastle or Pavestone in a specific region – even if they do not bid against each other – has a constraining effect on prices. National home centers regularly monitor and compare retail prices at other national home centers in the same geographic area to ensure that their drycast concrete hardscapes prices are competitive. For example, if one national home center sees that its retail prices for drycast concrete hardscapes are higher than prices at another national home center, it will pressure its drycast concrete hardscapes manufacturer to lower the manufacturer's prices so the national home center can remain competitive. The retail competition between national home centers thus provides leverage for national home centers to negotiate lower prices and better products from their drycast concrete hardscapes suppliers. Similarly, drycast concrete hardscapes manufacturers regularly monitor retail prices at national home centers when setting their bid prices to any individual national home center.

21. Post-acquisition, regional drycast concrete hardscapes manufacturers could not replace the lost competition between Oldcastle and Pavestone. These manufacturers have varied ability to supply the breadth of drycast concrete hardscapes required by national home centers, but they cannot and do not provide the geographic coverage that Oldcastle and Pavestone provide, and generally they lack the scale necessary to support the services offered by Oldcastle and Pavestone. Critically, none of the regional manufacturers can or do offer price rebates based on national volumes competitive with those currently offered by Oldcastle and Pavestone.

22. Prior to the announcement of the acquisition, both Oldcastle and Pavestone planned to build new plants in certain markets where the two currently compete, but where one or the other lacked optimally-located plant operations. The additional plants likely would have enhanced competition and led to lower prices for drycast concrete hardscapes to national home centers in these geographic areas. If the acquisition is consummated, Oldcastle and Pavestone would no longer have the same incentives to pursue these pro-competitive expansion plans, and national home centers and

consumers would lose the benefit of this enhanced competition between Oldcastle and Pavestone – competition that likely would have resulted in lower prices.

23. The acquisition, combining the operations of the two largest suppliers and closest competitors of drycast concrete hardscapes to national home centers in the United States, would result in a dominant provider of drycast concrete hardscapes to national home centers in numerous markets. The elimination of the unique competition between Pavestone and Oldcastle would allow Oldcastle, post-acquisition, unilaterally to increase prices of drycast concrete hardscapes and would result in reduced quality, innovation, and service to national home centers and their customers.

THE ACQUISITION WOULD SUBSTANTIALLY LESSEN COMPETITION IN TEXAS COMMERCIAL MARKETS

24. The acquisition also would create a dominant firm in the commercial markets for drycast concrete hardscapes in the Dallas, Houston, and San Antonio, Texas metropolitan areas.

25. Commercial customers are contractors that install drycast concrete hardscapes in construction projects, and dealers and distributors. Drycast concrete hardscapes manufacturers compete on price, quality, innovation, and service for commercial business.

26. Drycast concrete hardscapes sold to commercial customers largely differ from drycast concrete hardscapes sold to retail customers. Commercial-grade products are meant to be installed by professional contractors and, as such, generally require greater expertise to install than do the retail products purchased from national home centers by DIY homeowners. For example, patio products such as stepping stones are relatively rarely sold to commercial customers, while specialized pavers or SRWs used to construct a driveway or an engineered wall generally are not available at national home centers.

27. Oldcastle has a commercial class of product, its Belgard line, which it markets as substantially different from its drycast concrete hardscapes sold through national home centers. Pavestone also markets its commercial-grade products separately from its retail-grade products. Respondents earn markedly higher margins on sales to commercial customers than those earned on sales to national home centers.

28. Drycast concrete hardscapes manufacturers for the commercial channel of trade need not supply the breadth of drycast concrete hardscapes required by national home centers. Some smaller manufacturers produce either pavers or SRWs, but not both. Because commercial customers buy drycast concrete hardscapes for specific projects, a contractor may purchase pavers from one supplier for one project, and SRWs from another supplier for another project.

29. Drycast concrete hardscapes are rarely transported beyond 150 miles to commercial customers from the plants where they are manufactured. Manufacturers with plants closer to construction sites have a significant competitive advantage in bidding on jobs. As a result, the service area for commercial sales is approximately a 150 mile radius from each drycast concrete hardscapes plant.

30. Oldcastle and Pavestone are each significantly larger than other manufacturers of drycast concrete hardscapes in Texas. They possess the broadest product lines of the firms that serve Texas, and they are geographically well-located to serve customers in and around the Dallas, Houston, and San Antonio, Texas metropolitan areas. The merger would create a monopoly in drycast concrete pavers in Dallas, leave only two competitors in San Antonio, and leave only three in Houston. The merger would leave only three SRW manufacturer competitors in Dallas and San Antonio, and leave only four remaining competitors in Houston. In each geographic area for each product, Oldcastle and Pavestone would be the dominant supplier.

31. Post-acquisition, without Pavestone's competition, Oldcastle would be able unilaterally to increase prices and reduce quality, innovation, and service to commercial customers in relevant geographic areas in the Dallas, Houston, and San Antonio, Texas areas.

**ENTRY WOULD NOT MITIGATE
THE ANTICOMPETITIVE EFFECTS OF THE ACQUISITION**

32. Post-acquisition, entry or expansion into the manufacture and sale of drycast concrete hardscapes to national home centers would not be timely, likely, and sufficient in scope to deter or negate the anticompetitive effects of the proposed acquisition.

33. Several factors render sufficient entry into the national home center markets time-consuming, costly, and unlikely to occur. These factors include the need for a super-regional network of manufacturing plants to compete for sales to national home centers; the need for a new entrant to overcome costs to the national home center of displacing an incumbent vendor, including the loss or reduction of national discounts; and the need to provide the category management, in-store services, product standardization, quality control, exclusive products, and frequent product innovation required by national home centers.

34. Post-acquisition, entry or expansion into the manufacture and sale of pavers and SRWs to Texas commercial customers would not be timely, likely, and sufficient in scope to deter or negate the anticompetitive effects of the proposed acquisition.

35. Several factors render sufficient entry into the Texas commercial markets time-consuming, costly, and unlikely to occur. To enter the Dallas, Houston, or San Antonio areas, an entrant would need to overcome the challenges of competing with Respondents' economies of scale in production and distribution, establishing relationships with dealers, distributors, and contractors, developing a reputation with customers as a reliable and high-quality producer, and marketing its products to architects and engineers who specify which products to install in their projects. Timely entry is especially unlikely because there already is sufficient capacity to meet commercial demand in the Texas commercial markets today.

VIOLATIONS

COUNT I – ILLEGAL ACQUISITION

36. The allegations of Paragraphs 1 through 35 above are incorporated by reference as though fully set forth.

37. The acquisition, if consummated, would substantially lessen competition in the affected markets 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.

COUNT II – ILLEGAL ACQUISITION AGREEMENT

38. The allegations of Paragraphs 1 through 35 above are incorporated by reference as though fully set forth.

39. Respondents Oldcastle and Pavestone, through the agreement described in Paragraph 12 above, have engaged in unfair methods of competition in or affecting competition in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given that the fifteenth day of June, 2009, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission and Clayton Acts to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Federal Trade Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense, and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings of fact and

conclusions of law under § 3.46 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and to authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

The Administrative Law Judge will schedule an initial prehearing scheduling conference to be held not later than 10 days after the answer is filed by the last answering Respondent in the complaint. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, but in any event no later than five days after the answer is filed by the last answering Respondent. Rule 3.31(b) obligates counsel for each party, within five days of receiving a Respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Federal Trade Commission conclude from the record developed in any adjudicative proceedings in this matter that Oldcastle's acquisition of the interests and assets of Pavestone violates Section 7 of the Clayton Act, as amended, or Section 5 of the Federal Trade Commission Act, as amended, the Federal Trade Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. If the acquisition is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable, and independent businesses in the relevant markets, with the ability to offer such products and services as Oldcastle and Pavestone were offering and planning to offer prior to the acquisition;

2. A prohibition against any transaction between Oldcastle and Pavestone that combines their manufacturing and sales of (a) drycast concrete hardscapes to national home centers in the United States; (b) drycast concrete pavers to commercial customers in the Dallas, Houston, and San Antonio, Texas areas; and (c) drycast concrete SRWs to commercial customers in the Dallas, Houston, and San Antonio, Texas areas, except as may be approved by the Federal Trade Commission;

3. A requirement that, for a period of time, Oldcastle and Pavestone provide prior notice to the Federal Trade Commission of acquisitions, mergers, consolidations, or any other combinations of their manufacturing and sales of drycast concrete hardscapes businesses in the relevant markets with any company manufacturing and selling drycast concrete hardscapes in the relevant markets;

4. A requirement to file periodic compliance reports with the Federal Trade Commission; and

5. Any other relief appropriate to correct or remedy the anticompetitive effects of the acquisition or to ensure the creation of one or more viable, competitive, independent entities to compete against the combined Oldcastle-Pavestone in the relevant markets.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C. this fourteenth day of January, 2009.

By the Commission.

Donald S. Clark
Secretary

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