

resolve claims of the United States against defendants International Paper Company and Nepera, Inc. in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at the Warwick Superfund Site in the Town of Warwick, Orange County, New York (the "Site"). In the first proposed consent decree, defendant International Paper Company agrees to pay the United States \$135,000 in settlement of the United States' claims for past response costs incurred by the Environmental Protection Agency at the Site through November 7, 1994. In the second proposed consent decree, defendant Nepera, Inc. agrees to pay the United States \$98,500 in settlement of the United States' claims for past response costs incurred by the Environmental Protection Agency at the Site through November 7, 1994.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to both proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. International Paper Company, et al.*, DOJ Ref. Number 90-11-3-812.

The proposed consent decrees may be examined at the Office of the United States Attorney, 100 Church Street, New York, NY, 10007; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10278; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005. In requesting a copy, please specify either the consent decree with International Paper Company or the consent decree with Nepera, Inc., and please also refer to the referenced case and enclose a check in the amount of \$5.25 for the consent decree with International Paper Company (25 cents per page reproduction costs) and \$5.50 for the consent decree with Nepera, Inc., payable to the Consent Decree Library.

Joel M. Gross,  
Chief, Environmental Enforcement Section,  
Environment and Natural Resources Division.  
[FR Doc. 96-24031 Filed 9-18-96; 8:45 am]

BILLING CODE 4410-01-M

## Antitrust Division

### United States v. Oldcastle Northeast et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court in Connecticut, Civil No. 396CVO1749.

On September 3, 1996, the United States filed a Complaint alleging that the proposed acquisition by Oldcastle Northeast, Inc. of the stock of Tilcon, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Oldcastle Northeast to divest its East Granby, Connecticut quarry and two three-ton asphalt plants located at the quarry.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202/307-0924).

Copies of the Complaint, Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, (202) 514-2841. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,  
Director of Operations, Antitrust Division.

### Stipulation and Order

Civil No.: 396-CV01749

Judge Alfred Covello

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Connecticut.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time

after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b)-(h)), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and from the date of the filing of this Stipulation, shall comply with all the terms and provisions of the Final Judgment as though they were in full force and effect as an order of the Court.

4. In the event plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For Plaintiff, United States:

Anne K. Bingaman,  
Assistant Attorney General.  
Lawrence R. Fullerton  
Charles E. Biggio  
Constance K. Robinson

For Defendants, Oldcastle Northeast, Inc. and CRH plc:

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Christopher F. Droney,  
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By \_\_\_\_\_  
 Carl J. Schuman,  
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For Defendants Tilcon, Inc. and BTR plc.  
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 DC 20006-4103, (202) 835-7433.*

Richard Blumenthal,  
*Attorney General of Connecticut.*

By \_\_\_\_\_  
 Steven M. Rutstein,  
*Assistant Attorney General, Attorney  
 General's Office of the State of Connecticut,  
 Federal Bar No. CT09086.*

Order

It is so ordered, this \_\_\_\_rd day of  
 September, 1996.

United States District Judge

### *Final Judgment*

Civil No.: 396-CV-01749  
 Judge Alfred Covello

Whereas, plaintiffs, United States of America and the State of Connecticut, having filed their Complaint herein on September 3, 1996, and plaintiffs and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of assets to assure that competition is not substantially lessened;

And whereas, plaintiffs require defendants to make certain divestitures for the purpose of establishing a viable competitor in the manufacture and sale of asphalt concrete in the greater Hartford, Connecticut area;

And whereas, defendants have represented to plaintiffs that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty

as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

## I

### *Jurisdiction*

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

## II

### *Definitions*

As used in this Final Judgment:

A. "Oldcastle" means defendant Oldcastle Northeast, Inc., a Delaware corporation headquartered in Washington, D.C., and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

B. "CRH" means defendant CRH plc, a company formed under the laws of the Republic of Ireland headquartered in Dublin (of which Oldcastle is a subsidiary), and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

C. "Tilcon" means defendant Tilcon, Inc., a Delaware corporation headquartered in New Britain, Connecticut, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

D. "BTR" means defendant BTR plc, a company formed under the laws of the United Kingdom and headquartered in London (of which Tilcon is a subsidiary), and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

E. "Aggregate" means sand, gravel, and crushed stone produced at quarries or sand and gravel pits. "Stone products" refer to any products produced at a quarry.

F. "Asphalt Concrete" means material that is used principally for paving and is produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate.

G. "Hot-mix plant" means a plant that produces asphalt concrete.

H. "Greater Hartford Area" refers to the following cities and towns in Connecticut: Hartford, New Britain, Newington, Wethersfield, Farmington, West Hartford, Bloomfield, Windsor, South Windsor, East Hartford, Manchester, Glastonbury, Windsor Locks, East Granby, Plainville, Rocky Hill, Enfield, Avon, Ellington, and East Windsor.

I. "Assets to be Divested" means:

(1) all rights, titles, and interests, including all fee and all leasehold and renewal rights, in Tilcon's East Granby, Connecticut quarry located at 60 Main St., East Granby, Connecticut 06026 and the related maintenance facilities and administration buildings (the "East Granby Quarry") including, but not limited to, all real property, capital equipment, fixtures, inventories, trucks and other vehicles, stone crushing equipment, scales, interests, permits, assets or improvement related to the production, distribution, and sale of aggregate and stone products at the East Granby Quarry;

(2) all rights, title, and interests, in the two, three-ton, hot-mix plants located at the East Granby Quarry (the "Two, Three-Ton, Hot-Mix Plants"), including, but not limited to, all real property, capital equipment, fixtures, inventories, trucks and other vehicles, storage tanks, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of asphalt concrete by the two, three-ton, hot-mix plants; and

(3) all intangible assets associated with the East Granby Quarry and the Two, Three-Ton, Hot-Mix Plants; provided, however, that CRH will be permitted to retain the name "Roncari."

## III

*Applicability*

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all Assets to be Divested, that the purchaser agree to be bound by the provisions of this Final Judgment.

## IV

*Divestitures*

A. CRH is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of this Final Judgment, to divest the Assets to be Divested to a purchaser.

B. CRH shall use its best efforts to accomplish the divestitures as expeditiously and timely as possible. The United States in its sole determination after consultation with Connecticut, may extend the time period for any divestiture an additional period of time not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, CRH promptly shall make known, by usual and customary means, the availability of the Assets to be Divested described in this Final Judgment. CRH shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. CRH shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Assets to be Divested customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. CRH shall make available such information to plaintiffs at the same time that such information is made available to any other person.

D. CRH shall not interfere with any negotiations by any purchaser to employ any CRH (or former Tilcon) employee who works at, or whose principal responsibility is the manufacture, sale or marketing of aggregate, stone products or asphalt concrete produced by the Assets to be Divested.

E. CRH shall permit prospective purchasers of the Assets to be Divested

to have access to personnel and to make such inspection of the Assets to be Divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. CRH shall warrant to the purchaser of the Assets to be Divested that the Assets to be Divested will be operational on the date of sale.

G. CRH shall warrant to the purchaser of the Assets to be Divested that there are no known defects in the environmental, zoning, or other permits pertaining to the operation of the Assets to be Divested and that the defendants will not undertake following the divestiture of the Assets to be Divested any challenges to the environmental, zoning, or other permits pertaining to the operation of the Assets to be Divested.

H. CRH, at its option, may retain ownership of the six-ton, hot-mix plant and the portland concrete cement plant located at the East Granby Quarry. The six-ton, hot-mix plant and the portland concrete cement plant ("Retained Plants") must be operated independent of the purchaser's operation of the Assets to be Divested. For the purpose of siting and operating the plants, CRH may negotiate separate easements and licenses for the Retained Plants, including the land underlying and at reasonable distance surrounding the Retained Plants. If CRH or a subsequent purchaser removes or discontinues the operations of either of the Retained Plants for more than two years, the easement and license associated with the plant will be voided. The easements and licenses that are retained for the siting and operation of the six-ton, hot-mix plant and the portland cement plant must not hinder the purchaser's operation of the Assets to be Divested.

I. CRH, at its option, may negotiate a supply agreement with the purchaser of the Assets to be Divested for the purpose of supplying CRH with aggregate and stone products produced at the East Granby Quarry. The sale of the Assets to be Divested shall not be conditioned on CRH's ability to obtain a supply agreement with the purchaser.

J. Unless the United States, after consultation with the State of Connecticut, otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the Assets to be Divested and be accomplished by selling or otherwise conveying the Assets to be Divested to a purchaser in

such a way as to satisfy the plaintiffs, in their sole discretion, that the Assets to be Divested can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the manufacture and sale of asphalt concrete, aggregate, and stone products. The divestiture, whether pursuant to Section IV of Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiffs' sole satisfaction that: (1) The purchaser has the capability and intent of competing effectively in the manufacture and sale of asphalt concrete in the greater Hartford Area; (2) the purchaser has or soon will have the managerial, operation, and financial capability to compete effectively in the manufacture and sale of asphalt concrete in the greater Hartford Area; and (3) none of the terms of any agreement between the purchaser and CRH give CRH the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in the greater Hartford Area.

## V

*Appointment of Trustee*

A. In the event that CRH has not divested the Assets to be Divested within the time specified in Section IV (A) and (B) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Assets to be Divested.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Assets to be Divested described in Section II of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Olkdcastle any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiffs, and shall have such other powers at this Court shall deem appropriate. CRH shall not object to a sale by the trustee on any

grounds other than the trustee's malfeasance. Any such objections by CRH must be conveyed in writing to the plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of CRH, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to CRH and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Assets to be Divested and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. CRH shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of CRH and CRH shall develop financial or other information relevant to the Assets to be Divested as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. CRH shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to no extent such report contains information that the trustee deems confidential, such reports shall not be filed in the public docket in the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have right to be heard and to make additional recommendations consistent with the

purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

## VII

### *Notification*

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, CRH or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall, similarly notify CRH. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiffs may request from CRH, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. CRH and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information requested from CRH, the proposed purchaser, and any third party, whichever is later, plaintiffs shall provide written notice to CRH and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiffs provide written notice to CRH and the trustee that it does not object, then the divestiture may be consummated, subject to CRH's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that plaintiffs do not object to the proposed purchaser or upon objection by plaintiffs, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiffs, or by CRH under the proviso in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

## VII

### *Affidavits*

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, CRH shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Assets to be Divested, and shall describe in detail each contract with any such person during that period. Each such affidavit shall further describe in detail any negotiations regarding a supply agreement to supply CRH with aggregate and stone products from the East Granby Quarry and terms regarding CRH's operation and siting of the Retained Plants at the East Granby Quarry as described in Section IV(H) of this Final Judgment.

B. Within twenty (20) calendar days of the filing of this Final Judgment, CRH shall deliver to plaintiffs an affidavit which describes in detail all actions CRH has taken and all steps CRH has implemented on an on-going basis to preserve the Assets to be Divested pursuant to Section VIII of this Final Judgment and describes the functions, duties and actions taken by or undertaken at the supervision of the individual(s) described at Section VIII(F) of the Final Judgment with respect to CRH's efforts to preserve the Assets to be Divested. The affidavit also shall describe, but not be limited to, CRH's efforts to maintain and operate the Assets to be Divested as an active competitor, maintain the management, sales, marketing and pricing of the Assets to be Divested, and maintain the Assets to be Divested in operable condition at current capacity configurations. CRH shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in CRH's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. CRH shall preserve all records of all efforts made to preserve and divest the Assets to be Divested.

## VIII

*Preservation of Assets*

Until the divestitures required by the Final Judgment have been accomplished:

A. CRH shall take all steps necessary to ensure that the Assets to be Divested will be maintained and operated as an independent, ongoing, economically viable and active competitor in the production and sale of asphalt concrete, aggregate, and stone products in the greater Hartford Area.

B. CRH shall use all reasonable efforts to maintain sales at the Assets to be Divested and shall maintain at 1995 or previously approved levels, whichever are higher, promotional, advertising, sales, marketing and merchandising support for asphalt concrete, aggregate, and stone products sold from the Assets to be Divested. CRH's sales and marketing employees responsible for sales from the Assets to be Divested shall not be transferred or reassigned to other quarries or hot-mix plants of CRH.

C. CRH shall take all steps necessary to ensure that the Assets to be Divested are fully maintained in operable condition at no lower than their current rated capacity configurations, and shall maintain and adhere to normal maintenance schedules for the Assets to be Divested.

D. CRH shall not, except as part of a divestiture approved by plaintiffs, remove, sell or transfer any of the Assets to be Divested, including all permits that relate to the operation of the Assets to be Divested, other than asphalt concrete, aggregate, and stone products sold in the ordinary course of business.

E. CRH shall not encumber the Assets to be Divested.

F. CRH shall appoint a person or persons to oversee the Assets to be Divested who will be responsible for CRH's compliance with Section VIII of this Final Judgment.

## IX

*Future Acquisitions*

A. CRH is ordered to give forty-five (45) days notice for any transactions not reportable under the Hart Scott Rodino Antitrust Improvements Act, 15 U.S.C. 18a, to the U.S. Department of Justice, Antitrust Division and the Connecticut Attorney General's Office concerning any intent to acquire ownership or control of the stock or assets of any manufacturer of asphalt concrete or quarry operator within a twenty-five (25) mile radius of Hartford, Connecticut. For all transactions concerning any intent to acquire ownership or control of the stock or

assets of any manufacturer of asphalt concrete or quarry operator within a twenty-five (25) mile radius of Hartford, Connecticut, that are reportable under 15 U.S.C. 18a, CRH is ordered to supply duplicate filings to the Connecticut Attorney General's Office.

## X

*Compliance Inspection*

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or duly authorized representatives of the Attorney General's Office of the State of Connecticut, and on reasonable notice to CRH made to its principal offices (which includes Oldcastle's offices), shall be permitted:

(1) Access during office hours of CRH to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of CRH, who may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of CRH and without restraint or interference from it, to interview its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division or duly authorized individuals of the Attorney General's Office of the State of Connecticut, made to CRH's principal offices (which includes Oldcastle's principal offices), CRH shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in Section X of this Final Judgment shall be divulged by a representative of plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States or an authorized representative of the Attorney General's Office of the State of Connecticut, except in the course of legal proceedings to which the United States or the State of Connecticut is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by CRH to plaintiffs, the CRH represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and CRH marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiffs to CRH prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

## XI

*Retention of Jurisdiction*

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

## XII

*Termination*

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

## XIII

*Public Interest*

Entry of this Final Judgment is in the public interest.

Dated: \_\_\_\_\_

United States District Judge

*Competitive Impact Statement*

Civil Action No.: 396CV01749 AWT  
Filed: September 3, 1996.

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16 (b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

## I

*Nature and Purpose of the Proceeding*

On September 3, 1996, the United States filed a civil antitrust Complaint, which alleges that the proposed acquisition by CRH plc ("CRH") through Oldcastle Northeast, Inc. ("Oldcastle"), of Tilcon, Inc. from BTR plc would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that

the combination of the two most significant competitors in the asphalt concrete market in the greater Hartford, Connecticut area would lessen competition substantially in the production and sale of asphalt concrete in the greater Hartford area. As defined in the Complaint, the greater Hartford area includes the following cities and towns in Connecticut: Hartford, New Britain, Newington, Wethersfield, Farmington, West Hartford, Bloomfield, Windsor, South Windsor, East Hartford, Manchester, Glastonbury, Windsor Locks, East Granby, Plainville, Rocky Hill, Enfield, Avon, Ellington, and East Windsor. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing CRH from acquiring control of Tilcon's asphalt concrete business, or otherwise combining such business with Oldcastle's own business in the United States.

When the Complaint was filed, the United States also filed a proposed settlement that would permit CRH to complete its acquisition of Tilcon's asphalt concrete business, but require certain divestitures that will preserve competition in the greater Hartford area. This settlement consists of a Stipulation and Order and a proposed Final Judgment.

The proposed Final Judgment orders CRH to divest Tilcon's East Granby, Connecticut quarry and two of the three, hot-mix asphalt plants located at the East Granby quarry and certain related tangible and intangible assets. CRH must complete the divestiture of these plants and related assets within one hundred and eighty (180) calendar days after the date on which the proposed Final Judgment was filed (i.e., September 3, 1996), in accordance with the procedures specified therein.

The Stipulation and Order and proposed Final Judgment require CRH to ensure that, until the divestitures mandated by the proposed Final Judgment have been accomplished, the East Granby quarry and the two hot-mix asphalt plants and related assets to be divested will be maintained and operated as an independent, ongoing, economically viable and active competitor. CRH must preserve and maintain the quarry and the two hot-mix asphalt concrete plants to be divested as saleable and economically viable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of Oldcastle's asphalt concrete business. CRH will appoint a person or persons to monitor and ensure

its compliance with these requirements of the proposed Final Judgment.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## II

### *Description of the Events Giving Rise to the Alleged Violation*

#### A. Oldcastle, Tilcon and the Proposed Transaction

Through its wholly owned subsidiary, Oldcastle, CRH is engaged in the business of manufacturing and selling asphalt concrete and extracting and processing aggregate in the state of Connecticut. In the greater Hartford area, Oldcastle operates three hot-mix plants that produce asphalt concrete and a quarry that produces aggregate which is used for, among other things, manufacturing asphalt concrete at the three hot-mix plants. In 1995, Oldcastle had sales of \$314 million.

Through its wholly owned subsidiary, Tilcon, BTR is engaged in the business of manufacturing and selling asphalt concrete and extracting and processing aggregate in the state of Connecticut. In the greater Hartford area, Tilcon operates six hot-mix plants that produce asphalt concrete and two quarries that produce aggregate which is used for, among other things, manufacturing asphalt concrete at the six hot-mix plants. In 1995, Tilcon had sales of \$349 million.

On June 19, 1996, CRH, through Oldcastle, agreed to acquire all of the outstanding voting securities of Tilcon from BTR for a purchase price of \$270 million. This transaction, which would take place in the highly concentrated greater Hartford area asphalt concrete manufacturing industry, precipitated the government's suit.

#### B. The Transaction's Effects in the Greater Hartford Area

The Complaint alleges that the manufacture and sale of asphalt concrete constitutes a line of commerce, or relevant product market, for antitrust purposes, and that the greater Hartford area constitutes a section of the country, or relevant geographic market. The Complaint alleges the effect of Oldcastle's acquisition may be to lessen competition substantially in the

manufacture and sale of asphalt concrete in the greater Hartford area.

Asphalt concrete is material that is used principally for paving and is produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate. A plant that produces asphalt concrete is commonly referred to as a "hot-mix plant." No good economic functional substitutes exist for asphalt concrete.

Manufacturers and buyers of asphalt concrete and other paving materials recognize asphalt as a distinct product.

Manufacturers of asphalt located in the greater Hartford area sell and compete with each other for sales of asphalt concrete within the greater Hartford area. Due to high transportation costs and long delivery time, manufacturers of asphalt concrete located outside the greater Hartford area do not sell a significant amount of asphalt concrete for use within the greater Hartford area.

The Complaint alleges that Oldcastle's acquisition of Tilcon would substantially lessen competition for the manufacture and sale of asphalt concrete in the greater Hartford area. Actual and potential competition between Oldcastle and Tilcon for the manufacture and sale of asphalt concrete in the greater Hartford area will be eliminated.

Oldcastle and Tilcon are the largest producers of asphalt concrete in the greater Hartford area and are the only producers of asphalt concrete in the greater Hartford area that own their own sources of aggregate for manufacturing asphalt concrete for highway projects. They are also the only manufacturers of asphalt concrete located in the greater Hartford area that supply asphalt concrete for highway construction projects built by the Connecticut Department of Transportation in the greater Hartford area. The Connecticut Department of Transportation is the largest purchaser of asphalt concrete in the greater Hartford area.

The acquisition would create a dominant asphalt concrete company in the greater Hartford area. It would reduce the number of competitors operating hot-mix plants in the greater Hartford area from three to two and reduce the number of competitors located in the greater Hartford area supplying asphalt concrete construction projects built by the Connecticut Department of Transportation in the greater Hartford area from two to one.

As a result of the acquisition, prices for asphalt concrete in the greater Hartford area are likely to increase. Oldcastle would control the asphalt

concrete market in the greater Hartford area, and it would have market power to increase the price of asphalt concrete in the greater Hartford area. In response to an increase, purchasers could not switch to another producer of asphalt concrete. The only alternative manufacturer of asphalt concrete in the greater Hartford area (Sales Construction) would have its only source of aggregate in the greater Hartford area controlled by Oldcastle.

New entry in the greater Hartford area is unlikely to restore the competition lost through Oldcastle's removal of Tilcon from the marketplace. De novo entry into the manufacture and sale of asphalt concrete requires a significant capital investment and likely would take over two years before any new hot-mix asphalt plant could begin production. Connecticut zoning provisions make it very difficult to open a quarry in the greater Hartford area, and none have been opened in fifty years.

#### C. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: Competition for the manufacture and sale of asphalt concrete in the greater Hartford area will be substantially lessened; actual and potential competition between Oldcastle and Tilcon in the manufacture and sale of asphalt concrete in the greater Hartford area will be eliminated; and prices for asphalt concrete in the greater Hartford area are likely to increase above competitive levels.

### III

#### *Explanation of the Proposed Final Judgment*

The proposed Final Judgment would preserve competition in the production and sale of asphalt concrete in the greater Hartford area by placing in independent hands the East Granby quarry and two of the three hot-mix asphalt plants used by Tilcon to serve the greater Hartford area, thus maintaining the existing level of suppliers in the market place. The two asphalt plants required to be divested by CRH have a combined capacity of six tons and account for half of the asphalt capacity at East Granby. Oldcastle would be permitted to retain a separate six ton asphalt plant at the East Granby location. In response to a price increase from Oldcastle, purchasers would be able to turn to one or more producers with (1) significant capacity to produce asphalt concrete in the greater Hartford area and (2) an independent source for

aggregate in the greater Hartford area for use in manufacturing asphalt concrete in the greater Hartford area.

Within one hundred and eighty (180) calendar days after filing the proposed Final Judgment, CRH must divest its East Granby quarry and the two hot-mix asphalt plants, all located in the East Granby, Connecticut, and related assets. CRH, at its option, may negotiate a supply agreement for the purpose of supplying CRH with aggregate and stone products produced at the East Granby quarry, but such a supply agreement cannot be a condition for divestiture. The East Granby quarry and two hot-mix asphalt plants and related assets will be sold to one or more purchasers who demonstrate to the sole satisfaction of the United States that they will be an economically viable and effective competitor, capable of competing effectively in the manufacture and sale of asphalt concrete in the greater Hartford area.

Until the ordered divestitures take place, CRH must take all reasonable steps necessary to accomplish the divestitures, and cooperate with any prospective purchaser. If CRH does not accomplish the ordered divestitures within the specified one hundred and eighty (180) calendar days which may be extended by up to sixty (60) calendar days by the United States in its sole discretion, the proposed Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestitures. CRH must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that CRH will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth the trustee's efforts to accomplish the divestiture, explains why the divestiture has not been accomplished, and makes any recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems

confidential. The parties each will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

### IV

#### *Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment neither will impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment as a no prima facie effect in any subsequent private lawsuit that may be brought against CRH, Oldcastle, BTR or Trilcon.

### V

#### *Procedures Available for Modification of the Proposed Final Judgment*

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person should comment within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000 Washington, DC., 20530.

The proposed Final Judgment provides that the Court retains

jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VII

### *Alternatives to the Proposed Final Judgment*

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against the defendants. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the manufacture and sale of asphalt concrete in the greater Hartford areas that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoid the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

## VII

### *Standard of Review Under the APPA for Proposed Final Judgment*

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24598 (1973). Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*United States v. Bechtel*, 648 F.2d 660, 666 (9th Cir. 1981) (emphasis added).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" (citations omitted). *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States*, 460 U.S. 1001 (1983).

## VIII

### *Determinative Documents*

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Executed on: September 5, 1996.

Respectfully submitted,

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BILLING CODE 4410-01-M

### **Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Ohio Aerospace Institute Propulsion Instrumentation Working Group**

Notice is hereby given that, on September 4, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Ohio Aerospace Institute Propulsion Instrumentation Working Group ("PIWG") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Ohio Aerospace Institute, Brook Park, OH; Allied Signal, Phoenix, AZ; Allison, Indianapolis, IN; GE Aircraft Engines, Cincinnati, OH; Pratt & Whitney, West Palm Beach, FL; and NASA Lewis Research Center, Cleveland, OH. The nature and objectives of the venture is to extend the capability of the current Non-Intrusive Stress Measurement System ("NSMS") to support High Cycle Fatigue analysis and models to improve life prediction for advanced engine components.

Membership in this venture remains open, and PIWG intends to file additional written notification disclosing all changes in membership. Information regarding participation in PIWG may be obtained from Eileen