

*estimated for an average respondent to respond:* It is estimated that 13,106 respondents will take 2 hours to complete the records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 26,212 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 7, 2007.

**Lynn Bryant,**

*Department Clearance Officer, PRA,  
Department of Justice.*

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**BILLING CODE 4410-FY-P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### **United States v. Cemex, S.A.B. de C.V., 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, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States v. Cemex, S.A.B. de C.V.*, Civil Action No. 1:07-cv-00640. On April 4, 2007, the United States filed a Complaint to enjoin Cemex, S.A.B. de C.V. from acquiring Rinker Group Limited. On May 2, 2007, the United States filed an Amended Complaint naming Rinker as a defendant in the suit. The Amended Complaint alleges that Cemex's acquisition of Rinker would substantially lessen competition in the production and distribution of ready mix concrete in certain metropolitan areas of Florida and Arizona, of concrete block in certain metropolitan areas of Florida, and of aggregate in the metropolitan area of Tucson, Arizona, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The proposed Final Judgment requires Cemex, once it obtains control of Rinker, to divest (1) Ready mix concrete plants in the metropolitan areas of Fort Walton Beach/Panama City/Pensacola, Jacksonville, Orlando, Tampa/St. Petersburg, and Fort Myers/Naples, Florida and the metropolitan areas Flagstaff and Tucson, Arizona; (2) concrete block plants in metropolitan

Tampa/St. Petersburg and Fort Myers/Naples, Florida; and (3) aggregate plants in metropolitan Tucson, Arizona.

Copies of the Amended Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 325 7th Street, NW., Room 215, Washington, DC 20530 (telephone: 202-514-2481), on the Department of Justice's Web site at <http://www.usdoj.gov/atr>, and at the Office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of these materials may be obtained from the Antitrust Division upon request and payment of a copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202-307-0924).

**Patricia A. Brink,**

*Deputy Director of Operations.*

#### **United States District Court for the District of Columbia**

*United States of America, Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Plaintiff, v. Cemex, S.A.B. de C.V., Av. Ricardo Margáin Zozaya #325, Colonia del Valle Campestre, Garza García, Nuevo León, Mexico 66265, and Rinker Group Limited, Level 8, Tower B, 799 Pacific Highway, Chatsworth, NSW 2067, Australia, Defendants.*

*Case No.: 1:07-cv-00640.*

*Judge: Hon. Royce C. Lamberth.*

*Deck Type: Antitrust.*

*Date Stamp: May 2, 2007.*

#### **Amended Complaint**

Plaintiff United States of America ("United States"), acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable and other relief against defendants, Cemex, S.A.B. de C.V. ("Cemex") and Rinker Group Limited ("Rinker") to prevent Cemex's proposed acquisition of Rinker. Plaintiff complains and alleges as follows:

##### *I. Nature of the Action*

1. On October 27, 2006, Cemex Australia Pty Ltd., an entity controlled by Cemex, initiated a hostile cash tender offer to acquire all of the outstanding

shares of Rinker. The total enterprise value of the transaction offer when made on October 27, 2007, including Rinker's debt, was approximately \$12 billion. The offer was due to expire on March 30, 2007, but Cemex extended it until April 27, 2007.

2. On April 9, 2007, Cemex announced that it had signed an agreement with Rinker, pursuant to which Cemex increased its offer to make the total enterprise value of the transaction, including Rinker's debt, approximately \$15 billion. This offer expired on May 18, 2007, and it is subject to the acquisition of 90 percent of Rinker's shares. As part of the agreement, Rinker's Board of Directors unanimously agreed to recommend to its shareholders that they accept Cemex's increased offer at the higher price, in the absence of a superior proposal.

3. Cemex and Rinker both produce and distribute building materials, including, among other things, ready mix concrete, aggregate, and concrete block, throughout the world.

4. The combination of Cemex and Rinker would create one of the world's largest building materials companies. Cemex's proposed acquisition of Rinker would reduce the number of significant suppliers of ready mix concrete in various metropolitan areas in Florida and Arizona, of concrete block in several metropolitan areas in Florida, and of aggregate in Tucson, Arizona.

5. The United States brings this action to prevent the proposed acquisition because it would substantially lessen competition in the production and distribution of ready mix concrete in the metropolitan areas of Fort Walton Beach/Panama City/Pensacola, Jacksonville, Orlando, Tampa/St. Petersburg, Fort Myers/Naples, Florida, and the metropolitan areas of Flagstaff and Tucson, Arizona. In addition, the acquisition would substantially lessen competition in the production and distribution of concrete block in metropolitan Tampa/St. Petersburg and Fort Myers/Naples, Florida. Finally, the acquisition would substantially lessen competition in the production and distribution of aggregate in metropolitan Tucson, Arizona.

##### *II. Parties to the Proposed Transaction*

6. Defendant Cemex is organized under the laws of the United Mexican States with its principal place of business in Nuevo León, Mexico. Cemex operates in the United States through its wholly owned subsidiary, Cemex, Inc., which has its principal place of business in Houston, Texas. In 2006,

Cemex reported total sales of approximately \$24.6 billion.

7. Cemex produces and distributes cement, ready mix concrete, aggregate, concrete block, concrete pipe, and related building materials to customers in more than 50 countries.

Approximately 25 percent of Cemex's revenues are earned in the United States. Cemex is the largest United States supplier of ready mix concrete and cement and the seventh largest United States supplier of aggregate.

8. Defendant Rinker is organized under the laws of Australia with its principal place of business in Chatswood, Australia. Rinker operates in the United States through its subsidiary, Rinker Materials Corporation. Rinker Materials Corporation has its principal place of business in West Palm Beach, Florida. In 2006, Rinker reported total sales of approximately \$4 billion.

9. Rinker produces and distributes aggregate, ready mix concrete, cement, concrete block, asphalt, concrete pipe, and other construction materials through its operations in the United States and Australia. Approximately 80 percent of Rinker's revenues are earned in the United States. Rinker is the second largest United States supplier of ready mix concrete and the fifth largest United States supplier of aggregate.

### *III. Jurisdiction and Venue*

10. Plaintiff United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

11. Defendants produce and distribute ready mix concrete, concrete block, and aggregate in the flow of interstate commerce. Defendants' activities in producing and distributing these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a), and 1345.

12. Venue is proper in this District pursuant to 28 U.S.C. 1391(d). Further, defendants have consented to venue and personal jurisdiction in this judicial district.

### *IV. Trade and Commerce*

#### *A. The Relevant Product Markets*

##### *1. Ready Mix Concrete*

13. Ready mix concrete is a building material made up of a combination of cement, fine and coarse aggregate, small amounts of chemical additives, and water. The amount of cement added to

a concrete mixture determines its strength, which is measured in pounds per square inch ("psi"). Concrete with higher psi ratings is typically used for large state department of transportation highway and bridge projects and high-rise buildings. Concrete with lower psi ratings is typically used for residential and curb-and-gutter construction projects.

14. Ready mix concrete is made at production facilities called batch plants. A batch plant measures the precise amount of dry input products needed to manufacture a given type of concrete. The mixture is then dumped into a rotating drum mounted on a heavy duty truck. Immediately before the truck departs the plant, a measured amount of water is added. Once the water hits the dry mixture, an irreversible chemical reaction is triggered causing the product to begin to set into a rigid building substance. The concrete components are mixed by the rotating drum while the truck is being driven to the job site. At the job site, the concrete is poured directly from the truck onto the project.

15. Ready mix concrete is unique because it is pliable when freshly mixed, can be molded into a variety of forms, and it is strong and permanent when hardened. For many building applications, customers will not substitute other building materials, such as steel, wood, or asphalt, for ready mix concrete. Steel is often not a substitute for ready mix concrete because it cannot be poured and formed into smooth, regular planes. Wood is often not a substitute because it does not have the structural strength to support heavy loads. Asphalt is often not a substitute because it cannot be used for the structural portions of bridges, cannot be used for buildings, and for certain applications cannot be used for highways.

16. Ready mix concrete is sold pursuant to bids, which are based on extensive specifications from the customer regarding, among other things, the amount of concrete, the various strengths of concrete, and the size and timing of the concrete pours. The needs of the customer can differ significantly by each project.

17. Not all suppliers of ready mix concrete can service every kind of project. For example, servicing certain types of "large projects," such as large state department of transportation highway and bridge building projects and high-rise building projects, requires ready mix concrete suppliers to be able to provide: (a) A large number of cubic yards of concrete; (b) large daily pours of concrete, which require the concrete supplier to schedule trucks to arrive

continuously at a project; (c) concrete having multiple psi specifications; and (d) testing to insure the concrete meets project engineering specifications.

18. If the concrete does not meet the project specifications or the concrete is not poured continuously, the customer may suffer substantial direct and consequential losses as a result of defective concrete. Contractors building large projects carefully select suppliers to minimize the chances of problems with the concrete.

19. Purchasers of ready mix concrete for such large projects require that their suppliers have: (a) Multiple ready mix concrete plants in a geographic area; (b) the ability to produce large amounts of concrete with multiple specifications; (c) backup plants; (d) a large number of concrete trucks; (e) a sizeable and well-trained workforce; (f) the demonstrated ability to service such a large project; and (g) considerable financial backing to remedy any problems relating to defective concrete.

20. Each large project is bid separately and ready mix concrete suppliers can identify the specific market conditions that apply to each large project, including the number of competitors that potentially could service the project's requirements. Ready mix concrete suppliers can and do charge different prices to customers based on the particular project's requirements and the market conditions.

21. A small but significant post-acquisition increase in the price of ready mix concrete that meets the bid specifications would not cause the purchasers of ready mix concrete for large projects to substitute another building material in sufficient quantities, or to utilize a supplier of ready mix concrete without the characteristics described in paragraph 19 above with sufficient frequency so as to make such a price increase unprofitable.

22. Accordingly, the production, distribution, and sale of ready mix concrete for use in large projects is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

##### *2. Concrete Block*

23. Concrete block is a construction material used to build exterior and interior walls in residential and commercial structures. Concrete block comes in a variety of shapes and sizes. Standard concrete blocks measure 8 inches by 8 inches by 16 inches and are composed of two hollow squares joined to form a rectangle.

24. Concrete block is produced by pouring concrete into molds and

pressing the molded blocks onto a conveyor belt for transport to a kiln for curing. Concrete blocks are then delivered to storage yards for final hardening and storage.

25. In Florida, from Orlando south, the walls of residential structures are built almost exclusively with concrete block. Wood is not a viable substitute because of its susceptibility to termite and hurricane damage. Poured concrete walls ("tilt up" walls) are at least 10 percent more expensive than concrete block, except where a large number of identical structures with regular shapes are built on contiguous lots using a single mold. In addition, block made of polyurethane is not an economically viable substitute because it is difficult to install and does not withstand hurricane winds as well as concrete block.

26. For nearly all residential construction applications in Florida, from Orlando south, a small but significant post-acquisition increase in the price of concrete block would not cause the purchasers of concrete block to substitute another product in sufficient quantities so as to make such a price increase unprofitable.

27. Accordingly, within the state of Florida, from Orlando south, the production and distribution of concrete block is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

### 3. Aggregate

28. Aggregate is rock mined from either quarries or pits. Aggregate is crushed, washed, and mixed with sand, cement, and water to produce ready mix concrete. It is also used to make asphalt concrete for use in building roads. Different sizes of rock are needed to meet different ready mix concrete and asphalt specifications.

29. There are no substitutes for aggregate because aggregate differs from other types of stone products in its physical composition, functional characteristics, customary uses, and pricing. It must meet the state departments of transportation or American Society of Testing Materials' specifications for the specific type of asphalt or ready mix concrete being produced.

30. A small but significant post-acquisition increase in the price of aggregate that meets state departments of transportation and American Society of Testing Materials' specifications for use in ready mix concrete and asphalt projects would not cause the purchasers of such aggregate to substitute another product in sufficient quantities so as to make such a price increase unprofitable.

31. Accordingly, the production and distribution of aggregate that meets state departments of transportation and American Society of Testing materials' specifications for use in ready mix concrete and asphalt projects is a line of commerce and a relevant product market within the meaning of Section 7 of the Clayton Act.

### B. The Relevant Geographic Markets

#### 1. Ready Mix Concrete

32. The ready mix concrete needed for large projects, such as highways, bridges, and high-rise buildings, is bid on a project-by-project basis. Ready mix concrete suppliers can identify the specific market conditions that apply to each project, including the number of competitors that potentially could service the location of the project. Ready mix concrete suppliers charge different prices to customers based on the particular location of a project.

33. The suppliers with the ability to bid on large projects are those with plants located within the metropolitan area in which the project is located. The cost of transporting ready mix concrete is high compared to the value of the product. As concrete is hauled greater distances, the transportation costs begin to diminish the profitability of a load of concrete. Therefore, suppliers attempt to stay close to their batch plants to minimize the cost of hauling concrete.

34. Further, because concrete begins to set while being driven to the job site, it is highly perishable. Therefore, contractors and state departments of transportation typically limit the time concrete can spend in a truck to 90 minutes or less. This time may be even shorter in hot weather conditions. This time period is measured from the moment the water hits the dry concrete inputs in the truck until the concrete is poured out of the truck. Because of this 90-minute window, contractors and state departments of transportation typically allow only a portion—often only 30 minutes—to be consumed by driving time. If the concrete is driven for a longer period of time, there may be insufficient time for the concrete to be completely poured onto the project within the 90-minute window.

35. Due to its perishability and the cost of hauling concrete, depending on the size of the city and the associated traffic, the distance concrete can reasonably be transported for large projects, such as highways, bridges, and high-rise buildings in a metropolitan area is limited to the metropolitan area and, in many cases, to only portions of that area.

36. The relevant geographic markets, within the meaning of Section 7 of the Clayton Act, consist of the locations within the metropolitan areas of Fort Walton Beach/Panama City/Pensacola, Jacksonville, Orlando, Tampa/St. Petersburg, Fort Myers/Naples, Florida, and the metropolitan areas of Flagstaff and Tucson, Arizona, to which Cemex and Rinker are among a small number of firms that compete to supply ready mix concrete for large projects.

#### 2. Concrete Block

37. The cost of transporting concrete block is high compared to the value of the product. Manufacturers or third-party haulers deliver concrete block to customer job sites by truck. As delivery distance increases, the ratio of transportation costs to the price of concrete block increases. In urban areas, this most often confines the transport of concrete block to the metropolitan area.

38. A small but significant post-acquisition increase in the price of concrete block in metropolitan Tampa/St. Petersburg would not cause customers of concrete block to procure concrete block from outside this area in sufficient quantities so as to make such a price increase unprofitable.

39. Accordingly, metropolitan Tampa/St. Petersburg is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

40. Similarly, a small but significant post-acquisition increase in the price of concrete block in metropolitan Fort Myers/Naples would not cause customers of concrete block to procure concrete block from outside this area so as to make such a price increase unprofitable.

41. Accordingly, metropolitan Fort Myers/Naples is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

### 3. Aggregate

42. Aggregate is a bulky, heavy, and relatively low-cost product. The cost of transporting aggregate is high compared to the value of the product.

43. Suppliers cannot economically transport aggregate to the Tucson area from locations outside of metropolitan Tucson. First, transportation costs limit the distance aggregate can be economically transported from an aggregate pit to a ready mix concrete plant (for aggregate pits that are not co-located with ready mix concrete plants) or from an aggregate pit to the job site. Second, the location of other aggregate suppliers limits the distance that aggregate can economically travel. Finally, in metropolitan Tucson, the ready mix concrete plants are typically

co-located with the aggregate pits to minimize transportation costs.

44. A small but significant post-acquisition increase in the price of aggregate in metropolitan Tucson would not cause customers of aggregate to procure aggregate in sufficient quantities from outside this area so as to make such a price increase unprofitable.

45. Accordingly, metropolitan Tucson is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

### C. Anticompetitive Effects

#### 1. The Proposed Transaction Will Harm Competition in the Markets for Ready Mix Concrete, Concrete Block, and Aggregate in the Specified Geographic Markets.

##### a. Ready Mix Concrete

46. Vigorous price competition between Cemex and Rinker in the production and sale of ready mix concrete has benefitted customers.

47. The competitors that could constrain Cemex and Rinker from raising prices for ready mix concrete to be used on large projects, such as highways, bridges, and high-rise buildings, are limited to those that meet the requirements imposed by purchasers for large ready mix concrete projects.

48. The proposed acquisition will eliminate the competition between Cemex and Rinker and reduce the number of suppliers of ready mix concrete that might bid on certain types of large projects, such as highways, bridges, and high-rise buildings, from three to two in metropolitan Tampa/St. Petersburg and metropolitan Fort Walton Beach/Panama City/Pensacola, Florida, and in metropolitan Tucson, Arizona. The proposed acquisition will eliminate the competition between Cemex and Rinker and reduce the number of suppliers of ready mix concrete that might bid on certain types of large projects, such as highways, bridges and high-rise buildings, from four to three generally, and in some areas or for some projects from three to two, in metropolitan Orlando, metropolitan Fort Myers/Naples, and metropolitan Jacksonville, Florida. Further, the proposed acquisition will substantially increase the likelihood that Cemex will unilaterally increase the price of ready mix concrete to a significant number of customers in these areas.

49. In metropolitan Flagstaff, Arizona, the proposed acquisition will eliminate the competition between Cemex and Rinker and reduce the number of suppliers of ready mix concrete that might bid on certain types of large

projects, such as highways, bridges, and high-rise buildings, from two to one.

50. The response of other ready mix concrete producers in the relevant areas would not be sufficient to constrain a unilateral exercise of market power by Cemex after the acquisition.

51. In addition, a combined Cemex and Rinker would have the ability to increase prices for ready mix concrete to certain customers. Ready mix concrete producers know the locations of their competitors' batch plants and the distance from their own plants and their competitors' plants to a customer's job site. Generally, because of transportation costs, the farther a supplier's closest competitor is from a job site, the less price competition that supplier faces for that project. Post-acquisition, in instances where Cemex and Rinker plants were the 11 closest plants to a customer's project, the combined firm, using the knowledge of its competitors' plant locations, would be able to charge such customers higher prices in instances in which the next closest ready mix concrete supplier's plant is farther from the customer's project than were the Cemex and Rinker plants.

52. Without the competitive constraint of competition between Cemex and Rinker, post-acquisition Cemex will have a greater ability to exercise market power by raising prices to customers for whom Rinker and Cemex were their closest and second-closest sources of ready mix concrete.

53. Further, Cemex's elimination of Rinker as an independent competitor in the production and distribution of ready mix concrete is likely to facilitate anticompetitive coordination among the remaining producers that can bid on large projects in each relevant geographic market. Mixes of the same strength of concrete are relatively standard and homogeneous, and producers have access to information about competitors' output, capacity, and costs. Moreover, participants in ready mix concrete markets have successfully engaged in anticompetitive coordination in the past. Given these market conditions, eliminating one of the few ready mix concrete suppliers that can bid on large projects is likely to further increase the ability of the remaining competitors to successfully coordinate.

54. The transaction will therefore substantially lessen competition in the market for ready mix concrete in the affected areas, which is likely to lead to higher prices for the ultimate consumers of such products, in violation of Section 7 of the Clayton Act.

##### b. Concrete Block

55. Vigorous price competition between Cemex and Rinker in the production and sale of concrete block has benefitted customers.

56. In metropolitan Tampa/St. Petersburg, Florida, the proposed acquisition will eliminate the competition between Cemex and Rinker. The acquisition will give Cemex control of approximately 60 percent of the concrete block capacity in metropolitan Tampa/St. Petersburg. The proposed acquisition will substantially increase the likelihood that Cemex will unilaterally increase the price of concrete block to a significant number of customers in metropolitan Tampa/St. Petersburg.

57. In metropolitan Fort Myers/Naples, Florida, the proposed acquisition will eliminate the competition between Cemex and Rinker. The acquisition will give Cemex control of approximately 69 percent of the concrete block capacity in metropolitan Fort Myers/Naples. The proposed acquisition will substantially increase the likelihood that Cemex will unilaterally increase the price of concrete block to a significant number of customers in metropolitan Fort Myers/Naples.

58. In addition, in each of these markets, a combined Cemex and Rinker would have the ability to increase prices for concrete block to certain customers. As with ready mix concrete, concrete block manufacturers know the locations of their competitors' plants and the distance from their own plants and their competitors' plants to a customer's job site. Generally, because of transportation costs, the farther a supplier's closest competitor is from the job site, the less price competition that supplier faces for that project. Post-acquisition, in instances where Cemex and Rinker plants were the closest plants to a customer's project, the combined firm, using the knowledge of its competitors' plant locations, would be able to charge such customers higher prices in instances in which the next closest concrete block supplier's plant is farther from the customer's project than were the Cemex and Rinker plants.

59. Without the constraint of competition between Cemex and Rinker, post-acquisition Cemex will have a greater ability to exercise market power by raising prices to customers for whom Rinker and Cemex were their closest and second-closest sources of concrete block supply.

60. Further, Cemex's elimination of Rinker as an independent competitor in the production and distribution of

concrete block is likely to facilitate anti-competitive coordination among the remaining concrete block producers in each relevant geographic market. Concrete block is a homogeneous commodity and producers have access to information about competitors' output, capacity, and costs. Given these market conditions, eliminating one of the few concrete block competitors is likely to further increase the ability of the remaining competitors to successfully coordinate.

61. The response of other concrete block producers in the relevant areas would not be sufficient to constrain a unilateral exercise of market power by Cemex after the acquisition.

62. The transaction will therefore substantially lessen competition in the market for concrete block, which is likely to lead to higher prices for the ultimate consumers of such products, in violation of Section 7 of the Clayton Act.

#### c. Aggregate

63. Vigorous price competition between Cemex and Rinker in the production and sale of aggregate in metropolitan Tucson, Arizona has benefitted customers.

64. In metropolitan Tucson, the proposed acquisition will eliminate the competition between Cemex and Rinker. The proposed acquisition will also reduce the number of significant suppliers of aggregate from five to four in the Tucson market generally and, depending on the location of the aggregate pit and the transportation costs, the number of suppliers could be reduced to as few as three or two. Further, the proposed acquisition will substantially increase the likelihood that Cemex will unilaterally increase the price of aggregate to a significant number of customers.

65. Further, Cemex's elimination of Rinker as an independent competitor in the production and distribution of aggregate is likely to facilitate anti-competitive coordination among the remaining aggregate producers in Tucson. Aggregate is a homogeneous commodity and producers have access to information about competitors' output, capacity, and costs. Given these market conditions, eliminating one of the few aggregate competitors is likely to further increase the ability of the remaining competitors to successfully coordinate.

66. The transaction will therefore substantially lessen competition in the market for aggregate, which is likely to lead to higher prices for the ultimate consumers of such products, in

violation of Section 7 of the Clayton Act.

#### 2. Entry Is Not Likely To Deter the Exercise of Market Power

##### a. Ready Mix Concrete

67. Successful entry or expansion into the production and distribution of ready mix concrete for large projects is difficult, time-consuming, and costly. In order to be able to bid on large projects, such as highways, bridges, and high-rise buildings, it is not sufficient simply to be able to produce ready mix concrete. In order to bid on these large projects, a new entrant or an existing producer must have multiple ready mix concrete plants in a geographic area, the ability to produce large amounts of concrete with multiple specifications, backup plants, a large number of concrete trucks, a sizeable and well-trained workforce, the demonstrated ability and reputation to be able to service such a large project and considerable financial backing to remedy any problems relating to defective concrete.

68. In addition, opening a ready mix concrete batch plant in a metropolitan area is difficult because of the need to acquire the land for the site of such a batch plant. The location of a batch plant is very important because of the perishability of the ready mix concrete. In Florida, batch plants typically require approximately three to five acres of land to comply with environmental and land use regulations. Finding the appropriate site for such a plant close enough to the large projects is difficult, because in metropolitan areas such land is already utilized or does not have the appropriate zoning. Obtaining the land use permits or zoning variances is difficult, costly, and time-consuming, as well. Furthermore, in addition to building the new batch plant, an entrant would also have to secure sources of cement and aggregate, which are inputs into ready mix concrete.

69. Therefore, entry or expansion by any other firm so that it is able to bid on large ready mix concrete projects will not be timely, likely, or sufficient to defeat an anti-competitive price Increase.

##### b. Concrete Block

70. In metropolitan Tampa/St. Petersburg and metropolitan Fort Myers/Naples, successful entry or expansion into the production and distribution of concrete block is difficult, time consuming, and costly. Properly zoned parcels of land of the necessary size (at least eight acres) are scarce. Locating or securing proper zoning, development, building, air

quality, and environmental permits and building a concrete block plant can take more than two years. Building a new concrete block plant costs approximately \$8 to \$12 million.

71. Therefore, entry or expansion by any other firm into the concrete block markets in metropolitan Tampa/St. Petersburg and metropolitan Fort Myers/Naples will not be timely, likely, or sufficient to defeat an anti-competitive price increase.

##### c. Aggregate

72. Successful entry or expansion into the production and distribution of aggregate is difficult, time-consuming, and costly. Successful entry or expansion into the production and distribution of aggregate in metropolitan Tucson, Arizona is difficult because there are very few new sites on which to locate aggregate pits. First, for aggregate used on transportation projects, the aggregate pits must be located in a river bed or wash. Second, aggregate is a finite resource in metropolitan Tucson, and several aggregate pits have been depleted in the past several years. Third, requests to open new aggregate pits often face fierce public opposition.

73. In addition, Arizona state and federal zoning, air quality, and other permitting process requirements must be met. Obtaining the necessary environmental and land-use permits for aggregate pits is difficult in Tucson.

74. Further, the Arizona Aggregate Mine Reclamation Act requires financial assurances and other requirements for companies seeking to open a new aggregate pit, continuing to operating an existing aggregate pit, or expanding an existing aggregate pit.

75. Therefore, entry or expansion by any other firm into the aggregate market in metropolitan Tucson would not be timely, likely, or sufficient to defeat an anti-competitive price Increase.

#### V. Violations Alleged

76. The proposed acquisition of Rinker by Cemex would substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

77. Unless restrained, the transaction will have the following anti-competitive effects, among others:

a. Actual and potential competition between Cemex and Rinker in the production and distribution of ready mix concrete, concrete block, and aggregate in the relevant geographic markets will be eliminated;

b. competition generally in the production and distribution of ready

mix concrete, concrete block, and aggregate in the relevant geographic markets. will be substantially lessened; and

c. Prices for ready mix concrete, concrete block, and aggregate in the relevant geographic markets will likely increase.

#### VI. Request for Relief

78. Plaintiff requests that:

a. Cemex's proposed acquisition of Rinker be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. Defendants and all persons acting on their behalf permanently enjoined and restrained from consummating the proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Cemex with the operations of Rinker;

c. Plaintiff be awarded its costs for this action; and

d. Plaintiff receive such other and further relief as the Court deems just and proper.

Respectfully submitted,

For Plaintiff United States of America:

/s/ \_\_\_\_\_  
Thomas O. Barnett,  
Assistant Attorney General, D.C. Bar  
#426840.

/s/ \_\_\_\_\_  
David L. Meyer,  
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/s/ \_\_\_\_\_  
Patricia A. Brink,  
Deputy Director of Operations.

/s/ \_\_\_\_\_  
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Dated: May 2, 2007.

#### United States District Court for the District of Columbia

*United States of America, Plaintiff, v. Cemex, S.A.B. de C.Y. and Rinker Group Limited, Defendants.*

Case No.: 1:07-cv-00640.

Judge: Hon. Royce C. Lamberth.

Deck Type: Antitrust.

Date Stamped: May 2, 2007.

#### Final Judgment

Whereas, plaintiff, United States of America, filed its Amended Complaint on May 2, 2007, and plaintiff and defendants, Cemex, S.A.R de C.V. ("Cemex") and Rinker Group Limited ("Rinker"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Cemex agrees 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 the prompt and certain divestiture of certain rights or assets by Cemex to assure that competition is not substantially lessened;

And whereas, plaintiff requires Cemex to make certain divestitures for the purpose of remedying the loss of competition alleged in the Amended Complaint;

And whereas, Cemex has represented to the United States that the divestitures required below can and will be made and that Cemex will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is Ordered, adjudged and decreed:

#### I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Amended 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. "Acquirer" or "Acquirers" means the entity or entities to whom Cemex divests some or all of the Divestiture Assets.

B. "Aggregate" means crushed stone and gravel produced at quarries, mines, or gravel pits used for, among other things, the production of ready mix concrete and concrete block. c.

C. "Cemex" means defendant Cemex, S.A.B. de C.V., a Mexican corporation with its headquarters in Nuevo Leon, Mexico, its successors and assigns, and its subsidiaries, divisions, groups,

affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Concrete block" means a building material used in the construction of residential and commercial structures that is produced at a plant by mixing cementitious material, aggregate, chemical additives, and water, and placing that mixture in molds of various sizes.

E. Divestiture Assets" means:

1. the following Ready Mix Concrete plants:

a. Fort Walton Beach/Panama City/Pensacola, Florida Area

i. Rinker's Crestview plant, located at 5420 Fairchild Road, Crestview, FL 32539;

ii. Rinker's Fort Walton plant, located at 1787 FIM Boulevard, Fort Walton Beach, FL 32547;

iii. Rinker's Milton plant, located at 6250 Da Lisa Road, Milton, FL 32583;

iv. Rinker's Panama City plant, located at 1901-B East 15th Street, Panama City, FL 32405;

v. Rinker's Panama City Beach plant, located at 17750 Hutchinson Road, Panama City Beach, FL 32407;

vi. Rinker's Pensacola plant, located at 415 Hyatt Street, Pensacola, FL 32503;

vii. Rinker's Port St. Joe plant, located at 1145 Industrial Road, Port St. Joe, FL 32456;

viii. Rinker's Point Washington plant, located at the intersection of East Highway 98 and Old Ferry Road, Santa Rosa Beach, FL 32459;

b. Jacksonville, Florida Area

i. Cemex's Main Street plant, located at 9214 North Main Street, Jacksonville, FL 32218;

ii. Cemex's Southside Florida Mining Boulevard plant, located at 9715 East Florida Mining Boulevard, Jacksonville, FL 32223;

c. Orlando, Florida Area

i. Cemex's East Orlando plant, located at 7400 Narcoossee Road, Orlando, FL 32822;

ii. Cemex's Goldenrod plant, located at 4000 Forsyth Road, Winter Park, FL 32792;

iii. Cemex's Winter Garden plant, located at 201 Hennis Road, Winter Garden, FL 34787;

iv. Rinker's Kennedy plant, located at 1406 Atlanta Avenue, Orlando, FL 32806;

d. Tampa/St. Petersburg, Florida Area

i. Rinker's Clearwater plant, located at 3757 118th Avenue North, Clearwater, FL 33762;

ii. Rinker's Odessa plant, located at 12025 State Road 54, Odessa, FL 33556;  
 iii. Rinker's Odessa Keys plant, located at 11913 State Road 54, Odessa, FL 33556;

iv. Rinker's Riverview plant, located at 6723 South 78th Street, Riverview, FL 33569;

v. Rinker's Tampa plant, located at 6106 East Hanna Avenue, Tampa, FL 33610;

vi. Rinker's Tampa Keys plant, located at 1811 North 57th Street, Tampa, FL 33619;

e. Fort Myers/Naples, Florida Area

i. Rinker's Ave Maria plant, located at 4811 Ave Maria Boulevard, Immokalee, FL 34142;

ii. Rinker's Bonita Springs plant, located at 25061 Old U.S. Highway 41 South, Bonita Springs, FL 34135;

iii. Rinker's Canal Street plant, located at 4262 Canal Street, Fort Myers, FL 33916;

iv. Rinker's Cape Coral (Pine Island) plant, located at 2401 SW Pine Island Road, Cape Coral, FL 33991;

v. Rinker's Naples plant, located at 9210 Collier Boulevard, Naples, FL 34114;

vi. Rinker's South Fort Myers plant, located at 7270 Alico Road, Fort Myers, FL 33912;

f. Flagstaff, Arizona Area

Cemex's Brannen plant, located at 633 East Brannen Avenue, Flagstaff, AZ 86001;

g. Tucson, Arizona Area

i. Cemex's Ina plant, located at 5400 West Massingale Road, Tucson, AZ 85743;

ii. Rinker's Green Valley plant, located at 18701 South Old Nogales Highway, Sahuarita, AZ 85629;

iii. Rinker's Poorman Road plant, located at 6500 South Old Spanish Trail, Tucson, AZ 85747;

iv. Rinker's Valencia plant, located at 1011 West Valencia Road, Tucson, AZ 85706;

The following concrete block plants:

a. Tampa/St. Petersburg, Florida

i. Rinker's Odessa plant, located at 12025 State Road 54, Odessa, FL 33556;

ii. Rinker's Palmetto plant, located at 600 9th Street West, Palmetto, FL 34221;

iii. Rinker's Tampa plant, located at 6302 North 56th Street, Tampa, FL 33610;

b. Fort Myers/Naples, Florida Area

i. Rinker's Bonita Springs plant, located at 25091 Old U.S. Highway 41 South, Bonita Springs, FL 34135;

ii. Rinker's Coral Rock plant, located at 41451 Cook Brown Road, Punta Gorda, FL 33982;

iii. Rinker's South Fort Myers plant, located at 7270 Alico Road, Fort Myers, FL 33912;

3. The following Tucson, Arizona area aggregate plants:

a. Cemex's Ina plant, located at 5400 West Massingale Road, Tucson, AZ 85743;

b. Rinker's Green Valley plant, located at 18701 South Old Nogales Highway, Sahuarita, AZ 85629;

4. All tangible assets used in the plants listed in paragraphs II(E)(1)-(3), including all research and development activities, manufacturing equipment, tooling and fixed assets, real property (leased or owned), mining equipment, personal property, inventory, aggregate reserves, office furniture, materials, supplies, on- or off-site warehouses or storage facilities relating to the plants; all licenses, permits and authorizations issued by any governmental organization relating to the plants; all contracts, agreements, leases (including renewal rights), commitments, and understandings relating to the plants, including supply agreements; all customer lists, contracts, accounts, and credit records relating to the plants; all other records relating to the plants; and at the option of the Acquirer or Acquirers, a number of trucks and other vehicles usable at the plants listed in paragraphs II(E)(1)-(3) equal to, for each separate type of truck or other vehicle, the average number of trucks and other vehicles of that type used at each such plant per month during the months of operation of the plant between January 1, 2006 and December 31, 2006 (calculated by averaging the number of trucks and other vehicles of each type that were used at each plant at any time during each month that the plant was in operation), but such trucks and vehicles need not include any equipment related to Cemex's "ReadySlump" process, so long as the trucks and other vehicles are fully operable without such equipment; and

5. All intangible assets used in the development, production, servicing, and distribution of products by the facilities listed in paragraphs II(E)(1)-(3), including but not limited to all contractual rights, patents, licenses and sublicenses, intellectual property, technical information, computer software (including dispatch software and management information systems) and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the

handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided to the employees, customers, suppliers, agents or licensees, and all research data (including aggregate reserve testing information) concerning historic and current research and development efforts relating to the plants listed in paragraphs II(E)(1)-(3), including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

F. "Ready mix concrete" means a building material used in the construction of buildings, highways, bridges, tunnels, and other projects that is produced by mixing a cementitious material and aggregate with sufficient water to cause the cement to set and bind.

G. "Rinker" means defendant Rinker Group Limited, an Australian corporation with its headquarters in Chatswood, Australia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

H. "Divestiture Trigger" means the day on which Cemex elects a majority of the Board of Directors of Rinker or forty-five (45) days after Cemex obtains a number of shares of Rinker stock in excess of 50 percent of the outstanding shares of Rinker, whichever is sooner.

### III. Applicability

A. This Final Judgment applies to Cemex, as defined above, and all other persons in active concert or participation with Cemex who receive actual notice of this Final Judgment by personal service or otherwise.

B. Cemex shall require, as a condition of the sale or other disposition of all or substantially all of its assets or of lesser business units that include the Divestiture Assets, that the purchaser agrees to be bound by the provisions of this Final Judgment.

### IV. Divestitures

A. Cemex is ordered and directed, within one hundred twenty (120) calendar days after the Divestiture Trigger, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed in total sixty (60) calendar days, and shall notify



the Court in each such circumstance. Cemex agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by the Final Judgment, Cemex promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Cemex shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Unless the United States otherwise consents in writing, Cemex shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets that customarily are provided in a due diligence process except such information or documents subject to the attorney-client or work-product privilege. Cemex shall make available such information to the United States at the same time that such information is made available to any other person.

C. Unless the United States otherwise consents in writing, Cemex shall provide the Acquirer or Acquirers and the United States information relating to personnel involved in production, operations, and sales at the Divestiture Assets to enable the Acquirer or Acquirers to make offers of employment. Cemex will not interfere with any negotiations by the Acquirer or Acquirers to employ any employee of the Divestiture Assets whose primary responsibility is production, operations, or sales at the Divestiture Assets.

D. Unless the United States otherwise consents in writing, Cemex shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, and other documents and information customarily provided as part of a due diligence process.

E. Cemex shall warrant to the Acquirer or Acquirers that those Divestiture Assets owned by Cemex prior to an acquisition of Rinker will be operational on the date of the divestiture. In addition, with respect to those Divestiture Assets owned by Rinker prior to an acquisition by Cemex, Cemex shall warrant to the Acquirer or Acquirers that those Divestiture Assets will be operational on the date of the divestiture, if they were operational on the date Cemex acquires a number of

shares of Rinker stock in excess of 50 percent of the outstanding shares of Rinker.

F. Cemex shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. Cemex shall warrant to the Acquirer or Acquirers that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of those Divestiture Assets owned by Cemex prior to an acquisition of Rinker. In addition, with respect to those Divestiture Assets owned by Rinker prior to an acquisition by Cemex, Cemex shall warrant to the Acquirer or Acquirers that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of those Divestiture Assets, if there are no material defects in the environmental, zoning, or other permits pertaining to the operation of those Divestiture Assets on the date Cemex acquires a number of shares of Rinker stock in excess of 50 percent of the outstanding shares of Rinker. Cemex shall not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. If for any reason Cemex is unable within the time period required by paragraph IV(A) to divest any of the Divestiture Assets or make any of the Divestiture Assets available for sale by the trustee appointed pursuant to Section V, or if for any reason Cemex does not make the warranties in paragraphs IV(E) and (G) with respect to the assets owned by Rinker prior to an acquisition by Cemex, for each such asset, the United States, in its sole discretion, may select one or more alternative assets owned by Cemex that are located or used in the same geographic area (as identified in boldface type in section II(E)) to be divested in lieu of the Divestiture Asset that could not be divested. Unless the United States consents otherwise in writing, divestiture of an alternative Cemex asset shall include all tangible and intangible assets associated with that asset, as defined in paragraph II(E).

I. Unless the United States otherwise consents in writing, any divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer or Acquirers as viable, ongoing businesses engaged in producing and distributing ready mix

concrete, concrete block, and/or aggregate, that the Divestiture Assets will remain viable, and that the divestiture of such assets will remedy the competitive harm alleged in the Amended Complaint. The sale of the Divestiture Assets may be made to one or more Acquirers, so long as: (1) All of the ready mix concrete plants in a geographic area (as identified in boldface type in section II(E)) are divested to a single Acquirer; (2) all of the concrete block plants in a geographic area are divested to a single Acquirer; (3) both aggregate plants listed in paragraph II(E)(3) are divested to the same Acquirer that acquires the ready mix concrete plants listed in paragraphs II(E)(1)(g)(i)–(iii); and (4) in each instance it is demonstrated in a manner acceptable to the United States in its sole discretion that the Divestiture Assets will remain viable and the divestiture of such Divestiture assets will remedy the competitive harm alleged in the Amended Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

1. Shall be made to an Acquirer or Acquirers that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) to compete effectively in the production and distribution of ready mix concrete, concrete block, and/or aggregate; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer or Acquirers and Cemex gives Cemex the ability to unreasonably raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively in the production and distribution of ready mix concrete, concrete block, and/or aggregate.

J. If Cemex does not acquire a number of shares of Rinker stock in excess of 50 percent of the outstanding shares of Rinker, Cemex shall divest all its interest in Rinker within six months from the date this Final Judgment is signed by the Court. Pending such divestiture, Cemex shall not, directly or indirectly: (1) Exercise dominion or control over, or otherwise seek to influence, the management, direction, or supervision of the business of Rinker; (2) seek or obtain representation on the Board of Directors of Rinker; (3) exercise any voting rights attached to the shares; (4) seek or obtain access to any confidential or proprietary information of Rinker; or (5) take any action or omit to take any action that would have an



effect different than if Cemex's interest in Rinker were that of a purely passive investor.

#### *V. Appointment of Trustee to Effect Divestitures*

A. If Cemex has not divested the Divestiture Assets within the time period specified in paragraph IV(A), Cemex shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to paragraph V(D) of this Final Judgment, the trustee may hire at the cost and expense of Cemex any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Cemex shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objection by Cemex must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Cemex, on such terms and conditions as plaintiff approves, 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 Cemex and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets 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, but timeliness is paramount.

E. Cemex 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 the business to be divested, and Cemex shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Cemex shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file 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. To the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

#### *VI. Notice of Proposed Divestiture*

A. Within two (2) business days following execution of a definitive divestiture agreement, Cemex or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of

any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Cemex. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Cemex, the proposed Acquirer or Acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential Acquirer. Cemex 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.

C. Within thirty (30) calendar days after receipt of the notice, or within twenty (20) calendar days after the United States has been provided the additional information requested from Cemex, the proposed Acquirer or Acquirers, any third party, or the trustee, whichever is later, the United States shall provide written notice to Cemex and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Cemex's limited right to object to the sale under paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Cemex under paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

#### *VII. Financing*

Cemex shall not finance all or any part of any purchase by an Acquirer of any Divestiture Asset pursuant to Section IV or V of this Final Judgment.

#### *VIII. Hold Separate*

Until the divestiture required by this Final Judgment has been accomplished, Cemex shall take all steps necessary to comply with the Amended Hold Separate Stipulation and Order entered by this Court. Cemex shall take no action that would jeopardize the divestiture ordered by this Court.

**IX. Affidavits**

A. Within twenty (20) calendar days of the Divestiture Trigger, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or V, Cemex shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty days, 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 Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Cemex has taken to solicit buyers for the Divestiture Assets, and to provide required information to any prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Cemex, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Amended Complaint in this matter, Cemex shall deliver to the United States an affidavit that describes in reasonable detail all actions Cemex has taken and all steps Cemex has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Cemex shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Cemex's earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Cemex shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

**X. Compliance Inspection**

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of

the Antitrust Division, and on reasonable notice to Cemex, be permitted:

1. Access during Cemex's office hours to inspect and copy, or at plaintiff's option, to require Cemex to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of Cemex, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, Cemex's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Cemex.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Cemex shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States 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 Cemex to the United States, Cemex 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 Cemex 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 the United States shall give Cemex ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

**XI. No Reacquisition**

Cemex may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

**XII. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be

necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**XIII. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

**XIV. Public Interest Determination**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: \_\_\_\_\_

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

United States District Judge.

**United States District Court for the District of Columbia**

*United States of America, Plaintiff, v. Cemex, S.A.B. de C.V. and Rinker Group Limited, Defendants.*

Case No.: 1:07-cv-00640.

Judge: Hon. Royce C. Lamberth.

Deck Type: Antitrust.

Date Stamped:

**Competitive Impact Statement**

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 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**

The United States filed a civil antitrust Complaint on April 4, 2007, seeking to obtain equitable and other relief against defendant Cemex, S.A.B. de C.V. ("Cemex") to prevent its proposed acquisition of defendant Rinker Group Limited ("Rinker") by hostile cash tender offer. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially in the production and distribution of ready mix concrete in certain areas of Florida

and Arizona, of concrete block in certain areas of Florida, and of aggregate in Tucson, Arizona, in violation of Section 7 of the Clayton Act. This loss of competition would likely result in higher prices for these products in the affected areas. At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order and a proposed Final Judgment, which were designed to eliminate the anticompetitive effects of the acquisition.

Subsequently, on April 9, 2007, Cemex signed an agreement with Rinker, pursuant to which, among other things, Cemex agreed to increase its offer price for the shares of Rinker stock and the Rinker Board of Directors agreed to recommend to its shareholders that they accept Cemex's increased offer. Accordingly, on May 2, 2007, the United States filed an Amended Complaint adding Rinker as a defendant and an Amended Hold Separate Stipulation and Order that obligated Rinker to abide by the terms of that Stipulation and Order.<sup>1</sup> Finally, the United States filed an amended proposed Final Judgment (hereafter, the "proposed Final Judgment"), reflecting the fact that Rinker is a defendant in this action.<sup>2</sup>

Under the proposed Final Judgment, which is explained more fully below, Cemex is required to divest 31 ready mix concrete plants in the metropolitan areas of Fort Walton Beach/Panama City/Pensacola, Jacksonville, Orlando, Tampa/St. Petersburg, and Fort Myers/Naples, Florida, and the metropolitan areas of Flagstaff and Tucson, Arizona. In addition, Cemex is required to divest six concrete block plants in the Tampa/St. Petersburg and Fort Myers/Naples, Florida metropolitan areas and two aggregate plants in the Tucson, Arizona metropolitan area. Under the terms of the Amended Hold Separate Stipulation and Order, Cemex and Rinker are required to: (1) Take certain steps to ensure that the plants discussed above (hereafter, the "Divestiture Assets") are operated as ongoing, economically viable competitive businesses; (2) maintain the management, sales, and operations of all assets owned by each

entirely separate, distinct, and apart from the assets owned by the other; and (3) refrain from coordinating the production, marketing, or terms of sale of any of their products with those produced or distributed by any assets owned by the other defendant prior to the acquisition.

The United States, Cemex, and Rinker have stipulated that the proposed Final Judgment may be entered after compliance with the APP A. 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. The Defendants and the Proposed Transaction*

Cemex and Rinker both produce and distribute building materials, including, among other things, ready mix concrete, aggregate, and concrete block throughout the world. Cemex is organized under the laws of the United Mexican States with its principal place of business in Nuevo León, Mexico. In 2006, Cemex reported total sales of approximately \$24.6 billion. Cemex is the largest United States supplier of ready mix concrete and cement and the seventh largest United States supplier of aggregate. Approximately 25 percent of Cemex's revenues are earned in the United States. Cemex operates in the United States through its wholly-owned subsidiary, Cemex, Inc., which has its principal place of business in Houston, Texas.

Rinker is organized under the laws of Australia with its principal place of business in Chatswood, Australia. In 2006, Rinker reported total sales of approximately \$4 billion. Rinker is the second largest United States supplier of ready mix concrete and the fifth largest United States supplier of aggregate. Approximately 80 percent of Rinker's revenues are earned in the United States. Rinker operates in the United States through its subsidiary, Rinker Materials Corporation. Rinker Materials Corporation has its principal place of business in West Palm Beach, Florida.

On October 27, 2006, Cemex Australia Pty Ltd., an entity controlled by Cemex, initiated a hostile cash tender offer to acquire all of the outstanding shares of Rinker for \$13 per share. The total enterprise value of the transaction when made on October 27, 2006, including Rinker's debt, was approximately \$12 billion. This offer was due to expire on

March 30, 2007, but Cemex extended it until April 27, 2007.

On April 9, 2007, Cemex announced that it signed an agreement with Rinker, pursuant to which Cemex agreed to increase its offer price for the shares of Rinker stock to \$15.85 per share. This increased the total enterprise value of the transaction to approximately \$15 billion. This offer expired on May 18, 2007, and is subject to Cemex's acquisition of 90 percent of the Rinker shares. As part of the agreement, the Rinker Board of Directors unanimously agreed to recommend to its shareholders that they accept Cemex's increased offer in the absence of a superior proposal.

### *B. The Competitive Effects of the Transaction on the Markets for Ready Mix Concrete, Concrete Block, and Aggregate*

#### *1. Relevant Product Markets*

##### *a. Production, Distribution, and Sale of Ready Mix Concrete*

The Amended Complaint alleges that the production, distribution, and sale of ready mix concrete for use in large projects is a relevant product market within the meaning of Section 7 of the Clayton Act. Ready mix concrete is a building material made up of a combination of cement, fine and coarse aggregate, small amounts of chemical additives, and water. Ready mix concrete is unique because it is pliable when freshly mixed, can be molded into a variety of forms, and is strong and permanent when hardened. For many building applications, there is no substitute for ready mix concrete.

Ready mix concrete is sold pursuant to bids, which are based on extensive specifications from the customer regarding, among other things, the amount of concrete, the various strengths of concrete, and the size and timing of the concrete pours. Not all suppliers of ready mix concrete can service every kind of project. For example, servicing certain types of large projects, such as large state department of transportation highway and bridge building projects and high-rise building projects, requires ready mix concrete suppliers to be able to provide: (a) A large number of cubic yards of concrete; (b) large daily pours of concrete, which require the concrete supplier to schedule trucks to arrive continuously at a project; (c) concrete having multiple pounds per square inch specifications; and (d) tests to ensure that the concrete meets project engineering specifications. If the concrete does not meet the project specifications or the concrete is not poured continuously, the customer may suffer direct and consequential losses as

<sup>1</sup> Paragraph VIII(B) of the original proposed Final Judgment provided that if Cemex and Rinker subsequently reached an agreement relating to Cemex's acquisition of Rinker, Cemex would require Rinker to sign and become a party to an amended Hold Separate Stipulation and Order.

<sup>2</sup> In addition, Paragraph VIII(B) of the original proposed Final Judgment was deleted in the amended Final Judgment because Rinker has been added to the Amended Hold Separate Stipulation and Order. There were no other substantive changes to the Amended Complaint or amended proposed Final Judgment.

a result of defective concrete.

Purchasers of ready mix concrete for such large projects require that the suppliers have: (a) Multiple ready mix concrete plants in a geographic area; (b) the ability to produce large amounts of concrete with multiple specifications; (c) backup plants; (d) a large number of concrete trucks; (e) a sizeable and well-trained workforce; (f) the demonstrated ability to service such a large project; and (g) considerable financial backing to remedy any problems relating to defective concrete.

Each large project is bid separately and ready mix concrete suppliers can identify the specific market conditions that apply to each large project, including the number of competitors that potentially could service the project's requirements. Ready mix concrete suppliers can and do charge different prices to customers based on the particular project's requirements and market conditions.

The Amended Complaint alleges that a small but significant post-acquisition increase in the price of ready mix concrete that meets particular bid specifications would not cause the purchasers of ready mix concrete for large projects to substitute another building material in sufficient quantities, or to utilize a supplier of ready mix concrete without the characteristics described above with sufficient frequency, so as to make such a price increase unprofitable.

Accordingly, the production, distribution, and sale of ready mix concrete for use in large projects is a line of commerce and a relevant product market.

#### b. Concrete Block

The Amended Complaint alleges that concrete block is a relevant product market within the meaning of Section 7 of the Clayton Act in the state of Florida from Orlando south. Concrete block is a construction material used to build exterior and interior walls in residential and commercial structures. In the state of Florida, from Orlando south, the walls of residential structures are built almost exclusively with concrete block. For nearly all residential construction applications in this area, a small but significant post-acquisition increase in the price of concrete block would not cause the purchasers of concrete block to substitute another product such as poured concrete or polyurethane block in sufficient quantities so as to make such a price increase unprofitable. Accordingly, within the state of Florida, from Orlando south, concrete block is a relevant product market.

#### c. Aggregate

The Amended Complaint alleges that the production and distribution of aggregate that meets specifications set by state departments of transportation and the American Society of Testing Materials for use in ready mix concrete and asphalt projects is a relevant product market within the meaning of Section 7 of the Clayton Act. Aggregate is rock mined from either quarries or pits that is crushed, washed, and mixed with sand, cement, and water to produce ready mix concrete. It is also used to make asphalt concrete for use in building roads. Different sizes of rock are needed to meet different concrete and asphalt specifications. There are no substitutes for aggregate because it differs from other types of stone products in its physical composition, functional characteristics, customary uses, and pricing. It must meet specifications of state departments of transportation or the American Society of Testing Materials for the specific type of asphalt or ready mix concrete being produced. The Amended Complaint further alleges that a small but significant post-acquisition increase in the price of aggregate that meets such specifications for use in ready mix concrete and asphalt projects would not cause the purchasers of aggregate to substitute another product in sufficient quantities so as to make such a price increase unprofitable. Accordingly, the production and distribution of aggregate that meets specifications of state departments of transportation or the American Society of Testing Materials for use in ready mix concrete and asphalt projects is a relevant product market.

#### 2. Relevant Geographic Markets

##### a. Ready Mix Concrete

The ready mix concrete needed for large projects, such as highways, bridges, and high-rise buildings, is bid on a project-by-project basis. Ready mix concrete suppliers can identify the specific market conditions that apply to each project, including the number of competitors that potentially could service the location of the project. Ready mix concrete suppliers charge different prices to customers based on the particular location of a project.

The suppliers with the ability to bid on large projects are those with plants located within the metropolitan area in which the project is located. The cost of transporting ready mix concrete is high compared to the value of the product. As concrete is hauled greater distances, the transportation costs begin to diminish the profitability of a load of

concrete. Therefore, suppliers attempt to stay close to their batch plants to minimize the cost of hauling concrete.

Further, because concrete begins to set while being driven to the job site, it is highly perishable. Therefore, contractors and state departments of transportation typically limit the time concrete can spend in a truck to 90 minutes or less. Of this 90-minute window, contractors and state departments of transportation typically allow only a portion—often only 30 minutes—to be consumed by driving time.

Due to its perishability and the cost of hauling concrete, depending on the size of the city and the associated traffic, the distance concrete can reasonably be transported for large projects, such as highways, bridges, and high-rise buildings in a metropolitan area, is limited to the metropolitan area and, in many cases, to only portions of that area. Accordingly, the relevant markets consist of the locations within the metropolitan areas of Fort Walton Beach/Panama City/Pensacola, Jacksonville, Orlando, Tampa/St. Petersburg, and Fort Myers/Naples, Florida, and the metropolitan areas of Flagstaff and Tucson, Arizona, to which Cemex and Rinker are among a small number of firms that compete to supply ready mix concrete.

##### b. Concrete Block

The cost of transporting concrete block is high compared to the value of the product. Manufacturers or third-party haulers deliver concrete block to customer job sites by truck. As delivery distance increases, the ratio of transportation costs to the price of concrete block increases. In urban areas, this ratio most often confines the transport of concrete block to the metropolitan area.

The Amended Complaint alleges that a small but significant post-acquisition increase in the price of concrete block in either the metropolitan Tampa/St. Petersburg area or the metropolitan Fort Myers/Naples area would not cause customers of concrete block to procure concrete block from outside these areas in sufficient quantities so as to make such a price increase unprofitable. Accordingly, metropolitan Tampa/St. Petersburg and metropolitan Fort Myers/Naples are relevant geographic markets.

##### c. Aggregate

Aggregate is a bulky, heavy, and relatively low-cost product. The cost of transporting aggregate is high compared to the value of the product. Suppliers cannot economically transport aggregate

to the Tucson area from locations outside of metropolitan Tucson. First, transportation costs limit the distance aggregate can be economically transported from an aggregate pit to a ready mix concrete plant (for aggregate pits that are not co-located with ready mix concrete plants) or from an aggregate pit to the job site. In metropolitan Tucson, the ready mix concrete plants are typically co-located with the aggregate pits to minimize transportation costs. Second, the location of other aggregate suppliers limits the distance that aggregate can economically travel.

The Amended Complaint alleges that a small but significant post-acquisition increase in the price of aggregate in metropolitan Tucson would not cause customers of aggregate to procure aggregate in sufficient quantities from outside this area so as to make such a price increase unprofitable. Accordingly, metropolitan Tucson is a relevant geographic market.

### 3. Anticompetitive Effects of the Acquisition

#### a. Ready Mix Concrete

The Amended Complaint alleges that the proposed acquisition will eliminate competition between Cemex and Rinker and reduce the number of suppliers of ready mix concrete that might bid on certain types of large projects, such as highways, bridges, and high-rise buildings, from three to two in metropolitan Tampa/St. Petersburg and metropolitan Fort Walton Beach/Panama City/Pensacola, Florida, and in metropolitan Tucson, Arizona. The proposed acquisition will eliminate the competition between Cemex and Rinker and reduce the number of suppliers of ready mix concrete that might bid on certain types of large projects, such as highways, bridges, and high-rise buildings, from four to three generally, and in some areas or for some projects from three to two, in metropolitan Orlando, metropolitan Fort Myers/Naples, and metropolitan Jacksonville, Florida. Accordingly, the Amended Complaint alleges that the proposed acquisition will substantially increase the likelihood that Cemex will unilaterally increase the price of ready mix concrete to a significant number of customers in the affected metropolitan areas. Moreover, in metropolitan Flagstaff, Arizona, the proposed acquisition will reduce the number of suppliers of ready mix concrete that might bid on certain types of large projects, such as highways, bridges, and high-rise buildings, to only one.

Absent the constraint of competition between Cemex and Rinker, post-acquisition Cemex will have a greater ability to exercise market power by raising prices to customers for whom Rinker and Cemex were their closest and second-closest sources of ready mix concrete. The responses of other ready mix concrete producers in the relevant areas would not be sufficient to constrain a unilateral exercise of market power by Cemex after the acquisition.

Further, Cemex's elimination of Rinker as an independent competitor in the production and distribution of ready mix concrete is likely to facilitate anticompetitive coordination among the remaining producers that can bid on large projects in each relevant geographic market. Mixes of the same strength of concrete are relatively standard and homogeneous, and producers have access to information about competitors' output, capacity, and pricing. Moreover, participants in ready mix markets have successfully engaged in anticompetitive coordination in the past. Given these market conditions, eliminating one of the few ready mix concrete suppliers that can bid on large projects is likely to increase further the ability of the remaining competitors to coordinate successfully.

Successful entry or expansion into the production and distribution of ready mix concrete for large projects is difficult, time-consuming, and costly. In order to be able to bid on large projects, such as highways, bridges, and high-rise buildings, it is not sufficient simply to be able to produce ready mix concrete. A new entrant or an existing producer must have multiple ready mix concrete plants in a geographic area, the ability to produce large amounts of concrete with multiple specifications, backup plants, a large number of concrete trucks, a sizeable and well trained workforce, the demonstrated ability and reputation to be able to service such a large project, and considerable financial backing to remedy any problems relating to defective concrete.

In addition, opening a ready mix concrete batch plant in a metropolitan area is difficult because of the need to acquire the land for the site of such a batch plant. The location of a batch plant is important because of the perishability of the ready mix concrete. In Florida, batch plants typically require approximately three to five acres of land to comply with environmental and land use regulations. Finding the appropriate site for such a plant close enough to the large projects is difficult, because in metropolitan areas such land is already utilized or does not have the appropriate zoning. Obtaining the land

use permits or zoning variances is difficult, costly, and time-consuming, as well. Furthermore, in addition to building the new batch plant, an entrant would also have to secure sources of cement and aggregate, which are inputs into ready mix concrete. Accordingly, entry or expansion by any other firm so that it is able to bid on large ready mix concrete projects will not be timely, likely, or sufficient to deter an anticompetitive price increase by Cemex after the acquisition.

#### b. Concrete Block

In metropolitan Tampa/St. Petersburg and metropolitan Fort Myers/Naples, Florida, the acquisition will eliminate competition between Cemex and Rinker. The acquisition will give Cemex control of approximately 60 percent of the concrete block capacity in metropolitan Tampa/St. Petersburg, and approximately 69 percent of the concrete block capacity in metropolitan Fort Myers/Naples. The acquisition will substantially increase the likelihood that Cemex will unilaterally increase the price of concrete block to a significant number of customers in metropolitan Tampa/St. Petersburg and metropolitan Naples/Fort Myers. The responses of other concrete block producers in the relevant areas would not be sufficient to constrain a unilateral exercise of market power by Cemex after the acquisition. In addition, without the constraint of competition between Cemex and Rinker, post-acquisition Cemex will have a greater ability to exercise market power by raising prices to customers for whom Rinker and Cemex were their closest and second-closest sources of concrete block supply.

Further, Cemex's elimination of Rinker as an independent competitor in the production and distribution of concrete block is likely to facilitate anticompetitive coordination among the remaining concrete block producers in each relevant geographic market. Concrete block is a homogeneous commodity and producers have access to information about competitors' output, capacity, and costs. Given these market conditions, eliminating one of the few concrete block competitors is likely to increase further the ability of the remaining competitors to coordinate successfully.

Moreover, in metropolitan Tampa/St. Petersburg and metropolitan Fort Myers/Naples, successful entry or expansion into the production and distribution of concrete block is difficult, time-consuming, and costly, and such entry would not be timely, likely, or sufficient to defeat an anticompetitive price increase in the

event that Cemex acquires Rinker. Properly zoned parcels of land of the necessary size are scarce. Locating or securing proper zoning, development, building, air quality, and environmental permits and building a concrete block plant can take more than two years. Building a new concrete block plant costs approximately \$8 to \$12 million. Accordingly, entry or the threat of entry into the concrete block market is not likely to deter an anticompetitive price increase by Cemex after the acquisition.

c. Aggregate

In metropolitan Tucson, the proposed acquisition will eliminate competition between Cemex and Rinker. The proposed acquisition will also reduce the number of significant suppliers of aggregate from five to four in the market generally, and, in some locations for which the third or fourth most proximate supplier faces higher transportation costs than the nearest two, the number of suppliers could be reduced to as few as two or three. The acquisition will substantially increase the likelihood that Cemex will unilaterally increase the price of aggregate to a significant number of customers.

Moreover, Cemex's elimination of Rinker as an independent competitor in the production and distribution of aggregate is likely to facilitate anticompetitive coordination among the remaining aggregate producers in Tucson. Aggregate is a homogeneous commodity and producers have access to information about competitors' output, capacity, and costs. Given these market conditions, eliminating one of the few aggregate competitors is likely to increase further the ability of the remaining competitors to coordinate successfully.

Further, in Tucson, successful entry or expansion into the production and distribution of aggregate is difficult, time-consuming, and costly, and such entry would not be timely, likely, or sufficient to defeat an anticompetitive price increase in the event that Cemex acquires Rinker. There are few new sites on which to locate aggregate pits in metropolitan Tucson. First, for aggregate used on transportation projects, the aggregate pits must be located in a river bed or wash. Second, aggregate is a finite resource in metropolitan Tucson, and several aggregate pits have been depleted in the past several years. Third, requests to open new aggregate pits often face fierce public opposition. Fourth, obtaining the necessary environmental and land use permits for aggregate pits is difficult in metropolitan Tucson. Fifth, the Arizona

Aggregate Mine Reclamation Act requires financial assurances and other requirements for companies seeking to open a new aggregate pit, continuing to operate an existing pit, or expanding an existing pit. Accordingly, entry or the threat of entry into the aggregate market is not likely to deter an anticompetitive price increase by Cemex after the acquisition.

*III. Explanation of the Proposed Final Judgment*

A. The Divestiture Assets

The divestitures provided for in the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the markets for the production and distribution of: (1) Ready mix concrete in the metropolitan areas of Fort Walton Beach/Panama City/Pensacola, Jacksonville, Orlando, Tampa/St. Petersburg, and Fort Myers/Naples, Florida, and the metropolitan areas of Flagstaff and Tucson, Arizona; (2) concrete block in the metropolitan areas of Tampa/St. Petersburg and Fort Myers/Naples, Florida; and (3) aggregate in metropolitan Tucson, Arizona. In each metropolitan area for ready mix concrete, the divestitures will establish a new, independent, and economically viable competitor that can bid on large projects, such as highways, bridges, and high-rise buildings. In metropolitan Tampa/St. Petersburg and Fort Myers/Naples, the divestitures will also establish new, independent, and economically viable competitors that can produce and distribute concrete block. Further, the divestitures will provide the new ready mix concrete competitor in Tucson, Arizona, with sufficient aggregate reserves to compete effectively in that market.

The Divestiture Assets are:

A. Ready mix concrete plants:

1. Fort Walton Beach/Panama City/Pensacola, Florida Area

a. Rinker's Crestview plant, located at 5420 Fairchild Road, Crestview, FL 32539;

b. Rinker's Fort Walton plant, located at 1787 FIM Boulevard, Fort Walton Beach, FL 32547;

c. Rinker's Milton plant, located at 6250 Da Lisa Road, Milton, FL 32583;

d. Rinker's Panama City plant, located at 1901-B East 15th Street, Panama City, FL 32405;

e. Rinker's Panama City Beach plant, located at 17750 Hutchinson Road, Panama City Beach, FL 32407;

f. Rinker's Pensacola plant, located at 415 Hyatt Street, Pensacola, FL 32503;

g. Rinker's Port St. Joe plant, located at 1145 Industrial Road, Port St. Joe, FL 32456;

h. Rinker's Point Washington plant, located at the intersection of East Highway 98 and Old Ferry Road, Santa Rosa Beach, FL 32459;

2. Jacksonville, Florida Area

a. Cemex's Main Street plant, located at 9214 North Main Street, Jacksonville, FL 32218;

b. Cemex's Southside Florida Mining Boulevard plant, located at 9715 East Florida Mining Boulevard, Jacksonville, FL 32223;

3. Orlando, Florida Area

a. Cemex's East Orlando plant, located at 7400 Narcoossee Road, Orlando, FL 32822;

b. Cemex's Goldenrod plant, located at 4000 Forsyth Road, Winter Park, FL 32792;

c. Cemex's Winter Garden plant, located at 201 Hennis Road, Winter Garden, FL 34787;

d. Rinker's Kennedy plant, located at 1406 Atlanta Avenue, Orlando, FL 32806;

4. Tampa/St. Petersburg, Florida Area

a. Rinker's Clearwater plant, located at 3757 118th Avenue North, Clearwater, FL 33762;

b. Rinker's Odessa plant, located at 12025 State Road 54, Odessa, FL 33556;

c. Rinker's Odessa Keys plant, located at 11913 State Road 54, Odessa, FL 33556;

d. Rinker's Riverview plant, located at 6723 South 78th Street, Riverview, FL 33569;

e. Rinker's Tampa plant, located at 6106 East Hanna Avenue, Tampa, FL 33610;

f. Rinker's Tampa Keys plant, located at 1811 North 57th Street, Tampa, FL 33619;

5. Fort Myers/Naples, Florida Area

a. Rinker's Ave Maria plant, located at 4811 Ave Maria Boulevard, Immokalee, FL 34142;

b. Rinker's Bonita Springs plant, located at 25061 Old U.S. Highway 41 South, Bonita Springs, FL 34135;

c. Rinker's Canal Street plant, located at 4262 Canal Street, Fort Myers, FL 33916;

d. Rinker's Cape Coral (Pine Island) plant, located at 2401 SW Pine Island Road, Cape Coral, FL 33991;

e. Rinker's Naples plant, located at 9210 Collier Boulevard, Naples, FL 34114;

f. Rinker's South Fort Myers plant, located at 7270 Alico Road, Fort Myers, FL 33912;

## 6. Flagstaff, Arizona Area

Cemex's Brannen plant, located at 633 East Brannen Avenue, Flagstaff, AZ 86001;

## 7. Tucson, Arizona Area

a. Cemex's Ina plant, located at 5400 West Massingale Road, Tucson, AZ 85743;

b. Rinker's Green Valley plant, located at 18701 South Old Nogales Highway, Sahuarita, AZ 85629;

c. Rinker's Poorman Road plant, located at 6500 South Old Spanish Trail, Tucson, AZ 85747;

d. Rinker's Valencia plant, located at 1011 West Valencia Road, Tucson, AZ 85706;

## B. Concrete Block plants:

## 1. Tampa/St. Petersburg, Florida Area

a. Rinker's Odessa plant, located at 12025 State Road 54, Odessa, FL 33556;

b. Rinker's Palmetto plant, located at 600 9th Street West, Palmetto, FL 34221;

c. Rinker's Tampa plant, located at 6302 North 56th Street, Tampa, FL 33610;

## 2. Fort Myers/Naples, Florida Area

a. Rinker's Bonita Springs plant, located at 25091 Old U.S. Highway 41 South, Bonita Springs, FL 34135;

b. Rinker's Coral Rock plant, located at 41451 Cook Brown Road, Punta Gorda, FL 33982;

c. Rinker's South Fort Myers plant, located at 7270 Allico Road, Fort Myers, FL 33912;

## C. Aggregate plants:

1. Cemex's Ina plant, located at 5400 West Massingale Road, Tucson, AZ 85743; and

2. Rinker's Green Valley plant, located at 18701 South Old Nogales Highway, Sahuarita, AZ 85629.

The sale of the Divestiture Assets according to the terms of the proposed Final Judgment will ensure that Cemex's acquisition does not harm competition in any of the affected geographic areas for ready mix concrete, concrete block, and aggregate. In the following geographic areas, Cemex is required to divest all of the ready mix concrete plants it would acquire from Rinker: Fort Walton Beach/Panama City/Pensacola, Tampa/St. Petersburg, and Fort Myers/Naples, Florida. In addition, in Tampa/St. Petersburg and Fort/Myers/Naples, Florida, Cemex is required to divest all of the concrete block plants it would acquire from Rinker. Further, in Flagstaff, Arizona, Cemex is required to divest its only ready mix concrete plant and will acquire only one ready mix concrete plant from Rinker.

In the other three metropolitan areas of concern, the proposed Final Judgment requires divestiture of a sufficient number of ready mix concrete plants to ensure that competition is preserved. In metropolitan Orlando, Florida, Cemex operates five plants and Rinker operates four plants. The proposed Final Judgment requires the divestiture of four plants: (1) Three Cemex plants located northwest, northeast, and southeast of downtown Orlando; and (2) one Rinker plant located in downtown Orlando. With these four plants, the acquirer will be able to service large projects anywhere in metropolitan Orlando, and for each of the divested plants, another of those plants could serve as an effective back-up facility. The proposed Final Judgment does not require the divestiture of Cemex's downtown facility because it is co-located with one of Rinker's two downtown facilities, and Cemex anticipates achieving efficiencies in raw material supply by retaining its plant and the downtown Rinker plant at the same location.

Within the Jacksonville, Florida, metropolitan area, Cemex currently operates three plants and Rinker operates four plants. The proposed Final Judgment requires the divestiture of two of Cemex's plants—one south of downtown and the other north. Together these two plants will be able to preserve pre-merger competition between Cemex and Rinker in Jacksonville. The proposed Final Judgment does not require the divestiture of Cemex's downtown plant because Rinker has no plant in the downtown area, and the two plants to be divested can service the downtown area as or more effectively than Rinker's plants. Moreover, Cemex's downtown facility is co-located with a concrete block plant that Cemex will retain and a divestiture of the ready mix concrete facilities at that location would not allow Cemex to achieve efficiencies related to the co-location.

In the Tucson, Arizona, metropolitan area, Cemex operates four ready mix concrete facilities and Rinker operates five. The proposed Final Judgment requires the divestiture of four ready mix concrete facilities: three Rinker facilities and one Cemex facility. This relief is adequate to preserve competition because it provides the acquirer with the same number of ready mix concrete facilities as Cemex operates and ensures that the acquirer will have access to supplies of aggregates needed to compete effectively. In particular, by requiring the divestiture of Cemex's Ina plant instead of one of Rinker's other two

plants, and by separately requiring that all of the divested ready mix concrete plants be sold to the same acquirer that purchases Rinker's aggregate facilities at Green Valley and Cemex's aggregate facilities at Ina, the proposed Final Judgment will give the acquirer access to aggregates that is at least equivalent to that of Rinker.

## B. Selected Provisions of the Proposed Final Judgment

In antitrust cases involving mergers in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. A quick divestiture has the benefits of restoring competition lost in the acquisition and reducing the possibility of dissipation of the value of the assets. Paragraph (A) of the proposed Final Judgment requires Cemex to divest the Divestiture Assets as viable ongoing businesses within 120 days after the Divestiture Trigger,<sup>3</sup> or five days after notice of the entry of the Final Judgment by the Court, whichever is later. The Divestiture Trigger is the earlier of two dates: the date on which Cemex elects a majority of the Board of Directors of Rinker, or 45 days after Cemex obtains a number of shares of Rinker stock in excess of 50 percent of the outstanding shares of Rinker. The 120-day time period to effectuate the divestitures begins to run from the Divestiture Trigger, rather than the filing of the Complaint, because the deal originally involved a hostile, cash tender offer. Cemex represented to the United States that under Australian law, it could not effectuate the divestitures until it had obtained in excess of 50 percent of the outstanding Rinker shares and had elected a majority of Rinker's Board of Directors. The Divestiture Trigger thus requires Cemex to start the 120-day clock as soon as it elects a majority of the Rinker Board and can effectuate the divestitures, while establishing an outer time limit of 45 days if Cemex obtains the majority of outstanding shares but delays electing a new Board.

Given that the proposed transaction is a tender offer, the proposed Final Judgment contains provisions to ensure that relief will be effective. Paragraph

<sup>3</sup>In this matter, the proposed Final Judgment provides that Cemex has 120 days after the Divestiture Trigger to accomplish the divestitures because they involve multiple geographic markets and several different types of assets. During the period before Cemex effectuates the divestitures, the Amended Hold Separate Stipulation and Order will preserve the assets to be divested and require that each defendant continue to operate its assets separately from the other's assets, thereby maintaining competition.



IV(J) of the proposed Final Judgment requires that Cemex divest all its interest in Rinker within six months from the date that the Final Judgment is signed by the Court if Cemex does not acquire a number of shares of Rinker stock in excess of 50 percent of the outstanding shares of Rinker. This provision ensures that if Cemex does not acquire a sufficient number of shares to effectuate the divestiture of the assets owned by Rinker prior to an acquisition by Cemex, then Cemex will not be permitted to own enough shares of Rinker to allow Cemex to have some form of control over Rinker even though it is unable to effectuate the divestitures.

In addition, if for any reason Cemex is unable to divest any of the Divestiture Assets or make those assets available for sale by the trustee, or if Cemex cannot warrant that the Divestiture Assets will be operational on the date of the divestiture and that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets, paragraph IV(H) provides that for each affected asset, the United States, in its sole discretion, may select one or more alternative assets owned by Cemex that are located in the same geographic area to be divested in lieu of the affected Divestiture Asset.<sup>4</sup> This provision is necessary to protect against a variety of situations in which a Divestiture Asset owned by Rinker prior to the acquisition by Cemex could not be divested. This will ensure that each acquirer has sufficient assets to be able to compete for the projects for which Cemex and Rinker currently compete.

Further, paragraph IV(I) of the proposed Final Judgment provides that all the ready mix concrete plants in a geographic area must be divested to a single acquirer, all the concrete block plants in a geographic area must be divested to a single acquirer, and both aggregate plants in Tucson must be divested to the same acquirer that purchases the Tucson-area divested ready mix concrete plants. This provision ensures that Cemex's acquisition does not harm competition

in the affected product and geographic markets.

Paragraph IV(I) of the proposed Final Judgment also provides that the assets must be divested in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Cemex must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

Finally, section V of the proposed Final Judgment provides that in the event that Cemex does not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Cemex will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestitures. If the divestitures have not been accomplished at the end of the six months, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

#### *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 attorneys' fees. Entry of the proposed Final Judgment will neither 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 has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

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

The United States and 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 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 who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. 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: Maribeth Petrizzi, Chief, Litigation II Section, 1401 H St. NW., Suite 3000, Antitrust Division, United States Department of Justice, 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 proposed Final Judgment.

#### *VI. Alternatives to the Proposed Final Judgment*

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Cemex's acquisition of Rinker. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the production and distribution of ready mix concrete, concrete block, and aggregate in the markets identified by the United States and that such a remedy would achieve all or substantially all the relief the United States would have obtained through litigation, but avoids the time and expense of a trial.

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

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after

<sup>4</sup> Paragraph IV(H) does not apply to the Fort Walton Beach/Panama City/Pensacola area, where Cemex's ready mix concrete assets are owned and operated through a joint venture between Cemex and Ready Mix USA, Inc. Accordingly, Cemex is not able unilaterally to sell any of its ready mix concrete plants in that area and it would be extremely difficult and costly for Cemex to terminate its interest in the joint venture. The United States determined that the benefit of requiring Cemex to terminate its interest in the joint venture or to make these assets available for sale would be significantly outweighed by the negative impact on the joint venture, which operates in a large number of areas that are unaffected by Cemex's acquisition of Rinker.

which the Court shall determine whether entry of the proposed Final Judgment “is in the public interest.” 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

(A) 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, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, 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)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, 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 Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

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) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft*, 56 F.3d at 1460–62. Courts have held that:

[t]he 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.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).<sup>5</sup> In making

its public interest determination, a district court must accord due respect to the government’s prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requires a standard that is 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.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). The Court “must accord deference to the government’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations because this may only reflect underlying weakness in the government’s case or concessions made during negotiation.” *United States v. SBC Commc’ns, Inc.*, Nos. 05–2102 and 05–2103, 200FWL 1020746, at \*16 (D.D.C. Mar. 29, 2007).

Moreover, the Court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459. Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As this Court recently confirmed in *SBC Commc’ns*, courts “cannot look beyond the

decree”); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist’s reducing glass”). See generally *Microsoft*, 56 F.3d at 1461 (discussing whether “the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest’”).

complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” 2007 WL 1020746, at \*14.

In 2004, Congress amended the APPA to ensure that courts take into account the above-quoted list of relevant factors when making a public interest determination. Compare 15 U.S.C. 16(e) (2004) with 15 U.S.C. 16(e)(1) (2006) (substituting “shall” for “may” in directing relevant factors for court to consider and amending list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms).

These amendments, however, did not change the fundamental role of courts in reviewing proposed settlements. To the contrary, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. 16(e)(2). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: “[t]he 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. 24,598 (1973) (statement of Senator Tunney). Rather:

[a]bsent 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-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

This Court recently examined the role of the district court in reviewing proposed final judgments in light of the 2004 amendments, confirming that the amendments “effected minimal changes[ ] and that this Court’s scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 2007 WL 1020746, at \*9. This Court concluded that the amendments did not alter the articulation of the public interest standard in *Microsoft*. See *id.* at \*15.

#### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the

<sup>5</sup> Cf. *BNS*, 858 F.2d at 463 (holding that the court’s “ultimate authority under the [APPA] is limited to approving or disapproving the consent

APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: May 23, 2007.

Respectfully submitted,  
Frederick H. Parmenter, VA Bar No. 18184,  
*Attorney, U.S. Department of Justice,  
Antitrust Division, Litigation II Section, 1401  
H Street, NW., Suite 3000, Washington, DC  
20530, (202) 307-0620.*

#### Certificate of Service

I, Frederick H. Parmenter, hereby certify that on May \_\_\_\_, 2007, I caused a copy of the foregoing Competitive Impact Statement to be served on defendants Cemex, S.A.B. de C.V. and Rinker Group Limited by mailing the document electronically to the duly authorized representative of the defendant as follows:

Counsel for Defendant Cemex, S.A.B. de C.V.

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BILLING CODE 4410-11-M

#### NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

##### Advisory Committee on the Records of Congress; Meeting

**AGENCY:** National Archives and Records  
Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

**DATES:** June 25, 2007 from 10 a.m. to 11 a.m.

**ADDRESSES:** The U.S. Capitol Building,  
Room S-211, Washington, DC.

##### FOR FURTHER INFORMATION CONTACT:

Richard H. Hunt, Director; Center for  
Legislative Archives; (202) 357-5350.

#### SUPPLEMENTARY INFORMATION:

Agenda:

Introduction of New Members  
Discussion of Committee Goals  
Update on the Center for Legislative  
Archives  
Other current issues and new business  
The meeting is open to the public.

Dated: June 7, 2007.

**Mary Ann Hadyka,**

*Committee Management Officer.*

[FR Doc. E7-11284 Filed 6-11-07; 8:45 am]

BILLING CODE 7515-01-P

#### NUCLEAR REGULATORY COMMISSION

##### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Nuclear Regulatory  
Commission (NRC).

**ACTION:** Notice of pending NRC action to  
submit an information collection  
request to OMB and solicitation of  
public comment.

**SUMMARY:** The NRC is preparing a  
submittal to OMB for review of  
continued approval of information  
collections under the provisions of the  
Paperwork Reduction Act of 1995 (44  
U.S.C. Chapter 35).

Information pertaining to the  
requirement to be submitted:

1. *The title of the information  
collection:* NRC Form 327, Special  
Nuclear Material (SNM) and Source  
Material (SM) Physical Inventory  
Summary Report, and NUREG/BR-0096,  
Instructions and Guidance for  
Completing Physical Inventory  
Summary Reports.

2. *Current OMB approval number:*  
3150-0139.

3. *How often the collection is  
required:* The frequency of reporting  
corresponds to the frequency of required  
inventories, which depends essentially  
on the strategic significance of the SNM  
covered by the particular license.  
Certain licensees possessing strategic  
SNM are required to report inventories  
every 6 months. Licensees possessing  
SNM of moderate strategic significance  
must report every 9 months in  
accordance with the revised regulation  
in 10 CFR part 74.43. Licensees  
possessing SNM of low strategic  
significance must report annually,  
except two licensees must report their  
dynamic inventories every 2 months  
and a static inventory on an annual  
basis.

4. *Who is required or asked to report:*  
Fuel facility licensees possessing special  
nuclear material.

5. *The number of annual respondents:*  
9.

6. *The number of hours needed  
annually to complete the requirement or  
request:* 100 hours (an average of  
approximately 4 hours per response for  
25 responses).

7. *Abstract:* NRC Form 327 is  
submitted by fuel facility licensees to  
account for special nuclear material.  
The data is used by NRC to assess  
licensee material control and accounting  
programs and to confirm the absence of  
(or detect the occurrence of) special  
nuclear material theft or diversion.  
NUREG/BR-0096 provides specific  
guidance and instructions for  
completing the form in accordance with  
the requirements appropriate for a  
particular licensee.

Submit, by August 13, 2007,  
comments that address the following  
questions:

1. Is the proposed collection of  
information necessary for the NRC to  
properly perform its functions? Does the  
information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the  
quality, utility, and clarity of the  
information to be collected?

4. How can the burden of the  
information collection be minimized,  
including the use of automated  
collection techniques or other forms of  
information technology?

A copy of the draft supporting  
statement may be viewed free of charge  
at the NRC Public Document Room, One  
White Flint North, 11555 Rockville  
Pike, Room O-1 F21, Rockville, MD  
20852. OMB clearance requests are  
available at the NRC worldwide Web  
site: [http://www.nrc.gov/public-involve/  
doc-comment/omb/index.html](http://www.nrc.gov/public-involve/doc-comment/omb/index.html). The  
document will be available on the NRC  
home page site for 60 days after the  
signature date of this notice.

Comments and questions about the  
information collection requirement may  
be directed to the NRC Clearance  
Officer, Margaret A. Janney (T-5 F52),  
U.S. Nuclear Regulatory Commission,  
Washington, DC 20555-0001, by  
telephone at 301-415-7245, or by  
Internet electronic mail to  
[INFOCOLLECTS@NRC.GOV](mailto:INFOCOLLECTS@NRC.GOV).

Dated at Rockville, Maryland, this 5th day  
of June, 2007.

For the Nuclear Regulatory Commission.

**Margaret A. Janney,**

*NRC Clearance Officer, Office of Information  
Services.*

[FR Doc. E7-11301 Filed 6-11-07; 8:45 am]

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