Federal Register / Vol. 70, No. 45 / Wednesday, March 9, 2005 / Notices 11669

20050586	Valeant Pharmaceuticals International	Xcel Pharmaceuticals, Inc.	Xcel Pharmaceuticals, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 02/22/2005

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050566	Carl C. Icahn, c/o Icahn Associates Corp.	Kerr-McGee Corporation	Kerr-McGee Corporation
20050577	Dominion Resources, Inc.	WPS Resources Corporation	Wisconsin Public Service Corporation
20050579	Dominion Resources, Inc.	Allliant Energy Corporation	Wisconsin Power and Light Company
20050591	CCG Investments BVI, L.P.	MAPICS, Inc.	MAPICS, Inc.
20050596	Synovus Financial Corp.	Visa U.S.A. Inc.	Vital Processing Services L.L.C.
20050597	Equifax Inc.	APPRO Systems, Inc.	APPRO Systems, Inc.
20050599	Microsoft Corporation	Sybari Software, Inc.	Sybari Software, Inc.
20050600	Plains All American Pipeline, L.P.	Koch Industries, Inc.	Koch Hydrocarbon, L.P.
			Koch Pipeline Company, L.P.
20050601	Marian Ilitch	Mandalay Resort Group	Circus Circus Michigan, Inc.
			Detroit Entertainment, L.L.C.
20050602	Time Warner Inc.	ECI Holdings, Inc.	ECI Holdings, Inc.
20050610	John H. Harland Company	Intrieve, Incorporated	Intrieve, Incorporated
20050611	Lee Enterprises, Incorporated	Voting Trust Agreement dated March 18, 1999	Pulitzer, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 02/23/2005

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050584	Pfizer Inc.	Rigel Pharmaceuticals, Inc.	Rigel Pharmaceuticals, Inc.
20050595	XTO Energy, Inc.	Antero Resources Corporation	Antero Resources Corporation
20050612	Cytyc Corporation	Proxima Therapeutics, Inc.	Proxima Therapeutics, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION - 02/25/2005

TRANS #	ACQUIRING	ACQUIRED	ENTITIES
20050614	Bruckmann, Rosser, Sherrill & Co. II, L.P.	ICV Partners, L.P.	ICV Marshall Holdings, Inc.
			The Marshall Retail Group, LLC

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Case Management Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–4595 Filed 3–8–05; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 051 0007]

Cemex S.A. de C.V.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 15, 2005.

ADDRESSES: Comments should refer to ''Cemex, S.A. de C.V., File No. 051 0007,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Randall Long, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2715.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 14, 2005), on the World Wide Web, at ''*http://www.ftc.gov/os/2005/02/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before March 15, 2005. Comments should refer to ''Cemex, S.A. de C.V., File No. 051 0007,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Cemex, S.A. de C.V. (''Cemex''). The purpose of the Consent Agreement is to remedy the anticompetitive effects resulting from Cemex's proposed acquisition of RMC, PLC (''RMC''). The Consent Agreement requires Cemex to divest RMC's Tucson, Arizona ready-mix concrete business within six months of the date Cemex signed the Consent Agreement. The Consent Agreement also includes an Order to Hold Separate and Maintain Assets that requires Cemex to preserve the RMC Tucson, Arizona ready-mix concrete business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Consent Agreement has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to an Implementation Agreement dated September 27, 2004, Cemex agreed to acquire 100 percent of the existing shares of RMC for approximately $5.8 billion (''Proposed Acquisition''). The Commission's complaint alleges that the Proposed Acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the Tucson, Arizona market for the manufacture and sale of ready-mix concrete.

II. The Parties

Headquartered in Monterrey, Mexico, Cemex is the third largest cement company in the world, with significant downstream businesses in ready-mix concrete and related products. Cemex's operations in Tucson, Arizona consist of four ready-mix concrete plants, all of which are supplied internally with concrete aggregates.

RMC is a United Kingdom Holding Company headquartered in London, with nine subsidiaries doing business in the United States. RMC is the world's largest supplier of ready-mix concrete and a leading producer of cement and aggregates in Europe. RMC has five ready-mix concrete plants in the Tucson, Arizona area, all of which are supplied internally with locally-produced aggregates.

III. The Tucson, Arizona Ready-Mix Concrete Market

The relevant product market in which to assess the competitive effects of the Proposed Acquisition is ready-mix concrete. Ready-mix concrete is produced at local plants by combining cement, aggregates, and water in accordance with precise specifications. Once blended, ready-mix concrete is delivered to construction sites as a slurry in trucks with revolving drums. At construction sites, ready-mix concrete is poured and formed into its final shape. Among building products, ready-mix concrete is unique because it is pliable when freshly mixed and strong and permanent when hardened. Due to ready-mix concrete's exceptional characteristics as a building material, ready-mix concrete customers would not switch to other materials, such as steel, wood, or asphalt, in the event of a five to ten percent increase in the price of ready-mix concrete. Indeed, for some applications, such as certain building foundations, concrete's unique structural characteristics make it the only viable construction material.

The relevant geographic market in which to analyze the effects of the Proposed Acquisition is the Tucson, Arizona metropolitan area. The geographic scope of competition in ready-mix concrete is circumscribed by the perishable nature of the product. Once ready-mix concrete is blended at a plant and loaded into a truck, it will solidify if it is not poured in a timely manner (typically less than one hour), rendering it useless. Hence, ready-mix concrete generally is sold within a 10 to 20 mile radius of the plant where it is mixed, although the precise mileage may differ depending on traffic patterns and infrastructure. For instance, traffic congestion within a metropolitan area can significantly lengthen delivery times, whereas a plant located on the periphery of the market may be able to serve a larger area. Due to a low value-to-weight ratio, transportation costs also can effectively limit the distance that ready-mix concrete can be shipped. There are three ready-mix competitors in Tucson, each operating at least four ready-mix concrete plants: Cemex, RMC, and Rinker. Each competitor has spaced plants within 20 miles of its other plants, creating a network capable of supplying the entire area.

The three-firm Tucson, Arizona ready-mix concrete market is highly concentrated. If the Proposed Acquisition is consummated, the Tucson, Arizona ready-mix concrete market will become even more concentrated with only two independent suppliers. As a result, the Proposed Acquisition likely would facilitate coordinated behavior between Cemex and its lone remaining competitor. Coordination is particularly likely where the relevant product is homogenous, as is ready-mix concrete. In a two-firm market, each competitor would have an enhanced ability to monitor the other's conduct, and would know with certainty the source of any discounting. Likewise, the accuracy and effectiveness of any retaliation for deviations from the terms of collusion would greatly improve with only one remaining competitor. As a result, the Proposed Acquisition would increase the likelihood that ready-mix concrete purchasers in Tucson, Arizona would be forced to pay higher prices and would receive diminished service. Absent Commission action, Cemex's acquisition of RMC raises significant antitrust concerns in Tucson, Arizona.

Entry into the Tucson, Arizona ready-mix concrete market on a level sufficient to deter or counteract the likely anticompetitive effects of the Proposed Transaction is not likely to occur in a timely manner. Entry into this market is difficult due to a limited availability of the vital raw materials, *i.e.,* aggregates and cement, necessary to sustain a new ready-mix concrete operation. In Tucson, Arizona, ready-mix concrete operations are closely intertwined with concrete aggregate operations. As a result, concrete aggregates are not currently available on the open market in Tucson on the scale necessary to sustain a new ready-mix concrete competitor. Thus, a new concrete entrant would need to enter the aggregate business itself, or enter the market contemporaneously with a new aggregate entrant. Neither alternative is likely to occur in a timely manner. Viable locations for concrete aggregates in Tucson are scarce, and even if a suitable site were found, an aggregates entrant would then need to undergo an extensive permitting process with Federal, State, and local authorities. Entry into the Tucson, Arizona ready-mix concrete market also is made difficult by the scale required to compete. Entry with a single ready-mix plant would be insufficient, as customers typically require that a supplier have a network of plants. Presently, all three ready-mix companies have a network of at least four plants supplying the entire Tucson metropolitan area. Due to these entry barriers, new entry by a ready-mix concrete company has not occurred in Tucson in over ten years.

IV. The Consent Agreement

The Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the Tucson, Arizona ready-mix concrete market by requiring Cemex to divest RMC's Tucson, Arizona ready-mix concrete business. Pursuant to the Consent Agreement, Cemex is required to divest the RMC Tucson, Arizona ready-mix concrete business to a buyer, at no minimum price, within six months of the date Cemex signed the Consent Agreement. The acquirer of the RMC Tucson business must receive the prior approval of the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to ensure that the competitive environment that existed prior to the acquisition is maintained. A proposed acquirer of divested assets must not itself present competitive problems.

Should Cemex fail to accomplish the divestiture within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest these assets. If approved, the trustee would have the exclusive power and authority to accomplish the divestiture within six months of being appointed, subject to any necessary extensions by the Commission. The Consent Agreement requires Cemex to provide the trustee with access to information related to the RMC Tucson business as necessary to fulfill his or her obligations.

The Order to Hold Separate and Maintain Assets that is included in the Consent Agreement requires that Cemex hold separate and maintain the viability of the RMC Tucson business as a competitive operation until the business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between Cemex and the RMC Tucson business (except as otherwise provided in the Consent Agreement). The Order to Hold Separate and Maintain Assets is also designed to prevent interim harm to competition in the Tucson, Arizona ready-mix concrete market pending divestiture. Under the Order to Hold Separate and Maintain Assets, the Commission may appoint a Hold Separate Monitor to monitor Cemex's compliance with the Consent Agreement. Pursuant to that Order, the Commission has appointed Stephen J. Roebuck, President, Roebuck Consulting Group, as a Hold Separate Monitor to oversee the RMC Tucson business prior to its divestiture and to ensure that Cemex complies with its obligations under the Consent Agreement. Mr. Roebuck has more than 25 years of construction materials industry experience at all levels of management. Most recently, Mr. Roebuck served as Vice President of Sales and Marketing with Southdown, Inc.'s Concrete Products Division. He is also a former member of the Board and Executive Committee of the National Concrete Masonry Association; has authored over 20 industry-specific continuing education programs; and has served as a contributing author and editor for the National Ready Mixed Concrete Association's Certified Concrete Sales Professional program.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or proposed Order or to modify the terms of the Consent Agreement or proposed Order in any way.

By direction of the Commission, Chairman Majoras recused.

Donald S. Clark,

Secretary.

[FR Doc. 05–4591 Filed 3–8–05; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 041 0203]

Cytec Industries Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 30, 2005.

ADDRESSES: Comments should refer to ''Cytec Industries Inc., File No. 041 0203,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Tovsky, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2634.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 1, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/03/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before March 30, 2005. Comments should refer to ''Cytec Industries Inc., File No. 041 0203,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.''[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Cytec Industries Inc. (''Cytec''). The Consent Agreement is intended to resolve anticompetitive effects stemming from Cytec's proposed acquisition of the Surface Specialties Business of UCB S.A. (''UCB''). The Consent Agreement includes a proposed Decision and Order (''Order'') that would require Cytec to divest UCB assets relating to the research, development, marketing, sale, and production of amino resins (''UCB Amino Resins Business''). The Consent Agreement also includes an Order to Hold Separate and Maintain Assets, which requires Cytec to preserve the UCB Amino Resins Business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Consent Agreement, if finally accepted by the Commission, would settle charges that Cytec's proposed acquisition of UCB's Surface Specialties

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).