

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, and  
STATE OF CONNECTICUT, ex rel.  
RICHARD BLUMENTHAL, ATTORNEY  
GENERAL,

Plaintiffs,

v.

OLDCASTLE NORTHEAST, INC.;  
CRH plc;  
TILCON, INC.; and  
BTR plc,

Defendants.

Civil No.:

**396CV01749 AWT**

Filed: September 3, 1996

Entered: December 23, 1996

FINAL JUDGMENT

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

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

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

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

AND WHEREAS, defendants have represented to plaintiffs that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

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

II.

DEFINITIONS

As used in this Final Judgment:

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

B. "CRH" means defendant CRH plc, a company formed under the laws of the Republic of Ireland headquartered in Dublin (of which Oldcastle is a subsidiary), and includes its

successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

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

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

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

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

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

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

I. "Assets to be Divested" means:

(1) all rights, titles, and interests, including all fee and all leasehold and renewal rights, in Tilcon's East Granby, Connecticut quarry located at 60 Main St., East Granby,

Connecticut 06026 and the related maintenance facilities and administration buildings (the "East Granby Quarry") including, but not limited to, all real property, capital equipment, fixtures, inventories, trucks and other vehicles, stone crushing equipment, scales, interests, permits, assets or improvement related to the production, distribution, and sale of aggregate and stone products at the East Granby Quarry;

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

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

### III.

#### APPLICABILITY

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

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

Judgment.

IV.

DIVESTITURES

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

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

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

D. CRH shall not interfere with any negotiations by any purchaser to employ any CRH (or former Tilcon) employee who works at, or whose principal responsibility is the

manufacture, sale or marketing of aggregate, stone products or asphalt concrete produced by the Assets to be Divested.

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

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

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

H. CRH, at its option, may retain ownership of the six-ton, hot-mix plant and the portland concrete cement plant located at the East Granby Quarry. The six-ton, hot-mix plant and the portland concrete cement plant ("Retained Plants") must be operated independent of the purchaser's operation of the Assets to be Divested. For the purpose of siting and operating the plants, CRH may negotiate separate easements and licenses for the Retained Plants, including the land underlying and at reasonable distance surrounding the Retained Plants. If CRH or a subsequent purchaser removes or discontinues the operations of either of the Retained Plants for more than two years, the easement and license associated with the plant will be voided. The

easements and licenses that are retained for the siting and operation of the six-ton, hot-mix plant and the portland cement plant must not hinder the purchaser's operation of the Assets to be Divested.

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

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

otherwise to interfere in the ability of the purchaser to compete effectively in the greater Hartford Area.

V.

APPOINTMENT OF TRUSTEE

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

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Assets to be Divested described in Section II of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Oldcastle any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiffs, and shall have such other powers as this Court shall deem appropriate. CRH shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by CRH must be conveyed in writing to the plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this

Final Judgment.

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

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

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment,

why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

## VI.

### NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, CRH or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify CRH. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, plaintiffs may request from CRH, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. CRH and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the

request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information requested from CRH, the proposed purchaser, and any third party, whichever is later, plaintiffs shall provide written notice to CRH and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiffs provide written notice to CRH and the trustee that it does not object, then the divestiture may be consummated, subject only to CRH's limited right to object to the sale under Section V (B) of this Final Judgment. Absent written notice that plaintiffs do not object to the proposed purchaser or upon objection by plaintiffs, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiffs, or by CRH under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

## VII.

### AFFIDAVITS

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

negotiations regarding a supply agreement to supply CRH with aggregate and stone products from the East Granby Quarry and terms regarding CRH's operation and siting of the Retained Plants at the East Granby Quarry as described in Section IV(H) of this Final Judgment.

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

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

## VIII.

### PRESERVATION OF ASSETS

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

A. CRH shall take all steps necessary to ensure that the Assets to be Divested will be maintained and operated as an independent, ongoing, economically viable and active competitor

in the production and sale of asphalt concrete, aggregate, and stone products in the greater Hartford Area.

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

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

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

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

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

## IX.

### FUTURE ACQUISITIONS

A. CRH is ordered to give forty-five (45) days notice for any transactions not reportable under the Hart Scott Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, to the U.S.

Department of Justice. Antitrust Division and the Connecticut Attorney General's Office concerning any intent to acquire ownership or control of the stock or assets of any manufacturer of asphalt concrete or quarry operator within a twenty-five (25) mile radius of Hartford, Connecticut. For all transactions concerning any intent to acquire ownership or control of the stock or assets of any manufacturer of asphalt concrete or quarry operator within a twenty-five (25) mile radius of Hartford, Connecticut, that are reportable under 15 U.S.C. § 18a, CRH is ordered to supply duplicate filings to the Connecticut Attorney General's Office.

X.

COMPLIANCE INSPECTION

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

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

- (1) Access during office hours of CRH to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of CRH, who may have counsel present, relating to enforcement of this Final Judgment; and
- (2) Subject to the reasonable convenience of CRH and without restraint or interference from it, to interview its officers, employees, and agents, who may have counsel present, regarding any such matters.

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

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

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

## XI.

### RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be

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

XII.

TERMINATION

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

XIII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: Dec 23, 1996

Alan W. Thompson

United States District Judge

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U.S. DISTRICT COURT  
N. DISTRICT OF CALIF.