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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Rebecca Kelly Slaughter, Acting Chairwoman**
Noah Joshua Phillips
Rohit Chopra
Christine S. Wilson

In the Matter of **HeidelbergCement AG,** **a corporation,** **Lehigh Hanson, Inc.,** **a corporation,** **Lehigh Cement Company LLC,** **a limited liability company,** **Elementia S.A.B. de C.V.,** **a corporation,** **Giant Cement Holding, Inc.,** **a corporation,** **and** **Keystone Cement Company,** **a limited liability company.**	**Docket No. 9402** **PUBLIC VERSION**

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents HeidelbergCement AG, Lehigh Hanson, Inc., Lehigh Cement Company LLC (collectively, "Lehigh"), Elementia S.A.B. de C.V. ("Elementia"), Giant Cement Holding, Inc. ("Giant"), and Keystone Cement Company ("Keystone") have executed an acquisition agreement ("Acquisition Agreement") pursuant to which Lehigh will acquire substantially all the assets of Keystone (the "Acquisition") in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and which if consummated would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I.

NATURE OF THE CASE

1. Lehigh proposes to acquire all the assets of Keystone. Today Lehigh and Keystone compete head-to-head to supply cement, the key input in concrete, to customers in eastern Pennsylvania and western New Jersey. For a significant number of customers in this area, Lehigh and Keystone are two of only four competitive sources of cement.

2. Lehigh is by far the largest cement producer in the relevant market today and is one of the largest cement producers in North America. Lehigh owns and operates two cement plants serving customers located in eastern Pennsylvania and western New Jersey. Keystone is one of Lehigh's fiercest competitors for customers in this area, operating a nearby cement plant in Pennsylvania. Intense competition from Keystone has kept market prices down, causing Lehigh to complain that Keystone's [redacted] was negatively impacting Lehigh's sales. In ordinary course documents, Lehigh executives explain that [redacted] in creating [redacted] in the relevant market. Against this backdrop, Lehigh proposes to acquire Keystone in a transaction that Heidelberg executives conclude [redacted] By acquiring Keystone's plant, Lehigh would eliminate competition from Keystone, leading to higher prices for customers.

3. Cement is an essential ingredient of concrete, one of the most important and widely-used building materials in the United States and worldwide across a range of construction applications. Concrete is a fundamental building material used in the construction of homes, schools, hospitals, houses of worship, residential and commercial buildings, as well as highways, bridges, tunnels, mass transit systems, airports, sidewalks, dams, reservoirs, drinking and wastewater pipes, and many other pieces of critical public infrastructure. Due to cement's widespread use in residential, commercial, agricultural, and governmental construction projects, increased cement prices would directly and indirectly impact the pocketbook of many consumers and taxpayers in the relevant market.

4. There is no reasonable substitute for cement. Customer substitution to alternative products would not prevent the post-merger exercise of market power by the combined firm. Nor would more distant suppliers prevent the post-merger exercise of market power by the combined firm. In the cement industry, shipping patterns are regional in nature, as the cost of shipping, as well as customers' requirements for frequent deliveries, make distribution over longer distances impractical and cost-prohibitive. Customers overwhelmingly purchase cement from local sources.

5. Most customers in the relevant market consider only four firms, each of which operate plant(s) in and around the Lehigh Valley in Pennsylvania, to be viable suppliers of cement. These four firms include Lehigh and Keystone, as well as Buzzi Unicem USA Inc. ("Buzzi"), that operates a plant in Stockertown, Pennsylvania, and Lafarge North America, Inc., a subsidiary of LafargeHolcim Ltd ("Lafarge"), that operates a plant in Whitehall, Pennsylvania. Today, these firms account for over [redacted] percent of the cement sold in the relevant market.

6. Cement customers in the relevant market have benefited from substantial head-to-head competition between Lehigh and Keystone. Keystone has aggressively used low prices to compete for business, often undercutting prices of Lehigh to win new customers or gain additional business. In many instances, Lehigh responded by [redacted] Keystone's low prices have also affected market prices for cement in the relevant market, as Keystone's offers of cement at lower prices have defeated attempts by Lehigh and other suppliers to charge higher cement prices. In response to Keystone's aggressive pricing moves, Lehigh and other cement suppliers have also reduced their cement prices for customers.

7. Lehigh recognizes Keystone's disruptive role in the relevant market, identifying Keystone as the [redacted] in the relevant market. Lehigh has monitored Keystone's aggressive sales activity, identifying [redacted] According to Lehigh, competition from Keystone has required it to [redacted]

8. The Acquisition would cement Lehigh's dominant position. Post-Acquisition, Lehigh would control over [redacted] percent of sales in the relevant market. The Acquisition would significantly increase concentration in an already highly concentrated market, making the Acquisition presumptively unlawful under the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (the "Merger Guidelines").

9. The Acquisition would eliminate competition between Lehigh and Keystone that has led to lower prices and better terms for customers, bolster Lehigh's position as market leader, and substantially increase market concentration. As a result, it would allow Lehigh unilaterally to raise cement prices or decrease the quality of service provided to customers in these areas.

10. Keystone is a particularly aggressive, low price, and disruptive competitor. By removing Keystone from the market, the Acquisition would also make the relevant market more susceptible to anticompetitive coordination among the remaining cement suppliers.

11. Neither new entry nor expansion by other market participants is likely to be timely or sufficient to prevent the Acquisition's anticompetitive effects. No new plants or terminals have been constructed in the relevant market in over 30 years. There are significant barriers to entry in the market for the production and sale of cement, including substantial sunk costs, environmental and regulatory requirements, economies of scale, and industry expertise.

12. Respondents will not be able to prove verifiable, cognizable efficiencies would result from the Acquisition that would be sufficient to rebut the strong presumption of harm and other evidence of the Acquisition's likely significant anticompetitive effects.

13. As a result, Lehigh's proposed acquisition of Keystone likely would substantially lessen competition for cement in eastern Pennsylvania and western New Jersey in violation of Section 5 of the FTC Act, 15 U.S.C. § 45 and Section 7 of the Clayton Act, 15 U.S.C. § 18.

II.

JURISDICTION

14. Respondents, and each of their relevant operating entities and subsidiaries are, and at all relevant times have been, engaged in commerce or in activities affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

15. The Acquisition is subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

III.

RESPONDENTS

16. Respondent HeidelbergCement AG ("Heidelberg") is a German corporation headquartered in Heidelberg, Germany. Operating in more than 50 countries, Heidelberg is one of the largest building materials companies in the world. Its core business is the production and distribution of cement and aggregates. In 2020, Heidelberg sold over 122 million metric tons of cement worldwide and generated total revenues of over $20 billion.

17. Respondent Lehigh Hanson, Inc. ("Lehigh Hanson") is a Delaware corporation headquartered in Irving, Texas. Lehigh Hanson is a wholly-owned subsidiary of Heidelberg and is a leading supplier of construction materials in North America. It operates 19 cement plants in North America (including jointly-owned facilities) and sold over 15.5 million metric tons of cement in 2020.

18. Respondent Lehigh Cement Company LLC ("Lehigh Cement") is a Delaware limited liability company headquartered in Irving, Texas. Lehigh Cement is an indirectly wholly-owned subsidiary of Heidelberg. Lehigh Cement is identified as the "Buyer" in the Acquisition Agreement. Lehigh Cement is a leading cement supplier in the United States, serving customers through 13 wholly- and jointly-owned cement plants and a large network of distribution terminals. Lehigh Cement supplies cement to customers located in eastern Pennsylvania and western New Jersey principally from its plants located in or near Nazareth and Evansville, Pennsylvania.

19. Respondent Elementia is a Mexican corporation headquartered in Mexico City, Mexico. Elementia is a leading international building materials company with over 6,000 employees, operations in nine countries, and three business divisions: cement, metal products, and building systems. Elementia indirectly holds a 55 percent ownership interest in Giant, which is the parent of Keystone. Elementia is the ultimate parent entity of Giant and Keystone and, as such, is the legal entity that filed a Premerger Notification and Report Form with the FTC and the Department of Justice for the Acquisition—pursuant to the Hart-Scott-Rodino Antitrust Improvement Act of 1976, 15 U.S.C. § 18a—and responded to the Request for Additional Information and Documentary Material from the Commission.

20. Respondent Giant is a Delaware corporation. It is a holding company that owns Keystone, as well as two other companies that operate cement plants in the United States outside of the relevant geographic market. Giant is a party to the Acquisition Agreement.

21. Respondent Keystone is a Pennsylvania limited liability company headquartered in Bath, Pennsylvania. A wholly-owned subsidiary of Giant, Keystone owns and operates a cement plant and related assets located in East Allen Township (just south of Bath) in Northampton County, Pennsylvania. Keystone has produced cement at this location since 1928. In 2009, Keystone completed a three-year, $230 million modernization and expansion project, making the plant the most modern cement manufacturing facility in the region.

IV.

THE ACQUISITION

22. On September 26, 2019, Heidelberg's indirectly wholly-owned subsidiary Lehigh Cement entered into an Asset Purchase Agreement with Elementia's subsidiaries Giant and Keystone, pursuant to which Lehigh Cement proposes to acquire the assets comprising Keystone's cement manufacturing and distribution business for $151 million, subject to adjustment.

V.

THE RELEVANT PRODUCT MARKET

23. The relevant product market in which to assess the effects of the Acquisition is the production and sale of gray portland cement ("cement"). Cement is an essential ingredient for making concrete, one of the most important building materials in the United States across a range of construction applications. Most cement is purchased to make ready-mix concrete. Delivered to the jobsite in concrete mixer trucks with the familiar revolving drums, ready-mix concrete is used in most residential, commercial, and public construction projects, including buildings, bridges, and highways. Other uses for cement include manufacturing pre-cast concrete products, making mortar for masonry applications, and soil stabilization.

24. The cement manufacturing process is capital-intensive. The elements necessary for making cement include calcium and silica, as well as small amounts of alumina and iron. The main raw material, limestone, is usually extracted from a quarry located near the cement manufacturing plant. The limestone is transported to the cement plant where it is crushed, combined with other raw materials, and then ground together. The ground material is then introduced into huge rotary furnaces called "kilns" where it is processed at extremely high temperatures to create a lava-like substance called clinker. The red-hot clinker nodules are then cooled and ground with a small amount of gypsum (calcium sulphate) into a fine powder to create cement.

25. Cement customers often specify a certain type of cement based on construction requirements or conditions. Cement manufacturers make different types of cement with slightly different properties formulated to meet defined standards. These cements are classified as Types I through V, according to standards prescribed by the American Society for Testing and

Materials. Some cements meet multiple standards. Types I, II (moderate sulfate-resistant), and I/II are general-purpose cements suitable for making concrete for most buildings, pavements, bridges, and other structures, and are the most widely consumed types of cement in the relevant market. Type III cement is used where high early strength is desired. Type III cement is identical in chemical composition to the former types but is ground to a finer consistency, with the result that it achieves full compressive strength at a faster pace when mixed with water. There is little to no demand for Type IV (low heat of hydration) cement or Type V (high sulfate resistance) cement in the relevant market. Another common type of cement is masonry cement, which is a mixture of portland cement, a plasticizer (which makes the mortar more fluid and hence more workable), and other ingredients. Masonry cement is used to make mortar and masonry block.

26. Most cement customers purchase cement in bulk form, usually in trailer loads of about 25 tons. Producers also distribute small amounts of cement in bags containing about 70-94 pounds of cement for resale to building trades professionals and consumers.

27. There is no cost-effective substitute for cement. Other cementitious materials, such as fly ash or ground, granulated blast furnace slag, are not close substitutes for cement and have a negligible impact on the price of cement. Customer substitution to other products would be insufficient to defeat to a small but significant, non-transitory price increase ("SSNIP") imposed by a hypothetical monopolist supplier of cement in the region.

28. Industry participants recognize that cement is a distinct product from other building materials. Cement suppliers do not consider the threat of substitution to any other product when pursuing price increases and consistently calculate market shares only in relation to sales of cement.

VI.

THE RELEVANT GEOGRAPHIC MARKET

29. The relevant geographic market in which to analyze the competitive effects of the Acquisition is no broader than the eastern Pennsylvania and western New Jersey area. A list of the counties that compose the relevant geographic market is included in Appendix A.

30. A hypothetical monopolist that was the only present and future seller of cement in the relevant market could profitably impose a SSNIP on customers located in eastern Pennsylvania and western New Jersey. Competition from more distant suppliers located outside the relevant market would not defeat the price increase because acquiring cement from those more distant plants requires more expensive and less reliable transportation.

31. Several factors serve to limit the distance over which cement can be economically shipped. Cement is a heavy and bulky but relatively low-cost product. As a result, the cost of transporting cement is large in proportion to the cost of cement itself. Transport costs increase proportionally as the distance from the customer to the supplier increases, leading customers to prefer local sources. Other factors that lead customers to purchase cement from local sources are convenience and security of supply. Many customers require frequent shipments of cement (even multiple daily shipments) to maintain their production levels of concrete. Traveling farther

to obtain cement could reduce the number of daily trips a customer could make using their own semi-trucks and pneumatic bulk trailers (or force the customer to obtain additional tractor trailers in order to haul a similar volume of cement). Traveling greater distances could also expose a customer to a greater possibility of supply disruptions due to weather or traffic congestion.

32. Cement prices are not posted, but instead are determined through bilateral negotiation between suppliers and customers. As a result, actual transaction prices often vary significantly from customer to customer. In most cases, suppliers and customers negotiate annually to determine the price and terms by which each particular customer will purchase cement for the upcoming year. Usually the quoted cement price is subject to change at any time and is not guaranteed by written contract. When negotiating the price of cement, suppliers are aware of the logistical cost advantage or disadvantage they hold relative to other cement suppliers for sale to a specific customer's location(s). Cement suppliers consider their relative transportation cost advantage or disadvantage when quoting prices to individual customers. In addition, cement suppliers often monitor information regarding their competitor's costs, sales volumes, and capacity utilization. Using all of this information, cement suppliers are able to identify customers that face limited competitive options and are able to target those customers with higher prices.

33. Because cement suppliers can price discriminate based on a customer's location and competitive alternatives, it is analytically appropriate to define relevant geographic markets based on the locations of targeted customers. Although relevant geographic markets could be defined as narrowly as individual customers, it is appropriate and accurate to define a relevant market consisting of customers located in eastern Pennsylvania and western New Jersey because customers in this region of the country face similar competitive conditions.

34. This relevant geographic market conforms to the commercial realities of the cement industry and is consistent with how Lehigh, Keystone, and other cement suppliers conduct their business and assess the markets in which they compete in the ordinary course of business. Industry participants analyze competition in regional markets and view competition in the relevant market as distinct from other markets in which they operate, including, for example, markets in western Pennsylvania, Maryland, and the New York City metropolitan region.

35. The four firms that operate cement plants located in or near Pennsylvania's Lehigh Valley are the only economically feasible options for many customers in the relevant geographic market. Due to the additional cost, time, and inconvenience required to transport cement from more distant suppliers, customer substitution to suppliers located outside of the market would be insufficient to defeat a small but significant non-transitory price increase imposed by a hypothetical monopolist supplier of cement in the region.

VII.

MARKET STRUCTURE AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

36. The relevant market is already highly concentrated. In recent years, the relevant market has experienced significant consolidation, including Heidelberg's 2016 acquisition of Italcementi S.p.A., through which Lehigh acquired its cement plant in Nazareth, Pennsylvania.

37. Lehigh and Keystone are now two of only four suppliers that have significant sales in the relevant market. In addition to Lehigh and Keystone, Lafarge and Buzzi produce and distribute cement at plants located in Pennsylvania's Lehigh Valley. These four suppliers account for over [redacted] percent of cement sales in the relevant market. In addition to these four firms, Riverside Construction Materials, a subsidiary of the Silvi Group, imports cement at its terminal in Bristol, Pennsylvania, which it distributes [redacted]

38. The Acquisition would substantially increase concentration levels in this already highly concentrated market. Lehigh is by far the leading cement supplier in the relevant market. If the Acquisition closes, Lehigh will control more than [redacted] percent of cement sales in eastern Pennsylvania and western New Jersey.

39. The Merger Guidelines and courts use the Herfindahl-Hirschman Index ("HHI") to measure market concentration. HHIs are calculated by totaling the squares of the market shares of each firm in the relevant market, both before and after the transaction. A relevant market is "highly concentrated" under the Merger Guidelines if it has an HHI level of 2,500 or more. Under the Merger Guidelines, transactions likely to create or enhance market power are presumptively unlawful. A transaction is presumed likely to create or enhance market power, and is presumptively illegal, if the post-transaction HHI exceeds 2,500 and the transaction increases the HHI by more than 200 points.

40. If consummated, the Acquisition would result in a post-Acquisition HHI of over 3,500 and would increase the HHI by more than 1,000—levels that far exceed the necessary thresholds for presumptive illegality. Accordingly, the Acquisition is presumptively unlawful under the Merger Guidelines and relevant case law.

VIII.

ANTICOMPETITIVE EFFECTS

A.

The Acquisition Would Eliminate Head to Head Competition between Lehigh and Keystone

41. Lehigh and Keystone are close competitors for many cement customers in eastern Pennsylvania and western New Jersey and are two of just four significant suppliers in the relevant market. The Acquisition would significantly reduce competition for cement customers and allow the combined firm to raise prices or reduce output in the relevant market.

42. The significant direct competition between Lehigh and Keystone has benefited cement customers in the relevant market. Many customers in the market request price quotes from both Lehigh and Keystone when negotiating terms for purchasing cement. Keystone has often demonstrated a willingness to offer low prices to win or attempt to win business from Lehigh. Keystone's aggressive pricing has caused Lehigh to lower its cement prices in the relevant market and compete on price more vigorously.

43. Keystone has regularly undercut Lehigh's cement prices in the relevant market. For example, in 2019, Lehigh's sales officials conducted an analysis of [redacted] identifying over [redacted] in which Keystone undercut Lehigh's cement prices for customers, often causing Lehigh [redacted] Other ordinary course business documents show how Lehigh has responded to direct competition from Keystone by [redacted] Absent competition from Keystone, Lehigh likely would not need to [redacted]

44. Lehigh recognizes that the completion of the Acquisition will eliminate the opportunity for customers to take advantage of Keystone's lower prices. As [redacted] wrote during the pendency of the Acquisition: [redacted]

45. One of the motivations driving the Acquisition is the perceived defensive value to be attained by removing the competitive threat posed by Keystone. Lehigh executives concluded that, absent the Acquisition, Keystone would [redacted] at Lehigh's expense, and that the Acquisition would prevent Lehigh [redacted]

B.

[redacted] to Curtail [redacted] Output Following the Acquisition

46. If allowed to acquire Keystone, [redacted] would lead to a reduction in output [redacted] and would harm consumers in the relevant market.

C.

The Acquisition Would Increase the Likelihood of Anticompetitive Coordination

47. The Acquisition would increase the likelihood and efficacy of anticompetitive coordination among cement suppliers in the relevant market. Cement suppliers, including the same companies that own facilities in the relevant market, have previously expressly colluded in other geographic markets with similar characteristics. For example, Heidelberg was among six

firms fined by the Bundeskartellamt in 2003 for engaging in illegal cartel activity in German cement markets. Following the Acquisition, all of the three remaining significant participants (or their parent companies) in the relevant market—Lehigh, Lafarge, and Buzzi—have been found guilty of illegally coordinating to increase the price of cement in other geographic markets within the last two decades.

48. The relevant market has characteristics that make it vulnerable to coordination. Those characteristics include a highly-concentrated market with limited competitors; a homogeneous product; significant transparency as to the prices, costs, capacities, and strategic initiatives of rival firms; sales that are small, frequent, and usually not made pursuant to long-term contracts; low price elasticity of demand; and evidence of past interdependent behavior by market participants.

49. Competitors commonly track each other's customers, production capacities, costs, sales volumes, and prices. Cement suppliers are often able to obtain information relating to their rivals' prices to individual customers and general price increase announcements that are typically made by each supplier on an annual basis. Post-Acquisition, access to such information will enable Lehigh and the remaining cement suppliers in the relevant market to detect and effectively punish deviations from coordinated schemes or tacit agreements to increase prices, reduce output, or allocate customers.

50. Because cement has no close substitutes Lehigh and the remaining significant suppliers of cement in the relevant market would likely be able to raise cement prices without fear of losing sales to suppliers of other products.

51. In recent years, Keystone has emerged as a particularly aggressive competitor in the relevant market. Keystone, [redacted], has sought to grow its sales and [redacted] by winning business from other suppliers' customers by offering lower prices.

52. Keystone's aggressive pricing has prevented Lehigh and other suppliers from increasing the price of cement in the relevant market. For example, a Lehigh sales presentation from 2017 described how [redacted] Similarly, in 2018, [redacted] In another example, in April 2019, a Lehigh sales presentation reported, [redacted] Shortly thereafter, Lehigh's management requested that Heidelberg's Managing Board approve its plan to acquire Keystone.

53. The Acquisition would significantly increase concentration in this already highly-concentrated market and would reduce the number of significant competitors from four to three. By reducing the number of competitors, the Acquisition would reduce obstacles to coordination and make it easier for Lehigh and the other two remaining significant cement suppliers to

monitor and retaliate against deviations from coordinated schemes or tacit agreements to increase cement prices, reduce output, or allocate customers.

54. Heidelberg's own internal analysis presented to its Managing Board in advance of the Acquisition concluded that the [redacted] and [redacted]

55. By reducing the number of competitors and eliminating Keystone, a firm that plays a disruptive role in the market to the benefit of customers, the Acquisition would likely strengthen existing tendencies among remaining firms to coordinate and enhance the prospects for successful coordination in the future.

IX.

LACK OF COUNTERVAILING FACTORS

A.

Entry Barriers

56. Respondents cannot demonstrate that new entry or expansion by existing firms would be timely, likely, or sufficient to offset the anticompetitive effects of the Acquisition and rebut the presumption that the Acquisition is illegal. To the contrary, the cement industry is characterized by substantial barriers to entry.

57. Construction of a new cement facility would require significant upfront sunk-cost investments and take several years to accomplish. Finding a suitable location, if one is available, and obtaining necessary governmental permits and approvals is difficult and time-consuming and this process alone can take numerous years. Even if a firm could find a suitable location and obtain all necessary governmental approvals, the construction of a cement production facility would take considerable resources and time. For example, Elementia estimated that it would cost approximately [redacted] and require a minimum of [redacted] to construct a new cement plant in eastern Pennsylvania with a capacity similar to Keystone's Bath plant.

58. Entry by constructing a marine terminal is also costly and time-consuming. Securing a suitable site to accommodate ships of sufficient size is difficult. Finding an available location to construct a cement import terminal, obtaining all requisite regulatory approvals and permits, and constructing the facility would likely take more than two years. For example, when [redacted]

59. New entry by means of a truck or rail terminal is unlikely and would be insufficient to prevent the likely anticompetitive effects of the Acquisition. Due to the additional costs of transporting cement to the terminal (as well as terminal operating costs), a new entrant seeking to compete in the relevant market using a truck or rail terminal would be unlikely to be

cost competitive, because it would be competing directly against market participants that locally operate lower cost cement plants.

60. Expansion by existing cement suppliers would not be timely, likely, or sufficient to prevent the competitive harm from the Acquisition.

B.

Efficiencies

61. Respondents cannot demonstrate merger-specific cognizable efficiencies sufficient to rebut the strong presumption and evidence of the Acquisition's likely significant anticompetitive effects.

X.

VIOLATION

COUNT I – ILLEGAL AGREEMENT

62. The allegations of Paragraphs 1 through 61 above are incorporated by reference as though fully set forth.

63. The Acquisition Agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

COUNT II – ILLEGAL ACQUISITION

64. The allegations of Paragraphs 1 through 61 above are incorporated by reference as though fully set forth.

65. The Acquisition, if consummated, may substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the second day of November 2021, at 10 a.m. EST, is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that this administrative proceeding shall be conducted as though the Commission, in an ancillary proceeding, has also filed a complaint in a United States District Court, seeking relief pursuant to Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b), as provided by Commission Rule 3.11(b)(4), 16 CFR 3.11(b)(4). You are also notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

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

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

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

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

2. A prohibition against any transaction between Respondents that combines their businesses in the relevant market, except as may be approved by the Commission.

3. A requirement that, for a period of time, Respondents provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant market with any other company operating in the relevant markets

4. A requirement to file periodic compliance reports with the Commission.

5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore Keystone as a viable, independent competitor in the relevant markets.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this twentieth day of May 2021.

By the Commission.

April I Tabor
Secretary

SEAL:

Appendix A:

List of Counties in Relevant Geographic Market eastern Pennsylvania and western New Jersey:

Eastern Pennsylvania	Western New Jersey
Berks	Atlantic
Bradford	Burlington
Bucks	Camden
Carbon	Cape May
Centre	Cumberland
Chester	Gloucester
Clinton	Hunterdon
Columbia	Morris
Cumberland	Salem
Dauphin	Somerset
Delaware	Sussex
Juniata	Warren
Lackawanna	
Lancaster	
Lebanon	
Lehigh	
Luzerne	
Lycoming	
Monroe	
Montgomery	
Montour	
Northampton	
Northumberland	
Perry	
Philadelphia	
Pike	
Schuylkill	
Snyder	
Sullivan	
Susquehanna	
Tioga	
Union	
Wayne	
Wyoming	
York	