

**TESTIMONY BEFORE THE  
HOUSE COMMITTEE ON THE JUDICIARY  
ANTITRUST TASK FORCE**

**SUBMITTED BY**

**SUSAN M. DIEHL  
SENIOR VICE PRESIDENT LOGISTICS  
AND SUPPLY CHAIN MANAGEMENT  
HOLCIM (US) INC.**

**HEARING ON**

**H.R. 1650, THE “RAILROAD ANTITRUST ENFORCEMENT ACT”**

**FEBRUARY 24, 2008**

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Good morning Chairman Conyers and Members of the Committee. My name is Susan Diehl and I am the Senior Vice President, Logistics and Supply Chain Management at Holcim (US) Inc., which I will refer to today as "Holcim". I am here to speak to the Committee about Holcim's experiences as a captive shipper. I commend you Mr. Chairman, and your Committee, for the leadership you are taking on this very important issue. As a person who was born and raised in Michigan, and whose company has a significant presence in Michigan, I see the devastating effects when companies cannot be cost competitive.

I sincerely appreciate the opportunity to express my deep concern over the fundamental flaws in the current rail system, which permits and indeed invites four major monopoly powers to dominate U.S. shippers, the vast majority of whom are unable to seek cost and eco-efficient competition. There exist impenetrable barriers to entry and an oversight system that is, at best, ineffective and undeniably available to only the privileged few who possess the ability to pay the high costs of access. Few, if any, industries can claim the benefit that the rail industry has of owning near-exclusive rights to its infrastructure, and to prevent the meaningful entry of new competitors.

Holcim is a shipper of a strategic building material, namely cement. In most of the markets it serves, Holcim faces unfair and non-competitive rates, on the heels of years of massive rail consolidation and utter lack of oversight by the STB and its predecessor. What is currently being proposed in H.R. 1650, under your leadership, Mr. Chairman and that of your Committee, has many key proposals that would help captive shippers like Holcim, for example: 1. removing the antitrust exemption under the Nation's antitrust laws; 2. allowing Federal Courts to assert jurisdiction in actions against common carriers and, 3. extending treble damages to carriers

Holcim submits this testimony fully recognizing that by doing so, it assumes certain risks: the rail lobby is effective and Holcim, as a captive shipper, has few alternatives if confronted with further erosion of service and cost competitiveness. Nevertheless, we hold a deep belief that the only way to continue to supply our country with its most fundamental building material and keep jobs in this country is to share our experience with you, Mr. Chairman, and your Task Force. The current system is unfair and needs change.

## **HOLCIM IS A LEADER IN THE MANUFACTURE OF CEMENT SERVING CUSTOMERS IN MORE THAN FORTY STATES, WITH A FOCUS ON SUSTAINABLE DEVELOPMENT**

My Company, Holcim (US) Inc., is based in Waltham, MA and has its largest presence in Dundee, Michigan, where it contributes more than \$85 million to the Michigan economy. It is a subsidiary of Holcim Ltd, a worldwide leader in the building materials sector, with over 150 million tons of cement and almost 200 million tons of aggregates supplied annually. Holcim Ltd is a leader in sustainable development and for the last three years, has been recognized as the “Leader of Industry” by the Dow Jones Sustainability Index for the building materials sector.

As a leader in the US cement industry, Holcim produces and supplies nearly 16 million tons of cement and cementitious products annually from its 16 manufacturing and 3 import facilities. We have more than 3000 employees, 475+ of whom are in Michigan and over \$1.5 billion in annual revenue. We have invested nearly \$1 billion to upgrade and expand our existing U.S. facilities over the last decade, and are investing another \$1 billion in Ste. Genevieve County near St. Louis, Missouri, to build the world’s largest single cement production line. Still, this massive investment in capacity and efficiency upgrades is not enough to serve the Nation’s need for cement, as the industry must import approximately 20 million tons of additional cement to meet the domestic demand.

Holcim has four regions in the United States, including the Atlantic coast and southern US, the Great Lakes and Mississippi River system, Texas and Oklahoma, and the Rocky Mountains. We serve customers in over 40 states from our 16 plant facilities, and from over 55 additional remote distribution sites, or terminals. Roughly 7.5 million tons of cement moves from our manufacturing facilities to these remote company terminals, for final distribution to customers; 4.5 million tons or more (or 60%) of that volume moves by rail. In addition, Mr. Chairman, we bring critical raw materials such as coal and gypsum to our manufacturing facilities to feed their continuous operations.

### **How Cement is Made**

The Committee may want to understand that cement is produced from various abundant raw materials including limestone, shale, clay and silica sand. These minerals are ground and heated in large rotary kilns to temperatures as high as 3,400 degrees Fahrenheit. The heat of the combustion fuses these materials into clumps of an intermediate material called clinker. When the clinker is discharged from the kiln, it is cooled and later ground with a small amount of gypsum to produce the gray powder known as portland cement. Different types of portland cement are manufactured to meet various physical and chemical requirements.

Portland cement manufacturing facilities use an enormous amount of energy. In fact, energy is the largest cost component in the manufacture of portland cement. The U.S. cement industry is largely coal fired with over 80% percent of all plants using coal, pet coke, or some combination of the two as primary kiln fuel in 2004. The domestic cement industry is one of the largest industrial consumers of coal. Much of the coal utilized to heat cement kilns is delivered by rail.

The cement industry is regional in nature, Mr. Chairman. Most cement manufacturing plants are located in rural areas near large limestone deposits, the principal ingredient in

producing cement. However, at the same time plants also must be located near markets because the cost of shipping cement quickly exceeds its value. As such, customers traditionally purchase cement from local sources.

In 2007, we spent in excess of \$60 million on rail freight and fuel surcharges (to move cement within our company, and even more when adding what is spent to bring raw materials into our facilities). What is interesting to note, Mr. Chairman, is that these costs cannot always be passed along to our customers, because sometimes our competitors have a local manufacturing presence and have no need to move cement by rail. In this type of situation, we need to be as cost competitive as possible.

As evidenced by the amount of product that moves by rail, and the remote areas served (e.g., Bliss, ID, Lehi, UT, Superior, NE), we recognize the railroads as an important component of our business. Unreliable service can force our operations to shut down due to lack of raw materials and fuels, and worse yet, leave customers stranded with no cement to complete their building work.

**THE CEMENT INDUSTRY IS STRATEGICALLY IMPORTANT DOMESTICALLY AND HOLCIM IS COMMITTED TO CONTINUING INVESTMENTS TO IMPROVE ITS ENVIRONMENTAL EFFICIENCY AND INCREASE ITS CAPACITY**

Considering the regional nature of the cement industry, it is critical that there are reliable and cost-effective transportation options available. Average cement shipments range between 250 to 300 miles. Truck transportation is not economical much beyond 150 miles; it is also not as environmentally friendly as rail. We are reliant on railroads to deliver our product. Only five of Holcim's sixteen cement plants have access to water transportation for domestic shipments and then only to select markets. The railroads have sometimes argued that these cement facilities are not captive since there are alternative modes of transportation available. This simply is not the case, Mr. Chairman. The US Cement Industry relies on rail transportation to move approximately 50 percent of all shipments between cement plants and distribution terminals, according to 2004 U.S. Geological Survey data, the most recent independent figures. It is highly important to our industry that the railroads provide reliable, efficient and cost-effective service to meet the widespread demand for our product. More than 80 percent of U.S. cement manufacturing plants are captive to a single railroad. Due to the absence of competition, these plants are unable to secure competitive rail rates and often receive poor service. On the other hand, dual rail-served facilities promote competition, leading to better rates and more reliable service.

The railroads also transport millions of tons of inbound coal shipments to fuel cement manufacturing plants each year. There are examples within the industry in which cement plants that are served by two railroads receive coal from a supplier that is captive to a single railroad. There are also instances where both the cement plant and the coal supplier are captive to a single railroad. These situations result in unnecessarily high rail rates that add to the cost of cement and, ultimately, to the cost of infrastructure.

**INCREASING COMPETITION IS THE BEST WAY TO DRIVE EFFICIENCIES AND PROMOTE INVESTMENT IN RAIL INFRASTRUCTURE**

Mr. Chairman, the railroads' argument that "re-regulation" will have a chilling effect on business growth is flawed and presents a false choice. H.R. 1650, currently before

Congress, presents an opportunity to improve service, and increase rate competition, without impacting rail capacity.

The Staggers Act of 1980, which selectively removed regulations of the railroad industry in instances where transportation competition exists, has improved the industry's efficiency and financial stability. However, since deregulation, there has been a sharp decline from 63 Class I railroads in 1976 to just four major Class I railroads today handling 90% of the nation's rail traffic. This consolidation has contributed to diminished competition as well as ineffective and inconsistent rail service for the cement industry and many others.

Inconsistent and unreliable service from the Class I railroads is one of the most serious problems Holcim faces in its efforts to bring an affordable and essential product to market. Service encompasses many aspects of rail transportation, including picking up rail cars (covered hoppers), on-time delivery of rail cars and providing empty rail cars. The cars supplied by the railroads are typically old, poorly maintained and frequently a safety concern.

In recent years, Mr. Chairman, Holcim has been forced to purchase private rail cars because Class I railroads have refused to add cement rail cars to their fleets. Meanwhile the railroads have added tariff provisions charging for the storage (demurrage) of Holcim-owned (private) rail cars. This results in increased costs (in the form of capital investment, maintenance and service fees) to the cement shipper while providing no incentive to the rail carriers to improve their service.

We face uncertainty daily regarding the service reliability of the railroads. The Company is also disadvantaged competitively when competitors have dual service to serve markets where we are captive. Holcim has had to take extraordinary measures to try to remedy this disadvantage.

**HOLRAIL IS CREATED TO CREATE COMPETITION WITH THE RAILROADS:  
3 YEARS AND HUNDREDS OF THOUSANDS OF DOLLARS LATER,  
AND STILL NO COMPETITION**

Holcim created HolRail LLC ("HolRail") in 2003 for the purpose of constructing and operating a 2.3 mile common carrier rail line, to establish competitive rail service at Holcim's cement production facility in Holly Hill, South Carolina ("Holly Hill Facility"). The Holly Hill Facility is heavily dependent upon both inbound and outbound rail service to produce and distribute up to 2 million tons of cement annually. However, the Holly Hill Facility is captive to a single railroad, the CSXT. This captivity has allowed CSXT to provide poor and unresponsive service while charging unreasonably high rates to Holcim (comparable to truck rates for similar distances), which has placed Holcim at a competitive disadvantage in the cement market. In order to improve its rail service and obtain competitive rates, Holcim concluded that it needed competitive rail service at Holly Hill.

Although the Holly Hill Facility is closed to the CSXT, the Norfolk Southern Railway ("NSR") comes within approximately two miles of the Holly Hill Facility, at Giant, South Carolina. Therefore, Holcim determined that it could obtain competitive rail service at Holly Hill by constructing its own railroad over that distance to connect with the NSR. Holcim separately incorporated HolRail for this purpose.

Holcim has two competitors located within 5 miles of the Holly Hill Facility, both of whom are dual served by the CSXT and the NSR. So, not only must Holcim try to compete without having a level playing field, Mr. Chairman, it must commit to invest in excess of \$20+ million to level that playing field, incurring more costs due to the CSXT's failure to allow a shared right of way.

HolRail identified two potential routes to connect the Holly Hill Facility with the NSR, a "Preferred" and an "Alternate" route. Both routes would extend 2.3 miles, from north to south, across the Four Hole Swamp and parallel to CSXT's existing track. The Alternate Route, however, lies approximately 105 feet east of the Preferred Route over most of that distance. The key distinction between the two routes is that the Alternate Route can be constructed almost entirely on property owned by Holcim, whereas the Preferred Route must cross over CSXT's property for 1.7 miles and would be constructed within the existing CSXT right-of-way.

Despite having a clear path across Holcim-owned property via the Alternate Route, HolRail proposed the Preferred Route across CSXT's property to minimize the environmental consequences of constructing a railroad across the Four Hole Swamp, which is a unique and environmentally sensitive wetland. Since there is an existing transportation corridor, which includes the CSXT track, State Highway 453, above ground power lines, and a buried gas line, which already constricts the flow of water through the swamp, HolRail determined that simply widening that corridor, by constructing the Preferred Route immediately adjacent to the CSXT track, would cause the least environmental harm.

In contrast, the Alternate Route would exacerbate the harmful effects of the existing corridor by creating a second, entirely separate, transportation corridor approximately 130 feet further downstream, and deeper into the Four Hole Swamp. In addition to disturbing the portion of the swamp actually occupied by the railroad, the Alternate Route would disturb the entire area between the two corridors, which is referred to as an "island" effect. Consequently, the Alternate Route would more than double the acres of pristine wetlands that would be disturbed by the rail construction.

The Army Corps of Engineers, the South Carolina Department of Natural Resources, and The National Audubon Society submitted letters to the Surface Transportation Board independently confirming HolRail's observations and expressing their preference for the Preferred Route over the Alternate Route.

The Alternative Route, which the STB ordered HolRail to pursue without legal basis, would not only disturb these precious wetlands, but will also more than double the costs of construction and would force the Company to invest well over \$20 million to construct. It took over 2 years to get the denial of HolRail's crossing petition from the STB, costing hundreds of thousands of dollars in legal fees and consulting fees. The DC Circuit Court of Appeals just denied our appeal, applying the Chevron doctrine to afford wide deference to the STB's decision. The Company may now be forced to pursue an environmentally damaging option to create much needed competition.

## DAILY OPERATIONAL ISSUES CONTINUE TO ABOUND

- ❖ In May, 2007, the Canadian National Railroad utterly failed to service a distribution facility in Green Bay, WI. There was no option but to truck product from another facility in Duluth, MN. During this time, the Company paid 2.5 times more than the rail rate, a cost that cannot be passed on to customers. In addition, the truck haulage is less efficient from an environmental perspective than rail.
- ❖ In the fall of 2006, the Union Pacific Railroad threatened to stop serving a manufacturing facility for inbound coal. The Union Pacific Railroad stated that the Company did not unload cars quickly enough and insisted that Holcim share unit trains full of coal with our competitor in the area.
- ❖ Some basic analysis reveals that in 98% of all of the origins/destinations Holcim serves; either the origin or the destination is “closed” or captive on one railroad. In one instance where competition does exist in our system, the rates are over 60% less than a comparable captive haul.
- ❖ In 2007 alone, on selected hauls of less than 225 miles, trucking rates in Holcim are nearly \$1.8 million *more* favorable than rail rates, despite the fact that it takes approximately 4 trucks to move the same amount of product as 1 rail car. Holcim wants to be able to leverage rail infrastructure to avoid the extra congestion and emissions occasioned by having more trucks on the road. Mr. Chairman, given that the Company moves more than 45,000 rail cars per year, converting this haulage to truck would put nearly 180,000 extra trucks on the road every year!

### **THE STB’S FAILURE TO PROTECT SHIPPERS AND PROVIDE LOW COST, UNBIASED ACCESS TO PURSUE CLAIMS IS A DETERRENT TO SHIPPERS AND FURTHER EMBOLDENS THE RAILROADS TO EXERT THEIR MONOPOLY POWER**

As evidenced by the examples above, Holcim lives with the grim reality that there is little or no recourse when it can neither obtain favorable rates nor service from the Class I railroads. The STB has done little since it was formed to protect shippers from the increasingly consolidated rail industry, with almost impenetrable barriers to entry and few, if any options available.

The impediments to moving through the system created by the STB are evidenced by the fact that HolRail has been trying since 2004 to establish a short line; when a decision was finally issued earlier this year, the STB ordered HolRail to pursue an ecologically and environmentally inefficient option, at nearly twice the cost. In addition, to date, legal and consulting fees are in excess of \$600,000.

Holcim has no recourse regarding rates since cement (officially “hydraulic cement”) is classified as an exempt product from rate regulation by the STB. Since the STB has done little to address service issues, Holcim believes Congress should expand the STB’s authority to promote transparency around rail service. Congress should also require the STB to submit an annual report regarding rail service complaints and

describe the procedures the STB took to resolve them. Further, either party should be allowed to submit a dispute over rail service to the STB for “final offer” arbitration.

At present, the Surface Transportation Board does not fulfill its mandate “to respond to the demands of maintaining a healthy and competitive . . . national transportation infrastructure . . . . [T]he STB [is] charged with ensuring that the nation maintains a strong railroad infrastructure that serves passengers and shippers well”.<sup>1</sup> The STB has not fostered competition and improved service during its tenure and has not responded well to the needs of shippers.

## **CONCLUSION**

As a shipper of a strategic building material, Holcim needs a vibrant and profitable rail industry to support the nation’s economic growth. Holcim must have access to a competitive rail transportation system, to ensure timely and efficient delivery of cement to those who build our nation’s critical infrastructure. It simply requires the rail industry to re-invest to grow and stay competitive, like its customers. Congress must level the playing field following decades of consolidation and growth of monopoly power in the rail industry.

During the last decade, Holcim has invested over \$1 billion to upgrade its capacity and better serve its customers while improving its environmental performance. Holcim is investing an additional \$1 billion in Ste. Genevieve, Missouri, on the Mississippi River, to ensure cost effective, environmentally friendly and reliable transport of cement, in part based on concerns that the railroads will not have the capacity or service levels necessary to serve customer needs in the years to come. We believe that the railroads must also re-invest; however, that investment need not be conditioned on receiving a mandate to continue with monopolistic practices.

What is currently being proposed in H.R. 1650, under your leadership, Mr. Chairman and that of your Committee, has many key proposals that would help captive shippers like Holcim, for example: 1. removing the antitrust exemption under the Nation’s antitrust laws; 2. allowing Federal Courts to assert jurisdiction in actions against common carriers and, 3. extending treble damages to carriers. Indeed, Mr. Chairman, we would not advocate for reform that would deter growth of our critical rail infrastructure. What we believe is that stronger competition creates incentives to become efficient operators with a strong customer focus—much like the incentives of the free market economy that drive efficiencies and competitive investment by Shippers. Competition, not monopoly power, is essential to fuel the railroads’ and Shippers’ growth. Continued monopoly power is by definition anti-competitive and will yield no growth. Every business must and does invest in renewing its infrastructure in order to remain competitive and railroads should be no exception.

I believe that Congress must especially consider provisions that promote rate competition and provide greater oversight on rail service related issues.

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<sup>1</sup> Statement of Congressman Wise, Ranking Member, Hearing on STB Reauthorization, March 12, 1998, U.S. House of Representatives, Subcommittee on Railroads, Committee on Transportation and Infrastructure.

I sincerely thank you, Mr. Chairman, and Members of the Committee for your time and I again appreciate this opportunity to speak about issues vital to our national infrastructure and future growth.

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