

ATTORNEY GENERAL OF THE STATE OF NEW YORK
ANTITRUST BUREAU

In the Matter of

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

Colas Inc., and Suit-Kote Corporation,

Respondents.

Assurance No. 26-065

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to Section 343 of the New York General Business Law, Section 63(12) of the New York Executive Law, and Section 7 of the Clayton Act concerning the potential harm to competition caused by the proposed acquisition (“the Acquisition”) of Suit-Kote Corporation, (“Suit-Kote”) by Colas Inc. (“Colas”), a wholly owned subsidiary of Bouygues S.A., a French conglomerate (collectively, “the Parties”). OAG’s investigation focused on the Acquisition’s potential to harm competition in the market for pavement preservation services in New York State. As part of its investigation, OAG, among other things, gathered and analyzed relevant market data and reviewed documents and information produced by the Parties.

This Assurance of Discontinuance (“Assurance”) sets forth OAG’s investigative findings and the relief agreed to by OAG and the Parties.

OAG’s FINDINGS

1. On August 4, 2025, Colas signed an agreement to acquire 100% of shares

in Suit-Kote.

2. Colas owns hot mix asphalt plants and provides asphalt trucking, road construction, and pavement preservation services in the Northeast, including New York and Pennsylvania, through its wholly owned subsidiaries Barrett Industries and Midland Asphalt. Unlike Suit-Kote, Colas is not materially involved in the distribution or resale of liquid asphalt in New York, because it purchases liquid asphalt primarily for its internal use.

3. Suit-Kote is a liquid asphalt distributor and provider of road construction and pavement preservation services operating primarily in New York and Pennsylvania.

4. The road construction industry encompasses several interrelated products and services. At top of the supply chain is liquid asphalt, a commodity product formed as a byproduct of the refinery processes by which crude oil is converted into various grades of fuel. Refineries sell liquid asphalt (either directly or through intermediary distributors) to companies that operate asphalt plants, where liquid asphalt is combined with crushed rock (“aggregate”), typically at high temperatures, resulting in a product called hot mix asphalt (“HMA”) or, when used as a road surface, blacktop.

5. Because constructing new road surface requires large amounts of HMA and is expensive and labor-intensive, several methods have been developed to repair, maintain and otherwise effectively extend the life of existing roads. These methods, collectively known as pavement preservation, involve applying a variety of products or treatments derived from liquid asphalt and aggregate, central among which are asphalt emulsions.

6. Asphalt emulsions are mixtures of liquid asphalt, water, and an emulsifying agent that can be applied to pavement in liquid form. Asphalt emulsions can be produced with either regular unmodified (“neat”) asphalt, or with liquid asphalt to which additives like

polymers or latex have been added to improve performance, called polymer-modified asphalt (“PMA”).

7. Because pavement preservation involves the application of various emulsion-based products by trained crews operating specialized equipment, it is typically provided to customers as a comprehensive, all-in-one (“turnkey”) service.

8. Pavement preservation services customers in New York are primarily county highway departments.

9. The provision of turnkey pavement preservation services is a relevant product market in New York.

10. Sales of emulsions a la carte are not a close substitute for turnkey pavement preservation services in New York because most county highway departments in New York maintain neither equipment nor crews needed to self-apply emulsions.

11. Based on interviews, bidding data, and other information available to OAG, the Acquisition would result in a substantial lessening in competition in the market for turnkey pavement preservation services in several areas of Central and Western New York.

12. OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

13. Colas will divest its facility in Bloomsburg, Pennsylvania (located at 1525 Millville Road, Bloomsburg, Pennsylvania, 17815) and the former Suit-Kote facilities in Belmont, New York (located at 5628 Tuckers Corners Rd, Belmont, New York 14813),

Buffalo, New York (located at 505 Como Park Blvd, Buffalo, New York 14227), and Jamestown, New York (located at 153 Jones & Gifford Ave, Jamestown, New York 14701) (the “Divestiture Assets”), to a single, qualified divestiture buyer (the “Buyer”), acceptable to OAG in accordance with paragraph 21 (the “Divestiture”). Colas shall use its reasonable best efforts to complete the Divestiture as expeditiously as possible after the closing of the Acquisition, including expending such efforts to fulfill the conditions outlined below (the “Divestiture Milestones”):

- a. Colas will market the Divestiture Assets to potential Buyers for a sixty (60) day period from the date of closing. (the “Marketing Period”);
- b. Colas will begin soliciting bids, offers, indications of interest, or other offers for the Divestiture Assets from prospective Buyers and will seek to enter into a non-binding letter of intent with respect to the Divestiture by a date that is no more than sixty (60) days following the end of the Marketing Period (the “Offer Period”);
- c. Colas will complete the Divestiture of the Divestiture Assets to a single, qualified Buyer, approved by OAG in accordance with paragraph 21, within sixty (60) days following the end of the Offer Period.

14. OAG may agree, in its sole discretion, without unreasonably withholding its consent, to one or more extensions of any time period outlined in paragraph 13. If, despite its reasonable best efforts, Colas has not been able to complete, or reasonably anticipates not being able to complete, any Divestiture Milestone within the timing provided in paragraph 13, Colas may request, and OAG may, in its sole discretion with consent not unreasonably withheld, agree to additional extensions.

15. Colas shall provide periodic updates to OAG on the status of the Divestiture

and its efforts to complete the Divestiture Milestones, including but not limited to providing OAG with copies of all written bids, offers, or Letters of Intent for the Divestiture Assets from prospective Buyers. Such updates shall be delivered in a form mutually agreed to by the parties. Such updates shall be provided by Colas to OAG not less than every thirty (30) days from the execution of this Assurance. Upon mutual consent of the Parties, the requirements of this paragraph 15 may be waived or modified in whole or in part.

16. In accomplishing the divestiture ordered by this Assurance, Colas will promptly make known, by usual and customary means, the availability of the Divestiture Assets. Colas will inform any person making a reasonable inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Assurance, and Colas will furnish a copy of this Assurance to that person. Colas will offer to furnish to prospective divestiture buyers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except such information or documents subject to the attorney-client privilege or work-product doctrine. Upon request, Defendants shall also make available such information to OAG in substantially the same form as available to a prospective divestiture Buyer, such as providing OAG access to a data room or other repository of due diligence materials. Any such information accessed or obtained by OAG shall be deemed highly confidential, proprietary, and non-public business information protected from disclosure pursuant to all applicable protections of Public Officers Law § 87 and any other applicable statutes or regulations.

17. Colas will install a new emulsion mill at the Bloomsburg facility with manufacturing equipment capable of producing at least four (4) million gallons of

emulsions annually, and adequate related storage capacity. The emulsion mill and storage equipment shall meet industry standards, and Colas will discuss the details and desired specifications of this build-out with the Buyer. For the avoidance of doubt, Colas may discuss such details and specifications with potential Buyers in advance of any approvals of said Buyers by OAG to facilitate the timely installation of this equipment. Colas may complete the closing of the sale of the Divestiture Assets prior to completion of this build-out, provided that in such instance Colas shall provide the Buyer with funds necessary to complete the build-out in a timely manner consistent with industry standards, and Colas shall condition such funds to only be used for the completion of the build out contemplated by this paragraph. Colas's obligation to finance this build-out, whether completed prior to the closing of the Divestiture by Colas or completed by the Buyer post-closing, shall be up to a maximum of \$3,000,000.

18. At the Buyer's option, and if needed in the Buyer's view for the operations of the Divestiture Assets, Colas will provide pavement preservation equipment valued at up to a maximum of \$3,500,000 at each of the Belmont and Bloomsburg locations sufficient to enable the Buyer to provide payment preservation services from those locations.

19. Colas will use reasonable best efforts to ensure that, at the time of closing, the Belmont facility has a plant manager with considerable industry and regional experience, and will not impede the Buyer's ability to employ that plant manager post-transaction. Moreover, Colas will, at the Buyer's option, use reasonable best efforts to identify a sales professional with experience and relationships in the counties currently serviced by the Suit-Kote facility in Watkins Glen, New York, and will not impede the Buyer's ability to employ that sales professional post-transaction.

20. Unless OAG otherwise consents in writing, the divestiture pursuant to this Assurance shall include the entire Divestiture Assets and be accomplished in such a way as to satisfy OAG, in its sole discretion without unreasonably withholding its approval, that the Divestiture Assets can and will be used by the Buyer as part of a viable, ongoing business of providing pavement preservation services.

21. The divestiture pursuant to this Assurance shall be made to a Buyer that, in OAG's sole discretion without unreasonably withholding its approval, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of providing pavement preservation services, and thereby restoring the nature and intensity of competition otherwise lost due to the Acquisition. Such approval of a Buyer by OAG shall not be unreasonably withheld, upon reasonable demonstration of Buyer's fitness to compete effectively in the business of producing and selling Emulsions and providing Pavement Preservation Services, including but not limited to prior performance, including in similar or related businesses.

22. OAG and Defendants desiring to settle their differences without trial or adjudication of any issue of fact or law, have entered into this Assurance, which is not an admission of liability by Defendants as to any issue of fact or law.

MISCELLANEOUS

I. Subsequent Proceedings

23. The Parties expressly agree and acknowledge that OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 25, and agree and acknowledge that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and

after the effective date of this Assurance until the completion of the sale of the Divestiture Assets;

- b. OAG may use statements, documents, or other materials produced or provided by the Parties prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that the Parties irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue.

24. If a court of competent jurisdiction determines that any Party has violated the Assurance, the Party shall pay to OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including, without limitation, legal fees, expenses, and court costs.

II. Effects of Assurance

25. All terms and conditions of the Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Parties. The Parties shall include in any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No Party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

26. Any failure by OAG to insist upon the strict performance by the Parties of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Parties.

III. Communications

27. All notices, reports, requests, payments, and other communications pursuant to this Assurance must reference Assurance No. 26-065, shall be in writing, and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

1) If to OAG:

Elinor Hoffmann, Bureau Chief, Antitrust Bureau
Amy McFarlane, Deputy Bureau Chief, Antitrust Bureau
Benjamin Cole, Assistant Attorney General, Antitrust Bureau

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
elinor.hoffmann@ag.ny.gov
amy.mcfarlane@ag.ny.gov
benjamin.cole@ag.ny.gov

2) If to Colas:

Anthony Martino
Vice President, General Counsel
Colas Inc.
73 Headquarters Plaza
North Tower, 10th Floor
Morristown, NJ 07960
amartino@colasinc.com

with a required copy to:

Alexander Okuliar
Morrison & Foerster LLP
2100 L Street, NW Suite 900
Washington, DC 20037
aokuliar@mofo.com

3) If to Suit-Kote:

c/o Erica L. Lawson
Hinman, Howard & Kattell, LLP

700 Security Mutual Building
80 Exchange Street
Binghamton, NY 13901
elawson@hhk.com

IV. Representations and Warranties

28. OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the Parties and their counsel and OAG's own factual investigation as set forth in the Findings. Each Party respectively represents and warrants that neither it nor its counsel has made any material representations to OAG that are inaccurate or misleading. If any material representations by the Parties or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by OAG in its sole discretion.

29. No representations, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Parties in agreeing to this Assurance.

30. The Parties represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved. The Parties further represent and warrant that Anthony L. Martino, II and Frank H. Suits, Jr., as the signatories to this Assurance, are duly authorized officers acting on behalf of Colas and Suit-Kote, respectively.

31. The Parties further represent that the divestitures above can and will be made and that neither Colas nor Suit-Kote will later raise any claim of hardship or difficulty as grounds for seeking to modify any of the divestiture provisions contained above, except for the extensions of time contemplated by paragraph 13.

V. General Principles

32. Nothing in this Assurance shall relieve the Parties of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

33. Nothing contained herein shall be construed to limit the remedies available to OAG in the event that a Party violates this Assurance after its Effective Date.

34. This Assurance may not be amended except by an instrument in writing signed by OAG and the Parties.

35. Should any one or more of the provisions contained in this Assurance for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

36. The Parties acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

37. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

38. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

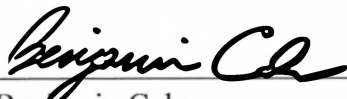
39. This Assurance may be executed in multiple counterparts by OAG and the Parties. All counterparts so executed shall constitute one agreement binding upon OAG and the Parties, notwithstanding that OAG and the Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the Effective Date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same

as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

40. The Effective Date of this Assurance shall be October 13, 2026.

[signatures on following page]

LETITIA JAMES
Attorney General of the State of New York

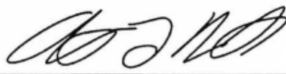
By: 
Benjamin Cole
Assistant Attorney General, Antitrust Bureau

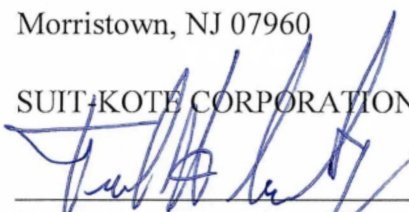
Elinor R. Hoffmann
Chief, Antitrust Bureau

Amy McFarlane
Deputy Chief, Antitrust Bureau

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28 Liberty Street
New York, NY 10005

COLAS INC.

By: 
Anthony L. Martino, II, Vice President &
General Counsel
73 Headquarters Plaza
North Tower, 10th Floor
Morristown, NJ 07960

SUIT-KOTE CORPORATION
By: 
Frank H. Suits, Jr., President
1911 Lorings Crossing Rd
Cortland, NY 13045