



# **Decision of the Competition** **Commission**

**Proposed merger between Holcim Ltd & Lafarge S.A**

**Decision 27<sup>th</sup> May 2015**

**CCM/DS/0016**

## **Decision of the Commissioners of the Competition Commission**

### **CCM/DS/0016 - Proposed merger between Holcim Ltd & Lafarge S.A**

#### **The Commission –**

Mr. Ariranga G. Pillay	-	<i>Chairperson</i>
Mr. R. J. R. Rama	-	<i>Commissioner</i>
Mr. M. R. Sadool	-	<i>Commissioner</i>
Mrs. P. J. S. Poonoosamy	-	<i>Commissioner</i>

On the 21<sup>st</sup> May 2015, the Commission held a meeting where the Commissioners have taken cognizance of the following:

#### **A. Overview of the investigation, the findings and recommendations**

1. On 1<sup>st</sup> September 2014, the Executive Director of the Competition Commission of Mauritius (CCM) commenced an investigation under section 51 of the Competition Act 2007 (the Act) to assess the proposed merger between Holcim Ltd and Lafarge S.A (the investigation). The investigation was launched following a preliminary enquiry carried out by the Executive Director under Rule 5 of the Competition Commission Rules of Procedure 2009 (Rules of Procedure) and a joint application for guidance filed by Holcim Ltd and Lafarge S.A on the 23<sup>rd</sup> July 2014.
2. Holcim Ltd and Lafarge S.A are worldwide players in the construction sector. In Mauritius, Holcim Ltd and Lafarge S.A are active in the market through their ownership and control of Holcim (Mauritius) Ltd and Lafarge (Mauritius) Cement Ltd respectively, and through exportation of cement from their various related entities to Mauritius.
3. In the merger notification, Holcim Ltd signified its willingness to divest of its shares in Holcim (Mauritius) Ltd to address the competition concerns that the proposed merger may raise in Mauritius.
4. On the 26<sup>th</sup> January 2015, Holcim Ltd and Lafarge S.A provided undertakings to the CCM under the provisions of section 63 of the Act. On the 8<sup>th</sup> of May 2015, the merging parties submitted revised undertakings to the CCM (*see the annex*).
5. The undertakings mainly provided for the divestment of the shares of Holcim Ltd in Holcim (Mauritius) Ltd which will be made subject to the CCM's approval of the purchaser.

6. Further to a Provisional Report, in response to which the merging parties provided their comments, the Executive Director completed the investigation on the basis of the undertakings and issued his report on the 13<sup>th</sup> of May 2015, with the following findings and recommendations:
- (i) The proposed merger between Holcim Ltd and Lafarge S.A is likely to qualify as a merger situation within the meaning of the Act. The merger situation between Holcim Ltd and Lafarge S.A will also result in various merger situations given the changes in ownership and control in other enterprises that the transaction will bring;
  - (ii) The relevant markets are the upstream market for the supply of grey cement in Mauritius, which is done through exportation to processors and wholesale distributors of grey cement in Mauritius and the downstream market for the supply of grey cement within Mauritius at wholesale level, which includes importers, processors and wholesale distributors. The market shares of Holcim Ltd and Lafarge S.A are approximately [~~3~~ *confidential*] over 30 per cent for each in the upstream market. The market shares of Holcim (Mauritius) Ltd and Lafarge (Mauritius) Cement Ltd are [~~3~~ *confidential*] over 30 per cent for each in the downstream market;
  - (iii) In the absence of the undertakings, the proposed merger may have led to competition concerns in terms of non-coordinated effects in the upstream market, non-coordinated effects in the downstream market, coordinated effects and vertical effects in various markets;
  - (iv) The undertakings proposed satisfactorily address the potential concerns that the proposed merger may raise; and through the proposed undertakings the state of competition in the markets in Mauritius will not be substantially lessened; and
  - (v) The Executive Director recommends that the Commission should accept the undertakings and that the merger be cleared subject to the undertakings which must be given the form of directions under section 60 of the Act.

## **B. Legal Background**

7. The control of merger situations is provided for in *Sub-Part IV of Part III* of the Act. Section 47 of the Act stipulates the criteria for existence of a merger situation and Section 48 of the Act describes merger situations that may be subject to review by the Commission.

### **Merger situation - Section 47**

8. A merger situation is defined under section 47 (1) as *"the bringing together under common ownership and control of 2 or more enterprises of which one at least carries its activities, in Mauritius, or through a company incorporated in Mauritius."*
9. Section 47(2) of the Act stipulates that *"enterprises shall be regarded as being under common control where they are –*
- (a) enterprises of interconnected bodies corporate;*
  - (b) enterprises carried on by 2 or more bodies corporate of which one person has or groups of persons have control; or*
  - (c) 2 distinct enterprises, one carried on by a body corporate and the other carried on by a person having control of that body corporate."*
10. Section 47(3) of the Act further states that *"[a]ny person may be treated as bringing an enterprise under his control where –*
- (a) he becomes able to control or materially to influence the policy of the enterprise, but without having a controlling interest in it;*
  - (b) being already able to control or materially to influence the policy of the enterprise, he acquires a controlling interest in it; or*
  - (c) being already able materially to influence the policy of the enterprise, he becomes able to control that policy."*

### **Review by the Commission - Section 48**

11. Section 48 of the Act stipulates that a *"merger situation shall be subject to review by the Commission where -*
- (a) all the parties to the merger, supply or acquire goods or services of any description, and will following the merger, together supply or acquire 30 per cent or more of all those goods or services on the market; or*
  - (b) one of the parties to the merger alone supplies or acquires prior to the merger, 30 percent or more of goods or services of any description on the market; and*

*(c) the Commission has reasonable grounds to believe that the creation of the merger situation has resulted in, or is likely to result in, a substantial lessening of competition within any market for goods or services.”*

### **Remedies in merger control – Section 61**

12. Under Section 61 of the Act “[w]here the Commission determines, after investigation that –

*(a) an enterprise is a party to a merger situation; and*

*(b) the creation of the merger situation has resulted, or is likely to result, in a substantial lessening of competition within a market for goods or services,*

*the Commission may give the enterprise such directions as it considers necessary, reasonable and practicable to –*

*(i) remedy, mitigate or prevent the substantial lessening of competition; and*

*(ii) remedy, mitigate or prevent any adverse effects that have resulted from, or are likely to result from, the substantial lessening of competition.”*

### **Undertakings – section 63**

13. Section 63 of the Act provides enterprises the opportunity to offer the CCM undertakings and stipulates that:

*“ (1) An enterprise may offer a written undertaking to the Commission to address any concern that has arisen, or is likely to arise, during an investigation in respect of a restrictive agreement subject to investigation, a monopoly situation or a merger situation.*

*(2) The undertaking may be offered before the start of the investigation or at any stage during the investigation.*

*(3) The Commission may, after having taken cognizance of the report of the Executive Director on the matter, determine a case on the basis of an undertaking if it considers that the undertaking satisfactorily addresses all the concerns it has about any prevention, restriction distortion or substantial lessening of competition.*

*(4) An undertaking accepted by the Commission shall be published by the Commission in the form of a decision of the Commission.*

*(5) An undertaking accepted by the Commission shall have effect as if it were a direction under section 60.”*

### **C. Review of the merger situation by the Commission**

14. The review of a merger situation, based on the provisions of the Act, as highlighted in the legal background section, requires the Commission to make an assessment and determination as to whether:

- (i) the proposed merger between Holcim Ltd and Lafarge S.A qualifies for a merger situation as provided under section 47 of the Act (The Merger Situation);
- (ii) the parties to the merger situation possess or would capture 30 per cent or more of the market as per section 48 (a) or (b) of the Act (Market Shares); and
- (iii) the creation of the merger situation has resulted in, or is likely to result in, a substantial lessening of competition within any market for goods or services as mentioned under section 48 (c) of the Act (Substantial Lessening of Competition).

#### **The Merger Situation**

15. Taking into account the assessments carried out by the Executive Director in relation to the merger situation, the Commission is of the opinion that:

- (i) the proposed merger qualifies as a merger situation within the meaning of sections 47 (1) & (2) and 2 (2) of the Act. It is not disputed that Holcim Ltd, through its various companies under the Holcim Group and Lafarge S.A through its various companies in the Lafarge Group including Holcim (Mauritius) Ltd and Lafarge (Mauritius) Cement Ltd respectively, are active in the supply of cement in Mauritius and are therefore engaged in commercial activities for gain or reward in Mauritius;
- (ii) the proposed transaction termed as a 'merger of equals' by the merging parties in that Holcim Ltd will offer new Holcim shares to the shareholders of Lafarge S.A in a public exchange offer governed by French Law and will in effect bring the acquiring (Holcim Ltd) and the target firm (Lafarge S.A) together and under common ownership and control within the meaning of section 47 (1) of the Act;

16. The Commission agrees with the finding of the Executive Director that the proposed merger may result in various merger situations as follows:

- A horizontal merger between Holcim Ltd and Lafarge S.A
- A horizontal merger between Holcim (Mauritius) Ltd and Lafarge (Mauritius) Cement Ltd

- A vertical merger between Holcim Ltd and Lafarge (Mauritius) Cement Ltd through Lafarge S.A
- A vertical merger between Holcim Ltd and Premixed Concrete Ltd through Lafarge S.A
- A vertical merger between Lafarge S.A and Holcim (Mauritius) Ltd through Holcim Ltd

**The relevant market and market share**

17. The review of the merger situation by the Commission is subject to the requirements of section 48 (a) or (b) of the Act - the market share threshold. Such an assessment invariably starts with the definition of the relevant market.
18. The Executive Director rightly, in our opinion, notes that in the present case where undertakings have been offered, the purpose of the exercise of market definition is to identify the potential markets that may be affected by the proposed merger and to identify and assess the potential concerns in those markets.
19. Having reviewed the exercise of market definition as carried out by the Executive Director in chapter five of the report, the Commission considers that the Executive Director rightly concluded that there are two levels of the cement market that may be involved with the proposed merger, namely the upstream and downstream markets -
- (i) the downstream market is one for the supply of bulk grey cement and bagged grey cement at wholesale level in Mauritius by importers, processors and distributors;
  - (ii) the upstream market is one for the supply of grey cement in Mauritius to importers, processors and wholesale distributors, with the possibility that bulk and bagged cement may be submarkets.
20. In that respect it would be found that the market threshold as specified under section 48 of the Act is reached where -
- (i) the proposed merger would acquire an estimated share of [~~3~~ confidential] above 70% per cent in the downstream market as defined above, in as much as the average market share of Holcim (Mauritius) Ltd and Lafarge (Mauritius) Ltd over the last five years, is [~~3~~ confidential] above 30% per cent for each; and
  - (ii) the proposed merger would acquire an estimated share of [~~3~~ confidential] above 70% per cent in the upstream market as defined above, in as much as the average

market share of Holcim Ltd and Lafarge S.A over the last five years, is [~~30~~  
*confidential*] above 30% per cent for each.

**Substantial Lessening of Competition**

21. The Executive Director noted, however, that a full-fledged evaluation of the competition concerns in terms of any potential substantial lessening of competition that may result from the proposed merger is not warranted in the present case because of the offer of undertakings.
22. The potential concerns in terms of potential substantial lessening of competition resulting from the proposed merger and which have to be assessed against the undertakings are as follows:
  - (i) Based on Paragraph 3.34 of the CCM5 Guidelines on merger, the Commission may regard the fact that the proposed merger would lead to a market share above 50 per cent for the merged entity, as being likely to result in unilateral market power (unilateral effects) both in the upstream and even the downstream market;
  - (ii) the merger would eliminate the main competitive constraint in the downstream market by bringing the two competitors together. In the absence of the merger, if one of these two suppliers increases its price, consumers still have the choice of shifting to the other supplier. However, with the proposed merger this possibility will be eliminated rendering the relevant downstream market as a highly concentrated market;
  - (iii) A similar level of concentration may be deduced for the upstream market given that Holcim (Mauritius) Ltd and Lafarge (Mauritius) Cement Ltd both source their cement requirements from the Holcim group and Lafarge group;
  - (iv) risks of coordinated effect; and
  - (v) vertical concerns owing to the increase in market power both at upstream level by the proposed merged entity and downstream by Lafarge (Mauritius) Cement Ltd.

## D. The Undertakings

23. It is noted that the Executive Director assessed the undertakings and met various parties to have their views in relation to the undertakings. A press communiqué was also issued to invite the views of any interested parties in relation to the proposed merger and undertakings.
24. The undertakings as annexed, include among others, commitments from the notifying parties to:
- (i) divest of their shares in Holcim (Mauritius) Ltd held by or through shareholders related to or associated to any one of the notifying parties in the event of completion of the proposed merger;
  - (ii) find a purchaser and enter into a final binding sale and purchase agreement for the sales of the divestment shares in Holcim (Mauritius) Ltd;
  - (iii) approval by the CCM of the purchaser of the divested business, Holcim (Mauritius) Ltd;
  - (iv) the process that would be involved in the divestment, including the appointment of the Hold Separate Manager, subject to the approval of the CCM;
  - (v) other measures to preserve the competitiveness of the divested business and to safeguard competition in the market.
25. The Executive Director concluded that through the divestment of the shares held by the notifying parties in Holcim (Mauritius) Ltd, the number of competitors and structure of the market will be maintained post-merger in the downstream market since there will be no concentration concerning the notifying parties in the downstream market and that the state of competition in general would not be substantially lessened through the merger process. In particular, the CCM will assess the purchaser and its ability to ensure that the state of competition in the market is not substantially lessened in the process.
26. With regard to the upstream market, the state of competition following the divestment will depend to a large extent on the purchaser and its ability to create competition at the upstream market. Indeed this quality will be sought out in the potential purchaser. The Executive Director is of the view that it is unlikely that the state of competition will be affected at the upstream market in view of the divestment and the fact that the purchaser must be independent from the notifying parties and be able to maintain competition in the market.

27. The Executive Director is consequently of the view that the undertakings satisfactorily address the concerns of the CCM with regards to the proposed merger between Holcim Ltd and Lafarge S.A in Mauritius subject to the divestment, the terms of the undertakings and the purchaser's qualities. Thus, the Executive Director's conclusion is that the merger may be conditionally cleared subject to the undertakings.
28. Based on the extensive assessment of the undertakings as carried out by the Executive Director and the conclusion reached, we are of the view that the undertakings would satisfactorily address all the concerns in terms of substantial lessening of competition through common ownership and increase in concentration of market shares in the downstream market.

### **Decision**

29. We, the Commissioners, take cognizance of:

- (i) the undertakings offered by the notifying parties;
- (ii) the comments received from the notifying parties by the Executive Director in response to the Provisional Findings;
- (iii) the recommendations of the Executive Director in his Report dated 13<sup>th</sup> May 2015; and
- (iv) the fact that the Commission is empowered under Section 63(3) of the Act to determine a case on the basis of an undertaking if it considers that the undertaking satisfactorily addresses all the concerns it has about any prevention, restriction, distortion or substantial lessening of competition.

30. We consequently decide as follows:

- (i) We are satisfied with the recommendations of the Executive Director.
- (ii) We consider that the undertakings will satisfactorily address the concerns which the CCM has about any prevention, restriction, distortion or substantial lessening of competition.
- (iii) We accept the undertakings as per the annex.
- (iv) The CCM will keep under review the performance of the undertakings given by the notifying parties. The Executive Director is to monitor the implementation of the undertakings.

Pursuant to section 63(5) of the Act, the undertakings given by the notifying parties and accepted by the Commission shall have effect as if they were directions under section 60 of the Act.

Mr. Ariranga G. Pillay 

(Chairperson)

Date 27.5.2015

Mr. R. J. R. Rama 


(Commissioner)

Date 27/05/2015

Mr. M. R. Sadool 

(Commissioner)

Date 27/05/2015

Mrs. P. J. S. Poonoosamy 

(Commissioner)

Date 27 May 2015

**Annex - Undertakings offered by Holcim Ltd and Lafarge S.A (non-confidential)**

1. 2. 3. 4. 5. 6. 7. 8. 9. 10.

11. 12. 13. 14. 15. 16. 17. 18. 19. 20.

21. 22. 23. 24. 25. 26. 27. 28. 29. 30.

31. 32. 33. 34. 35. 36. 37. 38. 39. 40.

41. 42. 43. 44. 45. 46. 47. 48. 49. 50.

# INV028 – Undertakings to the CCM

**UNDERTAKINGS PROVIDED BY MAIN PARTIES, HOLCIM LTD  
AND LAFARGE, S.A. IN RELATION TO POTENTIAL MERGER AND  
NOTIFICATION MADE TO THAT EFFECT (INV 028)**

## Contents

A.1 Introduction: .....	2
A.2 Definitions:.....	2
B.1 Divestiture:.....	3
B.2 the Divestment Business:.....	4
B.3 Related undertakings:.....	5
B.3.1 Operation Status .....	5
B.3.2 Hold Separate Undertakings.....	6
B.3.3 Ring Fencing.....	6
B.3.4 Non-Solicitation Clause .....	7
B.3.5 Divestiture Process .....	7
B.3.6 Reporting .....	7
B.4 the Purchaser .....	8
C.1 The Review Clause .....	9
C.2 Entry into force.....	9

## A. Background:

### A.1 Introduction:

- 1.0 Holcim Ltd and Lafarge, S.A had announced some time back of their intention to carry out a merger worldwide. In relation to same, a merger notification was filed, inter alia, in the COMESA Competition Commission and a Merger guidance notification was filed at the Competition Commission in Mauritius under section 47(4) of the Competition Act 2009.
- 2.0 Pursuant to the said notification, the Executive Director launched a merger investigation on the 1<sup>st</sup> September 2014.
- 3.0 The Notifying Parties, Holcim Ltd and Lafarge, S.A., are, by the presents, providing undertakings related specifically to possible effects on the Mauritius Market under section 63 of the Competition Act to the Competition Commission of Mauritius ("CCM") with a view allaying the concerns of the CCM, and with a view to obtain clearance to proceed with the merger notified (the "Proposed Merger").

### A.2 Definitions:

- 4.0 For the purpose of the Undertakings, the following terms shall have the following meaning:

**Affiliated enterprises:** enterprises controlled by the Notifying Parties.

**Closing:** means the transfer of the legal title in respect of the Divestment Business by way of a sale of all the **Divestment Shares** to a Purchaser (or Purchasers).

**Closing Period:** the period of [Confidential contains business secrets] from the date of Completion.

**Completion:** means the implementation of the Proposed Merger.

**Confidential Information:** any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

**Divestment:** means the disposal by the Notifying Parties of the Divestment Shares by way of a sale to a Purchaser pursuant to a binding sale and purchase agreement.

**Divestment Business:** the business which at the time of this undertaking is run and managed under Holcim (Mauritius) Ltd, and from which the Notifying Parties commit to divest and as described in Schedule 1 hereto.

**Divestment Company:** means a new holding company or companies for the Divestment Shares, jointly held by the Notifying Parties and formed for the purposes of effecting Closing.

**Divestment Shares:** shares held by the HML Shareholders in Holcim (Mauritius) Ltd.

**Effective Date:** the date of adoption of the Decision by the CCM.

**First Divestiture Period:** the period of [Confidential contains business secrets] from the Effective Date.

**HML Shareholders:** the shareholders of Holcim (Mauritius) Ltd related to or associated to any one of the Notifying Parties, listed in Schedule 2.

**Hold Separate Manager:** the person appointed by HML Shareholders or Divestment Company to manage the day-to-day business for the Divestment Business.

**Key personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Business, including the Hold Separate Manager.

**Notifying Parties:** Holcim Ltd. and Lafarge S.A.

**Personnel:** all staff current employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

**Purchaser:** the entity approved by the CCM as acquirer of the Divestment Shares..

**Purchaser Criteria:** the criteria laid down in paragraph 24 of these Undertakings that the Purchaser must fulfil in order to be approved by the Commission.

**Schedules:** schedules to these Undertakings.

## B. Undertaking to divest:

### B.1 Divestiture:

- 5.0 The Notifying Parties had given the undertaking of divesting from the Divestment Business by sale of the Divestment Shares to a Purchaser on their merger guidance notification to the CCM. This undertaking document provides clarification on undertakings specific to the divestment process and selection of the Purchaser as well as related matters and constitute the complete set of undertakings made to the CCM.
- 6.0 In order to maintain effective competition, the Notifying Parties undertake to divest, or procure from the HML Shareholders the divestiture of the **Divestment Shares** by the end of the Closing Period as a going concern to a purchaser and on terms of sales approved by the Commission in accordance with the procedure described in paragraph 24 of these Undertakings.
- 7.0 To carry out the divestiture, the Notifying Parties undertake within the First Divestiture Period to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the **Divestment Shares**, subject to Completion.
- 8.0 The Divestment shall not be implemented before the CCM has approved the Purchaser which has entered into a final binding sale and purchase agreement for the sale of the Divestment Shares, subject to Completion.
- 9.0 The Notifying Parties shall be deemed to have complied with this undertaking if:
- 9.1 By the end of the First Divestiture Period, the Notifying Parties have implemented paragraph 7. to effect the Divestment; and
  - 9.2 The Closing takes place within the Closing Period. Or
  - 9.3 The Hold Separate Manager is granted an exclusive mandate to sell the Divestment Shares in accordance with para 21.0.
- 10.0 In order to maintain the structural effect of the undertakings, the Notifying Parties shall, for a period of [Confidential contains business secrets] after closing, not acquire, whether directly or indirectly, the possibility of exercising control (as defined in section 47(3) of the Competition Act) over the whole or part of the Divestment Business, subject to the written approval of the CCM on application made.

## B.2 the Divestment Business:

- 11.0 The Divestment Business consists of the ongoing business of Holcim (Mauritius) Ltd, namely, the import, unloading, blending, bagging and wholesale of cement in Mauritius. This includes providing unloading services through a Kovako unloader, and sale of cement, both in bulk and bag in CEM 1, CEM II and CEM III MSB standards.

- 12.0 The legal shareholding structure of the Divestment Business as operated to date is described in the Schedule 2. The Divestment Business, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, as provided in Schedule 1.
- 13.0 Only in the circumstances where a Purchaser does not have any related entity upstream for the sourcing of cement, and in order to allay any concerns in relation to sourcing of cement which the CCM may have, the Notifying Parties undertake and propose, for a transitional period of [Confidential contains business secrets] after Closing, and on terms and conditions equivalent or no less favourable to those given to any other entity related to the Notifying Parties post-merger, to supply and source cement to the Divestment Business, if requested to do so by the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements will not be shared with, or passed on to, anyone outside the cement trading operation.

## B.3 Related undertakings:

### B.3.1 Operation Status

- 14.0 From the Effective Date until Closing, the Notifying Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular HML Shareholders undertake:
- 14.1 not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
- 14.2 to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
- 14.3 to take all reasonable steps, or procure that all reasonable steps are being taken, to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Notifying Parties remaining business.

### B.3.2 Hold Separate Undertakings

15.0 The Notifying Parties undertake, from the Effective Date until Closing, to keep the Divestment Business separate from the business(es) retained and to ensure that unless explicitly permitted under these undertakings:

15.1 management and staff of the business(es) retained by Notifying Parties have no involvement in the Divestment Business;

15.2 the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Notifying Parties and do not report to any individual outside the Divestment Business.

16.0 Until Closing, the Notifying Parties shall procure that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which they are retaining. Immediately after the adoption of the Decision, the Notifying Parties shall procure to be appointed, a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Notifying Parties. The Hold Separate Manager shall have, as part of its appointment obligations, the duty to report to the CCM on any pertinent issues relating to operations, any other information required by the CCM and divestment of the Divestment Business as required. Any appointment and replacement of the Hold Separate Manager shall be subject to approval from the CCM.

### B.3.3 Ring Fencing

17.0 HML Shareholders shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by HML Shareholders before the Effective Date will be eliminated and not be used by HML Shareholders. This includes measures vis-à-vis HML Shareholders appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. HML Shareholders may obtain or keep information relating to the Divestment Business which is reasonably necessary for the Divestment Business or the disclosure of which to Notifying Parties is required by law.

### B.3.4 Non-Solicitation Clause

- 18.0 The Notifying Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the key Personnel transferred with the Divestment Business for a period of [Confidential contains business secrets] after Closing.

### B.3.5 Divestiture Process

- 19.0 In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Notifying Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

19.1 provide to potential purchasers sufficient information as regards the Divestment Business;

19.2 provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

- 20.0 The Notifying Parties undertake to explain the divestiture and purchaser selection process to the CCM, and processes shall not include provisions having the effect of disqualifying any potential purchaser on the basis of its potential competitive effect on the Mauritius market.

- 21.0 If the CCM has not approved a Purchaser [Confidential contains business secrets] prior to the expected date of Completion, the Notifying Parties shall grant the Hold Separate Manager an exclusive divestiture mandate. Under the terms of this mandate, and provided that the CCM has not approved a Purchaser presented by the Parties within a period of [Confidential contains business secrets] following Completion, the Hold Separate Manager shall sell, within a period of [Confidential contains business secrets], the Divestment Shares to a Purchaser approved by the CCM in line with the CCM's Decision and the Undertaking. In acting upon the divestiture mandate, the Hold Separate Manager shall protect the legitimate financial interests of the Parties, subject to the Parties' unconditional obligation to divest.

### B.3.6 Reporting

- 22.0 The Notifying Parties shall submit ongoing updates and reports to the CCM on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers and hold a fortnightly meeting with the CCM until the end of the First Divestiture Period or end of the Closing Period, except as otherwise advised by the CCM. The Notifying Parties shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of

the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

- 23.0 The Notifying Parties shall inform the Commission on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission.

## B.4 the Purchaser

- 24.0 In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

24.1 The Purchaser shall be independent of and unconnected to the Notifying Parties and its/their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

24.2 The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Notifying Parties and other competitors;

24.3 The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commission will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

- 25.0 The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When the Notifying Parties have reached an agreement with a purchaser, they shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the CCM. The Notifying Parties must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the CCM's Decision and the Undertakings. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Undertakings including their objective to bring about a lasting competition in the market.

## C. Miscellaneous:

### C.1 The Review Clause

26.0 The Commission may extend the time periods foreseen in the Undertakings in response to a request from the Notifying Parties or, in appropriate cases, on its own initiative.

27.0 The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Undertakings. Any request made by the Notifying Parties shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

### C.2 Entry into force

The undertakings shall take effect upon the date of adoption of the Decision.

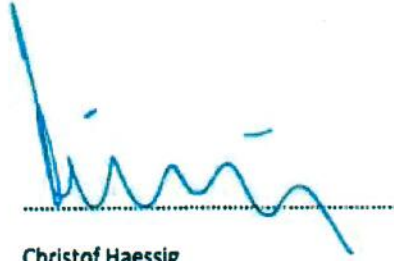


Bi Yong Chungunco

Senior Vice President, Group General Counsel and Corporate Secretary

Duly authorised for and on behalf of

Lafarge S.A



Christof Haessig  
Head Corp. Finance & Treasury and M&A



Xavier Deduilen  
Chief Legal and Compliance Officer

Duly authorised for and on behalf of  
Holcim Ltd

Schedules 1 and 2 as already provided to the CCM in our prior undertaking draft.

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