



## COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2014/07/190)

**Dated: 02.02.2016**

**Notice under Section 6 (2) of the Competition Act, 2002 given by**

- **Holcim Limited; and**
- **Lafarge S.A**

### **Supplementary Order**

#### **INTRODUCTION**

1. On 14.07.2014, the Competition Commission of India (“**Commission**”) received a notice (“**Notice**”) under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) given by Holcim Ltd. (“**Holcim**”) and Lafarge S.A. (“**Lafarge**”) (hereinafter, Holcim and Lafarge are collectively referred to as the “**Parties**”).
2. The Commission in its meeting held on 30.03.2015 considered and approved the proposed combination with modification by passing an order dated 30.03.2015 under sub-section (7) of Section 31 of the Act (hereinafter referred to as “**Order**”).
3. In accordance with paragraph 53 of the Order, the Parties submitted a detailed proposal along with the Business Transfer Agreement (hereinafter referred to as “**BTA**”) and Transitional Support Agreement for approval of the Commission on 26.08.2015.
4. The Commission considered the proposal in its meeting held on 10.09.2015. The Commission noted that as per the BTA, obtaining all approvals necessary for the transfer of the mining lease and the mineral rights was one of the conditions precedent for sale of the Divestment Business. However, given the uncertainty regarding transfer of mining leases on account of amendment in the Mines and Minerals (Development and Regulation) Act, 1957, the Commission sought clarifications from the Parties regarding the transfer of mining leases under the BTA.
5. The Parties requested for extension of the timelines mentioned in paragraph 28 of the Order, (i.e., the timelines by which the Parties were required to execute the approved



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- sale and purchase agreement with the approved purchaser) from 29.09.2015 to 30.10.2015. The Commission considered the request of the Parties in its meeting held on 21.09.2015 and decided to grant the extension, as requested.
6. On 23.10.2015, the Parties, in order to ensure compliance with the Order, submitted an alternative proposal envisaging sale of 100 percent of the share capital of Lafarge India (hereinafter referred to as “**Alternative Proposal**”). The Parties requested that the Commission may consider the Alternative Proposal in supersession of their previous proposals.
  7. The Alternative Proposal envisages the sale of the entire share capital of Lafarge India as opposed to sale of assets as envisaged in the Order.
  8. The Commission considered the Alternative Proposal submitted by the Parties in its meetings held on 03.12.2015, 12.01.2016, 18.01.2016 and 02.02.2016 and after obtaining certain additional information and clarifications, approved the Alternative Proposal in form of a share sale option which contemplates sale of 100 percent of the share capital of Lafarge India to one strategic and/or one or more financial investors, subject to the purchaser(s) meeting the Purchaser Requirements as laid down in paragraph 52 of the Order.
  9. Based on the submissions made by the Parties, the Commission noted that subsequent to the Order, Lafarge A&C has been amalgamated with Lafarge India. Thus, Lafarge India at present is carrying out business relating to cement, RMC and aggregates in India.
  10. In light of the above approval of the Alternative Proposal by the Commission, certain paragraphs of the Order that pertain, *inter alia*, to the Divestment Business and mode of sale of Divestment Business would require amendment. Accordingly, by means of this supplementary order (hereinafter referred to as “**Supplementary Order**”), the Order stands amended to the following extent:



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- a. The following definition shall be inserted in Appendix A after the definition of ‘Key Personnel’:

<i>Modified Date</i>	<i>The date of communication of the Supplementary Order</i>
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- b. Paragraph 28 of the Order shall stand amended to read as under:

*“The Parties shall execute the Approved Sale and Purchase Agreement with the Approved Purchaser within [...] months from the Modified Date”.*

- c. Paragraph 31 of the Order shall stand amended to read as under:

*“The Divestiture shall be carried out by way of a sale of shares to an Approved Purchaser”.*

- d. Paragraph 42 of the Order shall stand amended to read as under:

*“Until Closing, the Parties shall assist the Monitoring Agency in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business retained by the Parties. Within seven days from the Modified Date, the Parties shall appoint a Hold Separate Manager for the Divestment Business, who shall be part of the Key Personnel, and shall manage Divestment Business independently and in the best interest of the business with a view to ensure its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. The Hold Separate Manager shall closely cooperate with and report exclusively to the Monitoring Agency and, if applicable, the Divestiture Agency. Any replacement of the Hold Separate Manager shall be subject to the approval of the Commission.”*

- e. Paragraph 46 of the Order shall stand deleted.

- f. Paragraph 53 of the Order shall stand amended to read as under:



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*“The final binding sale and purchase agreement (as well as ancillary agreements including transitional agreement(s)), relating to the Divestiture of the Divestment Business shall be conditional on the Commission’s approval. Further, any and all shareholding arrangements inter-se between the members of the consortium, whether by way of shareholders’ agreements or otherwise, will be subject to the approval of the Commission. Within a period of [...] months from the Modified Date, the Parties shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Agency. The Parties must be able to demonstrate to the Commission that the purchaser proposed by the Parties, fulfils the Purchaser Requirements and that the Divestment Business is being divested in a manner consistent with the Order. Further, any transfer of shares (irrespective of the shareholding percentage) by an approved purchaser to any third party within a period of (18) months from date of acquisition of such shares, will be subject to the approval of the Commission.”*

g. The definition of Alternative Divestment Business in Appendix A shall stand deleted.

h. [...]

i. The definition of Divestment Business in Appendix A shall stand amended to read as under:

*“shall mean the entirety of Lafarge India’s business activities in India as defined in Schedule I.”*

j. The definition of First Divestiture Period in Appendix A shall stand amended to read as under:

*“The period of [...] months from the Modified Date.”*



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- k. The definition of Key Personnel in Appendix A shall stand amended to read as under:

*“The employees who are necessary to maintain the viability and competitiveness of the Divestment Business as identified by the Parties and listed in Appendix II to Schedule I and would include employees recommended by the Monitoring Agency and accepted by the Commission as being necessary to maintain the viability and competitiveness of the Divestment Business.”*

- l. The definition of Sonadih Quarry Operations in Appendix A shall stand deleted.
- m. Schedule I of the Order shall be substituted by the following Schedule I of the Supplementary Order.
- n. Schedules II, III, IV and V of the Order shall stand deleted.
11. This Supplementary Order shall form an integral part of the Order and in case of any conflict between the provisions of this Supplementary Order and the Order, the former shall prevail.



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**Schedule I of the Supplementary Order**

**Divestment Business**

1. The Divestment Business comprises:
  - a. Lafarge India's integrated cement plants at Sonadih (Chattisgarh), Arasmeta (Chattisgarh) and Chittorgarh (Rajasthan).
  - b. Lafarge India's grinding stations at Jojobera (Jharkhand), Mejia (West Bengal);
  - c. Lafarge India's RMC plants listed at Appendix I;
  - d. Lafarge India's aggregates plants at Kotputli (Rajasthan), Dacapara (Kolkata) and Badlapur, (Maharashtra); and
  - e. Lafarge India's blending unit at Bhiwani, Haryana.
  
2. In accordance with paragraph 1 above, the Divestment Business includes, but is not limited to:
  - i. all tangible assets including those at each of the integrated plants, grinding station, aggregate plants, blending unit and RMC plants referred to in paragraph 1 above, including the plants and grinding station themselves, as well as all land, associated quarries, buildings, offices, machinery and equipment;
  - ii. all intangible assets including those relating to each of the integrated plants, grinding stations, aggregate plants, blending unit and RMC plants referred to in paragraph 1 above, including all goodwill and software. All brands that are under the proprietorship of Lafarge India will be transferred together with the Divestment Business;
  - iii. all necessary licences, permits and authorisations relating to each of the integrated plants, aggregate plants, blending unit, the



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grinding station and RMC plants referred to in paragraph 1 above;

- iv. all contracts, agreements, leases, commitments and understandings, in particular, all key supply contracts and all customer contracts held by Lafarge India and/or any third parties;
- v. all customer, credit and other records that are held by Lafarge India;
- vi. all Personnel; and
- vii. all Key Personnel as listed in Appendix II.

3. If there is any relevant asset or personnel which is not covered by paragraph 2 of this Schedule but which is both owned (exclusively or not) by Lafarge India and necessary for the continued viability and competitiveness of Lafarge India, that asset or adequate substitute will be offered to potential purchasers.

4. Exclusions from Divestment Business:

- i. Brands listed at Appendix III, which are (A) under the proprietorship of Lafarge India and use the word Lafarge (hereinafter called as “**Category I excluded brands**”); and (B) under the proprietorship of Lafarge and/or other group entities of Lafarge and are currently licenced to Lafarge India (hereinafter called as “**Category II excluded brands**”), are excluded from Divestment Business, provided that subject to the requirements of the Approved Purchaser, the Parties shall enter into a transitional arrangement with the



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Approved Purchaser for use of such brands for a certain mutually agreed duration.

- ii. Certain IT applications and software which are at present being used by Lafarge India but are owned by companies controlled and/or owned the Parties, provided that subject to the requirements of the Approved Purchaser, the Parties shall enter into a transitional arrangement with the Approved Purchaser for use of the IT applications and software which are presently licensed to Lafarge India by the group companies of the Parties.





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**Appendix I to Schedule I: List of RMC Plants of Lafarge India**

**A. Commercials**

SI No.	Zone	Area	Plant	Plant Name/Location
1.	East	Hyderabad	IN4240	Uppal
2.	East	Hyderabad	IN4239	Patencheru
3.	East	Hyderabad	IN4241	Jeedimetla
4.	East	Hyderabad	IN4243	Miyapur
5.	East	Hyderabad	IN4244	Vijayawada
6.	East	Hyderabad	IN4245	Vizag
7.	East	Hyderabad	IN4351	Raipur II
8.	East	Kolkata	IN4250	Bhubaneswar
9.	East	Kolkata	IN4289	Durgapur
10.	East	Kolkata	IN4248	Ranchi
11.	East	Kolkata	IN4249	Dankuni
12.	East	Kolkata	IN4251	Rajarhat
13.	East	Kolkata	IN4329	Patna
14.	North	Delhi	IN4235	Faridabad
15.	North	Delhi	IN4336	Gurgaon
16.	North	Delhi	IN4234	Noida
17.	North	Delhi	IN4233	Sonepat
18.	North	Delhi	IN4232	Rudrapur
19.	North	Punjab	IN4264	Panchkula
20.	North	Punjab	IN4260	Ludhiana
21.	North	Punjab	IN4263	Amritsar
22.	North	Punjab	IN4259	Baddi
23.	North	Punjab	IN4262	Mohali
24.	South	Bengaluru	IN4219	Anjanapura
25.	South	Bengaluru	IN4212	Whitefield
26.	South	Bengaluru	IN4217	Hubli



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SI No.	Zone	Area	Plant	Plant Name/Location
27.	South	Bengaluru	IN4213	Sarjapura Road
28.	South	Bengaluru	IN4220	Mysore
29.	South	Bengaluru	IN4211	Hegdenagar
30.	South	Bengaluru	IN4353	Hoskote
31.	South	Bengaluru	IN4221	Hosur Road
32.	South	Chennai	IN4227	Siruseri
33.	South	Chennai	IN4231	Perungudi
34.	South	Chennai	IN4222	Poonamalle
35.	South	Chennai	IN4352	Oragadam II
36.	South	Chennai	IN4223	Tuticorin
37.	South	Chennai	IN4230	Coimbatore
38.	West	Ahmedabad	IN4205	Udhna-Bestan
39.	West	Ahmedabad	IN4201	Surat
40.	West	Ahmedabad	IN4303	Jaipur II
41.	West	Ahmedabad	IN4207	Harini
42.	West	Ahmedabad	IN4204	Jaipur
43.	West	Ahmedabad	IN4209	Sanathal
44.	West	Ahmedabad	IN4203	Vadodara
45.	West	Ahmedabad	IN4210	Naroda
46.	West	Ahmedabad	IN4206	Haripar
47.	West	Ahmedabad	IN4324	Madhapar
48.	West	Mumbai	IN4342	Pune
49.	West	Mumbai	IN4269 & 4293	Pune I and III
50.	West	Mumbai	IN4252	Thane
51.	West	Mumbai	IN4290	Andheri
52.	West	Mumbai	IN4314	Jogeshwari
53.	West	Mumbai	IN4214	Pilerne – Goa
54.	West	Mumbai	IN4258	Kurla



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SI No.	Zone	Area	Plant	Plant Name/Location
55.	West	Mumbai	IN4218	Vasco
56.	West	Mumbai	IN4257	Navi Mumbai

### B. Projects

SI No.	Zone	Area	Plant	Plant Name/Location
1.	North	Delhi	IN4362, 63, 64	CEC DMRC
2.	North	Delhi	IN4345, 46	DMRC Dwarka
3.	West	Ahmedabad	IN4349	JMRC Jaipur
4.	West	Ahmedabad	IN4350	JMRC Project II, Jaipur
5.	West	Mumbai	IN4331, 41	Lodha Phase II Mumbai
6.	West	Mumbai	IN4327	Samsung, Mumbai
7.	West	Mumbai	IN4304	Lower Parel, Mumbai



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**Appendix II to Schedule I of the Supplementary Order: List of Key Personnel**

[...]



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**Appendix III to Schedule I of the Supplementary Order: List of excluded brands**

**A. Category I excluded brands**

SL. NO.	PROPRIETOR	MARK	TYPE	CLASS
1.	Lafarge India	Lafarge Fair Floor	Label	17
2.	Lafarge India	Lafarge Concreto	Label	19
3.	Lafarge India	Fair Floor Lafarge	Label	19
4.	Lafarge India	Fair Floor Lafarge	Label	19
5.	Lafarge India	Lafarge Dura Guard	Label	19
6.	Lafarge India	Lafarge Home Building Centre	Label	16
7.	Lafarge India	Lafarge Concreto Roofing & Foundation Cement	Label	16
8.	Lafarge India	Lafarge Concreto Roofing & Foundation Cement	Label	19
9.	Lafarge India	Lafarge Fair Floor	Label	16
10.	Lafarge India	Lafarge Fair Floor	Label	19
11.	Lafarge India	Lafarge Sampark	Label	37
12.	Lafarge India	Lafarge Sampark	Label	35
13.	Lafarge India	Lafarge Sampark	Label	16
14.	Lafarge India	Lafarge Building Circle	Label	35,37,41,42
15.	Lafarge India	Lafarge Home Building Centre	Label	35,37,41,42
16.	Lafarge India	Lafarge Concreto Nothing Builds Better	Label	16
17.	Lafarge India	Lafarge Concreto Nothing Builds Better	Label	19
18.	Lafarge India	Lafarge Sampark	Label	41
19.	Lafarge India	Lafarge Building Circle	Label	16
20.	Lafarge India	Lafarge Building Circle	Label	19
21.	Lafarge India	Lafarge Concreto (Colour)	Label	4
22.	Lafarge India	Lafarge Concreto (Colour)	Label	16
23.	Lafarge India	Lafarge Concreto (Colour)	Label	19
24.	Lafarge India	Lafarge Concreto	Label	4
25.	Lafarge India	Lafarge Concreto	Label	16
26.	Lafarge India	Lafarge Concreto	Label	19



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### B. Category II excluded brands

SL. NO.	PROPRIETOR	MARK	TYPE	CLASS
1.	Lafarge SA	L-Lafarge	Logo	37 and 42
2.	Lafarge SA	L-Lafarge	Logo	19
3.	Lafarge SA	L-Lafarge	Logo	2
4.	Lafarge SA	L-Lafarge	Logo	17
5.	Lafarge SA	L-Lafarge	Logo	6
6.	Lafarge SA	Lafarge PSC	Label	1
7.	Lafarge SA	Lafarge PSC	Label	4
8.	Lafarge SA	Lafarge PSC	Label	16
9.	Lafarge SA	Lafarge PSC	Label	19
10.	Lafarge SA	Lafarge PSC	Label	22
11.	Lafarge SA	Lafarge PSC	Label	37
12.	Lafarge SA	Lafarge Cement	Label	19
13.	Lafarge SA	CHRONOLIA		19
14.	Lafarge SA	ARTEVIA		19 & 37
15.	Lafarge SA	AGILIA		19 & 37
16.	Lafarge SA	MEGA		19 & 37
17.	Lafarge SA	MEGA SERIES		19 & 37
18.	Lafarge SA	Hydromedia		19