



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2014/07/190)

Dated: 30.03.2015

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

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

Order under Section 31 (7) of the Competition Act, 2002 (“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 Notice was filed with the Commission pursuant to the execution of combination agreement by and between the Parties on 07.07.2014 (“**Combination Agreement**”).
3. The board of directors of the Parties made an announcement regarding the revised terms of the Combination Agreement pertaining to exchange ratio and certain governance provisions on 20.03.2015. The said changes were intimated to the Commission by the Parties vide their letter dated 24.03.2015. The said information was received by the Commission under Regulation 16 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”) and it was decided that the same may be noted and the Combination Agreement may be read with the proposed changes.
4. In terms of Regulation 14 of the Combination Regulations, vide letter dated 18.07.2014, the Parties were required to provide certain information/document(s) latest by 30.07.2014. The Parties filed their reply on 11.08.2014 after seeking extension in this regard. Letters under Regulation 14 in continuation of the Parties’ reply were issued on 11.08.2014 and 14.08.2014 respectively and the Parties were



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directed to provide the information/documents by 22.08.2014. The Parties submitted a part reply on 22.08.2014 and final reply on 25.08.2014.

5. In terms of sub-regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, vide letter dated 01.09.2014, the Parties were required to provide additional information/document(s) latest by 08.09.2014. The Parties submitted their reply on 22.09.2014 after seeking an extension of two weeks.
6. The Commission in its meeting held on 29.09.2014 decided to seek information in terms of sub-regulation (3) of Regulation 19 of the Combination Regulations from certain cement and ready mix concrete (“RMC”) companies. These cement and RMC companies were asked to provide details with regard to planned capacity expansions and prices etc. for the cement segment and information relating to RMC and aggregates vide letters dated 17.10.2014. Their responses were received accordingly.

PARTIES TO THE COMBINATION

7. Holcim is a global producer of cement and other construction material such as RMC, aggregates, asphalt, pre-cast concrete products, etc. In India, Holcim is active through its two indirect subsidiaries, i.e., ACC Limited (“ACC”) and Ambuja Cements Limited (“ACL”) and is present in the product segments of cement, RMC and aggregates.
8. Lafarge is also a global producer of cement and other construction material such as RMC, aggregates, asphalt, pre-cast concrete products, etc. Lafarge is present in the product segments of cement, RMC and aggregates in India through its indirect subsidiaries, Lafarge India Private Limited (“Lafarge India”) and Lafarge Aggregates & Concrete India Private Limited (“Lafarge A&C”).

PROPOSED COMBINATION

9. The proposed combination is structured as an acquisition of shares and falls under Section 5(a) of the Act. In pursuance to the proposed combination, Holcim would file



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a public offer for all outstanding shares of Lafarge. As per the information filed by the Parties under Regulation 16 of the Combination Regulations, each Lafarge shareholder tendering Lafarge shares to the contemplated public exchange offer initiated by Holcim would receive 9 Holcim shares for 10 Lafarge shares. Therefore, pursuant to the proposed combination, Lafarge would become a subsidiary of Holcim. The offer would be subject to Holcim holding at least 2/3rd of the share capital and voting rights of Lafarge on a fully diluted basis. The new entity will be named as “LafargeHolcim” and will be listed on SIX Swiss Exchange and Euronext, Paris.

INVESTIGATION UNDER SECTION 29 OF THE ACT

10. The Commission in its meeting held on 29.09.2014 considered the facts on record, details provided in the notice and the responses filed by the Parties and formed a prima facie opinion that the proposed combination is likely to cause an appreciable adverse effect on competition within the relevant markets in India. Therefore, the Commission decided to issue a show-cause notice to the Parties in terms of sub-section (1) of Section 29 of the Act. Accordingly, a show cause notice was issued to the Parties under sub-section (1) of Section 29 of the Act (“**SCN**”) on 02.10.2014, as per which the Parties were directed to respond, in writing, within thirty days of the receipt of SCN, as to why investigation in respect of the proposed combination should not be conducted.
11. The response of the Parties to the SCN was received on 03.11.2014 (“**Response to SCN**”). The Commission in its meeting held on 13.11.2014 considered and assessed the Response to SCN and formed a prima facie opinion that the combination is likely to have an appreciable adverse effect on competition (“**AAEC**”) under sub-section (2) of Section 29 of the Act. Accordingly, under sub-section (2) of Section 29 of the Act read with Regulation 22 of the Combination Regulations, the Commission directed the Parties to publish details of the combination within ten working days of the said direction for bringing the combination to the knowledge or information of



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the public and persons affected or likely to be affected by such combination. The said direction was communicated to the Parties vide letter dated 13.11.2014.

12. In accordance with the directions of the Commission, the details of the combination were published by the Parties on 22.11.2014 in Form IV contained in Schedule II to the Combination Regulations. Vide the said publication, the Commission invited comments/objections/ suggestions in writing, in terms of the provisions of sub-section (3) of Section 29 of the Act from any person(s) adversely affected or likely to be affected by the proposed combination within fifteen working days from the date of publication, i.e., by 12.12.2014.
13. Pursuant to the said publication, the Commission received comments from various stakeholders which were noted by the Commission in its meeting held on 22.12.2014. Further, in terms of sub-section (4) of Section 29 of the Act, the Commission decided to seek clarifications on the comments submitted by stakeholders and certain other relevant information from the Parties. Accordingly on 24.12.2014, a letter was issued to the Parties seeking required details, in terms of sub-section (4) of Section 29 of the Act, the response to which was submitted by the Parties on 09.01.2015 after seeking extension of one day.
14. The Commission considered the proposed combination and the response of the Parties in its meeting held on 15.01.2015 and decided to propose divestiture to the Parties in respect of relevant market of grey cement in the Eastern region. In the said meeting, the Commission was of the view that response of the Parties was not comprehensive enough to frame the proposal for modification under sub-section (3) of Section 31 of the Act. Accordingly, the Commission decided to seek detailed information from the Parties in relation to structuring of the divestiture package, transitional supply and other arrangements, etc. under the provisions of sub-section (4) of Section 29 of the Act and sub-regulation (4) of Regulation 5 of the Combination Regulations. A letter was, therefore, issued to the Parties seeking detailed information, on 20.01.2015, as per which the Parties were directed to respond, in writing, by 23.01.2015. The Parties submitted their response to the same



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on 05.02.2015, after seeking extensions in this regard vide their letters dated 22.01.2015, 28.01.2015 and 04.02.2015, respectively. The Commission in its meeting held on 10.02.2015 considered the said response of the Parties and decided to proceed with the case in accordance with the provisions contained in Section 31 of the Act.

COMPETITION ASSESSMENT

15. As stated above, the Parties are involved in manufacture and sale of cement and other construction materials through their subsidiaries in India. For the purpose of competition assessment, the Commission identified two product segments on the basis of product overlaps between the Parties in India, viz., cement and RMC.

CEMENT

Relevant Market

- 15.1 As per the Act, the examination of the likelihood of a combination resulting in an AAEC is undertaken in context of a relevant market. Further, as per Section 2(r) of the Act relevant market is defined as,

“the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets”.

Accordingly, the competitive effects of the proposed combination were analysed by delineating the relevant market in terms of relevant product market and relevant geographic market. The markets were defined in a manner that would include the relevant constraints on the behaviour of firms.

Relevant Product Market

- 15.2 As per Section 2(t) of the Act, the relevant product market is defined as,



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“a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use”.

15.3 In order to define the relevant product market, the Commission considered the extent of demand side substitutability between various types of cement, viz., grey cement and white cement and between different varieties of grey cement, viz., ordinary portland cement, portland pozzolana cement, portland blast furnace slag cement, rapid hardening portland cement, etc. The Commission observed that white cement and grey cement differ in terms of their physical characteristics and intended use and therefore, constitute separate relevant product markets and that different varieties of grey cement are considered to be largely interchangeable. The Commission further noted that in India, the Parties operate in the grey cement segment only. Accordingly, the Commission decided that the relevant product market for the purpose of competition assessment of the proposed combination may be defined as the market for grey cement.

Relevant Geographic Market

15.4 As per Section 2(s) of the Act, the relevant geographic market is defined as,

“a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas”.

15.5 The Commission noted that cement being a bulk commodity, involves significant transportation costs and, therefore, the consumption of cement is generally centred around the production clusters, which are located in the vicinity of limestone resources. From the perspective of demand and supply, these self-contained areas, having homogeneous conditions of competition, constitute the relevant geographic market from the point of view of the competition assessment.



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- 15.6 The Commission observed that there are overlaps between the Parties in the markets for grey cement in the Eastern and North-Western regions in India. Accordingly, two relevant geographic markets were delineated for the purpose of assessment of the proposed combination, i.e., one for the Eastern region and the other for the North-Western region. For the purpose of delineation of relevant market, the Commission used the ElzingaHogarty Test (“**EH Test**”) and catchment area analysis.
- 15.7 The Commission noted that the Parties’ submissions on the relevant geographic market are based on the EH Test and catchment area analysis at 90 percent threshold. The Parties in their submissions defined separate relevant geographic markets for the North-Western region and the Eastern region. For the North-Western region, the Parties defined the relevant geographic market as the area comprising the states of Rajasthan, Haryana, West Uttar Pradesh, Delhi and Gujarat. For the Eastern region, the Parties defined the relevant geographic market as the area comprising the states of Chhattisgarh, Jharkhand, Bihar, Assam, West Bengal, Odisha, Madhya Pradesh, Uttar Pradesh, Haryana, Delhi and Rajasthan. The Parties also submitted an alternative narrower definition of the relevant geographic market for the Eastern region consisting of the states of Chhattisgarh, Jharkhand, Bihar, Assam, West Bengal, Odisha, Madhya Pradesh and East Uttar Pradesh.
- 15.8 With regard to the relevant geographic market for the North-Western region, the Commission decided that this may be left open as the Commission’s analysis revealed that the proposed combination is not likely to cause AAEC in any of the potential relevant markets that may be defined for the North-Western region.
- 15.9 As regards the relevant geographic market for the Eastern region, the Commission noted that both the definitions (the original definition and the alternative definition) given by the Parties are too wide and do not reflect the most relevant competition constraints. The Parties have continued to expand the relevant geographic market till a particular level of Little In From Outside (LIFO) / Little Outside From In (LOFI) thresholds, i.e., 90 percent have been met and in the process, arrived at a very wide



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market definition. In this regard, the Commission noted that regardless of the choice of the threshold level for the purpose of EH Test and catchment area tests, there should be sufficient cause in terms of the competitive constraints for inclusion of an additional state/area in the relevant geographic market. The said tests should be applied in a manner that ensures that the market definition thus arrived at reflects the most relevant constraints on the behaviour of the Parties. The inclusion of a new state that does not itself trade substantially with other states included in the relevant market can widen the market definition to include those states with which only such newly added state trades substantially. Such chains of substitution may have the impact of widening of relevant market without reflecting effective competitive constraints.

15.10 The Commission, therefore, independently applied the EH Test to identify the areas forming part of the relevant geographic market. However, in order to account for the limitations of the test and specific nature of this industry in India, due consideration was given to not only the LIFO/LOFI thresholds, but also the nature of the change in these thresholds with each successive addition of a state. This helped the Commission to ascertain whether the addition of a new state in the relevant market was justified and the definition of the relevant market thus arrived at reflected the most relevant competitive constraints on the behaviour of the Parties or not.

15.11 The Commission applied the EH Test with Chhattisgarh as the base, as it is the state with maximum overlap between the Parties based on the location of their plants. The Commission also applied the EH Test with Jharkhand and West Bengal as the base, i.e., the states other than Chhattisgarh with overlapping locations of plants of the Parties, and the same results were arrived at. The Commission expanded the market definition to include Odisha, West Bengal, Bihar and Jharkhand. Up to this stage, the Commission's findings and the submissions of the Parties were the same. However, while the Parties had further included Assam and thereafter, Madhya Pradesh in the relevant market, the Commission was of opinion that the relevant geographic market should not include Assam and Madhya Pradesh and the subsequent additions of states made by the Parties are not justified by the actual pattern of inter-state trade



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flows. As regards Assam, the Commission noted, based on the historical data of inter-state trade and the data submitted by the Parties, that the proportion of exports to Assam from the plants located in the above stated five states as a proportion of total production in these five states is insignificant and Assam does not export to these five states at all. As regards Madhya Pradesh, the Commission observed that Madhya Pradesh caters to a distinct, self-contained area, as reflected in EH Test with Madhya Pradesh as the base and the states included in this self-contained market are different from those forming part of relevant geographic market identified with Chhattisgarh as the base.

15.12 Based on this analysis, the Commission decided that the relevant geographic market for the Eastern region may be defined in terms of area comprised by the states of Chhattisgarh, Odisha, West Bengal, Bihar and Jharkhand.

Assessment of AAEC concerns

15.13 *Level of concentration:* As is generally accepted, market concentration is a useful indicator of the likely competitive effects of a combination and Herfindahl Hirschman Index (“**HHI**”) is one of the indices used to assess the level of market concentration and the changes in the concentration due to a combination. The relevant market in the Eastern region as delineated above was therefore, analysed on the basis of the post-combination value of HHI and the change in HHI pursuant to the proposed combination. The Commission considered the market shares and HHI in terms of both the current installed capacity and the installed capacity likely to be in operation by the end of 2015. It is observed that in terms of current installed capacity, the pre-combination market share of Holcim in the relevant market for the Eastern region is around 25 percent and that of Lafarge is around 16 percent, thus resulting in a market share of around 41 percent, post combination. Accordingly, pre-combination HHI of around 1500 will increase to post combination HHI of around 2280, with change in HHI of 780. Similarly, it is observed that, in terms of installed capacity likely to be in operation by the end of 2015, pre combination market share of Holcim is around 24 percent and that of Lafarge is around 13 percent with a post



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combination market share of around 37 percent. The pre combination HHI of 1328 will increase to post combination HHI of 1953 with a change in HHI of 625. It is, therefore, observed that the change in HHI in terms of both current installed capacity and the installed capacity likely to be in operation by the end of 2015, is substantial and the proposed combination has the impact of significantly increasing concentration in the relevant market.

15.14 *Countervailing buying power:* The Commission noted that as per the data submitted by the Parties, a substantial part of the market, i.e., approximately [...] percent of market comprises small consumers who generally do not have countervailing buying power.

15.15 *Constraints exerted by competitors:* The Parties have production facilities in 4 out of the 5 states included in the relevant market and their combined market share in terms of installed capacity by the end of 2015 would be around 37 percent. The second biggest player in the relevant market is Ultratech, with a market share of 17 percent in terms of installed capacity. Ultratech has production facilities in 3 of the 5 states included in relevant market. The other players are relatively small and, therefore, have limited reach both in terms of capacity and area. Thus, competitors in the relevant market may not be in a position to impose significant competitive constraints on the Parties post-combination.

15.16 *Entry barriers:* The Commission noted that there are significant entry barriers in cement industry. These may take the form of high costs of installation of a production line, logistics relating to location of a cement plant, availability of limestone and energy requirements and distribution networks, etc.

15.17 *Pre-combination degree of competition between the Parties:* The Commission noted, on the basis of comparison of prices charged by the Parties, that both the Parties are premium players and close competitors in the relevant market. Their ability to charge high prices together with their control over substantial installed capacity in the region suggests the possibility of AAEC, post the proposed combination.



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15.18 *Prevailing Market structure:* The Commission took note of the fact that the cement industry in India is oligopolistic in nature. The fact that the pre combination CR 4 (in terms of installed capacity likely to be in operation by the end of 2015) for the relevant market in the Eastern region is 65 percent, reflects the oligopolistic nature of the industry. Further factors such as homogeneous product, relatively small sale transactions and entry barriers make the cement industry in India prone to collusion and under such circumstances, the likelihood of coordinated effects assumes significance. Accordingly, an analysis of change in the market structure and its impact on coordinated effects was considered. The Commission noted that CR 4 in the relevant market would increase from pre-combination level of 65 percent to 72 percent. This is indicative of possibility of strengthening the likelihood of coordinated effects, leading to AAEC.

15.19 *Efficiencies:* The Parties have stated that the proposed combination would allow pooling of their skills, resources and establishing synergistic operational practices leading to, a better consumer experience, increased availability of cement with minimum turn-around time, increased consumer choice, and would have a downward impact on distribution and other costs. The Commission observed that the efficiencies are not combination specific, i.e., it cannot be said that there are no less anticompetitive ways to achieve the efficiencies. Further, the Commission observed that the submissions of the Parties lack quantification and verifiability and no specific suggestion has been made or evidence provided as regards the efficiencies translating into lower prices for customers. Overall, there is no evidence to suggest that efficiency gains are substantial and would offset, to any significant extent, the concerns of AAEC.

15.20 Considering the facts on record and the details provided in the notice given under sub-section (2) of section 6 of the Act and assessment of the proposed combination on the basis of factors stated in sub-section (4) of section 20 of the Act, the Commission is of the opinion that the proposed combination is likely to have an appreciable adverse effect on competition in India in the relevant market for grey cement in the Eastern region.



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RMC

Relevant Product Market

16.1 The concrete used for construction purposes can be broadly classified in two categories, i.e., site mix concrete (“SMC”) and RMC. RMC is different from SMC, in terms of physical characteristics and shelf life. Moreover, RMC has certain advantages over SMC, such as, automated operations and resulting quality control, lower wastage, faster production and eco-friendliness etc. However, on the aspect of cost, SMC offers a 15-20 percent cost advantage over RMC. The different characteristics and advantages of RMC and SMC indicate that they constitute separate relevant product markets.

16.2 Within RMC, there are different grades varying in terms of strength and applications. The Commission noted from the submissions of the Parties that all grades of RMCs are produced in the same plants using the same raw materials. Based on supply side substitutability, the Commission noted that all grades of RMC would together constitute the same market.

Relevant Geographic Market

16.3 The Commission noted that transportation of RMC is limited to 30-40 km from the batching plant to job site considering its short life span. The data provided by the Parties led to the thirteen relevant geographic markets being defined in terms of cities including Hyderabad, Chennai, Mohali and Panchkula, Ludhiana, Raipur, Jaipur, NCR (excluding Sonapat), Sonapat, Ahmedabad, Vadodara, Surat, Bengaluru and Mumbai.

Assessment of AAEC concerns

16.4 The Commission considered the details of market shares provided by the Parties and noted that their combined market shares are not significant. Further, based on the information on sales of the other RMC players as received from them in response to



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the letter issued under sub-regulation (3) of Regulation 19 of the Combination Regulations, the Commission noted that there are significant competitors present in the RMC segment.

16.5 The Commission also took note of other factors affecting the competition dynamics of RMC industry such as, low barriers to entry, countervailing buying power and ease of switching from one supplier to another and concluded that the proposed combination is not likely to cause AAEC in the RMC segment in any of the relevant markets, as identified.

16.6 After considering the impact of horizontal overlaps in the RMC segment, the Commission also considered the aspect of vertical relationships between the Parties in the RMC segment. As stated in the Notice, Lafarge procures small quantities of grey cement for use in its RMC business from Holcim, which is not significant enough to cause AAEC. Further, Holcim procures aggregates in small amounts from Lafarge. The Commission examined the possibility of vertical foreclosure, particularly with respect to the aspect of supply of aggregates, a segment in which Lafarge is considered to be a strong player. Details in this regard were also sought from other RMC providers vide the aforesaid letter issued under sub-regulation (3) of Regulation 19 of the Combination Regulations. Their replies indicate that there are other players supplying aggregates and in fact the majority of the aggregates were being procured by these RMC companies from sources other than Lafarge. The Commission, accordingly concluded that there is no evidence to suggest the dependence of RMC companies on Lafarge for supplies of aggregates and therefore, it seems that the vertical relationship between the Parties is not likely to result in foreclosure for RMC companies.

MODIFICATION TO ADDRESS AAEC CONCERNS

17.1 As stated above, the analysis of the Commission reveals likelihood of AAEC concerns emanating from the proposed combination in the market for grey cement in



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the Eastern region. The Commission noted that in accordance with the provisions of the Act, it may either direct that the combination shall not take effect in accordance with sub-section (2) of Section 31 of the Act or may propose a modification to the combination in accordance with sub-section (3) of Section 31 of the Act. The modification proposed would need to be comprehensive and effective in order to eliminate the possibility of adverse effect on competition, while enabling the Parties to consummate the proposed combination.

17.2 Based on the above assessment of the likely adverse effect of the proposed combination on competition in the relevant market for grey cement in the Eastern region, the Commission is of the opinion that the likely AAEC of the proposed combination can be eliminated by suitable modification to the combination. In this regard, the Commission observed, that given the likelihood of the proposed combination resulting in both unilateral and coordinated effects, it would be appropriate to propose divestiture as a remedy to eliminate the competition concerns emanating from both sources of harm.

17.3 A divestiture remedy involves two concurrent steps. Firstly, to ascertain the extent of divestiture (of assets) required and secondly, to determine the specific assets required to be divested. The Commission noted certain factors that may govern the decision as to extent of divestiture and the identity of the assets. The Commission is of the opinion that the plants selected for divestiture should constitute a complete ecosystem in terms of operational requirements. Further, the proposed divestiture should result in reducing the overall level of concentration in the relevant market, have a pan relevant market impact and should address the adverse impact of structural changes in the market resulting from the proposed combination.

17.4 The Commission, in the process of deciding on the divestiture proposal, considered various combinations of plants located in states of Jharkhand, West Bengal and Chhattisgarh forming part of the relevant market and decided that a divestiture of Lafarge's Jojobera plant located in Jharkhand with a cement grinding capacity of 4.6 MTPA and Lafarge's integrated unit located at Sonadih in Chhattisgarh with a



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cement grinding capacity of 0.55 MTPA and clinker capacity of 3.10 MTPA would be most effective in eliminating the concerns of AAEC in the relevant market.

17.5 The decision of the Commission to propose divestiture of the two plants as stated above was based on consideration of following factors:

- i. *Location of plants:* The assessment of a combination for likelihood of causing AAEC is undertaken with reference to a relevant market, which, in this case has been defined as the Eastern region comprising the states of Chhattisgarh, Odisha, Jharkhand, Bihar and West Bengal. The Commission noted that the two of the five states, i.e., Chhattisgarh and Jharkhand, included in the relevant market are primarily net exporters within the relevant market, while the other three states, i.e., Odisha, West Bengal and Bihar are primarily net importers within the relevant market. An increase in concentration in net exporting states such as Chhattisgarh and Jharkhand may lead to increase in prices within the relevant market. The Commission noted that in the state of Chhattisgarh, there are other players and post combination the market share of the Parties would be around 31 percent, considering the installed capacity likely to be operational by the end of 2015. However, in the state of Jharkhand, the only player other than the Parties is Jaypee and the Parties' combined share post combination would be around 79 percent. Therefore, the divestiture of plants located in Jharkhand becomes strategically important from the viewpoint of alleviating the adverse structural impact of the proposed combination in the relevant market.
- ii. *Pan relevant market impact:* The Jojobera plant is located in Jharkand, which is at the centre of the relevant market. The geographical location of a cement plant determines to a large extent the reach or the ability of the plant to cater to the relevant market. The central location and greater reach of the Jojobera plant is reflected in the dispatch data for the period 2011-2014 given by the Parties which reveals that the Jojobera plant had



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supplied more than [...] MTPA each to the states of West Bengal and Bihar in addition to dispatches of more than [...] MTPA within Jharkhand. The divestiture of plants located in Jharkhand would ensure that the new firm that would enter the market by acquiring these assets would have a sizeable capacity and operate from a geographically central location so as to cater to all the states included in the relevant market and thereby pose competitive constraints to the Parties post the proposed combination.

- iii. *Impact on concentration:* With a total of 5.15 MTPA of assets being divested, the combined share of the Parties in the relevant market (in terms of installed capacity likely to be in operation by the end of 2015) comes down to around 28 percent. Further, the modification has the impact of bringing down the incremental HHI from a level of 625 to a level of 133. These effects are in addition to the fact that the combined market share in Jharkhand, comes down to around 33 percent from the level of around 79 percent it would reach as a result of the proposed combination.
- iv. *Self-contained divestiture package:* The Commission observed that it is very important to ensure that the package comprising assets required to be divested is a self-contained ecosystem in terms of provisions of limestone reserves, clinker and grinding capacities. This would enable a new player to enter the market easily by acquiring these assets. Lafarge's Sonadih plant is an integrated unit with a grinding capacity of 0.55 MTPA and clinker capacity of 3.10 MTPA while Jojobera is a grinding unit with a capacity of 4.6 MTPA. As per information given by the Parties, the clinker for Jojobera unit is sourced primarily from Sonadih. Thus, the package comprising of these two units is a technically and operationally self-contained one.



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- v. *Impact on market structure:* As already stated the cement industry in India is prone to collusion and therefore, the issue of coordinated effects assumes importance. The Commission noted that as a result of the divestiture, the CR4, which would increase to 72 percent after the proposed combination, would reduce to a pre-combination level of 65 percent, if the assets included in the divestiture package are sold to a new player that is not present in the relevant market. In case the assets included in the divestiture package are sold to a relatively smaller player, having installed capacity of less than 5 percent of the total installed capacity in the relevant geographic market, the CR 4 is likely to be in the range of 66 to 70 percent.
- 17.6 On the basis of the aforesaid, the Commission formed the opinion that divestiture of Jojobera and Sonadih plants is of sufficient scale and scope, as detailed above, to address the AAEC concerns emanating from the proposed combination and would create a credible competitor who could pose a significant competitive constraint in the relevant market.
18. Accordingly, the Commission proposed modification to the combination, to the Parties, in terms of sub-section (3) of Section 31 of the Act vide communication dated 11.02.2015 (“**Proposal for Modification**”).
19. In the Proposal for Modification, the Commission proposed, *inter alia*, that
- i. The Parties shall divest, or procure the Divestiture of the Divestment Business within the first divestiture period, i.e., a period of [...] months from the Effective Date, absolutely and in good faith, to an Approved Purchaser pursuant to and in accordance with the Approved Sale and Purchase Agreement. The purchaser proposed by the Parties, in order to be approved by the Commission, shall, *inter alia*, not have any structural or financial links (whether directly or indirectly) with any existing



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cement producer in the relevant market and shall not have any existing operational capacity in the relevant geographic market.

- ii. The Divestiture shall not be given effect to unless and until the Commission has approved (i) the terms of the final and binding sale and purchase agreement; (ii) the purchaser proposed by the Parties; and (iii) transitional agreements, if any, to be entered into by the Parties and Approved Purchaser.
 - iii. The Parties shall execute the Approved Sale and Purchase Agreement with the Approved Purchaser within [...] months from the Effective Date.
 - iv. Pursuant to execution of the Approved Sale and Purchase Agreement, the Parties shall ensure that the Closing takes place within the first divestiture period, as provided above.
20. The Parties, vide their response filed on 26.03.2015, after seeking an extension of one day, submitted the below mentioned amendments to the modification proposed by the Commission under the provisions of sub-section (6) of Section 31 of the Act.
- i. With regard to the timeline to execute the Approved Sale and Purchase Agreement, the Parties proposed that the same may be extended to allow the Parties to divest the assets (forming part of the Divestment Business) while realising their full commercial value.
 - ii. With respect to the purchaser requirement mentioned in paragraph 19(i) above, the Parties requested that some flexibility be given to the Parties to sell the assets (forming part of the Divestment Business) to any company that is either a completely new player in the relevant market or has less than 5 percent capacity share in the relevant market.



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21. The Commission, in its meeting held on 30.03.2015 considered the amendments given by the Parties and decided as follows:
- i. The Parties shall execute the Approved Sale and Purchase Agreement with the Approved Purchaser within [...] months from the Effective Date and consequently, the first divestiture period shall stand extended as defined in the Order.
 - ii. As regards the purchaser requirements, the Commission decided that the purchaser shall, *inter alia*, not have any structural or financial links (whether directly or indirectly) with any existing cement producer in the relevant market and shall not have (directly or indirectly) operational capacity exceeding 5 percent of the total installed capacity in the relevant geographic market.
22. Pursuant to the above, the Commission hereby approves the proposed combination under sub-section (7) of Section 31 of the Act, subject to the Parties carrying out the modification to the proposed combination as provided below.

Modification to the Proposed Combination

23. The Parties shall divest the Divestment Business absolutely and in good faith in accordance with the Order.
24. The modification to the proposed combination aims to maintain the existing level of competition in the relevant market through:
- i. the creation of a viable, effective, independent and long term competitor in the relevant market; and
 - ii. ensuring that the Approved Purchaser of Divestment Business has the necessary components, including transitional support arrangements, to compete effectively with the Parties in the relevant market in India.



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25. The modification to the proposed combination shall be given effect to in accordance with the terms and conditions provided below.

Divestiture during the First Divestiture Period

26. The Parties shall divest, or procure the Divestiture of the Divestment Business within the First Divestiture Period, absolutely and in good faith, to an Approved Purchaser pursuant to and in accordance with the Approved Sale and Purchase Agreement.
27. The Divestiture shall not be given effect to unless and until the Commission has approved (i) the terms of the final and binding sale and purchase agreement; (ii) the purchaser proposed by the Parties; and (iii) transitional agreements, if any, to be entered into by the Parties and Approved Purchaser.
28. The Parties shall execute the Approved Sale and Purchase Agreement with the Approved Purchaser within [...] months from the Effective Date.
29. Pursuant to execution of the Approved Sale and Purchase Agreement, the Parties shall ensure that the Closing takes place within the First Divestiture Period.
30. The Divestment Business shall include the elements set out in paragraphs 33 and 34 below and more specifically defined in the Schedules annexed herewith.
31. The Divestiture shall be carried out by way of sale of the Assets to an Approved Purchaser.
32. The Parties are permitted to sell such other additional asset(s) that they and the Approved Purchaser may agree in the context of the Divestiture.

Structure of the Divestment Business

33. The Divestment Business shall include:



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- i. All tangible and intangible assets (including intellectual property rights) related to and/or being used in connection with the Divestment Business;
- ii. All necessary licenses, permits and authorisations issued by any governmental or statutory authority related to and/or being used in connection with the Divestment Business;
- iii. All contracts, leases, commitments, and understandings of and related to the Divestment Business;
- iv. All customer records, credit records and other records pertaining to the Divestment Business;
- v. All Personnel, including Key Personnel.

The elements provided in sub-paragraphs (i) to (v) are collectively referred to as “**Assets**”.

34. In addition, the Divestment Business shall include such transitional support as may be agreed between the Approved Purchaser and the Parties which are necessary to enable the Approved Purchaser to conduct the Divestment Business in at least the same manner as the Parties operated the Divestment Business at the time of execution of the Combination Agreement.

Preservation of Economic Viability, Marketability and Competitiveness

35. Until the Closing Date, the Parties shall take such steps as are necessary to maintain the economic viability, marketability and competitiveness of the Divestment Business, minimise the loss of competitive potential of the Divestment Business and shall prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer (including creation of encumbrance) or impairment of the assets related to the Divestment Business, except as would occur in the ordinary course of business.
36. Until the Closing Date, the Parties shall maintain the operations of the Divestment Business at least as they are currently operated (including efforts to generate new business) consistent with the practices of the Divestment Business and the Parties’



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business, capital and strategic plans, in place on the date of the Combination Agreement. The Parties shall use their best efforts to preserve the existing relationships with suppliers, vendors, customers, agencies, and other Third Parties having business related to the Divestment Business. Further, the Parties shall perform (i) all maintenance to, and replacements of, the assets of the Divestment Business in the ordinary course of business, in accordance with past practice, and Parties' business, capital, and strategic plans in place on the date of execution of the Combination Agreement; and (ii) carry on such capital projects, physical plant improvements, and business plans as are already under way or planned, including, but not limited to, existing or planned renovation and expansion projects, in accordance with Parties' business, capital, and strategic plans in place on the date of execution of the Combination Agreement.

37. Until the Closing Date, the Parties shall make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis of continuation of the existing business plans.
38. The Parties shall take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to continue his or her position consistent with the past practices and/or as may be necessary to maintain the marketability, viability and competitiveness of the Divestment Business. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Divestment Business.
39. The Parties shall not and procure that their Affiliates shall not solicit or move any Personnel to the Parties' remaining business. The Parties shall remove any impediments that may deter Key Personnel from accepting employment with the Approved Purchaser including, but not limited to any non-compete or confidentiality



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provision of the employment or other contracts with the Key Personnel that would affect the ability of the Key Personnel to be employed by the Approved Purchaser.

40. In exceptional circumstances, if any member of Key Personnel terminates his or her employment with the Parties prior to the Closing Date, the Parties shall provide to the Monitoring Agency a reasoned proposal to replace such member of Key Personnel with the replacement who is well suited to carry out the functions of the said member of Key Personnel.

Hold-separate obligations

41. The Parties shall, until Closing, procure that the Divestment Business is kept separate from the business that the Parties will be retaining and to ensure that: (i) management and staff of the business retained by the Parties have no involvement in the Divestment Business; and (ii) the Key Personnel and Personnel have no involvement in any business retained by the Parties and do not report to any individual outside the Divestment Business.
42. 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 Effective Date, the Parties shall appoint a Hold Separate Manager for each plant forming part of 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(s) shall closely cooperate with and report exclusively to the Monitoring Agency and, if applicable, the Divestiture Agency. Any replacement of the Hold Separate Manager(s) shall be subject to the approval of the Commission.
43. The purpose of the hold separate obligations is to (a) preserve the Divestment Business as a viable, competitive and on-going business, independent of the Parties



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until the Closing; (ii) assure that no Confidential Information is exchanged between the Parties and the Divestment Business, except as otherwise provided in the Order; and (iii) prevent interim harm to competition in the relevant market pending Divestiture.

Ring-fencing

44. The Parties and their Affiliates shall ensure that Confidential Information obtained by the Parties and/or their Affiliates is eliminated and is not used by the Parties or their Affiliates. For this purpose, the Parties shall implement, or procure implementation of necessary and adequate measures. The Parties shall also ensure that the participation of the Divestment Business in the central information technology network will be discontinued to the extent possible, provided however, such discontinuation should not affect the viability and competitiveness of Divestment Business. The employees of the Parties who provide support to the Divestment Business shall retain and maintain Confidential Information as confidential and except as permitted under the Order, shall not provide, discuss, exchange, circulate, or otherwise furnish any such information to or with any person whose employment involves the business retained by the Parties. Such employees shall also execute agreement(s) prohibiting disclosure of Confidential Information.
45. The Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary for the Divestiture or the disclosure of which to the Parties is required by law or which is reasonably required by the Parties to comply with their financial reporting or other legal obligations (including in relation to tax filings).
46. The provisions of paragraphs 35 to 45 shall apply *mutatis mutandis* to the Alternative Divestment Business from the Effective Date.



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Non-solicitation clause

47. The Parties shall not, and procure that their Affiliates do not employ, or make offers of employment to, any member of Key Personnel transferred with the Divestment Business for a period of one year after Closing, unless the employment of such member of Key Personnel has been terminated by the Approved Purchaser.

Due diligence

48. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the Divestiture process provide to potential purchasers sufficient information (i) as regards the Divestment Business; and/or (ii) relating to the Key Personnel and Personnel and allow them reasonable access to the Key Personnel and Personnel.

Reporting

49. The Parties shall submit written reports on the Divestiture process to the Monitoring Agency no later than seven days after the end of every month following the date of the Order (or otherwise at the Monitoring Agency's request), including, if applicable, on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers, and on the status of Divestiture. The Parties shall submit a list of all potential purchasers which have expressed interest in acquiring the Divestment Business to the Monitoring Agency at each stage of the Divestiture process, as well as a copy of all offers made by such potential purchasers within five days of their receipt.
50. The Parties shall keep the Monitoring Agency informed about the Divestiture process, in particular, on preparation of the data room documentation and the due diligence procedure and shall submit copies of any information memorandum and/or similar documents to the Monitoring Agency.



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No acquisition of influence:

51. The Parties shall, for a period of 10 (ten) years from the Closing Date, not acquire direct or indirect influence over the whole or part of the Divestment Business.

Purchaser Requirements

52. The purchaser proposed by the Parties, in order to be approved by the Commission, must, *inter alia*:
- i. be independent of and with no connection whatsoever with the Parties or their Affiliates;
 - ii. have the financial resources, expertise and incentive to maintain and develop the Divestment Business as a viable and active competitor to the Parties in the relevant market;
 - iii. shall not have any structural or financial links (whether directly or indirectly) with any existing cement producer in the relevant market and shall not have (directly or indirectly) operational capacity exceeding 5 percent of the total installed capacity in the relevant geographic market; and
 - iv. be neither likely to create, in the light of the information available to the Commission, *prima facie* competition concerns, nor give rise to a risk that the implementation of the Order will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business. (The aforementioned criteria for the purchaser is hereinafter referred to as the “**Purchaser Requirements**”).



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Approval of Sale and Purchase Agreement and Purchaser

53. 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. Within a period of [...] months from the Effective 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.
54. The Commission may approve the Divestiture of the Divestment Business without one or more Assets, or by substituting one or more Assets or Personnel with one or more different assets or Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the Divestiture, taking account of the requirement of the Approved Purchaser.

Monitoring Agency

55. The Commission shall, under Regulation 27 of the Combination Regulations, appoint an independent agency as Monitoring Agency for the purpose of, *inter alia*, supervision of the modification.
56. The Monitoring Agency shall undertake such functions as may be directed by the Commission, which shall include, *inter alia*, the following functions:
- i. overseeing the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitoring compliance by the Parties with the modification to the combination provided in the Order. To that end, the Monitoring Agency shall:



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- (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the holding separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 35 to 41 of this Order;
- (b) supervise the management of the Divestment Business as distinct and saleable entity, in accordance with paragraph 42 of this Order;
- (c) with respect to Confidential Information:
- determine all necessary measures are being taken to ensure that the Parties do not after the Effective Date obtain any Confidential Information relating to the Divestment Business;
 - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business;
 - strive to ensure that any Confidential Information relating to the Divestment Business obtained by the Parties before the Effective Date is eliminated and will not be used by the Parties; and
 - decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the Divestiture or as the disclosure is required by law;
- ii. monitor the splitting of assets between the Divestment Business and the Parties and/or their Affiliates;



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- iii. propose to Parties such measures as the Monitoring Agency considers necessary to ensure Parties' compliance with the Order, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of Confidential Information, including but not limited to commercially sensitive information;
- iv. review and assess the replacement of the member of Key Personnel who has terminated his or her employment with the Parties and provide its recommendation regarding the suitability of such replacement to the Commission;
- v. review and assess potential purchasers as well as the progress of the Divestiture process and verify that at each stage of the Divestiture process, potential purchasers receive sufficient information relating to the Divestment Business in particular by reviewing the relevant data room documentation, information memorandum and due diligence process and that the potential purchasers are granted reasonable access to the Personnel;
- vi. act as a contact point for any requests by Third Parties, in particular potential purchasers, in relation to the Order ;
- vii. submit to the Commission a written report within (ten days after the end of every month which shall cover (a) the operation and management of the Divestment Business; and (b) the progress of the Divestiture process as well as potential purchasers. A non-confidential copy of the said report will be provided to the Parties;
- viii. The Monitoring Agency shall report immediately in writing to the Commission of any failure on part of the Parties to comply with the Order;



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- ix. submit to the Commission a written report containing its recommendations as regards (a) the suitability of the purchaser proposed by the Parties in accordance with paragraph 52 of this Order; (b) whether the Divestiture is being carried in accordance with the Order; and (c) where applicable, its recommendations with regard to Divestiture of the Divestment Business without one or more Assets under paragraph subparagraph (i) to (v) of paragraph 33 of this Order, taking into account the requirements of the proposed purchaser; and
- x. assume the other functions assigned to the Monitoring Agency under the Monitoring Agency Agreement.
57. A copy of the Monitoring Agency Agreement shall be provided to the Parties and the Parties shall use their best efforts to facilitate the Monitoring Agency in performance of its duties and obligations provided in the Monitoring Agency Agreement. Any failure by the Parties in such facilitation may be deemed to be a contravention of the Order.

Divestiture Agency

58. If the Closing has not taken place as specified in paragraph 29 of the Order, the Commission shall appoint a Divestiture Agency to Divest the Divestment Business.
59. The appointment of the Divestiture Agency shall take effect from commencement of Second Divestiture Period or the day of its appointment, whichever is later.
60. Upon receipt of the notice of the Commission regarding the appointment of Divestiture Agency, the Parties must, within the period prescribed by the Commission, execute a comprehensive power of attorney in favour of the Divestiture Agency to effect the sale of Divestment Business and all actions and declarations which the Divestiture Agency considers necessary or appropriate for achieving the



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sale of Divestment Business, including the power to appoint advisors to assist with the sale process. The power of attorney shall include the authority to grant sub-powers. During the Second Divestiture Period, the Divestiture Agency shall have the sole authority to sell the Divestment Business at no minimum price to an Approved Purchaser. Upon request of the Divestiture Agency, the Parties shall cause the documents required for effecting the sale and the Closing to be executed.

61. The Divestiture shall not be effected by the Divestiture Agency unless and until the Commission has approved the terms of sale and purchase agreement (including any ancillary agreement) and the purchaser proposed by the Divestiture Agency.
62. If the Monitoring Agency and the Divestiture Agency are not the same legal or natural persons, the Monitoring Agency and the Divestiture Agency shall cooperate with each other during the Second Divestiture Period in order to facilitate each other's tasks.
63. A copy of the Divestiture Agency Agreement shall be provided to the Parties and the Parties shall use their best efforts to facilitate the Divestiture Agency in performance of its duties and obligations provided in the Divestiture Agency Agreement. Any failure by the Parties in such facilitation may be deemed to be a contravention of the Order.

Sale of Divestment Business within Second Divestiture Period

64. Within the Second Divestiture Period, the Divestiture Agency shall divest at no minimum price the Divestment Business, to an Approved Purchaser.
65. The Divestiture Agency shall have the discretion as to the manner in which it sells the Divestment Business. The Divestiture Agency shall include in the sale and purchase agreement, or other disposal arrangement, (as well as in any ancillary agreements) (a) such terms and conditions as it considers appropriate for an expedient sale in the Second Divestiture Period; and (b) such customary



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representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Agency shall protect the legitimate financial interests of the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Second Divestiture Period.

66. During the Second Divestiture Period, the Divestiture Agency shall provide the Commission with a comprehensive monthly (or otherwise at the Commission's request) report on the progress of the Divestiture process. The monthly reports shall be submitted within ten days after the end of every month with a simultaneous copy to the Monitoring Agency and a non-confidential copy to the Parties.

Duties and obligations of the Parties

67. The Parties shall provide and shall cause their advisors to provide the Monitoring Agency and Divestiture Agency with such co-operation, assistance and information as the Monitoring Agency and/or Divestiture Agency may reasonably require to perform its tasks. The Monitoring Agency and Divestiture Agency shall have full and complete access to any of the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Order and the Parties and the Hold Separate Managers shall provide the Monitoring Agency and Divestiture Agency upon request with copies of any document required by the Monitoring Agency or the Divestiture Agency, as the case may be. The Parties shall make available to the Monitoring Agency and Divestiture Agency one or more offices on their premises.
68. The Parties shall provide the Monitoring Agency with the managerial and administrative support that it may reasonably request in relation to the management of the Divestment Business. This shall include administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause its advisors to provide the Monitoring Agency, on request, with the information submitted to potential purchasers, in particular give the Monitoring Agency access to the data room documentation and all



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other information granted to potential purchasers in the due diligence procedure. The Parties shall inform the Monitoring Agency on potential purchasers, submit lists of all potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Agency informed of all developments in the Divestiture process.

69. The Parties shall indemnify the Monitoring Agency, its employees and agents and Divestiture Agency and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against any liabilities arising directly out of the performance of the Indemnified Party’s duties under the Order, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Indemnified Party.
70. The Commission may share confidential information proprietary to the Parties and the Divestment Business with the Monitoring Agency and Divestiture Agency, without seeking any approval from the Parties.
71. Prior to the Closing Date, the Parties shall secure all consents and waivers from all Third Parties that are required by the Approved Purchaser in relation to the Divestment Business as of the Closing Date. Provided, however, that the Parties may satisfy this requirement by certifying that the Approved Purchaser has, to the Approved Purchaser’s satisfaction, either (i) executed such agreements directly with each of the relevant Third Parties, or (ii) secured a similar contract with similar terms from the customers or from supplier(s) supplying such product or service.
72. The Commission may at any time request information from the Parties that is reasonably necessary for the effective implementation of the Order.
73. The Parties shall notify the Commission at least thirty days prior to any proposed change in the corporate structure of the Parties that may adversely affect the compliance obligations of the Parties.



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74. All appendices and Schedules annexed to the Order shall form an integral part of the Order.
75. In carrying out the aforesaid modification, the Parties shall comply with the provisions of the Act, the Combination Regulations and the Competition Commission of India (General Regulations), 2009.
76. The Order shall stand revoked, if any time, the information provided by the Parties is found to be incorrect.
77. The Secretary is directed to communicate to the Parties accordingly.



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Appendix A

Glossary

<i>Affiliates</i>	Enterprises controlled by the Parties and/or by the ultimate parents of the Parties, including the ultimate parents, whereby the term “Enterprises” and “Control” shall bear the meaning provided in the Act.
<i>Alternative Divestment Business</i>	[...]
<i>Approved Purchaser</i>	The entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in paragraph 52.
<i>Approved Sale and Purchase Agreement</i>	The sale and purchase agreement for sale of Divestment Business which has been duly approved by the Commission.
[...]	[...]
<i>Assets</i>	Shall mean the tangible and intangible assets in relation to the Divestment Business provided in sub-paragraph (i) to (v) of paragraph 33.
<i>Cement Products</i>	Shall mean cement, blended cement products and clinker, in each case, in bulk or bagged, including but not limited to Portland cement, masonry cement, slag cement, blended cement, mortar cement, stucco cement and blended construction products.
<i>Closing</i>	The transfer of the legal title of the Divestment Business to the Approved Purchaser.
<i>Closing Date</i>	The date on which Closing takes place.



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<i>Confidential Information</i>	Any business secrets, know-how, commercial information, or any other information of a proprietary nature relating to the Divestment Business that is not available in public domain.
<i>Divestment Business</i>	shall mean and include (a) the business of producing, distributing and selling Cement Products from the Sonadih Cement Plant (as detailed in Schedule I); (b) the business of producing, distributing and selling Cement Products from Jojobera Cement Plant (as detailed in Schedule II); and (c) the business of mining of limestone materials from Sonadih Quarry Operations. The Divestment Business shall include the elements provided in sub-paragraph (i) to (v) in paragraph 33 (as detailed in Schedules I and II) and transitional support referred to in paragraph 34. In the Second Divestiture Period, the Divestment Business shall mean the Alternative Divestment Business.
<i>Divestiture</i>	Shall mean the sale and transfer of the Divestment Business. The words, “divest”, “divested”, “divesting” and “divestment” shall be interpreted accordingly.
<i>Divestiture Agency</i>	One or more natural or legal person(s), independent from the Parties, who is appointed by the Commission, and who has the duty to divest the Divestment Business during the Second Divestiture Period. The Monitoring Agency may be appointed as the Divestiture Agency by the Commission.
<i>Divestiture Agency Agreement</i>	The agreement executed by and between the Commission and the Divestiture Agency.
<i>Effective Date</i>	The date of the Order.
<i>First Divestiture</i>	The period of [...] months from the Effective Date. In the



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<i>Period</i>	event the consummation of proposed combination does not take place within a period of [...] months from the Effective Date, the First Divestiture Period may, subject to approval of the Commission, be extended to include a further period of [...] months from the date of consummation of the proposed combination.
<i>Hold Separate Manager</i>	means an individual with experience in the management, sales, marketing, or financial operations of the Divestment Business, who is appointed by the Parties to manage the Divestment Business till the Closing Date. The Hold Separate Manager shall be a part of the Key Personnel.
<i>Key Personnel</i>	The employees who are necessary to maintain the viability and competitiveness of the Divestment Business as identified by the Parties and listed in Schedule V 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.
<i>Monitoring Agency</i>	One or more natural or legal person(s), independent from the Parties, who is appointed by the Commission, and who has the duty to monitor the Parties' compliance with the modifications provided in the Order. The Monitoring Agency may be appointed as the Divestiture Agency by the Commission.
<i>Monitoring Agency Agreement</i>	The agreement executed by and between the Commission and the Monitoring Agency.
<i>Personnel</i>	Employees who worked at least one hundred (100) work days for the Divestment Business during the twelve-month period prior to the Closing Date, including but not limited to shared employees and seconded employees.



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<i>Second Divestiture Period</i>	The period of [...] months from the end of the First Divestiture Period.
<i>Sonadih Quarry Operations</i>	Mining of limestone materials from the Parties' quarry operation located adjacent to the Sonadih Cement Plant.
<i>Third Party(ies)</i>	Any entity other than the Parties and the Approved Purchaser.



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Schedule I

Divestment Business Pertaining to Sonadih Cement Plant

1. The Sonadih Cement Plant, *inter-alia* comprises of:
 - i. An integrated cement plant located at Sonadih, Chhattisgarh;
 - ii. Grinding station located at Sonadih, Chhattisgarh;
 - iii. Clinker Facilities located at Sonadih, Chhattisgarh;
 - iv. Sonadih Quarry Operations consisting of quarries located at Sonadih, Chhattisgarh; and
 - v. Cement bagging and distribution facilities located at Sonadih, Chhattisgarh.

2. In accordance with the paragraph 1 above, the Divestment Business pertaining to the Sonadih Cement Plant includes all rights, titles, and interests of Parties or their Affiliates in and to all assets, properties, business and goodwill, tangible or intangible, used to operate the Sonadih Cement Plant in the ordinary course and in accordance with past practice, but is not limited to:
 - i. All tangible assets at the Sonadih Cement Plant including but not limited to the following:
 - a. all real property used in (including in connection with) that contribute to the current operations or are necessary to ensure the viability and competitiveness of the Sonadih Cement Plant, including but not limited to (i) all structures, improvements, buildings and facilities owned by the Parties or their Affiliates located thereon; (ii) all railway sidings and locomotives maintained at or near plant sites; (iii) all rights, title and interest of the Parties, reversionary or otherwise, in and to all easements, if any, in or upon such real property and all other rights and appurtenances belonging or in any way pertaining to such real property (including all right, title and interest of the Parties or their Affiliates in and to



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- any mineral rights with respect to mining of limestone materials from the quarries located near Sonadih Cement Plant used (or intended to be used) in connection with the said cement plant and water rights, if any, owned by the Parties of their Affiliates relating to the real property); and (iv) all rights, title and interest of the Parties in or to under all stripes and any land lying in the bed of any public road, highway or other access way, open or proposed, adjoining such real property;
- b. all personal property owned, leased or otherwise held by the Parties or their Affiliates and used to operate the Sonadih Cement Plant, including but not limited to all plants, conveyor systems, loading facilities, machinery, equipment, tanks, bins, and related facilities, and tools, vehicles, furnishings, furniture, fixtures, leasehold improvements, and other tangible property, including all off road rolling stock, material handling equipment, wheel loaders, track dozers, scrapers, water trucks, haul trucks, aggregate processing equipment/crushers and machinery, storage silos, control systems, electric motors, conveyors, spare parts, raw material storage and handling equipment, weigh scales, office furniture, business machines, cement/aggregate testing and laboratory equipment, tools and fixtures, in each case, used (or intended to be used) by the Parties or their Affiliates primarily in the Sonadih Cement Plant;
- ii. All intangible assets relating to Sonadih Cement Plant, facilities and depots as well as the assets mentioned above including all goodwill, technology used in relation to the Sonadih Cement Plant and software including but not limited to all intellectual property owned by or licensed to the Parties or their Affiliates which is used in (or in connection with) the Sonadih Cement Plant, including but not limited to patents, mask works, copyrights, trade secrets, research materials, technical information, management information systems, software, inventions, test



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data, technological (and/or other) know-how, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas;

- iii. All necessary registrations, permits, licenses, consents, authorizations and other approvals, and pending applications and request therefor, used or required for the conduct of the business operations at the Sonadih Cement Plant or ownership or operation of the real property and issued to the Parties or any of their Affiliates by any governmental authority;
- iv. All contracts, agreements, leases, commitments and understandings relating to the present or future operations of the Sonadih Cement Plant, including but not limited to (i) all lease agreements pertaining to plants and machinery; (ii) all key supply contracts with suppliers for any products, raw materials, supplies, equipment or parts (iii) all lease agreements pertaining to the real property; (iv) all customer contracts held by Parties or their Affiliates ; (v) agreements relating to supply of contract labour; and (vi) all other contracts entered into by the Parties or their Affiliates which are relating to the Sonadih Cement Plant;
- v. All customer, credit and other records that are held by the Parties regarding the Sonadih Cement Plant, including but not limited to all books, records, and files held by the Parties or their Affiliates relating to the Sonadih Cement Plant, including but not limited to all of Parties and their Affiliates' books and records, whether in hard copy or in electronic format (e.g. computer files), including all personnel records of employees of the Parties or their Affiliates whose employment with Parties or their Affiliates will be terminated as a result of the Divestiture, past or present customer lists, past or present customer files, past or present supplier lists, past or present supplier files, production data, equipment maintenance data, accounting records, inventory records, sales and sales promotional data and materials, advertising materials, sales training materials, educational support program materials, cost and pricing



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information, catalogues, brochures, business plans, equipment and parts lists, and dealer and distributor lists, quality control records and manuals, blueprints, research and development files, records and laboratory books, patent disclosures, correspondence, manuals, handbooks, geologic reports and surveys of the real property, all books and records with respect to Sonadih Cement Plant relating to taxes, and other records (other than books and records related to income tax which do not relate solely to the business operations carried out at the Sonadih Cement Plant), and any other records and data that are within the possession or control of the Parties and their Affiliates;

- vi. all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods held by the Parties or their Affiliates and used in the Sonadih Cement Plant, including but not limited to the inventories located at the real property and produced or held by or for the operations related to the Sonadih Cement Plant and in transit or otherwise located off the real property and all inventories of supplies (including fuel and coal), repair parts and components for the machinery and equipment, lubricants and tools used (or intended for use) primarily in relation to the operations of the Sonadih Cement Plant;
- vii. all Personnel related to Sonadih Cement Plant;
- viii. all Key Personnel related to Sonadih Cement Plant as listed in Schedule V;
- ix. other rights including but not limited to all rights and interests of the Parties or any of their Affiliates relating to credits, prepaid expenses, advance payments, vendor allowances, deferred charges, sureties, security and similar deposits, and prepaid items, including volume and promotional incentive allowances, prepaid interest, deposits and any other credits received by or accruing to such persons from lessors,



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suppliers or utilities (together with security interests or liens from Third Parties relating thereto), in each case which relate to the real property or the business operations at the cement plants; and all rights, privileges, judgments, demands, causes of action, claims in bankruptcy, indemnification agreements with, and indemnification rights against, Third Parties, warranty claims, reimbursements, offsets and other claims, including all claims related to the value, condition or title to the assets, relating to the business operations at Sonadih Cement Plant ; and

- x. At the purchaser's request, arrangements for supply of products, or services currently supplied by the Parties or their Affiliates (on substantially the same terms and conditions as those products or services are supplied to Sonadih Cement Plant at the completion of the Divestment).
3. If there is any asset or personnel which is not covered by paragraph 2 above but which is both used (exclusively or not) by the Sonadih Cement Plant and is necessary for continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers. In addition, at the Approved Purchaser's option, the Parties or their Affiliates shall license the proprietary technology owned by the Parties or their Affiliates and used in the operations of Sonadih Cement Plant for continuous use at the Sonadih Cement Plant on an exclusive royalty free basis for the life time of underlying intellectual property.



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Schedule II

Divestment Business Pertaining to Jojobera Cement Plant

1. The Jojobera Cement Plant, *inter-alia* comprises of:
 - i. Cement plant located at Jamshedpur, Jharkhand;
 - ii. Grinding station located at Jamshedpur, Jharkhand; and
 - iii. Cement bagging and distribution facilities located at Jamshedpur, Jharkhand.

2. In accordance with the paragraph 1 above, the Divestment Business pertaining to the Jojobera Cement Plant includes all of rights, titles, and interests of the Parties or their Affiliates in and to all assets, properties, business and goodwill, tangible or intangible, used to operate the Jojobera Cement Plant in the ordinary course and in accordance with past practice, but is not limited to:
 - i. All tangible assets at the Jojobera Cement Plant, including but not limited to the following:
 - a. all real property used in (including in connection with) that contribute to the current operations or are necessary to ensure the viability and competitiveness of the Jojobera Cement Plant, including but not limited to (i) all structures, improvements, buildings and facilities owned by the Parties or their Affiliates or located thereon; (ii) all railway sidings and locomotives maintained at or near plant sites; (iii) all rights, title and interest of the Parties, reversionary or otherwise, in and to all easements, if any, in or upon such real property and all other rights and appurtenances belonging or in any way pertaining to such real property (including all right, title and interest of the Parties or their Affiliates in and to water rights, if any, owned by the Parties of their Affiliates relating to the real property); and (iv) all rights, title and interest of the



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Parties in or to under all stripes and any land lying in the bed of any public road, highway or other access way, open or proposed, adjoining such real property;

- b. all personal property owned, leased or otherwise held by the Parties or their Affiliates and used to operate the Jojobera Cement Plant, including but not limited to shall include all plants, conveyor systems, loading facilities, machinery, equipment, tanks, bins, and related facilities, and tools, vehicles, furnishings, furniture, fixtures, leasehold improvements, and other tangible property, including all off road rolling stock, material handling equipment, wheel loaders, track dozers, scrapers, water trucks, haul trucks, aggregate processing equipment/crushers and machinery, storage silos, control systems, electric motors, conveyors, spare parts, raw material storage and handling equipment, weigh scales, office furniture, business machines, cement/aggregate testing and laboratory equipment, tools and fixtures, in each case, used (or intended to be used) by the Parties or their Affiliates primarily in the Jojobera Cement Plant;
- ii. All intangible assets relating to Jojobera Cement Plant, facilities and depots as well as the assets mentioned above including all goodwill, technology used in relation to the Jojobera Cement Plant and software including but not limited to all intellectual property owned by or licensed to the Parties or their Affiliates which is used in (or in connection with)the Jojobera Cement Plant, including but not limited to, patents, mask works, copyrights, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technological (and/or other) know-how, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas;



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- iii. All necessary registrations, permits, licenses, consents, authorizations and other approvals, and pending applications and request therefor, used or required for the conduct of the business operations at the Jojobera Cement Plant or ownership or operation of the real property and issued to the Parties or any of their Affiliates by any governmental authority;
- iv. All contracts, agreements, leases, commitments and understandings relating to the present or future operations of the Jojobera Cement Plant, including but not limited to (i) all lease agreements pertaining to plants and machinery; (ii) all key supply contracts with suppliers for any products, raw materials, supplies, equipment or parts; (iii) all lease agreements pertaining to the real property; (iv) all customer contracts held by the Parties or their Affiliates; (v) all agreements pertaining to supply of contract labour; and (vi) all other contracts entered into by the Parties or their Affiliates which are relating to the Jojobera Cement Plant;
- v. All customer, credit and other records that are held by the Parties regarding the Jojobera Cement Plant, including but not limited to all books, records, and files held by the Parties or their Affiliates relating to the the Jojobera Cement Plant, including but not limited to all of Parties and their Affiliates' books and records, whether in hard copy or in electronic format (e.g. computer files), including all personnel records of employees of the Parties or their Affiliates whose employment with Parties or their Affiliates will be terminated as a result of the Divestiture, past or present customer lists, past or present customer files, past or present supplier lists, past or present supplier files, production data, equipment maintenance data, accounting records, inventory records, sales and sales promotional data and materials, advertising materials, sales training materials, educational support program materials, cost and pricing information, catalogues, brochures, business plans, equipment and parts lists, and dealer and distributor lists, quality control records and



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manuals, blueprints, research and development files, records and laboratory books, patent disclosures, correspondence, manuals, handbooks, geologic reports and surveys of the real property, all books and records with respect to Jojobera Cement Plant relating to taxes, and other records (other than books and records related to income tax which do not relate solely to the business operations carried out at the Jojobera Cement Plant), and any other records and data that are within the possession or control of the Parties and their Affiliates;

- vi. all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods held by the Parties or their Affiliates and used in the Jojobera Cement Plant, including but not limited to the inventories located at the real property and produced or held by or for the operations related to the Jojobera Cement Plant and in transit or otherwise located off the real property and all inventories of supplies (including fuel and coal), repair parts and components for the machinery and equipment, lubricants and tools used (or intended for use) primarily in relation to the operations of the Jojobera Cement Plant;
- vii. all Personnel related to Jojobera Cement Plant;
- viii. all Key Personnel related to Jojobera Cement Plant as listed in Schedule V;
- ix. other rights including but not limited to all rights and interests of the Parties or any of their Affiliates relating to credits, prepaid expenses, advance payments, vendor allowances, deferred charges, sureties, security and similar deposits, and prepaid items, including volume and promotional incentive allowances, prepaid interest, deposits and any other credits received by or accruing to such persons from lessors, suppliers or utilities (together with security interests or liens from Third Parties relating thereto), in each case which relate to the real property or



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the business operations at the cement plants; and all rights, privileges, judgments, demands, causes of action, claims in bankruptcy, indemnification agreements with, and indemnification rights against, Third Parties, warranty claims, reimbursements, offsets and other claims, including all claims related to the value, condition or title to the assets, relating to the business operations at Jojobera Cement Plant; and

- x. At the purchaser's request, arrangements for supply of products, or services currently supplied by the Parties or their Affiliates (on substantially the same terms and conditions as those products or services are supplied to the Jojobera Cement Plant at the completion of the Divestment).
3. If there is any asset or personnel which is not covered by paragraph 2 above but which is both used (exclusively or not) by the Jojobera Cement Plant and is necessary for continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers. In addition, at the Approved Purchaser's option, the Parties or their Affiliates shall license the proprietary technology owned by the Parties or their Affiliates and used in the operations pertaining to Jojobera Cement Plant for continuous use at the Jojobera Cement Plant on an exclusive royalty free basis for the life time of underlying intellectual property.



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Schedule III

[...]



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Schedule IV

[...]



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Schedule V: List of Key Personnel

[...]