

COMPETITION TRIBUNAL

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/2008-141;

**AND IN THE MATTER OF** a proposed acquisition by Holcim Ltd of all of the issued and outstanding shares of Lafarge S.A.;

**AND IN THE MATTER OF** the filing and registration of a consent agreement pursuant to section 92 and section 105 of the *Competition Act*.

**B E T W E E N :**

COMMISSIONER OF COMPETITION

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE <b>REGISTERED / ENREGISTRÉ</b> <b>FILED / PRODUIT</b>  May 4, 2015 CT-2015-004  Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 2

Applicant

– and –

**HOLCIM LTD**

Respondent

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CONSENT AGREEMENT

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**RECITALS:**

**A.** Respondent Holcim Ltd (“Holcim”) proposes to acquire all of the issued and outstanding shares of Lafarge S.A. (“Lafarge”) (the “Transaction”);

**B.** On July 7, 2014, Holcim and Lafarge offered to divest all of Holcim (Canada) Inc.;

**C.** The Commissioner has concluded that the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of cement in certain regional markets in Canada, and that the implementation of this Agreement is necessary

to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction;

**D.** Holcim does not admit, but will not for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions that (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of cement in certain regional markets in Canada; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction;

**E.** Nothing in this Agreement shall (i) affect the Commissioner's ability to pursue any investigation or inquiry or to commence any proceeding or seek any remedy with respect to Holcim's conduct or the effects thereof under any provision of the Act, other than in respect of the effects of the Transaction under section 92 of the Act; (ii) condone any existing policy, program, agreement, arrangement or conduct of Holcim, whether mentioned in this Agreement or not; or (iii) be used by either the Commissioner or Holcim as an admission against the other in a pleading, in evidence or in argument or in any other manner in a proceeding between them before the Tribunal under sections 75, 76, 77, 79 or 90.1 of the Act.

**THEREFORE** Holcim and the Commissioner agree as follows:

## **I. DEFINITIONS**

[1] Whenever used in this Agreement, the following words and terms have the meanings set out below:

- (a) **"Act"** means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (b) **"Affiliate"** means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
- (c) **"Agreement"** means this Consent Agreement, including the schedules hereto, and references to a "Part", "Section", "Paragraph" or "Schedule" are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;
- (d) **"Alberta Business"** means the businesses identified in Schedule C to this Agreement;
- (e) **"Business Day"** means a day on which the Competition Bureau's Gatineau, Quebec office is open for business;
- (f) **"Canada Business"** means the businesses identified in Schedule B to this Agreement;

- (g) **“Closing”** means the completion of the Transaction;
- (h) **“Commissioner”** means the Commissioner of Competition appointed under the Act;
- (i) **“Confidential Information”** means competitively sensitive information that is not in the public domain, and that is owned by or pertains to a Person or a Person’s business, and includes, but is not limited to, competitively sensitive information pertaining to manufacturing, operations and financial matters, customer lists, price lists, contracts, cost and revenue information, marketing methods, patents, technologies, processes, research and development, or other trade secrets;
- (j) **“Designated Personnel”** means employees of Holcim identified to the Commissioner prior to Closing who shall have signed a confidentiality agreement in a form satisfactory to the Commissioner only;
- (k) **“Divested Business”** means the Canada Business and the Alberta Business identified in Schedules B and C to this Agreement;
- (l) **“Divestiture”** means the sale, conveyance, transfer, assignment or other disposal of the Divestiture Assets to a Purchaser or Purchasers pursuant to this Agreement and with the prior approval of the Commissioner, such that Holcim will have no direct or indirect interest in the Divestiture Assets;
- (m) **“Divestiture Agreement”** means a binding and definitive agreement between Holcim and a Purchaser to effect the Divestiture pursuant to this Agreement and subject to the prior approval of the Commissioner;
- (n) **“Divestiture Assets”** means all of the right, title and interest in, to and under, or relating to the assets, property and undertaking owned or used or held by Holcim for use in, or relating to, the Divested Business;
- (o) **“Divestiture Process Agreement”** means the agreement described in Sections 18-20 of this Agreement;
- (p) **“Divestiture Trustee”** means the Person appointed pursuant to Part V of this Agreement (or any substitute appointed thereto) and any employees, agents or other Persons acting for or on behalf of the Divestiture Trustee;
- (q) **“Divestiture Trustee Sale”** means the Divestiture to be conducted by the Divestiture Trustee pursuant to Part V of this Agreement;
- (r) **“Divestiture Trustee Sale Period”** means the period that commences upon the expiry of the Initial Sale Period and ends at the time provided for in Confidential Schedule A to this Agreement;

- (s) **“First Reference Date”** shall have the meaning set out in Paragraph 3(c) of this Agreement;
- (t) **“Holcim”** means Holcim Ltd, its directors, officers, employees, agents, representatives, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by Holcim Ltd, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- (u) **“Holcim Canada”** means Holcim (Canada) Inc., its directors, officers, employees, agents and representatives, including St. Lawrence Cement Co., L.L.C.; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by Holcim Canada, and the respective directors, officers, employees, agents and representatives;
- (v) **“Holcim’s Continuing Employees”** means those employees of Holcim who are not employed in connection with the Hold Separate Assets, and for greater certainty does not include NASS Personnel;
- (w) **“Hold Separate Assets”** means the Divested Business identified in Schedules B and C to this Agreement;
- (x) **“Hold Separate Employees”** means those employees of Holcim who are employed in connection with the Hold Separate Assets, and **“Hold Separate Employee”** means any one of those employees;
- (y) **“Hold Separate Manager”** means the Person appointed pursuant to Part III of this Agreement (or any substitute appointed thereto) to manage the operation of the Hold Separate Assets, and any employees, agents or other Persons acting for or on behalf of the Hold Separate Manager;
- (z) **“Hold Separate Period”** means the period that commences at Closing and ends upon the completion of the Divestiture;
- (aa) **“includes”** means “includes, without limitation” and “including” has a corresponding meaning;
- (bb) **“Interpretation Act”** means the *Interpretation Act*, R.S.C. 1985, c. I-21, as amended;
- (cc) **“Initial Sale Period”** means the period that commences at Closing and ends at the time set out in Confidential Schedule A to this Agreement;
- (dd) **“Lafarge”** means Lafarge S.A., its directors, officers, employees, agents, representatives, successors and assigns; and all joint ventures, subsidiaries, divisions, groups and Affiliates controlled by Lafarge S.A. and the respective directors, officers, employees, agents, representatives, successors and assigns of each;

- (ee) **“Material Contracts, Approvals and Authorizations”** means the contracts, licences, approvals, permits and authorizations which are necessary to continue the competitive viability of the Divestiture Assets;
- (ff) **“Monitor”** means the Person appointed pursuant to Part X of this Agreement (or any substitute appointed thereto), and any employees, agents or other Persons acting for or on behalf of the Monitor;
- (gg) **“Monitor Agreement”** means the agreement described in Sections 46-48 of this Agreement;
- (hh) **“NASS”** means Holcim’s North American Shared Services that provides certain back office services and technical and administrative support to Holcim’s operational businesses in North America;
- (ii) **“NASS Personnel”** means those Holcim employees employed in connection with NASS;
- (jj) **“Parties”** means the Commissioner and Holcim collectively, and **“Party”** means any one of them;
- (kk) **“Person”** means any individual, sole proprietorship, partnership, joint venture, firm, corporation, unincorporated organization, trust, or other business or government entity, and any subsidiaries, divisions, groups or Affiliates thereof;
- (ll) **“Purchaser”** means a Person that acquires Divestiture Assets pursuant to this Agreement and a Divestiture Agreement;
- (mm) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (nn) **“Respondent”** means “Holcim”;
- (oo) **“Second Reference Date”** shall have the meaning set out in Paragraph 3(d) of this Agreement;
- (pp) **“Third Party”** means any Person other than the Commissioner, Holcim or a Purchaser;
- (qq) **“Transaction”** means the transaction described in the first recital to this Agreement;
- (rr) **“Transitional Services Agreement”** means the agreement described in Sections 35-39 of this Agreement and which has received the approval of the Commissioner; and

(ss) “**Tribunal**” means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.).

## II. COMMISSIONER APPROVAL OF DIVESTITURE

- [2] The Divestiture may proceed only with the prior approval of the Commissioner in accordance with this Part. For greater certainty, the Commissioner may approve a single Purchaser for the Divested Business, or he may approve a Purchaser for the Canada Business and a separate Purchaser for the Alberta Business in accordance with this Part and Confidential Schedule D.
- [3] Subject to Section 4, Holcim (during the Initial Sale Period) or the Divestiture Trustee (during the Divestiture Trustee Sale Period), as the case may be, shall comply with the following process for seeking and obtaining a decision of the Commissioner regarding his approval of a proposed Divestiture:
- (a) Holcim or the Divestiture Trustee, as the case may be, shall promptly:
    - (i) inform the Commissioner of any negotiations with a prospective Purchaser that may lead to a Divestiture; and
    - (ii) forward to the Commissioner copies of any agreement that is signed with a prospective Purchaser, including non-binding expressions of interest.
  - (b) Holcim or the Divestiture Trustee, as the case may be, shall immediately notify the Commissioner that it intends to enter a Divestiture Agreement with a prospective Purchaser, or has entered into an agreement that, if approved by the Commissioner, will be a Divestiture Agreement within the meaning of this Agreement. Such notice shall be in writing and shall include: the identity of the proposed Purchaser; the details of the proposed Divestiture Agreement and any related agreements; and information concerning whether and how the proposed Purchaser would, in the view of Holcim or the Divestiture Trustee, likely satisfy the terms of this Agreement.
  - (c) Within 15 days following receipt of the notice described in Paragraph 3(b), the Commissioner may request additional information concerning the proposed Divestiture from any or all of Holcim, the Divestiture Trustee, the Monitor, the Hold Separate Manager and the prospective Purchaser. These Persons shall, without delay, each provide any additional information requested from them. When they have provided a complete response to the Commissioner’s request, these Persons shall, without delay, comply with the following procedures:
    - (i) the Divestiture Trustee shall provide written confirmation to the Commissioner that the Divestiture Trustee has provided to the

Commissioner all additional information requested from the Divestiture Trustee;

- (ii) the Monitor shall provide written confirmation to the Commissioner that the Monitor has provided to the Commissioner all additional information requested from the Monitor;
- (iii) an officer or other duly authorized representative of Holcim shall certify that he or she has examined any additional information provided by Holcim to the Commissioner and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects;
- (iv) an officer or other duly authorized representative of the Hold Separate Manager shall certify that he or she has examined any additional information provided by the Hold Separate Manager to the Commissioner and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects; and
- (v) an officer or other duly authorized representative of the prospective Purchaser shall certify that he or she has examined any additional information provided by the prospective Purchaser to the Commissioner and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

The date on which the last of Holcim, the Divestiture Trustee, the Monitor, the Hold Separate Manager and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **“First Reference Date”**.

- (d) Within 15 days after the First Reference Date, the Commissioner may request further additional information concerning the proposed Divestiture from any or all of Holcim, the Divestiture Trustee, the Monitor, the Hold Separate Manager and the prospective Purchaser. These Persons shall, without delay, each provide any further additional information requested from them. When they have provided a complete response to the Commissioner’s request, if any, these Persons shall comply with the procedures outlined in Sub-paragraphs 3(c)(i)-(v) in regard to the further additional information provided. The date on which the last of the Divestiture Trustee, Holcim, Monitor, the Hold Separate Manager and the prospective Purchaser provides to the Commissioner a confirmation or certification required under this Paragraph is the **“Second Reference Date”**.

- (e) The Commissioner shall notify Holcim or the Divestiture Trustee, as the case may be, of the approval of, or the objection to, the proposed Divestiture as soon as possible, and in any event within 45 days after the date on which the Commissioner receives that notice described in Paragraph 3(b) or, if he requests any additional information under Paragraph 3(c) or further additional information under Paragraph 3(d), within 15 days after the later of:
    - (i) the First Reference Date; and
    - (ii) the Second Reference Date, if any.
  - (f) The Commissioner's determination as to whether to approve a proposed Divestiture shall be in writing.
  - (g) Where such approval is given after a request for an advance ruling certificate pursuant to section 102 of the Act has been made, the Commissioner shall issue a letter to the Purchaser indicating that the Commissioner does not, at that time, intend to make an application under section 92 of the Act in respect of the Divestiture, and that the Commissioner waives any applicable requirements or waiting period under Part IX of the Act.
- [4] If Holcim or a prospective Purchaser has satisfied any of the steps in Section 3 prior to Closing, the Commissioner shall treat those steps as having been satisfied in accordance with this Part.
- [5] The Commissioner has sole discretion to determine whether to approve a proposed Divestiture. In exercising such discretion, the Commissioner shall take into account the likely impact of the Divestiture on competition, and may consider any other factor he considers relevant. Prior to granting his approval, the Commissioner must also be satisfied that:
- (a) the proposed Purchaser is fully independent of and operates at arm's length from Holcim;
  - (b) Holcim will have no direct or indirect interest in the Divestiture Assets following the Divestiture, subject to Section 62 below;
  - (c) Any entity in which Holcim or an Affiliate of Holcim has a significant interest will have no direct or indirect interest in the Divestiture Assets following the Divestiture;
  - (d) the proposed Purchaser is committed to carrying on the Divested Business in Canada;



- (e) the proposed Purchaser has the managerial, operational and financial capability to compete effectively in the supply of cement in certain regional markets in Canada; and
- (f) the proposed Purchaser will (i) if the Commissioner grants his approval during the Initial Sale Period, complete the Divestiture prior to the expiry of the Initial Sale Period; or (ii) if the Commissioner grants his approval during the Divestiture Trustee Sale Period, complete the Divestiture during the Divestiture Trustee Sale Period.

### **III. HOLD SEPARATE**

**[6]** During the Hold Separate Period, Holcim shall:

- (a) hold the Hold Separate Assets separate, apart and independent of Holcim and shall vest the Hold Separate Manager with all rights, powers and authority necessary to conduct the business of the Hold Separate Assets;
- (b) not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or the Hold Separate Manager; and
- (c) take no action that interferes with or impedes, directly or indirectly, the Hold Separate Manager's duties and responsibilities.

**[7]** Prior to or at Closing, the Commissioner shall appoint a Hold Separate Manager, responsible for managing and operating the Hold Separate Assets independently of Holcim during the Hold Separate Period.

**[8]** Within 5 Business Days after the appointment of the Hold Separate Manager, Holcim shall submit to the Commissioner for approval the terms of a proposed Management Agreement with the Hold Separate Manager and the Commissioner that transfer to the Hold Separate Manager all rights and powers necessary to permit the Hold Separate Manager to manage and operate the Hold Separate Assets independently of Holcim during the Hold Separate Period in accordance with this Agreement.

**[9]** Within 5 Business Days after receipt of the proposed Management Agreement referred to in Section 8, the Commissioner shall advise Holcim whether or not he approves the terms of the proposed Management Agreement. If the Commissioner does not approve the terms of the proposed Management Agreement, he shall prescribe alternative terms for the Management Agreement that Holcim shall incorporate into a final Management Agreement with the Hold Separate Manager and the Commissioner.

**[10]** Without limiting the Commissioner's discretion to require additional terms, Holcim consents to the following terms and conditions regarding the Hold Separate Manager's rights, powers, duties, authority and responsibilities, and shall include such terms in the Management Agreement:

- (a) The Hold Separate Manager shall report solely and exclusively to the Monitor (or, if there is no Monitor, to the Commissioner).
- (b) The Hold Separate Manager shall not have any involvement with, or receive any Confidential Information respecting, the businesses or assets of Holcim other than in respect of the Hold Separate Assets.
- (c) Subject to the oversight of the Monitor (or, if there is no Monitor, the Commissioner), the Hold Separate Manager shall manage and maintain the operation of the Hold Separate Assets independently and separately from Holcim, in the regular and ordinary course of business and in accordance with past practice, and shall use commercially reasonable efforts to ensure the ongoing economic viability, marketability and competitiveness of the Hold Separate Assets.
- (d) Without limiting the generality of Paragraph 10(c), the Hold Separate Manager shall:
  - (i) maintain and hold the Hold Separate Assets in good condition and repair, normal wear and tear excepted, and to standards at least equal to those that existed prior to the date of this Agreement;
  - (ii) take all commercially reasonable steps to honour all customer contracts and to maintain quality and service standards for customers of the Hold Separate Assets at least equal to those that existed prior to the date of this Agreement;
  - (iii) not knowingly take or allow to be taken any action that materially and adversely affects the competitiveness, operations, financial status or value of the Hold Separate Assets;
  - (iv) not alter or cause to be altered, to any material extent, the management of the Hold Separate Assets as it existed prior to the date of this Agreement, except with the prior approval of the Monitor (or, if there is no Monitor, the Commissioner);
  - (v) not terminate or alter any employment, salary or benefit agreements, as they existed at the date of this Agreement, for Persons employed in connection with the Hold Separate Assets, outside of the regular and ordinary course of business and in accordance with past practice, except with the prior approval of the Monitor (or, if there is no Monitor, the Commissioner);
  - (vi) ensure that the Hold Separate Assets are staffed with sufficient employees to ensure their viability and competitiveness, including by replacing any departing employees with other qualified employees if necessary; and

- (vii) maintain inventory levels and payment terms materially consistent with the practices of Holcim that existed, with respect to the Hold Separate Assets, prior to the date of this Agreement.
- (e) Holcim shall provide sufficient financial resources, including general funds, capital funds, working capital and reimbursement for any operating, capital or other losses, to permit the Hold Separate Manager to comply with its obligations under this Section. The Hold Separate Manager, subject to the prior approval of the Monitor (or, if there is no Monitor, the Commissioner), may request funds at any time in order to comply with its obligations and to carry on the Divested Business during the Hold Separate Period, and Holcim shall comply with any such request. If the Monitor believes that Holcim has not provided, is not providing or will not provide sufficient financial and other resources under this Paragraph, the Monitor shall forthwith refer the matter to the Commissioner, who shall make a final determination respecting the financial and other resources that Holcim must provide. The Commissioner may also make such a determination in circumstances where there is no Monitor. Holcim shall comply with any determination made by the Commissioner on this issue.
- (f) The Hold Separate Manager shall have no financial interests affected by Holcim's (excluding Holcim Canada) revenues, profits or profit margins, except that Holcim shall provide to the Hold Separate Manager reasonable incentives to undertake this position. The Monitor (or, if there is no Monitor, the Commissioner) shall determine the type and value of such incentives, which shall include continuation of all employee benefits, and such additional incentives as the Monitor (or, if there is no Monitor, the Commissioner) determines may be necessary to assure the continuation and prevent any diminution of the viability, marketability and competitiveness of the Hold Separate Assets.
- (g) In addition to those Persons employed in connection with the Hold Separate Assets on the Closing Date, the Hold Separate Manager may employ such other Persons as the Monitor (or, if there is no Monitor, the Commissioner) believes are necessary to assist the Hold Separate Manager in managing and operating the Hold Separate Assets.
- (h) Subject to any legally recognized privilege, the Hold Separate Manager shall provide to the Monitor (or, if there is no Monitor, the Commissioner) full and complete access to all personnel, Records, information (including Confidential Information) and facilities relevant to monitoring Holcim's compliance with this Agreement.
- (i) The Hold Separate Manager shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor (or, if there is no Monitor, the Commissioner) may request.

- [11] Holcim shall be responsible for all reasonable fees and expenses properly charged or incurred by the Hold Separate Manager in the course of carrying out the Hold Separate Manager's duties under this Agreement. The Hold Separate Manager shall serve without bond or security, and shall account for all fees and expenses incurred. In the event of any dispute: (i) such account shall be subject to the approval of the Commissioner only; and (ii) Holcim shall promptly pay any account approved by the Commissioner.
- [12] Holcim shall indemnify the Hold Separate Manager and hold the Hold Separate Manager harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Hold Separate Manager's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Hold Separate Manager.
- [13] If the Commissioner determines that the Hold Separate Manager has ceased to act or has failed to act diligently, the Commissioner may remove the Hold Separate Manager and appoint a substitute Hold Separate Manager. The provisions of this Agreement respecting the Hold Separate Manager shall apply in the same manner to any substitute Hold Separate Manager.
- [14] Holcim and the Hold Separate Manager shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Monitor in consultation with the Commissioner (or, if there is no Monitor, by the Commissioner) of access and data controls to prevent unauthorized access to or dissemination of Confidential Information. The system shall include the following protocols:
- (a) The Monitor (or, if there is no Monitor, the Commissioner) shall be copied on all written communications between the Hold Separate Manager and Holcim.
  - (b) Holcim's Continuing Employees shall not receive, access or use any Confidential Information respecting the Hold Separate Assets.
  - (c) Holcim shall implement measures to prevent against the receipt, access or use of Confidential Information that is not permitted by this Agreement or any Transitional Services Agreement. Such measures shall include but are not limited to, one or both of the following measures:
    - (i) measures restricting access by Holcim's Continuing Employees to Confidential Information available or stored on Holcim's computers or computer networks;
    - (ii) measures whereby if any of Holcim's Continuing Employees possesses Confidential Information respecting the Hold Separate

Assets as of the date of this Agreement, a requirement that such Persons shall, within 5 Business Days following appointment of the Hold Separate Manager, (i) delete, destroy or deliver to the Hold Separate Manager any Records containing such Confidential Information, together with a signed statement confirming that he or she is no longer in possession of any Records containing Confidential Information respecting the Hold Separate Assets; and (ii) submit to the Monitor (or if there is no Monitor, the Commissioner) a signed statement confirming that he or she undertakes not to share any Confidential Information respecting the Hold Separate Assets with any of Holcim's Continuing Employees.

- (d) Holcim shall implement a system to monitor Holcim's Continuing Employees' compliance with the obligations contemplated by Paragraph 14(c). Holcim shall immediately notify the Monitor (or if there is no Monitor, the Commissioner) in the event of unauthorized access or use of Confidential Information by any of Holcim's Continuing Employees.
- (e) Notwithstanding Paragraph 14(b), Designated Personnel of Holcim may receive aggregate financial and operational information relating to the Hold Separate Assets only to the extent necessary to comply with securities laws, prepare financial and regulatory reports, tax returns, administer employee benefits, defend litigation and comply with this Agreement and for purposes of any Transitional Services Agreement. Any such information shall be: (i) reviewed by the Monitor (or, if there is no Monitor, the Commissioner) prior to its receipt by any Designated Personnel; (ii) maintained in a separate confidential file that is accessible only to the Designated Personnel; and (iii) used only for the purposes set forth in this Section.
- (f) Neither the Hold Separate Manager nor any Hold Separate Employee shall receive, have access to or use any Confidential Information relating to any part of Holcim's businesses other than the Hold Separate Assets.

#### **IV. DIVESTITURE DURING THE INITIAL SALE PERIOD**

- [15] Holcim shall use commercially reasonable efforts to complete the Divestiture during the Initial Sale Period in accordance with the provisions of this Part and Confidential Schedule A.
- [16] Holcim shall, on request, provide to the Commissioner and to the Monitor every 30 days a written report describing the progress of its efforts to effect the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. Holcim shall, within 10 Business Days, respond to any request by the

Commissioner for additional information regarding the status of Holcim's efforts to complete the Divestiture. An officer or other duly authorized representative of Holcim shall certify that he or she has examined the information provided in any such response and that such information is, to the best of his or her knowledge and belief, correct and complete in all material respects.

**V. DIVESTITURE TRUSTEE SALE PROCESS**

- [17] In the event that Holcim fails to complete the Divestiture prior to the expiry of the Initial Sale Period, the Commissioner shall appoint a Divestiture Trustee, to complete the Divestiture in accordance with this Agreement. Such appointment may be made at any time prior to the expiry of the Initial Sale Period or on such later date as the Commissioner determines.
- [18] Within 5 Business Days after the appointment of the Divestiture Trustee, Holcim shall submit to the Commissioner for approval the terms of a proposed Divestiture Process Agreement with the Divestiture Trustee and the Commissioner that transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the Divestiture.
- [19] Within 5 Business Days after receipt of the proposed Divestiture Process Agreement referred to in Section 18, the Commissioner shall advise Holcim whether or not he approves the terms of the proposed Divestiture Process Agreement. If the Commissioner does not approve the terms of the proposed Divestiture Process Agreement, he shall prescribe alternative terms that Holcim shall incorporate into a final Divestiture Process Agreement with the Divestiture Trustee and the Commissioner.
- [20] Without limiting the Commissioner's discretion to require additional terms, Holcim consents to the following terms and conditions regarding the Divestiture Trustee's rights, powers, duties, authority and responsibilities, and shall include such terms in the Divestiture Process Agreement:
- (a) The Divestiture Trustee shall complete the Divestiture as expeditiously as possible, and in any event prior to expiry of the Divestiture Trustee Sale Period.
  - (b) The Divestiture Trustee shall use reasonable efforts to negotiate terms and conditions for the Divestiture that are as favourable to Holcim as are reasonably available at that time; however, the Divestiture shall not be subject to any minimum price. The Divestiture Trustee's opinion of what constitutes favourable terms and conditions and what constitutes reasonably available terms and conditions, is subject to review and sole approval by the Commissioner.
  - (c) Subject to oversight and approval by the Commissioner, the Divestiture Trustee shall have full and exclusive authority during the Divestiture Trustee Sale Period:

- (i) to complete the Divestiture in accordance with the provisions of this Part;
  - (ii) to solicit interest in a possible Divestiture by whatever process or procedure the Divestiture Trustee believes is suitable to allow a fair opportunity for one or more prospective good faith Purchasers to offer to acquire the Divestiture Assets;
  - (iii) to enter into a Divestiture Agreement with a Purchaser that will be legally binding on Holcim;
  - (iv) to negotiate reasonable commercial covenants, representations, warranties and indemnities to be included in a Divestiture Agreement; and
  - (v) to employ, at the expense of Holcim, such consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants as the Divestiture Trustee believes are necessary to carry out the Divestiture Trustee's duties and responsibilities.
- (d) Where any Person makes a good faith inquiry respecting a possible purchase of Divestiture Assets, the Divestiture Trustee shall notify such Person that the Divestiture is being made and shall provide to such Person a copy of this Agreement, with the exception of the provisions hereof that are confidential pursuant to Section 73 of this Agreement.
- (e) Where, in the opinion of the Divestiture Trustee, a Person has a good faith interest in purchasing Divestiture Assets and has executed a confidentiality agreement, in a form satisfactory to the Commissioner only, with the Divestiture Trustee protecting any Confidential Information that such Person may receive in the course of its due diligence review of the Divestiture Assets, the Divestiture Trustee shall:
  - (i) promptly provide to such Person all information respecting the Divestiture Assets that is determined by the Divestiture Trustee to be relevant and appropriate;
  - (ii) permit such Person to make reasonable inspection of the Divestiture Assets and of all financial, operational or other non-privileged Records and information, including Confidential Information, that may be relevant to the Divestiture; and
  - (iii) give such Person as full and complete access as is reasonable in the circumstances to the personnel involved in managing the Divestiture Assets.

- (f) The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets.
  - (g) The Divestiture Trustee shall provide to the Commissioner and to the Monitor, within 14 days after the start of the Divestiture Trustee Sale Period and thereafter every 21 days, a written report describing the progress of the Divestiture Trustee's efforts to complete the Divestiture. The report shall include a description of contacts, negotiations, due diligence and offers regarding the Divestiture Assets, the name, address and phone number of all parties contacted and of prospective Purchasers who have come forward. The Divestiture Trustee shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding the status of the Divestiture Trustee's efforts to complete the Divestiture.
  - (h) The Divestiture Trustee shall notify Holcim and the Commissioner immediately upon the signing of any letter of intent or agreement in principle relating to the Divestiture Assets, and shall provide to Holcim a copy of any executed Divestiture Agreement upon receipt of Commissioner's approval of the Divestiture contemplated in such Divestiture Agreement.
- [21] Holcim shall not be involved in the Divestiture process during the Divestiture Trustee Sale Period or in any negotiations with prospective Purchasers undertaken by the Divestiture Trustee, nor will Holcim have contact with prospective Purchasers during the Divestiture Trustee Sale Period.
- [22] Subject to any legally recognized privilege, Holcim and the Hold Separate Manager shall provide to the Divestiture Trustee full and complete access to all personnel, Records, information (including Confidential Information) and facilities relating to the Divestiture Assets, to enable the Divestiture Trustee to conduct its own investigation of the Divestiture Assets and to provide access and information to prospective Purchasers.
- [23] Holcim shall take no action that interferes with or impedes, directly or indirectly, the Divestiture Trustee's efforts to complete the Divestiture.
- [24] Holcim and the Hold Separate Manager shall fully and promptly respond to all requests from the Divestiture Trustee and shall provide all information the Divestiture Trustee may request. Holcim shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Divestiture Trustee on behalf of Holcim.
- [25] Holcim will do all such acts and execute all such documents, and will cause the doing of all such acts and the execution of all such documents as are within its power to cause the doing or execution of, as may be reasonably necessary to ensure that the Divestiture Assets are divested in the Divestiture Trustee Sale



Period and that agreements entered into by the Divestiture Trustee are binding upon and enforceable against Holcim.

- [26] Holcim shall be responsible for all reasonable fees and expenses properly charged or incurred by the Divestiture Trustee in the course of carrying out the Divestiture Trustee's duties and responsibilities under this Agreement. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the timely completion of the Divestiture contemplated by this Agreement. The Divestiture Trustee shall serve without bond or security, and shall account for all fees and expenses incurred. In the event of any dispute: (i) such account shall be subject to the approval of the Commissioner only; and (ii) Holcim shall promptly pay any account approved by the Commissioner.
- [27] Holcim shall pay all reasonable invoices submitted by the Divestiture Trustee within 30 days after receipt. Any outstanding monies owed to the Divestiture Trustee by Holcim shall be paid out of the proceeds of the Divestiture.
- [28] Holcim shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Divestiture Trustee.
- [29] Holcim shall indemnify the Commissioner and hold the Commissioner harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability.
- [30] If the Commissioner determines that the Divestiture Trustee has ceased to act or has failed to act diligently, the Commissioner may remove the Divestiture Trustee and appoint a substitute Divestiture Trustee. The provisions of this Agreement respecting the Divestiture Trustee shall apply in the same manner to any substitute Divestiture Trustee.
- [31] Holcim may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner only; provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commissioner.
- [32] The Commissioner may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, legal counsel, investment bankers, business

brokers, appraisers, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Divestiture Trustee may receive from the Commissioner in connection with the performance of the Divestiture Trustee's duties.

- [33] Notwithstanding any term of this Agreement, the obligations and powers of the Divestiture Trustee under this Agreement shall not expire until the Divestiture is completed.

## **VI. THIRD PARTY CONSENTS**

- [34] To the extent that a Divestiture Agreement involves or will involve the sale or transfer of assets to a Purchaser, it shall be a condition in any such Divestiture Agreement (whether negotiated by Holcim or by the Divestiture Trustee) that Holcim shall, as a condition of closing, obtain any consents and waivers from Third Parties that are necessary to permit the assignment to, and assumption by, a Purchaser of all Material Contracts, Approvals and Authorizations relating to the Divestiture Assets; provided, however, that Holcim may satisfy this requirement by certifying that the Purchaser has executed agreements directly with one or more Third Parties which make such assignment and assumption unnecessary.

## **VII. NORTH AMERICAN SHARED SERVICES AND TRANSITIONAL SERVICES AGREEMENT**

- [35] Notwithstanding anything else in this Agreement, Holcim and Lafarge may enter into a Transitional Services Agreement with the Purchaser of the Divested Business in respect of the provision of the following back office and information technology services to commence upon Closing, if the Commissioner has approved the Transitional Services Agreement: accounting, human resources, information technology systems, order processing and vendor support services.
- [36] At least 30 days prior to Closing, Holcim will provide the Commissioner with a draft of the proposed Transitional Services Agreement. Within 5 Business Days after receipt of the proposed Transitional Services Agreement, the Commissioner shall advise Holcim whether or not he approves the terms of the proposed agreement.
- [37] Under the Transitional Services Agreement, NASS Personnel may provide such back office and information technology services as contemplated in Paragraph 35 to the Divested Business for a period of up to 12 months from the date on which the Purchaser acquires the Divested Business.
- [38] Holcim shall develop, implement and monitor a system of access and data controls to prevent the unauthorized access or use of Confidential Information by NASS Personnel who perform services under the Transitional Services Agreement.
- [39] The Transitional Services Agreement shall include terms requiring:

- (a) Holcim to ensure compliance with the Transitional Services Agreement by NASS Personnel and enforce compliance with appropriate remedial action in the event of non-compliant access or use of Confidential Information by any NASS Personnel;
  - (b) Holcim to immediately notify the Monitor (or if there is no Monitor, the Commissioner) in the event of non-compliant access or use of Confidential Information by any NASS Personnel;
  - (c) Holcim to identify to the Commissioner any NASS Personnel and their positions or functions who access Confidential Information in performing services under the Transitional Services Agreement; and
  - (d) Any NASS Personnel who will be accessing Confidential Information under the Transitional Services Agreement to sign a statement confirming that he or she undertakes not to share any Confidential Information respecting the Divested Business with any of Holcim's Continuing Employees.
- [40] Holcim agrees to provide copies of all statements signed by NASS employees as contemplated in Paragraph 39(d) to the Monitor (or if there is no Monitor, the Commissioner).

### **VIII. EMPLOYEES**

- [41] To the extent that a Divestiture Agreement involves or will involve the sale or transfer of assets to a Purchaser, Holcim (during the Initial Sale Period), the Divestiture Trustee (during the Divestiture Trustee Sale Period) and the Hold Separate Manager (for the Hold Separate Employees) shall provide to any prospective Purchaser and to the Commissioner information relating to the employees whose responsibilities involve the operation of the Divestiture Assets (including the Hold Separate Assets), to enable such Purchaser to make decisions regarding offers of employment to such employees. The Monitor shall review the information provided to ensure that it is sufficient to enable the Purchaser to make such decisions. Holcim shall:
- (a) not interfere, directly or indirectly, with any negotiations by a Purchaser to employ any such employees;
  - (b) not offer any incentive to such employees to decline employment with the Purchaser or to accept other employment with Holcim;
  - (c) remove any impediment that may deter such employees from accepting employment with the Purchaser;
  - (d) waive any non-compete or confidentiality provisions of employment or other contracts that could impair the ability of such employees to be employed by the Purchaser; and

- (e) pay or transfer to or maintain for such employees subsequently employed by Purchaser all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of Holcim.
- [42] For a period of 1 year following completion of the Divestiture, Holcim shall not, without the prior written consent of the Commissioner, directly or indirectly solicit or employ any Persons employed in connection with the Divestiture Assets who have accepted an offer of employment with the Purchaser unless such Person's employment has been terminated by the Purchaser. However, this Section does not apply to any Person who responds to any general solicitation or advertisement not specifically directed at such Person or employees of the Divestiture Assets.
- [43] Notwithstanding the provisions of this Part VIII, in the event that Holcim's compliance with this Part VIII would otherwise constitute a breach of its obligations under a collective bargaining agreement to which it is a party, its compliance with the terms of such collective bargaining agreement will be deemed not to constitute a breach of this Part VIII, provided that, if such a circumstance arises, Holcim shall:
- (a) notify the Commissioner within 3 Business Days of the exercise of the collective bargaining right leading to the conflict between compliance with this Part VIII and the collective bargaining agreement; and
  - (b) within 10 Business Days of giving notice under Paragraph 43(a), take such action as is reasonably necessary and practicable to address the impact that compliance with its obligations under the relevant collective bargaining agreement has on the viability, marketability and competitiveness of one or more of the Divestiture Assets up to the time of the completion of the associated Divestiture.

#### **IX. FAILURE OF DIVESTITURE TRUSTEE SALE**

- [44] If, by the end of the Divestiture Trustee Sale Period, the Divestiture has not been completed, or if the Commissioner is of the opinion that the Divestiture likely will not be completed prior to the end of the Divestiture Trustee Sale Period, the Commissioner may apply to the Tribunal, at his election, for either (i) such order as is necessary to complete the Divestiture; or (ii) such order as is necessary to ensure that the Transaction is not likely to prevent or lessen competition substantially.

#### **X. MONITOR**

- [45] The Commissioner shall appoint a Monitor, responsible for monitoring compliance by Holcim with this Agreement and any Transitional Services Agreement. Such appointment may occur at any time following registration of this Agreement. A reference in this Agreement to specific monitoring functions or tasks that are to be undertaken by the Monitor shall in no way detract from the

Monitor's general power and duty to monitor all aspects of Holcim's compliance with this Agreement.

- [46] Within 5 Business Days after the appointment of the Monitor, Holcim shall submit to the Commissioner for approval the terms of a proposed Monitor Agreement with the Monitor and the Commissioner that transfers to the Monitor all rights and powers necessary to permit the Monitor to monitor compliance by Holcim with this Agreement.
- [47] Within 5 Business Days after receipt of the proposed Monitor Agreement referred to in Section 46, the Commissioner shall advise Holcim whether or not he approves the terms of the proposed Monitor Agreement. If the Commissioner does not approve the terms of the proposed Monitor Agreement, he shall prescribe alternative terms for the Monitor Agreement that Holcim shall incorporate into a final Monitor Agreement with the Monitor and the Commissioner.
- [48] Holcim consents to the following terms and conditions regarding the Monitor's rights, powers, duties, authority and responsibilities, and shall include such terms in the Monitor Agreement:
- (a) The Monitor shall have the power and authority to monitor Holcim's compliance with this Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of this Agreement and in consultation with the Commissioner.
  - (b) The Monitor shall have the authority to employ, at the expense of Holcim, such consultants, accountants, legal counsel and other representatives and assistants as the Monitor believes are necessary to carry out the Monitor's duties and responsibilities.
  - (c) The Monitor shall have no obligation or authority to operate or maintain the Divestiture Assets or Hold Separate Assets.
  - (d) The Monitor shall act for the sole benefit of the Commissioner, maintain all confidences and avoid any conflict of interest.
  - (e) The Monitor shall have no duties of good faith, of a fiduciary nature, or otherwise, to Holcim.
  - (f) The Monitor shall provide to the Commissioner every 30 days after the date of the Monitor's appointment, a written report concerning performance by Holcim of its obligations under this Agreement. The Monitor shall, within 3 Business Days, respond to any request by the Commissioner for additional information regarding Holcim's compliance.
- [49] Subject to any legally recognized privilege, Holcim shall provide to the Monitor full and complete access to all personnel, Records, information (including

Confidential Information) and facilities relevant to monitoring Holcim's compliance with this Agreement.

- [50] Holcim shall take no action that interferes with or impedes, directly or indirectly, the Monitor's efforts to monitor Holcim's compliance with this Agreement.
- [51] Holcim shall fully and promptly respond to all requests from the Monitor and shall provide all information the Monitor may request. Holcim shall identify an individual who shall have primary responsibility for fully and promptly responding to such requests from the Monitor on behalf of Holcim.
- [52] Holcim may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement in a form satisfactory to the Commissioner only; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commissioner.
- [53] The Commissioner may require the Monitor and each of the Monitor's consultants, accountants, legal counsel and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information the Monitor may receive from the Commissioner in connection with the performance of the Monitor's duties.
- [54] Holcim shall be responsible for all reasonable fees and expenses properly charged or incurred by the Monitor in the course of carrying out the Monitor's duties under this Agreement. The Monitor shall serve without bond or security, and shall account for all fees and expenses incurred. In the event of any dispute: (i) such account shall be subject to the approval of the Commissioner only; and (ii) Holcim shall promptly pay any account approved by the Commissioner.
- [55] Holcim shall pay all reasonable invoices submitted by the Monitor within 30 days after receipt. Any outstanding monies owed to the Monitor by Holcim shall be paid out of the proceeds of the Divestiture.
- [56] Holcim shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from malfeasance, gross negligence or bad faith by the Monitor.
- [57] Holcim shall indemnify the Commissioner and hold the Commissioner harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation or defence of any claim, whether or not resulting in any liability.

- [58] If the Commissioner determines that the Monitor has ceased to act or has failed to act diligently, the Commissioner may remove the Monitor and appoint a substitute Monitor. The provisions of this Agreement respecting the Monitor shall apply in the same manner to any substitute Monitor.
- [59] The Monitor shall serve such time as in the Commissioner's opinion is necessary to monitor Holcim's compliance with this Agreement.

## **XI. COMPLIANCE**

- [60] Within 5 Business Days after the Closing, Holcim shall provide written confirmation to the Commissioner of the date on which the Transaction was completed.
- [61] Holcim shall provide a copy of this Agreement to NASS Personnel, Designated Personnel, and each of Holcim's own and its Affiliates' directors, officers, employees and agents having managerial responsibility for any obligations under this Agreement, within 3 Business Days after the date of registration of this Agreement. Holcim shall ensure that its directors, officers, employees and agents with responsibility for any obligations under this Agreement receive sufficient training respecting Holcim's responsibilities and duties under this Agreement, and the steps that such individuals must take in order to comply with this Agreement.
- [62] Holcim shall not, for a period of 5 years after the date when the Divestiture is completed, directly or indirectly acquire any interest in the Divestiture Assets without the prior written approval of the Commissioner.
- [63] Six months after the date of registration of this Agreement and annually for the duration of this Agreement, and at such other times as the Commissioner may require, Holcim shall file an affidavit or certificate, substantially in the form of Schedule E to this Agreement, certifying its compliance with Parts VII, VIII and XI of this Agreement and setting out the following information in detail:
- (a) the steps taken to ensure compliance;
  - (b) the controls in place to verify compliance; and
  - (c) the names and titles of employees who have oversight of compliance.
- [64] If any of Holcim, the Hold Separate Manager, the Divestiture Trustee or the Monitor becomes aware that there has been a breach or possible breach of any of the terms of this Agreement, such Person shall, within 3 Business Days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach. Holcim shall provide confirmation of its compliance with this provision in all affidavits and certificates of compliance filed with the Commissioner pursuant to Section 63 of this Agreement.

**[65]** Holcim shall notify the Commissioner at least 30 days prior to:

- (a) any proposed dissolution of Holcim Ltd; and
- (b) any other change in Holcim, if such change may affect compliance obligations arising out of this Agreement, including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Holcim's incorporating statute.

**[66]** For the period commencing when this Agreement is registered and ending 2 years after the Divestiture is completed, for purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Holcim shall, upon written request given at least 3 Business Days in advance to Holcim, permit any authorized representative(s) of the Commissioner, without restraint or interference:

- (a) to access, during regular office hours of Holcim on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of Holcim related to compliance with this Agreement, which copying services shall be provided by Holcim at its expense; and
- (b) to interview such officers, directors or employees of Holcim as the Commissioner requests regarding such matters.

## **XII. DURATION**

**[67]** This Agreement shall become effective on the date when it is registered, and shall remain in effect for 5 years following the Divestiture, except that Parts II, III, IV, V and VI of this Agreement shall be effective only until the Divestiture is complete.

## **XIII. NOTICES**

**[68]** For a notice, report, consent, approval, written confirmation or other communication required or permitted to be given under this Agreement to be valid,

- (a) it must be in writing and the sending party must use one of the following methods of delivery: (1) personal delivery; (2) registered mail; (3) courier service; (4) facsimile; or (5) electronic mail; and
- (b) it must be addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

Commissioner of Competition



Competition Bureau Canada  
Place du Portage, 21st Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9

Attention: Commissioner of Competition  
Fax: (819) 953-5013  
Email address: MergerNotification@cb-bc.gc.ca

with copies to:

Executive Director and Senior General Counsel  
Competition Bureau Legal Services  
Department of Justice  
Place du Portage, 22nd Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9  
Fax: (819) 953-9267  
Email address: jonathan.chaplan@cb-bc.gc.ca

if to Holcim:

Xavier Dedullen  
Holcim Group Services Ltd.  
Hagenhoizstrasse 85  
CH - 8050 Zurich  
Switzerland  
Fax: +41 58 858 58 59  
Email address: xavier.dedullen@holcim.com

with a copy to:

Brian Facey  
Blake, Cassels & Graydon LLP  
199 Bay Street, Suite 4000, Toronto ON M5L 1A9  
Fax: 416-863-2653  
Email address: brian.facey@blakes.com

and

Madeleine Renaud and Don Houston  
McCarthy Tétrault LLP  
Suite 2500, 1000 De La Gauchetière Street West  
Montréal QC H3B 0A2  
Fax: 514-875-6246  
Email address: mrenaud@mccarthy.ca/dhouston@mccarthy.ca

[69] A notice, consent or approval under this Agreement is effective on the day that it is received by the receiving Party. A notice, consent or approval is deemed to have been received as follows:

- (a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;
- (b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip;
- (c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

If a notice is received after 5:00 p.m. local time, or on a day that is not a Business Day, then the notice shall be deemed to have been received on the next Business Day.

[70] Notwithstanding Sections 68 and 69, a notice, report, consent, approval, written confirmation or other communication that is not communicated in accordance with Sections 68 and 69 is valid if a representative of the Party to this Agreement that is the recipient of such communication confirms the receipt and sufficiency of such communication.

#### XIV. GENERAL

[71] In this Agreement:

- (a) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (b) **Time Periods** – Computation of time periods shall be in accordance with the Interpretation Act, and the definition of “holiday” in the Interpretation Act shall include Saturday.

[72] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Holcim hereby consents to such registration.

[73] Information in Confidential Schedule A shall be made public upon the expiry of the Initial Sale Period. Information in Confidential Schedule D shall be made public upon completion of the Divestiture.

- [74] The Commissioner may, after informing Holcim, extend any of the time periods contemplated by this Agreement. If any time period is extended, the Commissioner shall promptly notify Holcim of the revised time period.
- [75] Nothing in this Agreement precludes Holcim or the Commissioner from bringing an application under section 106 of the Act. Holcim will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions that: (i) the Transaction is likely to result in a substantial lessening and/or prevention of competition in the supply of cement in certain regional markets in Canada; and (ii) the implementation of this Agreement is necessary to ensure that any substantial lessening and/or prevention of competition will not result from the Transaction.
- [76] Holcim attorns to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.
- [77] This Agreement, together with the Hold Separate Management Agreement and the Monitor Agreement, constitutes the entire agreement between the Commissioner and Holcim, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [78] This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.
- [79] In the event of a dispute regarding the interpretation, implementation or application of this Agreement, the Commissioner or Holcim may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail. In no event shall any dispute suspend the Initial Sale Period or the Divestiture Trustee Sale Period.
- [80] This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

DATED this 4 day of May, 2015

**COMMISSIONER OF COMPETITION**

[Originally signed by Matthew Boswell]

\_\_\_\_\_

Name:	<u>Matthew Boswell</u>
Title:	<u>Acting Commissioner of Competition</u>

**HOLCIM LTD**

We have the authority to bind the corporation.

[Originally signed by Xavier Dedullen]

\_\_\_\_\_

Name:	<u>Xavier Dedullen</u>
Title:	<u>Chief Legal and Compliance Officer</u>

[Originally signed by Christof Hässig]

\_\_\_\_\_

Name:	<u>Christof Hässig</u>
Title:	<u>Head – Corporate Finance &amp; Treasury</u>

**CONFIDENTIAL SCHEDULE A**

**[CONFIDENTIAL]**

**SCHEDULE B**  
**CANADA BUSINESS**

<b><u>Cementitious Materials Facilities</u></b>	
<b>#</b>	<b><i>Plant</i></b>
1	HCA – Mississauga
2	HCA – Joliette
<b>#</b>	<b><i>Terminal</i></b>
1	HCA – Saskatoon
2	HCA – Selkirk
3	HCA – LaSalle
4	HCA – Longueuil
5	HCA – Moncton
6	HCA – Bedford
7	HCA – Corner Brook
8	HCA – Argentia
9	HCA – Long Pond
10	HCA – Nepisiguit
11	HUS – Buffalo
12	HUS – Cleveland
13	HUS – Detroit
14	HUS – Duluth
15	HUS – Dundee
<b><u>Aggregates Assets</u></b>	
<b>#</b>	<b><i>Pit</i></b>
1	DFA – Aberfoyle
2	DFA – Bethany
3	DFA – Blair
4	DFA – Breslau
5	DFA – Butler
6	DFA – Millcreek
7	DFA – Mosport
8	DFA – Paris
9	DFA – Simcoe
10	DFA – Cook
11	DFA – White
12	DFA – Hampshire Mills
13	DFA – Eubanks
14	DXA – St. Telesphore
<b>#</b>	<b><i>Quarry</i></b>
1	DFA – Milton
2	DFA – Flamboro

3	DFA – Carden
4	DFA – Cayuga
5	DFA – Buckhorn
6	DFA – Acton
7	DXA – St-François
8	DXA – Varennes
9	DXA – Laval
10	DXA – Mirabel
<b><u>Ready-Mix Concrete Plants</u></b>	
<b>#</b>	<b><i>Plant</i></b>
1	DC – Aylmer
2	DC – Niagara Falls
3	DC – Mississauga
4	DC – Toronto (2 plants on this site)
5	DC – Burlington
6	DC – Scarborough
7	DC – Maple
8	DC – Markham
9	DC – Etobicoke
10	DC – Whitby
11	DC – Malton
12	DC – Georgetown
13	DC – Hamilton
14	DC – Bowmanville
15	DC – Beamsville
16	DC – Welland
17	DC – Kitchener
18	DC – Guelph
19	DC – Cambridge
20	DC – Tillsonburg
21	DC – London
22	DC – Stratford
23	DC – Simcoe
24	DC – Bradford
25	DC – Peterborough
26	DC – Port Hope
27	DC – Innisfil
28	DC – Niagara Tunnel Plant 1
29	DC – Niagara Tunnel Plant 2
30	ORM – Etobicoke
31	ORM – Pickering
32	ORM – Milton
33	ORM – Toronto Plant
34	DXB – Longueuil
35	DXB – LaSalle

36	DXB – Laval
37	DXB – St-Eustache
38	DXB – Mont-Tremblant
39	DXB – Valleyfield
40	DXB – Terrebonne
41	DXB – Vaudreuil
42	DXB – Sherbrooke
43	DXB – Drummondville
44	DXB – Québec
45	DXB – Levis
<b><u>Construction Facilities</u></b>	
<b>#</b>	<b><i>Asphalt Plant</i></b>
1	DCC – Bronte
2	DCC – Hamilton
3	DCC – Asphalt Plant (Closed)
4	DCC – Simcoe
5	DCC – London Plant (Leased Lafarge Property)
6	DCC – Brantford
7	DCC – Breslau
8	DCC – Blair
9	DCC – Hwy 400
10	DXC – St. Martin
11	DXC – Saulnier
<b>#</b>	<b><i>Other Sites</i></b>
1	DCC – Head Office
2	DCC – Southwest Office
3	DCC – Maintenance Shop & Office
4	DCC – London Maintenance Shop & Office
5	DCC – Oakville Construction Yard
6	DCC – Hamilton Construction (Nebo) Yard
7	DCC – London Construction Yard
8	DXC – Office
9	DXC – Garage



## SCHEDULE C

## ALBERTA BUSINESS

<b><u>Cementitious Materials Facilities</u></b>	
<b><u>#</u></b>	<b><i>Plant</i></b>
1	HUS – Trident
<b><u>#</u></b>	<b><i>Terminal</i></b>
1	HCA – Edmonton
2	HCA – Lethbridge

**CONFIDENTIAL SCHEDULE D**

**[CONFIDENTIAL]**

**CONFIDENTIAL SCHEDULE E**

**[CONFIDENTIAL]**