



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

Dated: 07.09.2016

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

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

Order in continuation of the Supplementary Order dated 03.02.2016 and Order dated 30.03.2015 issued under Section 31(7) of the Competition Act, 2002

1. On 14.07.2014, the Competition Commission of India (“**Commission**”) received a notice (“**Notice**”) under Section 6(2) of the Competition Act, 2002 (“**Act**”) given by Holcim Ltd. (“**Holcim**”) and Lafarge S.A. (“**Lafarge**”) (erstwhile Holcim and Lafarge and now “LafargeHolcim” are collectively referred to as the “**Parties**”). The combination relates to acquisition of Lafarge by Holcim (“**Combination**”).
2. The Commission in its meeting held on 30.03.2015 considered and approved the Combination with modification by passing an order dated 30.03.2015 under Section 31(7) of the Act (“**Order**”).
3. In accordance with paragraph 53 of the Order, the Parties submitted a detailed proposal along with the Business Transfer Agreement (hereinafter referred to as “**BTA**”) and Transitional Support Agreement for approval of the Commission on 26.08.2015.
4. The Commission considered the proposal in its meeting held on 10.09.2015. The Commission noted that as per the BTA, obtaining all approvals necessary for the transfer of the mining lease and the mineral rights was one of the conditions precedent for sale of the Divestment Business. However, given the uncertainty regarding transfer of mining leases on account of amendment in the Mines and Minerals (Development and Regulation) Act, 1957, the Commission sought clarifications from the Parties regarding the transfer of mining leases under the BTA.
5. The Parties requested for extension of the timelines mentioned in paragraph 28 of the Order, (i.e., the timelines by which the Parties were required to execute the approved sale and purchase agreement with the approved purchaser) from 29.09.2015 to



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30.10.2015. The Commission considered the request of the Parties in its meeting held on 21.09.2015 and decided to grant the extension, as requested.

6. On 23.10.2015, the Parties, in order to ensure compliance with the Order, submitted an alternative proposal envisaging sale of 100 percent of the share capital of Lafarge India (hereinafter referred to as “**Alternative Proposal**”).
7. The Commission considered the Alternative Proposal submitted by the Parties, in form of a share sale option which contemplates sale of 100 percent of the share capital of Lafarge India to one strategic and/or one or more financial investors and approved the same, by passing a Supplementary Order dated 03.02.2016 (“**Supplementary Order**”), subject to the purchaser(s) meeting the Purchaser Requirements as laid down in paragraph 52 of the Order.
8. In terms of paragraph 27 of the Order, the Parties were required to seek prior approval of the Commission regarding (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. Further, as per paragraph 53 of the Order as amended by the Supplementary Order, the Parties were required to submit a fully documented and reasoned proposal(s), including a copy of the final and binding sale and purchase agreement(s) to the Commission for its approval within a period of 6 months from the date of communication of the Supplementary Order. In accordance with the said requirement, the Parties submitted a detailed proposal along with the agreed form of the Securities Purchase Agreement (“**SPA**”) and the Transitional Support Agreement (“**TSA**”), on 19.07.2016 (“**Proposal**”). In the Proposal, the Parties identified Nirma Limited (“**Nirma**”), a company incorporated in India, for divestment of Divestment Business (as defined in the Supplementary Order).
9. In terms of Regulation 27 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”) and Paragraph 55 of the Order, the Commission appointed Mazars LLP as the monitoring agency in the present case (“**Monitoring Agency**”) for the purpose of supervision of the modification. As per paragraph 56(ix) of the Order, the Monitoring Agency was inter-alia required to submit a report containing



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its recommendations as regards (a) the suitability of the purchaser proposed by the Parties in accordance with paragraph 52 of the Order; (b) whether the Divestiture is being carried in accordance with the Order. A report covering the aforesaid aspects was submitted by the Monitoring Agency on 02.08.2016 (“**Report**”).

10. The Commission considered the Report and the information contained in the Proposal in order to assess: (i) whether Nirma meets the requirements laid down in paragraph 52 of the Order; and (ii) whether the SPA and the TSA proposed to be entered into by the Parties and Nirma, are in accordance with the provisions of the Order and the Supplementary Order.
11. The Commission noted that as per the Purchaser Requirements contained in the paragraph 52 of the Order, the proposed purchaser 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.
12. As regards the issue of Nirma meeting the aforesaid Purchaser Requirements, the Commission, on the basis of the reports of the Monitoring Agency and the information given by the Parties and Nirma as part of Proposal, decided to seek further information relating to Nirma’s business plans, integration plans and financial plans relating to the acquisition of Divestment Business.



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13. As regards the issue of terms of SPA and TSA being in conformity with the Order and the Supplementary Order, the Commission noted that vide Paragraph 53 of the Order as amended by the Supplementary Order required that the purchaser of the divestment business shall not transfer any of its shares to any third party within 18 months from the date of acquisition of such shares without approval of the Commission. Since the SPA did not contain any such clause, the Commission, therefore, decided that a clause to this effect needs to be incorporated in the SPA.
14. In accordance with the directions of the Commission, vide letter dated 02.09.2016, the Parties and the proposed purchaser were asked to submit the aforesaid information/clarifications regarding the ability of Nirma to run the Divestment Business and to amend the SPA to include a clause in terms of requirements contained in paragraph 53 of the Order as amended by the Supplementary Order. The response to said letter was received on 05.09.2016. The Parties and the proposed purchaser submitted details of Nirma's business plans and integration plans of Divestment Business and financial plans. Furthermore, the Parties submitted that they will incorporate a clause in SPA to comply with the aforesaid directions of the Commission in terms of paragraph 53 of the Order as amended by the Supplementary Order.
15. After considering report of the Monitoring Agency and information/clarification(s), submitted by the Parties and the proposed purchaser on 05.09.2016, the Commission noted that Nirma meets the Purchaser Requirements as contained in paragraph 52 of the Order and approved Nirma as the purchaser of Divestment Business. As regards the terms of SPA and TSA, as agreed between the Parties and Nirma, in relation to the Divestment Business, the Commission approved the same subject to inclusion of a clause in the SPA in accordance with the requirements of paragraph 53 of the Order as modified by the Supplementary Order.
16. In terms of Paragraph 29 of the Order, the Parties are required to ensure that Closing (as defined in the Order) takes place within the First Divestiture Period (as defined in the Order and amended by the Supplementary Order). The Parties are further required to submit a compliance report to the Commission in accordance with Regulation 26 of the Combination Regulations.



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17. This order shall stand revoked if, at any time, the information provided by the Parties or Nirma is found to be incorrect.
18. The Secretary is directed to communicate to the Parties accordingly.