



## **Final Report of the Hearing Officer<sup>1</sup>**

### **Holcim / Cemex West**

**(COMP/M.7009)**

#### **I. BACKGROUND**

1. On 3 September 2013, the European Commission (the "Commission") received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation<sup>2</sup> by which Holcim Beteiligungs GmbH (Deutschland) ("Holcim") intends to acquire sole control over part of the activities in cement, ready-mix concrete, aggregates and cementitious materials of Cemex Group in western Germany and to some minor extent in France and the Netherlands (together "Cemex West") within the meaning of Article 3(1)(b) of the Merger Regulation (the "Transaction").
2. Under a Memorandum of Understanding signed on 12 July 2013, the Transaction is related to and dependant on other transactions by which Cemex Group will acquire control of the whole of Holcim's activities in cement, ready-mix concrete and aggregates in the Czech Republic and Spain. The transactions are not assessed under the Merger Regulation as a single concentration as control is not acquired by the same undertaking.<sup>3</sup>
3. The Transaction has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

#### **II. PROCEDURE**

4. By decision of 22 October 2013, the Commission initiated proceedings according to Article 6(1)(c) of the Merger Regulation. On 23 October 2013, Holcim was given access to non-confidential versions of certain key documents collected during the first phase investigation. On 5 November 2013, Holcim submitted its written

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<sup>1</sup> Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings ("Decision 2011/695/EU"), OJ L 275, 20.10.2011, p. 29.

<sup>2</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the "Merger Regulation"), OJ L 24, 29.1.2004, p. 1.

<sup>3</sup> The parallel transactions relating to the acquisition of Holcim activities in the Czech Republic and in Spain do not have an EU dimension within the meaning of Article 1(2) of the Merger Regulation. The acquisition of the Spanish activities of Holcim is however being reviewed by the Commission following a decision to accept the referral request made under Article 22(1) of the Merger Regulation by the Spanish Competition Authority (case COMP/M.7054 Cemex / Holcim Assets). The Czech Competition Authority did not join the referral request and examined Cemex's acquisition of Holcim's assets in the Czech Republic under the national merger control rules. The Czech Competition Authority approved the transaction on 12 March 2014.

response to the Article 6(1)(c) decision and, on 9 January 2014, Holcim submitted an amended and extended version of its written response.

### **Germany's referral request**

5. On 26 September 2013, the German Competition Authority submitted a full referral request of the Transaction from the Commission to Germany under Article 9(2)(a) of the Merger Regulation. On 3 January 2014, the Commission adopted a decision pursuant to Article 9(3) of the Merger Regulation rejecting the referral request because in the present case there are no affected markets for grey cement which present all the characteristics of distinct markets within Germany and do not exceed the territory of Germany.

### **Suspension and extension of the time limit**

6. Following failure of the parties to supply certain information within the set deadline of 11 November 2013, on 14 November 2013 the Commission issued two decisions under Article 11(3) of the Merger Regulation requesting Holcim and Cemex to supply the information. Consequently, the time limit to review the concentration referred to in Article 10 of the Merger Regulation was suspended between 12 November and 2 December 2013. On 22 January 2014, the Commission issued a third decision under Article 11(3) of the Merger Regulation requiring Holcim to supply information which had been requested on 14 November 2014 but which Holcim had not provided yet. The time limit to review the Transaction was suspended again between 19 December 2013 and 27 February 2014.
7. Under Article 10(3) of the Merger Regulation, following Holcim's request, the time limit to review the Transaction was extended by 20 working days on 17 January 2014.

### **Scope of requests for information**

8. By letters of 25 November and 26 November 2013 respectively, Cemex España S.A. (the undertaking controlling the assets and businesses to be transferred to Holcim) and Holcim requested my intervention under Article 4(1) of Decision 2011/695/EU in order to safeguard their procedural and defence rights in relation to a request for information of 18 November 2013 under Article 11(2) of the Merger Regulation.
9. Having reviewed their requests, I informed Cemex and Holcim that I was not competent to intervene under Article 4(1) of Decision 2011/695/EU because it is not applicable in the investigation phase of merger proceedings initiated by a notification and leading to either an authorisation or a prohibition decision.<sup>4</sup>

### **Third persons**

10. The representatives of the employees at Holcim ("Forum Européen") demonstrated sufficient interest within the meaning of Article 18(4) of the Merger Regulation and

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<sup>4</sup> Article 4(1) of Decision 2011/695/EU only applies in the context of the exercise of the Commission's powers of investigation under Chapter V of Regulation No 1/2003 or in proceedings that can result in the imposition of fines pursuant to Article 14 of the Merger Regulation.

were thus recognized as interested third persons. They received information of the nature and subject matter of the procedure and were given the opportunity to make known their views.

### **III. DRAFT DECISION**

11. The draft decision provides for an unconditional clearance of the proposed Transaction. Pursuant to Article 16(1) of Decision 2011/695/EU, upon its review, I conclude that the draft decision deals only with objections in respect of which the parties have been afforded the opportunity to make known their views.
12. In view thereof, I conclude that the effective exercise of the procedural rights of all parties has been respected in this case.

Brussels, 21 May 2014

(signed)  
Joos STRAGIER