



**Final Report of the Hearing Officer<sup>1</sup>  
Cemex / Holcim Assets  
(COMP/M.7054)**

**I. INTRODUCTION**

1. On 28 February 2014, the European Commission (the "Commission") received a notification of a proposed transaction by which Cemex España, S.A. ("Cemex España" or the "Notifying Party") will acquire sole control over the production and distribution assets of Holcim España, S.A. ("Holcim Assets") in cement, ready-mix concrete, aggregates and mortar in Spain (the "Transaction").<sup>2</sup> The Holcim Assets are fully controlled by Holcim Ltd. ("Holcim").
2. The Transaction does not have an EU dimension within the meaning of Article 1 of the Merger Regulation.<sup>3</sup> The Transaction was notified to the Commission following a referral request by the Spanish Competition Authority under Article 22(1) of the Merger Regulation on 12 September 2013. The Commission accepted the referral request by decision of 18 October 2013.<sup>4</sup>

**II. WRITTEN PROCEDURE**

3. On 23 April 2014, the Commission found that the Transaction raised serious doubts as to its compatibility with the internal market and the EEA Agreement and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation. The Notifying Party submitted written comments on 6 May 2014.

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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, OJ L 275, 20.10.2011, p. 29 ("Decision 2011/695/EU").

<sup>2</sup> The Transaction does not include Holcim Trading, S.A., a company headquartered in Spain, active in the trading and transport of cementitious products worldwide.

<sup>3</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

<sup>4</sup> Under a memorandum of understanding signed on 12 July 2013, Cemex will also acquire Holcim's assets in the Czech Republic (the "Czech transaction") while Holcim will acquire Cemex's assets in Western Germany (the "German transaction"). The Czech transaction does not meet the turnover thresholds of the Merger Regulation. However, the Czech Office for the Protection of Competition did not join Spain's referral request and examined Cemex's acquisition of Holcim's assets in the Czech Republic under the national merger control rules. The Czech Office for the Protection of Competition approved the transaction on 12 March 2014. The German transaction has an EU dimension and was cleared unconditionally by the Commission on 5 June 2014 (COMP/M.7009 Holcim / Cemex West).

4. On 3 July 2014, the Commission adopted a Statement of Objections ("SO") addressed to the Notifying Party, in which it took the preliminary view that the Transaction was incompatible, within the meaning of Article 2(3) of the Merger Regulation, with the internal market and the EEA Agreement.
5. The Notifying Party replied on 17 July 2014 and requested the opportunity to develop its arguments at a formal oral hearing. Holcim was also informed of the objections and submitted written observations on 17 July 2014.
6. The Notifying Party received access to the file via CD-ROM on 4 July 2014 and on 22 July 2014.
7. Pursuant to Article 10(3) of the Merger Regulation, the Commission extended the time limit to review the Transaction by five working days on 28 July 2014.
8. The representatives of the employees at the works council of Holcim ("Forum Européen") demonstrated sufficient interest within the meaning of Article 18(4) of the Merger Regulation and 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. ORAL PROCEDURE**

9. The oral hearing was held on 23 July 2014. It was attended by representatives of Cemex España and Holcim as well as their external legal and economic advisers; the relevant Commission services; and representatives of the competition authorities of four Member States. At its request, the Notifying Party presented its economic assessment of the case in a closed session.

### **IV. CONCLUSION**

10. The draft decision provides for an unconditional clearance of the proposed Transaction. Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which the parties have been afforded the opportunity of making known their views, and I have come to a positive conclusion. Overall, I conclude that all parties have been able to effectively exercise their procedural rights in this case.

Brussels, 29 August 2014

(signed)  
Joos STRAGIER