

Mr David Hatfield
A/g General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

11 March 2008
Matter 81319642

Dear Sir

CEMEX Australia Pty Limited
Application for revocation of A90769 and substitution by A91082

We refer to the Commission's letter dated 29 February 2008 to Mr Paul Evans of this office.

We note that, as indicated by the subject line to this letter and foreshadowed by footnote 1 to our client's submissions, our client's name has changed to "CEMEX Australia Pty Limited". It has ceased to trade as "Readymix Concrete", and now trades as "CEMEX".

Following the numbering in Attachment A to the Commission's letter, we have been instructed to respond to the Commission's questions as follows:

- 1 The reference to "bargaining group" on page 10 of our client's submissions, and any other collective reference to LODs hired by CEMEX, is not a reference to any collective bargaining by the LODs vis-à-vis CEMEX. It is simply the term chosen at that point to describe the group of persons that contract with CEMEX as LODs, and is not intended to indicate the basis on which those contract negotiations occur. This negotiation and contracting process occurs with each LOD separately, and this is consistent with the statement that the Commission has noted on page 6 of our client's submissions.
- 2 Changes to the number of CEMEX company trucks in Western Australia occurred as follows:
 - (a) September 2004: increase from 1 to 5
 - (b) December 2004: increase from 5 to 10
 - (c) June 2005: increase from 10 to 14
 - (d) September 2006: increase from 14 to 17
- 3 If CEMEX were to further increase the number of trucks in its fleet, this might be done by either additional company trucks or the hiring of further LODs. Which of these options is more likely to be taken will depend on the availability of spare company trucks elsewhere, at the time. If there are available company trucks in other areas of the company's business (or that of its related entities, including in the eastern states or even overseas), then it might be simpler and more efficient for CEMEX to utilise those assets in Western Australia than to hire an additional LOD.

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- 4 The EOT System currently operates with a margin of $\pm 10\%$. It was increased to this amount in 2007, as CEMEX found that, since 2003, $\pm 5\%$ provided inadequate flexibility for the EOT System in that LODs were being required to shift batching plants too frequently. This was unnecessarily inefficient.
- 5 Any other tasks performed by CEMEX employee drivers are separate from the operation of the EOT System, which is exclusively for the transportation of pre-mixed concrete from batching plants to customers. The additional tasks that may be performed by employee drivers are many and varied, but generally relate to the operation of the batching plants and are described in the terms of the employees' collective agreement with CEMEX.
- 6 Please see the attached table of the specifications and capacities of the trucks in the Western Australian CEMEX fleet.
- 7 No – save for differences in agitator capacity, the remuneration rates paid to LODs are uniform.
- 8 No – the Australian standard by which CEMEX manufactures pre-mixed concrete recommends that all such concrete be poured within 90 minutes of mixing. This also applies to the higher quality products to which page 4 of our client's submissions refers.

If the Commission requires any further information, please contact the writer (who has now returned from leave).

Yours sincerely



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Truck number	Plant Number	Plant Name	Property (Company)		Truck Size (Wheels)	Brand	Model Year	Agitator capacity (m3)
			Own / LOD	COMPANY				
8283	5678	East Perth	COMPANY	COMPANY	8	Iveco	2004	7
8284	5686	Wanneroo	COMPANY	COMPANY	8	Iveco	2004	7
8291	5678	East Perth	COMPANY	COMPANY	8	Iveco	2004	7
8292	5686	Wanneroo	COMPANY	COMPANY	8	Iveco	2004	7
8360	5677	Bibra Lake	COMPANY	COMPANY	6	Mack	2004	5.8
8361	5677	Bibra Lake	COMPANY	COMPANY	6	Mack	2004	5.8
8362	5677	Bibra Lake	COMPANY	COMPANY	6	Mack	2004	5.8
8364	5687	Welshpool	COMPANY	COMPANY	8	Iveco	1998	7
8365	5678	East Perth	COMPANY	COMPANY	8	Iveco	1998	7
8372	5680	Gosnells	COMPANY	COMPANY	6	Ford	1999	5.6
8374	5687	Welshpool	COMPANY	COMPANY	8	Iveco	1998	7
8375	5687	Welshpool	COMPANY	COMPANY	8	Iveco	1998	7
8378	5680	Gosnells	COMPANY	COMPANY	6	Iveco	1998	5.4
8389	5678	East Perth	COMPANY	COMPANY	6	mitsubishi	1993	5
8390	5685	Rockingham	COMPANY	COMPANY	6	mitsubishi	1992	5
8392	5678	East Perth	COMPANY	COMPANY	6	Ford	1995	5.4
8394	5678	East Perth	COMPANY	COMPANY	6	isuzu	2001	5.6
8213	5680	Gosnells	LOD	LOD	6	Mack	2005	5.8
8214	5678	East Perth	LOD	LOD	6	Hino	2004	5.6
8215	5679	Gnangara	LOD	LOD	6	isuzu	2001	5.6
8216	5685	Rockingham	LOD	LOD	6	isuzu	1999	5.6
8217	5681	Mandurah	LOD	LOD	6	isuzu	2006	5.6
8218	5687	Welshpool	LOD	LOD	6	isuzu	2007	5.6
8220	5677	Bibra Lake	LOD	LOD	6	Hino	2003	5.6
8221	5679	Gnangara	LOD	LOD	6	isuzu	2002	5.6
8223	5680	Gosnells	LOD	LOD	6	Ford	1997	5.6
8224	5679	Gnangara	LOD	LOD	6	isuzu	2007	5.6
8226	5681	Mandurah	LOD	LOD	6	Mack	2005	5.8
8227	5680	Gosnells	LOD	LOD	6	isuzu	2006	5.4
8230	5678	Bibra lake	LOD	LOD	6	isuzu	2007	5.6
8232	5680	Gosnells	LOD	LOD	6	isuzu	2007	5.6
8233	5686	Wanneroo	LOD	LOD	6	isuzu	2007	5.6
8234	5678	East Perth	LOD	LOD	6	isuzu	2007	5.6
8235	5685	Rockingham	LOD	LOD	6	isuzu	2007	5.6

8236	5679	Gnangara	LOD	6	isuzu	2005	5.8
8238	5678	East Perth	LOD	6	Kenworth	2006	5.8
8239	5686	Wanneroo	LOD	6	isuzu	2003	5.6
8242	5678	East Perth	LOD	6	isuzu	2007	5.6
8243	5680	Gosnells	LOD	6	Hino	2004	5.4
8245	5687	Welshpool	LOD	6	isuzu	1999	5.6
8246	5679	Gnangara	LOD	6	isuzu	2002	5.6
8248	5678	East Perth	LOD	6	isuzu	1999	5.6
8255	5678	East Perth	LOD	6	isuzu	2002	5.6
8257	5678	East Perth	LOD	6	isuzu	2007	5.6
8258	5677	Bibra Lake	LOD	6	Mack	2005	5.8
8259	5678	East Perth	LOD	6	Friegthliner	1996	5.4
8260	5685	Rockingham	LOD	6	isuzu	2001	5.6
8263	5678	East Perth	LOD	6	Friegthliner	1996	5.6
8266	5679	Gnangara	LOD	6	isuzu	1999	5.6
8267	5686	Wanneroo	LOD	6	Mack	2005	5.8
8268	5677	Bibra Lake	LOD	6	isuzu	2000	5.6
8273	5687	Welshpool	LOD	6	isuzu	2001	5.6
8276	5687	Welshpool	LOD	6	isuzu	2003	5.6
8279	5685	Rockingham	LOD	6	isuzu	2003	5.6
8294	5685	Rockingham	LOD	6	isuzu	2000	5.6
8295	5678	East Perth	LOD	6	isuzu	2002	5.6
8297	5677	Bibra Lake	LOD	6	isuzu	2001	5.6
8299	5686	Wanneroo	LOD	6	Ford	1994	5.6
8321	5681	Mandurah	LOD	6	International	1999	5.6
8343	5685	Rockingham	LOD	6	Mack	2005	5.8
8347	5686	Wanneroo	LOD	6	isuzu	2001	5.6
8348	5686	Wanneroo	LOD	6	isuzu	2001	5.6
8371	5685	Rockingham	LOD	6	isuzu	2006	5.6
8376	5687	Welshpool	LOD	6	isuzu	2007	5.6
8377	5685	Rockingham	LOD	6	Hino	1999	5.6
8387	5685	Rockingham	LOD	6	Ford	1998	5.6
8388	5687	Welshpool	LOD	6	Hino	2005	5.6