

Mr David Hatfield
A/g General Manager
Adjudication Branch
Australian Competition and Consumer
Commission
23 Marcus Clarke Street
CANBERRA ACT 2601

18 April 2008
Matter 81319642
By email

Dear Sir

CEMEX Australia Pty Ltd application for revocation and substitution A91082

We refer to your letter dated 8 April 2008, attaching an outline of submissions of interested parties.

We have been instructed to respond to that outline as follows (using the headings in the outline).

1 Improved efficiency of operations

We note the statement that *"a LOD is unable to make a material impact on the amount of concrete carted or distance over which that concrete is carted"*, and the related submissions with respect to LODs' inability to determine the amount of concrete that they carry. The object of the EOT System is not to give each LOD such a discretion: it is not for the LODs to choose the trips they take (and the quantities of concrete required by the customers for each trip). The terms of each of their contracts with CEMEX require that they take such loads as directed by CEMEX (within the limits imposed by the EOT System).

The allocation system applied at each batching plant is similar to a "cab rank" system: the LODs queue to take jobs from the plant to customers, and must accept whichever job is presented to them when they reach the front of the queue. Queue positions are alternated in order to ensure fairness: for example, a LOD who is first in line one day, will be placed last in line the next day. There is no discretion as to the amount of concrete carried by an LOD, save any job assignment adjustments that need to be made to take account of agitator capacity.

It is in this latter respect that CEMEX submits there is improved efficiency of operations from the EOT System. The manner of calculation of points under the EOT System provides an incentive for loads to be allocated to those trucks whose capacities most closely match the quantities of concrete to be carted (which CEMEX attempts to do at each batching plant), and an incentive for each LOD to accept as much concrete as the truck will take (and is proposed to be loaded by CEMEX).

Further efficiencies derive from the EOT System in that it gives an LOD the ability to finish a day's work early. Most pre-mixed concrete is delivered before 1pm each day. After that time, usually only about half the fleet is required to work. The truck "knock off" roster is derived from the EOT System at each plant, whereby the truck with the highest number of EOT points is offered the opportunity to finish work for the day first, and so on

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down the order until the trucks that remain either wish to continue working or need the opportunity to make up more points.

[COMMERCIALY-SENSITIVE INFORMATION REMOVED]

The submissions with respect to the LODs' terms of contract with CEMEX have nothing to do with the merits of the EOT System. CEMEX submits that the Commission ought not be drawn into a discussion about the LODs' terms of contract, save to note the following:

- the EOT System is not a collective bargaining regime – each LOD is separately offered standard terms of contract with CEMEX which the LOD may either accept or reject;
- if the LODs are dissatisfied with their terms of contract, then that is an indication that there has been hard negotiation between the parties in a proper competitive process; and
- the making of submissions with respect to CEMEX's application to the Commission is not an opportunity for the LODs to negotiate more favourable terms with CEMEX.

2 Improved industrial harmony

2.1 EOT margin

The applicable margin for the EOT System is still $\pm 5\%$, but has been allowed to extend as far as $\pm 10\%$, so that a particular LOD is not shifted from a plant at which it would prefer to remain (notwithstanding the reduced opportunities it may experience at that plant) due to, for example, the fact that it may live near that plant.

This change was agreed at a meeting in 2007 between representatives of the LODs and CEMEX. CEMEX understood that the appointed representatives of the LODs would inform the balance of the LODs of the change in application of the EOT System.

There is currently no proposal to change the margin further, however if the LODs would prefer that the margin remain at $\pm 5\%$ at all times, CEMEX is happy to apply this figure uniformly.

2.2 Monthly equalisation of workload

Ordinarily, the EOT calculation is performed at the end of each month. However, many of the CEMEX staff who are usually involved in this process have been on annual leave in the past 6 months, and this has contributed to the calculation not being able to be performed since November. However, this does not mean that the EOT System has not been applied during this time: the calculations are performed on the basis of all data since the previous calculation, such that regard has simply been had to a fleet average over a longer period. Furthermore, the Perth market has been very busy during this time: there has been little need to move LODs that are not being given adequate opportunities.

CEMEX does not agree that any delay in the calculation of the EOT results *"in some LODs having to work up to 12-14 hours per day to meet fleet average"*. Nor does CEMEX agree that *"fluctuations in workload have led to driver fatigue and negatively impacted on cash flow management"*.

It is for the LODs to manage their time: the EOT System provides each LOD a fair opportunity to share in the quantity and quantum (in terms of load size and distance) of trips available. How the LOD chooses to manage its opportunities is up to the LOD.

There have been occasional instances of trucks working 14 hours in a day in the past year. However, the most times any single truck worked more than 11 hours in a day over this period was 7 times, and at no stage did this occur on consecutive days.

2.3 Calculation of trips and points

Calculation of points under the EOT System occurs in the manner set out in the EOT Guidelines previously submitted to the Commission by CEMEX: the points are calculated on the basis of trips (taking into account load size and distance travelled), not utilisation rate. As noted above, this ordinarily occurs at the end of each month.

If, in a particular period, a LOD has had several trips where less than a full load has been carried (whereas the other LODs have had close to full loads), that LOD will be given the opportunity to do extra trips.

2.4 Company trucks

Again, submissions with respect to negotiations over size of truck as between LODs and CEMEX have nothing to do with the merits of the EOT System. CEMEX again submits that the Commission ought not be drawn into these discussions. Suffice it to say that, while LODs have made enquiries of CEMEX with respect to 8 wheeler trucks, no LOD has sought to use such a truck save those 8 wheeler trucks identified in the attachment to our letter to the Commission dated 11 March 2008.

The shifting of points between trucks does occur. This policy was first introduced following a meeting between representatives of CEMEX and the LODs on 7 November 2002 (at which stage CEMEX had only 1 company truck), at the request of LODs who had more than 1 truck in the fleet. It was requested so that a truck from a low use plant would not necessarily have to be moved to a high use plant, if the LOD had another truck from which points could be shifted. This was desirable because it allowed the drivers of these trucks to continue to work at plants closer to where they lived.

3 More effective input into contracts

Again, submissions with respect to the LODs' terms of contract with CEMEX have nothing to do with the merits of the EOT System. CEMEX again submits that the Commission ought not be drawn into a discussion about the LODs' terms of contract.

4 Environmental benefits

CEMEX makes no response to these submissions, save to:

- (a) repeat its original submissions on the issue; and
- (b) note that the trips on which agitator wash-out is most likely to be required is on loads of coloured concrete and kerb concrete. A LOD will tend to stay on coloured concrete or kerb concrete for the next few loads to reduce the need to wash-out. As these are generally small loads, under the EOT System, the LODs who take them will generally be given the opportunity to do additional trips immediately thereafter, which in itself reduces the frequency with which there needs to be a wash-out of the agitator.

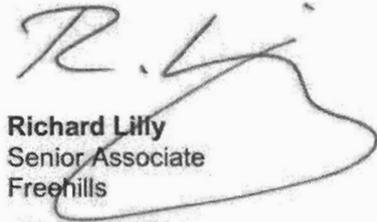
5 Public safety benefits

CEMEX makes no response to these submissions, save to repeat its original submissions on the issue.

Freehills

If the Commission requires any further information, please contact the writer. Otherwise, we look forward to receiving a draft Determination in due course.

Yours sincerely



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