

## MONITOR AGREEMENT

This Monitor Agreement (this "Agreement") entered into this June 2, 2016 by and among William Hill (the "**Monitor**"), Italcementi SpA ("**Italcementi**"), and HeidelbergCement AG ("**Heidelberg**" and, together with Italcementi, the "**Respondents**"), and provides as follows:

**WHEREAS**, the United States Federal Trade Commission (the "**Commission**") has accepted or will shortly accept for public comment an Agreement Containing Consent Order, including a proposed Decision and Order and a proposed Order to Maintain Assets ("Asset Maintenance Order" and collectively, the "Orders"), which, among other things, requires the divestiture of certain plant and terminal assets, as defined in the Orders, and contemplates the appointment of a Monitor to monitor Respondents' compliance with their obligations under the Orders;

**WHEREAS**, the Commission has appointed William Hill as Monitor pursuant to the Orders, and William Hill has consent to such appointment;

**WHEREAS**, the Orders further provide that Respondents shall execute an agreement, subject to the prior approval of the Commission, that confers all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the terms of the Orders; and

**WHEREAS**, the parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

**NOW, THEREFORE**, the Parties agree as follows:

All capitalized terms used in this Agreement and not specifically defined herein shall have the respective definitions given to them in the Orders.

### ARTICLE I

**1.1 Monitor's Responsibilities.** The Monitor shall be responsible for monitoring Respondents' compliance with their obligations as set forth in the Orders and the Divestiture Agreements, as defined in the Orders ("Monitor's Responsibilities").

**1.2 Access to Relevant Information and Facilities.** The Monitor shall have full and complete access to the personnel, facilities, books, and records of Respondents related to Respondents' obligations under the Orders and the Divestiture Agreements, as the Monitor may reasonably request. Respondents shall cooperate with any reasonable request of the Monitor. The Monitor shall give Respondents reasonable notice of any request for such access or such information and shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Respondents' operations. At the request of the Monitor, Respondents shall promptly arrange meetings and discussions, including tours of relevant facilities, at reasonable times and locations between the Monitor and employees of Respondents who have knowledge relevant to the proper discharge of the Monitor's responsibilities under the Orders.

**1.3 Compliance Reports.** Respondents shall provide the Monitor with copies of all compliance reports filed with the Commission in a timely manner, but in any event no later than five (5) business days after the date on which Respondents file such a report with the Commission;

**1.4 Monitor's Obligations.** The Monitor shall:

- a. carry out the Monitor's Responsibilities, including submission of periodic reports, and such additional written reports as may be requested by the Commission staff, to the Commission staff regarding Respondents' compliance with the Orders;
- b. maintain the confidentiality of all confidential information, including Confidential Business Information, and any other non-public confidential information provided to the Monitor by Respondents, the Acquirers of the Divested Businesses, any supplier or customer of Respondents, or the Commission, and shall use such confidential information only for the purpose of discharging the obligations pursuant to this Agreement and not for any other purpose, including, without limitation, any other business, scientific, technological, or personal purpose. The Monitor may disclose confidential information only to:
  - i. persons working with the Monitor under this Agreement (and only to the extent such persons have executed a confidentiality agreement consistent with the provisions of this Agreement); and
  - ii. persons employed at the Commission working on this matter;
- c. maintain a record and inform the Commission of all persons (other than the persons referenced in 1.4 (b)(ii) above) to whom confidential information related to this Monitor Agreement has been disclosed;
- d. require any consultants, accountant, attorneys, and any other representatives or assistants retained by the Monitor to assist in carrying out the Monitor's Responsibilities to execute a confidentiality agreement that requires such third parties to treat confidential information with the same standards of care and obligations of confidentiality to which the Monitor must adhere under this Agreement;
- e. maintain the confidentiality, for a period of ten (10) years after the termination of this Agreement, of all other aspects of the performance of the Monitor's Responsibilities and not disclose any confidential information, including Confidential Business Information, relating there; and
- f. upon termination of the Monitor's duties under this Agreement, consult with the Commission's staff regarding disposition of any written and electronic materials (including materials that Respondents provided to the

Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the Commission's staff, as directed by the staff.

In response to a request by Respondents to return or destroy materials that Respondents provided to the Monitor, the Monitor shall inform the Commission's staff of such request and, if the Commission's staff do not object, shall comply with the Respondents' request. Notwithstanding the foregoing the Monitor shall not be required to return or destroy confidential information contained in an archived computer back-up system for his disaster recovery and/or security purposes. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an obligation not to disclose any non-public information obtained while acting as a Monitor for ten (10) years after termination of this Agreement.

For the purpose of this Agreement, information shall not be considered confidential or proprietary to the extent that it is or becomes part of the public domain (other than as the result of any action by the Monitor or by any employee, agent, affiliate or consultant of the Monitor), or to the extent that the recipient of such information can demonstrate that such information was already known to the recipient at the time of receipt from a source other than the Monitor, the Respondents, or any director, officer, employee, agent, consultant or affiliate of the Monitor or the Respondents, when such source was not known to recipient after due inquiry to be restricted from making such disclosure to such recipient.

In the event that confidential information must be disclosed by the Monitor or any person referenced in 1.4(b)(ii) herein under applicable law or pursuant to legal process, such party shall, to the extent not otherwise prohibited, give written notice to the Respondents that such disclosure is required so that the Respondents may, at their sole expense, seek an appropriate protective order or waive compliance with the terms hereof or both. If, absent the entry of a protective order or the receipt of a waiver of this Monitor Agreement, the Monitor or any person referenced in 1.4(b)(ii) herein is compelled by law or legal process to disclose any confidential information, such party (x) may disclose such information solely to the extent required by law; (y) shall not disclose such information until such time as it is required by law; and (z) shall exercise commercially reasonable efforts to obtain reliable assurances that confidential treatment will be accorded to any confidential information so disclosed. Notwithstanding the foregoing, the Monitor or any person referenced in 1.4(b)(ii) herein may disclose confidential information to any regulatory or self-regulatory agency having jurisdiction over such party in the course of routine reviews or audits when such disclosure is required by law, which confidential information may be disclosed without notice or restriction.

**1.5 Monitor Payment.** Respondents will pay the Monitor the hourly fee specified in the confidential fee schedule attached as Appendix A ("Hourly Fee") for all reasonable time spent in performance of the Monitor's duties under this Agreement. In addition, Respondents will pay: (a) out-of-pocket expenses reasonably incurred by the Monitor in the performance of the Monitor's duties; and (b) fees and disbursements reasonably incurred by such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities hereunder; however, all such out-of-pocket expenses and fees and disbursements shall be pre-approved by Respondents, which shall not withhold approval unreasonably. The Monitor shall invoice Respondents on a monthly basis, within seven (7) days of the conclusion of the month, including details and an explanation of all matters for which the Monitor submits an invoice to Respondents. Respondents shall pay such invoices within thirty (30) days of receipt. Any consultants, accountants, attorneys, and other representatives and assistants retained by the Monitor shall invoice their services to the Monitor who will review and approve such invoices and submit to Respondents for payments. At their own expense, Respondents may retain an independent auditor to verify such invoices. The Monitor and Respondents shall submit any disputes about invoices to the Commission for assistance in resolving such disputes.

**1.6 Monitor's Indemnification.** Respondents indemnify the Monitor and Respondents shall hold Monitor harmless (regardless of any action, whether in contract, statutory law, tort or otherwise) against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties and obligations hereunder, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence, willful misconduct, or bad faith by the Monitor. The Monitor's maximum liability to the Respondents relating to services rendered pursuant to this Monitor Agreement (regardless of the form of the action, whether in contract, statutory law, tort, or otherwise) shall be limited to the total sum of the fees paid to the Monitor by Respondents, except to the extent resulting from the gross negligence, willful misconduct or bad faith by the Monitor, in which case the liability is not so limited.

**1.7 Disputes.** In the event of a disagreement or dispute between Respondents and the Monitor concerning Respondents' obligations under one or both of the Orders, and, in the event that such disagreement or dispute cannot be resolved by the Parties, any Party may seek the assistance of the individual in charge of the Commission's Compliance Division.

**1.8 Conflicts of Interest.** If the Monitor becomes aware during the term of this Agreement that he has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of the Monitor's Responsibilities, the Monitor shall immediately inform Respondents and the Commission of any such conflict.

## ARTICLE II

**2.1 Termination.** This Agreement shall terminate upon the earlier of: (a) the expiration or termination of the Orders; (b) the expiration or termination of the last to expire of the Divestiture Agreements; (c) Respondents' receipt of written notice from the Commission that

the Commission has determined that William Hill has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; and (d) with at least thirty (30) days advance notice to be provided by the Monitor to Respondents and to the Commission, upon resignation of the Monitor. If this Agreement is terminated for any reason, the confidentiality obligations set forth in Section 1.3 above will remain in force.

**2.2 Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by the substantive laws of the state of New York, including all matters of construction, validity and performance. The Orders shall govern this Agreement and any provisions herein which conflict or are inconsistent with them may be declared null and void by the Commission and any provision not in conflict shall survive and remain a part of this Agreement.

**2.3 Disclosure of Information.** Nothing in this Agreement shall require Respondents to disclose any material information that is subject to a legally recognized privilege or that Respondents are prohibited from disclosing by reason of law or an agreement with a third party.

**2.4 Assignment.** This Agreement may not be assigned or otherwise transferred by Respondents or the Monitor without the consent of Respondents and the Monitor and the approval of the Commission. Any such assignment or transfer shall be consistent with the terms of the Orders.

**2.5 Modification.** No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless made in writing, signed by all parties, and approved by the Commission. Any such amendment, modification, termination, or waiver shall be consistent with the terms of the Orders.

**2.6 Approval by the Commission.** This Agreement shall have no force or effect with respect to the Orders until approved by the Commission.

**2.7 Entire Agreement.** This Agreement, and those portions of the Orders incorporated herein by reference, constitute the entire agreement of the parties and supersede any and all prior agreements and understandings between the Monitor and Respondents, written or oral, with respect to the subject matter hereof.

**2.8 Duplicate Originals.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

**2.9 Section Headings.** Any heading of a section is for convenience only and is to be assigned no significance whatsoever as to its interpretation and intent.

### ARTICLE III

**3.1** In the performance of his functions and duties under this Agreement, the Monitor shall exercise the standard of care and diligence that would be expected of a reasonable person in the conduct of its own business affairs.

**3.2** It is understood that the Monitor will be serving under this Agreement as an independent contractor and that the relationship of employer and employee shall not exist between the Monitor and Respondents.

**3.3** This Agreement is for the sole benefit of the Parties hereto and their permitted assigns and the Commission, and nothing herein express or implied shall give, or be construed to give, any other person any legal or equitable rights hereunder.

**3.4** In the event that the Monitor wishes to terminate this Agreement, the Monitor shall provide written notice to the Respondents and the Commission. Respondents and the Monitor shall work in good faith with the Commission to identify and proposed to the Commission a successor Monitor. Mr. Hill shall continue to serve as the Monitor under the terms of this Agreement until such time as the Commission approves a successor Monitor, and Monitor termination of this Agreement shall be effective only upon the approval by the Commission of a successor Monitor.

#### **ARTICLE IV**

**4.1** The Monitor should have all of the powers and responsibilities and protections conferred upon the Monitor by the Asset Maintenance Order, including but not limited to:

- a. monitoring the organization and operations of the Martinsburg Cement Business;
- b. supervising the management of the Divested Business through the Managers;
- c. maintaining the independence of the Martinsburg Cement Business;
- d. monitoring Respondents' compliance with their obligations as required by the Orders; and
- e. reviewing Replacement Contracts and Allocated Shared Contracts and determining, in consultation with Commission staff, whether these contracts comply with the Asset Maintenance Order.

**4.2** By the date of the Asset Maintenance Order, Respondents shall transfer to and confer upon the Monitor all rights, powers and authority necessary to permit the Monitor to perform his duties and responsibilities pursuant to and consistent with the purposes of the Asset Maintenance Order.

**4.3** Subject to applicable laws and regulations, the Monitor shall have full and complete access to the personnel, books, records, documents, and facilities of the Martinsburg Cement Business, and to any other relevant information as the Monitor may reasonably request, including but not limited to all documents kept by the Respondents in the ordinary course of business that relate to the Martinsburg Cement Business. Respondents shall develop such financial and other information as the Monitor may reasonably request and shall cooperate with the Monitor. The Monitor shall give Respondents reasonable notice of any request for such

access or information. The Monitor shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Respondents' operations.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

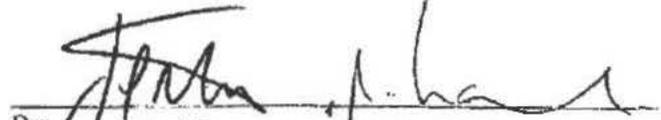
**MONITOR**

William Hill



**RESPONDENTS**

HeidelbergCement AG



By: Jon Morrish  
Title: Board Member

Dr. Ingo Schaffernak  
Procurist and General Counsel

Italcementi SpA



By: **ITALCEMENTI GROUP**  
Title: Legal and Tax Director

**Agostino Nuzzolo**

**CONFIDENTIAL APPENDIX A  
FEE SCHEDULE**

