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**The Company Directors Disqualification (Northern Ireland) Order 2002**

**DISQUALIFICATION UNDERTAKING**

**IN RE: FP McCann Limited ("FPM")**

**CASE 50299: SUPPLY OF PRODUCTS TO THE CONSTRUCTION INDUSTRY (PRE-CAST CONCRETE DRAINAGE PRODUCTS)**

I, FRANCIS MCCANN of [REDACTED] [REDACTED] hereby undertake to the Competition and Markets Authority ("CMA"), on the basis set out in the schedule attached to this disqualification undertaking, that in accordance with Article 13B of The Company Directors Disqualification (Northern Ireland) Order 2002 ("CDDO 2002"):

I WILL NOT for a period of **11 years**:

- (a) be a director of a company, act as a receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) I have the leave of the court; or
- (b) act as an insolvency practitioner.

The scope and effect of the disqualification undertaking that I hereby give has been explained to me in the CMA's letter of 9 March 2021.

Further, I understand that if I act in contravention of the above disqualification undertaking:

- (a) I may be prosecuted for a criminal offence (CDDO 2002, Article 18); and/or
- (b) I may be personally responsible for all the relevant debts of a company (CDDO 2002, Article 19).

I confirm and undertake to the CMA that I will use my best endeavours to cooperate with, and assist, the CMA in its director disqualification investigation in relation to Case 50299 and any related proceedings, including any appeal against a decision made in respect of FPM.

The CMA has explained that I may seek legal or professional advice on the effect of this undertaking, and I was given the opportunity to do so before signing the undertaking.

Signed

[REDACTED]

Francis McCann

9/3/21

Date

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Accepted by



11 March 2021

.....

(Authorised person at CMA)

Date

Note: the period of disqualification commences at the end of 21 days beginning with the day on which the disqualification undertaking is accepted by the CMA, and that commencement date is 31 March 2021.

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## SCHEDULE TO THE DISQUALIFICATION UNDERTAKING GIVEN BY

### FRANCIS MCCANN

Solely for the purpose of the CDDO 2002 and for any other purposes under the provisions of the CDDO 2002 and other legislation consequential to the giving of a disqualification undertaking, I do not dispute the following matters:

#### BREACH OF COMPETITION LAW

1. On 13 January 2021 the Competition Appeal Tribunal (“**the Tribunal**”) made an order by consent that FPM had committed a breach of competition law, as defined in Article 13A(4) of the CDDO 2002, for the reasons found by the CMA in its infringement decision issued on 23 October 2019 (“**the Decision**”) in case 50299: supply of products to the construction industry (pre-cast concrete drainage products).
2. By virtue of the above finding of a breach, the Tribunal also declared that the first condition in the CMA's application for a disqualification order against Francis McCann, issued on 15 January 2020, was satisfied.
3. The Tribunal found that FPM infringed the prohibition in section 2(1) of the Competition Act 1998 and Article 101(1) of the Treaty on the Functioning of the European Union by participating in a single continuous infringement through an agreement or a concerted practice which had as its object the prevention, restriction or distortion of competition in relation to the supply of certain pre-cast concrete drainage products to customers in Great Britain (“**the Infringement**”) from at least 6 July 2006 to 13 March 2013 (“**the Relevant Period**”).
4. As set out in the Decision, the infringing conduct took the form of:
  - 4.1. price fixing or price coordination between competitors, including by the agreement of price lists for spot market work, which reduced uncertainty as regards the pricing to be adopted by FPM, Stanton Bonna Concrete Limited (“**SBC**”) and CPM Group Limited (“**CPM**”), with the aim of increasing prices;
  - 4.2. market sharing between competitors through:
    - 4.2.1. the allocation of customers (including by bid rigging). This included an arrangement in respect of the pricing for, and allocation of, customers supplied under certain fixed price agreements; and
    - 4.2.2. an agreement to maintain specified market shares;
  - 4.3. the regular and systematic exchange of competitively sensitive information.

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5. I was a director of FPM from its incorporation on 30 April 1979 to 31 December 2020. Accordingly, I was a director of FPM throughout the Relevant Period and for the duration of the Infringement.
6. In addition to being a director, I was also a part-owner of FPM during the Relevant Period. FPM is now wholly-owned by FP McCann Group Limited. I am a part-owner of FP McCann Group Limited along with other members of the McCann family.

#### MATTERS OF UNFITNESS

7. I accept that my conduct as a director of FPM during the Relevant Period, which is set out in full in the Notice under Article 13C addressed to me dated 23 October 2019, and which is summarised below, was such as to make me unfit to be concerned in the management of a company:
  - 7.1. I had a significant role in establishing FPM's position in the cartel, and used my position as a director to help facilitate and encourage the infringement, and to promote FPM's involvement within it.
  - 7.2. I actively participated in the Infringement, attending most, if not all, of the 67 meetings held between FPM and its competitors across the course of the Relevant Period (as evidenced in Annexure A to the Decision), four of which were recorded by the CMA. The meetings took place approximately once every 4-6 weeks during the Relevant Period.
  - 7.3. At the meetings, I took an active, supporting role, leading the sharing of information of FPM's prices, customers and intentions and prompting discussion points during the meetings to facilitate the harmonisation of prices.
  - 7.4. During the meetings, I, along with Eoin McCann and FPM Senior Employee 3, would discuss and agree with FPM's competitors:
    - 7.4.1. to fix or coordinate prices in the spot market, including by the agreement of price lists;
    - 7.4.2. certain fixed price agreements (namely, term deals and stock deals), which involved the allocation of customers (including by bid-rigging) and a coordinated approach to pricing; and
    - 7.4.3. to maintain specified market shares.
  - 7.5. I took detailed notes of the meetings proceedings and outcomes, and explained FPM's pricing decisions in order to facilitate the agreement, and to maintain both the cartel and FPM's position within it.
  - 7.6. During the course of the Relevant Period, I passed on information obtained at the meetings to staff member of FPM, who would use this information when

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dealing with customers. I also discussed prices, term deals and market shares with competitors on the telephone and monitored the operation of the agreements internally within FPM.

- 7.7. My intention in participating in the Infringement was to increase the price of certain products and to maintain FPM's share of the market.
- 7.8. During the Relevant Period, I was aware that price fixing, market sharing, and sharing competitively sensitive information constituted breaches of competition law.
8. The Infringement includes price fixing, market-sharing and bid-rigging which are among the most serious types of competition law breach. The infringement also involved sharing competitively-sensitive information, which is also a serious breach of competition law.
9. As a result of its participation in the Infringement, FPM has been exposed to a penalty of £25,449,676 under the Competition Act 1998.