

Final Undertakings given by the Global Cement and Concrete Association under sections 159 and 165 of and Schedule 10 to the Enterprise Act 2002

The Global Cement and Concrete Association now gives to the CMA the following undertakings (the Undertakings), which the CMA proposes to accept pursuant to section 138 and 159 of the Act. These Undertakings may be varied, superseded or released by the CMA in accordance with section 159(4) or (5) of the Act.

1. Commencement

- 1.1 In accordance with section 159(3) of the Act, these Undertakings come into force when they are accepted by the CMA.

2. Interpretation

- 2.1 The following provisions apply in the interpretation of these Undertakings.
- 2.2 These Undertakings give effect to the conclusions of the CC stated in Section 13 of the Report as to the need for measures aimed at reducing transparency in the GB cement markets (and in particular for restrictions on the timing and form of any disclosure of data on the volumes of production or sale of cement) and shall be construed consistently with and to give effect to those conclusions.
- 2.3 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in the Undertakings.
- 2.4 The word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.
- 2.5 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 2.6 Unless the context otherwise requires, expressions in the singular include the plural (and vice versa) and references to persons include references to bodies of persons, whether corporate or incorporate.
- 2.7 References to a 'month' are references to a calendar month.
- 2.8 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 2.9 References to paragraphs or subparagraphs are references to paragraphs or subparagraphs of these Undertakings.
- 2.10 In these Undertakings:
'the Act' means the Enterprise Act 2002;

'Aggregated Cement Market Data' means any aggregation of Individual Cement Market Data relating to at least three Cement Producers;

'Cement' means any type of bulk or bagged grey cement, including cement clinker;

'Disclosure' means disclosure by a person to a third party and includes any provision, release or communication of information to a third party including but not limited to for commercial purposes (and 'Disclose' shall be construed accordingly);

'Cement Producer' means any person who produces Cement in Great Britain;

'Individual Cement Market Data' means any historic data on the volumes of production or sale of Cement in Great Britain relating to a single Cement Producer, or an aggregation of such data relating to less than three such Cement Producers;

'GCCA' means the Global Cement and Concrete Association, a company limited by guarantee with registered number 11191992 and registered office at Paddington Central, 6th Floor, 2 Kingdom Street, London, W2 6JP, United Kingdom;

'Notice' means a written communication sent by post, fax, personal delivery or email;

'Permitted Third Party' has the meaning given by subparagraph 4.3;

'Publication' means making information publicly available, including the publication or other public notification of information in any form (and 'Publish' shall be construed accordingly);

'Quarantine Period', in relation to a set of data, means the period of at least three months from the end of the period to which those data relate;

'Working Day' means any day other than a Saturday or a Sunday on which the banks are open for business in England.

3. Restrictions on the receipt, Disclosure or Publication of Individual or Aggregated Cement Market Data

- 3.1 The GCCA undertakes not to receive, Disclose or Publish any Individual Cement Market Data for a period of five years from the end of the period to which those data relate.
- 3.2 The GCCA undertakes not to receive, Disclose or Publish any Aggregated Cement Market Data until the expiry of the Quarantine Period and then only in accordance with the requirements of Article 4.
- 3.3 Nothing in these Undertakings shall prevent the Disclosure or Publication of Individual or Aggregated Cement Market Data by the GCCA:

- (a) to any person who has the legal power to require the Disclosure; or
- (b) where the CMA has given its prior written consent to the Disclosure or Publication.

4. Receiving Aggregated Cement Market Data by the GCCA

- 4.1 The GCCA undertakes not to receive Aggregated Cement Market Data from any person other than a Permitted Third Party.
- 4.2 Where the GCCA uses a Permitted Third Party for the purposes of paragraph 4.1, the GCCA undertakes to ensure that it contracts with a Permitted Third Party on terms which include the following requirements:
- (a) that the Permitted Third Party is responsible for collecting all of the Individual Cement Market Data and does not Disclose or Publish the Individual Cement Market Data to any person, including the GCCA at any time (even after the expiry of the Quarantine Period); and
 - (b) in the case of Aggregated Cement Market Data, the Permitted Third Party cannot Disclose or Publish the Aggregated Cement Market Data to the GCCA until the expiry of the Quarantine Period mentioned in subparagraph 3.2.
- 4.3 For the purposes of paragraphs 4.1 and 4.2, a Permitted Third Party is a person who:
- (a) is not a Cement Producer and is not associated with or otherwise to be treated as the same person as any Cement Producer (for the purposes of section 127 of the Act as applied by virtue of 183(2) of the Act), or a member of any group of interconnected bodies corporate that contains such a Cement Producer;
 - (b) has not entered into any agreement or arrangement with any Cement Producer, except as allowed under subparagraph 4.4; and
 - (c) has put in place the necessary safeguards in order to ensure the confidentiality of the Individual or Aggregated Cement Market Data and compliance with the obligations under subparagraph 4.2.
- 4.4 A Permitted Third Party will, however, be permitted to act on behalf of any Cement Producer so long as:
- (a) it acts on behalf of the Cement Producer on a separate engagement; and
 - (b) it has put in place suitable confidentiality firewalls to prevent any sharing of, or access to, any information between the GCCA and the Cement Producer.
- 4.5 Nothing in these Undertakings shall prevent the GCCA receiving Individual or Aggregated Cement Market Data where the CMA has given its prior written consent to it.

5. Changes in relation to the collection etc. of data

5.1 The GCCA undertakes to give Notice to the CMA of any material changes that are proposed to be implemented in relation to the collection, collation, Disclosure or Publication of Individual or Aggregated Cement Market Data, including any change in:

- (a) the Permitted Third Party who will be responsible for such collection and collation; or
- (b) the form in which the Individual or the Aggregated Cement Market Data is collated, Disclosed or Published.

5.2 Notice under subparagraph 5.1 shall be given no less than two months before the date of the proposed implementation, and the GCCA undertakes not to implement any such change if the CMA has given a Notice of objection before the end of the two months period.

6. Compliance

6.1 The GCCA undertakes to comply with such reasonable written directions as the CMA may from time to time give to take such steps within its reasonable competence as may be required for the purpose of carrying out or securing compliance with these Undertakings.

6.2 Any application to the CMA for the purpose of receiving its prior written consent according to Article 3.3(b) and Article 4.5 above shall be addressed to:

Competition and Markets Authority
The Cabot
25 Cabot Square
London
E14 4QZ

or by email to: Remediesmonitoringteam@cma.gov.uk

7. Effect of invalidity

7.1 The GCCA undertakes that should any provision of these Undertakings be contrary to law or invalid for any reason, the GCCA shall continue to observe the remaining provisions.

8. Provision of information to the CMA

8.1 The GCCA undertakes that it must as soon as practicable provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under these Undertakings or under sections 159, 160, 162 and 167(6) of the Act.

8.2 The GCCA undertakes that, should it at any time become aware that it is in breach of any provision of these Undertakings, it will notify the CMA within

five Working Days to advise the CMA that there has been a breach and of all the circumstances of that breach within its knowledge.

9. Service

9.1 The GCCA hereby authorises its Chief Executive to accept, on its behalf, service of all documents connected with these Undertakings (including any document of any kind which falls to be served on or sent to the GCCA in connection with any proceedings in courts in the United Kingdom), orders, requests, notifications or other communications connected with these Undertakings; and service shall be deemed to have been acknowledged by the GCCA if it is acknowledged by its Chief Executive or other appointed nominee.

9.2 Any communication from the GCCA to the CMA under these Undertakings shall be addressed to Remedies Manager, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing and shall include email communication to RemediesManager@cma.gsi.gov.uk or such other address as the CMA may direct in writing.

10. Governing law

10.1 The GCCA recognises and acknowledges that these Undertakings shall be governed and construed in all respects in accordance with English law.

10.2 In the event that a dispute arises concerning these Undertakings, the GCCA undertakes to submit that dispute to the courts of England and Wales.

11. Termination

11.1 The GCCA recognises and acknowledges that these Undertakings shall be in force until such time as they are varied, superseded or released under section 159(4) or (5) of the Act.

11.2 The GCCA recognises and acknowledges that the variation, supersession or release of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, supersession or release.

FOR AND ON BEHALF OF THE GLOBAL CEMENT AND CONCRETE ASSOCIATION

(signed)

Frank Rossini

Acting Chief Executive

15 September 2018