

AGGREGATES, CEMENT AND READY-MIX CONCRETE MARKET INVESTIGATION

Interim undertakings given by Lafarge Tarmac under section 157 of the Enterprise Act 2002

On 18 January 2012 the Office of Fair Trading made a reference to the Competition Commission (CC) under [section 131](#) of the Enterprise Act 2002 (the Act) concerning the supply or acquisition of aggregates, cement and ready-mix concrete in Great Britain (the Reference).

On 14 January 2014 the CC published its report on the Reference, entitled [Aggregates, cement and ready-mix concrete market investigation: Final report](#) (the Report), in which it concluded that:

- (a) a combination of structural and conduct features in the bulk and bagged cement markets in Great Britain (GB) gave rise to an adverse effect on competition (AEC) in those markets (the GB cement markets);
- (b) there were further features of the GB cement markets which combine to give rise to an AEC in the market for the supply of ground granulated blast furnace slag (GGBS) in GB, as well as to an additional AEC in the GB cement markets;
- (c) the likely effect of those features and resulting AECs is higher prices for cement and for GGBS than would otherwise be the case;
- (d) in order to address those AECs and the resulting customer detriments, remedies should be imposed under [section 138\(2\)](#) of the Act consisting, in particular, in the divestiture of a cement plant by Lafarge Tarmac and an active GGBS plant by Hanson, together with the right of the acquirer of the GGBS plant to obtain supplies of granulated blast furnace slag (GBS) or pellite and access to existing stockpiles of GBS or pellite; and
- (e) a monitoring trustee should be appointed as soon as reasonably practicable following the publication of the Report, for the purpose in particular of ensuring the protection of the divestiture package.

The Reference has not been finally determined in accordance with section 183(3) of the Act, and the CC wishes to prevent action being taken which might impede the taking of any action by the CC under section 138(2) of the Act.

Lafarge Tarmac accordingly gives to the CC the following undertakings for the purposes of section 157 of the Act (the Undertakings).

Safeguard of position pending divestiture

1. Lafarge Tarmac undertakes not to take any action without the prior written consent of the CC which might prejudice the implementation of the Cement Divestiture Remedy, including in particular:
 - (a) except in the ordinary course of business, the making of any changes to the operation of any of the Protected Assets or to the organization of the business carried on there, including any changes to any senior managerial or other member of staff whose performance could materially affect the viability of the Protected Asset; and

- (b) any action which might impair the ability of any of the Protected Assets to compete independently subsequent to its divestiture.

Where a staff member within paragraph (a) resigns or is dismissed for gross breach of contract, Lafarge Tarmac undertakes to inform the CC as soon as possible.

2. Lafarge Tarmac undertakes to safeguard the Protected Assets for the purposes of the implementation of the Cement Divestiture Remedy, and in particular to:
 - (a) keep the Protected Cement Plants in good working order;
 - (b) keep all other Protected Assets in their current working order;
 - (c) avoid disposing of any of the Protected Assets without the prior written consent of the CC;
 - (d) maintain and preserve the Protected Property; and
 - (e) except in the ordinary course of business, avoid disposing of any of the Protected Property without the prior written consent of the CC.

Until divestiture takes place in accordance with the Cement Divestiture Remedy, Lafarge Tarmac undertakes to maintain any existing arrangements, whether contractual or non-contractual, between the Protected Cement Plants and the National Laboratory and Sapphire Energy Recovery facilities currently at Caudon.

3. Lafarge Tarmac undertakes:
 - (a) not to take any action without the prior written consent of the CC which might prejudice the implementation of the GGBS Divestiture Remedy; and
 - (b) to take all reasonable steps within the ordinary course of business to maintain the storage of any GBS or pellite stockpiled at any of the GBS sites or otherwise under the ownership or control of the LT business, unless the prior written consent of the CC is obtained to do otherwise.

Monitoring trustee

4. Lafarge Tarmac undertakes that it will:
 - (a) secure the appointment of a Monitoring Trustee to perform on behalf of the CC the function of monitoring and reviewing compliance with these Undertakings; and
 - (b) provide the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may reasonably require to enable it to carry out its duties.

The appointment of the Monitoring Trustee, and its Mandate, are subject to the approval of the CC.

5. Appendix A to these Undertakings sets out:
 - (a) qualifications and other requirements relating to the Monitoring Trustee;
 - (b) the procedure for making the appointment; and
 - (c) matters that are to be provided for in the Mandate.

Consent

6. Lafarge Tarmac:
 - (a) undertakes that, where the Undertakings or any one of them require the consent or approval of the CC (however that requirement is expressed), it will seek that consent or approval in writing;
 - (b) undertakes that any such application for the CC's consent or approval will make full disclosure of every material fact that, having made all reasonable enquiries, it believes is relevant to the CC's decision; and
 - (c) recognizes that where the CC grants consent or approval on the basis of misleading or incomplete information, the consent or approval is voidable at the election of the CC.
7. In the event that Lafarge Tarmac discovers that an application by it for consent or approval has been made without full disclosure and is therefore incomplete, it undertakes to:
 - (a) inform the CC in writing identifying the particulars in which the application for consent is incomplete within two working days of becoming aware that the application is incomplete; and
 - (b) at the same time or as soon as possible thereafter provide to the CC an application for consent that is complete.
8. Lafarge Tarmac undertakes to use all reasonable endeavours to ensure that each such application is made so that it is received by the CC at least five working days, or such lesser period as the CC may allow, before the day on which the CC's consent or approval is necessary to avoid a breach of these Undertakings.
9. Lafarge Tarmac recognizes that the CC is not required to use more than its reasonable endeavours to grant or refuse any consent or approval within that period of five working days.
10. However, where the application for consent relates to changes to staff under paragraph 1(a), the prior written consent of the CC is deemed to have been given if no notice of its refusal is given within seven working days of the application.

Compliance statements

11. Lafarge Tarmac undertakes:
 - (a) to provide the CC with such information or statement of compliance as the CC may from time to time require for the purposes of monitoring its compliance with these Undertakings; and
 - (b) in particular, on 28 March 2014 and subsequently on the 28th of each month (or, where the 28th does not fall on a working day, the first working day thereafter) to provide a monthly statement confirming compliance with these Undertakings in the form set out in Appendix B.

Directions

12. Lafarge Tarmac undertakes to comply, so far as it is able, with such written directions as the CC may from time to time give to take such steps as may be specified or

described in the directions for the purpose of carrying out or securing compliance with these Undertakings.

Commencement and termination etc

13. In accordance with section 157(3) of the Act, these Undertakings come into force when they are accepted by the CC.
14. Subject to the variation, supersession or release of these Undertakings under section 157(3) of the Act, they shall remain in force until the final determination of the Reference.
15. The variation, termination, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights arising prior to such variation, termination, release or supersession.

Effect of invalidity

16. Lafarge Tarmac undertakes that:
 - (a) should any provision of these Undertakings be held by any court or tribunal to be contrary to law or invalid for any reason, it will continue to observe the remaining provisions; and
 - (b) it will not rely on any default or want of authority on the part of its signatory, or any of its officers or employees, in the execution of these Undertakings unless it is directed to do so by the CC.

Notifications

17. A notice under these Undertakings may be given:
 - (a) to the CC by giving it to Brid McHugh, Remedies Coordinator, Competition Commission, Victoria House, Southampton Row, London WC1B 4AD or by email to Brid.McHugh@cc.gsi.gov.uk; and
 - (b) to Lafarge Tarmac by giving it to James Bryan, Senior Commercial and Compliance Advisory Counsel, Portland House, Bickenhill Lane, Solihull, Birmingham, B37 7BQ or by email to james.bryan@lafargetarmac.com
18. The particulars given in paragraph 17 may be updated by giving notice of the amended particulars to the CC or, as the case may be, Lafarge Tarmac.

Interpretation

19. These Undertakings give effect to the conclusions of the CC as to the need for interim measures stated in Section 13 of the Report and shall be construed consistently with, and to give effect to, those conclusions.
20. References in these Undertakings (however expressed) to Lafarge Tarmac undertaking to take, or to avoid taking, any action are to be construed where necessary as references to Lafarge Tarmac undertaking to procure that such action is taken or (as the case may be) avoided.
21. In these Undertakings (including Appendix A):

(a) words and expressions defined in the recitals to these Undertakings have the same meaning as in those recitals; and

(b) words and expressions have the meanings assigned to them below.

<i>Word or expression</i>	<i>Meaning</i>
Cement Divestiture Remedy	The remedy consisting in the divestiture (at the option of Lafarge Tarmac) of either the Cauldon or the Tunstead cement plants, together with arrangements relating to limestone quarries, depots and RMX plants, as set out in Section 13 of the Report at paragraph 13.5(a) and Figure 13.1.
Disposing of	Selling, transferring, conveying, or agreeing to sell transfer or convey, or granting any right or interest whether legal or equitable in or over, or otherwise in whole or part disposing of or relinquishing control over.
Final determination	The meaning given in section 183(3) to (6) of the Act.
GBS plant	A blast furnace slag granulator or pelletizer operation of the LT business at: (1) Scunthorpe in North Lincolnshire; (2) Port Talbot in Neath Port Talbot, Wales; or (3) Teesside in North Yorkshire.
GBS site	A site at which a GBS plant is located.
GGBS Divestiture Remedy	The remedy consisting in the divestiture (at the option of Hanson) of one of its active GGBS plants, namely a plant at Scunthorpe, Port Talbot or Purfleet (including the assets and operations required for the plant to compete on a stand-alone basis, and accompanied in the case of the Port Talbot plant by divestitures of Hanson's Glasgow and Teignmouth depots), and arrangements relating to the supply of and access to GBS and pellite, as set out in Section 13 of the Report at paragraph 13.5(c) and Figure 13.4.
Hanson	The UK operations of HeidelbergCement AG, a company with its registered office in Heidelberg, Germany.
Lafarge Tarmac	Lafarge Tarmac Holdings Limited, a company with registered number 07533961 and registered office at Portland House, Bickenhill Lane, Solihull, Birmingham B37 7BQ, whose subsidiaries carry on the business of a joint venture in the UK between Lafarge SA and Anglo American plc.
LT business	The business of the joint venture referred to above.
Mandate	The terms and conditions of appointment of the Monitoring Trustee.
Monitoring Trustee	The person appointed in accordance with paragraph 4 above and Appendix A.

Notice	A written communication sent by post, fax, personal delivery, or email.
Ordinary course of business	Matters connected to the day-to-day supply of goods and services by the LT business.
Protected Assets	The Protected Cement Plants, together with: (1) the RMX plants of the LT business situated in Great Britain; (2) the Cauldon quarry which supplies limestone exclusively to the Cauldon cement plant; (3) the Tunstead quarry which supplies limestone to the Tunstead cement plant; and (4) the following cement depots of the LT business: [X]
Protected Cement Plants	The cement plants of the LT business situated at Cauldon in Staffordshire and Tunstead in Derbyshire.
Protected Property	Any movable or immovable property at or associated with any of the Protected Assets, whether tangible or (where relevant to its operation) intangible, but not including movable or intangible property associated with the operation of: (1) the National Laboratory facility currently located at the Cauldon cement plant; or (2) the Sapphire Energy Recovery facility currently located at that plant.
Safeguard	Preserve as a viable, competitive and marketable business asset, including making any capital expenditure necessary for that purpose.
Working day	Any day other than a Saturday or a Sunday on which the banks are open for business in England.

Execution

FOR AND ON BEHALF OF Lafarge Tarmac Holdings Limited

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Cyrille Ragoucy

Chief Executive Officer

28 February 2014

Monitoring trustee

Qualifications and other requirements

1. The Monitoring Trustee must:
 - (a) possess appropriate qualifications and experience to carry out the Trustee Functions;
 - (b) act on behalf of the CC and be under an obligation to the CC to carry out those functions to the best of its abilities; and
 - (c) neither have nor become exposed to a conflict of interest that impairs its objectivity and independence in discharging its duties, unless any actual or potential conflict can be resolved in a manner and within a time limit agreed by the CC.
2. Lafarge Tarmac shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with its Mandate, and in such a way as to not impede the Monitoring Trustee's independence or ability to effectively and properly carry out the Trustee Functions.

Procedure for appointment

3. The appointment of the Monitoring Trustee and its Mandate are subject to the approval of the CC. Lafarge Tarmac must inform the CC as soon as is reasonably practical and in any event by no later than two working days after the Notification Date of the identity of the Monitoring Trustee that Lafarge Tarmac proposes to appoint, and provide the CC with the draft Mandate. Once the Monitoring Trustee and draft Mandate have been approved by the CC and appointed, Lafarge Tarmac must provide the CC with a copy of the final agreed Mandate.
4. If the proposed Monitoring Trustee is rejected by the CC, Lafarge Tarmac shall submit the names of at least two further persons within five working days starting with the date on which they were informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 1 to 3 above.
5. The provisions of paragraph 6 below shall apply where:
 - (a) Lafarge Tarmac fails to nominate persons in accordance with paragraphs 3 or 4 above;
 - (b) the further persons nominated in accordance with paragraph 4 above are rejected by the CC; or
 - (c) Lafarge Tarmac is unable for any reason to conclude the appointment of the Monitoring Trustee within a time limit specified by the CC.
6. The CC shall nominate one or more persons to act as Monitoring Trustee, and Lafarge Tarmac shall appoint one of such persons as Monitoring Trustee within two working days starting with the date of such nomination under the terms of a Mandate approved by the CC.

Matters to be provided for in the Mandate

7. The duties of the Monitoring Trustee are to:
 - (a) take such steps as it reasonably considers necessary in order to carry out the Trustee Functions effectively for the purpose of evaluating that the Undertakings are being complied with; and
 - (b) comply with any reasonable requests made by the CC for that purpose.
8. The Trustee Functions are to monitor and review compliance with these Undertakings, and in particular to:
 - (a) monitor whether the Protected Assets and Protected Property, and the stockpiles of GBS or pellite, are safeguarded or maintained in accordance with paragraphs 1 to 3 of the Undertakings;
 - (b) monitor whether directions given by the CC under paragraph 12 of the Undertakings are complied with;
 - (c) report to the CC at least once a month on the current trading performance of:
 - (i) the Protected Assets, benchmarked against the performance of the other corresponding assets of the LT business; and
 - (ii) any relevant GBS plants;
 - (d) monitor any preparatory steps that may be taken by Lafarge Tarmac to dispose of any of the Protected Cement Plants in accordance with the Cement Divestiture Remedy; and
 - (e) monitor or review any such other matter as the CC may direct from time to time for the purpose verifying compliance with the Undertakings.
9. The Monitoring Trustee shall promptly inform the CC of any material developments arising from the carrying out of its duties, and shall in any event provide the CC with a written report every four weeks.
10. The Mandate may make such further provision or provision for such other matters as the CC considers appropriate, and in particular for the duties and obligations of Lafarge Tarmac in relation to the Monitoring Trustee.

Interpretation

11. In this appendix:
 - (a) 'Notification Date' means the date that the CC's acceptance of the Undertakings is notified to Lafarge Tarmac;
 - (b) 'person' includes a body of persons corporate or incorporate; and
 - (c) 'Trustee Functions' means the functions specified in paragraph 8.

AGGREGATES, CEMENT AND READY-MIX CONCRETE MARKET INVESTIGATION: FINAL REPORT

Compliance statement

I [*name*] [*title*] of Lafarge Tarmac Holdings Limited confirm on behalf of Lafarge Tarmac that, in respect of the period from [*x*] to [*y*]:

1. Lafarge Tarmac has complied with the Interim Undertakings.
2. Except in accordance with the Interim Undertakings, no action has been taken by Lafarge Tarmac which might prejudice the implementation of the Cement Divestiture Remedy, in particular action mentioned in paragraphs 3 and 4 below.
3. Except in accordance with the Interim Undertakings, Lafarge Tarmac has avoided making any changes to the operation of a Protected Asset or to the organization of the business carried on there, including any changes to any senior managerial or other member of staff whose performance could materially affect the viability of the Protected Asset.
4. Except in accordance with the Interim Undertakings, Lafarge Tarmac has avoided taking any action which might impair the ability of a Protected Asset to compete independently subsequent to its divestiture.
5. The Protected Assets have been safeguarded by Lafarge Tarmac for the purposes of the implementation of the Cement Divestiture Remedy, and in particular:
 - (a) all Protected Cement Plants have been kept in good working order;
 - (b) all other Protected Assets have been kept in their previous working order;
 - (c) except in accordance with the Interim Undertakings, none of the Protected Assets has been disposed of;
 - (d) all of the Protected Property has been maintained and preserved; and
 - (e) except in accordance with the Interim Undertakings, none of the Protected Property has been disposed of.
6. Lafarge Tarmac has maintained any previous arrangements between the Protected Cement Plants and the National Laboratory and Sapphire Energy Recovery facilities at Cauldon.
7. Except in accordance with the Interim Undertakings, no action has been taken by Lafarge Tarmac which might prejudice the implementation of the GGBS Divestiture Remedy.
8. Except in accordance with the Interim Undertakings, Lafarge Tarmac has taken all reasonable steps within the ordinary course of business to maintain the storage of all stockpiles of GBS or pellite.

Interpretation

9. In this Compliance statement:

- (a) 'Interim Undertakings' means the interim undertakings given by Lafarge Tarmac that were accepted by the Competition Commission on [**date**]; and
- (b) words and expressions have the meanings given to them by the Interim Undertakings.

FOR AND ON BEHALF OF Lafarge Tarmac Holdings Limited

..... [Signature]

[Name]

[Title]

[Date]