
AGGREGATE INDUSTRIES
RESPONSE TO ISSUES STATEMENT

CONTENTS

SECTION	PAGE
1. INTRODUCTION AND SUMMARY	2
2. NO ADVERSE EFFECT ON COMPETITION.....	3
3. THEORY OF HARM 1: HIGH LEVELS OF CONCENTRATION AND BARRIERS TO ENTRY MEAN THAT THE SUPPLIERS CAN EXERCISE UNILATERAL MARKET POWER	10
4. THEORY OF HARM 2: COORDINATION BETWEEN PRODUCERS REDUCES OR PREVENTS COMPETITION	20
5. THEORY OF HARM 3: VERTICAL INTEGRATION AND EXCLUSIONARY BEHAVIOUR.....	24
6. POLICY AND REGULATION	25
7. CONCLUSION	28

1. INTRODUCTION AND SUMMARY

1.1 Aggregate Industries (*AI*) is a UK based subsidiary of the Holcim Group. It is a heavy building materials producer whose core business comprises the production of aggregates, asphalt, ready mix concrete (*rmx*) and concrete products.

1.2 AI does not produce grey cement in the UK. AI imports grey cement from group companies manufacturing abroad and purchases grey cement from UK manufacturers. [X] AI does not produce or supply high purity limestone in the UK.

1.3 The markets for aggregates and rmx in the UK were hard hit by the recession in the early 1990's. The demand for primary aggregates fell by 22% between 1989 and 1992 and the demand for rmx by 30% over the same period¹. A fundamental change in building techniques and preferences meant that as the UK economy improved during the 1990's the demand for aggregates did not return to pre-recession levels. More recently a sharp downturn in demand since 2007 has resulted in an unprecedented contraction in house building and infrastructure expenditure. The Consumer Products Association (*CPA*) predicts a decrease of approximately 20% in new housing spend in 2012 compared to 2007, and a decrease of approximately 6.5% (£5.6bn) in infrastructure spending over the same period.

1.4 In these declining markets AI competes with a large and diverse base of suppliers. In Great Britain there are:

- (a) approximately 235 suppliers producing primary aggregates from more than 1,200 sites;
- (b) 450 suppliers operating an estimated 650 aggregates recycling plants²;
- (c) nearly 50 suppliers producing 30,000m³ or more annually of rmx and nearly 150 smaller suppliers operating their own concrete batching plant; and
- (d) numerous suppliers using volumetric trucks that account for 9%³ of rmx supplied⁴.

1.5 Customers [X] include large, well resourced and sophisticated purchasers. Larger customers use multiple suppliers and tender processes to foster competitive pressure, which has intensified in the economic downturn. Against a backdrop of rising costs, particularly energy costs and taxes, suppliers are under intense pressure to win valuable business. This pressure does not appear likely to be alleviated any time soon.

¹ Mineral Products Association (*MPA*)

² As explained in paragraph 3.10, whilst demand for primary aggregates has fallen since 1989 the demand for secondary and recycled aggregates has grown

³ Statistics from BDS Market Research as reported by the OFT.

⁴ As explained in paragraph 3.35, volumetric trucks, among other things, significantly reduce waste; typically do not attract fuel duties; and are particularly successful at servicing small loads with long waiting times. Some customers are turning to volumetric trucks for self supply of rmx.

1.6 Customers also have a large degree of choice at a local level:

[✂]

1.7 In areas where customers have fewer options this is an inevitable consequence of lower local demand and, in some cases, the lack of locally available mineral resources.

1.8 The combination of lower demand and wide choice has created competitive pressure to which AI has responded by: cutting costs [✂]; continuing to focus on increasing customer service (for example, by innovating to differentiate itself from its competitors); and implementing a programme of “commercial excellence” for its employees⁵. [✂]

1.9 The Issues Statement published by the CC on 8 March (the *Issues Statement*), sets out potential adverse effects on competition and a number of theories of harm, that are at odds with the commercial realities of the markets experienced by AI. In *Section 2* of this response, we address the potential adverse effects on competition identified by the CC in the Issues Statement. In *Sections 3 – 6* of this response, we address the theories of harm identified by the CC in the Issues Statement. *Section 7* contains our conclusions. As requested in the Issues Statement⁶, we comment, where appropriate, on the relevance of the CC’s provisional findings in the AA/Lafarge merger inquiry to this response.

2. NO ADVERSE EFFECT ON COMPETITION

Industry suffering a steady decline in demand

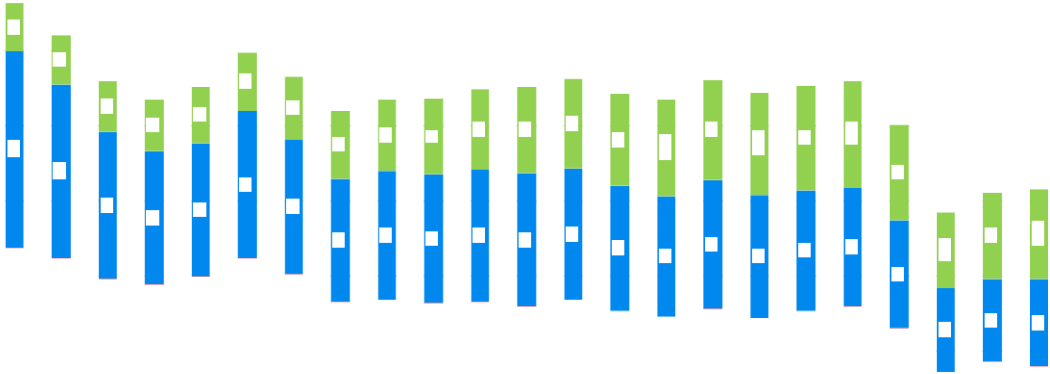
2.1 As can be seen from **Figures 1 and 2** below the markets for aggregates and rmx in the UK were hard hit by the recession of the early 1990s and demand has never recovered to the pre-recession levels of 1989⁷. A significant contribution to the lack of recovery in the 1990s was a change in the design of buildings. Steel, glass and timber, for example, are increasingly used as a replacement for rmx. Improvements in the design of buildings and houses, as well as better concrete specification, have also significantly reduced the demand for aggregates and concrete.

Figure 1
Aggregates Volumes (Mt)

⁵ [✂]

⁶ Paragraph 6 of the Issues Statement

⁷ As noted in paragraph 1.3, the demand for primary aggregates fell by 22% between 1989 and 1992 and the demand for rmx by 30% over the same period



■ ■

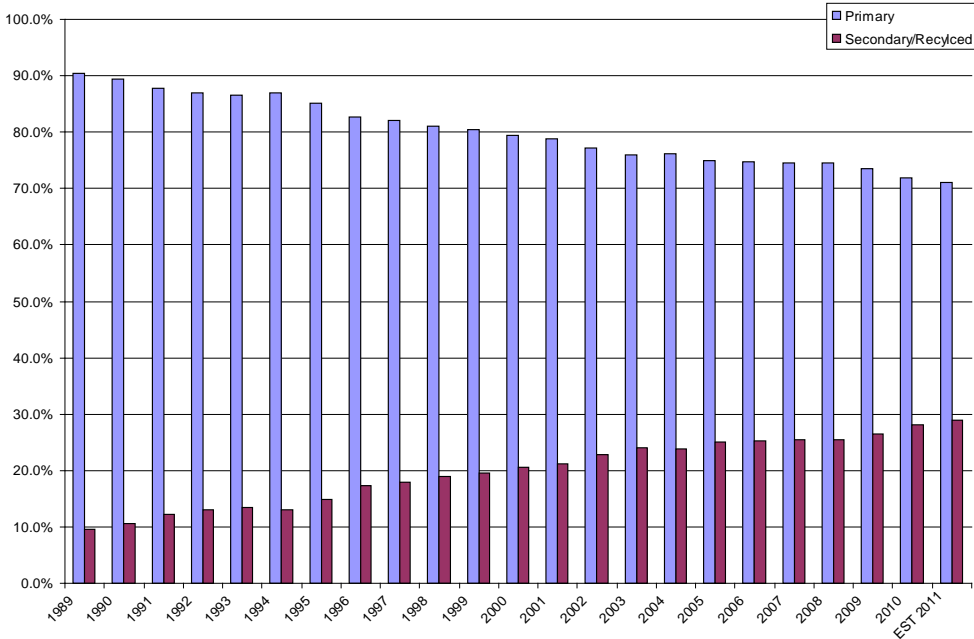
Source MPA (Feb 2012)

Figure 2
Rmx Volumes (Mm³)

Source MPA (Feb 2012)

2.2 The demand for primary aggregates has been particularly hard hit. **Figure 3** below shows the industry share of primary and secondary/recycled aggregates. It shows primary aggregates have lost industry share whilst secondary/recycled aggregates have gained industry share. See further paragraph 3.10.

Figure 3
Industry share of primary and secondary/recycled aggregates



Source MPA volume statistics (Feb 2012)

2.3 As can also be seen from **Figures 1 and 2**, since 2007 the industry has suffered from another substantial drop in demand due to an unprecedented contraction in house building and infrastructure expenditure. The effect is manifested in recent statistics⁸ which show that in 2007, total demand for rmx was 23.5 million m³, the per capita consumption was 0.4m³ and the volume per £ million of construction output was 285m³. By 2010, total demand had fallen by almost 40% to 14.3 million m³, per capita consumption had fallen by 40% to 0.24 m³ and volume per £ million of construction output⁹ had fallen by 52% to 137m³.

2.4 To provide further detail on this decline in demand, there has been a decrease in new construction, both in the housing and non housing segments, since 2007:

- (a) the CPA forecasts that the value of new work (excluding new housing) and repair and maintenance will fall further from £85.3bn in 2010 to £81.7bn in 2012, significantly below the £87.3bn spent in 2007;
- (b) in its latest published figures, the CPA predicts a modest rise from £16.6bn spent on new housing in 2010 to £16.8bn in 2012, still far below the £20.9bn spent on new housing in 2007; and
- (c) the Home Builders' Federation's most recent market report for new houses records that the approval of residential units¹⁰ (an indicator of future activity) in Q3 2011 was 10% lower than for the same period in 2010 and almost half the quarterly average for 2006 and 2007¹¹.

2.5 In addition, the number of major infrastructure projects has fallen since 2007:

- (a) the number of major road projects (costing more than around £1 billion) in the UK has declined from three, between 2001 and 2006, to none since 2007. Repair and maintenance budgets are also under pressure with most highways authorities top dressing and repairing rather than rebuilding roads at the moment;
- (b) negotiations on the second high speed rail link, which would be a larger project than the Olympics, do not seem to be close to resolution. In the last decade, expenditure on major rail projects (costing more than around £100 million) has decreased from around £10 billion between 2000 and 2005 to just £2.5 billion between 2006 and 2011;
- (c) no new airport runways are planned and political debate on whether, and if so where, to site additional runways is far from exhausted;

⁸ Source: MPA, Office of National Statistics and CPA.

⁹ Please note that the volume per £ million of construction output is not like for like as the only construction output figures available for 2007 are at constant 2000 prices whereas the 2010 figures are at constant 2005 prices. However, even when we compare the volume per £ million of construction output between 2008 and 2010, which is a like for like comparison, we see a 25% fall.

¹⁰ Projects involving ten or more residential units.

¹¹ HBF, *New housing pipeline: Q4 2011 report* (March 2012), page 1.

- (d) large house building projects (costing more than around £100 million) have slowed from two between 2001 and 2007, to none since 2008; and
- (e) in London, no new project is in the pipeline to replace the Olympics and many London authorities will have used their budgets for the replacement and repair of infrastructure for the foreseeable future¹².

2.6 Forecasts for the future provide little encouragement for a recovery until at least 2015:

- (a) the Government's austerity measures mean that any increase in public spending on infrastructure projects in the near future is highly unlikely. Leading commentators consider the 2012 Budget to have provided "*little in terms of any announcements of new infrastructure investment*"¹³ and to have been a "*big disappointment [...] [in that] there was no mention of specific tax reliefs given for infrastructure projects*"¹⁴. Similarly, the Confederation of British Industry considered the Budget "*disappointing [in] that there was no sign of taking up the CBI's calls for changes to the capital allowance structure to incentivise investment in infrastructure*"¹⁵;
- (b) the CPA forecasts that total housing demand will remain below 2007 levels until at least 2015 and the value of new work (excluding new housing) and repair and maintenance will not return to 2007 levels (in nominal terms) before 2015 at the earliest; and
- (c) similarly, the MPA predicts limited growth in aggregates and ready-mix concrete output over this period.

Customers are applying pressure on suppliers

2.7 AI's aggregates and rmx customers have also been hard hit by the recession. All are operating in markets that have been badly affected by the fall in house building and cuts in infrastructure spend. These customers have therefore been looking, more than ever, to squeeze the best terms possible from their suppliers. They have continued to multi-source and they have introduced increasingly extensive tendering procedures. [✂]¹⁶

¹² London is a unique and atypical part of the UK, not least because the 2012 Olympics gave a temporary boost to infrastructure spend. The uplift was felt not just for Olympic sites but for general redevelopment in London.

¹³ Prior, Nick (Head of Infrastructure and Capital Programmes, Deloitte), "Deloitte infrastructure Budget response" (21 March 2012) on the Deloitte website (http://www.deloitte.com/view/en_GB/uk/news/news-releases/3feefcf3de536310VgnVCM2000001b56f00aRCRD.htm).

¹⁴ KPMG, *Budget 2012: What it means for you: KPMG commentary* (March 2012), page 2.

¹⁵ CBI, "Budget breakdown: Infrastructure" (22 March 2012) on the CBI website (<http://www.cbi.org.uk/media-centre/news-articles/2012/03/budget-breakdown-infrastructure/>).

¹⁶ [✂]

Increasing costs of production and supply

2.8 In addition, the markets for aggregates and rmx have faced significant cost increases since 2007, especially energy costs and taxes:

- (a) in aggregates, increasing energy costs relate to direct and indirect rises in the cost of oil, steel and electricity. For example, industry diesel costs have increased by approximately 60% since 2007¹⁷, gas costs by 100%¹⁸ and electricity by 73%¹⁹, significant increases that AI has observed in its own cost base;
- (b) the aggregates levy and the carbon reduction commitment charge have also imposed a heavy burden on the industry²⁰. The aggregates levy alone accounts for approximately £2 per tonne on rock, gravel and sand; and
- (c) in rmx, the cost of cement, including that imported by AI through its Paragon subsidiary, has been rising.

2.9 [✂]^{21,22}

2.10 AI has at the same time focused on improving customer service. In rmx, for example, AI's Minimix brand promises a same day delivery service, localised shipping, smaller vehicles to service restricted access and a dedicated customer service staff, for small volume rmx loads.

2.11 AI has also focused on product development. As part of its Life product range, AI has developed, Eblend, an aggregate product that combines 50% recycled material and 50% primary aggregate, utilising arisings (e.g. road planings) that would normally be earmarked for landfill, to constitute a Type 1 sub-base that is fully compliant with the relevant Highways Agency specification;

2.12 AI has sought to distinguish itself by providing sustainable solutions. By way of example, AI has addressed health and safety, quality control, ethical trading, carbon management, water management, biodiversity and social responsibility issues. The work has culminated in AI becoming the first company in the world to be certified to BES 6001, a framework for responsible sourcing of construction materials, by the Building Research Establishment.

Financial performance has been hard hit

2.13 [✂]

2.14 [✂]²³

¹⁷ Platts

¹⁸ Front month energy markets

¹⁹ Ibid.

²⁰ Further details are provided in paragraphs 6.2 to 6.7.

²¹ See paragraph 6.15 to 6.17 for further details.

²² Excluding repairs to a ship that suffered fire damage

2.15 [✂]

Vertical integration

2.16 The OFT has already considered the competitive effects of the transactions that it cites as leading to the concentration of these markets. All but one of the acquisitions in the last decade which the OFT referenced in its report were considered and specifically approved by the OFT or European Commission.

2.17 All decisions considered issues of vertical foreclosure and coordinated effects, where relevant, and either found no issues or accepted undertakings to resolve the issues. In particular, the European Commission on the acquisition of *Hanson by Heidelberg Cement* found that “*it is not rational for the merged entity to restrict its sales of cement and aggregates to favour its in-house ready-mixed concrete activities.*” In its most recent decision, the acquisition of *Atlantic Aggregates by AI*, the OFT did “*not therefore consider that there is a realistic prospect that the merger itself will create or strengthen coordination among suppliers in the supply of secondary aggregates in the Gunheath or Lee Moor areas*”.

2.18 Finding a concern with consolidation or vertical integration in such circumstances would contravene the substantive legitimate expectations of the parties which have received approval for these mergers.²⁴

2.19 AI strongly believes that increased vertical integration has allowed it to better meet customer demands and achieve efficiencies. In particular vertical integration allows AI to achieve a better security of supply, better product quality, a greater commitment to sustainable production, increased health & safety and gives staff the opportunities to excel. It has helped AI develop and bring value added products to customers with the confidence that it has a supply chain capable of delivering the necessary inputs.

2.20 By way of example:

(a) AI could not have delivered the Olympic project on time and to specification without having control of all parts of the supply process. For example, production, train movements and off loading at the site, all needed to be carefully co-ordinated to ensure that there were no gaps in the supply process. A case study on the rmx supply for the site is to form part of the Olympic learning legacy; and

(b) [✂]

2.21 Integrated supply chains also form a key part of the government drive to shorten supply chains, improve the speed of decision making and cut cost out of production. In March 2011, the Government stated that one of its actions for 2012 to

²³ [✂]

²⁴ See *R (on the application of Nadarajah) v Secretary of State for the Home Department* [2005] EWCA Civ 1363, at paragraph 68. “Where a public authority has issued a promise or adopted a practice which represents how it proposes to act in a given area, the law will require the promise or practice to be honoured unless there is good reason not to do so.”

2014 would be “*further measures with industry to promote an efficiency and integration programme across suppliers engaged in frameworks and alliances...*”²⁵. The Highways Agency’s category management scheme is a practical example.

In summary

2.22 This is an industry suffering from a substantial fall in demand, increasing costs and significant pressure from customers. These are not the market conditions that favour suppliers seeking to profit to the detriment of consumers. [X]

3. THEORY OF HARM 1: HIGH LEVELS OF CONCENTRATION AND BARRIERS TO ENTRY MEAN THAT THE SUPPLIERS CAN EXERCISE UNILATERAL MARKET POWER

3.1 The first theory of harm hypothesised in the Issues Statement is that: (a) there is high concentration in the market; (b) there are high barriers to entry; and (c) together these factors lead to the ability to exercise unilateral market power.

3.2 We examine each of these factors below from which it will be apparent that we do not consider this theory of harm to be well founded, in particular because aggregates and rmx customers enjoy a high level of choice of supplier throughout the UK. First, though, we comment on the nature of the aggregates market in the UK, both product and geographic market definition. At paragraphs 3.31 to 3.37 we comment on market definition in rmx.

Aggregates

Product Market Definition

3.3 AI considers there to be one market for the supply of aggregates²⁶. As the CC provisionally found in its investigation of the AA/Lafarge joint venture, AI considers that this encompasses all grades, i.e. sizes, of aggregate. However, in contrast to the CC provisional finding on AA/Lafarge, AI believes that secondary and recycled aggregates compete with primary for such a significant proportion of use, on the basis that they fulfil the same requirements, that they should be considered as part of the same market as primary aggregates.

3.4 *Primary aggregates* comprise crushed rock and sand & gravel.

- (a) Crushed rock is produced from natural rock by blasting, crushing and grading. It is used in asphalt and other road building applications and in many other applications such as rmx, site-mixed concrete, pre-cast concrete products, bagged aggregates, foundations, fills, road sub-base, pipe beddings and railway ballast. Dust, from crushing rock, is used as a fine aggregate, like

²⁵ See the Implementation Plan published by HM Treasury following the Infrastructure Cost Review

²⁶ A view shared by the OFT most recently in *Aggregate Industries Ltd/Foster Yeoman*, 20 November 2006. The OFT has previously reviewed a merger by reference to secondary aggregates but without concluding on market definition (*Aggregate industries/Atlantic Aggregates*, 2 March 2009). Likewise the European Commission has consistently found all primary aggregates, irrespective of type (sand, gravel and crushed rock), to constitute a single, separate product market (*Eurovia/Tarmac* COMP/M.5803), but left open the question as to whether secondary or recycled aggregates are also within this market.

sand. Rock suitable for use as building aggregates is found mainly in the North and West of England, Wales, the Midlands and Scotland.

- (b) Sand & gravel aggregate is naturally occurring and found mainly in the South East of England, the Midlands, Northern Scotland and the Central Belt of Scotland. Marine sand and gravel has the same properties. Sand and gravel is quarried, washed and graded and used in rmx, site-mixed concrete, pre-cast concrete products, bagged aggregates, and in other applications such as road building, foundations, fills and (albeit less) in asphalt. Sand is also used as a fine aggregate in asphalt and in mortar.

3.5 Customers have multiple requirements when sourcing aggregates. The most common requirement concerns the grade of aggregate available. Different grades of aggregate can be produced from both crushed rock quarries and sand and gravel quarries and each quarry tends to produce multiple grades. There is therefore a high degree of supply side substitutability between quarries.

3.6 The geological composition of the aggregate can, for some purposes, be a factor in the customer's choice, particularly when a certain strength of aggregate is required. Some rock types are suitable for virtually every end use (e.g. certain granites) others for few uses and there is a continuum in between. Other requirements include geological characteristics, shape, cleanliness, colour, strength, etc. End-users are always looking for cheaper alternatives and manufacturers likewise look for ways of enlarging the end use capability and range of their aggregate products²⁷.

3.7 Geological composition, national standards and other customer requirements can also affect the price of the end product. Rmx, for example, can be made using a number of combinations of coarse aggregates and fine sand types (limestone, granite, gravel, crushed concrete, glass sand, natural sea dredged sand etc). Different combinations of aggregate require different amounts of cement and water to produce the same specification of rmx. The specification may be set by a national standard for a certain end use. Customers will look to minimise the cost of product by comparing the costs of sourcing different combinations of aggregates, which in turn will depend upon what is locally available, with the cost of cement and water.

3.8 We set out below some practical examples:

- (a) rmx can be made out of sand and gravel or sand and crushed rock. The sand can either be naturally occurring or manufactured by washing crushed rock fines²⁸. In areas where sand and gravel is prevalent, sand and gravel will be the exclusive (or almost exclusive) aggregate used in rmx production. In areas where sand and gravel is scarce or inaccessible rmx is produced using crushed rock products. [✂]
- (b) more generally crushed rock fines can be used as a substitute for sand of the same grade in most applications;

²⁷ We note that the CC in the AA/Lafarge merger referred to high polished stone value aggregate and rail ballast as in separate markets. High polished stone value aggregate (>65psv) and rail ballast accounted for a minimal percentage of AI sales in 2011.

²⁸ Crushed rock fines are essentially the fine grade of aggregate that results from crushing rock.

- (c) in London, rmx was historically made almost entirely using local (terrestrial and marine) sand and gravel. [✂]
- (d) asphalt was widely made using sand & gravel aggregates in areas of surplus in the past. Producers have switched to crushed rock, particularly from Somerset, Leicestershire and Scotland to South East England; and
- (e) dense block manufacturers can and do switch readily between crushed rock, sand and gravel, secondary and recycled.

3.9 *Secondary aggregates* are aggregates that are produced as a by-product of industrial and mining processes. *Recycled aggregates* are aggregates that are produced, for example, from demolition sites and construction waste. Secondary and recycled aggregates can be categorised as follows:

- (a) china clay waste is stone from which china clay has been washed in china clay production. It is produced in the South West of England and graded for use as fine and coarse aggregate, for concrete products and fill;
- (b) glass waste is recycled coloured bottle glass, and other glass, collected by local authorities. AI grinds and distributes waste glass for use as a sand substitute, for use, for example, in asphalt and as bedding sand. It can also be used in concrete;
- (c) slag is a by-product of iron and steel manufacture and ash is a waste produce of incineration and both are used as an aggregate. It can be included in the manufacture of asphalt and used as a road base and in ready-mixed concrete and concrete products;
- (d) recycled construction and demolition waste consists of used brick, concrete and other building materials and arises throughout the built environment. It is often crushed and used on site. In areas of dense urbanisation, it can be economic to transport this waste to a central crusher for subsequent distribution. This material is used typically for road building materials and fill, including pipe beddings;
- (e) recycled railway ballast, which arises throughout Great Britain, can be washed, screened and reused typically for asphalt, other road building materials and fill; and
- (f) asphalt waste and planings from redundant road surfaces are used for temporary surfacing (e.g. in car parks) or as aggregate in asphalt.

3.10 The increase in the levy on primary aggregates, new recycling technology and changes in product specifications over the last 15 years have supported the growth in sales of recycled aggregates. Whereas primary aggregates suffered a fall in demand post 1989, recycled and secondary aggregates grew throughout the period from 1989 to 2007. Secondary and recycled aggregates have, according to the MPA, grown from constituting 9% of all UK aggregates in 1989 to accounting for 28% in 2010. Please see **Figure 3** for further details of the growth of secondary and recycled aggregates by year.

3.11 Secondary and recycled aggregates are a substitute for primary aggregates for a significant proportion of the use of aggregates in the UK. For example:

- (a) secondary and recycled aggregates are entirely substitutable with primary aggregates for general construction purposes and produce a highly similar product with comparable integrity;
- (b) for sub base and fills, [REDACTED] all types of aggregate are substitutes;
- (c) some secondary aggregates, china clay by products from Devon and Cornwall, are used as complete substitutes for primary aggregates across all applications;
- (d) AI uses blended recycled aggregate in its concrete block works in the Midlands in place of crushed rock; asphalt waste at Bardon Hill; and glass waste in its concrete products works at Hulland Ward. AI also supplies secondary and recycled aggregates in substitution for crushed rock and sand and gravel;
- (e) the contract for the development of the 2012 Olympic site specified that a minimum percentage of aggregates used must be recycled aggregates;
- (f) the CC in its review of the AA/Lafarge merger noted that “*survey evidence shows that 49% of aggregates customers surveyed had switched some of their use of aggregates from primary to secondary or recycled aggregates during the last three years and that 61% did so because of the price of the products*”; and
- (g) the European Commission, DG Environment, published a report in August 2011²⁹ showing the UK as the biggest user in the EU of recycled aggregates as a proportion of total aggregate use.

3.12 As for primary aggregates there is a high degree of supply side substitutability in producing different grades of aggregate from secondary sources and recycling plants. Secondary and recycled aggregates, like rocks, are crushed, screened and sorted into different sizes.

3.13 In summary, there is a high degree of substitutability between different types of aggregate for construction uses.

Geographic market definition

3.14 The AA/Lafarge provisional findings analyse relatively narrow local geographical markets for aggregates in its price concentration analysis (22.5 miles). [REDACTED]³⁰ Furthermore, recent OFT and EC precedents find the geographic market to be wider than 22.5 miles³¹.

²⁹ Economic analysis of resource efficiency policies

³⁰ [REDACTED]

³¹ In AI/Foster Yeoman, 20 November 2006, the OFT applied a 30 mile radius but also assessed the competitive effects of the merger on a 40 to 50 mile radius and a 2 hour drive time. Most recently,

3.15 Rail ballast tends to be collected by Network Rail from the quarry and distributed to wherever it is needed throughout the UK.

Concentration

3.16 The theory of harm starts from the hypothesis that the supply of the reference products is characterised by a high degree of concentration at national level³².

3.17 At a national level customers have a wide choice of suppliers. There are approximately 235 suppliers producing primary aggregates from more than 1,200 sites in the UK and 450 suppliers in Great Britain operating an estimated 650 aggregates recycling plants³³. There are five national suppliers the largest of which, Tarmac, has a market share of primary aggregates of only 20.8%³⁴. Furthermore, the shares of the five national suppliers have also not been stable over time. Between 2008 and 2010, Tarmac's national share for aggregates fell by a factor of 8.8% and Hanson by a factor of 8.5%, whereas Cemex grew by a factor of 9%³⁵.

3.18 However, it is a commonly held view, including by competition authorities, that the market for the supply of primary aggregates and rmx are local. The Issues Statement speculates that local markets might be concentrated but offers no supporting evidence for that proposition. In fact, at a local level, customers have a wide choice of quarries and suppliers from which to source primary aggregates. [X]

[X]

3.19 [X]³⁶

3.20 Even this understates the level of choice available to customers. [X] Moreover, as explained above, many customers will also consider secondary and recycled aggregates suppliers alongside primary aggregates quarries to meet their requirements.

3.21 That said, not all areas will attract a large number of suppliers. This is in most cases the inevitable consequence of a lack of demand in those areas and in some cases a lack of suitable available primary aggregates due to local geology. [X]

the European Commission in Eurovia/Tarmac (COMP/M.5803) stated “*In previous cases, the Commission has retained a radius of 50-100 km around each production site depending on the particularities of the areas concerned. The BundesKartellAmt has retained in previous cases a radius of 50-80 km*” although ultimately left the geographic market definition open.

³² Paragraph 27 of the Issues Statement

³³ BDS Market Research as reproduced by the OFT

³⁴ BDS Market Research 2010.

³⁵ BDS Market Research 2010.

³⁶ Independent in this response is used to mean a supplier that is not one of AI, Tarmac, Lafarge, Hanson or Cemex.

[REDACTED]³⁷

3.22 In summary, in the vast majority of the country customers have an extensive choice of local suppliers and even where concentration is slightly higher compared to other parts of the country, this is typically a result of lower demand.

3.23 Furthermore customers face minimal costs in switching supplier. Supply in these markets tends not to be made under long term exclusive supply contracts. [REDACTED] Moreover there are no technical barriers that prevent customers switching supplier.

Barriers to entry

3.24 The fact that we have seen few examples of entry in primary aggregates in the recent past cannot be seen as evidence of the existence of barriers to entry in this sector. Potential entrants are unlikely to find profitable opportunities to enter local markets characterised by excess capacity and falling demand. However, we believe that entry would have occurred had incumbent suppliers attempted to raise prices above the competitive level. Nevertheless, we address each of the alleged barriers identified by the CC in this section.

3.25 *Suitable sites.* The Issues Statement refers to a lack of naturally suitable sites in appropriate areas as a barrier to entry. As noted in paragraph 3.21 above, local areas with a lower number of suppliers are in most cases the inevitable consequence of a lack of demand and in some cases a lack of suitable available primary aggregates due to local geology. AI does not believe that a lack of suitable sites is constraining the number of suppliers in local areas.

3.26 *Planning permission.* As explained in Section 6 below the planning regime naturally has to take account of a range of policy considerations, which all applications for planning, whether those already in the market or wholly new entrants, have to address, but is not an insurmountable barrier to entry.

3.27 *Unexploited sites.* As explained in more detail in paragraphs 6.15 and 6.16 below, AI currently has mothballed a number of aggregates quarries³⁸. [REDACTED]

3.28 *Transport.* [REDACTED] Furthermore, transport costs are costs faced by all suppliers and factored into delivered prices. Hence these costs do not constitute a barrier to entry.

3.29 *Capital costs.* Although a quarry is expensive to develop the costs are not so prohibitive as to deter entry. The land and minerals can be leased and most services can outsourced. [REDACTED]

3.30 *Economies of scale.* Quarries and suppliers of all sizes compete in the same local areas thereby disproving that any economies of scale dissuade entry.

³⁷ [REDACTED]

³⁸ Mothballed quarries are those that contain mineral reserves for which AI has both control of tenure (i.e. freehold, leasehold, option agreement or licence) and necessary permits to extract the reserves. [REDACTED]

[✂]³⁹

[✂]

Rmx*Market Definition*

3.31 AI concurs with the CC's provisional finding in the AA/Lafarge merger investigation that there is one market for the supply of rmx. However, contrary to the CC provisional finding in that inquiry, AI believes that the market for rmx should include volumetric trucks.

3.32 Rmx is produced by mixing cement with gravel or small-sized crushed rock (or, where available, crushed recycled concrete), water and other additives at a central plant, or in a truck mixer, and is delivered by mixer truck to the place at which it will be used. For large projects it can also be produced on site. It is supplied to building contractors, civil engineers, local authorities and other construction end-users for use in foundations and structures in housing, commercial construction and infrastructure. Rmx competes with steel, timber, glass and concrete mixed on-site at the point of use. As rmx is a product that sets it must generally be delivered to a customer within 2 hours of mixing⁴⁰.

3.33 Certain applications require ready-mixed concrete with different performance characteristics, and these are achieved by changing the mixes of aggregate and cement in each batch of concrete, according to customer requirements on an order-by-order basis, and by the use of chemical additives.

3.34 As production of all grades of ready-mixed concrete involves essentially the same raw materials and takes place at the same plant, there is for almost all types of concrete supply-side substitutability between each grade of concrete. Typically, most rmx producers produce most grades and can obtain quality assurance certificates for most grades.

3.35 Furthermore, fixed plants and volumetric trucks that produce rmx should all be considered to compete in the same market as:

- (a) the share of rmx supplied by volumetric trucks in the UK has been steadily increasing to 9%⁴¹;
- (b) volumetric trucks store the raw materials in separate compartments and mix them on site to meet the specific demands of the customer on the day. Volumetric trucks significantly reduce waste; are often run on red diesel rather than white diesel and therefore do not attract fuel duties; their drivers do not require HGV licences; they often do not have an upper weight limit; and they are particularly successful at servicing small loads with long waiting times,

³⁹ [✂]

⁴⁰ The actual time limit depends upon a number of variables including the type of rmx and ambient temperature.

⁴¹ Statistics from BDS Market Research as reported by the OFT

e.g. patching damaged road surfaces or performing motorway barrier work;
and

- (c) some customers are even turning to volumetric trucks for the self supply of rmx. London FM Conway for example, a significant contractor in the highways market, has purchased its own fleet of volumetric trucks and no longer purchases from rmx plants.

3.36 Site plants are used on large projects and would typically be awarded after a competitive tender. In these instance, the tenderer will usually have determined that a site plant would better meet its needs than alternative supply arrangements so competition takes place for that opportunity. Site plants will usually not compete for other jobs in the local vicinity.

3.37 Increasingly AI has noticed a trend for contractors to build their own site plants and procure only the raw material from third party producers. Contractors are becoming a significant competitor in the supply of rmx on site through the use of mobile site plants. The start up costs for a mobile rmx business are very low, especially if the plant and truck etc. are leased. These mobile plants are competing with AI fixed plants. These mobile operators tend to focus less on quality and more on price so do not, for example, generally invest in sustainable solutions.

Concentration

3.38 At a national level there are nearly 50 suppliers in Great Britain that produced 30,000m³ or more of rmx annually; nearly 150 smaller suppliers that operate their own concrete batching plant; and approximately 460 volumetric trucks⁴². There are five national suppliers the largest of which, Hanson, has a market share of only 17.7%⁴³. At a national level therefore customers have a wide choice of suppliers. The shares of the five national suppliers have also not been stable over time. Between 2008 and 2010, Tarmac's national share fell by a factor of 14.9% whereas Lafarge increased its share by a factor of 10.6%⁴⁴.

3.39 At a local level, there is a wide choice of plants and suppliers from which to source rmx. [✂]

[✂]

3.40 [✂]

3.41 That said, not all areas will attract a large number of suppliers. This is because of a lack of demand in some areas, which is closely related to the volume of construction work across the country. Rmx plants tend to be located in areas of higher demand. [✂]

⁴² Excluding on site rmx plants. Source BDS Market Research 2010

⁴³ Excluding on site rmx plants. Source BDS Market Research 2010. See paragraph 3.44 for detail on the number of new entrants.

⁴⁴ Excluding on site rmx plants. BDS Market Research 2010.

[REDACTED]⁴⁵

3.42 [REDACTED]

3.43 Furthermore customers face minimal costs in switching supplier. Supply in these markets tends not to be made under long term agreements. [REDACTED] The remainder of rmx sales goes to short term smaller jobs.

Barriers to entry

3.44 There are few barriers to entry in rmx. Even in a market with falling demand and overcapacity there has been entry reflecting the low capital expenditure requirements and know how required to enter the rmx market. The OFT found that the number of independent suppliers has grown steadily since 2000 with 23 new suppliers entering between 2005 and 2009.

3.45 [REDACTED]⁴⁶

3.46 Suitable sites are readily available (for purchase or lease). Out of the last 12 planning consents received for rmx plants, 11 were by independent rmx producers.

Economies of scale.

3.47 The Issues Statement refers to economies of scale achieved by large scale sites, multi-sites or vertical integration as a potential barrier to entry. This is inconsistent with the fact that plants and suppliers of all sizes are able to supply rmx competitively.

(a) [REDACTED]⁴⁷

[REDACTED]

- (b) Independents operate approximately the same proportion of small plants as large plants. Independents operate approximately 30% of plants with production below 40,000m³ and approximately 34% of plants with production more than 40,000m³ (to the best knowledge of AI).
- (c) Some of the large plants are owned by independent suppliers (for example the Procon site in Wembley is estimated to produce nearly 100,000m³ per year), while many small plants are owned by one of the major national suppliers.
- (d) Moreover, in many cases large and small plants will compete for sales volumes at a local level. For example, Procon's Wembley plant (producing an estimated 100,000m³ a year) and Cemex's Wembley plant (producing an estimated 50,000m³ a year) are located approximately one mile apart.

⁴⁵ [REDACTED]

⁴⁶ [REDACTED]

⁴⁷ [REDACTED]

3.48 In any event the supply of rmx is a competitive market suffering from falling demand and in which suppliers face customers that routinely seek competing quotes and larger customers that frequently use more sophisticated tender processes. As a result, customers are the principal beneficiaries of any economies of scale.

Conduct of cement and aggregates suppliers

3.49 The Issues Statement refers to the conduct of aggregates and cement suppliers, as a potential barrier to entry. We address this issue in Section 5 of this response.

In summary

3.50 The theory hypothesised in the Issues Statement that there is high concentration in the aggregates and rmx markets, that barriers to entry are high and that together these factors lead to the ability of suppliers to exercise market power, is entirely unsubstantiated.

3.51 With regard to the supply of aggregates:

- (a) AI considers there to be one market for aggregates (including recycled and secondary) and that the geographic scope of this market is wider than found in the provisional findings in the AA/Lafarge merger inquiry;
- (b) however, even applying the definitions and methodology used in that inquiry, the results show that almost all consumers enjoy a wide choice of supplier for primary aggregates;
- (c) areas where there are fewer primary aggregates suppliers are sparsely populated and demand for primary aggregates is low; and
- (d) barriers to entry in aggregates are not insurmountable and are faced by incumbents and entrants of all sizes.

3.52 With regard to the supply of rmx

- (a) AI considers there to be one market for the supply of rmx (including volumetric trucks);
- (b) however, even applying the definitions and methodology used in the provisional findings in the AA/Lafarge merger inquiry, the results show that almost all consumers enjoy a wide choice of supplier for rmx;
- (c) areas where there are fewer rmx suppliers are sparsely populated and demand for rmx is low; and
- (d) barriers to entry in rmx are low as is evidenced by the substantial rate of entry by independents over the last few years.

4. THEORY OF HARM 2: COORDINATION BETWEEN PRODUCERS REDUCES OR PREVENTS COMPETITION

4.1 The second theory of harm hypothesised in the Issues Statement is that producers have coordinated to allocate customers, allocate geographic areas, coordinate prices and/or agree a response to demand shocks, on individual products or across a product portfolio, in one or more geographic areas.

4.2 According to the CC's guidance⁴⁸, in order to prove coordination the CC must show: an ability to reach and monitor coordination; internal stability; and external stability. In the same guidance⁴⁹ the CC recognises that "*one problem in identifying such [oligopolistic] conduct is that similar or identical prices can also result from intense competition.*" The clear conclusion is that, even if some of conditions for tacit coordination may exist, it does not mean that tacit coordination will result.

4.3 AI addresses each element in turn below for the supply of aggregates and rmx in the UK.

No ability to reach and monitor coordination

Products are not homogenous

4.4 [§]⁵⁰ Furthermore the value of the aggregate and/or rmx, as the case may be, constitutes only one part of the delivered price. Other matters that can affect what is supplied include haulage, timing, volume, frequency, duration of contract, creditworthiness, day or night delivery, up front or delayed payment, waiting time, testing fees, small load fees, etc.

4.5 AI has also sought to distinguish itself through a better quality offer, including through product development and by implementing in a programme of "commercial excellence" for its employees (as described in paragraph 1.8). For example:

- (a) AI's Minimix rmx brand promises a same day delivery service, localised shipping, smaller vehicles to service restricted access and a dedicated customer service staff, for small volume rmx loads;
- (b) AI has developed a number of rmx products suitable for particular applications. Adflow, for example, is an rmx product with an increased flow rate that does not compromise the strength or quality of the rmx. Drivecrete is an rmx product specially designed to be easy to place and virtually maintenance free;
- (c) as part of its Life product range, AI markets Eblend, an aggregate product that combines 50% recycled material and 50% primary aggregate, utilising arisings (e.g. road planings) that would normally be earmarked for landfill to constitute

⁴⁸ Paragraphs 3.62 onwards of CC3 (Market Investigation References: Guidelines).

⁴⁹ *I.d.* paragraph 3.67

⁵⁰ [§]

a Type 1 sub-base that is fully compliant with the relevant Highways Agency specification; and

- (d) also as part of its Life product range, AI has developed Bardon Highflow S, a unique formulation of free flowing concrete that provides a high early strength solution to the construction of screeded floors whilst providing a 92% carbon saving compared to standard sand and cement screeds.

Customers do not lack choice

4.6 [✂]

No symmetry of market shares, cost structures or decision making

4.7 The national market share figures show no symmetry between the top five suppliers of either product.

- (a) Tarmac, the largest supplier of aggregates, had a share of 20.8% of primary production in 2010 whereas Lafarge, the smallest of the top five suppliers, had a share of only 7.8%⁵¹. Moreover, the difference in share between Tarmac and Lafarge (13%) is much larger than the difference in share between Lafarge and the largest independent Breedon (5.3%).
- (b) Similarly for rmx, Hanson, the largest supplier, had a share of 17.7% in 2010 whereas Lafarge, the smallest supplier of the top five, had a share of only 9.4%⁵². Moreover, the difference in share between Hanson and Lafarge (8.3%) is larger than the difference in share between Lafarge and the largest independent Breedon (7.2%).
- (c) AI supplies only a minimal amount of cement to third parties in contrast to Hanson, Tarmac, Cemex and Lafarge.

4.8 The shares of the five national suppliers have also not been stable over time. Between 2008 and 2010, Tarmac's national share for aggregates fell by a factor of 8.8% and Hanson by a factor of 8.5%, whereas Cemex grew by a factor of 9%⁵³. Similarly, for rmx in the same period, Tarmac's national share fell by a factor of 14.9% whereas Lafarge increased its share by a factor of 10.6%⁵⁴.

4.9 Furthermore the major national suppliers tend to be present to differing degrees at different levels in the supply chain. With a 20.8% share, Tarmac, for example, is the largest national supplier of aggregates but only the third largest supplier of rmx with a 17.1% share⁵⁵ and the smallest of the cement suppliers according to the provisional findings on the AA/Lafarge merger inquiry. In contrast,

⁵¹ BDS Market Research 2010.

⁵² BDS Market Research 2010. Excluding on site rmx plants.

⁵³ BDS Market Research 2010.

⁵⁴ BDS Market Research 2010.

⁵⁵ BDS Market Research 2010.

Lafarge was the smallest of the top five, in the supply of rmx in 2010⁵⁶ but the largest of the cement suppliers according to the provisional findings on the AA/Lafarge merger inquiry. AI understands that this asymmetry between Tarmac and Lafarge was one of the drivers for the proposed joint venture.

4.10 The cost structure of the major suppliers may also vary given the different location of quarries and plants operated by the major suppliers. Different areas of the country produce different types of aggregate. Some may need additional processing to be suitable for certain purposes, e.g. hard rock will need to be crushed and washed for use as sand in rmx. Similarly in some areas suitable aggregate may need to be transported greater distances. This is evidenced by the patterns of inter-regional movement of aggregates in the UK.

4.11 As indicated in paragraph 4.5, AI also seeks actively to differentiate itself from the other four major multinational suppliers by focusing on better quality products and customer solutions rather than commodity volumes. AI aims to be a quality supplier of sustainable products.

4.12 The OFT suggested that some suppliers have engaged in asset swaps and that this may have led to an increase in the symmetry of these suppliers' market positions. [REDACTED]⁵⁷

Market conditions are not stable, either on the demand side or the cost side

4.13 As indicated in Section 2, the markets for aggregates and rmx have undergone a sustained downturn since the onset of the recession. Demand has fallen sharply, while costs continue to rise markedly, [REDACTED].

4.14 Furthermore the conditions of demand and the costs of production differ across the country.

Buyers exert significant pressure on suppliers

4.15 As noted at paragraph 2.7, customers [REDACTED] employ large, well resourced and sophisticated procurement specialists. Larger customers use multiple suppliers and tender processes to foster competitive pressure, which has intensified in the economic downturn.

4.16 The use of internet auctions, for example, is becoming more common. Competition among suppliers to win these types of tender is intense. Carillion, which is one of the second tier central government suppliers, at the end of 2010, announced that it would be reducing its supplier base from 25,000 to just 5,000 as part of a drive to save £140m a year by 2013. At the same time it started using electronic auctions to select which of its existing suppliers would remain preferred suppliers. Skanska, [REDACTED] recently indicated that it wants to reduce the number of its suppliers to three in order to benefit from better terms for bulk purchases and to reduce administrative costs.

⁵⁶ BDS Market Research 2010. Excluding on site rmx plants.

⁵⁷ [REDACTED]

There is little contact between suppliers in localities where they compete

4.17 AI's joint ventures are primarily production joint ventures with complementary businesses leading to an increase in customer choice. With only two exceptions⁵⁸, none of the production joint ventures to which AI is a party is between AI and another major supplier.

No internal sustainability

Excess capacity

4.18 [X] The situation has been exacerbated in rmx due to the continued new entry by independents despite the tough trading conditions.

No barriers to switching

4.19 Customers face minimal costs in switching supplier. Rmx customers, as outlined in paragraph 3.6 above, may take into account the effect of switching the geological type of aggregate, on the quantities of other materials required to produce rmx, but this would not constitute a barrier to switching in response to a price rise. [X]

No external sustainability

Barriers to entry not insurmountable

4.20 Barriers to entry in rmx are very low. The capital expenditure needed to open an rmx plant is low⁵⁹ and the planning process is relatively straightforward. This is evidenced by the continuous growth in the number of independent rmx suppliers in the UK since 2000 and the fact that 23 new suppliers entered between 2005 and 2009⁶⁰.

4.21 The barriers to entry in aggregates are higher than in rmx but not insurmountable. As explained in paragraph 3.29, the capital costs required to develop a quarry are not prohibitive. As explained in Section 6 below, the planning regime is a hurdle for any supplier of any size wishing to develop reserves, whether an incumbent or new entrant. The fact that we have seen few examples of entry in primary aggregates in the recent past however cannot be seen as evidence of the existence of barriers to entry in this sector. Potential entrants are unlikely to find profitable opportunities to enter into local markets characterised by excess capacity and falling demand.

Purchasers hold countervailing buyer power

4.22 Customers include large purchasers that employ tenders and encourage multiple bidders to stimulate competition amongst suppliers.

⁵⁸ [X]

⁵⁹ See paragraph 3.45

⁶⁰ As reported by the OFT

No evidence of coordination

4.23 [REDACTED]

4.24 Furthermore, there have been gains and losses among the major suppliers, for example:

- (a) In primary aggregates, between 2008 and 2010, Tarmac's national share fell by a factor of 8.8% and Hanson's by a factor of 8.5%, whereas Cemex grew by a factor of 9%⁶¹.
- (b) Similarly, for rmx in the same period, Tarmac's national share fell by a factor of 14.9% whereas Lafarge increased its share by a factor of 10.6%⁶². Moreover, in rmx, there has been sustained growth in the market share of the independents at the expense of integrated producers⁶³.

In summary

4.25 In summary, the market features necessary to sustain tacit coordination are not present in the aggregates and rmx markets:

- (a) there is no ability to reach and monitor coordination as products are not homogenous; customers have a wide range of choice; there is no symmetry of market shares or cost structures among suppliers; market conditions are not stable; buyers exert significant pressure on prices; and there is little contact between suppliers in localities in which they compete;
- (b) there is no internal ability to sustain coordination. [REDACTED] and
- (c) there is no external ability to sustain coordination as barriers to entry are not insurmountable; purchasers hold countervailing buyer power and there is no evidence of actions to deter entry.

4.26 Moreover, there is no evidence, of which AI is aware, that suggests tacit coordination in fact occurs. Prevailing economic conditions are a much more plausible explanation for the current market situation than the complex theories of collective harm addressed in the Issues Statement.

5. THEORY OF HARM 3: VERTICAL INTEGRATION AND EXCLUSIONARY BEHAVIOUR

5.1 The third theory of harm, hypothesised in the Issues Statement, is that suppliers have engaged in practices to squeeze independent suppliers out of the market. The practices specifically complained of are that suppliers refuse to supply or charge prices to independent rmx producers for cement and/or aggregates that prevent rmx producers making a reasonable margin. AI is unable to comment on the position as regards cement but, as regards vertical integration more generally, as noted in

⁶¹ BDS Market Research 2010

⁶² BDS Market Research 2010

⁶³ BDS Market Research 2010

paragraphs 2.18 and 2.19, AI strongly believes that increased vertical integration has brought benefits to customers. It has helped AI develop and bring value added products to customers with the confidence that it has a supply chain capable of delivering the necessary inputs.

5.2 The CC notes, in paragraph 43 of the Issues Statement, that “*we have not seen suggestions that integrated producers bundle products to customers in ways which make it difficult for non-integrated suppliers to attract customers.*” [✂].

No policy of refusing to supply rmx customers

5.3 AI has no policy of refusing to negotiate with independent rmx producers for the supply of aggregates and would generally only refuse to negotiate on credit worthiness grounds. [✂] This resulted in the adjustment of lines of credit for a number of customers.

No systematic policy of below cost pricing of rmx

5.4 Aggregates and rmx pricing is highly competitive given increasing costs and customer bargaining strength, as described in Section 2 of this response. [✂]

5.5 In short, market conditions are a much more plausible explanation for the concerns expressed about low rmx prices than the novel theory of collective harm advanced in the Issues Statement.

In summary

5.6 In summary, AI strongly believes that vertical integration has brought benefits to customers in terms of enabling suppliers to better meet customer demands and allowing suppliers to achieve efficiencies. Of the practice complained of with regard to aggregates and rmx, AI can confirm that it has no policy to refuse to supply rmx customers and no policy of below cost pricing on rmx.

6. POLICY AND REGULATION

6.1 The fourth theory of harm, hypothesised in the Issues Statement, is that aspects of policy and regulation have the effect of distorting behaviours or creating barriers to entry. In particular the Issues Statement⁶⁴ refers to the EU Emissions Trading System, aggregates tax, the planning regime, aspects of these schemes that may incentivise the creation of land banks and aspects of these schemes that may result in increased transparency. We address each in turn below.

EU Emissions Trading System

6.2 The Issues Statement states that the CC will investigate “*whether the EU Emissions Trading System has the effect of giving advantages to existing cement producers, distorts patterns of production, and tends to drive increased concentration*”.

⁶⁴ Paragraph 47

6.3 As AI is not a manufacturer of cement in the UK it is not in a position to comment on those aspect of the OFT's findings with regard to the UK.

Aggregates tax

6.4 The Issues Statement states that the CC will investigate *“how the aggregates tax influences the choice between use of primary, secondary and recycled aggregates and whether this may have the effect of distorting competition”*.

6.5 As noted above AI is strongly of the view that aggregates taxes and credits distort efficient production. AI agrees that the landfill tax and latterly the aggregates levy have been a barrier to the expansion of primary aggregates and results in the favouring of secondary and recycled aggregates over primary aggregates. The levy constitutes approximately 20-25% of the average sales price of aggregates.

6.6 The landfill tax gave demolition contractors, skip hire and haulage businesses an incentive to recycle rather than send material to landfill. A 2009 BDS report⁶⁵ stated that the *“[i]ntroduction of the landfill tax resulted in an increase in waste disposal costs for demolition contractors, skip hire and haulage business. To reduce these costs, it was necessary for this sector [inter alia] to establish its own aggregate recycling plants”*.

6.7 The aggregates levy has given producers of secondary and recycled aggregates, primarily independents, a significant cost advantage. It has been one of the main factors that has contributed to the increase in secondary and recycled aggregates as a proportion of total aggregate production from 9% in 1980 to 28% in 2010⁶⁶.

- (a) The 2009 BDS report⁶⁷ found the *“Introduction of the aggregates levy has changed the economics and distorted the market. It is now possible to economically supply china clay sand into the south east, and slate wastes into the midlands. [...] Untaxed aggregates have a cost advantage over taxed aggregates. This distorts the market”*.
- (b) A memorandum published by the BAA ahead of the Pre Budget Review 2003⁶⁸ found that aggregate by-products *“are unavoidably produced when extracting and processing virgin aggregate to produce a quarry's primary product. This has never been treated as ‘waste’, since it could be sold cheaply, for use in products such as concrete blocks, or for use as a cheap ‘fill’ material, for around £1 per tonne. The £1.60 per tonne levy has made aggregates by-products commercially unattractive and unsaleable in many areas.”*

⁶⁵ BDS Marketing Research Limited, *The effects of the landfill tax and aggregates levy by an analysis of aggregates markets since 1990* (December 2009)

⁶⁶ MPA Statistics

⁶⁷ BDS Marketing Research Limited, *The effects of the landfill tax and aggregates levy by an analysis of aggregates markets since 1990* (December 2009)

⁶⁸ BAA, *The aggregates levy: Between a rock and a hard place* (October 2003).

Planning regime

6.8 As the OFT identified “*Land-won primary aggregates are subject to both town and country planning restrictions for land use and a Managed Aggregates Supply System (MASS) that seeks to reconcile demand and supply requirements, setting targets for reserves of permitted supply (landbanks) based on econometric modelling of demand in Great Britain which is then disaggregated into England, Wales and Scotland and then into the different English regions.*”

6.9 What should not be forgotten is that this planning regime is designed to make it easier to obtain planning consent. Geological factors mean that there is an imbalance in the UK between areas that have high deposits of economically extractable mineral but low demand for that mineral and areas that have insufficient mineral reserves but high demand for those minerals. Central government, via the MASS, therefore forecasts national demand and delegates responsibility for meeting that demand to regional planning authorities. The result is that planning decisions are made on the basis of what is good for the UK as a whole rather than only what is good for a particular region or area. In AI’s view, without a managed system, local planners would resist applications for any more than is required for local consumption which would lead to fewer planning consents, shortfalls in supply and aggregates being transported over greater distances to the detriment of the environment.

6.10 The new National Planning Policy Framework published last month acknowledges the need for a nationally managed aggregate supply system. If anything it emphasises the need to maintain an adequate and steady supply, safeguard potential extraction sites, keep an up to date local plan and maintain an adequate stock of permitted reserves. The new framework therefore continues to facilitate the entry in aggregate extraction that is required to support construction and economic development.

6.11 That said, the general UK planning system is bureaucratic, slow and expensive. Significant improvements could, and should, be made, within the current national framework, which would, inter alia, benefit the minerals planning regime as well. These are not insurmountable hurdles and apply equally to large and small suppliers but the processes could benefit from being more streamlined. This would reduce the cost for all applicants.

6.12 However, the planning system can be navigated by any entrant with the help of planning consultants. It is common practice for all suppliers to use planning consultants and there are a large number of planning consultants to whom an entrant can turn for assistance with the detailed process of a planning application, with a supporting environmental assessment. Planning costs vary significantly depending upon the characteristics of the site in question but need not constitute a prohibitively large part of the overall investment costs for establishing a quarry.

6.13 We understand that the MPA has undertaken a study of 314 planning decisions taken between 2000 and 2008/09 and found no substantive difference in the success rates of planning applications by larger or SME companies, either for new or extended crushed rock or sand and gravel quarries. In fact, we understand that the MPA found a slightly higher success rate for SMEs.

6.14 Planning is not an insurmountable hurdle to entry, in fact the regime is designed to aid entry, and applies equally to large and small suppliers, entrants and incumbents. It does not therefore distort competition in the market.

Mothballing

6.15 [REDACTED]⁶⁹

6.16 [REDACTED]⁷⁰

6.17 [REDACTED]

Transparency

6.18 As regards the operation of the planning regime, AI is at a loss to understand why the current degree of transparency in the system could be a concern. Meetings of the Aggregate Working Parties under the MASS arrangements are technical in nature. Commercially sensitive information is not disclosed. Furthermore, minutes of the meetings are published on the Communities and Local Government website which is hardly consistent with an inappropriate information exchange.

6.19 As regards the operation of the emissions tradings system, we are not in a position to comment. We can confirm that the aggregates taxation regime does not provide any undue transparency.

6.20 AI is not therefore aware of any aspect of the regulatory regimes that provide a degree of transparency that aids coordinated competitive behaviour.

In summary

6.21 AI believes that the aggregates tax regime can have a distortive effect on efficient production.

6.22 The planning system was designed to make it easier, not harder, to obtain planning consent. It is not an insurmountable hurdle and applies equally to large and small suppliers, entrants and incumbents. It does not therefore distort competition.

6.23 AI is not aware of any aspect of the regulatory regimes that provide a degree of transparency that aids coordinated competitive behaviour.

7. CONCLUSION

7.1 As set out in this response, AI does not consider that features of the aggregates and rmx markets support the theories of harm as set out in the CC's Issues Statement nor that features of these markets result in adverse effects on competition.

⁶⁹ [REDACTED]

⁷⁰ [REDACTED]

7.2 AI would urge the CC to be mindful of the fact that aggregates and rmx suppliers are currently experiencing particularly difficult trading conditions. In response to current conditions, [✂].

7.3 These difficult trading conditions affect all suppliers, large and small, but it is the inefficient suppliers which will be looking to the CC process to insulate themselves from competition. AI requests that the CC be particularly careful not to penalise efficiency and those that have adapted to meet the challenges of the tough trading environment through the exercise of prudent and pragmatic commercial management.
