Aggregates, Cement and Ready-Mix Concrete Market Investigation

Tarmac response to the Competition Commission's Statement of Issues

1 Introduction

As a starting point, Tarmac would like to emphasise that although it is disappointed that the Office of Fair Trading ("**OFT**") made the decision to refer its market study to the Competition Commission ("**CC**") (the "**Decision**"), Tarmac is looking forward to engaging with the CC during the course of this market investigation.

The construction industry is a serious driver for the economy and Tarmac believes that it is essential that the markets for aggregates, cement and ready-mix concrete ("**RMX**") work as efficiently and effectively as possible, not least given the current challenges the markets face as a result of the existing economic downturn. Therefore, Tarmac hopes that it is able to assist the CC in understanding how the markets for the reference products work.

Tarmac believes that the timing of the Decision is ill-founded since it takes place in the context of an economic downturn which is longer and deeper than any experienced by the construction industry within the last thirty years. There has been a significant reduction in demand for aggregates, cement and RMX from the construction sector since 2007 as a result of the recession and declines in construction industry activity. There is expected to be a further decline in construction output in 2013 of 5% and forecasts do not predict any change in this trend before at least 2014[1] and consider that any potential improvements will be from a very low base.[2] Since 2007, demand for aggregates fell by 27.5%; in cement, production in Great Britain ("**GB**") has declined by 34.3%; and in RMX, demand has declined by 39%. As explained further below, all of these markets are also characterised by significant overcapacity.

As a result of the recession, in recent years Tarmac has been forced to make substantial cost savings and adjust to the reduction in activity. During 2008 and 2009, Tarmac made numerous employees redundant and in December 2010, the Tarmac group further announced the closure of its Tarmac Building Products precast concrete and flooring division, with even more job losses. Since 2007, the overall UK headcount within the Tarmac group has reduced by approximately [CONFIDENTIAL BUSINESS SECRET]%.[3]

The Decision therefore comes at a challenging time for Tarmac and for the sector in general. [CONFIDENTIAL BUSINESS SECRET].[4] The analysis undertaken by the CC should be viewed against this backdrop.

The overall economic and outlook for construction remains bleak and challenging for the foreseeable future. The latest forecasts see construction output declining further with no signs of recovery until 2014 at the earliest.

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2 Relevance of the provisional findings ("PFs") in the Anglo American/Lafarge joint venture to the market investigation

Anglo American and Tarmac, together with RBB Economics ("**RBB**") have undertaken a considerable amount of work in the context of the Merger and think that the CC could usefully draw upon much of that work for the market investigation.

In relation to the CC's PFs, as explained to the CC Merger team in the response to the PFs, Tarmac considers that a number of the CC's conclusions in the PFs are unfounded and, in particular, considers that the CC fails to discharge the applicable legal standard for finding a substantial lessening of competition based on co-ordinated effects in bulk cement. The PFs also fail to take account of, or give due weight to, the relevant pro-competitive effects of the proposed joint venture. Therefore, Tarmac does not consider that the CC market investigation team should give undue weight to the CC's PFs, without also considering the arguments Tarmac has made in response to the PFs and other submissions made by Tarmac in the course of this market investigation.

Nevertheless, it is important to emphasise that the work undertaken by the CC in relation to the Merger is for the purpose of assessing the effects of the Merger in the markets which are relevant to that assessment. This market investigation is a separate process, with different aims and a focus on specific reference products and markets.

3 Market definition

The CC notes that as part of its investigation, it will consider the relevant product and geographic markets and, in particular, will consider whether there are separate markets for different grades of products and whether there a separate markets for different product uses. Set out below are Tarmac's views of the relevant product and geographic markets.

3.1 Aggregates

Aggregates including primary aggregates - crushed rock, sand and gravel (marine and land sourced) - and secondary and recycled aggregates, are primarily used for construction purposes.[5] Aggregates are also used for non-construction purposes, for example, for industrial purposes (such as flue gas desulphurisation[6] at coal fired power stations); as rail ballast (sold almost exclusively to Network Rail); in the production of cement and lime; high purity limestone used in chemical processes; and for use in the agricultural and horticultural sector as a soil additive.

Tarmac is of the view that there is a single market for construction aggregates, which includes sand and gravel, crushed rock, and recycled and secondary aggregates[7] (but

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excludes certain specialist and non-construction aggregates). Secondary and recycled aggregates constrain primary aggregates as they are substitutable and customers of primary aggregates are able to, and do, switch purchases from primary to recycled or secondary aggregates. Therefore, secondary and recycled aggregates are a feasible alternative to primary aggregates for a significant proportion of customers.

In addition, no distinction can be made between marine dredged and land won aggregates as marine dredged sand and gravel has the same composition as land sourced sand and gravel and there is no specific demand for sand and gravel from either source. Suppliers choose between marine dredged and land sourced sand and gravel based on the comparative logistics costs and availability.

The availability of aggregate types in a given location is dependent upon geology and the availability of construction, demolition and industrial waste from which recycled and secondary aggregates are produced. GB has a "rock line" running approximately from Weymouth in the south west to Kingston-upon-Hull in the north east. To the north west of this rock line (i.e. particularly in Scotland, Wales and the North of England), the local geology gives rise to large deposits of crushed rock. In contrast, to the south east of this line (in particular, in East Anglia and the South East) there are high levels of sand and gravel, but little or no crushed rock.[8]

Tarmac has made submissions in the context of the Merger (in response to the Merger PFs) that it disagrees with the CC's approach of looking at competition within segments of the market for primary aggregates (e.g. by looking at sand and gravel and crushed rock separately). Tarmac considers the CC's approach in this regard to be unwarranted as sand and gravel and crushed rock are substitutable. Different rates of usage in local areas can be explained by geological constraints (i.e. lack of local availability in certain local areas) and are not evidence of limited substitutability. Both sand and gravel and crushed rock can be, and are, used interchangeably, e.g. for RMX and concrete products applications. From the customer perspective, the choice of aggregate materials for construction purposes is based upon the grade required and local availability and not upon the geological composition of the material.

Aggregates are not typically transported over long distances due to their weight to value ratio and the impact transport costs have on the delivered prices for aggregates. Therefore, competition for aggregates takes place at a local level and the relevant geographic market for aggregates as a starting point for competitive assessment is 30 miles around the point of production. Tarmac has a national footprint for aggregates but actively competes for jobs within each local area in which it is active and faces a mix of national, regional and local players.

3.2 RMX

RMX is concrete that is manufactured in a freshly mixed and unhardened state. It is often manufactured at the supplier's site for delivery to a customer's construction site.. It can also be produced and or mixed on-site by a volumetric truck, or a mobile or fixed on site plant. It is manufactured by mixing highly specific quantities of cement and other cementitious products with fine and coarse aggregates, water and other additives. It can

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All grades of RMX incorporate the same raw materials, mixed at different quantities to achieve properties required for a specific application. Differences between grades of RMX are driven by varying the quantity of the primary ingredients and by the use of freely available additives, meaning there is supply-side substitutability between the different grades produced at any RMX plant.

In the Merger PFs, the CC indicated that it did not consider volumetric trucks to be part of the same relevant market as RMX produced by fixed plants. However, Tarmac disagrees and believes that volumetric trucks exert a significant and increasing constraint on concrete plants and that the RMX which they produce is fully substitutable for RMX produced at fixed plants.

RMX supplied by volumetric operators accounts for approximately 9% of the supply of RMX in GB and has grown considerably in the past decade with both new entrants to the RMX industry and existing suppliers investing heavily in volumetric trucks. Approximately three-quarters of volumetric plants are owned by small companies who own/operate up to three vehicles. BDS estimates that there are 540 volumetric trucks operating in GB and has identified 180 companies, of which only around a dozen also have fixed RMX plants (the remainder operate volumetric trucks only).[9] The large national RMX suppliers are not generally involved in volumetric operations. Even though volumetric trucks were originally designed to supply the small-loads market, Tarmac understands that volumetric truck operators are now increasingly delivering to customers and jobs that have been traditionally supplied by plant mixed companies. Tarmac considers that volumetric operators compete for business strongly against its fixed plants.

Volumetric trucks typically operate at higher capacity utilisation rates than traditional concrete plants. An existing volumetric operator could also very easily scale capacity by buying or leasing additional volumetric trucks.

Tarmac expects volumetric operators will continue to grow at the expense of larger plant suppliers and therefore considers that they impose a real competitive constraint on RMX produced by fixed plants.

RMX can be manufactured at a plant which is situated at the customer's construction site for the purposes of that project (i.e. a 'site plant'). Fixed and site RMX plants are not in direct competition with each other due to the different competitive processes involved in relation to the decision to use a site plant. In particular, RMX site plants are set up to supply specific construction projects and therefore the vast majority of sales are not supplied to the general market (i.e. there is competition "for" rather than "in" the market). Once a site plant has been set up for an individual customer for a particular project, that plant does not sell to the external market. However, fixed and site plants are in competition when a job is tendered, as at this point a customer can choose to buy RMX from a fixed RMX plant or set up a site plant.

The relevant geographic market for RMX as a starting point for competitive assessment is 10 miles from the point of production, as the distance RMX can travel from a plant is limited by the time it takes for the product to set.[10]

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3.3 Cement

Cement is produced from a mixture of finely ground limestone or chalk, clay and sand which is heated almost to melting point at around 1,450ºC in a large rotating kiln. The emerging cement clinker is ground to a fine powder or combined with cementious materials to produce different grades of cement. In GB, cement is supplied to RMX producers, builders' merchants, concrete product manufacturers and soil stabilisation contractors.

Different types of grey cement are made at cement works depending on the amount of different cementious materials (such as Granulated Ground Blast Furnace Slag (GGBS), Pulverised Fly Ash (PFA), limestone fines and silica fume) that are blended with the cement clinker. GGBS is a by-product recovered from blast furnaces used in the production of iron. It can be used unground as a coarse aggregate or as a supplementary cementitious material (where it can replace up to 70% of cement in a concrete mix). PFA is a by-product of coal-fired power stations. Both products have environmental benefits given that their processing requires less energy than the processing of primary materials and if they were not used in composite cements or as an addition at the RMX site then the materials would be wasted and sent to landfill.

There are three main types/grades of grey cement: (i) CEM I (ground cement clinker with a small percentage of gypsum); (ii) CEM II (6 – 35% PFA, limestone or GGBS); and (iii) CEM III (36 – 95% GGBS). Tarmac considers that the relevant product market comprises all types/grades of grey cement given that demand and supply-side considerations suggest that the different grades of grey cement are interchangeable.

Further, Tarmac does not consider that a distinction should be made between imported and domestically-produced grey cement, as the two sources are fully substitutable and compete directly. The OFT and the European Commission have found imported and domestically-produced grey cement to be directly substitutable in past merger decisions.[11] Imported cement has maintained a significant share of the grey cement market since demand peaked in 2007, demonstrating the ability to import at competitive prices and constrain domestically produced product. Imports now account for 15% of GB total sales[12].

It may be appropriate to distinguish between bulk and bagged cement, as they serve different customers and, indeed, the OFT has previously suggested that a distinction may exist.[13] Bulk cement is stored in large silos and is used by RMX and concrete producers who can handle the bulk themselves. Bagged cement is used by builders' merchants and DIY outlets.

The geographic market for cement is at least national in scope.

4 Analysis of competition in the relevant markets

4.1 The CC has noted in its statement of issues that it will consider competition in the relevant markets and, in particular, the behaviour of customers and consumers and whether competition has an effect on prices or other aspects of performance. Set out below is a

[11] For example, European Commission decisions: COMP/M.3713 Holcim/Aggregate Industries, 14 March 2005; COMP/M.4719 Heidelberg Cement/Hanson, 7 August 207; COMP/M.5425 DOPRASTAV/CESKOMORAVSKY BETON/TBG DOPRASTAV, 6 February 2009. OFT decision: Anticipated acquisition by Lafarge Cement UK of Port Land Cement Company Limited, 21 October 2005.

[12] See Main Parties Submission in the Merger, page 38.

[13] Anticipated acquisition by Lafarge Cement UK / West Thurrock (OFT decision of 27 June 2005); and Anticipated acquisition by Lafarge Cement UK of Port Land Cement Company Limited (21 October 2005).

summary of competition in the markets for each of the reference products, which also focuses on some of the points the CC has said it will consider in paragraphs 20-22 of the statement of issues:

4.1.1 Aggregates

Fragmented local markets

The supply of aggregates in GB is characterised by significant fragmentation. In Tarmac's experience recycled and secondary aggregates are often used interchangeably by customers for economic reasons, with secondary and recycled aggregates often being favoured on grounds of price. It is estimated that in 2009, 28% of the share of supply of aggregates was accounted for by secondary and recycled aggregates. The fact that the share of supply has grown to this extent at the expense of primary aggregates demonstrates that they are an important source of competition in this market. In the Decision, the OFT identifies approximately 235 operators in the industry supplying primary aggregates[14] and 650 plants producing recycled aggregates, operated by more than 450 companies.[15]

Different types of aggregates are functionally substitutable meaning, for example, a secondary and recycled aggregates producer could successfully supply customers in the same local market where Tarmac would have proposed to supply that same customer with, for example, crushed rock. As there is demand substitutability between the different types of aggregates and a number of operators in the industry, customers have a wide range of choice of suitable suppliers in the local markets.

Customers

Aggregates customers may be broadly grouped into three categories. First, there are "fixed outlets", i.e. customers with fixed locations and a fairly steady demand for aggregates (such as concrete products manufacturers, bagged aggregates producers, RMX or asphalt producers). Secondly, and most importantly in volume terms, there are sales for "general construction" or "jobs" For these, aggregates are required by construction and civil engineering firms for specific construction projects (in the case of larger projects lasting for a number of months). Thirdly, some sales are also made to merchant hauliers or resellers. These are typically customers that have their own vehicle fleets and collect from quarries or depots (multi sourcing on the basis of price and location). Resellers would typically sell aggregates for general construction applications.

"Jobs" customers undertaking construction projects usually purchase materials on a "spot" basis. Fixed outlet customers and merchants often also purchase materials on a spot basis, although more formal supply agreements for these customers can also be used. Tarmac has a small number of national framework agreements with customers, however these agreements do not dictate the prices paid by customers; instead, prices are negotiated through local sales teams in the usual way for these customers[16] (see 'pricing' section below). Customers are generally repeat buyers, often with a regional or GB-wide span, and thus have a good knowledge of prices across any particular region or across GB more generally, which can be used to negotiate competitive terms of supply.

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[14] Decision, paragraph 3.12. Small and medium sized competitors supplied 18.5% of the primary aggregates market in 2009 and 23% of the secondary and recycled aggregates market. Data based on MPA estimates.

[15] Decision, paragraph 4.9.

[16] [CONFIDENTIAL BUSINESS SECRET]

Choice of suppliers and switching

Exclusive supply contracts are not a feature of the aggregates market and customers typically multi-source their needs according to price and availability of supply. Switching between suppliers occurs regularly, as customers shop around for each order between the producers located in each local market.

Smaller customers for aggregates have access to the same supply options as larger customers. Aggregates are sold by quantity and therefore smaller customers can purchase on a collect or delivered basis (although Tarmac may be able to offer better prices for large orders to reflect economies of scale achieved on deliveries).

As noted above, producers of primary aggregates face significant and increasing competition from suppliers of recycled and secondary aggregates. Entry into the production of recycled aggregates is straightforward as no substantial investments are required (e.g. mobile crushers can be hired over the short-term or leased). Further, they are not subject to the aggregates levy, which means that overall secondary and recycled aggregates often work out cheaper for the customer.[17] Therefore, customers can, and do, regularly switch sources of supply.

Pricing

Price is the key element of competition in the aggregates sector. Ability to supply also influences a customer's decision, although in the environment of substantial spare capacity, as the case for aggregates where product is often kept on stock, this is not a major issue. Although there are a relatively small number of national players in the aggregates market, within local geographic markets Tarmac faces numerous competitors in the form of other majors, independents and secondary and recycled producers. Tarmac therefore has to compete on price to win jobs and although distance delivered imposes additional costs on the supplier, it is not the case that the supplier geographically nearest to the job will necessarily win it. In an environment of spare capacity and high fixed costs to recover, suppliers are willing to accept lower margins to serve jobs further away from their sites.

Tarmac conducts price negotiations through local sales teams. [CONFIDENTIAL BUSINESS SECRET]

Capacity utilisation

The market for the supply of construction aggregates has been characterised for at least two decades by overcapacity. The production of aggregates is capital intensive, and requires a high level of fixed costs. Also, given the high costs of transporting aggregates and the terms of many lease arrangements which require continued operation of a quarry throughout the term of that lease, relatively little capacity has been removed from the market, while total annual demand has reduced substantially.

The difficulties caused by this overcapacity have been further compounded by significant falls in demand from the construction sector as a result of the global financial crisis in 2007 and the subsequent recession.

As a result of these market conditions, aggregates producers have been forced to mothball or close high cost operations where possible. This is a last resort for Tarmac given the

[17] However, please see discussion below in relation to the recent General Court decision Case T-210/02 *British Aggregates Association v European Commission,* 7 March 2012.

levels of investment made in securing land and mineral rights, obtaining planning permission and acquiring the necessary plant and equipment in order to produce aggregates from the site. Furthermore, the costs of mothballing a site can be significant, including the cost of making the workforce redundant. There are also continuing costs for mothballed sites, such as rent, rates, energy standing charges, maintenance costs and general upkeep costs. Further, leasehold sites are subject to ongoing rental payments and minimum royalty payments, irrespective of whether the site is operational or not, which makes mothballing a leasehold site even more costly.

Those sites which continue to operate currently do so below capacity and have scaled back production (by reducing staff and running plants for restricted periods).

Tarmac estimates that it is currently operating at an average capacity utilisation rate below [CONFIDENTIAL BUSINESS SECRET]% in aggregates. Tarmac considers this utilisation level to be indicative of overcapacity in the aggregates market as a whole.

The overcapacity also means that barriers to expansion in aggregates are low. Production output for existing producers can be readily scaled without the need to incur additional fixed costs due to the typically low capacity utilisation of many suppliers.

4.1.2 RMX

Fragmented local markets

Barriers to entry within the RMX sector are low since there are relatively small costs involved in setting up an RMX plant (the capital costs associated with building a RMX plant on a pre-owned site are as little as £300,000); the know-how and equipment required to establish an RMX plant are easily accessible; any planning consents can generally be acquired within three months of application; and minimal upfront investment is required in relation to transport, as trucks that transport the mixed RMX product are typically bought through hire-purchase arrangements with the truck distributors or other finance institutions. In addition, third party truck operators may be used and truck mixers are also readily available for hire. This has led to a significant growth in independent RMX players in recent years, evidenced by approximately 23 new RMX suppliers commencing operations between 2005 and 2009, with the share of supply account for by local or regional suppliers increasing from 17% in 2000 to over 27% in 2010.[18] This, coupled with the fact that there are an increasing number of volumetric trucks that are equally able to fulfil customers' RMX needs as fixed plant sites, means that there are a number of players within the local RMX markets to serve customers.

Customers

Customers for RMX are typically general construction or civil engineering companies, with the exception of a small number of concrete product customers. Supply is made both through the contracts or "jobs" channel (in which customers procure RMX on a project by project basis, normally through formal tender or partnership arrangements) and more generally on an ad hoc basis outside the scope of any wider contractual arrangement.

Choice of suppliers and switching

As with aggregates, exclusive supply contracts are not a feature of the RMX market and customers typically multi-source their needs according to price and availability of supply.

[18] See Main Parties Submission in the Merger, page 31.

Since all grades of RMX incorporate the same raw materials, there is supply-side substitutability between the different grades produced at any RMX plant or volumetric truck. Customers have the choice of supply from a fixed plant, a mobile plant or a volumetric truck and are increasingly opting to use supply from volumetric trucks. [CONFIDENTIAL BUSINESS SECRET] Tarmac's customers buy RMX from Tarmac as well as from producers with volumetric trucks, showing a willingness to switch between different sources of supply.

Switching between suppliers occurs regularly, as for each order customers shop around between the producers located in the relevant local market. Smaller customers of RMX have access to the same supply options as larger customers, although the means of delivering the product to those customers may differ (e.g. for large construction projects, the quantity of RMX needed may justify a site plant, while mini-mix trucks[19] are specifically targeted towards smaller customers typically requiring smaller volumes of RMX).

Pricing

As for aggregates, price is the key element of competition in RMX, although the ability to supply also influences a customer's decision, given that, due to product perishability, the local geographic market for RMX is so close to the point of production.

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Capacity utilisation

At present, RMX capacity exceeds demand by a considerable margin. Tarmac estimates that its current capacity utilisation is [CONFIDENTIAL BUSINESS SECRET]%. Tarmac believes that this figure is indicative of capacity utilisation figures in the industry as a whole.

A degree of excess capacity is typical for RMX plants: it is required to meet demand at peak times of the day since RMX has a shelf-life of around two hours and must be made to order. However, Tarmac is currently operating at lower levels of capacity utilisation than normal and believes the rest of the RMX industry is in a similar situation.

4.1.3 Cement

Numerous competitors in the grey cement market

[CONFIDENTIAL BUSINESS SECRET] Tarmac does sell externally, it does face robust competition in the supply of grey cement throughout GB, including from the following market participants:

- **Lafarge**: Lafarge is the largest domestic producer and supplier of grey cement in GB. Lafarge produces and supplies grey cement throughout the United Kingdom through a network of five cement-producing plants located at Hope (Derbyshire), Cauldon (Staffordshire), Aberthaw (South Glamorgan), Dunbar (East Lothian) and Cookstown (Northern Ireland). These plants are supported by a nationwide network of ten distribution depots and two import terminals (at Northfleet and West Thurrock). In addition, Lafarge owns a small plant at Barnstone (Nottinghamshire)

[19] Tarmac operates a minimix business to serve smaller/private customers. A mini-mix truck is identical to a regular RMX truck but has only approximately half the capacity of regular trucks. Tarmac's RMX trucks have between $6m^3$ and $8m^3$ capacity, where as Tarmac's mini-mix trucks have a capacity of $3m^3$ or $4m^3$.

which is dedicated to the manufacture of specialist cement products (namely a ready-to-use cement, Postcrete, and bagged mortars).

- **Cemex**: Cemex is the second largest producer and supplier of grey cement in GB with a total capacity of 3,350ktpa. It operates three cement plants at Rugby (Warwickshire), South Ferriby (North Lincolnshire) and Tilbury (Essex). The company also owns and operates six marine import terminals, including a facility at Tilbury (Essex), which opened in September 2009 following a £50 million investment (the largest investment in the GB cement industry in the last five years). Cemex is also active in the supply of cementitious products, most notably PFA.

- **Hanson**: HeidelbergCement's UK cement division – Hanson – was formed in 2007 through the merger of Castle Cement and Civil and Marine. It has a total capacity of 3,100ktpa. It operates three cement plants at Ketton (Rutland), Ribblesdale (Lancashire) and Padeswood (North Wales). Hanson is also the only producer of GGBS in GB.

- **Aggregate Industries**: Aggregate Industries ("**AI**") is owned by Holcim, one of the world's leading suppliers of cement and aggregates. AI does not manufacture cement domestically but has the facilities to import up to 800ktpa from its significant German cement business. AI's grey cement is imported in bulk through one of AI's four import terminals at Chatham (Kent), Ellesmere Port (Cheshire), Glasgow and Plymouth (Devon).

- **Cementos Portland Valderrivas** ("**CPV**"): CPV is a major international cement producer, headquartered in Spain and with operations throughout Europe, the United States and Tunisia. In GB, it operates through two subsidiaries:

    - **Dragon Alpha Cement Ltd**: Based in Sharpness (Gloucestershire), Dragon is the most established cement import company in the country and has been active in GB for the past 25 years. A wholly-owned subsidiary of CPV, Dragon is active in the supply of bulk cement, bagged cement, white cement, mortars, hydraulic and hydrated lime, and self-levelling compound. Tarmac believes that Dragon imports much or all of its cement from the Uniland Group in Spain, in which CPV holds a majority interest.

    - **Southern Cement Ltd**: Southern Cement is a leading importer and distributor of both bulk and bagged cement products and has been supplying the concrete and construction industry in GB for the last eight years. Southern Cement is owned by Uniland and the majority of Southern Cement's imports into GB are from Uniland's cement plants in Spain.

- **Titan Group**: Titan is an independent multi-regional producer of cement and other related building materials. Headquartered in Greece, Titan Group has expanded its production and distribution operations into 12 countries. Within the United Kingdom, Titan operates through Titan Cement UK, which owns a cement distribution station in the commercial port of Hull (East Yorkshire).

- **CRH plc**: CRH is an international building materials group headquartered in Ireland. Its European materials division is a major, vertically-integrated producer of primary materials and value-added manufactured products operating in 20 countries, whose principal products are cement, aggregates, RMX, concrete products, asphalt and lime. In its domestic market, CRH has invested heavily in

cement production facilities, most notably with the kiln extension and upgrade of its Platin Works near Drogheda (north of Dublin). In June 2010, CRH acquired a UK cement import business, Dan Morrissey Concrete UK ("**Morrissey**"). CRH has publicly stated its intention to use Morrisey's import terminal at Swansea as an outlet for its Irish cement production into GB.[20]

- **Dudman Group Limited**: Formed twenty-one years ago, Dudman, based in West Sussex, has grown steadily from a haulage firm to being, one of the south of England's largest independent aggregate producers, RMX suppliers, cement importers and secondary/recycled aggregate producers. Through its own dedicated fleet of tanker vessels owned by its shipping arm, Independent Shipping Limited, Dudman imports cement to supply its own RMX plants and external customers throughout the UK. Having terminals at Shoreham (West Sussex), Howden (East Yorkshire) and Lowestoft (Suffolk) enables it to provide national coverage. Dudman is understood to source cement from Lagan in Ireland, as well as from suppliers in Germany.
- **Sherburn Stone Co Ltd**: Sherburn is an independent aggregate producer, cement importer and RMX producer based in Shadforth, County Durham.
- **Thomas Armstrong**: Based in Flimby, Cumbria, Thomas Armstrong is one of the UK's largest privately-owned manufacturers of building products and suppliers of building services with a product portfolio that includes aggregates, concrete blocks, and precast concrete. Thomas Armstrong started to import cement from Germany in May 2008, having built a £1 million storage unit at the port of Workington to accommodate the 40,000 tonnes of cement it intended to import each year.
- **Lagan:** Lagan has a 700,000 tonne facility at Kinnegad, Co. Meath. Tarmac understands that Lagan imports cement into GB via ferry or through Dudman.

Customers

The customer base for grey cement can be split between customers of bagged cement products (e.g., builders' merchants and DIY stores) and customers of bulk cement products. Bulk cement is supplied principally to fixed outlets, where a further segmentation is typically made between RMX, concrete products, mortar and soil stabilisation customers.

Customers undertaking construction projects usually purchase materials on a spot basis. Fixed outlet customers and merchants also often purchase materials on a spot basis, although more formal supply agreements for these customers can also be used. Tarmac's Buxton Lime and Cement division has [CONFIDENTIAL BUSINESS SECRET] in the usual way for these customers, as described in the pricing section below.

Choice of suppliers and switching

As is the case with the other products, multi-sourcing and switching are a feature of the cement sector. Grey cement customers can, and do, switch regularly between different cement producers. This is particularly the case given that there is strong competition from importers of cement and, as noted above, imported and domestically-produced grey cement are fully substitutable and compete directly with each other. Many of the

[20] CRH Press Release, Development Strategy Update (7 July 2010) http://production.investis.com/crhcorp/media/press/2010/2010-07-07a/

independent RMX players therefore source their cement requirements from importers as well as from the domestic players.

Pricing

[CONFIDENTIAL BUSINESS SECRET]

Capacity utilisation

Between 2007-2010, GB demand for grey cement fell by over one-third, from 12.9 million tonnes in 2007 to 9 million tonnes in 2010. In response to this significant reduction in demand, domestic cement producers have sought to rationalise their capacity. In 2009 Lafarge closed its wet-kiln plant at Westbury,[21] Cemex closed its Barrington wet-kiln plant and Hanson has mothballed one of its two kilns at Ketton. The sector is therefore currently experiencing significant overcapacity across the industry, with Tarmac estimating average capacity utilisation across the industry to be around 60%.

4.2 In addition to the above, Tarmac would also like to make the following additional points in relation to willingness to supply (which is relevant to all three reference markets), which the CC may consider in its consideration of competition in the relevant markets:

4.2.1 Willingness to supply

Tarmac's policy is to supply all customers unless it is unable to do so within agreed credit limits or for operational reasons (e.g. if a customer's cement silo is not up to the required safety standards to receive a discharge of cement from a Tarmac tanker).

[CONFIDENTIAL BUSINESS SECRET]

5 Potential theories of harm being considered by the CC

The CC has set out in the statement of issues four possible theories of harm. Taking each of these in turn:

5.1 Unilateral market power as a result of high levels of concentration and barriers to entry

The CC is considering whether suppliers may be able to exercise unilateral market power as a result of high levels of concentration and barriers to entry in the relevant markets. Set out below is an explanation of why Tarmac does not believe this to be the case for each of the relevant markets.

Aggregates

The CC will consider whether costs and economies of scale may result in there being high barriers to entry into the aggregates market. It is the case that barriers to entry in the

[21] The European Union's Emission Trading Scheme has been a contributing factor as regards cement plant closures, with less efficient/high CO_2 producing, wet process cement plants (such as Lafarge's Westbury and Cemex's Barrington) being susceptible to closure. Wet process cement production requires greater quantities of moisture, and therefore heat, to produce cement compared to dry processing. As a result, wet-process plants are more costly to operate and emit greater levels of CO_2This has allowed producers in turn to rationalise their CO_2allocations to other works. While wet-kiln plants could in theory be upgraded (and returned to production), it would take in the region of £20-30 million to modernise the plant to today's environmental specifications (including those of the European Directive 2008/1 concerning integrated pollution prevention and control (the "**IPPC Directive**" which limits nitrogen oxide ("**NOx**" and sulphur dioxide ("**SO_2**"emissions by industrial installations including cement plants). In the current economic climate, with cement demand not expected to return to 2007 levels until at least 2020, Tarmac believes it unlikely that wet plant upgrades would occur given the already significant level of over-capacity in domestic cement production and import facilities.

production of primary aggregates can be high, as a result of the significant capital investment required to set up a plant and the cost and difficulty in obtaining planning permission. However, Tarmac also notes that barriers to entry for some small scale mineral developments are relatively low, particularly in the case of sand and gravel sites where plants can be hired and the work undertaken by contractors on a rate per tonne/m3 basis to offset capital outlay. In addition, Tarmac also notes that although securing planning permissions can be costly (especially for new Greenfield crushed rock sites), the success rate of applications submitted is relatively good.

It is also the case that the larger aggregates producers often have higher safety requirements than the smaller independents, which necessarily involves additional capital spend from the larger players to comply with such policies and standards.

Further, barriers to expansion for aggregates sites are low. This is particularly the case given the current economic climate and the overcapacity which is widespread across the industry.

Further, there are low barriers to entry particularly in recycled and secondary aggregates, as they do not require high levels of capital or fixed costs for set-up. As noted above, recycled aggregates impose a competitive constraint on primary aggregates and there are many recycled and secondary aggregates players who hold a significant share of the local markets for aggregates and who operate viable small-scale sites.

In addition, the CC will consider whether there is unilateral market power arising from concentration in aggregates markets. Whilst at a national level there are a relatively small number of players, Tarmac notes that the relevant market for aggregates is local and the work undertaken by RBB in the context of the Merger shows that a large number of competing suppliers are active in each of these local areas. Further, as noted above, the OFT notes in the Decision that there are approximately 235 operators in the industry supplying primary aggregates[22] and 650 plants producing recycled aggregates, operated by more than 450 companies.[23] Given that aggregates are a homogenous product (as acknowledged by the OFT in the Decision), all producers (large or small) are equally well placed to meet customer needs within a 30 mile radius.

RMX

The CC has noted that it will consider competition in RMX markets in light of substitutability between plant-batched, site-batched and volumetric truck sources of RMX and any potential barriers to entry arising from economies of scale, availability of input and aspects of supplier conduct.

Tarmac notes at this initial stage that RMX has relatively low barriers to entry. An operator can enter the market with a single silo, a single hopper and a water tank and there is no reason why a smaller supplier is not as competent to compete effectively with a larger supplier (provided that they are equally efficient) given that the products are homogenous.

Non-integrated RMX producers have increased their share of supply over the past four years despite significant decreases in demand. In 2000, local or regional suppliers had approximately 17% of supply; in 2007 they had 21.3% of supply and in 2010 they had over 27%.[24] According to BDS reports, 23 new suppliers commenced operation between 2005

[22] Decision, paragraph 3.12.

[23] Decision, paragraph 4.9.

[24] See Main Parties submission in the Merger, p31.

and 2009 and are spread across GB (not just in areas where the major players are less prominent). Furthermore, volumetric trucks have been increasing their market share in recent years and impose a competitive constraint on the major players. The largest number of exits in RMX are from the major players[25], which also goes to demonstrate that the independent and non-integrated suppliers have grown at the expense of the major national players. The tendency for major players to close or mothball sites is consistent with this trend.

The geographic market for RMX is local, typically spanning around 10 miles[26] and at a local level, customers have a large choice of suppliers who compete with intensity.

This all suggests that independent and, in particular, non-integrated producers are not at a disadvantage due to economies of scale, the multi-plant production scale available to the major producers, vertical integration of other players or the existence of any disadvantageous behaviour by other operators. Major players are constrained by growing independent and non-integrated RMX operators such that they are not able to exercise unilateral market power.

In relation to rebates as a potential barrier to entry, [CONFIDENTIAL BUSINESS SECRET]. Tarmac notes that rebate arrangements are not a standard feature of the construction industry as suppliers compete with each other on prices which are typically negotiated on a contract-by-contract basis. [CONFIDENTIAL BUSINESS SECRET]

Cement

There are high barriers to entry in the cement market because production of cement is capital intensive and a new plant requires capital expenditure of at least £250 million. It also requires forward planning of a number of years. This is the simple reason why there are only four major domestic operators in cement in GB. However, barriers to entry into cement imports are relatively low, with a new import terminal costing around £20/annual tonne of capacity, as opposed to up to £80/annual tonne of capacity for a grinding station and £300/annual tonne of capacity for an integrated cement plant. The risk involved with import facilities is also lower since the time for obtaining consents and construction will typically be under two years for an import terminal, compared to around four years for a grinding station and approximately ten years for an integrated plant.

Furthermore, as discussed above in relation to aggregates, the barriers to expansion in cement production are low as a result of excess capacity in the market.

The domestic cement operators in GB are heavily constrained by cement import facilities. The significance of importers in the cement market has grown significantly in recent years and half of the import facilities in the UK are under the control of independents. As import facilities constrain major cement producers, their role inhibits majors from exhibiting unilateral market power. In addition, there is excess capacity in import facilities, which indicates that the trend for gaining market share of independent import players is likely to continue. RBB analysis in the Merger has shown that “pure” cement importers (without GB

[25] [CONFIDENTIAL BUSINESS SECRET]

[26] It is likely to be economically viable to deliver RMX further than 10 miles. For example, independents or producers who are not present in a particular area would likely be willing to incur higher transport costs and travel further in order to make additional sales.

production facilities) impose a competitive constraint on major players and prices,[27] which undermines the ability for tacit coordination amongst the domestic producers.

The CC has queried whether the allocation of emissions permits might create a barrier to entry into the cement market. Tarmac believes the opposite. The implementation of EU ETS Phase III next year is likely to provide even greater incentive for non-GB cement producers to supply cement to GB, as RBB analysis in relation to coordination in cement illustrates.[28]

5.2 Coordination

The CC is considering as a potential theory of harm the possibility that a lack of competition could arise because of coordination between producers, either in any of the individual product markets, or spanning more than one. The CC notes that such coordination could be on the basis of sustaining a certain level of production or a certain share of overall production of sales; on the basis of geographic market sharing or serving only particular parts of the market; or coordination on prices.

In the Decision, the OFT found a lack of correlation between prices at quarry level and concentration in local aggregates markets and indicates that this could be a result of tacit coordination.[29] However, the OFT does not provide any evidence to substantiate this claim and, in particular, notes that it was *"unable to come to a firm assessment of whether competition has been adversely affected*".[30] Therefore, Tarmac believes that in order to prove a lack of competition in aggregates, or indeed the other markets, as a result of coordination between producers, the CC faces a high threshold requiring cogent evidence to demonstrate to the requisite legal standard that there is a lack of competition arising out of coordination.

<u>No coordination on prices</u>

In relation to coordination on prices, analysis undertaken by RBB for the purpose of the Merger has demonstrated that Tarmac's prices for aggregates, RMX and cement are widely dispersed by customer and by site, which suggests that price could not provide a focal point for coordination.[31] Importantly, in its assessment in the context of the Merger, the CC dismisses coordination on prices.[32]

In its market study, the OFT analysed a sample of price announcement letters and indicated its view that such letters "*may have a role in signalling price intentions, thus softening competition*".[33] However, the OFT also emphasised that the price letters are used as a starting point for negotiations and that firms "*generally fail to achieve the prices set out in the price letters*".[34] Given the figures in price change letters rarely correspond to the implemented price increases (as accepted by the OFT[35]), Tarmac does not share the

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[27] [CONFIDENTIAL BUSINESS SECRET]

[28] [CONFIDENTIAL BUSINESS SECRET]

[29] Decision, paragraph 4.11

[30] Decision, paragraph 4.12.

[31] [CONFIDENTIAL BUSINESS SECRET]

[32] Merger PFs, paragraph 6.120.

[33] Decision, paragraph 5.42.

[34] Decision, paragraph 5.39.

[35] In the Merger PFs, the CC also concludes that realised prices for cement are not very transparent (PFs, paragraph 6.136) and that there may be motivations other than price signalling for sending out the price announcement letters (PFs, paragraph 6.133).

OFT's view that such letters have a role in signalling price intentions. Indeed, in Tarmac's experience, the increases announced in the letters sometimes do not translate into actual price changes at all and in some cases, the outcome of price negotiation after a price announcement letter is reduction in prices.

Tarmac is not aware of any strategy of coordination in price announcements; to the extent that there is any correlation between the timing and the amounts of the price letters this can be explained by the need to respond to customer requests for their own budgeting/ costing purposes and to address increased input costs (which are common to all producers) annually or, in more exceptional circumstances, as they can no longer continue to be absorbed. This is consistent with other industries, where suppliers tend to announce price changes at the beginning of the calendar year to inform customers' budgeting processes for the next financial year.

Further, as the CC notes in the Merger PFs, realised prices for cement are not transparent, which reduces the risk of price 'leakage' because *"customers would not usually be aware of the prices being paid by other customers"*.[36] Cement producers are likewise unaware of actual prices charged to customers by other producers.

Certain levels of production are not sustained

The CC has indicated that it may consider the possibility that firms have reached a tacit understanding to restrict the amount of available output.

Production levels are driven by prevailing market conditions and, as described above, the current economic climate means that overcapacity is a common feature in all of the aggregates, cement and RMX markets. The absence of capacity constraints in each of the relevant sectors implies that the suppliers could collectively only reduce the effectiveness of competition if they were able to reach and sustain a tacit understanding with respect to the level of prices that each player should charge. However, as discussed above, price coordination is unlikely in these markets. Importantly, in its assessment in the context of the Merger the CC dismisses coordination on price and capacity. [37]

Geographic markets are not shared

Large producers and also independents are involved in cross supplies with other producers to save on transport costs and for logistical reasons, for example, where a producer has a shortfall of inputs in a particular location. Such cross supplies should be seen as efficiency enhancing and pro-competitive, rather than as a mechanism for coordination on production or market sharing. Tarmac makes sales to competitors in these circumstances on an arm's length commercial basis and purchases from competitors on the same terms.

Joint ventures are another way of enhancing efficiencies, as they enable producers to share fixed cost investments and the risks associated with a venture. In many cases, producers would not be able to set up a new production site alone, as this would be cost prohibitive. Therefore, such joint ventures should be viewed as efficiency enhancing and pro-competitive rather than as a mechanism for coordination on production or market sharing.

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[36] Merger PFs, paragraph 6.158.

[37] Merger PFs paragraph 6.120 and Appendix K to Merger PFs paragraph 57d.

[CONFIDENTIAL BUSINESS SECRET] There has been no evidence to show operators do not supply to customers close in proximity to rival sites and, in fact, there has been evidence of the opposite. Further, there has been no evidence of geographic areas in which one supplier has taken control, especially given that geological concerns mean cement sites are often in competitors' catchment areas.

5.3 Vertical integration and exclusionary behaviour

The third potential theory of harm being considered by the CC is the possibility that vertical integration could impact on competition in any of the aggregates, cement and RMX markets by, for example, impacting on producers' costs so that non-integrated producers are unlikely to be able to compete effectively with integrated producers. In particular, the CC focusses on whether integrated producers raise the price of cement relative to the price of RMX, which could have the effect of squeezing the margins of non-integrated RMX suppliers.

The CC notes that it has not seen any evidence that integrated producers bundle products to customers in ways which would make it difficult for non-integrated suppliers to attract customers and, indeed, this is not the case. Further, given that the geographic markets for aggregates and RMX are local in scope, non-integrated producers who are strong in their local areas are equally able to attract customers as the integrated players, because competition in relation to these markets takes place on a local basis. It is therefore difficult to see how the position of vertically integrated firms at a national level is relevant here and, in assessing the risk of either total or partial input foreclosure, it can only be relevant to consider the level of integration which exists at a local level.[38]

Vertical integration is pro-competitive

Tarmac emphasises that vertical integration enables the achievement of efficiencies and should therefore be viewed as pro-competitive.[39] In particular, vertical integration removes double marginalisation and also leads to security of supply for production in the downstream markets. The extent of vertical integration within the industry has increased over time[40] due to competitive pressure to reduce production costs by capitalising on supply chain efficiencies.

Tarmac also notes that the business model of the five majors is not the same. For example, Lafarge is focussed on cement and Aggregate Industries is focussed on aggregates. Therefore, the markets have at least five fully vertically integrated suppliers, each pursuing their own strategies and business models, which makes it difficult to see how competition concerns can arise.

No exclusion of independent RMX producers

The CC cites the OFT's suggestion that integrated producers raise the price of cement relative to the price of RMX, which could have the effect of squeezing the margins of non-integrated RMX suppliers, as a possible limb to its third theory of harm. However, analysis of market data is not consistent with Tarmac currently charging prices aimed to foreclose non-integrated bulk cement customers in the downstream RMX market. In particular, given

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[38] This is recognised by the OFT, albeit in a more limited way, at paragraph 4.27 of the Decision which states that *".. it may not be feasible for the downstream operations of the vertically integrated firms to purchase aggregates internally, where they do not produce the right type of aggregate in the quantity in the right place*".

[39] As acknowledged by the OFT in Paragraph 4.28 of the Decision.

[40] As referred to by the OFT in Paragraph 4.18 of the Decision.

that Tarmac [CONFIDENTIAL BUSINESS SECRET] (supplying [CONFIDENTIAL BUSINESS SECRET]% of its supply externally in 2010) [CONFIDENTIAL BUSINESS SECRET], there is no evidence to suggest that Tarmac charges non-integrated RMX producers more for its cement than it charges its internal operations. There has been a significant decline in demand for RMX since 2007, which has put pressure on all RMX producers (including larger producers and independents). However, independent RMX producers have grown as a share of supply considerably in recent years (from 25% to 34% over the period 2007-2010 when including supply from volumetric trucks[41]) and the CC notes in its statement of issues that "*there are a great many small producers of RMX*".[42] This is therefore inconsistent with a theory that independent RMX producers have been "squeezed" from the market.

Tarmac also notes that in the Decision, the OFT relied heavily on anecdotal evidence suggesting that the majors are not competing with one another to supply independents even in areas where they do not have a RMX presence, implying that behaviour is coordinated or at least that competition is muted. This evidence is unsubstantiated and therefore Tarmac believes should not be relied upon by the CC in its investigation.

Cement importers are a key source of supply for the non-major RMX channel (in this regard, the market share held by importers is much higher than for the GB market for external cement as a whole: it was as high as 26% in 2009 and has remained at or above 22%),[43] so independent RMX producers always have a access to a constant source of cement supply.

No refusal to supply cement

The Decision alleges that the majors have refused to supply non-integrated RMX producers, by being uninterested in providing quotes or providing quotes above existing supply prices.[44] However, only anecdotal evidence is referred to in relation to this theory.

[CONFIDENTIAL BUSINESS SECRET] Tarmac would only refuse to sell cement to a customer on credit or operational grounds (as explained above).

5.4 Policy and Regulation

The CC has noted that it will consider whether any aspect of regulation or implementation of policies has the effect of preventing, restricting or distorting competition. In relation to this theory of harm, Tarmac notes in the first instance that the National Planning Policy Framework ("**NPPF**") published on 27 March 2012 by the Department for Communities and Local Government's ("**DCLG**") now forms the basis of the planning system. The policies proposed within the NPPF will influence the future operation of the Managed Aggregate Supply System ("**MASS**") and it is not yet known what the impact of the NPPF will be on the planning regime. Tarmac therefore believes that it would be difficult for the CC to suggest any reforms to the planning system without waiting to see how the NPPF affects the planning regime in practice.

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[41] The finding that non-major RMX producers have grown share is not dependent on the inclusion of supply from volumetric trucks; excluding supply from volumetric trucks, share for non-majors grew from 21% to 27% over the same period.

[42] Paragraph 27.

[43] [CONFIDENTIAL BUSINESS SECRET]

[44] Paragraph 5.20 of the Decision.

The NPPF upholds the principle of MASS but the system in general will be less prescribed than that which previously existed when national guidelines were issued by the central government. Whilst the NPPF still refers to "*taking account of published national and sub-national guidelines on future (aggregate) provision*", MASS will be more influenced by Mineral Planning Authorities ("**MPAs**") preparing 'Local Aggregates Assessments' based on a rolling average of 10 years' sales data and other relevant local information to steer the local authority. It is almost certain that this more local system will result in lower forecasts of the need for aggregates, so fewer allocations for future mineral sites being included in the Mineral Development Plans. Given that apportionment levels are to be based on an average of the last 10 years' sales from within the boundary of the MPA, the current average will include figures from before the recession, as well as the economic downturn levels of 2007-2011. With sales levels likely to be depressed for some years to come, it is likely that these levels will drop even further and therefore there will be lower levels of apportionment.

In terms of the more regional/national issues that MASS sought to address in relation to mineral supply from reserve rich areas to reserve poor areas, this is still recognised as being of importance by the DCLG and the DCLG are relying upon the MPAs' duty to co-operate under the Localism Act, as well as placing a duty on them to participate and take advice from the relevant Aggregate Working Party when preparing their Local Aggregate Assessment, to ensure that MPAs with plenty of reserves, such as Somerset, Derby and Leicester, do not simply plan for their own needs but instead consider the role they have in supplying other areas such as the south east with hard rock reserves. However, it is not yet clear whether this will be effective in practice.

Importantly, the NPPF retains the policy previously included in the now superseded Minerals Planning Statement 1, which makes it clear that when making provision for a "*steady and adequate supply of aggregates*" (which the MPAs have the function of doing) MPAs should ensure that large landbanks bound up in very few sites should not stifle competition. Tarmac believes that it is important that MPAs adhere to this in an effective and consistent manner. This is currently not the case, as some MPAs seek to use the principles of maintaining landbank targets[45] as a maximum because they are unwilling to permit more quarrying than they perceive to be necessary. However, previous Minerals Policy Statements, and now the NPPF, reinforce the principle that MPAs should make provision for the maintenance of landbanks of *at least* 7 years for sand and gravel and at least 10 years for crushed rock (i.e. the targets should be used as a minimum). Failure by some of the MPAs to do this can cause overly restrictive restraints on new planning applications and is something that Tarmac believes needs to be addressed by the MPAs.

Tarmac further believes that the planning system has a difficult task of ensuring that whilst sufficient permissions are granted to ensure continuity of supply of aggregates, the environmental impact of new and existing mineral operations are minimised. Whilst MASS has effectively achieved its objective of ensuring an adequate and steady supply of aggregates, there are still some aspects of the planning regime that Tarmac considers need reforming. For example, the NPPF does not address is the increasingly burdensome obligations arising from European Environmental Protection legislation (such as the Habitat Directives), which are becoming difficult to interpret, susceptible to legal challenge from disgruntled third parties and have generally made the process of securing new mineral developments more difficult. There are also other burdensome directives and regulations in

[45] Reserves of permitted supply, measured in years

place, such as the Water Framework Directive, the Landfill Directive and the Mine Waste Directive. Each gives rise to varying cost and operational uncertainties and, in considering any competition implications of the planning regime, it is important that the CC weighs compliance with all these other policies against its analysis.

In relation to some of the specific points raised by the CC:

Aggregates tax

A levy of £2.00 per tonne is imposed on primary aggregates but is not imposed on certain waste materials (e.g. clay, slate, china clay, ball clay and shale aggregates) . The levy was implemented in 2001 and its aim was to transfer the demand from primary aggregates to the exempt materials, so as to reduce the extraction of primary aggregates from the ground. This is one of the reasons why secondary and recycled aggregates are cheaper to produce than primary aggregates and why their share of supply in the overall aggregates market has been able to grow in recent years.[46]

The planning regime and mineral reserves

Given the unpopularity of aggregates quarries, the planning system has a difficult task of ensuring that sufficient permissions are granted to ensure continuity of supply of aggregates. One important function of MASS is to ensure that those regions which have the resources to produce aggregates do not absolve themselves of their responsibility to do so. The availability of aggregates resources is determined by geology and consequently, in some regions, such as the South East, the construction industry is reliant upon the importation of crushed rock from counties such as Somerset, Leicestershire and Derby where there are large reserves of crushed rock. MASS ensures that those areas which can produce aggregates do so, in order to provide for those areas in which there is a shortage. This is also a priority for the DCLG under the new NPPF, which encourages MPAs to prepare Local Aggregate Assessments in conjunction with other MPAs, and to participate in the operation of the Aggregates Working Party, to ensure that the regional flows of aggregates are maintained.

Tarmac's forward planning in considering whether to make planning applications is on the basis that there will be a [CONFIDENTIAL BUSINESS SECRET] year lead time on any applications submitted. Capital constraints also influence Tarmac's decisions to apply for planning permission and Tarmac has to consider the available budget at the outset of the process. [CONFIDENTIAL BUSINESS SECRET] Tarmac is currently implementing planning permissions less quickly than in previous years because the downturn in sales due to the current economic climate means that remaining reserves in sites are lasting longer than predicted and the need to open new sites is therefore less pressing.

During the planning process, aggregates developments are subject to rigorous and costly assessments such as environmental assessments (including noise and traffic impacts). Although the environmental impact of recycled operations tends to be lower than for primary aggregates operations, recycled aggregates developments are subject to the same rigorous environmental assessments as primary aggregate developments. Increasingly, MPAs are setting targets for the provision of recycled aggregates and are

[46] On 7 March 2012, the General Court issued its decision in T-210/02 *British Aggregates Association v European Commission* which held that the exemption which previously applied to certain secondary materials was not lawful under State aid rules. Thus materials which were previously exempt from the levy (spoils resulting from the extraction of slate, shale, ball clay and china clay) may in future be subject to the levy. However, if this were to be the case, it is likely that any change will take some time to implement as it will require amendments to primary legislation.

trying to achieve this by identifying preferred sites for the production of recycled aggregates within Minerals Development Frameworks. In addition, the introduction of the need for MPAs to undertake Local Aggregates Assessments through the NPPF will encourage those authorities to assess all supply options, including recycled and secondary aggregates, as a means of reducing the pressure on the use of primary aggregates. Tarmac believes it may be the case that, going forward, the MPAs seek to put greater reliance on the use of recycled and secondary aggregates when they consider their apportionment figures for primary aggregates.

Mothballed sites

Mothballing is the practice of ceasing production and sales from a site temporarily without having sold or leased that site. The site is kept in a state such that it can become operational in a relatively short period of time and with a relatively small investment.

Tarmac has no wish to mothball sites given the levels of investment made in securing land and mineral rights, obtaining planning permission and acquiring the necessary plant and equipment in order to produce aggregates from the site. Furthermore, the costs of mothballing a site can be significant, including the cost of making the workforce redundant, rent, security, maintenance and other costs. [CONFIDENTIAL BUSINESS SECRET] Although such payments can often be recovered, the period of recovery is often limited to, e.g. three years. Consequently, Tarmac's approach is to mothball a site only as a last resort.

As discussed above, the market has lost little capacity since 1989 but has suffered a decline in demand since 2007. Therefore, recent mothballing within the industry is primarily a result of excess capacity.

Transparency does not lead to coordinated behaviour

In its Decision, the OFT notes that a degree of information sharing on aggregates supply and permitted reserves is necessary for the functioning of MASS.[47] It further recognises that sensitive information (such as updated sales and reserves data by site) is not included in market reports which are gathered in order to help MASS operate more effectively.[48]

Data on mineral production and permitted reserves are provided by producers to MPAs on a confidential basis, to enable the MPAs to carry out their duty to compile the annual Aggregate Monitoring Reports. The four yearly Aggregates Minerals survey is compiled by the British Geological Society and published by the Office of National Statistics. There is therefore no planning regime linked transparency within the market that Tarmac considers could dampen competition.

EU Emissions Trading Scheme

Under the current EU ETS scheme, an entrant building their own cement kiln may secure allocations of CO2 credits to assist in meeting the requirements of the ETS new entrant scheme, however under EU ETS Phase III implementation in 2013, an application to secure allocations of CO2 credits will only be permissible once a new plant has been built and has started to operate.

Further, the implementation of EU ETS Phase III is likely to provide even greater incentives for non-GB cement producers in, for example, Spain, Ireland and Greece, to supply

[47] Decision, paragraph 6.54.

[48] Decision, paragraph 6.42.

cement into GB. This is due to the rule change whereby cement plants using less than 50% of their allocated annual CO2 allowance each year will not automatically retain their full allocation for the following year, and will lose 50% of their allocation. This will mean that importers will impose an even greater competitive constraint on domestic cement producers going forward.