

MARKET INVESTIGATION INTO THE SUPPLY OR ACQUISITION OF AGGREGATES, CEMENT AND READY-MIX CONCRETE

DIVESTITURE REMEDIES

Notice of a proposal to accept Final Undertakings, and a public consultation on the proposed undertakings, pursuant to sections 159 and 165 of and Schedule 10 to the Enterprise Act 2002

On 18 January 2012 the Office of Fair Trading made a reference to the Competition Commission (CC) under section 131 of the Enterprise Act 2002 (the Act)¹ concerning the supply or acquisition of aggregates, cement and ready-mix concrete in Great Britain (the Reference).

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

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

¹ Relevant amendments to the Act have been made by Part 3 of and Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

- (e) the GGBS plant to be divested should, at the option of Hanson, be its plant at Port Talbot, Scunthorpe or Purfleet, and the divestiture should be made to a buyer who satisfies the CC's criteria for a suitable purchaser and is not another GB cement producer;
- (f) the divestiture with the fewest risks would be for Hanson to divest its plant at Scunthorpe, subject to Hanson providing satisfactory undertakings that ensure that: (i) the operation of Hanson's existing joint venture with Calumite Inc (the Calumite JV) does not compromise the ability of the Scunthorpe plant to compete independently; and (ii) it will continue to supply the cement powders used in the nuclear waste encapsulation process at the Sellafield site in Cumbria on terms no less favourable than at present. However, the CC would also be prepared to consider the divestiture of one of Hanson's other two active GGBS plants at Port Talbot or Purfleet, accompanied in the case of Port Talbot by the divestitures of Hanson's Glasgow and Teignmouth depots;
- (g) a monitoring trustee should be appointed to ensure the protection of the divestiture package until completion of the divestiture and to ensure that Hanson was taking the steps necessary to achieve an effective and timely disposal; the divestiture period should not exceed [] months from the date of final undertakings or (where applicable) final Order; and
- (h) the CC reserved the right to appoint a divestiture trustee if the divestiture was not implemented within the period allowed, or if the CC reasonably expected that it would not be so implemented.

On 28 February 2014, the CC, in order to prevent action being taken which might impede the taking of any action under section 138(2) of the Act, accepted interim undertakings under section 157 of the Act from Hanson and from Lafarge Tarmac.

On 12 March 2014 Lafarge Tarmac made an application to the Competition Appeal Tribunal under section 179 of the Act requesting the Tribunal to, among other things, quash paragraphs 12.3 to 12.7 and 12.9(a), and paragraph 13.5(a), Figure 13.1 and paragraphs 13.7 to 13.138 of the Final Report; however, no such application has been made to quash those parts of the Report making findings in relation to GGBS and the need for the divestiture of a GGBS plant.

On 1 April 2014 the remaining functions of the CC in relation to the Reference were transferred to the Competition and Markets Authority (CMA), under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014.

On the same date as the date of the present Notice, the CMA has given notice of a proposal to accept Final Undertakings from Hanson to divest an active GGBS plant.

The CMA has reached agreement with both Lafarge Tarmac and Hanson as to the terms of draft Final Undertakings to ensure the right of the acquirer of the divested GGBS plant to obtain supplies of GBS and pellite and access to existing stockpiles, and those proposed undertakings are annexed to this Notice.

Notice of proposal to accept undertakings

The CMA now gives notice under section 165 of and paragraph 2 of Schedule 10 to the Enterprise Act 2002 that—

- (a) the CMA proposes to accept the annexed draft Final Undertakings;
- (b) the proposed undertakings seek to address the AEC found in the market for the supply of GGBS in GB and the GGBS-related AEC found in the GB cement markets; and
- (c) the purpose and effect of the proposed undertakings is to ensure the right of the acquirer of the divested GGBS plant to obtain supplies of GBS and pellite and access to existing stockpiles.

The CMA invites written representations on the proposed undertakings from any interested person or persons. Representations should reach the CMA by 5pm on 25 July 2014 and should be addressed to:

Bríd McHugh
Remedies Coordinator
Competition and Markets Authority
Victoria House
Southampton Row
London
WC1B 4AD

or by email to: Brid.McHugh@cma.gsi.gov.uk.

The CMA will have regard to any representations made in response to this Notice and may make modification to the proposed undertakings as a result. In the absence of any written representations, or in the event that the CMA decides, on consideration of representations made, not to amend the proposed undertakings, the CMA proposes to accept the undertakings in their present form pursuant to section 159 of the Act. If the CMA considers that any representation necessitates any material change to the proposed undertakings the CMA will give notice of the proposed modifications.

Once accepted such Final Undertakings may be varied, superseded or released by the CMA under section 159(4) and (5) of the Act.

This Notice and a non-confidential version of the proposed undertakings will be published on the GOV.UK website at www.gov.uk/cma. The CMA has excluded from the non-confidential version of the undertakings information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [✂].

(signed) MARTIN CAVE

Group Chair

10 July 2014

MARKET INVESTIGATION INTO THE SUPPLY OR ACQUISITION OF AGGREGATES, CEMENT AND READY-MIX CONCRETE

DIVESTITURE REMEDIES

Final undertakings given by Lafarge Tarmac and Hanson under section 159 of the Enterprise Act 2002

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

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

- (a) a combination of structural and conduct features in the bulk and bagged cement markets in Great Britain (GB) gave rise to an adverse effect on competition (AEC) in those markets (the GB cement markets);
- (b) there were further features of the GB cement markets which combine to give rise to an AEC in the market for the supply of ground granulated blast furnace slag (GGBS) in GB, as well as to an additional GGBS-related AEC in the GB cement markets;
- (c) the likely effect of those features and resulting AECs is higher prices for cement and for GGBS than would otherwise be the case;
- (d) in order to address those AECs and resulting customer detriments, remedies should be imposed under [section 138\(2\)](#) of the Act consisting, in particular, in the divestiture of a cement plant and related operations by Lafarge Tarmac and an active GGBS plant by Hanson, together with the right of the acquirer of the GGBS plant to obtain supplies of granulated blast furnace slag and pellite from Lafarge Tarmac and access to existing stockpiles of granulated blast furnace slag or pellite;
- (e) the GGBS plant to be divested should, at the option of Hanson, be its plant at Port Talbot, Scunthorpe or Purfleet, and the divestiture should be made to a buyer who satisfies the CC's criteria for a suitable purchaser and is not another GB cement producer;

- (f) the divestiture with the fewest risks would be for Hanson to divest its plant at Scunthorpe, subject to Hanson providing satisfactory undertakings that ensure that: (i) the operation of Hanson's existing joint venture with Calumite Inc does not compromise the ability of the Scunthorpe plant to compete independently; and (ii) it will continue to supply to Sellafeld Ltd the cement powders used in the nuclear waste encapsulation process at the Sellafeld site in Cumbria on terms no less favourable than at present. However, the CC would also be prepared to consider the divestiture of one of Hanson's other two active GGBS plants at Port Talbot or Purfleet, accompanied in the case of Port Talbot by the divestitures of Hanson's Glasgow and Teignmouth depots;
- (g) a monitoring trustee should be appointed to ensure the protection of the divestiture package until completion of the divestiture and to ensure that Hanson was taking the steps necessary to achieve an effective and timely disposal; the divestiture period should not exceed [] months from the date of final undertakings or (where applicable) final Order; and
- (h) the CC reserved the right to appoint a divestiture trustee if the divestiture was not implemented within the period allowed, or if the CC reasonably expected that it would not be so implemented.

On 28 February 2014, the CC, in order to prevent action being taken which might impede the taking of any action under [section 138\(2\)](#) of the Act, accepted interim undertakings under [section 157](#) of the Act from Hanson and from Lafarge Tarmac.

On 12 March 2014 Lafarge Tarmac made an application to the Competition Appeal Tribunal under [section 179](#) of the Act requesting the Tribunal to, in particular, quash paragraphs 12.3 to 12.7 and 12.9(a), and paragraph 13.5(a), Figure 13.1 and paragraphs 13.7 to 13.138 of the Report (the Proceedings); however, no such application has been made to quash those parts of the Report making findings in relation to GGBS and the need for the divestiture of a GGBS plant.

On 1 April 2014 the remaining functions of the CC in relation to the Reference were transferred to the Competition and Markets Authority (CMA), under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014.

On [** 2014] Hanson gave Final Undertakings to the CMA to make divestiture of an active GGBS plant to an Approved Purchaser within a specified timetable (the Hanson Undertakings).

On 10 July 2014 the CMA published a Notice of proposal to accept Final Undertakings from Lafarge Tarmac and Hanson to ensure the continued supply of

GBS and pellite to the purchaser of a divested GGBS plant. It has considered the representations received and has decided to [.....].

Lafarge Tarmac and Hanson now give to the CMA the following undertakings (the Undertakings), which the CMA proposes to accept pursuant to sections 138 and 159 of the Act. These Undertakings as given by Lafarge Tarmac are without prejudice to Lafarge Tarmac's position in the Proceedings.

These Undertakings may be varied, superseded or released by the CMA in accordance with section 159(4) or (5) of the Act.

In accordance with section 183(4)(c) and (6) of the Act the Reference will not be finally determined until the acceptance or making of the last undertaking or order in the group of undertakings and orders involved in the CMA's enforcement action (but disregarding those which vary, supersede or revoke earlier undertakings or orders).

1. Commencement

1.1 These Undertakings come into force when accepted by the CMA under section 159(3) of the Act.

2. Interpretation

2.1 The following provisions apply in the interpretation of these Undertakings.

2.2 These Undertakings give effect to the conclusions of the CC stated in Section 13 of the Report as to the need for the divestiture of an active GGBS plant, and for the continued supply of GBS to the divested plant, and shall be construed consistently with and to give effect to those conclusions.

2.3 The obligations of Lafarge Tarmac and Hanson under these Undertakings are several and neither joint nor joint and several.

2.4 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in the Undertakings.

2.5 The word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.

2.6 The headings used in these Undertakings are for convenience and shall have no legal effect.

2.7 Unless the context otherwise requires, expressions in the singular include the plural (and vice versa) and references to persons include bodies of persons, whether corporate or incorporate.

- 2.8 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 2.9 References to paragraphs and subparagraphs are references to paragraphs and subparagraphs of these Undertakings.
- 2.10 Unless the context otherwise requires:
- 'the Act'** means the Enterprise Act 2002;
- 'Back-up Supplies'** means—
- (a) Supplies to the GGBS Plant at Scunthorpe from a GBS Plant not situated at Scunthorpe; or
- (b) Supplies to a GGBS Plant at Port Talbot or Purfleet from a GBS Plant not situated at Port Talbot;
- 'GBS'** means granulated blast furnace slag or pellite;
- 'GBS Agreement'** means any agreement between Lafarge Tarmac and Hanson under which Hanson has the right to obtain Supplies;
- 'GBS Plant'** means a blast furnace slag granulator or pelletiser operation of the LT Business situated at Scunthorpe in North Lincolnshire; Port Talbot in Neath Port Talbot, Wales; or Teesside in North Yorkshire;
- 'GGBS Plant'** means a GGBS plant of Hanson situated at Scunthorpe in North Lincolnshire; Port Talbot in Neath Port Talbot, Wales; or Purfleet in Essex;
- 'Hanson'** means Hanson Limited, a company with registered number 04626078, together with Castle Cement Limited, a company with registered number 02182762, both with registered office at Hanson House, 14 Castle Hill, Maidenhead S16 4JJ;
- 'Lafarge Tarmac'** means Lafarge Tarmac Holdings Limited, a company with registered number 0753396 and registered office at Portland House, Bickenhill Lane, Solihull, Birmingham B37 7BQ, a 50:50 incorporated joint venture between members of the Lafarge SA and Anglo American plc groups in the United Kingdom;
- 'LT Business'** means the business conducted by Lafarge Tarmac;
- 'New Agreement'** means a GBS Agreement as novated and amended as necessary pursuant to paragraphs 3 to 7;

'Nominated Plant' means the GGBS Plant nominated for divestiture under the Hanson Undertakings;

'Novation', in relation to a GBS Agreement, means the substitution of a purchaser for Hanson as a party to the agreement;

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

'Purchaser' means the purchaser of a GGBS Plant divested under the Hanson Undertakings;

'Subsidiaries' has the meaning given by section 1159 of the Companies Act 2006;

'Supplies' means supplies of GBS from the ongoing production of a GBS Plant or from stockpiles at that plant;

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

3. Supply of GBS for GGBS production at Scunthorpe

- 3.1 This paragraph applies if the Nominated Plant is the GGBS Plant at Scunthorpe.
- 3.2 Lafarge Tarmac and Hanson undertake to cooperate in procuring the Novation and amendment of the relevant GBS Agreements in order to ensure that the purchaser of the plant can obtain secure Supplies following the divestiture.
- 3.3 Lafarge Tarmac undertakes to ensure that, under the New Agreements, the Supplies will be from the Scunthorpe GBS Plant.

4. Supply of GBS for GGBS production at Port Talbot

- 4.1 This paragraph applies if the Nominated Plant is the GGBS plant at Port Talbot.
- 4.2 Lafarge Tarmac and Hanson undertake to cooperate in procuring the Novation and amendment of the relevant GBS Agreements in order to ensure that the Purchaser of the plant can obtain secure Supplies following the divestiture.
- 4.3 Lafarge Tarmac undertakes to ensure that, under the New Agreements, the Supplies will be from the Port Talbot GBS Plant.

5. Supply of GBS for GGBS production at Purfleet

- 5.1 This paragraph applies if the Nominated Plant is the GGBS Plant at Purfleet.
- 5.2 Lafarge Tarmac and Hanson undertake to cooperate in procuring the Novation and amendment of the relevant GBS Agreements in order to ensure that the Purchaser of the plant can obtain secure Supplies following the divestiture.
- 5.3 Lafarge Tarmac undertakes to ensure that, under the New Agreements, the Supplies will be from the Port Talbot GBS Plant, supplemented if necessary (and where available) by Supplies from another GBS plant.

6. New Agreements: general requirements

- 6.1 Subject to subparagraphs 6.2 and 6.3, the right to Supplies under a New Agreement must be on terms (including terms relating to price) no less favourable than those granted to Hanson under the original GBS Agreement. However, for the avoidance of doubt, as regards the Purchaser's right to Back-up Supplies under these Undertakings, the quantity of any such Back-up Supplies shall not exceed the limit in subparagraph 7.1 or, where applicable, subparagraph 5.3.
- 6.2 In the case of an obligation under the New Agreement that does not correspond to any obligation under the original GBS Agreement, Lafarge Tarmac and the Purchaser will have the ability to agree terms on a reasonable commercial basis.
- 6.3 For the avoidance of doubt, subparagraph 6.2 applies to any obligation to provide quantities of Back-up Supplies (as required under subparagraph 7.1 and, where applicable, 5.3). However, in respect of such supplies the terms (other than terms as to quantity) that are agreed should be broadly equivalent to the terms in the original GBS Agreement.
- 6.4 Lafarge Tarmac and Hanson undertake to cooperate in effecting any amendments to existing agreements between them that are consequential on procuring the Novation and amendment of the relevant GBS Agreements.
- 6.5 The amendments required by these Undertakings to any agreement other than the GBS Agreement relating to the Nominated Plant are limited to amendments that are purely consequential on the amendment and Novation of the GBS Agreement.

7. Access to increased GBS production at Teesside

- 7.1 Lafarge Tarmac and Hanson undertake to ensure that, under the New Agreements, the Purchaser is entitled in each calendar year to one-third of any increased production for that year at the Teesside GBS Plant.
- 7.2 For the purpose of subparagraph 7.1, 'increased production' means the difference between the GBS production of the plant in the year concerned and its GBS production in 2013.
- 7.3 The entitlement referred to in subparagraph 7.1 is additional to any other entitlement to Supplies arising pursuant to these Undertakings.

8. Disclosure etc

- 8.1 Lafarge Tarmac undertakes not to disclose or permit the disclosure—
- (a) to a Purchaser of the prices paid by Hanson under a GBS Agreement; or
 - (b) to Hanson of the prices paid by a Purchaser under a New Agreement.
- 8.2 However, subparagraph 8.1 shall not prevent Lafarge Tarmac from making or permitting such disclosure as may strictly be necessary for the purpose of complying with its obligations under these Undertakings.
- 8.3 Subject to Hanson's consent (such consent not to be unreasonably withheld or delayed) Lafarge Tarmac may communicate directly with the Purchaser for the purpose of complying with its obligations under these Undertakings.

9. Directions

- 9.1 Each of Lafarge Tarmac and Hanson undertakes to comply with such reasonable written directions as the CMA may from time to time give to take such steps within its reasonable competence as may be required for the purpose of carrying out or securing compliance with these Undertakings.

10. Effect of invalidity

- 10.1 Each of Lafarge Tarmac and Hanson undertakes that, should any provision of these Undertakings be contrary to law or invalid for any reason, it and its subsidiaries shall continue to observe the remaining provisions.

11. Provision of information to the CMA

- 11.1 Each of Lafarge Tarmac and Hanson undertakes that it shall as soon as practicable provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under these Undertakings or sections 159, 160, 162 and 167(6) of the Act.
- 11.2 Each of Lafarge Tarmac and Hanson undertakes that, should it at any time become aware that it is in breach of any provision of these Undertakings, it will notify the CMA within five Working Days to advise the CMA that there has been a breach and of all the circumstances of that breach within its knowledge.

12. Service: Hanson

- 12.1 Hanson hereby authorises Pinsent Masons to accept, on its behalf and on behalf of any of its subsidiaries, service of all documents connected with these Undertakings (including any document of any kind which falls to be served on or sent to Hanson or any of its subsidiaries in connection with any proceedings in Courts in the United Kingdom), orders, requests, notifications or other communications connected with these Undertakings. Notwithstanding this, the CMA will copy all such documents to the Chief Executive Officers of Hanson.
- 12.2 Unless Hanson informs the CMA in writing that Pinsent Masons has ceased to have authority to accept and acknowledge service on its or any of its subsidiaries' behalf and nominates another person or firm for the purpose of such service, any document, order, request, notification or other communication shall be validly served on Hanson if it is served on Pinsent Masons; and service shall be deemed to have been acknowledged by Hanson if it is acknowledged by Pinsent Masons or such other nominee.
- 12.3 Subparagraph 12.2 has effect irrespective of whether, as between Hanson and Pinsent Masons or other nominees, Pinsent Masons or other nominees have or continue to have any authority to accept and acknowledge service on behalf of Hanson or any of its subsidiaries; and no failure or mistake by Pinsent Masons or other nominees (including a failure to notify Hanson of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Undertakings including any proceedings or judgement.
- 12.4 Any communication from Hanson to the CMA under these Undertakings shall be addressed to Brid McHugh, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other person or

address as the CMA may direct in writing and shall include email communication to Brid.McHugh@cma.gsi.gov.uk or such other address as the CMA may direct in writing.

13. Service: Lafarge Tarmac

- 13.1 Lafarge Tarmac hereby authorises Slaughter and May to accept, on its behalf and on behalf of any of its subsidiaries, service of all documents connected with these Undertakings (including any document of any kind which falls to be served on or sent to Lafarge Tarmac or any of its subsidiaries in connection with any proceedings in Courts in the United Kingdom), orders, requests, notifications or other communications connected with these Undertakings. Notwithstanding this, the CMA will copy all such documents to the Chief Executive Officer of Lafarge Tarmac.
- 13.2 Unless Lafarge Tarmac informs the CMA in writing that Slaughter and May has ceased to have authority to accept and acknowledge service on its or any of its subsidiaries' behalf and nominates another person or firm for the purpose of such service, any document, order, request, notification or other communication shall be validly served on Lafarge Tarmac if it is served on Slaughter and May; and service shall be deemed to have been acknowledged by Lafarge Tarmac if it is acknowledged by Slaughter and May or such other nominee.
- 13.3 Subparagraph 13.2 has effect irrespective of whether, as between Lafarge Tarmac and Slaughter and May or other nominees, Slaughter and May or other nominees has or continues to have any authority to accept and acknowledge service on behalf of Lafarge Tarmac or any of its subsidiaries; and no failure or mistake by Slaughter and May or other nominees (including a failure to notify Lafarge Tarmac of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Undertakings including any proceedings or judgement.
- 13.4 Any communication from Lafarge Tarmac to the CMA under these Undertakings shall be addressed to Brid McHugh, Competition and Markets Authority, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CMA may direct in writing and shall include email communication to Brid.McHugh@cma.gsi.gov.uk or such other address as the CMA may direct in writing.

14. Subsidiaries

- 14.1 Each of Lafarge Tarmac and Hanson undertakes to procure that its subsidiaries comply with these Undertakings as if they had been given by those subsidiaries.

15. Governing law

- 15.1 Lafarge Tarmac and Hanson recognise and acknowledge that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 15.2 In the event that a dispute arises concerning these Undertakings, Lafarge Tarmac or Hanson (as the case may be) undertakes to submit that dispute to the courts of England and Wales.

16. Termination

- 16.1 Lafarge Tarmac and Hanson recognise and acknowledge that these Undertakings shall be in force until such time as they are varied, released or superseded under [section 159\(4\)](#) or (5) of the Act.
- 16.2 Lafarge Tarmac and Hanson recognise and acknowledge that the variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

Execution: Lafarge Tarmac

FOR AND ON BEHALF OF LAFARGE TARMAC HOLDINGS LIMITED

..... Signature

[NAME]

Director

[Date]

..... Signature

[NAME]

Director/Secretary

[Date]

Execution: Hanson

FOR AND ON BEHALF OF Hanson Limited

..... Signature

Jim Claydon

Managing Director – Cement

[date]

FOR AND ON BEHALF OF Castle Cement Limited

..... Signature

Jim Claydon

Managing Director – Cement

[date]