

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

DIVESTITURE REMEDIES

Notice of acceptance of Final 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

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

plant to obtain supplies of granulated blast furnace slag (GBS) and pellite from Lafarge Tarmac and access to existing stockpiles of GBS 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 International Inc does not compromise the ability of the Scunthorpe plant to compete independently;
 - and (ii) it will continue to supply to Sellafield Ltd 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 from Hanson interim undertakings under [section 157](#) of the Act (the Interim Undertakings).

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. 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 10 July 2014 the CMA published a Notice of proposal to accept Final Undertakings from Hanson to make the divestiture of an active GGBS plant to an Approved Purchaser within a specified timetable. The CMA has considered the representations received, and has decided to accept the undertakings in the form consulted upon without any material changes.

Pursuant to sections [138](#) and [159](#) of the Act, the CMA now accordingly accepts the following undertakings given by Hanson (the Undertakings).

On the same date as the date of the present Notice, the CMA has published a Notice of acceptance of Final Undertakings from both Hanson and Lafarge Tarmac 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 main provisions of the undertakings that the CMA has accepted for that purpose are set out, for ease of reference only, in the Appendix to the following Undertakings.

The 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 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
21 August 2014

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

DIVESTITURE REMEDIES

Final undertakings given by 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 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 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 International 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 from Hanson interim undertakings under [section 157](#) of the Act (the Interim Undertakings).

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. 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 10 July 2014 the CMA published a Notice of proposal to accept Final Undertakings from Hanson to make the divestiture of an active GGBS plant to an Approved Purchaser

within a specified timetable. The CMA has considered the representations received, and proposes to accept the undertakings without any material changes.

Hanson now accordingly gives to the CMA the following undertakings (the Undertakings), which the CMA proposes to accept pursuant to sections 138 and 159 of the Act.

Furthermore on 10 July 2014 the CMA published a Notice of proposal to accept Final Undertakings from both Hanson and Lafarge Tarmac 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 main provisions of the undertakings that the CMA now proposes to accept for that purpose are set out, for ease of reference only, in the Appendix to these Undertakings.

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

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

- 2.5 The headings used in these Undertakings are for convenience and shall have no legal effect.
- 2.6 Unless the context otherwise requires, expressions in the singular include the plural (and vice versa) and references to persons include bodies of persons, whether corporate or incorporate.
- 2.7 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.
- 2.8 Except where the contrary intention appears, references to recitals, paragraphs and subparagraphs are references to the recitals to, or paragraphs and subparagraphs of, these Undertakings.
- 2.9 A person has a real interest in the acquisition of a GGBS Plant if that person:
- (a) has demonstrated an interest in acquiring the GGBS Plant; and
 - (b) is, or is likely to be able, to make such an acquisition within the Divestiture Period.
- 2.10 References to 'disposal' are references to such legally recognised transfer, assignment, delivery or other disposal, creation or assumption of property, rights, assets, liabilities and other obligations, and to such combination of them, as the context requires.
- 2.11 Unless the context otherwise requires:
- 'the Act'** means the Enterprise Act 2002;
- 'Adverse Effects'** means the AECs in the GB bulk and bagged cement markets and GGBS markets identified in paragraphs 8.480 to 8.485 of the Report;
- 'Approved Agreement'** means the binding agreement or agreements approved by the CMA in accordance with subparagraphs 4.4 and 4.5;
- 'Approved Purchaser'** means a purchaser which the CMA is satisfied meets the criteria set out in paragraphs 13.331 to 13.334 of the Report;
- 'Calumite JV'** means Hanson's joint venture with Calumite International Inc;
- 'Calumite Slag'** means the substance produced, using GBS, by the Calumite JV;

'Commencement Date' means the date on which these Undertakings come into force;

'Date of Effective Disposal' means the date upon which the Effective Disposal has been completed;

'Divestiture Period' means the period of [~~8~~] months beginning with the Commencement Date, together with any Trustee Divestiture Period, in each instance subject to any extension granted by the CMA under paragraph 17 (Extension of time limits);

'Divestiture Trustee' means any person appointed in accordance with paragraph 10 (Appointment of Divestiture Trustee);

'Effective Disposal' means the completed sale and purchase of the Nominated Plant under an Approved Agreement to an Approved Purchaser;

'GBS' means granulated blast furnace slag or pellite;

'GGBS Plant' means a GGBS plant of Hanson situated at Port Talbot, Scunthorpe or Purfleet, together with any co-located storage depots or silos and buildings, but in the case of the Scunthorpe plant does not include:

(a) the facilities of the Calumite JV (but see subparagraph 3.2(a));

(b) the Sellafield depot (but see subparagraph 3.2(b)); or

(c) the laboratory facilities at the plant (but see subparagraph 3.2(c));

'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 SL6 4JJ;

'Heads of Terms' means a non-binding agreement to acquire the Nominated Plant that sets out the transaction structure and its principal terms;

'Heads of Terms Notice' means a Notice stating that Heads of Terms have been agreed and attaching those Heads of Terms to the Notice;

'Independent Expert' means a qualified solicitor, barrister, advocate, actuary, chartered accountant or other person of suitable expertise;

'Interim Undertakings' means the undertakings accepted by the CC on 28 February 2014 together with any directions or variations made in respect of them by the CMA;

'Lafarge Tarmac' means the company registered in England and Wales with the name Lafarge Tarmac Holdings Limited, 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;

'Monitoring Trustee' means Smith and Williamson, appointed pursuant to paragraph 3 of and Appendix A to the Interim Undertakings or any successor appointed in accordance with subparagraph 7.1 of these Undertakings;

'Nominated Plant' means the GGBS Plant nominated in accordance with paragraph 3;

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

'Sellafield Encapsulation Product' means the cement powders used by Sellafield Ltd in the nuclear waste encapsulation process at the Sellafield site in Cumbria;

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

'Trustee Divestiture Period' means the period of [~~3~~] months, or such other longer period as the CMA may allow, beginning with the date on which a Divestiture Trustee is appointed in accordance with paragraph 10 (Appointment of Divestiture Trustee) and subject to any extension granted by the CMA under paragraph 17 (Extension of time limits);

'Trustee Obligation' means bringing about Effective Disposal at no minimum price but recognising always the need to protect the legitimate financial interests of Hanson (including the price of the Effective Disposal) and the performance of all ancillary tasks as are necessary or desirable for the purposes of Effective Disposal promptly and in any event within the Trustee Divestiture Period;

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

3. Nomination Undertaking

- 3.1 Hanson undertakes to give Notice to the CMA within a period of [X] months beginning with the Commencement Date specifying which GGBS Plant it nominates to be divested to an Approved Purchaser in accordance with paragraph 4 (Divestiture Undertaking).
- 3.2 If the Notice under subparagraph 3.1 nominates the GGBS Plant at Scunthorpe it must also set out:
- (a) details of the arrangements that Hanson proposes to make for the continued operation of the Calumite JV, including in particular:
 - (i) how the GBS requirements of the Calumite JV will impact on the supply of GBS to the Scunthorpe GGBS plant;
 - (ii) how the ability of the purchaser of the plant to compete independently will not be compromised by the continued operation of the Calumite JV; and
 - (iii) any alternative arrangements that are envisaged for the co-located storage silo for Calumite Slag;
 - (b) the arrangements that Hanson proposes to make to ensure the continued production, storage and sale of the Sellafield Encapsulation Product, including whether the co-located storage depot for the Sellafield Encapsulation Product is to be included in the divestiture package; and if it is not to be so included:
 - (i) the reasons that it would be impractical to do so; and
 - (ii) the impact of that exclusion on the operations of the Scunthorpe GGBS Plant; and
 - (c) the arrangements that Hanson proposes to make in relation to the laboratory facilities at the Scunthorpe GGBS plant, and how they will not compromise the ability of the purchaser of the plant to compete independently.
- 3.3 If the Notice under subparagraph 3.1 nominates the GGBS Plant at Port Talbot it must also specify the arrangements that Hanson proposes to make for the inclusion of the Glasgow and Teignmouth depots in the divestiture package.

- 3.4 If the Notice under subparagraph 3.1 nominates the GGBS Plant at Purfleet, it must also specify the arrangements that are envisaged for the continued supply of GBS to the plant (see paragraph 5 in the Appendix to these Undertakings).
- 3.5 Hanson may amend the details specified in accordance with subparagraph 3.2, 3.3 or 3.4 and resubmit the Notice within a time period to be agreed with the CMA (but this shall not extend the Divestiture Period).

4. Divestiture Undertaking

- 4.1 Hanson undertakes that it shall complete, to the satisfaction of the CMA, the Effective Disposal of the Nominated Plant by the end of the Divestiture Period in accordance with these Undertakings.
- 4.2 Hanson undertakes that it will use all reasonable endeavours to conclude such transitional arrangements, if any, as are necessary on commercial terms with the Approved Purchaser to ensure that following Effective Disposal of the Nominated Plant the relevant Approved Purchaser is able to operate it effectively as an independent competitor.
- 4.3 If Hanson decides to agree Heads of Terms with a potential purchaser of the Nominated Plant it shall, within two Working Days of Heads of Terms being agreed, send to the CMA a Heads of Terms Notice.
- 4.4 Hanson recognises that in order to bring about an Effective Disposal, the CMA must approve the final draft sale and purchase agreement and any other final drafts of agreements or arrangements ancillary or connected to the sale and purchase agreement, including:
- (a) any transitional arrangements, or other assets transfers or agreements that are necessary to enable an Approved Purchaser to operate the Nominated Plant effectively as an independent competitor;
 - (b) any modifications to or novations of the relevant existing supply agreement between Hanson and Lafarge Tarmac, and any other agreements that are necessary to ensure that the Approved Purchaser has sufficient access to supplies and stockpiles of GBS from Lafarge Tarmac (see the Appendix to these Undertakings); and
 - (c) if required by the Approved Purchaser, provisions for the inclusion of any vehicle fleet necessary to provide the Nominated Plant with distribution capabilities suitable for its annual GGBS production and sale.

- 4.5 In considering whether to approve any such agreement the CMA shall consider:
- (a) whether the divestiture package as set out in the Notice submitted (or resubmitted) under paragraph 3 (Nomination Undertaking) is suitable to give effect to the requirements contained in Figure 13.4 and paragraphs 13.241 to 13.345 of the Report; and
 - (b) whether the terms of the sale and purchase agreement (and any other agreements or arrangements ancillary or connected to the sale and purchase agreement) give effect to that divestiture package and to those requirements, and in particular do not give rise to any significant risk that the Adverse Effects and resulting customer detriment identified in the Report will not be remedied;

and for these purposes the final drafts of agreement and sale documentation shall be sent to the CMA promptly for approval but no later than ten Working Days before the day on which the agreement is intended to be signed.

- 4.6 From the Date of Effective Disposal, Hanson (or any of its successor bodies) shall not, whether directly or through any person associated with it or otherwise to be treated as the same person for the purposes of [section 127](#) of the Act, take control over, or gain the ability to materially influence, the Nominated Plant without first having obtained from the CMA prior written consent, such consent not to be unreasonably withheld.

5. Approved Purchasers

- 5.1 Where in the reasonable opinion of Hanson it has identified one or more potential purchasers with a real interest in the acquisition of the Nominated Plant, it will apply to the CMA for a decision on whether or not they are an Approved Purchaser. Hanson shall approach the CMA with potential purchasers for approval in good time to achieve the objectives of these Undertakings. Hanson shall have the right to amend the list of potential purchasers at any time following such approach to the CMA, but any such amendment shall not affect the length of the Divestiture Period. Any amendment to that list shall be notified as soon as practicable to the Monitoring Trustee and the CMA by Hanson.
- 5.2 Hanson shall use all reasonable endeavours to assist the CMA in obtaining further information from the potential purchasers where necessary.
- 5.3 Hanson undertakes to inform the potential purchasers of a Nominated Plant that, in order to become an Approved Purchaser, a purchaser must produce evidence

to the CMA to confirm that it satisfies the criteria set out in paragraphs 13.331 to 13.334 of the Report.

6. Interim Undertakings

- 6.1 Hanson undertakes that on the cessation of the Interim Undertakings under [section 157\(4\)](#) of the Act, and until the Date of Effective Disposal, it will continue to abide by the obligations contained in the Interim Undertakings except in so far as the CMA has consented to derogations under subparagraph 6.2.
- 6.2 The CMA may, upon written request by Hanson grant derogations from or variations to those obligations for the purpose of facilitating an effective disposal and protecting the assets to be divested, provided that the CMA is satisfied that this will not jeopardise the CMA's objectives in achieving an effective remedy under [section 138](#) of the Act.
- 6.3 On the nomination of a plant under subparagraph 3.1 and before the cessation of the Interim Undertakings, the CMA will consider what variation or release of them under [section 157\(3\)](#) of the Act may be appropriate in relation to the plants that have not been so nominated.

7. Monitoring Trustee

- 7.1 Hanson undertakes that on the Commencement Date it shall secure on the same terms the continued appointment of Smith and Williamson as Monitoring Trustee, or the appointment of a successor Monitoring Trustee under the procedure laid down in Appendix A to the Interim Undertakings. The Monitoring Trustee will continue to have the same powers and duties and will in addition carry out the duties set out in subparagraphs 7.3 and 7.4. Hanson undertakes to ensure that the Monitoring Trustee continues to act until Effective Disposal has been achieved.
- 7.2 Hanson undertakes to exercise its reasonable endeavours to enable, and where necessary shall procure that each of its subsidiaries shall enable the Monitoring Trustee to carry out its duties set out in subparagraphs 7.3 and 7.4.
- 7.3 The Monitoring Trustee will monitor the compliance of Hanson and its subsidiaries with their obligations under these Undertakings.
- 7.4 The duties set out in this subparagraph are those of monitoring the Effective Disposal within the Divestiture Period and shall in particular include:

- (a) monitoring the progress made by Hanson including progress made against the timetable towards the satisfaction of the Effective Disposal within the Divestiture Period and the steps that have otherwise been taken to comply with the Undertakings including the steps that have been taken towards the preparation of Heads of Terms (where relevant) and an agreement for each Effective Disposal, and the persons to whom such an agreement has been distributed;
- (b) attending such meetings and monitoring such communications as the Monitoring Trustee considers necessary that Hanson and/or its financial and other advisers hold with possible candidate purchasers and/or those possible candidate purchasers' financial or other advisers in connection with the disposal process (save where those meetings and communications are properly the subject of legal privilege). Hanson undertakes to notify such communications to the Monitoring Trustee as soon as practicable afterwards and, in any case, by way of the weekly compliance calls and/or fortnightly compliance logs. Hanson will have the right to proceed with any such meetings if two Working Days' prior notice of such meetings has been given to the Monitoring Trustee. In the event that the Monitoring Trustee wishes but is unable to attend a meeting, Hanson and its advisers will use reasonable endeavours to reschedule the meeting;
- (c) assessing whether there are any reasonable grounds for concern that insufficient progress is being made towards an Effective Disposal within the Divestiture Period;
- (d) monitoring whether variations to or derogations from the obligations in the Interim Undertakings are necessary to achieve an Effective Disposal; and
- (e) complying with such other written direction as the CMA may reasonably give from time to time.

8. Reporting obligations

- 8.1 Hanson undertakes that, within the period of [~~8~~] weeks from the Commencement Date, it will provide a written report to the CMA, copied to the Monitoring Trustee, setting out the timetable that it proposes to adopt, subject to the CMA's approval, to ensure Effective Disposal to an Approved Purchaser within the Divestiture Period. The report will outline the progress that it has made and the steps that have otherwise been taken to comply with these Undertakings and shall in particular report on:

- (a) the status of any discussions that have been held with potential purchasers of the Nominated Plant;
- (b) the identity of any Independent Expert who has been consulted, and the identities of external advisers who have been retained for the purpose of the divestiture;
- (c) the status of any additional marketing material (including an information memorandum), the identities of the persons to whom it has been circulated and the responses to the marketing materials;
- (d) the status of any data room, its contents and the persons who have had access to it;
- (e) the progress that has been made towards agreeing Heads of Terms (where relevant);
- (f) the steps that have been taken towards reaching an Approved Agreement and the persons to whom any agreement has been distributed; and
- (g) such other matters as may be reasonably directed by the CMA from time to time.

8.2 Hanson shall provide similar reports to the CMA copied to the Monitoring Trustee at monthly intervals or at other times to be agreed with the CMA for the duration of the Divestiture Period.

8.3 In the event that Hanson does not meet a step as set out in the approved timetable, or is otherwise delayed in implementing the remedy, Hanson undertakes to inform the CMA and the Monitoring Trustee in writing of the occurrence and the reasons for the failure promptly, but in any event no later than two Working Days of becoming aware that a step in the approved timetable has not been met.

9. Procedure for Consent and Approval

9.1 Hanson undertakes that where it requires the consent or approval of the CMA (however that requirement is expressed in these Undertakings) it will seek the consent or approval in writing. Any consent or approval given by the CMA under these Undertakings shall be given in writing pursuant to paragraph 19.

- 9.2 Hanson undertakes that any application by it for the CMA's consent or approval shall make full disclosure of every material fact that, having made all reasonable enquiries, it believes is relevant to the CMA's decision (Relevant Information).
- 9.3 Hanson recognises that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.
- 9.4 In the event that Hanson discovers that an application for consent or approval has been made without full disclosure of Relevant Information, Hanson undertakes to:
- (a) inform the CMA in writing identifying Relevant Information that it omitted to include in the application for consent within two Working Days of becoming aware that Relevant Information is incomplete; and
 - (b) at the same time or no later than two Working Days starting with the date on which it informed the CMA of the omission in accordance with subparagraph 9.4(a) above, provide to the CMA an application for consent that includes missing Relevant Information.

10. Appointment of Divestiture Trustee

- 10.1 Hanson undertakes that it shall at the written direction of the CMA appoint a Divestiture Trustee in accordance with the provisions of this paragraph.
- 10.2 The CMA will keep under review the need for a Divestiture Trustee and in particular may issue directions for the appointment of a Divestiture Trustee, where:
- (a) the CMA considers that the reports received in accordance with paragraph 8 (Reporting Obligations) and/or the advice of the Monitoring Trustee, inter alia, indicate that it is unlikely that Hanson will achieve an Effective Disposal within the Divestiture Period and that such failure is not remedied within a reasonable period of time; or
 - (b) there is no Effective Disposal within the Divestiture Period; or
 - (c) the CMA considers that Hanson is in material breach of any of the provisions of these Undertakings or has failed to comply with the Undertakings and that such breach or failure is not remedied within a reasonable period of time.

- 10.3 Hanson undertakes that within the period of [~~30~~] Working Days following the day on which pursuant to subparagraph 10.2 the CMA gives a direction, Hanson shall submit to the CMA for approval a list of two or more persons whom Hanson proposes to appoint as Divestiture Trustee together with a proposed mandate.
- 10.4 Each person on the list referred to in subparagraph 10.3 shall be independent of and unconnected to Hanson and any interconnected body within the meaning of [section 129\(2\)](#) of the Act, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
- 10.5 The CMA may approve or reject any or all of the proposed persons and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Trustee Obligation. If only one proposed person is approved, Hanson shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CMA. If more than one proposed person is approved, Hanson shall be free to choose the Divestiture Trustee to be appointed from among the approved persons. Hanson undertakes to appoint the Divestiture Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.
- 10.6 If all the proposed Divestiture Trustees are rejected by the CMA, Hanson shall submit the names of at least two further persons within four Working Days from being informed of the rejection, in accordance with the requirements and the procedure set out in subparagraphs 10.3 to 10.5 above.
- 10.7 The provisions of subparagraph 10.8 shall apply if:
- (a) Hanson fails to nominate further persons in accordance with subparagraph 10.6; or
 - (b) those further persons nominated by Hanson in accordance with subparagraph 10.6 are rejected by the CMA; or
 - (c) Hanson is unable without reasonable justification to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
- 10.8 The CMA shall nominate two or more persons who may act as Divestiture Trustee after informing Hanson at least one Working Day before nomination of

the name of the potential Divestiture Trustees, and Hanson shall appoint or cause to be appointed one of those Divestiture Trustee within two Working Days from such nomination under the terms of a Divestiture Trustee mandate approved by the CMA.

- 10.9 Hanson recognises that the function of the Divestiture Trustee is distinct from the function of the Monitoring Trustee, although the two functions may be performed by the same person subject to that person meeting the requirements set out in subparagraph 10.4.
- 10.10 Hanson undertakes to remunerate and reimburse the Divestiture Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in accordance with the directions or instructions given pursuant to subparagraph 11.3(a), in such a way so as not to impede the Divestiture Trustee's independence or ability to effectively and properly fulfil the Trustee Obligation.

11. Divestiture Trustee – functions

- 11.1 The Divestiture Trustee shall comply with any written directions the CMA may give pursuant to subparagraph 11.3 and shall fulfil the Trustee Obligation.
- 11.2 The Divestiture Trustee shall undertake such preparatory matters as it considers necessary to discharge the Trustee Obligation and for these purposes may give written directions to Hanson. Hanson undertakes to comply with any such written directions and to take steps to enable the Divestiture Trustee to carry out the Trustee Obligation.
- 11.3 Hanson acknowledges that:
- (a) the CMA may, on its own initiative or at the request of the Divestiture Trustee or Hanson, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty (including directions as to the disposal of such assets, rights, consents, or any other matters, including those set out in subparagraph 4.4, as the CMA considers necessary to bring about an Effective Disposal);
 - (b) the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of its duty such terms and conditions as it reasonably considers appropriate; and

(c) the Divestiture Trustee shall protect the legitimate financial interests of Hanson subject to the Divestiture Trustee's overriding obligations to give effect to its duty and shall use reasonable endeavours to consult with Hanson during the disposal process on all important matters.

11.4 The Divestiture Trustee shall take such steps and measures it considers necessary to discharge its duty and to that end the Divestiture Trustee may give written directions to Hanson, and Hanson undertakes to comply with such directions or to procure compliance with such directions as are within its powers and to take such reasonable steps within its competence as the Divestiture Trustee may specify.

11.5 Hanson recognises and acknowledges that in the performance of its duty, the Divestiture Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of Hanson and Hanson undertakes that it will not seek to create or vary the obligations and duties of the Divestiture Trustee without the CMA's prior written consent.

12. Divestiture Trustee – obligations of Hanson

12.1 Hanson undertakes to provide the Divestiture Trustee with all such cooperation, assistance and information (including by the production of financial or other information whether or not such information is in existence at the time of the request, but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of its duties.

12.2 Hanson recognises and acknowledges that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information reasonably necessary for the fulfilment of its duty (save where material is properly the subject of legal privilege). Hanson undertakes that it shall provide the Divestiture Trustee upon request with copies of any such document. On the request of the Divestiture Trustee, Hanson undertakes to make available to the Divestiture Trustee one or more offices on its premises for meetings in order to provide the Divestiture Trustee with all information necessary for the performance of the Trustee Obligation.

12.3 Hanson undertakes to grant reasonable comprehensive powers of attorney, on terms approved by the CMA, duly executed, to the Divestiture Trustee to enable it to discharge its duties including by the appointment of advisers to assist with the disposal process if necessary for the performance of the Trustee Obligation.

Before doing so, Hanson will consider using the advisers already appointed by Hanson and appoint further advisers (whether in replacement of in addition to Hanson's advisers) if it reasonably considers the appointment of such further advisers necessary or appropriate in the discharge of the Trustee Obligation. Hanson undertakes that, upon the reasonable request of the Divestiture Trustee, Hanson shall execute the documents required to give effect to the Trustee Obligation.

- 12.4 Hanson undertakes to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Trustee Obligation. Hanson recognises and acknowledges that the Divestiture Trustee, its employees, agents or advisers shall have no liability to Hanson for any liabilities arising out of the proper performance of the Trustee Obligation, except to the extent that such liabilities result from the negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
- 12.5 Hanson undertakes that at its expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee reasonably considers the appointment of such advisers necessary or appropriate in the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred and approved by Hanson, where possible in advance. Should Hanson refuse to approve the advisers proposed by the Divestiture Trustee, the CMA may, after consulting with Hanson, approve and direct the appointment of such advisers at Hanson's expense.
- 12.6 Where Hanson wishes to make an objection to any disposal, on the grounds of bad faith, gross negligence or failure of the Divestiture Trustee to protect the legitimate financial interests of Hanson, subject to the Trustee Obligation, it shall submit a Notice setting out its objections within seven Working Days from the day on which it became aware of the fact or facts giving rise to its objection.

13. Divestiture Trustee – replacement, discharge and reappointment

- 13.1 Hanson acknowledges that if the Divestiture Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest:
- (a) the CMA may, after consulting the Divestiture Trustee, require Hanson to replace the Divestiture Trustee; or

(b) Hanson, with the prior written approval of the CMA, may replace the Divestiture Trustee.

13.2 If the Divestiture Trustee is removed under subparagraph 13.1, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in subparagraphs 10.3 to 10.8.

13.3 Hanson recognises and acknowledges that, other than in accordance with subparagraph 13.1, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time at which all the functions with which the Divestiture Trustee has been entrusted have been met.

14. Technical assistance

14.1 Hanson undertakes to remunerate in full, and to pay all the reasonable costs and expenses of, any Independent Expert whose assistance the CMA may reasonably require in connection with any of the matters in subparagraph 14.2.

14.2 The matters in this subparagraph are:

(a) the determination of a person as an Approved Purchaser;

(b) the determination of an agreement as an Approved Agreement; and

(c) any other matter on which the CMA may reasonably require the assistance of an Independent Expert in connection with these Undertakings.

14.3 For the purposes of enabling Hanson to fulfil its obligation in subparagraph 14.1, the CMA shall promptly give Hanson advance notice of its intention to seek the assistance of any Independent Expert and an indication of likely costs.

15. Compliance

15.1 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.

16. Effect of invalidity

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

17. Extension of time limits

- 17.1 Hanson recognises and acknowledges that the CMA may, where it considers appropriate, in response to a written request from Hanson showing good cause, or otherwise at its own discretion, grant an extension of any period specified in the Undertakings within which Hanson must take action.
- 17.2 In considering whether to grant such an extension, the CMA will take into account the extent to which any delay was caused by factors outside Hanson's control.

18. Provision of information to the CMA

- 18.1 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 under sections [159](#), [160](#), [162](#) and [167\(6\)](#) of the Act.
- 18.2 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.

19. Service

- 19.1 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.
- 19.2 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.

- 19.3 Subparagraph 19.2 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 judgment.
- 19.4 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.

20. Subsidiaries

- 20.1 Hanson undertakes to procure that its subsidiaries comply with these Undertakings as if they had been given by those subsidiaries.

21. Governing law

- 21.1 Hanson recognises and acknowledges that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 21.2 In the event that a dispute arises concerning these Undertakings, Hanson undertakes to submit that dispute to the courts of England and Wales.

22. Termination

- 22.1 Hanson recognises and acknowledges 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.

22.2 Hanson recognises and acknowledges 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

FOR AND ON BEHALF OF Hanson Limited

..... Signature

Jim Claydon
Managing Director – Cement

FOR AND ON BEHALF OF Castle Cement Limited

..... Signature

Jim Claydon
Managing Director – Cement

MAIN PROVISIONS OF UNDERTAKINGS TO BE GIVEN BY HANSON AND LAFARGE TARMAC CONCERNING THE SUPPLY OF GBS

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 SL6 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 make 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.