

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

The Cement Market Data Order 2016

Notice of intention to make an Order pursuant to sections 161 and 165 of and Schedule 10 to the Enterprise Act 2002 and public consultation on the proposed Order

1. 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).
2. 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 cement markets) gave rise to an adverse effect on competition (AEC) through coordination in those markets (the Coordination AEC);
 - (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 Great Britain, 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, in particular, to address the Coordination AEC and resulting customer detriment a number of remedies should be imposed under [section 138\(2\)](#) of the Act, including a remedy consisting of restrictions on the disclosure of cement production and sales volume data concerning the GB cement markets;
 - (e) that remedy should be implemented by: (i) an order restricting the disclosure of production and sales volume data by any cement producer

in the GB markets; and (ii) undertakings entered into by the Mineral Products Association (MPA) concerning the use of a suitable third party that is independent of the cement producers in GB for the collection and disclosure of production and sales volume data it receives from cement producers in the GB cement markets; and

- (f) the remedy should be implemented in such a way as not to prevent the direct collection of cement market volume data from each of the cement producers in the GB cement markets by the UK Statistics Authority (or its executive office, the Office for National Statistics) and any government agencies in accordance with their legal requirements to do so.
3. On 12 March 2014 Hope Construction Materials Ltd (Hope) and Lafarge Tarmac Holdings Ltd (Lafarge Tarmac) made an application to the Competition Appeal Tribunal (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.
 4. 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.
 5. In light of the challenges brought by Hope and Lafarge Tarmac, the CMA decided to place the implementation of the cement market volume data remedial action on hold pending on the outcome of those proceedings.
 6. On 4 August 2015, by Order, the Tribunal granted permission to Hope and Lafarge Tarmac to withdraw their applications for review.
 7. The CMA now gives notice under [section 165](#) of, and paragraph 2 of [Schedule 10](#) to, the Act that:
 - (a) the CMA proposes the making of the following Order – The Cement Market Data Order 2016;
 - (b) the proposed Order seeks to address, in conjunction with the other remedial actions detailed in the Report, the Coordination AEC and thereby resulting customer detriment;
 - (c) the purpose and effect of the proposed Order are to restrict the disclosure and publication by any cement producer in the GB markets of its cement production and sales volume data; and

(d) a copy of the proposed Order will be published on the [CMA website](#).

8. On the same date as the date of the present Notice, the CMA has given notice of a proposal to accept Final Undertakings from the Mineral Products Association, which have the purpose and effect of restricting the collection and disclosure of cement production and sales volume data concerning the GB cement markets by the MPA.
9. The CMA invites written representations on the proposed Order from any interested person. Representations should reach the CMA by 5pm on 29 March 2016 and should be addressed to:

Remedies Manager
Competition and Markets Authority
Victoria House
Southampton Row
London WC1B 4AD

or by email to: RemediesManager@cma.gsi.gov.uk

10. The CMA will have regard to any representations made in response to this Notice and may make modifications to the proposed Order 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 Order, the CMA proposes to make the Order in its present form pursuant to [section 161](#) of the Act. If the CMA considers that any representation necessitates any material change to the proposed Order the CMA will give notice of the proposed modifications and consider any further representations.
11. Once made the Order may be varied or revoked by the CMA under [section 161\(4\)](#) of the Act.
12. This Notice will be published on the [CMA website](#).

MARTIN CAVE
Group Chair
25 February 2016

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

DRAFT ORDER – CONSULTATION

The Cement Market Data Order 2016

Background

1. 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).
2. 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 cement markets) gave rise to an adverse effect on competition (AEC) through coordination in those markets (the Coordination AEC);
 - (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 Great Britain, 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, in particular, to address the Coordination AEC and resulting customer detriment a number of remedies should be imposed under [section 138\(2\)](#) of the Act, including a remedy consisting in restrictions on the disclosure and publication of cement production and sales volume data concerning the GB cement markets;
 - (e) that remedy should be implemented by: (i) an order restricting the disclosure of production and sales volume data by any cement producer in the GB markets; and (ii) undertakings entered into by the Mineral Products Association (MPA) concerning the use of a suitable third party that is independent of the cement producers in GB for the collection and disclosure of production and sales volume data it receives from cement producers in the GB cement markets; and

- (f) the remedy should be implemented in such a way as not to prevent the direct collection of cement market volume data from each of the cement producers in the GB cement markets by the UK Statistics Authority (or its executive office, the Office for National Statistics) and any government agencies in accordance with their legal requirements to do so.
3. On 12 March 2014 Hope Construction Materials Ltd (Hope) and Lafarge Tarmac Holdings Ltd (Lafarge Tarmac) made an application to the Competition Appeal Tribunal (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.
 4. 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.
 5. In light of the challenges brought by Hope and Lafarge Tarmac, the CMA decided to place the implementation of the cement market data remedial action on hold pending on the outcome of those proceedings.
 6. On 4 August 2015, by Order, the Tribunal granted permission to Hope and Lafarge Tarmac to withdraw their applications for review.
 7. On 25 February 2016 the CMA consulted on the proposed order and the outcome of consultation was [***]

The Order

The CMA makes this Order in performance of its duty under [section 138](#) of the Act, and in exercise of its powers under [section 161](#) of the Act together with sections [86](#), [87](#) and [164\(2\)](#) of and paragraphs 17(1) and (1A), 21 and 22 of [Schedule 8](#) to the Act, the CMA makes the following Order for the purpose of remedying the Coordination AEC and resulting customer detriment:

1. Commencement and Application

- 1.1 This Order may be cited as the 'Cement Market Data Order 2016'.
- 1.2 This Order comes into force on *[the day after the day on which it is published by the CMA]*.

1.3 This Order applies to Cement Producers producing cement in Great Britain.

2. Interpretation

2.1 The Interpretation Act 1978 shall apply to this Order.

2.2 The purpose of this Order is to give effect to the Report and it shall be construed accordingly.

2.3 Any word or expression used in this Order or the recitals to this Order shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report.

2.4 In this Order the word 'including' means including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and 'include' shall be construed accordingly.

2.5 In this Order:

'the Act' means the Enterprise Act 2002;

'Aggregated Cement Market Data' means any aggregation of Individual Cement Market Data relating to at least three Cement Producers;

'Association' means an entity which is not independent of the Cement Producers where: (a) the entity's governance or management comprises representatives employed by two or more Cement Producers; or (b) the entity has direct or indirect structural or financial links to two or more Cement Producers; or (c) the entity is funded directly or indirectly by two or more Cement Producers; or (d) two or more Cement Producers are members of such entity;

'Cement' means any type of bulk or bagged grey cement, including cement clinker;

'Cement Producer' means any person who produces Cement in Great Britain;

'CMA' means the Competition and Markets Authority;

'Disclosure' means disclosure by a person to a third party and includes any provision, release or communication of information to a third party including but not limited to for commercial purposes (and 'Disclose' shall be construed accordingly);

'Group' means group of interconnected bodies corporate, as defined in [section 129](#) of the Act;

'Individual Cement Market Data' means historic data on the volumes of production or sale of Cement in Great Britain relating to a single Cement Producer, or an aggregation of such data relating to less than three such Cement Producers;

'MPA' means the Mineral Products Association Limited, a company limited by guarantee with registered number 01634996 and registered office at Gillingham House, 38-44 Gillingham Street London SW1V 1HU. The MPA is a trade association for the UK aggregates, asphalt, cement, concrete, lime, mortar and silica sand industries. The MPA is an Association for the purposes of this Order;

'Publication' means making information publicly available, including the publication or other public notification of information in any form (and 'Publish' shall be construed accordingly);

'Quarantine Period', in relation to a set of data, means the period of at least three months from the end of the period to which those data relate;

'Report' means the Aggregates, cement and ready-mix concrete market investigation: Final report, published by the Competition Commission on 14 January 2014;

'Undertakings' means the final Cement Market Data Undertakings given by the MPA and accepted by the CMA under [section 159](#) of the Act on [...] or the final Cement Market Data Undertakings given by an Association in the form appended to the current Order in Schedule 1 and accepted by the CMA under [section 159](#) of the Act.

3. Prohibition on publication and disclosure of sales and production volume data

- 3.1 A Cement Producer must not Publish any Individual Cement Market Data for a period of five years from the end of the period to which those data relate.
- 3.2 A Cement Producer (P) must not Disclose Individual Cement Market Data that has not passed its Quarantine Period other than to:
 - (a) a Permitted Third Party acting on behalf of an Association in the collection of the Individual Cement Market Data for the purposes of producing Aggregated Cement Market Data for use by an Association where the Association has given Undertakings to the CMA;

(b) a person in the same Group as P; or

(c) a Permitted Data User.

3.3 For the purposes of Article 3.2(a) a Permitted Third Party is a person who:

(a) is not a Cement Producer and is not associated with or otherwise to be treated as the same person as any Cement Producer (for the purposes of [section 127](#) of the Act as applied by virtue of [section 183\(2\)](#) of the Act), or a member of any group of interconnected bodies corporate that contains such a Cement Producer;

(b) is not an Association;

(c) has not entered into any agreement or arrangement with any Cement Producer, except for the case when it acts on behalf of the Cement Producer on a separate engagement and it has put in place suitable confidentiality firewalls to prevent any sharing or access to any information between the Association and the Cement; and

(d) has put in place the necessary safeguards and confidentiality firewalls in order to ensure that:

(i) the Permitted Third Party does not Disclose the Individual Cement Market Data to any person, including any Association at any time (even after the expiry of the Quarantine Period); and

(ii) in the case of Aggregated Cement Market Data, the Permitted Third Party cannot Disclose the Aggregated Cement Market Data to any Association until the expiry of the Quarantine Period.

3.4 For the purposes of Article 3.2(c) a Permitted Data User is a person (other than a Cement Producer or an Association) who:

(a) has been engaged by P to provide consultancy, advisory or other professional services requiring the use of Individual Cement Market Data provided by P and the output is only used for internal purposes by P, and has not been engaged by any other Cement Producer or an Association for such a purpose; or

(b) has been engaged separately by P and by any other Cement Producer (Q):

(i) to provide services requiring the use of Individual Cement Market Data provided by P and Q respectively; and

- (ii) in each case, on terms that prevent the sharing of information between P and Q, including between staff dealing with Individual Cement Market Data provided by P and staff dealing with Individual Cement Market Data provided by Q; or
 - (c) is a person (Y) where for the purposes of a due diligence process during a transaction involving the transfer of an interest in assets and/or shares between P (or a member of P's Group) and Y, or the provision of finance or another form of funding by Y to P (or a member of P's Group), where Y does not meet the conditions set out in Articles 3.4 (a) or (b); or
 - (d) has been engaged by P to provide technical, operational or similar services requiring the use of Individual Cement Market Data provided by P and the output is only to be used for the purposes of the provision of such services to P.
- 3.5 Where Individual Cement Market Data is Disclosed to a Permitted Data User under subparagraph 3.2(c), the Individual Cement Market Data shall not be further Disclosed or Published for any purpose.
- 3.6 A Cement Producer may Disclose Individual Cement Market Data that has passed its Quarantine Period provided that the Cement Producer takes all reasonable steps to ensure that any recipient of the Individual Cement Market Data will not further Disclose, Publish or otherwise disseminate the Individual Cement Market Data to any other Cement Producer or any Association.
- 3.7 A Cement Producer must not Disclose Individual Cement Market Data to any Association involved in the collation or the analysis or the publication of the Individual Cement Market Data for a period of five years from the end of the period to which those data relate. Provided that the Association has given Undertakings to the CMA, an Association may only receive Aggregated Cement Market Data and only from a Permitted Third Party.

4. Permitted disclosure and publication

- 4.1 Nothing in this Order prevents the Disclosure or Publication of data by a Cement Producer:
- (a) directly to the UK Statistics Authority (or its executive office, the Office for National Statistics) for the purpose of collation and submission by the

Office for National Statistics to the Statistical Office of the European Union (Eurostat); or

- (b) directly to any government body or to any of the institutions of an intergovernmental organisation (including, but not limited to the institutions of the European Union); or
- (c) where the CMA has given its prior written consent to the Disclosure or Publication. Any application to the CMA for the purpose of obtaining its prior written consent shall be addressed to:

Remedies Manager
Competition and Markets Authority
Victoria House
Southampton Row
London WC1B 4AD

or by email to: RemediesManager@cma.gsi.gov.uk

5. Powers of direction

5.1 The CMA may give directions falling within this Order to:

- (a) a person specified in the directions; or
- (b) a holder for the time being of an office so specified in any body of persons corporate or unincorporate.

5.2 Directions fall within this paragraph if they are directions:

- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with this Order; or
- (b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.

5.3 The CMA may vary or revoke any directions so given.

6. Termination

6.1 This Order shall be in force until such time as it is varied or revoked under the Act.

6.2 The variation or revocation of this Order shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation or revocation.

(signed) MARTIN CAVE
Group Chair
Date

Final Undertakings given by [*the name of the Association*] under sections 159 and 165 of and Schedule 10 to the Enterprise Act 2002

[...] now gives to the CMA the following undertakings (the Undertakings), which the CMA proposes to accept pursuant to section 138 and 159 of the Act. These Undertakings may be varied, superseded or released by the CMA in accordance with section 159(4) or (5) of the Act.

1. Commencement

- 1.1 In accordance with section 159(3) of the Act, these Undertakings come into force when they are accepted by the CMA.

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 measures aimed at reducing transparency in the GB cement markets (and in particular for restrictions on the timing and form of any disclosure of data on the volumes of production or sale of cement) 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 references to bodies of persons, whether corporate or incorporate.
- 2.7 References to a 'month' are references to a calendar month.

- 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 or subparagraphs are references to paragraphs or subparagraphs of these Undertakings.

2.10 In these Undertakings:

'the Act' means the Enterprise Act 2002;

'Aggregated Cement Market Data' means any aggregation of Individual Cement Market Data relating to at least three Cement Producers;

'Cement' means any type of bulk or bagged grey cement, including cement clinker;

'Disclosure' means disclosure by a person to a third party and includes any provision, release or communication of information to a third party including but not limited to for commercial purposes (and 'Disclose' shall be construed accordingly);

'Cement Producer' means any person who produces Cement in Great Britain;

'Individual Cement Market Data' means any historic data on the volumes of production or sale of Cement in Great Britain relating to a single Cement Producer, or an aggregation of such data relating to less than three such Cement Producers;

'[the name of the association]' means [...];

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

'Permitted Third Party' has the meaning given by subparagraph 4.3;

'Publication' means making information publicly available, including the publication or other public notification of information in any form (and 'Publish' shall be construed accordingly);

'Quarantine Period', in relation to a set of data, means the period of at least three months from the end of the period to which those data relate;

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

3. Restrictions on the receipt, Disclosure or Publication of Individual or Aggregated Cement Market Data

- 3.1 The [*the name of the association*] undertakes not to receive, Disclose or Publish any Individual Cement Market Data for a period of five years from the end of the period to which those data relate.
- 3.2 The [*the name of the association*] undertakes not to receive, Disclose or Publish any Aggregated Cement Market Data until the expiry of the Quarantine Period and then only in accordance with the requirements of Article 4.
- 3.3 Nothing in these Undertakings shall prevent the Disclosure or Publication of Individual or Aggregated Cement Market Data by the [*the name of the association*]:
- (a) to any person who has the legal power to require the Disclosure; or
 - (b) where the CMA has given its prior written consent to the Disclosure or Publication.

4. Receiving Aggregated Cement Market Data by the [*the name of the association*]

- 4.1 The [*the name of the association*] undertakes not to receive Aggregated Cement Market Data from any person other than a Permitted Third Party.
- 4.2 Where the [*the name of the association*] uses a Permitted Third Party for the purposes of paragraph 4.1, the [*the name of the association*] undertakes to ensure that it contracts with a Permitted Third Party on terms which include the following requirements:
- (a) that the Permitted Third Party is responsible for collecting all of the Individual Cement Market Data and does not Disclose or Publish the Individual Cement Market Data to any person, including the [*the name of the association*] at any time (even after the expiry of the Quarantine Period); and
 - (b) in the case of Aggregated Cement Market Data, the Permitted Third Party cannot Disclose or Publish the Aggregated Cement Market Data to the [*the name of the association*] until the expiry of the Quarantine Period mentioned in subparagraph 3.2.
- 4.3 For the purposes of paragraphs 4.1 and 4.2, a Permitted Third Party is a person who:

- (a) is not a Cement Producer and is not associated with or otherwise to be treated as the same person as any Cement Producer (for the purposes of section 127 of the Act as applied by virtue of 183(2) of the Act), or a member of any group of interconnected bodies corporate that contains such a Cement Producer;
 - (b) has not entered into any agreement or arrangement with any Cement Producer, except as allowed under subparagraph 4.4; and
 - (c) has put in place the necessary safeguards in order to ensure the confidentiality of the Individual or Aggregated Cement Market Data and compliance with the obligations under subparagraph 4.2.
- 4.4 A Permitted Third Party will, however, be permitted to act on behalf of any Cement Producer so long as:
- (a) it acts on behalf of the Cement Producer on a separate engagement; and
 - (b) it has put in place suitable confidentiality firewalls to prevent any sharing of, or access to, any information between the [*the name of the association*] and the Cement Producer.
- 4.5 Nothing in these Undertakings shall prevent the [*the name of the association*] receiving Individual or Aggregated Cement Market Data where the CMA has given its prior written consent to it.

5. Changes in relation to the collection etc. of data

- 5.1 The [*the name of the association*] undertakes to give Notice to the CMA of any material changes that are proposed to be implemented in relation to the collection, collation, Disclosure or Publication of Individual or Aggregated Cement Market Data, including any change in:
- (a) the Permitted Third Party who will be responsible for such collection and collation; or
 - (b) the form in which the Individual or the Aggregated Cement Market Data is collated, Disclosed or Published.
- 5.2 Notice under subparagraph 5.1 shall be given no less than two months before the date of the proposed implementation, and the [*the name of the association*] undertakes not to implement any such change if the CMA has given a Notice of objection before the end of the two months period.

6. Compliance

- 6.1 The [*the name of the association*] 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.
- 6.2 Any application to the CMA for the purpose of receiving its prior written consent according to Article 3.3(b) and Article 4.5 above shall be addressed to:

Remedies Manager
Competition and Markets Authority
Victoria House
Southampton Row
London WC1B 4AD

or by email to: RemediesManager@cma.gsi.gov.uk

7. Effect of invalidity

- 7.1 The [*the name of the association*] undertakes that should any provision of these Undertakings be contrary to law or invalid for any reason, the [*the name of the association*] shall continue to observe the remaining provisions.

8. Provision of information to the CMA

- 8.1 The [*the name of the association*] undertakes that it must 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.
- 8.2 The [*the name of the association*] 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.

9. Service

- 9.1 The [*the name of the association*] hereby authorises its Chief Executive to accept, on its behalf, service of all documents connected with these Undertakings (including any document of any kind which falls to be served on or sent to the [*the name of the association*] in connection with any

proceedings in courts in the United Kingdom), orders, requests, notifications or other communications connected with these Undertakings; and service shall be deemed to have been acknowledged by the [*the name of the association*] if it is acknowledged by its Chief Executive or other appointed nominee.

- 9.2 Any communication from the [*the name of the association*] to the CMA under these Undertakings shall be addressed to Remedies Manager, 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 RemediesManager@cma.gsi.gov.uk or such other address as the CMA may direct in writing.

10. Governing law

- 10.1 The [*the name of the association*] recognises and acknowledges that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 10.2 In the event that a dispute arises concerning these Undertakings, the [*the name of the association*] undertakes to submit that dispute to the courts of England and Wales.

11. Termination

- 11.1 The [*the name of the association*] recognises and acknowledges that these Undertakings shall be in force until such time as they are varied, superseded or released under section 159(4) or (5) of the Act.
- 11.2 The [*the name of the association*] recognises and acknowledges that the variation, supersession or release of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, supersession or release.

FOR AND ON BEHALF OF THE [*the name of the association*]

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

Explanatory note

The Cement Market Data Order 2016

(This Note does not form part of the Order)

Background

1. 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).¹
2. 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:
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 - (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, in particular, to address the Coordination AEC and resulting customer detriment a number of remedies should be imposed under [section 138\(2\)](#) of the Act, including a remedy consisting in restrictions on the disclosure and publication of cement production and sales volume data concerning the GB cement markets;

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

- (e) that remedy should be implemented by: (i) an order restricting the disclosure of production and sales volume data by any cement producer in the GB markets; and (ii) undertakings entered into by the Mineral Products Association (MPA) concerning how it collects and discloses production and sales volume data it receives from cement producers in the GB cement markets; and
 - (f) the remedy should be implemented in such a way as not to prevent the direct collection of cement market data from each of the cement producers in the GB cement markets by the UK Statistics Authority (or its executive office, the Office for National Statistics) and any government agencies in accordance with their legal requirements to do so.
- 3. On 12 March 2014 Hope Construction Materials Ltd (Hope) and Lafarge Tarmac Holdings Ltd (Lafarge Tarmac) made an application to the Competition Appeal Tribunal (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.
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- 5. In the light of the challenges brought by Hope and Lafarge Tarmac, the CMA decided to place the implementation of the cement market data remedial action on hold pending the outcome of those proceedings.
- 6. On 4 August 2015, by Order, the Tribunal granted permission to Hope and Lafarge Tarmac to withdraw their applications for review.

Possible consequences of not complying with the Order

- 7. [Section 167](#) of the Act places a duty on any person to whom the Order applies to comply with it. Any person who suffers loss or damage due to a breach of this duty may bring an action.
- 8. The CMA has power under the Order to give directions, including directions to a person in their capacity as an office holder, for the purpose of carrying out, or ensuring compliance with, the Order.

9. [Section 167](#) of the Act also provides that the CMA can seek to enforce the Order by civil proceedings for an injunction or for any other appropriate relief or remedy.

Review of the Order

10. The CMA has a duty under [section 162](#) of the Act to monitor the operation of the Order. This includes a duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances. A Cement Producer may apply for a variation or cancellation of all or part of the Order on the basis of a change of circumstances, or recommend that the CMA reviews the need for the Order or part of it.

Status of this Explanatory Note

11. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail.

Structure of the Order

12. The Order is divided into seven Articles and one Schedule:
 - (a) Articles 1 and 2 contain general provisions, which include specifying when the Order comes into force and definitions that are used throughout the Order (and which are also used in this Explanatory Note).
 - (b) Article 3 of the Order prohibits:
 - (i) the publication by Cement Producers in Great Britain of their individual data on the volumes of production or sale of cement for a period of five years from the end of the period to which those data relate;

The CMA consulted informally on the proposed draft Cement Market Data Order and the proposed draft Final Undertakings and it received a number of representations in particular relating to the duration of the prohibition on disclosure of firm-specific data. The CMA has therefore clarified that the prohibition on the disclosure and publication of firm-specific data does not apply to the data after a period of five years from the end of the period to which the data relates.

- (ii) the Disclosure by Cement Producers of their individual data on the volumes of production or sale of cement, data which has not passed a

three-month time lag (ie the Quarantine Period), subject to certain limited exceptions. In particular, such individual data may be Disclosed to a permitted third party appointed by an Association in accordance with its Undertakings; to someone providing services solely to that cement producer; or (subject to certain safeguards) services to more than one such producer; or such individual data may be Disclosed in the process of due diligence during a transaction involving the assets or the shares of a Cement Producer or it may be disclosed to a supplier of services to the Cement Producer. Individual data on the volumes of production or sale of cement may be shared by a Cement Producer provided that the Cement Producer ensures that any recipient of Individual Cement Market Data will not further Disclose it or otherwise disseminate it with the other Cement Producers or any Association;

(iii) the direct Disclosure by Cement Producers of their individual data on the volumes of production or sale of cement to any Association of the Cement Producers for a period of five years from the end of the period to which those data relate. An Association may receive Aggregated Cement Market Data only and only via a Permitted Third Party and only where the Association has given and the CMA has accepted, satisfactory undertakings in the form appended to the Order in Schedule 1.

(c) Article 4 specifies the other exceptions to the prohibition.

(d) Article 5 contains provisions allowing the CMA to give directions as to compliance with the Order.

(e) Article 6 provides that the Order will remain in force until varied or revoked.

(f) [Schedule 1](#) contains a template undertakings to be to be given by an Association and to be accepted by the CMA under [section 159](#) of the Act.