

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

CEMENT MARKET DATA REMEDY UNDERTAKINGS

Notice of a proposal to accept Final Undertakings given by the Mineral Products Association under sections 159 and 165 of and Schedule 10 to the Enterprise Act 2002 and public consultation on the proposed Final Undertakings

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 any cement production and sales 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 the outcome of those proceedings.
 - (a) On 4 August 2015, by Order, the Tribunal granted permission to Hope and Lafarge Tarmac to withdraw their applications for review.
- 6. The CMA now gives notice under [section 165](#) of, and paragraph 2 of [Schedule 10](#) to, the Act that:
 - (a) the CMA proposes to accept the annexed Final Undertakings;
 - (b) the proposed Final Undertakings seek 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 Final Undertakings are to restrict the collection and disclosure of cement production and sales volume data

concerning the cement producers in the GB cement markets by the MPA;
and

(d) once accepted, a copy of the proposed Final Undertakings (Final Undertakings) will be published on the [CMA website](#).

7. On the same date as the date of the present Notice, the CMA has given notice of an intention to make an Order, which has the purpose and effect of restricting the disclosure by any cement producer in the GB cement markets of its cement production and sales volume data (the Cement Market Data Order).

8. The CMA invites written representations on the proposed Final Undertakings from any interested person. Representations should reach the CMA by 5pm on 11 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

9. The CMA will have regard to any representations made in response to this Notice and may make modifications to the proposed Final Undertakings as a result. In the absence of any written representations, or in the event that the CMA decides, on consideration of representations made, not to amend the proposed Final Undertakings, the CMA proposes to accept the proposed Final Undertakings in their present form pursuant to sections 138 and 159 of the Act. If the CMA considers that any representation necessitates any material change to the proposed Final Undertakings the CMA will give notice of the proposed modifications and consider any further representations.

10. 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.

11. Once accepted, such Final Undertakings may be varied, superseded or released by the CMA under [section 159\(4\)](#) and (5) 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

CEMENT MARKET DATA REMEDY UNDERTAKINGS

Final Undertakings given by the Mineral Products Association under sections 159 and 165 of and Schedule 10 to the Enterprise Act 2002

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 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 published a Notice of proposal to accept the proposed Final Undertakings from the MPA. It has considered the representations received and has decided to [...].

The MPA now gives to the CMA the following undertakings (the Undertakings), which the CMA proposes to accept pursuant to sections [138](#) and [159](#) of the Act. These Undertakings 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;

'BIS' means the Department for Business, Innovation and Skills;

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

‘Cement Producer’ means any person who produces Cement in Great Britain;

‘Disclosure’ means disclosure by one 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);

‘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;

‘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;

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

‘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 and Publication of Individual or Aggregated Cement Market Data

- 3.1 The MPA 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 MPA 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 MPA:
- (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 MPA

- 4.1 The MPA undertakes not to receive Aggregated Cement Market Data from any person other than a Permitted Third Party.
- 4.2 Where the MPA uses a Permitted Third Party for the purposes of paragraph 4.1, the MPA 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 Publish or Disclose the Individual Cement Market Data to any person, including BIS or the MPA 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 Publish or Disclose the Aggregated Cement Market Data to the MPA 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 [section 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 or access to any information between the MPA and the Cement Producer.

4.5 Nothing in these Undertakings shall prevent the MPA 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 MPA 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 MPA 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 MPA 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 3.4(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 MPA undertakes that should any provision of these Undertakings be contrary to law or invalid for any reason, the MPA shall continue to observe the remaining provisions.

8. Provision of information to the CMA

- 8.1 The MPA 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.
- 8.2 The MPA 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 MPA 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 MPA 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 MPA if it is acknowledged by its Chief Executive or other appointed nominee.
- 9.2 Any communication from the MPA 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 MPA 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 MPA undertakes to submit that dispute to the courts of England and Wales.

11. Termination

- 11.1 The MPA 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 MPA 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 MINERAL PRODUCTS ASSOCIATION

(signed)

(signed)

[NAME]

[NAME]

[Chief Executive]

[Executive Director]

[Date]

[Date]