

Anticipated acquisition by Breedon Aggregates Limited of Hope Construction Materials Limited

Decision on the acceptance in principle of the proposed undertakings offered by Breedon in lieu of a reference

ME/6566/15

1. Breedon Aggregates Limited (**Breedon**) has agreed to acquire Hope Construction Materials Limited (**Hope**) (the **Merger**). Breedon and Hope are together referred to as the **Parties**.
2. On 12 April 2016, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On 19 April 2016, Breedon offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. As required under section 73A(1) of the Act, Breedon made this offer within five working days beginning with the day after the CMA notified it of the SLC Decision under section 34ZA(1)(b) of the Act.
4. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Breedon that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

5. The Parties' activities overlap in the supply of aggregates and ready mixed concrete (**RMX**). The CMA assessed the effects of the Merger on competition for the supply of these products at a national level and at a local area level. The SLC Decision found that there is a realistic prospect that the Merger will give rise to an SLC in the supply of RMX in 27 local areas in England, Scotland and Wales (see Annex to this decision).

6. Breedon has offered to divest the 14 RMX plants indicated in the Annex to this document (the **Divestment Businesses**) in order to address the competition concerns identified in the SLC Decision (the **Proposed Undertakings**). The Divestment Businesses will be divested to an upfront buyer or upfront buyers as going concerns (together with all staff and property) by way of trade and asset sales.

The CMA's provisional views

7. The CMA's starting point when considering undertakings in lieu of reference is to seek an outcome that restores competition to the level that would have prevailed absent the merger.¹
8. The CMA currently believes, subject to the responses to the consultation required by Schedule 10 to the Act, that the Proposed Undertakings or a modified version of it might be acceptable as a suitable remedy to the SLCs identified by the CMA, given that it would, in most areas, remove the increment arising from the Merger and restore the fascia in each area to the position prior to the Merger. In some areas, the CMA has accepted Breedon's submissions that a remedy which falls short of removing the full increment arising from the Merger will nonetheless clearly and comprehensively remove the identified SLC. Following divestment, the purchaser will be able to operate each divested business as a competitor to the merged entity. As such, the CMA believes that the Proposed Undertakings would replace the competitive constraint provided by Hope that would otherwise be lost as a result of the Merger.
9. The CMA currently considers that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also believes at this stage that the Proposed Undertakings will be capable of ready implementation.
10. For these reasons, the CMA currently considers that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
11. The CMA's decision on whether to ultimately accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed

¹ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, paragraph 5.11. *OFT1122* was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

Undertakings are suitable to address the competition concerns identified by the CMA.

Upfront buyer

12. The CMA will only accept undertakings which are capable of ready implementation. The CMA's guidance states that 'the CMA will normally seek an upfront buyer where the divestiture package is not an existing standalone business and/or where the risk profile of the remedy requires it, for example where the CMA has reasonable doubts with regard to the ongoing viability of the divestment package and/or there is only a small number of suitable candidate purchasers'.²
13. In this case Breedon's proposed divestment packages are stand-alone RMX plants. The CMA anticipates that any buyer will likely be another RMX producer, which means the number of possible buyers for the Divestment Businesses could be low. The CMA has therefore decided that, if it were to accept the undertakings, it should include an upfront buyer requirement. Breedon has indicated in its offer that it anticipates an upfront buyer process in this case.
14. An upfront buyer requirement means that the proposed divestment purchasers will have committed contractually, subject to formal CMA approval of the undertakings, to acquiring the relevant Divestment Businesses before the CMA accepts the undertakings. The CMA will consult publicly on the suitability of the proposed divestment buyer, as well as any other aspects of the Proposed Undertakings, during the public consultation period.

Consultation process

15. Full details of the Proposed Undertakings will be published in due course when the CMA consults on the undertakings offered, as required by Schedule 10 of the Act.³

Decision

16. The CMA therefore considers that the Proposed Undertakings offered by Breedon, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 23 June 2016 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with

² See [CMA2](#), paragraph 8.34.

³ See [CMA2](#), paragraph 8.29.

the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 18 August 2016 if it considers that there are special reasons for doing so. If the Proposed Undertakings, or a modified version of them, are not accepted, then the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

Sheldon Mills
Competition and Markets Authority
26 April 2015

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List of the proposed Divestment Businesses

Area	SLC sites in area	Proposed Divestment Businesses
Moray	Cloddach (Hope) Netherglen (Breedon) Roths Glen (Breedon)	Cloddach (Hope)
Monmouthshire / Gloucestershire border	Clearwell (Breedon) Coleford (Hope)	Coleford (Hope)
North Lincolnshire / Humberside	Grimsby (Breedon) Immingham (Hope) Scunthorpe (Hope) Humber (Breedon)	Immingham (Hope) Scunthorpe (Hope)
North Inverness-shire (near Inverness)	Beaully (Breedon) Longman (Breedon) Inverness (Hope)	Longman (Breedon) or Inverness (Hope)⁴
Lincolnshire (near Lincoln)	Lincoln (Hope)	Lincoln (Hope)
Powys / Hertfordshire border	Kington (Hope) Leinthall (Breedon) Woofferton (Hope) Wellington (Hope)	Leinthall (Breedon)
Shropshire	Leaton (Breedon) Shrewsbury (Hope) Telford Halesfield (Hope) Telford Trench (Hope)	Shrewsbury (Hope) Telford Halesfield (Hope) Telford Trench (Hope)
Lincolnshire / East Anglia	Boston (Breedon) Boston (Hope) Long Sutton (Breedon) Sleaford (Breedon) Spalding (Hope) Woodhall Spa (Breedon)	Boston (Hope) Spalding (Hope) Grantham (Hope) Wisbech (Hope)⁵

⁴ This will be at Breedon's election, save that if during the period prior to the undertakings being finally accepted by the CMA, the CMA concludes that it will be necessary for Breedon to divest the Inverness (Hope) plant, then Breedon will divest the Inverness (Hope) plant.

⁵ Lincoln (Hope) was also included in Breedon's divestment offer in this area.