

# Anticipated acquisition by Breedon Aggregates Limited of Hope Construction Materials Limited

## Decision on acceptance of undertakings in lieu of reference

**ME/6566/15**

### Introduction

1. Breedon Aggregates Limited (**Breedon**) has agreed to acquire Hope Construction Materials Limited (**Hope**) (the **Merger**). Breedon and Hope are together referred to below 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 (the **UILs**). The CMA gave notice to Breedon on 26 April 2016, pursuant to section 73A(2)(b) of the Act, that it considered that there were 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 was considering Breedon's offer (the **UILs Notice**).
4. The text of the SLC Decision and the UILs Notice are available on the CMA webpages.<sup>1</sup>

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<sup>1</sup> See [Breedon Aggregates/Hope Construction Materials merger inquiry case page](#).

## The undertakings offered

5. As set out in the SLC Decision, the CMA found 27 sites in respect of which it believed there is a realistic prospect of an SLC in the supply of RMX as a result of the Merger. These sites are:
  - 1) Cloddach (Hope)
  - 2) Netherglen (Breedon)
  - 3) Rothes Glen (Breedon)
  - 4) Clearwell (Breedon)
  - 5) Coleford (Hope)
  - 6) Grimsby (Breedon)
  - 7) Immingham (Hope)
  - 8) Scunthorpe (Hope)
  - 9) Humber (Breedon)
  - 10) Beaully (Breedon)
  - 11) Longman (Breedon)
  - 12) Inverness (Hope)
  - 13) Lincoln (Hope)
  - 14) Kington (Breedon)
  - 15) Leinthall (Breedon)
  - 16) Woofferton (Hope)
  - 17) Wellington (Hope)
  - 18) Leaton (Breedon)
  - 19) Shrewsbury (Hope)
  - 20) Telford Halesfield (Hope)
  - 21) Telford Trench (Hope)
  - 22) Boston (Breedon)
  - 23) Boston (Hope)
  - 24) Long Sutton (Breedon)
  - 25) Sleaford (Breedon)
  - 26) Spalding (Hope)
  - 27) Woodhall Spa (Breedon)
6. As set out in the UILs Notice, Breedon offered undertakings to divest the 14 RMX plants indicated in Table 1 of the consultation in Annex 1 below (the **Divestment Businesses**) in order to address the competition concerns identified in the SLC Decision (the **Proposed Undertakings**).
7. Breedon offered to enter into an agreement with an upfront buyer, prior to the CMA finally accepting the UILs, which would be for the sale and purchase of the Divestment Businesses as going concerns (together with all staff and property) by way of trade and asset sales, as set out in more detail in the text of the consultation in Annex 1 below. Breedon has proposed Tarmac Trading Limited (**Tarmac**) and The Concrete Company (Thornley) Limited (**The**

**Concrete Company)** as upfront buyers of the Divestment Businesses as indicated in Table 1 of the consultation in Annex 1.

## Consultation

8. On 30 June 2016, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs, inviting interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex 1 of this decision.<sup>2</sup> For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLC identified in the SLC decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation.<sup>3</sup>
9. The CMA received no submissions during the consultation period that raised merger specific issues. Accordingly, the third party consultation did not cause the CMA to change its preliminary view that the UILs would be acceptable.
10. The CMA therefore considers that the UILs offered by Breedon are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and that Tarmac and The Concrete Company are suitable purchasers of the Divestment Businesses.

## Decision

11. For the reasons set out above, the CMA considers that the UILs provided by Breedon are as comprehensive a solution as is reasonable and practicable and remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by Breedon pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
12. The undertakings, which have been signed by Breedon and will be published on the CMA webpages,<sup>4</sup> will come into effect from the date of this decision.

**Sheldon Mills**  
**Senior Director**  
**Competition and Markets Authority**  
**27 July 2016**

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<sup>2</sup> The full consultation text was published on [Breedon Aggregates/Hope Construction Materials merger inquiry case page](#).

<sup>3</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

<sup>4</sup> See [Breedon Aggregates/Hope Construction Materials merger inquiry case page](#).

## Annex 1

# Anticipated acquisition by Breedon Aggregates Limited of Hope Construction Materials Limited

## Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6566/16

### Introduction

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.
4. The CMA now gives notice to Breedon, pursuant to section 73A(2)(b) of the Act, that it considers that there were 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 Breedon's offer.
5. The text of the SLC Decision is available on the CMA webpages.<sup>5</sup>

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<sup>5</sup> See the [Breedon Aggregates/Hope Construction Materials merger inquiry case page](#).

## The undertakings offered

6. As set out in the SLC Decision, the CMA found 27 sites in respect of which it believes there is a realistic prospect of an SLC in the supply of RMX as a result of the Merger. These sites are:

- 1) Cloddach (Hope)
- 2) Netherglen (Breedon)
- 3) Rothes Glen (Breedon)
- 4) Clearwell (Breedon)
- 5) Coleford (Hope)
- 6) Grimsby (Breedon)
- 7) Immingham (Hope)
- 8) Scunthorpe (Hope)
- 9) Humber (Breedon)
- 10) Beaully (Breedon)
- 11) Longman (Breedon)
- 12) Inverness (Hope)
- 13) Lincoln (Hope)
- 14) Kington (Breedon)
- 15) Leinthall (Breedon)
- 16) Woofferton (Hope)
- 17) Wellington (Hope)
- 18) Leaton (Breedon)
- 19) Shrewsbury (Hope)
- 20) Telford Halesfield (Hope)
- 21) Telford Trench (Hope)
- 22) Boston (Breedon)
- 23) Boston (Hope)
- 24) Long Sutton (Breedon)
- 25) Sleaford (Breedon)
- 26) Spalding (Hope)
- 27) Woodhall Spa (Breedon)

7. As set out in the UIL acceptance in principle Notice,<sup>6</sup> Breedon has offered undertakings to divest the 14 RMX plants indicated in Table 1 (the **Divestment Businesses**) in order to address the competition concerns identified in the SLC Decision (the **Proposed Undertakings**). The Divestment Businesses are to be divested to upfront buyers as going concerns (together with all staff and property) by way of trade and asset sales. The text of the

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<sup>6</sup> See the [Breedon Aggregates/Hope Construction Materials merger inquiry case page](#).

undertakings is available on the CMA webpages (the **Proposed Undertakings**).<sup>7</sup>

8. Breedon has offered to enter into an agreement for the sale and purchase of the Divestment Businesses with an upfront buyer(s) before the CMA finally accepts the Proposed Undertakings. Breedon has proposed Tarmac Trading Limited (**Tarmac**) and The Concrete Company (Thornley) Limited (**The Concrete Company**) as upfront buyers of the Divestment Businesses as indicated at Table 1.

**Table 1: List of the proposed Divestment Businesses and proposed purchasers**

<b>Area</b>	<b>SLC sites in area</b>	<b>Proposed Divestment Businesses</b>	<b>Proposed Purchaser</b>
<b>Moray</b>	Cloddach (Hope) Netherglen (Breedon) Rothes Glen (Breedon)	<b>Cloddach (Hope)</b>	<b>Tarmac</b>
<b>Monmouthshire / Gloucestershire border</b>	Clearwell (Breedon) Coleford (Hope)	<b>Coleford (Hope)</b>	<b>Tarmac</b>
<b>North Lincolnshire / Humberside</b>	Grimsby (Breedon) Immingham (Hope) Scunthorpe (Hope) Humber (Breedon)	<b>Immingham (Hope)</b> <b>Scunthorpe (Hope)</b>	<b>The Concrete Company</b>
<b>North Inverness-shire (near Inverness)</b>	Beaully (Breedon) Longman (Breedon) Inverness (Hope)	<b>Longman (Breedon) or Inverness (Hope)</b> <sup>8</sup>	<b>Tarmac: Inverness</b>
<b>Lincolnshire (near Lincoln)</b>	Lincoln (Hope)	<b>Lincoln (Hope)</b>	<b>Tarmac</b>
<b>Powys / Hertfordshire border</b>	Kington (Hope) Leinthall (Breedon) Woofferton (Hope) Wellington (Hope)	<b>Leinthall (Breedon)</b>	<b>Tarmac</b>
<b>Shropshire</b>	Leaton (Breedon) Shrewsbury (Hope) Telford Halesfield (Hope)	<b>Shrewsbury (Hope)</b> <b>Telford Halesfield (Hope)</b>	<b>Tarmac</b>

<sup>7</sup> See the [Breedon Aggregates/Hope Construction Materials merger inquiry case page](#).

<sup>8</sup> This was at Breedon's election, Breedon elected to divest the Inverness (Hope) plant.

Area	SLC sites in area	Proposed Divestment Businesses	Proposed Purchaser
	Telford Trench (Hope)	<b>Telford Trench (Hope)</b>	
<b>Lincolnshire / East Anglia</b>	Boston (Breedon) Boston (Hope) Long Sutton (Breedon) Sleaford (Breedon) Spalding (Hope) Woodhall Spa (Breedon)	<b>Boston (Hope)</b> <b>Spalding (Hope)</b> <b>Grantham (Hope)</b> <b>Wisbech (Hope)</b> <sup>9</sup>	<b>Tarmac:</b> Boston / Spalding / Wisbech  <b>The Concrete Company:</b> Grantham

9. This agreement will be conditional on acceptance by the CMA of the Proposed Undertakings, including approval of Tarmac and The Concrete Company as the buyers of the Divestment Businesses.

### **CMA assessment**

10. The CMA currently considers, subject to responses to the consultation required by Schedule 10 of the Act, that the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>10</sup> This is because the sale of the proposed sites will restore the number of competitors on each area to pre-Merger levels. The CMA also considers that the Proposed Undertakings would be capable of ready implementation, because each divestment business is capable of operating as a stand-alone business.

### ***Suitability of the proposed purchaser***

11. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:

<sup>9</sup> Lincoln (Hope) was also included in Breedon's divestment offer in this area.

<sup>10</sup> *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

- (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it;
  - (b) the proposed purchaser is independent of and unconnected to the merging parties;
  - (c) the proposed purchaser has the necessary financial resources, expertise, incentive and intention to maintain and operate the divested business as an effective competitor in the marketplace;
  - (d) the proposed purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
  - (e) the acquisition by the proposed purchaser does not itself create an SLC within any market or markets in the UK.<sup>11</sup>
12. Evidence supplied to the CMA by Tarmac and The Concrete Company shows that:
- (a) **Tarmac:** Tarmac (which is wholly-owned by CRH, a multinational company) has a turnover of £1,862 million (2014). Tarmac is a building supplies company located in the UK and it employs nearly 7,000 people across its extensive network of approximately 120 quarries, 100 RMX plants and 74 asphalt plants across the UK. Tarmac provided evidence that it has sufficient finances to acquire the Divestment Businesses and has many years of experience in RMX production in the UK.
  - (b) Tarmac has informed the CMA that the purchase of the divestment business will extend the footprint and reach of Tarmac's RMX network to complement its existing national coverage in aggregates and asphalt. The plants will be managed as part of Tarmac's national network of RMX plants.
  - (c) The CMA re-analysed the relevant areas to consider whether Tarmac purchasing the divestment sites could create the prospect of an SLC. The CMA found that Tarmac are not present in most areas. In the areas where Tarmac was present, the CMA found that there are sufficient other competitors present to prevent the prospect of an SLC being created. The CMA believes that there is no prospect of an SLC being created as a result of the sale of the divestment business to Tarmac.
  - (d) **The Concrete Company:** The Concrete Company is an independent regional RMX producer in East and Central England who have been

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<sup>11</sup> [OFT1122](#), paragraphs 5.25–5.30.



operating RMX plants for over 25 years. The Concrete Company currently has a turnover of around £10 million per year. The Concrete Company's core business activity is the production and supply of RMX and screeds, from 12 sites employing 72 people. The Concrete Company provided evidence that it has sufficient finances to acquire the divestment businesses and has experience of successfully purchasing operational RMX sites.

- (e) The Concrete Company has informed the CMA that the purchase of the divestment business will fit well with the planned expansion of The Concrete Company in that they are areas close to The Concrete Company's existing business, that are not currently serviced by The Concrete Company. The Concrete Company intends to continue production from Scunthorpe and Immingham and restart production in Grantham.
  - (f) The CMA re-analysed the relevant areas to consider whether The Concrete Company purchasing the divestment sites could create the prospect of an SLC. The CMA found that The Concrete Company are not present in the areas in question. The CMA believes that there is no prospect of an SLC being created as a result of the sale of the divestment business to The Concrete Company.
13. The CMA considers that the evidence provided by Tarmac and the Concrete Company indicates that they have the intention and incentive to compete with Breedon and other RMX producers in the UK post-acquisition. The CMA has assessed the divestment and considers that the acquisition would not create a realistic prospect of an SLC in the UK.
  14. The CMA also notes that no consents or approvals, other than CMA approval, are required to complete the acquisition and commence trading.
  15. Therefore, subject to the outcome of this consultation, the CMA considers both Tarmac and The Concrete Company to be suitable purchasers of the Divestment Businesses.

## **Proposed decision and next steps**

16. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Businesses by Tarmac and The Concrete Company are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.

17. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation.
18. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.<sup>12</sup>
19. Representations should be made in writing to the CMA and be addressed to:

Peter Swan  
Mergers Group  
Competition and Markets Authority  
Victoria House  
37 Southampton Row  
London  
WC1B 4AD

Email: [peter.swan@cma.gsi.gov.uk](mailto:peter.swan@cma.gsi.gov.uk)  
Telephone: 020 3738 6794

**Deadline for comments: 15 July 2016**

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<sup>12</sup> Under paragraph 2(4) of Schedule 10 to the Act.