

Notice of consultation to give consent to Tarmac Trading Limited to reacquire 27 ready-mix concrete plants from Breedon Group PLC under clause 3.5 of the undertakings given to the Competition Commission by Anglo American plc, Anglo American Finance (UK) Limited, Lafarge S.A., and Lafarge UK Holdings Limited and TL One Limited under section 82 of the Enterprise Act 2002

Introduction

1. On 1 May 2012, the Competition Commission (**CC**)¹ published a report on the anticipated construction materials joint venture between Anglo American PLC (**Anglo American**) and Lafarge S.A. (**Lafarge**) (**Anglo American / Lafarge decision**).² The CC found that the proposed joint venture may be expected to result in a substantial lessening of competition (**SLC**) in several markets.³
2. For the purpose of remedying, mitigating and preventing the SLC and any other adverse effects that might be expected to result from the SLC, on 26 July 2012, the CC accepted the undertakings given by Anglo American, Anglo American Finance (UK) Limited, Lafarge, Lafarge UK Holdings Limited and TL One Limited (**JVCo**) under section 82 of the Enterprise Act 2002 (the **Act**), under which several assets were divested, including a cement plant and associated operations, as well as certain ready-mix concrete (**RMX**) plants (the **Undertakings**).⁴
3. Certain divestitures that formed part of the Undertakings were intended to address the concerns identified by the CC in relation to the potential impact of the joint venture upon coordinated effects in the market for the supply of bulk cement in the UK.⁵ These divestitures included not only a cement plant and a quarry and certain associated rail-linked depots, but also a portfolio of RMX

¹ On 1 April 2014 the CMA took over the functions of the Competition Commission and the competition and certain consumer functions of the Office of Fair Trading (**OFT**).

² [A report on the anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.](#), Competition Commission, 1 May 2012.

³ Anglo American / Lafarge decision, paragraph 7.1. See also paragraph 3 of [final undertakings](#).

⁴ See [final undertakings](#).

⁵ At paragraph 2.262 of the Anglo American / Lafarge decision, the CC explains how the combination of the parties' RMX businesses would increase the parties' ability and incentive to coordinate in the bulk cement market.

plants.⁶ The inclusion of these RMX assets (within a remedy intended to address an SLC in relation to the UK bulk cement market) was intended to support the successful disposal of the bulk cement plant and to address certain ways in which the combination of Anglo American and Lafarge's UK RMX operations would have been likely to increase susceptibility of the UK bulk cement market to coordination.⁷

4. Clause 3.5 of the Undertakings prevents Anglo American, Lafarge, JVCo or any of their group companies from re-acquiring the assets divested under the Undertakings for a period of ten years without the prior written consent of the OFT (or successor body).
5. Tarmac Holdings Limited is the immediate parent company of Tarmac Trading Limited (**Tarmac**). Tarmac Holdings Limited was formed as Lafarge Tarmac in March 2013 by virtue of the Anglo American / Lafarge joint venture mentioned in paragraph 1 of this notice.

Tarmac's request for consent to the acquisition of certain assets part of the Undertakings

6. On 12 December 2017, Tarmac requested the CMA (as the successor of the OFT) to give written consent under clause 3.5 of the Undertakings for Tarmac to acquire the assets listed in Annex 1 (the **Acquisition**). These RMX assets were divested pursuant to the Undertakings, in relation to an SLC in relation to the UK bulk cement market, to support the successful disposal of the bulk cement plant.
7. Tarmac submitted that the circumstances underlying the Undertakings have changed in the five years since the Undertakings came into force, with the creation of a fifth producer of bulk cement in the UK (ie one more producer than was active in that market prior to the Anglo American / Lafarge decision), which has brought about a reduction in concentration in the UK bulk cement market.
8. Tarmac also submitted that there have been significant changes in market conduct. In particular, cement suppliers are no longer allowed to make generic price announcements. In addition, the disclosure and publication of cement production and sales volume data in the GB cement market is heavily

⁶ Six RMX plants were also divested to address horizontal unilateral effects in relation to RMX markets in certain local areas (Anglo American / Lafarge decision, paragraphs 8.17 and 8.30). The proposed reacquisition concerns certain RMX plants that were required to be divested to address the CC's concerns in relation to coordinated effects in the market for the supply of bulk cement in the UK and do not concern any of the RMX plants divested to address unilateral effects concerns.

⁷ Anglo American / Lafarge decision, paragraph 8.66.

restricted. Tarmac also indicated that there has been a reduction of cross-supply within the industry.

9. In light of these changes in circumstances, Tarmac submitted that the concerns previously identified by the CC in the Anglo American / Lafarge decision in relation to coordinated effects in the UK bulk cement market no longer arise, and therefore that the CMA should give consent to Tarmac for the Acquisition.

Considering Tarmac's request

10. The CMA's approach to granting consent under a remedy will depend on the individual circumstances affecting a particular undertaking or order and its terms.
11. In determining whether to give consent under the Undertakings in this case, the CMA is considering whether the circumstances prevailing at the time of the Undertakings, which necessitated the divestment of the assets listed in Annex 1, have changed, such as to make it appropriate for the CMA to grant consent to Tarmac to re-acquire these assets. In doing so, the CMA will have regard to the substantive considerations set out in its guidance on merger remedies,⁸ guidance on merger review,⁹ and the Chairman's Guidance on Disclosure.¹⁰
12. For the avoidance of doubt, the decision as to whether there has been a change of circumstances since the Undertakings came into force is independent of, and without prejudice to, the review of the Acquisition under the merger control provisions of Part 3 of the Enterprise Act 2002 (and, in particular, whether the Acquisition brings about a relevant merger situation that has resulted, or may be expected to result, in an SLC in any market or markets in the UK).¹¹
13. The scope of the CMA's decision is limited to determining whether to grant consent for Tarmac to acquire the assets listed in Annex 1 under Article 3.5 of the Undertakings. The other obligations of the Undertakings will remain in

⁸ [Merger remedies: Competition Commission Guidelines \(CC8\)](#). This guidance was originally published by the CC and has been adopted by the CMA board. The original text has been retained unamended, therefore it does not reflect or take account of developments in case law, legislation or practice since its original publication.

⁹ [Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders \(CMA11\)](#). In paragraph 2.6 of this guidance the CMA considers that changes in market conditions are among the change of circumstances that may lead to a variation or termination of undertakings.

¹⁰ [Disclosure of information in CMA work \(CC7\)](#). This guidance was originally published by the CC and has been adopted by the CMA board. The original text has been retained unamended, therefore it does not reflect or take account of developments in case law, legislation or practice since its original publication.

¹¹ The CMA is investigating the acquisition in case M/6719/17 Tarmac Trading Limited / Breedon Group PLC merger inquiry. For more details please visit the case page: <https://www.gov.uk/cma-cases/tarmac-trading-limited-breedon-group-plc-merger-inquiry>

force and the CMA is not considering whether the Undertakings should be varied, revoked or superseded.

14. Before reaching a decision, the CMA invites representations from any person or persons who wish to comment on the request for consent to the acquisition of the 27 RMX plants, listed in Annex 1 by Tarmac under clause 3.5 of the Undertakings, and whether there has been a change of circumstances.
15. Representations should reach the **CMA by 5pm on 19 March 2018** and should be addressed to:

Cristina Caballero
Mergers Group
Competition and Markets Authority
Victoria House
37 Southampton Row
London WC1B 4AD

Email: cristina.caballero@cma.gsi.gov.uk.

Telephone: 020 3738 6639

ANNEX 1

List of the RMX plants that Tarmac would like to acquire

1. Alrewas
2. Banbury
3. Boroughbridge
4. Bournemouth
5. Bridgend
6. Bristol (Flax Bourton)
7. Briton Ferry
8. Cardiff
9. Cardigan
10. Carmarthen
11. Carnforth (Dunald Mill)
12. Colchester
13. Coventry (Meriden)
14. Dumfries (J. Bridge)
15. Exeter
16. Halecombe (decommissioned plant)
17. Llanelli
18. Llandybie
19. Llyncllys
20. Pembroke
21. Portsmouth
22. Scorton
23. Shawell
24. Southampton
25. Tongwynlais
26. Tredegar
27. Wellington