

## **ACQUISITION BY TARMAC TRADING LIMITED OF ALUN GRIFFITHS (CONTRACTORS) LIMITED**

### **Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)**

Whereas:

- (a) the Competition and Markets Authority (CMA) has reasonable grounds for suspecting that it is or may be the case that Tarmac Trading Limited and Alun Griffiths (Contractors) Limited (**Griffiths**) have ceased to be distinct;
- (b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (**UK**);
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to CRH plc (**CRH**) and Tarmac Trading Limited (**Tarmac**) (Order).

#### **Commencement, application and scope**

1. This Order commences on the commencement date: 2 March 2018.
2. This Order applies to CRH and Tarmac.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige CRH

or Tarmac to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

### **Management of the CHF and Griffiths businesses until determination of proceedings**

4. Except with the prior written consent of the CMA, CRH and Tarmac shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
  - (a) lead to the integration of the Griffiths business with the CRH business;
  - (b) transfer the ownership or control of the CRH business or the Griffiths business or any of their subsidiaries; or
  - (c) otherwise impair the ability of the Griffiths business or the CRH business to compete independently in any of the markets affected by the transaction.
  
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, CRH and Tarmac shall at all times during the specified period procure that, except with the prior written consent of the CMA:
  - (a) the Griffiths business is carried on separately from the CRH business and the Griffiths business's separate sales or brand identity is maintained;
  - (b) the Griffiths business and the CRH business are maintained as a going concern and sufficient resources are made available for the development of the Griffiths business and the CRH business, on the basis of their respective pre-merger business plans;
  - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Griffiths business or the CRH business;
  - (d) the nature, description, range and quality of goods and services supplied in the UK by each of the two businesses are maintained and preserved;
  - (e) except in the ordinary course of business for the separate operation of the two businesses:
    - (i) all of the assets of the Griffiths business and the CRH business are maintained and preserved, including facilities and goodwill;

- (ii) none of the assets of the Griffiths business or the CRH business are disposed of; and
- (iii) no interest in the assets of the Griffiths business or the CRH business is created or disposed of;
- (f) there is no integration of the information technology of the Griffiths or CRH businesses, and the software and hardware platforms of the Griffiths business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Griffiths business will be carried out by the Griffiths business alone and for the avoidance of doubt the CRH business will not negotiate on behalf of the Griffiths business (and vice versa) or enter into any joint agreements with the Griffiths business (and vice versa);
- (h) all existing contracts of the Griffiths business and the CRH business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Griffiths business or CRH business;
- (j) no key staff are transferred between the Griffiths business and the CRH business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Griffiths business and the CRH business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Griffiths business (or any of its employees, directors, agents or affiliates) to the CRH business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

## Compliance

6. CRH and Tarmac shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
7. CRH and Tarmac shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by CRH and Tarmac and their subsidiaries with this Order. In particular, on 16 March 2018 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of CRH and Tarmac or other persons of CRH and Tarmac as agreed with the CMA shall, on behalf of CRH and Tarmac, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
8. At all times, CRH and Tarmac shall, or shall procure that Griffiths shall, actively keep the CMA informed of any material developments relating to the Griffiths business or the CRH business, which includes but is not limited to:
  - (a) details of key staff who leave or join the Griffiths business or the CRH business;
  - (b) any interruption of the Griffiths or CRH business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
  - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Griffiths or CRH business including any substantial changes in customers' demand; and
  - (d) substantial changes in the Griffiths or CRH business's contractual arrangements or relationships with key suppliers.
9. If CRH or Tarmac has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that CRH and/or Tarmac may be directed to appoint under paragraph 10.
10. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.

11. CRH and Tarmac shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

## Interpretation

12. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
13. For the purposes of this Order:

**'the Act'** means the Enterprise Act 2002;

**'an affiliate'** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**'business'** has the meaning given by section 129(1) and (3) of the Act;

**'commencement date'** means 2 March 2018;

**'control'** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**'CRH'** means CRH plc (company number: 12965);

**'the CRH business'** means the business of CRH and its subsidiaries carried on as at the commencement date as it relates to UK<sup>1</sup>;

**'the decisions'** means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

**'Griffiths'** means Alun Griffiths (Contractors) Limited (company number: 01493003);

**'the Griffiths business'** means the business of Griffiths and its subsidiaries carried on as at the commencement date;

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<sup>1</sup> For the avoidance of doubt, this includes business activities outside of the UK which are necessary for the effective functioning of CRH and its subsidiaries business activities in the UK.

unless the context requires otherwise, the singular shall include the plural and vice versa.

**'key staff'** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

**'the ordinary course of business'** means matters connected to the day-to-day supply of goods and services by Griffiths or CRH/Tarmac and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Griffiths and CRH/Tarmac;

**'specified period'** means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

**'subsidiary'**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**'Tarmac'** means Tarmac Trading Limited (company number: 00453791);

**'the Tarmac business'** means the business of Tarmac and its subsidiaries but excluding the Griffiths business, carried on as at the commencement date;

**'the transaction'** means the transaction by which Tarmac and Griffiths have ceased to be distinct within the meaning of section 23 of the Act];

**'the two businesses'** means the CRH business and the Griffiths business;

**Greg Bonne, Assistant Director, Mergers**

**2 March 2018**

## Compliance statement for CRH

I [insert name] confirm on behalf of CRH that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) CRH has complied with the Order made by the CMA in relation to the transaction on 2 March 2018 (the Order).
  - (b) CRH's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by CRH that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the Griffiths business with the CRH business;
    - (ii) transfer the ownership or control of the CRH business or the Griffiths business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Griffiths business or the CRH business to compete independently in any of the markets affected by the transaction.
  - (b) The Griffiths business has been carried on separately from the CRH business and the Griffiths business's separate sales or brand identity has been maintained.
  - (c) The Griffiths business and the CRH business have been maintained as a going concern and sufficient resources have been made available for the development of the Griffiths business and the CRH business, on the basis of their respective pre-merger business plans.
  - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Griffiths business or the CRH business, except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and services supplied in the UK by the Griffiths business and the CRH business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Griffiths business and the CRH business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Griffiths business or the CRH business have been disposed of; and
  - (iii) no interest in the assets of the Griffiths business or the CRH business has been created or disposed of.
- (g) There has been no integration of the information technology of the Griffiths or CRH businesses, and the software and hardware platforms of the Griffiths business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Griffiths business have been carried out by the Griffiths business alone and, for the avoidance of doubt, the CRH business has not negotiated on behalf of the Griffiths business (and vice versa) or entered into any joint agreements with the Griffiths business (and vice versa).
- (i) All existing contracts of the Griffiths business and the CRH business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Griffiths business or the CRH business.
- (k) No key staff have been transferred between the Griffiths business and the CRH business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Griffiths business and the CRH business.



- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Griffiths business (or any of its employees, directors, agents or affiliates) to the CRH business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
- (i) key staff that have left or joined the Griffiths business or the CRH business;
  - (ii) interruptions of the Griffiths business or the CRH business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
  - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Griffiths business or the CRH business;  
or
  - (iv) substantial changes in the Griffiths or CRH business's contractual arrangements or relationships with key suppliers.
- (o) *[list of material developments]*

3. CRH and its subsidiaries remain in full compliance with the Order and will, or will procure that Griffiths, continue actively to keep the CMA informed of any material developments relating to the Griffiths or the CRH business in accordance with paragraph 8 of the Order.

### **Interpretation**

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF CRH

Signature .....

Name .....

Title .....

Date .....

## Compliance statement for Tarmac

I [insert name] confirm on behalf of Tarmac that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Tarmac has complied with the Order made by the CMA in relation to the transaction on 2 March 2018 (the Order).
  - (b) Tarmac's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Tarmac that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the Griffiths business with the Tarmac business;
    - (ii) transfer the ownership or control of the Tarmac business or the Griffiths business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Griffiths business or the Tarmac business to compete independently in any of the markets affected by the transaction.
  - (b) The Griffiths business has been carried on separately from the Tarmac business and the Griffiths business's separate sales or brand identity has been maintained.
  - (c) The Griffiths business and the Tarmac business have been maintained as a going concern and sufficient resources have been made available for the development of the Griffiths business and the Tarmac business, on the basis of their respective pre-merger business plans.
  - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Griffiths business or the Tarmac business, except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and services supplied in the UK by the Griffiths business and the Tarmac business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Griffiths business and the Tarmac business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Griffiths business or the Tarmac business have been disposed of; and
  - (iii) no interest in the assets of the Griffiths business or the Tarmac business has been created or disposed of.
- (g) There has been no integration of the information technology of the Griffiths or Tarmac businesses, and the software and hardware platforms of the Griffiths business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Griffiths business have been carried out by the Griffiths business alone and, for the avoidance of doubt, the Tarmac business has not negotiated on behalf of the Griffiths business (and vice versa) or entered into any joint agreements with the Griffiths business (and vice versa).
- (i) All existing contracts of the Griffiths business and the Tarmac business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Griffiths business or the Tarmac business.
- (k) No key staff have been transferred between the Griffiths business and the Tarmac business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Griffiths business and the Tarmac business.

(m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Griffiths business (or any of its employees, directors, agents or affiliates) to the Tarmac business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

(i) key staff that have left or joined the Griffiths business or the Tarmac business;

(ii) interruptions of the Griffiths business or the Tarmac business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;

(iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Griffiths business or the Tarmac business; or

(iv) substantial changes in the Griffiths or Tarmac business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Tarmac and its subsidiaries remain in full compliance with the Order and will, or will procure that Griffiths, continue actively to keep the CMA informed of any material developments relating to the Griffiths or the Tarmac business in accordance with paragraph 8 of the Order.

### **Interpretation**

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF TARMAC

Signature .....

Name .....

Title .....

Date .....