

## Decision on Tarmac Trading Limited request for consent to reacquire 27 RMX plants from Breedon Group PLC

The CMA's decision on Tarmac Trading Limited request for consent to reacquire 27 RMX plants from Breedon Group PLC given on 26 April 2018. Full text of the decision published on 15 May 2018.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

### Summary

1. The CMA has decided to give Tarmac Trading Limited (**Tarmac**) consent to reacquire 27 ready-mix concrete (**RMX**) plants listed in Annex 1 from Breedon Group PLC (the **Acquisition**). As set out in detail below, this consent is required as a result of undertakings given to the Competition Commission (**CC**)<sup>1</sup> on 26 July 2012 by Anglo American PLC (**Anglo American**), Anglo American Finance (UK) Limited, Lafarge S.A. (**Lafarge**), and Lafarge UK Holdings Limited and TL One Limited (**JVCo**) under section 82 of the Enterprise Act 2002 (the **Act**).
2. This consent is independent of, and without prejudice to, the CMA's review of whether the Acquisition gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) under section 33 of the Act.<sup>2</sup>

### Background

3. On 1 May 2012, the CC published a report on the anticipated construction materials joint venture between Anglo American and Lafarge (**Anglo**

---

<sup>1</sup> On 1 April 2014 the CMA took over the functions of the CC and the competition and certain consumer functions of the Office of Fair Trading (**OFT**).

<sup>2</sup> 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>

**American / Lafarge decision**).<sup>3</sup> The CC found that the merger was expected to result in a SLC in several markets.<sup>4</sup>

4. For the purpose of remedying, mitigating and preventing the SLC and any adverse effects that might be expected to result from it, on 26 July 2012, the CC accepted the undertakings given by Anglo American, Anglo American Finance (UK) Limited, Lafarge, and Lafarge UK Holdings Limited and JVCo under section 82 of the Act, under which several assets were divested, including a cement plant and associated operations, as well as certain RMX plants (the **Undertakings**).<sup>5</sup>
5. Certain divestitures that formed part of the Undertakings were intended to address concerns identified by the CC regarding the potential for the joint venture to increase the likelihood of coordinated effects in the market for the supply of bulk cement in the UK.<sup>6</sup> The divestitures included a cement plant and a quarry, certain associated rail-linked depots, and a portfolio of RMX plants.<sup>7</sup> The inclusion of these RMX assets (within a remedy intended to address an SLC in relation to the UK bulk cement market) was intended:
  - (a) to support the successful disposal of the bulk cement plant; and
  - (b) 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.<sup>8</sup>
6. Paragraph 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).
7. Tarmac Holdings Limited is the immediate parent company of Tarmac. Tarmac Holdings Limited was formed as Lafarge Tarmac in March 2013 by virtue of the Anglo American / Lafarge joint venture mentioned in paragraph 3 of this decision.

---

<sup>3</sup> [A report on the anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.](#), CC, 1 May 2012.

<sup>4</sup> Anglo American / Lafarge decision, paragraph 7.1. See also paragraph 3 of [final undertakings](#).

<sup>5</sup> See [final undertakings](#).

<sup>6</sup> 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.

<sup>7</sup> 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 but do not concern any of the RMX plants divested to address unilateral effects concerns.

<sup>8</sup> Anglo American / Lafarge decision, paragraph 8.66.

## **Tarmac's request for consent to the acquisition of certain assets from Breedon**

8. On 12 December 2017, Tarmac requested the CMA (as successor of the OFT) to give written consent under paragraph 3.5 of the Undertakings for Tarmac to acquire the assets listed in Annex 1.
9. 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 transaction), which has brought about a reduction in concentration in the UK bulk cement market.
10. 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 Great Britain (**GB**) cement market is heavily restricted. Tarmac also indicated that there has been a reduction of cross-supply within the industry.
11. 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**

12. 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.
13. In determining whether to give consent under the Undertakings in this case, the CMA has examined whether there has been a change of circumstances in the bulk cement market which would have a bearing on the appropriateness of granting consent for Tarmac to reacquire the assets. In doing so, the CMA has had regard to the substantive considerations set out in its guidance on

merger remedies,<sup>9</sup> guidance on merger review<sup>10</sup> and the Chairman's Guidance on Disclosure.<sup>11</sup>

14. 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 paragraph 3.5 of the Undertakings.

### **Market conditions at the time of Anglo American / Lafarge decision**

15. In the Anglo American / Lafarge decision, the CC found that the proposed JV might be expected to result in an SLC in the market for the supply of bulk cement in the UK as a result of coordinated effects.<sup>12</sup>
16. The CC found that, following the proposed JV, there would be: (i) increased concentration in UK cement production; (ii) increased consolidation in RMX production at a UK level; and (iii) a more balanced position in terms of the degree of vertical integration between the JV entity, Hanson and Cemex, which could facilitate coordinated outcomes in the supply of bulk cement.<sup>13</sup> The CC also found that the proposed JV would result in each of the three conditions of coordination being satisfied.<sup>14</sup>
17. In light of these findings, the CC concluded that the proposed JV would, if there were no pre-existing coordination, make coordination in the bulk cement market significantly more likely to emerge or, if there were pre-existing coordination, materially increase its effectiveness and stability. The CC concluded that the effects of the changes to the market arising from the proposed JV would be sufficiently large that the proposed JV would be likely to result in an SLC in the supply of bulk cement in the UK.<sup>15</sup>

### **Changes to market conditions**

---

<sup>9</sup> [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.

<sup>10</sup> [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.

<sup>11</sup> [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.

<sup>12</sup> The other markets in which the CC considered that the JV was expected to result in an SLC were (a) 19 local markets for the supply of primary aggregates for construction applications, as a result of unilateral effects; (b) the market for the supply of rail ballast in the UK, as a result of unilateral effects; (c) the market for the supply of HPL in the UK, as a result of unilateral effects; (d) two local markets for the supply of asphalt, as a result of unilateral effects; and (e) seven local markets for the supply of RMX as a result of unilateral effects. Anglo American / Lafarge decision, paragraph 61.

<sup>13</sup> Anglo American / Lafarge decision, paragraph 6.205.

<sup>14</sup> Anglo American / Lafarge decision, paragraphs 6.213 to 6.257.

<sup>15</sup> Anglo American / Lafarge decision, paragraph 6.264.

18. The CMA has examined whether there has been a change in the circumstances prevailing at the time the Undertakings were accepted. The CMA has gathered this information for the purpose of determining whether any changes in market conditions for the supply of bulk cement in the UK, the market in which the SLC was identified, might have a bearing on the appropriateness of the CMA granting its consent to the Acquisition given that it will change the extent of vertical integration of Tarmac and Breedon through the transfer of a number of RMX plants.
19. The CMA considers that there have been a number of changes to market conditions since the Anglo American / Lafarge decision relating to the supply of bulk cement in the UK. In particular, the CMA notes that:
- (i) A new cement producer has entered the market. Currently there are five producers of bulk cement in the UK: CRH / Tarmac (3 cement plants), Hanson Limited (Heidelberg Cement Group) (3 plants), Cemex (2 plants), Breedon Group PLC (1 plant) and Aggregate Industries (LafargeHolcim group) (2 plants)<sup>16</sup>. At the time of the Anglo American /Lafarge decision, there were only four producers of bulk cement in the UK.<sup>17</sup>
  - (ii) As a result of the merger between Breedon Aggregates Limited and Hope Constructions Materials Limited in 2016, the cement plant previously operated by Hope was acquired by Breedon.<sup>18</sup> This plant therefore now has a large number of RMX plants under the same ownership that it can supply, over and above the divested RMX plants that formed part of the Undertakings.
  - (iii) There has been a reduction in the concentration of market shares. At the time of the Anglo American / Lafarge decision, the CC estimated that the bulk cement production shares of the four GB cement producers were: Lafarge ([40-50]%), Tarmac ([10-20]%), Cemex ([20-30]%), and Hanson ([20-30]%), giving an Herfindahl–Hirschman Index (HHI) score of around 3,000. In 2017, the corresponding shares for GB bulk cement for the five GB cement producers were: Hanson Limited (Heidelberg Group cement) ([20-30]%), Cemex ([20-30]%), Tarmac (CRH) ([20-30]%), Breedon ([10-20]%), and Aggregate Industries (LafargeHolcim group) ([10-20]%), giving an HHI score of around 2,200.

---

<sup>16</sup> One of these plants is located in Northern Ireland.

<sup>17</sup> Anglo American / Lafarge decision, Appendix K, paragraphs 30 to 48: Anglo American (Tarmac) (1 cement plant), Lafarge (5 plants), Hanson (3 plants) and Cemex (5 plants, although 2 of them were inactive).

<sup>18</sup> CMA's decision on [Breedon Aggregates / Hope Construction Materials merger inquiry](#), 12 April 2016.

- (iv) There has been a reduction in the level of cross-supply of cement. In 2017, four GB cement producers sold [0-10]% or less of its cement production to other GB cement producers (the only exception being [redacted]).
- (v) As a result of the CMA's Price Announcement Order 2016, cement suppliers are no longer allowed to make so-called generic price announcements.<sup>19</sup> In addition, as a result of the CMA's Cement Market Data Order 2016, disclosure and publication of cement production and sales volume data concerning the GB cement market is now restricted.<sup>20</sup>

20. The CMA has not, however, not been required to conclude on whether there has been a change of circumstances since the Undertakings came into force (for the reasons explained in paragraphs 25 to 27 below).

### **Third party views**

- 21. Between 5 March and 19 March 2018, the CMA consulted on whether to give consent to the Acquisition under paragraph 3.5 of the Undertakings.<sup>21</sup> The CMA received no submissions during the consultation period.
- 22. However, in its investigation into whether the Acquisition gives rise to a realistic prospect of an SLC under section 33 of the Act, the CMA has received submissions from third parties in relation to the proposed reacquisition of these assets. These third parties submit that the Anglo American / Lafarge decision and subsequent divestments were supposed to address competition concerns relating to market dominance and therefore that there is a risk that the Acquisition will bring about a market structure similar to that which raised concerns in that decision. In particular, one third party indicated that if the Acquisition were to happen, Tarmac would regain the market position they had in 2012, which the third party considered would give Tarmac a 'competitive advantage' in relation to the supply of RMX.
- 23. The CMA notes that this submission does not raise concerns about the possibility of coordinated effects in the UK bulk cement market, which the Undertakings were intended to address. This submission instead raised concerns around the competitive situation after the Acquisition, which the

---

<sup>19</sup> [Price Announcement Order](#), CMA, 22 January 2016.

<sup>20</sup> [Cement Market Data Order 2016](#), CMA, 25 February 2016.

<sup>21</sup> [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.](#)

CMA has assessed separately within the context of the review of the Acquisition under section 33 of the Act.<sup>22</sup>

24. Another third party suggested that the UK bulk cement producers may be exchanging commercial information. The CMA has not, however, received any evidence to support this statement. The CMA also notes, as indicated in paragraph 18, that the visibility of price conduct and the disclosure of volume data is now considerably restricted.

### **CMA's assessment**

25. As discussed above, the available evidence indicates that there have been a number of changes to market conditions in the market for the supply of bulk cement in the UK.
26. The CMA has, however, not been required to conclude on whether there changes amount to a change of circumstances since the Undertakings came into force such that the Undertakings should be varied, superseded or revoked. This is because the CMA is only considering whether the Acquisition would undermine the effectiveness of the Undertakings such that it would not be appropriate for it to give its consent to the reacquisition of the 27 RMX plants listed in Annex 1.
27. The CMA notes that the market changes described in paragraph 19 above make it less likely that the changes in vertical integration brought about by the Acquisition would undermine the effectiveness of the Undertakings. In addition, the CMA considers that the transfer of the 27 plants will not bring about any material change in the level of vertical integration of UK cement producers (similarities in which were cited a factor in facilitating coordination in the Anglo / American Lafarge decision), and therefore will not result in any material change in the susceptibility of the UK bulk cement market to coordination. On this basis, the CMA grants its consent for the Acquisition to take place (subject to the outcome of the CMA's review of whether the Acquisition gives rise to a realistic prospect of an SLC under section 33 of the Act).
28. Based on the information submitted by Tarmac and the evidence gathered from third parties, the CMA has decided that it would be appropriate to give consent under the Undertakings to Tarmac under paragraph 3.5 of the Undertakings.

---

<sup>22</sup> 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>.

29. This decision is limited to determining whether to grant consent for Tarmac to reacquire the assets listed in Annex 1 under paragraph 3.5 of the Undertakings. The reacquisition of any of the other assets subject to the Undertakings, or the release or variation of the Undertakings (because there has been a change of circumstances since they came into force), would require further assessment to be undertaken.<sup>23</sup>

### **The CMA's decision**

30. The CMA gives its consent to the Acquisition under paragraph 3.5 of the Undertakings.
31. The CMA's consent to the Acquisition does not preclude the statutory powers of the CMA to review any acquisition by Tarmac involving the assets divested under the Undertakings under its merger control functions.

**Sheldon Mills (Senior Director, Mergers) on behalf of Adam Land (Senior Director, RBFA)**  
**26 April 2018**

---

<sup>23</sup> Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders (CMA11).



## ANNEX 1

### List of the RMX plants to which the consent applies

- |                                      |                 |
|--------------------------------------|-----------------|
| 1. Alrewas                           | 21. Portsmouth  |
| 2. Banbury                           | 22. Scorton     |
| 3. Boroughbridge                     | 23. Shawell     |
| 4. Bournemouth                       | 24. Southampton |
| 5. Bridgend                          | 25. Tongwynlais |
| 6. Bristol (Flax Bourton)            | 26. Tredegar    |
| 7. Briton Ferry                      | 27. Wellington  |
| 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. Llaneli                          |                 |
| 18. Llandybie                        |                 |
| 19. Llynclys                         |                 |
| 20. Pembroke                         |                 |