

Anticipated acquisition by Tarmac Trading Limited of certain assets of Breedon Group PLC

Decision that undertakings might be accepted

ME/6719-17

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 10 May 2018. Full text of the decision published on 25 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.

Introduction

1. Tarmac Trading Limited (**Tarmac**) has agreed to acquire 27 ready-mix concrete (**RMX**) plants, a marine aggregates terminal at Briton Ferry (the **Briton Ferry Wharf**) as well as certain assets utilised in connection with the RMX plants and the Briton Ferry Wharf from Breedon Group PLC (**Breedon**) (the **Merger**). The acquired assets are together referred to as the **Target Assets**. Tarmac and the Target Assets are together referred to as the **Parties**.
2. On 26 April 2018, 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 the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to Tarmac of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow Tarmac the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.

4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 3 May 2018, Tarmac offered undertakings to the CMA for the purposes of section 73(2) of the Act.
5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to Tarmac 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

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in the supply of RMX in the local areas around the Parties' RMX plants in Bridgend, Cardiff (inner), Cardiff (outer) and Carnforth (the **SLC Local Areas**) as a result of horizontal unilateral effects. The Target Assets located within the SLC Local Areas are: Bridgend, Cardiff, Tongwynlais and Carnforth (the **SLC RMX plants**).¹ The CMA did not find competition concerns in relation to any of the other Target Assets.
8. To address this SLC, Tarmac has offered to give undertakings that Tarmac will not acquire the SLC RMX plants for a period of 10 years in lieu of a reference (the **Proposed Undertakings**).

The CMA's provisional views

9. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that

¹ The SLC RMX plants are located at (i) Bridgend (Bridgend Concrete, Cornelly Quarry, Heol y Splot, South Cornelly, Bridgend); (ii) Cardiff (Cardiff Concrete, Roath Dock Road, Cardiff CF10 4ED); (iii) Tongwynlais (Tongwynlais Concrete, Forrest Road, Tongwynlais, Cardiff CF15 7YZ); and (iv) Carnforth (Dunald Mill Concrete, Nether Kellet, Carnforth LA6 1HE).

restores competition to the level that would have prevailed absent the merger.²

10. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, since by ensuring that the SLC RMX plants will not be acquired by Tarmac, the Proposed Undertakings maintain the pre-Merger market structure.
11. The CMA currently believes 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 may be capable of ready implementation, given that:
 - (i) the scope of the Proposed Undertakings is limited to the SLC RMX plants;
 - (ii) there are no conditions for the implementation of the Proposed Undertakings; and
 - (iii) [✂].
12. For these reasons, the CMA currently believes 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.

Consultation process

13. The CMA's decision on whether ultimately to 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 Undertakings are suitable to address the competition concerns identified by the CMA.
14. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.³

² *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).

³ *CMA2*, paragraph 8.29.

Decision

15. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by Tarmac, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 9 July 2018 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 3 September 2018 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

Sheldon Mills
Senior Director, Mergers
Competition and Markets Authority
10 May 2018