

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

## Decision on acceptance of undertakings in lieu of reference

**ME/6719-17**

The CMA's decision to accept undertakings in lieu of reference under section 73(2) of the Enterprise Act 2002 given on 15 June 2018. Full text of the decision published on 25 June 2018.

### 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 3 May 2018, Tarmac offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to Tarmac on 10 May, 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 Tarmac's offer (the **UILs Provisional Acceptance Decision**).

4. The text of the SLC Decision and the UILs Provisional Acceptance Decision are available on the CMA webpages.<sup>1</sup>

## The undertakings offered

5. As set out in the SLC Decision, the CMA found 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**).<sup>2</sup> The CMA did not find competition concerns in relation to any of the other Target Assets.
6. As set out in the UIL Provisional Acceptance Decision 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 **UILs**).<sup>3</sup>

## Consultation

7. On 25 May 2018, 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>4</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>5</sup>
8. The CMA received no submissions during the consultation period.
9. The CMA therefore considers that the UILs offered by Tarmac are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision.

---

<sup>1</sup> See <https://www.gov.uk/cma-cases/tarmac-trading-limited-breedon-group-plc-merger-inquiry>.

<sup>2</sup> 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).

<sup>3</sup> See <https://www.gov.uk/cma-cases/tarmac-trading-limited-breedon-group-plc-merger-inquiry>.

<sup>4</sup> The full consultation text was published on <https://www.gov.uk/cma-cases/tarmac-trading-limited-breedon-group-plc-merger-inquiry>.

<sup>5</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).

## **Decision**

10. For the reasons set out above, the CMA considers that the UILs provided by Tarmac 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 Tarmac pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
11. The undertakings, which have been signed by Tarmac and will be published on the CMA webpages,<sup>6</sup> will come into effect from the date of this decision.

**Sheldon Mills**  
**Senior Director**  
**Competition and Markets Authority**  
**15 June 2018**

---

<sup>6</sup> See <https://www.gov.uk/cma-cases/tarmac-trading-limited-breedon-group-plc-merger-inquiry>.

# Annex 1

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

### 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/6719-17

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**). The text of the SLC Decision is available on the CMA webpages.<sup>7</sup>
3. On 3 May 2018, Tarmac offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.

---

<sup>7</sup> See <https://www.gov.uk/cma-cases/tarmac-trading-limited-breedon-group-plc-merger-inquiry>.

4. On 10 May 2018, the CMA gave notice to Tarmac, pursuant to section 73A(2)(b) of the Act, 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 Tarmac's offer (the **UIL Provisional Acceptance Decision**).

## The undertakings offered

5. As set out in the SLC Decision, the CMA found 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**).<sup>8</sup> The CMA did not find competition concerns in relation to any of the other Target Assets.
6. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA Tarmac has offered not to acquire the SLC RMX plants for a period of 10 years. The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).<sup>9</sup>

## CMA assessment

7. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.<sup>10</sup> This is because the Proposed Undertakings maintain the pre-Merger market structure within the local areas concerned. The CMA also believes that the Proposed Undertakings would be capable of ready implementation. This is because:
  - (i) the scope of the Proposed Undertakings is limited to the SLC RMX plants;

---

<sup>8</sup> 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).

<sup>9</sup> See <https://www.gov.uk/cma-cases/tarmac-trading-limited-breedon-group-plc-merger-inquiry>.

<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).

- (ii) there are no conditions for the implementation of the Proposed Undertakings; and
- (iii) [✂].

## **Proposed decision and next steps**

- 8. For the reasons set out above, the CMA currently considers that the Proposed Undertakings 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.
- 9. 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. The text of the proposed undertaking is available on the CMA web pages.<sup>11</sup>
- 10. 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>
- 11. Representations should be made in writing to the CMA and 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](mailto:cristina.caballero@cma.gsi.gov.uk)

Telephone: 020 3738 6639

**Deadline for comments: 8 June 2018.**

---

<sup>11</sup> See <https://www.gov.uk/cma-cases/tarmac-trading-limited-breedon-group-plc-merger-inquiry>.

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