

## **MARKET INVESTIGATION INTO THE SUPPLY OR ACQUISITION OF AGGREGATES, CEMENT AND READY-MIX CONCRETE**

### **The Price Announcement Order 2016**

#### **Notice of making an Order pursuant to sections 161 and 165 of and Schedule 10 to the Enterprise Act 2002**

1. On 18 January 2012 the Office of Fair Trading made a reference to the Competition Commission (CC) under [section 131](#) of the Enterprise Act 2002 (the Act) concerning the supply or acquisition of aggregates, cement and ready-mix concrete in Great Britain (the Reference).
2. On 14 January 2014 the CC published its report on the Reference, entitled *Aggregates, cement and ready-mix concrete market investigation: Final report (the Report)*, in which it concluded that:
  - (a) a combination of structural and conduct features in the bulk and bagged cement markets in Great Britain (GB cement markets) gave rise to an adverse effect on competition (AEC) through coordination in those markets (the Coordination AEC);
  - (b) there were further features of the GB cement markets which combine to give rise to an AEC in the market for the supply of ground granulated blast furnace slag (GGBS) in Great Britain, as well as to an additional GGBS-related AEC in the GB cement markets;
  - (c) the likely effect of those features and resulting AECs is higher prices for cement and for GGBS than would otherwise be the case;
  - (d) in order, in particular, to address the Coordination AEC and resulting customer detriment a number of remedies should be imposed under [section 138\(2\)](#) of the Act, including a remedy consisting in the prohibition of generic price announcement letters sent by all suppliers in Great Britain of cementitious materials to their customers; and
  - (e) given the risks identified with implementation of this remedy by means of undertakings given by the suppliers, the prohibition should be effected by means of an order.

3. On 12 March 2014 Hope Construction Materials Ltd (Hope) and Lafarge Tarmac Holdings Ltd (Lafarge Tarmac) made an application to the Competition Appeal Tribunal (Tribunal) under [section 179](#) of the Act requesting the Tribunal to, in particular, quash paragraphs 12.3 to 12.7 and 12.9(a), and paragraph 13.5(a), Figure 13.1 and paragraphs 13.7 to 13.138 of the Report.
4. On 1 April 2014 the remaining functions of the CC in relation to the Reference were transferred to the Competition and Markets Authority (CMA) under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014.
5. In light of the challenges brought by Hope and Lafarge Tarmac, the CMA decided to place the implementation of the price announcement remedial action on hold pending on the outcome of those proceedings.
6. On 4 August 2015, by Order, the Tribunal granted permission to Hope and Lafarge Tarmac to withdraw their applications for review.
7. On 10 September 2015, in accordance with [section 165](#) and paragraph 2(1) of [Schedule 10](#) to the Act, the CMA gave notice (the First Notice) of its intention to make an Order on the terms attached to the First Notice (the Draft Order). The Draft Order, including the First Notice and a draft explanatory note (the Explanatory Note), were published on the CMA website for consultation (the First Consultation).
8. The CMA received representations in response to the First Consultation from three parties. Having considered these representations, the CMA decided that in light of these, the Draft Order required material modifications:
  - (a) The first modification related to the definition of 'Cement'. In Article 2.5 of the Order, 'Cement' was defined as 'any type of cement, including grey and white cement'. In light of the responses received, the CMA proposed that the definition of 'Cement' in the Order should correspond with the definition given in the Final Report, and therefore 'Cement' should mean 'grey cement' only.
  - (b) The second modification related to a clarification of the definition of 'Cementitious product' as defined in Article 2.5 of the Order. In light of the responses received, the CMA proposed to amend the definition of 'Cementitious product' in the Order to include GGBS and pulverised fuel or fly ash (PFA) only and exclude limestone and other cement additives. The CMA considered, as explained also in the Report, that limestone has little cementitious or pozzolanic properties and has significantly wider

industrial applications other than as a Cementitious product, and therefore should be excluded from the object of the Order. The CMA also did not consider that excluding other cement additives from the object of the Order would increase the risk of circumvention of the Order, as described in paragraph 13.190 of the Report.

- (c) The third modification related to the definition of 'Customer' as defined in Article 2.5 of the Order. In light of the responses received, the CMA proposed that an intermediary acting as a buying group (on behalf of other Customers) for Cement and Cementitious products, can be treated as a single Customer for the purposes of this Order, if that buying group is then responsible for negotiating the prices of Cement and Cementitious products with the Supplier on behalf of its own buying group members. For the avoidance of doubt, if a member of a buying group decides to negotiate its Price Structure directly with a Supplier, then that member would be treated as a Customer in its own right. A further modification to the definition of 'Customer' now permits a Supplier to treat company subsidiaries under common ownership as a single Customer for the purposes of this Order. Article 2.5 of the Order has been amended to give effect to this.
- (d) The fourth modification related to a clarification of the definition of a 'Generic Price Announcement', where a Notification that only sets out a Supplier's intentions to change prices in the future without specifying the details of any such changes, including the amount of such changes, would be defined as a Generic Price Announcement. Article 2.5 of the Order has been amended to give effect to this.
- (e) The fifth modification related to the introduction of a category of Permitted Generic Price Announcement. In light of the responses received, the CMA proposed that a new definition should be introduced at Article 2.5 of the Order defining a 'Permitted Generic Price Announcement' and also that Article 3.1 should provide that a 'Permitted Generic Price Announcement' represents the exception from the general prohibition. Under this modification, a Permitted Generic Price Announcement is a Notification for: (a) product launches that mention an introductory price for a new product, or price offers for products being marketed to a new customer; and (b) peripheral surcharges and charges for ancillary services such as shrink wrapping, charges for waiting times, non-standard loads and weekend and evening deliveries. In line with these amendments, Article 4.1 has also been modified to exclude charges for non-standard delivery conditions and ancillary services.

9. In accordance with sections [138](#), [165](#), [172](#) of, and paragraph 2 of [Schedule 10](#) to the Act, the CMA gave notice of its intention to modify the Draft Order on the terms attached to a notice published on 10 September 2015 (the Modified Draft Order) and invited representations on the Modified Draft Order, and specifically on the modifications to Article 2.5 and Article 3.1 of the Modified Draft Order, from any interested person (the Second Consultation).
10. The CMA received representations in response to the Second Consultation from two cement producers. Having considered these representations, the CMA has decided that the Modified Draft Order did not require further material modification.
11. However, following the representations received in response to the First and Second Consultation, the CMA made some further minor modifications which it included in the Modified Draft Order. The CMA did not, however, consider any of these further modifications to be material so as to require further consultation.
12. The CMA now gives notice of the making of the attached Order – The Price Announcement Order 2016. The Order is made in accordance with [sections 138 and 138A](#) and in exercise of the powers conferred by [section 161](#) of and [Schedule 8](#) to the Act. The Order is made for the purpose of remedying, mitigating or preventing the Coordination AEC identified in the Report and the resulting customer detriment. The Order will come into force on 23 January 2016.
13. This Notice, the Order and the Explanatory Note have been published on the [CMA website](#).

MARTIN CAVE  
*Group Chair*  
22 January 2016

# MARKET INVESTIGATION INTO THE SUPPLY OR ACQUISITION OF AGGREGATES, CEMENT AND READY-MIX CONCRETE

## The Price Announcement Order 2016

### Background

1. On 18 January 2012 the Office of Fair Trading made a reference to the Competition Commission (CC) under [section 131](#) of the Enterprise Act 2002 (the Act) concerning the supply or acquisition of aggregates, cement and ready-mix concrete in Great Britain (the Reference).<sup>1</sup>
2. On 14 January 2014 the CC published its report on the Reference, entitled *Aggregates, cement and ready-mix concrete market investigation: Final report* (the Report), in which it concluded that:
  - (a) a combination of structural and conduct features in the bulk and bagged cement markets in Great Britain (GB cement markets) gave rise to an adverse effect on competition through coordination in those markets (the Coordination AEC);
  - (b) there were further features of the GB cement markets which combine to give rise to an AEC in the market for the supply of ground granulated blast furnace slag (GGBS) in GB, as well as to an additional GGBS-related AEC in the GB cement markets;
  - (c) the likely effect of those features and resulting AECs is higher prices for cement and for GGBS than would otherwise be the case;
  - (d) in order, in particular, to address the Coordination AEC and resulting customer detriment a number of remedies should be imposed under [section 138\(2\)](#) of the Act, including a remedy consisting in the prohibition of generic price announcement letters sent by all suppliers in Great Britain of cementitious materials to their customers; and
  - (e) given the risks identified with implementation of this remedy by means of undertakings given by the suppliers, the prohibition should be effected by means of an order.
3. On 12 March 2014 Hope Construction Materials Ltd (Hope) and Lafarge Tarmac Holdings Ltd (Lafarge Tarmac) made an application to the

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<sup>1</sup> Relevant amendments to the Act are made by Part 3 of and Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

Competition Appeal Tribunal (Tribunal) under [section 179](#) of the Act requesting the Tribunal to, in particular, quash paragraphs 12.3 to 12.7 and 12.9(a), and paragraph 13.5(a), Figure 13.1 and paragraphs 13.7 to 13.138 of the Report.

4. On 1 April 2014 the remaining functions of the CC in relation to the Reference were transferred to the Competition and Markets Authority (CMA) under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014.
5. In light of the challenges brought by Hope and Lafarge Tarmac, the CMA decided to place the implementation of the price announcement remedial action on hold pending on the outcome of those proceedings.
6. On 4 August 2015, by Order, the Tribunal granted permission to Hope and Lafarge Tarmac to withdraw their applications for review.
7. On 10 September 2015, in accordance with [section 165](#) and paragraph 2(1) of [Schedule 10](#) to the Act, the CMA gave notice (the First Notice) of its intention to make an Order on the terms attached to the First Notice (the Draft Order). The Draft Order, including the First Notice and a draft explanatory note (the Explanatory Note), were published on the CMA website for consultation (the First Consultation).
8. The CMA received representations in response to the First Consultation from three parties. Having considered these representations, the CMA decided that in light of these, the Draft Order required material modifications:
  - (a) The first modification related to the definition of 'Cement'. In Article 2.5 of the Order, 'Cement' was defined as 'any type of cement, including grey and white cement'. In light of the responses received, the CMA proposed that the definition of 'Cement' in the Order should correspond with the definition given in the Final Report, and therefore 'Cement' should mean 'grey cement' only.
  - (b) The second modification related to a clarification of the definition of 'Cementitious product' as defined in Article 2.5 of the Order. In light of the responses received, the CMA proposed to amend the definition of 'Cementitious product' in the Order to include GGBS and pulverised fuel or fly ash (PFA) only and exclude limestone and other cement additives. The CMA considered, as explained also in the Report, that limestone has little cementitious or pozzolanic properties and has significantly wider industrial applications other than as a Cementitious product, and therefore should be excluded from the object of the Order. The CMA also did not

consider that excluding other cement additives from the object of the Order would increase the risk of circumvention of the Order, as described in paragraph 13.190 of the Report.

- (c) The third modification related to the definition of 'Customer' as defined in Article 2.5 of the Order. In light of the responses received, the CMA proposed that an intermediary acting as a buying group (on behalf of other Customers) for Cement and Cementitious products, can be treated as a single Customer for the purposes of this Order, if that buying group is then responsible for negotiating the prices of Cement and Cementitious products with the Supplier on behalf of its own buying group members. For the avoidance of doubt, if a member of a buying group decides to negotiate its Price Structure directly with a Supplier, then that member would be treated as a Customer in its own right. A further modification to the definition of 'Customer' now permits a Supplier to treat company subsidiaries under common ownership as a single Customer for the purposes of this Order. Article 2.5 of the Order has been amended to give effect to this.
  - (d) The fourth modification related to a clarification of the definition of a 'Generic Price Announcement', where a Notification that only sets out a Supplier's intentions to change prices in the future without specifying the details of any such changes, including the amount of such changes, would be defined as a Generic Price Announcement. Article 2.5 of the Order has been amended to give effect to this.
  - (e) The fifth modification related to the introduction of a category of Permitted Generic Price Announcement. In light of the responses received, the CMA proposed that a new definition should be introduced at Article 2.5 of the Order defining a 'Permitted Generic Price Announcement' and also that Article 3.1 should provide that a 'Permitted Generic Price Announcement' represents the exception from the general prohibition. Under this modification, a Permitted Generic Price Announcement is a Notification for: (a) product launches that mention an introductory price for a new product, or price offers for products being marketed to a new customer; and (b) peripheral surcharges and charges for ancillary services such as shrink wrapping, charges for waiting times, non-standard loads and weekend and evening deliveries. In line with these amendments, Article 4.1 has also been modified to exclude charges for non-standard delivery conditions and ancillary services.
9. In accordance with sections [138](#), [165](#), [172](#) of, and paragraph 2 of [Schedule 10](#) to the Act that the CMA gave notice of its intention to modify the Draft Order on the terms attached to a notice published on 10 September 2010 (the

Modified Draft Order) and invited representations on the Modified Draft Order, and specifically on the modifications to Article 2.5 and Article 3.1 of the Modified Draft Order, from any interested person (the Second Consultation).

10. The CMA received representations in response to the Second Consultation from two cement producers. Having considered these representations, the CMA has decided that the Modified Draft Order did not require further material modification.
11. However, following the representations received in response to the First and Second Consultation, the CMA made some further minor modifications which it included in the Modified Draft Order. The CMA did not, however, consider any of these further modifications to be material so as to require further consultation.
12. The CMA has taken into account the representations received in accordance with the First Consultation and the Second Consultation, and now issues this Order.
13. The Explanatory Note accompanying the Order provides an explanation of how the Order is expected to operate.



## The Order

Now therefore in accordance with its duties under [section 138](#) of the Act, and in exercise of its powers under [section 161](#) of the Act together with sections [86](#) and [164\(2\)](#) of and paragraphs 17(1) and (1A), 21 and 22 of [Schedule 8](#) to the Act, the CMA makes the following Order for the purpose of remedying the Coordination AEC and resulting customer detriment:

### 1. Commencement

- 1.1 This Order comes into force on the day after the day on which it is published by the CMA.

### 2. Interpretation

- 2.1 The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
- 2.2 The purpose of this Order is to give effect to the Report and it shall be construed accordingly.
- 2.3 Any word or expression used in this Order or the recitals to this Order shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report.
- 2.4 In this Order the word 'including' means including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and 'include' shall be construed accordingly.
- 2.5 In this Order:
- 'Cement'** means any type of grey cement;
- 'Cementitious product'** means the following substances with cementitious or pozzolanic properties that are added to Cement to make another type of Cement, or in the making of concrete respectively:
- (a) ground granulated blast furnace slag (GGBS), and
  - (b) pulverised fuel or fly ash (PFA);
- 'Customer'** means a customer in Great Britain, and:
- (a) includes any existing and prospective customer;

- (b) where Customers are members of an intermediary buying group and the prices they pay for Cement and/or Cementitious products were negotiated by that intermediary buying group, then a Supplier may treat that buying group as a single Customer;
- (c) where there is more than one company within the same Group, each company under common ownership shall be considered to be the same customer as the others for these purposes; but
- (d) does not include a person who is in the same Group as the Supplier

**'Generic Price Announcement'** means any Notification issued by a Supplier to its Customers which is not a customer-specific notification as described in Article 4 and which:

- (a) sets out (in whole or in part) the Price Structure for any of the Supplier's Products, other than a Notification that is specific to the circumstances of an individual Customer; or
- (b) sets out the Supplier's intentions to change any part of the Price Structure without specifying the details of any such changes that are specific to the circumstances of an individual Customer.

**'Group'** means group of interconnected bodies corporate, as defined in [section 129](#) of the Act;

**'Notification'** means any communication or publication in writing, including a communication sent by post, fax, personal delivery or email (and any other form of electronic communication);

**'Permitted Generic Price Announcement'** means a Notification for:

- (a) a product launch that mentions an introductory price for a new product, or price offers for products being marketed to a new customer; and
- (b) peripheral surcharges and charges for ancillary services such as shrink wrapping, charges for waiting times, non-standard loads and weekend and evening deliveries.

**'Price Structure'** means:

- (a) the prices to be charged for a Product, whether gross or net of any additional charges;
- (b) the proposed increases or decreases in such prices;
- (c) any discounts, rebates or other concessions that may be available; and

(d) the amount of any surcharge or other adjustment factor that may be taken into account under standard delivery conditions;

**'Product'** means:

(a) Cement; or

(b) a Cementitious product;

irrespective of the form in which it is supplied and includes bulk and bagged.

**'Supplier'** means any producer or importer of Cement or Cementitious products in Great Britain, other than:

(a) a builders' merchant; or

(b) any other person who supplies solely to retail customers.

### **3. Prohibition on Generic Price Announcement**

3.1 No Supplier shall issue (or cause or permit another person to issue) a Generic Price Announcement except for a Permitted Generic Price Announcement.

### **4. Requirements relating to customer-specific notifications**

4.1 Any Notification issued by a Supplier to a Customer which sets out, in whole or in part, the Price Structure for the Supplier's Products, or sets out an intention to change any part of the Price Structure, must include the following information:

(a) the Customer's name and relevant address;

(b) the effective date of any price change;

(c) the current or last unit price charged by the Supplier to the Customer;

(d) the new unit price being proposed, if a new price is being proposed; and

(e) details of any other changes that affect the total amount payable for the Product under standard delivery conditions and that excludes charges for ancillary services (see also Permitted Generic Price Announcement) if a price change is proposed.

### **5. Powers of direction**

5.1 The CMA may give directions falling within this Order to:

- (a) a person specified in the directions; or
- (b) a holder for the time being of an office so specified in any body of persons corporate or unincorporate.

5.2 Directions fall within this paragraph if they are directions:

- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with this Order; or
- (b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.

5.3 The CMA may vary or revoke any directions so given.

## **6. Governing law**

6.1 This Order shall be governed by and construed in all respects in accordance with English law.

6.2 Disputes arising concerning this Order shall be subject to the jurisdiction of the courts of England and Wales.

## **7. Termination**

7.1 This Order shall be in force until such time as it is varied or revoked under the Act.

7.2 The variation or revocation this Order shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation or revocation.

*(signed)* MARTIN CAVE

*Group Chair*

22 January 2016

# MARKET INVESTIGATION INTO THE SUPPLY OR ACQUISITION OF AGGREGATES, CEMENT AND READY-MIX CONCRETE

## Explanatory note

### The Price Announcement Order 2016

*(This Note does not form part of the Order)*

#### Background

1. On 18 January 2012 the Office of Fair Trading made a reference to the Competition Commission (CC) under [section 131](#) of the Enterprise Act 2002 (the Act) concerning the supply or acquisition of aggregates, cement and ready-mix concrete in Great Britain (the Reference).<sup>1</sup>
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  - (b) there were further features of the GB cement markets which combine to give rise to an AEC in the market for the supply of ground granulated blast furnace slag (GGBS) in GB, as well as to an additional GGBS-related AEC in the GB cement markets;
  - (c) the likely effect of those features and resulting AECs is higher prices for cement and for GGBS than would otherwise be the case;
  - (d) in order, in particular, to address the Coordination AEC and resulting customer detriment a number of remedies should be imposed under [section 138\(2\)](#) of the Act, including a remedy consisting in the prohibition of generic price announcement letters sent by all suppliers in Great Britain of cementitious materials to their customers; and

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<sup>1</sup> Relevant amendments to the Act are made by Part 3 of and Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

- (e) given the risks identified with implementation of this remedy by means of undertakings given by the suppliers, the prohibition should be effected by means of an order.
3. On 12 March 2014 Hope Construction Materials Ltd (Hope) and Lafarge Tarmac Holdings Ltd (Lafarge Tarmac) made an application to the Competition Appeal Tribunal (Tribunal) under [section 179](#) of the Act requesting the Tribunal to, in particular, quash paragraphs 12.3 to 12.7 and 12.9(a), and paragraph 13.5(a), Figure 13.1 and paragraphs 13.7 to 13.138 of the Report.
  4. On 1 April 2014 the remaining functions of the CC in relation to the Reference were transferred to the Competition and Markets Authority (CMA) under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014.
  5. In the light of the challenges brought by Hope and Lafarge Tarmac, the CMA decided to place the implementation of the price announcement remedial action on hold pending on the outcome of those proceedings.
  6. On 4 August 2015, by Order, the Tribunal granted permission to Hope and Lafarge Tarmac to withdraw their applications for review.

### **Possible consequences of not complying with the Order**

7. [Section 167](#) of the Act places a duty on any person to whom the Order applies to comply with it. Any person who suffers loss or damage due to a breach of this duty may bring an action.
8. The CMA has power under the Order to give directions, including directions to a person in their capacity as an office holder, for the purpose of carrying out, or ensuring compliance with, the Order.
9. [Section 167](#) of the Act also provides that the CMA can seek to enforce the Order by civil proceedings for an injunction or for any other appropriate relief or remedy.

### **Review of the Order**

10. The CMA has a duty under [section 162](#) of the Act to monitor the operation of the Order. This includes a duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances. Suppliers may apply for a variation or cancellation of all or part of the Order on

the basis of a change of circumstances, or recommend that the CMA reviews the need for the Order or part of it.

## **Status of this Explanatory Note**

11. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail.

## **Structure of the Order**

12. The Order is divided into seven Articles:
  - (a) Articles 1 and 2 contain general provisions, which include specifying when the Order comes into force and definitions that are used throughout the Order (and which are also used in this Explanatory Note).
  - (b) Article 3 of the Order prohibits the issue of generic price announcements by suppliers of cement or cementitious products in Great Britain (that is to say, any price announcement that is not specific to the circumstances of an individual customer). However, the prohibition does not apply to someone (such as a builders' merchant) who supplies retail customers only.
  - (c) Article 4 sets out minimum requirements for those price announcements that are not prohibited by Article 3.
  - (d) Article 5 contains provisions allowing the CMA to give directions as to compliance with the Order.
  - (e) Article 6 confirms that the laws of England and Wales apply to this Order.
  - (f) Article 7 provides that the Order will remain in force until varied or revoked.