

Tarmac

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Tarmac: Breach of the Cement Market Data Order 2016 due to Individual Cement Market Data being disclosed

I am writing to you on behalf of the CMA concerning Tarmac's breach of the Cement Market Data Order 2016 (the Order). This was caused by Tarmac disclosing data on the volume of cement clinker production for one of its sites to the Mineral Products Association (MPA). Article 3.7 of the Order prohibits the sharing of Individual Cement Market Data for a period of five years from the end of the period to which those data relate.

The breach

On 4 March 2022 Tarmac sent the MPA cement clinker production volumes for its Tunstead plant for the dates 2016 to 2021. This information was sent accidentally, as part of another communication to the MPA, on a hidden tab of a spreadsheet.

Tarmac explained to the CMA that it had put in place procedures for ensuring compliance with the Order but that the disclosure was caused by an individual error.

It is the CMA's view that the information falls within the definition of Individual Cement Market Data in the Order, as it is cement volume data and the Order explicitly includes clinker within its definition of 'Cement'. Article 3.7 of the Order prohibits cement producers such as Tarmac from disclosing Individual Cement Market Data to any Association for a period of five years from the end of the period to which those data relate. Article 3.7 contains an exception relating to disclosure via Permitted Third Parties that is not relevant to these facts.

The CMA therefore finds that the majority of the Individual Cement Market Data shared by Tarmac with the MPA (i.e. those within the five year period set out in Article 3.7) breached Article 3.7 of the Order.

The CMA's concerns

The CMA created the prohibition on disclosing Individual Cement Market Data in 2016 to reduce the ability of cement producers to accurately predict their competitors' sales volumes. The CMA is concerned that cement production data sent by a cement producer to the MPA could potentially be used by Board members of the MPA (the Board includes representatives of major cement producers), if these Board members could access the data, to understand relevant information about a cement producer's production volumes.

We have been told that the prohibited data was only accessed by one member of staff at the MPA. We have also been told that the MPA's internal procedures prevented further disclosure within the MPA. In particular, these procedures were effective in preventing further disclosure of this information to MPA Board members, and therefore mitigated effectively the risk of other cement producers having access to this data.

Tarmac has taken voluntary action to prevent a recurrence

I am content that Tarmac has engaged with the CMA in relation to the error made, and has committed to taking the following action to ensure that a recurrence could not happen:

- Tarmac has implemented revisions to its internal compliance training programme in relation to the Order, in order to highlight the specific circumstances of the breach, and to emphasise the need for relevant employees to undertake document-specific checks to prevent this being repeated.
- Tarmac fully supports the additional safeguards that the MPA will implement to prevent a breach of this nature occurring.
- Tarmac has emphasised to all relevant employees that any "hidden" aspects of documents or seemingly unused areas (including tabs within spreadsheets) must be carefully checked before being sent, so as to avoid any data being disclosed.
- Tarmac has amended its internal compliance training programme in relation to the Order, which is run for new joiners and as refresher / top-up training for all relevant employees, to reiterate that any "hidden" aspects of documents must be carefully checked before being sent.

CMA assessment and next steps

Given the nature of Tarmac's approach to preventing a recurrence, the CMA does not consider it appropriate to take formal enforcement action at this time. The CMA will monitor Tarmac's compliance closely in future.

Yours sincerely

Alistair Thompson

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