

**AGGREGATES, CEMENT AND READY-MIX CONCRETE
MARKET INVESTIGATION**

Summary of provisional decision on remedies

Notified: 8 October 2013

1. This document presents our provisional decision on the package of remedies required to remedy the adverse effects on competition (AECs) and the resulting customer detriment that we have provisionally found.
2. Our provisional decision on remedies was based on our provisional findings which were published in full on 23 May 2013 (provisional findings); our augmented provisional findings set out in the Addendum to the provisional findings: Further analysis on GGBS and GBS and provisional findings (Addendum to PFs) published on 8 October 2013; and our consideration of the evidence we received from written responses to our Notice of possible remedies (Remedies Notice) published on 21 May 2013, response hearings with both main and third parties to this investigation, and their further submissions of evidence. Our final decisions on any AEC, and appropriate remedies, will take into account the responses to this document, our provisional findings and Addendum to PFs.
3. We have provisionally decided on a package of remedies that comprises three main elements: (a) a measure based on the divestiture of a cement plant; (b) two measures aimed at reducing transparency in the cement markets in Great Britain (the GB cement markets); and (c) measures to promote competition in the supply chain for ground granulated blast furnace slag (GGBS).
4. We summarize these elements in further detail below:

(a) *Cement plant divestiture.* Lafarge Tarmac should be required to choose between divesting either its Cauldon or Tunstead cement plant. In support of this divestiture, we have proposed the following measures:

- (i) *Inclusion of ready-mix concrete (RMX) plants in the divestiture package.* A purchaser of the divested cement plant should be able to acquire a limited number of RMX plants from Lafarge Tarmac subject to the purchaser's total internal cementitious requirement being capped at 15 per cent of the acquired cement production capacity. Lafarge Tarmac would not be required to divest any RMX plants to a purchaser that already owns RMX plants (or other cement-consuming downstream operations) whose cementitious requirement exceeds this upper limit.
- (ii) *Suitable purchaser.* A purchaser must satisfy the Competition Commission's (CC's) suitable purchaser criteria and cannot be one of the GB cement producers. This requirement will facilitate the entry of a fifth and independent GB cement producer.
- (iii) *Implementation of divestiture.* A monitoring trustee should be appointed as soon as is reasonably practicable following publication of our final report to ensure the protection of the divestiture package until completion of the divestiture. The CC will reserve the right to appoint a divestiture trustee should divestiture not be implemented within the specified divestiture period, or if the CC reasonably expects that an effective disposal would not be achieved within this divestiture period.

(b) *Restrictions on the publication of GB cement market data.* For each set of monthly, quarterly and annual GB cement market data that is currently published by the Minerals Products Association (MPA) and the Department for Business, Innovation & Skills, there should be a time lag of no less than three months from the time to which the data refers, before the data can be made public. This remedy measure has two main components:

- (i) *Conditions on the MPA.* As a condition for continuing to collate and publish the relevant GB cement market data, the MPA should give undertakings to continue to engage a 'permitted' third party, that is both independent of the GB cement producers and has the necessary safeguards in place to comply fully with this remedy, in the collation, aggregation and release of this data (but only in aggregated form) to the MPA and any other parties subject to the lapse of the time-lag requirement. Any changes to these arrangements would require the MPA to seek CC approval (or Competition and Markets Authority approval from 1 April 2014).
 - (ii) *Restrictions on GB cement producers.* An Order should be made that prohibits GB cement producers from providing their sales and production data to any other private sector organization. The only exceptions to this prohibition are when one of the following two conditions is satisfied: either (a) the data is being collated by a permitted third party on behalf of the MPA under the terms of the undertakings set out above; or (b) the third party does not also receive data from any other GB cement producer and the output is only used for internal consumption by the GB cement producer that had engaged the third party.
- (c) *Prohibition of the practice of issuing generic price announcement letters.*
- (i) *Prohibition.* An Order should be made that prohibits GB suppliers of cementitious materials, including GB cement producers and importers, as well as suppliers of other cementitious materials (but with certain exemptions, eg builders' merchants), from sending generic price announcement letters to their customers. Instead GB suppliers of cementitious materials should only be permitted to send customer-specific price announcement letters that state clearly, as a minimum, both the current actual unit price and the proposed revised unit price.

(ii) *Product scope.* The prohibition covers all forms of cementitious materials sold by GB cement suppliers, including CEM I cement, blended cement, GGBS and pulverized fuel ash.

(d) *Measures to increase competition in the GGBS supply chain.* Hanson should divest two of its GGBS production facilities (GGBS plants) and Lafarge Tarmac should divest two of its GBS production facilities (GBS plants). The key components of this remedy are:

(i) *Divestiture of GGBS plants.* We identified Hanson's Port Talbot and Scunthorpe GGBS plants as effective divestitures that would also present the least divestiture risks. However, we are also prepared to consider alternative divestitures, but limited to the Purfleet and Teesport GGBS plants, subject to Hanson addressing the specific divestiture risks associated with these plants.

(ii) *Divestiture of GBS plants.* We identified Lafarge Tarmac's Port Talbot and Scunthorpe GBS plants as effective divestitures that would also present the least divestiture risks. However, we are also prepared to consider divestiture of the Teesside GBS plant, if Lafarge Tarmac were able to address the additional divestiture risks associated with this plant.

(iii) *Suitable purchaser.* A purchaser of any GGBS plant or GBS plant must satisfy the CC's suitable purchaser criteria and cannot also be one of the GB cement producers. Whilst our preference would be for the divestiture of GGBS plants and GBS plants to be made to more than one purchaser, we would be prepared to consider a solution where a single purchaser is permitted to acquire: (a) both GGBS plants; (b) both GBS plants; or (c) up to two GGBS and two GBS plants.

(iv) *Monitoring and divestiture trustees.* A single monitoring trustee should be appointed as soon as reasonably practicable following the publication of our final report, who will be charged with overseeing both Hanson's GGBS and Lafarge Tarmac's GBS operations and ensuring the protection of the

package of assets that will form part of any divestiture. The CC will reserve the right to appoint a divestiture trustee should divestiture not be implemented within the specified divestiture periods for the GGBS and / or GBS plant divestitures, or if the CC reasonably expects that an effective disposal would not be achieved within the relevant divestiture period.

5. We have provisionally concluded that the proposed package of remedies represents a comprehensive and effective solution to the AECs we have provisionally found.
6. We further provisionally concluded that:
 - (a) Each of the remedy measures that form part of our package of remedies is capable of effective implementation, monitoring and enforcement, and that once the relevant divestitures have been implemented, ongoing monitoring and compliance costs of the package of remedies are expected to be very small.
 - (b) Our proposed package of remedies could be implemented and have a substantial beneficial impact on competition and on market outcomes within a relatively short timescale following publication of our final report. We would also expect this beneficial impact to grow over time, such that we would expect the full benefits of increased competition to be realized within five years of publication of our final report.
7. In relation to the proportionality of our proposed package of remedies in addressing the AECs, we provisionally concluded that, having evaluated the potential benefits and costs of these measures, the beneficial effects that would flow from addressing these AECs were likely to outweigh significantly the potential costs of our remedies. We provisionally concluded that our proposed package of remedies represented a proportionate solution to the AECs and their resulting customer detriment.

8. We therefore provisionally concluded that this package of remedies represents as comprehensive a solution as is reasonable and practicable to the AECs and resulting customer detriment that we have provisionally found.