

ANGLO AMERICAN / LAFARGE / JV

**RESPONSE TO THE COMPETITION COMMISSION'S
NOTICE OF POSSIBLE REMEDIES**

NON-CONFIDENTIAL VERSION

5 March, 2012

RESPONSE TO THE COMPETITION COMMISSION'S NOTICE OF POSSIBLE REMEDIES

1. This Response is made jointly by Anglo American plc (“**Anglo American**”) and Lafarge SA (“**Lafarge**”, together the “**Parties**”) to address the Competition Commission’s (“**CC**”) Notice of Possible Remedies dated 21 February 2012 (the “**Remedies Notice**”).
2. The Parties are committed to securing competition approval for the proposed combination of their UK construction materials businesses through a 50:50 joint venture arrangement (the “**JV**”). They continue to believe that there is a compelling strategic rationale for the combination. In particular:
 - There is a geographic complementarity between the Parties’ operations. The combination will provide the JV with national coverage across all product markets, providing material logistical efficiencies [X];
 - By combining Lafarge’s expertise and research investment in innovative cement and ready-mix concrete (“**RMX**”) products with Tarmac’s wider geographic footprint in the supply of RMX, the Parties would expect to expand the distribution of Lafarge’s value-added RMX product ranges, bringing a larger range of products to more customers nationwide;¹ and
 - The joint venture also offers an opportunity for significant cost and value synergies of at least £60 million per annum.² These synergies will make the JV more competitive than the Parties individually in each of the relevant markets.
3. The Parties remain confident that these commercial objectives can be achieved while also addressing the competition concerns provisionally identified by the CC in its Provisional Findings (“**PFs**”). For the purposes of this Response, the Parties proceed on the basis of the findings set out in the PFs and therefore seek to address through their remedy proposals the competition concerns as set out in the PFs. However, this Response is without prejudice to detailed comments that the Parties will submit on the substance of the analysis in the PFs.

¹ The Parties note that the JV will also benefit from the distribution of Lafarge’s value-added products in packed and bulk cement.

² As set out in section 3.2.3 of the Main Parties’ Initial Submission, the £60 million of synergies represents almost [X]% of combined EBITDA. Variable cost reductions, namely scale synergies and network optimisation, represent an important part of these synergies (over [X]% of the £60 million).

A. Remedies to Address SLC in Cement

4. The CC has provisionally concluded that the proposed JV “*is likely to give rise to an SLC, as a result of an increased likelihood of coordinated effects in the UK market³ for cement.*” According to the Remedies Notice, these effects arise in two ways:
- (a) from the combination of the Parties’ cement operations, which the CC states will reduce the number of GB cement producers from four to three; and
 - (b) from the impact of the combination of the Parties’ RMX activities on the ability and incentives of GB cement producers to achieve and sustain coordinated outcomes.
5. The CC considers that, as a result of these factors, “*the proposed JV was likely to result in each of the three conditions for coordination... being satisfied to a greater extent than at present in the bulk cement market*” (paragraph 6.227 of the PFs).
6. The Parties note that, since the conditions for coordination are cumulative, a remedy that fully addresses any one of the conditions will be sufficient to eliminate the prospect for tacit coordination.⁴ The Parties believe, however, that [X] the remedy package [X] proposed in this Response would address each of the conditions that the CC has provisionally found to be satisfied.
7. [X]:
- (a) **Creation of a Fourth Independent GB Cement Producer with Substantial RMX.** The Parties would propose to divest Lafarge’s Hope cement works to an independent third party, together with a network of depots sufficient to provide any buyer with national coverage. The divestment would include Hope’s workforce (subject to TUPE regulations); freehold and leasehold interests for existing quarries and future reserve areas plus any existing raw material supply contracts; all existing consents and authorisations; and the existing customer list. This divestment package would include downstream assets currently supplying approximately [X]k m³ of RMX per annum (although the capacity of these plants is such that they could produce substantially greater volumes). This would provide any buyer with immediate access to downstream markets, while at the same time ensuring that the buyer would be incentivised to compete aggressively upstream in the supply of bulk cement (with a substantially greater ability and incentive to compete in the external market than Tarmac at present). This remedy would therefore disrupt any scope in the future for potential tacit coordination.
 - (b) [X]

³ The Parties’ understanding is that the CC’s coordinated effects analysis relates to conditions of competition in Great Britain, and does not extend to Northern Ireland. The remedy proposals set out in this Response therefore address the GB market for the supply of bulk cement.

⁴ See Merger Assessment Guidelines, at paragraph 5.5.9: “*All three of the ... conditions must be satisfied for coordination to be possible.*”

8. The Parties believe that [X] divestment proposal would comprehensively address the competition concerns identified by the CC, whilst also maintaining the strategic rationale for the JV and delivering the customer efficiency benefits that would result from wider geographic distribution of value-added RMX products by the JV.
9. In this context, the Parties note the suggestion, at paragraph 12(a) of the Remedies Notice, that possible remedy options might include “*prohibiting the inclusion of the main parties’ cement and RMX operations in the joint venture.*” Such a remedy would equate to the maintenance of the *status quo ante*. By contrast, [X] the divestment option [X] put forward by the Parties would address the SLC provisionally identified by the CC and result in a material increase in the competitive dynamics in both the upstream bulk cement and downstream RMX markets. The Parties would be prepared to develop [X] according to any preference expressed by the CC.

(a) **Creation of a Fourth Independent GB Cement Producer with a Substantial Volume of RMX**

10. In the Remedies Notice, the CC suggests that, “*to be effective in remedying the provisional SLC in cement, any divestiture package would need to contain substantial cement and RMX operations, on a scale similar to the current cement and RMX operations of either Anglo American or Lafarge.*”⁵ In considering an appropriate remedy package that would meet these criteria, the Parties have also had regard to the CC’s Merger Guidelines (as referenced at paragraph 6.178 of the PFs), namely that “*coordination will be harder to sustain where there is a firm with substantially different incentives to coordinate than its rivals, and with the capacity to take significant share from any group of firms that tried to coordinate without its participation*” (at paragraph 5.5.18).

(i) **Structural Divestments**

11. Based on these considerations, the Parties would propose a divestment package comprising the following elements:

- (a) **Hope cement works.** Lafarge’s Hope cement works is located in the Peak District National Park in Derbyshire. It is the largest of Lafarge’s GB production facilities, having clinker capacity of [X]mtpa and bulk cement capacity of 1.5mtpa. In 2011, the plant produced [X]mt of bulk cement and generated EBITDA of £[X] million. Hope cement works is substantially larger than Tarmac’s sole production facility at Tunstead, which has a capacity of 1mtpa and produced approximately [X]mt of grey cement in 2011. Accordingly, the divestment of the Hope works would result in a divestment greater than the increment arising from the proposed JV. Moreover, since Tarmac currently consumes internally around [X]% of Tunstead’s cement production, selling only around [X]ktpa externally, the sale of Hope to an independent third party would be likely to result in that party being substantially “longer” in grey cement (*i.e.*, the divested production capacity would substantially exceed that of the cement capacity required to supply the

⁵ Remedies Notice, at paragraph 16(a).

divested RMX sites) than is Tarmac today, thereby providing it with a significant incentive to seek external customers.

- (b) **Quarries.** The divestment of the Hope cement works would include the co-located quarries. Hope has proven reserves of limestone for approximately [X] years, and potential reserves of limestone for approximately [X] years (both figures assuming operation at full capacity). Through the use of PFA as a low sulphur shale replacement in the raw mix (at up to [X]%), the life of the proven low sulphur shale reserves at Hope ([X] years) will at least match that of the proven, *i.e.*, fully consented limestone reserves of [X] years.⁶ Hope's reserves are held through a combination of freehold and leasehold interests. In the case of the leasehold interest, the leases for the mineral reserves in the north-western and north-eastern parts of the limestone quarry run until [X].

- (c) **Depot network.** In order to provide a national competitive constraint on the JV and other GB cement suppliers, it would be important that any buyer of the Hope cement works (which includes an integrated storage and rail loading facility) have access to a supporting rail-linked depot network. The Parties anticipate that the number and location of any depots required to support the Hope works would depend in large part on the identity of the ultimate purchaser, and any GB network infrastructure that the buyer may already have in place. Hope's planning consent allows distribution by road of up to [X]ktpa of bulk cement. As currently configured within the Lafarge network, Hope in fact uses just over [X] of this road capacity (delivering [X]kt by road in 2011, which is significantly more than Tunstead sells externally at present), providing substantial opportunities for any purchaser to increase road distribution to meet demand from bulk customers in central and northern England and in the south-west. In addition, the Parties would expect to include at least two rail-linked depots in any divestment package. These would comprise Lafarge's depots at Theale in West Berkshire (depot capacity: [X]ktpa) and Dewsbury in West Yorkshire (depot capacity: [X]ktpa). The Theale depot would provide the buyer of Hope with access to demand in the south of England, while Dewsbury is well located to serve the major conurbations in the north of England. Each of these depots has blending facilities on site which could be utilised by the purchaser to produce CEM II or CEM III, effectively expanding the cement production capacity of the cement plant. [X].

- (d) **Offtake arrangement.** Removing Hope from the network of the JV would reduce the rail capacity of the residual company. In turn, this would create an issue for packing Mastercrete and General Purpose Cement at West Thurrock, which require some [X]kt per year of blended cement, some of which requires an air entraining agent, both of which products are manufactured at Hope and despatched by rail to West Thurrock. Uprating the rail capacity of the residual network and arranging for the limestone blended cements will require capital projects, taking up to [X]years to complete. The JV would therefore be open to concluding a non-reciprocal, short-term supply contract

⁶ There are additional limestone and shale deposits in the area which could be utilised to extend the life of the plant further, if full extraction rights/permissions are granted.

with the buyer of Hope, subject to the CC's agreement, to fulfil West Thurrock's needs for that interim period and to offer some guaranteed supply on a transitional basis to a new buyer.

- (e) **RMX.** The CC has suggested (at paragraph 6.229 of the PFs) reasons why the addition of RMX to the JV enhances the scope for coordinated effects. The Parties consider that there are good reasons why the JV would not give rise to coordinated effects and, in particular, why the addition of RMX to the JV would not give rise to coordinated effects with or without the divestment of a cement plant (or plants). However, taking the PFs at face value for present purposes, this Response proceeds on the basis of the CC's indication that the sale of a cement plant may need to be supported by "*substantial*" RMX operations (while noting that the CC has not at this stage provided an indication of the number of plants or volume of RMX production that this might entail).

12. The Parties have therefore proceeded on the basis of three assumptions:
- that any buyer should be incentivised to maximise its sales of bulk grey cement to external customers in order to address any concerns that the CC has in relation to coordination amongst GB producers, by introducing a disruptive producer with incentives to sell cement on the external market;
 - that the strategic commercial incentives of any buyer should be differentiated from those of other GB producers. In considering this aspect, the Parties have taken account of the market shares of participants in both cement and RMX (this is in answer specifically to Table 10 of the PFs); and
 - that the package of divested RMX sites to be sold with the cement plant should be sufficiently large to address the CC's concerns in relation to the role RMX may have in relation to the coordination in the supply of cement.
13. Taking these considerations into account, the Parties would propose to include with the divestment of Hope cement works a RMX portfolio of plants producing [\approx]k m³, equivalent to approximately [\approx]ktpa sales of cement.⁷ Since long-term contracts are not a feature of either the bulk cement nor the RMX market, the Parties would also propose to provide customer lists to any purchaser (as is standard with these types of assets). For the sake of clarity, the Parties would not retain any activities on sites that are included within the proposed divestment package.
14. The proposed divestment package would therefore represent a "turnkey" opportunity for any purchaser (including a completely new entrant to the GB market), and would be represent an immediately viable, competitively significant stand-alone business.

⁷ Based on a conversion rate of 300kg/m.

(ii) Saleability

15. The CC has taken the provisional view (at paragraph 16(c) of the Remedies Notice) that any cement divestiture would likely need to be completed before the JV may proceed. The Parties note in this context the CC's *Merger Remedies Guidelines* which, at paragraph 3.19, explain the circumstances in which an upfront buyer requirement may in principle be required. For the reasons explained below, the Parties do not believe that any of the conditions for an upfront requirement are satisfied in this case:

- (a) **Composition Risk.** As the CC is aware, the Parties conducted a pre-marketing exercise in the course of the OFT's investigation of the proposed transaction in order to gauge the level of buyer interest in acquiring proposed divestment assets. A summary of the pre-marketing exercise conducted by the Parties has been provided to the CC previously. This confirms that between three and six bids were received for each asset marketed. This pre-marketing exercise included the proposed divestment of the Hope cement plant together with the Theale and Dewsbury rail-linked depots. The Parties received [X] indicative offers for the plant from potential new entrants including experienced international cement producers [X]. A number of additional potential buyers such as [X] expressed a continuing interest in the sale process, notwithstanding that they did not submit a formal offer. Given the greater certainty that will prevail following the publication by the CC of its Final Report, the Parties are confident that there will be a strong level of interest in the purchase of Hope (or any other cement asset) since it effectively offers any a relatively unique entry opportunity both to potential new entrant or to an existing RMX and/or aggregates player with aspirations to extend its presence and/or to integrate vertically.⁸
- (b) **Purchaser Risk.** The outcome of the pre-marketing process conducted during the OFT review period, considered with the continuing interest expressed by buyers subsequently, should give the CC significant comfort that there are multiple suitable purchasers that are ready to purchase assets from the Parties. This demonstrates that purchaser risk in this divestment process is negligible if not non-existent, and as such an upfront buyer requirement for cement is unnecessary.
- (c) **Asset risk or prolonged completion of divestiture.** There is no reason to suspect that any of the proposed divestiture assets will deteriorate before sale to a suitable purchaser. The Parties commit to employ all reasonable efforts to operate the assets such that their viability and ongoing competitiveness is preserved pending divestment. Moreover, the Parties have appointed financial advisers to manage the divestment process; as such it will function through an efficient and timely process. The Parties anticipate that the entire sale process can be concluded within approximately [X] from CC approval.

⁸ As reported in the Financial Times on 26 February 2012, Breedon has recently confirmed an interest in acquiring divestment assets resulting from the CC's inquiry.

16. Given the minimal level of risk associated with the proposed divestment package and purchaser pool, the Parties consider that it would be unnecessary to require that divestment of the proposed cement package occur prior to completion of the proposed transaction.
17. In the alternative, the Parties note that, in the two previous cases in which the CC has imposed an upfront buyer requirement,⁹ the CC has considered it sufficient for completion of the primary transaction that the buyer is contractually committed to the purchase of the divestment assets. The Parties do not believe that there is any reason why a stricter restriction should apply in this case should an upfront requirement be imposed notwithstanding the comments in this Response.

(iii) Behavioural Commitments

18. In its Remedies Notice, the CC notes that it “*will consider whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies*” (at paragraph 9). To the extent that it were considered necessary, the Parties envisage that its divestment package could potentially be supported by a series of behavioural undertakings:

(a) **MPA¹⁰ Statistical Data.** The CC has suggested that “*a company could with a fair degree of accuracy monitor its own share of total UK production and sales of cement with a one-month lag using publicly available information from the MPA*” and that “*this may in many cases be sufficient to detect whether any deviation [from a tacitly coordinated common policy] is likely to have occurred*” (at paragraph 6.137). The Parties would be prepared to undertake to limit the JV’s participation in any MPA statistical exchange so that, in relation to both bulk cement and RMX, the JV would submit and receive data [X] and in arrears, and at no more geographically disaggregated level [X]. Such a commitment would address any concerns that the CC may have around the ability for the JV or other cement producers to monitor production volumes or shares.

(b) [X]

(c) **Cessation of Bulk Cement Price Announcement Letters.** The Parties have noted the CC’s concerns that standardised price announcement letters “*could assist the UK cement producers in coming to a common understanding on the timing and direction of price movements*” (at paragraph 6.133) and “*may therefore have some role in reducing the risk of future deviations*” (at paragraph 6.134). Given these expressed concerns, the Parties would be prepared to undertake to cease issuing to customers who are also cement producers standardised pricing letters for bulk cement. Any price change for these customers would in future be notified only on an individual basis.

(iv) Effect of the Proposed Remedies on Market Structure

⁹ Hamsard 2786 Ltd / Academy Music Holdings Ltd (2007); and Kemira GrowHow Oyi / Terra Industries Inc (2007).

¹⁰ Mineral Products Association (the “MPA”).

19. The remedy package put forward by the Parties aims to create a fourth GB cement producer with a significant downstream RMX business that would be a more competitive, externally-facing supplier than is Tarmac today. A new entrant long in cement with national reach would eliminate any concern the CC may have of input foreclosure in RMX.
20. The implementation of this remedy package would result in substantial asymmetry of market positions between the four GB producers, both upstream in the supply of bulk cement and downstream in the supply of RMX. Relevant market shares based on 2010 production and sales estimates are set out in **Table 1** below (which assumes no existing RMX portfolio in the ownership of a buyer).

Table 1: Market Shares of Bulk Cement Sales in GB and Shares of GB RMX Sales in 2010 Post JV and Post Divestments

	Lafarge (pre-JV)	Tarmac (pre-JV)	JV (post divestment)	Cemex	Hanson	4th Cement Producer¹¹
Cement	[30-40]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%	[15-25]%
RMX	[0-10]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[0-10]%

Source: Parties' best estimates.

21. In the supply of bulk cement, the JV would account for approximately [X]mt of bulk cement sales ([20-30]%), ahead of Cemex with [X]mt ([20-30]%), Hanson with [X]mt ([20-30]%) and the new entrant with up to [X]mt ([15-25]%). The post-merger structure would therefore result in a [0-10] percentage point range between the bulk cement supply positions of the four GB cement producers. This range may of course increase in light of the increased supply dynamics resulting from the introduction of a new entrant producer. This variation in market shares will inevitably lead to significant differences in strategies and incentives for each of the four GB cement producers.
22. Considered in light of these asymmetries, the proposed remedies would successfully eliminate any prospect for tacit coordination in bulk cement:
 - (a) **No ability to monitor.** By reducing the JV's position in the supply of bulk cement relative to Lafarge's current position, and creating a strong fourth GB producer with bulk cement sales almost double that of Tarmac today, the proposed remedies would render significantly more difficult any attempt to establish or monitor coordination. This difficulty would be reinforced by the Parties' commitment to withdraw from the current system of statistical data exchange through the MPA cement committee.
 - (b) **No internal sustainability.** The proposed remedies would also eliminate any internal sustainability. The remedies would create significant disalignment between the market profiles of the four GB producers, with both the JV and the new entrant being materially less vertically integrated than either Cemex or Hanson and therefore having clear incentives to compete aggressively for third party sales. Further, [X] would remove any ability to use repatriation of

¹¹ Assumes operation of Hope plant at capacity with all production used to supply bulk cement.

these sales either as a signal to other members of the alleged coordinating group that it has detected deviation or as a punishment mechanism to deter deviation (which the CC itself acknowledges is “*less likely*”). At the same time, by retaining an ability to make external purchases outside the alleged coordinating group in the limited circumstances where this may be justified by logistical efficiencies, the Parties believe that they would maintain sufficient supply flexibility.

(c) **No external sustainability.** Fundamentally, the remedies will create an independent GB producer with a strong incentive to develop its external sales profile and both the ability (*i.e.*, sufficient capacity) and incentive to prevent the alleged coordinating group from profitably sustaining higher prices post-JV.

(b) [REDACTED]

23. [REDACTED]

(i) [REDACTED]

24. [REDACTED]

25. [REDACTED]

26. [REDACTED]

27. [REDACTED]

28. [REDACTED]

29. [REDACTED]

30. [REDACTED]

(ii) [REDACTED]

31. [REDACTED]

32. [REDACTED]

(iii) [REDACTED]

33. [REDACTED]

(iv) [REDACTED]

34. [REDACTED]

35. [REDACTED]

Table 2: [REDACTED]

[REDACTED]

36. [X]

37. [X]

B. Remedies to Address SLC in Construction Aggregates, Asphalt and RMX, Rail Ballast and High Purity Limestone for Flue Gas Desulphurisation

38. The CC reaches the provisional decision in the PFs that the JV is likely to result in an SLC in the following local markets for aggregates,¹² asphalt and RMX on the basis of unilateral effects:

- (a) 22 local markets for the supply of primary aggregates for construction applications;
- (b) 2 local markets for the supply of asphalt; and
- (c) 7 local markets for the supply of RMX.

39. The proposed remedies seek to address these SLCs through structural remedies that would create or strengthen external competition within each local market. These divestments would clearly and comprehensively eliminate any unilateral effects resulting from the formation of the JV.

40. In addition, the CC provisionally concludes that the proposed transaction would be likely to result in an SLC based on unilateral effects in the supply of:

- (a) rail ballast; and
- (b) high purity limestone (“HPL”) for flue gas desulphurisation (“FGD”).

41. The proposed remedies in relation to rail ballast and HPL for FGD seek to address these SLCs by creating a new source of competition or strengthening an existing source of competition. Further comments are made below with regard to the possibility of behavioural remedies in HPL for FGD as a means of maintaining the current level of competition.

(a) Remedies to address SLCs in Aggregates, Asphalt and RMX

42. In order to address the SLCs identified, the Parties propose to divest one or more sites in each problem radial identified by the CC in aggregates, asphalt and RMX. In summary, the proposed divestment package includes:

- 8 primary aggregates quarries.¹³ In addition, Tarmac would exit the Midland Quarry Products joint venture with Hanson (“MQP”), which would effectively

¹² Excluding rail ballast and HPL for FGD (see below).

¹³ Including one marine wharf.

result in the divestment of interests in two further operational primary aggregates quarries;

- 1 aggregates depot;
- 2 asphalt plants. (The proposed exit from MQP will also result in Tarmac divesting its interest in a further six asphalt production plants¹⁴); and
- 5 RMX plants.

43. A list of the proposed divestment sites is set out in **Table 3** below. Additional information about the individual sites listed below is produced at **Annex 1**.

Table 3: List of Proposed Divestment Assets

Primary Aggregates	Tarmac Coxhoe
	Tarmac Wensley
	Tarmac Holme Hall
	Tarmac Clitheroe Bankfield
	Lafarge Dowlow
	Lafarge Swarkestone
	Lafarge Briton Ferry (marine wharf)
	Lafarge Graig
	MQP Cliffe Hill
	MQP Griff
Lafarge Ashbury (depot)	
Asphalt	Tarmac Cavenham
	Lafarge Wivenhoe
	MQP Cliffe Hill (x2)
	MQP Ettingshall
	MQP Griff
	MQP Groby
	MQP Wednesbury
RMX	Tarmac Greenock
	Tarmac Scunthorpe
	Lafarge Selby
	Tarmac Thirsk
	Tarmac Lincoln

44. In designing the package of divestment assets, the Parties applied a number of principles to ensure that, post-divestment, the SLCs will be remedied in a clear-cut and comprehensive manner. These principles comprise the following, one or more of which may apply to a given radial:

¹⁴ The six asphalt plants of MQP are located on five sites. In particular, Cliffe Hill has two plants on site.

- (a) **Divestment eliminates the entire increment.** Where the Parties divest the entirety of the existing sites owned by one of the Parties in a problem radial, the overlap is eliminated and the SLC is addressed in a clear-cut manner (restoring the pre-merger situation within those radials).¹⁵
- (b) **Divestment of the equivalent volume of the market share increment solves the overlap.** In eleven primary aggregates problem radials, the Parties propose to divest assets which produce at least, or in one case almost entirely, the equivalent volume of the market share increment arising as a result of the proposed JV (in some cases using a mix and match¹⁶ approach).¹⁷
- (c) **Post-divestment production share of the JV will fall below 33%.** The Parties note that the CC decided (at paragraph 6.27 of the PFs) not to pursue possible problem areas in which the combined share of production would be less than 33%. In selecting suitable and proportionate remedies to address the SLCs, in a number of radials the Parties will divest assets sufficient to reduce the combined post-divestment production share of the JV to less than 33%.¹⁸ In one of these radials where this principle is relied upon, the Parties would divest assets that will reduce the combined share down to just marginally in excess of 33%, but the production share will fall below 35%.¹⁹ However, the Parties submit that this is a very conservative approach given that the indicative safe harbour threshold for homogenous products set out in the Merger Assessment Guidelines is 40%. Moreover, constraints from secondary and recycled aggregates have not been factored in the primary aggregates production shares and the market is characterised by significant long term overcapacity.
- (d) **Divestment of the site at the centre of a problem radial.** Where the Parties divest the site at the centre of a production radial (as identified by the CC in

¹⁵ This principle remedies the following problem radials in (i) primary aggregates: Tunstead (Tarmac), Hendre (Tarmac), Ashbury (Lafarge - depot), Agecroft aggregates handling (Tarmac), Bredbury aggregates handling (Tarmac); (ii) asphalt: Higham (Lafarge), Wivenhoe (Lafarge); and (iii) RMX: Greenock (Lafarge and Tarmac), Scunthorpe (Lafarge), Selby (Tarmac), Northallerton (Lafarge), Lincoln (Tarmac).

¹⁶ A mix and match approach refers to the use of a combination of remedy assets from both Lafarge and Tarmac to resolve a problem radial.

¹⁷ This principle remedies the following problem radials in primary aggregates: Thrislington (Lafarge), Scorton (Tarmac), Cadeby (Lafarge) and Swinden (Tarmac) in addition to all radials identified above where the entire increment is eliminated (Tunstead (Tarmac) and Hendre (Tarmac)), and in some radials where the centre of the radial is being divested (Holme Hall (Tarmac), Clitheroe Bankfield (Tarmac), Coxhoe (Tarmac) and Dowlow (Lafarge)). In the Mountsorrel (Lafarge) problem radial, the divested share of production ([<]%) almost entirely offsets the increment ([<]%).

¹⁸ This principle remedies the following problem radials in primary aggregates: Thrislington (Lafarge), Coxhoe (Tarmac), Scorton (Tarmac), Cadeby (Lafarge), Holme Hall (Tarmac), Dowlow (Lafarge), Ballidon (Tarmac), Dene (Tarmac), Whitwell (Lafarge), Caldon Low (Tarmac), and Mancetter (Tarmac).

¹⁹ [<]% in Mancetter (Tarmac).

the PFs), they consider that the divestment comprehensively resolves the problem area.²⁰

- (e) **Divestment restores the number of fascia to the pre-merger position.** The CC applied a fascia reduction filter to identify two problem radials in sand and gravel aggregates.²¹ In the Swansea (Tarmac) radial, the divestment of an asset sufficient to introduce a new entrant into the problem radial addresses the fascia reduction and thereby will address the SLC identified.²² In the Scorton (Tarmac) radial, the proposed divestment will in any event reduce the primary aggregates share of the JV to below 25%.

(b) **Remedies to Address SLC in Rail Ballast**

45. The CC has provisionally found that the JV is likely to result in an SLC in the national market for rail ballast.
46. To address this concern, the Parties propose to divest Tarmac's 50% interest in MQP, which includes the Cliffe Hill quarry (Tarmac's only material interest in rail ballast production). This will almost entirely eliminate the overlap between the Parties in relation to the supply of rail ballast in Great Britain.²³

(c) **Remedies to Address SLC in High Purity Limestone for FGD**

47. The divestment of Lafarge Dowlow solves the overlap between the Parties in the supply of HPL for FGD (thereby addressing the SLC identified in the PFs in this segment of the market for HPL).
48. Although the Parties propose to divest Lafarge Dowlow to remedy concerns in a number of local areas in which the CC has provisionally identified an SLC in relation to the supply of construction aggregates, the Parties consider that there are strong arguments why no SLC should arise in those areas. The Parties will set out this reasoning in their response to the PFs.

²⁰ In assessing the competitive impact of the JV in local markets by centring on JV production sites, the question being addressed is whether or not the centre site could exercise market power as a result of the JV. By divesting the site, the scope for the site to exercise market power is removed. The question of whether other JV sites can exercise market power is addressed by centring on those other sites. This principle remedies the following problem radials in (i) primary aggregates: Coxhoe (Tarmac), Holme Hall (Tarmac), Clitheroe Bankfield (Tarmac), Dowlow (Lafarge), Cliffe Hill (MQP JV), Wensley (Tarmac) and Ashbury (Lafarge - depot); (ii) asphalt: Wivenhoe (Lafarge); and (iii) RMX: Greenock (Tarmac), Lincoln (Tarmac).

²¹ The CC applied the fascia reduction approach in three radials although following a local competitive effects analysis, the CC concluded that no SLC would arise in one of the three radials, leaving two radials in which such a filter was applied.

²² According to paragraph 6.6 of the PFs, the CC has indicated that the filters chosen were conservative and that "[the CC] generally opted for thresholds ... that would result in fewer rather than more areas being filtered out." The restoration of fascia as a remedy meets a stricter criterion set out by the filter and should therefore address the CC's concern even on a conservative basis.

²³ The increment in rail ballast arises almost solely from Tarmac's interest in MQP. Tarmac supplies only minimal quantities of rail ballast from other sites.

49. Should the CC ultimately agree with the Parties that no such SLCs arise in construction aggregates in those local markets in which Dowlow is the effective remedy (thereby rendering unnecessary the divestment of Lafarge Dowlow), the Parties would propose alternative behavioural remedies to address the CC's concerns in relation to the supply of HPL for FGD.
- (i) Extension of Current Agreements on Existing Terms
50. In the first instance, the Parties would undertake to extend the current long-term supply agreements for the supply of HPL for FGD with power station customers on existing terms. This will protect the customer's continuity of supply of HPL for FGD post-JV. The Parties note that their current supply agreements with power station customers for FGD are subject to pre-agreed price escalation clauses which are linked to RPI. Therefore, customers under these contracts are already protected from price increases during the term of the contract. The Parties expect that other bidders (notably [X]) would tender for contracts at their renewal.
- (ii) Long-Term Off-Take Arrangement
51. Should the CC deem this to be an insufficient mechanism by which to ensure continuity of supply to existing customers of HPL for FGD on no worse terms than today, notwithstanding the JV, then the Parties would propose a "virtual divestment" via a long-term right for a third party to off-take and sell HPL from the Dowlow quarry suitable for use in FGD. Under this proposal, the JV would enter into a tolling arrangement with a third party operator, extending the right to purchase HPL quarried from Dowlow on an ex-works basis. This alternative remedy would effectively create a new supplier of HPL for FGD in the market and thereby eliminate the CC's concern about the reduction in the number of suppliers as a result of the JV.
52. This arrangement would be accompanied by the assignment, subject to customer consent, of Lafarge's existing contracts with power stations for the supply of HPL for FGD. The intermediary purchaser under the offtake arrangement would have the right to purchase the material from the JV at a price that would cover the cost of production and administration (subject to indexation).
53. The Parties consider that the implementation of a semi-structural remedy such as those proposed above would be appropriate in the case of HPL for FGD given the competitive dynamics and the degree of the SLC identified by the CC (in relation to which further comments will be made in response to the PFs). The divestment of Dowlow to remedy the SLC in HPL alone would be wholly disproportionate when account is taken of the insignificant proportion of Dowlow's total output that is accounted by HPL for FGD. In 2011 HPL for FGD accounted for only [X]% of total aggregates produced from Dowlow.
- (ii) Saleability
- (a) Package definition
54. All of the proposed divestment assets meet the CC's criteria of being viable, stand-alone assets. The Parties will divest all relevant activities and assets which contribute to a given site's operation (as detailed in Annex 1). A purchaser would be able to put

in place the requisite support functions in a short period of time in order to be able immediately post-divestment to compete effectively and independently of the JV on a lasting basis.

55. However, any relevant upstream or downstream assets that are co-located with the relevant asset are not necessarily within the scope of the businesses to be divested, since such ancillary assets are not necessary to ensure the viability and competitiveness of the divestment assets. These arrangements will be formalised as necessary, including through contractual supply agreements, to ensure that the divestment assets are run on an entirely separate basis from the co-located assets. Such co-location arrangements are not unusual in this industry.²⁴ Limiting the assets in this manner will not compromise the effectiveness of these remedies.²⁵
56. In any event, in the few cases in which divestment assets are co-located or otherwise supplied by another plant, the Parties would be willing to discuss with the relevant purchaser(s) the scope for entering into supply or off-take agreements, as the case may be, on market terms should such an arrangement be of commercial interest to the acquiring party to ensure the viability of the divestment assets.²⁶

(b) Interest from suitable purchasers

57. A number of the proposed divestment assets were pre-marketed in mid-2011, specifically:
- Tarmac Holme Hall was marketed in the Northern site cluster. This cluster received bids from [X];
 - Tarmac Lincoln RMX was marketed in the Midlands cluster. This cluster received bids from [X];
 - Tarmac Cavenham (asphalt) was marketed in the South East Asphalt cluster and received bids from [X];
 - Tarmac Scunthorpe RMX was marketed in the Yorkshire cluster and received bids from [X];
 - Tarmac Thirsk RMX was marketed in the North East cluster and received bids from [X]; and

²⁴ The following are some examples of co-located assets operated on a stand alone basis: Cemex operates a quarry at Weeford Staffordshire, which is co-located with an asphalt plant operated by Lafarge; Tarmac operates a quarry at Daviot in the Highlands, which is co-located with an asphalt plant operated by Breedon; Aggregate Industries operates a quarry at Woodhall Spa, Lincolnshire which is co-located with an RMX plant operated by Breedon; Leiths operate Mid Lairgs Quarry near Inverness, which is co-located with an asphalt plant operated by Aggregate Industries and also Premier Concrete Products have volumetric readymix trucks based on site; and Longwater Gravel operates Coxford Abbey Quarry, Norfolk which is co-located with an RMX plant operated by The Concrete Company.

²⁵ Details in relation to co-located sites which are proposed for divestment are included at Annex 1.

- Tarmac Greenock RMX was marketed in the Scotland cluster and received bids from [X].
58. Based on feedback from the pre-marketing process, the Parties expect a number of further bidders to come forward when the assets are finally put up for sale. As noted above, Breedon has publically declared an interest in purchasing divestment assets from the Parties. The Parties have already received a number of inbound calls expressing interest.
59. The range of bidders for these assets, as listed above, included new entrants, larger existing UK players and smaller independent and regional players. The Parties are therefore confident that a suitable purchaser can be found which meets the CC's criteria.
- (c) Absence of composition, purchaser and asset risks such that upfront buyer requirements are not merited
60. As noted above, there are a number of interested purchasers for the aggregates, asphalt, RMX, rail ballast and HPL assets, such that purchaser risk should not be a reason for the CC to require upfront buyers in this case.
61. The Parties have sought to address any composition risks by including with the divestments all of the required assets to enable the purchaser to operate effectively from the outset. Should the purchaser consider it desirable in certain cases, the Parties would also propose to provide an option to conclude a supply agreement under which the JV would purchase inputs produced by the divestment assets for a transitional, providing an immediate outlet for the purchaser.
62. In relation to asset risk, the Parties would not expect the sales process to be unusually prolonged for the following reasons. The Parties have considered the saleability of the relevant assets in identifying assets proposed for divestment, and are confident that there are no significant hurdles to selling the relevant sites (other than the usual consent requirements in transactions of this type). For example, issues such as planning restrictions, third party consents²⁷ and any other transfer restrictions have been taken into account in selecting divestment assets, and the Parties believe that any residual, legal or commercial restrictions on divesting the relevant assets are likely to be manageable (with the caveat that any unforeseen circumstances may lead to some delay in the sales process, as is usual in these matters).
63. Finally, the Parties are confident that they can conduct a timely and effective sales process to implement divestment of the relevant assets. The Parties have engaged three investment banks to assist in this process. These banks have established teams with industry specialists to assist in this process. As in relation to the cement assets, the Parties anticipate that the entire sale process can be concluded within approximately [X] from CC approval.
64. [X]

²⁷ The main third party consent would be from landowners in the case of leasehold interests. The Parties are not aware of any site for which the landowner's consent would be unreasonably withheld.

65. The Parties are confident that they can secure signature of a binding agreement for the sale of Tarmac's shares in MQP, on the same timetable outlined above in paragraph 63 above for other assets. MQP has interests in a number of high quality long life assets and is likely to attract significant buyer interest. As a result, the Parties submit that there is no basis for an upfront buyer requirement and if the CC disagrees then it should only require the signature of a binding agreement rather than full completion before the JV may be allowed to proceed.

E. Conclusion

66. The Parties strongly believe that the structural divestments put forward in this Response (and the supporting behavioural remedies referred to) "*achieve as comprehensive a solution as is reasonable and practicable to address the substantial lessening of competition and any adverse effects resulting from it*" in accordance with Section 36(3) of the Enterprise Act 2002. Therefore, a full prohibition or partial prohibition (prohibiting the Parties from contributing cement and/or RMX to the JV) would be disproportionate.
67. The Parties again refer to the expected synergies, which will make the JV more competitive in each of the relevant markets and would lead to consumer benefits. A prohibition or partial prohibition would clearly undermine these anticipated benefits.
68. The Parties note that the proposed remedies are designed to address the SLCs set out in the PFs which result from the merger. The ongoing market investigation into aggregates, RMX and cement will address any features of these markets which are found to distort competition.
69. The Parties have identified a package of assets that are viable, stand-alone assets for which there are a significant number of interested suitable purchasers. Therefore, they see no reason why the CC should impose an onerous upfront buyer requirement: not only is the risk associated with the divestment package minimal, the Parties are keen to implement the proposed JV, subject to the proposed remedies, as soon as practicable so as to start generating the significant cost and value synergies and customer benefits that the JV will offer. An upfront buyer requirement would only unnecessarily delay such efforts to the detriment ultimately of the customer and end-consumer.
70. The Parties look forward to engaging with the CC further with regard to the detail of the remedies proposed in this Response.