

## Anglo American/ Lafarge Joint Response to the Addendum to Provisional Findings

The following sets out the joint response by Anglo American plc and Lafarge S.A. (the “Parties”), to the CC’s addendum to the provisional findings and notice of possible remedies, published on 22 March 2012.

### 1 Lafarge Graig

The Parties consider that there is no material overlap between them in the Lafarge Graig radial.

Specifically, the Lafarge increment to Tarmac's existing share is very low ([X] % on an all aggregates basis and [X] % on a crushed rock only basis) and the Parties do not believe that this gives rise to a substantial lessening of competition.

#### *Proposed remedy*

Should the CC continue to consider that an SLC arises in relation to the radial around Lafarge Graig the Parties would propose to divest Lafarge Graig. In fact, the Parties have already proposed to divest Lafarge Graig to address the CC’s concerns in relation to the radial surrounding Tarmac Hendre. Divesting Lafarge Graig eliminates entirely the overlap between the Parties in the Lafarge Graig radial. Lafarge Graig offers a clean divestment of a standalone asset capable of independent operation by a third party [X]. There are no co-located assets [X]. Further details on Lafarge Graig were provided to the CC by Lafarge on 12 March 2012 in response to the CC’s information request issued 2 March 2012.

### 2 Lafarge Willington

The Parties are of the view that there should be no SLC in the Lafarge Willington radial. In particular, the Parties remain of the view that the CC has failed to establish an economic basis for applying different average radials to Lafarge and Tarmac sites and for making a distinction between urban and non-urban sites, as explained in the Parties’ response to Provisional Findings. The Parties note that this methodology has given rise to a peculiar situation in relation to Lafarge Willington whereby sites close to each other (which are likely to be subjected to similar competitive constraints) will nevertheless capture different sets of competitors in their respective radials thus potentially resulting in markedly different shares of production or number of fascias.

Specifically, within the Lafarge Willington radial, the four sites belonging to the Parties (Lafarge Willington and Sandy Heath; Tarmac Broom and Potton) are all located within around 8 miles of each other and they serve similar demand locations. The CC has, however, adopted a much narrower radial for Lafarge Willington than for the other nearby sites when applying its fascia filter.<sup>1</sup> Similarly, in determining the Parties’ share of production of primary aggregates, the CC has also applied a narrower radial for Willington

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<sup>1</sup> The CC has adopted a [X]-mile sand and gravel radial for Lafarge Willington but wider radials for the other Parties’ sites (see CC’s presentation of 19 March 2012 with revised results for the catchment area analysis). As a result, the CC has excluded the constraints imposed by at least two suppliers located just outside the Lafarge Willington radial: [X].

than for the other Parties' sites and found a high JV share on this basis<sup>2</sup>. Had a wider radial been used to reflect the true competitive constraints exerted by third-party sites on Willington, no SLC concerns should arise in the Willington radial as there would be a sufficient number of competing suppliers in the area.

Further, as the Parties previously argued, transport costs should be taken into account in determining the true geographic scope of a site<sup>3</sup>. The Parties note that since the area around Willington benefits from good transport links (located close to the A1 and A14 roads) product tends to travel greater distances. Importantly, the fact that sites located in urban areas (in this case Lafarge Willington) have shorter delivery distances due to their proximity to demand does not mean that they are not constrained by non-urban sites that are located further away. Therefore, for Lafarge Willington, the Parties consider that it is appropriate to consider the competitive conditions within a wider geographic scope.

By way of illustration, using radials of [redacted] and [redacted] miles (as in the assessment of Tarmac non-urban sites and Lafarge non-urban sites, respectively), the Parties' combined shares would be [redacted]% and [redacted]%, respectively, in the Lafarge Willington radial. The Parties note that these figures are substantially lower than from those obtained using the narrow radials applied by the CC.

Specifically, a major third party site (operated by Hanson at Needingworth), one of the largest sand and gravel quarries in GB, is situated only twenty-one miles from Lafarge Willington. Indeed Hanson's overall capacity in this area is significant: Needingworth supplies customers over significant delivery distances by maximising economies of scale and Hanson also has a quarry at Earls Barton which is located 17 miles away from Willington. In addition, Cemex and Aggregate Industries also impose a significant competitive constraint, as does Breedon (also at Earls Barton), [redacted] with a large 170kt site. Fixed recycling sites located at Biggleswade (F D O'Dell) and Kempston (G Moore) continue to constrain the operators within and just outside this radial.

For the reasons given above, no SLC should arise in the Lafarge Willington radial.

*Proposed remedy*

Should the CC continue to consider that an SLC arises in relation to Willington, the Parties propose to divest the Willington quarry itself<sup>4</sup>, together with additional consented reserves at Roxton<sup>5</sup>. The divestment of Willington will remove the centre of the radial and thus remedy the SLC the CC provisionally identified in this area<sup>6</sup>.

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<sup>2</sup> The CC has adopted wider radials for Tarmac Broom and Potton (at [redacted]-mile for primary aggregates, Tarmac non-urban sites), and Lafarge Sandy Heath (at [redacted]-mile for primary aggregates, Lafarge non-urban sites). None of these radials have been identified as SLC areas because they capture more than three sand and gravel fascias. Moreover, the primary aggregates share of production of the JV are substantially lower because the radials include a larger set of competitors who will constrain the Parties post-JV.

<sup>3</sup> See paragraph 4.2.1 of the Submission of 12 March 2012.

<sup>4</sup> [redacted]. The Parties consider that, even if any competition concerns arise in light of the above, the divestment of Lafarge Willington alone will be sufficient to remedy the SLC provisionally identified in this area.

<sup>5</sup> The Roxton reserves are [redacted] of consented reserves and are located approximately 3miles from Willington. [redacted]

<sup>6</sup> This approach is consistent with the CC's methodology in identifying potentially problematic areas where, to the extent that an SLC is provisionally found in a radial, that radial will be identified as potentially problematic irrespective of whether it would also fall within another problem radial (for example, the CC identified both Tarmac Swinden and Tarmac Wensley as problem areas despite the fact that both sites fall within one another's radials). By implication, to the extent that the site which has caused the area to be identified as potentially problematic is removed, then no SLC could arise in the area; an SLC would only exist in the area to the extent that the radial was also captured by a separately identified problem area. In the case of Willington, there is no such separately identified problem area.

Furthermore, the Parties consider that the divestment of Willington alone would be a sufficient remedy because, as identified above, the good transport links which the area benefits from means that aggregates tend to travel further than other “urban” sites meaning that its classification as an “urban” site may be misleading. On the basis of the [X] mile Tarmac and [X] mile Lafarge non-urban radials set-out above by way of illustration, the divestment of Willington would reduce the Parties’ combined share of primary aggregates production in the area to [X]% or [X]%, respectively.

Furthermore, as outlined above, there is a very significant presence of third party aggregates producers just outside the radial who will continue to constrain the Parties in the area post JV<sup>7</sup> and on the basis of a [X] mile radius as an illustration (capturing Needingworth which can supply into and throughout the area), the divestment of Willington would reduce the Parties’ combined share of primary aggregates production in the area to [X]%.

Finally, if the CC does not accept the Parties’ proposed remedies identified above, the Parties would propose to divest Tarmac Potton and Lafarge Willington, together with additional consented reserves at Roxton. The proposed divestments of Lafarge Willington and Tarmac Potton account for [X] percentage points out of the [X] percentage point increment in the Lafarge Willington radial, resulting in a small net increment post-divestment.

In assessing the Parties’ proposals as set out above, the CC should note that both Lafarge Willington and Tarmac Potton offer a clean divestment of a standalone asset capable of independent operation by a third party and are predominantly focused on external sales. The Parties propose to include co-located RMX assets and landfill activities with the divestment of Lafarge Willington. The divestment of Lafarge Willington would also include the transfer of permits to conduct recycling activities on-site. Lafarge does not consider that any consents would prevent the transfer of Lafarge Willington to a third party and Anglo American does not consider that any consents would prevent the transfer of Tarmac Potton to a third party.

### 3 Tarmac Wensley, Tarmac Swinden

#### *De minimus increment following reclassification of Lafarge Dry Rigg*

The CC has concluded in Paragraph 13 of the Notice that there is no SLC in the radial around Tarmac Clitheroe on the basis that Lafarge’s share in primary aggregates, crushed rock and all aggregates is “virtually zero”.

On the same basis, there is no SLC in the radials around Tarmac Wensley and Tarmac Swinden. As explained in response to the CC’s Provisional Findings<sup>8</sup>, following reclassification of the transaction data for Lafarge Dry Rigg, the 2010 output of generic construction aggregates from that site was [X]. This results in a de minimis overlap in the radial around Tarmac Wensley of [X] per cent and of [X] per cent around Swinden based on the Parties’ calculations.<sup>9</sup>

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<sup>7</sup> In particular, the CC should consider that Hanson at Needingworth, by capitalising on economies of scale will easily be able to sell aggregates into and throughout the Willington radial.

<sup>8</sup> See section 4.2.3(i)(a) of the Parties’ submission of 12 March 2012.

<sup>9</sup> [X].

As a result of the very small presence of Lafarge in both of these radials and the very small increment [X] in shares of production which the JV would give rise to, it is not conceivable that the JV will give rise to a substantial lessening of competition in these areas. This is particularly so given that (i) the significant levels of 3<sup>rd</sup> party overcapacity in these areas would constrain any attempted unilateral conduct by the JV<sup>10</sup>, (ii) secondary and recycled aggregates producers will continue to pose a significant competitive constraint on the activities of JV in these areas and (iii) there is a significant presence of other primary aggregates producers who are located outside the radial but who will continue to sell into the radial.

*Proposed remedy*

To the extent that the CC does not accept the point above, the divestment of Wensley (which resolves the Wensley radial) itself, also removes almost the entire increment in the Swinden radial. Specifically, the divested share in the Swinden area is [X]% resulting in a net increment of only [X]% post-Wensley divestment.<sup>11</sup> This [X]% net increment in the Swinden area post-divestment of Wensley could not be expected to have any appreciable impact on competition in the area and therefore should not be considered problematic. Consequently, to the extent that the CC does not accept the Parties' views on Wensley and Swinden as set out in the paragraphs above, the Parties consider that the divestment of Wensley alone would be sufficient to remedy the perceived SLCs in both the Wensley and Swinden radials.

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<sup>10</sup> The Parties' estimate there to be approximately [X]% of 3rd party (excluding secondary and recycled aggregates producers) excess capacity in each of these radials based on 2010 production volumes.

<sup>11</sup> The [X]% increment in the Tarmac Swinden radial resulting from the overlap with [X], less the [X]% share of supply divested from Tarmac Wensley, results in a net increment in share of supply of only [X]%.