

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

### **Interim undertakings given by Hanson under section 157 of the Enterprise Act 2002**

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).

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) gave rise to an adverse effect on competition (AEC) in those markets (the GB cement markets);
- (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 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 to address those AECs and the resulting customer detriments, remedies should be imposed under [section 138\(2\)](#) of the Act consisting, in particular, in the divestiture of a cement plant by Lafarge Tarmac and an active GGBS plant by Hanson, together with the right of the acquirer of the GGBS plant to obtain supplies of granulated blast furnace slag (GBS) or pellite and access to existing stockpiles of GBS or pellite; and
- (e) a monitoring trustee should be appointed as soon as reasonably practicable following the publication of the Report, for the purpose in particular of ensuring the protection of the divestiture package.

The Reference has not been finally determined in accordance with section 183(3) of the Act, and the CC wishes to prevent action being taken which might impede the taking of any action by the CC under section 138(2) of the Act.

Hanson accordingly gives to the CC the following undertakings for the purposes of section 157 of the Act (the Undertakings).

#### **Safeguard of position pending divestiture**

1. Hanson undertakes not to take any action without the prior written consent of the CC which might prejudice the implementation of the GGBS Divestiture Remedy, including in particular:
  - (a) except in the ordinary course of business, the making of any changes to the operation of a Protected GGBS Plant or to the organization of the business carried on at that plant, including any changes to:

- (i) staff who are in a position of executive or senior managerial responsibility in relation to the plant; or
  - (ii) any other staff whose performance could materially affect the viability of the plant; and
- (b) any action which might impair the ability of a Protected GGBS Plant to compete independently subsequent to its divestiture.

Where a staff member within subparagraph (a)(i) or (ii) resigns or is dismissed for gross breach of contract, Hanson undertakes to inform the CC as soon as possible.

2. Hanson undertakes to safeguard the Protected GGBS Plants for the purposes of the implementation of the GGBS Divestiture Remedy, and in particular to:
- (a) keep all Protected GGBS Plants in good working order;
  - (b) avoid disposing of any Protected GGBS Plant;
  - (c) maintain and preserve all the movable or immovable assets at or associated with a Protected GGBS Plant, whether tangible or (where relevant to its operation) intangible; and
  - (d) except in the ordinary course of business, avoid disposing of any of the assets mentioned in subparagraph (c) without the prior written consent of the CC.

### **Monitoring trustee**

3. Hanson undertakes that it will:
- (a) secure the appointment of a Monitoring Trustee to perform on behalf of the CC the function of monitoring and reviewing compliance with these Undertakings; and
  - (b) provide the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may reasonably require to enable it to carry out its duties.

The appointment of the Monitoring Trustee, and its Mandate, are subject to the approval of the CC.

4. Appendix A to these Undertakings sets out:
- (a) qualifications and other requirements relating to the Monitoring Trustee;
  - (b) the procedure for making the appointment; and
  - (c) matters that are to be provided for in the Mandate.

### **Consent**

5. Hanson:
- (a) undertakes that, where the Undertakings or any one of them require the consent or approval of the CC (however that requirement is expressed), it will seek that consent or approval in writing;

- (b) undertakes that any such application for the CC's consent or approval will make full disclosure of every material fact that, having made all reasonable enquiries, it believes is relevant to the CC's decision; and
  - (c) recognizes that where the CC grants consent or approval on the basis of misleading or incomplete information, the consent or approval is voidable at the election of the CC.
- 6. In the event that Hanson discovers that an application by it for consent or approval has been made without full disclosure and is therefore incomplete, it undertakes to:
  - (a) inform the CC in writing identifying the particulars in which the application for consent is incomplete within two working days of becoming aware that the application is incomplete; and
  - (b) at the same time or as soon as possible thereafter provide to the CC an application for consent that is complete.
- 7. Hanson undertakes to use all reasonable endeavours to ensure that each such application is made so that it is received by the CC at least five working days, or such lesser period as the CC may allow, before the day on which the CC's consent or approval is necessary to avoid a breach of these Undertakings.
- 8. Hanson recognizes that the CC is not required to use more than its reasonable endeavours to grant or refuse any consent or approval within that period of five working days.
- 9. However, where the application for consent relates to changes to staff under paragraph 1(a)(i) or (ii), the prior written consent of the CC is deemed to have been given if no notice of its refusal is given within seven working days of the application.

### **Compliance statements**

- 10. Hanson undertakes:
  - (a) to provide the CC with such information or statement of compliance as the CC may from time to time require for the purposes of monitoring its compliance with these Undertakings; and
  - (b) in particular, on 28 March 2014 and subsequently on the 28<sup>th</sup> of each month (or, where the 28<sup>th</sup> does not fall on a working day, the first working day thereafter) to provide a monthly statement confirming compliance with these Undertakings in the form set out in Appendix B.

### **Directions**

- 11. Hanson undertakes to comply, so far as it is able, with such written directions as the CC may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings.

### **Commencement and termination etc**

- 12. In accordance with section 157(3) of the Act, these Undertakings come into force when they are accepted by the CC.

13. Subject to the variation, supersession or release of these Undertakings under section 157(3) of the Act, they shall remain in force until the final determination of the Reference.
14. The variation, termination, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights arising prior to such variation, termination, release or supersession.

### **Effect of invalidity**

15. Hanson undertakes that:
  - (a) should any provision of these Undertakings be held by any court or tribunal to be contrary to law or invalid for any reason, it will continue to observe the remaining provisions; and
  - (b) it will not rely on any default or want of authority on the part of its signatory, or any of its officers or employees, in the execution of these Undertakings unless it is directed to do so by the CC.

### **Notifications**

16. A notice under these Undertakings may be given:
  - (a) to the CC by giving it to Brid McHugh, Remedies Coordinator, Competition Commission, Victoria House, Southampton Row, London WC1B 4AD or by email to [Brid.McHugh@cc.gsi.gov.uk](mailto:Brid.McHugh@cc.gsi.gov.uk); and
  - (b) to Hanson by giving it to Edward Gretton, Head of Legal, Hanson Limited, Hanson House, 14 Castle Hill, Maidenhead, SL6 4JJ or by email to [edward.gretton@hanson.com](mailto:edward.gretton@hanson.com).
17. The particulars given in paragraph 16 may be updated by giving notice of the amended particulars to the CC or, as the case may be, Hanson.

### **Interpretation**

18. These Undertakings give effect to the conclusions of the CC as to the need for interim measures stated in Section 13 of the Report and shall be construed consistently with, and to give effect, to those conclusions.
19. References in these Undertakings (however expressed) to Hanson undertaking to take, or to avoid taking, any action are to be construed where necessary as references to Hanson undertaking to procure that such action is taken or (as the case may be) avoided.
20. In these Undertakings (including Appendix A):
  - (a) words and expressions defined in the recitals to these Undertakings have the same meaning as in those recitals; and
  - (b) words and expressions have the meanings assigned to them below.

<i>Word or expression</i>	<i>Meaning</i>
<b>Disposing of</b>	Selling, transferring, conveying, or agreeing to sell transfer or convey, or granting any right or interest whether legal or equitable in or over, or otherwise in whole or part disposing of or relinquishing control over.
<b>Final determination</b>	The meaning given in section 183(3) to (6) of the Act.
<b>GGBS Divestiture Remedy</b>	The remedy consisting in the divestiture (at the option of Hanson) of one of its active GGBS plants, namely the plant at Scunthorpe, Port Talbot or Purfleet (including the assets and operations required for the plant to compete on a stand-alone basis, and accompanied in the case of the Port Talbot plant by divestitures of Hanson's Glasgow and Teignmouth depots), and arrangements relating to the supply of and access to GBS and pellite, as set out in Section 13 of the Report at paragraph 13.5(c) and Figure 13.4.
<b>Hanson</b>	Hanson Limited, a company with registered number 04626078, together with Castle Cement Limited, a company with registered number 02182762, both with registered office at Hanson House, 14 Castle Hill, Maidenhead SL6 4JJ.
<b>Mandate</b>	The terms and conditions of appointment of the Monitoring Trustee.
<b>Monitoring Trustee</b>	The person appointed in accordance with paragraph 3 above and Appendix A.
<b>Notice</b>	A written communication sent by post, fax, personal delivery, or email.
<b>Ordinary course of business</b>	Matters connected to the day-to-day supply of goods and services by Hanson.
<b>Protected GGBS Plant</b>	A GGBS plant of Hanson situated at: (1) Port Talbot in Neath Port Talbot, Wales, together with the Glasgow and Teignmouth depots used for the purposes of that plant; (2) Scunthorpe in North Lincolnshire; or (3) Purfleet in Essex.
<b>Safeguard</b>	Preserve as a viable, competitive and marketable business asset, including making any capital expenditure necessary for that purpose.
<b>Working day</b>	Any day other than a Saturday or a Sunday on which the banks are open for business in England.

**Execution**

FOR AND ON BEHALF OF Hanson Limited

..... Signature

Jim Claydon

Managing Director – Cement

27 February 2014

FOR AND ON BEHALF OF Castle Cement Limited

..... Signature

Jim Claydon

Managing Director – Cement

27 February 2014

## Monitoring trustee

### Qualifications and other requirements

1. The Monitoring Trustee must:
  - (a) possess appropriate qualifications and experience to carry out the Trustee Functions;
  - (b) act on behalf of the CC and be under an obligation to the CC to carry out those functions to the best of its abilities;
  - (c) neither have nor become exposed to a conflict of interest that impairs its objectivity and independence in discharging its duties, unless any actual or potential conflict can be resolved in a manner and within a time limit agreed by the CC.
2. Hanson shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with its Mandate, and in such a way as to not impede the Monitoring Trustee's independence or ability to effectively and properly carry out the Trustee Functions.

### Procedure for appointment

3. The appointment of the Monitoring Trustee and its Mandate are subject to the approval of the CC. Hanson must inform the CC as soon as is reasonably practical and in any event by no later than two working days after the Notification Date of the identity of the Monitoring Trustee that Hanson proposes to appoint, and provide the CC with the draft Mandate. Once the Monitoring Trustee and draft Mandate have been approved by the CC and appointed, Hanson must provide the CC with a copy of the final agreed Mandate.
4. If the proposed Monitoring Trustee is rejected by the CC, Hanson shall submit the names of at least two further persons within five working days starting with the date on which they were informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 1 to 3 above.
5. The provisions of paragraph 6 below shall apply where:
  - (a) Hanson fails to nominate persons in accordance with paragraphs 3 or 4 above;
  - (b) the further persons nominated in accordance with paragraph 4 above are rejected by the CC; or
  - (c) Hanson is unable for any reason to conclude the appointment of the Monitoring Trustee within a time limit specified by the CC.
6. The CC shall nominate one or more persons to act as Monitoring Trustee, and Hanson shall appoint one of such persons as Monitoring Trustee within two working days starting with the date of such nomination under the terms of a Mandate approved by the CC.

## **Matters to be provided for in the Mandate**

7. The duties of the Monitoring Trustee are to:
  - (a) take such steps as it reasonably considers necessary in order to carry out the Trustee Functions effectively for the purpose of evaluating that the Undertakings are being complied with; and
  - (b) comply with any reasonable requests made by the CC for that purpose.
8. The Trustee Functions are to monitor and review compliance with these Undertakings, and in particular to:
  - (a) monitor whether the Protected GGBS Plants are safeguarded in accordance with paragraphs 1 to 3 of the Undertakings;
  - (b) monitor whether directions given by the CC under paragraph 11 of the Undertakings are complied with;
  - (c) report to the CC at least once a month on the current trading performance of each Protected GGBS Plant;
  - (d) monitor any preparatory steps that may be taken by Hanson to dispose of any of the Protected GGBS Plants in accordance with the GGBS Divestiture Remedy; and
  - (e) monitor or review any such other matter as the CC may direct from time to time for the purpose verifying compliance with the Undertakings.
9. The Monitoring Trustee shall promptly inform the CC of any material developments arising from the carrying out of its duties, and shall in any event provide the CC with a written report every four weeks.
10. The Mandate may make such further provision or provision for such other matters as the CC considers appropriate, and in particular for the duties and obligations of Hanson in relation to the Monitoring Trustee.

## **Interpretation**

11. In this appendix:
  - (a) 'Notification Date' means the date that the CC's acceptance of the Undertakings is notified to Hanson;
  - (b) 'person' includes a body of persons corporate or incorporate; and
  - (c) 'Trustee Functions' means the functions specified in paragraph 8.

## AGGREGATES, CEMENT AND READY-MIX CONCRETE MARKET INVESTIGATION: FINAL REPORT

### Compliance statement

I, Jim Claydon, a Managing Director of Hanson Limited and of Castle Cement Limited confirm on behalf of Hanson that, in respect of the period from [x] to [y]:

1. Hanson has complied with the Interim Undertakings.
2. Except in accordance with the Interim Undertakings, no action has been taken by Hanson which might prejudice the implementation of the GGBS Divestiture Remedy, in particular action mentioned in paragraphs 3 and 4 below.
3. Except in accordance with the Interim Undertakings, Hanson has avoided making any changes to the operation of a Protected GGBS Plant or to the organization of the business carried on at that plant, including any changes to:
  - (a) staff who are in a position of executive or senior managerial responsibility in relation to the plant; or
  - (b) any other staff whose performance could materially affect the viability of the plant.
4. Except in accordance with the Interim Undertakings, Hanson has avoided taking any action which might impair the ability of a Protected GGBS Plant to compete independently subsequent to its divestiture.
5. The Protected GGBS Plants have been safeguarded by Hanson for the purposes of the implementation of the GGBS Divestiture Remedy, and in particular:
  - (a) all Protected GGBS Plants have been kept in good working order;
  - (b) no Protected GGBS Plant has been disposed of;
  - (c) all of the plant assets have been maintained and preserved; and
  - (d) except in accordance with the Interim Undertakings, none of the plant assets has been disposed of.

### Interpretation

6. In this Compliance statement:
  - (a) 'Interim Undertakings' means the interim undertakings given by Hanson that were accepted by the Competition Commission on [date];
  - (b) words and expressions have the meanings given to them by the Interim Undertakings;
  - (c) 'plant assets' means the assets mentioned in paragraph 2(c) of the Interim Undertakings.

FOR AND ON BEHALF OF Hanson Limited

..... Signature

..... Name

..... Title

..... Date

FOR AND ON BEHALF OF Castle Cement Limited

..... Signature

..... Name

..... Title

..... Date