

## The Mineral Products Association (MPA)

### Competition Commission investigation into the markets for the supply of aggregates, cement and ready-mix concrete in GB

#### **1 Executive summary**

- 1.1 The MPA wishes to assist the Competition Commission in its investigation. There are a number of areas where we feel strongly that further work is necessary for the CC to develop a more complete and accurate understanding of what is a complex and competitive industry operating in very difficult and demanding market conditions down some 30% since 2007.
- 1.2 We would highlight concerns that the significant cost and resource requirements imposed on the industry by the Office of Fair Trading Market Study and Competition Commission Market Investigation are taking place while market activity remains extremely depressed and the investigatory burden placed on industry businesses should be proportionate.
- 1.3 The MPA believes it is essential that, as part of its in-depth investigation, the Competition Commission is provided with accurate, thorough and balanced explanations of the features of the markets and how they link together as part of an efficient and reliable supply chain.
- 1.4 The MPA can assist with this and believes that this will help the Competition Commission assess the markets in question, including the positive features of the markets, in the context of the regulatory and planning environment within which the industries operate.

#### **2 About the MPA**

- 2.1 The MPA is the trade association for the aggregates, asphalt, cement, concrete, lime, mortar and silica sand industries. The MPA is the sectoral voice for the mineral products sector and represents around 430 companies throughout the UK including a substantial number of SME companies as well as the 9 major international and global companies. The MPA is therefore well placed to provide views that are representative of the sectors of interest to the Competition Commission.
- 2.2 MPA membership covers 100% of GB cement production, 90% of primary aggregates production, 95% of asphalt production, 75% of ready-mixed concrete production and 70% of precast concrete production.
- 2.3 MPA governance includes a Board of Directors with representatives from the 5 global companies and 5 SME companies (the Board). The focus of the Board is financial and strategic. The MPA's General Council is responsible for all matters relating to membership and includes members of the Board together with the Chairmen of the English Regions, The Concrete Centre, the 12 Product Groups and 4 Core Standing committees. Representatives of the MPA affiliated organisations in Northern Ireland and Scotland are also members of the MPA's General Council, as are British Precast and the Mineral Products Qualifications Council.

- 2.4 The MPA has particular knowledge of and expertise in technical and regulatory issues affecting the markets under review and, in particular, the operation and impact of the mineral planning system relating to the extraction and supply of mineral products.
- 2.5 Each year the industry supplies in excess of £5 billion of materials to the £120 billion construction industry and other sectors. Industry production represents the largest materials flow in the UK economy and is also one of the largest manufacturing sectors.
- 3 The MPA's interest in the present MIR**
- 3.1 Prior to the OFT's decision to refer the relevant markets to the Competition Commission for further investigation, the MPA responded to the OFT's market study consultation on 30 September 2011 having also submitted a response to the initial Aggregates market study in October 2010. The MPA wishes both of these submissions to be taken into account by the Competition Commission as part of its investigation and appropriate weight given.
- 3.2 The MPA's previous responses focused on the non-commercial, e.g. regulatory and planning issues identified by the OFT and on matters relating to market features.
- 3.3 The MPA's responses identified a variety of concerns with the OFT's findings including those relating to:
- 3.3.1 the market concentration analyses of the aggregates, ready mixed concrete and cement sectors particularly with regard to the exclusion of recycled and secondary materials;
  - 3.3.2 the rapid and recent growth in the number of volumetric suppliers of ready mixed concrete and imports of cement; and
  - 3.3.3 the absence of empirical evidence indicating that the operation of the industry was having any detrimental effect on consumers.
- 3.4 The MPA also sought to explain and address concerns that the operation of the mineral planning system may result in anti-competitive effects.
- 3.5 Notwithstanding the MPA's concerns, the OFT decided to refer the markets to the Competition Commission for an in-depth Market Investigation. This now provides the opportunity for a more comprehensive review based on a clearer understanding of the issues in their proper context, informed by empirical data and lending appropriate weight to the positive effects of certain market features.
- 3.6 Due to the extensive range of its membership the MPA believes that it can provide a representative industry contribution to the Market Investigation and can assist the Competition Commission in raising awareness of the issues involved.
- 3.7 In the MPA's view, it is possible that the OFT gave undue weight to the evidence and comments provided by a small number of contributors to the Market Study. The MPA considers, therefore, that it is essential that evidence to this Market Investigation is taken from a more representative and meaningful sample of industry participants including end users.
- 3.8 The MPA would urge the Competition Commission to seek information from a wider variety of sources, namely from different types and sizes of groups

operating within the industry, to ensure that a properly representative range of views informs the Competition Commission's analysis.

#### **4 The MPA's remit/scope of submission**

4.1 With the above considerations in mind, given its industry-wide focus and expertise, the MPA wishes to contribute to the Competition Commission's investigation with particular emphasis on:

4.1.1 market definition; and

4.1.2 the 'Policy and Regulation' hypothesis/theory of harm (including the examples of issues provisionally identified by the Competition Commission), albeit the scope of this submission is not to elaborate on such issues in detail here, but these are set out in the 2 previous MPA submissions to the OFT.

#### **5 Market Definition**

5.1 By way of initial observations, to assist the Competition Commission's analysis of the affected markets and the degree of market concentration, the MPA considers that there are a number of areas which would merit more in depth review.

5.2 The Competition Commission will be aware that the OFT Market Study defined the aggregates market as a market for primary aggregates, distinguishing it from other types of aggregates, such as secondary and recycled aggregates and concluded that "the five major players" accounted for "75% of aggregates sales".

5.3 In the MPA's view, this underplays the substitutability between primary aggregates and other types of aggregates and, as a result, has the potential to exaggerate the degree of concentration in the market and market concerns associated with such concentration. As far as the MPA is concerned, there is merit in viewing the aggregates market as a single market comprising primary, recycled and secondary sources of materials.

5.4 It is worth noting that the share of recycled and secondary materials in the aggregates market increased from 10% in 1990 to 28% currently and these sources are regarded by the industry as part of the mainstream market. This trend is indicative of the growing pressure on businesses to produce and use sustainable aggregates and to make the most efficient use of primary, recycled and secondary sources of supply. In part, this trend is encouraged by tax measures such as the Landfill Tax and the Aggregates levy and shifts in technical specifications, quality protocols and improved confidence in performance.

5.5 The MPA believes these areas and the effects they are having on the evolution of the market would benefit from further review by the Competition Commission, given the wider remit of this Market Investigation. Consideration of WRAP's 'Aggregain' website would be a good starting point.

5.6 MPA considers it important that the Competition Commission also takes account of the following issues:

- minerals can only be dug where they lie, which distinguishes minerals development from other forms of development, e.g. housing;

- the ownership and control of mineral bearing land and the impact land under option and leasehold arrangements versus freehold can bring to bear upon the timescales relating to extraction;
- the timescales that are required from the initial identification of a potential extraction site to the commencement of extraction;
- the impact of variable geology nationally, locally and within a site;
- the impact of changing regulation as a site proceeds which can affect the yield and rate of extraction;
- the impact of EU and UK technical standards on quality requirements;
- the impact of logistics and distribution patterns; and
- recognition that aggregates markets are complex and supplied from sources which themselves are variable.

#### **Cement**

- 5.7 MPA considers that the level and influence of cement imports in the UK is growing significantly; indeed, a substantial proportion of cement supplied in the UK is now accounted for by imports and official data is likely to understate the full extent of imports, for example by road from Ireland. As part of its review, the MPA would urge the Competition Commission to consider the extent to which EU and UK regulation is impacting and may impact upon domestic production.
- 5.8 As the Competition Commission may be aware, emissions trading, industry-financed subsidies to the renewable energy sector and the Climate Change Levy may be undermining the ability of UK-based cement producers to compete with rivals in countries that do not have equally exacting environmental regimes.

#### **Ready mix concrete**

- 5.9 MPA invites the Competition Commission to review in greater depth the impact and growth of volumetric suppliers. We believe insufficient weight has been given to the rapid and continuing growth in this market, particularly as many of the operators have neither aggregate nor cement assets. In the MPA's view, the occurrence and expansion of volumetric suppliers should not be undervalued when assessing actual barriers to market entry and the degree of healthy competition prevailing in this market.

#### **Anglo American/Lafarge**

- 5.10 The Competition Commission has rightly separated its review of the Anglo American/Lafarge JV from the present Market Investigation; however, it has invited comments on the relevance of its provisional findings concerning the JV to the Market Investigation.
- 5.11 The outcome of the merger review may, of course, mean that those markets presently under review as part of the Market Investigation will inevitably change in some months' time. The Competition Commission will have to factor in such potential developments to its current analysis, although this will be a challenge at this stage.

- 5.12 The MPA's main preliminary observation is that, given the broader scope of the Market Investigation, it is difficult and perhaps inappropriate to read across too much from the Competition Commission's provisional findings in respect of the merger. The Market Investigation focuses on a much wider range of diverse issues, each of which merits independent research and consideration.

## 6 Policy and regulation

The MPA considers that proper weight must be given to the influence of policy and regulation on competition in the sector. In addition to the 2 specific regulatory areas highlighted below relating to EUETS/carbon and energy measures and the planning regime, the sector is subjected to a vast array of permitting and licensing requirements, as well as many wide ranging and significant EU Directives and UK measures, e.g.

- Water Framework Directive
- Landfill Directive
- Mine Waste Directive
- Habitats and Wild Birds Directive
- Environmental permitting and Environmental Impact Assessment
- Landfill Tax and Aggregates levy
- Review of Old Mineral Permissions

Each of these gives rise to varying cost and operational uncertainties, which add to the cumulative burden placed on operators.

**EU Emissions Trading System and other carbon and energy related measures.**

- 6.1 Regulatory issues such as 'carbon measures' can have an important effect on competition, particularly where they may operate in such a way as to undermine the level playing field that would normally prevail in a geographic market.
- 6.2 In our view, the EU Emissions Trading Scheme (EUETS) will have major future cost implications for UK and European cement businesses. In particular, the EUETS could distort domestic/EU competition by encouraging non EU imports which, by virtue of their origin, are not subject to the higher levies that domestic products shoulder.
- 6.3 At this stage, information on the identity and location of such sources is perhaps unclear; however, it is something that merits further analysis by the Competition Commission, given its potential to affect the markets under review.

### **Planning regime**

- 6.4 MPA believes that the mineral planning system for aggregates (MASS) has operated soundly in general terms over the last 30 years or so, although the performance of the plan led system is very poor and the application of landbank policy is variable. Moreover, the MPA considers that the planning

success rates for both large suppliers and SMEs are similar, which is indicative of a level playing field.

- 6.5 However, the way in which the system is implemented could be improved significantly and such improvements are likely to have the effect of enhancing efficiency.
- 6.6 The MPA has, in its submissions to the OFT, previously identified concerns with how the system is implemented, for example:
- an overly rigid application of landbank policy by certain authorities (misinterpreting the purpose of certain guidelines and the degree of flexibility available to such authorities);
  - delays, uncertainties and costs associated with the planning process (including the preparation of planning applications); and
  - the lack of resource available to mineral planning authorities.
- 6.7 The MPA believes that it would benefit the Competition Commission's analysis considerably, if these issues and their impacts could be explored in greater detail.

#### **Other issues**

- 6.8 As far as other market features are concerned, the MPA believes that certain features merit particular attention. These include the impact of European and British Standards on product homogeneity and, in particular, the move towards performance standards, which are enabling the use of a wider variety of materials for similar applications, thereby enhancing choice and competition. We would also highlight the potential positive contribution of market features, for example as acknowledged in the OFT Market Study (paragraph 4.28) with regard to vertical integration.

### **7 Next steps/conclusion**

- 7.1 The MPA is grateful for the opportunity to participate in the Competition Commission's Market Investigation and believes that its position, as the industry trade body across each of the three markets, will enable it to provide a detailed and representative range of views to assist the Competition Commission in its deliberations. Representatives from the MPA would be willing to attend the Competition Commission to explain certain features of the markets and associated regulation in more detail.