

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

### Summary of response hearing with Cemex held on 28 June 2013

#### Provisional findings response

1. Cemex restated its rejection of the Competition Commission's (CC) findings of tacit coordination in the GB cement market. Cemex believed that this finding was flawed in several fundamental ways.
2. Cemex said that despite the UK market fundamentally changing in recent years, the CC had continued to place significant emphasis on historical evidence. Cemex claimed that the CC relied on this evidence in preference to evidence of the competitiveness of the current market.
3. Cemex noted that Hope Construction Materials (HCM) was fully operational and competing strongly for volumes. In addition, there had been a continuous growth in importers and Cemex was suffering significant price reductions for its products in the market just as its costs were rising.
4. Cemex believed that, with its acquisition of a number of cement terminals throughout the UK, CRH was more than likely in the process of becoming a major new importer. With its excess international production capacity in both Ireland and Continental Europe, CRH was competing for a significant position in the UK market.
5. Likewise, Quinn, another Irish cement manufacturer, was thriving and in the process of constructing four new silos in Rochester in order to increase its competitiveness in the UK market.
6. Cemex disagreed with the CC's finding that importers had not acted as a constraint on domestic cement producers. Indeed, Cemex had recently stopped shipments of domestically produced cement from its South Ferriby plant to Scotland. Instead, Cemex was importing [redacted] tonnes of cement from [redacted] directly to Scotland. This was an example of it being easier, cheaper and more profitable to import material than producing it domestically from Cemex's own plants.
7. Cemex said that every concrete producer in the UK would use the availability of imported cement to negotiate down the price they were willing to pay for Cemex's product.
8. Cemex also emphasized that neither the new joint venture between Lafarge Tarmac, nor HCM, were present in the market when the inquiry began. This had had a profound effect on the market as both Lafarge Tarmac and HCM had competed hard for capacity and prices had dropped by more than [redacted] despite increasing costs. The entry of Hope into the GB market had created a fundamental change that undermined the stability of any alleged co-ordination in the GB market.
9. Cemex considered that the profitability model used by the CC was particularly sensitive to assumptions. Even minute changes in such assumptions could indicate that GB producers were not making excess profits. This meant that the CC should be careful in placing high levels of confidence on any conclusions it might draw from the model.

## **Importers market share**

10. As far as Cemex was aware, Aggregate Industries (AI) was importing all of its cement for its own ready-mix business. This had probably put an extra 2 per cent market share on imports compared with 2011. There had also been additional imports from Ireland.
11. Exporters still based their decisions on running or achieving 50 per cent capacity despite the fact that the market price for carbon was lower than it had been in the past. Cemex was purchasing its clinker from Ireland and buying it at marginal cost up to the point that exporters hit their 50 per cent threshold. Cemex stated that, given the amount of credits involved, a marginal aspect was still substantial despite the price being low.
12. Cemex had taken the decision to start importing cement from Spain for its Scottish market. Previously this had been produced in South Ferriby and then shipped to Scotland where Cemex had an import terminal. The cost at which Cemex could buy cement from Spain was lower than the marginal cost of making it and transporting cement from South Ferriby. [REDACTED]
13. Cemex was buying cement from [REDACTED], out of [REDACTED] delivered into the UK. Cemex believed that [REDACTED] was pricing this on a marginal basis as there was an Emissions Trading System (ETS) partial cessation threshold benefit.

## **Standard of proof and proportionality of remedies for an AEC**

14. Cemex noted that, given the steer from the European Court, there needed to be a high standard of proof in order to present a convincing case of coordinated effects taking place. The CC should not disregard any potential uncertainties in the evidence that led it to its provisional AEC finding. Cemex pointed to the case of HCM having changed the market and that this situation should not be ignored by the CC when it came to remedies.
15. With regards to proportionality of remedies, Cemex wished to highlight the fact that [REDACTED]. Therefore any divestment of a plant would have a greater impact on it than would the divestment of one of its competitor's plants. Cemex pointed out that while it only had two plants the other players had three or four.

## **Restriction of MPA and BIS data**

16. Cemex broadly agreed with the CC that restricting the publication of Mineral Products Association (MPA) and Department for Business, Innovation and Skills (BIS) data would remove any transparency and consequently any alleged coordination could not be maintained.
17. However, Cemex did not agree with the CC's assertion that the Majors used MPA/ BIS data to distort competition, rather that it aided Cemex in planning its volumes. By using the data, Cemex was able to gauge the market and its own production capacity which was necessary in a capital-intensive business. In terms of planning, the MPA data allowed Cemex to foresee any potential upturn in the market with a degree of accuracy.
18. A delay in releasing data could reduce transparency and the ability of players to react to market share changes. A delay of three months would be sufficient but any longer than this and the data would cease to be relevant.

19. It would not be problematic to remove the regional breakdown of data. While this would make it harder in terms of Cemex's long-term planning process it would also prevent its competitors from tracking the impact of other players in particular parts of the country.
20. ETS data did not play a significant role for Cemex commercially, rather it was used by its sustainability team to validate whether its emissions figures were accurate.

### **Divestiture of cement and RMX plants**

21. Cemex stated that in light of the comprehensive remedies package proposed by the CC, it would be grossly disproportionate to require any producer to divest its cement or ready-mix assets. Even were the CC to proceed with such a divestiture, Cemex submitted that the CC must take into account the fact that they had not contributed to any alleged harm.
22. Cemex did not believe that the CC needed to create a new player in the market as there already existed a new player in the form of HCM. One additional player would be enough to remove any alleged coordination in the cement market. Cemex did not believe that any purchaser of a divested cement plant required in-house RMX but rather it should serve the external market.
23. From a supply-side perspective, Cemex viewed the market as national in that each cement plant, in its own right, could reach every part of the country. Therefore location was a factor that an investor would have to balance against other aspects of the plant in question. Rail links would be a critical factor to consider for such an investor and would affect the purchase price.
24. With regards to latent capacity, Cemex stated that it needed to retain a certain amount in order to cope with any potential upturn in the market. Cemex felt that the CC should not therefore focus solely on latent capacity. Although it was not technically difficult to bring capacity online at a plant such as Ferriby, it would be very expensive.
25. The CC would need to find a purchaser that knew the market in GB and also knew how to run a cement plant. To this end, Cemex believed that [X] would qualify as suitable purchasers. It considered that the negotiation process for divestment would take approximately 12 to 18 months and was also necessary in order to achieve a fair value for such an asset.
26. There was no issue with barriers to entry in ready-mix. Cemex did not always need a ready-mix capacity in order to operate as a cement producer. It had entered foreign markets without such a capacity and had competed successfully in both ready-mix and cement.
27. Cemex thought that creating a stand-alone cement producer was a preferable remedy option as opposed to addressing the vertical integration of those already in the market. Should such a producer decide that they wished to build or acquire their own ready-mix plant they could do so easily.
28. Cemex believed that it would be unfair to prevent players from investing in new ready-mix capacity if there were to be a forced divestment over a period of three years. The average age of its ready-mix plants was 35 years, therefore Cemex needed to replace or replenish them.

29. The divestment of RMX plants would not be substantially different from that of cement plants. The only difference Cemex noted was that the due diligence for a potential buyer would be more complicated due to the large number of locations involved and the need for an environmental analysis of each site.

### **Creation of a cement buying group or groups**

30. Cemex believed that there would be technical problems with a cement buying group (CBG). This was due to the fact that when buying bulk cement (as opposed to simply buying by a bag of cement and selling it on), ready-mix companies would need two to three weeks to test it in order to understand its particular qualities and how it might perform with different mixtures.
31. Cemex noted that CBGs should get a better price due to buying in bulk, however, customers should not be obliged to buy through CBGs or cement producers to sell through them.
32. It was Cemex's view that a regional or even product-specific buying group would be more effective than a national one. For example, a group of ready-mix producers might want to purchase a specific type of cement that performed in a certain way.
33. Cemex did not believe that it would be difficult to establish regional buying groups from an administrative perspective, once the technical difficulties concerning the specification of cement had been overcome.

### **Prohibition on GB cement producers sending generalized cement price announcement letters to their customers**

34. Cemex said that preventing the sending of generalized price announcement letters would reduce transparency. However, Cemex noted that it would still need to maintain some level of communication with its customers over prices. It therefore suggested that a more focused remedy might involve sending more targeted letters on a customer-by-customer basis as opposed to the sending of generalized letters.

### **Structural measures to address the AEC in relation to GGBS/GBS production in GB**

35. Even if there were more competition in the market for GGBS and this resulted in lower prices, Cemex would not look to increase the amount of GGBS that it purchased.
36. Cemex did not know whether increased competition would drive down prices as this factor was dependent on negotiation. Cemex often used fly ash as opposed to GGBS for certain mixes of material depending on its clients' requirements.

### **Other possible remedies and relevant customer benefits**

37. Cemex thought that another possible remedy would be to restrict the transfer of internal information between cement and ready-mix divisions. Cemex already had such a mechanism in place as it was Cemex's policy to run its businesses as separate entities to a certain extent.
38. A code of conduct for the industry should be established. Cemex noted that the CC had rejected the remedy imposing a generalized code of conduct but its proposed

firewall remedy would be aimed only at restricting the flow of specific types of information and that this approach would only be considered as an ancillary remedy option, which would be effective when combined with other remedies proposed by Cemex.