

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

**Note of meeting with DG Clima held on 25 June 2013**

1. The team from the Competition Commission (CC) provided an overview of the CC's provisional findings in its Aggregates, Cement and RMX market investigation, touching on the background, provisional findings and provisional views on the CC's proposed recommendation to the European Commission regarding the publication of EU Emissions Trading System (ETS) data.
2. DG Clima (DGC) told us that transparency was a feature that was widely present in environmental legislation due to the policy benefits of transparency, and stated that the publication of verified emissions data was prescribed by legislation (a list of which could be found on its website at: [http://ec.europa.eu/clima/policies/ets/documentation\\_en.htm](http://ec.europa.eu/clima/policies/ets/documentation_en.htm)); its genesis dating back to the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters—signed 25 June 1998—and implemented in the EU and member states through Directive 2003/4. It further confirmed that the European Court of Justice (Case 524/09 *Ville de Lyon v Caisse des dépôts et consignations*—<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-524/09>) held that data classified as 'environmental information', such as reports of emissions, had to be published, but certain exemptions applied to 'trading data' relating to emission allowances.
3. DGC explained that the rationale behind the publication of the EU ETS data included:
  - the policy benefits of transparency; enabling the public and interested third parties (such as NGOs, financial analysts and those active in the carbon markets, eg [X]) to see the effectiveness of the EU ETS in reaching its policy objectives (and, in the case of analysts, contributing to the efficient running of the carbon markets); and
  - the aim of facilitating compliance in reducing carbon emission.
4. The relevant data was published by the European Commission the next working day after it was provided to the European Commission on 31 March each year and everyone had access to the same information on this date. The legislation applied to the 27 EU member states (soon to be 28 with the accession of Croatia on 1 July 2013—however, Croatia had been part of the ETS since 1 January 2013) and all three member states of the European Economic Area-European Free Trade Association (EEA-EFTA)—Norway, Iceland and Liechtenstein. It covered over 10,000 installations covering the energy, industrial and, since 2012, the aviation sectors.
5. DGC explained that all participants must submit the requested data before 31 March each year. There were detailed rules in place that stipulated how this data should be recorded and these were harmonized across the member states. Each installation must record and keep the requested data and have it independently verified before submission to the respective national competent authority (in the UK, this was the Environment Agency). There were also rules applicable to the accreditation of independent verifiers. Each country also managed part of the Union registry in which this information was stored. The public could request the release of certain information

(including verified emissions data at an installation level) contained within the Union registry from national authorities as well as from the European Commission.

6. Prior to 2006, verified emissions data for the preceding year was published by 15 May (at the latest). DGC explained that under the first compliance cycle in 2006 there was a time lag of six weeks from when the data was submitted to the EU to when it was published. Some market participants managed to obtain information on the data prior to publication and that distorted trading in the carbon market. As a result, the EU opted for the publication of the data on the next working day after 31 March. After 31 March, the companies submitting this data had one month to surrender their relevant allowances equivalent to their emissions. DGC explained that by publishing the data within one working day of receiving it, no company should be able to gain an upper hand when it came to the trading of allowances in advance of submission of allowances to the EU. DGC stated that the EU had no basis on which to withhold data on CO<sub>2</sub> emissions from publication.
7. In response to the CC's Notice of Possible Remedies, DGC noted that it did not believe the recommendation could be acted on in any of the forms suggested by the CC because:
  - Under the earlier process where there was a delay in publication of six weeks, information was obtained by the market by other means in advance of publication and this had an adverse effect on trading in the carbon market. In addition, DGC noted that only ten of the 10,000-odd CO<sub>2</sub> emitting installations across the EU were GB cement plants, and so there was an issue of proportionality in changing the system for all ~10,000 installations for the sake of addressing an issue with ten of them.
  - Given the application of equal treatment principles, it would not be possible to exclude the GB cement producers from the ambit of the legislation, nor to apply a different level of aggregation to GB data.
  - DGC submitted that the publication of installation-specific information is an important aspect to this system and such data provides a means from which to benchmark the performance of plants in terms of emission reductions. DGC explained that ETS legislation—and the structure for storing the emissions data in the Union registry—was built around the emitting installation (ie a 'point-source' approach), rather than, say, around the company owning the CO<sub>2</sub>-emitting installations.
  - Aggregating cement emissions data with emissions data from other industries would not be desirable as it would not provide useful information on the environmental impact of each industry in isolation.
8. Given the disclosure rules applicable to the EU-wide registry, the CC queried whether the date by which installations submitted their data to the national authorities could be delayed. DGC told us that this would be undesirable since the publication of verified emissions data, together with the date when installations must surrender their used EUAs (ie carbon allowances), and also when they received their free allocations, was part of the well-established compliance cycle for installations under the EU ETS. Delaying publication would mean that this activity took place at too late a stage in the year.
9. [✂]