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Inquiry Coordinator  
Competition Commission

By email only: aggregates@cc.gsi.gov.uk

28 October 2013

Dear Robin

**Provisional decision on remedies – Aggregate Industries' response**

Aggregate Industries (**AI**) is grateful for the opportunity to provide its views on the provisional decision on remedies (the **Provisional Decision**) notified by the Competition Commission (**CC**) on 8 October 2013.

As a cement importer and customer, rather than a Great Britain (**GB**) cement producer, we have restricted our comments below to the Provisional Decision to those aspects of the CC's four remedies where we have sufficient market knowledge to comment meaningfully.

**Remedy measure A: divestiture of a cement plant by a Top 3 cement producer**

As set out in our response to the CC's notice of provisional remedies (the **Notice**),<sup>1</sup> in light of the CC's provisional findings that:

- (a) there are high levels of market concentration in the GB cement markets, where all ten cement plants in GB are owned by four companies, namely Lafarge Tarmac, Hanson, Cemex and Hope Construction Materials (**HCM**); and
- (b) the top three (**Top 3**) cement producers – Lafarge Tarmac (four cement works), Hanson (three) and Cemex (two) – form a group that the CC has concluded is engaged in maintaining a coordinated outcome in the GB cement markets,

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As AI is not a GB cement producer, we do not here comment on whether the particular proposed remedy – *i.e.*, the divestiture of Lafarge Tarmac's Cauldon or Tunstead cement plant – is effective and proportionate.

In considering the effectiveness of the proposed remedy, the CC has examined certain design issues, including: (i) the inclusion of ready-mix concrete (**rmx**) plants in the divestiture package; and (ii) the suitability of the purchaser.

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<sup>1</sup> Paragraph 2.1.

We note that the CC has concluded that a purchaser should be permitted to opt out from acquiring any rmx plants as part of the cement plant remedy.<sup>2</sup> As explained in our response to the Notice,<sup>3</sup> we agree with this approach and do not consider it necessary to divest rmx plants *as part of a package* with any cement plants divested under this proposed remedy in order to increase competition in the cement market and/or to ensure that the divestiture package is sufficiently attractive to guarantee that a purchaser can be found.

As regards the suitability of a purchaser for remedy measure A and particularly the criteria under paragraph 3.165(c) of the Provisional Decision, we consider AI to be a suitable purchaser, *inter alia* for the following reasons:

- (a) We note that the CC has not ruled out AI as a potential purchaser of any divested cement plant and an acquisition by AI would satisfy the CC's requirement to create a new GB cement producer through this remedy.<sup>4</sup> AI is not a current GB cement producer and has only a very limited and *ad hoc* presence in the market for external sales of cement – for these reasons, we do not consider that the acquisition of a cement plant divestiture by AI would pose any material issues to competition in the GB cement markets.
- (b) The CC has not found AI to have had any part in the CC's finding of coordination in the cement market and nor has AI been found to have infringed Article 101(1) of the Treaty on the Functioning of the European Union or equivalent prohibitions.

#### **Remedy measure B: restrictions on the disclosure of GB cement market data**

AI is not a GB cement producer but instead a cement importer and customer, principally for its own consumption in its downstream businesses. As such, we have no clear, practical understanding of the current market data disclosure arrangements, and cannot therefore comment on how the proposed remedy would affect behaviour in the market.

#### **Remedy measure C: price announcement letters remedy**

For the very limited volumes of cement that AI sells to external customers, AI's policy is not to send price announcement letters (**PALs**).

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Having ceased the issuing of PALs for all cementitious materials, we have no clear understanding of the present case for GB cement suppliers, and cannot therefore comment in detail on how the proposed remedy would affect suppliers' behaviour in the cement market.

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<sup>2</sup> Provisional Decision, paragraph 3.137.

<sup>3</sup> Paragraph 3.2.

<sup>4</sup> Provisional Decision, paragraph 3.165(c)(i).

#### **Remedy measure D: GGBS and GBS remedies**

We consider that the CC's provisional findings with respect to GGBS / GBS are very specific to the operation of the cement market in GB, principally because these products are dependent on UK domestic steel production.

AI is not active in the production of GGBS or GBS in GB. On this basis, we do not here comment on the effectiveness and/or proportionality of the proposed divestiture remedies.

Yours sincerely

James Atherton-Ham  
General Counsel  
For Aggregate Industries UK Limited