
AGGREGATE INDUSTRIES
RESPONSE TO PROVISIONAL FINDINGS

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1. INTRODUCTION AND SUMMARY

1.1 Aggregate Industries (*AI*) is grateful for the opportunity to respond to the Provisional Findings (*PFs*) published by the Competition Commission (*CC*) on 23 May 2013.

1.2 AI broadly welcomes the findings of the CC. In particular:

- (a) in respect of the competitive assessment of the aggregates market, AI welcomes the CC's finding that there is a "*lack of concerns raised by [the CC's] analysis, both across multiple local markets and in the two specific areas [the CC] assessed*"¹ and, consequently, that there are no market features giving rise to an adverse effect on competition (*AEC*) in any market in Great Britain (*GB*) for the supply of aggregates;² and
- (b) in respect of the competitive assessment of the ready-mixed concrete (*rmx*) market, AI welcomes the fact that the CC "*did not find evidence indicating widespread problems across multiple local RMX markets (whether as a result of unilateral market power or coordination)*"³ and, consequently, that there are no features giving rise to an AEC in any market in GB for the supply of rmx.⁴

1.3 AI notes the CC's conclusion that: (i) "*there was a combination of structural and conduct features that gave rise to an AEC in the GB bulk and bagged cement markets*"; and (ii) "*Lafarge Tarmac's exclusive agreements [...] for the production of GBS, and Hanson's exclusive long-term contract with Lafarge Tarmac for the production of GGBS [...] gave rise to an AEC in the GB cement markets.*"⁵ However, in relation to the cement market, AI restates its position that it is not a GB cement producer but instead a cement importer and customer, principally for its own consumption in its downstream businesses. Accordingly, AI provides no comment on the CC's *general* findings for the GB cement markets.

1.4 In this response, AI summarises its views on the PFs and comments on those instances where it believes the findings should not become final or require further changes.

2. AGGREGATES

2.1 AI welcomes and agrees with the CC's findings in respect of its competitive assessment of the aggregates market. These findings demonstrate that no features of

¹ PFs, paragraph 6.132

² *Ibid*, paragraph 12.2.

³ *Ibid*, paragraph 9.71.

⁴ *Ibid*, paragraph 12.2.

⁵ *Ibid*, paragraphs 12.3 and 12.8 respectively.

the market give rise to an AEC in any market in GB for the supply of construction aggregates.⁶

Market definition

2.2 In Part 5 of the PFs, the CC analysed the product market definition in relation to aggregates and concluded that it was appropriate to define a relevant product market for all construction aggregates.⁷ AI is pleased that the CC agrees with the market definition outlined in AI's Response to the Issues Statement (*IS Response* and *IS* respectively). In particular, the CC has recognised the high degree of supply-side substitutability between different grades of aggregates⁸ and that the choice between aggregates is largely influenced by local geology.⁹

2.3 In AI's Response to the Updated Issues Statement (*UIS Response* and *UIS* respectively) it stated that aggregates markets were local in nature and "*approximately 30 miles from the point at which the construction aggregates are produced*".¹⁰ AI recognises the CC's finding that aggregates markets are local in nature but that their precise specification, i.e. in terms of delivery distance, could vary according to a variety of local factors.¹¹

Unilateral market power is not present

2.4 AI agrees with the CC's analysis which found no unilateral market power present in the aggregates market. Therefore, the CC was able to conclude that there were no market features giving rise to an AEC as a result of unilateral conduct in relation to the supply of construction aggregates in GB.¹² AI notes that the CC's conclusions are wholly consistent with the evidence and analysis which it has provided during the market investigation. In particular:¹³

- (a) the finding that customers enjoy a wide choice of aggregates supplier;¹⁴
- (b) AI's analysis of supplier concentration showed a strong positive relationship between the number of competitors and the level of demand for aggregates in a given area underscoring the limited extent of high concentration in local markets found by the CC;¹⁵ and

⁶ *Ibid*, paragraph 6.132.

⁷ *Ibid*, paragraph 5.24. AI notes that the CC has defined separate product markets for specialist aggregates, such as rail ballast.

⁸ *Ibid*, paragraph 5.6(a).

⁹ *Ibid*, paragraph 5.11.

¹⁰ *UIS Response*, paragraph 4.3.

¹¹ *PFs*, paragraph 5.30.

¹² *Ibid*, paragraph 6.125.

¹³ *Ibid*, paragraph 6.123.

¹⁴ *UIS Response*, paragraph 5.3.

¹⁵ *IS Response*, paragraph 3.21, and *UIS Response*, paragraph 5.5.

- (c) AI's replication of the CC's Price Concentration Analysis (*PCA*) and its Entry and Exit Analysis (*EEA*) for AI's customers, which demonstrated no systematic, significant relationship between the price of primary aggregates and the level of concentration in a local area.¹⁶

No relationship between local concentration and aggregates prices

2.5 In relation to the CC's *PCA* and *EEA*, the conclusions drawn from these analyses by the CC accord with [§]¹⁷ Namely that:

- (a) there are similar numbers of statistically significant negative findings and statistically significant positive findings. The only conclusion to draw from this is that there is no systematic relationship between price and market concentration. This is underpinned by the absence of a systematic pattern of statistically significant results (either positive or negative), across the range of products and competitors considered by the CC within its analysis;
- (b) moreover, where results are statistically significant, the relative constraints implied for different plants do not follow a pattern consistent with economic theory. For example, plants located geographically closer to customers often have a smaller constraining effect than plants located further from customers; and
- (c) in any event, where concentration has a statistically significant impact on price, this was of virtually insignificant economic magnitude.

2.6 As AI has set out previously, the reason for the absence of any price-concentration finding in the aggregates market is:¹⁸

- (a) the existence of significant surplus capacity following the decline in demand since 2008, and the consequent ability for existing firms to expand production; and
- (b) the existence of a high level of choice for customers, with over 93.4% of customers being able to choose from 5 or more different suppliers.¹⁹

2.7 AI therefore welcomes the CC's conclusions "*that, on average, the extent of local competition does not seem to have much impact on prices that customers pay*".²⁰ However, AI does not believe that there is any evidence to suggest that "*[the CC's results] are 'average effects', and may hide local or regional variability in competitive constraints*".²¹ The large number of observations and transaction details

¹⁶ PFs, Appendix 6.7, paragraphs 89 and 119.

¹⁷ *Ibid*, Appendix 6.7, paragraph 3.

¹⁸ [§]

¹⁹ PFs, Appendix 6.7, Table 5.

²⁰ *Ibid*, Appendix 6.7, paragraph 4.

²¹ *Ibid*, Appendix 6.7, paragraph 4.

available in the data is such that if a price-concentration relationship were to exist, it would be clearly visible in the analyses the CC has performed.

Coordination concerns amongst aggregates producers are unfounded

2.8 AI agrees with the CC's view that coordination is not present in the supply of aggregates. Moreover, AI is not surprised that the CC found no evidence of coordination in the supply of aggregates through its document review and case studies.²²

2.9 AI also agrees with the CC's results that the geographical differentiation of products and the extent of wide variation in competitive conditions found in the aggregates market eliminate concerns of coordination being feasible or sustainable.²³ AI welcomes the CC's recognition that the results of its PCA reflect low levels of demand and a very competitive market rather than coordination.²⁴

Price announcement letters

2.10 Although the CC found no tacit coordination between the Majors in the supply of aggregates, in respect of aggregates price announcement letters (*PALs*) sent out to customers by the Majors, the CC observed that:

- (a) *“the parallelism in the dates of the announcements is notable”*;²⁵
- (b) *“the level of the announced price increases were on many occasions quite similar between the Majors for each product group [and] “that on many occasions AI and Tarmac were the first to announce price increases”*;²⁶ and
- (c) *“in almost all the cases that [the CC] analysed, the Majors were able to increase their average prices following one of their own price increase announcements”*.²⁷

2.11 *First*, AI refutes the CC's implication that there is any coordination between AI and Tarmac in terms of PALs and, in equal measure, that AI was involved in price increase leadership practices in aggregates. Importantly, the CC readily acknowledges that it had insufficient data with respect to PALs to *“generalise the trends [the CC] observed”*, which fundamentally undermines the statements and inferences it made concerning AI's PALs.²⁸

²² *Ibid*, paragraph 6.129 ff.

²³ *Ibid*, paragraphs 6.22 and 6.19, summarised in 6.130.

²⁴ *Ibid*, paragraph 6.127(f).

²⁵ *Ibid*, paragraph 6.105.

²⁶ *Ibid*, paragraph 6.106.

²⁷ *Ibid*, paragraph 6.107.

²⁸ *Ibid*, paragraph 6.106.

2.12 *Second*, AI does not consider that the CC’s remaining observations are legitimate grounds for concern for the reasons outlined below.

AI uses PALs as an efficient method of communication with customers

2.13 AI uses PALs to communicate forecast increases in the prices of aggregates it sells to its customers. As explained at AI’s second hearing,²⁹ this method of pricing communication allows customers to plan ahead for increases in aggregates prices, for example due to rises in key input prices. These price rises – and the subsequent issuance of PALs – can be either unpredictable (due to market fluctuations in, for example, the oil price) or predictable (reflecting, as the CC notes, “annual price review processes” and “changes in common regulatory costs”).³⁰ [✂]

[✂]

2.14 [✂] It is not, therefore, surprising (as the CC appears to suggest at paragraph 6.107 of the PFs) that, in most cases analysed by the CC, “the Majors were able to increase their average prices following one of their own price increase announcements”. As AI noted in the UIS Response, “any achieved price increases likely reflect increases in input costs, given that the CC has observed that margins have remained broadly constant over the period”.³¹

2.15 Therefore, the CC has merely observed the routine function of PALs as a means of communication and [✂] and any negative inferences it draws are wholly unfounded.

PALs provide at best a poor indication of the price increase actually achieved by AI

2.16 As explained in its response to the market questionnaire (the **MQ Response**) and the UIS Response.³²

(a) [✂]

(b) the level of price increase actually achieved varies according to the results of negotiations with individual customers; and

(c) [✂]

2.17 The use of PALs and the consequent price negotiations demonstrate a well functioning, dynamic and competitive market. This accords with the CC’s comments that (i) the Majors who followed the first Major issuing a PAL swung between both

²⁹ [✂]

³⁰ PFs, paragraph 6.105.

³¹ UIS Response, paragraph 6.6.

³² MQ Response, response to question 38; and UIS Response, paragraph 6.6.

undercutting and “*accommodating*”³³ the first Major,³⁴ and that (ii) the price increase actually achieved varied as a proportion of the price increase announced in the PAL.³⁵

PALs are not a grounds for concern

2.18 Therefore, in light of the above, together with the other, complex factors present in the aggregates market,³⁶ and in particular the key factors undermining any risk of coordination,³⁷ AI considers that there are no grounds for any concern of coordination in the aggregates market and concurs with the CC’s finding that there is no AEC in the supply of aggregates in GB.

3. RMX

3.1 AI welcomes and agrees with the CC’s finding in respect of its competitive assessment of rmx. These findings demonstrated that no features of the market gave rise to an AEC in any market in GB for the supply of rmx.³⁸

Market definition

3.2 AI welcomes the CC’s conclusion that all specifications of rmx should be considered to form part of the same relevant product market which includes both site plants and volumetric trucks.³⁹ AI also agrees with the CC’s findings that the rmx markets are highly localised in nature and typically 8 to 10 miles from rmx plants,⁴⁰ as previously stated by AI.⁴¹

Unilateral market power is not present

3.3 AI concurs with the CC’s analysis in relation to unilateral market power and its conclusion that widespread unilateral market power was unlikely in the GB rmx markets.⁴² AI welcomes the CC’s endorsement of the evidence and analysis which it has provided in the market investigation, in particular:

³³ AI notes that “*accommodating*”, as used by the CC here, is an ambiguous term.

³⁴ PFs, paragraph 6.106.

³⁵ *Ibid*, paragraph 6.107.

³⁶ These are set out at paragraph 6.9 of the UIS Response and comprise: differing competitive conditions; a highly fragmented customer base; bilaterally agreed prices on a project-by-project basis; an extensive choice of suppliers; the ease with which customers can switch; a lack of structural links between AI and other Major aggregates producers; and excess capacity that can be easily flexed to meet changes in demand.

³⁷ Namely: geographical differentiation of aggregates products; wide variation in competitive conditions from one local area to another; and the Majors’ relatively modest (in general) returns and falling margins on their aggregates operations. See PFs: paragraph 6.130.

³⁸ PFs, paragraph 9.71.

³⁹ *Ibid*, paragraphs 5.46 and 5.50.

⁴⁰ *Ibid*, paragraphs 5.51 and 5.52.

⁴¹ UIS Response, paragraph 4.11.

⁴² PFs, paragraph 9.68.

- (a) [redacted] which demonstrated both the limited local market concentration and the significant choice of suppliers enjoyed by rmx customers;⁴³
- (b) the low profitability of rmx;⁴⁴ and
- (c) AI's evidence of low barriers to entry and low barriers to expansion within the market.⁴⁵

Coordination concerns amongst rmx producers are unfounded

3.4 AI welcomes and agrees with the CC's conclusion that coordination in the GB rmx markets was unlikely to be feasible or sustainable due to the low barriers to entry and an absence of other market features prone to facilitating coordination.⁴⁶

4. CEMENT

4.1 AI is not a GB cement producer but instead a cement importer and customer, principally for its own consumption in its downstream businesses. Accordingly, AI provides no comment on the CC's *general* findings for the GB cement markets. AI has outlined below its specific, limited concerns on those findings made by the CC involving AI.

CC's cement switching analysis

4.2 In its cement switching analysis, the CC observed "*some correlations of wins and losses*" by AI and Lafarge.⁴⁷ The evidence presented by the CC is insufficient to support a finding that AI has engaged in tit-for-tat behaviour with Lafarge. AI is concerned that (i) the CC's analysis has not attempted to control for any other factors (such as legitimate commercial dealings) that may lead to such a correlation occurring and (ii) the analysis is based on a small sample of events.

4.3 AI has lodged its concerns on the robustness of the CC's conclusions in its correspondence with the CC.⁴⁸ In particular, AI has requested the wholly proportionate disclosure of the underlying cement switching data to allow AI to confirm whether there are legitimate commercial explanations for the small number of instances for which the CC alleges correlation. The CC has refused to provide this data. As such, AI is unable to comment at this stage with any certainty on the CC's conclusions, which may be a mere product of legitimate commercial dealings. [redacted]

⁴³ UIS Response, paragraph 5.19 and reflected in PFs, paragraph 9.67 and 9.68.

⁴⁴ The CC's own analysis shows that collectively the majors' rmx businesses have been loss making since 2008, see PFs, Appendix 9.2, Table 1.

⁴⁵ UIS Response, paragraphs 5.21 and 5.22, reflected in PFs, paragraphs 9.52 and 9.68.

⁴⁶ *Ibid*, paragraph 9.70.

⁴⁷ *Ibid*, paragraph 7.157(e).

⁴⁸ AI's response to the CC's cement switching working paper, response to the CC's put-back of Appendix 8.8A of the PFs, and letters to David Fowles, inquiry manager, on 20 and 28 May 2013.

4.4 In relation to the CC's analysis of win and loss data and tit-for-tat behaviour in the cement market, AI considers it should be properly distanced from the CC's findings here. In particular, the CC notes the fact that AI had commented on the methodology used in its tit-for-tat analysis.⁴⁹ However, the CC states in relation to AI's submission, "*We agree that we did not control for these other factors. However, we had direct evidence of tit-for-tat behaviour occurring through internal documents, and our statistical analysis confirmed this.*" AI would like to rebut any implication that the evidence referenced here for tit-for-tat behaviour was in any way linked to AI's behaviour:

- (a) the CC has not cited any AI internal documents that relate to tit-for-tat behaviour; and
- (b) the sample of win and loss events underlying the CC's correlation for AI are exceptionally small.

4.5 Therefore, AI expects the CC's findings to be clarified such that it is clear that AI's involvement in the tit-for-tat analysis was solely limited to its comment on the CC's analysis methodology and not because its own internal documents in any way corroborated the CC's findings.

Lafarge supply terms

4.6 In commenting on the existing cement supply relationship between AI and Lafarge, the CC has suggested that AI "*receives favourable terms from Lafarge*"⁵⁰ and that AI secures "*a favourable deal from Lafarge and that AI tries uses the threat of importing as leverage. Lafarge considers the favourable arrangement with AI as 'in lieu of imports' "*".⁵¹

4.7 First, AI is a cement customer and so will attempt to secure the best possible terms it can for the cement it purchases as a matter of normal commercial practice.

4.8 Second, if AI receives "*favourable terms*" from Lafarge, this merely represents the [✂] bargaining position held by AI as a result of its ability to access readily alternative sources of cement through imports and the scale of its demand.

4.9 Third, AI is not in a position to comment on Lafarge's own view of its supply arrangement with AI being "*in lieu of imports*", a comment which appears to be sourced from Lafarge's own internal documents and which AI cannot therefore cross-examine further. AI refutes this suggestion as the basis for its own decision to contract with Lafarge for the supply of cement in GB.

4.10 AI has previously explained to the CC its cement requirements and the reasons for sourcing cement for its downstream operations from both imports and locally from Lafarge in GB.

⁴⁹ PFs, paragraph 8.199, footnote 177.

⁵⁰ *Ibid*, paragraph 8.45.

⁵¹ *Ibid*, paragraph 8.86.

(a) [✂]

(b) [✂]

(c) [✂]

4.11 [✂]

5. VERTICAL FORECLOSURE

5.1 AI welcomes the CC's finding that there is no evidence of market foreclosure having examined market shares, market entry and downstream pricing behaviour.⁵²

6. POLICY AND REGULATION

6.1 AI supports the announced abolition of the Carbon Reduction Commitment (**CRC**) as this measure will remove the material distortion in competition, which AI highlighted to the CC in its UIS Response, arising from the current interplay between the CRC and the EU Emissions Trading Scheme.

6.2 AI has no further comment to make on the CC's findings with respect to the effect of policy and regulation on competition in the reference markets.

7. CONCLUSION

7.1 AI welcomes the CC's findings that no features of the GB aggregates and/or rmx markets lead to an AEC. The CC's conclusion underscores AI's own long-held belief that these are properly functioning, dynamic and competitive markets delivering value to customers.

7.2 AI urges the CC, should it reach the conclusion that feature(s) of the cement market have led to an AEC, to consider the real impact of possible remedies on an industry that has been subject to significant contraction due to difficult economic conditions over a sustained period of time.

7.3 The CC must ensure that any regulatory measures, which it considers necessary to impose on the industry, take proper account of the continuing and difficult operating conditions that the industry finds itself in and remain wholly proportionate to the level of the detriment that the CC has identified.

⁵² PFs, paragraph 10.32.