

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

### COMMENTS OF [A MID-TIER AGGREGATES AND RMX PRODUCER] ON THE COMPETITION COMMISSION'S FINDINGS AND PROPOSED REMEDIES

#### 1. INTRODUCTION

[A mid-tier aggregates and RMX producer] has reviewed the Competition Commission's ("CC") Provisional Findings ("Provisional Findings") and Notice of Possible Remedies ("Remedies Notice") published on 21<sup>st</sup> May 2013. [X] does not propose making any detailed comments in relation to those Provisional Findings and Remedies Notice, save for its comments below which relate to the CC's proposed remedy C3, namely the creation of a cement buying group or groups.

#### 2. REMEDY C3 - THE PROPOSED CEMENT BUYING GROUP

##### Extent of the Adverse Effect on Competition

2.1 [A mid-tier aggregates and RMX producer] does not consider that the CC's proposed remedy C3 is justified and queries the basis for it. In particular, [X] considers that the adverse effect on competition ("AEC") that remedy C3 is seeking to address, i.e. a lack of countervailing buyer power on the part of cement purchasers, is not fully articulated in the Provisional Findings and notes that whilst the conclusions reached by the CC in paragraphs 8.213 – 8.216 appear to form the basis for this proposed remedy, the basis for this is very limited. [X] also considers that the other proposals which the CC is considering so as to remedy the AEC it has identified in relation to cement, namely the co-ordination among Cemex, Hanson and Lafarge, would suffice to address that AEC. These other remedies which require divestments and restrictions on supplier conduct (remedies C1, C2 and C4) and publication restrictions (C5 and C6) would together address the AEC and correctly focus on the structure and behaviour of the suppliers: by addressing the AEC at that level of the supply chain, [X] believes that any concerns about the extent of customer buyer power will be addressed because those other remedies will already lead to a consequent, resulting increase in the relative buyer power of those customers. As a result, there is no need for a separate, additional remedy in the form of C3 to address that current lack of countervailing buyer power.

2.2 In summary, in proposing a separate remedy focused solely at cement purchasers to address the issue of buyer power, [X] considers that the CC is not pursuing the *least onerous* option available to counter the AEC identified by the CC. This is particularly the case given the other remedies being proposed which would already provide a comprehensive solution, and in [X] opinion, a more proportionate and effective means of achieving the same aim.

2.3 [X] is mindful of the CC's stated aims of ensuring that remedies are effective, proportionate and reasonable. These are addressed in relation to C3 in turn below.

##### Requirement to be effective<sup>1</sup>, proportionate and reasonable

2.4 Even if the CC were to conclude (contrary to [X] view) that, notwithstanding the other remedies being considered, an additional measure were needed to enhance the countervailing power of cement purchasers, [X] considers that the proposed remedy C3 would be neither reasonable, effective nor proportionate.

2.5 Whilst it is clear from the Remedies Notice that the precise scope of any CBG is yet to be determined,<sup>2</sup> [X] considers that the implementation, monitoring and administration requirements of such a group or groups would be considerable and disproportionately

<sup>1</sup> Guidelines for market investigations: Their role, procedures, assessment and remedies, paras 334-341. Enterprise Act 2002, section 134(6).

<sup>2</sup> Remedies Notice, paragraph 68.

burdensome to an extent that would reduce both the effectiveness (if indeed such exists) and practicality of a remedy of this nature.

- 2.6 Most importantly, [X] has very real concerns that the proposed remedy would distort the prevailing competitive conditions amongst cement purchasers and that in this regard it is unduly invasive: the existing competitive dynamics between those cement purchasers would be directly impacted by the remedy in a manner and to an extent which is both excessive and unjustifiable, as well as unpredictable. The disproportionate impact is all the greater when seen in the context of the source of the AEC which the CC is trying to address, namely co-ordination and concentration at the supplier level resulting in an imbalance of power.<sup>3</sup>
- 2.7 [X] also notes that establishing buying groups raises potential competition law compliance issues which would need to be addressed, most notably as to pricing and supply terms, and more generally the potential competition law sensitivities which can ordinarily arise from buying groups of this kind.
- 2.8 The CC has identified that regional (rather than national) buying groups might be introduced.<sup>4</sup> This is likely to lead to the remedy having an unequal impact across the regions due to the differences in the buying groups. This would increase still further the difficulties which [X] believes already exist in relation to the effectiveness of the remedy as well as in relation to any assessment and measure of its effectiveness.
- 2.9 The CC also raises the issue of any CBG needing to reach 'critical mass' before the proposed remedy would become effective.<sup>5</sup> However, no consideration appears to be given to the fact that compulsory membership would be highly invasive and interventionist, increasing the already considerable distorting effect of the proposed remedy on cement purchasers. This appears disproportionate to the aim of remedying the AEC. As both customers and those whose business would be the subject of the proposed remedies, it is important that cement buyers do not suffer disproportionately as a result of attempts to rectify the market imbalance and one which is caused and indeed can be addressed by changes at the supplier (rather than the buyer) level of the supply chain.
- 2.10 Finally, it is not clear how long such a remedy would be in place and how long it would be required to be effective and to assess its efficacy (if any) – the longer the proposed duration, the more invasive and burdensome the remedy becomes and hence disproportionate and unreasonable.

### 3. CONCLUSION

- 3.1 Each of the points set out above confirms [X] view that the proposed remedy C3 would be neither reasonable, nor effective, nor proportionate (and could give rise itself to competition law compliance sensitivities). This is all the more so when seen in the context of the other remedies which the CC is considering and which [X] believes already provide a comprehensive solution to address the AEC identified
- 3.2 Should the CC have any questions in relation to the points raised by [X] please do not hesitate to contact the undersigned.

[X]

[X]

**7 June 2013**

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<sup>3</sup> Remedies Notice, paragraph 9. Provisional Findings, section 12.

<sup>4</sup> Remedies Notice, paragraph 66.

<sup>5</sup> Remedies Notice, paragraph 69.