



Department  
of Energy &  
Climate Change

**Department of Energy & Climate Change**

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Competition Commission  
Victoria House  
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Dear David

### **AGGREGATES MARKET ENQUIRY**

Thank you for informing us that the Competition Commission has published a summary of its provisional findings and notice of possible remedies (the Notice) in relation to its investigation into the markets for aggregates, cement and ready-mix concrete. We welcome this opportunity to comment and will limit our comments to Remedy C6 on the publication of annual verified emissions data under the EU Emissions Trading System (EU ETS). Other Government Departments may comment on other remedies.

DECC accepts that the annual EU ETS emissions data is a useful source of data for the cement sector to have. However, there are significant public policy benefits from the transparent publication of this data across the EU. I do not yet see that the Commission has set out a strong enough case that the potential to assist in the creation of an adverse effect on competition outweighs the policy benefits of transparency as other remedies proposed by the Commission tackling the core issues. Ultimately, of course, only the Commission can make this judgement on the basis of evidence provided.

The process and timing of the release of the annual EU ETS emission results is now well established within the annual compliance cycle participants in the EU ETS work to. The annual EU ETS emission figures are made publicly available by the European Commission on the first working day after the 31<sup>st</sup> March deadline for reporting annual EU ETS emissions. Making the data available to all as soon as possible helps prevent those with the ability to make accurate estimates of the emissions data from having an unfair advantage in the carbon market. This includes those looking at emissions from particular sectors as well as the market as a whole. In 2006 the first set of annual EU ETS emission figures were submitted and the intention was to publish these in the middle of May. However some market participants were able to obtain this information earlier and the carbon price dropped dramatically as those with knowledge of the extent of the surplus sold allowances. Also some Member States highlighted that, due to freedom of information laws, they could not restrict access to the data until a later date. Therefore to ensure a co-ordinated release of emissions data, it was agreed to release the EU-wide data as soon as possible. The Competition Commission recommendations would go against this principle and risk adverse effects on the carbon market.

There is also a wider risk that putting in place recommendations such as aggregating data may set a precedent for other sectors. This would impact on the advantages that publishing installation level emission data has in terms of allowing the public to see how the EU ETS is delivering emission reductions at an installation level. Such publication of installation level data assists public debate on the effectiveness of carbon reduction efforts by different companies. It would also not fit with the wider UK Government transparency agenda that promotes the release of more data, in an open, regular and re-usable format, by Government. The installation level data has now been published at the start of April each year since 2007.

It is not clear that the ETS data is the only source of information that UK cement producers can use to make inferences about production volumes and market shares nor that it is critical to the adverse effect on competition you are concerned about. I would be interested to see more evidence on this point. The other remedies set out in the Notice, such as those that directly address the ability to coordinate, are likely to be more effective than a ban on data publication.

Aside from the public policy concerns your Remedy raises there are some legal practicability issues we would face in seeking to implement the Remedy of which you should be aware.

The publication of installation level EU ETS emissions data is set out in EU legislation. Article 15a of the amended ETS Directive<sup>1</sup> states that:

*Member States and the Commission shall ensure that all decisions and reports relating to the quantity and allocation of allowances and to the monitoring, reporting and verification of emissions are immediately disclosed in an orderly manner ensuring non-discriminatory access.*

*Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the applicable laws, regulations or administrative provisions.*

In addition to the broad requirements of the Directive, the 2013 Registries Regulation<sup>2</sup> sets out in more detail the obligations on making emissions data available to the public:

- Article 109, stipulates that the Central Administrator shall make available information referred to in annex XIV of the regulations, to members of the public via the EU Transaction Log (EUTL) – this is the EU wide database through which all Registry transactions take place.
- Article 1(e) of annex XIV, specifies that the EUTL shall provide to the public *‘the verified emissions figure, along with its corrections for the installation related to the operator holding account for year x shall be displayed from the 1 April onwards of year (x+1)’*.

To put in place the Competition Commission’s proposed remedy would require amendments to this EU legislation. Amendments to the Registries Regulation would need to be agreed by a qualified majority of Member States through the comitology process, while an amendment to the Directive itself would need to be agreed through the ordinary legislative procedure, by both the European Parliament and the Council of the EU in response to a proposal from the European Commission.

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0029:EN:NOT>

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:122:0001:0059:EN:PDF>

There are further legal considerations such as responding to information requests for this data under the Environmental Information Regulations<sup>3</sup>. These Regulations implement the EU Directive on public access to environmental information (2003/4/EC). They place a statutory duty on public authorities to make environmental information such as emissions data available on request. The Regulations place strict criteria on refusing any requests and these are particularly restrictive in the case of information on emissions (which can only be refused on the ground of such matters as international relations, defence, national security, judicial process, intellectual property rights and protection of personal data). It would be difficult to see how installation level emissions data could be refused for the reasons presently under consideration.

Finally, I should flag that in addition to the EU ETS, the UK cement sector is also covered under the Climate Change Agreements (CCAs) and the CRC Energy Efficiency Scheme. These policies have obligations on publishing emissions data. We will therefore need to think through how a Remedy on ETS might also need to be applied to these domestic schemes which might also require primary or secondary legislation to amend

I would be happy to discuss this response further with the Competition Commission or answer any further questions for the investigation.

Yours sincerely

**Niall Mackenzie**  
**Head, Industrial Energy Efficiency Programme**

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<sup>3</sup> <http://www.legislation.gov.uk/uksi/2004/3391/contents/made>