

AGGREGATES, CEMENT AND READY- MIX CONCRETE MARKET INVESTIGATION

Tata Steel UK's Response to the Notice of possible remedies under Rule 11 of the *Competition Commission Rules of Procedure*

Tata Steel UK ('TSUK') welcomes the publication of the Competition Commission's Provisional Findings Report and Notice of Possible Remedies. TSUK, as identified by the Competition Commission in its provisional findings is not present in the primary Cement market; rather it supplies the GBS market with slag through its plants in Port Talbot and Scunthorpe. As such TSUK will focus its comments on (i) the provisional findings of the Competition Commission and (ii) the proposed remedies (C7) in relation to the GGBS and GBS markets.

(i) Provisional Findings in the GBS and GGBS markets

In relation to the supply of GGBS in GB, we note the CC's provisional findings that Lafarge Tarmac's exclusive agreements with the GB steel producers for the production of GBS, and Hanson's exclusive long-term contract with Lafarge Tarmac for the production of GGBS, in combination with Lafarge Tarmac's and Hanson's participation in the GB cement markets, were features that gave rise to an Adverse Effect on Competition ('AEC') in the GB cement markets.

TSUK also notes that one of the main competition problems are linked to the exclusivity of the Tarmac/Hanson supply arrangement and because of this *'that Hanson has market power in the supply of GGBS in GB, leading to higher prices and/or lower availability of GGBS than would otherwise be the case'*¹.

[X] The TSUK contracts with Tarmac for the removal, processing and sale of blast furnace slag, steel slag and other slags, which includes the processing of GBS are [X]

Although the TSUK contracts are exclusive contracts with Tarmac it is a necessary and essential feature of the agreements. Furthermore, we would like to make the following points in relation to the exclusive nature:

- a) Large-scale investment is necessary in slag cooling technology in order to treat the slag. The level of capital investment, which includes significant capital costs at the outset as well as ongoing maintenance and investment costs running into the tens of millions for both sites, means that Tarmac require some form of certainty of supplies of slag over time to justify and recover the initial investment.
- b) The process of treating the slag necessitates that the slag cooling facilities are within close proximity to the blast furnaces (both facilities at Port Talbot and Scunthorpe are on site). The large scale investment necessary means each site needs to have its own dedicated treatment facilities and transporting the slag between plants for treatment is not currently a viable option.
- c) [X] As such a producer of GBS may need to operate multiple sites so that in times of low production at one site it can balance this with supply from another.
- d) [X] The requisite strong working relationship, knowledge of the blast furnace process and expertise in granulation can only be achieved by an operator with both a significant and long-term commitment to the GBS and steel industry.
- e) [X]

¹ Competition Commission Provisional Findings Report of 21 May 2013, page 7-44, para 7.127.

ii) **Proposed remedies (C7) in relation to the GGBS and GBS markets**

TSUK addresses the CC's proposed remedies in relation to GGBS and GBS markets below utilising the framework of the questions raised by the CC in its Notice of Possible Remedies.

a) Is it necessary to intervene at both the upstream and downstream levels in order to achieve an effective remedy to this AEC?

TSUK notes the Commissions view that there are potential competition issues with the exclusive nature of the contracts between Hanson and Tarmac and GB Steel Producers. [X] As stated above the primary purpose of the TSUK/Tarmac contracts is for the complete removal and processing of the slag by-product from the blast furnaces, which includes the production of GBS. [X]

(b) At the upstream level, how many GBS plants would it be necessary to divest in order to achieve an effective remedy to this aspect of the AEC? How might potential concerns in relation to the continuity of supply of blast furnace slag be mitigated if GBS plants were sold separately?

[X] in the event that the Competition Commission deems this necessary then TSUK believes that in order to establish a viable supplier of GBS in the UK then an owner must operate multiple sites.

[X] continuity of supply may necessitate that an owner operates multiple sources of GBS. As there are only three such sites active in the UK this means that only one such supplier can be supported. As such TSUK believes that common ownership of the sites in the UK is necessary in order to support a viable supplier of GBS in the marketplace.

In light of the potential environmental and cost implications on the steel industry and TSUK it is very important that any supplier of GBS has the stability of access to multiple sites so that they can fulfil both their obligations in the supply of GBS market and to us in the clearing and granulation of slag.

The Competition Commission should note that whilst the proposed remedy relates to the potential divestment of one or more GBS plants, as discussed above, [X]

(c) At the downstream level, how many GGBS plants would it be necessary to divest in order to achieve an effective remedy?

As discussed above TSUK are not involved at this level of the supply chain and as such are unable to comment.

(d) If we chose to require divestitures at both upstream and downstream levels, should the same operator be permitted to purchase both a GBS and GGBS plant?

[X] if the Competition Commission were to require this then TSUK [X]

(e) What criteria should be applied to the consideration of purchaser suitability for:

(i) GBS plants;

[X] in the event that the Competition Commission deems this necessary then TSUK [X]

Furthermore TSUK would require the following criteria to be applied by the Competition Commission regarding the characteristics of a potential suitable purchaser:

- (i) **Independence:** TSUK believes that any potential new owner should be independent of the steel industry. In particular given that both granulation plants are present on site and have access to significant operational information and business secrets regarding our steel making processes the potential purchaser and operator of the granulators must neither be a steel company nor any third party that has links to any steel competitor of TSUK or any other part of the Tata Steel Group.
- (ii) **Capability:** The suitable purchaser should have appropriate expertise and knowledge, including of the GBS market, to ensure that they are able to comply fully with our contracts and commitments as they currently stand and that they can maintain the granulating processes to the necessary efficiency levels which we currently benefit from. Furthermore, any purchaser(s) needs to be of sufficient financial standing to be able to make the investments that will be required in the granulators and to demonstrate an intention to ensure that the assets will be maintained with additional capital invested as required. In addition to the general operational considerations detailed above, TSUK's key priority is the health and safety of all those that it employs and others who are affected by the operations on its sites. As part of this TSUK considers it to be critical that any contractor approved to access and/or operate on its sites can demonstrate that the appropriate processes and procedures are in place in respect of health and safety. This is of increased relevance at its Port Talbot and Scunthorpe sites which are COMAH Tier 1 sites. In the event that there were to be any change in the arrangements associated with the removal and processing of slag on the Port Talbot and Scunthorpe sites then it would be essential to maintain the required standards of health and safety and, as stated above, that TSUK be able to scrutinise and approve any proposed new incumbent.
- (iii) **Commitment to relevant market:** As discussed previously due to the necessary financial investment in the assets and the continued capital expenditure any potential purchaser needs to be of sufficient financial standing to be able to make the investments that will be required in the granulators and to demonstrate an intention to ensure that the assets will be maintained with additional capital invested as required.
- (iv) **Undertakings:** As discussed above any potential purchaser would need to be able to demonstrate a long-term commitment to the divested entity, as such we would ask that the CC require any purchaser to demonstrate such a commitment by requesting undertakings that they will not divest the assets within a 5 year period or if they do that the new purchaser satisfies the same purchaser criteria as applied in the initial divestiture. [✂]

(ii) GGBS plants?

As discussed above TSUK are not involved at this level of the supply chain and as such are unable to comment.

(f) What safeguards should be put in place to ensure a timely disposal and an effective divestiture process, in particular:

- (i) What timescale should be allowed for the implementation of any divestiture the CC may require? (ii) What arrangements should be put in place for holding separate the operations to be divested from those that will be retained and for monitoring any such provisions?**

TSUK believe that if the Commission concludes that divestment is required at either level of the GBS or GGBS the divestiture should take place at the earliest possible opportunity, but if not then within the 6 months standard model operated by the Competition Commission.

[✂]

(g) Under what circumstances should the CC appoint a divestiture trustee? What costs and benefits would arise as a result of this remedy?

[X]

(h) Whether there are any other relevant considerations to be taken into account in evaluating and implementing this remedy. Other possible remedies

As set out above.