

The Mineral Products Association (MPA)

Competition Commission investigation into the markets for the supply of aggregates, cement and ready-mix concrete in GB

Response to the Competition Commission's Notice of possible remedies

1 Executive summary

- 1.1 The MPA wishes to comment in relation to remedy option C5 as proposed by the Competition Commission in the Notice of possible remedies, which seeks to prohibit GB cement producers from submitting cement sales and production volume data to trade associations or any other private sector organization, including, the MPA, CEMBUREAU (the European Cement Association based in Brussels) and market research or consulting firms.
- 1.2 The MPA considers that Remedy C5 is a disproportionate remedy option in addressing the AECs which the Competition Commission has identified in its provisional findings as subsisting in the GB cement market. In view of the substantial safeguards already adopted in respect of the compilation and dissemination of the data concerned (whether in terms of the nature of the data itself, its currency, anonymisation and aggregation and time lag), the MPA believes that Remedy C5 is inconsistent with past EU/UK authority decisional practice in respect of the collection and reporting of such or similar data.
- 1.3 Further, the MPA does not believe that, in relation to dissemination of identical market data from the same source, a different remedy should be implemented for private sector organisations such as the MPA, as opposed to Government departments and public sector bodies, such as the Department for Business Innovation and Skills (BIS). The remedy implies, wrongly, that efficiencies arising from the publication of industry data can only be achieved when managed by a Government department.
- 1.4 Restricting access to market data except via a Government source will stifle effective market analysis and innovation. It is those others operating in the market and downstream markets or those seeking to enter or expand in those markets that will suffer in relative terms from this restriction.
- 1.5 Whilst the MPA's view is that the proposed Remedy C5 is disproportionate for the reasons described, the Competition Commission has asked for an opinion on appropriate time lag prior to release of the cement sales and production data. The MPA does not consider that the release of the aggregated data (incorporating all the existing safeguards), as is done now, causes competition concerns of itself so does not think a further time lag is necessary for competition reasons. However, if it would help the CC, the MPA would be prepared to consider a longer time lag provided it strikes a reasonable balance between competition considerations and the legitimate benefits that all users derive from publication of the data.
- 1.6 The MPA is grateful for the opportunity to comment at this stage of the Competition Commission's Market Investigation. The MPA is happy to address any queries the Competition Commission may have in relation to the contents of this submission.

2 The MPA

- 2.1 The MPA is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and silica sand industries.

2.2 The MPA has 470 members (including associates and affiliates), with membership comprising 8 major international companies, including cement producers and the remaining 462 being SMEs.

3 Focus of the MPA's response

3.1 The MPA wishes to comment in relation to Remedy C5, as proposed by the Competition Commission in its Notice of possible remedies in paragraphs 78 to 83.

3.2 The MPA makes no comment at this stage on any other aspects of the Competition Commission's provisional findings report.

4 The MPA's view with regard to Remedy C5

4.1 The MPA, along with most trade associations in other industry sectors and third party organisations including market research companies such as Nielsen, Mintel, Leading Edge and Construction Markets, collects and publishes industry data on a monthly, quarterly and yearly basis in order to assist its members with business planning.

4.2 The provision of sales and production data is a common activity of trade associations. For example, within the motor industry, the Society of Motor Manufacturers and Traders (SMMT) publishes market data a week after the end of the month to which the statistics refer. Statistics published by the SMMT include a list of sales volumes for each manufacturer for the month and year to date, with equivalent figures for the previous year and associated market shares and market share changes for each manufacturer for the month and year to date. Further examples are provided at Annex 1.

4.3 As described below, the data published by the MPA has few of the features identified as raising competition concerns in the relevant European Commission guidelines and UK/EC decisions. The MPA believes that, in the absence of evidence demonstrating any clear nexus between the use of MPA data and the coordination concerns raised by the Competition Commission, that prohibiting cement producers from submitting sales and volume data to the MPA is disproportionate and unjustified. Moreover, it does not recognise or value, to its proper extent, the countervailing benefits associated with the reporting of industry data, which position is entirely inconsistent with that adopted in other industries, investigations and cases.

5 Characteristics of the data disseminated by the MPA

5.1 The MPA employs a third party accountancy firm (Bessler Hendie) to receive, collate and disseminate cement market data to all MPA members. The MPA gave details of the process and safeguards employed in evidence submitted to the Competition Commission after the hearing of 13 August 2012.

5.2 Bessler Hendie receives market statistics from the majors on a monthly, quarterly and yearly basis. The firm aggregates and anonymises the data and distributes the information to all MPA member companies one month in arrears, on the last working day of the following month (three months in arrears for quarterly data). Bessler Hendie simultaneously distributes such data to BIS. It is this data that BIS use in the statistics that it publishes. The annual aggregated data is also sent to CEMBUREAU in the second quarter of the following year.

5.3 Shortly thereafter, and in any event within two weeks of distributing the (aggregated and anonymised) data to MPA members, the MPA publishes such data on the MPA cement website, which is available for the public to view at no cost.

- 5.4 The Competition Commission will be aware of the circumstances in which the European Commission considers the exchange of information to be unlikely to give rise to concerns in its guidelines¹, which take into account the following:
- (i) Data which is not strategically useful, in that it is not shown to be capable of reducing strategic uncertainty in the market, is permissible. Non-pricing information is generally not considered strategic. The data published by the MPA relates to aggregated cement sales and production volume by region and nationally. There is no information relating to prices, discounts, increases, reductions, rebates or other terms of trade.
 - (ii) Exchanging aggregated (as opposed to individualised) data is less likely to lead to anti-competitive effects.
 - (iii) Exchanging historic data is unlikely to lead to a collusive outcome as it is unlikely to be indicative of competitors' future conduct, or to provide a common understanding on the market.
 - (iv) Exchanging genuinely public information is unlikely to be infringing; 'genuinely public' in the sense that it is generally equally accessible, in terms of cost, to all competitors and customers.

The MPA considers that the market data collected and disseminated by the MPA can be defined with regard to the above characteristics: in itself the data is not strategically useful; it is aggregated, anonymous, historic (i.e. does not deal with future intentions) and available to the public at no cost.

6 Previous decisional practice

- 6.1 The market data disseminated by the MPA should be distinguished from information exchanges of highly disaggregated and sensitive data by trade associations, which are generally seen to be problematic.
- 6.2 In the UK Agricultural Tractor Registration Exchange decision², detailed and accurate market information was exchanged, enabling the companies to identify almost all individual tractor sales, which created greater transparency in a highly concentrated market, which the European Commission regarded "would likely destroy what hidden competition remains between suppliers in that market". This enabled the companies to detect movement on the market very quickly and to move to defend their position as soon as any variations on the market were detected.
- 6.3 Similarly, in Stahl³, the European Commission found that an exchange of confidential information by the German steel industry trade association at firm level (individual market shares and data on individual deliveries, broken down by quality and consumer industries) on a monthly basis, infringed competition law.
- 6.4 The Competition Commission will be aware of the OFT's recent decision to accept binding commitments in relation to the information exchange product, Whatif? Private Motor⁴. Data was exchanged monthly, however it was 'future' information (in that insurers received the forthcoming month's pricing information before it went live, allowing them to adjust their pricing in response to competitors' stated intentions), commercially sensitive, non-public

¹ Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements 2011/C 11/01, 14.01.2011

² Commission Decision 92/157/EEC, UK Agricultural Tractor Registration Exchange, 17.02.1992

³ Commission Decision OJ L 1/10, Wirtschaftsvereinigung Stahl, 1998

⁴ OFT 1395: Decision to accept binding commitments to modify a data exchange tool used by Motor Insurers, December 2011

(not available to all at no cost), individualised and highly disaggregated (access to actual prices at an individual firm level).

- 6.5 It was shown that subscribers to Whatif? could also, through batch analysis (inputting many risk profiles), determine the detailed structure of their competitors' pricing strategies for each risk profile, for example by holding constant all risk factors apart from one and testing the effect on price resulting from varying the value for that particular risk factor. In this way, insurers could identify the pricing strategy for that particular risk factor.
- 6.6 The OFT decided that its competition concerns would be appropriately addressed by the parties offering binding commitments to modify the product subject to certain principles: that any pricing information exchanged should, if less than six months old, be anonymous, be averaged across at least five UK insurers and already live within broker sold policies.
- 6.7 The MPA is of the view that data exchanged through Whatif? and the information exchange featuring in European Commission decisions such as those outlined above, has entirely different characteristics to the market data collected and disseminated by the MPA - with MPA data being far less sensitive. As such, the MPA believes that prohibiting the publication of the cement market data - in the format currently used by the MPA - is disproportionate as a remedy and deviates from the legitimate expectations of persons operating in any industry or trade sector. Further, due to the differences inherent in the characteristics of the data, the MPA data should be distinguished from individualised, disaggregated, often forward-looking information which has historically been treated unfavorably by competition authorities in decisions involving information exchange.
- 6.8 It is worth noting that, in the Competition Commission and the OFT investigations of grocery retail markets, which were found to be concentrated on a national basis and in many local areas, no action was taken in relation to the common practice of publishing national prices for all products on websites or in price match or price comparison services offered by supermarkets on their websites (i.e. far more granular data than data currently collected and disseminated by the MPA).

7 Pro-competitive benefits

- 7.1 The MPA believes that the Competition Commission should take account of the following pro-competitive benefits resulting from the published MPA cement and cementitious data:
- Provide regular and consistent aggregated historic market data to support efficient business planning in the cement and cementitious industries.
 - Assist potential new entrants to the industry and in the supply chain to assess the market.
 - Provide timely data to Government and its various agencies and organisations such as the Bank of England & OBR, to help assess UK economic and construction market conditions and activity levels to support policy development.
 - Enable financial institutions to provide intelligence on UK market conditions and investment opportunities.
 - Help UK Government and the EU to assess carbon and other emissions against their targets in order to regulate the EU ETS Scheme and to monitor progress on a transition to a low carbon economy.

Annex 1 Industry Statistical Data

Introduction

The provision of market information is a common activity of trade associations. Sometimes this data is collected as market sentiment and sometimes as production and sales data. It is also common for third party organisations such as market research companies to collect data from companies and other sources and sell collated analyses to industry and related businesses. Industry associations and external organisations can also co-operate to produce data, see for example, the British Retail Consortium, below.

Retail Motor Industry

The Society of Motor Manufacturers and Traders (SMMT) publishes market data a week after the end of the month to which the statistics refer. The published statistics (in the public arena) include:

- New car registrations broken down by general vehicle type (petrol/diesel) and customer type (fleet /private) for the month and year to date.
- A list of the ten highest selling models for the month and year to date with sales volumes for each model.
- A list of sales volumes for each manufacturer for the month and year to date with equivalent figures for the previous year, with associated market shares and market share changes for each manufacturer for the month and year to date.

Retail/Food and Drink

The British Retail Consortium (BRC) publishes data on retail sales volumes and price changes in association with KPMG and Neilson respectively.

The BRC website describes the information as follows:

“Retail Sales Monitor

Since its inception over a decade ago, the Retail Sales Monitor (RSM) has become the premier indicator of weekly and monthly sales performance available to the industry.

The RSM is viewed as the most respected and trusted monitor of like-for-like and total retail sales in the UK, and provides participating retailers with weekly and monthly retail sales figures, and is based on sales data from multiple and SME retailers. They complete weekly sales returns by value in both like-for-like and total formats for 12 retail product categories. For the convenience of grocery retailers, the food and drink data is submitted by the Institute of Grocery Distribution (IGD) via their Market Track scheme covering the entire grocery sector.

The RSM currently represents approximately 60% of UK retail sales value. This is then re-weighted according to the Office of National Statistics to cover the entire industry.”

“BRC-Nielsen Shop Price Index

Provides year-on-year and month-on-month price changes (Inflation Rates). Food and non-food are split out into the following categories:

- *Food*
 - *Ambient Food*
 - *Fresh Food*
- *Non-Food*
 - *Clothing & Footwear*
 - *Furniture & Flooring*
 - *Electrical*

- *DIY, Gardening & Hardware*
- *Books, Stationery & Home Entertainment*
- *Health & Beauty*
- *Other Non-Food “*

Market Research Data

There are many companies providing market research and analysis across sectors. Mintel, for example, provides these services across a range of industries, including the following descriptions in its literature:

“Mintel Food & Drink is our premium service for the industry - and the most powerful research tool in the market. All our resources, a single focus.

Our specialist, global team of world-class food and drink analysts draws on the full range of Mintel products to give you granular detail on market size, segmentation and share. More than 30 categories, exhaustive data sets in each.”

“Mintel offers a range of products and services, including “Mintel Oxygen”, which provides

- *Market data, including size, segmentation, forecasts and share*
- *Robust consumer research compiled through clear and trusted methodologies*
- *Strategic assessments of the key forces driving industry change*
- *Insightful analysis of the big issues facing the sector*
- *Company profiles and adspend data*
- *The wider cultural trends the market can tap in to for growth*
- *What can it tell me?*
- *The size of the market and who owns what share*
- *What consumers are doing. How they are changing. What they think of products, services, brands*
- *What will drive future growth. Where the opportunities and challenges will lie*
- *Who’s innovating right now. Where the next big things will be coming from*
- *The priorities and strategies that will make your business future-ready”*

Electrotechnical Industry

[✂]