

## **MARKET INVESTIGATION INTO THE SUPPLY OR ACQUISITION OF AGGREGATES, CEMENT AND READY-MIX CONCRETE**

### **The Price Announcement Order 2015**

#### **Notice of intention to make an Order pursuant to sections 161 and 165 of and Schedule 10 to the Enterprise Act 2002 and public consultation on the proposed Order**

1. On 18 January 2012 the Office of Fair Trading made a reference to the Competition Commission (CC) under [section 131](#) of the Enterprise Act 2002 (the Act) concerning the supply or acquisition of aggregates, cement and ready-mix concrete in Great Britain (the Reference).
2. On 14 January 2014 the CC published its report on the Reference, entitled *Aggregates, cement and ready-mix concrete market investigation: Final report* (the Report), in which it concluded that:
  - (a) a combination of structural and conduct features in the bulk and bagged cement markets in Great Britain (GB cement markets) gave rise to an adverse effect on competition (AEC) through coordination in those markets (the Coordination AEC);
  - (b) there were further features of the GB cement markets which combine to give rise to an AEC in the market for the supply of ground granulated blast furnace slag (GGBS) in Great Britain, as well as to an additional GGBS-related AEC in the GB cement markets;
  - (c) the likely effect of those features and resulting AECs is higher prices for cement and for GGBS than would otherwise be the case;
  - (d) in order, in particular, to address the Coordination AEC and resulting customer detriment a number of remedies should be imposed under [section 138\(2\)](#) of the Act, including a remedy consisting in the prohibition of generic price announcement letters sent by all suppliers in Great Britain of cementitious materials to their customers; and

- (e) given the risks identified with implementation of this remedy by means of undertakings given by the suppliers, the prohibition should be effected by means of an order.
3. On 12 March 2014 Hope Construction Materials Ltd (Hope) and Lafarge Tarmac Holdings Ltd (Lafarge Tarmac) made an application to the Competition Appeal Tribunal (Tribunal) under [section 179](#) of the Act requesting the Tribunal to, in particular, quash paragraphs 12.3 to 12.7 and 12.9(a), and paragraph 13.5(a), Figure 13.1 and paragraphs 13.7 to 13.138 of the Report.
  4. On 1 April 2014 the remaining functions of the CC in relation to the Reference were transferred to the Competition and Markets Authority (CMA) under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014.
  5. In light of the challenges brought by Hope and Lafarge Tarmac, the CMA decided to place the implementation of the price announcement remedial action on hold pending on the outcome of those proceedings.
  6. On 4 August 2015, by Order, the Tribunal granted permission to Hope and Lafarge Tarmac to withdraw their applications for review.
  7. The CMA now gives notice under [section 165](#) of, and paragraph 2 of [Schedule 10](#) to, the Act that:
    - (a) the CMA proposes the making of the following Order – The Price Announcement Order 2015;
    - (b) the proposed Order seeks to address, in part, the Coordination AEC and thereby resulting customer detriment;
    - (c) the purpose and effect of the proposed Order is:
      - (i) to prohibit the issue of generic price announcements by all suppliers in Great Britain of cement and cementitious materials to their customers and includes GB cement producers and importers of cement and cementitious products (including GGBS and pulverised fuel or fly ash (PFA)); and
      - (ii) to set out the minimum requirements for those price announcements that are not prohibited by the Order; and
    - (d) a copy of the proposed Order will be published on the [CMA website](#).

8. The CMA invites written representations on the proposed Order from any interested person or persons. Representations should reach the CMA by 5pm on 9 October 2015 and should be addressed to:

Alice Cole Roberts  
Competition and Markets Authority  
Victoria House  
Southampton Row  
London WC1B 4AD

or by email to: [Alice.ColeRoberts@cma.gsi.gov.uk](mailto:Alice.ColeRoberts@cma.gsi.gov.uk)

9. The CMA will have regard to any representations made in response to this Notice and may make modifications to the proposed Order as a result. In the absence of any written representations, or in the event that the CMA decides, on consideration of representations made, not to amend the proposed Order, the CMA proposes to make the Order in its present form pursuant to [section 161](#) of the Act. If the CMA considers that any representation necessitates any material change to the proposed Order the CMA will give notice of the proposed modifications and consider any further representations.
10. Once made the Order may be varied or revoked by the CMA under [section 161\(4\)](#) of the Act.
11. This Notice will be published on the [CMA website](#).

MARTIN CAVE

*Group Chair*

10 September 2015

# MARKET INVESTIGATION INTO THE SUPPLY OR ACQUISITION OF AGGREGATES, CEMENT AND READY-MIX CONCRETE

## DRAFT ORDER – CONSULTATION

### The Price Announcement Order 2015

#### Background

1. On 18 January 2012 the Office of Fair Trading made a reference to the Competition Commission (CC) under [section 131](#) of the Enterprise Act 2002 (the Act) concerning the supply or acquisition of aggregates, cement and ready-mix concrete in Great Britain (the Reference).<sup>1</sup>
2. On 14 January 2014 the CC published its report on the Reference, entitled *Aggregates, cement and ready-mix concrete market investigation: Final report* (the Report), in which it concluded that:
  - (a) a combination of structural and conduct features in the bulk and bagged cement markets in Great Britain (GB cement markets) gave rise to an adverse effect on competition through coordination in those markets (the Coordination AEC);
  - (b) there were further features of the GB cement markets which combine to give rise to an AEC in the market for the supply of ground granulated blast furnace slag (GGBS) in GB, as well as to an additional GGBS-related AEC in the GB cement markets;
  - (c) the likely effect of those features and resulting AECs is higher prices for cement and for GGBS than would otherwise be the case;
  - (d) in order, in particular, to address the Coordination AEC and resulting customer detriment a number of remedies should be imposed under [section 138\(2\)](#) of the Act, including a remedy consisting in the prohibition of generic price announcement letters sent by all suppliers in Great Britain of cementitious materials to their customers; and
  - (e) given the risks identified with implementation of this remedy by means of undertakings given by the suppliers, the prohibition should be effected by means of an order.

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<sup>1</sup> Relevant amendments to the Act are made by Part 3 of and Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

3. On 12 March 2014 Hope Construction Materials Ltd (Hope) and Lafarge Tarmac Holdings Ltd (Lafarge Tarmac) made an application to the Competition Appeal Tribunal (Tribunal) under [section 179](#) of the Act requesting the Tribunal to, in particular, quash paragraphs 12.3 to 12.7 and 12.9(a), and paragraph 13.5(a), Figure 13.1 and paragraphs 13.7 to 13.138 of the Report.
4. On 1 April 2014 the remaining functions of the CC in relation to the Reference were transferred to the Competition and Markets Authority (CMA) under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014.
5. In light of the challenges brought by Hope and Lafarge Tarmac, the CMA decided to place the implementation of the price announcement remedial action on hold pending on the outcome of those proceedings.
6. On 4 August 2015, by Order, the Tribunal granted permission to Hope and Lafarge Tarmac to withdraw their applications for review.
7. On 10 September 2015 the CMA consulted on the proposed order and the outcome of consultation was [\*\*\*]

## **The Order**

Now therefore in accordance with its duties under [section 138](#) of the Act, and in exercise of its powers under [section 161](#) of the Act together with sections [86](#) and [164\(2\)](#) of and paragraphs 17(1) and (1A), 21 and 22 of [Schedule 8](#) to the Act, the CMA makes the following Order for the purpose of remedying the Coordination AEC and resulting customer detriment:

### **1. Commencement**

- 1.1 This Order comes into force on the day after the day on which it is published by the CMA.

### **2. Interpretation**

- 2.1 The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
- 2.2 The purpose of this Order is to give effect to the Report and it shall be construed accordingly.

2.3 Any word or expression used in this Order or the recitals to this Order shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report.

2.4 In this Order the word 'including' means including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and 'include' shall be construed accordingly.

2.5 In this Order:

**'Cement'** means any type of cement, including grey and white cement;

**'Cementitious product'** means any substance with cementitious or pozzolanic properties) that is added to Cement to make another type of Cement, or in the making of concrete, including:

(a) ground granulated blast furnace slag (GGBS), and

(b) pulverised fuel or fly ash (PFA);

**'Notification'** means any communication or publication in writing, including a communication sent by post, fax, personal delivery or email (and any other form of electronic communication);

**'Customer'** means a customer in Great Britain, and:

(a) includes any existing and prospective customer, but

(b) does not include a person who is in the same Group as the Supplier;

**'Generic Price Announcement'** means any Notification issued by a Supplier to its Customers which sets out (in whole or in part) the Price Structure for any of the Supplier's Products, other than a Notification that is specific to the circumstances of an individual Customer;

**'Group'** means group of interconnected bodies corporate, as defined in [section 129](#) of the Act (except that for 'subsidiary' in section 129(1) and (2) substitute 'wholly-owned subsidiary');

**'Price Structure'** means:

(a) the prices to be charged for a Product, whether gross or net of any additional charges;

(b) the percentage increases or decreases that may be made in such prices;

(c) any discounts, rebates or other concessions that may be available; and

(d) the amount of any surcharge or other adjustment factor that may be taken into account;

**'Product'** means:

(a) Cement; or

(b) a Cementitious product;

irrespective of the form in which it is supplied and includes bulk and bagged.

**'Supplier'** means any producer or importer of Cement or Cementitious products in Great Britain, other than:

(a) a builders' merchant; or

(b) any other person who supplies solely to retail customers.

### **3. Prohibition on Generic Price Announcement**

3.1 No Supplier shall issue (or cause or permit another person to issue) a Generic Price Announcement.

### **4. Requirements relating to customer-specific notifications**

4.1 Any Notification issued by a Supplier to a Customer which sets out, in whole or in part, the Price Structure for the Supplier's Products must include the following information:

(a) the Customer's name and relevant address;

(b) the effective date of any price change;

(c) the current or last unit price charged by the Supplier to the Customer;

(d) the new unit price being proposed; and

(e) details of any other changes that could affect the total amount payable.

### **5. Powers of direction**

5.1 The CMA may give directions falling within this Order to:

(a) a person specified in the directions; or

(b) a holder for the time being of an office so specified in any body of persons corporate or unincorporate.

5.2 Directions fall within this paragraph if they are directions:

- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with this Order; or
- (b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.

5.3 The CMA may vary or revoke any directions so given.

## **6. Governing law**

6.1 This Order shall be governed by and construed in all respects in accordance with English law.

6.2 Disputes arising concerning this Order shall be subject to the jurisdiction of the courts of England and Wales.

## **7. Termination**

7.1 This Order shall be in force until such time as it is varied or revoked under the Act.

7.2 The variation, release or supersession of this Order shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

*(signed)* MARTIN CAVE

*Group Chair*

Date

# MARKET INVESTIGATION INTO THE SUPPLY OR ACQUISITION OF AGGREGATES, CEMENT AND READY-MIX CONCRETE

## Explanatory note

### The Price Announcement Order 2015

*(This Note does not form part of the Order)*

#### Background

1. On 18 January 2012 the Office of Fair Trading made a reference to the Competition Commission (CC) under [section 131](#) of the Enterprise Act 2002 (the Act) concerning the supply or acquisition of aggregates, cement and ready-mix concrete in Great Britain (the Reference).<sup>2</sup>
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  - (b) there were further features of the GB cement markets which combine to give rise to an AEC in the market for the supply of ground granulated blast furnace slag (GGBS) in GB, as well as to an additional GGBS-related AEC in the GB cement markets;
  - (c) the likely effect of those features and resulting AECs is higher prices for cement and for GGBS than would otherwise be the case;
  - (d) in order, in particular, to address the Coordination AEC and resulting customer detriment a number of remedies should be imposed under [section 138\(2\)](#) of the Act, including a remedy consisting in the prohibition of generic price announcement letters sent by all suppliers in Great Britain of cementitious materials to their customers; and

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<sup>2</sup> Relevant amendments to the Act are made by Part 3 of and Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

- (e) given the risks identified with implementation of this remedy by means of undertakings given by the suppliers, the prohibition should be effected by means of an order.
3. On 12 March 2014 Hope Construction Materials Ltd (Hope) and Lafarge Tarmac Holdings Ltd (Lafarge Tarmac) made an application to the Competition Appeal Tribunal (Tribunal) under [section 179](#) of the Act requesting the Tribunal to, in particular, quash paragraphs 12.3 to 12.7 and 12.9(a), and paragraph 13.5(a), Figure 13.1 and paragraphs 13.7 to 13.138 of the Report.
  4. On 1 April 2014 the remaining functions of the CC in relation to the Reference were transferred to the Competition and Markets Authority (CMA) under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014.
  5. In the light of the challenges brought by Hope and Lafarge Tarmac, the CMA decided to place the implementation of the price announcement remedial action on hold pending on the outcome of those proceedings.
  6. On 4 August 2015, by Order, the Tribunal granted permission to Hope and Lafarge Tarmac to withdraw their applications for review.

### **Possible consequences of not complying with the Order**

7. [Section 167](#) of the Act places a duty on any person to whom the Order applies to comply with it. Any person who suffers loss or damage due to a breach of this duty may bring an action.
8. The CMA has power under the Order to give directions, including directions to a person in their capacity as an office holder, for the purpose of carrying out, or ensuring compliance with, the Order.
9. [Section 167](#) of the Act also provides that the CMA can seek to enforce the Order by civil proceedings for an injunction or for any other appropriate relief or remedy.

### **Review of the Order**

10. The CMA has a duty under [section 162](#) of the Act to monitor the operation of the Order. This includes a duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances. Suppliers may apply for a variation or cancellation of all or part of the Order on

the basis of a change of circumstances, or recommend that the CMA reviews the need for the Order or part of it.

## **Status of this Explanatory Note**

11. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail.

## **Structure of the Order**

12. The Order is divided into seven Articles:
  - (a) Articles 1 and 2 contain general provisions, which include specifying when the Order comes into force and definitions that are used throughout the Order (and which are also used in this Explanatory Note).
  - (b) Article 3 of the Order prohibits the issue of generic price announcements by suppliers of cement or cementitious products in Great Britain (that is to say, any price announcement that is not specific to the circumstances of an individual customer). However, the prohibition does not apply to someone (such as a builders' merchant) who supplies retail customers only.
  - (c) Article 4 sets out minimum requirements for those price announcements that are not prohibited by Article 3.
  - (d) Article 5 contains provisions allowing the CMA to give directions as to compliance with the Order.
  - (e) Article 6 confirms that the laws of England and Wales apply to this Order.
  - (f) Article 7 provides that the Order will remain in force until varied or revoked.