

## REFERENCE RELATING TO THE ANTICIPATED JOINT VENTURE BETWEEN ANGLO AMERICAN PLC AND LAFARGE SA

### Notice of possible remedies under Rule 11 of the Competition Commission Rules of Procedure

#### Introduction

1. On 2 September 2011 the Office of Fair Trading (OFT), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred to the Competition Commission (CC) for investigation and report the anticipated joint venture between Anglo American (Anglo American) and Lafarge SA (Lafarge) (the joint venture).
2. In its provisional findings on the reference notified to Anglo American and Lafarge (the main parties) on 21 February 2012, the CC Inquiry Group (the Group) concluded provisionally that the joint venture would result in the creation of a relevant merger situation; and that the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in markets for aggregates, asphalt, cement and ready mix concrete (RMX), which may be expected to lead to a worsening of the competitive offering, eg higher prices, than would otherwise be the case.
3. This notice sets out the actions which the Group considers might be taken by the CC, including any recommendations it might make for action on the part of others, for the purpose of remedying the SLC and any resulting adverse effects identified in the provisional findings. The CC invites comments on possible remedies by **6 March 2012** (see note (i)).

#### Criteria

4. In choosing appropriate remedial action, the Group shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.<sup>1</sup> When deciding on an appropriate remedy, the Group will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies that the Group considers equally effective, it will choose that which imposes the least cost or restriction. The Group will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.

#### Possible remedies on which views are sought

5. The transaction that has been referred to the CC is an anticipated joint venture. The following broad classes of structural remedy might be effective in remedying the SLC which has been provisionally identified:
  - (a) Full prohibition of the joint venture.
  - (b) Prohibition of the joint venture in relation to some aspects of the transaction, but not in relation to others ("partial prohibition"). For example, the main parties might be permitted to combine their operations in some markets (eg in certain local asphalt markets), but be required to retain separate ownership of their operations

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<sup>1</sup> Section 35 (4) of the Act.

in others markets (eg in cement). This remedy option might also include divestiture of certain operations of the main parties, for example to deal with specific local issues.

- (c) Requiring divestiture of certain operations of the main parties, as a condition for allowing the joint venture to proceed.
- 6. Full prohibition of the joint venture would prevent an SLC from arising in any relevant market. The Group therefore takes the view that full prohibition would represent a comprehensive solution to all aspects of the SLC it has provisionally found and that it has very few risks in terms of effectiveness.
- 7. The Group will give careful consideration to whether there are other remedy options which would be similarly effective in remedying this provisional SLC.
- 8. The Group's current thinking about other structural remedy options that might be effective is set out in paragraphs 11 to 27. The Group would consider any other practicable remedies that the main parties, or any interested third parties, may propose in order to address the SLC and any resulting adverse effects.
- 9. The Group's current view is that a behavioural remedy is very unlikely to be an effective remedy to any element of the SLC that it has provisionally identified. However, the Group will consider whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies.
- 10. In determining an appropriate remedy, the Group will consider the extent to which different remedy options would be effective in remedying each of the individual elements of the SLC that has been provisionally identified. The Group will also consider whether a combination of measures is required to achieve a comprehensive solution, and will evaluate the cumulative impact of any such combination of measures on the SLC.

### ***Remedies to address SLC in cement***

- 11. The Group has provisionally found that the joint venture is likely to give rise to an SLC, as a result of an increased likelihood of coordinated effects in the UK market for cement. These effects arise both from the combination of the main parties' cement operations, which reduce the number of UK cement producers from four to three, and also from the impact of the combination of all of the main parties' RMX activities on the incentives and ability of UK cement producers to achieve and sustain coordinated outcomes.
- 12. To remedy this aspect of the provisional SLC, in addition to full prohibition (see paragraph 6), the Group has identified the following options as being potentially effective:
  - (a) prohibiting the inclusion of the main parties' cement and RMX operations in the joint venture; and
  - (b) requiring divestiture of certain cement and RMX operations as a condition of allowing the joint venture to proceed.
- 13. At this stage, the Group does not expect that a prohibition that related only to the inclusion of cement operations in the joint venture would be sufficient, in itself, to fully remedy this element of the SLC. This is because the combination of all of the parties' RMX activities also contributes substantially to the provisional SLC finding (see paragraph 11).

14. A prohibition of the joint venture in relation to both cement and RMX may have greater potential to be an effective solution to this aspect of the SLC, as it would address problems arising from the combination of the main parties' operations at both levels of the supply chain.
15. In evaluating the effectiveness of this option, the Group will consider whether allowing a more limited joint venture (eg in relation to those aggregates and asphalt operations where there is no problematic overlap) would still give rise to competition concerns in relation to cement. As we set out in the provisional findings, there are a number of existing 'structural' and 'non-structural' links between the four UK cement producers, which may facilitate a common understanding between them. A further joint venture involving a significant proportion of the main parties' aggregate and/or asphalt operations would represent a substantial additional structural link and would need to be considered carefully in the context of our concerns about coordinated effects.
16. In evaluating possible divestitures as a remedy to this aspect of the SLC, the Group will consider the likelihood of achieving a successful divestiture, the associated risks, as well as the implications of any reconfigured joint venture on the incentives and ability of UK cement producers to achieve and sustain coordinated outcomes. In reaching its view, the Group will have regard to the following critical elements of the design of divestiture remedies:
  - (a) *The scope of the divestiture package.* The Group's current view is that, to be effective in remedying the provisional SLC in cement, any divestiture package would need to contain substantial cement and RMX operations, on a scale similar to the current cement and RMX operations of either Anglo American or Lafarge. Such a package would need to be appropriately configured to be attractive to potential purchasers and to enable the purchaser to operate effectively as an independent competitor in the UK cement market. To avoid problems associated with 'mix-and-match' divestitures, the CC will normally prefer for all the assets in any divestiture package to be provided by one of the joint venture parties unless it can be demonstrated that there is no significant increase in risk from a mix-and-match alternative.
  - (b) *Identification of a suitable purchaser.* The Group will wish to satisfy itself that a prospective purchaser is independent of the main parties, has the necessary capability to compete, is committed to competing in the UK cement market and that divestiture to the purchaser will not create further competition concerns. The Group's current view is that neither Cemex nor Hanson would be a suitable purchaser for any divestiture package in relation to cement.
  - (c) *Effective divestiture process.* The Group will consider the appropriate timescale for achieving a divestiture and what procedural safeguards would be needed to minimize the risks associated with this remedy option. For example, at this stage, the Group expects that it would be necessary to require that any divestiture(s) be completed before the joint venture is allowed to proceed.
17. The Group invites views on these remedy options and any other options that could be effective in remedying the SLC that it has provisionally found in the UK market for cement.

### ***Remedies to address SLCs in aggregates, asphalt and RMX***

18. The Group has provisionally found that the joint venture is likely to result in an SLC in certain local markets for aggregates, asphalt and RMX. These SLC findings arise

from the combination, as a result of the joint venture, of the parties' operations in particular local areas and the resulting reduction in local competition.

19. A list of all the problematic local overlaps that have been identified is set out in the [annex](#) to this Notice. This annex identifies the product in which the SLC has been identified (ie aggregates, asphalt or RMX), the site (or other facility) by reference to which the problematic local overlap has been identified and other competing sites, or other facilities, of the main parties within a specified distance of that site.
20. In addition, the Group has provisionally found that the joint venture is likely to result in an SLC in the national markets for two speciality forms of aggregates: rail ballast and high purity limestone for flue-gas desulphurization. The sites of the main parties that supply these two forms of aggregates are also set out in the annex to this notice.
21. The Group is considering the following options in relation to each of the problematic overlaps (whether local or national) that it has provisionally identified:
  - (a) Prohibiting the main parties from including in the joint venture those operations involved in a problematic overlap. For example, under this remedy option, if a problematic local overlap involved both an Anglo American and a Lafarge RMX plant, neither site could be included in the joint venture.
  - (b) Divestiture of local operations to remove the source of the local SLC as a condition of allowing the inclusion of the remaining operations in the joint venture. For example, if a problematic local overlap contained both an Anglo American and a Lafarge RMX site, one site would need to be divested to a suitable purchaser, before the second site could be included in the joint venture.
22. In relation to the first of these options, the Group will consider whether those operations which were kept outside the joint venture could reasonably be expected to compete independently, if the joint venture were to proceed.
23. As with divestiture remedies in cement (see paragraph 16), the Group will consider the scope of any divestiture package, the criteria for a suitable purchaser and how to achieve a timely and effective divestiture process.
24. The Group will wish to ensure that any divestiture package is capable of competing independently and successfully on an ongoing basis and that it includes all the relevant activities pertinent to the area of competitive overlap. This may need to involve divestiture of products other than those in which the SLC has been identified, if it is not practicable to limit the scope of divestiture without compromising the effectiveness of the remedy.
25. The Group will also consider whether, in relation to specific divestitures, there is a risk that a specific plant may rely on supply from another site, for example the supply of aggregates to an asphalt plant or to a rail depot. Should this be a relevant consideration in relation to specific divestitures, the Group will consider whether the scope of the divestiture package should be widened (for example, to include both up- and downstream sites) and/or whether a behavioural remedy would be required in addition to any divestiture remedy (for example, to ensure ongoing supply).
26. The Group will consider the possible relationships and overlaps between appropriate remedies for specific elements of the SLC that it has provisionally found, including the interaction of remedies to address problems arising from both coordinated and unilateral effects.

27. The Group invites views on these remedy options and any other options that could be effective in remedying the SLC that it has provisionally found in certain local markets for aggregates, asphalt and RMX and in national markets for rail ballast and high purity limestone for flue-gas desulphurization.

### **Relevant customer benefits**

28. The Group will have regard to the effects of remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the merger situation. Such benefits might comprise lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. A benefit is only a relevant customer benefit if the CC believes that: (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.
29. The Group welcomes views on the nature of any relevant customer benefits and on the scale and likelihood of such benefits and the extent to which these are preserved by the different remedy options we are considering.

### **Next steps**

30. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the Group to consider, by **6 March 2012** (see note (i)).
31. A copy of this notice will be posted on the CC website.

*(signed)* ROGER WITCOMB  
Group Chairman  
**21 February 2011**

### *Note*

- (i) This notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the provisional findings announced on 21 February 2012. The main parties have until **13 March 2012** to respond to the provisional findings. The Group's findings may alter in response to comments it receives on its provisional findings, in which case the Group may consider other possible remedies, if appropriate.

## Problematic overlaps in aggregates, asphalt and RMX

1. The tables in this annex summarize the problematic overlaps that have been identified in markets for aggregates, asphalt and RMX:
  - (a) Table 1 summarizes the problematic overlaps at a national level in relation to specialist aggregates—high purity limestone for flue-gas desulphurization and rail ballast. It provides details of the Lafarge and Tarmac sites that produce each of these two products.
  - (b) Table 2 summarizes the problematic local overlaps in relation to primary aggregates, arranged by region. For each such overlap, it sets out the Lafarge or Tarmac site by reference to which the overlap has been identified and the other Lafarge and Tarmac sites within a specified distance ('radial') of that site.
  - (c) Table 3 summarizes the problematic local overlaps in relation to asphalt, arranged by region. For each such overlap, it sets out the Lafarge or Tarmac site by reference to which the overlap has been identified and the other Lafarge and Tarmac sites within a specified distance ('radial') of that site.
  - (d) Table 4 summarizes the problematic local overlaps in relation to RMX, arranged by region. For each such overlap, it sets out the Lafarge or Tarmac site by reference to which the overlap has been identified and the other Lafarge and Tarmac sites within a specified distance ('radial') of that site.
2. No particular significance should be attached to the sequence in which these tables are presented, or to the position of individual overlaps or sites within each table.

TABLE 1 Specialist aggregates—problematic overlaps

<i>Product</i>	<i>Lafarge sites</i>	<i>Tarmac sites</i>
Rail ballast	Mountsorrel	Ciiffe Hill
High purity limestone for flue-gas desulphurization	Dowlow	Tunstead

TABLE 2 Primary aggregates—problematic local overlaps

<i>Region</i>	<i>Site at centre of radial</i>	<i>Lafarge sites within radial (including existing joint ventures)</i>	<i>Tarmac sites within radial (including existing joint ventures)</i>
North	Thrislington (Lafarge)	Thrislington, Quarrington Merchating*	Cochranes Wharf, Coxhoe, Quarrington Merchating*
North	Coxhoe (Tarmac)	Thrislington, Quarrington Merchating *	Coxhoe, Cochranes Wharf, Ellerton, Ebchester, Howdon, Quarrington Merchating, * Scorton
Yorkshire & Humberside	Scorton Quarry (Tarmac)	Marfield, Thrislington	Scorton, Cochranes Wharf, Coxhoe, Ellerton, Nosterfield, Wensley
Yorkshire & Humberside	Cadeby (Lafarge)	Cadeby, Finningley, Methley, Whitwell	Holme Hall, Carlton Forest
Yorkshire & Humberside	Holme Hall (Tarmac)	Cadeby, Finningley, Methley, Whitwell	Holme Hall, Carlton Forest
Yorkshire & Humberside	Swinden (Tarmac)	Dry Rigg, Marfield	Swinden, Arcow, Clitheroe, Nosterfield, Wensley
Yorkshire & Humberside	Wensley (Tarmac)	Dry Rigg, Marfield	Wensley, Arcow, Ellerton, Nosterfield, Scorton, Swinden
North West	Clitheroe (Tarmac)	Dry Rigg	Clitheroe, Arcow, Leapers Wood, Pilsworth, Swinden
North West	Ashbury depot (Lafarge)	Ashbury depot	Agecroft Aggregates Handling, Bredbury Aggregates Handling
North West	Agecroft Aggregates Handling (Tarmac)	Ashbury depot	Agecroft Aggregates Handling, Bredbury Aggregates Handling, Pilsworth
North West	Bredbury Aggregates Handling (Lafarge)	Ashbury depot	Agecroft Aggregates Handling, Bredbury Aggregates Handling
East Midlands	Dowlow (Lafarge)	Dowlow, Alrewas, Cadeby, Chaddesden, Lockington, Swarkestone, Whitwell	Ballidon, Bestwood, Caldon Low, Calverton, Carlton Forest, Crown Farm, Croxden, Dene, Eaton Hall, Fourways, Holme Hall, Pilsworth, Tunstead
East Midlands	Tunstead (Tarmac)	Dowlow	Tunstead, Ballidon, Caldon Low, Croxden, Dene, Eaton Hall
East Midlands	Ballidon (Tarmac)	Chaddesden, Dowlow, Lockington, Swarkestone	Ballidon, Bestwood, Caldon Low, Calverton, Croxden, Dene, Eaton Hall, Tunstead,
East Midlands	Dene (Tarmac)	Chaddesden, Dowlow, Lockington, Swarkestone, Whitwell	Dene, Ballidon , Bestwood , Caldon Low, Calverton, Croxden, Tunstead
East Midlands	Whitwell (Lafarge)	Whitwell, Besthorpe, Cadeby, Chaddesden, Dowlow, Finningley, Lockington, Methley, Swarkestone, Whisby	Ballidon, Bestwood, Caldon Low, Calverton, Carlton Forest, Dene, Holme Hall, Langford, Tunstead
East Midlands	Mountsorrel (Lafarge)	Mountsorrel, Brooksby, Chaddesden, Lockington, Swarkestone	Cadeby, Cliffe Hill
East Midlands	Cliffe Hill (Tarmac / Hanson MQP JV)	Alrewas, Brooksby, Chaddesden, Husbands Bosworth, Lockington, Mountsorrel, Shawell, Swarkestone	Cliffe Hill, Cadeby, Mancetter, Griff, Hints, Meriden
West Midlands	Caldon Low (Tarmac)	Alrewas, Chaddesden, Dowlow, Swarkestone	Caldon Low, Ballidon, Croxden, Dene, Eaton Hall, Tunstead
West Midlands	Mancetter (Tarmac)	Alrewas, Husbands Bosworth, Lockington, Mountsorrel, Shawell, Swarkestone	Mancetter, Cadeby, Cliffe Hill, Griff, Hints, Meriden
Wales	Swansea Wharf (Tarmac)	Briton Ferry, Ewenny	Swansea Wharf, Cornelly, Hendy, Pant Torcoed
Wales	Hendre (Tarmac)	Graig	Hendre, Borrás, Bramely Moore, Crown Farm, Fourways
East Anglia	Bury St Edmunds Aggregates Handling (Tarmac)	Barham, Barham depot, Cambridge (Chesterton), Higham (Kennett)	Bury St Edmunds Aggregates Handling, Ingham

\*Quarrington Merchating is a JV between Lafarge and Tarmac.

TABLE 3 Asphalt—problematic local overlaps

<i>Region</i>	<i>Site at centre of radial</i>	<i>Lafarge sites within radial</i>	<i>Tarmac sites within radial</i>
East Anglia	Higham (Lafarge)	Higham, Cambridge	Cavenham
South East	Wivenhoe (Lafarge)	Wivenhoe	Bellhouse, Ipswich

TABLE 4 **RMX—problematic local overlaps**

<i>Region</i>	<i>Site at centre of radial</i>	<i>Lafarge sites within radial</i>	<i>Tarmac sites within radial</i>
Scotland	Greenock (both)	Greenock	Greenock, Dumbarton
Yorkshire & Humberside	Scunthorpe (Lafarge)	Scunthorpe	Scunthorpe
Yorkshire & Humberside	Selby (Tarmac)	Selby	Selby
Yorkshire & Humberside	Northallerton (Lafarge)	Northallerton	Thirsk
East Midlands	Lincoln (Tarmac)	Whisby	Lincoln
East Anglia	Great Yarmouth (Tarmac/Carter JV)	Great Yarmouth	Great Yarmouth