



COMPETITION APPEAL TRIBUNAL

**SUMMARY OF APPLICATION UNDER SECTION 179 OF THE ENTERPRISE ACT 2002**

**CASE No. 1223/6/8/13**

Pursuant to rules 15 and 25 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (the “Rules”), the Registrar gives notice of the receipt on 28 October 2013 of an application for review under section 179(1) of the Enterprise Act 2002 (the “Act”), by Hanson Quarry Products Europe Limited (the “Applicant”), for a review of a decision made by the Competition Commission (the “Commission”) to publish, on 8 October 2013, two documents relating to the Commission’s ongoing investigation into the markets for the supply and acquisition of aggregates, cement and ready-mix concrete in Great Britain (the “Investigation”). The Applicant is represented by Pinsent Masons LLP, 3 Colmore Circus, Birmingham B4 6BH (ref: Giles Warrington/Richard Snape).

The Commission published its provisional findings in the Investigation and accompanying notice of possible remedies on 21 May 2013. On 8 October 2013, the Commission published two further documents in the Investigation: an addendum to its provisional findings entitled “Further analysis on ground granulated blast furnace slag” (“GGBS”) (the “Addendum”); and a provisional decision on remedies (the “PDR”).

By this application, the Applicant applies for review of the Commission’s decision or decisions to:

1. publish the Addendum on 8 October 2013; and/or
2. publish the PDR, at least insofar as the PDR concerns GGBS, on the same date.

In summary, the Applicant contends that the Commission’s decision to publish the Addendum at the same time as the PDR was is in breach of the Commission’s statutory duty to consult in section 169(2) of the Act and/or the common law principles of natural justice and/or Article 6 of the European Convention of Human Rights (“ECHR”) and/or Article 1 of the First Protocol to the ECHR. If well founded, the Applicant submits that the Addendum and the relevant section of the PDR (insofar as it relates to GGBS) would have to be set aside. Furthermore, if the Applicant’s criticism of the statutory consultation process is made out then the scope of the current Commission investigation would be materially altered (even if the Investigation could, sensibly, survive).

The decisions sought to be reviewed in the application are raised by reference to the Tribunal’s recent judgment dated 2 October 2013 in Case No.: 1218/6/8/13 *BMI Healthcare Limited v Competition Commission*, [2013] CAT 24<sup>1</sup>. The Applicant submits that that judgment made clear that consultation issues relating to due process may be raised at an early stage and well before any final decision of a regulator (in this case, the Commission) has been made.

By way of relief, the Applicant requests that the Tribunal:

1. sets aside the Addendum; and
  2. sets aside the PDR insofar as it relates to GGBS
- with the effect that the Investigation, insofar as it relates to GGBS, ceases;

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<sup>1</sup> [http://www.catribunal.org.uk/files/1218\\_BMI\\_Judgment\\_021013.pdf](http://www.catribunal.org.uk/files/1218_BMI_Judgment_021013.pdf)

3. such further or other relief as the Tribunal thinks fit, including declaratory relief and directions; and
4. an order that the Commission pay the Applicant the costs it has reasonably incurred in bringing its application.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules. Pursuant to the Tribunal's Order of 31 October 2013, any request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB, so that it is received no later than **4pm on 13 November 2013**.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, QC (Hon)*  
Registrar

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