EN

Case No COMP/M.180 – Steetley / Tarmac

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 9 (3)
Date: 12/02/1992

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12 February 1997
C(92) 240

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

COMMISSION DECISION

of 12 February 1992

referring in part case No IV/M.180 – Steetley / Tarmac,

to the competent authorities of the United Kingdom

pursuant to Article 9 of Council Regulation No 4064/89

(Case No. IV/M.180 – Steetley / Tarmac)

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989[1] on the control of concentrations between undertakings, and in particular Article 9(3)(b),

Having regard to the notification made by Steetley plc. and Tarmac plc. pursuant to Article 4 of the said Council Regulation on 20.12.1991.

Having regard to the communication received from the United Kingdom Government, dated 24.1.1992,

whereas,

1. On 1.12.1991, Steetley Plc (Steetley) and Tarmac Plc (Tarmac) entered into an agreement by which they created a joint venture, Allied Buildings materials Holdings Limited. This latter company is to take over all the building product activities of Steetley and Tarmac in Great Britain. This agreement was notified to the Commission on 20.12.91 pursuant to Article 4 of the Merger Regulation. A copy of the notification was supplied to the United Kingdom Government on 06.01.1992.

2. On 24.12.1992, the United Kingdom Government informed the Commission pursuant to Article 9(2) of the merger Regulation, that in its opinion the joint venture threatens to create or strengthen a dominant position as a result of which effective competition would be impeded on the following markets:

   – bricks (or sub-markets within the brick sector) in local markets in the North-East and South-West of England;

   – clay tiles in Great Britain.

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1 OJ L 257, 21.9.1990, p. 14.

I. THE PARTIES

3. Steetley is a UK-based company active in building products, quarrying and industrial products and services sectors.

4. Tarmac is a UK-based company active in the quarrying, construction and building products sectors and the manufacture and installation of waterproofing materials and lightweight building systems.

II. THE OPERATION

5. The parties will cede to the joint venture all their UK assets, employees and businesses that relate to the manufacture and sale of building bricks (concrete and clay), clay roofing tiles, concrete products (excluding ready-mixed concrete), the extraction and processing of clay and the quarrying, processing and sale of cut stone.

III. COMMUNITY DIMENSION

6. The notified transaction has a community dimension. The aggregate worldwide turnover of Tarmac and Steetley in 1990 was 5.176 million and 1.062 million ECU respectively. Of this, Tarmac attained 4.659 million ECU in the EC; the equivalent figure for Steetley being 983 million ECU. The parties achieved less than two-thirds of its 1990 Community-wide turnover in one and the same Member State.

IV. CONCENTRATION

7. The joint venture is a concentration within the meaning of Article 3(2) of the Merger Regulation.

Joint control

Allied will be owned in equal shares bar its parents. The Board of Directors of Allied will consist of appointees of the parents in equal number. Resolutions must be passed unanimously. Tarmac and Steetley will therefore jointly control Allied within the meaning of Article 3 of the Merger Regulation.

Concentrative joint venture

8. The joint venture will acquire from its parents all the resources, in terms of production, management and marketing, to create an identifiable and viable undertaking distinct from its parents. It will result in a permanent structural change to the market. The integration and rationalization of the parents' assets within the joint venture structure means that it will not realistically be able to be abandoned, and thus the modification of market structure can be considered to be durable. Allied will act as an independent supplier and buyer on the market, exercising its own commercial policy. The operation therefore has all the characteristics of an autonomous economic entity.

9. The joint venture will not result in the coordination of competitive behaviour between Steetley and Tarmac fear the following reasons.

Actual competition: The two companies are to cede all their assets in the above mentioned product sectors to the joint venture, and will therefore compete neither with one another nor with the joint venture.

Potential competition: Once the joint venture has been established the parents will own no assets nor expertise that would make them likely to enter the joint venture's markets in their private capacities. Furthermore, the existence of the joint venture means that the parents have very limited economic interest in entering in the markets in competition with the joint venture, particularly in the light of the capital intensive nature of the industry. They cannot, therefore, be considered to be potential competitors of the joint venture for the products in question.

Spill-over effects on neighbouring markets: In geographic terms, Steetley manufactures bricks in the US. Tarmac manufactures bricks and concrete blocks in France and Tarmac's French brick facility will either be brought under the control of Allied by July 1392, or sold. Firstly, it should be noted that the parties do not actually compete with one another in these geographic areas remote from that in which the joint venture will be active, and thus the joint venture could not result in coordination of the competitive behaviour between them in this respect. Secondly, transport costs for these products makes Great Britain a distinct geographic area; there is little or no competitive interaction between Britain and these areas for the products in question.

In product terms, both parents continue to compete in Great Britain in quarrying, the processing and sale of aggregates, coated roadstone and ready mixed concrete. These products are clearly distinct from those of Allied: they serve different end uses, use different raw materials, are manufactured using different technology, and marketed through different channels. The collaboration via the joint venture cannot be expected to provide the parents with technical or marketing information that would be relevant to the markets in which they remain competitors.

Spill-over effects on upstream/downstream markets

Tarmac and Steetley do not compete on markets upstream/downstream of those of the joint venture. Tarmac alone is present in the building and construction markets. No competition between the parents in this respect exists to be restricted and the operation will not result in a coordination of competitive conduct.

The operation does not therefore result in the coordination of competitive conduct. The Commission therefore concludes that the joint venture is concentrative in nature.

V. ASSESSMENT

Bricks

10. Relevant Product Market

Three basic types of bricks can be distinguished:

Common bricks are cheap and standardized building bricks without any particular physical or aesthetic qualities. They are used for walls or structures that will be covered over.

Facing bricks are specifically designed to give an attractive appearance to a wall and are available in a wide range of colours and textures.

Engineering bricks are made to defined quality standards of strength and durability and are suited for use where exposure to damp or frost may be extreme, or where load bearing qualities are important.

11. There is limited substitutability between these three product categories, partly in commercial terms, partly regarding end-use. Common bricks for example can, in theory, be used for facing applications. However, for aesthetic reasons, they will be used very rarely for this purpose, and only when price is of overwhelming importance. Engineering bricks can also be used either for facings or as common bricks. In reality, however, they are not used for facing applications for the same reason as commons. Neither commons, nor facing bricks are generally used for engineering applications. It should be noted however, that there is a very high degree of supply-side substitutability between these three product categories: all three require substantially the same capital equipment and differ in only minor respects regarding raw materials. The production process can differ between engineering/commons compared to facing bricks, but the commonality of the capital equipment required for the production of all three categories is such that, switching costs, in both technical and marketing terms, are not likely to be significant. According to the information available to the Commission the degree of supply-side substitutability is so high that a small but significant price increase in one of these three categories would be likely to result in immediate supply side substitution; production would switch from another category to that in which the price has increased. Thus, market power would not be exercisable in one of the three brick categories in isolation of the other two. For the purposes of analyzing the effects of the concentration, it is therefore appropriate not to distinguish between these categories of bricks.

12. In Great Britain the market for bricks has been traditionally divided between fletton bricks and non-fletton bricks. Fletton bricks are manufactured from a particular type of Oxford clay deposited naturally in a distinct area of the south of England. The London Brick Company is the monopoly producer of such bricks. Fletton bricks were traditionally distinguished from non-flettons due to production costs. Flettons were furthermore considered to be less aesthetically pleasing, with a limited range of colours and textures. These differences have now reduced: flettons are produced in a wide range of styles, and technological developments have significantly reduced the cost differences. The choice for a customer has therefore widened, and the two markets have fused to a significant extent. A small but significant price increase in fletton bricks would be highly likely to result in substitution by customers for non-fletton bricks. Thus, although energy-related cost-differences do remain, for the purposes of examining the notified concentration it is not appropriate to distinguish bricks manufactured using fletton clay from other bricks.

The Commission therefore considers that the general market for bricks can be taken to be the relevant product market for the purposes of analyzing the notified concentration.

Geographic reference market

13. In its request for referral the UK Government considers that there are distinct markets for bricks in the North East and South West of England[2]. In its assessment the Commission has taken this into account, as well as the following elements:

14. Bricks are both heavy and bulky, and transport represents a significant percentage of total selling price. According to figures received by the Commission from the parties and a number of their competitors, a table can be drawn up showing the percentage of total product price of various categories of brick prices that is made up by transport costs over varying distances. The first figure in each box represents the calculation based on transport charges provided by Steetley. The figure in brackets represents the figure calculated on the basis of the equivalent average figure of a number of its competitors.

COST OF BRICKS/ DISTANCE	17 miles	35 miles	50 miles	70 miles	105 miles
£ 100	5,0% (7,0%)	7,1% (11,0%)	9,0% (15,0%)	11,3%(18,2%)	15,3%(24,1%)
£ 150	3,3% (4,7%)	4,7% (7,3%)	6,0% (10,0%)	7,5% (12,1%)	11,5%(15,1%)
£ 200	2,5% (3,5%)	3,6% (5,5%)	4,5% (7,5%)	5,6% (9,1%)	7,7% (12,1%)
£ 250	2,0% (2,8%)	2,8% (4,4%)	3,6% (6,0%)	4,5% (7,3%)	6,1% (9,6%)
£ 300	1,7% (2,3%)	2,4% (3,7%)	3,0% (5,0%)	3,8% (6,1%)	5,1% (8,0%)

15. Replies to questionnaires sent by the Commission to the notifying parties as well as many of their competitors and customers, enable the calculation to be made that 60-70 % of all bricks are sold in Great-Britain for delivery within a 70 mile radius of their place of manufacture.

16. The parties argue that the geographic reference market in this case is Great Britain, because notwithstanding the costs of transporting bricks, there are significant product flows between the different regions of Great-Britain. This is said to be shown by the fact that whilst Steetley/Tarmac account for over 80% of the production capacity in the North-East of England, they achieved less than 50% of the sales of bricks in the area in 1991. In analyzing this argument the Commission has taken into account the following considerations:

    (1) Over recent years large efficient brick plants have been established, which enable the manufacture of bricks at significantly lower cost compared to smaller, older plants.

    This enables a low-cost producer to sell into distant markets in which older high-cost producers have a significant part of local capacity, absorb the higher transport costs and still be competitive. Indeed, this latter point has

2 The monopolies and Mergers Commission in their 1983 Report on the proposed merger between London Brick plc and Ibstock Johnson plc (CMnd 9015), considered the brick market to be local in character.

been stressed by the notifying parties as the main reason why the geographic reference market for bricks, considered local by the Monopolies and Mergers Commission in 1981 and 1983, should now be considered national.

However, the parties acknowledge that the market is undergoing significant charge. Small, high-cost plants are being replaced by larder low-cost plants throughout the country. For example, Steetley has opened 4 new plants since 1985, with the major Todhills plant in the North-East of England. Tarmac opened the new Bothwell Park plant in the same area in 1989. This can be seen as a trend that would change the current market situation once a greater number of high-cost plants are replaced by low-cost factories, making current product movement an unreliable indicator of future trade flows.

(2) The manufacture of bricks is characterised by high fixed but relatively low variable costs. The parties argue that to maintain profitability, capacity utilisation must be maximised. In such circumstances a producer may be willing to use existing unutilised capacity to sell in remote markets, and absorb transport costs. It should be noted, however, that this consideration is only likely to play an important role when excess capacity exists due to recession in the construction sector, as is presently the case in Great Britain. Again, this factor is not a reliable indicator of continued movement of bricks.

(3) Furthermore, on the basis of the evidence available to the Commission, it cannot be excluded that trade flows could be accounted for to a significant extent by the movement of expensive bricks which tend to be architect specified and are thus less price-sensitive than cheaper bricks.

In the light of the above, even though there are certain trade flows of bricks over significant distances, there are strong indications that the geographic reference market for bricks within the United Kingdom is basically local in nature. The request for referral identifies two distinct markets in which a threat to competition is considered to exist; the North-East and South-West of England. The above factors indicate that these areas can be considered to be distinct geographic markets.

Creation or strengthening of a dominant position

17. In terms of capacity, the merged firm would acquire [75-85%] market share in the conurbation of Middlesborough/Sunderland Newcastle-upon-Tyne. In the larger area of the Northern Economic Planning Region, it would have [55-65%]. In the South-west EPR, Tarmac/Steetley would acquire [75-80%] of available capacity. If the area immediately surrounding Plymouth is considered, where Tarmac has most of its South-western facilities, it would have a market share of [80-85%] of available capacity.

18. Tarmac/Steetley's combined market share calculated in terms of actual sales in these areas is much lower than the above figure due to the present existence of trade flows (see, for example, paragraph 16 above). However, on the basis of the information available to the Commission, this factor cannot be considered to be a sufficient indication of effective competition.

19. Indeed, where as a consequence of the factors referred to above and of the likely market evolution, the creation of the merged company, with very high market share

in terms of capacity in the North-East and South-West of Great Britain could lead to monopoly pricing.

20. Furthermore, potential new entry is unlikely in the short and even medium term since regulatory requirements make the authorisation procedure for building a new brick plant difficult. All manufacturers contacted by the Commission consider a time period of a minimum of 5 years from conception to production to be inevitable.

21. Finally, two of the major customers of Tarmac/Steetley with significant operations in the North of England, have expressed the concern that the merger may lead to the creation of market power.

22. The Commission therefore considers that the notified concentration threatens to create a dominant position in the markets identified above as a result of which effective competition would be significantly impeded.

Tiles

Relevant Product Market

23. Roofing tiles are used in the UK mainly for pitched roof housing. Tiles may be classified according to shape and size (plain and interlocking) and also according to material (concrete, clay or slate). These various categories of tile are fungible.

24. There are significant price differences between the various product categories. A plain clay tile typically costs between 10% and 20% more than an equivalent concrete tile. An even greater price difference exists between clay and natural slate tiles.

25. In 1990, the overall market was divided between 72% concrete tiles, 5,5% clay tiles and 10% synthetic slate.

26. The willingness of purchasers of clay tiles to pay a premium can be explained by a perceived aesthetic difference between clay tiles and their functional substitutes made of concrete. An even greater aesthetic difference exists between clay and natural or artificial slate tiles. The existence of such a perception is recognized by the parties in the notification.

According to the notification 60-65% of all clay roof tiles are sold for repair maintenance and improvement, where substitution between clay and concrete or slate tiles will be significantly constrained.

27. The manufacturing processes for clay, concrete and slate tiles are fundamentally different, and there is thus very limited or no supply-side substitutability between clay and concrete or slate tiles.

28. These considerations lead the Commission to define clay tiles to be a relevant product market. The parties argue that the cost of manufacturing clay tiles is declining, so that the difference in price between clay and concrete tiles will reduce over time. On this basis they consider the relevant product to be roofing tiles in general.

However, even if the price difference between clay and concrete tiles reduces, the perceived aesthetic difference between these products will remain. The inelastic repair, maintenance and improvement segment of the market will also continue to exist. Therefore, the parties' arguments do not change the Commission's view of the relevant product market.

Relevant Geographic Reference Market

29. The unit cost of transporting clay tiles is much lower than the unit cost of transporting bricks. The notifying parties argue that the reference market is Great Britain.

30. Unlike bricks, clay tile manufacturers use a specific type of clay located in the West Midlands, Humberside, and to a lesser extent, the south of England. Plants are therefore located in these regions, although manufacturers have to service the whole country. In addition, the low market volume requires manufacturers having several plants to concentrate production of each type of clay tile in one plant and distribute nationally. According to manufacturers consulted by the Commission, this strategy produces savings compensating the increased transport costs incurred.

The Commission therefore considers the relevant geographic market to be Great Britain.

Creation or strengthening of a dominant position

31. Tarmac/Steetley had a combined market share of [35-45%] of the relevant market in 1990. In January 1992, Tarmac opened a new plant, with the capacity to manufacture […] million plain clay tiles per annum. This additional capacity, which, according to information available to the Commission represents as much as [15-25%] of 1991 sales, significantly strengthens the existing position of Tarmac on the clay tile market.

32. A significant gap in market share exists between this figure and those of the major competitors that would remain on the market. Goxhill/Sandtoft had a market share of [25-30%] in 1990, Redland had [10-15%].

33. Other manufacturers of clay tiles are small and concentrate their activities on hand-made or specialist roof tiles, priced 50-100% higher than the machine-made tiles forming the bulk of Steetley/Tarmac's sales.

34. Commission inquiries indicate that significant entry barriers exist in the clay tile market. Firstly, only certain types of clay are used to produce roofing tiles. Any company that is not already quarrying appropriate clay (for manufacturing bricks for example) will face considerable expense and long delay before entry will be possible. Secondly, even brick manufacturers with appropriate clay reserves would face considerable difficulty in entering the market in the short-term. Two companies with such reserves, Butterley Bricks Ltd and Ibstock, have indicated that the cost of building a plant of minimum efficient size would be approximately £ […] million and would require between [up to 3 years].

35. Thus, in an already concentrated market, where the three leading companies have a combined market share in excess of 70%, the new entity will be the clear market

leader. Furthermore, there are significant barriers to entry. In these circumstances a threat exists that the concentration may create a dominant position.

36. In the light of these considerations the Commission concludes that the concentration threatens to create a dominant position as a result of which competition would be significantly impeded on the relevant market.

VI. REFERRAL

37. It follows from the above that the condition for a referral under Article 9(3) are fulfilled with regard to bricks and clay tiles. The Commission considers it appropriate to refer this case to the competent authorities of the United Kingdom with respect to bricks since for this product the geographic reference market identified above is local in nature and the competition issues identified are limited entirely to the territory of the United Kingdom. In relation to clay tiles the reference market covers the whole of Great Britain. Nevertheless, the Commission considers that good grounds exist for also referring this aspect of the case to the United Kingdom authorities. Indeed, the low level of trade flows for this product between Great Britain and the rest of the Community has the result that the economic consequences of the merger will be materially limited to the United Kingdom.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration between Steetley plc and Tarmac plc is hereby referred to the competent authorities of the United Kingdom pursuant to Article 9 of Council Regulation (EEC) No 4064/89 with regard to the manufacture and sale of bricks in the North-East and South-West of England and of clay tiles in Great Britain.

Article 2

This decision is addressed to the United Kingdom.

For the Commission,