

*Case No COMP/M.1779 – Anglo
American / Tarmac*

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 9 (3)b
Date: 13/01/2000



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.01.2000
C(2000)42

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 9(3)(b) DECISION

Decision relating to the referral of the case No COMP/M. 1779 - ANGLO AMERICAN/TARMAC to the United Kingdom Competition Authorities, pursuant to Article 9 of Regulation 4064/89

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No. 4064/89 of 21 December 1989, on the control of concentrations between undertakings¹, as amended by Council Regulation (EC) No 1310/97 of 30 June 1997² (together, 'the Merger Regulation'), and in particular article 9(3) thereof,

Having regard to the notification made by Anglo American plc on 23 November 1999, pursuant to article 4 of the said Regulation,

Having regard to the request of the United Kingdom Competition Authorities of 15 December 1999,

Whereas:

1. On 23 November 1999 the Commission received a notification of a proposed concentration by which Anglo American plc ('Anglo') will acquire sole control of Tarmac plc.
2. By a letter dated 15 December 1999, the United Kingdom requested the referral to the competent United Kingdom competition authorities of the whole case with a view to

¹ OJ L 395, 30.12.1989, p.1; corrected version OJ L 257, 21.9.1990, p.13

² OJ L 180, 9.7.1997, p.1; corrigendum OJ L 40, 13.12.1998, p.17

assessing it under United Kingdom national competition law, pursuant to article 9(2)(a) of the Merger Regulation.

I THE PARTIES

3. Anglo is a UK-registered and quoted company, [...]. Its principal activities are: mining of metals, diamonds, and coal; quarrying and industrial mineral production (aggregates – sand, gravel and crushed rock - cement, lime, asphalt mortar, and concrete); metal production; forestry and paper and board making. It has operations in various parts of the world, including the UK, where it operates through its subsidiary, the Tilcon group of construction materials companies, among others.
4. Tarmac is also a UK-registered and quoted company. Its principal activities are the production of aggregates, asphalt and readymixed concrete, and the manufacture of concrete products. It has operations in the UK and several other EU Member States, in the USA and elsewhere.

II THE OPERATION

5. The operation comprises an agreed public bid on the London Stock Exchange, whereby Anglo will acquire, for cash, the whole of the issued share capital of Tarmac.

III CONCENTRATION

6. Anglo will acquire sole control of Tarmac under the operation, which accordingly gives rise to a concentration within the meaning of article 3(1)(b) Merger Regulation.

IV COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover in excess of € 5,000 million (Anglo c. € [...] million, Tarmac c. € [...] million). Each of them has a Community-wide turnover in excess of € 250 million (Anglo c. € [...] million, Tarmac c. € [...] million)³ but they do not both achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Therefore, the notified operation has a Community dimension. It does not constitute a co-operation case under the EEA Agreement.

V RELEVANT MARKETS

Introduction

8. The request is for the referral of the whole of the case, on the grounds that the notified concentration threatens to create or strengthen a dominant position on certain markets within the UK which present all the characteristics of distinct markets (article 9(2)(a) Merger Regulation), namely the markets for aggregates, asphalt, readymixed concrete, mortar and concrete blocks.
9. Both parties are active in the supply of aggregates, asphalt, ready-mixed concrete, mortars and concrete products in the UK. Anglo, but not Tarmac, also has activities in the UK in the

³ all figures calendar year 1998

related areas of the production of lime (used in the manufacture of cement and mortar) where it has a share of c.[30 - 40 %] of national consumption, and cement manufacture (a share of c. [< 5 %] of national consumption). There are no overlaps between the parties in any of these products in any other EU Member State besides the UK.

Product Markets

Aggregates

10. The request treats all three main aggregate types (sand, gravel and crushed rock) as a single product market. This approach is in accordance with the view taken in previous Commission decisions in merger cases concerning aggregates⁴ and with the views of the notifying party in its Notification of the present case, and generally confirmed by the Commission's enquiries of third parties.
11. Both parties, and their main competitors, produce all three aggregate types. Although there is some variation in ex-works prices of aggregates as between the different main types, there is considerable scope for demand-side substitution between them, especially for concrete production, which according to the parties accounts for over 70% of total aggregate consumption by the construction industry in the UK, and for roadbuilding. Since transport costs account for a substantial proportion of the total price of all aggregates (according to the Notification, from about 30% of the total for a delivery distance of 10 miles (15km), to c.50% for 50 miles (80km) and *pro rata* above that) this tends to reduce the impact of variations in the ex-works price for different types.
12. According to the Commission's information, most customers will choose sources of aggregates principally on the basis of their distance from the point of use rather than the type of material. Moreover, due to local geological conditions – sand and gravel are alluvial or marine-sourced products, crushed rock is obtained from various, mainly harder, rock types (eg granite, quartzite, limestone) - customers in some areas will not have a source of more than one type within economic range
13. If the relevant product markets should be narrower than in the request, then it is likely that substantial market shares and increments, indicative of the existence of a threat of the creation or strengthening of a dominant position, would also arise in certain areas within the UK on that basis. It is accordingly not necessary, for the purposes of the present decision, to consider further subdividing the aggregates product market.
14. The notifying party suggests that 'secondary aggregates' – colliery and china clay waste, slate, power station ash, slags and demolition/construction wastes – should be regarded as substitutes for new aggregates in most of the main applications apart from mortar production and track ballast. Together with recycled asphalt (road planings) which is used only for roadmaking and site filling, these materials account for some 20% of all aggregate use, according to the Notification.
15. It is clear however from the Notification that secondary aggregates are not fully substitutable for new aggregates across the whole range of applications. Therefore they will not constrain prices in all of them. In particular, their use in readymixed concrete production

⁴ case no. IV/M 1030, Lafarge/Redland, referral to France, at page 3; also IV/M 1157 Skanska/Scancem, at paras. 32 and 33

– a major aggregate use - appears to be very limited. The extent to which they will constrain prices in the applications for which they can in principle be substituted will also vary between localities according to availability and transport cost/distance. However it is unnecessary to further consider the inclusion of secondary aggregates in the relevant product market for the purpose of the present decision, since – as further described below - on the information available, even on a generous estimate of their impact on the various relevant geographic aggregate markets, there would still be a threat of creation or strengthening of a dominant position.

Asphalt (coated stone)

16. The notifying party suggests that other types of surfacing (notably concrete and block paving) are effective substitutes for asphalt in its main use – roads and pavements - and that there is also the possibility of using recycled asphalt. However, all these alternatives together make up only some 37% of the total surfacing market, against 63% for asphalt. The figures are 24% and 76% respectively if recycled asphalt – which can only be partially substituted (maximum 30% of the total surface) - is included alongside the fresh product, and none of the other alternatives individually has more than c.10%. Moreover, the Commission’s enquiries suggest that differences in cost, appearance, durability and useful life all mean that there is only limited substitutability between asphalt and the other materials, suggesting that asphalt should, as in the request, be regarded as a distinct product market.

Readymixed concrete

17. Previous decisions under the Merger Regulation⁵ have confirmed that readymixed concrete is, as stated in the request, a distinct product market. No information to suggest otherwise has come to light in the present case.

Mortar

18. Mortar is made by mixing cement, sand and water. It appears to be a relatively homogeneous product with no obvious technical substitutes. Accordingly it should, for the purpose of this decision, be regarded as a distinct product market, as in the request. The notifying party also contends that site-mixed mortar should be regarded as a substitute for the delivered variety. However, it appears from the Commission’s enquiries that although this may often be the case, there may also be many instances where space or environmental restrictions make site-mixing impossible. The likely implications for prices and market shares are considered further under ‘assessment’, below. It is however clear that mortar (whether or not site-mixed is included) is a distinct product market.

Concrete Blocks

19. The UK also cites this as a related downstream market. Both parties have a number of factories producing concrete building blocks of various kinds. Both parties produce a full range of types, as do their main competitors. According to the Notification, concrete blocks are used as walling materials and can thus be substituted for (or by) bricks - which neither party makes - and similar products. However, the Notification also suggests that lightweight

⁵ cf Lafarge/Redland and Skanska/Scancem as above; also IV/M 460 Holdercim/Cedest (article 9 referral to France).

and aerated blocks, in particular, are favoured by housebuilders for internal walling as they are easier for the bricklayer to handle than potential alternatives. Consequently, other walling materials would appear to be, at best, only partial substitutes for concrete blocks, and accordingly, on the information available, concrete blocks can, as in the request, be considered as a distinct product market for the purpose of this decision.

Geographic markets

Aggregates

20. The request states that the relevant geographic markets for aggregates are local, due principally to the impact of transport costs, with an effective maximum distance of c.50-80km from the source of supply. This is consistent with the view of the notifying party in the Notification, and with the previous Commission decisions already referred to. Aggregates markets are in any event unlikely to be wider than national, even if several local markets were found to give rise to a chain of substitution across a larger area. Imports into the UK by sea are technically feasible but practically non-existent, partly no doubt due to the additional cost of transshipping them for onward transport (usually by road). No contrary indications have come to light in the Commission's investigation of the present case. Aggregates can therefore, as in the request, be regarded as a distinct market (or markets) within the UK (Article 9(7) Merger Regulation).

Asphalt

21. Essentially the same arguments and conclusion apply as for aggregates (see above) and readymixed concrete (see below). Asphalt is a perishable product and needs to be transported in special heated containers to prevent it from setting before it can be delivered and laid. The request states that the relevant maximum supply distance is c.80-100km from the production centre, and that the maximum possible transport time (regardless of distance) is less than three hours. This is consistent with the Notification, and with previous Commission decisions⁶ and no contrary indications have arisen in the course of the Commission's examination of the present case.

Readymixed Concrete

22. The request states that the relevant markets are local, with a maximum supply distance of c.15-25km from the production site. This is consistent with previous Commission decisions in the sector⁷, with the Notification, and with third party views in the present case, also with previous cases dealt with under UK national merger control law⁸. Readymixed concrete is highly perishable, because it sets quickly, and transport costs are high. Special containers (mixer trucks) are needed to transport it so that it does not set before being laid, and even then the maximum effective transport period is quite short (about one hour).

⁶ cf also IV/M 678, Minorco/Tilcon.

⁷ cf cases in footnotes 4 and 5 above.

⁸ eg, Lafarge/Redland

Mortar

23. The request observes that mortar displays many of the characteristics of the other products described above, and that in consequence, the market for mortar should also be regarded as a distinct market within the UK for the purposes of article 9(7), Merger Regulation. This appears to be the case. In the Notification, it is suggested by the notifying party that factory-mixed mortar can be transported for up to 70 miles (c.120km) from the point of production – which implies that the relevant markets are local or at most, regional in scope. No indications to the contrary have been observed in the course of the present investigation.

Concrete Blocks

24. The request cites essentially similar grounds to those for mortar, above. The Notification states that prices and conditions do not vary substantially across the UK, implying that the relevant market is national. The Commission has however received indications from its enquiries that the geographic market is likely to be narrower, since production is organised regionally, prices vary between areas and transport costs (which are substantial) can severely limit customers' choice of supplier. Accordingly, the market for concrete blocks would appear to be at most national, and possibly regional/local in scope, the precise boundaries requiring further, detailed investigation to determine. Concrete blocks can therefore be regarded as a distinct market (or markets) within the UK for the purposes of Article 9(7), Merger Regulation.

VI COMPETITION ASSESSMENT

Aggregates

25. The request identifies the following five areas– Lancashire, North Yorkshire, Northumberland, Clwyd and Cheshire and Strathclyde – as containing local markets in which, on the basis of information provided by the parties in Form CO, the concentration threatens to create or strengthen a dominant position in aggregates. They are all in the northern half of the UK. In each of these areas, the parties' combined share and the increment arising from the merger are substantial; in terms of share of production, the combined shares and increments are as follows:

Clwyd and Cheshire	[35–45%], increment [15–25%]
North Yorkshire	[40–50%], increment [15–25%]
Lancashire	[50-60%], increment [20-25%]
Northumberland	[40-50%], increment [0-10%]
Strathclyde	[30-40%], increment [10-20%]

26. In all the above areas the merged company would be, by some margin, the largest supplier. The request points out that these figures do not represent shares in the relevant geographic markets, the precise boundaries of which could only be established after substantial additional investigation. However, as the request also observes, these markets are very likely to be smaller in area than the above (the areas cited are based on administrative areas which are substantially more extensive than those within the 80km radius from the point of production referred to above). Consequently, the parties' combined share and the increment

from the merger arising within the relevant markets is likely, at least in some instances, to be higher than those figures would suggest.

27. The notifying party comments that these figures, though the best the parties can provide, are likely to overstate the parties' position, since they ignore trade flows across the regional boundaries, include supplies to the parties' own manufacturing plant, and include only an average figure (20% of the total) for the use of secondary aggregates. Moreover, there is, according to the parties, substantial excess capacity in the industry as a whole (current utilisation is estimated at c. 70%) , so that any attempt by the parties to increase prices above the competitive level after the merger would rapidly be met by expansion or diversion of capacity by competitors.
28. In the Commission's view, these issues can only be resolved by further detailed investigation. But, *prima facie*, they do not remove the threat of dominance. Trade flows across regional boundaries will not affect shares or prices in the more centrally-located local relevant markets. As regards the impact of secondary aggregates, a simple average, especially one of as high as 20%, is likely to overstate their effect, given that (as discussed above) their use, and local availability, are restricted. As regards in-house consumption, even if, as claimed by the notifying party, vertical integration will not increase overall as a result of the merger, the operation is nevertheless likely to result in changes to the supply structure at the local level where competition takes place.
29. [...]⁹. Such developments would appear to be capable of leading to foreclosure to downstream competitors and customers and/or to a reduction in the number of sources of supply available to third parties in a given local market, with consequent effect on prices.
30. As regards capacity utilisation, the existence of overcapacity nationally, if such is the case, would not necessarily suffice to remove the threat of dominance in the local markets in which competition actually takes place. [...] ¹⁰.
31. Previous cases in this sector have highlighted the importance of entry barriers in aggregate supply. This is also likely to apply in the present instance. Not only are the resources themselves finite, scarce and to a large extent already in the possession of aggregate suppliers, but increasing environmental and logistic pressures will make effective expansion and entry more difficult still. Further barriers are created by the relatively static demand for aggregates [...] and the significant level of concentration already present in the UK heavy construction materials sector as a whole. [...] ¹¹
32. Accordingly, on the basis of the information available, it can be concluded that the concentration would, as in the request, threaten to create or strengthen a dominant position in certain distinct markets for aggregates within the UK (Article 9(2)(a) Merger Regulation.)

⁹ [...]

¹⁰ [...]

¹¹ [...]

Asphalt

33. As in the case of aggregates, the request is made on the basis of certain local markets within the UK, which however can only be denominated precisely after further and more detailed investigation, but which are likely to be smaller than the areas in respect of which data has been supplied by the parties. The eight areas identified, and the shares and increments involved, on the basis of the information in the Notification, are:

Staffordshire and Derbyshire	[50-60%] (+ [10-20%])
Humberside	[55-65%] (+ [10-20%])
West Yorkshire	[30-40%] (+ [10-20%])
North Yorkshire	[55-65%] (+ [10-20%])
Tyne & Wear	[50-60%] (+ [15-25%])
Manchester	[25-35%] (+ [5-15%])
Clwyd	[30-40%] (+ [5-15%])
Fife	[45-55%] (+ [10-20%])
Strathclyde	[40-50%] (+ [5-15%])

34. As with aggregates (which are also an important input for asphalt production) the merged company would be by some margin the largest supplier in each of these areas. It should be noted that all the identified areas are in the northern half of the UK and also that as regards those in England and Wales, they are neighbours (eg in England and Wales, Staffordshire & Derbyshire, Clwyd, Manchester, West and North Yorkshire, Tyne & Wear and Humberside are each adjacent to one or more of the other areas listed).
35. On this basis, even if the relevant markets were larger than those regions (or, which is more likely, the relevant markets were smaller and crossed the administrative borders) then the relevant shares and increments resulting from the merger are likely to be higher than at least the lower of the figures for the areas listed. Given also the effects of vertical integration (notably, aggregates) and entry barriers (aggregate supply, environmental issues, need for a fleet of special-purpose vehicles) it can, again, be concluded that as in the request, the concentration threatens to create or strengthen a dominant position in certain distinct markets within the UK for asphalt.

Readymixed Concrete

36. The request identifies, on the basis of the information available, the following areas in which there are local markets giving rise to a threat of dominance post-merger (shares and increments as in Form CO):

Lancashire	[50-60%] (+ [20-30%])
Manchester	[40-50%] (+ [10-20%])
Cleveland	[40-50%] (+ [20-30%])

Tyne & Wear [40-50%] (+ [15-25%])

Strathclyde [40-50%] (+ [10-20%])

Lothian [55-65%] (+ [25-35%])

37. As with the other products mentioned, the parties would together be substantially the largest player in these areas, all of which are in the northern part of the country, and several of which are contiguous (eg Lancashire and Manchester, Cleveland and Tyne and Wear). As before, the relevant markets are likely to be very much smaller, so that the relevant market shares and increments are likely in some instances at least to be larger still. Moreover, as the request points out, the relevant economic supply distance is in this instance so small that dominant positions are also likely to be created or strengthened in adjacent areas outside the identified areas. [...]
38. Essentially similar issues of vertical integration and entry barriers as in aggregates and asphalt also arise in readymixed concrete.
39. Consequently, it can be concluded that, as in the request, the concentration threatens to create or strengthen a dominant position in certain distinct markets for readymixed concrete within the UK.

Mortar

40. The request points out that on the basis of the parties' estimate of the maximum practicable transport distance (c.120km) the relevant markets are local, and that in urban or other congested areas the need to deliver mortar before it sets could reduce the effective distance considerably. As a result, particularly in areas in which the parties both have plants close to each other, competition at local level could be substantially reduced after the merger. [...]¹²
41. As the request points out, if the relevant product market excludes site-mixed mortar, then the increment and combined share are *prima facie* indicative of creation of a dominant position, since they would amount, nationally, to some [50-60%] (increment c.[20-30%]) of a market thus defined. Moreover, as discussed above under market definition, site-mixing may not provide a viable alternative to delivered mortar in sufficient instances to ensure that it constrains prices for the delivered variety. Indeed, this may also be the case even where it is practicable to mix on site. Sand is an essential and primary ingredient of all mortar. So in those areas where the merger would be likely to lead to dominance in the aggregates market, it is at least arguable that the parties would be able to raise prices for supplies of sand for mortar-making to the point at which the price of site-mixed mortar is comparable to that for the delivered variety.
42. Consequently, it can be concluded that, as in the request, the concentration threatens to create or strengthen a dominant position in certain distinct markets within the UK for the supply of mortar, whether or not site-mixing is included.

¹² [...]

Concrete Blocks

43. As already mentioned, the concrete blocks market may be narrower than national. If that is the case, a potentially significant reduction of competition is likely to arise post-merger in Derbyshire, Nottinghamshire and South Yorkshire, where both parties have plants. The Commission's enquiries have also raised concern over the impact of possible vertical integration following the merger on the availability of competing sources of aggregate for block production. It has been suggested to the Commission that certain major aggregate suppliers, other than the parties, do not produce (at least, throughout the country as a whole) aggregate of appropriate quality for block-making. Moreover, whereas Tilcon is not a significant supplier of blocks (only supplying some [0-10%] of national demand, according to the Notification) it is – as the largest supplier of aggregates nationally – likely also to be a substantial supplier of aggregate for this purpose. Given Tarmac's stronger position in block-making (supplying [10-20%] of national demand) that source may be foreclosed to third parties as a result of the merger.
44. Accordingly, even if the relevant geographic market were national, the concentration would, on the evidence available, threaten to create or strengthen a dominant position in a distinct market within the UK for concrete blocks.

VII VIEWS OF THE UNDERTAKINGS CONCERNED

45. The undertakings concerned were informed of the request from the United Kingdom (as required by Article 9(2) Merger Regulation) and invited to comment on it. They indicated in their response and accompanying additional submission (of 5 January 2000) that they fully supported the United Kingdom's request. They also commented that as regards concrete blocks they did not consider that the merger would give rise to significant accretions of market share or vertical links, and that as regards all the product markets concerned apart from aggregates, they considered that entry barriers were relatively low.
46. In the Commission's view these comments do not substantially alter the grounds for concluding that the concentration threatens to create or strengthen a dominant position in the markets concerned, as in the United Kingdom's request. As regards entry barriers generally, the parties did not produce any additional evidence in support of their view. As described above, the Commission regards entry barriers as potentially significant in all the product markets concerned in this case. As regards concrete blocks, the parties submitted additional estimates with their reply of 5 January according to which their combined share of block production within a radius of c.100 miles (160 km) from their plants - which the parties describe as a typical supply distance - nowhere exceeds c.[20-30%]. They also state that significant vertical issues cannot arise in this product market because block production accounts for only a small percentage (c.[0-10%]) of their respective total aggregate sales at national level. However, both upstream and downstream markets appear to be local or regional in scope. There may therefore be geographic markets in which the parties could foreclose supplies of aggregate for block-making to their competitors, especially given their shares in certain of the local aggregate markets already discussed. As regards the horizontal aspects, it is unclear from the additional information submitted whether or not the local market boundary suggested by the parties is correct (the parties themselves do not explain it), and a different basis could produce substantially different market shares. Verification and a full assessment of these new points would require detailed investigations at local level.

VIII CONCLUSION

47. From the above it follows that the conditions to request a referral under article 9(2)(a) are met. The Commission also considers that, given the local scope of the markets affected by the transaction, the United Kingdom national competition authorities are better placed to carry out a thorough investigation of the case, and that it is therefore appropriate for the Commission to exercise its discretion under article 9(3)(b) so as to grant the referral.
48. Accordingly, the Commission has adopted this decision :

Article 1

The notified concentration resulting in the acquisition of control of Tarmac plc by Anglo American plc is referred to the United Kingdom competition authorities, pursuant to article 9(3)(b) of Regulation 4064/89.

Article 2

This decision is addressed to the United Kingdom.

For the Commission,

(signed)

Mario MONTI

Member of the Commission