

***Case No COMP/M.1874 -  
LAFARGE / BLUE  
CIRCLE***

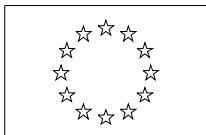
Only the English text is available and authentic.

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

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Article 6(2) NON-OPPOSITION  
Date: 07/04/2000

*Also available in the CELEX database  
Document No 300M1874*



## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.04.2000  
SG(2000) D/102992

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

MERGER PROCEDURE  
ARTICLE 6(2) DECISION

To the notifying party

Dear Sirs,

Subject : Case No COMP/M.1874 – LAFARGE / BLUE CIRCLE

Notification of 29.02.2000 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 29/02/2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Lafarge S.A. ('Lafarge') acquires within the meaning of Article 3(1)b of the Council Regulation control of the whole of Blue Circle Industries plc. ("BCI"), by way of a public bid.
2. After examination of the notification, the Commission has concluded that the notified operations falls within the scope of the Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

### **I. THE PARTIES AND THE OPERATION**

3. On 1<sup>st</sup> February 2000 the French company Lafarge announced a public bid for the U.K. company BCI. Both companies are active world-wide in the building materials sector, which includes grey and white cement, aggregates, ready-mix concrete, roofing tiles, pre-cast concrete and other products.

### **II. CONCENTRATION**

4. Lafarge has offered to acquire all the share capital of BCI. Therefore the proposed operation constitutes a concentration within the meaning of Article 3(1)b of the Merger Regulation.

### **III. COMMUNITY DIMENSION**

5. The undertakings concerned have combined aggregate worldwide turnover of more than EUR 5 billion. Both of them have a Community-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate

Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a cooperation case under the EEA Agreement.

#### **IV. COMPATIBILITY WITH THE COMMON MARKET**

##### **A. THE RELEVANT PRODUCT AND GEOGRAPHIC MARKETS**

6. The following products are involved in the transaction:

###### **a) Cement**

7. Grey cement is one of the two ingredients of concrete products. In previous decisions the Commission has found grey cement to be a separate product market, within which different types of cement are largely interchangeable. Its investigation in the current case has confirmed that market definition is appropriate for the purpose of assessing the current transaction. From the geographic point of view, the Commission has considered that the cement market may be seen as a set of markets, centred around the various factories, overlapping one another and covering the whole of Europe. The size of each market and the extent of overlap are determined by the distance from the factory at which cement may be sold. While transport by road is expensive, rail transport is less so and cement can be transported considerable distances by sea at reasonable cost. However, the notifying party considers that the geographic markets for cement are national. It is not necessary to decide the issue in the present case since even on the basis of national markets the operation does not give rise to serious concern.

8. The notifying party argues that white cement constitutes a separate product market from grey cement because it is used for different purposes, is produced in much more limited quantities, and is significantly more expensive; they argue that the relevant geographic market is at least EEA-wide since it is produced in a limited number of Member States from which it is shipped throughout the EEA and beyond. The Commission's investigation has confirmed that these market definitions are appropriate for the purpose of assessing the current transaction.

###### **b) Aggregates**

9. Aggregates are the second ingredient of concrete products.

In previous decisions the Commission has found aggregates (gravel, crushed rock, sand) to constitute a single, separate product market. It has found the relevant geographic market to be local, in view of significant transport costs. There is evidence to suggest that in practice the maximum area over which aggregates can be economically delivered from a production site is defined by a 30-mile radius from the site.

###### **c) Ready mixed concrete**

10. In previous decisions the Commission has found ready mixed concrete to be a separate product market. It has found the relevant geographic market to be local, since the perishable nature of such a 'wet' product constrains the distance over which it can be delivered before use; in practice the maximum area over which ready-mix concrete can be economically delivered from a ready-mix plant is generally regarded as defined by a 10-mile radius from the plant.

d) Pre-cast concrete products

11. Lafarge produces only building blocks and paving blocks, and argues that the relevant geographic market is national in scope, which is in line with previous Commission decisions.

e) Concrete roofing tiles

12. The Commission's investigation has shown that concrete roofing tiles constitute a distinct product market, and that the relevant geographic market is national in scope

**B. ASSESSMENT**

13. There is no horizontal overlap between Lafarge and BCI in any of the relevant markets in any EU-Member State except Greece (see below). The operation would, however, involve several vertically affected markets in the U.K., Greece and Denmark.

a) United Kingdom

14. The proposed transaction would create a company, which was vertically integrated in the U.K. The merged entity would have almost half of cement sales and interests in aggregates at the upstream level, and interests in the above-mentioned concrete products (ready-mix, pre-cast, and tiles, which are made from cement and aggregates) at the downstream level.
15. In the U.K. BCI has some 46 % of cement sales, other major competitors being RMC/Rugby (23%) and Castle (25%); Lafarge has no U.K. cement interests. Conversely, BCI has no other interests in building materials in the U.K., whereas Lafarge is estimated to have the following shares of U.K. sales taken at the national level as a whole:

Aggregates: about 9% (Tarmac 17%, Hanson 12%, Anglo American 10%); however, some 70% of Lafarge's production is used in-house and therefore its aggregates sales to third parties represent only about 3% of total U.K. aggregate production

Ready-mix concrete: about 9% (RMC 28%, Tarmac 15%, Pioneer 10%).

Pre-cast concrete: about 2% for all products taken together (concrete paving: Marshalls 46%, Tarmac 13%; concrete blocks Hanson 15%, Tarmac 13%);

Concrete roofing tiles: about [30-40]% (Eternit [30-40]%, Russell [10-20]%)

16. The principal question to be addressed is whether the merged entity would become dominant in downstream markets by limiting the supply, or raising the price, of cement to customers, particularly competitors on concrete product markets.
17. An assessment at the national level would suggest that the likelihood of creation of dominance is not significant. If the U.K. grey cement market is national in scope (see above) downstream competitors should always have an alternative source of supply, principally Castle and RMC/Rugby. In any event, many Lafarge aggregate sites and ready-mix plants are situated in the Midlands and East Anglia, where RMC/Rugby and Castle cement plants are located as well as some belonging to BCI.

18. Moreover, as indicated above, Lafarge's share of sales of concrete products at national level is relatively modest, except for roofing tiles ([30-40]%). Because of this relatively modest presence downstream, Lafarge's consumption of cement as a proportion of total U.K. cement consumption is proportionately modest.
19. The table below shows the percentage of total UK cement consumption, consumed by Lafarge in the UK in 1999.

Total cement consumption	13,113,000 tonnes
Lafarge's UK cement consumption	[...] tonnes
Lafarge's consumption as a percentage of total consumption	[...] %

(source: Lafarge)

20. The table below shows the percentage of total cement purchases that Lafarge made from each UK cement producer in 1998:

BCI	[...] tonnes	[...]%
Castle	[...] tonnes	[...]%
Rugby	[...] tonnes	[...]%
Buxton Lime	[...]	[...]
S. Quinn	[...]	[...]

(source: Lafarge)

21. BCI has a 46% share of sales of cement in the UK (sales of approximately 6,070,000 tonnes). Thus, even if Lafarge switched all its UK cement demand to BCI about [...]% of the total UK cement supply would remain available for third party cement customers from BCI. Lafarge would therefore need to continue to supply other concrete product manufacturers from BCI cement plants on a competitive basis in order to earn an adequate return on its investment in BCI.
22. It nevertheless remains the case that at least two relevant markets, aggregates and ready-mix concrete, are very local in geographic scope (see above). The Commission has therefore focused an investigation on local markets where Lafarge might be particularly strong in aggregates or ready-mix concrete. Lafarge, in reply to a Commission request to identify any area in which Lafarge has a 40% (or more) market share within a 10-mile radius of any of its ready-mix plants (104 in total) or a 30-mile radius of any of its aggregates sites (78 in total) has replied that:
- there are no such aggregates sites
  - there are only five such ready-mix plants, in all of which one or more major competitors (e.g. RMC, Hanson) are also present

- That Lafarge aggregate sites and many ready-mix plants are situated in the Midlands and East Anglia, where cement is available from RMC/Rugby and Castle plants as well as BCI.

23. As far as white cement is concerned, the Commission has found that little if any white cement is produced in the UK, most UK consumption being sourced from imports, about 80% of which come from a Danish company Aalborg, which is jointly controlled by BCI. Lafarge has no white cement sales in the U.K. If the market is EEA-wide (see above), Lafarge and BCI (through Aalborg) would have a combined EEA share of [15-25]%, but would face competition from Cemec ([15-25]%), Italcementi ([15-25]%) and others.

In the course of its investigation, the Commission has received no substantiated complaints concerning the relevant markets in the U.K..

In view of the above, the proposed transaction does not raise dominance concerns as far as the relevant U.K. markets are concerned.

b) Greece

24. BCI has signed an agreement to acquire the leading Greek cement producer Heracles and Halkis ('Heracles'), which has about 53% of the Greek cement market and some downstream interests in ready-mix concrete; the rest of the cement market is supplied mainly by Titan with 39% and Italcementi with 5%.

As far as cement is concerned Lafarge's only interest in Greece is an import facility, [...].

If Lafarge were to acquire Heracles as a result of the acquisition of BCI, horizontal overlaps in ready-mix concrete and aggregates would be created, but taken at the national level these are relatively minor. Market shares at national level are as follows:

Ready-mix concrete:

Heracles	- [0-15]%
Titan	- [0-15]%
Alfa Beton	- [0-10]%
Lafarge	- [0-5]%
Others	- [65-80]%

Aggregates

Lafarge	- [0-5]%
Heracles	- [0-5]%
Others	- [90-100]%

25. Horizontal overlaps are therefore limited, with combined shares for Lafarge and Heracles for ready mix concrete and aggregates about [10-20]% and [0-10]% respectively.

Combined shares of ready mix concrete would be around [20-30]% in each of the three regions Patras, Larissa, and Salonica, and in addition Lafarge's aggregates plant is located near Patras with about [20-30]% of the regional market. There would therefore be vertically affected markets in all three regions, given Heracles' 59% of the upstream cement market. However ready – mix concrete competitors would have Titan and Italcementi as alternative suppliers to Heracles in these regions (Titan has cement plants in Salonica and Patras and transports cement by truck into Larissa from Salonica); moreover, given the disproportion between upstream and downstream market shares (59% cement , [...] ready-mix), Lafarge would need to continue to supply other ready-mix manufacturers from Heracles cement plants on a competitive basis in order to earn an adequate return on its investment in Heracles. The Commission received no complaints in the course of its investigation.

In view of the above, the proposed transaction does not raise dominance concerns as far as the relevant markets in Greece are concerned.

c) Denmark

26. As stated above, BCI has joint control of a Danish company Aalborg, which is the only cement producer located in Denmark, with about 87% of the Danish market, the remainder being supplied by independent importers. Lafarge has a [50-60]% share of the Danish concrete roofing tile market, with only one competitor A/S Ikast Betonvarefabrik (' IBF') having [25-35]%, the remaining [10-20]% being imported.
27. The Commission received a complaint from IBF, expressing concerns that Lafarge would be able to use its joint control of Aalborg (via BCI) to discriminate, as far as cement supplies are concerned, in favour of its own concrete roofing tile business which is already the market leader (see above). IBF does not consider that imported cement (the only alternative to Aalborg) is substitutable in terms of quality or reliability of supply; IBF requires two or three lorry-loads to be delivered on a daily basis to ensure continuity of its own operations, and could not rely on imported deliveries which are mainly shipped by sea to Denmark from Spain.
28. In the light of the above, it can be concluded that the proposed concentration raises serious doubts as to its compatibility with the common market in relation to the Danish market for concrete roofing tiles.
29. In order to remove the concerns raised by the operation, Lafarge has submitted an undertaking to divest its Danish concrete roofing tile business belonging to Lafarge Braas Dansk Tag A/S, including the assignment of intellectual property rights (including relevant trademarks), of assets and personnel used or engaged in the manufacture of concrete roofing tiles.

It can be concluded that, subject to full compliance which the divestment undertaking, the operation will not create a dominant position in the Danish market for concrete roofing tile.

## V. CONCLUSION

30. For the above reasons, and on condition that the undertakings described in the Annex to the present decision are fully complied with the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Articles 6(1)(b) and 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission,

*Signed by Mario Monti*  
*Member of the Commission*



## CASE COMP/M.1874 - LAFARGE/BLUE CIRCLE

### Divestment Undertaking

Whereas, on 29 February 2000, Lafarge SA (the "Divestor") notified its public bid for the entire share capital of Blue Circle Industries plc ("Blue Circle") (the "Transaction") to the European Commission (the "Commission") pursuant to Council Regulation 4064/89 as amended (the "Merger Regulation").

In accordance with Article 6(2) of the Merger Regulation, the Divestor hereby commits to the Commission, with respect to the above-referenced notification, to dispose of the Danish concrete roofing tile business belonging to Lafarge Braas Dansk Tag A/S (the "Divestment Assets"), on the terms and conditions set out in this Undertaking.

#### I Assets to be divested

1 Except for those assets specifically excluded below, the Divestment Assets will consist of the Danish concrete roofing tile business belonging to Lafarge Braas Dansk Tag A/S including:

- the land, building and fixtures forming the concrete roofing tile production plant located at Hersum, Denmark;
- all ancillary equipment, inventory and assets at the plant generally and currently used to manufacture concrete roofing tiles at the plant;
- any intellectual property other than trademarks, including but not limited to patents and know-how, generally and currently used for the manufacture of concrete roofing tiles at the plant;
- a non-exclusive licence for a reasonable transitional period of all trademarks generally and currently used to carry on the Danish concrete roofing tile business belonging to Lafarge Braas Dansk Tag A/S;
- (insofar as permitted by any applicable law and regulations) the rights to employment contracts of all personnel at the plant.

The following shall *not* be considered to form part of the Divestment Assets:

- the right to use the "Lafarge", "Braas" and "Lafarge Braas" trademarks and tradenames; and
- the clay roofing tile plant located at Vollstrup, Denmark.

2 The Divestor will cause all steps to be taken to ensure that the benefits and burdens of all contracts relating to the Divestment Assets will be transferred, assumed or assigned.

#### II Timing

3 Without prejudice to the powers of the Trustee and/or the Commission under paragraphs 7-9 below, the Divestor will procure the signature, within [...] from the date on which the Transaction becomes unconditional in all respects (the "Closing Date"), or such other period as may be agreed by the Commission, of a legally binding contract for the sale of the

Divestment Assets which is unconditional in all respects (save as set out below). The Divestor will thereafter ensure that legal title to the Divestment Assets is transferred to the Purchaser within [...] after the date on which such contract is signed, and in any event by [...] or such later date as may be agreed by the Commission ("the Final Date") and in accordance with and subject to the following provisions.

It is understood that the terms of a contract for sale of the Divestment Assets will be subject to all requisite regulatory and other approvals and the identity of the Purchaser will be subject to the prior approval of the Commission.

### **III Implementation**

**4** Immediately after the Closing Date, the Divestor shall appoint, or cause the appointment of, a Trustee in accordance with the provisions of paragraph 5 below to exercise the functions set out below.

**5**

(a) The Divestor shall propose to the Commission, within seven working days of the Closing Date, the name of an institution, independent from the Divestor, whom the Divestor considers appropriate to be appointed as Trustee, and any relevant material amendments that the Divestor requires to be made to the Mandate (defined below) in order for the Trustee to be able to enter into it.

(b) The Commission shall have the discretion to approve or reject the institution proposed by the Divestor. If the institution is approved or no rejection is given within ten Commission working days of the Divestor's proposal, the Divestor shall appoint or cause such institution to be appointed as Trustee on the terms suggested.

(c) If the institution proposed is rejected, the Divestor will propose the name of a further such institution (the "Further Institution") within seven working days of being informed of the rejection. If the Further Institution is approved by the Commission or no rejection is given within ten Commission working days of the Divestor's further proposal, the Divestor shall appoint or cause the approved institution to be appointed as Trustee.

(d) If the Further Institution is rejected by the Commission, the Commission shall nominate a suitable Trustee which the Divestor will appoint or cause to be appointed. The Trustee shall be an investment bank or accountancy firm of international standing.

**6** As soon as the Commission has given approval to an institution, or nominated a Trustee to be appointed, the Divestor shall appoint or cause the institution concerned to be appointed Trustee within seven working days thereafter.

### **IV Trustee's Functions**

**7** Immediately upon the Trustee's appointment the Divestor shall enter into a mandate agreement (the "Mandate") with the Trustee, the terms of which shall have previously been agreed with the Commission.

**7.1** Throughout the duration of the Trustee's appointment the Trustee shall:

- 7.1.1 monitor the maintenance of the viability and saleability of the Divestment Assets in accordance with this Undertaking and shall ensure that the Divestment Assets and activities concerned are operated on an independent arms' length basis consistent with their status, until their/its divestment to the Purchaser;
  - 7.1.2 monitor and advise the Commission as to whether the agreement(s) between the Divestor and the Purchaser will properly provide for the divestiture of the Divestment Assets as provided for herein;
  - 7.1.3 monitor the satisfactory discharge by the Divestor of its obligations entered into in this Undertaking; and
  - 7.1.4 provide written reports (the "Trustee Reports") to the Commission on the progress of the discharge of its duties under the Mandate, identifying any respects in which the Trustee has been unable to discharge such duties. The Trustee Reports shall be provided at regular monthly intervals, commencing one month after the date of the appointment of the Trustee, or at such other times or time periods as the Commission may specify and are notified to the Divestor.
  - 7.1.5 monitor the disposal of the Divestment Assets in accordance with this Undertaking;
  - 7.1.6 monitor and advise the Commission as to the development of the procedure for selecting the Purchaser and as to the conduct of the negotiations;
  - 7.1.7 monitor and advise the Commission as to whether prospective Purchasers with whom the Divestor is or intends to negotiate are likely to satisfy the Purchaser requirements as set out below;
  - 7.1.8 monitor and advise the Commission as to whether the arrangements for divestment will properly provide for the disposal of the Divestment Assets as provided for in this Undertaking;
  - 7.1.9 oversee that the Divestment Assets are disposed of by the Final Date;
- 8** The Trustee's duties and functions as set out above shall not be extended or varied in any way by the Divestor, save with the express written consent of the Commission. Any instruction or request to the Trustee from the Divestor which conflicts with the terms of the Mandate and duties and functions as set out above will be considered null and void.
- 9** If no legally binding contract for the sale of the Divestment Assets has been signed within [...] of the Closing Date or if, having signed such contract, legal title to the Divestment Assets has not been transferred within [...] of the date on which such contract is signed, or such longer period(s) as has been agreed with the Commission, the Mandate shall be deemed to be extended in order to enable the Trustee to carry out the additional functions set out in Paragraph 10 hereunder (the "Additional Functions"). The Trustee shall be granted full power and authority to be the Divestor's and any other relevant party's true and lawful attorney as required to enable the Trustee to discharge the Additional Functions.

In the event of conflict with the discharge of any of the functions as set above, and the Additional Functions, the Trustee shall give priority to the discharge of the Additional Functions.

**10 Additional Functions:**

- (e) only if the Trustee decides that it is necessary in order to achieve compliance with this Undertaking within the time limits set down, it shall submit to the Commission a proposal for the completion of the divestiture under the control of the Trustee. The Commission will, as soon as reasonably practicable, approve the proposal or indicate any changes that it may require;
- (f) the Trustee shall have an irrevocable mandate to find a purchaser for the Divestment Assets for the best possible price. For the avoidance of doubt, this sub-paragraph (b) shall not apply if a legally binding contract for the sale of the Divestment Assets has been signed but not completed;
- (g) in the Trustee's reports, or as soon as negotiations are entered into with a potential purchaser, the Trustee shall provide to the Commission sufficient information to enable the Commission to decide on the suitability of such purchaser;
- (h) the Trustee shall submit to the Commission for approval, with a legal opinion if considered by the Trustee as necessary, within due time to ensure compliance with this Undertaking, an agreement for sale of the Divestment Assets to a suitable purchaser or an appropriate plan or documentation for an alternative form of disposal. If an agreement for sale is submitted it shall be unconditional and legally binding on both the Purchaser and the Divestor and irrevocable save for the approval required from the Commission;
- (i) the Trustee will, or will instruct the Divestor to, break off negotiations with any prospective purchaser if it appears to the Commission that the negotiations concerned are being conducted with an unsuitable purchaser;
- (j) as far as permitted by law and in particular applicable company law, the Trustee will direct the carrying out of all such steps as may be required to transfer the legal title by the Final Date.

**VI Miscellaneous**

- 11** The Trustee will provide the Divestor with all reasonable assistance and will procure that all relevant third parties provide such assistance required to ensure compliance with this Undertaking. The Divestor will provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible by the Divestor and its affiliates, as the Trustee may require in carrying out its mandate, and to pay reasonable remuneration for his services.
- 12** Notwithstanding the Trustee's overall responsibility to discharge its functions and in particular notwithstanding the Trustee's position as an independent unrelated third party, the Trustee (who shall undertake in the Mandate to do so) shall have due regard to the commercial interests of the Divestor and its group and in particular the interests to achieve a disposal promptly,
- 13** The Mandate and this Undertaking shall be deemed to be discharged and the Trustee's appointment shall be deemed to be terminated if:
  - the Divestor should announce that the proposed Transaction has been irrevocably abandoned;  
or

- the Divestor never becomes or ceases to be a shareholder - directly or indirectly through its shareholding in Blue Circle - in Aalborg Portland Cement A/S before the Final Date.
- 14** Except as provided in this Undertaking, the Trustee's and all other relevant third parties' powers of attorney and appointment shall be irrevocable.
- 15** The obligations entered into in this Undertaking are conditional upon clearance by the Commission of the Transaction no later than 12 April 2000.
- 16** The Commission for its part declares that it will use its best endeavours to inform the Divestor, as soon as reasonably practicable, as regards the suitability of any proposed purchaser. If rejection of the purchaser by the Commission is not given within ten Commission working days after submission of a proposal by the Divestor or Trustee, the purchaser will be deemed to have been approved by the Commission.
- 17** In determining whether any proposed purchaser is suitable, it will take into account whether the prospective purchaser concerned (i) appears to possess the status and resources necessary to own and operate the Divestment Assets over the long term as a viable, active and significant competitor to the Divestor, (ii) is independent of the Divestor, (iii) can be shown not to have significant and relevant commercial connections with the Divestor and (iv) has, or can reasonably obtain, all necessary approvals for the purchase from the relevant competition and other regulatory authorities in the European Community and elsewhere.

**XIV Governing Law and Provisions**

- 18** This Undertaking is governed by, and shall be construed in accordance with, the laws of England and Wales.

Signed on behalf of Lafarge SA

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by.....

Dated.....