

***Case No COMP/M.1759 -
RMC / RUGBY***

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

Article 6(1)(b) NON-OPPOSITION
Date: 15/12/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.12.1999

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No COMP/M.1759 – RMC / Rugby

Notification of 12.11.1999 pursuant to Article 4 of Council Regulation No 4064/89

I. THE PARTIES AND THE OPERATION

1. On 12.11.1999 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which RMC Group plc ('RMC') acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of The Rugby Group PLC ('Rugby') by way of a public bid announced on 8.11.1999.
2. The business activities of the undertakings concerned are:
 - RMC: a UK company active in the UK and world-wide in the production and supply of building materials, namely ready mixed concrete, aggregates and cement, and concrete products; also do it yourself retailing and waste control operations.
 - Rugby: a UK company active in the UK and elsewhere in the manufacture of cement and related products.

II. CONCENTRATION

3. The operation constitutes a concentration within the meaning of Article 3(1) b of the Merger Regulation.

III. COMMUNITY DIMENSION

4. The combined aggregate world-wide turnover of RMC and Rugby exceeds EUR 5000 million. Each of RMC and Rugby have a Community-wide turnover in excess of EUR 250 million, but do not realise more than two thirds of their aggregate EU-wide turnover in 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

5. The concentration involves the vertical integration within the UK of a cement producer, Rugby, with a producer of ready mixed concrete and building materials, RMC. Cement is used as the 'glue' which holds concrete together. Whilst RMC has extensive operations in EU countries other than the UK, Rugby does not, and accordingly the effects of the concentration are confined to the UK.

Relevant product markets

A. Cement

6. In previous decisions the Commission has found cement to be a separate product market, within which different types of cement are largely interchangeable. This has been confirmed in the present case by the Commission's investigation.

B. Ready mixed concrete

7. In previous decisions the Commission has found ready mixed concrete to be a separate product market. This has been confirmed in the present case by the Commission's investigation

Relevant geographic markets

A. Cement

8. The parties argue that the market for cement is EU-wide, in view of significant volumes of interstate trade. As far as the UK is concerned, about 8% of total cement sales are estimated to be of imported cement. It is not necessary to define the geographic market in the present case, since even on the narrowest market definition the proposed concentration would not lead to competition problems (see below).

B. Ready mixed concrete

9. In previous decisions the Commission has found that the market for ready mixed concrete is local, in view of transport costs and the need for quick delivery in the case of wet ready mixed concrete, and this has been confirmed in the present case by Article 11 replies received to date

Competitive assessment

A. Cement

10. There is one horizontally affected market, that of cement in the UK. The transaction would lead to a combined share of 23%: Rugby 19%, RMC 4% through a 50% share in a cement importation business 'Seament'. The market leader is Blue Circle with 48%, the second largest producer is Castle with 25%; the remaining 4% is supplied by Minorco (2%), Titan (1%) and other smaller producers (market shares for 1998 provided by the parties, broadly confirmed by the Commission's investigation in this case). The three main categories of customers for cement are ready mixed concrete producers (43%), builders merchants for bagged cement (21%), and concrete products producers (36%).

11. Thus at the national level post-merger the combined entity would still be third largest producer after Blue Circle and Castle; moreover the increment in market share created by the merger is relatively insignificant (i.e. only 4% is added to Rugby's existing share of 19%).
12. Moreover, the combination on the cement market consists of the addition of Seament's three import terminals at Leith (Scotland), Liverpool, and Tilbury to Rugby's four cement works; at present Rugby has no import terminals, unlike Blue Circle and Castle, with two and three import terminals respectively.
13. Again even from a regional viewpoint the merger would not raise competition concerns. Seament's Leith and Liverpool terminals are a significant distance from the nearest Rugby works; in particular, Seament's Liverpool terminal is situated closer to a number of Blue Circle and Castle works and depots than it is to the nearest Rugby works. Whilst Rugby's Rochester works are close to Seament's Tilbury terminal, so are a Blue Circle works, a Castle works, and Castle's West Thurrock terminal.
14. In view of the above, the operation would not create or strengthen a dominant position on the UK cement market.

B. Ready mixed concrete

15. Ready mixed concrete is a vertically affected market, as RMC's share of UK sales taken as a whole is 28%. Rugby is not a producer of ready mixed concrete. The main categories of customer for ready mixed concrete are building contractors, utilities and public authorities.
16. Other large ready mixed concrete producers are Tarmac, Pioneer and Lafarge Redland, with 15%, 10% and 9% respectively of UK sales taken as a whole.
17. The operation seems unlikely to create foreclosure effects on either the ready mixed concrete or cement markets in the UK in view of the existence of the aforementioned strong competitors on both markets.
18. As far as ready mixed concrete is concerned, since the merged entity would have only 23% of the UK cement market, 77% would still be available to RMC's ready mix competitors post-merger even if RMC refused to supply them. However, RMC currently accounts for only 11% of Rugby's output, and would therefore need to continue to supply cement to other ready mix producers in order to earn an adequate return on its investment in Rugby. Replies from RMC's competitors state that it is unlikely that RMC would foreclose supply, and that RMC will itself continue to depend on sources of cement supply other than Rugby.
19. As far as cement is concerned, the question arises whether cement producers such as Castle and Blue Circle would be foreclosed from a substantial part of UK cement demand as a result of the merger. RMC accounts for only 13% of UK cement purchases and currently sources 72% of its cement needs from parties other than its existing joint venture Seament and Rugby. Since ready mixed concrete is a local market (see above), it would be theoretically possible for RMC post-merger to exercise monopsonistic power in individual local markets by favouring in-house cement supplies from Rugby at the expense of other cement producers; however, replies from such producers indicate a lack of concern in this respect, on the grounds that any local reduction in demand would be offset by increased demand elsewhere from other ready mix manufacturers or even other RMC plants.

20. Some ready mix manufacturers have indicated that the competitive effects of the merger would be broadly limited to a more aggressive pricing policy on the part of RMC on the basis of a reduced cost base resulting from the cost advantages arising from that part of its cement supply which would be sourced from Rugby post-merger.
21. In view of the above the operation would not lead to the creation or strengthening of a dominant position.

V. CONCLUSION

22. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA agreement. This decision is adopted in application of article 6(1)(b) of Council regulation No 4064/89.

For the Commission,