

MERGER PROCEDURE  
ARTICLE 6(1)b DECISION

PUBLIC VERSION

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1. Notifying party
2. Notifying party

Dear Sirs,

Re: Case No IV/M180 - STEETLEY/TARMAC  
Notification of 23.12.91, pursuant to Article 4 of Council  
Regulation No 4064/89

- A. 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.
- B. On 24.01.1992, the United Kingdom Government informed the Commission pursuant to Article 9(2) of the Council Regulation No 4064/89, 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.

**I. THE PARTIES**

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

- D. 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**

- E. 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**

- F. 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**

- G. 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 by 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**

- H. 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.

- I. The joint venture will not result in the coordination of competitive behaviour between Steetley and Tarmac for 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 1992, 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**

### **J. Bricks and clay tiles**

In relation to these products (for bricks in the North-East and South-West of England and for tiles in Great Britain) the case has been referred to the competent authorities of the United Kingdom by a decision adopted on 12.02.92 pursuant to article 9 of Council Regulation No 4064/89. In these markets, the Commission considered that the concentration threatens to create a dominant position as a result of which competition would be significantly impeded.

### **K. Concrete blocks**

Three basic categories of concrete blocks exist; dense, lightweight and aerated. Tarmac has a significant market share throughout Great Britain for such products, Steetley however, has a negligible presence in these markets. This can be seen from the following table:

	<u>Dense</u>	<u>Lightweight</u>	<u>Aerated</u>	<u>Total</u>
<u>1990</u>				
Tarmac	10,9%	23,3%	9,4%	13,6%
Steetley	1,3%	-	-	0,5%

The Commission has examined whether the operation would be likely to create a dominant position on the newly created joint venture in any possible regional market. This analysis, based on an examination of the location of production sites,

demonstrates that no possibility of regional dominance exists resulting from the concentration. Steetley has only 6 concrete plants, which are located either where there are many competing plants owned by a variety of competitors (e.g. the Midlands), or where Tarmac has little or no presence (e.g. South Wales). In such circumstances, it is not necessary for the Commission to adopt a precise market definition with respect to concrete blocks.

**L. Structural concrete products**

Prior to the establishment of the joint venture, Tarmac, but not Steetley, manufactured and sold these products. Furthermore, Tarmac had low market shares of even narrowly defined product markets. The operation will not therefore create or strengthen a dominant position in this sector and it is thus unnecessary for the Commission to adopt a precise market definition in this respect.

**M. Masonry products**

The following categories of cut stone products have been identified: architectural masonry products, engineering products, natural cut stone for decorative purposes and general concrete products (flag stones, paving stones etc.). Both parties have limited activities in this area. The following table provides an analysis of the companies' market shares for these product categories in Great Britain in 1990.

	<u>Tarmac</u>	<u>Steetley</u>
Architectural masonry products	7,5%	4,6%
Engineering products	30,7%	-
Cut stone	6,3%	-
General concrete products	1,0%	0,8%

On this basis, the operation does not raise serious doubts that it will create or strengthen a dominant position. The Commission has furthermore examined whether the establishment of the operation could result in the creation or strengthening of a dominant position were the market to be defined on a regional basis. An analysis of the geographic location of the parties' production centers indicates that no dominant position would result on such an analytical premise.

It is not therefore necessary for the Commission to adopt a precise market definition in this respect.

**VI. ANCILLARY RESTRAINTS**

N. The joint venture is to purchase, on an arms' length basis, certain materials and services (transport and aggregate) from its parents. This agreement which is limited to a duration of two years is directly related to the merger and necessary to ensure the smooth transition of ownership and control.

O. Allied's parents have agreed not to compete with Allied, in the UK, in Allied's business areas for the continuation of the joint venture and for two years thereafter.

This clause is a reflection of the permanent withdrawal of the parents from the joint venture's market and is directly related to the concentration, and necessary for its implementation.

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For the above reasons, the Commission has decided (with the exception of those aspects of the operation relating to bricks and clay tiles) not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of the merger Regulation.

For the Commission,