

***Case No COMP/M.2596 -
RMC / UMA / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 12/03/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.03.2003

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.2596 - RMC/UMA/JV
Notification of 11/02/03 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 11 February 2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89² by which the undertakings RMC (UK) Limited ("RMC"), belonging to the RMC Group, United Kingdom, and United Marine Aggregates Limited ("UMA"), ultimately controlled by Anglo American plc Group, United Kingdom, and by Hanson Group, United Kingdom, acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of Isle of Wight Aggregates Limited ("IOWA") United Kingdom, a newly created company constituting a joint venture by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. RMC is a wholly owned subsidiary of its parent undertaking, the RMC Group, a public limited company listed on the London Stock Exchange. RMC is active in the following sectors: aggregate extraction; production of ready mixed concrete, concrete products; and waste collection and disposal.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

4. UMA's main activity is the processing and distribution of aggregates for use in the construction industry in the United Kingdom. Hanson Group, one of the ultimate parents of UMA, also controls Hanson Building Materials Europe Limited ("Hanson Premix"), which is active in producing ready mixed concrete. UMA is a subsidiary of UMH, which is a joint venture company. Tarmac Limited (a wholly owned subsidiary of the Anglo American plc Group) and Pioneer Aggregates (UK) Ltd (a wholly-owned subsidiary of Hanson plc) each hold 50% of the shares in UMH. UMH consists of two operating companies, UMA and United Marine Dredging Ltd ('UMD').
5. The purpose of proposed operation to concentrate the marine won aggregate processing and distribution activities of the parents on the Isle of Wight in a joint venture.

II. THE PROPOSED OPERATION

6. IOWA is a newly formed private limited company established to process, sell and distribute aggregates on the Isle of Wight. Pursuant to the relevant agreements, RMC and UMA will transfer their current businesses and assets existing on the Isle of Wight to IOWA. The joint venture will be supported initially by equal loans from RMC and UMA and thereafter it is intended to be self-supporting. The notifying parties forecast that 70% of IOWA's output will be supplied to third parties. IOWA will have sufficient financial and other resources and will perform all the functions of an autonomous economic entity on a lasting basis.
7. The joint venture will be owned in equal shares by the RMC and UMA. Each shareholder may nominate an equal number of members of IOWA's Board. Decisions of the Board will require unanimous approval and each party will have a veto right. The joint venture will therefore be jointly controlled.

III. CONCENTRATION

8. The proposed operation is therefore a concentration within the meaning of Article 3(1) of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than €5 billion³ (RMC Group: €8,383.44 million; Hanson Group: €6,719.29 million; Anglo American plc Group: €21,520.08 million.). Each of RMC Group (€5,130.22 million), Hanson Group (€2,064.63 million) and Anglo American plc Group (€9,012.72 million) have a Community-wide turnover in excess of €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.

V. COMPETITIVE ASSESSMENT

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

1. Relevant product market

10. The proposed operation combines the business activities of RMC and UMA subsidiaries that dredge aggregates from the sea bed of the English Channel and other waters and supply this sea dredged aggregate to customers for them to process and sell. According to the notifying parties, marine aggregate is brought ashore on the Isle of Wight by RMC, UMA and Site Services. Land based aggregates are imported by RMC and Bardon Vectis.
11. Aggregates comprise sand, gravel and crushed rock. According to the notifying parties, crushed rock is quarried at source from naturally occurring deposits of rock, blasted, crushed and screened. Sand and/or gravel is quarried from naturally occurring deposits and consists of particles which range in size from small sand grains to boulders. Aggregates are used in the production of all types of concrete, coated stone, general fills, railway ballast and in general building and construction applications.
12. The notifying parties contend that the relevant product market includes both land won and sea-dredged aggregates on the basis that for all practical purposes they are indistinguishable. According to the notifying parties, from a technical standpoint, there is no reason why land won and marine dredged aggregates cannot be combined. The notifying parties also state there is no difference in terms of price.
13. The Commission has previously determined that to some extent prices of land and sea won aggregates are similar, and that the characteristics of aggregates in terms of end use is dependent on the geological composition of the area from which they are sourced.⁴ The market investigation confirmed that principal competitor to the notifying parties, Bardon Vectis receives land won aggregates, and Site Services imports processed marine won aggregates. One other competitor receives land won aggregates from the Isle of Wight. The market investigation broadly confirmed the views of the notifying parties as to substitutability of marine won and land won aggregates. Some responses suggested that in 10% of cases, customers may not consider sea won aggregates as suitable for certain building projects on grounds that the high shell content may weaken the structures concerned. The market investigation also confirmed that prices for land won aggregates and sea won aggregates were broadly similar. For the purposes of this decision, the issue whether it is necessary to subdivide the market for aggregates into markets for land and sea-won aggregates may however, be left open.

2. Relevant geographic market

14. The notifying parties consider that for the purposes of the proposed operation, the relevant geographic market is the Isle of Wight. The notifying parties also point out there are indications that it may be wider. The notifying parties estimate that the total consumption of aggregates on the Isle of Wight for year 2000 was 600,000 tonnes comprising 64.5% (387,000 tonnes) land won aggregates and 35.5% (213,000 tonnes) sea won aggregates.⁵ The notifying parties state that aggregates are sourced in substantial quantities (approximately 200,000 tonnes or 30% of the Isle of Wight's

⁴ Case No. IV/M.1030 – Lafarge/Redland, 16/12/1997.

⁵ Estimates of the notifying parties.

requirements) from mainland United Kingdom. In addition, the notifying parties suggest tonnages are also obtained further afield, including from Ireland, Wales and Norway.

15. RMC operates an aggregates wharf, Kingston Wharf, at East Cowes which is supplied with sea dredged aggregates by an RMC subsidiary with approximately [...] tonnes of aggregates per annum. In addition to sea dredged aggregate, the RMC East Cowes wharf also receives and processes approximately [...] tonnes per annum of land won aggregate imported from mainland UK. UMA has an aggregates wharf at West Cowes (leased from PD Wharfage Limited). This wharf is supplied by UMD with on average [...] tonnes per annum of marine dredged aggregate. UMA is the authorised tenant of PD Wharfage Limited to receive marine won aggregates. [...] Bardon Vectis is the authorised tenant of PD Wharfage to receive land won aggregates. In both cases, PD Wharfage provides the stevedores' services. UMA also leases a wharf at Stag Lane, Newport, Isle of Wight, however this site is non-operational.
16. As regards restrictions on imports to the Isle of Wight, the notifying parties indicated that there are physical restrictions on the size of vessel able to access the port of Cowes. The port is restricted in terms of water depth at the port entrance to 1.8 metres. The parties also identified limitations on the size of wharves in relation to stocking space availability. Imports may be brought in by barge, although it is possible to transport some aggregates by lorry and ferry.
17. In terms of prices, the notifying parties contend that the price of aggregates of the notifying parties on the Isle of Wight and the mainland are comparable. The notifying parties also contend that aggregates are capable of being transported substantial distances since transport costs are low.
18. The market investigation indicated that in year 2000, 152,440 tonnes of land based aggregates were imported from the UK mainland and 214,155 tonnes of marine dredged aggregates were imported to Cowes harbour. The market investigation also revealed that marine dredged aggregates to the Cowes harbour were imported solely by RMC and UMA's vessels.
19. The market investigation indicated that land based aggregates are imported to the Isle of Wight because of a shortage of available land based aggregate on the Isle of Wight itself, whilst imports of marine based aggregates are also introduced by Site Services in response to demand.
20. The Commission considered the factors which would influence the extent to which a new entrant not presently active on the Isle of Wight to supply aggregates to the Isle of Wight in response to a increase in price by the hypothetical monopolist aggregates supplier on the Isle of Wight or an increase in customer demand.⁶
21. *Restrictions on imports.* It is important to note that a supplier wishing to land unprocessed aggregates must have access to a processing plant. The market investigation confirmed that there are only two commercial wharves in the Cowes Harbour to the north of the Isle of Wight on the river Medina capable of handling and

⁶ Commission Notice on the definition of relevant market for the purposes of Community competition law, point 17. (97C 372/03).

processing raw unprocessed, marine based aggregates. RMC operates one wharf which imports marine dredged aggregates only. This wharf is exclusive to RMC. UMA has a long lease of [...] years to land and process marine aggregates [...] at the PD Wharfage Limited wharf at Medina Wharf. Any third party wishing to land marine based aggregates at the PD Wharfage wharf may submit a request to PD Wharfage. [...] PD Wharfage Limited is obliged to forward such a request to UMA and the latter may decide whether to accept the third party. Although the notifying parties submitted that UMA does not have exclusive rights, and cannot prevent the landlord from allowing the import of sea dredged aggregates by others, the Commission's investigation indicated the landlord would be unlikely to accept such imports if UMA objected. According to the landlord, the plant or equipment for receiving marine dredged aggregates is owned by UMA. Further south at Newport, Site Services operate a wharf which is capable of importing processed aggregates (i.e., it does not have processing capability). The Commission's market investigation confirmed that this wharf is exclusive to Site Services and would not be accessible to third parties.

22. Although the notifying parties identified three other sites at Stag Lane as a possibility for landing aggregates, one of these is leased by UMA until [...] and is inactive, another is operated by Lafarge and is presently only used for the import of cement, whilst the other was identified as 'a third site at this location with direct quay frontage, together with significant areas of vacant developed land in the interior of this development.' With respect to the Lafarge site, the notifying parties noted that although it is only presently used for cement import, it could easily import aggregates. The notifying parties also identified opportunities for creation of wharf sites such as green field development and cited an example in 2001 during which an industrial location in Cowes with a total of 3.4 acres of land, including 175 m of quay frontage was offered for development. However, the results of the Commission's investigation suggested that the existing wharf sites identified by the notifying parties were not presently suitable for use. In terms of the development of a totally new wharf, the notifying parties stated this would require significant investment (€0-2.9 million) and may take up to 12 months. This was confirmed by the Commission's investigation. On the basis of the foregoing, the Commission considers that for at least the short to medium term, the possibilities for suppliers outside the Isle of Wight to import aggregates are limited by access to wharf facilities.
23. *Prices.* In 2001, the price of UMA's aggregates on the Isle of Wight were approximately 12% higher than its aggregates on the UK mainland.⁷ However, the prices of RMC's Isle of Wight aggregate was approximately 8% less than its mainland aggregate. The Commission's investigation broadly suggested that the prices of aggregates on the UK mainland were similar to those on the Isle of Wight and that the prices of the notifying parties were comparable to those of their main competitors on the UK mainland. The response of all customers to the market investigation regarding prices of aggregates on the Isle of Wight was that they would absorb a 5-10% price rise for a significant period and that they would not switch purchases to the UK mainland on the basis that it would be too expensive. The overwhelming majority of competitors stated that in response to 5-10% price rise in aggregates on the Isle of

⁷ 2001 prices in tonnes: UMA Isle of Wight price [€...], mainland price [...], RMC Isle of Wight price [...]. The notifying parties submit that average selling prices have shown similar trends over the last 5 years. Data provided by the notifying parties, converted at rate of 1 £ sterling = €0.685.

Wight for a significant period of time, they would not consider supplying the Isle of Wight for reasons of cost of market entry and lack of availability of wharf access.

24. *Transport costs.* According to the estimates of the notifying parties, the haulage costs from the wharf by road to the end customer on the Isle of Wight represent 10-20% of the total cost of aggregates. These costs are borne by the supplier. The notifying parties estimate the additional cost of importing aggregates by barge from the UK mainland as €[...] per tonne. The Commission notes that this represents approximately 24-28% of the ex-wharf price of aggregates (based on 2001 estimates of the notifying parties). The market investigation however, indicated that the cost of transport by barge would be significantly higher, approximately €[...], representing 39-45% of the cost of aggregates. The market investigation indicated that due to the restrictions on availability of wharf facilities on the Isle of Wight, any supplier wishing to import aggregates from the UK mainland would need to import using lorries and ferries. The results of the market investigation indicated that this would not be viable since the transport cost of hiring a ferry and use of a lorry may exceed the cost of the aggregates themselves.⁸ The possibility of importing aggregates by barge is made difficult due to lack of wharf facilities. Even assuming that wharf access were possible, on the basis that transport costs represent a substantial part of the cost (24-28% according to the notifying parties and 39-45% according to the market investigation) of aggregates imported from the UK mainland, the Commission considers that a hypothetical monopolist on the Isle of Wight could raise the price of aggregates by 10% without being constrained by prices of aggregates on the UK mainland. Unless the cost of aggregates on the UK mainland were significantly lower than on the Isle of Wight, due to the high transport cost, UK mainland aggregates are unlikely to exercise a competitive constraint on the price of Isle of Wight aggregates.
25. On the basis of restrictions on access to wharf facilities which make new entry difficult, the relatively high transport cost of importing aggregates, and the clear view of customers and competitors that they would not switch in response to a 5-10% price increase of aggregates on the Isle of Wight, the Commission considers the relevant geographic market is limited to the Isle of Wight. The Commission therefore concludes that the appropriate geographic market for the purposes of this decision is the Isle of Wight. The Commission cannot exclude that the possibility of imports to the Isle of Wight may exercise some competitive constraint on the supply of aggregates on the Isle of Wight that would have to be taken into account in the competitive assessment.
26. The Commission notes that the Isle of Wight represents a relatively small geographic area (38,000 Hectares). The population of the Isle of Wight is 132,000, representing 0.23% of the population of the UK (58m), whilst its GDP is approximately £1bn, representing 0.15% of total UK GDP (£629bn).⁹ The total volume of aggregates supplied on the Isle of Wight is 600,000 tonnes (Year 2000), representing approximately <1% of total United Kingdom supply (200-225 million tonnes per annum). The notifying parties estimate the total value of the Isle of Wight aggregate

⁸ The market investigation suggested that per tonne transport costs may be as much as €3.9 for 30 miles, and €13.2 for 100 miles. In addition, there may be an additional €1.4-2.2 waiting time charge whilst the lorry is on the ferry. The notifying parties' estimate was €24.

⁹ Isle of Wight Census Atlas 1991.

market as €7.89 million, representing <1% of the value of the total UK aggregate market based on the total market size €3.2 billion. On the basis of the foregoing, the Commission considers for the purposes of this decision the Isle of Wight does not constitute a substantial part of the common market. The proposed concentration therefore does not lead to the creation or strengthening of any dominant position as a result of which competition would be impeded in the common market or a substantial part of it.

VI. CONCLUSION

27. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission

(signed)
Mario MONTI
Member of the Commission