

***Case No COMP/M.3259 -
CRH / CVC /
CEMENTBOUW***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/09/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29/09/2003

SG (2003) D/231986

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir, Madam

**Subject: Cases No. COMP/M.3259 - CRH/CVC/Cementbouw JV and COMP/M.3267 – CRH/Cementbouw
Notification of 26.08.03 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 26.08.2003, the Commission received a notification of a proposed transaction consisting of two concentrations pursuant to Article 4 of Council Regulation (EEC) No 4064/89. As a result of the first concentration, CRH Nederland B.V. (CRH), acquires control of Cementbouw Holdings' ("Cementbouw") building materials production, trade activities and retail activities. Through a second concentration, CRH and CVC Capital Partners B.V. ("CVC"), acquire joint control of a newly created joint venture which will comprise Cementbouw's ready-mixed concrete production activities, aggregates and binding agents trading activities.
2. After examination of the notification, the Commission has concluded that the notified operations fall within the scope of the Merger Regulation and do not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

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).

I. THE PARTIES AND THE OPERATION

3. CRH is part of the Irish CRH Group. Cementbouw is controlled by CVC, an investment fund. Cementbouw and CRH produce and trade building materials. Both are also active in the ‘Do it yourself’ and builders’ merchant retail businesses.
4. The first proposed operation consists in the acquisition of sole control by CRH of Cementbouw’s building materials production, builders’ merchant trade activities and building materials retail activities.
5. The Joint Venture (“JV”) to be established in the second proposed operation will comprise the businesses that have not been acquired by CRH through the first concentration, namely ready-mixed concrete production and trading of cement, aggregates and fly ash. After the completion of the second transaction, CRH and CVC will each hold 45% of the shares in the JV. The 10% remaining shares will be held by two foundations acting for the benefit of the JV’s Management. Pursuant to the Shareholder’s Agreement, and given that both CRH and CVC have equal voting rights and significant veto rights, CRH and CVC can be considered to have joint control over the JV.
6. As the JV will consist of the existing Cementbouw subsidiaries Betonmortel and Bindmiddelen & Logistiek, which constitute ongoing businesses, it will perform all the functions of an autonomous economic entity on a lasting basis.
7. Both proposed transactions therefore constitute concentrations within the meaning of Article 3(1)(b) of Council Regulation (EEC) No 4064/89. In view of the strong interrelationship between the two concentrations, their assessment is covered by one single decision.

II. COMMUNITY DIMENSION

8. The undertakings concerned in both concentrations have a combined aggregate world-wide turnover of more than EUR 5 billion² (CRH € 10,116 million; CVC € [...] million, Cementbouw € 790 million). Both CRH and the acquired Cementbouw business (for concentration 1) and both CRH and CVC (for concentration 2) have a Community-wide turnover in excess of EUR 250 million (CRH € [...] million; CVC € [...] million, Cementbouw business relating to first concentration: [...] 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 operations therefore have a Community dimension.

III. COMPETITIVE ASSESSMENT

² 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.

9. The two concentrations address several levels of the production of construction materials, of trading in construction materials and raw materials for construction materials and of distribution of building materials. The two transactions create a number of vertical relationships (mainly in the second operation) and horizontal overlaps (mainly in the first operation) between the parties' activities, leading to several vertically and horizontally affected markets. As Cementbouw's turnover is almost exclusively generated in the Netherlands, the competitive impact of the concentrations is limited to the Netherlands.

A. Relevant Product and Geographic Markets

10. Cement and aggregates trade and ready-mixed concrete production have previously been defined by the Commission³ as single, separate markets, which are, as concerns the Netherlands, national in scope⁴. For the purposes of this decision and in line with the parties' views, the same market delimitation will be applied leading to vertically affected markets in cement, aggregates trade and ready-mixed concrete production. Cementbouw also trades fly ash, a by-product of electricity generation, which can partially (20% maximum) substitute cement for the production of concrete. The parties have considered fly ash trading as a separate market, national in scope although it may be part of a wider cement additives market. Only premium quality fly ash can be used as a cement substitute. It is not necessary to decide on the exact product market delimitation of fly ash as the operation does not raise concerns on the basis of any alternative market definition. All of the above mentioned markets can be considered national in scope for the purposes of this decision.
11. The acquisition of Cementbouw by CRH will result in horizontal overlaps for paving, construction flooring, load-bearing wall materials, builders' merchandising and 'Do it Yourself' retail.
12. With regard to paving a number of paving materials for built-up areas can be used, ranging from asphalt to bricks. The parties only overlap on block pavings (tiles, bricks and kerbs sold as a package) and have submitted that from the demand side block pavings should be considered as one market. From the supply side, a further distinction in this market can be made between concrete products on the one hand and clay products on the other hand. It is not necessary to decide on the exact product market delimitation of block pavings as the operation does not raise concerns on the basis of any alternative market definition. As most producers have their production locations in the centre of the Netherlands, the relevant geographic market is considered to be the Dutch market.
13. The market for building materials for load-bearing walls has been investigated in the Haniel/Cementbouw/CVK case⁵. The market definition retained considered a wide array of materials to be part of the same market (including bricks, aerated concrete, pre-cast concrete walls and, possibly, in situ concrete). Whilst Cementbouw produces

³ Case No. IV/M.1157 – Skanska/Scancem of 11 November 1998

⁴ Case No. COMP/M.3141 – CEMENTBOUW / ENCI / JV

⁵ Case No. COMP/M.2650 Haniel/Cementbouw/JV (CVK)

most materials, CRH's presence in the load-bearing walls building materials market is limited to bricks. The market was considered to be national in scope.

14. The Dutch construction flooring markets have been considered previously in the CRH/ADDTEK case⁶ in which the market investigation indicated that pre-cast concrete floors are a market distinct from in situ cast floors and from cellular concrete floors. This view is shared by the parties who are not active in cellular concrete floors and whose activities for in situ cast floors are limited. In pre-cast floors, in which there is an overlap between the parties' activities, a distinction between (i) hollow-core floors, (ii) rib-cassette floors, (iii) combination floors and (iv) shuttering slabs can be made. The first three types can be used for ground floors whereas only hollow-core floors and shuttering slabs are used for intermediate floors. The parties therefore submit that pre-cast ground floors and pre-cast intermediate floors constitute separate markets which is corroborated by the fact that producers are able to price discriminate between hollow-core floors for both applications as hollow-core ground floors must be supplied with a layer of insulation and most floors are purchased directly with producers.
15. However, the parties argue that *within* pre-cast ground floors and pre cast intermediate floors no further distinction in terms of relevant product market should be made as the different types of floors compete with each other and constrain each other's prices. The Commission has investigated the question for ground floors where market shares would differ to some extent depending on the delimitation of the relevant product market. Although prices between products differ by about 15% - 20% a majority of market participants considered hollow-core ground floors and rib-cassette floors to be sufficiently substitutable so as to make a price increase of one product in the range of 5-10 % unprofitable. A smaller number also considered combination floors to be sufficiently substitutable. However, the exact market definition for ground floors and intermediate floors does not need to be decided because the market investigation indicated that even on the narrowest market with the highest combined market shares, rib-cassette floors for ground floors, the proposed concentrations does not lead to competitive concerns.
16. The relevant geographic market for floors is considered to be the Netherlands as floors are supplied throughout the Dutch territory from few production or storage sites. Some market participants pointed to the possibility of imports from Belgium and Germany but imports are not common enough to consider the market for floors to be wider than the Netherlands.
17. Industrial (concrete) slabs are used as paving in industrial buildings. Considering industrial slabs as part of a wider paving market, rather than a distinct market, would lower the market share of the parties. Industrial slabs are supplied on a national basis.
18. Both parties are general builders' merchants, providing their customers with a one-stop shop for all their materials required. The parties submit that, even if this activity were to be considered as a distinct market, it would still be competitively restrained by direct sales of producers. For the purposes of this decision it does not need to be decided whether there are narrower markets for specialist builders' merchants, eg.

⁶ Case No COMP/M. M.2322 – CRH/ADDTEK. No final decision was adopted as the operation was abandoned after the Statement of Objections.

roofing materials builders merchants. As the large number of outlets in builders' merchandising leads to overlapping catchment areas, this market is considered by the parties as national. However, the concentrations do not give rise to concerns even on markets which are narrower than national in scope.

19. Both parties are active in DIY retail distribution, which was previously considered to be one distinct market which may be, despite its local nature, national in scope as the large number of outlets leads to overlapping catchment areas⁷. The exact geographic market delimitation can be left open as even on the basis of markets that are narrower than national no competitive concerns would arise.

B. Competitive Assessment

Horizontal Effects

20. Market shares resulting from horizontal overlaps in the production of construction materials remain below 30%⁸ in all markets but the market for building materials for load-bearing walls and the market for ribcassette floors for ground floors.
21. First, whilst Cementbouw has a strong position for load-bearing wall materials ([30-40%]), CRH would add less than 1% which can be considered to be *de minimis* and does not lead to competitive concerns in view of the presence of CVK as a strong competitor with a market share of [30-40%].⁹ Another competitor (Mebin Beton) has a share of around [0-5%] if in situ concrete is included in the market. A large number of competitors have shares of around 1% which are comparable to the market presence of CRH prior to the concentrations. This applies, irrespective of whether in situ concrete is included in the relevant market or not to Wienerberger, Hanson (Pioneer) and Oudenallen who each have higher market shares than CRH under any possible market delimitation.¹⁰ The elimination of CRH as a competitor of Cementbouw in load-bearing walls therefore does not lead to the loss of any significant constraining force of the two strong market players and the market structure remains essentially unchanged.
22. Second, the parties' shares would reach [30-40%] ([20-30%]+[10-20%]) on the hypothesis of a separate product market for ribcassette floors for ground floors. If the

⁷ See, inter alia, Case No. COMP/M.2804 – Vendex KBB / Brico Belgium

⁸ Combined shares are for paving at most [20-30%] (clay block paving), for intermediate floors at most [20-30%] shuttering slabs), for industrial slabs [10-20%]. There is no horizontal overlap in the production of ready mix concrete. Nor is there, speaking of trading activities other than those addressed in recitals 23 and 24, any overlap in fly ash trading, additives trading or cement trading.

⁹ See Case COMP /M. 2650 Haniel / Cementbouw / JV (CVK) in which the decision was conditional on the unbundling of CVK. This unbundling has since been approved by the Dutch competition authority (case 3433 Cementbouw / Kalkzandsteenfabrieken). The market shares indicated are excluding in situ concrete. Cementbouw's market share on the may be [0-5%] higher if in situ concrete is included. However, as CRH does not have any activities in in situ concrete, the market share increment due to CRH would be even less if in situ concrete were included in the relevant market. Therefore the inclusion or not of in situ concrete in the relevant market for load bearing walls has no significant impact on the competitive assessment of the notified operations.

¹⁰ See Commission decision in case COMP / M. 2650 Haniel / Cementbouw /JV (CVK) of 26.06.2002, recital 91.

market were wider and included also (insulated) hollow-core floors the combined market shares would drop to [20-30%] and if, even wider, the relevant market would include all three types of pre-cast ground floors combined market shares would drop to [20-30%]. In ribcassette floors competitors' market shares would be [20-30%] (for Betonson) and around 10% for three other competitors with two further competitors having shares of at or below 5%. Demand for ribcassette floors has been falling. In recent years CRH's position has been eroding and its market share in ribcassette floors has fallen from [30-40%] in 2000 to [20-30%] in 2002. The parties' combined market shares may be reduced further following capacity reductions. In view of the stagnant or declining size of the market key competitors' capacity and their ability to increase capacity if demand picks up seem sufficient to exert competitive pressure on the parties. At the very least there is substantial fringe substitution by other types of (ground) floors. The Commission's market investigation indicated that the concentrations are expected to have little effect on competition in construction flooring. In view of these facts it can be concluded that the operation does not lead to the creation or strengthening of a dominant position even on the assumption of a separate market for ribcassette floors for ground floors.

23. A combined CRH / Cementbouw would have a [10-20%] market share on the national builders' merchants market and [10-20%] at most (distribution of roofing materials) if separate specialist builders' merchants markets were to be identified. Overlaps for builders' merchants on a local basis would remain limited and do not give rise to competitive ¹¹
24. Both CRH and Cementbouw are franchisees of Intergamma, which exploits the Gamma and Karwei DIY franchise stores. Post operation, the parties would control around [...] % of the Intergamma franchises (although this would not confer it with control over Intergamma or its sourcing policy). The combined CRH / Cementbouw would have a [10-20%] market share on the national DIY market. Local overlaps are limited and do not give rise to competitive concerns. ¹²

Vertical effects

25. The concentrations also give rise to a number of vertical links. For aggregates trading, cement and ready-mixed concrete, Cementbouw's market shares are below 15% and as such do not give rise to competitive concerns with regard to the downstream markets for concrete applications. Nor do vertical relations derived from CRH's concrete and non-concrete products (e.g. light domes), which can be distributed through the builders' merchant channel or the DIY channel, give rise to competitive concerns as they only constitute a small percentage of builders' merchants' or DIY stores' sales.
26. Cementbouw is a trader of fly ash with a [70-80%] market share in the Netherlands. However, it can reasonably be excluded that even such a strong position could confer CRH with a competitive advantage in downstream concrete markets. Given the limited

¹¹ Market shares would be below 30% on all local markets considered.

¹² In all local markets considered shares are below 30% except in one local DIY market in the Roosendaal/Bergen op Zoom area in which market shares would be around [30-40%]. However, there is a high number of competing stores in this area (ca. [...] competitors' outlets compared to only [...] outlets by the parties). In addition there is also a considerable number of competing stores in overlapping neighbouring geographical circles in which the parties' share is below 30%.

percentage (20%) of cement that can be replaced by premium fly ash for the production of concrete based products, given that fly ash represents about 40% of the price of Portland cement and that therefore the maximum achievable cost saving through the use of fly ash at current prices is 12%¹³ and given that cement represents at most 10% of the total cost of pre-cast concrete products, any theoretical discrimination of customers other than CRH would be limited around 1% of the current price of pre-cast concrete products. The JV's pricing power would be further limited (i) by the possibility of fly ash imports (CRH itself has so far imported fly ash from Germany at competitive prices) (ii) by the fact that Cementbouw's current fly ash trading activities of fly ash of suitable quality for concrete production are carried out by a joint venture with a third party (against whose commercial interests it would be to supply CRH below cost) and (iii) by the possibility to use other substitutes than fly ash (additives with comparable pozzolanic properties can also be produced from furnace slag). In view of these facts a threat for competition on downstream concrete markets can be excluded.

Conclusion on Competitive Assessment

27. It can therefore be concluded that neither of the proposed concentrations raises doubts as to the creation or strengthening of dominant positions.

IV. CONCLUSION

28. For the above reasons, the Commission has decided not to oppose the notified operations and to declare them 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

¹³ If 80% +20% Portland cement would cost an amount of "100"; 80% Portland cement + 20% fly ash (at a price of 20 x 0,4) would cost an amount of "88".