

***Case No COMP/M.3415 -
CRH / SEMAPA / SECIL
JV***

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/05/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28/05/2004

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Subject: Case No COMP/M.3415 – CRH/SEMAPA/SECIL JV
Notification of 26.04.2004 pursuant to Article 4 of Council Regulation
No 4064/89¹

1. On 26.04.2004, the Commission received a notification of a proposed concentration by which the undertaking CRH plc. (“CRH”, Ireland) acquires within the meaning of Article 3(1)(b) of the Council Regulation (“Merger Regulation”) joint control of the undertaking Companhia Geral de Cal e Cimento, S.A. (“Secil”, Portugal), previously under the sole control of SEMAPA, Sociedade de Investimento e Gestao, SGPS S.A. (“SEMAPA”, Portugal), by way of purchase of shares.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. CRH is active in the production and distribution of building materials such as cement, aggregates or ready-mixed concrete, as well as pre-cast concrete products for the construction sector.
4. SEMAPA is a holding company which is present in various sectors such as cement, building materials and energy.
5. Secil is the SEMAPA subsidiary active in the cement and building materials sector.

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).

II. THE CONCENTRATION

6. Secil is currently under sole control of SEMAPA. The transaction consists of the acquisition by CRH of 45,126% of the issued share capital in Secil, SEMAPA retaining 46,967%. The remaining 7,907% will be held directly or indirectly by Secil but will have no voting rights. According to the Shareholders Agreement, the approval of both CRH and SEMAPA will be needed for all significant decisions concerning Secil's business, and the Board of Directors will determine the general policy of the company including the scope of its activities and operations. Secil will therefore be jointly controlled by SEMAPA and CRH. It will also constitute a full function joint venture since it will continue its current businesses of production and sales of building materials.

III. COMMUNITY DIMENSION

7. The combined aggregate worldwide turnover of CRH and SEMAPA in 2003 was above 5.000 MEUR (CRH: 11.080 MEUR, and SEMAPA: 417 MEUR) and the aggregate Community wide turnover of each was in excess of 250 MEUR. They do not both 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.

IV. COMPETITIVE ASSESSMENT

A. Relevant Markets

Relevant product markets

8. The parties are active in the production of the following building materials: i) grey cement; ii) white cement; iii) lime; iv) aggregates; v) ready-mixed concrete; vi) wet and dry mortar; vii) pre-cast concrete products; viii) concrete roofing tiles, and ix) fly ash and slag.
9. Cement (grey and white) is one of the two primary ingredients of concrete products. The other primary product of concrete is "aggregates" (gravel, crushed rock and sand).
10. In previous decisions² the Commission has confirmed that each of: grey and white cement, aggregates, ready-mixed concrete and concrete roofing tiles constitute separate relevant product markets. For the purpose of this decision the same definitions remain valid.
11. Lime and its derivatives are used in a wide range of products such as fixing agents in steel refining, as a binder in building and construction and in water treatment to precipitate impurities. The precise definition of the relevant product market can be left open since there is no competitive overlap between the parties and the operation does not give rise to competition concerns.
12. Regarding mortar, the parties state that wet mortar may be a market different from dry mortar but that it is not necessary to determine the precise scope of the relevant product market in this case. The Commission has previously considered mortar as a distinct relevant product market³. For the purpose of this decision it is not necessary to take a

² Case COMP/M.2317 – LAFARGE/BLUE CIRCLE (II), Commission decision of 01.03.2001, and Case COMP/M.1779 - Anglo American/Tarmac, Commission decision of 13.01.2000.

³ Case COMP/M.1779 - Anglo American/Tarmac, Commission decision of 13.01.2000

final definition on whether dry, mixed and wet mortars constitute separate markets or a single market since the operation does not give rise to competition concerns under any alternative definition.

13. With respect to pre-cast concrete products (such as building blocks, pipes, beams or bricks), the Commission has not taken a definitive view regarding the product market definition⁴, and in this case it is not necessary since the operation does not give rise to competition concerns under any alternative market definition.
14. Fly ash is a by-product of electricity generation, which can partially (20% maximum) substitute cement in the production of concrete. Slag is a by-product of the steel industry which can be used in the production of cement and also as a partial replacement for some raw materials used to produce cement and concrete. The question whether fly ash constitutes a distinct relevant product market or whether it belongs to a wider cement additives market (such as slag) has been assessed previously by the Commission⁵, which has left the final definition open. The same approach is also valid in this case for both fly ash and slag as the operation does not give rise to competition problems under any alternative definition.
15. In addition, CRH is present in the sector of distribution of building materials through a joint ownership on a 50/50 basis of sixteen do it yourself (“DIY”) stores in Portugal under the brand name Max Mat. This activity has been previously assessed by the Commission⁶ and it has been confirmed that it constitutes a distribution channel distinct from others such as the building materials wholesalers or specialised retailers. According to previous decisions, distribution of building materials through DIY stores could be part of a wider market constituted by all the products sold through such outlets, such as decorative products, electrical goods and lightning, tools and gardening products.

Relevant geographic markets

16. Most of the building materials are heavy by nature and therefore cannot be economically transported over long distances. The Commission has previously confirmed the relevant geographic market for the following product markets⁷: white cement (at least EEA wide); aggregates (local, 30-mile (or 48 km) radius from the production site), ready-mixed concrete (local, 10-mile (or 16 km) radius from the production site), pre-cast concrete products (national), concrete roofing tiles (national), mortar (local, 70-mile (or 112 km) radius from the production site)⁸ and fly ash and cement additives, such as slag, (national).

⁴ Case COMP/M.2317 – LAFARGE/BLUE CIRCLE (II), Commission decision of 01.03.2001

⁵ Case M.3267 – CRH/Cementbouw, Commission decision of 29/09/2003.

⁶ Case COMP/M.3267 – CRH/CEMENTBOW, Commission decision of 29/09/2003; Case COMP/M.2898 Leroy Merlin/ Brico, Commission decision of 13.12.2002; Case COMP/M.2804 Vendex KBB/Brico Belgium, Commission decision of 13.12.2002 and Case COMP/M.1974 Compagnie de Saint-Gobain/Raab Karcher, Commission decision of 22.06.2000.

⁷ Case COMP/M.2317 – LAFARGE/BLUE CIRCLE (II), Commission decision of 01.03.2001, and Case COMP/M.1779 - Anglo American/Tarmac, Commission decision of 13.01.2000 and Case M.3267 – CRH/Cementbouw, Commission decision of 29/09/2003

⁸ In previous decisions, the market for mixed and wet mortar was explicitly defined as being narrower than a 70-mile (or 112-km) radius circle. The inclusion of dry mortar was not explicit. However, for the

17. Regarding grey cement, the parties state that the relevant geographic market is at most national. In a previous decision⁹ the Commission has assessed this market and concluded that it was not necessary to determine whether the relevant geographic market is national or covers the whole of Europe. For the purpose of this decision, the final definition can also be left open since the final assessment does not change.
18. With respect to lime the parties consider that the relevant geographic market is at most national. CRH has in the EEA only two production facilities in Ireland, and it transports its lime no further than 200-300 km. Secil has only a production facility in Portugal and the furthest point to which it delivers lime is 440 km from its plant, and it is also in Portugal. The above indications suggest that the market for lime could be national or regional or within circles of below 500 km radius, however, for the purpose of this decision, the final definition can be left open since there is no competitive overlap between the parties and the operation does not give rise to competition concerns.
19. Regarding the DIY stores at the distribution level, the Commission has stated that, despite its local nature, the relevant geographic market could be national in scope as the large number of outlets leads to overlapping areas¹⁰. At the procurement level, the relevant geographic market has been considered as mainly national. However, the exact geographic market delimitation has been left open, and the same approach can be taken in this case, as even on the basis of markets that are narrower than national no competitive concerns would arise.

B. Assessment

Horizontal effects

20. Grey cement: all three Secil's production facilities are located in Portugal whereas CRH plants are located in Ireland, Finland, Switzerland, Poland, Israel and Ukraine, none of these countries being contiguous or close to Portugal. If, as submitted by the parties, the geographic scope of this market is national, then the activities of the parties do not geographically overlap. If these markets are wider than national, it should be observed that the combined market shares of the parties are 3.5 % in the EU, which excludes any possibility of competition concerns. Regarding white cement, the operation does not give rise to overlaps since CRH does not produce white cement.
21. Lime: within the EEA, CRH has two lime production facilities in Ireland and Secil has one lime production facility in Portugal. The activities of the parties do not geographically overlap if national or regional markets are retained, which is plausible since both companies transport lime at a maximum distance of 500 km. At the EU level, their combined market share is marginal, below 2%, which excludes any potential competition concern.
22. Aggregates: all of Secil's quarries are located within Portugal and none of them is within a 200-km distance from the closest CRH's ones located in Spain. Therefore, the activities of the parties do not geographically overlap.

purpose of this decision, it is not necessary to define geographic markets since no competition concern is likely to arise under any alternative geographic market definition for dry mortar.

⁹ Case COMP/M.2317 – LAFARGE/BLUE CIRCLE (II), Commission decision of 01.03.2001

¹⁰ See, inter alia, Case No. COMP/M.2804 – Vendex KBB / Brico Belgium

23. Ready-mixed concrete: Secil operates 43 plants in Portugal and CRH operates 64 plants in Spain but none of the Secil's ones are within a 70-km distance from CRH's plants. Therefore, the activities of the parties do not geographically overlap.
24. Mortar: Secil is only active in Portugal where CRH is not active and the minimum distance between Secil and CRH plants is 550 km, which is significantly above twice the radius defined in previous decisions. Therefore the activities of the parties do not geographically overlap. If dry mortar was isolated from mixed and wet mortars, then it should be observed that (i) if markets are national then the activities of the parties do not overlap, (ii) in Spain and Portugal altogether, their combined market shares are less than 3 % and (iii) they are less than 2 % at the EU level. Any competition concern can therefore be excluded.
25. Pre-cast concrete products: CRH is not active in Portugal whereas Secil is only active in Portugal. Since the market is national, the activities of the parties do not geographically overlap.
26. Concrete roofing tiles: Secil produces only in Portugal and sells about one third of its production in Spain. The remaining two thirds are sold in Portugal. CRH is not active in Spain or Portugal. Therefore, the activities of the parties do not geographically overlap.

Vertical effects

27. Fly ash and slag production and trading: Secil buys fly ash and slag in Portugal and Spain for its own cement and ready-mixed production. CRH does not produce or trade fly-ash or slag in Portugal. CRH processes fly-ash and slag in Spain but consumes the whole of its purchases internally for its own ready-mixed concrete facilities. In any case, CRH estimates its market share in Spain for the production of fly ash and slag to be below 1%, which entails that, were the market be considered as regional including Spain and Portugal, it would not be affected.
28. DIY stores: Max Mat stores, the DIY stores held by CRH in Portugal, have a market share below 6% at national level. At local level, Max Mat stores have a market share which is systematically below 30 %. In addition, these Max Mat stores are usually locally in competition with stores from at least one store belonging to Aki or Mestre Maco, two chains having national market shares comparable to or higher than Max Mat's. Only in Madeira, Ponta Delgada and Paredes are these competitors not present, but there Max Mat has market shares below 25 % and therefore these local markets are not affected. Therefore Max Mat stores' positions do not give rise to any competition concern since competitors of Secil have access to numerous and credible alternatives for the distribution of their building materials through DIY stores.
29. On the upstream market, Secil and its subsidiaries sell white and grey cements, cement and bonded particle boards, lime and mortars to DIY stores.. Secil's market shares for grey cement, lime and mortar are below 40 % which excludes any possible competition concern in relation to these products. Secil holds high market shares for white cement and cement wood wallboards, above [75-85]%. However, the market investigation has shown that (i) cement wood wallboards could be considered as part of a wider market for bonded particle boards in which Secil's market share would be below 20% and (ii) competitors of Max Mat have confirmed they have credible and economical alternative sources of white cement and cement wood wallboards to Secil, such as Cimpor. Furthermore, since Max Mat has only 6% market share at national level (see paragraph 28), foreclosure behaviour by which Secil renounces to supply its products to the other

stores representing 94% of this market is not likely to happen. Therefore, this vertical relationship between the parties does not give rise to competition concerns.

V. CONCLUSION

30. 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
Stavros Dimas
Member of the Commission