

***Case No COMP/M.3572 -
CEMEX / RMC***

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

Article 6(1)(b) NON-OPPOSITION
Date: 08/12/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.12.2004

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.3572 – CEMEX/RMC
Notification of 18.19.2004 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 18.10.2004, Cemex S.A. de C.V. (“Cemex”) notified its intention to acquire control of RMC Group p.l.c. (“RMC”) within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 (“EC Merger Regulation”) by way of a scheme of arrangement under English company law.
2. After examination of the notification, the Commission has concluded that the notified operations falls within the scope of the Council Regulation No 139/2004 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

I. THE PARTIES

3. Cemex is a global producer and marketer of cement, ready-mixed concrete, aggregates and other related products. Its principal activities are in Mexico, the United States, Spain, Egypt and certain other countries in Central America, South America and Asia.

¹ OJ L 24, 29.1.2004 p. 1.

4. RMC is a manufacturer and supplier of construction materials with operating units in 22 countries worldwide. Its principal activities are the manufacture of cement, aggregates and ready-mixed concrete.
5. The main effects of the transaction will take place in Spain. RMC has a controlling interest in Readymix-Asland S.A. (“Readymix-Asland”), a 50/50 joint venture with Lafarge, which is active in the manufacture and supply of ready-mixed concrete, mortar and aggregates in Spain. [...]

II. THE OPERATION

6. The transaction is an acquisition by Cemex of RMC. The acquisition is to be implemented by way of a scheme of arrangement under English company law. The acquisition was announced on 27 September 2004 and is recommended by the Board of RMC. If the scheme is implemented successfully, it will result in Cemex acquiring sole control of RMC.

III. CONCENTRATION

7. Following from the above, it can be concluded that the operation constitutes a concentration within the meaning of article 3(1)(b) of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Cemex: EUR [...] million; RMC: EUR [...] million). Each of the parties have a Community-wide turnover in excess of EUR 250 million (Cemex: EUR [...] million; RMC: EUR [...] 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

A. Relevant product markets

9. Cemex and RMC are both active in the manufacture and supply of grey cement, ready-mixed concrete, mortar and aggregates.

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.

Cement

10. Cement is manufactured by grinding clinker and gypsum into a fine powder. There are two main types of cement: grey cement and white cement. However, only grey cement is relevant for the assessment of this case.
11. The parties have submitted that grey cement constitutes a relevant product market. In a number of previous decisions, the Commission has considered grey cement and white cement to constitute separate product markets³. The results of the market investigation in this case do not suggest that the Commission should deviate from its previous practice.

Ready-mixed concrete

12. Ready-mixed concrete is produced by mixing cement with aggregates, water and certain additives and is used as a base for on-site moulded concrete constructions. In previous Commission decisions, ready-mixed concrete has been viewed consistently as a single, distinct product market⁴. The results of the market investigation in this case do not suggest that the Commission should deviate from its previous practice.

Mortar

13. Mortar is a mixture of cement, sand and certain additives. Mortar is used principally for bricklaying, rendering and plastering. There are two main types of factory-mixed mortar: dry and wet (ready-mixed with water). Alternatively, raw materials can be supplied unmixed in twin compartment, transportable silos to the building site and mixed there in accordance with the manufacturer's instructions to make mortar (pre-batched site-mixed mortar). Finally, mortar can be batched and mixed entirely on-site using materials that are delivered separately. The Commission has left open in previous decisions the question whether site-mixed mortar forms part of the same relevant product market as factory-mixed mortar⁵.
14. The parties have argued that dry factory-mixed mortar constitutes a distinct product market, separated from both pre-batched site-mixed mortar and wet factory-mixed mortar. According to the parties, the main differences between factory-mixed and pre-batched site-mixed mortar are in the production process (more capital and labour intensive for dry factory-mixed mortar), price (around 10% higher for dry factory-mixed mortar, mostly as a consequence of higher capital investment required), responsibility for dosage (which rests on the supplier for dry factory-mixed mortar

³ COMP/M.3415 – CRH/SEMAPA/Secil JV; and COMP/M.2317 – *Lafarge/Blue Circle* (II).

⁴ COMP/M.CRH/SEMAPA/Secil JV; COMP/M.3267 – *CRH/Cementbouw*; COMP/M.3259 – *CRH/CVC/Cementbouw*; COMP/M.3141 – *Cementbouw/ENCI/JV*; COMP/M.2317 – *Lafarge/Blue Circle* (II); COMP/M.1874 – *Lafarge/Blue Circle*; COMP/M.1827 – *Hanson/Pioneer*; COMP/M.1779 – *Anglo American/Tarmac*; COMP/JV.29 – *Lafarge/Readymix*; IV/M.1759 – *RMC/Rugby*; IV/M.1157 – *Skanska/Scancem*; and IV/M.1030 – *Lafarge/Redland*.

⁵ COMP/M.1779 – *Anglo American/Tarmac*, COMP/M.3415 – *CRH/SEMAPA/Secil JV*

and on the customer for pre-batched site-mixed mortar) and standard units of measurement (weight versus volume).

15. The parties have submitted that the main differences between dry factory-mixed and wet factory-mixed mortar are in the technical characteristics of the resulting mortar (dry factory-mixed mortar is of better quality and can be stored for much longer time than wet factory-mixed mortar. The latter is a perishable product that can be transported only for a limited distance and must be used immediately if additives and stabilisers are not used), different production processes (dry factory-mixed mortar requires specific investment, while wet is produced in the same plants as ready-mixed concrete), production costs (around 20% higher for dry factory-mixed mortar) and price (around 25% higher for dry factory-mixed mortar), distribution format (dry can be stored on site in silos or bags, wet is delivered in mixer lorries), applications (dry factory-mixed mortar is more typically used for smaller construction jobs since it can be dispensed in small quantities, while wet is better suited for large construction jobs).
16. The Commission investigation has not endorsed the parties' claim that dry factory-mixed mortar constitutes a separate relevant product market for the purposes of this case. In particular, the majority of respondents considered that the different types of mortar are substitutes. A number of respondents pointed out that mortar is a homogeneous product and indicated that they would switch from dry factory-mixed mortar to other types should a small but significant non transitory increase in price occur. The indicated price differentials were generally smaller than those indicated by the parties. However, other respondents confirmed that dry and wet factory-mixed mortars are not perfect substitutes due to their different availability (the use of wet mortar requires proximity of a production plant), quality (wet mortar may not be suitable for all types of works) and specific characteristics (wet mortar is delivered in large quantities and tends to be used for large construction works). Dry factory-mixed and pre-batched site-mixed mortar were often mentioned as the most likely substitutes, whereas dosage conditions and measurement conventions did not appear to play a significant role.
17. The exact market definition can be left open also in this case because in all three alternative market definitions considered (dry factory-mixed mortar, or dry factory-mixed mortar plus pre-batched site-mixed mortar, or dry factory-mixed mortar plus pre-batched site-mixed mortar plus wet factory-mixed mortar) effective competition would not be significantly impeded in the EEA or any substantial part of it.

Aggregates

18. Aggregates comprise of the three primary raw materials used in construction and civil engineering: gravel, crushed rock and sand. In previous decisions, the Commission has considered aggregates to constitute a single, separate product market⁶. The Commission has, however, in some cases considered whether the

⁶ COMP/M.3415 – *CRH/SEMAPA/Secil JV*; COMP/M.3259 – *CRH/CVC/Cementbouw*; COMP/M.3141 – *Cementbouw/ENCI/JV*; COMP/M.2596 – *RMC/UMA/JV*; COMP/M.1874 – *Lafarge/Blue Circle*; COMP/M.1779 – *Anglo American/Tarmac*; COMP/M.1827 – *Hanson/Pioneer*; and IV/M.1157 – *Skanska/Scancem*; IV/M.1030 – *Lafarge/Redland*.

aggregates market could be sub-segmented based on type of material. By way of example, the Commission has distinguished between the three primary aggregates and secondary aggregates - colliery and china clay waste, slate, power station ash, slags and demolition/construction wastes⁷. The Commission has also considered whether the relevant product market could be sub-divided into land won and marine-dredged aggregates⁸. Finally, the Commission has noted that there may be a separate product market for aggregates with a high polished stone value (PSV)⁹. These issues have been however left open in previous cases. The exact market definition can be left open also in this case because in all alternative market definitions considered effective competition would not be significantly impeded in the EEA or any substantial part of it.

B. Relevant geographic markets

19. The geographic activities of the parties are largely complementary. Within the EEA, Cemex is only active in Spain and to a very limited extent in France (in Toulouse area and in département Haute-Garonne). The transaction will therefore affect only these areas.

Cement

20. In previous cases, the Commission has generally considered that the grey cement market consists of a group of geographic markets, centred around the different plants, overlapping one another. The size of each market and the extent of market overlap are determined by the distance from the factory at which cement may be sold¹⁰. The issue of the relevant geographic market for grey cement has been raised in previous cases¹¹, but the definition has been left open. The exact market definition can be left open also in this case because in all alternative market definitions considered effective competition would not be significantly impeded in the EEA or any substantial part of it.

Ready-mixed concrete

21. The parties have submitted that ready-mixed concrete must be used in freshly-mixed, unhardened condition and has a shelf-life of only a few hours. In practice, this means that the journey time from the ready-mixed concrete plant to the customer's construction-site must be limited to around one to two hours. Accordingly, ready-

⁷ COMP/M.1779 – *Anglo American/Tarmac*; and COMP/M.1827 – *Hanson/Pioneer*.

⁸ COMP/M.2596 – *RMC/UMA/JV*

⁹ COMP/M.1827 – *Hanson/Pioneer*

¹⁰ COMP/M.3267 – *CRH/Cementbouw*; COMP/M.2317 – *Lafarge/Blue Circle (II)*; IV/M.1874 - *Lafarge/Blue Circle*; IV/M.1157 – *Skanska/Scancem*; IV/M.1030 – *Lafarge/Redland*; IV/M.460 – *Holdercim/Cedest*

¹¹ COMP/M.2317 – *Lafarge/Blue Circle (II)*, COMP/M.3415 - *CRH/SEMAPA/Secil JV*

mixed concrete can only be transported for relatively short distances, seldom more than a few dozen kilometres.

22. The Commission has consistently found in previous cases that, from an economic viewpoint, the market for ready-mixed concrete is normally local in scope. In previous decisions, the Commission has considered a transport radius which varies between 15 and 25 km¹².
23. The parties have argued that ready-mixed concrete can be transported over distances longer than 15 km, to cover local areas with a radius up to 25-30 km. Taking into account that in Spain there are invariably plants in neighbouring areas which are able to compete effectively, the parties consider that there is an effective chain of substitution at least up to the province or island level. Therefore, provinces or islands should be considered as the relevant economic markets affected by the transaction.
24. The investigation carried out by the Commission has indicated that the transport possibility of ready-mixed concrete is limited in time to around 90 minutes, loading and unloading included. The distances that can be covered within this timeframe clearly vary depending on local transport conditions, although most respondents indicated a radius of 20 to 30 km as the relevant one.
25. However, the question of the exact transport radius can be left open because in all alternatives considered effective competition would not be significantly impeded in the EEA or any substantial part of it.

Mortar

26. The Commission has previously considered that the relevant geographic markets for dry factory-mixed mortar are local or, at most, regional in scope by reference to a 120 km transport radius¹³. In this case, the exact market definition can be left open because in all alternative market definitions considered effective competition would not be significantly impeded in the EEA or any substantial part of it.

Aggregates

27. In previous decisions, the Commission has considered the aggregates market to be local/regional, or at most national, in scope. The Commission has considered the market to be local within a 30 mile (or 48 km) radius in two previous cases¹⁴. The exact market definition can be left open in this case because in all alternative market

12 COMP/M.3415 – CRH/SEMAPA/Secil JV; COMP/M.3267 – CRH/Cementbouw (2003); COMP/M.3259 – CRH/CVC/Cementbouw; COMP/M.3141 – Cementbouw/ENCI/JV; COMP/M.2317 – Lafarge/Blue Circle (II); COMP/M.1874 – Lafarge/Blue Circle; COMP/M.1827 – Hanson/Pioneer (2000); COMP/M.1779 – Anglo American/Tarmac; COMP/JV29 – Lafarge/Readymix; COMP/M.1759 – RMC/Rugby; IV/M.1157 – Skanska/Scancem; and IV/M.1030 – Lafarge/Redland.

13 COMP/M.1779 – *Anglo American/Tarmac*

14 COMP/M.2317 – Lafarge/Blue Circle (II), *COMP/M.3415 - CRH/SEMAPA/Secil JV*

definitions considered effective competition would not be significantly impeded in the EEA or any substantial part of it.

C. Assessment

28. The only areas of overlap between the parties' activities in the EEA are in Spain and to a limited extent in France. In Spain, both parties are active in the manufacture and supply of ready-mixed concrete, mortar and aggregates. In France, both parties are active in the manufacture and supply of ready-mixed concrete and aggregates. Cemex is also active upstream in the production of grey cement in Spain. RMC is not active in cement production in Spain, an activity in which Lafarge, its partner in the Readymix-Asland JV, is active.

C.1. Spain

Horizontal activities

Ready-mixed concrete

29. There is a significant degree of geographic complementarity in the parties' operations in ready-mixed concrete. RMC has, through Readymix-Asland, significant activities in the South and North of Spain where Cemex has no presence. Conversely, Cemex has a number of ready-mixed concrete plants in the Canary Islands where Readymix-Asland has no presence. However, there are overlaps at the regional level in Aragón, Baleares, Castilla la Mancha, Cataluña, Madrid, Murcia and Valencia.
30. The Commission has examined all the areas where the parties' activities overlap on the basis of the product and geographical definition defined above, and has found that there are no substantial parts of the common market in which the transaction would significantly impede competition. In most areas where the parties combined market shares are above 15%, they remain generally below 30%. In some small and unconnected markets (the area around the city of Ciudad Real, the area around the city of Palma de Mallorca and the island of Ibiza), the parties combined market shares are higher than 30%. However, considering the extremely small size of these markets taken together relative to the Spanish and common market, the Commission concludes that taken together they do not form a substantial part of the common market.

Mortar

31. In Spain, Cemex is only active in the production of dry factory-mixed mortar. RMC, through Readymix-Asland, produces dry factory-mixed mortar only in Mallorca and in the Asturias region, where in the latter Cemex is not active. In addition, RMC produces wet factory-mixed mortar and pre-batched site-mixed mortar in a number of other areas.
32. The Commission has examined all the areas where the parties' activities overlap on the basis of the alternative product and geographical definitions defined above, and has found that there are no substantial parts of the common market in which the transaction would significantly impede competition.

33. In particular, in the areas of Zaragoza, Valencia and Murcia, where Cemex is the first dry factory-mixed mortar producer with market shares up to 40%, RMC is not active in dry factory-mixed mortar. RMC is active in the production of pre-batched site-mixed mortar and wet factory-mixed mortar, where Cemex is not active. If the different types of mortars are considered part of the same market, combined market shares vary between [20-30]% and [40-50]% (in the area around Murcia). However, even in the areas where market shares are highest, the investigation shows that supply from neighbouring areas constitutes an effective competition constraint, given the distribution of mortar plants on the territory. Furthermore, credible competitors have recently entered the market in the identified areas leading to a decrease in Cemex' market share, a trend that seems likely to continue.
34. In the area of Mallorca, where combined market shares are higher than 40%, the Commission has examined the size of the local mortar market in relation to the Spanish or common market and has concluded it does not form a substantial part of the common market.

Aggregates

35. The Commission has examined all the areas where the parties' activities overlap on the basis of the product and geographical definition defined above, and has found that there are no substantial parts of the common market in which the transaction would significantly impede competition.

Other effects

36. Grey cement is a product which is used downstream for the production of ready-mixed concrete and mortar. Aggregates are used downstream to produce ready-mixed concrete. Although there are vertical relationships between the parties' respective activities in grey cement (Cemex only), aggregates (both parties), mortar and ready-mixed concrete (both parties), the investigation has not produced indications that such relationships would cause serious doubts in markets in Spain which, taken together, form a substantial part of the common market.
37. Furthermore, some respondents have alleged that the operation could lead to co-ordinated effects between Cemex and Lafarge (which is also an active supplier of cement in Spain) through the Readymix-Asland JV. The investigation has however not provided evidence for any such co-ordinated effects to cause serious doubts in markets in Spain that, taken together, form a substantial part of the common market.
38. Therefore, on the basis of the foregoing, the Commission considers that the transaction as notified would not give rise to vertical or coordinated competition effects and significantly impede effective competition in any substantial part of the common market.

General conclusion on Spain

39. On the basis of the foregoing, the Commission considers that the transaction as notified would not significantly impede effective competition in any substantial part of the common market, in particular as a result of the creation or strengthening of a dominant position, in ready-mixed concrete, mortar or aggregates in Spain.

C.2. France

40. In France, the parties have limited overlapping activities in ready-mixed concrete and aggregates. There are no vertically affected markets in France.

Ready-mixed concrete

41. The Commission has examined all the areas where the parties' activities overlap on the basis of the product and geographical definition defined above, and has found that there are no substantial parts of the common market in which the transaction would significantly impede competition.

Aggregates

42. The Commission has examined all the areas where the parties' activities overlap on the basis of the product and geographical definition defined above, and has found that there are no substantial parts of the common market in which the transaction would significantly impede competition.

General conclusion on France

43. On the basis of the foregoing, the Commission considers that the transaction as notified would not significantly impede effective competition in any substantial part of the common market, in particular as a result of the creation or strengthening of a dominant position, in ready-mixed concrete or aggregates in France.

VII. CONCLUSION

44. 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 (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission