

***Case No COMP/M.4298 -
AGGREGATE
INDUSTRIES / FOSTER
YEOMAN***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 06/09/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.09.2006

SG-Greffe(2006) D/205612

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.4298 – Aggregate Industries / Foster Yeoman
Notification of 19.07.2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 19.07.2006, the Commission received a notification of a proposed concentration by which the undertaking Aggregate Industries Ltd (“Aggregate Industries”), controlled by the Holcim Group (“Holcim”) acquires within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004 (“the Merger Regulation”) control of the whole of the undertaking Foster Yeoman Ltd (“Foster Yeoman”) 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 functioning of the EEA Agreement.

I. THE PARTIES

3. Aggregate Industries is a UK- based building materials group. It has operations in the British Isles, the United States and Norway. Aggregate Industries’ activities in the UK comprise the production and supply of aggregates, asphalt, ready-mixed concrete and pre-cast concrete products as well as the provision of road surfacing

¹ OJ L 24, 29.1.2004 p. 1.

services. Since 2005, Aggregate Industries has been a wholly-owned subsidiary of Holcim², a Swiss based international building materials group.

4. Foster Yeoman is a smaller, privately-owned, UK - based heavy building materials group, producing and supplying aggregates and asphalt. It is also active in road surfacing.

II. THE OPERATION

5. Pursuant to a Framework Agreement, dated 20 June 2006, Aggregate Industries has made a recommended cash offer to acquire the entire issued share capital of Foster Yeoman. [...]. The proposed transaction will therefore confer on Aggregate Industries sole control over Foster Yeoman and, thus, constitutes a concentration under the terms of the Merger Regulation. The proposed concentration, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned is more than €5 billion (Holcim Group € 11,958 million, Foster Yeoman € 356 million). The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than € 250 million (Holcim Group € [...] million, Foster Yeoman € [...] million). None of the parties achieved more than two-thirds of their Community-wide turnover in 2004 in one Member State. The operation has therefore a Community dimension in the sense of Article 1(2) of the Merger Regulation.

IV. PROCEDURE: ARTICLE 9(2) REFERRAL REQUEST OF UNITED KINGDOM

7. By letters dated 8 and 11 August 2006, the United Kingdom requested the referral to its competent authorities of the part of the proposed concentration relating to the United Kingdom with a view to assessing it under UK national competition law, pursuant to Article 9(2)(a) and (b) of the Merger Regulation. The Office of Fair Trading (“OFT”) of the United Kingdom considers that the notified transaction affects competition in a number of separate product markets: the production and supply of aggregates and of asphalt and in the supply of surfacing services and related activities. According to the OFT these markets present all the characteristics of distinct markets and do not constitute a substantial part of the common market. The request does not concern markets for the above products outside the United Kingdom. By Decision of today, the Commission referred the case, as regards the aspects concerning the markets for aggregates, asphalt, surfacing and related activities in the UK to the competent national authorities.

V. COMPETITIVE ASSESSMENT

8. Outside the UK, the activities of the Parties only overlap in shipments of aggregates to a number of ports in Germany, the Netherlands, Poland, Belgium and France, but nowhere does this lead to horizontally affected markets. Only in Germany does the transaction lead to a potentially vertically affected market, in view of Holcim’s activity there in ready-mixed concrete. The subject matter of the present Decision is therefore

² Comp M. 3713 Holcim/Aggregate Industries.

the assessment of the operation's effects on the German market. On the German market, the activities of the Parties result in a small horizontal overlap on the market for supply of aggregates, to the extent that AI/Holcim is present there in the supply of aggregates. In Germany the Parties are not involved in production and supply of asphalt, nor in road surfacing services.

A. Relevant product markets

(i) Aggregates

9. The Commission has, in previous decisions, found all primary aggregates, irrespective of type (sand, gravel and crushed rock), to constitute a single, separate product market³, but left open the question as to whether secondary or recycled aggregates (such as colliery and china clay waste, slate, power station ash, slags and demolition/construction waste) were also within this single aggregates product market.
10. The parties consider that these secondary or recycled aggregates, together with marine and dredged aggregates, are substitutes for land-sourced primary aggregates. For the German market, the Bundeskartellamt has distinguished⁴ between the different aggregates like crushed stone, split, gravel, sand and others. Crushed natural stone is mainly used for road construction and asphalt and to a limited extent for ready-mixed concrete. In Germany, generally 80% of crushed rock is used for road construction and asphalt, and about 15% for production of concrete (the remainder is used for road building and land fill). According to the Parties, some [5-10]% of AI's crushed rock imports and local production in the Rostock area is used for ready-mixed concrete.

(ii) Ready mixed concrete

11. Ready-mixed concrete is produced by mixing cement with gravel or small-sized crushed rock (or crushed recycled concrete), water and other additives at a central plant, or in a truck mixer, and is delivered by mixer truck to the place at which it will be used for the building industry. The parties submit that since production of all grades of ready-mixed concrete involves essentially the same raw materials and takes place at the same plant, there is complete supply-side substitutability between each grade of concrete. Typically, most ready-mixed concrete producers produce most grades. In previous Commission decisions, ready-mixed concrete has been viewed consistently as a single, distinct product market⁵.
12. However, for the purpose of the present transaction, the exact product market definition for the proposed product markets may be left open, since in all alternative market definitions, the operation does not appear to raise any competition concerns.

B. Relevant geographic markets

³ COMP/M.3415 – *CRH/SEMAPA/Secil JV*; COMP/M.3259 – *CRH/CVC/Cementbouw*; COMP/M.1874 – *Lafarge/Blue Circle* (UK, Greece and Denmark); COMP/M.1779 – *Anglo American/Tarmac*.

⁴ Decision B1-29/05 (2005)

⁵ Case COMP/M.3572 *Cemex/RMC*; COMP/M.3415 *CRH/SEMAPA/Secil JV* COMP/M.2317; - *Lafarge/Blue Circle (II)* (UK and Greece); COMP/M.1827 - *Hanson/Pioneer*; COMP/M.1779 - *Anglo American/Tarmac*.

(i) *Aggregates*

13. The Commission has consistently held that the relevant geographic markets for aggregates are local, due principally to the impact of transport costs, with an effective maximum delivery distance of approximately 50 km from the source of supply.⁶ The parties submit, however, that the 50 km radial analysis is inappropriate for coastal quarries, such as Foster Yeoman's Glensanda quarry and AI's joint venture, Halsvik, in Norway, where the distances travelled by 80% of the products are significantly greater than 50 km. These quarries ship product to other ports in continental Europe. The parties submit therefore that the geographic market for such coastal quarries may be EEA-wide or at least as wide as the area encompassing the ports in Northern Europe. However, the Parties have also considered whether there would be any horizontal affected markets on the basis of treating the destination ports supplied by the parties as equivalent to quarries (i.e. "virtual production sites"), on the basis of a 50 km radius around those port facilities.
14. For the German market, the Bundeskartellamt⁷ has generally defined the geographic scope for the markets for crushed stone as being a radius of between 50 and 80 km from the quarry sites. However, for Northern Germany, in view of the absence of natural rock deposits, crushed stone is transported over greater distances, by ship and train. It is also noticed that in the Northern Germany basin and the coastal areas on the North Sea and the Baltic Sea are also supplied by crushed stone imports from Scandinavia and the UK.

(ii) *Ready mixed concrete*

15. The parties submit that ready-mixed concrete is perishable and hardens beyond use as it dries. In addition, its strength and in situ setting qualities can be compromised if more water is added in transit. As a consequence, generally, ready-mixed concrete cannot be transported for more than 2 hours from the site of production to the site of laying, including waiting and laying time. The Commission has found in its recent decision⁸ that ready-mixed concrete markets are local and suggested that the relevant geographic area would be in the range of 15 to 25km. For Germany, the Bundeskartellamt has considered ⁹ ready-mixed concrete markets areas with a 25 KM radius from the production sites, except for Berlin, where a radius of 40 KM was taken into consideration.
16. However, for the purpose of the present transaction, the exact geographic market definition for the proposed product markets may be left open, since in all alternative market definitions, the operation does not appear to raise any competition concerns.

⁶ COMP/M.1779 – *Anglo American/Tarmac*; COMP/M.1827 – *Hanson/Pioneer*.

⁷ See footnote 4

⁸ COMP/M.3572 *RMC/Cemex*

⁹ Decision B1-113/00 (2000)

C. Assessment

No horizontally affected aggregates market

17. Nowhere outside the UK do combined market shares¹⁰ reach 15% in aggregates supply. On the basis of their treating the ports where they import crushed stone as “virtual” quarries and taking a radius of 50 km from the port as the geographic markets, the Parties have identified the area of the port of Rostock, Germany as a market where the transaction may give rise to a vertically affected market. The Parties’ combined share of aggregates imported into the Rostock area are less than [10]%, with a market share addition of [...] for Holcim/AI’s imports and local production taken together. (AI’s imports add less than 1% of all aggregates in the Rostock area). It can therefore be concluded that no horizontally affected markets arise from the transaction outside the UK.

Vertical relationship

18. The Parties have mentioned a hypothetical vertically affected market for the relationship between seaborne aggregates and ready-mixed concrete production. They presented market shares data both on the basis of 50km and 25km around the ports. In none of the port areas into which Foster Yeoman imports crushed rock does Holcim have a market share in ready-mixed concrete of more than 25%, except for Rostock. On these bases, the transaction would only give rise to a single potentially vertical affected market in the area surrounding Rostock. In this area Holcim is active in ready-mixed concrete production and has a market share of around [25 – 40]% depending on whether a 50 km or a 25 km radius is considered.
19. In spite of this vertical relationship, it is very unlikely that the new entity would be able to create supply foreclosure problems for ready-mixed concrete competitors. It will have a small market share in aggregates in the 50 km radius area around Rostock (less than [10]% combined). Even on the basis of the narrower market for supply of crushed rock, Holcim’s only crushed rock quarry is at 400 km from Rostock (Nentmannsdorf in Saxony), but Holcim does not transport crushed rock, but only sand and gravel (by train) from that quarry into Rostock. This indicates that the transaction does not lead to changes in supply to ready - mixed concrete producers. There are indications of a possibly wider geographic market for crushed rock than a 50 to 80 km radius – however, even on that basis the transaction would not lead to changes. The Parties’ combined crushed rock share for all of Germany is estimated at less than 1%. In addition, only part of the crushed rock is used as a ready – mixed concrete input ([...] % of AI’s supplies and [...] of Foster Yeoman’s supplies to the Rostock area).
20. In the light of the above, the Commission has concluded that no serious doubts are raised that the notified concentration would significantly impede effective competition within the common market and the EEA.

¹⁰ all market shares are based on annual (2005) tonnages.

V. CONCLUSION

21. 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