

*Case No IV/M.678 -
MINORCO / TILCON*

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

TO THE NOTIFYING PARTY

Dear Sirs,

Subject : Case No IV/M.678 - MINORCO/TILCON

Notification of 28.11.1995 pursuant to Article 4 of Council Regulation No 4064/89

- 1 On 28 November 1995, Minorco notified a proposed concentration by which Minorco will acquire sole control of Tilcon Holdings Limited (Tilcon).
- 2 After examination of the notification the Commission has concluded that the proposed operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

- 3 Minorco is an international natural resources group with its principal interests in gold, base metals, industrial minerals, paper and packaging and agribusiness. Minorco's ultimate parent is Anglo American Corporation of South Africa Limited (AAC) which is essentially an investment holding company.
- 4 Tilcon is a UK-based company involved in the supply of quarry products, concrete and mortar, and industrial minerals.

II THE OPERATION

- 5 The concentration involves the acquisition by Minorco of sole control of Tilcon and its subsidiaries and associated companies by way of a private acquisition.

III COMMUNITY DIMENSION

- 6 The combined worldwide turnover of AAC and Tilcon exceeds 5.000 million ECU. Each party has an aggregate Community-wide turnover exceeding 250 million ECU. Although Tilcon achieves nearly all of its aggregate Community-wide turnover in the UK, AAC does not achieve more than two-thirds of its Community-wide turnover in a single Member State. The operation thus has a Community dimension.

IV COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market

- 7 There are overlaps in the following markets: (i) quicklime, (ii) crushed rock aggregates, (iii) PSV aggregates, (iv) coated stone.

(i) Quicklime

- 8 Quicklime is produced by heating limestone to high temperatures in a kiln. The quicklime produced from these kilns is in the form of lumps which are then crushed and screened (screened quicklime) in various sizes. Most quicklime is used in this screened form but some screened quicklime is further reduced in size in mills (ground quicklime) and some is produced as hydrated quicklime (water added to screened quicklime in a controlled process).
- 9 Although quicklime is supplied in different forms, the basic requirement is the provision of calcium oxide (lime) for use in a chemical process. The products are mainly used for steel, sugar and chemical manufacture but also, inter alia, used for effluent and sewage treatment, water purification and soil stabilisation. Screened quicklime and ground quicklime are the same chemical product, the only difference being the finer form in which ground quicklime is supplied. Hydrated quicklime is chemically different from the other two forms only in the sense that water has been added.
- 10 As the least processed of the three quicklime forms screened quicklime is the cheapest product and most used product (in the UK approximately 80% of all quicklime (captive and non-captive) used is screened quicklime while ground and hydrated quicklime account for 7% and 13%, respectively).
- 11 The three forms of quicklime are all entirely suitable for almost any of the uses to which quicklime is put (the principal exception being steel manufacture for which hydrated quicklime is not suitable). The actual form in which a customer chooses to purchase quicklime is determined by the particular equipment it may have within its process for handling the quicklime product and to some extent by manageability. However, should a customer choose to change its purchase from, for example, ground quicklime to screened quicklime it would have to make a modification to its processing equipment to enable it to handle the screened quicklime. The parties estimate the cost of this to be in

the range of £20.000 to £50.000 depending on plant circumstances and capacity. According to the parties, there are many examples of similar processes using different forms of quicklime for the same purpose and it is not unusual that customers switch from one form to another.

- 12 According to the parties, there is a high degree of supply side substitutability between the different forms of quicklime since once a company makes the necessary investment to enter the market as supplier of screened quicklime, it is a comparatively small further investment to provide facilities for grinding (ground quicklime) and hydrating. It appears that the costs of each of such facilities to grind and hydrate 13% and 19% of total output of screened quicklime, respectively (these are the average non-captive proportions in the UK), amount to an increase of 5% on the initial capital investment. All the main non-captive manufacturers in the UK produce all three forms of quicklime.
- 13 Considering the high degree of demand side substitutability and the relatively small further investment needed to extend production into ground and hydrated quicklime the three forms of quicklime can be considered as one market.

(ii) Crushed rock aggregates, (iii) PSV aggregates and (iv) coated stone

- 14 Minorco and Tilcon produce crushed rock aggregates, PSV aggregates and coated stone.
- 15 Crushed rock aggregates are used mainly for road building and maintenance of roads. PSV aggregates are aggregates with a high degree of skid resistance and are accordingly used on the top layer of road surfaces to prevent vehicles from skidding. Coated stone is crushed and screened aggregates coated with bitumen and is used in the construction and maintenance of roads.
- 16 According to the parties, each of the three products - (a) crushed rock aggregates, (b) PSV aggregates, (c) coated stone - should be considered as separate product markets because of different end uses. In this case, these narrow market definitions will be used. If the transaction does not give rise to competition problems at these narrowly defined levels, in this case there will be no significant competitive impact on the EEA area.

B. Geographic markets

(i) Quicklime

- 17 All the main UK-based non-captive producers market their products on a national basis. According to the parties, the transport costs as a proportion of total costs are around 20% which are sufficiently low to allow producers to compete nationally. Moreover, four of the five major non-captive producers in the UK are based at locations with limestone deposits which are relatively close to each other so that none is at a disadvantage competing for the national market.
- 18 Import of the products into the UK is very small (approximately 0.5% of total UK consumption and 1.0% of non-captive consumption).
- 19 On the basis of the information above, the geographic market for quicklime can be considered to be the UK.

(ii) Crushed rock aggregates

- 20 The main sales of crushed rock aggregates tend to be around the major conurbations or growth areas of population, in which areas there is significant road building and maintenance activity. Therefore, according to the parties, the geographical market definition of crushed rock aggregates should be confined by such economic areas rather than by the distance of transport. In this respect the parties define an area (West Midlands EPR (excluding Staffordshire) plus the counties of Powys and Gloucestershire) as the natural geographic market for crushed rock stone produced by Minorco and Tilcon. Considering the locations of Minorco and Tilcon's quarries, this would mean a distance of up to 100 km from the quarry.
- 21 However, it appears that the typical distance for sales of crushed rock aggregates would be some 55km to 70km from the quarry, although of course some crushed rock aggregates are transported beyond this distance. Such a typical distance is a result of a combination of the relatively high transport costs as a proportion of the delivered price of the products (45% to 55% at the distance of 55 km to 70 km) and the fairly widespread location of quarries producing this type of aggregate.
- 22 The relevant geographic market for crushed rock aggregates appears to be within a distance of between 55 km and 100 km from the quarry. It is not necessary to further delineate the relevant geographic market because neither in any narrow market (55km from the quarry), nor in any wider market (i.g. the UK), is there a significant competitive impact on the EEA area.

(iii) PSV aggregates

- 23 PSV aggregates are marketed at a national level since this type of aggregate is supplied from a relatively limited number of locations and the transport costs (as a proportion of price) is lower compared to crushed rock aggregates. According to the parties, currently they sell PSV aggregates throughout the UK. Thus, the geographical scope of PSV aggregates can be considered national.

(iv) coated stone

- 24 Coated stone is a hot product delivered in insulated vehicles as soon as it has been manufactured. It has to be used within some two to three hours of manufacture to prevent it from cooling and hardening to such an extent that it would be difficult to lay. The parties estimate the typical geographic market for coated stone to be up to some 65 km to 100 km from the coating plant, at which range transport costs would account for an estimated 20% to 25% of the delivered selling price.
- 25 Considering the characteristics of the product, it appears that the relevant geographic market for coated stone does not exceed a radius of 100 km from the coating plant. It is not necessary to further delineate the relevant geographic market because neither in any narrow geographic market (65 km from the coating plant), nor in any wider market (i.g. the UK), is there a significant competitive impact on the EEA area.

C. Assessment of the operation

(i) Quicklime

- 26 The total consumption of quicklime in the UK in 1994 amounted to 2,672,000 tons of which 1,472,000 tons (approximately 55%) was non-captive. The largest captive producers are Brunner Mond, British Steel and British Sugar.
- 27 Currently, Minorco is the major player on the non-captive UK market for quicklime with a share of [...] ⁽¹⁾ while Tilcon is a minor player with a share of [...] ⁽²⁾. Thus, the parties' combined shares in 1994 amount to [...] ⁽³⁾.
- 28 However, several other companies have strong positions: Redland Minerals Ltd and Singleton Birch Ltd with shares of around 20% and ARC Southern and RMC Industrial Minerals Ltd with shares between 7% and 12%.
- 29 The parties are not particular strong on the upstream market for limestone. In 1994 the UK production of limestone suitable for quicklime production amounted to approximately 55 million tons of which Minorco produced about 4 million tons and Tilcon 3,5 million tons. Thus, the parties combined share of this market is less than 14%.
- 30 According to the parties, British Steel's considerable purchasing power as the largest customer in the marketplace should be taken into account. In 1994 British Steel's own captive production amounted to approximately 450.000 tons but in the same year British Steel purchased from other producers approximately 690.000 tons, or 47% of all quicklime sold by non-captive producers. It follows, that significant changes in British Steel's demand for quicklime would have large effects on the non-captive market.
- 31 In conclusion, although Minorco has a substantial market share this will only marginally be increased as a result of the acquisition. Furthermore, the parties will face competition from several large competitors. Thus, on the UK market for quicklime the concentration does not raise serious doubts as to its compatibility with the common market.

(ii) Hard rock aggregates

- 32 Considering a very wide geographic market, for example the UK, the parties' combined share of total production would be approximately 7%.
- 33 In the UK Minorco only produce hard rock aggregates from one quarry (called "Nash"), which is situated in Powys, Wales. Considering that the geographic scope of these products is a distance of 100 km from the quarry, different degrees of overlap between Minorco's quarry and Tilcon's four quarries can be identified. One of Tilcon's quarries (called "Gore") is placed very near Minorco's Nash quarry in Powys. The distance from the Nash and Gore quarries to Tilcon's other three quarries is between 100 km and 130 km.

(1) deleted - business secret : between 20 and 40 %

(2) deleted - business secret : less than 5 %

(3) deleted - business secret : between 20 and 40 %

- 34 In an area formed by a circle with a radius of 100km with its centre at the Nash and Gore quarries approximately 50 quarries produce hard rock aggregates. The parties estimate their combined market share of the total production inside this area to be about 15%.
- 35 In a very narrow geographic market, for example an area formed by a circle with a radius of 50km with its centre at the Nash and Gore quarries, approximately 30 quarries produce hard rock aggregates. The parties estimate their combined share of the total production of hard rock aggregates inside this area to be about 20%.
- 36 However, the number of actual or potential competitors are of course higher than the number of quarries located inside the areas since many producers of hard rock aggregates outside the circle supply or could supply this product into different parts of the area in the circle.
- 37 In conclusion, on this market the concentration does not raise serious doubts as to its compatibility with the common market since neither in any narrow geographic market nor in any wider geographic market will the parties' combined share of total production exceed approximately 20% and, furthermore, there is a large number of actual and potential competitors.

(iii) PSV aggregates

- 38 Since the parties combined share of this market will not exceed 9%, on this market the proposed concentration does not raise serious doubts as to its compatibility with the common market.

(iv) coated stone

- 39 Considering a very wide geographic market, for example the UK, the parties' combined share of total production would be approximately 5%.
- 40 In the UK Minorco only produces coated stone from a plant at its Nash quarry (see above). Considering that the geographic scope of these products is a distance of 100 km from the coating plant there are different degrees of overlap between Minorco's plant and five plants owned by Tilcon. One of these plants is the Gore plant (see above). Another is located about 60 km from the Nash/Gore plants while the remaining three plants are located at a distance of between 100 km and 130 km from the Nash/Gore plants.
- 41 In an area formed by a circle with a radius of 100km with its centre at the Nash/Gore coating plants approximately 25 coating plants produce coated stone. The parties estimate their combined share of the total production inside this area to be less than 15%.
- 42 In a very narrow geographic market, for example an area formed by a circle with a radius of 65km with its centre at the Nash/Gore plants, approximately 15 coating plants produce coated stone. The parties estimate their combined market share of the total production inside this area to be about 25%.
- 43 As in the case of crushed rock aggregates the number of actual or potential competitors are of course higher than the number of plants located inside the areas since many

producers of coated stone outside the circle supply or could supply this product into different parts of the area in the circle.

- 44 In conclusion, on this market the concentration does not raise serious doubts as to its compatibility with the common market since neither in any narrow geographic market nor in any wider geographic market will the parties' combined share exceed approximately 25% and, furthermore, there is a large number of actual and potential competitors.

V CONCLUSION

- 45 It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.

VI ANCILLARY RESTRICTIONS

- 46 Tilcon has undertaken a non-competition obligation in the UK in relation to the activities currently carried on by Tilcon. The period of the obligation is 30 months from completion. Furthermore, under the Sale and Purchase Agreement the parties have accepted restrictions on the use of certain names, marks and logo. These provisions can be considered ancillary to the concentration because they appear to be directly related and necessary to the operation.
- 47 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,