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EUROPEAN COMMISSION
DG Competition

Case M.7744 - HEIDELBERGCEMENT / ITALCEMENTI

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 26/05/2016

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EUROPEAN COMMISSION

Brussels, 26.5.2016
C(2016) 3269 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

Dear Madam(s) and/or Sir(s),

Subject: Case M.7744 – HeidelbergCement/Italcementi
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

(1) On 1 April 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking HeidelbergCement AG ('HeidelbergCement', Germany) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Italcementi S.p.A ('Italcementi', Italy) by way of purchase of shares (the 'Transaction').[3] HeidelbergCement is designated hereinafter as the 'Notifying Party ', and together with Italcementi designated hereinafter as the 'Parties '.

I. THE PARTIES

(2) **HeidelbergCement** is a German producer and distributor of cement, clinker and ready-mixed concrete ("RMX"), aggregates and other related products. It carries out its commercial activities globally in more than 40 countries and it has several subsidiaries in the territory of the EEA.

(3) **Italcementi** is an Italian producer of cement, clinker, RMX and aggregates which also has minor activities in electricity production from renewable energy resources. Italcementi operates globally in more than 20 countries around the world.

II. THE OPERATION

(4) On 28 July 2015, HeidelbergCement AG ("HeidelbergCement") and Italmobiliare S.p.A ("Italmobiliare") entered into a sale and purchase agreement pursuant to which HeidelbergCement will purchase from Italmobiliare a 45% equity stake in Italcementi S.p.A.[4] Due to Italcementi's current shareholding structure and representation rate in its shareholders' meeting in past years, the acquisition of the 45% stake will confer HeidelbergCement de facto sole control over Italcementi[5].

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[1] OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

[2] OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

[3] Publication in the Official Journal of the European Union No C 128, 12.4.2016, p. 24.

[4] After having obtained all the necessary merger control clearances, and prior to closing, Italmobiliare and Italcementi will enter into stock sale and purchase agreements and real estate sale and purchase agreements for certain "non-core assets", following which closing will take place.

[5] This will suffice to guarantee HeidelbergCement a stable majority in Italcementi's shareholders' meeting. The past five year average attendance rate at the Annual General Meetings of Italcementi has been at approximately 68.62% for which a stake in the amount of approximately 34.32% had sufficed to have a majority.

(5) Shortly after the closing of the proposed acquisition, HeidelbergCement will launch a public tender offer to acquire up to 100% of Italcementi's shares. However, sole control will already be acquired with this first transaction notified to the Commission.

(6) The Transaction thus consists in the acquisition of sole control by […][*] of the whole of Italcementi and constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[6] (HeidelbergCement: EUR 12 614 million, Italcementi: EUR 4 354 million). Each of them has a Union-wide turnover in excess of EUR 250 million (HeidelbergCement: EUR […], Italcementi: EUR […]), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

(8) The notified operation therefore has an EU dimension pursuant Art. 1(2) of the Merger Regulation.

IV. MARKET DEFINITION

IV.1. Overview of the concerned products

(9) The Transaction mainly concerns the markets for grey cement, white cement, RMX and aggregates.

(10) *Cement* is produced by grinding clinker and alternative cementitious materials[7]. Clinker is the main ingredient in the production of cement and is produced at high temperatures from limestone and other constituents in cement kilns. In some cases, mineral components and other cementitious materials are added to the mixture by either grinding them together with clinker or blending separately ground materials together.[8]

(11) Cement is used in the building and construction sector mainly to bind other materials for stability and strength as well as an intermediary product mostly for the production of RMX, concrete products and mortar.[9]

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* Should read: HeidelbergCement.

6 Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

7 In this Decision, the term alternative cementitious materials refers to substances other than clinker that have cementitious, or hydraulic binding properties and that are used as supplementary materials in the production of cement and concrete. The most common alternative cementitious materials are fly ash (a by-product of coal combustion in thermal power plants) and blast furnace slag (a by-product in the production of iron) in the form of granulated blast furnace slag ("GBS") or ground granulated blast furnace slag ("GGBS"). They are added to cement and concrete in order to impart specific characteristics to the end product and to substitute, on the one hand, clinker in the production of cement and, on the other hand, cement in the production of concrete.

8 Case M.7550 – CRH / Holcim Lafarge Divestment Business, 24 April 2015, recital 16.

9 Case M.7550 – CRH / Holcim Lafarge Divestment Business, 24 April 2015, recital 13.

(12) There are two main types of cement: white cement and grey cement. The main difference between white and grey cement lies in the particular quality of limestone used for the production of white cement. Furthermore, white cement is used for different purposes (in particular reflecting esthetical/optical aspects). White cement is produced in comparably limited quantities and is more expensive than grey cement.[10]

(13) Within grey cement, there are different classes available and further grades can be produced according to customer requirements. Cement classes are defined by strength development and setting times, which are in turn determined by the proportions and nature of the different raw cementitious products used to make that particular cement type.[11] The EU standard EN 197-1 defines five classes of common cement that comprise Portland cement as a main constituent.

Table 1 - Classes of common cement according to EN 197-1[12]

CEM I	Portland cement	Comprising Portland cement and up to 5% of minor additional constituents
CEM II	Portland-composite cement	Portland cement and up to 35% of other single constituents
CEM III	Blast furnace cement	Portland cement and higher percentages of blast furnace slag
CEM IV	Pozzolanic cement	Portland cement and up to 55% of pozzolanic constituents (volcanic ash)
CEM V	Composite cement	Portland cement, blast furnace slag or fly ash and pozzolana

(14) Cement is sold both in bulks and in bags.[13] Bags containing about 25-30 kg of cement are sold through do-it-yourself stores and building material retailers whereas bulk cement meets the demand of RMX plants, plants producing concrete products and building sites.

(15) There are generally three types of cement production sites: integrated cement plants, grinding stations and terminals (also referred to blending stations).[14]

(16) An integrated cement plant is a manufacturing facility that covers the entire cement production process from the mining of raw materials to the dispatching of cement. The production process involves the following steps: (i) raw material extraction or mining from a quarry; (ii) raw material preparation and blending; (iii) raw feed preparation out of the raw materials in the form of meal; (iv) clinker production,

10 Case M.7550 – CRH / Holcim Lafarge Divestment Business, 24 April 2015, recitals 13 and 14.

11 UK Competition Commission, 'Anglo American PLC and Lafarge S.A. A report on the anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.', 1 May 2012.

12 Commission communication in the framework of the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (Publication of titles and references of harmonised standards under Union harmonisation legislation), OJ C 259, 8 August 2014, page 1; see also http://standards.cen.eu/dyn/www/f?p=204:110:0::::FSP_PROJECT:27250&cs=13B3EDD735E572AF56B7EC3A4CA2E1AF6.

13 Cases M.7252 – Holcim / Lafarge, 15 December 2014, recital 19; M.7054 – Cemex / Holcim Assets, 9 September 2014, recital 37; M.6153 – Anglo American / Lafarge / JV, 16 May 2011, recital 25; M.4898 – Compagnie De Saint-Gobain / Maxit, 4 March 2008, recital 210.

14 Case M.7252 – Holcim / Lafarge, 15 December 2014, recitals 16-18.

which forms the main process of an integrated plant, that is to say converting raw feed in a thermochemical reaction in a cement kiln into the desired calcined mineral ("clinker'"); (v) grinding and blending of clinker with gypsum or other components (such as alternative cementitious materials) into the desired cement product; and (vi) storage and handling of cement products, including dispatch.

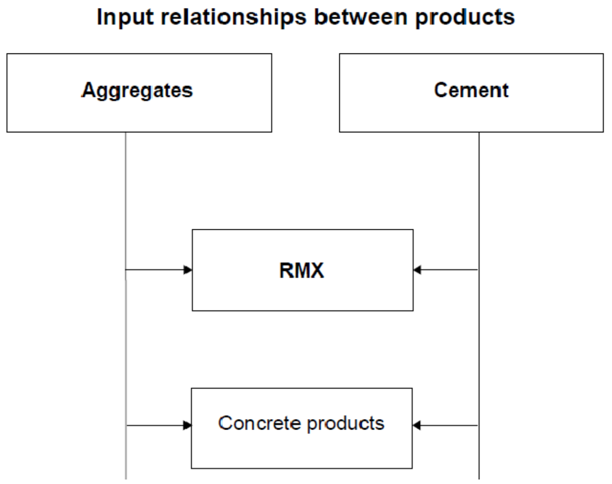
(17) A grinding station or grinding mill does not include the mining and the thermal process of producing clinker, but only the final grinding, blending and handling steps, with clinker and other raw materials being delivered from a separate plant or sourced elsewhere.

(18) A terminal is a depot facility. This kind of site is typically accessible by navigable water, railway or by road. A terminal consists of a relevant transport platform and of a silo-type storage installation and is a strategic asset enabling a cement manufacturer to supply a territory where it does not operate a production site.

(19) *Ready-mix concrete* ("RMX") is produced by mixing cement and aggregates with water. Concrete is mixed either on-site or, more commonly, in a dedicated plant before being subsequently transported to the point of use in specific mixer trucks. Transport time and distance are limited, hardens quickly and usually needs to be used within a time of one to two hours.

(20) *Aggregates* ("AGG") encompass the three primary raw materials used in construction and civil engineering: gravel, crushed rock and sand. Due to the impact of transport costs, aggregates are typically sold locally.

Figure 1: Input relationships between aggregates, cement, RMX and concrete products



IV.2. Grey cement

IV.2.1. Relevant product market definition

IV.2.1.1. Past decisional practice

(21) In past decisions, the Commission has defined distinct product markets for white cement and grey cement.[15] Concerning grey cement, the Commission has not further segmented the market according to grades or classes (CEM I to CEM V), mainly since such distinction did not have an impact on the outcome of the competitive assessment.[16] Moreover, the Commission considered that the market for grey cement could be further segmented according to whether grey cement is sold bulk or bagged, but left open the precise product market definition in that respect.[17]

IV.2.1.2. The Notifying Party's arguments

(22) The Notifying Party agrees that there exist different product markets for grey cement on the one hand and white cement on the other hand.[18] The Notifying Party further agrees in general with the Commissions' past decisional practice not to further divide the grey cement market according to different cement grades or classes, but highlights that grades and classes may still play a role in the analysis of specific market situations.[19]

(23) Regarding the question whether a further delineation according to different types of packaging (bag/bulk) is necessary, the Notifying Party suggests that the market definition in that respect can be left open in the present case.[20]

IV.2.1.3. Responses to the market investigation

(24) The Commission has not received any information during the course of the market investigation that would suggest deviating from its previous decisional practice of defining separate product markets for grey cement and white cement.

(25) As regards a possible delineation between different cement classes, the results of the market investigation were less conclusive. From a demand side, depending on the specific end use of the grey cement, certain customers may only be able to use different types and grades of cement as input for their products to a limited

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15 Cases M.7550 – CRH /Holcim Lafarge divestment business, 24 April 2015, recitals 35-36; M.7252 – Holcim / Lafarge 15 December 2014, recital 10; M.7054 – Cemex / Holcim Assets, 9 September 2014, recital 39; M.7009 – Holcim / Cemex West, 5 June 2014, recitals 24 and 41; M.3713 – Holcim / Aggregate Industries, 14 March 2005, recital 7; M.3572 – Cemex / RMC, 8 December 2004, recital 11; M.3415 – CRH / SEMAPA / Secil JV, 28 May 2004, recital 10; M.2317 – Lafarge / Blue Circle (II), 1 March 2001, recital 9; M.1157 – Skanska / Scancem, 11 November 1998, recital 31.

16 Cases M.7009 – Holcim / Cemex West, 5 June 2014, recital 14, M.7252 – Holcim / Lafarge, 15 December 2014, recital 36.

17 Cases M.7252 – Holcim / Lafarge, 15 December 2014; recitals 53-56; M.7054 – Cemex / Holcim Assets, 9 September 2014, recital 43; M.7009 – Holcim / Cemex West, 5 June 2014, recital 49.

18 Form CO, paragraph 82.

19 Ibid.

20 Form CO, paragraph 84.

extent.[21] However, from a supply-side perspective it has to be noted that cement producers can usually switch between a wide range of different cement types and grades without substantial investment.[22]

(26) Furthermore, respondents to the market investigation supported the Commission's earlier findings that the market for grey cement could be further segmented according to whether grey cement is sold in bulk or bagged.[21] First, although the vast majority of suppliers of grey cement that responded to the market investigation indicated that they sell both bulk and bagged cement, additional investment will be required to switch production from bulk cement to bagged cement if there is no bagging and palletising installation in place, and the lead times to complete the investment were estimated at up to 36 months.[23] Second, from the demand-side perspective there appear to be differences in terms of customers, prices and performance. Nearly all the customers that responded to the market investigation will be unable to switch from bagged to bulk cement (and vice versa).[24]

IV.2.1.4. Commission’s assessment and conclusion

(27) In accordance with past decisions and in the absence of contradicting evidence provided by the Parties or obtained in the course of the market investigation, the Commission considers that there are separate product markets for grey cement and white cement.

(28) The Commission further concludes that an additional sub-segmentation of the market for grey cement according to different cement types and grades is not necessary in this case. In all of the overlap markets assessed with the exception of Southern Italy, the Parties and their main competitors – including in particular those with integrated cement plants – offer a large range of cement types and grades. Even if the product markets would be narrower than an overall market for grey cement, there were no indications that the concentration levels would be materially different in such sub-segments.

(29) In the markets where competition concerns are identified in Belgium and its surroundings, the overlap of the Parties' activities by and large covers the entire grey cement portfolio. The main competitors offering a large range of cement types and grades are insufficient to constrain the Parties after the Transaction, irrespective of which cement type or grade is considered. The additional constraint imposed by competitors offering a narrower range of cement types and grades (such as grinding stations and importers) does not alter that assessment.

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21 See responses to Questionnaire to Competitors – Grey cement (Q 1), question 10, and responses to Questionnaires to Customers in Belgium – Grey cement (Q 3a and Q3b), question 5; responses to Questionnaires to Customers in Germany/Eastern France – Grey cement (Q 4), question 6; responses to Questionnaires to Customers in Italy – Grey cement (Q 5), question 5; responses to Questionnaires to Customers in the Bulgarian- Romanian Border Region m – Grey cement (Q 6), question 6.

22 See responses to Questionnaire to Competitors – Grey cement (Q 1), question 9.

23 See responses to Questionnaire to Competitors – Grey cement (Q 1), question 8.

24 See responses to Questionnaires to Customers in Belgium – Grey cement (Q 3a and Q3b), question 6; responses to Questionnaires to Customers in Germany/Eastern France – Grey cement (Q 4), question 7; responses to Questionnaires to Customers in Italy – Grey cement (Q 5b), question 6; responses to Questionnaires to Customers in the Bulgarian-Romanian Border region – Grey cement (Q 6), question 7.

(30) In the markets where no competition concerns arise, the main competitors offering a large range of cement types and grades are sufficient to constrain the Parties after the Transaction. This assessment would not change even if the product market were to be narrower.

(31) In line with that reasoning, the Commission observes that the respondents to the market investigation did not differentiate in their answers between different types and grades of cement. Furthermore, no concerns were raised that competition concerns would result from the Transaction as regards particular grades and types of cement.

(32) Therefore the Commission concludes that such segmentation would have no impact on the outcome of the competitive assessment in the different markets discussed in section V. However, where the distinction is relevant and adds to the assessment, it will be discussed, such as in the assessment of the overlaps in Southern Italy in section V.2.3.

(33) Finally, the question whether the market for grey cement can be further divided according to type of packaging can be left open as such segmentation would have no impact on the outcome of the competitive assessment in the different markets as will be set out in the individual assessments in section V.

IV.2.2. Relevant geographic market definition

IV.2.2.1. Past decisional practice

(34) In past decisions, the Commission has considered that the geographic market for grey cement consists of a group of geographic markets centred on different cement plants, overlapping one another. The scope of the relevant geographic markets was determined by the distance from the plant at which cement may be sold.[25]

(35) In Holcim/Cemex West[26], the Commission considered that the appropriate radii around the relevant grey cement plants to be taken into account were 150 km and 250 km in western Germany and the Benelux. In Cemex / Holcim Assets[27], the market was defined as circles of 150 km radii around the cement plants in Spain. In Holcim/Lafarge[28] the relevant geographic market was defined as circular areas of 150 km and 250 km around the relevant cement plants in several regions in western, central and Eastern Europe, reflecting the distance up to which cement suppliers can economically sell cement.[29] The Commission has previously found

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25 Cases M.7054 – Cemex / Holcim Assets, 9 September 2014, recital 52; M.7009 – Holcim / Cemex West, 5 June 2014, recital 64; M.460 – Holdercim/Cedest, 6 July 1994, recital 16; M.1030 – Lafarge/Redland, 16 December 1997, recital 16; M.1157 – Skanska/Scancem, 11 November 1998, recital 56; M.2317 – Lafarge/Blue Circle (II), 1 March 2001, recital 8; and M.3572 – Cemex/RMC, 8 December 2004, recital 20.

26 Case M.7009 – Holcim / Cemex West, 5 June 2014, recital 64.

27 Case M.7054 – Cemex / Holcim Assets, 9 September 2014, recital 52.

28 Case M.7252 – Holcim / Lafarge, 15 December 2014, recital 68.

29 Case M.7550 – CRH / Holcim Lafarge Divestment, 24 April 2015, recital 43.

that the markets based on such catchment areas should generally not be limited by national borders, in light of the existing cross-border trade flows.[30]

IV.2.2.2. The Notifying Party's arguments

(36) The Notifying Party does not disagree with the Commission's practice in recent cases of defining the relevant geographic markets for grey cement as catchment areas of 150km or 250km around each plant, reflecting the distance up to which cement suppliers can economically sell cement. According to the Notifying Party, this is also reflected in the Parties' sales[31] as could be seen from the distances up to which 80 and 90% of the production of the plants in markets that would be affected by the Transaction travel.[32]

IV.2.2.3. Responses to the market investigation

(37) Respondents to the market investigation indicated that transport costs are significant in the sale of grey cement and determine how far from its cement plant an undertaking can still viably compete with its product.[33]

(38) A majority of respondents usually sources grey cement within a distance of less than 150 km.[34]

IV.2.2.4. Commission's assessment and conclusion

(39) The distance over which grey cement can be economically shipped depends on the contribution margin before transport costs and the transport costs. The higher the contribution margin before transport costs (defined as the delivered price minus variable production costs), the longer the distance that cement can be economically shipped. Conversely, the higher the transport costs per km, the shorter the distances. Transport costs depend on a variety of factors, including the availability of transport infrastructure and modalities (such as highways, shipping routes, railways or storage terminals) as well as the topography of the respective region. The contribution margins before transport costs generally depend on the intensity

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30 Cases M.7252 – Holcim / Lafarge, 15 December 2014; recitals 64-67; M.7009 – Holcim / Cemex West, 5 June 2014, recitals 72 and 73.

31 See Form CO, Annex 5.4-IV_RFI 20160111_QP1_Consolidated.

32 Apart from exceptional cases (e.g. ITC's Guardiaregia plant selling 90% of its grey cement within a distance of [below 1.000] km) [80-90]% of the Parties' sales in the EEA are made usually within a distance of 150km from its plants and [90-100]% of their sales take usually place within 250 km. See Form CO paragraph 86 and Annex 5.4-IV_RFI 20160111_QP1_Consolidated.

33 See responses to Questionnaire to Customers in Belgium – Grey cement (Q 3a and Q3b), questions 7-8; responses to Questionnaire to Customers in Germany/Eastern France – Grey cement (Q 4), questions 8-9; responses to Questionnaire to Customers in Italy – Grey cement (Q 5), questions 7-8; responses to Questionnaire to Customers in the Bulgarian- Romanian Border Region– Grey cement (Q 6), questions 8-9. See also agreed non-confidential minutes of conference calls with customers of 1 February 2016 and of 10 February 2016.

34 See responses to Questionnaires to Customers in Belgium – Grey cement (Q 3a and Q3b), question 7; responses to Questionnaire to Customers in Germany/Eastern France – Grey cement (Q 4), question 8; responses to Questionnaire to Customers in Italy – Grey cement (Q 5), question 7; responses to Questionnaire to Customers in the Bulgarian- Romanian Border Region – Grey cement (Q 6), question 8.

of competition, in particular on the amount of overcapacities and whether firms set prices competitively or coordinate.[35]

(40) The sales data submitted by the Notifying Party confirms that the maximum distance within which grey cement is sold is often below 150 km and in any case usually not farther than 250km. However, such definition cannot be applied statically across all markets. Defining the relevant geographic markets as circles around a grey cement supplier's plant may lead to the inclusion in the same geographic market of customers facing differing supply conditions, in particular a differing number of close-by supply alternatives. Furthermore, it may disregard actual supply patterns, which can be influenced by topography and other factors. Therefore, similar as in previous cases[36], while taking the overlaps of catchment areas drawn on maps as the main focus of its assessment, the Commission will also take into account the actual supply patterns and the actual number and strength of suppliers available to cement customers in different locations within the catchment areas.

(41) Therefore, in the light of the past decisional practice, the Notifying Party's arguments and the responses to the market investigation, the Commission considers that the relevant geographic markets should be in general be defined as circular catchment areas of 150 km and 250 km around the relevant cement plants, reflecting the distance up to which cement suppliers can typically economically sell cement.

IV.3. White cement

IV.3.1. Relevant product market definition

(42) As set out in paragraph (27), the Commission considers that white cement constitutes a separate product market from grey cement.

(43) The Commission has previously not considered sub-segmenting the product market for white cement further.[37] In line with that established case practice, the respondents to the market investigation gave no indication that a further segmentation of white cement would be relevant for the assessment of the Transaction. Therefore, the Commission will assess the market for white cement as a whole in this case.

IV.3.2. Relevant geographic market definition

(44) The Commission has in the past considered that the geographic scope of the market for white cement is at least EEA-wide while in a more recent case the Commission left open whether smaller geographic markets, such as national markets, could be considered as well.[38]

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35 Case M.7252 – Holcim / Lafarge, 15 December 2014, recital 59.

36 Case. M.7252 – Holcim / Lafarge, 15 December 2014, recitals 62, 63.

37 Case. M.7252 – Holcim / Lafarge, 15 December 2014, recitals 49-52 with further references.

38 Case M.2317, 1 March 2001, para. 9; M.7252 – Holcim / Lafarge, 15 December 2014, recital 444-446.

(45) The Notifying Party submits that the geographic market is at least EEA-wide. The Notifying Party argues that there are significant trade flows across the EEA.[39] According to the Notifying Party, white cement is consumed throughout the EEA and white cement facilities are widely dispersed in the EEA. The scattering of white cement production facilities across the EEA could be explained by the geographically dispersed location of basic raw materials for the manufacture of white cement, namely high grade and chemically pure limestone and kaolin.

(46) Respondents to the market investigation indicated that, due to its higher costs per ton, customers might be able to source to a certain extent white cement across the EEA and in some cases even elsewhere.[40] Turkey, Tunisia, Egypt, Lebanon and Algeria were mentioned as potential import countries.[41] However, the Parties' sales of white cement are delivered in most cases up to a distance from their own plants between approximately [...] and […] km [less than 750 km], and in the majority of deliveries not throughout the entire EEA.[42] Furthermore, internal documents of the Parties show how white cement sales to distant EEA countries would be constrained by transport costs[43]. In this regard, the majority of customers responding to the market investigation indicated that they source their white cement needs from production plants located at less than 600km distance[44].

(47) The Commission considers that while these considerations would suggest that white cement market is likely not EEA-wide, the geographic market definition can be left open as such segmentation would have no impact on the outcome of the competitive assessment in the different markets.

IV.4. Aggregates

IV.4.1. Relevant product market definition

IV.4.1.1. Past decisional practice

(48) In past decisions, the Commission has considered aggregates as a separate product market.[45] The Commission has also considered, but ultimately left open, a further segmentation between: (i) primary aggregates (crushed rock, gravel and sand); and (ii) secondary / recycled aggregates (such as colliery and china clay waste, slate, power station ash, slags and demolition/construction waste).[46]

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39 Form CO, paragraph 878.

40 See responses to Questionnaire to Competitors – Grey cement (Q 1), question 14, and responses to Questionnaire to Customers – White cement (Q 9), question 8-10.

41 See responses to Questionnaire to Competitors – Grey cement (Q 1), question 14.

42 Form CO, paragraph 909.

43 See e.g. M.7744_RFI_20160318_QP4_Q30d.01_Sales Meeting HC Germany - May 2013_CONFIDENTIAL_contains business, slide 5.

44 See responses to Questionnaire to Customers – White cement (Q 9), question 9.

45 See e.g. Cases M.3415 – CRH / Semapa / Secil JV, 28 May 2004, recital 10; M.3141 – Cementbouw / Enci / JV, 1 August 2003, recital 11.

46 See e.g. Cases M.7252 – Holcim / Lafarge, 15 December 2014, recitals 322-334; M.1779 – Anglo American / Tarmac, 13 January 2000, recital 20.

(49) Within the primary aggregates category, in past decisions, the Commission has also considered, but ultimately left open, a further distinction between: (i) sand and gravel; and (ii) crushed rock.[47]

IV.4.1.2. The Notifying Party's arguments

(50) The Notifying Party submits that a single product market for aggregates should be considered as (i) different kinds of aggregates are substitutable from a demand-side point of view and from a supply-side perspective suppliers usually offer several kinds of aggregates, and (ii) the use of secondary and recycled aggregates as substitutes for primary aggregates has increased.

IV.4.1.3. Commission's conclusion

(51) For the purpose of the assessment of the Transaction, the exact product market definition can be left open as such segmentation would have no impact on the outcome of the competitive assessment in the different markets.

IV.4.2. Relevant geographic market definition

(52) In past decisions, the Commission has considered the aggregates market to be local[48] or at most national[49] in scope and has retained a radius of 50 to 80km depending on the particularities of the areas concerned.[50] This is due to the fact that aggregates are heavy and voluminous products with significant transport costs.

(53) The Notifying Party submits that in the light of transportation costs, for the assessment of the present case the geographic market should be defined by a 50-80 km radius.

(54) However, for the purpose of the assessment of the Transaction, the Commission considers that the exact geographic market definition can be left open as the competitive assessment remains the same under any plausible market definition.

IV.5. Ready-mix concrete ("RMX")

IV.5.1. Relevant product market definition

(55) In past decisions, the Commission has consistently considered RMX as a single, distinct product market regardless of different RMX specifications and the facilities used (mobile or fixed plants).[51]

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47 See e.g. Cases M.7054 – Cemex / Holcim Assets, 28 October 2013, recital 301; M.5803 – Eurovia / Tarmac, 10 June 2010, recital 10.

48 Case M.4298 – Aggregate Industries / Foster Yeoman, 06 September 2006, recital 13.

49 Case M.4179 – Heidelberg Cement / Hanson, 30 June 2006, recital 27.

50 Case M.7550 – CRH / Holcim Lafarge Divestment Business, 12 April 2015, recital 142; M.7252 – Holcim / Lafarge, 15 December 2014, recital 343; Case M.3713 – Holcim / Aggregate Industries, 14 March 2005, recital 8; M.2317 – Lafarge / Blue Circle (II), 01 March 2001, recital 10.

51 Cases M.3572 – Cemex / RMC, 8 December 2004, recital 12; M.4719 – HeidelbergCement / Hanson, 7 August 2007, recital 21; M.6153 – Anglo American / Lafarge / JV, 16 May 2011, recital 22; M.7054 – Cemex / Holcim Assets, 9 September 2014, recital 319. In case M.7550 – CRH / Holcim

(56) The Notifying Party considers the aforementioned definition to be appropriate in the present case[52].

(57) The Commission considers its consistent practice of defining a separate market for RMX to be appropriate also in the present case and has found no reasons in this investigation to deviate from its previous practice.

IV.5.2. Relevant geographic market definition

(58) The Commission has considered that the geographic market for RMX can be defined as catchment areas around RMX plants with a radius of 15- 40 km[53] or according to a more recent decision with a radius of 25 km[54] around production facilities.

(59) The Notifying Party agrees with that approach and submits that for the present case a radius of 25 km around each RMX plant is an appropriate proxy for the maximum transportation distance for RMX.[55] It can be left open for the purposes of this Decision if those RMX catchment areas should generally be limited by national borders. While there seem to be close to no cross-border RMX sales in the markets under investigation, the Commission will also assess cross-border overlaps between the Parties' RMX activities under a purely pre-cautionary approach.

IV.5.3. Conclusion

(60) In any event, the exact product and geographic market definition can be left open since the since the Transaction is not likely to impede effective competition under any plausible market definition.

V. COMPETITIVE ASSESSMENT

V.1. Methodology for the calculation of market shares

(61) The Notifying Party submitted market share estimates for the Parties' activities in grey cement using two main methodologies in accordance with the approach of the Commission taken in case M.7252: (i) sales market shares and (ii) capacity market shares based on the Parties' production capacities. Due to the homogeneous nature of the goods concerned and in line with the Commission's past case practice, market shares were calculated by the Notifying Party on a volume basis rather than on a revenue basis.

Lafarge Divestment Business, 24 April 2015, para. 108 the Commission left open whether a radius of 15-40 km or of 25 km would be appropriate to define the geographic market for RMX.

52 Form CO, paragraph 953.

53 Cases M.7252 – Holcim / Lafarge, 15 December 2014, recital 283; M.7009 – Holcim / Cemex West, 5 June 2014; M.4719 – HeidelbergCement / Hanson, 7 August 2007, recitals 21 and 29; M.3713 – Holcim / Aggregate Industries, 14 March 2005, recital 9; M.3572 – Cemex / RMC, 8 December 2004, recital 24; M.2317 – Lafarge / Blue Circle (II), 1 March 2001, recital 11.

54 Cases M.7252 – Holcim / Lafarge, 15 December 2014, recital 286; M.7054 – Cemex / Holcim Assets, 9 September 2014, recital 325; M.7550 – CRH / Holcim Lafarge Divestment Business, 24 April 2015, para. 110.

55 Form CO, paragraph 956.

(62) At the national and EEA level the Parties' sales and capacity market share estimates are based on data which is available by country. These market share estimates include grey cement produced in and sold from domestic plants as well as imports and exclude exports (i.e. they are equal to the total consumption in the EEA or in the respective country).

(63) At the catchment area level, the Parties' market shares are based on circular catchment areas with differing radii of geodesic distance depending on the relevant product market. In line with the Commission's previous competitive assessments, the circles are drawn around the Parties' respective plants (plant-centred approach).[56] In addition, the Parties have provided market shares for catchment areas, where overlaps are more significant, drawn around the mid-point between two of the Parties' plants (that is to say the mid-point of a straight line drawn between the two plants). This allows an assessment from the perspective of a customer based in that location between the two plants (mid-point approach) and has been used by the Commission also in its previous assessments.[57]

(64) For the calculation of sales market shares, the Notifying Party has included in its estimates both internal sales and external sales to third parties as no data on internal sales is available for competitors or for the total market. Therefore, the Notifying Party has essentially followed the methodology as set out in more detail in the Commission's most recent cases concerning the building materials industries.[58]

(65) Finally, market shares estimates were calculated on the basis of data for 2014. Market shares referred to in the sections below including market share data in tables therefore indicate market share estimates for 2014.

V.2. Grey Cement

(66) The activities of the Parties in grey cement are mainly complementary from a geographical perspective in the EEA. HeidelbergCement is active in northern, western, central and Nordic Europe whereas Italcementi's focus is mainly in southern Europe, operating cement facilities in Italy, France, Belgium, Spain, Greece and Bulgaria.

(67) The Parties' activities in grey cement lead to substantial overlaps in Belgium and its surroundings (see section V.2.1) as well as along the French-German border (see paragraph (86)), in the South of Italy (see section V.2.3), along the Romanian/Bulgarian border (see section V.2.4) and in the North of Spain (see section V.2.5).

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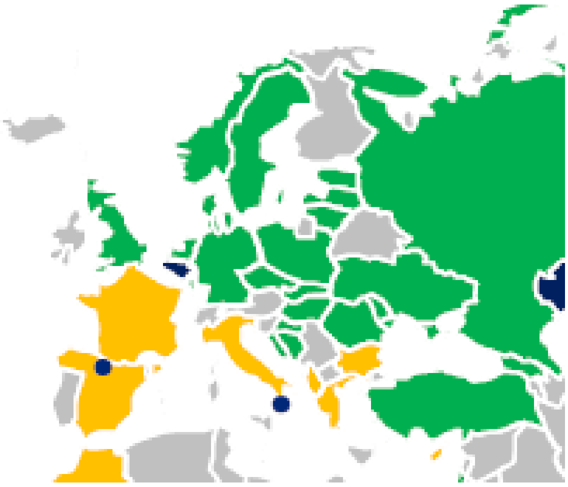
56 Cases M.7550 - CRH / Holcim Lafarge Divestment Business, 12 April 2015; M.7252 – Holcim / Lafarge, 15 December 2014; M.7009 – Holcim / Cemex West, 5 June 2014; M.7054 – Cemex / Holcim Assets, 9 September 2014.

57 M.7252 – Holcim / Lafarge, 15 December 2014, recital 73.

58 Cases M.7252 – Holcim / Lafarge, 15 December 2014, recitals 71-79; M.7550 - CRH / Holcim Lafarge Divestment Business, 12 April 2015, recitals 53-59.

Figure 2: The Parties' activities in grey cement in the EEA (Source: Parties)



Legend:
Green areas - HeidelbergCement
Yellow areas - Italcementi
Blue areas - Overlaps within the same country

V.2.1. Belgium and its surroundings

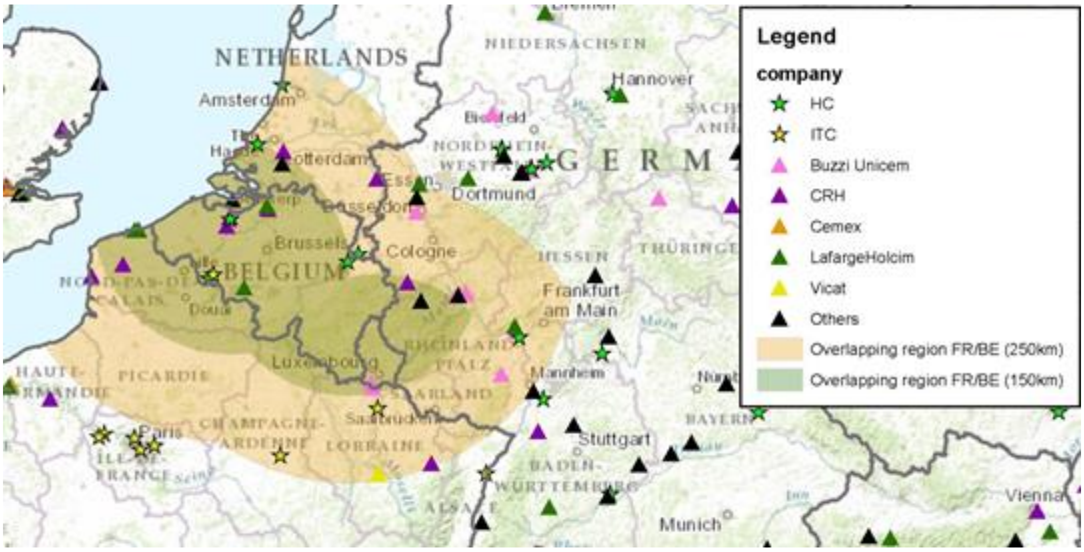
(68) HeidelbergCement's grey cement production assets in Belgium consist of an integrated grey cement plant in Lixhe, and a "quasi-integrated" plant in Antoing and Ghent – HeidelbergCement's clinker plant in Antoing ships [...] to [...]. In the Netherlands, HeidelbergCement has an integrated plant close to the Belgian border in Maastricht[59] and two grinding stations in Rotterdam and Ijmuiden. HeidelbergCement has no grey cement facilities in France.

(69) In addition, HeidelbergCement is vertically integrated in the production of RMX and aggregates in the regions in Belgium and its surroundings where it is also active in the supply of grey cement.

(70) Italcementi operates an integrated grey cement plant in Gaurain in the immediate vicinity of HeidelbergCement's Antoing plant. Also Italcementi is vertically integrated in the production of RMX and aggregates in the regions where it is active in the supply of grey cement in Belgium and its surroundings. Italcementi's closest cement plants in France are located in Couvrot (integrated plant approximately 100km east of Paris), Gargenville (integrated plant located in Île-de-France) and Ranville (integrated plant located close to Caen). Italcementi has no grey cement plants the Netherlands.

59 HeidelbergCement intends to [...].

Figure 3: Overlap between the Parties' grey cement facilities in Belgium and surroundings



(71) The Parties' activities overlap in Belgium, the South and centre of the Netherlands and in the North of France. Affected markets arise at the national Belgian level and in 150km and 250km catchment areas extending beyond national borders. As the competitive effects should be assessed throughout the relevant catchment areas, this section will not only assess the impact of the transaction in Belgium alone, but also in Southern and Central Netherlands and in Northern France (together referred to as "Belgium and its surroundings").

V.2.1.1. Market shares and concentration levels

(72) The Notifying Party has submitted the following market share estimates for Belgium and its surroundings:

Table 2 – Sale shares in catchment areas around plants in Belgium

	Ghent/Antoing		**Gaurain**		**Lixhe**	
	150km	**250km**	**150km**	**250km**	**150km**	**250km**
HC	[30-40]%	[20-30]%	[30-40]%	[20-30]%	[20-30]%	[20-30]%
ITC	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%
Combined	**[50-60]%**	**[40-50]%**	**[40-50]%**	**[40-50]%**	**[30-40]%**	**[30-40]%**
LafargeHolcim	[20-30]%	[30-40]%	[20-30]%	[20-30]%	[30-40]%	[10-20]%
CRH	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%
Buzzi Unicem	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[10-20]%	[10-20]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%

Table 3 – Sale shares in catchment areas around plants in the Netherlands

	Maastricht		Ijmuiden		Rotterdam	
	150km	**250km**	**150km**	**250km**	**150km**	**250km**
HC	[30-40]%	[20-30]%	[50-60]%	[30-40]%	[40-50]%	[30-40]%
ITC	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%
Combined	**[30-40]%**	**[30-40]%**	**[60-70]%**	**[40-50]%**	**[50-60]%**	**[40-50]%**
LafargeHolcim	[30-40]%	[20-30]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%
CRH	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Buzzi Unicem	[10-20]%	[10-20]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%
Others	[5-10]%	[10-20]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%

(73) The assessment of the overlap between the Parties' activities would not materially change if an alternative approach to assessing the Parties' market shares was used. First, although an approach based on capacity would lead to lower combined market shares in Belgium, the Parties would nonetheless hold [40-50]% of the market (with a significant increment of [10-20]%), and almost double the size of the next competitor, LafargeHolcim ([20-30]%). Moreover, this approach is not suitable to capture the differences in competitiveness of various plants/producers. Therefore, the Commission considers that the approach based on the Parties' sales is more representative of the market situation. Secondly, an analysis based on sales market shares in midpoint areas between respective plants of the Parties leads to similar results as for catchment areas around the plants. For this reason, the Commission bases its assessment on the sales based market share analysis.

(74) In the areas around the cement plants of Ghent/Antoing, Gaurain, Maastricht, Ijmuiden and Rotterdam, the Transaction will further strengthen the market position of HeidelbergCement, who is already the leader with market shares between [30-40]% and [60-70]%[60] for both radii of 150 and 250 km, and a significant overlap (between [5-10]% and [10-20]%).

(75) In the 150 km radius around the Ghent/Antoing, Gaurain, Ijmuiden and Rotterdam plants, the number of sizeable competitors will be reduced from four to three, namely the merged entity, LafargeHolcim (mainly from its plant in Obourg in Belgium) and CRH (mainly from its grinding stations in Ghent and Antwerp in Belgium).

(76) The combined market shares will be lower (between [30-40]% and [30-40]%) in the radii around the cement plants of Lixhe and Maastricht with an overlap between [5-10]% and [5-10]%. The main competitors in those catchment areas are LafargeHolcim and Buzzi Unicem (imports from its plant in Luxembourg).

(77) The other suppliers active in those catchment areas are importing cement to Belgium (notably Lagan, Spenner, Wotan, Wittekind), but do not hold a significant market share. Their combined market share reaches between [0-5]% and [5-10]% in radii around the Ghent/Antoing, Gaurain, Maastricht, Ijmuiden and Rotterdam

60 The market shares would not substantially differ if considering separate markets for bulk and bagged cement, Annex 6.III.2.-Grey cement_BE_sales shares_bagged-bulk_plants to the Form CO.

plant, and between [0-5]% and [10-20]% for the radii around the Lixhe and Maastricht plants, both located on the border with Germany.

V.2.1.2. The Notifying Party's arguments

(78) The Notifying Party acknowledges that the Transaction will give rise to material market share additions. However, they claim that the merged entity will continue to be severely constrained by other large and small market players, including importers in a marketplace characterized by well-informed and sophisticated customers facing insignificant switching costs. The Notifying Party claims that in any event, in view of the proposed divestments, the Transaction will not materially alter the current competitive conditions in the market concerned so as to give rise to substantial competition concerns.

V.2.1.3. Commission's assessment

(79) For the reasons set out in recitals (80) to (86), and consistent with HeidelbergCement's own internal assessment[61], the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market in relation to grey cement in the relevant catchment areas around the plants of Gaurain, Ghent/Antoing, Lixhe, Maastricht, Ijmuiden and Rotterdam in Belgium and its surroundings (border regions in France and the Netherlands).

(80) First, the merged entity will have very high market shares in the catchment areas around their Belgian plants (Gaurain, Ghent/Antoing, Lixhe) and their Dutch plants (Maastricht, Ijmuiden and Rotterdam) as set out in Table 1 and Table 2. This is also illustrated by the sales market shares at the national level with a combined market share of [50-60]% in Belgium (increment through Italcementi of [10-20]%) and a combined market share in the Netherlands of [50-60]% (increment through Italcementi of [0-5]%).

(81) Second, a significant number of customers that responded to the market investigation indicated that the elimination of one competing alternative will have an impact in Belgium and its surroundings.[62] These customers considered that the Transaction would reduce the choice of supplier, result in a very strong market position of HeidelbergCement, and, consequently, in price increases: "*HC zou een zeer dominante positie krijgen*"; "*HeidelbergCement group would have a too high market share in this region*"; "*risk of monopoly -> unrealistic prices*"; "*Nous craignons une augmentation des prix et de perdre la qualité*". A customer active in the France/Belgium border region further commented that "*un rachat de CALCIA* [Italcementi's French subsidiary] *par HEIDELBERG pourra entrainer le retrait de CBR du marché français et donc la fin de conditions économiques très intéressantes*".

61 Several HC internal documents estimated the Parties' combined market shares for cement in Belgium at [above 50]% and considered this as "problematic". See, for example, Annex M.7744_RFI 20160125_QP3_Q1.92_HC_Italcimenti in Belgium (CCB)_31 August 2015.PDF.

62 See responses to questionnaire Q3 (a and b) – Grey Cement – Customers Belgium, questions 48 and 49.

(82) Third, importers appear to exert a more limited competitive pressure compared to domestic producers:

(i) In particular in the catchment areas around Ghent/Antoing, Gaurain, Ijmuiden and Rotterdam (see Table 1 and Table 2 above), which are more distant from the German border, market shares of non-domestic producers (i.e. not active in either Belgium or the Netherlands) remain limited and revolve around [10-20]-[10-20]%. The Maastricht and Lixhe plants are located virtually on the German border, and their catchment areas consequently have a higher share of non-domestic sales ([30-40]-[30-40]%). Buzzi Unicem (with its German subsidiary Dyckerhoff) accounts for the majority of those sales, supplied from its nearby plants in Neuss, Germany, and Esch, Luxembourg.

(ii) Internal analyses of HeidelbergCement suggest that the competitive pressure has significantly diminished in the period from 2012 to 2015, to the extent that its analyses no longer identified any significant risks from competition. Initially, in 2012, periodical […] reports, which contain a section on risk management, identified a high risk of lost income due to fierce competition from the entry of new competitors in Belgium […].[63] The report did not mention a competitive threat from […].[64] Later, in the period from 2013-2015 (which coincided with HC's acquisition of its Belgian competitor Espabel), the risk management strategy in […] reports no longer mentioned a significant risk from competition. Concerning imports in particular, these reports suggest that even if HeidelbergCement did lose some cement volumes to […], and identified [...] as a potential competitive threat in the eastern parts of Belgium and the Netherlands as of 2014 on, HeidelbergCement considered that, on the whole, […] did not represent a significant competitive risk.[65]

(iii) According to its internal documents, HeidelbergCement considered to have a […][66], which it estimated at EUR […] over the prices offered by German independent cement suppliers ("Mittelständer")[67];

(iv) With the exception of […], the competitive pressure from […] was considered as opportunistic.[68] For example, suppliers based in Germany were only considered […].[69]

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63 Annex M.7744_RFI 20160125_QP3_Q6-10_25_HC_QMM13_QMM I 2012_HC Benelux (54300551).PDF, Annex M.7744_RFI 20160125_QP3_Q6-10_25_HC_QMM14_QMM II 2012_HC Benelux (54300552).PDF, Annex M.7744_RFI 20160125_QP3_Q6-10_25_HC_QMM15_QMM III 2012_HC Benelux (54300553).PDF.

64 This is consistent with another internal presentation from 2012 which commented [content of internal documents]. Annex M.7744_RFI 20160125_QP3_Q6_HC_Benelux_08_23. Update latest developments regarding the cement market in the Bene.

65 See, for example, Annex M.7744_RFI 20160125_QP3_Q6-10_25_HC_QMM19_QMM I 2014_HC Benelux (54300559).PDF.

66 Annex M.7744_RFI 20160125_QP3_Q7_8_9.01_HC_10. QMM III 2011 OP Plan - Final.PDF, slide 3.

67 "Update latest developments regarding the cement market in the Benelux", May 2012, slides 14 and 22.

68 M.7744_RFI 20160318_QP4_Q25.01Internal documents on imports from German... PART 1.pdf.

(v) In the market investigation, customers largely confirm that transportation costs for German cement are too high (except in the border regions). Comments by customers suggest that cement from Germany would, at the prevailing competitive price level, not be sufficiently competitive to avoid a price increase due to the merger: "*Actuellement, le niveau du prix du ciment en Belgique est trop bas pour que les importations puissent être concurrentielles à cause du coût du transport.*"[70]

(83) Fourth, internal documents show that ITC was, along with LafargeHolcim, an important source of rivalry to HeidelbergCement. Only HeidelbergCement, ITC and Holcim operate integrated cement plants, with certain quality, price and security of supplies advantages over grinding facilities or imports. Accordingly, HeidelbergCement was benchmarking its performance in Belgium against that of CCB (ITC) and Holcim.[71] Moreover, HeidelbergCement considered ITC's Gaurain's production assets as […] to those of […] Holcim in […], which operates […].[72]

(84) Fifth, already before the transaction, HeidelbergCement considered itself as […] in Belgium and the Netherlands [content of internal documents][73], and acted as one. HeidelbergCement took unilateral pricing decisions both to […] or […] new entrants, as well as to […]. First, in the period 2010-2012, HeidelbergCement contemplated a […] strategy to protect or even increase its market share in the wake of […]. This strategy consisted in a selective price reduction designed to send a […]. Subsequently, in the context of a stronger demand and lesser competitive pressure, HeidelbergCement aimed at improving its margins: "*HeidelbergCement 's current country [Benelux] strategy:* […]". HeidelbergCement considered that *"*[…]"[74]. Even if that price increase was finally […][75], HeidelbergCement was able to […]: *"[i]n 2015, HeidelbergCement was the only cement producer which* […]".[76]

(85) Sixth, the market investigation shows that competitors in Belgium and surroundings, including the German producers, have on the whole limited spare capacity for the production of cement. The respondents' estimates of 10-25% spare

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69 "Strategic Plan 2010-2014 Benelux being updated – Extracts", slides 21 and 22.

70 See responses to questionnaire Q3 (a and b) – Grey Cement – Customers Belgium, question 26 and non-confidential minutes of conference calls with customers dated 20 January 2016 and 25 January 2016.

71 Annex M.7744_RFI 20160125_QP3_Q6-10_25_HC_QMM14_QMM II 2012_HC Benelux (54300552).PDF, slide 17.

72 Annex M.7744 RFI20160125_QP3_Q1.91_HC_Market_Strategy_Post_Lafarge_Holcim_Merger_Draft.PDF, slide 5.

73 Annex M.7744_RFI 20160125_QP3_Q1.91_HC_Market_Strategy_Post_Lafarge_Holcim_Merger_Draft.PDF, slides 3 and 4.

74 Annex M.7744_RFI 20160125_QP3_Q6-10_25_HC_QMM20_QMM II 2014_HC Benelux (54300560).PDF.

75 Annex M.7744_RFI 20160125_QP3_Q6-10_25_HC_QMM22_QMM I 2015_HC Benelux (54300562).PDF.

76 Annex M.7744_RFI 20160125_QP3_Q6-10_25_HC_QMM24_QMM III 2015_HC Benelux (54300564).PDF.

capacity have been broadly confirmed by the aggregated data from the sample of respondent suppliers which suggests that the spare capacity is in the 10-15% range.[77] Such capacity would appear unlikely to discipline an attempt by the merged entity to increase prices unilaterally as an even stronger market leader (see previous paragraph). In addition, as explained in paragraph (82)(v), additional supplies from currently spare production capacity in Germany would be costly and unable to constrain a price increase.

(86) Through the Transaction, HeidelbergCement would see its grey cement capacity and sales in Belgium and its surroundings significantly increased, thus further strengthening its market position and ability and incentives unilaterally to raise prices. The Commission finds that, taking into account HeidelbergCement's already high market share pre-transaction, the important addition of the Italcementi cement business, and the absence of significant constraints from competitors, the Transaction would likely lead to the creation of a dominant position of HeidelbergCement[78]. The Transaction would also eliminate competition between two close competitors in an already concentrated market in Belgium and its surroundings.[79] Therefore, the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market in relation to grey cement in the relevant catchment areas in Belgium and its surroundings.

(87) Finally, it is not necessary to analyse whether the Transaction will lead to serious doubts as to its compatibility with the internal market due to coordinated effects in Belgium and its surroundings. This is because the remedies offered by the Notifying Party (see section VI) remove the entire overlap between the Parties' activities and, therefore, avoid any potential coordinated effects which – absent the remedies – could follow from a higher level of concentration in those markets.

V.2.2. French-German border region

(88) The Parties' activities in the French-German border region are mostly complementary: while HeidelbergCement operates cement facilities in Germany, Italcementi operates cement facilities in France. The Transaction therefore leads to cross-border overlaps in the French-German border region.

(89) The French-German border region was one of the focus areas in the Commission's antitrust investigation into the European cement sector which was opened in November 2010 and closed in July 2015.[80] The Commission suspected that the competitors may have explicitly colluded and coordinated their market behaviour, including among others potential restrictions of trade flows, market sharing and price coordination. Moreover, some market participants mentioned circumstances which could indicate (past) coordination in the region. Therefore, the Commission's assessment in this Decision of the effects of the Transaction in that region includes potential non-coordinated effects (see section V.2.2.2) as well as potential coordinated effects (see section V.2.2.3) in the present case.

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77 See responses to questionnaire Q1 – Grey Cement – Competitors Belgium, questions 7 and 22.

78 Horizontal Merger Guidelines ("HMG"), para 25 and 27.

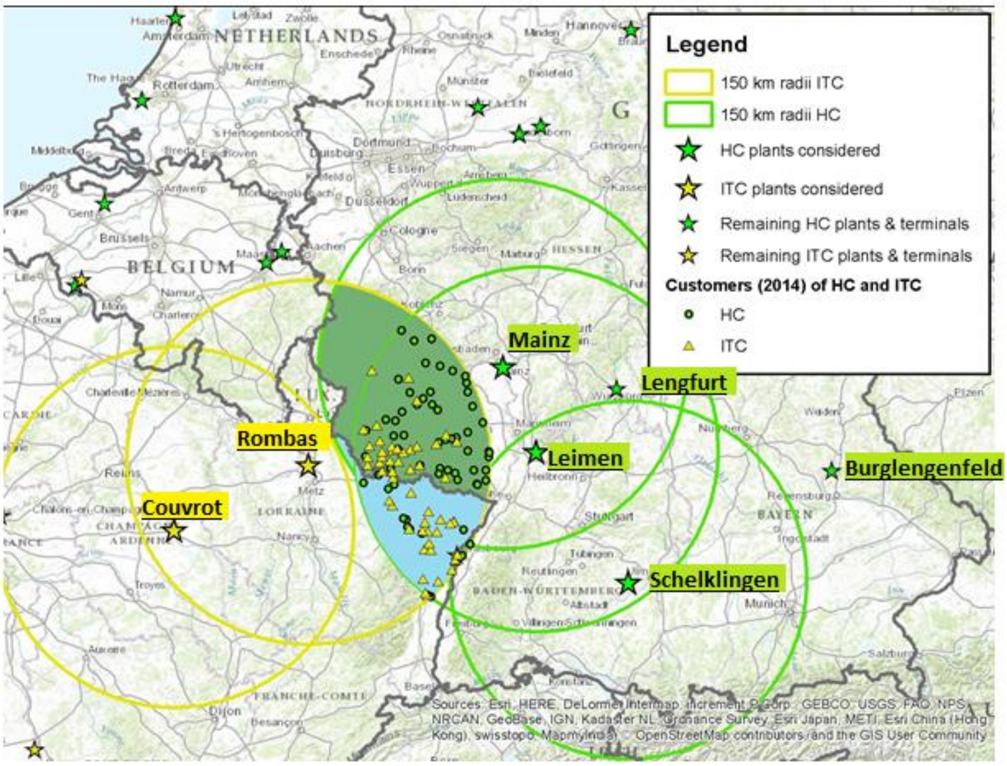
79 HMG, para 28.

80 See the Commission's press releases at http://europa.eu/rapid/press-release_IP-10-1696_en.htm and http://europa.eu/rapid/press-release_MEX-15-5462_en.htm?locale=en.

V.2.2.1. Market shares and concentration levels

(90) Considering 150 km catchment areas around plants, HeidelbergCement's German plants close to the French border (namely, Leimen, Mainz, Schelklingen and Lengfurt-Triefenstein) on the one hand, and Italcementi's French plant in Rombas on the other hand, primarily overlap in the cross-border region between South Western Germany (in particular, Rhineland-Palatinate and Saarland), Northern Alsace (Department of Bas-Rhin) and Lorraine (Department of Moselle).

Figure 4: Overlaps in the French-German border region[81]



(91) According to the Notifying Party's estimates, the Parties' combined sales shares will be approximately [20-30]% in the overlap region between their French and German plants (the shaded region in the above map). The Parties' combined sales shares reach up to [30-40]%[82] in certain catchment areas around individual plants. The Parties' main competitors are the three cement majors LafargeHolcim, CRH and Buzzi (with individual market shares up to [30-40]% for Buzzi, [10-20]% for CRH and [10-20]% for LafargeHolcim) with additional sales by French competitor Vicat and smaller German competitors.

81 Source: Parties.

82 The market shares would not substantially differ if considering separate markets for bulk and bagged cement, Annex 6.III.2.-Grey cement_DE_sales shares_bagged-bulk_plants and Annex 6.III.2.-Grey cement_FR_sales shares_bagged-bulk_plants to the Form CO. The Parties' combined sales shares in these regards reach up to [30-40]% (Leimen 150 km catchment area and ([30-40]% Couvrot 150 km catchment area) respectively.

Table 4 - French-German border region[83] - Market shares catchment areas[84]

	Leimen		Schelklingen		Lengfurt	
	150km	**250km**	**150km**	**250km**	**150km**	**250km**
HC	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[30-40]%	[20-30]%
ITC	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	**[30-40]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[30-40]%**	**[20-30]%**
LafargeHolcim	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[0-5]%	[10-20]%
CRH	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%
Buzzi Unicem	[10-20]%	[20-30]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%
Schwenk	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%
Maerker	[5-10]%	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[0-5]%
Others	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%

Table 5 - French-German border region - Market shares catchment areas[85]

	Mainz		Rombas		Couvrot	
	150km	**250km**	**150km**	**250km**	**150km**	**250km**
HC	[20-30]%	[20-30]%	[10-20]%	[20-30]%	[0-5]%	[10-20]%
ITC	[0-5]%	[0-5]%	[10-20]%	[5-10]%	[30-40]%	[20-30]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**
LafargeHolcim	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%
CRH	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Buzzi Unicem	[20-30]%	[20-30]%	[30-40]%	[20-30]%	[30-40]%	[10-20]%
Schwenk	[10-20]%	[5-10]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%
Vicat	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[5-10]%
Others	[10-20]%	[10-20]%	[0-5]%	[10-20]%	[0-5]%	[5-10]%

(92) The combined market share of the Parties remains below 35% with the highest value reached in a 150km catchment area around the Italcementi plant of Couvrot ([30-40]%). The highest increments occur around the Italcementi plants of Rombas ([10-20]% increment in a 150km radius) and Couvrot ([10-20]% increment in a 250 km radius).

(93) The Commission has collected sales and capacity information from the Parties' competitors in the French-German border region in the course of the market

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83 The Transaction also gives rise to a number of other affected markets in Germany and France at the national level and in the catchment areas around the plants of Gargenville, Ranville, Ennigerloh-Süd, Ennigerloh-Nord, Geseke-Milke and Geseke-Elsa. The increment brought about by the Transaction in those markets is below 5% and the overlap areas between the Parties' plants are not materially different from those discussed in this section. For the competitive assessment it can be referred to the principles set out it this Section of the Decision. Therefore, the Commission will not present a detailed assessment of these additional affected markets in this Decision.

84 Annex 6.III.2.-Grey cement_DE_sales shares_plants and Annex 6.III.2.-Grey cement_FR_sales shares_plants to the Form CO.

85 Source: Annex 6.III.2.-Grey cement_DE_sales shares_plants and Annex 6.III.2.-Grey cement_FR_sales shares_plants to the Form CO.

investigation. The data collected roughly confirms the market share estimates provided by the Notifying Party. Thus, the Notifying Party's calculations are sufficiently reliable for those markets.

V.2.2.2. Non-coordinated effects

V.2.2.2.a. The Notifying Party's arguments

(94) The Notifying Party submits that the Transaction does not raise any competition concerns based on non-coordinated effects for a number of reasons.

(95) First, the Notifying Party argues that the Parties are not close competitors in the region. To this end the Notifying Party submits that Italcementi's activities in Germany, through its distribution company Saarländische Zementgesellschaft mbH ("SZG"), are very small and limited to bulk grey cement, while Heidelberg supplies higher volumes of both bulk and bagged cement. Similarly, HeidelbergCement's sales of grey cement in France are limited.

(96) Second, the increment brought about by the Transaction would be limited. According to the Notifying Party's estimates the combined market share of the Parties would be below 30% in the respective overlap regions of the different catchment areas around the Parties' respective plants.

(97) Third, the Transaction would have a very limited impact on the market, given that a sufficient number of competitors will remain present in the region post-transaction. The Notifying Party calculated the HHI index and reached a maximum value of [2000-2500] with an increment of [300-400] for a 150km radius and [1500-2000] with an increment of [100-200] for 250km.[86]

V.2.2.2.b. Commission's assessment

(98) The combined market shares and market share increments as presented in section V.2.2.1 remain moderate in the French-German border region. At least four sizable alternative competitors remain available for customers in the region: Buzzi Unicem from its operations in Germany and Luxembourg, LafargeHolcim from its operations in Germany and France, CRH from its operations in Germany and France and Schwenk from its operations in Germany. In addition, the French competitor Vicat is an alternative supplier in some of the catchment areas (see Table 5 above).

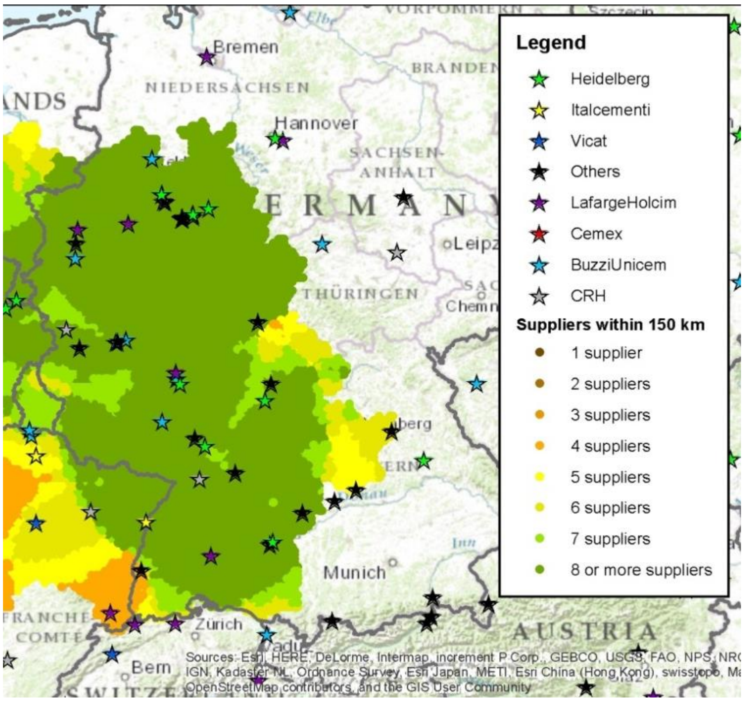
(99) The Commission has assessed the increase in concentration in terms of capacity around each customer. Using a 150km catchment area based on driving distance around each customer, the number of suppliers available for each customer varies between five and nine,[87] and the highest increase in HHI is rather limited

86 HHI index calculated on sales-based market shares. Results are not materially different when using capacity-based market shares.

87 See Figure 5 for an overview of available suppliers pre-transaction to each hypothetical customer in the catchment areas of the Parties' assets in the French-German border region. The areas where the suppliers available are less than 5 are within the 150km catchment areas but outside the overlaps of the Parties' activities, therefore the Transaction will not bring any change to the market in that regard.

(around [300-400]).[88] This suggests that potential non-coordinated effects from the Transaction are likely to be limited.

Figure 5: Number of suppliers in the French-German overlap region (pre-Transaction)[89]



(100) Those indications from the Commission's analysis of concentration levels were broadly confirmed by the replies received from market participants in the course of the market investigation. While the majority of respondents did not change suppliers in the last 3 years,[90] they explained that there will remain a sufficient number of alternatives in the French-German border region after the Transaction:

(i) The majority[91] of customers which responded to the market investigation considered the competition for the supply of grey cement in the French-German border region as at least "moderate" and the majority of competitors reported fierce and increasing competition in the region.[92]

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88 Using a 150km catchment area based on latitude/longitude distance around each customer, the number of suppliers available for each customer varies between four and 13, and the highest increase in HHI is limited as well (around [200-300]).

89 Source: Parties.

90 See responses to questionnaire Q4 – Grey Cement – Customers DE/eastern FR, questions 14 and 15.

91 While certain customers pointed out that the competition is low for certain specific types of cement, which are not produced by all the suppliers present in the area, there is no overlap between HeidelbergCement and Italcementi in the region for those types of cement and therefore the Transaction does not bring any change to the existing situation; see responses to questionnaire Q4 – Grey Cement – Customers DE/eastern FR, question 21.1.

92 See responses to questionnaire Q4 – Grey Cement – Customers DE/eastern FR, question 21, where the respondents were asked to submit whether they consider competition in the region to be "very strong", "strong", "moderate", "limited" or "very limited". See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, questions 18.2 and 19.2.

(ii) The respondents to the market investigation highlighted the presence of a number of competitors which will be active in the French-German border region post Transaction both in bulk and bagged grey cement.[93]

(iii) According to the majority of respondents to the market investigation, neither HeidelbergCement nor Italcementi has a specific competitive advantage in the French-German border region.[94]

(iv) The majority of respondents are aware of past expansions in the region by competitors which had a limited presence before (while the responses are mixed with regards to entry from competitors not previously present at all in the region).[95]

(v) The majority of respondents to the market investigation confirmed that the NF certification is a barrier to entry in the French market for the supply of grey cement.[96] However, the majority of competitors which replied to the market investigation have the NF certification and claim that the timing and cost to obtain it are limited.[97]

(101) Some customers raised concerns in case of reorganization of the production across the production sites of the merged entity in the region, for instance in case of the closure of quarries or the discontinuation of imports from Italcementi plants in France by SZG.[98] In the light of existing market structure, the arguments of the Notifying Party and the results of the market investigation, it is not likely that effective competition will significantly be impeded by the Transaction however. Currently, the Parties' activities hardly overlap due to the complementary strategic focus of HeidelbergCement and Italcementi in the French-German border region. Therefore, no major changes in the current market structure are likely to result from the Transaction, especially as the increment brought about by the Transaction remains modest and Italcementi's activities through SZG are limited. Furthermore, in the overlap areas in the French-German border region, a number of sizable competitors remain as possible sources of grey cement exerting competitive pressure on the Parties on both sides of the border. Therefore, even if post-transaction HeidelbergCement will cease to operate SZG and replace supplies from

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93 See responses to questionnaire Q4 – Grey Cement – Customers DE/eastern FR, questions 13 and 13.2; See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, question 17.2.

94 See responses to questionnaire Q4 – Grey Cement – Customers DE/eastern FR, questions 17 and 18; See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, questions 33 and 34.

95 See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, questions 28 and 29.

96 See responses to questionnaire Q4 – Grey Cement – Customers DE/eastern FR, question 36; See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, question 25.

97 See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, questions 24 and 26.

98 See responses to questionnaire Q4 – Grey Cement – Customers DE/eastern FR, questions 49, 50 and 54.1; See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, questions 58 and 60.

France by supplies from its plants in Germanys, there remain a sufficient number of competitors as alternative suppliers for current SZG customers.

(102) Accordingly, the majority of respondents to the market investigation did not identify any effects of the Transaction on their businesses and only limited effects on the market for the supply of grey cement in the French-German border region.

V.2.2.2.c. Conclusion on non-coordinated effects

(103) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition for grey cement with regards to non-coordinated effects in the French-German border region.

V.2.2.3. Coordinated effects

(104) Horizontal mergers may significantly impede effective competition, in particular by creating or strengthening a dominant position, by changing the nature of competition in such a way that firms that previously were not coordinating their behaviour are now significantly more likely to coordinate and raise prices or otherwise harm effective competition. A merger may also make coordination easier, more stable or more effective for firms which were coordinating prior to the merger (coordinated effects).[99]

(105) After summarizing the Notifying Party's arguments (section V.2.2.3.a), the Commission will therefore assess (section V.2.2.3.b) whether it is likely that the Transaction will significantly impede effective competition in the French-German border region by making pre-existing coordination easier, more stable or more effective or by making coordination significantly more likely.

V.2.2.3.a. The Notifying Party's arguments

(106) The Notifying Party submitted two economic analyses on 4 December 2015 and 15 March 2016,[100] in which they put forward several arguments claiming that: (i) there is no evidence of pre-existing collusion in the French/German border region and, (ii) the Transaction will not lead to coordinated effects.

(107) The first claim on the absence of pre-existing collusion in the French/German border essentially relies on analysing cross-border deliveries, customer switching patterns between the French/German border region and the non-border region, the price levels across the French/German border region and the non-border region and the number of rival suppliers in the border region.

(108) More precisely, the Notifying Party defines a measure of expected cross-border deliveries based on the relative size of the French part and the German part within the 150km circle overlap area and show that both HeidelbergCement's plant in Leimen and Italcementi's plant in Rombas realised more cross-border deliveries

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99 HMG, paragraph 22(b).

100 The Commission notes that compared to the previous submission the second submission from 15 March 2016 partially resolved some limitations regarding – inter alia – data on the Parties' sales revenues and ITC's sales of grey cement in Germany.

than expected.[101] This analysis suggests that cross-border deliveries were relatively substantial. Moreover, the Notifying Party's analysis shows that customer switching patterns for the Parties' plants do not differ in the border region from those in the non-border region, suggesting that there is no stable customer allocation in the border region.

(109) The Notifying Party puts forward that prices gradually decline from Centre of France to the French/German border region and from the French/German border region to the Central Germany, suggesting that prices in the French/German border region are not "artificially" higher than in other areas. This finding is also confirmed once several characteristics are taken into account, such as different customer groups (pre-cast customers or not), cement types (CEM I, CEM II, CEM III), sales volumes and distance between each plant and the respective customers.

(110) Finally, the Notifying Party shows that the number of rival suppliers whose plants' catchment area overlaps with the French/German border region is relatively high such that each customer located within the border region can choose between seven or more suppliers. Since a high number of suppliers can be generally considered to make coordination difficult, this finding suggests that collusion in the border region is unlikely.

(111) The Notifying Party takes these findings to conclude that there is no evidence that the Parties coordinated prior to the merger by using either the French/German border as a focal point / collusive device or any other customer allocation rule.

(112) The Notifying Party's second claim on the absence of coordinated effects arising from the Transaction essentially follows from analysing the number of remaining post-merger rival suppliers whose plants' catchment area overlaps with the French/German border region. The Notifying Party argues that all customers located within the border region will face at least six rival suppliers post-merger and thus sufficient alternatives so that coordinated effects will be unlikely.[102]

V.2.2.3.b. Commission's Assessment

Assessment of a potential strengthening of coordination

a. Data analysis

(113) The Commission has assessed the Notifying Party's arguments (see paragraphs (106)-(112)) using quarterly and yearly sales data submitted by the Notifying Party's in response to a series of requests for information.[103] Focusing on bulk grey cement sales of CEM I, CEM II and CEM III to external customers

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101 Cross-border deliveries are defined as sales of grey cement originated from Rombas to the German part of the overlap area and grey cement sales originated from Leimen to the French part of the overlap area.

102 The Notifying Party uses also this analysis to argue that all customers located within the border region will face at least six rival suppliers post-merger and thus sufficient alternatives so that non-coordinated effects will be unlikely (see also paragraph (98)).

103 See response to RFIs from 02 March 2016, 30 March 2016 and 12 April 2016.

covering the years 2014 and 2015,[104] the Commission carried out a quantitative analysis to assess whether the prices for grey cement in the French/German border region show a pattern of current or past coordination between HC's plant in Leimen and ITC's plant in Rombas which would have to be taken into account within the assessment whether the Transaction would increase the likelihood of future coordination.

(114) The relevant catchment areas of Leimen and Rombas were given by circles of 150km radius around each plant. The overlap area of these circles (the lense) covers all customers for whom both Leimen and Rombas are not further away than 150km geodesic distance and represents the French/German border region under consideration (see Figure 4 for an illustration).[105] It consists of 63% German territory and 37% French territory and accounts in terms of surface for 26% of each of the 150km circles around Leimen and Rombas.[106]

(115) In its assessment, the Commission has refined and extended the Notifying Party's evidence on the absence of pre-existing collusion in the French/German border region. Thereby, the Commission has proceeded in two steps using two different, but complementing methodologies.

(116) First, the Commission examined whether the observed price pattern in the overlap area (i.e. the lens in the French/German border region) differs from the corresponding price patterns realised by each plant outside the overlap area. More precisely, the Commission enquired whether the observed prices in the French/German border region might be driven by coordination on top of volume, distance, customer type, cement type and Incoterms[107] which the Commission was able to control for in its analysis.[108]

(117) In this regard, significant price differences – after controlling for differences in cement types, customer types, volume, distance and Incoterms between geographical regions – showing that the price level in the French/German border region is higher than the price level outside the border region could serve an indication for coordination between the Parties. In other words, in the absence of coordination any substantial price differences would have been competed away.

(118) The Commission's analysis overall confirms the Notifying Party's findings that prices in the French/German border region do not differ substantially from prices outside this area. This finding remains the same when controlling for differences in

104 Limiting attention to bulk cement sales of types CEM I, CEM II and CEM III and thereby excluding CEM IV, CEM V and special cement and all bagged grey cement sales is in line with the Notifying Party's approach (see submissions from 4 December 2016 and 15 March 2016).

105 The Commission notes that its analysis has been stress-tested by using circles of 200km and 250km geodesic distance and circles of 150km, 200km and 250km driving distance instead of only 150km geodesic distance. However, the results were overall not sensitive to varying these parameters.

106 See Parties submission "Duomo: Grey cement competition in the FR/DE and FR/BE border regions" from 4 December 2015.

107 Notice that, for the sake of simplicity, the Commission only distinguished sales delivered by the respective supplier from those picked up by customers.

108 The Commission notes that such an approach inherently assumes that outside the overlap area, where customers are located such that one of the Parties is not considered as an alternative, there is no coordination between the grey cement suppliers.

market concentration or the number of suppliers between the French/German border region and in the non-border region (in addition to differences in cement types, customer types, volume, distance and incoterms across the regions)[109, 110] This analysis did not reveal substantial differences between the border region and regions outside this area.

(119) Second, the Commission has analysed the Parties' incentives to reallocate some supplies from inner-Germany or inner-France to the French/German border region, so as to "steal" its rival's customers in the French/German border region (where, in case of coordination, prices would be supra-competitive).

(120) This approach is designed to test one important implication of potential collusion: if there is collusion, firms could deviate from a collusive agreement and capture substantial short term profits.[111] Conversely, if firms could not deviate and capture substantial short term profits, there is no collusion. In other words, reallocation incentives and deviation incentives, respectively, are interlinked with the existence and the success of coordination. If there is no coordination, there are no substantial benefits from reallocating output in the short-term. If, to the contrary, there is coordination between the Parties, then there are substantial benefits from reallocation and deviation in the short-term. These benefits are higher the more successful coordination is and illustrate the well-known trade-off between short run deviation profits and long run collusive profits which would be sacrificed in case of deviating from the collusive agreement

(121) A substantial incentive to reallocate output in the short-run would thus reflect the Parties' gains associated with deviating from a pre-existing collusive agreement and could thus indicate current (successful) coordination between the Parties.[112]

(122) However, the Commission finds that the Parties' gains from reallocation are not substantial. Such results do not support the potential assumption that the Parties coordinat(ed) operations in the French/German border region.

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109 It should be noted that the Commission used the data set underlying the Notifying Party's submissions from 4 December 2015 and 15 March 2016 in order to include information on market concentration and the number of suppliers.

110 The Commission has also run a regression analysis on Transactions outside the French/German region in order to find the main factors explaining prices. Using the results of this regression analysis, the Commission has predicted how prices in the French/German border region should look like in application to the factors identified. The Commission finds that the predicted prices in the French/German border are similar to the actual prices, suggesting that prices in the French/German border are not "artificially" high e.g. because of tacit coordination.

111 For the sake of completeness, it should be noted that in case of deviation firms would sacrifice the long-term collusive profits provided that the deviating firm would be subject to retaliation after having been detected by the remaining firms that adhered to the collusive agreement.

112 The Commission notes that reallocation incentives and deviation incentives, respectively, are interlinked with the existence and the success of coordination. In other words, if there is no coordination, there are no substantial benefits from reallocating output in the short-term. If, to the contrary, there is coordination between the Parties, then there are substantial benefits from reallocation and deviation in the short-term. These benefits are higher the more successful coordination is and illustrate the well-known trade-off between short run deviation profits and long run collusive profits which would be sacrificed in case of deviating from the collusive agreement.

(123) To conclude, the findings of the data analysis outlined in paragraphs (113) to (122) confirm the Notifying Party's overall claim that there is no pre-existing collusion in the French/German border region which could be strengthened through the Transaction.

b. Results of the market investigation

(124) The Commission has also addressed specific questions to the market participants in the course of the market investigation, aiming in particular at assessing whether and to what extent there is transparency in the market favouring coordination, whether and to what extent the market participants may have observed episodes of retaliatory actions between the competitors, how the competitive dynamics and pricing on both sides of the border have evolved over the years and whether the customers expect any effects – including in terms of coordination – from the Transaction.

(125) The market investigation indicated a certain level of transparency in the market. Sufficient transparency may allow coordinating firms to monitor to a sufficient degree deviations from the terms of coordination.[113] The majority of customers responding to the market investigation consider that grey cement suppliers in the French-German border region are aware of which competitor supplies which customer and also of the prices offered by competing suppliers.[114] The majority of customers explained that grey cement suppliers generally learn about the competitors' prices through customers, either because the supplier is invited by the customers to match a quoted competing price or because the cement supplier asks its customers which prices the competition is charging.[115] In addition, price transparency also appears to be enhanced through the use of price letters in which cements suppliers inform their customers about planned price increase in the following year. The majority of competitors which replied to the market investigation confirmed that they had sent price letters to customers in the French-German border region over the past years and also pointed out that they had access to price letters of competitors.[116] Therefore, the cements markets in the French-German border region appear to be characterized by a degree of transparency which may facilitate tacit coordination.

(126) However, as regards potential retaliatory measures, the majority of customers responding to the market investigation pointed out that they have not been approached by a grey cement supplier which was trying to win volumes against a specific competitor.[117] More generally, there are no conclusive indications of retaliation or similar strategies. Most customers did not report observing retaliatory measures in the market.

113 HMG, para. 49 and 50.

114 See responses to questionnaire Q4 – Grey Cement – Customers DE/eastern FR, question 26 and 28.

115 See responses to questionnaire Q4 – Grey Cement – Customers DE/eastern FR, question 27.

116 See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, questions 31 and 32.2.

117 See responses to questionnaire Q4 – Grey Cement – Customers DE/eastern FR, questions 24 and 25.

(127) Also, as regards cross-border trade, the majority of competitors which responded to the market investigation highlighted how suppliers having assets in France are selling to customers in Germany and vice versa. Those sales are done either directly or via a trader.[118] According to market participants, imports have increased over the years and competition has intensified in the French-German border region, in particular due to Buzzi Unicem's capacity increase in Luxembourg in 2010. Furthermore, prices have tended to align across the border according to market participants.

(128) As regards the overall effects of the transaction concerns regarding coordinated effects through strengthening of coordination were not confirmed by most market participants. Even if there is transparency in the market and even if there were indications of tacit coordination several years ago, the majority of market respondents did on the one hand not confirm that coordination could be observed in the market today and explained on the other hand that there are indications of increased competition in the region.

c. Evidence from the Parties' internal documents

(129) A review of the Parties' internal documents shows that there is high transparency among competitors. Internal documents of the Parties reflect in particular that they usually have knowledge about prices and gains/losses of customers of other competitors in the French-German border region. However, there are indications that a conflict between French and German grey cement competitors evolved leading to more competition in the French-German border region. In any event, there are no indications in the reviewed internal documents of current coordination in the German/French border region which could be strengthened by the Transaction.

d. Conclusion on a potential strengthening of coordination

(130) The Commission's analysis of the Parties' quarterly and yearly sales data, of the submissions received from market participants in the market investigation as well as of the Parties' internal documents shows that there is no pre-existing coordination in the French-German border region which could be strengthened through the Transaction.

Assessment of a potential creation of coordination

(131) The Commission has also assessed whether competitors that previously were not coordinating their competitive behaviour in the French-German border region are significantly more likely to coordinate as a result of the Transaction. For the reasons set out in recitals (132) to (134), it is unlikely that the Notified Transaction will change the market structure to such an extent that it will alter significantly the ability or incentives of competitors to engage in coordination as a result of the Notified Transaction. In particular, the Notified Transaction is likely to have no or only limited effects on the different factors facilitating coordination.

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[118] See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, questions 37, 38 and 40.

(132) It is unlikely that the reduction in the number of cement competitors in the French-German border region through the disappearance of Italcementi as a separate competitor will make it significantly easier to reach the terms of coordination due to the presence of a reduced number of competitors. As set out in Figure 5, paragraph (99) and footnote 87, the number of suppliers available for customers in the French-German border region after the Transaction is generally at least seven or more. This will not make the competitive situation significantly less complex.

(133) Furthermore, such limited reduction in the number of competitors from at most eight-to-seven for most customers is equally unlikely to have a significant effect on market transparency and, therefore, monitoring of potential deviations from coordination, as the Transaction will not make it significantly easier for competitors to access the relevant sources of information or otherwise facilitate market transparency.

(134) The considerations in paragraphs (132) and (133) are in line with the Commission's analysis of the submissions received from market participants in the market investigation as well as of the Parties' internal documents. The market participants did not raise any concerns that coordination could be created through the Transaction or, more specifically, that the economic environment could become less complex or stable and the markets more transparent to allow coordination to be created. The Commission's review of the internal documents equally provided no evidence of the creation of coordination in the French-German border region after the Transaction.

(135) Consequently, competitors that were previously not coordinating are not significantly more likely to engage in coordination in the French-German border region as a result of the Transaction.

V.2.2.3.c. Conclusion on coordinated effects

(136) Based on the modest increment brought about by the Transaction, the number of remaining competitors in the French-German border region as well as the findings of the Commission's data analysis, the results of the market investigation and the assessment of Parties' internal documents, the Commission considers that there are no indications of existing coordination that could be strengthened through the Transaction and no indications of a creation of coordination through the Transaction.

(137) Therefore, the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition for grey cement in the French-German border region with regards to coordinated effects.

V.2.2.4. Conclusion on the French-German border region

(138) Based on the assessment set out in sections V.2.2.1 to V.2.2.3, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition for grey cement in the French-German border region with regards to non-coordinated or coordinated effects.

V.2.3. Southern Italy

(139) In Italy, Italcementi is active in the production and distribution of grey cement through ten integrated plants, five grinding stations, and twenty-four distribution centres distributed along the Italian territory. HeidelbergCement is active only in the Italian region of Calabria by means of an import terminal which exclusively sells limited amounts of grey cement directly in the surrounding area.

(140) Therefore, considering the integrated plants that Italcementi operates in Palermo (Sicily) and Castrovillari (Calabria) and the import terminal that HeidelbergCement owns in the Italian southern region of Calabria, the Transaction leads to a horizontal overlap in the market for grey cement in Southern Italy in the Sicily and Calabria regions.

Figure 6: The Parties' cement facilities in Southern Italy (Source: Parties)

V.2.3.1. Market shares and concentration levels

(141) The sales shares for the overlapping catchment areas of the Parties' sites are as follows[119]:

Table 6 - Southern Italy Market shares catchment areas[120]

	Castrovillari		**Gioia Tauro**		**Isola delle Femmine**	
	150km	**250km**	**150km**	**250km**	**150km**	**250km**
HC	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
ITC	[40-50]%	[20-30]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%
Combined	**[40-50]%**	**[20-30]%**	**[40-50]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**
Cementir	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[0-5]%	[5-10]%
Colacem	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[20-30]%	[10-20]%
Buzzi Unicem	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Calme Group	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%
Others	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%

Table 7 - Southern Italy Market shares catchment areas[121]

	Porto Empedocle	
	150km	**250km**
HC	[0-5]%	[0-5]%
ITC	[30-40]%	[30-40]%
Combined	**[30-40]%**	**[30-40]%**
Colacem	[20-30]%	[20-30]%
Buzzi Unicem	[10-20]%	[10-20]%
Calme Group	[5-10]%	[10-20]%
Others	[10-20]%	[10-20]%

(142) The Parties' activities overlap in a number of catchment areas. The main overlap concerns the 150 km catchment area around HeidelbergCement's Gioia Tauro terminal with a combined sales share of [40-50]% (Italcementi: [30-40]%; HeidelbergCement: [0-5]%). In all other instances the Transaction leads to market share increments below [0-5]%.[122]

119 At a national level, Italcementi estimates that in 2014 its market shares by volume amounted to a [20-30]% of the total market for grey cement, whereas HeidelbergCement's market shares are estimated in [0-5]% for the same year. They further consider their main competitors to be: Buzzi Unicem (approximately [10-20]%), Colacem (approximately [10-20]%), Cementir (approximately [5-10]%), Gruppo Sacci (approximately [5-10]%), Cementi Rossi (approximately [5-10]%), LafargeHolcim (approximately [5-10]%), Cementizillo (approximately [0-5]%), Barbetti (approximately [0-5]%), Grigolin (approximately [0-5]%) and others (approximately [10-20]%).

120 Annex 6.III.2.-Grey cement_IT_sales shares_plants.

121 Annex 6.III.2.-Grey cement_IT_sales shares_plants.

122 This does not substantially differ if considering separate markets for bulk and bagged cement as HeidelbergCement has no sales of bagged cement in Italy, Annex 6.III.2.-Grey cement_IT_sales shares_bagged-bulk_plants and Annex 6.III.2.

(143) If each of the regions were considered as separate markets, the Parties' combined sales shares would be [50-60]% in Calabria ([5-10]% increment) and [30-40]% in Sicily ([0-5]% increment).

V.2.3.2. The Notifying Party's arguments

(144) The Notifying Party submits that the Transaction does not raise any competition concerns on a national nor on a local basis in Italy, mainly for the following reasons.

(145) First, the Notifying Party submits that Italcementi and HeidelbergCement are not close competitors since the former is active across the whole country selling both bulk and bagged cement while the latter has only one terminal selling [...][123]. Moreover, the Notifying Party argues that HeidelbergCement is not a relevant supplier in the southern region of Italy, selling very limited amounts of grey cement especially in Sicily.[124] They further submit that […] is a niche segment with very little importance in the overall competitive scenario and that Italcementi only has very marginal sales of this product in Calabria and Sicily.[125]

(146) Second, the Notifying Party argues that several competitors are present in the market for grey cement both nationally and regionally. In particular, they name Buzzi Unicem, Colacem and Cementir.[126] They further submit that a number of suppliers in the market for grey cement have entered in a recent period. For instance, competitors as Cemex have expanded their operations into Sicily.[127]

(147) Third, the Notifying Party presents the argument that there has been a noticeable decrease in Italian grey cement demand in the recent years, leading to an excess in capacity of approximately 50%. In particular, Italcementi had to close one grinding station and four integrated plants, one of them located less than 50 km away from Gioia Tauro.[128]

(148) Fourth, the Notifying Party affirms that suppliers in the Italian market have access to port infrastructures, facilitating them to import grey cement.[129]

(149) Fifth, the Notifying Party claims that the high transportation costs and the variation in the price of grey cement between Sicily and Calabria lead to a very limited flow of this product between both regions.[130]

123 Source: Form CO, page 308.

124 In Sicily, HeidelbergCement sold grey cement to only […] customers in 2014.

125 Source: Form CO, page 327.

126 Source: Form CO, page 309.

127 Source: Form CO, page 316.

128 Form CO, page 311.

129 Form CO, page 313.

130 Form CO, page 316.

V.2.3.3. Commission's assessment

(150) While the joint market share of the Parties is considerable in some of the areas under consideration, the Commission takes into account that HeidelbergCement's terminal in Gioia Tauro is small and sold a total of only […]kt in 2014. Furthermore, HeidelbergCement's terminal sells only one type of higher-quality cement, […], for which there is limited demand in Southern Italy and which Italcementi sells in very limited volumes. Italcementi only sold […]kt of this type of cement in Calabria in 2014 where HeidelbergCement concentrates its sales.

(151) Furthermore, there are a number of competitors active in the region and spare capacity is high due to the economic downturn the region has experienced since 2010.

(152) Those Commission findings were confirmed by the replies received from market participants in the course of the market investigation.

(153) First, the respondents to the market investigation highlighted the presence of a number of potential grey cement suppliers in addition to the Parties.[131] They have also confirmed that competition in the market for grey cement in Southern Italy and Sicily is between moderate[132] and fierce.[133] The respondents to the market investigation also indicated that a number of new suppliers have entered the grey cement market in the South of Italy in the last years, namely Euromec, Cemex and Catabeton.[134] No further new entries in the market for grey cement are expected in the next three years according to the respondents to the market investigation.[135] However, some respondents also maintain that some of the competitors in the market tried in the last five years to expand to a region where they were not present or had a limited presence.[136]

(154) Second, in relation to overcapacity in the market, the respondents to the market investigation have pointed out that grey cement producers are using approximately 50% of all the production capacity present in the market.[137]

(155) Third, as regards Sicily in particular, one customer in Sicily pointed out that HeidelbergCement had been present with a terminal in Porto Empedocle for a short period of time in Sicily in 2014 with an aggressive commercial policy.[138] However, the presence of HeidelbergCement in Sicily lasted only […] and was based on a contractual relationship with […]. That relationship was discontinued in […] for reasons independent from the Transaction, as apparent from the Parties' internal

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131 See responses to questionnaire Q5 – Grey Cement – Questionnaire To Customers – Italy, question 13.

132 See responses to questionnaire Q5 – Grey Cement – Questionnaire To Customers – Italy, question 15.

133 See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, question 18.

134 See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, question 27.

135 See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, question 28.

136 See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, question 29; See responses to questionnaire Q5 – Grey Cement – Questionnaire To Customers – Italy, question 22.

137 See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, question 22.

138 See minutes of conference calls with a costumer of 28 January 2016.

documents. While HeidelbergCement attempted to […], these plans were […] in early […] for reasons independent from the Transaction.[139] Indeed, HeidelbergCement decided then […].

(156) Fourth, the majority of respondents to the market investigation expressed that they have never been contacted in neither Sicily nor Calabria by HeidelbergCement to supply grey cement[140]. For instance, when asked about the impact of HeidelbergCement's presence in Sicily through the Porto Empedocle terminal, most of the respondents highlighted either the absence of any effects on the market or the slight impact of that presence of HeidelbergCement.[141] The majority of competitors also agree that HeidelbergCement is not or would not have become an important competitor in this segment should the Transaction not take place[142], whereas the written responses from costumers were not conclusive in that regard[143]. Follow-up contacts with customers clarified the limited role (actual or potential) of Heidelberg in Sicily.[144] In relation to the region of Calabria, competitors provided mixed answers to the question of whether HeidelbergCement has or could potentially have an important presence in the market or not, while costumers submit that it would not be the case[145].

(157) Finally, the majority of competitors submit that the impact of the Transaction on the market of grey cement in Southern Italy will be inexistent or insignificant[146], whereas the majority of customers believe that the Transaction will have no impact in Sicily[147] and either no impact or a positive one in Calabria.[148]

V.2.3.4. Conclusion

(158) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition for grey cement in Southern Italy.[149]

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139 See responses to questionnaire QP1 of 11 January 2016 – Questions on the draft Form CO, submitted on 14 March 2016, question 49

140 See responses to questionnaire Q5 – Grey Cement – Questionnaire To Customers – Italy, question 17-18.

141 See responses to questionnaire Q5 – Grey Cement – Questionnaire To Customers – Italy, question 17-19.

142 See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, question 49.

143 See responses to questionnaire Q5 – Grey Cement – Questionnaire To Customers – Italy, question 20.

144 See agreed non-confidential minutes of conference calls with a customer of 26 January 2016.

145 See responses to questionnaire Q5 – Grey Cement – Questionnaire To Customers – Italy, question 20.

146 See responses to questionnaire Q1 – Grey Cement – Questionnaire To Competitors, question 62.

147 See responses to questionnaire Q5 – Grey Cement – Questionnaire To Customers – Italy, question 27.

148 See responses to questionnaire Q5 – Grey Cement – Questionnaire To Customers – Italy, question 26.

149 With regards to grey cement the Transaction gives rise to a two other affected markets in Italy (i.e. at national level and in the catchment areas around the Italcementi plant of Salerno. The increments brought about by the Transaction in those markets are below [0-5]%.

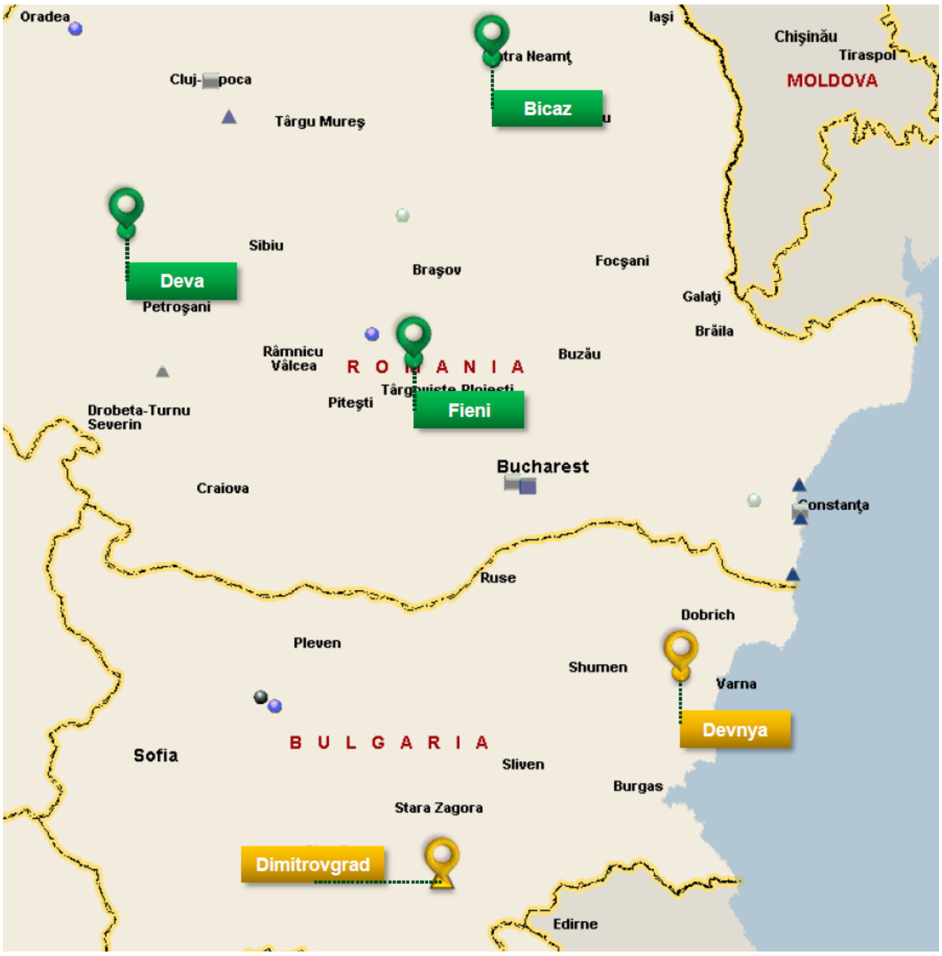
V.2.4. Bulgarian-Romanian border region

(159) HeidelbergCement is active in the production and distribution of grey cement in Romania through three integrated grey cement plants. The plants are located in (i) Tasca near Bicaz, situated in the north-east of the country, 384 km from Bucharest; (ii) Chiscadaga near Deva, located 400 km north-west of Bucharest; and (iii) Fieni, located slightly more than 100 km north-west of Bucharest.

(160) By contrast, Italcementi does not have any production sites in Romania, but only delivers very modest quantities of grey cement into Romania from its integrated plant based in Devnya in neighbouring Bulgaria.

(161) In Bulgaria, HeidelbergCement has no activities and realizes no turnover. Italcementi is active in this country by means of the mentioned integrated plant of Devnya, one grinding station located near Dimitrovgrad in the Haskovo region and one distribution center located in Damyanitsa in the south-west of the country, close to the Greek and Macedonian borders. Italcementi also owns 10 quarries and deposits located in the Varna and Haskovo regions.

Figure 7: HeidelbergCement's locations in Romania and Italcementi's locations in Bulgaria.



Source: Form CO.

V.2.4.1. Market shares and concentration levels

(162) On a national basis, Bulgaria and Romania present a fairly similar competitive situation, with three main competitors active in each on these countries. In Bulgaria, Italcementi's 2014 sale market share is estimated at [30-40]%[150], its main competitors are Titan ([20-30]%) and CRH ([10-20]%) followed by LafargeHolcim ([10-20]%). In Romania, HeidelbergCement's 2014 sale market share is estimated at [30-40]%[151], its main competitors are CRH ([30-40]%) and LafargeHolcim ([20-30]%).

(163) The overlaps between the activities of the Parties in Bulgaria and Romania have been analysed on a cross-border basis. Due to the proximity between Italcementi's two cement plants in Bulgaria and HeidelbergCement's grey cement facility in Romania, in Fieni close to Bucharest, there are geodesic overlaps between the catchment areas around the Parties' plants.

(164) The main increments brought about by the Transaction are around HeidelbergCement's Fieni plant (combined: [30-40]%, HeidelbergCement: [30-40]%, Italcementi: [0-5]%) and Italcementi's Devnya plant (combined: [10-20]%, HeidelbergCement: [5-10]%, Italcementi: [5-10]%), for both considering a catchment area with a 250 km radius.

Table 8 – Sale shares in catchment areas around plants in Bulgarian-Romanian border region

	Fieni		**Devnya**		**Dimitrovgrad**	
	150km	**250km**	**150km**	**250km**	**150km**	**250km**
HC	[30-40]%	[30-40]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%
ITC	[0-5]%	[0-5]%	[50-60]%	[5-10]%	[20-30]%	[5-10]%
Combined	**[30-40]%**	**[30-40]%**	**[50-60]%**	**[10-20]%**	**[20-30]%**	**[10-20]%**
LafargeHolcim	[30-40]%	[20-30]%	[0-5]%	[5-10]%	[20-30]%	[20-30]%
CRH	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[0-5]%	[10-20]%
Titan	[0-5]%	[5-10]%	[0-5]%	[5-10]%	[40-50]%	[20-30]%
Cemrom	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Oyak	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Cementir	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

(165) Market shares calculated for catchment areas around the midpoints between the different plants or the Parties in the Bulgarian-Romanian border region show a larger increment in the midpoint area around Devnya and Fieni[152].

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150 The market shares would not substantially differ if considering separate markets for bulk and bagged cement, Annex 6.III.2.-Grey cement_BU_sales shares_bagged-bulk_plants and Annex 6.III.2.-Grey cement_FR_sales shares_bagged-bulk_plants to the Form CO.

151 The market shares would not substantially differ if considering separate markets for bulk and bagged cement, Annex 6.III.2.-Grey cement_RO_sales shares_bagged-bulk_plants. In cases where market shares differ substantially the increment is minor, namely below [0-5]%.

152 By sales, in the 150km catchment area around Fieni-Devyna midpoint, HeidelbergCement: [30-40]%, Italcementi. [10-20]%, combined: [40-50]%, increment [10-20]%. By capacity, in the 150km catchment area around Fieni-Devyna midpoint, HeidelbergCement: [10-20]%, Italcementi. [10-20]%, combined: [30-40]%, increment [10-20]%.

V.2.4.2. The Notifying Party's arguments

(166) The Notifying Party argues that the Transaction will not lead to an impediment of effective competition in the markets for manufacture and sale of grey cement in Romania or Bulgaria at the national or catchment area level and bring forward the following two main arguments.

(167) First, the Parties put forward that they are not close nor even actual competitors in those markets. This is because HeidelbergCement has no grey cement facilities or sales in Bulgaria, while Italcementi has no production facility in Romania and its sales into the south-east region of Romania from its integrated plant in Bulgaria are limited to small amounts.[153] Furthermore, the Parties consider that there are a number of factors that limit cross-border trade of grey cement between Bulgaria and Romania. Reference is made to the Danube River as a natural boundary between the two countries, which makes the transport of grey cement difficult and costly. Other relevant factors would be handling costs in ports, customs formalities, foreign currency exchange differences and road/ferries taxes, all of which have implications on delivery times. The Parties make also reference to the Commission's observations in this regard in its decision M.7252 Holcim/Lafarge.[154]

(168) Second, the Notifying Party argues that the merged entity would still compete with a number of viable competitors, both domestic producers and importers who will provide an effective competitive constraint:

(i) In Bulgaria, the main domestic producers LafargeHolcim and Titan will continue to compete with the merged entity. Also, imports represent approximately [10-20]% of the overall cement consumption in Bulgaria. While the southern regions receive imports mainly from Turkey, the northern regions would receive imports from Romania. The total import of grey cement from Romania in 2014 into Bulgaria is estimated by the Parties to amount to approximately […] kt.

(ii) In Romania, the merged entity would continue to compete primarily with CRH and LafargeHolcim. Reference is also made to the competitive constraint brought about by importers. Imports are said to represent approximately [0-5]% of the overall cement consumption in Romania in 2014, or approximately [...] kt. These imports are mainly seaborne imports coming from the ports on the Black Sea. The main importers named are Ceminter International, which has had an import terminal in Constanta Seaport since it entered the Romanian market in 2008 and Oyak Cement Group, a Turkish entity, located in Mangalia Port in south-east Romania. The Notifying Party submits that although of a generally lower quality, imported grey cement is

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153 Italcementi sold […]kt of grey cement in Romania from its Bulgarian plants in 2015.

154 See European Commission, Case M.7252 – Holcim / Lafarge, 15 December 2014, recitals 95 and 227. Respondents to the market investigation indicated that there are certain factors, like the lack of infrastructure between Romania and Bulgaria, that create delays in the delivery of cement, which is a negative factor from the point of view of customers who require timely deliveries of their orders. One customer reported at the time that when attempting to source cement into Romania from Italcementi's plant in Devnya it encountered logistical barriers. Infrastructure between Romanian and Bulgaria in this part of the country was described as not making possible to transport big volumes of grey cement over the Danube in a reasonable timeframe.

substitutable with grey cement produced locally as confirmed by consumer behaviour.

(iii) More specifically, in the region along the border between Romania and Bulgaria, where the Parties' activities overlap, the merged entity will be constrained by CRH and Cemrom (a local manufacturer running a grinding station in the Constanta port), which have production facilities and terminals located closer to Italcementi's plants than HeidelbergCement's plants.

V.2.4.3. Commission's assessment

(169) While combined market shares, especially in the 150km Devyna catchment area, are rather high, the increments brought about by the Transaction are limited, being under [0-5]% except for the 250 km catchment area around Italcementi's Devyna plant, where it reaches [5-10]% (but in that case the Parties' combined market share would be of only [10-20]%).

(170) Cross-border trade of grey cement between Bulgaria and Romania appears to be limited. In this regard, the majority of respondents to the market investigation indicated that imports from one country to the other do not exercise significant competitive pressure[155]. Most respondents also consider that lack of appropriate infrastructure between the two countries represents an obstacle for cement sales across the border[156], making reference to the Danube as a natural border and to controls at the border as additional burden.

(171) Notwithstanding the above, concerns regarding the potential impact of the Transaction in the region were raised in the course of the market investigation.

(172) First, a number of Romanian grey cement customers expect the Transaction to have a negative impact given increased market pressure that in the Eastern border region led by Italcementi's import activities from its Devnya plant, especially after upgrading the production site and increasing its capacity in 2015. The Commission has considered these claims, and concluded however that the potential effects of the Transaction in this regard do not raise serious doubts as of its compatibility with the internal market. This finding is based on the following elements.

(i) While Italcementi's sales from Bulgarian plant in Devnya to Romania have indeed increased in the last year, they remain at low levels. Italcementi's total sales of grey cement to Romanian customers amounted to [...] kt in 2015. Estimated cement consumption for the Bucharest, and South-East regions of Romania in 2015 amounted to 2083kt[157].

(ii) Due to the capacity expansion exercise concerning its Devnya plant and the low levels of demand in Bulgaria, Italcementi considered in 2014 […]. This site, easily accessible by sea and with an estimated capacity of [...] kt[158], would

155 See responses to question 11 of Questionnaire 6 addressed to customers in the Bulgarian-Romanian border region.

156 See responses to question 21 of Questionnaire 6 addressed to customers in the Bulgarian-Romanian border region.

157 See Parties responses to request for information of 26 April 2016, submitted on 27 April 2016.

158 See paragraph 782 of the Form CO.

have facilitated additional sales opportunities in Romania. However, for reasons independent to the Transaction, this initiative was abandoned in early 2015[159]. The Commission considers that it is doubtful that Italcementi would have been able to increase substantially its cements imports into Romania over land, in the absence of import infrastructure[160].

(iii) an analysis of Italcementi's internal documents shows that its plans to increase exports from Bulgaria, following the capacity expansion of its Devnya plant, covered several countries around the Black-Sea and did not focus only on Romania[161].

(173) Second, in the course of the market investigation, a market participant raised concerns regarding the Transaction's impact on cross-border trade in the Black Sea region. According to that market participant, competitors may be discouraged from expanding into neighbouring countries and areas since, following the Transaction, HeidelbergCement will have a strong position in many areas of the Black Sea region with its production facilities in Bulgaria, Romania and Turkey. According to those claims, HeidelbergCement would be able to react to competitors' expansion plans by retaliating in their home markets.

(174) However, no evidence was provided to the Commission supporting the claims that such expansion plans indeed existed to any significant extent and that, in addition, those plans would indeed be changed or otherwise negatively affected by the Transaction.

(175) Furthermore, HeidelbergCement's internal documents show that the company closely monitors imports into Romania[162]. However, such documents do not make reference to potential reactions to expansion of competitors nor can be derived from such documents that other targeted measures against importers or expending competitors had been taken[163].

(176) Moreover the market investigation revealed increased competitive pressure at least in Romania and Bulgaria due to imports of grey cement by seaborne importers mainly from Turkey who have additional spare capacity at their terminals[164]. During the market investigation, no specific concerns were raised by the majority

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159 See Italcementi's reply to request for information of 6 April 2016, submitted on 11 April 2016.

160 See in this regard considerations on the lack of infrastructure in recital (170).

161 See document "Devnya Cement - Business Development opportunities [...]" provided by Italcementi in reply to request for information of 6 April 2016, submitted on 11 April 2016.

162 See, for example, Minutes of Commercial Meetings of CarpatCement submitted in response to questionnaire of 25 January 2016.

163 On HeidelbergCement internal documents regarding the Romanian market see reply to request for information of 20 April 2016, submitted on 25 April 2016.

164 See responses to question 23.1 of Questionnaire 6 addressed to customers in the Bulgarian-Romanian border region. See also minutes with importers of conference calls on 21 and 25 April 2016, and email of importer of 26 April 2016.

of those importers nor was any particular impact of the Transaction on their business expected[165].

(177) Against this background, the Commission finds that there are not sufficient elements to raise serious doubts in the Bulgarian-Romanian border region due to the transaction's potential impact on the expansion plans of competitors.

V.2.4.4. Conclusion

(178) For the reasons set out above, Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the grey cement markets in Bulgaria and Romania.

V.2.5. Spain

(179) Italcementi is active in Spain through its subsidiary Financiera Y Minera ("FYM") which operates in the grey cement, ready-mix concrete and aggregates businesses. FYM operates three integrated cement plants in Málaga, Añorga (San Sebastian) and Arrigorriaga (Bilbao).

(180) In contrast, HeidelbergCement does not own any grey cement facility in Spain and has limited sales of grey cement to Spanish customers. In 2014, HeidelbergCement realized the following sales in Spain: (i) [...] kt sold by HeidelbergCement's trading company to a [...] trader, [...], based in Barcelona but having the product delivered in Santander, and (ii) [...] kt of a special type of cement sold from its German plant in Geseke-Milke to [...] Spanish customers, all located close to Madrid.

(181) Accordingly, the Transaction will result in affected markets in the catchment areas around two of Italcementi's plants, which have a theoretical overlap with the port of Santander, where HC delivered its quantities of grey cement. The increments brought about the Transaction are nonetheless limited and remain below [0-5]%.[166]

Table 9 - Parties and competitors' market shares in overlapping catchment areas around Spanish plants by sales in 2014. Source: M.7744_RFI 20160401_RFI 1_Q2_ES_sales shares_plants

	Arrigorriaga		Añorga-Lugariz	
	150km	250km	150km	250km
HC	[0-5]%	[0-5]%	[0-5]%	[0-5]%
ITC	[40-50]%	[30-40]%	[40-50]%	[40-50]%
Combined	**[50-60]%**	**[30-40]%**	**[50-60]%**	**[40-50]%**
FCC Group	[20-30]%	[20-30]%	[30-40]%	[20-30]%
CRH	[10-20]%	[5-10]%	[10-20]%	[5-10]%

165 See minutes with importers of conference calls on 21 and 25 April 2016, and email of importer of 26 April 2016.

166 Capacity based market shares per catchment area around Italcementi's grey cement plants in Spain result in substantially lower market shares, due to HeidelbergCement's lack of production plants in Spain. Combined market shares around the Arrigorriaga plant are [10-20]% for the 150km and [10-20]% for 250km catchment areas. Combined market shares around the Añorga-Lugariz plant are [20-30]% for the 150km and [10-20]% for 250km catchment areas. In all cases the increment brought about by the Transaction would be [0-5]%.

V.2.5.1. The Notifying Party's arguments

(182) From a horizontal point of view, the Notifying Party puts forward that the Transaction will be no impediment to effective competition around these sites as the horizontal overlap between HeidelbergCement and Italcementi is limited. In this regard, it is argued that the Parties are not close competitors, given the fact that HeidelbergCement has no production facilities located in Spain. The Notifying Party also claims that they do not have customers in common that would be affected by a reduction in the number of suppliers given that HeidelbergCement's only client in the relevant areas is not supplied by Italcementi.

V.2.5.2. The Commission's assessment

(183) The horizontal overlap of the grey cement activities of the Parties lead to high combined market shares. However, the increments brought about the Transaction are minimal due to the absence of HeidelbergCement's physical presence in the country, and will not entail a substantive change to the dynamics of the relevant grey cement markets. The merged entity will still be constrained by competitors like CRH (Cementos Lemona, with a plant in Vizcaya), and FCC (Cementos Portland Valderrivas with sites in Santander and Navarra) whose capacity market shares in the relevant catchment areas are greater than those of the merged entity[167].

(184) Furthermore, the majority of the respondents to the market investigation indicated that they did not expect the Transaction to have any relevant impact in the grey cement markets at hand, and noted that the number of suppliers with local presence will not change following the transaction[168]. Indeed, as referred above HeidelbergCement is merely an importer in Spain.

V.2.5.3. Conclusion

(185) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to grey cement in Spain.

V.3. White Cement

(186) HeidelbergCement is active in the production and sale of white cement through its Belgian subsidiary CBR. CBR’s production of white cement was carried out at a facility in Harmignies (Belgium) until the end of 2014. White cement production was then transferred to an existing grey cement facility located in the Ghent harbour which was transformed into a white cement grinding plant. White clinker must therefore be sourced from third parties. In 2014, HeidelbergCement produced [...] kt of white cement in Belgium.

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167 In the 150km catchment area around Arrigorriaga, merged entity [10-20]%, FCC Group [40-50]% and CRH [20-30]%. In the 150km catchment area around Añorga-Lugariz, merged entity: [20-30]%, FCC Group: [40-50]% and CRH: [20-30]%. Source: M.7744_FormCO_Annex 6.III.2.-Grey cement_ES_capacity shares_plants_CONFIDENTIAL - contains business secrets.

168 See emails of market participants pertaining to market investigation concerning Spain of 13, 14 and 18 April 2016.

(187) Italcementi is active in the white cement market through four white cement plants in the EEA. ITC has an integrated white cement plant with clinker production in Rezzato (Italy), a grinding station at Guardiaregia (Italy), a grinding station near Varna (Bulgaria) and an integrated plant in Cruas (France).

Figure 8: Parties' white cement plants in the EEA. Source: Form CO, map 33

(188) On an EEA-wide basis, the market for white cement will not be affected since the combined market share will amount to [10-20]%, with the merged entity's main competitors being Aalborg-Cementir ([10-20]%), Cemex ([10-20]%), LafargeHolcim ([10-20]%), and Rolcim ([5-10]%)[169].

V.3.1.1. Market shares and concentration levels

(189) At national level, the transaction gives raise to three affected markets in Austria ([30-40]%), Belgium ([30-40]%) and France ([30-40]%).

169 Parties’ best estimates based on publicly available capacity data and based on population and cement consumption.

Table 10 - Parties' 2014 national sales market shares white cement

	Austria	Belgium	France
HeidelbergCement	[5-10]%	[30-40]%	[0-5]%
Italcementi	[20-30]%	[0-5]%	[30-40]%
Combined	**[30-40]%**	**[30-40]%**	**[30-40]%**
Cimsa	[10-20]%	[5-10]	[0-5]%
Cementir	[10-20]%	[20-30]%	[5-10]%
Buzzi	[5-10]%	[10-20]%	[0-5]%
LafargeHolcim			[40-50]%

(190) Taking into consideration catchment areas of 300 and 600km around the Parties' white cement plants, the transaction would result in affected markets in the catchment areas around Italcementi's Italian plants in Cruas[170] and Rezzato[171]. Considering catchment areas of 300km, the combined market share would be [30-40]% around Cruas (increment through HeidelbergCement of [0-5]%) and [70-80]% around Rezzato (increment through HeidelbergCement of [0-5]%). Considering catchment areas of 600km, the combined market share would be [40-50]% around Cruas (increment through HeidelbergCement of [0-5]%) and [40-50]% around Rezzato (increment through HeidelbergCement of [0-5]%).

(191) When considering market share data by capacity, the Transaction results in no increment in the 300km catchment areas around Cruas, Rezzato and Ghent II. In the respective 600km catchment areas, which are affected markets with combined market shares of [20-30]%, [20-30]% and [20-30]%, the increments are [0-5]%, [0-5]% and [10-20]%.[172]

V.3.1.2. The Notifying Party's arguments

(192) The Notifying Party claims that the Transaction will not lead to an impediment of effective competition given the limited overlaps of the Parties' activities as regards white cement and the small increments concerned[173]. It is also put forward that the Parties are not close competitors given that HeidelbergCement runs only a grinding facility in Belgium whereas Italcementi has spread white cement operations with integrated plants in Bulgaria, Italy and Southern France[174].

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170 At 300km catchment area, HeidelbergCement [0-5]%, Italcementi: [30-40]%, and merged entity: [30-40]%. At 600km catchment area, HeidelbergCement: [0-5]%, Italcementi. [40-50]% and merged entity: [40-50]%.

171 At 300km catchment area, HeidelbergCement [0-5]%, Italcementi: [70-80]%, and merged entity: [70-80]%. At 600km catchment area, HeidelbergCement: [0-5]%, Italcementi. [30-40]% and merged entity: [40-50]%.

172 See reply to request for information of 13 May 2016, submitted on 17 May 2016.

173 Form CO, paragraphs 941-943.

174 Form CO, paragraphs 944.

(193) Furthermore, a number of relevant suppliers active in the production and sale of white cement would still constrain the merged entity. These include Cementir, Buzzi, Cemex and LafargeHolcim[175].

V.3.1.3. Commission's assessment

(194) A minority of market respondents expressed negative views on the potential impact of the Transaction[176]. According to these, the white cement markets are concentrated with few available suppliers. They submit, that the Transaction would reinforce this feature and potentially result in price increases. The Commission considers nonetheless that a number of elements allow to exclude serious doubts as to its compatibility with the internal market.

(195) First, the market investigation confirmed the Notifying Party's claim according to which the Parties are not close competitors in so far as the production and sale of white cement is concerned. A vast majority of respondents indicated that competition between the Parties is limited or very limited, given their different geographic focus[177].

(196) Second, the overlap between the Parties' activities in white cement appears to be limited with moderate combined market shares at the EEA and national level. Although the combined market shares appear high in certain catchment areas drawn around the Parties' plants, and particularly in the areas around the Rezzato plant as presented in recital (190), the increments brought about by the Transaction in those catchment areas are minimal and remain below [0-5]% (and in the case of Rezzato the increment is almost negligible, amounting to [0-5]%).

(197) Third, a number of viable and relevant competitors are active in the affected markets and would exercise a competitive constraint of the merged entity post Transaction. The main competitors in the affected national markets are Cementir in all three markets, and Buzzi in Belgium, LafargeHolcim in France and Cimsa in Austria.

(198) Fourth, the majority of the market participants contacted in the course of the market investigation does not expect the Transaction to have a relevant impact in the EEA or in smaller geographic markets within the EEA[178]. Respondents point generally to the fact that the Parties are not active in the production of white cement in the same countries or local markets to explain their conclusion.

(199) Furthermore, the Commission has learnt in the course of the investigation that Italcementi has been considering plans to […] and to […]. Any such […] plans that may or may not lead to a […] in white cement capacity of Italcementi have been

175 Form CO, paragraphs 945-947.

176 See emails of market participants of 18 and 25 April 2016.

177 See responses to questionnaire Q9 – White Cement – Customers, question 14.

178 See responses to questionnaire Q9 – White Cement – Customers, question 17 and 18 responses to questionnaire Q1.

considered prior to the present Transaction, however, and are therefore not merger-specific effects[179].

V.3.1.4. Conclusion

(200) In light of the analysis set out above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition for white cement in the EEA.

V.4. Aggregates – Belgium and its surroundings[180]

(201) HeidelbergCement sells sand, gravel and crushed rock in Belgium. Sand and gravel are dredged in […] and then shipped to […] located in […] for further processing. Crushed rocks are sold from […] sites located in the centre of Belgium and in the French-Belgian border region. Internal sales account for […]% of all of HeidelbergCement's aggregates sales.

(202) Italcementi sells sand, gravel and crushed rock from two sites in Belgium, both located in the French-Belgium border region. Italcementi's aggregates business in Belgium is mostly focused on supplying Italcementi's own RMX activities in Northern France and Belgium.

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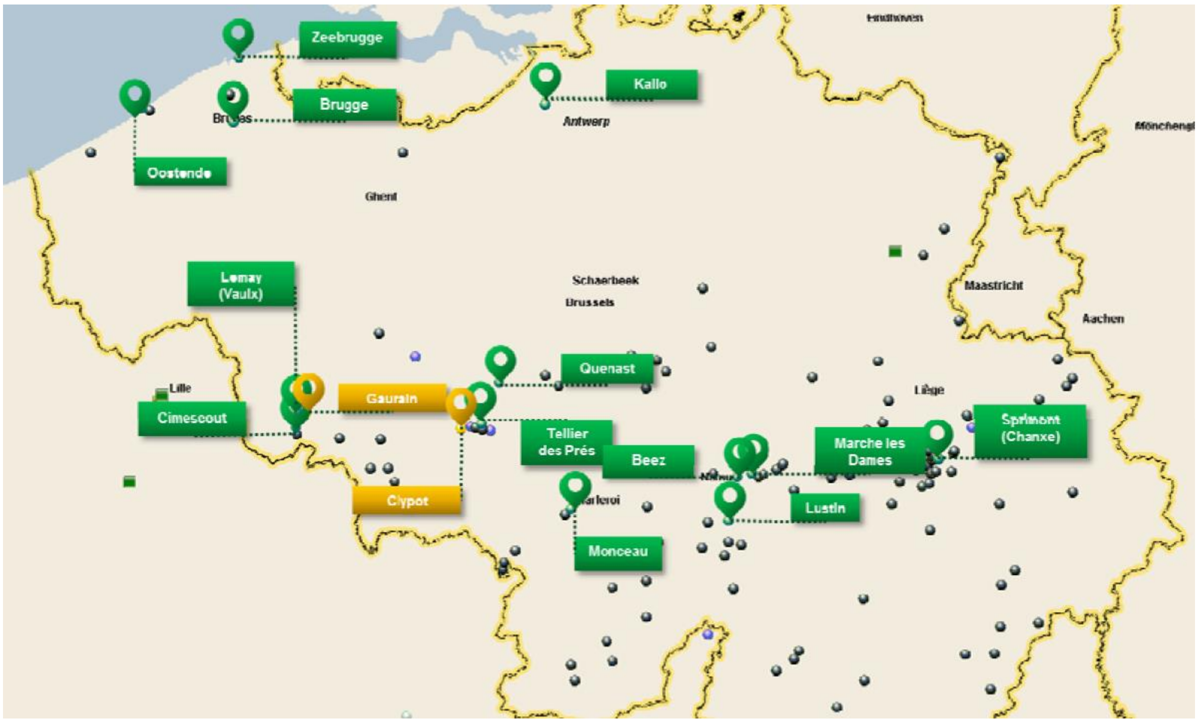
179 HC internal document of 20 January 2016 Qp2-Q54.01/ Internal ITC document of May 2015 Annex M.7744_RFI 20160125_QP3_Q6_7.03_ITC_BE_FR 12_France_Strategic Committee 20 MAY 2015 FINAL.

180 The Transaction will further lead to affected markets in France, namely in the catchment areas around ITC's plants Cayeux-sur-Mer (Usine de Chatelet: [40-50]%, Le Hourdel: [40-50]%), Le Crotoy (Eurarco: [40-250%), Haubourdin ([20-30]%) and around HC's plants in Granor Harnes ([20-30]%) and Granor Loos ([20-30]%). However, the increment is in all cases except Haubourdin, Granor Harnes and Granor Loos below [0-5]% and, thus, negligible. In all other cases, the increment will be almost entirely be eliminated by the submitted remedies removing all potential competition concerns. Therefore, the effect of the merger will not be discussed in more detail in this Decision.

Figure 9: Map of the Parties' aggregates facilities in Belgium



V.4.1. Market shares and concentration levels

(203) The Transaction will lead to affected markets in a number of catchment areas around the Parties' aggregates production facilities. Whereas in most catchment areas the combined share remains below 20%, the transaction will result in higher market shares in the catchment areas Cimescaut/Antoing, (50 km radius: [30-40]%), Brugge (50 km: [30-40]%), Zeebrugge (50 km: [30-40]%) and Gaurain (50 km: [30-40]%).[181]

181 In the light of the submitted commitments consisting of the sale of Italcementi's business in Belgium and the assessment of the overall market for aggregates, the Commission does not consider it necessary to further assess the impact on competition in Belgium also regarding the different types of aggregates. With the divestment of all aggregates sites of Italcementi there would not remain any overlap between the Parties' activities and any potential competition problem arising through the merger under any plausible market definition would be resolved.

Table 11 - Affected markets in catchment areas around relevant sites by volumes (incl. internal sales)[182] Parties' 2014 national sales market shares white cement

Plant/ Catchment area	Radius (km)	HC	ITC	Combined
Lemay	50	[10-20]%	[5-10]%	**[20-30]%**
	80	[10-20]%	[5-10]%	**[10-20]%**
Tellier des Prés	50	[10-20]%	[5-10]%	**[20-30]%**
	80	[10-20]%	[5-10]%	**[10-20]%**
Quenast	50	[10-20]%	[5-10]%	**[20-30]%**
	80	[10-20]%	[5-10]%	**[10-20]%**
Cimescaut (Antoing)	50	[10-20]%	[10-20]%	**[30-40]%**
	80	[10-20]%	[5-10]%	**[10-20]%**
Oostende	50	[10-20]%	[5-10]%	**[20-30]%**
	80	[10-20]%	[5-10]%	**[10-20]%**
Brugge	50	[20-30]%	[10-20]%	**[30-40]%**
	80	[10-20]%	[10-20]%	**[20-30]%**
Zeebrugge	50	[20-30]%	[10-20]%	**[30-40]%**
	80	[10-20]%	[5-10]%	**[10-20]%**
Gaurain	50	[10-20]%	[10-20]%	**[30-40]%**
	80	[10-20]%	[5-10]%	**[20-30]%**
Clypot	50	[10-20]%	[5-10]%	**[20-30]%**
	80	[10-20]%	[5-10]%	**[10-20]%**

V.4.2. The Notifying Party's arguments

(204) The Notifying Party submits that the Transaction would not result in conceivable competition concerns in the light of the submitted commitments. Furthermore, they submit that there will remain sufficient competitors with significant spare capacity in Belgium who would continue to exert considerable pressure on the merges entity.[183]

182 Source: Parties' best estimates based on sales data, average consumption data and population (Eurostat NUTS-3) in the relevant area.

183 Form Co, paragraph 1140-1147.

V.4.3. Commission's assessment

(205) The Commission notes, that the aggregates market in Belgium is highly fragmented. Therefore, post-transaction there remain a number of market players supplying aggregates in Belgium as can be seen from Figure 9.[184]

(206) Respondents to the market investigation did not raise substantiated concerns regarding the potential impact of the merger on the market for aggregates in Belgium and surroundings.[185]

V.4.4. Conclusion

(207) In the light of the above, the Commission considers that the transaction is unlikely to raise competition concerns. In any event, the commitments consisting in Italcementi's business in Belgium will remove practically all overlaps between the Parties' aggregate activities in the affected catchment areas in Belgium. Therefore, the Commission does not have to find whether the Transaction would raise serious doubts as to its compatibility with the internal market in relation to aggregates, as those doubts would in any case be removed by the commitments.

V.5. Ready-mix concrete ("RMX")

(208) Similar to the activities in grey cement, the activities of the Parties in ready-mix are mainly complementary from a geographical perspective in the EEA. Their activities in RMX lead to substantial overlaps in Belgium and its surroundings (see section V.5.1) as well as to much more limited overlaps along the French-German border (see section V.5.2) and in Northern Spain (V.5.3).

(209) The following sections will assess the ready-mix markets from a horizontal perspective but will also include the vertical relationship between the Parties' activities in grey cement and aggregates (upstream) and RMX (downstream).

V.5.1. Belgium and its surroundings

(210) HeidelbergCement is active in the RMX market in Belgium through 34 RMX sites which are operated by its subsidiary Inter-Beton SA. On a national basis, in 2014, HeidelbergCement sold […] million m³ of RMX. This results in a market share of approximately [20-30]%. Italcementi is active in the Belgian RMX market through 10 RMX sites, operated by its subsidiary CCB. On a national basis, Italcementi sold […] m³ of RMX in 2014 which results in a market share of approximately [5-10]%. Italcementi imports no RMX from France into Belgium. According to Italcementi, this is due to the fact that its Belgian plants close to the French border are better placed to serve Italcementi's Belgian customers in those areas.

184 The Parties main competitors in Belgium are LafargeHolcim ([10-20]%), De Cloedt ([10-20]%), Hulksens ([5-10]%), Eurovia ([5-10]%), Cermeuse ([5-10]%). Other competitors account overall for [50-60]%. Overall above 50 competitors are active in Belgium with above 70 production sites.

185 See responses to questionnaire Q8 – Aggregates – Customers in Belgium and surroundings, questions 8 and 9.

V.5.1.1. Market shares and concentration levels

(211) Based on 25km catchment areas around RMX plants, the Notifying Party identifies 33 affected markets in Belgium, and one in the French-Belgian border area. Among those 33 affected markets, the Notifying Party's market share estimates in the Form CO (Table 203) identify 10 affected markets where the combined market share would exceed 35% with an increment of at least [0-5]%[186]: Gaurain-Ramecroix, Ghislenghien, Libramont-Recogne, 2 areas around Mont-Saint-Guibert, Namur, Quenast, Roucourt, Tienen and Voorde.

V.5.1.2. The Notifying Party's arguments

(212) The Notifying Party essentially claims that the Transaction would not substantially lessen competition at national or catchment area level in view of the proposed commitments, the number of remaining RMX competitors, customers' ease of switching between RMX suppliers, and low entry barriers.

(213) Concerning the Libramont-Recogne overlap in the French-Belgian border area, which is not addressed by the proposed commitments, the Notifying Party claims that the hypothetical increment of 1% does not reflect market reality, as HeidelbergCement's Belgian plant in Libramont does not compete with Italcementi's plant in Charleville-Mézières, France. None of the RMX plants supplies RMX across the border. Thus, the overlap is theoretical only, and concerns scarcely populated areas in the Ardennes region.

V.5.1.3. Commission's assessment

(214) The Commission accepts the Notifying Party's arguments concerning the Libramont-Recogne overlap[187] and considers that this French-Belgian border overlap would not raise competition concerns in the relevant catchment area. This view is based on the limited size of the overlap in combination with the topographic and demographic reasons as invoked by the Notifying Party and confirmed by the absence of any actual RMX trade flows across the border from these plants.

(215) For the reasons set out in recitals (214) and (218), the Commission finds that the Transaction raises serious doubts as to its compatibility with the internal market in relation to RMX in Belgium.

(216) First, the merged entity will have high market shares in certain affected catchment areas. In 9 cases, the combined market share reached in the catchment area around an RMX plant will exceed 35%, with an increment of at least [0-5]%; in 4 of these cases, the combined market shares would exceed [40-50]% with a sizeable increment. Those areas are in particular the catchment areas around HeidelbergCement's RMX plants in Mont-Saint-Guibert (combined share of [40-50]%, [10-20]% increment), Namur ([40-50]%, [5-10]% increment), Quenast ([30-40]%, [10-20]% increment), Tienen ([40-50]%, [0-5]% increment), and the catchment areas around Italcementi's RMX plants in Gaurain-Ramecroix ([30-40]%, [10-20]% increment), Ghislenghien ([60-70]%, [20-30]%

186 See the Commission Decision M.7252 – Holcim / Lafarge, paragraph 292.

187 See paragraph (213) and Form CO.

increment), Mont-Saint-Guibert ([40-50]%, increment [10-20]%), Roucourt ([30-40]%, [5-10]% increment), and Voorde ([40-50]%, [20-30]% increment).

(217) Second, certain customers that responded to the market investigation, pointed out that the merger will lead to a high concentration of the RMX business and lessen competition in certain regions in Belgium, including areas where the Notifying Party reports combined market shares below 35%. These regions include Hainaut, and Brabant, and more specifically areas around Ghent, Kortrijk, Liège, Brussels, Namur, and Mons. The view that the Transaction will have an impact on RMX markets in Belgium was also expressed by some competitors that responded to the market investigation.

(218) Third, the Parties are both integrated suppliers with strong positions in the upstream markets of grey cement in Belgium, and are close competitors, as set out in section V.2.1. Accordingly, they have guaranteed access to cement input at competitive conditions which may make them stronger competitors than their independent competitors.

V.5.1.4. Conclusion

(219) For the above reasons, notably the sizeable additions to the Parties' market shares as well as significant combined market shares of the Parties, the customer feedback and the Parties' strong vertical integration in the upstream cement production, the Commission considers that the Transaction would raise serious doubts as to its compatibility with the internal market as far as RMX markets in Belgium are concerned.

(220) The Commission has also investigated whether the transaction would lead to any competition concerns in Belgium and surroundings stemming from vertical relationships between grey cement suppliers and producers of RMX as grey cement customers. However, given that the proposed commitments remove the entire overlap from the Transaction in Belgium, it is not necessary to take a position on this issue.

V.5.2. French-German border region

(221) HeidelbergCement is active in the RMX market in Germany with shareholdings in 393 RMX sites spread across the nation, including minority shareholdings.[188] However, it does not sell any RMX from its German plants to French customers[189]. In contrast, Italcementi is active in the RMX market in France through its subsidiary Unibeton which has 191 RMX sites spread across the nation,[190] while it has no sales to German customers.[191]

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188 See Annex 6.V.2 – RMX_DE_HC Plants.

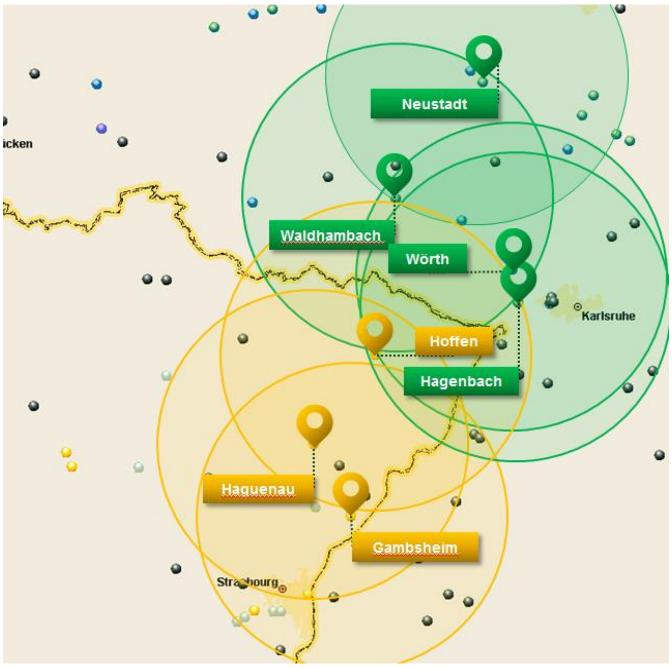
189 Form CO, paragraph 1032.

190 See Annex 6.V.2. – RMX_DE-FR_ ITC plants France.

191 Form CO, paragraph 1032.

(222) Geographic overlaps between the catchment areas of the Parties' plants in the French-German border region concern 3 Italcementi sites on the French side of the border region and 4 HeidelbergCement sites on the German side of the border.

Figure 10: Overlaps between the Parties' RMX plants in south-western Germany/France (25 km radii)[192]



(223) The market shares[193] based on geodesic overlaps within a 25km radius around relevant plants at the German-French border are as follows[194]:

Table 12 - Parties' market shares in RMX in the French-German border region

	Waldhambach	**Wörth**	**Hagenbach**	**Haguenau**	**Gambsheim**	**Hoffen**
HC	[30-40]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%	[5-10]%
ITC	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%
Combined	**[30-40]%**	**[10-20]%**	**[10-20]%**	**[10-20]%**	**[10-20]%**	**[10-20]%**

192 Form CO, Map 44.

193 If minority shareholdings in companies active in the affected RMX markets are allocated to the Parties in their entirety, the market shares in the French-German overlap region for RMX would differ. These shareholdings have been excluded because they are not controlled by HeidelbergCement pursuant to the EU Merger Regulation. If sales of RMX companies with HeidelbergCement's minority shareholdings were to be allocated to the Parties in their entirety for the affected markets, the market shares in the overlapping areas in Southern Germany would differ only for the catchment area of Italcementi's plants in Haguenau, with a combined production share of [20-30]%, but equivalent increment brought about the Transaction of [0-5]%; in Gambsheim, with a combined production share of [10-20]%, but equivalent increment brought about the Transaction of [0-5]%; and in Hoffen, with a combined production share of [20-30]%, but equivalent increment brought about the Transaction of [10-20]%, see Form CO, paragraph 1061.

194 The market shares relating to the Neustadt plant have been excluded from this table, considering that the combined market shares of both Parties lead to no increment.

V.5.2.1. The Notifying Party's arguments

(224) The Notifying Party argues that there are no horizontal overlaps in these catchment areas as the customer bases are different. The road distance from HeidelbergCement's plants to France is approximately 5 km above the average transport distance for HeidelbergCement's RMX deliveries.[195] Moreover, the Notifying Party argues that the Parties' plants in this region are small compared to those of the Parties numerous competitors such as Holcim Beton, Dyckerhoff Fertigbeton, Frischbeton, KBZ Kehler Betonzentrale, Betonwerk Renchtal, Peterbeton Rudolf Peter, Gross-th-beton, BKG-Beton Kern + Glaser, Jet beton, Fehr Beton, Leonhart, Pfordt, Sarbeton, Angermuller, Bour et Fils and EST Materiaux[196] and that they also face higher transportation burdens that hamper deliveries to France[197]. In addition, the Notifying Party maintains that RMX markets have low entry barriers, since RMX plants require rather low investments and the main raw materials for the production of RMX (grey cement and aggregates) normally can easily be sourced in the market.[198]

(225) With regard to vertical overlaps, the Notifying Party argues that the Transaction will not give rise to input foreclosure in the French-German border region with respect to RMX considering the limited market presence of the Parties in (i) the markets for aggregates (highest combined market share [5-10]%) and (ii) the market for grey cement (highest combined market share [30-40]%); consequently those markets see the presence of a number of competitors reaching individually market shares of [5-10]% and [30-40]% respectively.[199] The Notifying Party also maintains that no customer foreclosure concerns would arise by the merged entity should the Transaction be implemented given the remaining customers other than RMX producers who source cement.[200]

V.5.2.2. Commission's assessment

(226) With the exception of the catchment area around the Waldhambach plant, the combined market shares of the Parties in the French-German border are moderate. Also, the Transaction will give rise in all cases only to low or modest market share increments. Furthermore, the Parties do not sell their RMX [...] so that the Parties [...] have not been competing for the same customer base in the past.

(227) Regarding possible input or customer foreclosure, the Commission notes that in the light of the number of remaining market players on the upstream and the downstream market and the limited market power of the Parties on the relevant markets for grey cement, aggregates and RMX, the Parties will neither have the ability nor the incentive to engage in foreclosure of competitors and/or customers.

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195 Form CO, paragraph 1064.

196 Form CO, paragraphs 1065, 1068 and 1069 and table 215.

197 Form CO, paragraph 1065.

198 Form CO, paragraph 1067.

199 Form CO, paragraph 1072 and Table 216.

200 Form CO, paragraph 1176.

(228) Moreover, the respondents to market investigation did not raise any concerns with regards to the effects of the Transaction on the market for RMX in the French-German border region[201].

V.5.2.3. Conclusion

(229) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition for RMX in the French-German border region.

V.5.3. Spain

(230) HeidelbergCement is active in RMX production in Spain through its subsidiary Hanson. It operates ten plants in the Bilbao, Barcelona, Asturias and Mallorca regions. Among its RMX plants, HeidelbergCement operates two sites in Vizcaya, Basque country. These plants are located close to Bilbao, respectively in Asua and Zaramillo. HeidelbergCement is also active in the aggregates markets in Spain, with eight quarries spread in different parts of the Spanish territory.

(231) Italcementi's Spanish subsidiary FYM owns approximately 30 ready mix concrete sites, a number of which were closed because of the decrease in domestic consumption since 2007. In Northern Spain, Italcementi has three active production sites whereas two additional plants are currently closed[202]. Italcementi's active plants are located in Vizcaya, Basque Country. They are respectively located in Guernica, Mañaria and Erandio. In the South (Andalucía), Italcementi currently has 13 RMX plants. However, only two of these (near Malaga and Cadiz) are open and operated by Italcementi. Nine are rented to third parties and two are closed.

(232) The Transaction gives rise to geodesic overlaps between Italcementi's three ready-mix concrete plants in Vizcaya (Basque Country) and HeidelbergCement's two plants in the same area.

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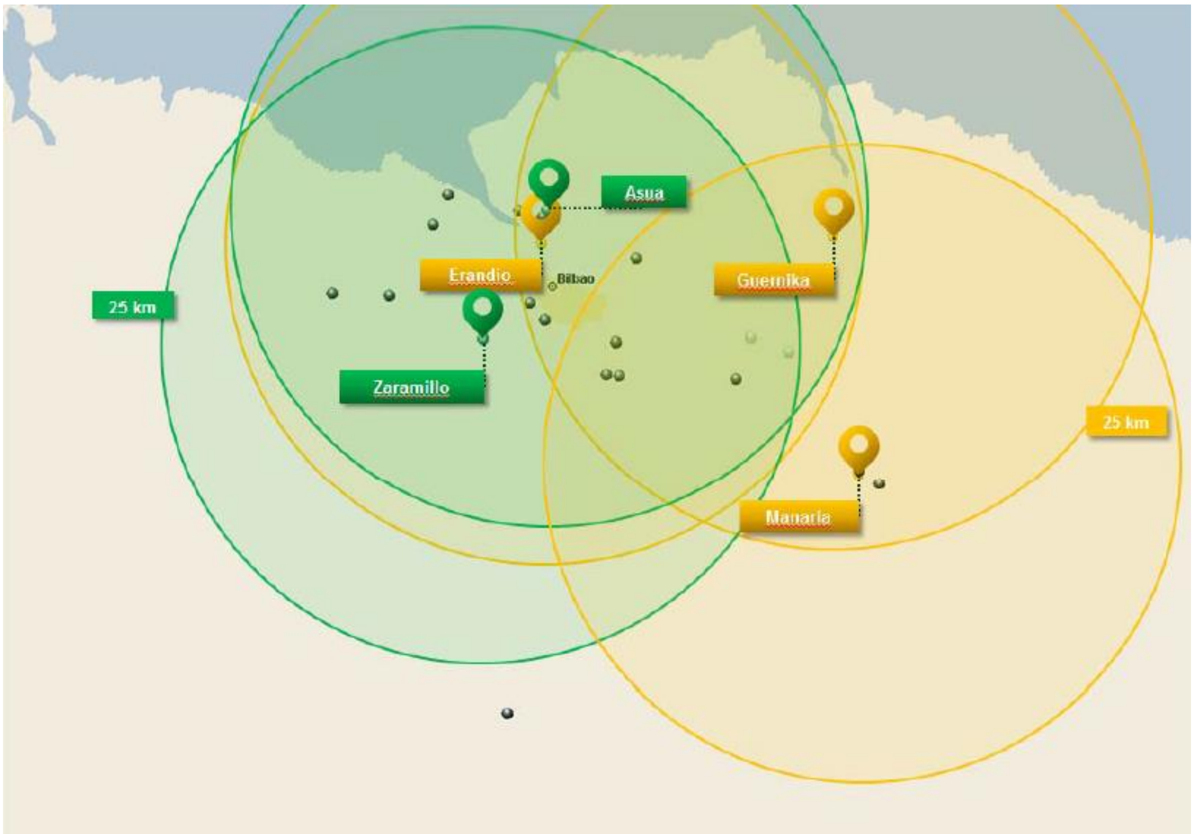
201 See responses to questionnaire Q4 – Grey Cement – Customers DE/eastern FR, question 52; See responses to questionnaire Q1 – Grey Cement – Questionnaire to Competitors, question 65.

202 According to the Notifying Party, these plants could be reactivated if there were large projects to be supplied in neighbouring areas bearing a cost not exceeding EUR 40,000 per plant. Form CO, paragraph 1082.

Figure 11: The Parties' ready-mix concrete activities in the Basque Country



(233) The market shares[203] based on geodesic overlaps within a 25km radius around the Parties' ready-mix concrete plants in the Basque result in four affected markets with market shares above 20% as follows:

Table 13 - Parties' market shares in RMX in Spain

	Asua	**Zaramillo**	**Erandio**	**Mañaria**	**Guernika**
HC	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%
ITC	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[10-20]%**

V.5.3.1. The Notifying Party's arguments

(234) From a horizontal perspective, the Notifying Party argues that the Transaction does not give rise to non-coordinated effects in those affected markets[204]. This is because the combined market shares are limited and remain always below 25%. Furthermore, the RMX industry in the Basque Country, and specifically in the Bilbao region, would be characterized by the presence of a large number of viable

203 If shareholdings of non-controlled subsidiaries active in the affected ready-mix concrete markets are allocated to the Parties in their entirety, the market shares in the overlapping areas in Northern Spain would differ only for the catchment area of Italcementi's plant in Mañaria, with a combined production share of [20-30]%, but equivalent increment brought about the Transaction of [5-10]%.

204 Form CO, paragraphs 1096 to 1101.

competitors[205], which will continue to exercise competitive constraints on the merged entity. Finally, the Notifying Party refers to low entry barriers for RMX businesses,[206] and to the absence of brand loyalty as factors supporting the absence of anticompetitive effects brought about by the Transaction.

(235) From a vertical perspective, the Notifying Party claims that the Transaction will not result in input foreclosure or customer foreclosure concerning the supply of grey cement[207].

(236) In relation to input foreclosure, the Notifying Party argues that the merged entity will not have the ability or the incentive to eliminate or reduce its supply of grey cement to companies which compete with it in the downstream RMX market. In this regard, it is put forward that there are sufficient grey cement sources in proximity to the overlapping areas. Reference is made to the grey cement plants of CRH (Cementos Lemona), and FCC (Cementos Portland Valderrivas) in Northern Spain and to the high degree of overcapacity of grey cement suppliers in Spain, allowing competitors to expand output in response to supply restrictions by the merged entity. Moreover, the Notifying Party argues that the merged entity would not have an incentive to restrict its grey cement supply to RMX competitors given the [...] utilization degree of Italcementi's cement plants in the Basque country[208]. Given that Italcementi's grey cement sales to its own RMX production sites in Northern Spain accounted only for [...] kt, restricting its supply to its RMX network would imply losing a significant part of its sales.

(237) In relation to customer foreclosure, the Notifying Party notes that the five RMX sites that the merged entity will hold in the province of Vizcaya (Basque country) will result in a market share of [10-20]% for the supply of RMX in that region. It is argued that such market presence would not allow the merged entity to limit access to relevant grey cement customers. RMX producers are numerous in the region[209] and HeidelbergCement's two RMX plants in Vizcaya sourced a total of [...]kt of

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205 The Parties refer to the following competitors per catchment area: Asua catchment area, 11 companies with 15 production sites, main competitors Arcanor, Grupo Amenabar and Hormigones vascos. Zaramillo catchment area: 11 companies with 15 production sites, main competitors Arcanor, Grupo Amenabar and Hormigones vascos. Erandio catchment area: 14 companies with 16 production sites, main competitors Lemona industrial, Hormigones vascos and Grupo Amenabar. Mañaria catchment area: 11 companies with 11 production sites, main competitors Grupo Amenabar, Hormigones Zamudio and Hormigones Euzko. Guernika catchment area: 6 companies with 7 production sites, main competitors Grupo Amenabar, Hormigones Zamudio and Aizko.

206 Ready-mix concrete plant are said to be a simple and affordable facility (with a total cost of around EUR 2-3 million), which can be installed anywhere outside urban centres in a very short timeframe. The costs would be even lower for those plants that are currently closed due to the financial crisis, but could reopen in a shorter timeframe if the market showed signs of recovery.

207 See Form CO paragraphs 827 to 834 and Replies of the Notifying Party to RFI dated 12 April 2016 submitted on 18 April 2016.

208 The Arrigorriaga plant operates at a capacity utilization rate of [...]%, while the Añorga one does so at [...]%. Grey cement demand in Spain is said to low to the point that Italcementi currently dedicates a substantial part of its production to exports to France. The Añorga plant exports [...]% of its production to France.

209 According to the Notifying Party, around 20 plants in Vizcaya and approximately 150 in the Basque country.

grey cement in 2014, which would represent [5-10]% of the overall grey cement market in Vizcaya.

V.5.3.2. Commission's assessment

(238) The Commission shares the Notifying Party's view that the combined market shares of the Parties for the ready-mix concrete markets concerned are limited. Furthermore, the majority of the respondents to the market investigation indicated that they did not expect the Transaction to have any relevant impact in the competitive dynamics of the markets at hand and confirmed the presence of a high number of competitors[210].

(239) Competition concerns can also be excluded in relation to the vertical relationship between the merged entity's grey cement and RMX activities in Northern Spain. The high levels of overcapacity at which grey cement suppliers in the region run their production sites support this finding[211]. Furthermore, the limited amounts of grey cement that its captive sales currently represent for Italcementi in comparison with its production of grey cement in the area is likely to preclude the merged entity's incentive to limit its cement output. In the course of the market investigation, none of the respondents reported to have encountered difficulties to source grey cement in the area, and the majority of them confirmed the presence of suitable alternative suppliers[212].

(240) Finally, doubts about potential customer foreclosure can also be excluded in view of the limited potential decrease of demand of approximately [...]kt of grey cement.

V.5.3.3. Conclusion

(241) For the reasons set out above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the affected RMX markets in Spain.

V.6. Other products

(242) The Parties are also active in the markets for clinker, alternative cementitious materials and alternative fuels.

(243) With regards to <u>clinker</u>, like most cement manufactures both Parties produce clinker almost exclusively for captive use. Thus, they have limited sales of clinker

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210 See emails of market participants pertaining to market investigation concerning Spain of 13, 14 and 18 April 2016.

211 According to the Notifying Party's estimates, capacity and sales values in the 150km catchment around Italcementi's plant of Arrigorriaga compare as follows: HeidelbergCement […]kt/[…]kt; Italcementi: […]kt/[…]kt; FCC Group: […]kt/[…] and CRH: […]kt/[…]kt. capacity and sales values in the 150km catchment around Italcementi's plant of Añorga compare as follows: HeidelbergCement […]kt/[…]kt; Italcementi: […]kt/[…]kt; FCC Group[…]kt/[…] and CRH: […]kt/[…]kt.

212 See emails of market participants pertaining to market investigation concerning Spain of 13, 14 and 18 April 2016.

to third parties in the EEA resulting in a market share at EEA-level below [10-20]%.[213] On a national basis, the Parties' activities do not overlap.[214]

(244) With regards to alternative cementitious materials, such as fly ash, granulated blast-furnace slag ("GBS") and ground granulated blast-furnace slag ("GGBS"), only HC is active in the sale of GBS, GGBS and fly ash in the EEA, whereas ITC does not have such sales to third parties in the EEA. On the purchasing market, the Parties' procurement activities regarding these alternative cementitious materials overlap in Belgium, France, Germany and the Netherlands leading to affected markets in Belgium, France and the Netherlands.[215] However, the increment resulting from the Transaction remains minor, namely below [5-10]%. Therefore, and in the light of the submitted commitments eliminating overlaps (i) in Belgium and the Netherlands fully and (ii) in France to an extent that there will be no affected market post-transaction, the Transaction is not likely to impede effective competition. As regards the vertical link created by the merger between HC's selling activities of alternative cementitious materials and the production of cement using such materials as an input, the Commission notes that due to the complementary activities[216] of the Parties, there are no vertically affected national markets arising from the Transaction making it unlikely that competition concerns would arise in this case.

(245) With regards to alternative fuels ("AFR"), the Parties' activities overlap only in Belgium with regard to the co-processing (co-incineration) of AFR in cement kilns. Their combined market shares reaches at most [30-40]% in the potential market for incineration of non-hazardous waste, with an increment of [5-10]%. However, it can be left open if competition problems might arise through the merger as the proposed commitments will remove all potential overlaps.

(246) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market regarding clinker, alternative cementitious materials and alternative fuels.[217]

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213 Neither HC nor ITC sell white cement clinker to third parties. Accordingly, they are not active in the white cement clinker market.

214 Italcementi sells clinker to third parties in Austria, France, Italy, Romania and Spain, while HeidelbergCement sells clinker to third parties in Germany and the UK.

215 The combined market share of the Parties on the procurement market will be respectively [70-80]% in Belgium ([0-5]% increment), [20-30]% in France ([0-5]% increment) and [60-70]% in the Netherlands ([0-5]% increment).

216 HeidelbergCement sells GBS to third parties in Germany, Spain and Poland, GGBS to third parties in the UK, and small quantities of fly ash to third parties in Estonia, Germany, Poland and the UK. However, the Parties' procurement activities only overlap in these regards in Germany, where the combined share on the procurement market is below [20-30]% and where HC had sales of GBS and fly ash of approximately […] kt, representing less than [0-5]% of the overall market for cementitious materials (GBS, GGBS and fly ash) which is estimated by the Notifying Party to be […] kt.

217 HeidelbergCement is also active in other product markets such as pre-cast concrete elements, gypsum and anhydrites, screeds and sand-lime brick always with market shares below [10-20]%.

VI. COMMITMENTS

VI.1. Framework for the assessment of the commitments

(247) Where a concentration raises serious doubts as regards its compatibility with the internal market, the Parties may undertake to modify the concentration so as to remove the grounds for the serious doubts identified by the Commission.

(248) As set out in the Commission's Remedies Notice[218], the commitments have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view.

(249) In assessing whether commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale and scope of the proposed commitments, with reference to the structure and particular characteristics of the market in which the Transaction is likely to significantly impede effective competition, including the position of the Parties and other participants on the market.[219]

VI.2. Commitments submitted by the Notifying Party

(250) In order to render the concentration compatible with the internal market, the Notifying Party has modified the notified concentration by entering into commitments.

(251) The Notifying Party submitted two successive sets of commitments in order to address the serious doubts raised by the Transaction. The first set of commitments was submitted on 29 April 2016 (the "Initial Commitments"). The Commission market tested the Initial Commitments to assess whether they are sufficient and suitable to remedy the serious doubts identified in the markets for grey cement and RMX in Belgium and its surroundings. The Initial Commitments were refined and improved by the Final Commitments (the "Final Commitments") which were submitted on 23 May 2016.

(252) The Commission considers the Final Commitments sufficient to ensure that the transaction no longer raises serious doubts as to its compatibility with the internal market. The Final Commitments are annexed to this Decision and form an integral part thereof.

VI.3. Initial Commitments

VI.3.1. Description of the Initial Commitments

VI.3.1.1. General perimeter of the divestment

(253) Through the Initial Commitments, the Notifying Party commits to divest the entire Italcementi business in Belgium centred around Italcementi's subsidiary Compagnie des Ciments Belges S.A. ("CCB") in order to remove almost the entire

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218 Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1-27).

219 Remedies Notice, paragraph 12.

overlap between the Parties' activities in the areas where competition concerns were raised. The main assets of Italcementi to be divested included:

(i) an integrated grey cement plant in Gaurain, including a yet-to-be opened limestone quarry ("Barry quarry") located at a short distance South-East of the Gaurain plant,

(ii) CCB's ten ready-mix concrete plants in Belgium,

(iii) CCB's three aggregates sites in Belgium (Clypot, Gaurain and Barry),

(iv) a stake in a limestone joint venture with with LafargeHolcim,

(v) a portion of HeidelbergCement's limestone quarry in Antoing in exchange for a portion of Italcementi's Barry quarry to be retained by HeidelbergCement and

(vi) certain sales staff of Italcementi in France.

(254) The Initial Commitments also included the divestment of (i) all intangible assets owned by CCB as well as a […] licence to the know-how owned by other companies of the ITC group which is necessary for the production of the relevant products of the Divestment Business, (ii) all necessary licenses, permits and authorisations, (iii) all contracts, agreements, leases, commitments and understandings entered into by CCB, (iv) all of CCB's customers' details and other records, including the records pertaining to customers in Germany or France which are supplied with CCB cement through other Italcementi subsidiaries, (v) all personnel, including the key personnel, and (vi) arrangements for the supply of products or services by the Notifying Party for a transitional period of up to […] years.

(255) The Initial Commitments did not include the divestment of any assets in France – other than the sales personnel mentioned in recital (253) – which are currently used by the Divestment Business to make sales to French customers. However, the Initial Commitments included the option for the Divestment Business to continue supplying (i) cement and aggregates to the ready-mix concrete plants of Italcementi's French subsidiary Unibeton which are currently supplied by CCB, and (ii) cement to Italcementi's French subsidiaries for on-sale to third party customers, in both cases for a period of up to […] years.

VI.3.1.2. Specific commitments concerning future limestone supply

(256) Integrated grey cement plants rely on the input of limestone which is burnt and ground to produce cement. To manage the joint exploitation of the available limestone reserves in the area around its Gaurain plant, Italcementi entered into the joint venture Carrières du Tournaisis S.C.T. S.A.("SCT") with LafargeHolcim to jointly exploit (i) Italcementi's Gaurain quarry which is now depleted, (ii) LafargeHolcim's Milieu quarry and (iii) at a later stage Italcementi's Barry quarry. All quarries are located at short distance to the Gaurain plant. Italcementi holds a […]% shareholding and LafargeHolcim a […]% shareholding in SCT.

Figure 12: Map of the quarries relevant for the Divestment Business

[…]

(257) The Gaurain plant which the Notifying Party commits to divest is currently supplied with cement-grade limestone from the Mileu quarry. The Milieu quarry currently provides LafargeHolcim with [...] for its [...] operations and Italcementi with [...] and [...] for its Belgian operations. In contrast, the Barry quarry has not yet been opened up for exploitation. According to the agreements between Italcementi and LafargeHolcim, Italcementi's subsidiary CCB has the right to extract up to [...] million tons of limestone from the Milieu quarry. In exchange, LafargeHolcim has the option to [...].

(258) The Milieu quarry with its reserves of approximately [...] million tons of cement grade and aggregates grade limestone may be depleted as early as [...] if exploitation continues at current rates.

(259) Italcementi's Barry quarry provides for [...] considerable reserves of cement grade and aggregates grade limestone estimated at [...] million tons. The extraction of limestone from the Barry quarry will, however, require lengthy and costly preparatory works. The Parties estimate the necessary investment to open the Barry Quarry at up to [...] million EUR over [...] years. Italcementi had initially committed to start exploiting its Barry quarry and to supply LafargeHolcim with aggregates-grade limestone as of [...]. Yet, due to project postponements, Barry is currently not expected to start operating before [...].

(260) In order to prevent that the purchaser will face a shortage of limestone for its own production and to enable the purchaser to honour its commitments towards LafargeHolcim the Notifying Party committed to divest (i) the […]% stake in SCT owned by Italcementi and (ii) a portion of HeidelbergCement's Antoing quarry – which is adjacent to the Milieu quarry – with reserves of [...] million tons of limestone, of which approximately [...] million tons of cement-grade and [...] million tons of aggregates-grade limestone. In return, HeidelbergCement would retain a portion of the Barry quarry equivalent in reserves to the divested portion of the Antoing quarry.[220]

(261) The substitution of limestone volumes from the Barry quarry through volumes from the Antoing quarry as well as the inclusion of that part of the Antoing quarry in the operations of the SCT joint venture requires prior approval by LafargeHolcim […]. In order to avoid a delay in the divestment due to the lack of consent from LafargeHolcim, the Notifying Party committed not to close the transaction until one of the two following conditions is met:

(i) The Notifying Party presents a binding statement of a duly appointed representative of LafargeHolcim which confirms that CCB can fulfil its obligations to sell [...] to LafargeHolcim with [...] from the portion of the Antoing quarry to be divested to the Purchaser and that the operations of SCT can be extended to this part of the Antoing quarry, and the Commission has formally confirmed that LafargeHolcim's statement meets those requirements; or

(ii) the Notifying Party has entered into a final binding sale and purchase agreement with a purchaser, the Commission has approved the purchaser and the terms of sale and the Notifying Party has provided the Commission with

220 Clause 6(d), Schedule A, clause 1(a) and Schedule A, clause 3 of the Initial Commitments.

sufficient comfort that the purchaser has access to limestone suitable for cement production to run the Gaurain plant at full capacity for [...] years (taking into account CCB's obligations towards LafargeHolcim under the [...]).[221] The [...] is the joint venture agreement between LafargeHolcim and Italcementi concerning SCT.

VI.3.2. Assessment of the Initial commitments

(262) As set out in sections IV and V, the Commission concluded that the Transaction raised serious doubts as to its compatibility with the internal market regarding grey cement and RMX in the relevant catchment areas in Belgium and surroundings.

(263) On the basis of the information provided by the Notifying Party, the Commission does not consider that the Initial Commitments could fully remove such serious doubts due to remaining concerns regarding the viability of the Divestment Business and in particular its access to limestone reserves.

VI.3.2.1. Suitability to remove the identified competition concerns

(264) As regards the overlaps of the Parties' activities in grey cement and RMX in Belgium and surroundings, the Initial Commitments included the divestment of the entirety of Italcementi's operations in Belgium.

(265) That divestment would eliminate any horizontal overlap of the activities of the Parties in Belgium and the Netherlands since Italcementi has previously made all of its sales in Belgium and in the Netherlands from its plants in Belgium. Therefore, the divestment would eliminate the entire overlap between the Parties' activities at the national level in Belgium and the Netherlands.

(266) At the catchment area level, there would remain some catchment areas in the region with a market share increment post-divestment due to remaining overlaps with the catchment areas of Italcementi's plants in France. However, the Parties' combined market shares and market share increments in such markets would be limited post-divestment.

Table 14 - Sale shares in catchment areas around plants in Belgium post-divestment

	Ghent/Antoing		**Gaurain**		**Lixhe**	
	150km	**250km**	**150km**	**250km**	**150km**	**250km**
Divestment Business	[10-20]%	[5-10]%	[10-20]%	[5-10]	[5-10]%	[5-10]%
HC	[30-40]%	[20-30]%	[30-40]%	[20-30]%	[20-30]%	[20-30]%
ITC	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%
Combined	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[20-30]%**	**[30-40]%**

221 Clause 3 of the Initial Commitments.

Table 15 - Sale shares in catchment areas around plants in the Netherlands post-divestment

	Maastricht		Ijmuiden		Rotterdam	
	150km	**250km**	**150km**	**250km**	**150km**	**250km**
Divestment Business	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%
HC	[30-40]%	[20-30]%	[50-60]%	[30-40]%	[40-50]%	[30-40]%
ITC	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Combined	**[30-40]%**	**[30-40]%**	**[50-60]%**	**[30-40]%**	**[40-50]%**	**[30-40]%**

(267) The Notifying Party submitted that in the French-Belgian border region there would remain five or more grey cement suppliers available after the divestment.[222]

(268) As regards RMX, all the overlaps between the plants of the Parties in Belgium would be eliminated. The remaining cross-border overlap in the catchment area of HeidelbergCement's Belgian RMX plant in Libramont-Recogne with Italcementi's French RMX plant Charleville-Mezières does not raise any competition concerns as assessed in paragraph (213).

(269) The vast majority of the market participants who replied to the market test considered that the Initial Commitments were sufficient to remove any competition concerns raised by the Transaction.[223]

(270) On that basis, the Commission considers that the divestment of Italcementi's activities in Belgium as suggested by HeidelbergCement in the Initial Commitments could sufficiently remove the overlaps between the Parties' activities in Belgium and surroundings.

(271) However, the Commission finds that the Initial Commitments would not be fully sufficient to render the Transaction compatible with the internal market due to concerns about the viability of the Divestment Business.

VI.3.2.2. Divestiture of a viable and competitive business

(272) The Commission considers that there are a number of factors which indicate that the Divestment Business would be a viable and competitive business in certain respects:

(i) The Divestment Business has been operating profitably over the past years, generating an EBITDA of EUR […] million in 2015 and 2014 respectively according to the Notifying Party. That assessment does not include the margins recorded by other Italcementi entities for the sales of the Divestment Business' cement and aggregates in France. According to the Notifying Party, those margins could increase the EBITDA by EUR […] million.[224]

222 The only exception is one area in the northern Champagne-Ardenne region where the Transaction would bring about a reduction from five to four grey cement suppliers. That area accounts for less than 1% of the relevant 150km catchment area with a low population of 4,580 inhabitants […].

223 See responses to Market Test questionnaire to Competitors – M1, question 1, and Market Test questionnaire to Customers – M2, question 1.

224 Form RM, paragraphs 85 and 86.

(ii) The plants included in the Divestment Business are at least similar to the merged entity's average plant in terms of efficiency. The Gaurain plant is the newest and largest production plant among the Parties' facilities in the relevant area with a substantial nominal clinker capacity of […] kt and a nominal cement grinding capacity of […] kt. It produces a broad product portfolio, including […] grey cement products.

(iii) The Divestment Business maintains its existing vertical integration in Belgium through the divestment of CCB's entire RMX and aggregates operations in Belgium.

(iv) The Divestment Business comprises all supplier and customer relationships, existing permits, licences and authorisations of CCB that are necessary to operate the business within a short time.

(v) The Divestment Business will include the management as well as the production and sales employees of CCB as well as the most important administrative functions, including procurement, logistics, payroll, and customer relations. In addition, HeidelbergCement will provide the Divestment Business with transitional support agreements if required by the Divestment Business, for a maximum period of […] years.

(273) However, the Commission has doubts as to the viability of the Divestment Business with regard to certain elements and considers that the Divestment Business' access to limestone input (see section VI.3.2.2.a) and the carve-out issues resulting from the lack of divestment of French Italcementi assets (see section VI.3.2.2.b) should be further assessed.

VI.3.2.2.a. Access to limestone input

(274) Access to sufficient limestone reserves is essential for integrated grey cement plants. As set out in section VI.3.1.2, the Gaurain plant currently [...] cement-grade limestone from the […] quarry, owned by […], which will be depleted in the short term, whereas the opening of the Barry quarry has not yet been started and requires considerable investments. That situation could lead to uncertainty whether the Notifying Party will be able to find a purchaser who will make the necessary investments in the Barry quarry and whether the Commission will be able to conclude with sufficient certainty that the purchaser will follow through such significant investment plans in the long run.

(275) Against that background, the Commission considers that the inclusion of the portion of the Antoing quarry (in exchange for an equal portion of the Barry quarry) is in principle a suitable safeguard to ensure the Divestment Business' access to limestone. According to the Notifying Party, the purchaser would have to invest approximately EUR [...] over a period of [...] to start excavation of that quarry.[225] The portion of the Antoing quarry adds [...] million tons of limestone – of which [...] million tons are cement-grade limestone – which (i) provide the Gaurain plant with additional reserves so that limestone extraction in Barry can be significantly delayed and (ii) allow the Divestment Business to [...][226]. In addition,

225 Form RM, paragraph 10.

226 […].

once opened, the Barry quarry will provide additional reserves of [...] million tons of limestone which, according to the Notifying Party, is sufficient to satisfy the Gaurain plant's requirements for at least [...] additional years.[227]

(276) However, that solution requires cooperation from LafargeHolcim and is therefore contingent on third party rights. To avoid any problem in that respect, the Notifying Party committed not to close the transaction until an agreement with LafargeHolcim has been found on that matter. It also committed not to change the JV agreement between Italcementi and LafargeHolcim without prior approval of the Commission. Nevertheless, those provisions do not guarantee that an agreement with LafargeHolcim will be found. The implementation of the Initial Commitments could therefore lead to considerable uncertainty and delays for the sale of the Divestment Business.

(277) Therefore, to avoid such uncertainties, the commitments need to include sufficient safeguards also for the scenario in which the Divestment Business needs to open the Barry quarry in the short term with the ensuing considerable investments. Such investments would not only be necessary but also urgent. On the one hand, the Divestment Business would have to avoid a shortage of limestone for the Gaurain plant if limestone supplies from the […] quarry are exhausted before the corresponding material is available from the Barry quarry. On the other hand, the Divestment Business would need to start supplying LafargeHolcim with [...] from Barry as early as [...] under the [...].

(278) The Initial Commitments contain an up-front buyer clause for that scenario according to which the Notifying Party commits to provide the Commission, before closing the Transaction, with sufficient comfort that the purchaser has access to limestone suitable for cement production to run the Gaurain plant at full capacity for [...] years (taking into account CCB's obligations towards LafargeHolcim under the [...]). However, that provision is not sufficient to address the Commission's concerns for two main reasons.

(279) First, the time horizon covered by that clause appears short. The cement industry is characterized by a long-term perspective on investments due to the high capital expenditures in the industry. This is illustrated by the investment cycle for the full development of the Barry quarry to ensure limestone supplies for the Gaurain cement plant. Significant investments, estimated at around EUR [...] million spread over more than [...] years, have been foreseen with the objective of extending the cement operations in Gaurain by up to [...] years, or possibly more.[228]

(280) Second, and more importantly, the clause leaves unclear how such access would need to be ensured. In particular, it leaves open if such access would have to be provided through opening the Barry quarry or through using the purchaser's other limestone reserves or if it would be sufficient if such access would be provided through other means, such as a long-term supply agreement with the merged entity. If the purchaser was not obliged to open the Barry quarry, limestone supply in the region could be insufficient in the medium to long-term, thereby affecting the

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227 Form RM, paragraph 10.

228 Reply to RFI of 130416 - Annexes qu 6.7z/General Description Report - 01.12.2014/Annexes/03 Machinery and Material Flows.

viability and competitiveness of the Divestment Business. Moreover, a potential supply agreement with the merged entity would create a permanent commercial link between the Notifying Party and the purchaser in relation to access to an essential input. Such a link could have adverse effects on competition between the purchaser and the merged entity as the purchaser would depend on the merged entity and its incentives to compete with the merged entity may be limited. Furthermore, the clause does not contain safeguards that such access would need to be at competitive terms.

(281) Therefore, the Commission is not able to conclude with certainty that under the scenario where the purchaser has not agreed to include the portion of the Antoing quarry in the SCT joint venture with LafargeHolcim, the purchaser would make the required investments in opening the Barry quarry which would be the only way to ensure the medium to long-term competitiveness and viability of the Divestment Business.

(282) The Commission thus considers that the Initial Commitments are not sufficient in ensuring the competitiveness and viability of the Divestment Business in terms of access to limestone input.

VI.3.2.2.b. Carve-out issues: French assets currently used by the Gaurain plant

(283) The Divestment Business also sells considerable volumes to France which represented […]% of its cement sales and […]% of its aggregates sales in 2015.[229]

(284) As regards grey cement, approximately […] of CCB’s deliveries to France ([…]) are made directly to third party customers located in North-Eastern France. […] of CCB’s sales to France ([…]) are captive sales to the Italcementi group. Those captive sales are made to:

(i) Italcementi’s French RMX subsidiary Unibeton, and

(ii) Italcementi's French subsidiary Calcia, which distributes CCB's grey cement in France through its Gennevilliers and Le Havre terminals[230] to serve third-party customers mostly located in North-Eastern France and Île de France.

(285) As regards aggregates, approximately […] of CCB’s deliveries to France ([…]) are made directly to third party customers located in North-Eastern France. […] of CCB’s sales to France ([…]) are captive sales to Italcementi’s French RMX subsidiary Unibeton.

(286) The Initial Commitments include the transfer of the contact details of all customers located in North-Eastern France to the Divestment Business.[231] Moreover, at the purchaser’s request, the Notifying Party would transfer certain sales personnel

[229] CCB’s grey cement sales to French customers amounted to […] kt out of total sales of […] kt in 2015; CCB’s aggregates sales to French customers amounted to […] kt out of total sales of […] kt in 2015.See "Project Atomium. Information Memorandum", page 12.

[230] The […] terminal is owned by […] subsidiary […]. While […] continues to own and manage this terminal and to use it for imports, Calcia has a right to use […]. This is based on […] between Calcia and […] for […].

[231] Schedule A, clause 1 e of the Initial Commitments.

currently employed by Italcementi's French subsidiaries and responsible for sales of grey cement and aggregates from CCB's production site to French customers.[232] The Notifying Party would also use its best efforts to obtain the consent of the existing third-party customers in France which are currently directly served from the assets of the Divestment Business to a transfer of their ongoing contracts to the Divestment Business.

(287) Finally, the purchaser would also be given the option to enter into transitional supply agreements for the sale of grey cement and aggregates to Unibeton and Calcia for a period of up to […] years. The conditions of the agreements shall be at least as favourable as the conditions of the current intra-group arrangements.[233]

(288) The Notifying Party would however retain the following assets located in France that are currently used (partially or fully) by the Gaurain plant for its French sales (the "French assets"):

(i) the French RMX plants of Italcementi's subsidiary Unibeton, currently (partially or fully) served with cement and aggregates from the Divestment Business,

(ii) a cement terminal in Gennevilliers, near Paris, currently partially[234] used by the Divestment Business and

(iii) the contract with […] under which Calcia has a right to use the […] terminal facility to sell cement of the Divestment Business to […] and to […] entities[235].

(289) Taken together, the sales through the French assets generated EUR […] million EBITDA which represents […]% of the Divestment Business' EBITDA. While at […]% the EBITDA generated through the French assets represents a rather limited part of the Divestment Business' overall EBITDA, the Commission has nonetheless verified that excluding the French assets from the Divestment Business would not impair the viability and competitiveness of the Divestment Business.

232 Schedule A, clause 1 f of the Initial Commitments.

233 Clause 7 of the Initial Commitments.

234 Gennevilliers stored in 2015 […]kt originating from […]. See reply to questions of 21 March 2016 submitted by the Parties on 11 April 2016, question 8.a.

235 The […] terminal represents […] of the sales made by CCB to Calcia (besides those directed to North-Eastern France). In 2015, out of […] kt, […] kt were stored in […] and […] kt in the Gennevilliers terminal. See reply to questions of 21 March 2016 submitted by the Parties on 11 April 2016, question 8.a.

(290) According to the Notifying Party, not including the French assets in the Divestment Business would have no appreciable effect on the viability and competitiveness of the Divestment Business. In this regard, the Notifying Party puts forward mainly the following arguments:[236]

(i) […] of CCB's sales into France go to external customers whose details and any existing contracts would be fully transferred to CCB. According to the Notifying Party, the profitability of these sales post-divestment would be higher than at present, given that that Italcementi's French subsidiary, Calcia, currently retains […] of the profits of CCB's French sales. Post-divestment, these profits would fully accrue to CCB […].

(ii) For CCB's remaining cement sales into France, currently supplied intra-group, the buyer would be offered flexible transitional supply agreements for a period of up to […] years. These agreements would provide sufficient time for the purchaser to decide on its appropriate strategy, which could easily rent or build its own storage space close to the Paris region and find new customers in France, Belgium or elsewhere in order to offset this loss of volumes

(iii) According to the Notifying Party's estimates, independent non-integrated RMX suppliers account for approximately 50% of the French RMX market. CCB would thus quickly be able build up a customer base. Moreover, a potential loss of the French sales would increase CCB's incentives to compete more vigorously in France and in Belgium.

(iv) Gaurain's plant is the best-placed among the companies of Italcementi for serving Unibeton's RMX plants in Northern France. According to the Notifying Party, it is therefore highly likely that after the expiration of the transitional agreements these plants would continue to buy grey cement from CCB.

(v) Even if at the expiration of the transitional supply agreements, all current internal sales to other Italcementi companies in France were to be fully lost and could not be offset by sales to other customers, the Divestment Business would still remain highly profitable

(291) The feedback received from competitors and potential purchasers during the market test was partially negative on this issue. The respondents raised the concern that excluding the French assets could lead to the loss of a secured outlet of cement for the Divestment Business which – if of a significant scale[237] – could harm the viability and competitiveness of the Divestment Business. However, an analysis of the comments of the respondents made in the written questionnaires and in follow-up calls and emails to the Commission showed that the concerns do not go as far as questioning the competitiveness and viability of the Divestment Business as such

[236] See Form RM, paragraphs 24-27. Reply to questions of 21 March 2016 submitted by the Parties on 11 April 2016, question 6 to 9. Follow-up submission on results to commitments market test submitted on 17 May 2016. Presentation submitted in the course of State of Play meeting of 22 April 2016.

[237] The figures regarding the volumes of sales and concerned EBITDA were not disclosed to market test participants for confidentiality reasons.

but relate rather to the attractiveness of the Divestment Business and its valuation in a sales process.[238]

(292) Taking into account the Notifying Party's arguments, the results of the market test and the fact that the sales through the French sales represent a rather limited part ([…]%) of the Divestment Business' EBITDA, the Commission concludes that the exclusion of the French assets currently used for sales by the Divestment Business does not impair the competitiveness and viability of the Divestment Business.

VI.3.2.2.c. Conclusion on the divestment of a viable and competitive business

(293) In the light of the assessment set out in sections VI.3.2.2.a, the Commission concludes that the access to limestone of the Divestment Business was not sufficiently secured under the Initial Commitments and that therefore concerns remain as to the viability and competitiveness of the Divestment Business.

VI.3.2.3. Potential purchasers

(294) The requirements for the purchaser of the Divestment Business set out in the Initial Commitments correspond to the standard requirements contained in the model text for divestiture commitments of the Commission.[239] They require, in particular, that (i) the purchaser must be independent of and unconnected to HeidelbergCement, (ii) the purchaser must have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and competitive force, and (iii) the acquisition by the purchaser must not be likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the commitments will be delayed.[240]

(295) In their replies to the Commission's market test, the large majority of the competitors who expressed an opinion on the question whether the Divestment Business was sufficiently interesting to attract suitable purchasers indicated that this was indeed the case.[241] The Commission received tentative expressions of interest from 7 potential purchasers in the course of the market test all of them being industry buyers.[242] This indicates that the Divestment Business is likely to be sufficiently attractive to generate interest in the market.

(296) Notwithstanding the above and given the relevance of the required long term investments in the Barry quarry, the Commission considers that the requirements in relation to the purchaser's financial resources, expertise and incentives are not sufficiently clear, as they do not specify that, when assessing the suitability of potential purchasers, the Commission shall, in particular, take into account the Divestment Business' long-term access to adequate limestone reserves.

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238 See responses to Market Test questionnaire to Competitors – M1, question 4 and follow-up calls with and emails received from certain respondents of 18 and 17 May 2016.

239 Paragraph 17 of the model text, available at http://ec.europa.eu/competition/mergers/legislation/template_commitments_en.pdf.

240 Clause 17 of the Initial Commitments.

241 Responses to Questionnaire R1 – Market Test of the Commitments – Competitors – Question 11.

242 Responses to Questionnaire R1 – Market Test of the Commitments – Competitors – Question 12.

VI.3.3. Conclusion on the Initial Commitments

(297) On the basis of the above, the Commission concludes that the Initial Commitments could not fully remove the identified serious doubts due to concerns about the viability and competitiveness of the Divestment Business and informed the Notifying Party accordingly.

VI.4. Final Commitments

(298) On 23 May 2016, the Notifying Party submitted Final Commitments, replacing the Initial Commitments, aimed at addressing the shortcomings identified with regards to the Initial Commitments.

VI.4.1. Description of the Final Commitments

(299) The Final Commitments have the same content as the Initial Commitments, except for the limited changes listed in paragraphs (300) and (301).

(300) The main change[243] in the Final Commitments concerns the conditions under which the Parties will be able to close the Transaction in the scenario where the purchaser has not found an agreement with LafargeHolcim to include the portion of the Antoing quarry in the SCT joint venture with LafargeHolcim.

(301) Instead of providing the Commission with sufficient comfort that the purchaser has access to limestone suitable for cement production for […] years, the Notifying Party commits to include in the sale and purchase agreement with the purchaser an appropriate incentive scheme to ensure that the Purchaser will open the Barry quarry. To that end, the Notifying Party commits to finance […] up to a maximum amount of […] million EUR – unless another kind of incentive scheme is negotiated with the Purchaser and approved by the Commission.[244]

(302) The Final Commitments also clarify that should an agreement with LafargeHolcim not be found, the Commission may approve the sale of the Divestment Business without the portion of the Antoing quarry if the Divestment Business includes the entire Barry quarry instead and if that does not affect the viability and competitiveness of the Divestment Business after the sale.[245] This addresses the potential situation where, without an agreement with LafargeHolcim, including the portion of the Antoing quarry is of limited use to the Divestment Business.

(303) Furthermore, the Notifying Party commits not to amend or abandon the agreed incentive scheme without having obtained the Commission's formal approval.[246]

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243 Other minor changes were introduced in relation to the following matters: (i) the standard for the Commission's assessment of any changes of the JV agreement between Italcementi and LafargeHolcim, which according to the Final Commitments should verify whether the changes affect the viability or competitiveness of the Divested business; (ii) the procedure according to which the Commission will approve (a) any agreement reached by the Notifying Party and LafargeHolcim regarding limestone supply, and (b) any changes made to the JV agreement between LafargeHolcim and Italcementi and (iii) the identity of several of the employees considered part of the key personnel.

244 Clause 3(2)(c) of the Final Commitments.

245 Clause 18 of the Final Commitments.

246 Clause 3(2)(c) of the Final Commitments.

VI.4.2. Assessment of the Final commitments

(304) The Final Commitments address the shortcomings of the Initial Commitments which the Commission had identified. Consequently, the Commission did not have to carry out a further market test of the Final Commitments.

(305) The inclusion of an incentive scheme in the sale and purchase agreement will make it sufficiently likely that the purchaser will start the opening of the Barry quarry in a timely manner. The inclusion of the incentive scheme will increase the valuation of the Divestment Business and therefore presumably increase the purchase price paid by the purchaser. To re-coup part of the payment of the purchase price, the purchaser will have to start and follow through with the opening of the Barry quarry. In this case, the purchaser would be able to exploit its own quarry without having to rely on the Parties' or other third party grey cement supplies.

(306) In addition the Final Commitments contain a clarification that the Commission shall take the Divestment Business' long-term access to adequate limestone reserves into particular account when assessing the suitability of potential purchasers.[247]

VI.4.3. Conclusion on the Final Commitments

(307) For the reasons outlined above, the Final Commitments entered into by the Notifying Party are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market.

(308) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with internal market.

(309) The fulfilment of the measures that give rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission’s decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(310) In accordance with the basis distinction between conditions and obligations, the commitments in section B of the Final Commitments constitute conditions attached to this Decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Final Commitments constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market. Accordingly, the Decision not to raise objections is made conditional on full compliance by the Notifying Party with Section B of the Final

[247] Clause 17 of the Final Commitments.

commitments and with the remaining sections of the Final commitments which constitute obligations on the Parties.

(311) Therefore full text of the Final commitments is attached as Annex to this Decision and forms an integral part of it.

VII. CONCLUSION

(312) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in sections B of the commitments annexed to this Decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(signed)
Phil HOGAN
Member of the Commission

23/05/2016

Case M.7744 - HeidelbergCement AG/Italcementi

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), HeidelbergCement AG (the "***Notifying Party***") hereby enters into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to removing the Commission's doubts as to the compatibility of the acquisition of Italcementi S.p.A. ("***Italcementi***" and, together with the Notifying Party, the "***Parties***") by the Notifying Party (the "***Concentration***") with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

For the avoidance of doubt, these Commitments are entered into solely with a view to obtain clearance by way of a Decision pursuant to Article 6(1)(b) of the Merger Regulation. The Commitments thus become null and void should the Commission decide to adopt a decision under Article 6(1)(c) of the Merger Regulation.

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

   Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

   Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 6 (a), (b) and (c) and described more in detail in the Schedule A, as well as the Quarry.

   Barry Quarry: the quarry owned by CCB and located in Barry, Belgium.

   CCB: Compagnie des Ciments Belges S.A., with headquarters in Grand Route, 260, B-7530 Gaurain-Ramecroix, Belgium.

Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

Closing Period: the period of […] months from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

[…]: The contract entered into by CCB, Holcim Granulats S.A., Holcim Belgique S.A. and Ciments Français S.A. ("**Ciments Français**") on […] […], and subsequently amended on […] […] for the creation of SCT and the exploitation of the Milieu, Barry and Gaurain quarries.

Divestment Business: the business or businesses as defined in Section B and in the Schedules A and B which the Notifying Party commits to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Party and who has/have received from the Notifying Party the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […] months from the Effective Date.

Hold Separate Manager: the person appointed by the Notifying Party, or by Italcementi as instructed by the Notifying Party, for the ITC Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Interim Period: the period from the Effective Date until Closing.

ITC Divestment Business: the Divestment Business as defined in section B, paragraph 6 (a), (b) and (c) of the Commitments and described in more detail in Schedule A.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the ITC Divestment Business, as listed in Schedule A, including the Hold Separate Manager.

LafargeHolcim: LafargeHolcim Ltd., with headquarters in Hagenholzstrasse 85, Zurich, 8050, Switzerland, as well as any of its subsidiaries including Holcim Granulats S.A. and Holcim Belgique S.A.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Party, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Party and the undertaking that is the target of the concentration.

Personnel: all staff currently employed by the ITC Divestment Business, including staff seconded to the ITC Divestment Business, shared personnel as well as the additional personnel listed in Schedule A.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 17 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Quarry: the part of the Divestment Business as defined in section B paragraph 6(d) and described in more detail in Schedule B.

Schedule A: the schedule to these Commitments describing in more detail the ITC Divestment Business.

Schedule B: the schedule to these Commitments describing in more detail the Quarry.

Schedules: Schedules A and B.

SCT: Société des Carrières du Tournaisis S.C.T. S.A., with headquarters in Grand-Route, 19, 7530 Tournai, Belgium.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] month from the end of the First Divestiture Period.

Section B. The commitment to divest and the Divestment Business

<u>Commitment to divest</u>

2. In order to maintain effective competition, the Notifying Party commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18 of these Commitments. To carry out the divestiture, the Notifying Party commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Notifying Party has not entered into such an agreement at the end of the First Divestiture Period, the Notifying Party shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph **Error! Reference source not found.** in the Trustee Divestiture Period.

3. (1) The Concentration shall not be implemented before
   (a) the Notifying Party has presented a binding statement of a duly appointed representative of LafargeHolcim to the effect that it confirms that (i) CCB can fulfill

its obligations to […] and that CCB is therefore not obliged to […], and that (ii) the operations of SCT can be extended to the Quarry; and

(b) the Commission has confirmed that LafargeHolcim's statement fulfills the requirements set out in (a) above. For this purpose, the Notifying Party shall submit a reasoned approval request, including a copy of LafargeHolcim's statement within one week after its reception to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the statement complies with the requirements set out in lit (a) above and shall invite the Commission to verify that. The Notifying Party further commits that any amendment to the […] and its Annexes agreed in the context of its negotiations with LafargeHolcim shall be conditional on the approval of the Commission. The Notifying Party shall submit a fully documented and reasoned proposal, including a copy of any amendment of the […] within one week after its reception to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate that the amendment does not negatively affect the viability or competitiveness of the Divestment Business and shall invite the Commission to verify that.

(2) The Notifying Party further commits that, in case it does not present a statement from LafargeHolcim as set out in sec. 3.(1)(a) above, the Concentration shall not be implemented before

(a) the Notifying Party, ITC or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business;

(b) The Commission has approved the purchaser and the terms of sale in accordance with paragraph 18; and

(c) The sale and purchase agreement provides for […] to ensure that the Purchaser will open the Barry Quarry. To this end, and unless another kind of […] is negotiated with the Purchaser and approved by the Commission, the Notifying Party commits to […]. The Notifying Party's obligation under the preceding sentence shall be subject to a maximum amount (cap) of EUR […] million.
The Notifying Party will not amend or abandon […] without having obtained the Commission's approval. The Notifying Party is aware that the Commission will refuse a request to amend or abandon […] unless the Notifying Party shows good cause that circumstances have changed significantly and on a lasting basis, or that the objective pursued with […] will be achieved at least equally well if the […] is changed or abandoned.

4. The Notifying Party shall be deemed to have complied with this commitment if:

(a) by the end of the Trustee Divestiture Period, the Notifying Party, ITC or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 18; and

(b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.

5. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of

exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 44 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the Concentration compatible with the internal market.

Structure and definition of the Divestment Business

6. The Divestment Business consists of

(a) The whole share capital of Compagnie des Ciments Belges S.A., Grand Route, 260, B-7530 Gaurain-Ramecroix, which is currently owned by three subsidiaries of Italcementi: Ciments Français S.A. (78.52%), Ciments Calcia S.a.s. ("**Calcia**") (21.4%), and Compagnie Financière et de Participations S.A. (0.08%);

(b) A […]% stake in Société des Carrières du Tournaisis S.C.T. S.A., Grand-Route, 19, 7530 Tournai, which is currently owned by Ciment Francais ([…]%), Calcia ([…]%) and CCB ([…]%);

(c) The whole share capital of Trabel Transports S.A., Grand Route, 260, B-7530 Gaurain-Ramecroix, which is currently owned by Tratel Affretement S.a.s. (89.97%) and CCB (10.03%), and Trabel Affretements S.A., at the same address, which is currently owned by Tratel Affretement S.a.s. (99.84%) and Calcia (0.16%);

(d) The pieces of land located in Antoing, Belgium as described in more detail in Schedule B, together will all related rights and permits.

The shares in the companies listed in points (b) and (c) above will not be directly transferred to the Purchaser. Rather, any shares in those companies which are currently not held by CCB will be transferred to CCB prior to the divestment of all shares in CCB. The divestment of CCB will thus already include the shares in the companies mentioned in points (b) and (c) above.

The Divestment Business, described in more detail in the Schedules, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

(a) all tangible and intangible assets of the Divestment Business;

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

(c) all contracts, leases, commitments and customer orders of the ITC Divestment Business; all customer, credit and other records of the ITC Divestment Business; and

(d) the Personnel.

7. In addition, the Divestment Business includes the benefit, for a transitional period of up to […] years after Closing and on terms and conditions equivalent to those at present afforded to the ITC Divestment Business, of all current arrangements under which the Parties or their Affiliated

Undertakings supply products or services to the ITC Divestment Business, as detailed in Schedule A, unless otherwise agreed with the Purchaser. The terms of these transitional agreements will not be less favorable for CCB than under the current arrangements.

The Divestment Business will also have the option to continue supplying (i) cement and aggregates to the ready-mix concrete plants of ITC's French subsidiary Unibeton which are currently supplied by CCB through Calcia, and (ii) cement to Calcia/GSM, in both cases for a period of up to […] years and at terms which will not be less favorable for CCB than the arrangements between CCB and Calcia at the date of the submission of these Commitments.

Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the operations of the relevant business unit/division providing the relevant product and/or service.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

8. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, the Notifying Party undertakes:

   (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

   (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;

   (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the ITC Divestment Business, and not to solicit or move any Personnel to the business retained by the Notifying Party. Where, nevertheless, individual members of the Key Personnel exceptionally leave the ITC Divestment Business, the Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

9. To the extent possible without impeding the proper functioning of the ITC Divestment Business and/or the business retained by the Notifying Party during the Interim Period, the Notifying Party commits to keep the ITC Divestment Business separate from the businesses it is retaining and to

ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by the Notifying Party have no involvement in the ITC Divestment Business; (ii) the Key Personnel and Personnel of the ITC Divestment Business have no involvement in any business retained by the Notifying Party and do not report to any individual outside the ITC Divestment Business.

10. Until Closing, the Notifying Party shall assist the Monitoring Trustee in ensuring that the ITC Divestment Business is managed as a distinct and saleable entity separate from the businesses which the Notifying Party is retaining. Immediately after the adoption of the Decision, the Notifying Party shall appoint, or cause Italcementi to appoint, a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the ITC Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8 (c) of these Commitments. The Commission may, after having heard the Notifying Party, require the Notifying Party to replace, or to procure the replacement of, the Hold Separate Manager.

11. To ensure that the ITC Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise the Parties' rights as shareholder in the legal entity or entities that constitute the ITC Divestment Business (except for their rights in respect of dividends that are due before Closing), with the aim of acting in the best interest of the business, which shall be determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Notifying Party's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of any of the Parties. Upon request of the Monitoring Trustee, the Parties shall resign as a member of the boards or shall cause such members of the boards to resign.

Ring-fencing

12. To the extent possible without impeding the proper functioning of the ITC Divestment Business and/or the business retained by the Notifying Party during the Interim Period, the Notifying Party shall implement all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by the Parties before the Effective Date will be eliminated and not be used by the Parties. This includes measures vis-à-vis the Parties' appointees on the supervisory board and/or board of directors of the Divestment Business. In particular, the participation of the ITC Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the ITC Divestment Business. The Parties may obtain or keep Confidential Information relating to the ITC Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which the Parties are or may be required by law.

Non-solicitation clause

13. The Notifying Party undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of 2 years after Closing.

Due diligence

14. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
    (a) provide to potential purchasers sufficient information as regards the Divestment Business;
    (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

15. The Notifying Party shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Notifying Party shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

16. The Notifying Party shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

17. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

    (a) The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
    (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors, taking into account in particular the Divestment Business' long-term access to adequate limestone reserves;;
    (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the

Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

18. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When the Notifying Party has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Notifying Party must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser. In particular, if clause 3(2) applies, the Commission may approve the sale of the Divestment Business without the Quarry if the Divestment Business includes all of the Barry Quarry (and there is thus no exclusion of the portion of the Barry Quarry referred to in Schedule A, Clause 3) and if this does not affect the viability and competitiveness of the Divestment Business after the sale.

Section E. Trustee

I. Appointment procedure

19. The Notifying Party shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.

20. If the Notifying Party has not entered into a binding sale and purchase agreement regarding the Divestment Business […] before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Notifying Party at that time or thereafter, the Notifying Party shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

21. The Trustee shall:
    (i) at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;
    (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
    (iii) neither have nor become exposed to a Conflict of Interest.

22. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the

Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Notifying Party

23. No later than two weeks after the Effective Date, the Notifying Party shall submit the name or names of one or more natural or legal persons whom the Notifying Party proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than […] before the end of the First Divestiture Period or on request by the Commission, the Notifying Party shall submit a list of one or more persons whom the Notifying Party proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 21 and shall include:

    (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

    (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

    (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

24. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Notifying Party shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Party shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission’s approval, in accordance with the mandate approved by the Commission.

New proposal by the Notifying Party

25. If all the proposed Trustees are rejected, the Notifying Party shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 19 and 24 of these Commitments.

Trustee nominated by the Commission

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Notifying Party shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

27. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Party, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

28. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Notifying Party with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the ITC Divestment Business from the business retained by the Parties, in accordance with paragraphs 8 and 9 of these Commitments;

(b) supervise the management of the ITC Divestment Business as a distinct and saleable entity, in accordance with paragraph 10 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that the Parties do not after the Effective Date obtain any Confidential Information relating to the ITC Divestment Business,
- in particular strive for the severing of the ITC Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
- make sure that any Confidential Information relating to the ITC Divestment Business obtained by the Parties before the Effective Date is eliminated and will not be used by the Notifying Party and
- decide whether such Confidential Information may be disclosed to or kept by the Notifying Party as the disclosure is reasonably necessary to allow the Notifying Party to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Parties or Affiliated Undertakings;

(iii) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(iv) review and assess (a.) any statement or contractual amendment presented by the Notifying Party under clause 3 (1) of the Commitments; and (b.) potential purchasers as well as the progress of the divestiture process and (c.) verify that, dependent on the stage of the divestiture process:

(aa.) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(bb.) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending the Notifying Party a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(vii) promptly report in writing to the Commission, sending the Notifying Party a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Party is failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 18 of these Commitments, submit to the Commission, sending the Notifying Party a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser. The Monitoring Trustee shall also provide a reasoned opinion on the adequacy of any statement or contractual amendment submitted by the Notifying Party in accordance with clause 3 (1) of the Commitments within one week after the receipt of the relevant statement/amendment.

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

29. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

30. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price […] the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 17 and 18 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee may also negotiate with LafargeHolcim on behalf of CCB for the purpose of amending the […]. The Divestiture Trustee shall protect the legitimate financial interests of the Notifying Party, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

31. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

III. Duties and obligations of the Parties

32. The Notifying Party shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Notifying Party and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

33. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the ITC Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Notifying Party shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture

process. The Notifying Party shall keep the Monitoring Trustee informed about the status and progress of any negotiations with LafargeHolcim concerning the statements and amendments referred to in clause 3 (1) of the Commitments.

34. The Notifying Party shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Notifying Party shall cause the documents required for effecting the sale and the Closing to be duly executed.

35. The Notifying Party shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Party for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

36. At the expense of the Notifying Party, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Notifying Party's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Notifying Party refuse to approve the advisors proposed by the Trustee, the Commission may approve the appointment of such advisors instead, after having heard the Notifying Party. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 35 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Notifying Party during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

37. The Notifying Party agrees that the Commission may share Confidential Information proprietary to the Notifying Party with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

38. The Notifying Party agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

39. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

40. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Trustee and the Notifying Party, require the Notifying Party to replace the Trustee; or

(b) the Notifying Party may, with the prior approval of the Commission, replace the Trustee.

41. If the Trustee is removed according to paragraph 40 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19-26 of these Commitments.

42. Unless removed according to paragraph 40 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

43. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Notifying Party or, in appropriate cases, on its own initiative. Where the Notifying Party requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause**.** This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall the Notifying Party be entitled to request an extension within the last month of any period.

44. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

45. The Commitments shall take effect upon the date of adoption of the Decision.

duly authorised for and on behalf of
HeidelbergCement AG

SCHEDULE A - ITC Divestment Business

1. The ITC Divestment Business as operated to date has the following legal and functional structure:

a. Compagnie des Ciments Belges S.A. ("CCB"), Grand Route, 260, B-7530 Gaurain-Ramecroix, which is a company incorporated under Belgian law, whose share capital is currently owned by three subsidiaries of Italcementi S.p.A.: Ciments Français S.A. ("CF") (78.52%), Calcia (21.4%), and Compagnie Financière et de Participations S.A. (0.08%).

CCB currently owns the following stakes in other companies:

- 99.9% of De Paepe Béton N.V., Kennedylaan 40, 9042 Gent, which manages one of the 10 ready-mix concrete plants of the CCB group (the remaining 0.1% stake is owned by Calcia and will also be part of the Divestment Business);
- 25.5% of Recybel S.A., Quai Du Halage 47-49, 4400 Flemalle, which is active in the exploitation of a low-quality fly ash site of […] for the sole benefit of CCB and the Notifying Party's Belgian subsidiary CBR. The other shareholders of Recybel are […], having a […] stake, and CBR, having a […] stake.
- 18% of Mixers at your Service NV, Vandendriesschestraat 25, 9620 Zottegem, which is active in the transportation of ready-mix concrete (the remaining 82% stake is owned by a physical person, […];
- 10.03% in Trabel Transports S.A., Grand Route, 260, B-7530 Gaurain-Ramecroix, a currently inactive company (the remaining 89.97% stake is owned by Tratel Affretement S.a.s. and will also be part of the Divestment Business);
- […]% of Société des Carrières du Tournaisis S.C.T. S.A. ("SCT"), Grand-Route, 19, 7530 Tournai, operating the Milieu and Barry quarries. The other shareholders of SCT are Holcim (Belgique) ([…]%), CF ([…]%) and Calcia ([…]%).

At the time of the divestment of CCB, as a result of intra-group transactions, CCB will own a […]% stake in SCT and 100% of the shares in Trabel Transports S.A. and Trabel Affretements S.A. (the latter being a 100% indirect subsidiary of Calcia, which is party to an outsourcing contract with a third-party provider of transport services for CCB).

The current organization charts of CCB and SCT are attached as Annex A and B.

b. In accordance with paragraph 6 of these Commitments, the ITC Divestment Business includes, but is not limited to:

(a) all tangible assets of CCB, including the following main tangible assets:

– The Gaurain grey cement plant, located at Grand Route, 260, B-7530 Gaurain-Ramecroix.

– A yet-to-be opened limestone quarry in Barry, located at a short distance South-East of the plant

– 10 ready-mix concrete plants located at the following locations:
  - Kennedylaan 40, Gand 9042 (this plant is owned by CCB's subsidiary De Paepe Béton N.V.);
  - Rue des Artisans 27 - ZI II, Ghislenghien 7822;
  - Rue des Sablières 2, Mont-Saint-Guibert 1435;
  - Av. du Port/Havenlaan 79, Bruxelles 1000;
  - Brakelsesteenweg 712, Voorde 9400;
  - Route du Châtelet 405, Couillet 6010;
  - Grand Route 260, Gaurain-Ramecroix 7530;
  - Vlamingstraat 38, Wevelgem 8560;
  - Quai du Canal 1, Roucourt 7601; and
  - Darse de Baudour, Baudour 7331.

– Three aggregate quarries located in (i) Gaurain, close to the cement plant (which is however now exhausted), (ii) Clypot, between the towns of Neufvilles and Soignies, and (iii) Barry, which however must still be opened.

(b) all intangible assets owned by CCB, including CCB's company name, logo and any trademarks owned by CCB;

CCB will also be granted a […] licence to the know-how owned by other companies of the ITC group which is necessary for the production of cement, ready-mix concrete or aggregates at any CCB production site included in the Divestment Business. The geographic scope of this licence will be limited to Belgium. For the avoidance of doubt, this geographic limitation of the licence will not impede the ability of CCB to sell the products within the entire EEA.

(c) all licences, permits and authorisations held by CCB, including the following permits:

– Environmental permit for the exploitation of the Barry Quarry;
– Environmental permit for Gaurain; and
– Authorization to exploit Clypot aggregate quarry.

(d) all contracts, agreements, leases, commitments and understandings entered into by CCB, including the following:

The vast majority of the agreements entered into by the ITC Divestment Business are standard agreements for the supply of CCB's products to its customers or for the purchase of the input required for the production of CCB's products. A list of the main purchasing contracts for inputs for cement production (including alternative fuels and alternative cementitious materials) is attached in Annex C.
To the extent any of these contracts are currently shared between the Divestment Business and other companies of ITC group, the Notifying Party commits to support the Divestment Business in agreeing with the contractual counterpart on a split of the contract. In case a supplier refuses to agree to a split of the contract, the Notifying Party commits to continue the relevant supply contract and to supply the relevant input to the Divestment Business for the remaining duration and on the terms and conditions of the relevant existing supply contract.

In addition to the aforementioned standard agreements, in […], CCB, CF, Holcim Belgique S.A., and Holcim Granulats (all companies belonging to the Holcim group are referred to as "Holcim") entered into an agreement (amended in […]) for the creation of SCT, a joint venture solely controlled by ITC with the purpose of managing the contracting parties' quarries in the Tournai region (the so-called "[…]").

According to the […], CCB has the right to extract up to […] million tons of limestone from […] quarry to be used for the production of grey cement in the […] plant and to be sold as aggregate (CCB buys the limestone from […] at an […] price). This agreement was entered into with the common objective to reduce the costs of the extraction of stones from the quarries located in the Tournai area. In addition, CCB needed to enter into the agreement in order to ensure the sourcing of the necessary raw material for the functioning of the Gaurain plant due to the fact that (i) the Gaurain quarry was about to be exhausted and (ii) the Barry Quarry requires lengthy and expensive works to be prepared and become operational.

[…]

A non-confidential summary of the […] is attached in Annex D.

(e) all of CCB's customer, credit and other records, including the records pertaining to customers in Germany or France which are supplied with cement or aggregates from CCB's sites through ITC's subsidiaries Calcia, SZG and GSM.

Annexes E to K include tables indicating all sales of grey cement, ready-mix concrete, and aggregates carried out by each of CCB's facilities and GSM's "Nord" branch, indicating the customer and its address, as well as the volume and value of the sales in, respectively, 2014 and 2015.

(f) all Personnel currently employed by CCB. At the purchaser's request, the Notifying Party will also use its best efforts to ensure the transfer of the following sales personnel currently employed by ITC's French subsidiaries and responsible for direct sales of grey cement and AGG from CCB's Belgian sites to French customers:

- […] sales agents of Calcia ; and
- […] people working for GSM's "Secteur Nord" with its own offices in Santes, just outside of Lille.

(g) the following Key Personnel:

- […].

(i) the arrangements for the supply with the services listed in Annex L by Calcia or CF for a transitional period of up to two years after Closing.

3. The ITC Divestment Business shall not include a portion of the yet-to-be opened Barry Quarry with reserves for […] million tons of limestone. The exact location of the relevant portion of the Barry Quarry will be determined in cooperation with CCB and/or the Purchaser with a view to avoid any obstruction of CCB's mining activities in the remaining part of the Barry Quarry.

4. If there is any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the ITC Divestment Business and necessary for the continued viability and competitiveness of the ITC Divestment Business, that asset or adequate substitute will be offered to potential purchasers upon their request.

SCHEDULE B - Quarry

1. The Quarry consists of all pieces of land owned by the Notifying Party’s subsidiary CBR and located in the area constituting the Quarry which is depicted in the map attached in Annex Annex M in orange.

2. In accordance with paragraph 6 of these Commitments, the Quarry includes, but is not limited to:

   (a) the following main tangible assets: all pieces of land owned by the Notifying Party or its subsidiaries in the quarry area described under point 1) above, as well as all reserves located therein;

   (b) the following intangible assets: an access right to the pieces of land located in direct proximity to the Quarry and owned by the Notifying Party or its Affiliated Companies which need to be crossed in order to allow the Purchaser and its Affiliated Companies to access the Quarry via the “middle road” depicted in the map in Annex M as the pink line starting at the main street (chaussée de la sucrerie) and running through the divested area (depicted in orange)).

   (c) the mining licence for the Quarry; this mining licence will result from a “split” of the current mining licence for the Antoing quarry held by the Notifying Party ’s subsidiary. the Notifying Party commits to conduct the procedure to “split”/partially transfer the mining licence together with the Purchaser or its subsidiaries immediately upon the Purchaser’s request (procedure pursuant to Article 60 of the Environmental Permit Decree of 11 March 1999).

3. To the extent certain pieces of land in the area constituting the Quarry are owned by third parties at the Effective Date, the Notifying Party commits to support the Purchaser upon request in its negotiations with the land owners to acquire the relevant pieces of land and/or in conducting the applicable procedures to ensure that the relevant pieces of land can be mined despite being owned by third parties (procedure pursuant to Article 6 of the Decree of 4 July 2002 concerning quarries).

4. If there is any asset which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Quarry and necessary for the operation of the Quarry, that asset or an adequate substitute will be offered to potential purchasers.

Annex A-1 […]

Annex A-2 […]

Annex A-3 […]

Annex A-4 […]

Annex A-5 […]

Annex A-6 […]

Annex B […]

Annex C […]

Annex D […]

Annex E […]

Annex F […]

Annex G […]

Annex H […]

Annex I […]

Annex J […]

Annex K […]

Annex L […]

Annex M […]