



EUROPEAN COMMISSION
DG Competition

*Case M.7744 –
HeidelbergCement /
Italcementi*

Only the English text is available and authentic.

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

Decision on the implementation of remedies - Art. 6(1)(b) in
conjunction with 6(2) – Approval of statement
Date: 17.06.2016



Brussels, 17.06.2016
C(2016) 3875 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
IMPLEMENTATION OF
COMMITMENTS

To the notifying party

Dear Sir/Madam,

**Subject: Case M.7744 - HeidelbergCement / Italcementi
Approval of the statement of LafargeHolcim submitted on 10 June 2016
pursuant to paragraph 3(1) of the Commitments**

I. FACTS AND PROCEDURE

- (1) By decision of 26 May 2016 ('the Decision') based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation No 139/2004¹, the Commission declared the operation 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 compatible with the internal market and with the EEA Agreement, subject to full compliance with the conditions and obligations in the commitments submitted by HeidelbergCement annexed to the Decision ('the Commitments').
- (2) In the light of the "[...]"² concluded between Compagnie des Ciments Belges ('CCB'), Ciments Français and Holcim (Belgique), now part of LafargeHolcim

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 The [...] is a contract which was entered into by Compagnie de Ciment Belge, Ciments Français and Holcim Granulats S.A. and Holcim Belgique S.A. in [...], and subsequently amended in [...], for the creation of a joint-venture called "Société des Carrières du Tournais".

group, the Commitments provide in its paragraph 3(1)(a) that the implementation of the acquisition of control of Italcementi shall not take place before HeidelbergCement has presented a binding statement of a duly appointed representative of "LafargeHolcim" (defined in the Commitments as LafargeHolcim Ltd. as well as any of its subsidiaries including Holcim Granulats S.A. and Holcim Belgique S.A.) to the effect that it confirms that (i) CCB can fulfil its obligations to [...], as defined in the Commitments³, and that CCB is therefore not obliged to [...]⁴, and that (ii) the operations of the joint venture company Société des Carrières du Tournaisis S.C.T. S.A. can be extended to the Quarry.

- (3) Furthermore, in paragraph 3(1)(b) sentences 4 and 6 of the Commitments, HeidelbergCement committed 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 which shall verify that the amendment would not negatively affect the viability or competitiveness of the Divestment Business.
- (4) By letter of 10 June 2016, the Parties asked the Commission to verify and confirm that a statement signed by Holcim (Belgique) on the same day ('the Statement'), which will be described in more detail further below, fulfilled the requirements of paragraph 3(1) of the Commitments and submitted that signed statement to the Commission.
- (5) On 14 June 2016, the monitoring trustee Smith & Williamson LLP (the 'Trustee') submitted an assessment of whether HeidelbergCement had complied with the requirements of paragraph 3(1) of the Commitments. In its report, the Trustee concluded that HeidelbergCement had indeed complied with those requirements.
- (6) By e-mail of 16 June 2016, upon request of the Commission, the Trustee submitted, after liaising with the Hold Separate Manager⁵ of the Divestment Business, an additional assessment regarding potential effects of the Statement issued by Holcim (Belgique) on the viability and the competitiveness of the Divestment Business. The Trustee concludes in his e-mail, that there is no risk to the viability of the Divestment Business resulting from the Statement.

II. ASSESSMENT OF THE STATEMENT

(a) Description of the Statement

- (7) In the Statement, signed by the CEO and CFO of Holcim (Belgique), LafargeHolcim confirmed and acknowledged its agreement that:
 - (i) *"CCB can fulfil its obligations to [...] (representing [...] million tons of reserves) which will be owned by CCB following the implementation of the remedy package offered by HeidelbergCement to the European Commission (the "CCB Antoing Quarry")"*,

³ Section B paragraph 6(d) reads as follows: "The pieces of land located in Antoing, Belgium as described in more detail in Schedule B, together with all related rights and permits."

⁴ The Barry Quarry as defined in the Commitments is the quarry owned by CCB and located in Barry, Belgium.

⁵ The Hold Separate Manager as defined in the Commitments is the person appointed by HeidelbergCement, or by Italcementi as instructed by HeidelbergCement, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

- (ii) "CCB *therefore is not obliged to [...]*", and
 - (iii) "*the operations of Société des Carrière du Tournaisis joint venture can be extended to the CCB Antoing Quarry*".
- (8) The Statement furthermore contains a confirmation and acknowledgement that Holcim (Belgique) agrees that [...].

(b) Assessment of the Statement

- (9) The Commission considers that the Statement as submitted by Holcim (Belgique) fulfils the requirements in paragraph (3)(1) of the Commitments for the following reasons:
- (i) The wording of the Statement corresponds in essence to the wording of paragraph (3)(1)(a) of the Commitments.
 - (ii) The Statement is signed by a duly appointed representative of LafargeHolcim as set out in paragraph 3(1)(a) of the Commitments.
 - (iii) Finally, the Commission concludes that in so far as the Statement should be interpreted as an amendment to the [...] and its Annexes, this amendment would not negatively affect the viability or competitiveness of the Divestment Business. [...] due to the inclusion of the Quarry in the Divestment Business and its inclusion in the Société des Carrière du Tournaisis joint venture will not lead to any risk for the viability of the Divestment Business as confirmed by the Hold Separate Manager of the Divestment Business.

III. CONCLUSION

- (10) On the basis of the above assessment and the information provided to it, the Commission confirms that the Statement fulfils the requirements set out in paragraph 3(1) of the Commitments.
- (11) This decision only constitutes an approval of the Statement and does not constitute a confirmation that HeidelbergCement has complied with all of the conditions and obligations in the Commitments.
- (12) This decision is based on paragraph 3(1) of the Commitments attached to the Commission Decision of 26.05.2016.

For the Commission

(signed)

Johannes LAITENBERGER

Director-General