



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) – Purchaser approval, Review of key
personnel, Approval of amendments

Date: 4.10.2016



EUROPEAN COMMISSION

Brussels, 4.10.2016
C(2016) 6476 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Aalborg Portland Holding A/S as purchaser of the
Divestment Business
Approval of amendments to [...]
Modifications of the Key Personnel

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 139/2004 (the Merger Regulation), 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 particular, in order to remove the Commission's serious doubts as to the compatibility of the concentration with the internal market, the Commitments provide for the divestment of the entire Italcementi business in Belgium ('the Divestment Business') centred around Italcementi's subsidiary Compagnie des Ciments Belges S.A. ('CCB'). The Divestment Business includes:
 - (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, Gaurian and Barry),
 - (iv) a stake in a limestone joint venture with LafargeHolcim ('Société des Carrières du Tournaisis S.C.T.S.A.', hereinafter referred to as SCT) which is currently supplying the Gaurain plant from the Milieu quarry,
 - (v) a portion of HeidelbergCement's limestone quarry in Antoing in exchange for a portion of Italcementi's Barry quarry retained by HeidelbergCement and
 - (vi) certain sales staff of Italcementi in France.
3. In paragraph 2 of the Commitments, HeidelbergCement commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business which shall be subject to the Commission's approval pursuant to paragraph 18 of the Commitments. HeidelbergCement presented to the Commission a proposed buyer for the Divestment Business, which will be assessed in section II of this decision.
4. In addition, in paragraph 3(1)(b) sentences 4 and 6 of the Commitments, HeidelbergCement commits that any amendment to the "[...]" and its Annexes agreed with LafargeHolcim Ltd. ("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. 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 Tournaisis ("SCT"). HeidelbergCement submitted to the Commission proposed amendments to the [...] and its annexes, which will be assessed in section III of this decision.

5. Furthermore, according to paragraph 8(c) of the Commitments HeidelbergCement commits to provide a reasoned proposal to replace any individual member of the 'Key Personnel'¹ who exceptionally leave the Divestment Business. It has to be demonstrated that the replacement is well suited to carry out the functions exercised by those members of the Key Personnel. HeidelbergCement submitted to the Commission a proposed change in Key Personnel, which will be assessed in section IV of this decision.

II. ASSESSMENT OF THE BUYER PROPOSAL

6. By letter of 29 July 2016, HeidelbergCement proposed Aalborg Portland Holding A/S ('Aalborg'), an indirectly wholly owned subsidiary of Cementir Holding S.p.A. ('Cementir'), for approval by the Commission as purchaser of the Divestment Business and submitted the proposed Sale and Purchase Agreement and related agreements (the 'Proposed Agreement'). Cementir and Aalborg are together referred to hereinafter as 'the Proposed Purchaser'.
7. On 9 August 2016, the Monitoring Trustee (the 'Trustee') submitted an assessment of the Proposed Purchaser's suitability as a purchaser and, in particular, indicated that it fulfils the criteria of the purchaser requirements in section D of the Commitments attached to the Decision. In his assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.

II.1. Legal framework

8. Pursuant to paragraph 18 of the Commitments, 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.
9. According to paragraph 17 of the Commitments, in its assessment of the Proposed Agreement, the Commission should ensure in particular that:
 - (i) The purchaser is independent of and unconnected to HeidelbergCement and its affiliated undertakings.
 - (ii) The purchaser has 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.
 - (iii) 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

¹ 'Key Personnel' is defined in the Commitments as all personnel necessary to maintain the viability and competitiveness of the ITC Divestment Business, as listed in Schedule A of the Commitments, including the Hold Separate Manager.

the relevant regulator authorities for the acquisition of the Divestment Business.

II.2. Assessment of the Proposed Purchaser

II.2.1. Description of the Proposed Purchaser

10. Aalborg is an indirectly wholly owned subsidiary of Cementir incorporated under Danish law. It is the holding company for the Nordic and Baltic, Turkish and Overseas activities of Cementir group.
11. Cementir group is a multi-national producer and distributor of grey and white cement, ready-mix concrete ('RMX'), aggregates and concrete products. Cementir is part of the Caltagirone Group and has been listed on the Italian Stock Exchange since 1955. Caltagirone Group is an Italian-based family-controlled industrial conglomerate whose activities comprise among others construction activities.
12. Cementir operates in 16 countries across 5 continents. Its sales volumes in 2015 totalled 9.4 million tons of cement, 3.7 million m³ of RMX and 3.8 million tons of aggregates. Cementir is the largest manufacturer and exporter of white cement in the world with white cement production sites in Denmark, Egypt, China, Malaysia and the United States, and with white cement shipments to over 60 countries throughout the world.
13. Cementir revenue amounted to 969 million in 2015 with an EBITDA of EUR 194 million and a Group net profit of EUR 67.5 million.

II.2.2. Independence from the Parties

14. As regards equity links, the Parties submit that there are no cross-shareholdings between the Proposed Purchaser and either of the Parties, with the exception of a minority shareholding of the Proposed Purchaser in a joint venture solely controlled by HeidelbergCement which, as analysed below, does not impair the independence of the Parties. In this regard, a subsidiary of Aalborg, Aalborg Cement Company Inc., owns a 24.5% share in the Lehigh White Cement Company Joint Venture ('the US Joint Venture') which is solely controlled by HeidelbergCement. HeidelbergCement's subsidiary Lehigh Cement Company LLS has a share of 51% in the US Joint Venture. The remaining 24.5% are owned by Cemex. The US Joint Venture manufactures, imports and sells white cement in the USA and Canada.
15. As regards board management links, the Trustee reported in its Reasoned Opinion of 9 August 2016 that there are no such links between either of the Parties and the Proposed Purchaser. In particular, no director of the Parties is on the board of Cementir or its subsidiaries, and vice versa, and there are no management links.

16. Regarding economic links, in its Reasoned Opinion of 9 August 2016, the Trustee reported that there are in particular the following commercial relationships between the Proposed Purchaser and HeidelbergCement and their affiliates²:
- (i) There are supply agreements between Aalborg and [...] which is indirectly controlled by [...]. These supply agreements concern the supply of [...]. However, the volume of [...] supplied by Aalborg under the framework of these supply agreements amounted only to [...] tons in 2015 and a value of EUR [...] million. This does not represent a substantial share of Cementir's total white cement sales and represents approximately [...] % of its total sales (which reached EUR [...] million in 2015).
 - (ii) Furthermore, there are some further supply agreements for [...] and [...] in place and further sales occur on [...]. Yet, the Trustee reports that these commercial relationships represented in the past 3 years, on average, a very minor share of Cementir's overall sales (including the sales to the [...]).
17. With regard to the first economic link, because of the non-controlling nature of the shareholdings in the US Joint Venture, the fact that the US Joint Venture concerns only white cement in North America and its limited relevance compared to the total sales of Cementir, the existing equity relationship in the US Joint Venture is not such as to impair the independence of the Proposed Purchaser from the Parties.
18. With regard to the second group of links identified here above, these are mostly [...] or [...] not exceeding [...] in duration; they cover very limited volumes and values and each time only a given location. In view of the limited scope of the economic links between the Proposed Purchaser and each Party in comparison with their overall activities, these commercial links are not indicative of any material dependence of the Proposed Purchaser on the Parties or of the Parties' ability to influence the Proposed Purchaser.
19. In conclusion, even in the light of existing equity and commercial relationships, the Commission considers that the Proposed Purchaser is independent of and unconnected to the Parties for the reasons explained above.

II.2.3. Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor

20. The Parties submit that the Proposed Purchaser has sufficient financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive business.
21. The Trustee reports in its Reasoned Opinion of 9 August 2016 on Cementir Group's operating revenues and profits since 2013 which show that Cementir Group has

² The Trustee reports in his Reasoned Opinion also that Aalborg will succeed into CCB's current 25.5% shareholding in Recybel in Belgium whose other shareholders are [...] but also HeidelbergCement through its subsidiary CBR. This JV was ment to supply a possible input for cement manufacturing stemming from [...]. However, this JV has been inactive for the last two years (2014-2015) [...]. Even if the activities of the JV were to restart, the input provided has no specific strategic value and and therefore such link appears to be very limited and not such as to impair the independence of Aalborg/Cementir from the Parties. It will thus not be discussed further for the purposes of this decision.

been sufficiently profitable over that period. The Trustee also reports that Cementir's ratio of financial debt to EBITDA allows it to invest and to grow without putting its financial stability at risk. The Commission notes in this context that Aalborg has a financing scheme to fund the acquisition.

22. Cementir is an established player with multinational activities in the cement, RMX and aggregates markets. During the past 10 years, Cementir has been steadily expanding its business and footprint through mergers and acquisitions. It thus has substantial experience in cross-border integration processes. Being part of one of the largest Italian industrial conglomerates, Caltagirone group, which has operating revenues of EUR 1.35 billion, Cementir has access to financing from a large number of banks. Cementir submits that the acquisition of the Divestment Business is in line with its business strategy to increase its geographic diversification. Cementir has provided a credible business plan based on conservative assumptions. Furthermore, Cementir has provided a convincing mining plan of the Barry quarry and its financing. This is in line with the intention to maintain and develop the Divestment Business as a viable and active competitive force in the market.
23. In view of the above considerations and the Reasoned Opinion submitted by the Trustee, the Commission considers that the Proposed Purchaser has the financial capabilities, 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.

II.2.4. Absence of prima facie competition problems

24. Cementir has only minor business activities in the Benelux and Cementir focusses in this area on white cement whereas the Divestment Business' focus is on grey cement. The Proposed Purchaser is not active in the market for grey cement in Belgium, Northern France and the Netherlands. Therefore, there are no overlaps between the activities of the Proposed Purchaser and the Divestment Business. As a consequence, the acquisition of the Divestment Business is unlikely to raise competition concerns given that the Proposed Purchaser is effectively a new entrant to the grey cement market in Belgium and surroundings.
25. This *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by the Proposed Purchaser by a competent competition authority under applicable merger control rules.

II.2.5. Conclusion on the purchaser criteria

26. In the light of the above considerations and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that Aalborg meets the purchaser criteria set out in paragraph 17 of the Commitments.

II.3. Assessment of the Transaction Documents

27. In line with paragraph 7 of the Commitments, the SPA between HeidelbergCement and the Purchaser includes two kind of transitional agreements:
- (i) Transitional supply agreements for the supply of [...] with [...] for a maximum duration of [...]³; and
 - (ii) A transitional service agreement with [...]for a maximum duration of [...]⁴.
28. While the Commitments foresaw that HeidelbergCement would carve out a part of the Barry quarry, the SPA does not foresee a carve-out but rather the constitution of an "emphyteusis right" whereby HeidelbergCement pays a remuneration to the Purchaser and in return HeidelbergCement has the right to mine a part of the Barry quarry in the next [...] years at its own costs. The volume of reserves covered by the emphyteusis right is in line with the volumes originally included in the carve-out of a portion of the Barry quarry. Therefore, the change to what was foreseen in the Commitment text does not seem to bring material changes to the Divestment Business nor to the content of the Commitments.
29. In addition to what was included in the text of the Commitments, HeidelbergCement has agreed to sell to the Purchaser [...]. This goes beyond the Commitments and aims at ensuring an additional outlet for the grey cement produced by the Divestment Business.
30. In the light of the above considerations (see in particular paragraphs 27 to 29 above) and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the Proposed Agreement is consistent with the Commitments and that, accordingly, the Divestment Business is being sold in a manner consistent with the Commitments.

III. ASSESSMENT OF THE PROPOSED AMENDMENTS TO [...] AND ITS ANNEXES

III.1.1. Proposal by HeidelbergCement

31. By letter of 20 June 2016, HeidelbergCement asked the Commission to approve a first set of amendments to the [...] and its Annexes in accordance with paragraph 3(1)(b) sentences 4 and 6 of the Commitments. By letter of 10 August 2016, HeidelbergCement asked the Commission to approve a second and final set of amendments to the [...] and its Annexes in accordance with

³ See Schedule 15 to the SPA.

⁴ The Transitional Service Agreement covers, but is not limited to, the provision of Finance and Accounting Services and IT Services.

paragraph 3(1)(b) sentences 4 and 6 of the Commitments. The amendments are hereinafter collectively referred to as the 'Proposed Amendments'.

III.1.2. The Trustee's assessment

32. On 19 August 2016, the Trustee submitted an assessment of the amendments to the [...] and its Annexes as presented by HeidelbergCement by letter of 20 June 2016 and 10 August 2016. In his assessment, the Trustee came to the conclusion that, based on the information received, the assessment of the Trustee's legal and technical experts and discussions with HeidelbergCement, the Hold Separate Manager and LafargeHolcim, all changes to the [...] seem reasonable and do not appear to have a negative impact on CCB's viability or competitiveness. The Trustee thus recommended to approve the proposed changes.

III.1.3. The Commission's assessment

33. The Proposed Amendments mainly reflect the changes brought about by the divestment of HeidelbergCement's limestone quarry in Antoing ('Antoing Quarry') and its inclusion in the contractual arrangements between CCB, Ciments Français and Holcim (Belgique), now part of LafargeHolcim group, regarding the SCT joint venture between the parties. By letter of 10 June 2016, Holcim (Belgique) had confirmed and acknowledged in accordance with para. 3(1)(b) of the Commitments (i) that CCB can fulfil its obligations to sell [...], (ii) that CCB is not obliged to [...] and (iii) that the operations of SCT can be extended to the CCB Antoing Quarry.
34. The Proposed Amendments include the postponement of the opening of the Barry quarry with the corresponding changes to the mining plan and the corresponding adjustment of Holcim's rights under the [...], plus other practical arrangements relating to the divestment of the CCB Antoing Quarry and its inclusion in SCT's activities as well as the divestment of CCB. These changes mainly lead to a mere readjustment of the contractual relationship between CCB and Holcim (Belgique) under the [...] in consequence of the divestiture of the Divestment Business without substantially changing the contractual balance between those parties.
35. In particular, the Proposed Amendments foresee that limestone extraction in the Barry Quarry that was planned to start in [...] is postponed and will start in [...] reflecting the additional limestone reserves of the CCB Antoing Quarry that will be divested to CCB in accordance with the Commitments. As a consequence, the Divestment Business will be able to [...]. In order to ensure that sufficient limestone reserves are transferred to the Divestment Business equal to a quantity of [...] HeidelbergCement committed - beyond its obligations resulting from the Commitments - to sell an additional [...]ha of land to CCB, further increasing the Divestment Business' limestone reserves.
36. While certain rights of Holcim under the [...], are readjusted, such changes do not result in any substantial deterioration of CCB's position before the amendments. In particular, in most cases, such amendments only replicate the situation that existed already before the contribution of the CCB Antoing Quarry to SCT and the prolongation of SCT's activities under [...]. Therefore, such changes appear to be reasonable and do not put the Divestment Business' competitiveness or viability at risk.

37. In light of the considerations set out in paragraphs (33) to (36) and taking into considerations the Trustee's Reasoned Opinion, the Commission concludes that the proposed changes are consistent with the Commitments.

IV. ASSESSMENT OF THE PROPOSED CHANGE IN KEY PERSONNEL

IV.1.1. Proposal by HeidelbergCement

38. By letter of 8 September 2016, HeidelbergCement submitted a reasoned proposal for a modification regarding the Key Personnel listed in the Commitments. Paragraph 9(g) of Schedule A to the Commitments currently lists [...] as [...].
39. In the submitted reasoned proposal, HeidelbergCement proposes that [...] be replaced by [...]. HeidelbergCement outlines in the reasoned proposal that [...] had refused to stay with the Divestment Business and take up the offered role as [...] despite financial incentives offered by HeidelbergCement. HeidelbergCement considers that [...] is perfectly suited for [...] in particular as he already acted for CCB several years as [...] and [...] for several different aggregates and other construction sites respectively. HeidelbergCement submits further that [...] possesses the required technical, operational and managerial expertise and experience required to exercise the similar functions of [...].

IV.1.2. The Trustee's assessment

40. On 14 September 2016, the Trustee submitted a report covering also the modification of Key Personnel. On the basis of the information received from HeidelbergCement and the Hold Separate Manager and the discussions held with the Hold Separate Manager and Aalborg, the Trustee considers that the change of the Key Personnel listed would not affect the viability of the Divestment Business.

IV.1.3. The Commission's assessment

41. In light of [...]’s refusal to remain with the Divestment Business despite the financial incentives he was offered and in [...] proven expertise and experience as summarized in paragraph 39 and taking into account the Trustee's reasoned opinion of 14 September 2016, the Commission finds that in their reasoned proposal of 8 September 2016, HeidelbergCement has shown good cause for the replacement of [...] as [...], and the prescribed requirements are met.
42. The Commission therefore considers that a modification of the Key Personnel subject to the Commitments under Schedule A as proposed can be granted.

V. CONCLUSION

43. On the basis of the above assessment, the Commission:
- approves Aalborg as a suitable purchaser of the Divestment Business;
 - concludes that the Divestment Business is being sold in a manner consistent with the Commitments;
 - [business secret: contractual relationship with third party]; and

- decides, in accordance with paragraph 8(c) of the Commitments, to modify the Key Personnel subject to the Commitments as follows: Under paragraph 9(g) of Schedule A to the Commitments [...] can be removed as [...] and be replaced by [...].
44. This decision only constitutes approval of the Proposed Purchaser identified herein, of the Proposed Agreement, the Proposed Amendments and the Proposed Change in Key Personnel. This decision does not constitute a confirmation that HeidelbergCement has complied with its Commitments.
 45. This decision is based on Sections B, C and D of the Commitments attached to the Commission Decision of 26 May 2016.

For the Commission

(signed)
Johannes LAITENBERGER
Director-General

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