EUROPEAN COMMISSION
DG Competition

Case M.9316 - PEAB / YIT'S PAVING AND MINERAL AGGREGATES BUSINESS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 26/03/2020

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EUROPEAN COMMISSION

Brussels, 26.03.2020
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: **Case M.9316 – PEAB / YIT's PAVING AND MINERAL AGGREGATES BUSINESS**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 20 February 2020, the Commission received the notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004[3] by which Peab AB ("Peab" or "Notifying Party") acquires sole control of the mineral aggregates business of YIT Oyj ("YIT") in Denmark, Finland, Norway and Sweden (the "Transaction", as set out in paragraph 5 below). The business targeted by the acquisition is referred to as the "Target", while Peab and the Target are collectively referred to as the "Parties". In a post-Transaction context, Peab, all the subsidiaries under its control and the Target may also be collectively referred to as the "merged entity".

[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] OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

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1. THE PARTIES

(2) Peab, the acquirer, is a construction and civil engineering company, active in businesses such as civil engineering; construction and renovations of buildings and infrastructure; paving of roads and other surfaces; as well as the production of mineral aggregates, concrete, asphalt and prefabricated concrete elements. Peab is registered in Sweden.

(3) YIT, the seller, is a construction company active in the construction and renovation of buildings and infrastructure; the paving of roads and other surfaces; and the production of mineral aggregates and asphalt. YIT is registered in Finland.

(4) The Target comprises the following YIT businesses: i) the production and sale of mineral aggregates in Finland, Norway and Sweden; ii) the production and sale of asphalt in Denmark, Finland, Norway and Sweden; iii) the paving of roads in Denmark, Finland, Norway and Sweden; iv) sale of bitumen in Norway, and v) operation of transport sea vessels. Bitumen is a marginal activity as the Target does not produce bitumen but rather buys them from oil companies for its own asphalt production needs. If asphalt production falls below the forecasted production, the Target sells the surplus it does not need. Transport is also a marginal activity as the Target has only one cargo ship and one bulk carrier ship, which carry, inter alia, some mineral aggregates.

2. THE OPERATION

(5) The Transaction is accomplished by way of a share acquisition (Finland, Norway and Denmark) and partly through a business asset acquisition (Sweden). Peab will acquire all shares of the Danish company YIT Danmark A/S, all shares of the Norwegian company YIT Norge AS and all shares of the Finnish company YIT Teollisuus Oy. In addition, Peab will acquire from the Swedish company YIT Sverige AB all assets related to its mineral aggregates, asphalt and paving businesses. The concentration will be implemented by the conclusion of an agreement.

3. THE CONCENTRATION

(6) As a result of the Transaction Peab will acquire sole control within the meaning of Article 3(1)(b) the Merger Regulation over the Target.

4. UNION DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] (Peab: EUR 5 471 million; Target: EUR 600 million). Each of them has a Union-wide turnover in excess of EUR 250 million (Peab: EUR 4 815 million; Target: EUR 457 million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover

[4] 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).

within one and the same Member State. The notified operation therefore has Union dimension.

5. RELEVANT MARKETS AND COMPETITIVE ASSESSMENT.

5.1. Introduction and overview of horizontal and vertical links

(8) Mineral aggregates ("aggregates") are different types of grained particulate minerals used as base materials in the construction of buildings, roads and other infrastructure. They are also used as raw material in the production of concrete, asphalt and mortar. Bitumen is a viscous liquid or semi-liquid form of petroleum found in natural deposits and often obtained as a result of oil refining process. It is primarily used as a binding agent in the production of asphalt (road bitumen), in the construction industry and in the production of paper (industrial bitumen). Asphalt is the building material of roads, bicycle lanes, car parks, sidewalks, sport areas and airport runways. It is a mixture of aggregates and bitumen. Ready-mix concrete ("RMX") is a common construction material made of cement, aggregates and water. It is manufactured at a concrete plant and transported in a semi-wet form in specific mixer truck vehicles to the construction site. Paving, also referred to as contract surfacing, is the application of asphalt and other materials to surface roads, car parks, footpaths, airport runways and other sites. Construction has been defined as the on-site construction or assembly of buildings and other structures, including building engineering. The upstream-downstream relationships of these various products and services are illustrated in figure 1 below.

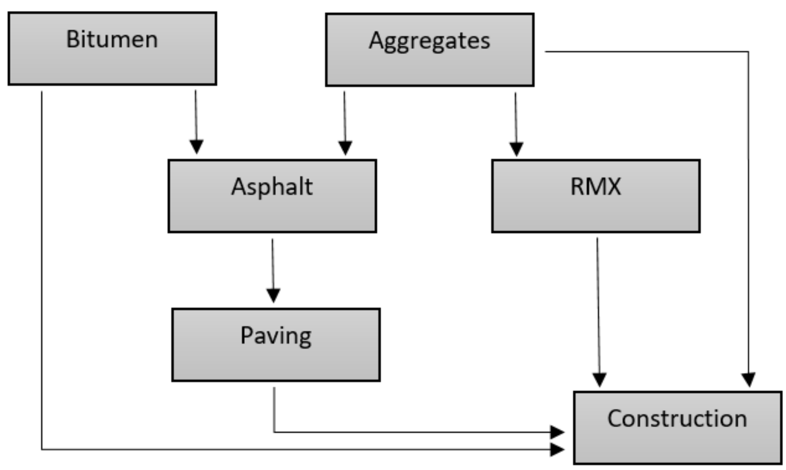

Figure 1 Upstream - downstream links between the relevant construction materials and services

(9) The Transaction involves a number of horizontal overlaps and vertical relationships. Horizontal overlaps include:

i.) the production and sales of aggregates in Finland, Sweden and Norway.

ii.) the production and sales of asphalt in Norway and Sweden; and

iii.) the supply of road paving services in Norway and Sweden.

(10) There is no horizontal overlap in asphalt or paving in Finland or Denmark as Peab is not active in these activities in these Member States. Neither the Target nor Peab is active in aggregates in Denmark. Furthermore, Peab is not active in bitumen, while the Target is not active in RMX and construction. As regards the latter, YIT's construction business is not part of the Transaction.

(11) Vertical relationships between the Parties include:

i.) Aggregates – asphalt relationship in Norway and Sweden

ii.) Aggregates – RMX relationship in Finland, Norway and Sweden

iii.) Aggregates – construction relationship in Finland, Norway and Sweden

iv.) Bitumen – asphalt relationship in Norway

v.) Transport – aggregates relationship in Norway.

vi.) Asphalt – paving relationship in Norway and Sweden

vii.) Paving – construction in Norway and Sweden

(12) The aggregates – asphalt relationship stems from the fact that both Parties are active in aggregates and asphalt in Norway and Sweden. However, there is no such relationship in Finland as Peab is not active in asphalt in Finland. As Peab is active in RMX in Finland, Norway and Sweden and the Target is active in aggregates in all of these EEA Contracting Parties, there is an aggregates – RMX link between the parties in all these EEA Contracting Parties. Likewise, the Target's aggregates activities are in a vertical relationship with Peab's construction activities in Finland, Norway and Sweden. The Target's minor activities in bitumen restricted to Norway, and thus the vertical links to asphalt only occurs in Norway. The same applies to transport as the Target operates a cargo ship and a bulk carrier ship only in Norway and these carry, inter alia, some mineral aggregates. Asphalt is the main input in paving but due to the fact that Peab is not active in asphalt and paving in Denmark and Finland, the asphalt-paving vertical link only arises in Norway and Sweden. Finally, Peab is active in construction, of which road construction is a particular segment, and paving could be regarded as an input service to road construction. This vertical link only arises in Norway and Sweden as Peab is only active in road construction in these EEA Contracting Parties.

(13) There are no bitumen-construction links as the Target only sells bitumen to asphalt producers. Lastly, there are no RMX-construction vertical links because the Target is not active in either activity.

5.2. Market definition

5.2.1. Aggregates

5.2.1.1. Product market definition

(14) Aggregates are used as (i) base materials in the construction of roads, buildings and other infrastructure, and (ii) raw materials to make products such as concrete,

asphalt and mortar. They may be quarried from land and dredged from the sea (together, "primary aggregates"); obtained from waste products of other mining or industrial services ("secondary aggregates"); or obtained from recycled sources such as demolition sites and construction waste ("recycled aggregates"). The two types of aggregates are crushed rock ("crushed rock") on the one hand and gravel and sand ("gravel and sand") on the other. Finally, "specialist aggregates" such as rail ballast, high polished stone value ('PSV') aggregates, and high-purity limestone aggregates can also be distinguished from primary and secondary/recycled aggregates used in the asphalt, RMX and construction businesses.

(A) The Notifying Party's view

(15) The Notifying Party submits that the distinction between primary and secondary/recycled aggregates is irrelevant as (i) there is no overlap in secondary aggregates, and (ii) secondary/recycled aggregates make up a very small share of the overall market (less than 4% in Finland and Sweden and less than 1% in Norway).[5] Furthermore, in the Notifying Party's view, secondary aggregates can be substituted by primary aggregates for all purposes, whereas the opposite is not always true.[6] Consequently, the total aggregates market essentially corresponds to the primary aggregates market.

(16) The Notifying Party further submits that, within primary aggregates, no distinction should be made between i) gravel and sand on the one hand and ii) crushed rock on the other as the two types of aggregates are substitutable for most uses.[7] Customers buying aggregates for construction purposes usually procure all types of aggregates.[8] RMX customers traditionally used gravel and sand but due to the scarcity of natural gravel, it is increasingly replaced by crushed rock.[9] Generally crushed rock is used for asphalt production and thus asphalt producers seek to buy crushed rock.[10] The price differences between the two types of aggregates are minimal.[11] When aggregates are purchased in public procurements, gravel/sand and crushed rock is usually purchased together.[12]

(17) As regards the distinction between specialist and other primary and secondary/recycled aggregates, the Notifying Party submits that Peab only produces specialist aggregates in Sweden, whereas the Target only does so in Finland. There is no vertical link between one party's specialist aggregates production and the other party's operations. Absent horizontal and vertical links, the Notifying Party considers that the distinction between specialist aggregates on

5 Form CO, paragraph 90.

6 Form CO, paragraph 90.

7 Form CO, paragraph 94.

8 Form CO, paragraph 98.

9 Form CO, paragraph 95.

10 Form CO, paragraph 95.

11 Form CO, paragraph 96.

12 Form CO, paragraph 99.

the one hand and primary and secondary/recycled aggregates on the other can be left open.[13]

(18) Thus the Notifying Party considers that, for the purposes of the Transaction, the relevant product market covers all aggregates.

(B) Commission precedents

(19) In some past decisions the Commission considered aggregates as a single, separate product market without further distinctions.[14]

(20) In other cases, the Commission has considered, but ultimately left open, a 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).[15]

(21) Within the primary aggregates category, the Commission has also considered a further distinction between (i) gravel and sand and (ii) crushed rock, but ultimately left the definition open.[16]

(22) Additionally, the Commission has also carried out a separate assessment of the impact of a merger as regards specialist aggregates despite ultimately leaving open the market definition.[17]

(C) The Commission's assessment

(C.i) Primary vs secondary/recycled aggregates

(23) The market investigation has not produced conclusive results on the distinction between primary and secondary/recycled aggregates. Some respondents consider that slag is interchangeable with primary aggregates[18] and, in a more general fashion, there is a degree of substitutability between primary and secondary/recycled aggregates.[19] Others exclude the possibility of switching between these types of aggregates.[20]

(24) However, the Parties' presence in secondary/recycled aggregates is minimal without there being any horizontal and vertical links between their respective operations.[21] Considering these aggregates separately would therefore not lead to

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13 Form CO, paragraph 100.

14 Cases M.2317 Lafarge/Blue Circle (II); M.1779 - Anglo American/Tarmac; M.3415 – CRH/Semapa/Secil JV, recital 10; M.3141 – Cementbouw/Enci/JV, recital 11.

15 Case M.7252 – Holcim/Lafarge, paragraphs 331-333; Case M.7054 – Cemex/Holcim Assets, paragraph 302; Case M.1779 – Anglo American/Tarmac, paragraph 20.

16 Case M.7252 – Holcim/Lafarge, paragraphs 331-333; Case M.7054 – Cemex/Holcim Assets, paragraph 302; Case M.5803 - Eurovia/Tarmac, 10 June 2010, recital 10.

17 Case COMP/M.7252 – *Holcim/Lafarge*, paragraph 334.

18 SSAB's response to Q1 – Questionnaire to customers – aggregates, Finland, question 11.

19 Q1 – Questionnaire to customers – aggregates, Finland, question 11; Q2 – Questionnaire to competitors – aggregates, Finland, question 15; Q10 – questionnaire to customers – aggregates, Sweden, question 11.

20 Q1 – Questionnaire to customers – aggregates, Finland, question 11; Q2 – Questionnaire to competitors – aggregates, Finland, question 15; Q10 – questionnaire to customers – aggregates, Sweden, question 11.

21 Form CO, paragraph 90.

competition concerns. Furthermore, the responses to the market investigation suggest that secondary and recycled aggregates can always be substituted with primary aggregates and doubts on the substitutability arise in the opposite direction.[22] This would imply that there can be no market power separately in secondary/recycled aggregates because producers of primary aggregates exercise a constraint on producers of secondary/recycled aggregates. Thus, the separate investigation of secondary/recycled aggregates is not warranted.

(25) The Commission also notes that secondary/recycled aggregates are a very small part of the overall aggregates market. In line with the Notifying Party's view, public statistics indicate that the share of secondary/recycled aggregates is less than 4% of total aggregates production in Sweden and Finland and less than 1% of total aggregates production in Norway.[23] Thus the competitive assessment of an overall aggregates market and a separate primary aggregates market would essentially be the same.

(26) Consequently, for the purpose of the assessment of the Transaction, the Commission will not distinguish primary and secondary/recycled aggregates.

(C.ii) Specialist aggregates vs. primary and secondary/recycled aggregates

(27) Concerning the possible segmentation between specialist aggregates, on one side, and primary/secondary/recycled aggregates on the other, similar considerations apply as in the case of the potential primary aggregates – secondary/recycled aggregates distinction. First, the Parties' presence is minimal in specialist aggregates without there being any horizontal and vertical links between their respective operations.[24] Thus considering these aggregates separately would not lead to competition concerns. Second, the specialist aggregates segment is a niche market relative to the primary and secondary/recycled aggregates segment, constituting less than 0.5-5% of the two segments combined.[25] Consequently, the competitive assessment of an overall aggregates market and a separate primary/secondary/recycled aggregates market would substantially be the same.

(28) Consequently, for the purpose of the assessment of the Transaction, the Commission will not distinguish specialist aggregates and primary, secondary/recycled aggregates.

(C.iii) Crushed rock vs. gravel and sand

(29) The market investigation indicated that crushed rock and gravel/sand can be used interchangeably in construction.[26]

(30) RMX producers indicated that they use both types of aggregates interchangeably[27] or use gravel/sand only in quality products.[28] However, if

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22 Q1 – Questionnaire to customers – aggregates, Finland, question 11; Q2 – Questionnaire to competitors – aggregates, Finland, question 15; Q10 – questionnaire to customers – aggregates, Sweden, question 11.

23 See http://www.uepg.eu/statistics/estimates-of-production-data/data-2017.

24 Form CO, paragraph 90.

25 NotofyingParty's Response to the Commission's RFI 5, questions 1-2. Data for Finland and Sweden.

26 Q1 – Questionnaire to customers – aggregates, Finland, question 12. Minutes of phone call with [a competitor] on 10 March 2020.

gravel and sand is not available nearby, it will be substituted with crushed rock.[29] Thus, while only gravel and sand has been used in RMX production, it is increasingly replaced by crushed rock. For example, according to a report by the Swedish Geological Survey, 2016 was the first year when rock material in Sweden surpassed gravel and sand in the manufacture of concrete. Out of the aggregates used for manufacture of concrete, 51 % consisted of rock material.[30] These facts suggest a significant degree of substitutability between the two types of aggregates for the purposes of RMX production.

(31) The market investigation also indicated that mainly crushed rock is used for asphalt and that gravel and sand is not suitable for this purpose.[31]

(32) Further, construction represents around 80 % of all aggregates use, with asphalt and RMX representing 11% and 5 % of total use respectively (disregarding specialist aggregates).[32]

(33) Based on the above the Commission considers that gravel and sand can be substituted with crushed rock, even if, in the case of RMX, the substitution is not perfect. However, despite the lack of full substitutability in the case of RMX, it appears difficult to raise the price of gravel and sand as construction customers would readily switch to crushed rock, making such a small but not insignificant price increase unprofitable. Since the market investigation has not yielded any indications that arbitrage could be prevented by aggregate producers, the Commission does not consider that selectively raising the price for RMX customers (i.e. price discrimination) is feasible. On the contrary, there are indications that quarries do not even control the final destination of their deliveries,[33] which makes it unlikely that they would be able to control secondary sales. Thus, despite the lack of perfect substitutability, crushed rock can be considered as a demand-side constraint that prevents price increases in gravel and sand.

(34) As regards substitution of crushed rock with gravel and sand, the Commission considers that such substitution is possible in construction and in RMX production but not in asphalt production. However, for the same reasons as discussed above in relation to substitution from gravel and sand to crushed rock, increasing the price of crushed rock appears difficult because the switching of construction customers would defeat such a move and selectively raising the price for asphalt customers does not appear feasible due to the inability of the aggregates suppliers to control arbitrage. Thus, despite the lack of perfect substitutability, gravel and sand can be considered as a demand-side constraint that prevents price increases in crushed rock.

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27 Customer response to Q1 – Questionnaire to customers – aggregates, Finland, question 12.

28 Customer reply to Q1 – Questionnaire to customers – aggregates, Finland, question 12.

29 Customer reply to Q1 – Questionnaire to customers – aggregates, Finland, question 12.

30 See the Geological Survey of Sweden, Grus, sand och krossberg 2016, periodiska publikationer 2017:2, p. 22.

31 Q1 – Questionnaire to customers – aggregates, Finland, question 12. Minutes of phone call with a competitor on 10 March 2020.

32 Minutes of phone call with a competitor on 10 March 2020.

33 Form CO, paragraph 817.

(35) On this basis, the Commission considers that the degree of substitution is at such levels that an overall aggregates market is probable. Consistent with this, the Swedish Competition Authority has concluded (and was upheld by the Swedish Market Court on this point) that sand and gravel belong to the same product market with crushed rock as they are substitutable with each other to more than only a limited extent.[34]

(36) Thus, while the Commission also received unsubstantiated responses on this issue, the market investigation overall suggests that crushed rock and gravel and sand belong to one market. In any event, the question whether separate markets should be defined for crushed rock, on the one hand, and gravel and sand on the other, can be left open as this would not change the competitive assessment in this case.

(37) Consequently, for the purpose of the assessment of the Transaction, the Commission will take a single aggregates market as a basis without distinguishing between (i) gravel and sand and ii) crushed rock. However, it ultimately leaves this question open as it would not change the competitive assessment.

5.2.1.2. Geographic market definition

(A) The Notifying Party's view

(38) The Notifying Party submits that the definition of a relevant geographic market for aggregates is dependent on the fact that aggregates are heavy and voluminous products with significant transport costs. Around half of the price of aggregates is made up of transport costs.[35] Consequently, the size of the geographic market depends on the distance to which it is economically reasonable to transport aggregates.

(39) In the Notifying Party's view, this distance varies to a certain extent by country and by region, as it depends on the cost of producing the aggregates (if aggregates can be produced at a lower cost, they can be sold competitively further away from the production site than aggregates produced at a higher cost), and the cost of transport.[36] The cost of producing aggregates in turn is tied to a number of variable components (e.g. whether the quarry is on an owned or leased property, the amount of landscaping works necessary for production), while the cost of transport depends on the location of the quarry and the road network available.[37] Further, in sparsely populated areas aggregates need to be transported to longer distances despite the higher costs as the place of use are often further away from the source of aggregates than in more densely populated areas. Thus quarries tend to compete in somewhat larger areas in sparsely populated areas than in metropolitan areas.[38]

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[34] Decision by the Swedish Competition Authority, Dnr 211/97, Skanska Sydöst / Bjursells i Jönköping AB och Bjursells Kran AB, 18 June 1997; MD 2011:11, Swerock AB mot Konkurrensverket, 12 April 2001, p. 15.

[35] Form CO, paragraph 103.

[36] Form CO, paragraph 104.

[37] Form CO, paragraph 104.

[38] Form CO, paragraph 110.

(40) Based on the share of the Parties' aggregates sales to different distances the Notifying Party considers that the most appropriate geographic market is a 50 km radius around the quarry and 80 km radius is the second best alternative.[39] For example, based on internal estimates, in Sweden [50-60]% of Peab's aggregates are used within a radius of 25 km of the quarry, [90-100]% is used within a radius 50 km and [90-100]% were used within 80 km from the quarry. The corresponding figures of the Target are as follows: [20-30]% of aggregates are used within a radius of 25 km, [70-80] % of aggregates are used within a radius of 50 km and [90-100]% are used within a radius of 80 km.[40]

(41) Further, while in the countries affected by the Transaction aggregates are predominantly transported by road, in certain areas, most notably in northern Norway, they are also transported by boat. In the case of boat transport, aggregates can be transported to distances of 150-250 km.[41]

(B) Commission precedents

(42) In past decisions, the Commission has considered the aggregates market to be local/regional in scope[42] and has retained a radius of 50 to 80 km depending on the particularities of the areas concerned.[43] This approach was based on the fact that aggregates are heavy and voluminous products with significant transport costs.

(43) Exceptionally, a national market was also defined but this concerned the Netherlands, which has a relatively small size, very easy geography as well as a dense and good quality road network.[44]

(44) Most recently, in *Holcim /Lafarge*, the Commission retained a 50-80 km radius around the production site as the relevant geographic market, in line with the standard practice.[45]

(C) The Commission's assessment

(45) It is clear on the basis of the precedents that the appropriate market size depends on how far it is reasonable to transport aggregates, which is confirmed by the fact that customers that the maximum distance from which customers source aggregates is 100 km.[46]

(46) However, the maximum distance could be an exceptional outlier that does not reflect real competitive conditions. If the vast majority of aggregates are sold within a shorter radius, competition between suppliers mostly takes place within

[39] Form CO, paragraph 120.

[40] Form CO, paragraph 108.

[41] Form CO, paragraph 107.

[42] Case M.4298 – Aggregate Industries/Foster Yeoman, paragraph 13.

[43] Case M.3713 - Holcim/Aggregate Industries, paragraph 8; M.2317 – Lafarge/Blue Circle (II), paragraph 10; COMP/M.1827 Hanson/Pioneer.

[44] COMP/M.3141 Cementbouw/ENCI/JV, paragraph 12.

[45] M.7252 Holcim / Lafarge, paragraphs 343 and 340-342.

[46] Q1 – Questionnaire to customers – aggregates, Finland, question 14; Q2 – Questionnaire to competitors – aggregates, Finland, question 19; Q10 – questionnaire to customers – aggregates, Sweden, question 14.

the smaller area determined by that radius and a supplier that is located from 100 km from the customer does not exercise competitive constraints on suppliers closer to the customer in a meaningful way. In this regard, the market investigation indicates that the vast majority of aggregates are sold within a radius of 50 km.[47]

(47) The Commission also notes that, in line with the Notifying Party's view, the investigation confirmed that in northern Norway aggregates are also transported by boat.[48] For example respondents included a shipping company that operates in Northern Norway and transports aggregates for both Parties.[49] The Target also operates boats that transport, inter alia, aggregates.[50] This is in line with the fact that northern Norway has a long and fractured coastline, that the population centres are located along the coast and that all inland destinations are relatively close to the coast. In the case of boat transport, aggregates can be transported to longer distances than by road, approximately 200 km.[51]

(48) Thus, in line with the precedents, the Commission considers that the appropriate geographic market is in general a radius of 50 kms in Finland, Norway and Sweden. However, to the extent necessary, it will also take into account regional variations in the competitive assessment. The most important regional variation is that in northern Norway boat transport is also used and this increases the area within which aggregates suppliers compete.

5.2.2. *Bitumen*

5.2.2.1. Product market definition

(49) Bitumen is a viscous liquid or semi-liquid form of petroleum found in natural deposits and often obtained as a result of oil refining process. It is primarily used as a binding agent in the production of asphalt (road bitumen), in the construction industry and in the production of paper (industrial bitumen).

(A) The Notifying Party's view

(50) The Notifying Party considers bitumen to be one product market without further segmentation. However, it submits that the exact product market definition can be left open for the purpose of this case[52].

(B) Commission precedents

(51) In previous decisions, the Commission has considered that bitumen should be distinguished from other refined oil products, based on its characteristics and

[47] Q10 – questionnaire to customers – aggregates, Sweden, question 13, Q2 – Questionnaire to competitors – aggregates, Finland, question 17; Q1 – Questionnaire to customers – aggregates, Finland, question 13.

[48] Minutes of phone call with a competitor on 10 March 2020.

[49] Customer response to Q9 – Questionnaire to customers – aggregates, Norway, question 1.

[50] Form CO, paragraph 56.

[51] Minutes of phone call with a competitor on 10 March 2020.

[52] Form CO, paragraph 251.

specific use[53]. In addition, the Commission has considered but ultimately left open, a further segmentation according to the type of bitumen used for a given end-application, such as road/standard bitumen, modified bitumen, bitumen emulsions and industrial bitumen.[54]

(C) The Commission's assessment

(52) In line with previous decisions, the Commission considers a distinct market for the supply of bitumen, with a potential further segmentation, depending on the type of bitumen.[55] In this case, the Target processes the purchased bitumen predominantly for its own asphalt production in Norway,[56] and sells any surplus on an ad-hoc basis to third parties.[57] Because of the Target's minor activity, the competitive assessment would not change under any plausible product market definition. For the purpose of this case, the exact product market definition can therefore be left open, as regardless of the exact product market definition for bitumen, no competition concerns would arise as a result of the transaction.

5.2.2.2. Geographic market definition

(A) The Notifying Party's view

(53) The Notifying Party submits that, in line with precedents, the market for bitumen should be national. However, the Notifying Party also notes that the exact geographic market definition can be left open as the Transaction will not result in any competition issues due to the vertical relationship between bitumen and asphalt.[58]

(B) Commission precedents

(54) In its past practice, the Commission has assessed national markets for the supply of bitumen and considered whether the geographical scope of bitumen supply could be narrower than national, without ever concluding on the market definition.[59] In addition, the Commission has considered whether the geographic scope of bitumen markets could be radius-based, pointing to radii of 200-300 km and 400-500 km.[60]

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[53] M.6151 – Petrochina/Ineos/JV, paragraph 28; M.5005 – Galp Energia/ExxonMobil Iberia, paragraph 19; M.3543 – PKN Orlen/Unipetrol, paragraph 20; M.3516 – Repsol Ypf/Shell Portugal, paragraph 13; M.1464 – Total/Petrofina, paragraph 18.

[54] M.7849 – MOL Hungarian Oil And Gas/ENI Hungaria/ENI Slovenija, paragraph 15; M.5781 – Total Holdings Europe SAS/ ERG Spa/ JV, paragraph 24.

[55] M.7849 – *MOL Hungarian Oil And Gas/ENI Hungaria/ENI Slovenija*, paragraph 15; M.5781 – *Total Holdings Europe SAS/ ERG Spa/ JV*, paragraph 24.

[56] Form CO, paragraph 263.

[57] Form CO, paragraph 271.

[58] Form CO, paragraph 252.

[59] M.7849 – *MOL Hungarian Oil And Gas/ENI Hungaria/ENI Slovenija*, paragraph 38; M.5781 – *Total Holdings Europe SAS/ERG Spa/JV*, paragraphs 40-43; M.5005 – *Galp Energia/ExxonMobil Iberia*, paragraphs 36-38. See also M.3516 – *Repsol Ypf/Shell Portugal*, paragraphs 13-14; M.1464 – *Total/Petrofina*, paragraph 19.

[60] M.7849 – *MOL Hungarian Oil And Gas/ENI Hungaria/ENI Slovenija*; M.6151 – *Petrochina/Ineos/JV*, paragraph 28; M.5781 – *Total Holdings Europe Sas/ERG Spa/JV*, paragraphs 40-43; M.3516 – *Repsol Ypf/Shell Portugal*, paragraphs 13-14.

(C) The Commission's assessment

(55) In the present case, the Target sells bitumen in Norway over a distance of up to 600 km.[61] The market investigation has not provided any indications that would speak against defining bitumen markets in this case in line with the Commission's findings in previous cases. In any event, for the purpose of this decision the exact scope of the geographic market can be left open, as the Transaction would not give rise to any competition concerns in this regard, irrespective of the exact market definition.

5.2.3. *Asphalt*

5.2.3.1. Product market definition

(56) Asphalt is used for surfacing roads, car parks, footpath pavements, airport runways and other sites. As asphalt is produced by heating but it may also be produced at lower temperatures as so-called half-warm mix or cold mix asphalt, which is generally done by heating the asphalt mix with steam or adding chemicals to the asphalt mix. Regardless of the production temperature, all asphalt is used for generally similar paving purposes. Warm asphalt mix is more durable than half-warm mix, which is in turn more durable than cold mix. The vast majority (around 90%) of all asphalt produced and used in paving in the countries affected by the Transaction is warm mix.[62] Asphalt is 100% recyclable and because of the increased focus on the circular economy, the share of recycled asphalt has been increasing over the recent years.[63] Asphalt can be produced in a fixed plant or in a mobile plant, which can change location several times a year.[64] Most suppliers are vertically integrated with in-house paving operations,[65] and asphalt is used exclusively for paving.[66]

(A) The Notifying Party's view

(57) The Notifying Party submits that, with a single exception, all of the Parties' and their competitors' asphalt plants produce warm asphalt in all of the horizontally and vertically affected markets and therefore the distinction between warm, half-warm and cold mix asphalt is irrelevant.[67]

(58) The Notifying Party further submits that mobile plants are usually sent to a particular location for specific paving projects, for which competition takes place before the plant is moved.[68] As mobile plants produce asphalt almost exclusively for captive use, they do not in actuality compete with fixed plants in asphalt production.[69]

[61] Request for Information 5, question 3.

[62] Form CO, paragraph 297.

[63] Form CO, paragraph 296/

[64] Q6 – questionnaire to competitors – asphalt, Sweden, question 14.

[65] Notifying Party's response to the Commission's Request for Information RFI 2

[66] Form CO, paragraph 372.

[67] Form CO, paragraph 299.

[68] Form CO, paragraph 303.

[69] Form CO, paragraph 306.

(59) As regards the link between asphalt and paving, the Notifying Party considers that paving has indeed a strong vertical link to the upstream market of production and sale of asphalt. In the countries affected by the Transaction, there is a high degree of vertical integration between the production of asphalt and paving. In addition to the Parties, many notable players in Norway and Sweden such as NCC, Skanska, Svevia, Sandahls and Veidekke operate on both levels and source most or at least a significant amount of their asphalt internally.[70] Nonetheless, the Parties and other notable asphalt producers also sell significant amounts of asphalt to external customers such as independent, including some independent paving contractors. As such independent paving operators exist and asphalt is sold to them regularly, the Notifying Party considers that asphalt and paving form two separate markets.[71]

(B) Commission precedents

(60) In past decisions, the Commission has consistently found that the production and sale of asphalt constitutes a distinct product market without further subdivision into warm, half-warm and cold mix asphalt.[72] Likewise, past decisions have consistently found that asphalt constitutes a distinct product market, separate from paving.[73]

(61) The Commission has not previously assessed the use of mobile plants, since the Commission's previous cases only related to Member States in which mobile plants are not used.

(C) The Commission's assessment

(62) Given that the asphalt produced in all but one of the horizontally and vertically affected markets is warm asphalt, there is no need to distinguish between warm, half-warm and cold mix in this case. In other words asphalt in this case means warm asphalt and is the sole focus of the assessment.

(63) As regards the question whether asphalt and paving should constitute one combined market or, on the contrary, asphalt and paving should form separate markets, the market investigation confirmed that there are a number of independent paving operators, mostly small firms in big metropolitan areas.[74] The majority of respondents also submitted that although the majority of the asphalt is produced for captive use, some asphalt is sold on the external market.[75] Furthermore, detailed catchment area data reveals that significant amounts of

[70] Form CO, paragraph 309.

[71] Form CO, paragraph 310.

[72] Case COMP/M.7252 Holcim/Lafarge, paragraph 383; Case M.5803, Eurovia/Tarmac; Case M.5158 Strabag / Kirchhoff.

[73] Case COMP/M.7252 – Holcim/Lafarge, paragraph 383; Case M.5803, Eurovia/Tarmac; Case M.5158 Strabag / Kirchhoff.

[74] Q6 – questionnaire to competitors – asphalt, Sweden, question 19. Q4 – questionnaire to competitors – asphalt, Norway, question 19.

[75] Q6 – questionnaire to competitors – asphalt, Sweden, question 20. Q4 – questionnaire to competitors – asphalt, Norway, question 20.

asphalt are sold externally.[76] As asphalt is sold regularly between buyers and sellers, there is demand for asphalt separate from demand for paving works that include captive asphalt production. Separate demand means that asphalt is a product separate from paving and thus forms a product market distinct from the market for paving.[77]

(64) The Notifying Party also made the argument that mobile plants should be excluded from the product market definition. In this regard, the market investigation revealed that mobile plants are not always an alternative to fixed plants. Whether or not they are an alternative to customers depends on the actual location even within a country. Therefore the Commission will assess this question in the geographic market definition in Section 5.2.3.2. The Commission notes, however, that the Notifying Party's argument that asphalt production in mobile plants is purely captive does not justify excluding asphalt produced in mobile plants from the product market. Captive production by a mobile plant is not different from captive production by a fixed plant and the Notifying Party does not argue that captive production should be excluded per se. On the contrary, the Notifying Party considers that market shares based on the combined merchant and captive production are a better indicator of market power than market shares based only on merchant sales, which is not consistent with the view that production by mobile plants should be excluded from the market.[78]

(65) On the basis of the above, for the purposes of the present decision, the Commission considers that asphalt is a market separate from paving. The Commission does not distinguish between warm, half-warm and cold mix asphalt in this case as practically the only type of asphalt that matters for the competitive assessment is warm asphalt. The issue of mobile plants is taken into account in the geographic market definition as they can only be a viable customer choice in certain areas.

5.2.3.2. Geographic market definition

(A) The Notifying Party's view

(66) The Notifying Party submits that asphalt is produced by heating and as a result it is perishable because it is best laid before it cools down and hardens. In practice this implies that it has to be laid within 2-3 hours of production, which limits the transport time to 1–2 hours.[79]

(67) Consequently, the Notifying Party considers that, in line with precedents, the relevant geographic market is local in scope and correspond to the catchment area of each asphalt plant.[80]

[76] Notifying Party's response to the Commission's Request for Information RFI 2.

[77] The question whether an integrated asphalt and paving supplier's captive asphalt production constrains indirectly another supplier's merchant sales indirectly will be discussed in the competitive assessment (Section 5.3.4.1.(A.iii.a)).

[78] As indicated in footnote 74, the role of captive sales will be discussed in the competitive assessment.

[79] Form CO, paragraph 297.

[80] Form CO, paragraph 313.

(68) Just like in the case of aggregates, the Notifying Party is of the view that the size of the geographic market varies to a certain extent by country and by region.[81] In general, transport distances tend to be shorter in urban areas and longer in sparsely populated areas.[82] In suitable regions, namely in Northern Norway, asphalt can also be transported by boat occasionally. Boats can transport larger amounts than trucks because the increased volume makes it easier to keep the asphalt warm, which in turn reduces its perishability. Thus, asphalt can be transported further by boat than by truck.[83]

(69) Based on the share of the Parties' asphalt sales to different distances the Notifying Party considers that the most appropriate geographic market is a 50 km radius around the asphalt plants but notes that a wider radius could be more appropriate in sparsely populated areas.[84] For example, based on internal estimates, in Sweden [60-70]% of asphalt produced by Peab is used within a radius of 25 km of the asphalt plant, [80-90]% is used within a radius 50 km and [90-100]% is used within 80 km from the plant. The corresponding figures of the Target are as follows: [20-30]% of the asphalt it produced is used within a radius of 25 km, [70-80] % of its production is used within a radius of 50 km and [90-100]% is used within a radius of 80 km.[85]

(70) The Notifying Party also suggests that radiuses of 40 km and 80 km can also be used as an alternative but considers that radiuses smaller or larger than these are not plausible. [86] Further, in the case of boat transport in Northern Norway, the transport distance can be 250 km.[87]

(B) Commission precedents

(71) In previous decisions, the radius of catchment areas that comprised the relevant geographic market varied between 25 km and 100 km depending on the circumstances.[88] In line with the Notifying Party's view, these precedents confirm that asphalt is a perishable product which needs to be transported in special heated containers to prevent it from hardening before it can be laid.

(72) In the most recent *Holcim/Lafarge* case that concerned the United Kingdom, the Commission retained a radius of 40 km around the asphalt facility.[89]

(C) The Commission's assessment

(73) In line with the precedents and the Notifying Parties' view, the market investigation confirmed that asphalt is perishable and needs to be laid within a

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[81] Form CO, paragraph 317.

[82] Form CO, paragraph 317.

[83] Form CO, paragraph 316.

[84] Form CO, paragraph 321.

[85] Form CO, paragraph 319.

[86] Form CO, paragraph 321.

[87] Form CO, paragraph 316.

[88] M.3754 Strabag/Dywidag; M.1827 Hanson/Pioneer; M.1779 Anglo American/Tarmac; M.678 Minorco/Tilcon.

[89] Case COMP/M.7252 – Holcim/Lafarge, paragraph 388.

few hours of production.[90] For example, a competitor observed that "*The driving distance combined with the driving time determines the maximum distance to transport the asphalt from production facility's to paving site. Mixed asphalt has a minimum temperature that defines if you can pave the material or not.*"[91]

(74) Given the perishable nature of asphalt, the definition of the relevant geographic market revolves around the appropriate radius of the catchment area within which most of the competition takes place. In this regard customers indicated that they source close to 100 % of their asphalt within a radius of 50 km from their paving projects,[92] while 5 out of 7 competitors submitted that they sell 85%-100% of their asphalt within this radius.[93] Thus, most of the competitive interactions between competitors with fixed plants in Norway and Sweden take place within a radius of 50 km from the asphalt plant.

(75) However, the Commission notes that two competitors indicated that they sell 25% and 30 % of their asphalt outside the radius of 50 km but within a radius of 80 km.[94] Furthermore, another of the Parties' competitors submitted that there are few asphalt plants in the north of Norway and thus distances can be larger.[95] These facts suggest that in sparsely populated rural areas the appropriate size of the geographic market may be larger than a radius of 50km around the plant and rather correspond to a radius of 80 km around the plant.

(76) The market investigation also confirmed that asphalt is transported by boat in northern Norway and therefore in that region the transport distances and the geographic market can be larger.[96] Boats can transport larger amounts than trucks and the increased volume allows longer travel distances[97] because it is easier to keep larger volumes warm.

(77) Mobile asphalt plants are also relevant in the systematic identification of competitive constraints the Parties face. In this regard the market investigation indicates that, unless there is no alternative, municipalities prefer fixed plants over mobile plants due to environmental concerns. The use of mobile plants leads to noise, dust and other types of pollution. Furthermore, fixed plants can use a much higher share of recycled asphalt than mobile plants. Consequently, in densely populated areas, where there are enough fixed plants and where issues such as dust and noise weigh more, mobile plants are not used. By contrast, mobile plants are used in less densely populated areas since in those areas

[90] Q6 – Questionnaire to competitors – asphalt, Sweden, question 22; Q4 – Questionnaire to competitors – asphalt, Norway, question 22; Q5 – Questionnaire to customers – asphalt, Sweden, question 11 ; Q3 – Questionnaire to customers – asphalt, Norway, question 11.

[91] Competitor response to Q6 – Questionnaire to competitors – asphalt, Sweden, question 22.

[92] Q5 – Questionnaire to customers – asphalt, Sweden, question 10; Q3 – Questionnaire to customers – asphalt, Norway, question 10.

[93] Q6 – Questionnaire to competitors – asphalt, Sweden, question 21 ; Q4 – Questionnaire to competitors – asphalt, Norway, question 21.

[94] Q6 – Questionnaire to competitors – asphalt, Sweden, question 21 ; Q4 – Questionnaire to competitors – asphalt, Norway, question 21.

[95] Competitor response to Q4 – Questionnaire to competitors – asphalt, Norway, question 22.

[96] Q3 – Questionnaire to customers – asphalt, Norway, question 10.

[97] See the study "Boat transport and quality of hot mix asphalt" by the Norwegian Public Roads Administration, page 9, table 4.

environmental concerns weigh less and there is not always a fixed plant nearby. More specifically, responses to the market investigation indicated that mobile plants are considered as an alternative in northern Sweden and in the whole of Norway with the exception of metropolitan areas such as, for example, Oslo, Bergen, Stavanger and Trondheim. Within the regions where mobile plants are an alternative, they can be moved to any area within 10 to 30 days.[98]

(78) Although mobile plants are mainly used captively to support the asphalt supplier's paving operations, there is nothing to prevent an owner of a mobile asphalt plant to deploy such a plant for merchant asphalt sales. Thus, if there is an opportunity to sell asphalt externally, mobile plants can represent additional constraints in these regions. Further, even when they are used captively, they may constrain other suppliers' merchant sales indirectly.[99]

(79) Based on the above, the Commission will retain geographic markets with a radius of 50 km but will take into account regional differences in the competitive assessment as appropriate. These regional differences are as follows:

i.) in sparsely populated areas a radius of 80 km may be more appropriate;
ii.) in northern Norway boat transport is also an alternative that can result in a larger geographic market as boat transport allows larger volumes, which reduces perishability; and
iii.) in northern Sweden and in Norway outside the metropolitan areas, mobile asphalt plants can also be competitive constraints.

5.2.4. Paving (contract surfacing)

5.2.4.1. Product market definition

(A) The Notifying Party's view

(80) The Notifying Party submits that, in line with the Commission's previous decisions, paving of roads / contract surfacing constitutes one product market.[100]

(B) Commission precedents

(81) In previous decisions, the Commission has considered contract surfacing to be a relevant product market in itself, distinct from the materials used (namely aggregates and asphalt).[101]

(C) The Commission's assessment

(82) As discussed in Section 5.2.3.1., paving is distinct from asphalt. Within paving, the market investigation indicated that standards and working methods differ on the basis of the surface to be paved (e.g. highways, roads, streets, pavements, parking lots, airport runways etc.) such that paving works paving works to be performed for one type of surface are not suitable to execute paving works for

98 Minutes of a call with a competitor, 10 march 2020; Minutes of a call with a competitor, 10 march 2020.

99 As indicated in footnote 74, the role of captive sales will be discussed in the competitive assessment.

100 Form CO, paragraph 534.

101 Case M.5158 Strabag/Kirchhoff, recital 20; Case M.7252 – *Holcim/Lafa*rge, paragraph 401.

another type of surface.[102] However, respondents also considered that most suppliers are capable of performing all kinds of paving works and that all suppliers are capable of performing most of the paving works.[103] Consequently, the Commission considers that paving is a single, distinct product market.

5.2.4.2. Geographic market definition

(A) The Notifying Party's view

(83) The Notifying Party considers that the paving market is national as all the major competitors on the paving market in Sweden and Norway are active on a national basis. The machinery and equipment used in paving can be moved around nationally if needed.

(B) Commission precedents

(84) In *Holcim Lafarge*, the Commission considered that the market for contract surfacing, i.e. paving, is national in scope.[104] This finding was based on the fact that equipment for paving is mobile and can be moved around to the point of demand, that the asphalt input is sourced from the vicinity of the paving project and that the biggest paving players in the United Kingdom are all active nationally.[105]

(C) The Commission's assessment

(85) A majority of both customers and competitors considered that paving players bid nationally and not only regionally.[106] As bidding has substantial costs, it is unlikely that a firm would bid in a tender if it did not consider that it has a non-negligible chance of success. Consequently, the fact that bidding takes place nationally indicates that suppliers constrain each other in the entire EEA state concerned and not only in the region where they have equipment or employees. This would therefore be indicative of a national market. In the same vein, respondents to the market investigation were of the view that paving suppliers can bid competitively anywhere in the EEA state regardless of having equipment and employees in the area, even if they considered that local presence is an advantage.[107] The Commission notes that having an advantage implies differentiation within the same market rather than separate markets.

(86) As regards the possibility of a market larger than national in scope, competitors considered that they would not be able to bid competitively in an EEA State where they are not present.[108] Similarly, customers considered that paving

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102 Q7 – Questionnaire to customers – paving, Sweden, question 10. Q8 – Questionnaire to competitors – paving, Sweden, question 9.

103 Q7 – Questionnaire to customers – paving, Sweden, question 11. Q8 – Questionnaire to competitors – paving, Sweden, question 10.

104 Case M.7252 – *Holcim/Lafa*rge, paragraph 405.

105 Case M.7252 – *Holcim/Lafa*rge, paragraphs 402-405.

106 Q8 – Questionnaire to competitors – paving, Sweden, question 15; Q7 – Questionnaire to customers – paving, Sweden, question 16.

107 Q7 – Questionnaire to customers – paving, Sweden, question 14; Q8 – Questionnaire to competitors – paving, Sweden, question 13.

108 Q8 – Questionnaire to competitors – paving, Sweden, question 16.

companies from neighbouring countries cannot bid competitively without presence in their own Member State, in this case Sweden.[109] Barriers include cultural differences, language and lack of contacts.[110]

(87) On the basis of the above, the Commission considers that, in line with precedents, the market for paving is national.

5.2.5. *RMX*

5.2.5.1. Product market definition

(A) The Notifying Party's view

(88) The Notifying Party submits that, in line with the Commission's precedents, RMX constitutes a single product market.[111]

(B) Commission precedents

(89) The Commission has consistently considered RMX to constitute a single, distinct product market.[112]

(C) The Commission's assessment

(90) RMX is homogenous and distinct from other types of building materials. Given the consistent past practice, which is in accordance with the Notifying Party's view, the Commission considers that RMX is a single distinct product market without further subdivisions.

5.2.5.2. Geographic market definition

(A) The Notifying Party's view

(91) The Notifying Party submits that the definition of a relevant geographic market for RMX is dependent on the fact that RMX is perishable over time, and can therefore only be transported up to a maximum distance.[113] A second limiting factor is the question of economic viability of transport distances.[114]

(92) In the view of the Notifying Party, exact driving distances may vary from location to location. Distances may be larger compared other European states given the size of the countries relevant to the Transaction. Transport distances may also vary depending on the density of population.[115] In less populated areas, distances tend to be longer. In urban areas on the other hand, there are more competing

[109] Q7 – Questionnaire to customers – paving, Sweden, question 17.

[110] Q8 – Questionnaire to competitors – paving, Sweden, question 16.1.

[111] Form CO, paragraph 534.

[112] Cases M.3572 Cemex/RMC, recital 12; M.4719 HeidelbergCement/Hanson, recital 21; M.6153 Anglo American/Lafarge/JV, recital 22; Case M.7054 – *Cemex/Holcim Assets*, paragraph 319; Case COMP/M.7252 – *Holcim/Lafa*rge, paragraph 281.

[113] Form CO, paragraph 668.

[114] Form CO, paragraph 664.

[115] Form CO, paragraph 665.

plants and traffic congestion, making the costs caused by longer transport distances a bigger disadvantage than in less populated areas. In urban areas, maximum distances for RMX therefore tend to be shorter.

(93) The Notifying Party submits that a clear majority of its RMX products are sold within a radius of 50 km or less. On average, its Finnish plants sell approximately [70-80]% of its products within an area of 25 km from the plant, but [50-60]% of its products outside a radius of 15 km[116]. Swedish and Norwegian RMX plants would sell close to [90-100]% of its products within a distance of 25 km, and [70-80]% within a radius of 15 km around a plant[117]. The Notifying Party estimates that maximum transportation distances for RMX are 100 km, and for some plants in Sweden up to 150 km.

(94) Based on this sale shares, the Notifying Party submits that a radius of 50 km around each plant can be used as the relevant geographic area for RMX, with a radius of 25 km as an alternative.[118]

(B) Commission precedents

(95) In past decisions, the Commission has considered that a relevant geographic market for RMX is a catchment area of a radius of 25 km around each plant[119]. However, the decision concerned markets located predominantly in France, Germany and the UK, and was partly based on the responses to the market investigation as well as arguments provided by the Notifying Party in the context of the Transaction in the respective countries.

(C) The Commission's assessment

(96) The Commission considers that a plausible geographic market for RMX would be either 25 km or 50 km around each plant. Based on previous decisions, as well as information provided by the Notifying Party, a narrower catchment area would be the more likely alternative in urban and more densely populated areas. However, the Commission acknowledge the argument by the Notifying Party that in Finland, Norway and Sweden, transport distances depend highly on the specific region in question. In the northern and other rural regions, which are sparsely populated, a catchment area around of 25 km around each plant would likely underestimated the actual sales territory.

(97) However, the ultimate market definition can be left open for the assessment of the case. As the Target is not active in the RMX business[120], no horizontal overlaps occur. Vertical relationships are considered in the context of a link with upstream aggregates businesses in all three countries. For the assessment of this specific case, applying a wider catchment area of 50 km is the more prudent approach.

(98) With respect to possible input foreclosure, the market shares on the respective aggregates markets upstream are decisive. However, those would not change

[116] Form CO, paragraph 666.

[117] Form CO, paragraph 667.

[118] Form CO, paragraph 669.

[119] Case COMP/M.7252 – Holcim/Lafarge, paragraph 286.

[120] Form CO, paragraph 671.

under a narrower geographic market definition. On the other hand, the overall number of affected markets would decline, as fewer catchment areas would overlap as a radius of 25 km would be considered as catchment area for RMX.

(99) Downstream market shares would indeed matter for the assessment of possible customer foreclosure. However, customer foreclosure is not a concern in the context of the aggregates – RMX relation, as further explained in the competitive assessment section.

(100) For the purposes of the present decision, a wider catchment area will be used as general assumption, as it would allow for a more prudent analysis. The ultimate geographical market definition can be left open between catchment areas of 25 km and 50 km around each RMX site, as it would not change the outcome of the assessment.

5.2.6. Construction

5.2.6.1. Product market definition

(A) The Notifying Party's view

(101) The Notifying Party submits that the market definition can be left open as the number of affected markets and the Notifying Party's market share will remain roughly the same under all plausible market definitions.

(B) Commission precedents

(102) Construction has in the past been defined as the on-site construction or assembly of buildings and other structures and building engineering.

(103) In previous decisions, the Commission has considered the division of the construction market into three sub-segments: the construction of residential buildings (blocks of flats, single household buildings), the construction of non-residential buildings (industrial buildings, offices, shopping centres and hospitals) and the construction of infrastructure/civil engineering (roads, bridges, railroads, sewage systems).[121] The Commission has, however, usually left the final market definition open. Within the segments of residential building, non-residential building and infrastructure building, a further segmentation has occasionally been made based on contract value.[122]

(104) The Commission also considered dividing the infrastructure construction / civil engineering segment into the construction of roads, the construction of bridges, the construction of tunnels and other infrastructure construction.[123] However, in this case too, the Commission has left the final product market definition open.

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[121] Case COMP/M.6841 – *Goldman Sachs/TPG Lundy/Tullock Homes Group Limited*, paragraph 17; M.6020 — ACS/HOCHTIEF, paragraph 6.

[122] Case COMP/M.1157 – *Skanska/Scancem*, paragraph 53-54.

[123] Case COMP/M.3864 – *Fimag/Züblin*, paragraph 10; Case COMP/M.5200 – *Strabag/Kirchner*, paragraph 12; and Case COMP/M.5158 – *Strabag/Kirchhoff*, paragraph 12.

(C) The Commission's assessment

(105) The Parties do not have any horizontal overlap in construction as the Target is not active in construction. Peab's share in construction stays below 30 % under any market definition that the Commission considers plausible in all three EEA states involved in the Transaction.[124] Thus construction markets are of interest because they are the downstream leg of a vertical link involving aggregates in the upstream market. In these vertical relationships the competitive assessment is the same under any market definition that the Commission considers plausible.

(106) Consequently, for the purpose of the assessment of the Transaction, the exact market definition can be left open.

5.2.6.2. Geographic market definition

(A) The Notifying Party's view

(107) The Notifying Party considers the market for construction to be national, and considers that the ultimate geographic market definition can be left open.

(B) Commission precedents

(108) In previous cases, the Commission has considered the market for construction works to be national, and potentially EEA-wide for certain types of construction works such as the construction of tunnels or bridges. However, geographic market definitions were ultimately left open.[125]

(C) The Commission's assessment

(109) For the present case, the Commission considers the market for construction to be national or wider. Peab itself is active in construction in Finland, Sweden and Norway, which is also the case for Skanska. NCC and Veidekke have a presence in construction in both Norway and Sweden[126]. However, companies do not compete in all parts of the EEA, and market investigation provided no information on whether presence in the respective country is a perquisite for successfully competing for construction projects.

(110) For the assessment of the case, a geographic market of at least national is considered, as no concerns would occur under the narrower definitions.

5.2.7. Transport

5.2.7.1. Product market definition

(111) The Target owns a general dry cargo ship and a bulk carrier that operate in northern Norway[127].

124 For Finland, see Form CO, paragraph 814; for Norway see Form CO, paragraph 822; for Sweden see Form CO, paragraph 829.

125 M.3864 – Fimag / Züblin; M.6020 ACS / Hochtief.

126 Annex 5.7.

127 Form CO, paragraph 872.

(A) The Notifying Party's view

(112) The Notifying Party submits that transport business has a vertical relationship with its aggregations operations, as the vessels are to transport, inter alia, aggregates. However, the Notifying Party considers that the relevant product market can be left open as the relationship between aggregates and cargo shipping does not give rise to affected markets under any plausible market definitions or result in any competition issues.[128]

(B) Commission precedents

(113) In its previous decisions, the Commission defined a separate product market for short-sea container liner shipping, i.e. distinct from deep-sea container shipping, non-liner shipping and non-containerised shipping, such as bulk shipping.[129]

(114) Additionally, the Commission has recognised the need to consider vessel sizes and contract types when defining the relevant product market for vessels.[130]

(C) The Commission's assessment

(115) Given that the Target only has one cargo ship and one bulk carrier ship, which carry, inter alia, some mineral aggregates, the Commission considers that the market definition can be left open as there are no conceivable competition concerns linked to these transport vessels.

5.2.7.2. Geographic market definition

(A) The Notifying Party's view

(116) The Notifying Party submits information on the basis of a national market, and considers that the exact geographic market definition can be left open.[131]

(B) Commission precedents

(117) In previous decisions, the Commission has considered that smaller ships tend to focus on coastal/short-range trade, while larger ships tend to go long-range, which may be worldwide.[132] Ultimately, the market definition was left open.

(C) The Commission's assessment

(118) The ships in question are rather small,[133] the geographic market is therefore smaller than worldwide. For the assessment of this case, the market definition can be left open. Possible vertical effects would origin from the link between the Target's cargo ship business in northern Norway and the aggregates production of Peab. Combined market shares in aggregates stay below 30% in all local markets

[128] Form CO, paragraph 874.

[129] Case COMP/M.9016 – *CMA CGM/Container Finance*, paragraph 31.

[130] Case COMP/M.5346 – *APMM/Broström*, paragraph 11.

[131] Form CO, paragraph 876.

[132] Case Comp/M.5346 – APMM / Broström.

[133] Form CO, paragraph 875.

in Norway.[134] Markets could therefore only become affected if market shares in cargo shipping would exceed 30%.

(119) On a national level, market shares are negligible below 2%. If markets would be defined regional, no links would occur, as Peab's two quarries are located in central Norway in Verrabotn[135] and in Jessheim near Oslo.[136] Therefore, under an even more narrow market definition than national, upstream and downstream market would no longer fall into the same geographic area.

(120) Thus the Commission considers that the exact geographic market definition can be left open.

5.3. Competitive assessment

5.3.1. Market share methodology

(121) In the case of local markets defined as a catchment area around a plant or a quarry, obtaining reliable sales and volume data for each local competitor poses great challenges. Such data is not readily available and reliable data collection may not be possible. Thus, in previous cases,[137] the Commission has relied on indirect estimation of market shares and proxies.

(122) Following the methodology used in previous cases, the market shares for catchment areas have been compiled as follows.[138]

- The size of the market (local demand) is computed as the product of consumption per capita in the relevant country and the population of the catchment area. A NASA population dataset has been used to estimate the size of the local market in terms of population.

- The Parties' combined sales attributed to each catchment area are all sales of the production site in the centre of the catchment area plus a share of the sales of each of the Parties' production sites with an overlapping catchment area, calculated based on the percentage of the overlap from the entire catchment area.

- The Parties' local market share is calculated as these sales divided by the total estimated consumption for the relevant product in the catchment area.

- Unless otherwise stated, the sales market shares of competitors are estimated by allocating the market volume minus the Parties' volumes to each competitor in proportion to its production capacity shares in the area. The production capacity share of each competitor is calculated in relation to the total capacity of competitors in the area

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[134] Form CO, paragraph 877.

[135] The quarry is closed.

[136] Form CO, Picture 4 / paragraph 133.

[137] M.7550, CRH / Holcim Lafarge Divestment Business, paras 174-176. Also see Case M.7252, Holcim / Lafarge, paras 75-77.

[138] Form CO, paragraphs 62-64.

(123) The Commission considers that this methodology is in line with precedents in this sector[139] and provides the best available proxy given the challenges of data gathering. The Commission notes that because the total market size is proxied with per capita consumption and population data whereas the Parties' sales are concrete sales figures, the market shares can sometimes exceed 100%, especially in more sparsely populated areas.

5.3.2. Overview of affected markets

(124) Table 1 below gives an overview of the product and country combinations in relation to which the Transaction gives rise to affected markets. A cell in a table does not necessarily correspond to a specific market as in many cases the markets are local. Thus one cell can refer to several markets, involving the same product(s) and the same EEA state.

Table 1 - overview of affected markets

Finland	**Sweden**	**Norway**
Horizontally affected markets		
aggregates	aggregates	
	asphalt	asphalt
	paving	
Vertically affected markets		
	aggregates-asphalt	aggregates-asphalt
aggregates-RMX	aggregates-RMX	aggregates-RMX
aggregates – construction		aggregates – construction
	asphalt – paving	asphalt – paving
		bitumen – asphalt

(125) The Commission notes that there are no affected markets in relation to transport, which would only concern Norway. The relationship would be between transport and aggregates as the Target's boats transport some aggregates from time to time. As discussed in Section 5.2.7., combined market shares in aggregates stay below 30% in all local markets in Norway.[140] Markets could therefore only become affected if market shares in cargo shipping would exceed 30%. If the cargo shipping market is national or wider, this would be wholly implausible as the Target has only two boats. If the cargo shipping market is local with a very small radius, the market share is still unlikely to exceed 30% and, in addition, the Target's boats could not serve the catchment areas of Peab's quarries. This is because Peab has only two quarries in Norway, one in Jessheim in southern Norway and one in Verrabotn in central Norway, whereas the Target's boats operate in northern Norway.[141]

[139] M.7550, CRH / Holcim Lafarge Divestment Business, paras 174-176. Also see Case M.7252, Holcim / Lafarge, paras 75-77.

[140] Form CO, paragraph 877.

[141] Form CO, paragraph 872.

5.3.3. *Finland*

5.3.3.1. Horizontally affected markets

(A) Aggregates

(A.i) List of affected markets and market shares

(126) Overall, Peab currently has limited presence in the aggregates business in Finland. It operates three aggregates quarries located in the wider Forssa area in south-western Finland and in the wider Lahti area in the southeast.[142]

(127) The Target, on the other hand, is a well-established supplier of aggregates in Finland. It owns approximately 200 aggregates quarries, around half of which are currently operative.[143]

(128) Overlaps of catchment areas of the three quarries currently owned by the Notifying Party with a number of catchment areas around the YIT's quarries give rise to 15 horizontally affected market in the Turku / Forssa / Uusimaa area. In addition, six market become vertically affected in the area of Lahti / Lappeenranta. The affected markets are listed in Tables 2 and Table 3 below.

Table 2 - horizontally affected aggregates markets in the Turku / Forssa / Uusima area

Catchment area	Peab	Target	**Combined**
Forssa / Forssanporti	[5-10]%	[30-40]%	**[40-50]%**
Forssa / Vuori	[5-10]%	[30-40]%	**[40-50]%**
Humppila	[5-10]%	[20-30]%	**[20-30]%**
Jokioinen, Myllymäki	[5-10]%	[30-40]%	**[30-40]%**
Jokioinen, Ripunkallio	[5-10]%	[30-40]%	**[40-50]%**
Murronmaa	[0-5]%	[20-30]%	**[30-40]%**
Nummensyrjä	[0-5]%	[20-30]%	**[30-40]%**
Salo, Hiekkanummi	[0-5]%	[20-30]%	**[30-40]%**
Somero, Matinmäki	[5-10]%	[30-40]%	**[30-40]%**
Somero Sora-Heikkilä	[5-10]%	[30-40]%	**[30-40]%**
Tammela, Penttilä	[0-5]%	[40-50]%	**[40-50]%**
Vahva Sora	[0-5]%	[20-30]%	**[20-30]%**
Tehdaspalsta	[0-5]%	[20-30]%	**[30-40]%**
Hämeenlinna	[0-5]%	[20-30]%	**[20-30]%**
Pusula	[0-5]%	[20-30]%	**[20-30]%**

Source: Form CO, table 1, paragraph 80.

Table 3 - horizontally affected aggregates markets in the Lahti/Lappenrata area

Catchment area	Peab	Target	**Combined**
Hämeenlinna	[0-5]%	[20-30]%	**[20-30]%**
Hamina	[0-5]%	[20-30]%	**[20-30]%**
Kotka	[0-5]%	[20-30]%	**[20-30]%**
Lahti	[0-5]%	[20-30]%	**[20-30]%**
Luumäki, Heimala	[0-5]%	[20-30]%	**[20-30]%**
Ämmänäyräs	[0-5]%	[20-30]%	**[20-30]%**

Source: Form CO, table 1, paragraph 80.

[142] Form CO, paragraph 126.

[143] Form CO, paragraph 125.

(129) A further segmentation of aggregates into crushed rock and gravel / sand would not substantially change that picture. In the Turku / Forssa / Uusimaa area, three more markets would be horizontally affected in that case (Pori, Söörmarkku, Ulvia), all with moderate market shares of well under 30%. In the Lahti / Lappeenranta area, three additional markets would become horizontally affected (Pernaja, Keltti 1, 2), all three with moderate market shares of below 30%. Also under such distinction, as shown in Table 4 and 5, combined market shares do not exceed [40-50]% in any affected areas, which is also the case for the combined market shares for the overall aggregates market.

Table 4 - market shares in horizontally affected aggregates markets separately for i) crushed rock and ii) gravel and sand

Catchment area	Crushed Rock	Gravel + Sand
Forssa / Forssanporti[144]	-	-
Forssa / Vuori	[40-50]%	-
Humppila	-	[30-40]%
Jokioinen, Myllymäki	-	[40-50]%
Jokioinen, Ripunkallio	[30-40]%	-
Murronmaa	-	[40-50]%
Nummensyrjä[145]	-	-
Salo, Hiekkanummi	-	[30-40]%
Somero, Matinmäki	-	[40-50]%
Somero Sora-Heikkilä	-	[40-50]%
Tammela, Penttilä	[40-50]%	-
Vahva Sora	[10-20]%	[20-30]%
Tehdaspalsta	-	[40-50]%
Hämeenlinna	[20-30]%	-
Pulsua	-	[20-30]%
Pori	[20-30]%	-
Söörmarkku	[20-30]%	-
Ulvila	[20-30]%	-

Source: Form CO, Annex 7, Table 67.

Table 5 - market shares in horizontally affected aggregates markets in the Lahti / Lappeenranta area separately for i) crushed rock and ii) gravel and sand

Catchment area	Crushed Rock	Gravel + Sand
Hämeenlinna	[20-30]%	-
Hamina	[40-50]%	[5-10]%
Kotka	[40-50]%	-
Lahti	[20-30]%	-
Luumäki, Heimala	[30-40]%	-
Ämmänäyräs	-	[10-20]%
Pernaja	[20-30]%	-
Kouvola, Keltti 1	[20-30]%	-
Kouvola, Keltti 2	[20-30]%	-

Source: Form CO, Annex 7, Table 67.

144 Forssa / Forssanporti does not produce new aggregates and sells only recycled / secondary aggregates.

145 No data available

(130) Tables 4 and 5 show that in most quarries, either crushed rock or gravel / sand is produced. In few catchment areas, market shares in segments may be lower than in the overall aggregates market. This is because in Tables 2 and 3, production of all aggregates by both parties within the catchment area is taken into account. In Tables 4 and 5, only all production by the parties of the specific type of aggregates that is produced in the respective quarry is analysed.

(A.ii) The Notifying Party's view

(131) The Notifying Party considers that the Transaction would have no impact on the aggregates markets in question. First, an increase of the Parties' combined market shares would only be nominal, as the Notifying Party's production is used fully captively and therefore would not put competitive pressure on the market. Production will remain for internal use only post Transaction.[146]

(132) Second, the combined market shares in the local areas would still remain moderate, and the Notifying Party would still meet plenty of competition in all markets.[147]

(A.iii) The Commission's assessment

(A.iii.a) Common characteristics of all markets

(133) Market shares as discussed in this section comprise both captive and non-captive production. As discussed under 5.3.1, also volumes that are not sold on the market, but used internally by companies with an integrated downstream business, are considered. For the purposes of the assessment, no distinction is therefore made between captive and non-captive sales, despite the Notifying Party's argument that almost the entire production of aggregates in its three quarries would be used internally[148]. This is because also internally used volumes reflect the market power of a specific company. The Notifying Party also appears to acknowledge that switching between internal and external sales is relatively easy[149], and that captively used production would reflect the capability to participate in the market or extent their sales.[150]

(134) Aggregates are a rather homogeneous product, and as evidenced by the market investigation, costs of switching between suppliers are generally moderate. A majority of customers responding to the investigation indicate that they can easily switch to other companies than the ones they source from[151]. The only reported barriers to switching pertain to different price levels or lack availability, and only to a minor degree on product differentiation connected to respective specific suppliers[152]. All undertakings that have responded to the market investigation

[146] Form CO, paragraph 164, 170.

[147] Form CO, paragraph 166, 172.

[148] Form CO, paragraph 127.

[149] Form CO, paragraph 68.

[150] Form CO, paragraph 69.

[151] See Q1, questionnaire to aggregates customers in Finland, question 15.

[152] See Q1, questionnaire to aggregates customers in Finland, question 17.1.

source from more than one aggregates supplier[153]. Therefore, the presence of actual or potential alternative aggregates suppliers within a market exert competitive pressure on aggregates companies, as customers can switch when prices are raised unilaterally.

(135) Production of aggregates in Finland is generally limited due to the fact that sourcing aggregates requires a permit, which is not easy to obtain because of environmental requirements. Respondents to the market investigation consistently state that acquiring a permit could take several years, a factor that constrains capacity expansion.[154] Therefore, barriers to enter the market or to expand production are not negligible. Even though the costs for opening a new or additional quarry are moderate[155], the time required to get a permit makes a timely entry into any market to respond to increased demand in that market unlikely, which may lead to capacity constraints.

(136) Responses from the market investigation indicated that, while there is not a general capacity problem regarding aggregates in Finland, there are regional differences[156]. This was further developed during calls with aggregates competitors. One of the main competitors of YIT confirmed that there would be significant excess capacities in rural Finland, for example in the Forssa area, where lots of excess capacities exist[157]. By contrast, access to aggregates would be more difficult in metropolitan areas, such as Helsinki.[158]

(137) Despite a more limited availability in metropolitan areas, as highlighted by the same competitor, in such areas however aggregates could not only be sourced from quarries, but also as by-product from construction sites, such as construction of roads, metro lines or tunnels. Such aggregates would add another 10% to 40% to the overall market of aggregates[159]. As these volumes are linked to specific construction projects, the availability of aggregates in metropolitan areas would be subject to significant variations. Therefore, in some years, demand for aggregates would outstrip capacities, including in Helsinki and other metropolitan areas.[160]

(A.iii.b) Turku / Forssa / Uusimaa area

(138) The Commission considers that there are two main reasons why the Transaction will not lead to higher prices for aggregates in the Turku / Forssa / Uusimaa area. First, the Transaction does not change the competitive structure of the market, as merged entity would not have a significantly stronger position compared to situation pre-transaction. Increments remain close to or below [5-10]% in all of the areas. This was further substantiated by replies to the market investigation. As an illustration, a competitor in aggregates production in Finland expressly

153 See Q1, questionnaire to aggregates customers in Finland, question 17.

154 See Q1, questionnaire to aggregates customers in Finland, question 25.

155 At around EUR 100.000, see Q2, questionnaire to aggregates competitors, question 30.

156 See Q1, questionnaire to aggregates customers in Finland, question 23.

157 Call with a competitor, 10 March 2020, point 9.

158 Call with a competitor, 10 March 2020, point 6, 7.

159 Call with a competitor, 10 March 2020, point 4.

160 Call with a competitor, 10 March 2020, point 7.

confirmed the Transaction would not have material effects on the market structure regarding aggregates in the Forssa / Turku / Uusimaa area[161].

(139) The point that the Transaction would not change the market structure was further substantiated in the market investigation. None of the respondents stated that Peab would currently exercise significant or even some competitive pressure on YIT, while customers rather stated that it would not exercise any significant pressure (a majority stated it would not be able to answer this question)[162]. Therefore, no significant competitive force would leave the market due to the Transaction.

(140) Second, the merged entity would still be constrained by other players. This is illustrated in the first place by the fact its combined market shares remain below 45% in all markets, and well below that figure in most of the regions. As switching costs for aggregates customers are generally moderate, the presence of alternative suppliers leave customers with the option of sourcing from other companies. In the second place, as Table 6 shows, the competitor base consists of both small players as well as larger, integrated competitors, in line with overall market structures within Finland generally.

(141) The fragmentation of the Finnish market for aggregates is illustrated by the fact that, in 2013, there were more than 6000 permits across the country for quarrying various kind of grounds. 4000 of these quarries were producing gravel and sand, 1800 rock, and 200 other types of grounds[163]. Overall, around one third of all aggregates in the wider Turku / Forssa / Uusimaa area are produced by smaller suppliers.

Table 6 - estimated market shares of aggregates competitors in the Turkuu / Forssa / Uusima area

Competitor	Estimated market shares[164]
Rudus (CRH)	[10-20]%
Hämeen Kuljetus	[5-10]%
Destia	[5-10]%
NCC	[5-10]%
TerraWise	[5-10]%
Palovuoren Kivi	[5-10]%
Kiertomaa	[5-10]%
Läänin Kuljetus	[5-10]%
Hämeen kuljetus	[5-10]%
Others	approx. [30-40]%

Source: Form CO, Table 16

(A.iii.c) Lahti / Lappeenranta area

(142) Similar arguments as stated above are valid for the assessment of the Lahti / Lappeenranta area. First, the Transaction would not change the structure of competition in the area compared to the situation pre-transaction. Increments in

161 Call with a competitor, 10 March 2020, point 9.

162 Q1, questionnaire to aggregates customers in Finland, question 19.

163 The Finnish Ministry of Employment and the Economy, Kiviaines- ja luonnonkiviteollisuuden kehitysnäkymät (report on aggregates), report 54/2015, page 28

164 Form CO, Table 16; estimates for an area of 160 km around the Target`s quarries in the Turku and Forssa area, and therefore potential competitors under catchment areas of 80 km.

all markets are close to or below [0-5]%. Therefore, Peab would not gain a stronger position than YIT currently has. As the market investigation confirmed, Peab currently does not form a significant competitive constrain on YIT[165]. Therefore, no significant competitor would be eliminated due to the Transaction.

(143) Second, the merged entity would still face significant competition, as its modest market shares remain below 30% in the Lathi / Lappeenranta area below 30%. As switching costs for aggregates customers are generally moderate, the presence of alternative suppliers leave customers with the option of sourcing from other companies. As switching costs between aggregates suppliers are generally moderate, the merged entity will not be in a position to raise prices unilaterally.

(144) Also in the Lahti / Lappeenranta area, the merged entity faces competition from a number of competitors. The competitor base consists partly of bigger, integrated companies such as Rudus, Destia or NCC. In addition to this, a large number of small suppliers with a market share below 5% account for around [40-50]% of all aggregates supply in the region, as Table 7 shows.

Table 7 - estimated market shares of aggregates competitors in the Lahti / Lappeenranta area

Competitor	**Estimated market shares[166]**
Rudus (CRH)	[20-30]%
Savon Kuljetus	[10-20]%
Destia	[5-10]%
NCC	[5-10]%
Tykkimäki	[5-10]%
Turpeinen	[5-10]%
Others	approx. [40-50]%

Source: Form CO, Table 17.

(A.iii.d) Conclusion

(145) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition due to unilateral effects in the markets for aggregates in Finland.

5.3.3.2. Vertically affected markets

(A) Aggregates – RMX

(A.i) List of affected markets and market shares

(146) The Notifying party has a limited presence in the aggregates business in Finland. It operates three aggregates quarries located in the wider Forssa area in south-western Finland and in the wider Lahti area in the southeast.[167] However, the

[165] Q1, questionnaire to aggregates customers in Finland, question 19.

[166] Form CO, Table 17; estimates for an area of 160 km around the Target`s quarries in the Lappeenranta area, and therefore potential competitors under catchment areas of 80 km.

[167] Form CO, paragraph 126.

Notifying Party is well active in the production of RMX in Finland and operates several RMX plants in the south and the west of the country[168].

(147) The Target, on the other hand, has no RMX production[169], but is very strong in the aggregates business. It owns approximately 200 aggregates quarries, around half of which are currently operative.[170]

(148) Potential concerns result therefore from the fact that the merged entity would reach a strong presence both in upstream aggregates and downstream RMX markets. The Transaction gives rise to a number of vertically affected markets, as catchment areas around the YIT's quarries overlap with the catchment areas of Peab's RMX plants. In given local markets, combined market shares exceed 30% either or both upstream and / or downstream. Concerns arise therefore in the context of both input foreclosure and customer foreclosure.

(149) Lists with affected markets are presented in the respective sections A.iii.a (input foreclosure) and A.iii.b (customer foreclosure).

(A.ii) The Notifying Party's view

(150) The Notifying Party considers that it would not have the ability to engage in input foreclosure, as RMX competitors would still have the opportunity to source from a large number of other suppliers in all areas. An obvious lack of ability would also eliminate any incentive to engage in such a strategy.[171]

(151) As for customer foreclosure, the Notifying Party submits that aggregates are a highly versatile product with many end-uses. As aggregates competitors would still be able to sell to other RMX manufacturers, as well as construction, asphalt or mortar companies, there would be no ability for customer foreclosure.[172]

(A.iii) The Commission's assessment

(A.iii.a) Input foreclosure

(152) The Transaction gives rise to a number of vertically affected markets with a combined upstream market share of more than 30% and an overlap with the catchment area of one of the Notifying Party's RMX plants. All these markets, listed in Table 8, are broadly located in the wider Turku / Forssa / Uusimaa area.

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168 Form CO, paragraph 674.

169 Form CO, paragraph 671.

170 Form CO, paragraph 125.

171 Form CO, paragraph 709, 710.

172 Form CO, paragraph 711.

Table 8 - upstream aggregates markets with combined market shares above 30%

Catchment area	**Combined market shares in upstream aggregates**	**Overlapping RMX plants**[173]
Forssa, Forssanportti	[40-50]%	Loimaa, Salo, Ylöjärvi, Tampere, Naantali, Lieto, Lohja, Kirkkonummi, Espoo
Forssa, Vuori	[40-50]%	Loimaa, Salo, Ylöjarvi, Lieto, Tampere, Naantali, Lohja, Kirkkonummi, Espoo
Jokioinen, Myllymäki	[30-40]%	Loimaa, Ylöjärvi, Tampere, Lieto, Naantali, Salo, Lohja, Espoo
Jokioinen, Ripunkallio	[40-50]%	Loimaa, Salo, Ylöjärvi, Lieto, Naantali, Tampere, Lohja, Kirkkonummi, Espoo
Salo, Hiekkanummi	[30-40]%	Lohja, Salo, Loimaa, Lieto, Naantali, Kirkkonummi, Espoo, Helsinki
Somero, Matinmäki	[30-40]%	Lohja, Loimaa, Salo, Lieto, Naantali, Kirkkonummi, Espoo, Helsinki
Somero, Sora-Heikkilä	[30-40]%	Lohja, Loimaa, Salo, Lieto, Naantali, Kirkkonummi, Espoo, Helsinki
Tammela, Pentt	[40-50]%	Loimaa, Salo, Ylöjärvi, Tampere, Naantali, Lieto, Kirkkonummi, Espoo, Helsinki

Source: Form CO, Table 169, paragraph 702.

(153) RMX can be generally produced using both types of aggregates, crushed rock or gravel and sand. Whereas gravel / sand is generally the preferred for the production of RMX[174], it is more and more replaced by crushed rock[175]. The market investigation confirmed that it is generally possible to use both crushed rock and gravel / sand for RMX production[176].

(154) For the assessment of input foreclosure, the conclusion would remain the same even if a product segmentation between crushed rock and gravel / sand was made. A segmentation would indeed give rise to two additional affected markets in Murronmaa and Humppila. However, as Table 9 shows, also with a segmentation in crushed rock and gravel / sand, combined market shares of the merged entity would remain in similar ranges compared to overall combined markets shares and remain below [40-50]% in all of the markets.

Table 9 - upstream aggregates markets with a combined market share of more than 30% separately for i) crushed rock and ii) gravel and sand

Catchment area	**Crushed Rock**	**Gravel + Sand**
Forssa, Forssanportti[177]	-	-
Forssa, Vuori	[40-50]%	[30-40]%
Humppila, Kair	-	[30-40]%
Jokioinen, Myllymäki	-	[40-50]%
Jokioinen, Ripunkallio	[30-40]%	-

173 Downstream market shares: Loimaa [40-50]%; Salo [40-50]%; Ylöjärvi plant opened in 2019; Tampere plant opened in 2019; Naantali [50-60]%; Lieto [50-60]%; Lohja [10-20]%; Kirkkonummi [10-20]%; Espoo [10-20]%; Helsinki [10-20]%.

174 Confirmed minutes of a call with a competitor, 10 March 2020, point 10.

175 The Finnish Ministry of Employment and the Economy, Kiviaines- ja luonnonkiviteollisuuden kehitysnäkymät (report on aggregates), report 54/2015, page 12.

176 Q1, questionnaire to aggregates competitors in Finland, question 12.1.1.

177 Site do not produce new aggregates, sales only from recycled / secondary aggregates.

Catchment area	Crushed Rock	Gravel + Sand
Murronmaa Iii		[40-50]%
Salo, Hiekkanummi	-	[30-40]%
Somero, Matinmäki	-	[40-50]%
Somero, Sora-Heikkilä	-	[40-50]%
Tammela, Pentt	[40-50]%	-

Source: Form CO, Annex 7, Table 186.

(155) Production of aggregates in Finland is limited due to the fact that sourcing aggregates requires a permit, which is not easy to obtain because of environmental requirements. Respondents to the market investigation consistently state that acquiring a permit could take several years, which limits the possibility for capacity expansion.[178] Response from the market furthermore showed that generally there is no capacity problem regarding aggregates in Finland, even though there are regional differences[179]. This was further developed during calls with aggregates competitors. As an illustration, one of the main competitors of YIT confirmed that there would be significant excess capacities in rural Finland, for example in the Forssa area[180].

(156) While some respondents indicated that access to aggregates would be more difficult in metropolitan areas, such as Helsinki,[181] as already illustrated within the horizontal assessment, in such metropolitan areas, aggregates would not only be sourced from quarries, but also as by-product from construction sites, such as construction of roads, metro lines or tunnels. Such aggregates would add another 10% to 40% to the overall market of aggregates[182]. As these volumes are linked to specific construction projects, the availability of aggregates in metropolitan areas would be subject to significant variations. Therefore, in some years, demand for aggregates would outstrip capacities in Helsinki and other metropolitan areas. This may lead to longer transport distances to alternative sources farther away. Overall, however, there would generally be enough capacity of aggregates even in metropolitan areas such as Helsinki.[183] Even though aggregates sourced from construction sites cannot be used directly as input for RMX production due to quality requirements,[184] they still form a general capacity relaxation on the overall aggregates market.

(157) During the market investigation, a downstream competitor in RMX pointed specifically to possible shortages in aggregates following the Transaction. The company raised its concern regarding access to aggregates post-transaction, as it would currently source aggregates from YIT, which is, unlike Peab, not a competitor in the downstream RMX business[185]. The same competitor also referred to the possibility that, post transaction, the merged entity and its largest

178 See Q1, questionnaire to aggregates customers in Finland, question 25.

179 See Q1, questionnaire to aggregates customers in Finland, question 23.

180 Confirmed minutes of a call with a competitor, 10 March 2020, point 9.

181 Confirmed minutes of a call with a competitor, 10 March 2020, point 6, 7.

182 Confirmed minutes of a call with a competitor, 10 March 2020, point 4.

183 Call with a competitor, 10 March 2020, point 7.

184 Call with a competitor, 10 March 2020, point 10.

185 Q1, questionnaire to aggregates customers, question 32.

upstream competitor Rudus (CRH) could exert market power as large integrated players throughout the whole value chain[186].

(158) However, for the specific markets in question, the Commission comes to the conclusion that it is unlikely that the merged entity could foreclose inputs for downstream competitors, as it would not have the ability and unlikely the incentive for such a strategy. In addition to this, input foreclosure would not have an impact, as it would not lead to an increase of downstream RMX prices.

(159) First, the merged entity would not have the ability to foreclose downstream RMX competitors, as these companies could still source from other suppliers. Combined market shares in the upstream aggregates business remain well below 50% in all affected markets. As discussed above, switching costs for aggregates customers are generally moderate. Within the area in question, alternative suppliers are present. The competitor base consist of both small players as well as larger competitors with an overall presence across the region.

Estimated market shares of competitors in the Turku / Forssa / Uusimaa area

Table 10 – estimated market shares of aggregates competitors in the Turku / Forssa / Uusima area

Competitor	**Estimated market shares[187]**
Rudus (CRH)	**[10-20]%**
Hämeen Kuljetus	**[5-10]%**
Destia	**[5-10]%**
NCC	**[5-10]%**
TerraWise	**[5-10]%**
Palovuoren Kivi	**[5-10]%**
Kiertomaa	**[5-10]%**
Läänin Kuljetus	**[5-10]%**
Hämeen kuljetus	**[5-10]%**
Others	**approx. [30-40]%**

Source: Form CO, Table 16.

(160) With respect to capacities, the Notifying Party submits that YIT is currently not a significant source for RMX competitors in the areas where the merged entity reaches upstream market shares of more than 30% that have overlapping catchment areas with one of Peab's RMX plants. In Forssa / Forssanportti, Forssa / Vuori, Jokioinen / Ripunkallio, Jokioinen / Myllymäki, Salo / Hiekkanummi, Somero / Matinmäki and Tammela Pentt, YIT reports no current sales to RMX manufacturers. In Somero / Sora-Heikkilä, sales to RMX companies remain moderate at around [10-20]%[188]. YIT indeed does report significant sale shares to Peab's RMX competitors for some markets where either combined upstream markets shares remain below 30% or that cannot serve one of Peab's RMX plants. However, in areas where input foreclosure may be a concern, RMX competitors predominantly source from other suppliers that the Target.

(161) Second, the merged entity lacks incentive for input foreclosure, for two reasons. On the one hand, the merged entity does not have a large enough downstream

186 Submission by a customer, 10 March 2020.

187 Form CO, Table 16; estimates for an area of 160 km around the Target`s quarries in the Turku and Forssa area, and therefore potential competitors under catchment areas of 80 km.

188 Reply to RFI1, question 1.

presence in RMX markets to recoup the margins lost through lower sales in the upstream aggregates market. Overall, Peab is not the largest player in four out of eight RMX downstream markets in question[189]. In the two by far biggest markets in Helsinki and Espoo, it is only the fourth biggest RMX supplier. In all markets in question, four or more other competitors with a market share of at least 5% are present, and at least one with a market share exceeding 15%.[190] [191] This is compounded by limited barriers to switching for a homogeneous product such as aggregates, as explained in the horizontal assessment section.

(162) On the other hand, the merged entity would indeed need large gains in market share downstream to level potential losses in upstream aggregates sales. As stated above, RMX forms only a small part of the overall aggregates customer base.[192] However, as the merged entity does not have control over the secondary market, and cannot avoid arbitrage, it would have to sustain higher aggregate prices not only for RMX customers, but also for customers from the construction or asphalt business in the context of an input foreclosure strategy. Therefore, in the face of limited potential gains downstream, it would risk facing losses in other customer groups upstream, which makes an incentive to pursue such a strategy unlikely.

(163) Third, the Commission considers that it is unlikely that an input foreclosure strategy would have an overall impact on downstream RMX prices. As shown above, the Notifying Party meets a number of credible competitors in all local markets, the largest of which have access to own upstream aggregates.

(164) The Notifying Party's main competitor Rudus (CRH) is an integrated company itself with own access to aggregates[193] and therefore does not rely on purchases from the Notifying Party. Further, the Notifying Party submits it would face competition from four additional integrated RMX competitors in the Turku / Forssa area (Santalan Betoni, 10Betoni, Vammalan Betoni and Laurilan Betoni), and competition from five integrated players in the Uusimaa area (Rusko, Luja, Betonicenter, Santalan Betoni, 10Betoni)[194]. As explained above, it is furthermore unlikely that the merged entity would have the ability to foreclose non-integrated competitors. Therefore, even if input foreclosure by the merged entity would affect single downstream competitors, it would not eliminate effective competition on the downstream market, and therefore not raise RMX prices.

(A.iii.b) Customer foreclosure

(165) The Transaction gives rise to a number of vertical aggregates and RMX markets where customer foreclosure is a potential concern. This would be the case in the four downstream RMX markets where the merged entity reaches shares exceeding 30%, as listed in Table 11.

189 Applying a catchment area of 50 km radius for Loimaa, Salo, Naantali, Lieto, Lohja, Kirkkonummi, Espoo, Helsinki; no data available for Ylöjärvi, Tampere, as plants opened in 2019.

190 Annex 7, table 155.

191 Under a catchment area of 25 km, the Notifying Party would face at least three competitors of more than 5% market share, with at least one of them with a share exceeding 10%.

192 The Finnish Ministry of Employment and the Economy, Kiviaines- ja luonnonkiviteollisuuden kehitysnäkymät (report on aggregates), report 54/2015, page 11.

193 See Q1, questionnaire to aggregates customers in Finland, question 4.

194 See response to RFI 1, 11 March 2020.

Table 11 – downstream RMX markets where Peab's market share exceeds 30%

Catchment area	Market shares[195]
Lieto	**[50-60]%**
Naantali	**[50-60]%**
Salo	**[40-50]%**
Loimaa	**[40-50]%**

Source: Form CO, Table 186.

(166) All upstream aggregates markets listed above for input foreclosure are also affected vertically due to market shares exceeding 30% in Peab's downstream RMX business, and put in italics in Table 12. In addition, a number of other areas are affected only because of the Notifingy Party's strong downstream position.

Table 12 – affected upstream aggregates markets

Catchment area	Market shares	Linked RMX catchment area
Humppila, Kair	[20-30] %	Loimaa, Salo, Lieto, Naantali
Hyvinkää, Noppo	[5-10]%	Loimaa, Salo, Lieto
Hämeenlinna/Hatt	[20-30] %	Loimaa
Kemiönsaari, Nord	[0-5] %	Loimaa
Laitila, Haijanen	[5-10]%	Loimaa, Salo, Lieto, Naantali
Lempäälä, Aukeas	[5-10]%	Loimaa
Loppi, Läyl	[5-10]%	Loimaa, Salo
Loppi, Pilpala	[10-20]%	Loimaa, Salo
Pirkkala, Linnakorpi	[5-10]%	Loimaa
Puslua	[20-30] %	Salo, Loimaa, Naantali
Pöytyä, Kum	[10-20]%	Loimaa, Salo, Lieto
Tampere, Sorila	[5-10]%	Loimaa
Tarvasjoki, Tyllilä	[5-10]%	Lieto, Loimaa, Naantali, Salo
Tupuri	[10-20]%	Lieto, Salo, Naantali, Loimaa
Ulvila, Pirunkynsi	[10-20]%	Loimaa
Valkeakoski, Patavuori	[10-20]%	Loimaa, Salo
Vantaa, Kiila	[5-10]%	Salo
Vantaa, Voutila	[5-10]%	Salo
Forssa, Forssanportti	[40-50]%	Loimaa, Salo, Lieto, Naantali
Forssa, Vuori	[40-50]%	Loimaa, Salo, Lieto, Naantali
Jokioinen, Myllymäki	[30-40]%	Loimaa, Salo, Lieto, Naantali
Jokioinen, Ripunkallio	[40-50]%	Loimaa, Salo, Lieto, Naantali
Salo, Hiekkanummi	[30-40]%	Loimaa, Salo, Lieto, Naantali
Somero, Matinmäki	[30-40]%	Loimaa, Salo, Lieto, Naantali
Somero, Sora-Heikkilä	[30-40]%	Loimaa, Salo, Lieto, Naantali
Tammela, Pentt	[40-50]%	Loimaa, Salo, Lieto, Naantali

Source: Form CO, Annex 5.6a.

(167) However, it is in general unlikely for RMX producers to be able to foreclose upstream aggregates suppliers, as RMX typically forms only a small portion of the overall aggregates demand. Aggregates can be used for a number of end-products, such as asphalt, mortar, RMX and overall construction works.

(168) In fact, RMX forms only a small part of around 10% of the overall aggregates customer base[196]. This number was confirmed during the market investigation, as market participants estimated the share of total aggregates that would be used for

[195] Annex 7, table

[196] The Finnish Ministry of Employment and the Economy, Kiviaines- ja luonnonkiviteollisuuden kehitysnäkymät (report on aggregates), report 54/2015, page 11.

RMX production at below 10%.[197] High market shares in downstream RMX markets alone do therefore not imply the ability for customer foreclosure, as the Notifying Party's RMX business accounts in fact for significantly less than 10% of the total customer base of upstream competitors in the aggregates business.

(169) Therefore, with respect to a potential product segmentation into crushed rock and gravel / sand, the assessment would not change, as both types of aggregates are used for the production of RMX. Concerning the geographic market definition, the conclusion remains the same if a narrower catchment area of 25 km was applied, as even very high downstream market shares in RMX would not be sufficient to successfully engage in customer foreclosure.

(170) Also a possible combination of all end-uses, combining market shares of all the merged entity's end-uses, would not increase the ability for customer foreclosure. The biggest part of overall aggregates production is used in the construction sector, where Peab currently has a market share of around [0-5]%[198], while YIT's construction business is not part of the Transaction. Peab itself is not active in manufacturing of asphalt in Finland, but aquires YIT's asphalt business. However, the ability for customer foreclosure for the merged entity post-transaction is significantly lower than it is currently for YIT.

(A.iii.c) Conclusion

(171) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition as a result of the aggregates-RMX vertical links in Finland.

(B) Aggregates – construction

(B.i) Affected markets

(172) The Transaction gives rise to a vertically affected market due to the aggregates-construction vertical link. The downstream construction market is national and the combined market share on this market stays well below 30% as only Peab is active in construction and its share is moderate. Namely, its share stays below 3% regardless of how construction market is defined.[199]

(173) Thus the only potential issue is input foreclosure due to high individual or combined market shares in a number of aggregates markets. The affected market is the national paving market.

(174) Table 13 below lists the aggregates markets where the Parties' individual or combined market share exceeds 30%.

[197] See call with a competitor on 10 March 2020.

[198] Form CO, Table 220 / paragraph 809.

[199] Form CO Table 220, see also Form CO paragraph 814.

Table 13 – upstream aggregates markets where individual or combined market shares exceed 30%

	Target	Peab	Combined share
Forssa, Forssaporti	[30-40]%	[0-5]%	[40-50]%
Forssa, Vouri	[30-40]%	[5-10]%	[40-50]%
Jokioininen/Myllymaki	[30-40]%	[0-5]%	[30-40]%
Jokioininen/Ripunkallio	[30-40]%	[5-10]%	[40-50]%
Salo, Hiekkanummi	[20-30]%	[0-5]%	[30-40]%
Salo, Muronmaa	[20-30]%	[0-5]%	[30-40]%
Salo, Nummensyrja	[20-30]%	[0-5]%	[20-30]%
Salo, Tehdaspalsta	[20-30]%	[0-5]%	[30-40]%
Somero/Matinmaki	[20-30]%	[0-5]%	[30-40]%
Somero/Soraheikkila	[20-30]%	[0-5]%	[30-40]%
Tammela	[30-40]%	[0-5]%	[40-50]%
Lappeenranta,Viipurinportti	[30-40]%	[0-5]%	[30-40]%
Ruokolahti 1:5	[30-40]%	[0-5]%	[30-40]%
Joutseno	[30-40]%	[0-5]%	[30-40]%
Kerimäki	[30-40]%	[0-5]%	[30-40]%
Oulu Vittakangas	[40-50]%	[0-5]%	[40-50]%
Pattijoki	[40-50]%	[0-5]%	[40-50]%
Savonlinna	[30-40]%	[0-5]%	[30-40]%
Siikajoki	[40-50]%	[0-5]%	[40-50]%
Taipalsaari Ahola	[30-40]%	[0-5]%	[30-40]%
Taipalsaari Sorala	[30-40]%	[0-5]%	[30-40]%

Source: Form CO, Table 2018, paragraph 809.

(B.ii) The Notifying Party's view

(175) The Notifying Party submits that it would not have the ability to foreclose competing construction companies in the relevant catchment areas post-Transaction because the pre-Transaction Peab quarries produce aggregates entirely for Peab's RMX business and the market share of the Target's quarries are limited. Market shares of at most 30-40% indicate that several significant competitors remain in the area from whom aggregates can be sourced.[200]

(176) Furthermore, many of the Target's largest customers in the areas are independent transport companies that deliver the aggregates to their own customers. Peab would not be able to prevent these companies from choosing their own end-customers.[201]

(177) In addition, many of the Target's current competitors in aggregates also operate in infrastructure construction, which means they could counter such hypothetical foreclosure strategy through the use of their own aggregates production.[202]

(178) Any segmentation of aggregates into (i) crushed rock and (ii) sand and gravel would not change this assessment to a significant extent as the number of catchment areas with more than 30% market share and the market shares would not change appreciably.[203]

(179) The Notifying party also notes that YIT (the seller of the Target) is a much larger player in the Finnish construction market than Peab. Thus, as a result of the

[200] Form CO, paragraph 816.

[201] Form CO, paragraph 817.

[202] Form CO, paragraph 817.

[203] Form CO, paragraph 818.

Transaction, the combined entity's ability to attempt input foreclosure would not increase.[204]

(B.iii) The Commission's assessment

(B.iii.a) Markets with upstream increments

(180) In 11 upstream markets,[205] there is an increment due to the Transaction. Given that the combined market share in these markets are above 30%, these markets were all horizontally affected. In Section 5.3.3.1. (A.ii), the Commission concluded that the Transaction will not lead to unilateral non-coordinated effects in these catchment areas. The lack of horizontal effects implies that, for the reasons explained in Section 5.3.3.1. (A.ii), the increment will not lead to significant price increases in the upstream market. This in turn implies that the merged entity will lack the ability to engage in input foreclosure.

(181) As regards incentives, in general the merged entity will face a trade-off when considering input foreclosure strategies. An increase of prices in the upstream market (or a refusal to sell) will reduce profits due to decreasing sales to downstream rivals. However, by raising downstream rivals' input costs it may gain additional profits downstream by capturing additional sales or by increasing prices downstream.

(182) In this regard, the Transaction will decrease, rather than increase Peab's incentives to engage in input foreclosure. This is because pre-Transaction the Target was part of YIT, the seller, which is a much larger player in the Finnish construction market than Peab.[206] Thus, the merged entity's downstream market share will be lower than YIT's was pre-Transaction. The decreasing market share downstream will reduce the incentives to foreclose as downstream the merged entity would be able to recoup less of the lost profits upstream than YIT was able to pre-Transaction due to the fact that it will have a smaller sales base.

(183) On the basis of above, the Commission considers that the Transaction will not lead to a significant impediment of effective competition on account of input foreclosure in the catchment areas of the Forssa/Forssaporti, Forssa/Vouri Jokioininen/Myllymaki, Jokioininen/Ripunkallio, Salo/Hiekkanummi, Salo/Muronmaa, Salo/Nummensyrja, Salo/Tehdaspalsta, Somero/Matinmaki, Somero/Soraheikkila and Tammela quarries.

(B.iii.b) Markets with zero upstream increments

(184) In 10 upstream markets[207] the increment brought about by the Transaction is zero as Peab has no quarries in these catchment areas. Hence, the Transaction does not increase the ability of the merged entity to engage in input foreclosure.

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204 Form CO, paragraph 819.

205 Forssa, Forssaporti; Forssa, Vouri ; Jokioininen/Myllymaki; Jokioininen/Ripunkallio; Salo, Hiekkanummi; Salo, Muronmaa; Salo, Nummensyrja; Salo, Tehdaspalsta; Somero/Matinmaki; Somero/Soraheikkila; Tammela.

206 Form CO, Table 227.

207 Lappeenranta,Viipurinportti; Ruokolahti 1:5; Joutseno; Kerimäki; Oulu/Vittakangas; Pattijoki; Savonlinna; Siikajoki; Taipalsaari/Ahola; Taipalsaari/Sorala.

(185) As discussed in Section 5.3.3.2 (B.iii.b) above, the Transaction decreases, rather than increases the incentives to engage in input foreclosure as the Peab's downstream presence post-Transaction will be smaller than YIT's pre-Transaction.

(186) On the basis of above, the Commission considers that the Transaction will not lead to a significant impediment of effective competition on account of input foreclosure in the catchment areas of the Lappeenranta/Viipurinportti, Ruokolahti 1:5, Joutseno, Kerimäki, Oulu/Vittakangas, Pattijoki, Savonlinna, Siikajoki, Taipalsaari/Ahola, Taipalsaari/Sorala quarries.

(B.iii.c) Conclusion

(187) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition as a result of the aggregates-construction vertical links in Finland.

5.3.4. Norway

5.3.4.1. Horizontally affected markets

(A) Asphalt – unilateral effects

(A.i) List of affected markets and market shares

(188) The Transaction gives rise to two horizontally affected markets in Norway. The markets and the relevant market shares for 2018 are indicated in Table 14 below. The market shares are based on the 50 km radius approach and volume based. Both of these areas are south/southwest of Oslo, 140 km (Grenland) and 100 km (Tonsberg) from the capital.

Table 14 – market shares in horizontally affected asphalt markets in Norway

Catchment area	Peab	Target	Combined	Veidekke	Skanska	NCC	Feiring	Others
Tonsberg	[5-10]%	[10-20]%	[20-30]%	[30-40]%	[5-10]%	[30-40]%	[5-10]%	[0-5]%
Grenland	[5-10]%	[30-40]%	[40-50]%	[30-40]%	[0-5]%	[20-30]%	[0-5]%	[0-5]%

Source: Form CO, table 49, paragraph 393.

(A.ii) The Notifying Party's view

(189) The Notifying Party submits that the Transaction will not lead to a significant impediment of effective competition for three general reasons.

(190) First, the production and sale of asphalt mass to external customers is not a key business to the Parties. They mainly supply asphalt internally to their own paving operations. External sales vary considerably from year to year. As effectively all asphalt sold is used for paving and all major paving players produce asphalt in both fixed and mobile asphalt plants of their own, there are no customers that would be dependent on the Parties' asphalt sales. Thus raising prices vis-à-vis these customers would not be effective.[208]

[208] Form CO, paragraph 396.

(191) Second, there are significant amounts of spare capacity available in asphalt production in the areas where the Parties have horizontal overlaps. Regardless of the combined entity's market share in any catchment area, competitors would be able to easily increase their production to respond to any hypothetical increase in the combined entity's prices. This would impose a powerful constraint for such behaviour.[209]

(192) Third, the Parties' asphalt operations are largely complementary and the merged entity would face strong integrated competitors such as Veidekke, Skanska and NCC. Any anti-competitive effects on the horizontally affected asphalt markets are thus unlikely.[210]

(193) Specifically with regard to the affected markets in Norway, the Notifying Party submits that in the catchment area of the Tønsberg plants, the Parties' competition is significant but their combined market shares are relatively modest, as NCC and Veidekke – both much larger players locally – are also active in the area through their plants in Larvik. NCC is also present through its plant in Lierskogen, from which there is a direct road to the area. The competitors have significant amounts of spare capacity available. For example, based on the notifying party's estimate on their production volumes, the capacity utilisation rate of both Veidekke's and NCC's Larvik plant and NCC's Lierskogen plant is around [20-40]%.[211]

(194) The Notifying Party further submits that in the Grenland catchment area, the combined market share is high but the Parties are not geographically close competitors and do not exercise major competitive pressure on each other. The driving distance between the Target's Grenland plant and Peab's Holmestrand plant is approximately 90 km, and there are two competing Veidekke plants and a competing NCC plant closer to the Target's Grenland plant than Peab's Holmestrand plant. The Holmestrand plant's operations are oriented towards Oslo, opposite direction from the Grenland area.[212]

(195) In addition, the Target’s market share has varied considerably in the Grendland catchment area, decreasing from [60-70]% to [40-50]% between 2017 and 2018. This decrease, which results from a drop in production after a 4 lane highway project through the Vestfold County was concluded, shows that the Target does not possess any real market power in the area. Such fluctuations are not uncommon and they are larger than the increment brought about by the Transaction.[213]

(196) The merged entity will continue to be constrained by NCC and Veidekke, who possess the full capability to significantly increase their production if the combined entity tried to increase its prices post- Transaction.[214]

209 Form CO, paragraph 397.

210 Form CO, paragraph 398.

211 Form CO, paragraph 403.

212 Form CO, paragraphs 401-402.

213 Form CO, paragraph 404-405.

214 Form CO, paragraph 409.

(A.iii) The Commission's assessment

(A.iii.a) Relevance of market shares and captive production.

(197) As a preliminary remark, the Commission notes that the market shares indicated above are appropriate to measure market power.

(198) In this regard the Commission notes that the shares are volume based, which is appropriate in the case of a homogenous good like asphalt according to the Commission's Market definition notice.[215]

(199) Furthermore, they are based on the overall asphalt production, i.e. both internal (captive) production and external (merchant) sales, which appear more appropriate in this particular case for two reasons.

(200) First, overall production figures fluctuate less than merchant sales and thus provide a more reliable indication of market power. Indeed, the share of external sales can and do fluctuate widely. For example, in the years 2016-2018, the share of external sales can go from around 20% to 90% in some of the Parties' asphalt plants.[216] It is important to note in this regard that most asphalt suppliers are integrated and have their own paving operations,[217] and that asphalt is used exclusively for paving.[218] Consequently, external sales and purchases of asphalt are driven by the supplier's success or lack thereof on the paving market (e.g. a supplier needs extra asphalt if it wins a lot of paving contracts) and by the location of the paving works (e.g. a supplier may buy extra asphalt if the competitor's location is more favourable relative to the paving site than its own plant). As paving is a bidding market, demand is lumpy in any given asphalt catchment area and market shares fluctuate considerably from one year to another (even if these fluctuations even out on a national basis in paving). Likewise, the location of paving works relative to the plant is also random and this also adds to the fluctuating nature of external sales. These fluctuations are evened out or reduced considerably in the case of total production and thus the latter is a more reliable indicator of market power, even if the lumpy demand on the underlying paving market can cause even the combined shares to fluctuate somewhat. The Commission also notes that switching between external sales and captive production is very easy as it involves the same product and the same distribution channels.

(201) Second, a supplier's captive production indirectly constrains another supplier's external sales. As asphalt is used exclusively for paving and is one of the most important inputs to paving, a supplier that sells asphalt to an external paving supplier has to take into account its customer's competitiveness on the paving market. As in in most cases the asphalt supplier is an integrated player, it is fully aware of the yearly fluctuation of merchant sales and the cost structure of paving operators. Consequently, when selling on the merchant market, it is likely to take

[215] Commission Notice on the definition of relevant market for the purposes of Community competition law, paragraph 55.

[216] Form CO, Annex 2 to Annex 7 (Copenhagen Economics: Catchment Areas, Market Sizes and Market Shares, 18 February 2020).

[217] Notifying Party's response to the Commission's Request for Information RFI 2

[218] Form CO paragraph 372.

into account the constraint exercised by an integrated competitor. In summary, the close link between asphalt and the fact that all major players are integrated implies that captive production indirectly constrains merchant sales.

(202) The use of shares based on combined production does not imply that such figures are always appropriate in all cases where some suppliers are vertically integrated. However, having regard to the particular circumstances discussed above (very close link between the asphalt and paving markets, most players are integrated, fluctuating merchant sales and indirect constraints), in the case of the asphalt-paving markets in Norway they are a good proxy.

(A.iii.b) Common characteristics of all Norwegian markets

(203) Before assessing the individual affected markets, the Commission will discuss factors that apply to all affected markets in Norway. These involve barriers to entry and customer buyer power.

(204) As regards entry, the Commission considers that entry barriers are not high. The cost of a fixed plant with medium capacity is around EUR 3-5 million.[219] By comparison, the Target's sales in Norway alone (combined sales of asphalt, paving and aggregates) amounted to roughly EUR […] million.[220] Furthermore, setting up a plant and starting production takes 3-12 months, including the time necessary for obtaining the permits.[221] This is consistent with the fact that respondents pointed to a number of entries in the different Norwegian regions by suppliers that have not been present in those regions, including Nord Vei & Anlegg in Liland, Askøy Dekkelegging in Askøy and Velde Asphalts in Mandal and Karmoy.[222]

(205) As regards buyer power, the buyers in the downstream paving market are public authorities who tender out paving contracts, have expertise in commissioning paving works and have budget constraints. All competitors noted that buyers exercise buyer power due to overcapacity, the number of suppliers and the focus of buyers on price, with the possible exception of very remote regions.[223] It was also mentioned in this regard that asphalt has few differentiators and it is a volume driven (and not margin driven) business, which implies that it is difficult for suppliers to exercise market power in the presence of choice and overcapacities.

(206) Consequently, it appears that paving customers have some buyer power and that this has effects in the upstream asphalt market due to the strong link between the two markets and to the fact that most players are integrated. This is true, even if the responses reveal that such buyer power is not absolute and could be outweighed if the particular market in question capacities are tight and the

219 Q6 – Questionnaire to competitors – asphalt, Norway, question 29; Q5 – Questionnaire to customers – asphalt, Norway, question 21.

220 Annex 5.4.18 to the Form CO, Project Aniola presentation 26 October 2018, page 25.

221 Q6 – Questionnaire to competitors – asphalt, Norway, question 29; Q5 – Questionnaire to customers – asphalt, Norway, question 21.

222 Q5 – Questionnaire to customers – asphalt, Norway, question 21.

223 Q6 – Questionnaire to competitors – asphalt, Norway, question 27.

number of competitors is low, which does not appear to be case in Norway in general.

(A.iii.c) Tonsberg

(207) The combined market share in the Tonsberg area is very moderate, barely above the threshold for affected markets. In line with paragraph 18 of the Horizontal Merger Guidelines, limited combined market shares is an indication that the merger will not create undue market power and the price effects, if any, will be minor.

(208) In this catchment area, three nationally active competitors (Veidekke, Skanska, NCC) and one smaller competitor (Feiring) remain post-Transaction. Taking market share as a basis, Veidekke and NCC will be stronger than the merged entity, and all competitors of the merged entity except Feiring have exercised a stronger constraint on Peab than the Target. Thus the merged entity will face sufficiently strong constraints post-merger.

(209) In addition, there are considerable excess capacities in the region as the overall capacity utilisation in the catchment area is 63%.[224] Competitors have 11 plants that can serve this catchment area and their capacity utilisation levels range from 23.4% to 74.4% with 6 plants running at a capacity utilisation of less than 40%.[225] Thus, to the extent the merger could lead to increased prices, competitors will have the ability to prevent such increases. They will also have the incentive to do so as asphalt plants have high fixed costs,[226] which implies that leaving capacity idle is costly. Consequently, if the merged entity were to raise prices, competitors can be expected to defeat such attempts by expanding their output and undercutting the merged entity's prices.

(210) Furthermore, as discussed in Section (A.iii.b), entry barriers are not high and customers have some buyer power.

(211) Based on the above the Commission considers that the Transaction will not lead to a significant impediment to effective competition due to unilateral effects in the catchment area of the Tonsberg plant.

(A.iii.d) Grenland

(212) In the Grenland area, the combined market share is very high (around [40-50]%) and the increment is also significant ([5-10]%). Moreover, the Transaction reduces the number of players from four to three, which can potentially lead to serious concerns. However, the Transaction is unlikely to lead to anticompetitive effects for the following reasons.

(213) First, capacity utilisation is very low in this market. Overall capacity utilisation is 35%, suggesting ample spare capacities.[227] Indeed Veidekke has three plants that could serve the catchment area with capacity utilisation levels of [30-40]%

224 Notifying Party's response to the Commission's Request for Information RFI 2.

225 Notifying Party's response to the Commission's Request for Information RFI 2.

226 Minutes of a call with a competitor 10 March 2020.

227 Notifying Party's response to the Commission's Request for Information RFI 2.

(Larvik), [60-70]% (Skien) and [70-80]% (Moss).[228] NCC has three plants that can serve this region with capacity utilisation levels of [20-30]% (Larvik), [20-30]% (Lierskogen) and [30-40]% (Notodden).[229] Skanska has one plant in Halden that can serve (a small part of) the catchment area with capacity utilisation level of [20-30]%.[230] Veidekke's total capacity available for this catchment area is around […] kt, while NCC's is […] kt, which compares to 420 kt of annual demand.[231] Thus, given their low capacity utilisation levels, Veidekke and NCC have enough spare capacities to serve the entire demand in the catchment area. This implies that the merged entity will not have guaranteed demand and thus will not be able to exercise market power provided competitors have the incentive to use their capacities to prevent price increases by expanding output. This appears to be the case as asphalt plants have high fixed costs.[232]

(214) Second, in addition to the free capacities in fixed plants, mobile plants can provide further capacity and choice. As discussed in Section 5.2.3.2, mobile plants are not a viable choice in every region but they are used in Norway outside the metropolitan areas. Grendland being 140 km away from Oslo, mobile plants can be used in this catchment area, which was explicitly confirmed by the market investigation.[233] These mobile plants can be moved to any area within 10 to 30 days.[234] The capacity of a mobile plant is about 150-200 kt/year,[235] which roughly equals half of the total demand of this catchment area. One major competitor, Skanska, is not already present in the region with fixed plants and has 3 mobile plants.[236] In addition NCC and Veidekke could also increase their capacities as each of them has 3 mobile plants.[237] This means, for example, that by bringing one mobile plant online NCC could have enough spare capacity in the catchment area to serve the entire demand, suggesting a very competitive post-merger market. Even if these catchment areas are not the only place in Norway where mobile plants can be used, it is likely that at least one plant from one of the competitors would be available for use if prices were to increase. As one single plant could serve half of the entire demand of this catchment area, the possibility of providing additional capacity and choice through mobile plants makes any competitive harm even less likely.

(215) Third, as discussed in Section 5.4.3.1. (A.iii.b), entry barriers (with fixed plants) are not high and customers have some buyer power.

(216) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition due to unilateral effects in the Grenland catchment area.

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228 Notifying Party's response to the Commission's Request for Information RFI 2.

229 Notifying Party's response to the Commission's Request for Information RFI 2.

230 Notifying Party's response to the Commission's Request for Information RFI 2.

231 Notifying Party's response to the Commission's Request for Information RFI 2.

232 Minutes of a call with a competitor 10 March 2020.

233 Minutes of a call with a competitor 10 March 2020.

234 Minutes of a call with a competitor, 10 march 2020; Minutes of a call with a competitor, 10 march 2020.

235 Minutes of a call with a competitior, 10 march 2020; Minutes of a call with a competitor, 10 march 2020.

236 Notifying Party's response to the Commission's Request for Information RFI 4, question 1.

237 Notifying Party's response to the Commission's Request for Information RFI 4, question 1.

(A.iii.e) Conclusion

(217) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition due to unilateral effects in the markets for asphalt in Norway.

5.3.4.2. Vertically affected markets

(A) Aggregates – asphalt

(A.i) List of affected markets and market shares

(218) The Transaction gives rise to two vertically affected markets due to the aggregates – asphalt relationship. Both the upstream and downstream markets are local, each corresponding to a 50 km radius around the quarry and the asphalt plant. The Parties' individual or combined market shares in aggregates are well below 30% in any catchment area and thus it is unlikely that input foreclosure will occur. However, since two asphalt catchment areas around Peab's asphalt plants where Peab's share exceeds 30 % can be supplied by three of the Target's quarries, the Commission will examine the possibility of customer foreclosure.

(219) Table 15 below lists the downstream markets.

Table 15 – downstream asphalt markets with individual or combined market shares above 30% in Norway, aggregates – asphalt link

Catchment area	Market share Peab	Market share Target	Combined market share
Trondheim	[40-50]%	[0-5]%	[40-50]%
Verdal	[90-100]%	[0-5]%	[90-100]%

Source: Form CO, table 72.

(220) Table 16 lists the affected upstream markets.

Table 16 – upstream affected aggregates markets and market shares in Norway, aggregates – asphalt link

Catchment area	Market share Peab	Market share Target	Combined market share
Skamfersætra	[0-5]%	[0-5]%	[0-5]%
Reitan	[0-5]%	[0-5]%	[0-5]%
Bjornli	[0-5]%	[0-5]%	[0-5]%

Source: Form CO, table 69.

(A.ii) The Notifying Party's view

(221) The Notifying Party considers that it would not have the ability to foreclose competing aggregates suppliers. Peab's market share in asphalt would remain below 40% in the Trondheim catchment area. Even more importantly, as described above, aggregates are an extremely versatile product that has many fully independent end-uses. It would always be possible to sell aggregates to other, downstream markets such as infrastructure construction and mortar.[238]

[238] Form CO, paragraph 451.

(A.iii) The Commission's assessment

(222) As discussed in relation to the product market definition of aggregates (Section 5.2.1.1. (C.iii.), construction represents around 80 % of all aggregates use, with asphalt and RMX representing 11% and 5 % of total use respectively (disregarding specialist aggregates).[239] As upstream aggregates competitors will be able to sell aggregates to construction and RMX customers (as well as to Peab's asphalt competitors) even if Peab's asphalt plants were to stop buying aggregates from them, they cannot be foreclosed. As Peab's asphalt plants represent a fraction of the 11% of aggregates sales in these catchment areas, they cannot be considered to be important customers.

(223) This applies also if the aggregates market were further divided into crushed rock, on one side, and gravel and sand on the other, as both can be used for construction,[240] which makes up around 80% of all aggregates use. Moreover, asphalt plants usually buy crushed rock and do not buy gravel/sand,[241] so in a divided market the potential customer foreclosure concern would apply to crushed rock. Crushed rock is used more widely than gravel and sand (as discussed in Section 5.2.1., crushed rock is used for construction, RMX and asphalt, whereas gravel and sand is used for construction and RMX), and thus in a separate crushed rock market the importance of an asphalt customer would be similar to that of a customer on the overall aggregates market.

(224) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition as a result of the Parties' aggregates-asphalt vertical links in Norway.

(B) Aggregates – RMX

(B.i) List of affected markets and market shares

(225) The Notifying Party only has two aggregates quarries in Norway[242], and both are not relevant in a vertical aggregates RMX relation due to low market shares. Peab furthermore operates three RMX plants in Norway in Tromsø, Jessheim and Kongsberg. In the latter two catchment areas, Peab's market shares remain below 30% under both possible geographic market definitions of 25 km and 50 km[243]. Affected markets are identified as market shares in Tromsø exceed 30% under both possible definitions, and the catchment area overlaps with those of three aggregates production sites currently owned by YIT, as shown in Table 17.

(226) The Target produces aggregates in 30 different locations in Norway[244], but is not active in RMX[245]. The same markets as mentioned above are therefore also affected due to market shares exceeding 30% in the upstream aggregates business. Possible concerns therefore arise in the context of input and customer foreclosure.

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239 Minutes of phone call with a competitor on 10 March 2020.

240 See Section 5.2.1.1. (C.iii.)

241 See Section 5.2.1.1. (C.iii.)

242 Form CO, paragraph 130.

243 Form CO, paragraph 686.

244 Form CO, paragraph 130.

245 Form CO, paragraph 671.

Table 17 – upstream and downstream markets with the Parties' combined market shares, aggregates – RMX link, Norway

Upstream aggregates catchment area	**Combined market shares upstream**	**Downstream RMX catchment area**	**Combined market share downstream 25 km radius**	**Combined market shares downstream 50 km radius**
Breivika	[40-50]%	Tromsø	[60-70]%	[30-40]%
Tyttebaervika	[50-60]%			
Ullsfjord	[50-60]%			

Source: Form CO, Annex 5.6a; Annex 7, Table 129.

(B.ii) The Notifying Party's view

(227) The Notifying Party considers that the vertical aggregates – RMX relation does not cause any plausible competition concerns. As for input foreclosure, the Notifying Party submits that downstream RMX competitors do not rely on aggregates produced by the Target's quarries, and can therefore not be foreclosed.[246]

(228) Concerning customer foreclosure, the Notifying Party argues that it would not have the ability for such a strategy, given the fact that aggregates are an input for a number of end products. Therefore, upstream competitors would still be able to sell to a high number of customers.[247]

(B.iii) The Commission's assessment

(B.iii.a) Input foreclosure in the Tromsø area

(229) Concerning the specific market in Tromsø, the Commission considers that the merged entity would not have the ability to foreclose downstream customers, and that it is unlikely that it would have an incentive to do so.

(230) First, existing RMX competitors currently do not purchase aggregates from YIT, and will therefore not rely on aggregate supply by the merged entity post transaction. In the downstream RMX market, Peab faces two competitors in the Tromsø area, Berg betong with a market share of [30-40]% and Storegga with a market share of [20-30]%.[248] Berg betong is a vertically integrated company with its own aggregates production around Tromsø. Currently, the Notifying Party itself sources aggregates from Berg betong for its own RMX business.[249] Also the second competitor Storegga currently does not source aggregates from YIT. Therefore, the merged entity will not have the ability to foreclose these two competitors.

(231) The market investigation provided further evidence that the merged entity will not have the ability for input foreclosure in the Tromsø area. On the one hand, capacities in the north of Norway are generally high[250]. On the other hand, aggregates in northern Norway can be transported over longer distances to still

246 Form CO, paragraph 722.

247 Form CO, paragraph 725.

248 Annex 7, table 132.

249 Form CO, paragraph 723; response to RFI 4.

250 Call with a competitor, 10 March 2020, points 14, 15.

economically reasonable terms, as they are also shipped by boat. This was confirmed during the market investigation by [a transport company], which stated to be active for companies such as Veiddeke, NCC and the Parties in northern Norway.[251] The geographic market definition of a catchment area of 50 km around each plant is likely to over-estimate the actual market power of the merging entity with respect to the Tromsø area.[252]

(232) Second, the merged entity will unlikely have the incentive to engage in input foreclosure. Overall, RMX forms only a small portion of the overall customer base of aggregates suppliers. As the merged entity does not have control over the secondary market, and cannot avoid arbitrage, it would have to raise aggregates not only for RMX customers, but also for customers from the construction or asphalt business in the context of an input foreclosure strategy. Therefore, it would lose clients in all customer groups upstream. Given the fact that an input foreclosure strategy would likely not affect the RMX market, as YIT currently does not sell to RMX customers, there would be no incentive for the merged entity to risk decreasing sales in the upstream aggregates market.

(233) A possible segmentation of aggregates into rock and gravel / sand would not change the assessment of the RMX – aggregates link in the Tromsø area. First, market shares would still be below 50% under any possible segmentation, as shown in Table 18. Second, as YIT currently does not sell any type of aggregate to RMX competitors, the same applies under a possible segmentation. Third, as both types of aggregates are used for the production of RMX, but also in the construction business, the incentive to engage in input foreclosure would not increase under a further product segmentation.

Table 18 – upstream aggregates market shares when market is divided into i) crushed rock and ii) gravel and sand, aggregates – RMX link, Norway

Catchment area	Crushed rock	Gravel / sand
Breivika	[30-40]%	-
Tyttebaervika	[30-40]%	-
Ullsfjord	[30-40]%	[50-60]%

Source: See Annex 7, table 180.

(B.iii.b) Customer foreclosure in the Tromsø area

(234) The merged entity would not have the ability to successfully foreclose upstream aggregates competitors. As aggregates can be used for many end-products, such as construction works, asphalt and mortar, a strong downstream position in RMX alone would not be sufficient to engage in customer foreclosure. Upstream competitors can deviate sales not only to other RMX competitors, but also to suppliers of other end uses. In fact, the market investigation showed that, among all end-uses for aggregates, RMX is not very important. Market participants estimated the share used for RMX production at less than 10%.[253]

[251] Q9, questionnaire to aggregates Norway, question 1, 18.

[252] In that context, it is noted that in a wider catchment area of 80 km radius, the Target would have significantly lower market shares in Breivika ([30-40]%), Tyttebaervika ([30-40]%) and Ullsfjord ([20-30]%). Market shares for even wider areas are not available.

[253] See call with a competitor on 10 March 2020.

(235) This assessment would not change under a possible product segmentation. As both crushed rock and gravel / sand are can be used for the production of RMX, the share of demand linked to this specific end-product would remain small. Also a possibly narrower geographic market definition of RMX of a 25 km radius around each production facility would not change the assessment, as even very high market shares in RMX are not sufficient to successfully pursue a customer foreclosure strategy.

(B.iii.c) Conclusion

(236) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition as a result of the aggregates-RMX vertical links in Norway.

(C) Aggregates – construction

(C.i) List of affected markets and market shares

(237) The Notifying Party only has two aggregates quarries in Norway[254], and both are not relevant in a vertical aggregates RMX relation due to low market shares. Peab is active the construction business in Norway, with overall market shares of below 5%. Its market shares in construction would not rise above 20% under any possible product market segmentation[255]. The geographic market definition for construction is national, as explained under 5.2.6.2.

(238) The Target produces aggregates in 30 different locations in Norway[256]. Affected market results from market shares exceeding 30% in five upstream aggregates markets, listed in Table 19. The Target is not active in the construction business in Norway[257]. The only possible concern can therefore be input foreclosure.

Table 19 – upstream aggregates markets with combined market shares above 30%, aggregates-construction link, Norway

	Peab	Target	Combined share
Breivika	-	[40-50]%	[40-50]%
Tyttebaervika	-	[50-60]%	[50-60]%
Ullsfjord	-	[50-60]%	[50-60]%
Bjarkoy	-	[50-60]%	[50-60]%
Lodingen	-	[60-70]%	[60-70]%

Source: Form CO, table 221 / paragraph 809.

(C.ii) The Notifying Party's view

(239) On input foreclosure, the Notifying Party considers that its market shares in aggregates would be too low to successfully foreclose downstream construction competitors, as there would be several other aggregates suppliers active in the area.[258]

254 Form CO, paragraph 130.

255 Form CO, paragraph 822.

256 Form CO, paragraph 130.

257 Form CO, paragraph 791.

258 Form CO, paragraph 821, 823.

(240) On customer foreclosure, the Notifying Party states that its market shares in the downstream construction market would be too low to successfully foreclose upstream aggregates competitors.[259]

(C.iii) The Commission's assessment

(241) Aggregates are an input used in all kind of construction works. As market investigation suggested, construction is overall the main source of demand for aggregates.[260] The aggregates produced in the five quarries in question are indeed almost entirely sold to construction companies.[261]

(242) However, the Commission considers that the merged entity will not be able to engage in input foreclosure post-transaction. Availability of aggregates is generally not a concern in northern Norway. Response from the market has shown that there are no capacity constraints in the area,[262] and the merged entity would not become unavoidable in any region.

(243) This assessment concerning general availability of aggregates is plausible despite high market shares of the merged entity given the fact that aggregates are also transported by boat over longer distances in northern Norway. This was confirmed during the market investigation by [a transport company], which stated to be active for companies such as Veiddeke, NCC as well as YIT in northern Norway.[263] As aggregates can be shipped over longer distances to economically reasonable terms, also suppliers outside a 50 km radius pose a competitive constraint, and market shares for this geographic market likely over-estimate the market position of the merged entity in the Tromsø area[264].

(244) Second, input foreclosure would not have a significant effect on construction competitors. The cost of aggregates form only a very small fraction of 1% to 2.5% of the total costs in a construction project. For any segmentation of construction that the Commission considers plausible, the cost of aggregates does not exceed 5% of total cost. In particular, this share would only be reached in infrastructure construction, which includes the construction of roads. For the construction of buildings, for instance, aggregates account for below 1% of total costs for non-residential buildings, and below 0.5% of total costs for residential buildings.[265]

(245) Third, the merged entity would not have a clear incentive to engage in customer foreclosure, as there are no indications that it would benefit from such a strategy. Peab currently only has a small market share in overall construction of below 5%, which would remain below 20% under any product segmentation[266]. In the

259 Form COm paragraph 824.

260 Call with a competitor, 10 March 2020, point 19; call with a competitor, 10 March 2020, point 15.

261 See answers to RFI1.

262 Call with a competitor, 10 March 2020, point 15; Q4, questionnaire to asphalt competitors in Norway, question 30, replies by competitors.

263 Q9, questionnaire to aggregates Norway, question 1, 18.

264 Under a catchment area of 160 km radius, the Target would only have a market share of 24% in aggregates in the Tromsø area, Form CO, table 233.

265 See reply RFI 4, question 2.

266 Form CO, paragraph 822.

construction of buildings and in infrastructure construction, Peab only has a respective market share of [0-5]%[267]. However, it faces competition by large, integrated competitors, such as Veidekke, Skanska and NCC[268]. Given this minor market position, it is questionable if the merged entity will be able to recoup losses in upstream sales with additional gains in downstream business.

(246) This assessment does not change under a possible segmentation between crushed rock and gravel / sand. Both types of aggregates are used in construction work, and market investigation suggested an overall availability of aggregates regardless of the segmentation. Also the impact of aggregates prices on overall costs of construction projects and the competition the merged entity faces in the construction business does not change under a product segmentation.

(C.iii.a) Conclusion

(247) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition as a result of the aggregates-construction vertical links in Norway.

(D) Asphalt – paving

(D.i) List of affected markets and market shares

(248) The Transaction gives rise to a vertically affected market due to the asphalt-paving relationship. The downstream paving market is national and the combined market share on this market stays below 30 %. Thus the only potential competition concern is input foreclosure due to high individual or combined market shares on a number of asphalt markets. The affected market is the national paving market.

(249) Table 20 below lists the asphalt markets where the Parties' individual or combined market share exceeds 30%.

Table 20 – upstream asphalt markets with a combined market share above 30%, asphalt-paving link Norway

Catchment area	Market share Peab	Market share Target	Combined market share
Grenland	[5-10] %	[30-40]%	[40-50]%
Ravneberget	[0-5]%	[40-50]%	[40-50]%
Trondheim	[40-50]%	[0-5]%	[40-50]%
Verdal	[90-100]%	[0-5]%	[90-100]%
Otta	[0-5]%	[60-70]%	[60-70]%
Eikefet	[0-5]%	[30-40]%	[30-40]%
Sotra	[0-5]%	[30-40]%	[30-40]%
Karmøy	[0-5]%	[60-70]%	[60-70]%
Harstad	[0-5]%	[120-130]%	[120-130]%
Tana Finnmark	[0-5]%	[50-60]%	[50-60]%
Tromsø	[0-5]%	[90-100]%	[90-100]%
Bodø	[0-5]%	[170-180]%	[170-180]%
Narvik	[0-5]%	[150-160]%	[150-160]%

Source: Form CO, table 129

267 Form CO, table 234 / paragraph 819.

268 Form CO, table 234 / paragraph 819.

(250) With regard to Table 20, it should be noted that market shares above a 100% are a result of the market share methodology, which estimates the total market size as a multiple of the Norwegian per capita asphalt consumption and the population of the catchment area. These market shares are therefore merely a rough indicator for high or very high market shares rather than precise shares of supply in the relevant market.

(251) The Commission also notes that, having regard to its analysis in relation to geographic market in Section 5.2.3.2., some of these catchment areas are sparsely populated rural areas or fall into areas where boat transport is also possible. Both of these factors could modify the size of the relevant geographic market and hence the market shares. These points will be discussed in the individual assessment of the relevant catchment areas below.

(252) Tables 21-22 below lists the market shares on the downstream paving market both in volume and value.

Table 21 - volume based market shares - paving, Norway

Peab	[5-10]%
Target	[10-20]%
Combined	**[10-20]%**
Veidekke	[30-40]%
NCC	[20-30]%
Skanska	[5-10]%
Others	[10-20]%

Source: Form CO, table 127

Table 22 - value based market shares - paving, Norway

Peab	[5-10]%
Target	[10-20]%
Combined	**[10-20]%**
Veidekke	[30-40]%
NCC	[20-30]%
Skanska	[5-10]%
Others	[10-20]%

Source: Form CO, table 127

(D.ii) The Notifying Party's view

(D.ii.a) Grenland and Ravneberget

(253) With regard to the Grenland area, the Notifying Party considers that, in line with the horizontal assessment related to this market, the Parties' actual market power in the Grenland catchment area is considerably smaller than their imputed combined market share would suggest. The Parties are not geographically close competitors, and the Transaction would not have any significant impact on the market situation in the Grenland catchment area. The Target's market share has considerably decreased in this catchment area, which is not nearly offset by the small increase in Peab's market share.[269]

[269] Form CO, paragraph 573.

(254) Furthermore, the merged entity will have three competing plants in its close proximity, two Veidekke plants located 6 and 29 km from Grenland, and one NCC plant, located 26 km away from the plant. Customers therefore would have alternative plants from where they could purchase asphalt, affecting Peab's ability to foreclose any customers from access to inputs.[270] Customers will also have alternative plants in the Ravneberget catchment area.

(255) In addition, all major paving competitors are vertically integrated and have mobile plants at their disposal, so an attempt to foreclose their access to asphalt in these catchment areas would not be successful.[271]

(256) Consequently, the merged entity will lack the ability to engage in input foreclosure in these catchment areas.

(D.ii.b) Trondheim, Verdal and Otta (Central Norway)

(257) The Notifying Party submits that use of a broader geographical market than a radius of 50 km is particularly justified in this market in the fairly sparsely inhabited region. Thus the merged entity's market power is smaller than what is suggested by its market share.[272]

(258) Further, in the absence of upstream increment the Transaction does not change the Peab's ability or incentive to engage in input foreclosure. The increment in the downstream paving market will also not change the ability or incentive because the combined market share of the merged entity would remain moderate.[273]

(D.ii.c) Eikefet, Sotra, Karmøy (Western Norway)

(259) The Notifying Party considers that in the absence of an upstream increment, the Transaction would not affect the combined entity's market power in asphalt in western Norway.[274]

(260) The only impact brought about by the Transaction would be the minor increase of approximately [5-10]% to the Target's existing market share on the paving side, which would have no impact on the overall competition.[275]

(261) Vertically integrated competitors Velde, Veidekke and NCC are all present in the area. As they all have their own supplies of asphalt available, a customer foreclosure strategy by Peab would not have any effect on the paving market.[276]

(D.ii.d) Harstad, Tana Finnmark, Tromsø, Bodø, Narvik (Northern Norway)

(262) The Notifying Party submits that the use of a broader geographical market than a radius of 50 km is particularly justified in this market in a fairly sparsely

[270] Form CO, paragraph 574.

[271] Form CO, paragraph 574.

[272] Form CO, paragraph 579.

[273] Form CO, paragraphs 580-582.

[274] Form CO, paragraph 584.

[275] Form CO, paragraph 587.

[276] Form CO, paragraph 585.

inhabited region in the north of Norway. Due to the use of boat transports along the western and northern coast of Norway, the relevant geographical market could arguably be even larger than a radius of 80 km. Thus the merged entity's market power is much smaller than what is suggested by its market share.[277]

(263) Further in the absence of an upstream increment, the Transaction would not affect the combined entity's market power in asphalt in western Norway.[278]

(264) The only impact brought about by the Transaction would be the minor increase of approximately [5-10]% to the Target's existing market share on the paving side, which would have no impact on the overall competition.[279]

(265) Vertically integrated competitor Veidekke has a strong presence in the area. As Veidekke has its own supplies of asphalt available, an input foreclosure strategy by Peab would not have any effect on the paving market. Veidekke therefore has sufficient alternatives for selling its asphalt, and a customer foreclosure strategy undertaken by Peab post-Transaction would have no impact.[280]

(D.iii) The Commission's assessment

(D.iii.a) Grenland

(266) With regard to the Grenland cathment area, in Section 5.3.4.1. (A.iii.), the Commission concluded that the Transaction is unlikely to lead to price increases. This assessment was based on the following reasons: low capacity utilisation and large amounts of excess capacity in the hands of competitors; additional choice and capacity in the form of mobile plants; low entry barriers and buyer power. Lack of price effect on the upstream market implies that the merged entity will not have the ability to increase prices on the upstream asphalt market (or prevent access to asphalt) in the Grenland area.

(267) This is especially the case because the largest paving competitors (Skanska, NCC and Svevia) are all integrated players with asphalt plants in the area,[281] which seriously limits the ability of the merged entity to foreclose them.

(268) As regards the incentives of the merged entity to foreclose, post-Transaction Peab will face a trade-off when considering input foreclosure strategies. An increase of prices in the upstream market (or a refusal to sell) will reduce profits due to decreasing sales to downstream rivals. On the other hand, by raising downstream rivals' input costs it may gain additional profits downstream by capturing additional sales or by increasing prices downstream. In theory, the [10-20]% increment downstream can increase Peab's incentives to engage in input foreclosure as it can recoup more profits downstream than before the merger due to the fact that it has a larger sales base than pre-Transaction.

277 Form CO, paragraph 588.

278 Form CO, paragraphs 589-590.

279 Form CO, paragraph 591.

280 Form O, paragraph 592.

281 Notifying Party's response to the Commission's RFI 2.

(269) However, [Strategic information][282] and thus it is unlikely that asphalt sales would be sacrificed for gaining paving sales. At the very least [Strategic information] significantly reduces the incentives to engage in this strategy. Thus the merged entity is unlikely to have the incentives to engage in input foreclosure.

(270) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition due to input foreclosure in the Grenland catchment area.

(D.iii.b) Analytical framework and general considerations for the catchment areas other than Grenland

(271) In the rest of the catchment areas, there is no merger-specific change in the upstream market and hence there is no merger-specific change in the ability to foreclose. However, there is a merger specific change in the downstream market, namely Peab's downstream share on the paving market increases by [10-20]% points. As discussed in relation to Grenland in Section 5.4.3.2.(D.iii.a), this could, in principle, increase the incentives to foreclose as the merged entity can recoup more profits downstream than before the merger due to the fact that it has a larger sales base than pre-Transaction. Thus it is necessary to analyse Peab's ability to do so (even if there is no merger specific change in the ability) and its incentives.

(272) As some of the catchment areas are located in sparsely populated areas, the application of an 80 km radius may be justified in these cases. Likewise, some of the catchment areas are located by the sea, which means that sea transport may be an option, leading to an even wider radius.

(273) In addition, a number of catchment areas are located outside metropolitan areas and are therefore suitable for the use of mobile plants. As discussed in Section 5.2.3.2, mobile plants are not a viable choice in every region but they are used in in Norway outside the metropolitan areas. These mobile plants can be moved to any area within 10 to 30 days.[283] The capacity of a mobile plant is on average 150-200 kt/year.[284] Among the competitors Veidekke, NCC and Skanska have mobile plants and the number of their mobile plants is 5, 3 and 3 respectively.[285] Mobile plants reduce the ability of the merged entity to cut off competitors' access to asphalt or to increase the cost of this input. It is true that mobile plants cannot be deployed in all of the catchment areas simultaneously as they may be needed in other parts of the country too. However, given that neither the projects, nor the hypothetical foreclosure attempts are likely to occur simultaneously and that the plants can be moved three times a year, this option to mitigate foreclosure risk is available in all of the catchment areas where they can be used.

(274) A common consideration that applies to all catchment areas is that the merged entity is unlikely to have the incentive to engage in input foreclosure despite the fact that the downstream increment allows it to recoup more losses downstream.

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282 Notifying Party's response to the Commission's RFI 1, question 3.

283 Minutes of a call with a competitor, 10 march 2020; Minutes of a call with a competitor, 10 march 2020.

284 Minutes of a call with a competitor, 10 march 2020; Minutes of a call with a competitor, 10 march 2020.

285 Notifying Party's response to the Commission's RFI 4, question 1.

(275) First, the merged entity's downstream combined market share ([10-20]%) and the thus the possibility for recoupment remains moderate.

(276) Second, [Strategic information][286] and thus it is unlikely that asphalt sales would be sacrificed for gaining paving sales or at least further reduces the incentives to engage in this strategy.

(D.iii.c) Ravneberget

(277) As the Ravneberget plant is around 100 km from Oslo and the main mode of transport is road, and 80 km or larger radius is not justified. Consequently, the standard 50 km radius applies.

(278) Despite a relatively high ([40-50]%) market share, the merged entity is unlikely to have the ability to raise prices or cut off competitors' access to asphalt.

(279) First, capacity utilisation in the catchment area is low and competitors have significant amounts of excess capacity. Total market capacity utilisation stands at 29%.[287] Veidekke has […] kt of capacity available to serve the market and the capacity utilisation of its two plants is [30-40]% and [60-70]%.[288] NCC has […] kt of capacity available to serve the market and the capacity utilisation of its three plants are [20-30]%, [30-40]% and [30-40]%.[289] In addition, Nordic Asphalt has […] kt of capacity available in this market.[290] The capacities of competitors therefore significantly exceed the total market demand of 171 kt.[291] Thus, given their low capacity utilisation levels competitors have enough spare capacities to serve the entire demand in the catchment area. This implies that the merged entity will not have guaranteed demand and thus will not be able to exercise market power, provided competitors have the incentive to expand output to prevent a price increase or an attempt to foreclose access to asphalt. This appears to be the case as asphalt plants have considerable fixed costs[292] and thus leaving capacity idle is very costly.

(280) Second, as the area is sufficiently outside the Oslo metropolitan area, mobile plants can also be used to bring additional capacity online and to increase choice. Although extra capacity is unlikely to be needed in this market, a single mobile plant would be able to serve the entire demand in the region, which would defeat any foreclosure strategy.

(281) Third, as the paving competitors present in the catchment area with an asphalt plant (NCC, Veidekke are large paving competitors Nordic Asphalt is smaller) are vertically integrated, and, as discussed above, have ample spare capacities, their access to asphalt cannot be cut off or made more difficult. In addition, the third large paving competitor, Skanska can make use of its mobile plants and also

286 Notifying Party's response to the Commission's RFI 1, question 3.

287 Notifying Party's response to the Commission's Request for Information RFI 2.

288 Notifying Party's response to the Commission's Request for Information RFI 2.

289 Notifying Party's response to the Commission's Request for Information RFI 2.

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cannot be foreclosed. The vertical integration of the main competitors severely restricts the ability of the merged entity to engage in input foreclosure.

(D.iii.d) Trondheim and Verdal

(282) The Trondheim and Verdal catchment areas are located close to the Trondheim metropolitan area. Thus the use of 80 km radius is not justified and road transport remains the principal mode of transport despite the location by the sea. Further, mobile plants are also unlikely to be used here.

(283) Despite high market shares ([40-50]% and [90-100]%) Peab is unlikely to have the ability to raise prices or cut off competitors' access to asphalt.

(284) First, capacity utilisation in the catchment area is low and competitors have a lot of excess capacity. Total market capacity utilisation stands at 42% in Trondheim and at 19% in Verdal.[293] The capacities of competitors (NCC, Veidekke, Froseth) exceed the total market demand in both areas.[294] This implies that the merged entity will not have guaranteed demand and thus will not be able to exercise market power, provided competitors have the incentive to expand output to prevent a price increase or an attempt to foreclose access to asphalt. This appears to be the case as asphalt plants have high fixed costs[295] and thus leaving capacity idle is very costly.

(285) Second, the two large paving competitors (NCC, Veidekke) and a smaller paving competitor (Froseth) are present in the catchment area with asphalt plants. As these competitors are vertically integrated, and, as discussed above, they have ample spare capacities, their access to asphalt cannot be cut off or made more difficult.

(D.iii.e) Otta

(286) Otta is located in a sparsely populated area in central Norway and thus the use of an 80 km radius is justified. Under an 80 km radius approach, the Target's (and thus the Parties' combined) market share remains below 30%, which implies that post-Transaction the merged entity will not have the ability to raise prices upstream or cut off competitors' access to asphalt.

(287) Furthermore, mobile plants can also be used here, which would allow Veidekke, NCC and Skanska to bring additional capacity online. This makes it even less probable that Peab would have the ability to raise prices upstream or cut off competitors' access to asphalt.

(288) The use of mobile plants also implies that these major competitors cannot be foreclosed as they have their own source of asphalt.

293 Notifying Party's response to the Commission's Request for Information RFI 2.

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(D.iii.f) Karmoy

(289) Although Karmoy lies by the sea, in the absence of specific indications to the contrary in the market investigation, the Commission will apply the standard 50 km radius. Despite a relatively high ([60-70]%) market share, the merged entity is unlikely to have the ability to raise prices or cut off competitors' access to asphalt.

(290) First, capacity utilisation in the catchment area is low and competitors have a lot of excess capacity. Total market capacity utilisation stands at 27%.[296] Veidekke, NCC, Velde and FM Asphalt have […] kt, […] kt, […] kt and […] kt of capacity available to serve the market respectively, which compares with a total demand of 188 kt.[297] The capacities of competitors therefore significantly exceed the total market demand. This implies that the merged entity will not have guaranteed demand and thus will not be able to exercise market power, provided competitors have the incentive to expand output to prevent a price increase or an attempt to foreclose access to asphalt. This appears to be the case as asphalt plants have high fixed costs[298] and thus leaving capacity idle is very costly.

(291) Second, as the area is sufficiently outside the Stavanger metropolitan area, mobile plants can also be used to bring additional capacity online and to increase choice. Although extra capacity is unlikely to be needed in this market, a single mobile plant would be able to serve the entire demand in the region, which would defeat any foreclosure strategy.

(292) Third, two large (NCC, Veidekke) the two smaller (Velde and FM Asphalt) paving competitors are present in the catchment area with asphalt plants. As these competitors are vertically integrated, and, as discussed above, have ample spare capacities, their access to asphalt cannot be cut off or made more difficult. In addition, the third large paving competitor, Skanska can make use of its mobile plants and also cannot be foreclosed. The vertical integration of the main competitors severely restricts the ability of the merged entity to engage in input foreclosure.

(D.iii.g) Harstad

(293) Harstad is located in the sparsely populated northern part of Norway and thus the 80 km radius is applicable. The Target's market share of [120-130]% under the 50 km approach drops to [70-80]%, which is still very high. Despite this very high market share the merged entity is unlikely to have the ability to raise prices or cut off competitors' access to asphalt.

(294) First, capacity utilisation in the catchment area is low and competitors have a lot of excess capacity. Total market capacity utilisation stands at 22%.[299] Veidekke has […] kt of capacity available, compared to the whole demand of 73 kt.[300] Thus, Veidekke can serve almost the entire demand. This implies that the merged

[296] Notifying Party's response to the Commission's Request for Information RFI 2.

[297] Notifying Party's response to the Commission's Request for Information RFI 2.

[298] Minutes of a call with [a competitor] 10 March 2020

[299] Notifying Party's response to the Commission's Request for Information RFI 2.

[300] Notifying Party's response to the Commission's Request for Information RFI 2.

entity will have very little guaranteed demand and thus will not be able to exercise market power, provided competitors have the incentive to expand output to prevent a price increase or an attempt to foreclose access to asphalt. This appears to be the case as asphalt plants have high fixed costs[301] and thus leaving capacity idle is very costly. The Commission notes that the demand and capacity figures correspond to the 50 km approach. As under the applicable 80 km approach the Target's market share drops, the merged entity is likely to have even less market power and less ability to foreclose under the 80 km radius approach.

(295) Second, mobile plants can also be used here, which would allow Veidekke, NCC and Skanska to bring additional capacity online. This makes it even less probable that Peab would have the ability to raise prices upstream or to cut off competitors' access to asphalt.

(296) Third, the paving competitor present in the region with an asphalt plant, Veidekke, is vertically integrated and has ample spare capacities. Consequently, its access to asphalt cannot be foreclosed. The same applies to Skanska, and NCC who can supply themselves with mobile plants.

(D.iii.h) Tanna Finnmark

(297) Tanna Finnmark is located in a sparsely populated area in northern Norway and thus at least an 80 km radius would be justified. Furthermore, in Northern Norway asphalt is also transported by boat, which enlarges the geographic market even further. Already under an 80 km radius approach the market share remains below 30 %, which implies that Peab will not have the ability to raise prices upstream or cut off competitors' access to asphalt. The share would even be lower under the 200 km approach, implying that the merged entity would have even less market power.

(298) Moreover, mobile plants can also be used here, which would allow Veidekke, NCC and Skanska to bring additional capacity online. This makes it even less probable that Peab would have the ability to raise prices upstream or to cut off competitors' access to asphalt.

(299) In addition, the paving competitor present in the region with an asphalt plant, Veidekke, is vertically integrated and therefore its access to asphalt cannot be foreclosed. The same applies to Skanska, and NCC who can supply themselves with mobile plants.

(D.iii.i) Tromso, Bodo and Narvik

(300) All three catchment areas are located in the sparsely populated northern part of Norway, and thus the use of the 80 km approach is justified. Under this approach the market shares are [70-80]%, [120-130]% and [80-90]% for Tromso, Bodo and Narvik respectively. These are lower than the market shares under the 50 km approach (Tromso [90-100]%, Bodo [170-180]% and Narvik [150-160]%), but still very high. As in northern Norway boat transport is also used, the market is even larger, the Target's share is even lower and there are additional sources of supply. Nonetheless in these catchment areas the market shares remain high under

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any approach. Furthermore, in these catchment areas competitors do not have sufficient fixed capacity available to meet local demand.

(301) However, Peab would not have the ability to engage in input foreclosure.

(302) First, overall demand in these regions is very small and only amounts to 115 kt, 80kt and 57 kt in Tromso, Bodo and Narvik respectively. Thus, each catchment area's demand can be served with a single mobile plant. A mobile plant could even supply all three catchment areas combined. Thus, through mobile plants, competitors have enough spare capacity and thus the ability to prevent upstream price increases by the merged entity. As asphalt plants have high fixed costs,[302] they are likely to have the incentive too

(303) Second, the use of mobile plants also implies that Veidekke, NCC and Skanska can rely on their own asphalt production. Given that, as discussed above, the capacity of this captive production is sufficient for any need in these catchment areas, the three largest paving competitors cannot be foreclosed.

(D.iii.j) Eikefet and Sotra

(304) These catchment areas are located in the Bergen metropolitan area and thus the 50 km radius applies and the principal mode of transport is by road. Furthermore, in these areas mobile plants are also not normally an alternative.

(305) Compared to other catchment areas in Norway, the capacity utilisation is relatively high ([60-70]% and [70-80]%) and competitors' capacities are sufficient to serve only a little more than half of the demand. [303]

(306) However, Peab's market share will remain moderate [30-40]% in Eikefet and [30-40]% Sotra, which makes it unlikely that Peab would have the ability to increase the price of asphalt or cut competitors' access to it.

(307) In any event, as discussed in Section 5.3.4.2.(D.iii.b), the merged entity will not have the incentive to engage in such foreclosure.

(308) Furthermore, the overall demand for asphalt in these two catchment areas is 1120 kt against 7500 kt for the whole of Norway.[304] As asphalt is only used for paving, this implies that the two catchment areas represent 15 % of overall paving demand in Norway. Thus, even if Peab had the ability and incentive to foreclose paving competitors, the overall impact on paving competition would not amount to a significant impediment of effective competition.

(D.iii.k) Conclusion

(309) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition as a result of the asphalt-paving vertical links in Norway.

302 Minutes of a call with [a competitor] 10 March 2020.

303 Notifying Party's response to the Commission's Request for Information RFI 2.

304 https://eapa.org/wp-content/uploads/2020/02/Asphalt-in-figures_2018.pdf

(E) Bitumen – asphalt

(E.i) List of affected markets and market shares

(310) The Notifying Party is not active in the production or sale of bitumen[305], but has four asphalt plants in Norway[306].

(311) The Target imports bitumen and produces bitumen emulsion and polymer-modified bitumen predominantly for the purposes of its own asphalt in one location in Norway.[307] It has twelve fixed and four mobile asphalt plants.[308]

(312) Bitumen is considered as a national market, on which YIT currently has a very small share of [0-5]% in volume and [0-5]% in value.[309] [310] Markets become affected due to two of Peabs downstream asphalt markets. The only relevant concern can therefore be customer foreclosure.

(313) The Transaction would potentially have an impact in three areas where downstream markets of Peab or combined market shares exceed 30%, listed in Table 23. On other areas, the Transaction would not change any ability or incentive of foreclosure, as no increment occurs.

Table 23 – downstream asphalt markets with combined market share above 30%, bitumen-asphalt link, Norway

Catchment area	Combined market shares
Trondheim	[30-40]%
Grenland	[40-50]%
Verdal	[90-100]%

Source: Form CO, Annex 5.6a.

(E.ii) The Notifying Party's view

(314) The Notifying Party considers that the Transaction would not raise concerns regarding the asphalt – bitumen link in Norway. The Target would only sell small amounts of bitumen on an ad hoc basis when surpluses occur from production for its own downstream asphalt business, and sales would therefore only form a negligible part of the overall bitumen market.

(E.ii.a) The Commission's assessment

(315) The merged entity would not have any ability to successfully foreclose the present upstream bitumen competitors such as Nynäs, Puma Energy, Exxon Mobile and Total[311] with its own asphalt business. First, the three downstream markets are local and therefore form only a fraction of the total customer base for bitumen competitors.

305 Form CO, paragraph 253.

306 Form CO, paragraph 326.

307 Form CO, paragraph 256.

308 Form CO, paragraph 326.

309 Annex 5.6a.

310 No additional markets would become affected under a possible product segmentation.

311 Form CO, paragraph 482.

(316) Second, as YIT's upstream competitors are big oil companies, it is unlikely that a customer foreclosure strategy would affect these companies in a way that competitive pressure on the upstream market would decrease.

(317) Third, the Target is not an integrated bitumen producer, but buys bitumen and process it to bitumen emulsion. Therefore, YIT, and thus post transaction the merged entity, relies on the upstream competitors it would foreclose as a supplier for input for its own bitumen sales, which does make a customer foreclosure implausible.

(318) The same arguments would apply under any kind of further product segmentation of bitumen, and no further markets would become affected under any segmentation.[312]

(E.ii.b) Conclusion

(319) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition as a result of the bitumen-asphalt vertical links in Norway.

5.3.5. Sweden

5.3.5.1. Horizontally affected markets

(A) Aggregates – unilateral effects

(A.i) List of affected markets and market shares

(320) The Notifying Party has an overall strong presence in Sweden with aggregates quarries in over 100 locations in the country.

(321) The Target has only very limited presence in aggregates production in Sweden. It operates one quarry located in Rimbo in the wider Stockholm area. The quarry itself is rather small, with an annual production of around […] tonnes, which accounts for [0-5]% market share in a catchment area of 50 km radius.

(322) Affected markets therefore can only originate from overlapping catchment areas of the Target's quarry in Rimbo and one of the Notifying Party's sites. Applying a catchment area of 50 km radius, this would give rise to one affected market, which is shown in Table 24.

Table 24 – horizontally affected aggregates markets, Sweden.

Catchment area	Market share Peab	Market share YIT	Combined share
Harbo	[20-30]%	[0-5]%	[20-30]%

Source: Form CO, Table 14.

[312] See response to RFI 3.

(A.ii) The Notifying Party's view

(323) The Notifying Party considers that the transaction would not lead to horizontal competition issues as the increment is very small and market shares remain moderate under any market definition.

(A.iii) The Commission's assessment

(A.iii.a) List of affected markets and market shares

(324) The Transaction will not lead to any unilateral effects in the aggregates market around Harbo. First, overall market shares remain moderate. Combined market shares of below [20-30]% show that the Notifying Party faces sufficient competition in the area, not only by other larger competitors, but also due to the high number of small independent aggregates suppliers. Responses obtained during the market investigation confirmed that other market participants do not consider that the Transaction will have any impact on the Swedish aggregates market.[313]

Table 25 – market shares of competitors in the wider Stockholm area

Competitor	**Market share[314]**
Peab	[5-10]%
YIT	[0-5]%
Jehander	[0-5]%
NCC	[5-10]%
Skanska	[0-5]%
Svevia	[0-5]%
Dala Frakt	[0-5]%
Others	[70-80]%

Source: Form CO, Table 18.

(325) Second, the Transaction will lead only to negligible additional market shares for Peab of below [0-5]%. Given this small increment, it is not likely that the Transaction would increase the possibility for the Notifying Party to raise aggregates prices unilaterally.

(326) The quarry in Rimbo produces predominantly crushed rock and some gravel / sand[315]. Peab has a market share of [10-20]% for crushed rock in the Harbo area. As overlaps would decrease under a product market segmentation, a product segmentation would not change the assessment of the Transaction.

(A.iii.b) Conclusion

(327) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition due to unilateral effects in the markets for aggregates in Sweden.

[313] See Q10, questionnaire to aggregates customers Sweden, question 30.

[314] No reliable market shares for individual competitors in single catchment areas are available. The table reflects the overall competitive situation in the Stockholm area, based on a 320 km radius around the Rimbo quarry.

[315] Form CO, paragraph 134.

(B) Asphalt – unilateral effects

(B.i) List of affected markets and market shares

(328) The Transaction gives rise to six horizontally affected markets in Sweden. The relevant market shares for 2018 are indicated in Table 26 below. The market shares are based on the 50 km radius approach and volume-based.

Table 26 – horizontally affected asphalt markets and market shares, Sweden

Catchment area	Peab	Target	**Combined**	Veidekke	Skanska	NCC	Svevia	Others
Stockholm area								
Rosersberg	[10-20]%	[5-10]%	**[20-30]%**	[5-10]%	[20-30]%	[10-20]%	[10-20]%	[5-10]%
Vidbo	[20-30]%	[5-10]%	**[20-30]%**	[5-10]%	[20-30]%	[10-20]%	[10-20]%	[5-10]%
Vastberga	[20-30]%	[0-5]%	**[20-30]%**	[5-10]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%
Dingtuna	[40-50]%	[0-5]%	**[40-50]%**	-	[0-5]%	[30-40]%	[5-10]%	[0-5]%
Lulea area								
Mattsund	[0-5]%	[40-50]%	**[50-60]%**	-	[20-30]%	[10-20]%	-	-
Boden	[0-5]%	[40-50]%	**[40-50]%**	-	[30-40]%	[10-20]%	-	-

Source: Form CO Tables 80 and 83.

(B.ii) The Notifying Party's view

(329) The Notifying Party submits that the Transaction will not lead to a significant impediment of effective competition for three general reasons.

(330) First, the production and sale of asphalt mass to external customers is not a key business to the Parties. They mainly supply asphalt internally to their own paving operations. External sales vary considerably from year to year. As effectively all asphalt sold is used for paving and all major paving players produce asphalt in both fixed and mobile asphalt plants of their own, there are no customers that would be dependent on the Parties' asphalt sales. Thus raising prices vis-à-vis these customers would not be effective.[316]

(331) Second, there are significant amounts of spare capacity available in asphalt production in the areas where the Parties have horizontal overlaps. Regardless of the combined entity's market share in any catchment area, competitors would be able to easily increase their production to respond to any hypothetical increase in the combined entity's prices. This would impose a powerful constraint for such behaviour.[317]

(332) Third, the Parties' asphalt operations are largely complementary and the merged entity would face strong integrated competitors such as Veidekke, Skanska and NCC. Any anti-competitive effects on the horizontally affected asphalt markets are thus implausible.[318]

(333) Specifically with regard to the affected markets in Sweden, the Notifying Party submits that horizontally affected markets can be found in the Stockholm area (Peab plants: Vidbo, Västberga as well as Dingtuna; Target's plants: Rosersberg)

[316] Form CO, paragraph 396.

[317] Form CO, paragraph 397.

[318] Form CO, paragraph 398.

and in the Lulea area in Northern Sweden (Peab's plant: Boden; Target's plant: Måttsund).

(334) In the Stockholm area, the merged entity would face strong, integrated competitors, such as Skanska, Svevia and NCC, all of which are equal in size to Peab.[319] In addition, capacity utilisation is as low as 35% in this area and thus competitors can easily counter any potential price increase.[320] The high market shares in the Dingtuna catchment area are not indicative of any harm resulting from the Transaction as the increment is minimal.[321] In particular, the Dingtuna plant's sales are transported towards the north and west from the plant, i.e. away from the Stockholm metropolitan area, whereas the Target's Rosersberg plant serves the metropolitan area.[322]

(335) In the Lulea area, the Notifying Party considers that a radius larger than 50 km is justified to define the geographic market as this is a relatively sparsely populated area and asphalt is transported for longer distances. A larger market would decrease the Parties' shares as it would include additional competitive constraints.[323] Further, both the Target's and Peab's market share have decreased in the area in recent years and they face strong competition from NCC and Skanska in this area.[324] In particular, NCC currently holds paving contracts awarded by the Lulea municipality, which shows that its market share in asphalt is set to grow at the expense of the merged entity.[325] Finally, in this area Peab is a small player with a market share below [5-10]% and sales of less than EUR […] per year in recent years.[326]

(B.iii) The Commission's assessment

(B.iii.a) Relevance of market shares

(336) As discussed earlier in relation to the Norwegian asphalt markets in Section 5.3.4.1.(A.iii.a), market shares based on the combined captive and merchant sales are an appropriate indicator of market power in this particular case in relation to asphalt and appear more appropriate than merchant sales.

(B.iii.b) Common characteristics of all markets in Sweden

(337) Before assessing the individual affected markets, the Commission will discuss factors that apply to all affected markets in Sweden. These involve barriers to entry and customer buyer power.

319 Form CO, paragraph 419.

320 Form CO, paragraph 420.

321 Form CO, paragraphs 421-422.

322 Form CO, paragraph 423.

323 Form CO, paragraph 431.

324 Form CO, paragraph 433.

325 Form CO, paragraph 434.

326 Form CO, paragraph 436.

(338) The Commission considers that entry barriers are not high. The cost of a fixed plant with medium capacity is around EUR 3-5 million.[327] By comparison Peab's paving sales in Sweden amount to roughly EUR […].[328] Furthermore, setting up a plant and starting production takes 7-12 months, including the time necessary for obtaining the permits.[329] This is consistent with the fact that respondents pointed to a number of entries in the different Swedish regions by suppliers that have not been present in those regions.[330]

(339) As regards buyer power, the buyers in the downstream paving market are public authorities who tender out paving contracts, have expertise in commissioning paving works and have budget constraints. All competitors noted that buyers exercise buyer power due to overcapacity and the focus of buyers on price.[331] Customers agreed that they are in a good negotiating position and considered that this is due to excess supply, the excess number of players relative to demand and overcapacity.[332]

(340) Consequently, it appears that paving customers have some buyer power and that this has effects in the upstream asphalt market due to the strong link between the two markets and to the fact that most players are integrated. This is true, even if the responses reveal such buyer power is not absolute and could be outweighed if the particular market in question capacities are tight and the number of competitors is low, which does not appear to be case in Sweden in general. On the contrary, as will be discussed in relation to the individual catchment areas, there are significant amounts of excess capacities in Sweden in general.

(B.iii.c) Stockholm area

Rosersberg, Vidbo and Vastberga

(341) In the Rosersberg, Vidbo and Vastberga catchment areas the combined market shares of the Parties remain moderate, namely [20-30]% [20-30]% [20-30]%. This suggests that the merged entity's market power will remain moderate. Furthermore, the increment, while not insignificant, is also modest and remains below [5-10]% in all three areas, indicating that the Target is a moderately strong constraint.

(342) In these areas four nationally active competitors will remain (Veidekke, Skanska, NCC and Svevia), each of them with at least [5-10]% share, i.e. each of them stronger than the Target. In addition, the category "others" (in all three areas) in Table 26 covers three additional competitors Markona, Svenska Vag and Sandahls. Of these, Sandahls's market share is close to that of the Target ([0-5]% in Rosersberg, [0-5]% in Vidbo and [5-10]% in Vastberga). Thus in each of these areas the merged entity will face five competitors that are stronger or comparably

327 Q6 – Questionnaire to competitors – asphalt, Sweden, question 29.

328 Annex 5.4.17 to the Form CO, Peab board presentation, page 7.

329 Q6 – Questionnaire to competitors – asphalt, Sweden, question 29.

330 Q6 – Questionnaire to competitors – asphalt, Sweden, question 28.

331 Q6 – Questionnaire to competitors – asphalt, Sweden, question 27.

332 Q5 – Questionnaire to customers – asphalt, Sweden, question 19.

strong to the Target. Therefore, the merged entity will face sufficiently strong constraints.

(343) In addition, the fixed costs of asphalt plants are high[333] and competitors' capacity utilisation is relatively low, which will incentivise competitors to expand output in the case of any price increase. For example, Skanska has three plants in the region and with capacity utilisation levels of [40-50]%, [20-30]% and [30-40]%.[334] NCC has four plants in the region with capacity utilisation levels of [50-60]%, [10-20]%, [30-40]% and [30-40]%.[335] Svevia has two plants in the region with utilisation levels of [30-40]% and [20-30]%.[336] Veidekke has one plant with a utilisation level of [20-30]%. Sandahls has one plant in the region, which runs at a level of [10-20]%.[337]

(344) Furthermore, as discussed in Section 5.3.5.1.(B.iii.b), entry barriers are not high and customers have some buyer power.

(345) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition due to unilateral effects in the markets of Rosersberg, Vidbo and Vastberga.

<u>Dingtuna</u>

(346) The Dingtuna catchment area is slightly different from the other catchment areas in the Stockholm area in that the combined market share is high, namely [40-50]%. However, the market share increment is minimal, only [0-5] %, which implies that the Transaction-specific effect is marginal. Thus, despite the high combined market share the merger is unlikely to lead to competitive harm.

(347) Just like pre-merger, the merged entity will be constrained mainly by NCC ([30-40]%), and three smaller competitors, Skanska, Svevia and Sandahls, each of which is stronger than the Target in this region.

(348) The relevant plants of competitors and their capacity utilisation are the same as those in the case of the Rosersberg, Vidbo and Vastberga catchment areas. Consequently, in this case too competitors have the ability and incentive to compete strongly.

(349) Furthermore, as discussed in Section 5.3.5.1.(B.iii.b), entry barriers are not high and customers have some buyer power.

(350) Based on the above, the Commission considers that the Transaction will not lead to a significant impediment of effective competition due to unilateral effects in the market of Dingtuna.

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335 Notifying Party's response to the Commission's Request for Information RFI 2.

336 Notifying Party's response to the Commission's Request for Information RFI 2.

337 Notifying Party's response to the Commission's Request for Information RFI 2.

(B.iii.d) Lulea area

(351) In the Lulea area, the combined market shares are very high, [50-60]% in Mattsund and [40-50]% in Boden. However, the increment is small in the case of Mattsund ([0-5]%) and moderate in Boden ([0-5]%), suggesting that Peab is not a very strong constraint in these markets and the Transaction does not have a pronounced effect. The markets have three strong players both before and after the Transaction (Target, Skanska and NCC) and the main effect of the Transaction is to replace the Target with Peab.

(352) In addition, capacity utilisation is very low in these markets. The overall capacity utilisation is below 20% in both markets, while Skanska's and NCC's plant run below 50% capacity utilisation levels.[338] Total market volume is estimated to be around 104 kt in Boden and 108 kt in Mattsund, whereas Skanska's and NCC's total capacity serving these markets is above […] kt each.[339] With such high amounts of total and free capacities, price effects, if any, are expected to be insignificant because competitors, taken together, can serve almost the entire demand and they have the incentive to fill their free capacities due to the high fixed costs of asphalt plants.

(353) Furthermore, mobile plants provide additional capacity and choice and could prevent hypothetical price increases. As discussed in Section 5.2.3.2, mobile plants are not a viable choice in every region but they are used in Northern Sweden, where these markets are located. These mobile plants can be moved to any area within 10 to 30 days.[340] The capacity of a mobile plant is about 150-200 kt/year,[341] which roughly equals the total demand of these two neighbouring catchment areas. Competitors that have mobile plants and are not already present in the region with fixed plants (Svevia and Goodway) have 6 mobile plants combined.[342] In addition NCC and Skanksa could also increase their capacity as they have 4 and 3 mobile plants respectively.[343] Even if these catchment areas are not the only place in Northern Sweden where mobile plants can be used, it's unlikely that at least one plant from one of the competitors would not be available for use if prices were to increase. As one single plant could serve the entire demand in both markets the possibility of additional capacity and choice in the form of mobile plants makes any competitive harm even less likely.

(354) Furthermore, as discussed in Section 5.3.5.1.(B.iii.b), entry barriers (with fixed plants) are not high and customers have some buyer power.

(355) Based on the above, the Commission considers that the Transaction will not lead to a significant impediment of effective competition due to unilateral effects in the Lulea area (Mattsund and Boden markets).

338 Notifying Party's response to the Commission's Request for Information RFI 2.

339 Notifying Party's response to the Commission's Request for Information RFI 2.

340 Minutes of a call with a competitor, 10 march 2020; Minutes of a call with a competitor, 10 march 2020.

341 Minutes of a call with a competitor, 10 march 2020; Minutes of a call with [a competitor], 10 march 2020.

342 Notifying Party's response to the Commission's Request for Information RFI 4, question 1.

343 Notifying Party's response to the Commission's Request for Information RFI 4, question 1.

(C) Paving – unilateral effects

(C.i) List of affected markets and market shares

(356) As a result of the Transaction the market for paving in Sweden is horizontally affected. In tables 27-28 below, both volume and value based shares are presented.

Table 27- volume based market shares - paving, Sweden

Peab	[20-30]%
Target	[0-5]%
Combined	**[20-30]%**
Skanska	[20-30]%
Svevia	[10-20]%
NCC	[10-20]%
Sandahls	[0-5]%
Others	[10-20]%

Source: Form CO, Table 126.

Table 28- value based market shares - paving, Sweden

Peab	[20-30]%
Target	[0-5]%
Combined	**[20-30]%**
Skanska	[20-30]%
Svevia	[10-20]%
NCC	[10-20]%
Sandahls	[0-5]%
Others	[10-20]%

Source: Form CO, Table 126.

(C.ii) The Notifying Party's view

(357) The Notifying Party considers that The Parties' combined market share in the Swedish national market for paving would be approximately [20-30]%. Peab's current market share is above [20-30]%, while the Target's is around [5-10]% or less. Post-Transaction, Skanska, NCC and Svevia would continue to compete with Peab as before. All three are strong national players, and Peab would gain no advantage over them from the small increment that the Target would add to its paving operations.

(C.iii) The Commission's assessment

(358) The Commission notes that, although paving is a service, it is not very differentiated as it involves laying a homogenous product with techniques that have been around for decades. Thus volume based shares are also suitable to assess market power. In any event, it is clear on the basis of Tables 27-28 that both volume and value based market shares show essentially the same competitive picture.

(359) The Commission considers that the Transaction is unlikely to lead to competitive harm for the following reasons:

(360) First, the combined market share of [20-30]% remains moderate. In line with paragraph 18 of the Horizontal Merger Guidelines such moderate levels of

combined market shares indicate the Transaction is compatible with the common market.

(361) Second, the increment is small, indicating that the Transaction will not bring about a meaningful effect. The market structure will essentially remain unchanged.

(362) Third, the merged entity will be constrained by three large competitors (Skanska, Svevia and NCC) and a number of smaller competitors, such as Sandahls and others that altogether have [10-20] % market share. These include, inter alia, Markona, Svenska Vag Sydbeläggningar, Asfaltgruppen, Asfaltbolaget and JLB Markoch Asfalt The loss of the Target as a competitive force equals to losing Sandahls or one of the several competitors that make up this group.

(363) Fourth, as discussed in relation to asphalt in Section 5.3.5.1. (C.iii.b), the buyers of paving works have some buyer power.

(364) Fifth, as discussed in relation to asphalt in Section 5.3.5.1. (C.iii.b), entry barriers are not high in asphalt market. They are even lower in the paving market as in principle there is no need to build out asphalt plants as asphalt can be sourced externally. The costs and time involved in entering the paving business was estimated to be around EUR 500 000 and 6 months.[344] Indeed respondents noted that a significant number of smaller companies entered the market recently.[345] Even if a firm preferred to enter the market as an integrated asphalt-paving player, the entry barriers do not appear high for the reasons mentioned in in Section 5.3.5.1. (C.iii.b).

(365) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition due to unilateral effects in the market for paving in Sweden.

5.3.5.2. Vertically affected markets

(A) Aggregates – asphalt

(A.i) List of affected markets and market shares

(366) The Notifying Party has a strong overall presence in Sweden both in the aggregates as well as in the asphalt business. It has quarries in over 100 locations in the country[346] and operates 14 fixed and nine mobile plants[347].

(367) The Target is only active to a limited extend in Sweden. Concerning aggregates, it operates one aggregates quarry located in Rimbo in the wider Stockholm area[348]. With respect to asphalt, the Target operates three fixed asphalt plants located in

344 Q8 – Questionnaire to competitors – paving, Sweden, question 28.

345 Q8 – Questionnaire to competitors – paving, Sweden, question 27.

346 Form CO, paragraph 134.

347 Form CO, paragraph 333.

348 Form CO, paragraph 134.

Rosersberg near Stockholm, in Måttsund near Luleå and in Kvissleby near Sundsvall, as well as one mobile asphalt plant[349].

(368) Vertical relation stem from various overlaps from YIT's asphalt plants in Måttsund and Kvissleby with Peabs aggregates quarries in the respective area, shown in Table 29 and 30. The only relevant concern can therefore be customer foreclosure.

Table 29 – upstream and downstream markets in the aggregates – asphalt link, Lulea area, Sweden

Upstream market	Market shares	Downstream market	Market shares
Björnberg	[20-30]%	Måttsund	[50-60]%
Heden	[10-20]%		
Öjebyn	[10-20]%		
Rasmyran	[20-30]%		
Rutvik	[10-20]%		
Nordanas	-[350]		
Storsund	-		
Muskus	-		
Brännträsk	-		
Ljusträk	-		
Heden	-		
Svartträsk	-		
Naartijärvi	-		

Source: Form CO, Annex 5.6a.

Table 30 - upstream and downstream markets in the aggregates – asphalt link, Sundsvall area, Sweden

Upstream market	Market shares	Downstream market	Market shares
Bispgården	-[351]	Kvissleby	[30-40]%
Hudiksvall-Sätra	-		

Source Form CO, Annex 5.6a.

(A.ii) The Notifying Party's view

(369) The Notifying Party submits that the vertical link between aggregates and asphalt in Sweden does not raise competition concerns in the context of the Transaction. First, asphalt producers would only form a part of the overall customer base of aggregates producers, as aggregates are an input for many end-uses, such as the production of RMX, mortar and in construction works.[352]

(370) Second, in all areas in question, the Notifying Party would face competition both upstream and downstream by integrated competitors. This limits the ability to engage in any kind of foreclosure strategy.

349 Form CO, paragraph 334.

350 Markets become affected due to overlapping catchment areas. No reliable market shares can be provided for these relations.

351 Markets become affected due to overlapping catchment areas. No reliable market shares can be provided for these relations.

352 Form CO, paragraph 460.

(A.iii) The Commission's assessment

(A.iii.a) Common characteristics for all affected markets

(371) Asphalt producers form a minority of the overall customer base of aggregates manufacturers. In fact, aggregates can be used for a number of end-products, such as overall construction works, RMX or mortar. Therefore, one asphalt producer does likely not form a big enough share of the overall customer base of aggregates competitors to successfully engage in a customer foreclosure strategy.

(372) This argument would not change if a segmentation is made between crushed rock and gravel / sand. For the production of aggregates, only crushed rock can be used. Therefore, the Notifying Party would not be able to foreclose the gravel / sand production of upstream competitors. Crushed rock, in turn, is also used in the production or RMX and construction.[353] Upstream aggregates competitors could therefore still sell to other asphalt manufacturers as well as companies active in the construction and RMX sector.

(A.iii.b) Luleå area

(373) As for all aggregates – asphalt links regarding customer foreclosure, the argument of versatility of aggregates as input for a number of end-products such as RMX and construction is valid. In the catchment area around Måttsund, YIT currently has a market share of around [50-60]% of total asphalt production, so only half of the proportion asphalt customers form can be attributed to the merged entity.

(374) Second, a number of upstream aggregates competitors in the Luleå area are themselves integrated companies with own downstream production. Skanska and NCC own quarries in the area of Luleå[354], all of them are active in downstream activities such as asphalt and construction. The Notifying Party would therefore likely not have the ability to foreclose these competitors. Neither would such a strategy have an impact on downstream asphalt prices, as competitors would still be able to source aggregates from own quarries.

(375) As both arguments would be valid even under a segmentation of aggregates into crushed rock and gravel / sand, the exact product market definition does not change the assessment of the market in Luleå.

(A.iii.c) Sundsvall area

(376) With respect to the asphalt plant in Sundvall, YIT currently has a significantly weaker market position than in Luleå. As market shares remain below 40%, the plant forms the minority of the already limited share of all asphalt producers among the aggregates customer base. It is therefore highly unlikely that the Notifying Party would have the ability for customer foreclosure post-transaction.

(377) Also in the area of Sundvall, NCC and Skanska are all present with its own quarries[355]. As explained above, the Notifying Party would not have the ability to foreclose these companies, as they use their aggregates production partially

353 See call with a competitor, 10 March 2020.

354 Form CO, paragraph 478.

355 Form CO, paragraph 470.

captively. Neither would such a strategy have a likely effect on downstream prices, as integrated competitors would still be able to source from own quarries.

(378) As all arguments would be valid even under a segmentation of aggregates into crushed rock and gravel / sand, the exact product market definition does not change the assessment of the market in Sundvall.

(A.iii.d) Conclusion

(379) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition as a result of the aggregates-asphalt vertical links in Sweden.

(B) Aggregates – RMX

(B.i) List of affected markets and market shares

(380) The Notifying Party has a strong presence in Sweden both in aggregates and RMX. It owns quarries in over 100 locations across the country[356] and operates a number of RMX plants located in and around the greater Stockholm area[357].

(381) The Target is barely present in the aggregates production in Sweden. It operates one aggregates quarry in the country that is located in Rimbo[358] in the wider Stockholm area and is not active in RMX.[359]

(382) Affected markets result from the strong position in Peabs RMX business, as shown in Table 31. The only plausible concern can therefore be customer foreclosure.

Table 31 – upstream and downstream markets in the aggregates – RMX vertical relationship

Upstream aggregates market	Combined market shares	Downstream RMX market	Combined market shares
Rimbo	[5-10]%	Norrtälje	[50-60]%
Rimbo	[5-10]%	Uppsala	[30-40]%

Source: Form CO, Annex 5.6a

(B.ii) The Notifying Party's view

(383) The Notifying Party submits that the link between aggregates as input for RMX would not raise competition concerns in Sweden. Aggregates are an input for a number of other end-uses, such as construction works and asphalt production. Its RMX business would therefore not be a substantial part of the customer base of upstream aggregates competitors[360].

356 Form CO, paragraph 134.

357 Form CO, paragraph 689.

358 Form CO, paragraph 134.

359 Form CO, paragraph 671.

360 Form CO, paragraph 733.

(B.iii) The Commission's assessment

(384) The Commission considers that the merged entity will not have the ability to successfully foreclose upstream competitors due to high market shares in its downstream RMX business.

(385) Aggregates for use in RMX accounts only for a small portion of overall aggregates sales. Aggregates can be used as an input for other products such as asphalt, mortar or construction works. Market investigation suggests that aggregates for the use in RMX overall accounts only for a fraction of less than 10% of total aggregates production.[361] The Notifying Party's RMX business does therefore not form a dominant part of aggregates competitors' potential customer base, and upstream competitors would still have a broad range of customers to supply in other sectors such as construction and asphalt.

(386) In addition to that, the incentive for the merged entity to engage in customer foreclosure would not raise due to the Transaction compared to the current situation. Because of the small size of YIT's quarry in Rimbo, Peab would only gain an increment of additional [0-5] percentage points in the upstream aggregates market.

(387) The assessment of the vertical aggregates – RMX relation would not change if a narrower catchment area of 25 km radius around each respective RMX plant was applied. Furthermore, it would still be valid under a possible segmentation of aggregates into crushed rock and gravel / sand, as both types are an input for RMX production, and the ability to foreclose upstream competitors would not rise.

(B.iii.a) Conclusion

(388) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition as a result of the aggregates-RMX vertical links in Sweden.

(C) Asphalt-paving

(C.i) List of affected markets and market shares

(389) The Transaction gives rise to a vertically affected market due to the asphalt-paving relationship. The downstream paving market is national and the combined market share on this market stays below 30 %. Thus the only potential issue is input foreclosure due to high individual or combined market shares on a number of asphalt markets. The affected market is the national paving market.

(390) Table 32 below lists the asphalt markets where the Parties' individual or combined market share exceeds 30%.

[361] See minutes calls with a competitor, 10 March 2020. .

Table 32 – asphalt markets with an individual or combined market share of more than 30%, asphalt-paving relationship, Sweden

Catchment area	Market share Peab	Market share Target	Combined market share
Dingtuna	[40-50]%	[0-5]%	[40-50]%
Måttsund	[0-5]%	[40-50]%	[50-60]%
Boden	[0-5]%	[40-50]%	[40-50]%
Vålberg	[70-80]%	[0-5]%	[70-80]%
Örebro	[70-80]%	[0-5]%	[70-80]%
Kvissleby	[0-5]%	[30-40]%	[30-40]%
Rällsjön	[60-70]%	[0-5]%	[60-70]%
Bjärsgård	[40-50]%	[0-5]%	[40-50]%
Linköping	[40-50]%	[0-5]%	[40-50]%
Linneryd	[50-60]%	[0-5]%	[50-60]%
Fröland	[50-60]%	[0-5]%	[50-60]%
Savsjo	[30-40]%	[0-5]%	[30-40]%

Form CO, Table 132

(C.ii) The Notifying Party's view

(391) With regard to the Dingtuna, Boden and Mattsund catchment areas, the Notifying Party considers that the merged entity's market power will be constrained by strong competitors' reducing its ability to engage in input foreclosure. Furthermore, most competitors in these areas are vertically integrated with their own asphalt production, making it impossible to foreclose their access to asphalt.[362]

(392) With regard to the Vålberg, Örebro, Kvissleby, Rällsjön Bjärsgård, Linköping, Linneryd, Fröland and Savsjo catchment areas, catchment areas, the Notifying Party submits that there is no Transaction-specific change in the upstream market and very little change in the downstream market, which implies that the ability and incentive to engage in input foreclosure will be unaffected by the Transaction. In addition, the merged entity's competitors are vertically integrated and thus impossible to foreclose.[363]

(C.iii) The Commission's assessment

(393) As explained below with respect to the different geographic areas, the Commission broadly agrees with the Notifying Party.

(C.iii.a) Catchment areas with zero upstream increment

(394) With regard to the Vålberg, Örebro, Kvissleby, Rällsjön Bjärsgård, Linköping, Linneryd, Fröland and Savsjo catchment areas (i.e. all catchment areas other than Dingtuna, Boden and Mattsund) the upstream increment is zero as either the Target or Peab is not present in the area. Accordingly, the Transaction does not change the merged entity's ability to foreclose.

(395) As regards incentives, in general the merged entity will face a trade-off when considering input foreclosure strategies. An increase of prices in the upstream market (or a refusal to sell) will reduce profits due to decreasing sales to downstream rivals. On the other hand by raising downstream rivals' input costs it

[362] Form CO, paragraphs 597-598 and 601.

[363] Form CO, paragraphs 604-607, 611-613.

may gain additional profits downstream by capturing additional sales or by increasing prices downstream. In theory, the increment downstream can increase Peab's incentives to engage in input foreclosure as it can recoup more profits downstream than before the merger due to the fact that it has a larger sales base than pre-Transaction.

(396) However, the Commission considers it unlikely that the merged entity would have the incentive to engage in such conduct. First, the [0-5]% increment in the downstream market is also minimal, which will not change appreciably the incentives.

(397) Second, [Strategic information][364] and thus it is unlikely that asphalt sales would be sacrificed for gaining paving sales or at least further reduces the incentives to engage in this strategy.

(398) Third, even if the Transaction increased the incentives in a meaningful way, quod non, the merged entity is unlikely to have the ability to engage in input foreclosure. This is because a number of paving competitors have asphalt plants in these catchment areas: Skanska and NCC have plants in all of these markets, while Sydbeläggningar, Asfaltgruppen, Asfaltbolaget, Svevia, Sandahls, JLB Markoch Asfalt have asphalt plants in one or more markets.[365] As such it is impossible to foreclose these paving competitors in these areas if they have sufficient excess capacity. This appears to be the case as the capacity utilisation of all of these competitors' asphalt plants in these markets are below 60 %, the vast majority is below 50% and their combined capacities exceed overall asphalt demand per catchment area.[366] Furthermore, it is precisely paving competitors with asphalt plants in the catchment areas that are most likely to bid for paving contracts in these areas.

(399) On the basis of the above, the Commission considers that the Transaction will not lead to a significant impediment of effective competition on account of input foreclosure in the Vålberg, Örebro, Kvissleby, Rällsjön Bjärsgård, Linköping, Linneryd, Fröland and Savsjo catchment areas.

(C.iii.b) Dingtuna

(400) In the Dingtuna catchment area, the upstream increment is not zero but the merger-specific change is still minimal as the upstream increment is [0-5]%, while the downstream increment is [0-5]%. As discussed in Section 5.3.5.2 (C.iii.a) above, the [0-5]% downstream increment will not change appreciably the incentives. As the [0-5]% upstream increment will not change appreciably the ability to foreclose, the Transaction is unlikely to lead to input foreclosure in Dingtuna.

(401) Furthermore, in Section 5.3.5.1. (C.iii), the Commission concluded that the Transaction will not lead to horizontal unilateral effects in the Dingtuna catchment area. The reasons included minimal increment, the presence of competitors with lots of excess capacity, low entry barriers and customer buyer

364 Notifying Party's response to the Commission's RFI 1, question 3.

365 Notifying Party's response to the Commission's RFI 2.

366 Notifying Party's response to the Commission's RFI 2.

power in the downstream market. The lack of horizontal effects implies that the merged entity will lack the ability to engage in input foreclosure.

(402) This is all the more the case as the largest paving competitors (Skanska, NCC and Svevia) all have asphalt plants in the Dingtuna catchment area[367] with significant excess capacities. Thus it is impossible to foreclose these competitors, who happen to be the most likely to bid for paving contracts in the Dingtuna area on account of their asphalt presence.

(403) In addition, [Strategic information][368] and thus it is unlikely that asphalt sales would be sacrificed for gaining paving sales or at least further reduces the incentives to engage in this strategy.

(404) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition due to input foreclosure in the Dingtuna catchment area.

(C.iii.c) Mattsund and Boden

(405) In the Mattsund and Boden catchment areas, the combined upstream market shares are [50-60]% and [40-50]% while the upstream increments are [0-5]% and [0-5]% respectively. The downstream increment on the national paving market is [0-5]%.

(406) Although the increments on the upstream market are not negligible, they remain moderate. The increment in the downstream market is small. Taken together, they are unlikely to change the ability (upstream increment) and the incentive (downstream increment) significantly.

(407) Furthermore, in Section 5.3.5.1. (C.iii), the Commission concluded that the Transaction will not lead to horizontal unilateral effects in the Mattsund and Boden catchment areas. Reasons included the following: moderate increment; competitors' substantial excess capacities and very low capacity utilisation rate such that competitors can serve the entire demand and have the incentives to do so; additional capacity that can be brought online in the form of mobile plants and/or additional suppliers that can compete with mobile plants; low entry barriers and buyer power of customers. The lack of horizontal effects implies that the merged entity will lack the ability to engage in input foreclosure.

(408) This is all the more the case as two of the three largest paving competitors (NCC and Skanska) all have asphalt plants in the Dingtuna catchment area[369] with significant excess capacities. Thus it is impossible to foreclose these competitors, who happen to be the most likely to bid for paving contracts in the Dingtuna area on account of their asphalt presence.

367 Notifying Party's response to the Commission's RFI 2.

368 Notifying Party's response to the Commission's RFI 1, question 3.

369 Notifying Party's response to the Commission's RFI 2.

(409) In addition, [Strategic information][370] and thus it is unlikely that asphalt sales would be sacrificed for gaining paving sales or at least further reduces the incentives to engage in this strategy.

(410) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition due to input foreclosure in the Mattsund and Boden catchment areas.

(C.iii.d) Conclusion

(411) Based on the above the Commission considers that the Transaction will not lead to a significant impediment of effective competition as a result of the asphalt-paving vertical links in Sweden. The Commission also notes that even if input foreclosure was possible, it would only produce effects in these areas, i.e. the entire downstream, national paving market may not be affected as a whole.

6. CONCLUSION

(412) Based on Section 5.3, the Transaction will not lead to a significant impediment of effective competition due to horizontal non-coordinated effects

- in the markets for aggregates in Finland and Sweden;
- in the markets for asphalt in Norway and Sweden, and
- in the market for paving in Sweden.

(413) Based on Section 5.3, the Transaction will not lead to a significant impediment of effective competition due to customer or input foreclosure in the following vertical relationships:

- aggregates-asphalt link in Sweden and Norway;
- aggregates-RMX link in Finland, Sweden and Norway;
- aggregates – construction link in Finland and Norway;
- asphalt-paving link in Sweden and Norway, and
- bitumen-asphalt link in Norway.

[370] Notifying Party's response to the Commission's RFI 1, question 3.

(414) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President