EUROPEAN COMMISSION
DG Competition

Case M.8626 - CRH / XI (RMAT)

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 30/10/2017

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Brussels, 30.10.2017
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.8626 - CRH / XI(RMAT)**
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 25 September 2017, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which CRH Zehnte Vermögensverwaltungs GmbH ("CRH Zehnte", Germany) ultimately controlled by CRH plc ("CRH", Ireland), intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of XI(RMAT), the holding company of Fels-Werke ("Fels") by way of purchase of shares ("the proposed Transaction")[3]. CRH is referred to as the "Notifying Party" and XI(RMAT) are collectively referred to as "the Parties".

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

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

3 Publication in the Official Journal of the European Union No C 332/04, 04.10.2017, p.5.

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1. THE PARTIES

(2) CRH is an Irish-based global company active in the manufacture and distribution of various building materials worldwide. Its activity is organised into three business segments, which are heavyside (including aggregates, cement, lime and concrete), lightside (including glass and glazing systems, construction accessories, and shutters and awnings), and distribution (of sanitary, heating and plumbing products, operation of general builder merchants and DIY stores). CRH Zehnte is a wholly owned indirect subsidiary of CRH.

(3) XI(RMAT) is the holding company of Fels, which is active in mining, processing and distribution of lime and limestone products in Germany, the Czech Republic and Russia. To a smaller extent Fels also produces gypsum and mortar.

2. THE OPERATION

(4) The notified operation consists in CRH Zehnte purchasing all shares in XI(RMAT). After the proposed Transaction, CRH will thus solely control XI(RMAT). Fels' Schraplau plant is not part of the proposed Transaction and will be carved out of Fels. The proposed Transaction therefore constitutes an acquisition pursuant to Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] *(CRH EUR 27 104 million, XI(RMAT) EUR* […] *million.* Each of them has an EU-wide turnover in excess of EUR 250 million *(CRH EUR* […]*million, XI(RMAT) EUR* […] *millon).* XI(RMAT) achieves […], however CRH does not achieve more than two-thirds of its aggregate EU-wide turnover [in the same country]. The notified operation therefore has an EU dimension.

4. MARKET DEFINITION

4.1. Introduction

(6) The proposed Transaction concerns the production of limestone, lime and mortar.

(7) CRH has two plants in Poland producing lime in Kujawy and Sitkówka, the latter also producing limestone. Fels has plants for limestone and lime at seven locations in Germany and at one location in the Czech Republic. CRH has mortar plants in the UK, Ireland and Spain, whereas Fels produces mortar in Germany and the Czech Republic.

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).

4.2. Relevant product markets

4.2.1. Limestone and lime

(8) Limestone is a sedimentary material consisting of the minerals calcite and aragonite but can also have additional constituents, such as dolomite. Limestone has numerous uses: for instance, crushed it serves as aggregate for a base of roads, coarsely ground it is an ingredient of animal feed, pulverised it is used as raw material for cement and further processed it is the ingredient for lime.

(9) Lime is an inorganic material consisting of carbonates, oxides and hydroxides. It is produced by burning crushed and washed limestone with natural gas, oil or coal. The burning process (calcination) converts the stones into the highly caustic material quicklime and, through subsequent addition of water, into slaked lime or hydrated lime. Depending on its mineral composition, quality and consistency, lime has a wide range of applications, for instance in the steel industry, in water treatment, cattle feed, soil stabilization, drilling mud applications in the oil industry, or pH adjustment in various industrial applications.

Distinction between lime and limestone

(10) In the past, the Commission has not examined the relevant market for limestone and lime, but examined the relevant market for aggregates, one of the applications for limestone.[5] The German Federal Cartel Office has dealt with limestone and lime and found that they belonged to separate product markets.[6]

(11) The Notifying Party agrees with the definition of the Federal Cartel Office that limestone and lime belong to separate product markets.

(12) Based on its investigation in this case[7], the Commission finds that limestone and lime constitute distinct product markets. From the demand side perspective there is no substitution between limestone and lime. There is also limited supply side substitutability, as the further processing of limestone into lime requires burning kilns. Operating burning kilns are more capital intensive and raise the entry barrier into lime production. Therefore, limestone production is characterised by a large number of smaller players, many of which are not active in lime. The price level of limestone and lime are also significantly different, lime being ca. seven times more expensive than limestone.

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5 Commission, decision of 13 January 2000, COMP/M.1779 – *Anglo American / Tarmac*, para. 10; decision of 6 September 2006, COMP/M.4298 – *Aggregate Industries / Foster Yeoman*, para. 9; decision of 7. August 2007. COMP/M.4719 – *Heidelbergcement / Hanson*, para. 9; decision of 15 December 2014, COMP/M.7252 – *Holcim/Lafarge*, para. 323.

6 Bundeskartellamt case report of November 2012, B1-53/12 – *Rheinkalk / Warstein;* decision of 3 April 2003, B1-168/02 – *Haniel / Schencking*, p. 5 et seq.; decision of 10 October 2003, B1-180/02 – *Rheinkalk / Lengerich*, p. 8.

7 The market investigation was conducted through written questionnaires to customers and competitors located in the geographic areas where the Parties' activities overlap and, in particular, on the alternative markets defined as the catchment area around the Parties' respective plants.

Distinction between different types of lime and limestone

(13) For both, limestone and lime, but more importantly for lime, different product characteristics and varieties exist, depending on the calcium content of the stone and the presence of other minerals. There are also different processing methods and ultimate consistencies and other product characteristics, such as reactivity which may result in limited demand side substitutability.

(14) The Notifying Party submits that due to the large degree of supply side substitutability beween limestone for different purposes and lime for different purposes, these markets should not be further differentiated.

(15) The German Federal Cartel Office acknowledged the variety of lime products. However, based on substitution between lime of different calcium contents across a large number of applications, price differentiation between lime products and supply side substitution, the German Federal Cartel Office found no clear indication to subsegment the market for lime.[8]

(16) Market participants responding to the investigation[9] were confident that generally all competitors active in lime were able to produce any variety and could quickly and without additional investment adjust their product assortment, within the limitations of the chemical composition of available limestone and technology (kilns).

Conclusion

(17) The Commission therefore considers that limestone and lime constitute different product markets. Furthermore, for the purposes of the present decision, it is not necessary to conclude whether such markets for limestone and lime should be further sub-segmented, as the proposed Transaction does not raise serious doubts under the alternative plausible market definitions.

4.2.2. Mortar

(18) Mortar is a material used to bind building blocks such as stones, bricks or concrete masonry products and fill the gaps between them. It is made out of a paste of mineral binders, aggregates and water. Limes can be used as such mineral binder, amongst others.

(19) The Commission in a past decision found that mortar constituted a separate product market.[10]

4.2.3. Cement

(20) Cement is one of the main input products in modern construction. It is produced by grinding clinker and alternative cementitious materials. Clinker is the main

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8 German Federal Cartel Office decisions of 3 April 2003, B1-168/02 – *Haniel / Schencking*, p.7-10; and of 10 October 2003, B1-180/02 – *Rheinkalk / Lengerich*, p.9

9 See replies to question 13 of Q1 - Questionnaire to customers and to question 18 of Q2 – Questionnaire to competitors.

10 COMP/M.1779 - *Anglo American/Tarmac*.

ingredient in the production of cement and is produced at high temperatures from limestone and other constituents in cement kilns.

(21) The Commission has delineated the relevant product market for grey cement to comprise all grades of grey cement (CEM I to CEM V) but found that white cement does not belong to the same product market.[11]

4.3. Relevant geographic markets

4.3.1. Lime

(22) The Parties submit that lime markets should be considered national for the following reasons:

a. No or limited cross-border trade of lime takes place.[12] Cross-border trade between the Parties' plants in Germany and Poland and in the Czech Republic and Poland is marginal, […]. The Parties claim that this also applies to competitors.

b. Lime is a just-in-time product that is perishable and therefore cannot be transported or stored for very long. In addition, transportation costs are relatively high (ca. […]EUR per ton per 100km) compared to the price of lime, which is ca. […] EUR per ton.

c. […]

d. Customer-supplier relationships are generally long term. Therefore close personal contact, common language and common currency are important factors, which limit cross border supplies.

(23) There is no decisional practice of the Commission concerning the scope of the geographic market for lime. In similar markets, such as grey cement, the Commission has considered that the geographic market consists of circular catchment areas with 150-250km radii around the relevant plants. The Commission has also analysed concentration levels in catchment areas drawn around midpoints between plants.

(24) The German Federal Cartel Office[13] found that the geographic market for lime was regional with a transportation radius of 200 km around a plant.

(25) The Parties hold that, if markets were to be defined as catchment areas, 200km around plants is in line with actual transportation distances for lime deliveries of Fels[14] in Germany and the Czech Republic but add that in Poland the transportation distances are larger, between […] and […] km for lime.

National or narrower than national markets

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11 COMP/M.7252 - Holcim/Lafarge, para. 49.

12 […].

13 German Federal Cartel Office decision of 3 April 2003, B1-168/02 – *Haniel / Schencking*, p. 13.

14 […].

(26) The market investigation provided evidence confirming a number of the Parties' assertions in favour of national or narrower than national markets for lime - at least as concerns eastern Germany, Poland and the Czech Republic.

(27) The vast majority of the Parties' customers responding to the market investigation[15] reported that they do not purchase lime across borders. This is notably due to distance but also the volatility of the exchange rates, as Germany, Poland and the Czech Republic do not have a common currency. They corroborated the Parties' claim that supplier relationships provided stability over longer periods of time, and reduced pricing uncertainty which appears to act as an impediment to cross border trade.

(28) A number of competitors affirmed[16] that they were able and ready to trade lime cross-border. One large competitor[17] reported exports from the Czech Republic to Germany, driven by geographic proximity and higher prices in Germany.[18]

(29) However, the geographic dispersion of the Parties' customers around the Parties' four plants[19] in Germany, Poland and the Czech Republic, demonstrates that actual cross-border supplies are sporadic; over 95% of customers in the catchment area of any of the plants source their lime within the same country.

(30) The Parties's internal documents[20] and respondents to the market investigation[21] confirm that price levels are not homogenous across countries, Germany being higher priced than the Czech Republic for instance, although market participants also note that prices may also vary due to differences of product mixes and are therefore difficult to compare. For example, […]

(31) On a more aggregate level, this is also mirrored by the real trade flows[22] for lime in Europe: Cross-border trade can be observed and flows are significant in the Western parts of Europe, mainly between Germany, the Netherlands and France (and also partly Slovakia), however, not in the countries in question, between plants in Germany and Poland and in the Czech Republic where the cross border trading seems to be minimal.[23]

Cross-border regional markets

(32) The investigation also provided some evidence in favour of regional geographic markets for lime in the form of catchment areas around the lime plants that could include areas across borders.

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15 See replies to question 7 of Q2 - Questionnaire to customers.
16 See replies to question 9 of Q1 – Questionnaire to competitors.
17 See reply of a competitor to question 9 of Q1 – Questionnaire to competitors.
18 Also internal documents of the Parties confirm that […] .
19 Reply to the Commission's request for information on 4 October, questions 6 and 7.
20 Reply to the Commission's request for information on 4 October, Annex 12, […].
21 See replies to question 15 of Q2 – Questionnaire to competitors.
22 Reply to the Commission's request for information on 4 October, Annex 2; CRH Lime review Europe, November 2016, p.23. Source of the trade statistic quoted therein: Eurostat.
23 Reply to the Commission's request for information on 4 October, Annex 10; Presentation to the Board by BCG, slide 16.

(33) Respondents to the market investigation confirmed the Parties' view that lime was a just-in-time product and agreed that transportation distances were crucial. Therefore, catchment areas based on travel distance could be seen as an alternative geographic market. As concerns the delivery distances, answers vary widely, and suggest radii in the range between 70-150 km. Some noted that for specific applications and qualities, the transportation distances could be significantly higher, up to 500km. In general, most respondents agreed however, that 90% of their purchases took place within a radius of below 250 km. Some held that this figure was somewhat higher in case of Poland but also significantly lower in case of the Czech Republic.

(34) Internal documents of the Parties look at […]. For the catchment area based analysis, the Parties' also seem to employ the […] km radius as the typical delivery distance around a production plant, […].[24] […].

Conclusion

(35) Ultimately, the Commission considers that, for the purposes of this decision, the precise geographic market definition of the lime market can be left open, as no serious doubts arise under the alternative plausible geographic market definitions.

4.3.2. Limestone

(36) The Commission has previously defined the relevant geographic market for aggregates as 50-80 km radius circles from the source of supply. This was due to the high cost of transportation compared to the value of the product.

(37) The German Competition Authority held that the geographic market for limestone is regional, defining circular catchment areas whose radius is determined by the transportation distance where 90% of the limestone is sold.

(38) The Parties argue that the markets for limestone are national in scope for similar reasons as the ones set out for lime in the previous section in paragraph (22). In addition, they hold that, if markets were to be defined as catchment areas, they should be based on […] km radii around the plants due to the actual transportation distances for Fels and CRH. They add, however, that due to the lack of natural limestone in Poland, […].

(39) Third party studies submitted by the Parties[25] support the argument that the geographic market for limestone is […]; "[…]".

(40) For the purposes of this decision, the geographic market definition for limestone can be left open as no affected markets arise under the alternative plausible market definitions.

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24 Reply to the Commission's request for information on 4 October, Annex 10; Presentation to the Board by BCG, slide 9.

25 See reply to the Commission's request for information on 4 October, Annex 12, […].

4.3.3. Mortar

(41) The Commission previously considered[26] the existence of local/regional markets based on circular catchment areas with a 120 km radius.

4.3.4. Cement

(42) The Commission previously considered the existence of regional markets based on catchment areas around the cement plants with a radius of 150 km and 250 km.[27]

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

(43) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(44) In this respect, a merger may entail horizontal, vertical and/or conglomerate effects. The proposed Transaction may give rise to horizontal overlaps between the Parties and to some horizontally affected markets.

Horizontal effects

(45) Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.[28]

(46) The Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects. Non-coordinated effects may significantly impede competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.

(47) The Horizontal Merger Guidelines also lists a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers

26 COMP/M.1779 - Anglo American/Tarmac, para 23.

27 COMP/M.7252 - Holcim/Lafarge, para. 57.

28 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

to switch suppliers, or the fact that a merger would eliminate an important competitive force. That list of factors applies equally if a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition.

(48) Coordinated effects may significantly impede competition when the proposed merger changes the nature of competition in such a way that undertakings that previously were not coordinating their behaviour are, after the merger, more likely to coordinate and harm effective competition.

Vertical effects

(49) Vertical effects may arise from mergers of companies operating at different levels of the supply chain[29].

(50) A vertical merger may result in anti-competitive effects due to foreclosure. Foreclosure concerns a situation where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.[30]

(51) Two forms of foreclosure can be distinguished in a vertical relationship: input and customer foreclosure. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).[31]

(52) This decision will analyse whether the proposed Transaction is likely to raise doubts as to its compatibility with the internal market by the creation on non-coordinated and coordinated effects in those markets on which the Parties' activities lead to horizontal overlaps, as well as its potential vertical effects since limestone can be an input for the production of lime and cement.

5.2. Horizontal effects

5.2.1. Lime

Non-coordinated effects

(53) If the market for lime is defined as national, there would be horizontally affected markets but there is hardly any overlap between the Parties' activities as they deliver only negligible quantities of lime cross-border. Combined market shares reach [30-40]% in the Czech Republic (Fels: [30-40]%, CRH: [0-5]%) and [40-

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[29] "Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings", OJ C 265, 18.10.2008, at p. 6 ('Non-Horizontal Guidelines'), paragraph 4.

[30] Non-Horizontal Guidelines, paragraphs 29-30.

[31] Non-Horizontal Guidelines, paragraphs 29–30.

50]% in Poland (CRH: [40-50]%, Fels [0-5]%). There is no overlap of sales in Germany (Fels: [20-30]%). Due to the negligible overlaps, no serious doubts arise as to the proposed Transaction's compatibility with the internal market as regards national lime markets.

(54) If the market for lime is defined as 200km or 250km catchment areas around the Parties' lime plants, there would also be horizontally affected markets, with higher overlaps.

(55) The Notifying Party submits that although the catchment areas overlap, the increments in sales market shares are very low […]. […][32] from Germany into Poland. The Notifying Party submits further that there is no actual competitive interaction between the Parties since the main consumption centers are not located in the overlap lenses of the catchment areas. The Notifying Party also claims that the distances between the Parties' plants are relatively large which may limit the number of customers that would consider the Parties' plants as supply alternatives. Furthermore, the Notifying Party maintains that they would at any rate be constrained by a number of sizeable competitors.

(56) The main horizontal overlap concerns the catchment areas of CRH's plant in Kujawy in Poland and Fels' plant in Rüdersdorf in Germany.

(57) Sales based market shares corroborate the Parties' arguments[33]: the combined shares in the overlapping 200km catchment areas would reach [40-50]%, however, with a small increment of [0-5]%. The 250km catchment areas result in lower combined market shares ([30-40]%), with an even lower increment ([0-5]%).[34]

(58) Combined capacity based market shares[35] around CRH's plant in Poland (Kujawy) and Fels' plant in Germany (Rüdersdorf) are [50-60]% and [60-70]% in the 200km catchment areas, with increments of [5-10]% and [0-5]%, repectively) and [40-50]% and [50-60]% in the 250km areas, with increments of [10-20]% and [0-5]% respectively). Market shares are [40-50]% and [40-50]% in the respective 200km and 250km catchment areas around the mid-point (with increments of [20-30]%, and [10-20]%, respectively).[36]

(59) Considering capacity for lime production, the Parties would face a number of competitors:

a. In the 200km catchment areas around the Parties' plants, the Parties' main competitor Lhoist has a market share of [40-50]% and Arcelor Mittal has a

32 […].

33 Catchment area sales market shares are based on the Parties' actual sales in radii of 200 and 250km geodesic distance drawn around their respective plant.

34 Form CO, paragraphs 154-156.

35 The Parties have calculated combined capacity market shares on the basis of two methodologies, following Commission precedents: (i) capacity shares of the catchment areas drawn around plants based on a 200km and 250km radius, as well as (ii) capacity shares of the catchment areas drawn around the mid-point between two plants based on a 200km and 250km radius. The shares were calculated following the approach of the Commission in Decision M.7252 – *Holcim Lafarge* (paragraphs 71-73, 78 and 79).

36 Form CO, paragraph 196.

market share of [5-10]%. There are also a number of other smaller suppliers. The competitive landscape is similar when considering catchment areas with a 250km radius.

b. In the 200km catchment area around the midpoint between the Parties' plants, Lhoist has a market share of [30-40]% and Arcelor Mittal has a market share of [20-30]%. There are also a number of other smaller suppliers. In the 250km radius catchment area around the midpoint around the Parties' plants, Lhoist has a market share of [30-40]% and Arcelor Mittal has a market share of [10-20]%. There are also a number of other smaller competitors.

(60) Further overlaps arise with respect to the catchment areas around CRH’s plants in Kujawy and Sitkówka in Poland and Fels’ plant in Lestina in the Czech Republic.

(61) As regards the catchment areas around CRH’s plants in Poland, Fels’ Czech plant only has […] sales of […]kt into the catchment areas of the Polish plants leading to a maximum sales based market share increment in the 200km catchment area of [0-5]%. The 250km cathment area would show even less increment. Conversely, CRH's exports from Poland into the Czech Republic are limited to […]kt, which results in an increment of [0-5]% to the [20-30]% sales based market share of Fels in the Lestina 200km catchment area.

(62) Combined capacity based market shares around CRH’s plants in Poland (Sitkówka and Kujawy), and Fels' plant in Lestina are, respectively, [30-40]% and [50-60]% in the 200km catchment areas (increments of [0-5]% and [5-10]% respectively), and [30-40]% and [40-50]% in the 250km areas (increments of [0-5]% and [10-20]% respectively).

(63) Considering the catchment areas around the midpoints between the plants, combined capacity based market shares are [20-30]% and [20-30]% in the respective 200km and 250km catchment areas for the Polish Sitkówka and the Czech Lestina plants, and [20-30]% for both 200km and 250km catchment areas between the Polish Kujawy and the Czech Lestina plants. [37]

(64) Competitor Lhoist has a sizable market share between [40-50]% and [50-60]% based on capacity-based mid-point market shares and there are a large number of smaller suppliers, such as Carmeuse, Arcelor Mittal, Dolvap or Kotouc Strambek among others, with market shares ranging between [0-5] and [10-20]%.[38]

(65) The Commission considers that the market investigation on the whole confirmed the Parties' claims. The proposed Transaction does not give rise to serious doubts as to its compatibility with the internal market due to non-coordinated effects for the following reasons:

(66) First, the Parties are distant actual competitors:

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[37] Form CO, paragraphs 197 and 198.

[38] Form CO, paragraphs 197 and 198.

a. the Parties's actual sales overlap only marginally in any of the alternative markets, be it national or based on catchment areas, as demonstrated above;

b. respondents, including customers, did not consider the Parties as closely competing.[39] The Parties' plants were not considered as substitutes and none of the responding customers had deliveries from both of the Parties' plants to the same plant.[40] Respondents explained that this was due to the geographic distance and also the composition of their products.

(67) Second, despite significant capacity market shares in the catchment areas around the Fels plant in Rüdersdorf (Germany) and CRH's plant in Kujawy, Poland, the Parties are not close potential competitors. This also applies to the CRH plant in Sitkówka and the Fels plant in Lestina, where, moreover, the combined market share appears to be more limited.

a. The distance between Parties' respective plants is significant. Consequently, the theoretical overlaps lens between the Parties' plants only concerns minor parts of the relevant catchment areas.

b. Customers do not perceive CRH plants in Poland as closely competing with the Rüdersdorf plant in Germany and Lestina in the Czech Republic. Apart from distance, this is mainly due to the fact that they supply lime of different quality and composition, suitable for different kinds of applications. Customers of the Rüdersdorf and Lestina plant therefore did not consider purchasing from CRH.

c. Internal documents of the Parties confirmed that […].

(68) Third, there is competition from other lime producers such as (i) Lhoist, Arcelor Mittal, Wünschensdorfer Dolomit, Calcisor Kalkterminal Dresden, around Rüdersdorf, (ii) Lhoist, Arcelor Mittal, Carmeuse, Dolvap, Kotouc Stramberk, Calmit, Hasit, around Lestina, (iii) Lhoist and Arcelor Mittal and Carmeuse, Dolvap, Kotouc Stramberk, Calmit, around Sitkowka and (iv) Lhoist, Arcelor Mittal and Krasnoslskstrojmaterialy, around Kujawy.

(69) Fourth, neither competitors nor customers responding to the market investigation saw any impact of the merger on their businesses.[41]

Coordinated effects

(70) The proposed Transaction does not give rise either to serious doubts as to its compatibility with the internal market due to coordinated effects, by facilitating the firms to reach a coordinated outcome or by strengthening existing coordination.

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[39] See replies to question 12 of Q2 – Questionnaire to customers.

[40] See replies to question 3 of Q2 – Questionnaire to customers.

[41] See replies to question 14 of Q2 – Questionnaire to customers and question 22 of Q1 – Questionnaire to competitors.

(71) This is in particular due to the fact that, as shown in recitals (66) and (67), the Parties are but distant competitors with a limited competitive interaction. This is consistent with the fact that, in addition, the Parties have a limited product portfolio overlap, and consequently appear to serve, to a significant extent, different customer groups. The proposed Transaction therefore neither eliminates an important source of rivalry nor does it significantly increase market concentration so as to be more conducive to coordination. Moreover, according to the Notifying Party[42], […]. Such potential entry could act as a further disruptor in case the incumbents attempted to coordinate their conduct. Finally, no respondent to the market investigation raised concerns on potential coordinated effects.

5.2.2. Limestone

(72) If national markets for limestone are defined, there is […] between the Parties' activities as they […] limestone cross-border. The Notifying Party further submits that due to […] cross-border deliveries, there is also […] of sales activities at the regional level.

(73) In any event, under any alternative geographic market definition (including the broadest one consisting in a 200km catchment area around the plants), the overlaps do not lead to affected markets for limestone. A theoretical overlap occurs between CRH's Sitkówka plant in Poland ([10-20]% market share) and Fels's Lestina plant ([20-30]% market share), but there is no overlap from actual sales, and there is only a marginal overlap between the catchment areas within which 90% of limestone is sold, respectively.

(74) Therefore, horizontal competition concerns are unlikely to arise.

(75) Therefore, the Commission considers that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market due to horizontal effects as regards the Parties' activities in the sale of limestone in any plausible geographic market.

5.2.3. Mortar

(76) As concerns mortar, there are no geographical overlaps at the national level or between the catchment areas previously considered by the Commission. Therefore, the notified Transaction raises no concerns from a horizontal standpoint as regards the sale of mortar in any plausible geographic market.

5.3. Vertical effects

Limestone and lime

(77) Limestone is used as an input in the production of lime. The proposed Transaction could therefore lead to a vertical relationship between the supply of limestone and the production of lime.

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42 Form CO, paragraph 203.

(78) In addition to the Parties' lime plants as discussed in section 5.2.1, Fels also operates a number of limestone plants in Germany[43] and one in the Czech Republic, while CRH quarries limestone in Sitkówka. Considering the possible relevant geographic markets, a vertical link could thus exist between the Parties' limestone and lime operations in the catchment areas of CRH's Sitkówka and Kujawy plants in Poland and Fels' Lestina plant in the Czech Republic

(79) However, the proposed Transaction is unlikely to lead to undesirable vertical effects either in the form of input or customer foreclosure for the following reasons:

a. the distance between the Parties' respective limestone quarries and lime plants is significant and it is, therefore, not likely that the Transaction would have any impact on existing supplies from and to these plants.

b. there are enough competitors in the upstream and downstream markets and the Parties' respective market share would not give them the ability or incentive to engage in a foreclosure strategy. Notably, the Parties' market shares for their respective plants are modest for lime (as described above in paragraphs 61-63) and for limestone (paragraph 73 above).

Limestone and cement

(80) According to the Notifying Party, the proposed Transaction could lead to a vertical relationship between the supply of limestone and the production of cement. Limestone is one of the raw materials used in the production of clinker, a key ingredient of grey cement, as well as for grey cement itself.

(81) CHR is active on a downstream market for grey cement. It operates an integrated cement plant in Karsdorf, Germany (30-40% market share within a 150km radius, 10-20% market share within a 250km radius), and cement grinding plants in Sötenich (5-10% market share) and Wössingen (5-10% market share), while Fels operates a number of limestone plants in Germany.[44]

(82) Regarding this potential vertical link in Germany, the proposed Transaction is also unlikely to lead to undesirable vertical effects either in the form of an input or a customer foreclosure for the following reasons:

a. cement producers typically do not procure limestone from third parties, but operate limestone quarries on the site, or close to the site;

b. concerning CRH's Karsdorf cement plant in Germany's Harz region, there are enough competitors in the upstream and downstream markets. Concerning customer foreclosure, the proposed Transaction does not render more difficult sales of limestone to Karsdorf by any third party, as the Karsdorf plant currently sources limestone from its own quarry. Concerning input foreclosure, the market share of Fels' for limestone

[43] In Germany, Fels currently operates active quarries in the Harz region (3 quarries), Saal, Münchehof, Rüdersdorf and Gillersheim. Form CO, para 70.

[44] See footnote 43.

plants do not exceed 30% in any relevant catchment area and would thus not give the combined entity the ability or incentive to engage in a foreclosure strategy;[45]

c. concerning CRH's cement plants in Wössingen and Sötenich, there is no vertical relationship. These plants are located far from Fels' limestone quarries and thus fall outside even the broadest alternative catchment area for the supply of limestone (200km radius).

(83) Therefore, the Commission considers that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market due to vertical effects as regards the the Parties' activities in the sale of limestone and the production of lime or grey cement.

6. CONCLUSION

(84) 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
Member of the Commission

45 […].