



EUROPEAN COMMISSION
DG Competition

***Case M.7878 – HeidelbergCement
/ Schwenk / Cemex Croatia /
Cemex Hungary***

Only the English text is available and authentic.

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

Article 4(4)
Date: 22.06.2016



EUROPEAN COMMISSION

Brussels, 22.06.2016
C(2016) 3983 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

To the notifying parties

**To the Hungarian Competition
Authority**

Dear Sir/Madam,

**Subject: Case M.7878 – HeidelbergCement / Schwenk / Cemex Croatia / Cemex
Hungary
Commission decision following a reasoned submission pursuant to
Article 4(4) of Regulation No 139/2004¹ and Article 57 of the Agreement on
the European Economic Area² for partial referral of the case to Hungary.**

Date of filing: 25 May 2016

Legal deadline for response of Member States: 15 June 2016

Legal deadline for the Commission decision under Article 4(4): 29 June 2015

I. INTRODUCTION

1. On 25 May 2016, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Merger Regulation with respect to the transaction cited above. The parties request the operation to be examined, as regards the Hungarian part of the transaction, by the competent authorities of Hungary.

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').

2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 25 May 2016.
4. By letter of 6 June 2016, the *Gazdasági Versenyhivatal* (the "**GVH**") as the competent authority of Hungary informed the Commission that Hungary agrees with the proposed referral.

II. THE PARTIES

5. **HeidelbergCement AG ("HeidelbergCement")** is a German producer and distributor of cement, clinker, ready-mix concrete, aggregates and other related products. It carries out its commercial activities globally in more than 40 countries and it has several subsidiaries in the territory of the EEA.
6. **SCHWENK Zement KG ("Schwenk")** is a family-held limited partnership active in the production of cement, clinker, ready-mix concrete, concrete products and services, as well as aggregates. Its business is focused on Germany, which accounts for more than [...] % of its turnover, but it also has limited activities in Austria, France, the Netherlands, Poland and the Czech Republic.
7. HeidelbergCement and Schwenk are jointly referred to hereinafter as the "**Submitting Parties**".
8. **Duna-Dráva Cement Kft. ("DDC")** is a full-function joint venture company equally owned and jointly controlled by HeidelbergCement and Schwenk, which is active in Hungary and the Western Balkans in the areas of cement, ready-mix concrete and aggregates. In Hungary, DDC currently operates two cement plants and 24 fixed ready mixed concrete plants and two aggregates sites. In the Western Balkans, DDC operates one cement plant and 11 ready-mix concrete plants.
9. **Cemex, S.A.B. de C.V.**, is a global building materials company headquartered in Mexico active in cement, ready-mix concrete, aggregates and related building materials. It has operations in Africa, the Americas, Asia, Europe and the Middle East. Along with the rest of the Cemex companies, the group will hereinafter be referred to as "Cemex".
10. **Cemex Hungária Építőanyagok Kft ("Cemex Hungary")** is a limited liability company under Hungarian law, which is mainly active in the production and sale of ready-mix concrete, paving stones, and aggregates which are only sold in Hungary. Cemex Hungary currently operates 26 fixed ready-mix concrete plants, three aggregate sites and two paving stone plants in Hungary. Cemex Hungary is not active in the production and sale of cement.
11. **Cemex Hrvatska dd ("Cemex Croatia")** is a joint stock company under Croatian law, which is mainly active in the production and distribution of grey cement, ready-mix concrete, clinker, and aggregates. Cemex Croatia has activities mainly in the Western Balkan region (i.e. Croatia, Bosnia-Herzegovina, Serbia, Macedonia, Montenegro and Albania) but also supplies limited quantities to Italy, Slovenia and Malta. The company operates seven ready-mix concrete plants, five in Croatia, two in

Bosnia and two aggregates quarries in Croatia. Furthermore, Cemex Croatia has three cement plants and operates four sales terminals in Croatia.

12. HeidelbergCement, Schwenk, DDC, Cemex Hungary and Cemex Croatia are jointly referred to hereinafter as the "**Parties**".

III. THE OPERATION AND CONCENTRATION

13. On 6 May 2015, Cemex initiated a process for the sale of (i) its subsidiary Cemex Austria AG ("**Cemex Austria**"), which held 100% of the shares in Cemex Hungary, and (ii) its subsidiary Cemex Croatia. Cemex had an interest in selling its subsidiaries together and at the same time.
14. Against the background of a framework agreement entered into between DDC and Rohrdorfer Baustoffe Austria AG ("**Rohrdorfer**") on 27 July 2015, Heidelberg Cement submitted a joint bid to Cemex on behalf of DDC and Rohrdorfer which was selected as the preferred bid. On 11 August 2015, DDC and Cemex entered into a share purchase agreement pursuant to which DDC will acquire 100% shares in Cemex Croatia. In parallel, Rohrdorfer entered into a similar agreement for the acquisition of Cemex Austria and its subsidiary Cemex Hungary. The acquisition of Cemex Austria and its subsidiary Cemex Hungary by Rohrdorfer was implemented on 2 November 2015³. On the same day and following what had been agreed in the framework agreement between DDC and Rohrdorfer, DDC and Cemex Austria entered into a share purchase agreement for the acquisition of Cemex Hungary by DDC.
15. The acquisition of Cemex Croatia and Cemex Hungary by DDC (the "**Transaction**") should be considered as a single concentration within the meaning of the Merger Regulation. The Submitting Parties were interested in acquiring both Cemex Hungary and Cemex Croatia through DDC, while not interested in the acquisition of Cemex Austria to be retained by Rohrdorfer. This was explained by DDC's traditional focus on the Western Balkan (Croatia, Bosnia-Herzegovina, Montenegro) and Hungary.
16. Since Cemex was unwilling to spin-off Cemex Hungary from Cemex Austria, DDC and Rohrdorfer entered into their framework agreement according to which they would sign a share purchase agreements for the sale of Cemex Hungary from Rohrdorfer to DDC immediately upon closing of the Cemex Austria transaction. The economic reality of the agreements is therefore that DDC acquires control of Cemex Hungary and Cemex Croatia while Rohrdorfer acquires control of Cemex Austria. The acquisition of Cemex Hungary and Cemex Croatia by DDC were pursued at the same time and are linked through the framework agreement between Rohrdorfer and DDC.⁴
17. The Transaction thus involves the acquisition of joint control of Cemex Hungary and Cemex Croatia by HeidelbergCement and Schwenk (through DDC) by means of purchase of shares. The Transaction constitutes therefore a concentration within the meaning of Article 3(1)(b) of the EU Merger Regulation.

³ Merger control clearance by the Austrian Federal Competition Authority was obtained on 19 October 2015.

⁴ See the Commission's Consolidated Jurisdictional Notice, OJ C 37, 30.01.2016, p. 3 (the 'Jurisdictional Notice'), points 43 and 47.

IV. EU DIMENSION

18. On the acquirer's side, the undertakings concerned by the Transaction for the purpose of Article 1 and 5 of the Merger Regulation are DDC's parent companies HeidelbergCement and Schwenk. According to the Jurisdictional Notice⁵, a full-function joint venture, and not its parents, is normally considered the undertaking concerned by an operation. However, if the joint venture can be regarded as a mere vehicle for an acquisition by the parent companies, the undertakings concerned will be the parent companies themselves.
19. In the case at hand, the Commission found that there were sufficient elements to demonstrate that the parent companies of DDC – HeidelbergCement and Schwenk – were the real drivers behind the operation. The parent companies were involved significantly in the initiation, organisation and financing of the operation, as evidenced by HeidelbergCement's internal documents.
20. First, HeidelbergCement's role was not that of a mere facilitator of a joint DDC-Rohrdorfer bid but it was itself interested in acquiring the Cemex businesses and initiated the acquisition process in concertation with Schwenk and Rohrdorfer. The transaction was to be shaped so as to [...].
21. Second, HeidelbergCement organised a steering committee responsible for the transaction and comprised by senior HeidelbergCement managers as well as two DDC managers. The steering committee headed by HeidelbergCement representatives devised the transaction structure and a detailed planning for the acquisition process, including for the formal acquirers, namely DDC and Rohrdorfer. It appears that the latter companies strictly adhered to the process decided by the steering committee.
22. Third, members of the steering committee attended negotiations with Cemex and prepared detailed documentation, deal valuation and other components of the business case for the decision by the HeidelbergCement management board and supervisory board to approve the acquisition.
23. Fourth, although DDC bears [...] of the transaction cost, and each of the parent companies [...] several elements suggest that this participation rate significantly understates the involvement of HeidelbergCement in the financing, and other aspects of the transaction. HeidelbergCement assigned its representative on the steering committee the responsibility of keeping "the contact with Cemex and the banks". This suggests that HeidelbergCement not only initiated the financing process but also took a leading role vis-à-vis the banks.
24. Fifth, [...] suggest that initially, DDC was expected to only contribute [...] to the acquisition cost, while the remaining [...] of cost would be financed by HeidelbergCement and Schwenk. An internal presentation from 18 June suggests that the financing scheme [...]. The same presentation introduces a new financing scheme, whereby the contributions of HeidelbergCement and Schwenk would be limited to EUR [...], with the remainder financed by DDC. However, even after that, a draft board presentation admits that [...].
25. Therefore, the acquisition was not initiated and organised by DDC, but by HeidelbergCement, which appears to have taken all the major decision relating to the acquisition process. It also appears that it was HeidelbergCement itself which

⁵ Points 146 and 147.

concerted with Schwenk to obtain its agreement for the transaction. Consequently, as DDC's parent companies, HeidelbergCement and Schwenk, are the real players behind the Transaction, the Commission considers them as the undertaking concerns for the purpose of this Transaction.

26. The Transaction has an EU dimension within the meaning of Article 1 of the Merger Regulation since the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (HeidelbergCement: EUR 13 399 million in 2015; Schwenk EUR [...] million in 2015; Cemex Hungary: EUR [...] million in 2015; Cemex Croatia: EUR [...] million in 2015). Two of them have an EU-wide turnover in excess of EUR 250 million (HeidelbergCement: EUR [...] million in 2015; Schwenk: EUR [...] million in 2015), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

V. ASSESSMENT

27. On the basis of the information submitted in the Reasoned Submission, the Transaction will lead to horizontally affected markets with regard to the production and sale of ready-mix concrete in several local markets in Hungary. Furthermore, the Transaction will bring about vertically affected markets with regard to grey cement (upstream) and the production and supply of ready-mix concrete (downstream) in Hungary.

Ready-mix concrete

28. Ready-mix concrete is produced by mixing cement and aggregates with water. Concrete is mixed either on-site or, more commonly, in a dedicated plant before being subsequently transported to the point of use in specific mixer trucks. Transport time and distance are limited, as ready-mix concrete hardens quickly and usually needs to be used within a time of one to two hours.
29. In past decisions, the Commission has consistently considered ready-mix concrete as a single, distinct product market regardless of different ready-mix concrete specifications and the facilities used (mobile or fixed plants).⁶
30. The Commission has considered that the geographic market for ready-mix concrete can be defined as catchment areas around ready-mix concrete plants with a radius of 15-40 km⁷ or according to a more recent decision with a radius of 25 km⁸ around production facilities.

⁶ Cases M.3572 – Cemex / RMC, 8 December 2004, recital 12; M.4719 – HeidelbergCement / Hanson, 7 August 2007, recital 21; M.6153 – Anglo American / Lafarge / JV, 16 May 2011, recital 22; M.7054 – Cemex / Holcim Assets, 9 September 2014, recital 319. In case M.7550 – CRH / Holcim Lafarge Divestment Business, 24 April 2015, para. 108 the Commission left open whether a radius of 15-40 km or of 25 km would be appropriate to define the geographic market for RMX.

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

⁸ Cases M.7252 – Holcim / Lafarge, 15 December 2014, recital 286; M.7054 – Cemex / Holcim Assets, 9 September 2014, recital 325; M.7550 – CRH / Holcim Lafarge Divestment Business, 24 April 2015, para. 110.

31. The Submitting Parties have provided the Commission with market share data for catchment areas with a radius of 25 km around each of the Parties' ready-mix concrete plants in Hungary.

Cement

32. Cement is produced by grinding clinker and alternative cementitious materials. Clinker is the main ingredient in the production of cement and is produced at high temperatures from limestone and other constituents in cement kilns. In some cases, mineral components and other cementitious materials are added to the mixture by either grinding them together with clinker or blending separately ground materials together.⁹
33. Cement is used in the building and construction sector mainly to bind other materials for stability and strength as well as an intermediary product mostly for the production of ready-mix concrete, concrete products and mortar.¹⁰
34. In past decisions, the Commission has defined distinct product markets for white cement and grey cement.¹¹ Concerning grey cement, the Commission has not further segmented the market according to grades or classes (CEM I to CEM V), mainly since such distinction did not have an impact on the outcome of the competitive assessment.¹²
35. In past decisions, the Commission has considered that the geographic market for grey cement consists of a group of geographic markets centred on different cement plants, overlapping one another. The scope of the relevant geographic markets was determined by the distance from the plant at which cement may be sold¹³. Generally, radii of 150 km or 250 km have been taken into account¹⁴.

⁹ Case M.7550 – CRH / Holcim Lafarge Divestment Business, 24 April 2015, recital 16.

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

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

¹² Cases M.7009 – Holcim / Cemex West, 5 June 2014, recital 14, M.7252 – Holcim / Lafarge, 15 December 2014, recital 36.

¹³ Cases M.7054 – Cemex / Holcim Assets, 9 September 2014, recital 52; M.7009 – Holcim / Cemex West, 5 June 2014, recital 64; M.460 – Holdercim/Cedest, 6 July 1994, recital 16; M.1030 – Lafarge/Redland, 16 December 1997, recital 16; M.1157 – Skanska/Scancem, 11 November 1998, recital 56; M.2317 – Lafarge/Blue Circle (II), 1 March 2001, recital 8; and M.3572 – Cemex/RMC, 8 December 2004, recital 20.

¹⁴ In case M.7009 – Holcim / Cemex West, 5 June 2014, the Commission considered that the appropriate radii around the relevant grey cement plants to be taken into account were 150 km and 250 km in Western Germany and the Benelux. In case M.7054 – Cemex / Holcim Assets, 9 September 2014, the market was defined as circles of 150 km radii around the cement plants in Spain. In case M.7252 – Holcim / Lafarge, 15 December 2014, the relevant geographic market was defined as circular areas of 150 km and 250 km around the relevant cement plants in several regions in Western, Central and Eastern Europe, reflecting the distance up to which cement suppliers can economically sell cement.

Competitive assessment

36. DDC currently operates 24 fixed ready-mix concrete plants in different locations in Hungary, whereas Cemex Hungary operates 26 fixed ready-mix concrete plants in Hungary.
37. According to the Reasoned Submission, in the catchment areas with a radius of 25km around DDC and Cemex's overlapping ready-mix concrete plants in Hungary, the Transaction will lead to 28 horizontally affected markets in the Hungarian territory¹⁵. Of such affected markets, the combined market shares will be above 40% in twelve¹⁶ and above 50% in six¹⁷. The Transaction is therefore likely to significantly affect competition in these distinct markets in Hungary.
38. With regard to vertical relationships, DDC operates two grey cement integrated plants in Vác and Beremend in Hungary with a combined capacity of [...]kt whereas Cemex Hungary has no cement production in the country. In 2015 Cemex Croatia [sales and customers].
39. According to the information provided by the Submitting Parties, the Transaction would lead to a number of vertically affected markets in Hungary.
40. In the downstream market for ready-mix concrete, combined market shares in the catchment areas of 25km around the Parties' overlapping plants in Hungary will be above 30% in at least 17 of these catchment areas¹⁸ which partly are located in the catchment areas of DDC's grey cement plants in Hungary. Moreover, in the upstream market for the production and sale of grey cement at national level¹⁹, DDC has a market share of [40-50]%²⁰. In the catchment area around DDC's cement plant in Beremend, DDC market share amounts to [20-30]% for a 150km radius and [20-30]% for a 250km radius²¹.

¹⁵ For the sake of completeness, the Commission notes that there is a theoretical geodesic cross-border overlap between DDC's Hungarian plant in Nagykanizsa and that of Cemex Croatia in Varaždin. However, on the basis of the information available to the Commission, there is no trade of ready-mix concrete between Croatia and Hungary. The Parties do not have any cross-border deliveries of ready-mix between these two countries. It appears that transport costs, increased delivery time and language barriers dissuade cross-border trade and as a result ready-mix sales are limited to their home markets.

¹⁶ Catchment areas around DDC ready-mix concrete plants in Balatonboglári, Kaposvári, Kecskeméti, Nagykanizsai, Pécs, Siófoki and around Cemex Hungary ready-mix concrete plants in Kaposvár, Kecskemét, Nagykanizsa, Pécs, Siófok and Veszprém. This list takes into account only the catchment areas where the Transaction will entail an increment in combined market shares.

¹⁷ Catchment areas around DDC ready-mix concrete plants in Balatonboglári, Nagykanizsai, Siófok and around Cemex Hungary ready-mix concrete plants in Nagykanizsa, Siófok and Veszprém.

¹⁸ Catchment areas around DDC ready-mix concrete plants in Balatonboglári, Besenyszög, Dunakeszi, Kaposvári, Kecskeméti, Nagykanizsai, Pécs, Siófoki and Székes-fehérvár and around Cemex Hungary ready-mix concrete plants in Kaposvár, Kecskemét, Keszthely, Nagykanizsa, Pécs, Siófoki, Székesfehérvár and Veszprém. This list takes into account only the catchment areas where the Transaction will entail an increment in combined market shares.

¹⁹ According to the Parties' internal estimates.

²⁰ Cemex Croatia sales of grey cement into Hungary would confer it a market share of around [0-5]%. However, as stated in paragraph 38, Cemex Croatia had [sales and customers].

²¹ [...], combined market shares would amount to [30-40]% for a 150km radius and [30-40]% for a 250km radius.

41. Consequently, the Transaction will lead to vertically affected markets with regard to grey cement (upstream) and the production and supply of ready-mix concrete (downstream) in several markets in Hungary.
42. The Submitting Parties put forward that the Transaction, in so far as Hungary is concerned, will not have any cross-border vertical effects. On the basis of the information available, the Commission has no indications contrary to this conclusion. Any input foreclosure concerns due to the addition of market share in the downstream RMX markets in Hungary would be confined to effects in those Hungarian markets. As regards potential customer foreclosure concerns, DDC currently sources [...] of its grey cement demand for ready-mix concrete production internally, and until 2015, Cemex Hungary sourced [...]% of its demand either internally from Cemex Croatia or from DDC. The effect of the Transaction would therefore be limited to the remaining [...]% of Cemex Hungary's grey cement demand, which amounted to only [...]kt in 2015 (compared with an estimated annual cement consumption in Hungary of [...]kt). Out of these, purchases from foreign third parties amounted to [...]kt in 2015, making cross-border customer foreclosure concerns unlikely.
43. In view of the foregoing, the principal effects of the Transaction in relation to Hungary would be restricted to local markets for ready-mix concrete in Hungary. These markets present all the characteristics of distinct markets. While the Transaction may also affect competition in the vertically related markets within Hungary, such effects are unlikely to occur outside Hungary.

Additional factors

44. The Commission further considers that, should one or more of the affected markets in Hungary not constitute a substantial part of the internal market pursuant to Article 2(3) of the Merger Regulation, the GVH would be better placed for dealing with the Hungarian part of the Transaction. Furthermore, a partial referral to the GVH would also be justified by this authority's experience with competition in the ready-mix concrete markets²².

VI. REFERRAL

45. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in markets within a Member State which presents all the characteristics of distinct markets.
46. The Commission notice on case referral in respect of concentrations²³ indicates that, in seeking a referral under Article 4(4), *“the requesting parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny”, and that “such indications may be no more than preliminary in nature...”*.

²² Case Strabag/Cemex, para. 16; Case Vj-81/2007 – Holcim Hungária/Pannonbeton (regarding RMX); Case Vj-193/2006 – Hans Kostmann Beteiligungs/Wopfinger Transportbeton/CEE Chemicals Vagyonkezelő/Lasselsberger Hungária (regarding RMX); Case Vj-110/2006 – Holcim Cesko, C.B s.r.o (regarding RMX).

²³ OJ C 56, 5.3.2005, p. 2, point 17.

47. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the Transaction, in so far as Hungary is concerned, is liable to take place on distinct markets in Hungary, and that the requested partial referral would be consistent with point 20 of the notice.

VII. CONCLUSION

48. For the above reasons, and given that Hungary has expressed its agreement with respect to the proposed partial referral, the Commission has decided to refer the assessment of the effects of the Transaction on the relevant markets in Hungary to be examined by the GVH. This decision is adopted in application of Article 4(4) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Johannes LAITENBERGER

Director-General