

COMPLETED ACQUISITION BY BREEDON AGGREGATES LIMITED OF CERTAIN SCOTTISH ASSETS OF AGGREGATE INDUSTRIES UK LIMITED

Statement of issues

22 October 2013

The reference

1. On 24 September 2013, the Office of Fair Trading (OFT) referred to the Competition Commission (CC) under section 22 of the Enterprise Act 2002 (the Act) the completed acquisition by Breedon Aggregates Limited (Breedon) of the Scottish assets (the target operations) of Aggregate Industries UK Limited (Aggregate Industries). In this statement we refer to Breedon and the target operations collectively as the parties.
2. The CC must decide:
 - whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
3. In this statement we set out the main issues that we are likely to consider in reaching our decision. This does not preclude the consideration of any other issues that may be identified in the course of our investigation.

Background

4. Breedon and Aggregate Industries produce and supply construction materials in the UK. Breedon's turnover in 2012 was £173.4 million in the UK. The target operations of Aggregate Industries essentially comprise 27 facilities¹ located in Scotland:
 - eleven aggregates quarries, of which six are active and five are either inactive or have occasional use;
 - four active asphalt plants;
 - two contract surfacing centres;
 - eight ready-mix concrete (RMX) plants, of which seven were active; and
 - two concrete block factories.
5. Breedon signed a sales and purchase agreement with Aggregate Industries and announced the acquisition of the target operations on 10 April 2013 ('the merger').

¹ There were also some non-operational units, ie units that could not be put back into use.

The markets in which the parties operate

6. Breedon and the target operations overlap in the supply of aggregates, RMX and asphalt (the overlap products) and contract surfacing services in various areas in the North of Scotland. Below is a brief description of these products and their uses.
7. There are various types of aggregates. Primary aggregates are raw materials that are quarried from the land or dredged from the sea, and can be classified as either crushed rock, or sand and gravel. Secondary aggregates are produced as the by-products of other industrial or mining activities. Recycled aggregates are derived from demolition sites and construction waste. Decorative aggregates are richly-coloured natural stones, such as basalt, granite, quartz or limestone.
8. Aggregates are used in two general categories of application. Most aggregates (by volume) are used in general construction applications, as the base material in the construction of roads, buildings and other infrastructure, or as an input to the production of RMX and concrete products. A small proportion of aggregates are used in specialist applications such as rail ballast² and high-purity limestone.³ Decorative aggregates are used for driveways, rockeries and other landscape applications.
9. Asphalt is produced from aggregates and a viscous binding agent, usually bitumen, and is primarily used in asphalt surfacing (in particular, road building) and maintenance activities.
10. Asphalt surfacing services refer to the application of asphalt that is used to surface or resurface roads, car parks, footpaths and other pavements.
11. RMX is a building material consisting of a mix of aggregates, cement and water supplied in a ready-mixed form that can be poured and that sets in situ.
12. In defining the market or markets in which Breedon and the target operations supply aggregates, we will consider in particular:
 - the extent to which customers can switch between different types of aggregates and to what extent this may vary by end-use and application;
 - whether demand-side and supply-side substitution may result in product markets which are broader than individual types or end-uses;
 - whether recycled and/or secondary aggregates should be in the same market as primary aggregates;
 - whether decorative aggregates constitute a separate market; and
 - whether, given that Breedon and some other producers supply aggregates to their downstream operations, internal sales should be taken into account.
13. In relation to market definition for aggregates for specialist applications, our current view, based on the evidence we have seen so far, is that there is no reason to depart from the approach taken in previous cases,⁴ namely that aggregates for specialist

² Rail ballast is a specific type of crushed rock aggregate used as a bedding material underneath railway tracks. Nearly all of the rail ballast produced in the UK is used by Network Rail.

³ High-purity limestone is a specific type of crushed rock aggregate consisting of limestone with low levels of impurities. It is used for chemical applications such as flue gas desulphurization and the production of soda ash.

⁴ On 1 May 2012, the CC published a [report on the anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.](#) On 23 May 2013, the CC published its [provisional findings report on the supply or acquisition of](#)

applications are in a separate market from aggregates used for general construction applications.

14. In relation to asphalt, we have seen no evidence so far that RMX products and block paving products should be included in the same market as asphalt.
15. Our current view is that asphalt surfacing services constitute a separate relevant market.
16. In relation to product market definition for RMX, we will consider whether RMX supplied by volumetric trucks (ie vehicles that hold and transport the ingredients separately and mix concrete on-site) and mobile plants should be included in the relevant RMX market in this case. At this stage, and consistently with previous cases, we are minded to exclude pre-cast products from the relevant market.
17. Our initial view is that the geographic markets for the overlap products are local due to transport costs. Our starting point in assessing competitive constraints at the local level will be to identify catchment areas around the parties' operations, which will inform the likely size of the relevant geographic markets. We will consider:
 - Whether catchment areas around the parties' sites should be defined using radial distances or road distances, given the characteristics of the areas surrounding the plants and locations of customers;
 - In defining local markets in this case, whether it would be appropriate to apply uniform rules for all the parties' operations or whether the catchment area for each facility should be defined separately; and
 - Whether our assessment should be based on local areas centred on the facilities of the parties or customer sites.
18. Market definition is not an end in itself and provides the framework for our competitive assessment, which will take into account constraints from both inside and outside the relevant markets.

Assessment of the competitive effects of the merger

Counterfactual

19. We will assess the possible effects of the merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation without the merger). We will therefore consider what would have happened without the merger, and in particular:
 - Whether Aggregate Industries would have been likely to continue to operate some or all of the target operations' sites and for how long;
 - if Aggregate Industries had been unlikely to continue to operate some or all of the target operations, whether there would have been other likely buyers for some or all of the target operations; and
 - how effective the competitive constraint of the target operations on Breedon's activities would have been in future.

aggregates, cement and RMX in Great Britain, in which it identified competition concerns in the bulk and bagged cement markets.

Theories of harm

20. Theories of harm describe possible changes, any impact on rivalry and expected harm to customers that may arise from the merger. They provide the framework for assessing the effects of the merger. We have set out below the theories of harm which we intend to investigate. However, we may revise our theories of harm as our inquiry progresses. Also, the identification of a theory of harm does not preclude an SLC being identified on another basis following further work by us or the receipt of additional evidence. We welcome the views of parties on all the theories of harm set out below.

Theory of harm 1: Loss of actual competition at the local level

21. The concern under this theory of harm is that the removal of a competitor, in some or all of the areas where Breedon's operations overlap with the target operations, could lead the merging parties to increase the prices of their products and/or services or reduce service quality locally, including by closing or reducing the level of activity of sites.
22. We will assess the extent to which the parties competed with each other before the merger and the extent to which the products and services of other suppliers (whether they are within or outside the relevant markets) could be expected to exert a competitive constraint on the parties following the merger.
23. Issues which we are likely to consider include:
- the factors underlying customers' choice of supplier and their propensity to switch suppliers and/or products;
 - the extent to which the closure or mothballing of plants, or other changes to supply, impact on price;
 - the extent to which there is spare capacity in the industry; and
 - the levels of profitability of the parties' sites and products.

Theory of harm 2: Loss of a potential competitor at the local level

24. The second theory of harm is that the merger may lead to a loss of a potential competitor in an area. In particular, such an adverse effect may arise if, prior to the merger, the behaviour of either party was influenced by the threat of the other expanding and entering into direct competition with it. Under this theory of harm, by removing a potential competitor from some local markets, the merger may reduce the competitive pressure in those markets.
25. Issues which we are likely to consider include:
- the reasons for developing new sites and permissions required;
 - reasons for the temporary closure or mothballing of sites and reasons for re-opening them; and
 - the extent to which the past closure or mothballing of plants, or reopening of sites, has had an effect on prices.

Other possible theories of harm which we do not currently intend to investigate

26. We do not currently intend to investigate the possibility of the merger leading to, or strengthening, coordinated effects as it appears to us that the risk or occurrence of coordination is unlikely to be significantly affected by the merger.
27. Nor do we currently intend to investigate whether the merger may result in vertical effects, by increasing the incentive and/or ability of the parties to harm competition either by increasing the price or restricting the supply of its products to companies with which it competes downstream. We note that many competitors are vertically integrated and that the OFT did not receive complaints relating to this possible theory of harm.
28. However, should any party have reason to believe that we should investigate either of these possible theories of harm, it should tell us and provide its reasons.

Countervailing factors

29. We will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find. In particular, we intend to consider the following:
 - *Entry and expansion.* We will consider how easy it is to open, reopen or expand facilities in the local areas of potential concern and whether entry would be timely, likely and sufficient to prevent any SLC. To do this we will:
 - (i) look at the history of actual entry, expansion and exit by the parties and by their competitors and review any future plans; and
 - (ii) examine the factors which might inhibit entry or the expansion of existing competitors into the local areas of potential concern including the availability of suitable premises and planning restrictions.
 - *Buyer power.* We will assess whether any customers of Breedon and the target operations have countervailing buyer power and whether any such buyer power of some customers would be sufficient to protect all customers from any effects of an SLC. In this regard, we note that prices tend to be individually negotiated. We would also consider what the impact of the acquisition is on any pre-existing countervailing buyer power.
 - *Efficiencies.* We will examine any arguments made in relation to efficiencies arising from the merger. In particular, we will examine whether any postulated efficiencies are rivalry-enhancing and can be expected to offset any loss of competition.
30. We are not currently aware of any other countervailing factors.

Possible remedies and relevant customer benefits

31. Should we conclude that the merger may be expected to result in an SLC in one or more markets, we will consider whether, and if so what, remedies might be appropriate, and will issue a further statement.

32. In any consideration of possible remedies, we will take into account whether any relevant customer benefits might be expected to arise as a result of the merger and, if so, what these benefits are likely to be and which customers would benefit.

Responses to the issues statement

33. Any party wishing to respond to this issues statement should do so in writing, by no later than 5pm on 5 November 2013. Please email Breedon-AI@cc.gsi.gov.uk or write to:

Inquiry Manager
Breedon/Aggregates merger inquiry
Competition Commission
Victoria House
Southampton Row
LONDON
WC1B 4AD