

From: Seamus Maye

Sent: 14 June 2013 12:01

To: Aggregates

Subject: CONSOLIDATED NON CONFIDENTIAL VERSION Aggregates, Cement and Readymix Concrete Market Investigation

Dear Sirs,

Comments:

The International Small Business Alliance (ISBA) welcome the publication of the Competition Commission's much anticipated preliminary findings regarding the UK Cement, Aggregates and Concrete Sector. The findings are a major breakthrough for UK consumers, both private and public sector and for independent concrete products producers throughout the UK.

The CC findings follow a host of international findings against major cement producers. It should be noted that in 1994, the EU Commission fined 42 cement producers for operating a pan-European cement cartel which prevented the free movement of cement across European borders. **Importantly**, in its then decision, the Commission noted:-

“While the Commission is able to establish the date on which the infringement constituted by the Cembureau Agreement or principle commenced, it has no certainty that the infringement ever ceased, and it cannot therefore establish a date for the ending of the infringement”.

It is widely believed that these infringements never in fact ceased and ISBA looks forward to a positive outcome for consumers from the European Commission's current ongoing cement investigation. Since the EU Commission's 1994 decision, findings have been made against major cement companies in Germany, Poland, Romania, Spain, Ukraine, South Africa, Pakistan, India, U.S, New Zealand, Argentina, Mexico and Taiwan.

Clearly, there are very significant structural and behavioural problems within the UK sector that create an artificial cost burden on consumers [independent concrete producers and final consumers alike]. It is unfortunate that the Competition Commission has had to operate under considerable time and resource constraints, as many in the independent sector feel that some further analysis is required in relation to both foreclosure and margin squeeze effects, arising from the degree of vertical integration enjoyed by the major cement producers. Effective remedies require that the underlying analysis is thorough and it does seem that this may not fully be the case in regard to the concrete products market in the context of the aforementioned resource constraints.

Readymix Concrete (RMX):

By way of example, Dr. John Fingleton when head of the Irish Competition Authority stated that CRH Plc (a major producer of cement in Ireland) had used small concrete producers as “proxies for the consumer”. Importantly, it should also be borne in mind that the major producers in the UK have in the past been found to have cartelised downstream concrete markets in defiance of Court Orders. Mr. Justice Buckley said in 1995 that such behaviour is intolerable and threatened directors of major readymix producers with lengthy prison terms. Also, while in theory, construction companies have a degree of purchasing power in relation to RMX, in practise this is not really the case. In the first instance, construction companies choice of aggregate and cement suppliers are limited and there is very little leverage available to them in negotiating raw material prices. Put simply, the figures rarely add up.

Further, the risks for independent RMX producers in relation to margin squeeze and continuity of cement supplies (see below) are such that independents generally operate relatively small RMX facilities, typically 2-10 readymix trucks which effectively precludes them from winning the more significant RMX contracts. For example, structural construction projects such as motorway flyovers could have a number of 500 cubic metre concrete pours. An independent producer with 5 trucks capable of 5 round trips per day will only be in a position to deliver less than 200 cu metres in a day. Also, for continuous pours such as these, consulting engineers will require full back up facilities to cover for plant breakdowns. Majors producers more often than not have a second plant within range or have reciprocal cross supply arrangements in place with other majors. In reality, the majority of independents only have access to the bread and butter RMX market, e.g. housing and agriculture.

This is an example of where we believe that resource constraints may have led to a shortfall in assessing the RMX market, in terms of AEC (adverse effect on competition). In our experience from meeting dozens of industry participants from all around the UK, the potential margin squeeze and threats to continuing cement supplies have been a very significant deterrent to new market entrants or to expansion by existing concrete producers. The CC has already accepted that cement manufacturers maintained or even increased margins in a rapidly declining cement market but have been losing money in downstream concrete markets. Why is this? The Majors will argue that independent concrete producers are selling at very low prices (often referred to as “silly” or “suicide” prices) but independents only supply a maximum of one third of the RMX market. Independents cannot cross subsidise RMX losses from other activities unlike Majors. In our experience, the Majors are the drivers of prices in the concrete and aggregates markets, just as they are in cement markets.

As has been the case in other countries, margin squeeze over the long term tends to eliminate independent RMX producers. Majors can then increase downstream (RMX) and / or upstream (aggregate) prices to compliment cement profits. **This is why very careful consideration must be given to developing effective remedies.** Historically, vertical integration (or at least the abuse of) has proved damaging to both independent producers / consumers and final consumers. We have provided our detailed analysis of the [Dublin Concrete Products Market](#) to assist the CC with understanding behaviour patterns of major integrated companies. Should the vertical integration structure in the sector be entirely dismantled? In our view there is a strong statable case for doing so and this might be considered as part of an effective remedy package.

Cement:

We are concerned that major cement companies, some of which have manufacturing capacity in the UK (some have not), have effectively put the “coast under lock and key” as far as cement imports are concerned. The European Commission found that the Italian cement producers had dealt with the threat of imports by effectively putting the Italian Coast under lock and key. In short, the current control of cement import facilities creates an illusion of competition where in effect the current situation gives rise to an AEC [Adverse Effect on Competition].

It appears that since we finalised our draft report, that another major player in the European Cement Cartel decision of 1994 [CRH Plc] has now gained control of an additional UK Cement import terminal along with its apparent control over Dan Morrissey Cement at Swansea, namely Southern Cement based in Ipswich. It is also our understanding that CRH Plc has (or is in the process of) taken control of up to five of the former Dudman cement import terminals. As the Dudman Group was formerly the UK's largest independent cement importer, we believe that the CC should carefully examine the history and the circumstances surrounding the eventual demise of the Dudman cement importation operations.

It is our view that the ring of cement import terminals around the UK that are controlled by Major cement producers, either with cement production capacity in the UK or not, are an elaborate attempt to create an illusion of competition when in reality, a quota system operates from country to country so as to give the effect of the free movement of cement across transnational borders.

We draw your attention to information provided to CC by our colleague Mr. Peter Goode in relation to cement market activity. Significantly, the amount of cement imported into the UK by true independent importers is miniscule. The principle importers are Jack Maye of Cornwall, Sherburn Stone of Blyth, Thomas Armstrong of Workington. The survival rate for independent importers has been poor.

Aggregates:

It is our experience that foreclosure on aggregate reserves has been a key tool of the Majors in many markets but we have not looked at foreclosure effects in any great detail in the UK market. It may be an area in which the CC might undertake further analysis.

Conclusion:

Given the relatively short time between the publication of the CC's provisional findings and our current workload, we have been unable to analyse and comment on the findings as comprehensively as we would have liked. Clearly, careful consideration will be required so as to ensure that long term sustainable remedies are implemented. We envisage that a breakup of the present level of dominance and vertical integration will be a prerequisite for opening up the various construction materials markets.

Ends.

[Seamus F. Maye](#)

[International Small Business Alliance \(ISBA\)](#)