

Anticipated acquisition by Lhoist UK Ltd of Steetley Dolomite Ltd

ME/6486-14

The CMA's decision on reference under section 33(1) given on 30 September 2014.
Full text of the decision published on 4 December 2014.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Summary

1. Lhoist UK Limited, a subsidiary of Lhoist SA (together with their group companies, **Lhoist**) has agreed to acquire (**the Merger**) Steetley Dolomite Limited (**Steetley**). Lhoist is an international producer of lime, dolime and mineral products active across Europe. Steetley is a UK producer of dolime products.
2. The Competition and Markets Authority (**CMA**) considers that the parties will cease to be distinct and that the share of supply test is met. Therefore, it considers that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation pursuant to section 23(2) of the Enterprise Act (the **Act**). The CMA's statutory timetable for a decision expires on 30 September 2014.
3. The CMA considered the appropriate frame of reference. Lhoist is active in the supply of lime products in the UK, with very limited activities in dolime products. Steetley is active only in dolime products. As regards product scope, the evidence available suggests that dolime products are likely to constitute their own distinct frame of reference and that lime products are in a separate frame of reference. In the UK, the parties overlap only in soft-burned dolime products. Accordingly and on a cautious basis, the CMA has assessed the Merger based on a product scope of soft-burned dolime products.
4. As regards geographic scope, based on the evidence received during its investigation, the CMA considers that imports of dolime products do not exert

a competitive constraint on the UK and has therefore assessed the Merger based on a geographic scope of the UK.

5. The CMA considered the possibility of horizontal unilateral effects arising as a result of the Merger. Steetley is by far the largest supplier of soft-burned dolime products in the UK. Lhoist has supplied small quantities of soft-burned dolime in previous years during production outages at Steetley's plants.
6. All the third parties which responded to the CMA's market investigation considered that Lhoist does not exert a competitive constraint on Steetley in the UK. They considered that Steetley was the only supplier available to them and told the CMA that they were not in a position to switch to, or threaten switching to, suppliers in Europe such as Lhoist. The lack of competition between the parties was also supported by the internal documents they supplied.
7. The CMA therefore found that due to the lack of competition between the parties in the supply of dolime products to UK customers, the Merger does not raise a realistic prospect of a significant lessening of competition.
8. This merger will therefore **not be referred** under section 33(1) of the Act.

Parties

9. Lhoist SA is an international producer of lime, dolime¹ and mineral products headquartered in Belgium. It offers a wide range of products to customers across many sectors, including steelmaking, non-ferrous metals, roads and civil engineering, construction, flue gas treatment, water treatment and agriculture. Lhoist UK Limited's turnover in 2013 was approximately £24.7 million.
10. Steetley Dolomite Limited is a UK-based producer of dolime products, primarily supplying customers in the steel industry. Steetley was established in 2004, following a management buy-out of the former dolime production assets of Lafarge Tarmac. Its 2012 UK turnover was £36 million.

Transaction

11. Under the terms of the sale and purchase agreement, Lhoist UK Limited has agreed to acquire 100% of the issued share capital in Steetley's parent

¹ Dolime products are made from the raw material dolomite, a naturally occurring substance which is composed of calcium magnesium carbonate. Dolime products have a variety of applications including steelmaking, glassmaking and agriculture.

company CLEB Holdings Limited (**CLEB**) for a consideration of [REDACTED]. CLEB is currently owned by five individual shareholders, each of whom also occupies a senior management position within Steetley. Following the Merger, Steetley will become a wholly-owned subsidiary of Lhoist UK Limited.

12. The Merger includes Steetley's processing equipment and kilns at the two production sites in the UK, but does not include the two dolomite quarries at the same locations, which are owned by Lafarge Tarmac and supply dolomite to Steetley under long-term supply agreements. The Merger is conditional upon receipt of approval from the CMA.

Jurisdiction

13. The CMA considers that, as a result of the proposed Merger, Lhoist and Steetley will cease to be distinct.
14. The parties overlap in the supply of dolime products. They estimate that Steetley accounted for circa [90–100]%, with an increment of around [0–10]%, of the supply of dolime products in the UK in 2013.² The share of supply test in section 23(2)(b) of the Act is therefore satisfied.
15. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation pursuant to section 23 of the Act. The initial period for consideration of the Merger started on 5 August 2014, and the statutory deadline for a decision is 30 September 2014.

Counterfactual

16. The parties did not submit that it was appropriate to assess the Merger against a different counterfactual to the pre-merger situation, saying that absent the proposed transaction, the most likely counterfactual scenario would be that Steetley continues to operate under its present ownership structure in the short term.
17. The CMA therefore adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the Merger.³

² [REDACTED].

³ See *Merger Assessment Guidelines* (OFT1254/CC2, September 2010), from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see Annex D to *Mergers: Guidance on the CMA's Jurisdiction and Procedure*, CMA2, January 2014).

Frame of reference

Background

18. In the UK, the parties are primarily active in the supply of products made from two types of carbonate minerals. The parties submit that Lhoist supplies products made from calcitic lime (**lime**) (calcium oxide), derived from limestone, while Steetley supplies products made from dolomitic lime (**dolime**) (a mixture of calcium oxide and magnesium oxide⁴), derived from dolomite. These raw materials are quarried and further processed, then burned in a rotary or shaft kiln ('calcination'). Calcitic lime is obtained by calcination of limestone (calcium carbonate) whereas dolomitic lime is obtained by calcination of dolomite (calcium magnesium carbonate). As such, both types are products of calcination but they are made from different raw materials.
19. The parties state that within dolime, different methods of calcination are used to produce two forms, soft-burned and dead-burned dolime, which have different uses:
- (a) **Soft-burned dolime** (marketed as '**Dolomet**' by Steetley) is softer and more reactive than sintered dolime and is used as a flux in the steel-making process. Fluxes are used in smelting for several purposes, mainly catalysing the desired reactions and chemically binding to unwanted impurities or reaction products. Soft-burned dolime acts partly as a source of calcium oxide which reacts with and thereby removes impurities from the molten metal.⁵ It is also a source of magnesium oxide, which:
 - (i) reacts with impurities in the steel slag which prevents damage to the refractory linings (therefore extending their lifespan);
 - (ii) forms compounds with other components in the slag, which allows the viscosity of the slag to be modified; and
 - (iii) is used as part of the modified slag to coat the furnace after the steel has been tapped out to further protect the refractory lining (therefore reducing the need for repairs).
 - (b) **Sintered/dead-burned dolime** is denser and less reactive than soft-burned dolime and produced in two grades. The higher specification grade (marketed as **Dolopel** by Steetley) is used in the manufacture of refractory bricks. The lower specification grade (marketed as **Dolofrit** by

⁴ Dolime typically contains at least 20% magnesium oxide.

⁵ Lime can also be used as a source of calcium oxide in the flux.

Steetley) is used by steel producers to repair refractories *in situ* in the electric arc furnaces or converters.

20. In addition to steelmaking, small amounts of dolime (typically Dolomet) are used in other industries in the UK:
- (a) Glass/fibreglass production. Dolime serves a similar purpose as in steelmaking as a source of magnesium and calcium oxides.
 - (b) Agriculture. Dolime can be used as a form of fertiliser and to control the acidity levels of soil.
21. The parties submit that the dolime products supplied for these alternative applications are not suitable for the steel industry (typically because of their grade) and are otherwise waste products.

Product scope

22. The CMA's approach to product scope is generally to consider first if narrow candidate markets can be widened through substitution on the demand side. If appropriate, the CMA then considers if substitution on the supply side allows several products, which are not demand-side substitutes, to be aggregated into one wider market.⁶
23. The parties are engaged in the production of lime and dolime products (and, in the case of Lhoist, other products). As regards dolime products, in the UK the parties overlap only in the supply of soft-burned dolime.
24. The parties submit that within dolime products, soft-burned dolime (Dolomet) and dead-burned dolime (Dolopel and Dolofrit) may constitute distinct product frames because of a lack of demand- and supply-side substitution.
25. Lhoist does not supply dead-burned dolime into the UK. On a cautious basis, the CMA has assessed the merger on the basis of soft-burned dolime products (ie Dolomet and equivalents).

Constraints from lime

26. Lhoist also supplies lime products in the UK. The parties submit that lime is not a substitute for dolime in any application, since the presence of magnesium gives dolime products different chemical properties and different usages to lime.

⁶ *Merger Assessment Guidelines*, from paragraph 5.2.6.

Steelmaking

27. In steelmaking, both lime and dolime are used. However, the parties submit that these serve different functions. The lime products act as only a flux additive whilst dolime products are used to lessen or prevent damage to the refractory linings and therefore reduce replacement costs and avoiding repair downtime of plants.
28. The parties consider that neither the dolomite flux additive (Dolomet, soft-burned dolime) nor the product to repair refractories (Dolofrit, dead-burned dolime) can be replaced with lime due to the absence of magnesium oxide.
29. Further, the parties submit that soft-burned dolime may replace lime in the steelmaking process to a certain extent as it also contains calcium oxide. However, the parties considered that customers would favour lime over soft-burned dolime for both technical and commercial reasons: they would be reluctant to vary the technically optimal calcium oxide/magnesium oxide mix; and it would be uneconomical to replace lime with soft-burned dolime since it is around 40–55% more expensive while having a lower calcium oxide content than lime.
30. The parties also submit that there is no supply-side substitution possible as different raw materials are used and because of differences in the production process. For instance, both soft-burned and dead-burned dolime is calcinated for longer and at higher temperatures than lime, requiring a different type of kiln.
31. One steel customer noted that it would consider reducing its consumption of soft-burned dolime and using more lime in response to a price rise. As a result, refractory linings would have to be replaced more frequently. However, the customer noted that this would only be an option if the price for dolomite increased more than the price of lime,⁷ and that the production of refractory bricks (which are required) still requires dolime.
32. Another considered that it could consider substituting soft-burned dolime by adding magnesium oxide to lime. Indeed, Lhoist's website states that the 'Flucal' milled quicklime product can be co-injected with magnesium powder.⁸ However, the customer was unclear whether this would be a viable strategy for it.

⁷ The CMA's investigation suggested that on average, lime products are considerably (more than 10%) cheaper per tonne than dolime products.

⁸ See [Lhoist website](#).

33. Three other steel customers considered that lime cannot or can only to a limited extent replace soft-burned dolime in the steel production process. The first considered that refractory linings are very expensive (around £500,000) and that due to this high price differential, they have not considered at which point a price increase in soft-burned dolime would justify a more frequent replacement or repair of refractory linings.
34. The CMA also spoke to some non-steel customers of Lhoist and Steetley, active across a variety of industries including glassmaking and agriculture. Steetley's customers universally confirmed that they did not find lime an appropriate substitute for the dolime products they currently purchase from Steetley. Similarly, all of Lhoist's non-steel customers which responded to the CMA's market investigation confirmed that dolime would not be an appropriate substitute for lime.
35. The CMA considers that the evidence set out above suggests that although there is some relationship between lime and dolime products, particularly as regards steel customers, lime does not pose a significant constraint on dolime (whether soft-burned or dead burned) such that, on a cautious basis, it should be included in the relevant frame of reference.

Geographic scope

36. The CMA considered the supply of bulk lime (hydrated lime) within Great Britain in its *Lafarge Tarmac / Tarmac Building Products* decision.⁹ It noted that 'lime is supplied from only two regions [in Great Britain] from which different producers operate [...]. Furthermore, third parties submitted that imports of lime (without additives) do not play a role in Great Britain.'
37. The parties submit that they consider the relevant geographic market to be no wider than national (ie UK-wide). The reasons for a national market would be:
- (a) high transport costs from Continental Europe (Lhoist's closest dolime plants are located in France and Belgium);¹⁰
 - (b) in addition to high transport costs, a cost advantage of Steetley over Lhoist due to lower labour, raw material and fuel costs than in Continental Europe.

⁹ CMA [decision](#) of 9 April 2014.

¹⁰ The parties submit that Steetley's transport cost to its customers range between [£] per tonne whereas Lhoist's transport cost to supply Steetley's customers would range between [£] per tonne, depending on the distance between plant and customer.

38. Specifically, the parties submit that transport cost from Lhoist's closest plants in Continental Europe to Steetley's customers would be at least £[X] higher than from Steetley's plants (which represents almost [X]% of the current purchase price).
39. Further, they submit that this is evidenced by the fact that Steetley is the only supplier of dolime in the UK, even though some steel producers in the UK who are active elsewhere in Europe purchase dolime from Lhoist for their Continental European plants. In addition, when customers tendered for the supply of lime or dolime, they would only receive bids from UK suppliers.
40. Consequently, the proportion of imports of dolime into the UK is very low. The parties estimate that less than [X]% of dolime was imported into the UK between 2011 and 2013. In particular, [X] sales of dolime to the UK between 2011 and 2013 have been [X] during periods of significant interruption to Steetley's production, caused either by fire (2011) or large infrastructure upgrades (2013).
41. Customers of Steetley in the UK considered that a SSNIP¹¹ in Steetley's dolime products would not suffice to outweigh the additional transport costs for imports from overseas, and did not consider imports a competitive constraint on Steetley. Specifically, two steel makers which are customers of Steetley noted that dolomite is a relatively low-value product with a high specific weight, and is bought in large quantities. Transport costs account therefore for a large proportion of price. One steel customer noted that it was actively trying to reduce transport costs and that supply from abroad would be very complex. Another considered that only a steelmaker in the south of England (of which there are none) could potentially source dolime from northern France.
42. A third steel customer considered that supply from producers in Sweden would be possible in theory but they had not concluded whether this would be economically feasible.
43. The CMA therefore considers for the purpose of this analysis, and on a cautious basis, that the geographic scope of the supply of dolime products is no wider than the UK.

Conclusion on the frame of reference

44. The CMA has used the following product frame for the purpose of its analysis:

¹¹ Small but significant non-transitory increase in price. See *Merger Assessment Guidelines*, paragraph 5.2.11.

- The supply of soft-burned dolime products to customers in the UK.

Unilateral horizontal effects

45. Horizontal unilateral effects can arise where a firm merges with a competitor that previously provided a competitive constraint, and are more likely where the merger firms' products compete closely.¹²
46. Both parties have historically supplied soft-burned dolime to UK customers, although Lhoist is not currently active in supplying any UK customers.

Shares of supply and closeness of competition

47. The parties submit that Steetley is currently the sole supplier of dolime products in the UK (see Table 1). This was confirmed by its customers.

TABLE 1 Shares of supply (volume in kilotonnes to UK customers)

	2011				2012				2013			
	Dolomet ¹³		Dolofrit ¹⁴		Dolomet		Dolofrit		Dolomet		Dolofrit	
	Vol.	%	Vol.	%	Vol.	%	Vol.	%	Vol.	%	Vol.	%
Steetley	[X]	[90–100]	[X]	[90–100]	[X]	[90–100]	[X]	[90–100]	[X]	[90–100]	[X]	[90–100]
Lhoist	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]
Others	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]
Total	[X]		[X]		[X]		[X]		[X]		[X]	

Source: Parties' estimates.

48. Table 1 shows that, although Lhoist is not currently supplying dolime products in the UK, it has done so in the recent past. The parties estimate that
 - (a) Lhoist supplied circa [X] kilotonnes of a Dolomet equivalent in 2011 to [X] during the production outage of one of Steetley's plants after a fire; and
 - (b) Lhoist supplied circa [X] kilotonnes of a Dolomet equivalent in 2013 to [X] during an infrastructure upgrade of both of Steetley's plants.
49. Steetley's internal documents are consistent with the parties' submission, as the only mentions of Lhoist are in documents relating to these two instances in which Steetley's production was interrupted.
50. The CMA contacted a number of the parties' customers, who confirmed that they do not consider that the parties compete in the supply of soft-burned

¹² *Merger Assessment Guidelines*, paragraphs 5.4.2 and 5.4.6.

¹³ Soft-burned dolime.

¹⁴ Low grade dead-burned dolime.

dolime in the UK. Some customers mentioned that, as they cannot use other suppliers' prices for soft-burned dolime products as a negotiating tool with Steetley, they [X] so that they can determine [X].

51. All steelmaking customers which responded to the market investigation informed the CMA that they are constantly trying to optimise their production process and to minimise cost. The CMA observes, based on customer responses, that these businesses have different views of whether and how they can reduce the cost of different input materials: there are different technical approaches to optimise the process but there appears to be no universal solution because of the complexity of the chemical and physical parameters at play.
52. As noted above, some steel customers noted the possibility of increasing their use of lime or co-injecting lime with magnesium oxide. The CMA does not consider, based on customer responses, that any of these approaches would materially change the fact that lime and soft-burned dolime are substitutable only to a very limited extent. Further, third parties told the CMA that to their knowledge, Lhoist is mainly active in the UK in the supply of specialist grades of lime, considerably purer than those used in steelmaking. Even if they increased their consumption of lime, they did not consider that they would source this from Lhoist in the UK. That is, the CMA considers the finding that the parties do not compete in the UK would remain unchanged.
53. For these reasons, the CMA considers that the parties do not impose a competitive constraint on each other in the UK.

Conclusion

54. For the reasons set out above, the CMA considers that the parties are not competing in the UK. The CMA therefore concludes that there is no realistic prospect that the merger will result in a significant lessening of competition in the supply of soft-burned dolime to customers in the UK.

Barriers to entry and expansion

55. Entry or expansion of existing firms can mitigate the initial effect of the merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹⁵

¹⁵ See *Merger Assessment Guidelines*, from paragraph 5.8.1.

56. The CMA has not received evidence of entry or expansion into the production of dolime products. Dolomite deposits are limited and substantial investment in equipment would be required to begin supply. One steel customer considered that even sponsored entry in the production of dolime in the UK is unlikely.
57. However, as there are no competition concerns, the CMA does not find it necessary to conclude on entry or expansion in this market.

Third parties

58. The CMA spoke to a variety of customers of both Steetley and Lhoist. Respondents to the CMA's market investigation represented over 80% of Steetley's revenues.
59. Third party views are reflected above in the text where appropriate. Overall, customers were not concerned since they considered that the parties are not competing in the UK.
60. Some customers noted that there are some commercial uncertainties arising from new management at Steetley following the merger. However, these were related to the disruption of an existing commercial relationship, rather than competition concerns.
61. One customer noted that Steetley may be more capable of investing in new technology within a bigger organisation.

Decision

62. This merger will therefore **not be referred** under section 33(1) of the Act.

Nelson Jung
Director of Mergers
Competition and Markets Authority
30 September 2014