

Completed acquisition by Tarmac Group Limited of two ready-mix concrete sites from MCG Enterprises Limited

ME/5361/12

The OFT's decision on reference under section 22(1) given on 3 April 2012. Full text of decision published 26 July 2012.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. Tarmac Group Limited (Tarmac) is a subsidiary of Anglo American PLC, a global mining and industrial business. Tarmac's principal UK businesses are the production and sale of aggregates, asphalt, cement and ready mixed concrete (RMX). Tarmac has a large number of fixed RMX plants across the UK, including at Colwick (Nottinghamshire) and Lincoln (Lincolnshire). It also operates a concrete batching plant at [] Bottesford piling production unit (in Leicestershire).
2. The Target comprises the business of two RMX batching plants located at Newark (Nottinghamshire) and Grantham (Lincolnshire) formerly controlled by MCG Enterprises Ltd, and branded Newark Concrete (the Target). The Target's UK turnover in its last financial year (ending 30 September 2011) was £[] million.

TRANSACTION

3. On 10 January 2012, Tarmac acquired the Target. The OFT's statutory deadline for review of this case is 9 May 2012 and the administrative deadline is 5 April 2012.

JURISDICTION

4. As a result of this transaction, two enterprises, Tarmac and the Target have ceased to be distinct.

5. Prior to this merger, Tarmac and the Target (the parties) overlapped in the production and supply of RMX in the Newark and Grantham areas. Tarmac submitted that their combined share of supply is greater than 25 per cent within a 10-mile radius of each of the acquired plants (on the basis of a site count).¹ The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is therefore met.
6. The OFT therefore believes that it is or may be the case a relevant merger situation has been created pursuant to section 23 of the Act.

MARKET DEFINITION

7. The parties overlapped in the production and supply of RMX in the Newark and Grantham areas. In addition, Tarmac supplies cement and aggregates to the Target's RMX plants.

Product market

Ready-mixed concrete (RMX)

8. RMX is a mixture of cement and other cementitious materials, water and aggregates comprising sand and gravel, crushed rock, secondary and recycled products. The specific composition (and resulting properties) of RMX can be customized to suit different applications.
9. It can be produced (a) in a fixed plant and distributed to site by a concrete truck mixer; (b) in a mobile plant at (or near) the customer site (also known as a 'site plant'); or (c) in a volumetric truck which carries the ingredients separately and mixes them on site (also known as 'on site-batching').

¹ The aggregate population affected by these overlaps in Newark (Nottinghamshire) and Grantham (Lincolnshire) is estimated to be around 140,000 inhabitants. In line with decisional practice by the OFT and the Competition Commission, this constitutes a substantial part of the UK for the purposes of section 23 of the Act having regard to population and other economic factors of the area and the relevant sector. See for example, OFT's decision of 13 May 2009 on the completed acquisition by Stagecoach Group plc of Eastbourne Buses Limited and Cavendish Motor Services and *A report of the completed acquisition by Stagecoach Group plc of Preston Bus Limited*, CC report of 11 November 2009. See also, OFT's *Mergers- Jurisdictional and procedural guidance*, June 2009, paragraph 3.56. and *Merger Assessment Guidelines, a joint publication of the Competition Commission and the Office of Fair Trading*, September 2010, paragraphs 3.3.6 and 3.3.7.

10. Tarmac submitted that the OFT and the Competition Commission (CC) have previously considered that the production and supply of RMX forms a separate product market without any further segmentation by grade or application.² In addition, Tarmac submitted that the OFT has previously accepted the competitive constraint that volumetric trucks impose on fixed and mobile RMX plants. Nevertheless, Tarmac also noted that the CC have taken the preliminary view that fixed and site RMX plants serve different segments of the market (in terms of the size of the project) and accordingly proposed to assess competition for the supply of RMX from fixed and site plants separately. Site plants are typically used for large-volume projects.
11. The CC's provisional findings in *Anglo American/Lafarge*³ state that '[t]aking into account evidence from the main parties, third parties and [the CC's] survey, [the CC had] concluded that, in relation to the proposed [joint venture between Anglo American and Lafarge], it was appropriate to define a single product market for the supply of RMX.' The CC did not include volumetric trucks in the definition of the relevant market but it considers the competitive constraints from them in the competitive assessment. This is similar to the market definition the OFT applied in *Anglo American/Tarmac*.⁴

Other products – aggregates and cement

12. In the absence of any evidence to the contrary, the OFT has followed the approach it took in its recent investigation of *Anglo American/Lafarge* joint venture and in which the extraction and supply of aggregates and cement have been defined.⁵ In the present case this is relevant for the assessment of possible vertical issues (see paragraph 29 and *ff.* below).

² See for example *Hanson/Pionner* (OFT's decision of 19 April 2000), *Anglo American/Tarmac* (OFT's decision of 18 February 2000) and, and *Anglo American/Lafarge* (OFT's decision of 2 September 2011 and CC's provisional findings report of 23 February 2012).

³CC's provisional findings report of 23 February 2012 on the Anglo American/Lafarge Joint Venture inquiry; paragraphs 5.47 and *ff.*

⁴ OFT's decision of 2 September 2011 on the anticipated joint venture between Anglo American and Lafarge (*Anglo American/Lafarge*); paragraphs 96-101.

⁵ *Anglo American/Lafarge*. This is line with the CC's provisional findings report on the Anglo American/Lafarge Joint Venture inquiry of 23 February 2012, paragraphs 2.3-2.19.

Geographic scope

13. Consistent with previous OFT and CC decisional practice,⁶ Tarmac submitted that the relevant geographic market is a 10-mile radius around the RMX production facilities affected by this case.
14. In *Anglo American/Lafarge*, the OFT noted that RMX is both heavy and highly perishable and therefore, once prepared, it must be delivered within a short period.⁷ In this case, the OFT notes that whilst a 10-mile radial may provide a good estimate of the geographic catchment area on average, it is not necessarily accurate in each individual case.
15. Based on data supplied by the parties on the catchment area where 80 per cent⁸ of RMX is delivered from each of their local plants (the 80 per cent catchment area), the OFT has drawn a more accurate picture of the relevant catchment areas of each of these facilities which is applied in the competitive assessment below.
16. This data shows very different results for each of the parties. The Target's plants cover larger areas (up to [10-20] miles) than Tarmac. The data from Tarmac's plants shows that they draw 80 per cent of their sales (by volume) from less than [0-10] miles away: [0-10] and [0-10] miles. This may be due to Tarmac's much larger density across the country.
17. On the geographic scope for cement, the Tarmac has provided supply data based on cement plants within 100 miles, or cement import terminals within 80 miles, of the non-integrated RMX plants that compete with the Target.

Conclusion on market definition

18. The OFT has followed previous OFT and CC decisional practice and concluded that the product scope for the supply of RMX includes both fixed and mobile plants (albeit noting possible segmentation by type of project) but with no further segmentation by grade or type of RMX. In terms of geographic assessment, notwithstanding the use of a 10-mile radius in the *Anglo American /Lafarge* case, data submitted by the parties has enabled the OFT to assess the actual catchment areas of the parties' affected plants. This data has shown significant differences (from Tarmac's

⁶ See footnote 2 above for some examples.

⁷ *Anglo American / Lafarge*; paragraph 102.

⁸ Based on volume.

[0-10] miles to the Target's [10-20] miles). The competitive assessment below focuses on the actual competition between the parties' RMX plants in the affected local areas of Nottinghamshire and Lincolnshire and Leicestershire.

19. The OFT has not been required to conclude on the exact market definition for aggregates and cement, given the small scale of the increment or any other material changes as to the production and supply of aggregates and cement arising from the merger however these candidate markets are defined.

COMPETITIVE ASSESSMENT⁹

Horizontal unilateral effects

20. The OFT discusses horizontal unilateral effects below by reference to the overlap analysis applicable to each of the two Target plants.

Analysis in respect of Target's Grantham plant

21. The 80 per cent catchment area for Target's Grantham RMX plant is [10-20] miles. Tarmac's batching plants in Lincoln and Colwick are located outside that catchment area. In addition as noted above, the catchment area of Tarmac's plants is substantially smaller (below [0-10] miles) suggesting that the constraint imposed by these Tarmac plants on the Target's Grantham RMX plant pre-merger was limited.
22. Consistent with this, sales data show that 80 per cent of the Tarmac's Lincoln plant's sales were made either in [local areas with no deliveries from the Target]. Of the additional 20 per cent of sales, most were made

⁹ Pursuant to section 22 of the Act, this merger investigation focuses on whether the Transaction described in paragraph 3 above gives rise to the realistic prospect of a substantial lessening of competition. It therefore focuses on the loss of competition between Tarmac and the Target and vertical links affected by this merger. The UK Competition Commission is currently assessing the competition impact of the proposed joint venture between Anglo American PLC and Lafarge SA. Any implications from this transaction in relation to the proposed joint venture will be assessed in the CC investigation which is expected to be completed by 1 May 2012. See at www.competition-commission.org.uk/our-work/anglo-american-lafarge/news-releases-and-announcements.

to customers [in local areas with no or limited deliveries from the Target]. Moreover, Tarmac's Colwick plant made only a [small number of] sales to customers in []. In the light of these evidence, the OFT does not believe that there is a substantive overlap between the Target's Grantham plant and any of the Tarmac's batching plants in those areas.

Analysis in respect of Target's Newark plant

23. The Target's Newark RMX plant has an 80 per cent catchment area of [10-20] miles, with Tarmac's Colwick located at the south west of this catchment area. The OFT notes that the Target's plant at Newark is relatively distant from Tarmac's Colwick RMX plant, which is located at the edge of [], with a relatively limited number of Newark's customers lying in the Tarmac catchment area.
24. The parties submit that [50-60] per cent of Tarmac Colwick's sales (by volume) were made to customers in the City of Nottingham, compared to only [0-10] per cent for the Target's plants. Furthermore, only [10-20] per cent of the Target's Newark plant's sales (by volume) were to a site that is located in the 80 per cent catchment area of Tarmac's Colwick RMX plant. Although [35-45] per cent of Tarmac's sales were to a site that is located in the Target's Newark 80 per cent catchment area, it should be noted that this appears to be primarily due to the Target's relatively dispersed customer base, which overlaps more significantly with Tarmac's relatively concentrated customer base.
25. In this overlapping area, the merger has resulted in a fascia reduction from six to five with Cemex, Breedon, and Aggregate Industries and Lafarge¹⁰ also present. No customers raised any competition concerns and those third parties who responded to the OFT's information request stressed that the merged parties were not, prior to the merger, close competitors.

¹⁰ The OFT considers that, even if Lafarge were not deemed to be a competing fascia, this would not change the OFT's competition assessment as to this area (although see footnote 9 above concerning the ongoing CC investigation into the proposed joint venture between Anglo American PLC and Lafarge SA).

26. As a result, based on the sales data submitted by Tarmac indicating the different geographic focus of their RMX businesses, the limited overlap between the merged parties and the lack of third parties' competition concerns, the OFT does not believe that there was a material amount of pre-merger competition between Tarmac's batching plants and the Target, such that competition concerns do not arise.

Bottesford plant

27. Tarmac operates a site plant at Bottesford, which lies within the 10-mile catchment area of Newark RMX plant. Tarmac have provided sales data for its Bottesford plant, covering a three year period (2009-2011), which shows that [it made only very few sales to external customers between 2009 and 2011].
28. Therefore, the OFT does not believe that the Bottesford site plant has imposed any significant competitive constraint on the Target batching plants or vice-versa.

Vertical unilateral effects

29. Tarmac's cement operations comprise a quarry and cement plant located in Derbyshire and some cement depots. It also supplies primary aggregates from quarries in the UK and operates a marine aggregates business around the UK coast.
30. The merger does not substantially change Tarmac's pre-merger ability and incentive to partially or totally foreclose any third party in terms of any customer foreclosure analysis. Tarmac currently supplies the Target with all its aggregates and cement requirements. This continues post-merger, thus the Target has not switched away from an upstream rival as a result of the merger.
31. The OFT has also considered whether, in terms of an input foreclosure strategy, the acquisition could affect Tarmac's ability to foreclose non-integrated RMX competitors. In this respect, Tarmac's estimated (upstream) market share in the supply of cement is [10-20] per cent. This figure is based on the volume of cement plants within 100 miles, and cement import terminals within 80 miles radius of non-vertically integrated RMX plants that compete with the Target. The OFT does not believe that

this share of supply is sufficient in this case to give the merged firm the ability to foreclose downstream rivals.

Coordinated effects

32. The OFT has not received any third party comments to suggest that this transaction will lead to an increased risk of coordination. Additionally, the transaction will not have any effect on upstream shares of supply, so cannot be expected to lead to similar coordinated concerns as those raised during the OFT's assessment of the joint venture between Anglo American and Lafarge and currently under investigation by the CC. The CC's provisional findings has not identified any concerns in relation to any possible anti-competitive coordination in the supply of RMX.¹¹

THIRD-PARTY VIEWS

33. No third parties raised any competition concerns on this case.

BARRIERS TO ENTRY AND COUNTERVAILING BUYER POWER

34. In light of its findings on horizontal and non-horizontal issues, the OFT has not found it necessary to conclude on barriers to entry and countervailing buyer power.

ASSESSMENT

35. Prior to this merger, the parties overlapped in the production and supply of ready-mix concrete (RMX) in Nottinghamshire and Lincolnshire. The Target also has a plant at [] construction site at Bottesford (Leicestershire).
36. The OFT has applied previous OFT and CC decisional practice and concluded that the supply of RMX forms a single separate market, noting a segmentation by type of project (which are usually served from different type of plants, those are fixed and mobile, but with no further segmentation as to grade or type of RMX). Data submitted by the parties has enabled the OFT to assess the actual catchment areas of the parties' affected plants. This data has shown significant differences (from Tarmac's [0-10] mile to the Target's [10-20] miles).

¹¹ See CC's provisional findings report of 23 February 2012; paragraphs 6.91 and ff.

37. The substantive assessment has considered whether this merger creates any anti-competitive unilateral horizontal or vertical concerns in the areas around the Target's Newark and Grantham plants. After analysing data on catchment areas for the parties' batching plants in these areas, the OFT has concluded that there is an overlap between Tarmac's Colwick and the Target's Newark concrete plants. However, analysis of data on delivery locations shows that the parties are not close competitors, which is supported by third party comments.
38. In addition, the OFT has been provided with evidence that Tarmac's Bottesford site plant has almost exclusively served the site customer in the last two years.
39. In addition, the OFT has analysed vertical issues but does not believe that Tarmac has the ability to implement an anticompetitive foreclosure strategy against competing non-vertically integrated RMX plants. Similarly, the OFT does not believe that the merger change the market structure to an extent which could have any impact on any possible coordinated effects.
40. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

41. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.