

Anticipated acquisition by CRH plc of Ancon Limited UK

ME/3563/08

The OFT's decision on reference under section 33(1) given on 30 April 2008.  
Full text of decision published 15 May 2008.

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**Please note that square brackets indicate figures or text which has been deleted or replaced at the request of the parties for reasons of commercial confidentiality.**

**PARTIES**

1. **CRH plc** (CRH) is headquartered in the Republic of Ireland and is the holding company for a number of subsidiaries involved in the production and distribution of a wide range of building materials and products, including cement, aggregates, asphalt, agricultural and chemical chalk, pre-cast concrete (including flooring, pavement tiles and roofing), ventilation products and drainage pipes. It also manufactures and distributes anchoring products for building support and affixing construction elements to each other. The relevant CRH subsidiary companies for this case are Forsite Limited (Forsite) and Halfen (UK) Limited (Halfen), the latter of which trades under the brand names of Halfen, Deha, Frimeda and Kwikastrip.
2. **Ancon Limited UK** (Ancon) is a part of the Ancon Group of companies and is a wholly owned subsidiary of Tyco International Group Limited. Ancon manufactures and supplies a variety of anchoring, restraint and fixing products for use in the construction industry. Its UK turnover in 2007 was around £38 million.

**TRANSACTION**

3. A Sale and Purchase Agreement was signed on 27 February 2008 for the acquisition by CRH of the entire issued share capital of the Ancon Group of companies which includes companies located in Australia, Austria,

Germany, Switzerland, the United Arab Emirates and the UK. The agreed consideration was £88 million (subject to adjustments). This decision only relates to the UK aspects of the deal – that is, the acquisition of Ancon.

4. The transaction was also notified to competition authorities in the Republic of Ireland, Germany and Austria. Clearance has been received in each of these jurisdictions.

## **JURISDICTION**

5. As a result of this transaction CRH and Ancon will cease to be distinct. The parties overlap in the supply of various anchoring products for use in the construction industry and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met in relation to the supply of several construction accessory products.<sup>1</sup>
6. The OFT 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.

## **MARKET DEFINITION**

7. The parties overlap in the supply of anchoring products, and in particular steel anchoring products, in the UK. Anchoring products are used to fix different construction elements to each other and provide support within a building. For example, brickwork support systems can be used to fix brick cladding to the main structural framework of a building. Windposts can be used in wall cavities to strengthen the inner wall by bearing the load of the outer wall.
8. The parties manufacture some of their overlapping products in the UK, while others are manufactured outside of the UK.

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<sup>1</sup> Those meeting the share of supply test include brickwork support systems, wall ties, masonry restraint channels, windposts, cast-in channels, re-bend reinforcements, shear dowels and balcony connection systems.

## Product scope

9. The parties submitted that there are good arguments for considering a single overall product market for construction anchoring products but there are also good arguments for considering reinforced and non-reinforced anchoring products separately.
10. Reinforced anchoring products are used to maintain the continuity of reinforcement through construction elements (for example, between a concrete floor and a concrete column). The parties submitted that it may be possible to further segment some of these products into a sub-segment, continuity systems.
11. Non-reinforced products are used principally to support or restrain masonry cladding on buildings. Within non-reinforced anchoring products the parties submitted that there are two sub-segments, masonry support products and masonry restraint products.
12. By individual product lines, the parties overlap in five reinforced anchoring products and nine non-reinforced anchoring products (table 1). A description of each of these products is in annex A.

**Table 1: Overlapping anchoring products by segment**

Reinforced anchoring products	Non-reinforced anchoring products
<ul style="list-style-type: none"><li>• Bar couplers (CS)</li><li>• Re-bend reinforcement (CS)</li><li>• Shear dowels</li><li>• Punching shear reinforcement</li><li>• Balcony connections systems</li></ul>	<ul style="list-style-type: none"><li>• Brickwork support systems (MS)</li><li>• Natural stone support (MS)</li><li>• Lintels (MS)</li><li>• Wall ties (MR)</li><li>• Masonry restraint channels (MR)</li><li>• Windposts (MR)</li><li>• Brickwork reinforcement (MR)</li><li>• Tension rods</li><li>• Cast-in channels</li></ul>

Note: CS = continuity systems; MS = masonry support; and MR = masonry restraint.

Source: The parties.

13. Each candidate product market will be discussed in turn below, starting with a single overall anchoring products market.

## A SINGLE MARKET

14. The parties submitted that the flexibility among constructors in deciding which anchoring products to use for a particular purpose, and the similar production processes which are applied to produce the products in table 1, mean that they may be substitutable and there may therefore be a single overall product market for anchoring products.
15. However, the OFT's investigation has found that most, if not all, of the products listed in table 1 are not functionally interchangeable to any significant degree. Further, supply side switching between the products, especially between reinforced and non-reinforced anchoring products, appears to be costly. These two views were supported by third parties within the industry.
16. The parties' own evidence submitted to the OFT did not persuade the OFT that supply side substitution was sufficiently feasible enough for the OFT to conclude that the product market is broad. Therefore, the OFT has decided to adopt a narrower product market frame of reference.
17. It may be that case that narrower product markets comprise reinforced anchoring products and non-reinforced anchoring products. These are discussed below.

## REINFORCED ANCHORING PRODUCTS

18. The parties submitted that the various reinforced anchoring products are purchased together and by the same customer base, and therefore it is somewhat artificial to segment these products any further.
19. However, evidence submitted by the parties show that generally the overlapping reinforced anchoring products sold by Ancon are not sold with another reinforced anchoring product. The products most commonly sold with another product were balcony connection systems and shear dowels, which were both sold with another product only 20 per cent of the time. CRH's overlapping products are sold together with other products around 40 per cent of the time (with little variation between products).
20. Furthermore, from the demand side the OFT's investigation has found that individual reinforced anchoring products are not substantially functionally

interchangeable. This, from a demand side perspective, is the key point, not whether any individual customer (such as a builders' merchant) acquires a range of products since the end user will not be able to substitute to another product in the event of a price rise in their preferred product.

21. The parties also submitted that all reinforced products are supply side substitutable since, although the production equipment is different for each product, it would be possible to switch to the manufacture of an alternate product within a year. Some third parties agreed saying that supply side switching between reinforced anchoring products is not particularly difficult.
22. The parties' own experience of supply side switching is that of responding to short lead times from customer orders (for Ancon lead times can be as little as [ ] whereas for CRH lead times are generally around [ ]). However, their responses indicate they have either used different production plants, or different production lines within a plant, in order to flex production to meet their customers' demands. The parties did not supply evidence of switching the production of different products using the same production equipment. Further, the examples provided by the parties did not involve reinforced anchoring products.
23. It may be the case that reinforced anchoring products form a single product market. However, in this case the OFT has not found it necessary to decide on the exact product market but instead it has decided to adopt a cautious approach and examine this merger on the basis of a narrower product market than all reinforced anchoring products.

#### REINFORCED ANCHORING PRODUCTS: CONTINUITY SYSTEMS VERSUS OTHER

24. One possible product market narrower than all reinforced anchoring products is continuity system products (that is, bar couplers and re-bend reinforcement products) and the others products individually (shear dowels, punching shear reinforcement and balcony connection systems). Continuity systems refer to reinforced products that continue reinforcement between construction elements (for example, between a concrete floor and a concrete column).

25. When the OFT tested this candidate product market definition with third parties it received little third party support. Some third parties told the OFT that they had never heard of continuity systems in this context nor thought about the products in this way.
26. While not concluding on the product market, the OFT has decided to take a cautious approach and assess this merger on a product market narrower in scope than reinforced anchoring products, continuity systems, and other reinforced anchoring products.

#### REINFORCED ANCHORING PRODUCTS: INDIVIDUAL PRODUCTS

27. The narrowest reasonable product market definition in this case is for each individual reinforced anchoring product to form its own product market.
28. **Re-bend reinforcement.** The parties argued that where construction would require the use of re-bend reinforcement, traditional technologies (such as pass-through reinforcement or drilled in starter bars) are preferred in around [40–60 per cent] of cases. However, there is mixed evidence from third parties on the extent to which demand-side substitution extends the product market to include such traditional methods. One third party said that they are substitutes to some degree but it would not be cost effective to switch to or use traditional methods.
29. Although not finding it necessary to conclude on the product market definition, given such mixed evidence the OFT has taken a cautious approach and considered this merger on the basis of re-bend reinforcement forming a separate product scope, not including traditional methods.
30. **Bar couplers.** The parties submitted that where construction would require the use of couplers, traditional technologies, such as lapping of bars, are preferred in [70–90] per cent of cases. However, the OFT has been unable to corroborate this with third parties. Therefore, given the outcome of the competition assessment is not dependent upon the product market definition with respect to bar couplers, the OFT has decided to take a cautious approach and assess this merger on the basis of bar couplers forming a separate product scope.
31. **Shear dowels.** The OFT was told by the parties that shear dowels form part of a wider market including traditional methods, such as shaped concrete,

that are seen as an alternative by end-users. In processes where a shear dowel can be used, according to the parties, traditional methods are chosen over dowels [50–70] per cent of cases.

32. The parties provided examples of customers redesigning their project so that shear dowels were not required and traditional methods were chosen instead (in order to save costs). They contended that the recent increase in steel prices has increased the cost of shear dowels relative to shaped concrete and made substitution more appealing and that traditional methods are increasingly cost-competitive as raw material prices for stainless steel have been rising since 2004.
33. To support this assertion the parties submitted the results of a survey of major UK concrete subcontractors. The subcontractors indicate the proportion of projects in which they use shear dowels in expansion joints. The average across the 10 companies is only [10–20] per cent. Similarly, major UK engineers were asked to estimate the proportion of expansion joints that use shear dowels. The average across nine structural engineers is around [20–30] per cent.
34. However, this wider product market is not supported by third party competitors. Two told the OFT that shear dowels are not considered substitutes as traditional methods are far more complicated. In addition, if the price of dowels were to increase by around 10 per cent, the perception amongst third parties was that customers would accept the price rise and not switch to traditional methods.
35. One third party indicated that substitution was feasible. Engineers and contractors develop a preference and then use that consistently. Their preference is then specified in designs and drawings at an early stage and the procurement or supply team simply buy in what is ordered.
36. The evidence on the inclusion of traditional methods in a single product market alongside shear dowels is mixed and so, while not finding it necessary to conclude on the product market in this case, the OFT has taken a cautious approach and for the purposes of this decision considered the supply of shear dowels as a separate product scope.
37. **Balcony connection systems.** From the demand side there are no other products which can be substituted for balcony connection systems. The

OFT's analysis on supply side substitution for this product group is the same for all reinforced anchoring products, discussed above. However, given the outcome of the competition assessment does not depend on the product market definition for balcony connection systems, the OFT has assessed this merger on the basis of the narrowest possible scope which is balcony connection systems alone.

38. **Punching shears.** Given the outcome of the competition assessment does not depend on the product market definition for punching shears, the OFT has assessed this merger on the basis of the narrowest possible scope which is punching shears alone.

#### NON-REINFORCED ANCHORING PRODUCTS

39. As for reinforced anchoring products, the parties submitted that the range of non-reinforced anchoring products are purchased by the same customer base and with each other, and therefore should constitute a discrete product market.
40. However, the OFT's analysis and findings are very similar to reinforced anchoring products. That is, the individual non-reinforced anchoring products are not functionally substitutable for each other, customers have told the OFT that they do not generally source all (or even many) of the individual products together and evidence on both the parties' sales show that most sales of the individual products are not sold together with other products.
41. For seven of the nine overlapping products, Ancon's sales data show that 80 per cent or more of its sales were accounted for by these products being sold separately. The only two exceptions were brickwork support systems and masonry restraint channels which were sold with other products in 80 per cent and 60 per cent respectively of cases.
42. The parties also submitted that all non-reinforced anchoring products are produced using the same type of manufacturing equipment and therefore, for reasons of supply side substitutability, non-reinforced anchoring products should not be segmented further for the purpose of market definition. More particularly, the parties told the OFT that the equipment used to manufacture masonry support and masonry restraint systems is the type of equipment that would be found in a standard fabrication plant and

therefore entrants could subcontract the manufacturing of the products easily and quickly (the parties also provided examples to the OFT of competitors who currently subcontract their production).

43. However, the parties did not provide to the OFT persuasive evidence of past instances of supply side substitution beyond providing some evidence that it is possible for producers of a wide range of products – such as themselves – to flex production volumes along individual production lines so that increases in demand for particular products can be met.
44. Third parties told the OFT that supply side substitution between some products may be difficult. For example, one third party said that some production plants are set up to manufacture the complete product while other plants buy in a semi-completed product and finish off the product in the plant. Another third party said that to switch away from one reinforced product in which they specialise to producing other non-reinforced anchoring products would be difficult and costly, and that they would not consider such a move in the event of changes in relative prices. However, other third parties agreed with the parties that supply side substitution relatively straightforward with only moderate switching costs.
45. The OFT has not found it necessary to conclude on the exact product market for non-reinforced anchoring products. However, given the lack of demand side substitution and the mixed evidence on supply side substitution, the OFT has decided to take a cautious approach and reject an all non-reinforced anchoring products market definition and examine this merger on the basis of a narrower market definition.

#### MASONRY SUPPORT AND MASONRY RESTRAINT SYSTEMS

46. One potential way to narrow down the non-reinforced anchoring products is to segment them into the categories of masonry support, masonry restraint and the other products individually. Masonry support systems provide support for stone or brickwork and include products such as lintels and natural stone support products. Masonry restraint products are used to connect the brickwork or stone cladding of a building to the inside wall of the building. Other non-reinforced anchoring products – namely tension rods and cast-in channels – do not fit into either of these categories.

47. The OFT was unable to identify any significant demand side substitution between the products in either the masonry support or masonry restraint categories. The parties submitted that individual products within these categories are not functionally interchangeable.
48. On the supply side, the OFT's findings are the same as for non-reinforced anchoring products as a whole.
49. The OFT has not found it necessary to conclude on the exact product market for masonry support and masonry restraint products. However, given the lack of demand side substitution and the mixed evidence on supply side substitution, the OFT has decided to take a cautious approach and reject a product market definition which segments the products along the lines of being masonry support or masonry restraint products, and examine this merger on the basis of a narrower market definition.

#### NON-REINFORCED ANCHORING PRODUCTS: INDIVIDUAL PRODUCTS

50. The narrowest reasonable product market definition in this case is for each individual non-reinforced anchoring product to form its own product market.
51. The OFT has not needed to conclude on any product market in this case since the outcome of the competition assessment does not depend on market definition. Therefore, the OFT has taken a cautious approach and assessed this merger on the basis of each individual product. Very little evidence (besides that discussed above) was received by the OFT for broadening the product market with respect to lintels, natural stone support products, wall ties, windposts, brickwork reinforcement products and tension rods. For brickwork support systems, masonry restraint channels and cast-in channels, some product-specific evidence was received and is discussed briefly below.
52. **Brickwork support systems.** It may be the case that brickwork support systems are in a product market with at least one other product since Ancon's sales data show that in around 80 per cent of cases brickwork support systems are purchased with at least one other product. However, given the competition assessment in this case is not affected by the product market definition with respect to brickwork support systems, the

OFT has decided to assess this merger on the basis of brickwork support systems forming its own product market.

53. **Masonry restraint channels.** It may be the case that masonry restraint channels are in a product market with at least one other product since Ancon's sales data show that in around 60 per cent of cases masonry restraint channels are purchased with at least one other product. However, given the competition assessment in this case is not affected by the product market definition with respect to masonry restraint channels, the OFT has decided to assess this merger on the basis of masonry restraint channels forming its own product market.
54. **Cast-in channels.** The parties submitted that cast-in channels are a relatively new technique that is an alternative to traditional methods (such as expansion bolts and resin-assisted fixing bolts) which are post-cast methods of structural connections. They told the OFT that in situations where a cast-in channel could be used, traditional methods are chosen in around [70–90] per cent of cases. Third parties have generally agreed with the potential for substitution.
55. However, without prejudice to the competitive constraint that traditional methods may place on the supply of cast-in channels, the OFT has not found it necessary to conclude on the product market definition with respect to cast-in channels since the outcome of the competition assessment does not depend on it, and has decided to examine this merger on the basis of cast-in channels forming its own product market.

### **Geographic scope**

56. The parties submitted that the geographic market for all of the products is the UK. They suggested that different building techniques across Europe may limit the geographic scope to a national market.
57. Estimates submitted by the parties on imports into the UK generally supported their proposition of a UK only market. However, for some products, namely balcony connection systems ([90–100] per cent), cast-in channels ([40–50] per cent), re-bend reinforcement ([20–30] per cent) and shear dowels ([10–20] per cent), the proportion of supply in the UK which is imported is substantial.

58. The OFT was able to confirm these estimates of imports from third parties with the exception of re-bend reinforcement products. The lack of corroborating evidence for re-bend reinforcement products has led the OFT to take a cautious approach and not widen the geographic market for this product. The imports for the other products predominately come from within Europe – especially Germany (for cast-in channels and balcony connection systems), Poland (balcony connection systems) and Switzerland (shear dowels).
59. Although the OFT has not found it necessary to conclude on the geographic market in this case, it has taken a cautious approach and assessed this merger on the basis of the UK for all individual products (including re-bend reinforcement products) apart from balcony connection systems, cast-in channels and shear dowels which have been assessed on a European wide (EEA) basis:
- **Balcony connection systems** – around [90–100] per cent of the products used in the UK are imported.
  - **Cast-in channels** – around two-fifths of UK supply is imported from continental Europe, including CRH which supplies the UK from both its UK and German plants. The main competitor to the parties in the supply of this product imports all products for UK supply from Germany and state transport costs are not prohibitive and they are price competitive in the UK. Additionally, customers seem willing to source from European suppliers.
  - **Shear dowels** – around one-fifth of UK supply is imported from outside the UK. The parties also stated to the OFT that Ancon exports [55–65 per cent] of UK production across continental Europe and further. Two competitors told the OFT that they supply the UK from Germany and consider themselves to be price competitive in the UK since transport costs are not prohibitive, and could supply more into the UK if need be.

## HORIZONTAL ISSUES

### Unilateral effects

60. Of the 14 overlapping products eight can be dismissed as raising no possible competition concerns on the basis of either low shares of supply, very low increments to the share of supply as a result of the proposed

merger, or both. No concerns were raised by third parties specifically in relation to any of these products, with the exception of balcony connection systems. The products are:

- **Lintels** – the parties' combined share of UK supply is only around [0–5] per cent.
- **Brickwork reinforcement products** – the parties' combined share of UK supply is less than [0–5] per cent.
- **Tension rods** – the parties' combined share of UK supply is around [0–5] per cent.
- **Punching shear reinforcement products** – the parties' combined share of UK supply is around [5–10] per cent.
- **Natural stone support products** – the parties' combined share of UK supply is around [10–20] per cent and the increment arising from the merger is [5–10] per cent per cent. Key competitors post merger will be Stainless Steel Fixings ([20–30] per cent share of supply), Fischer Fixing Systems ([10–20] per cent) and Haz (around [10–20] per cent).
- **Wall ties** – although the parties' combined share of UK supply is reasonably high (at around [40–50] per cent) the increment to this share is only around [0–5] per cent. Furthermore, Vista with an estimated share of supply of around [20–30] per cent – and to a lesser extent ACS and Powerplace, both with around a [5–10] per cent share of supply – will continue to offer a competitive constraint to the merged entity after the merger.
- **Shear dowels** – on an EEA wide basis, the parties supply around [10–20] per cent of shear dowels (increment of [0–5] per cent). Other suppliers of a similar size to the merged entity will be DSI and Permabban. Over half of supply is accounted for by firms with less than [0–5] per cent share of supply each.
- **Balcony connection systems** – on an EEA wide basis, the parties' combined share is [10–20] per cent (increment [0–5] per cent) and strong competitors, especially Schoeck and J&P will continue to provide a competitive constraint post merger. One third party competitor told the OFT that the merger would result in a standardisation of this product, which would lead to domination. However, given the low increment and presence of strong competitors who are also active in the supply of a number of construction accessory products we do not consider this further.

61. Therefore, six products remain for analysis:

- brickwork support systems
- masonry restraint channels
- windposts
- cast-in channels
- re-bend reinforcement products, and
- bar couplers.

62. Although overlapping in these products, the parties have quite different routes to market and therefore largely different customer bases. CRH tends to supply these products direct to end users (construction and engineering companies) whereas most (around [60–70] per cent) of Ancon's sales of these products are to distributors such as builders' merchants. The majority of contracts are won through a process of competitive tender (see below for a discussion of the bidding data).

63. The following discussion focuses on the six remaining products.

#### BRICKWORK SUPPORT SYSTEMS

64. The parties' combined share of UK supply is around [30–40] per cent (increment around [10–20] per cent). The parties' strongest competitors in the supply of brickwork support systems are ACS (an estimated [10–20] per cent share of supply), WMB ([5–10] per cent) and Vista ([5–10] per cent) who will remain post merger to give customers choice and competition in their tenders, neither of whom have indicated capacity constraints. Overall, the supply of brickwork support systems is fragmented. Almost [40–50] per cent of supply is supplied by firms with less than a five per cent share.

65. The majority of customers did not express specific concerns about this product segment.

#### MASONRY RESTRAINT CHANNELS

66. The parties' combined share of UK supply is very high at almost [50–60] per cent. However, the increment arising as a result of the proposed merger is small, at only around [0–5] per cent.

67. After the merger the merged entity will continue to face competitive pressure in tenders from Wincro (an estimated share of around [10–20] per cent) and Alderdale (around [10–20] per cent). ACS, with a share of around [0–5] per cent will also remain. None of these competitors have indicated capacity constraints.

#### WINDPOSTS

68. Together the parties account for around [30–40] per cent of the supply of windposts in the UK (increment of [0–5] per cent). The supply of windposts is quite fragmented with the main competitors being ACS (around [10–20] per cent share of supply), Keystone ([5–10] per cent), Alderdale ([5–10] per cent), and Wincro and WMB ([0–5] per cent each), none of whom indicated capacity constraints. Based on these shares, and bearing in mind the parties' different routes to market, the evidence suggests that pre-merger CRH was not Ancon's closest competitor (but rather ACS was and will remain so).

69. Customers did not express specific concerns about this product segment.

#### CAST-IN CHANNELS

70. On an EEA-wide basis the parties account for around [30–40] per cent of the supply of cast-in channels. However, the increment is only [0–5] per cent. Further, the merged entity's main competitor will continue to be Jordahl (J&P) with an estimated [10–20] per cent share of supply. There is a long tail of other competitors such as Unistrut ([0–5] per cent) and BS Italia ([0–5] per cent).

71. Additionally, there is some evidence that other, traditional methods may continue to provide some additional constraint on the supply of cast-in channels (see paragraph 54).

#### RE-BEND REINFORCEMENT PRODUCTS

72. Together the parties' share is around [30–40] per cent (increment around [5–10] per cent) in the UK. After the merger the merged entity's main competitor will be RFA ([20–30] per cent share) before a long, fragmented

tail of competitors (all with less than five per cent share of supply) and none of whom have indicated capacity constraints.

73. No customers expressed concerns about this product category and there has been some recent entry into the supply of re-bend reinforcement products (see below). Further, there is some evidence that imports may provide a constraint on UK domestic supply (see paragraph 57).

## BAR COUPLERS

74. The parties together hold a [10–20] per cent share of bar couplers in the UK (increment [5–10] per cent). Larger competitors are Erico (around [20–30] per cent) and RFA ([20–30] per cent), neither of whom have indicated capacity constraints.
75. As discussed above in paragraph 30, the parties submitted that in most ([70–90] per cent) of cases in which couplers are required traditional methods (such as the use of lapping bars) are used. However, given the relatively modest combined share of supply even on a very narrow basis it has not been necessary for the OFT to reach a view on the substitutability of traditional methods.

## Bidding data

76. The parties submitted that the majority of supply is provided through contracts won through a process of competitive tender. In such a bidding market where customers seek bids, actively encouraging the presence of competitors, static shares of supply (as set out above) may overestimate the parties' competitive position. The OFT has therefore placed more focus in analysing share of supply data on the presence of strong remaining competitors to the parties post-merger. Furthermore, we note that Ancon has a very concentrated customer base (two customers account for [ ] per cent of their supply), which may also mean such static shares of supply overestimate the parties' competitive position.
77. The parties provided bidding data for every contract worth over £25,000 for which they had submitted bids over the previous six month period. In all, the parties submitted [ ] bids over the period and bid against each other on only [ ] occasions (less than [5–10] per cent of the time).

78. Ancon entered [ ] tenders and did not lose any bids to CRH during this time; CRH itself entered [ ] tenders and lost to Ancon in less than [20–30] per cent of cases. In all, the bidding data tends to indicate that the parties have not been close competitors given the limited number of occasions when they have bid against each other, and this may be a reflection of the differing supply chains they primarily serve (see paragraph 62).

### **Coordinated effects**

79. Notwithstanding its recent announcement relating to allegations of bid rigging within the wider construction sector<sup>2</sup>, in the context of this merger the OFT has not found any evidence of previous coordinated behaviour by suppliers of anchoring products. Further, the OFT does not believe that the proposed merger will increase the ability or incentives for coordination (explicit or tacit) in the future. At this level of the supply chain, the industry is characterised by non-transparent bidding and price negotiations on a case by case basis and even, the parties suggested, on a storey-to-storey basis for some commercial buildings.
80. Not only is pricing for individual contracts not transparent, but detecting any deviations or 'cheating' from tacitly agreed prices would be very difficult and, across the different products, shares of supply show significant asymmetry. This means that the suppliers in the industry may have different incentives when determining their pricing behaviour. The OFT considers there insufficient evidence to suggest this merger will have any material effect on the risk of explicit coordination in respect of the overlapping products of the type recently alleged in the wider construction sector.

### **Barriers to entry and expansion**

81. The parties submitted that barriers to both entry and expansion are low. Firms can, and have they say, entered at low cost with little lead time and achieved strong market shares in a short period of time.
82. The OFT's investigation has found that equipment costs for a start up entrant could be over £1 million, although the parties told the OFT that

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<sup>2</sup> For more information on this announcement see OFT Press Release 52/08, *OFT issues statement of objections against 112 construction companies*, 17 April 2008.

second hand equipment can easily be sourced for around £200,000. To set up manufacturing facilities for some products would be cheaper than others (for example, the equipment needed to produce shear dowels is cheaper than that to produce brickwork support systems or masonry restraint channels). Alternatively, the parties submitted, an entrant can subcontract some or all of the manufacture of the products which would reduce their start up costs to around £100,000–300,000.

83. Design expertise is also required. However, the parties told the OFT that there is not a shortage of knowledgeable design staff and that CRH itself sometimes subcontracts the design function. What is more, the parties said that the products in question are not especially technically complicated and so intensive design involvement in the production process is not required.
84. Some of the parties' products are still under patent although the shares of supply presented above show that clearly for each individual product a range of suppliers are available. Third parties have confirmed the parties' assertion that even patented products can be copied with relative ease and protect a product for only a limited amount of time. The evidence therefore indicates that patents do not likely form a significant barrier to entry over the long-term. The parties submitted that R&D activity within their companies is negligible.
85. Client relationships and brand loyalty may also increase the costs of entry. The parties admitted that developing client relationships (whether with builders or builders' merchants) is a key aspect to being successful. However, they also provided evidence to show that customers do switch suppliers based on price considerations. The parties also submitted evidence that a number of suppliers are invited to submit bids in tenders, typically around five or six.
86. One third party disagreed and said that client relationships did create a significant barrier to entry.
87. A CRH internal document said that [ ].
88. Nevertheless, evidence of recent entry indicates that whatever barriers exist, they can be surmounted. The evidence shows that:

- ACS, a manufacturer of general fixings for pre-cast concrete which has entered in the past four or five years and achieved significant share of supply in wall ties (around [5–10] per cent) and masonry support systems.
- GA Fixings was started by ex-Ancon staff. It subcontracts the manufacturing of its products and has achieved a small but growing market share across a broad product range.
- Hadley Group is a general steel fabricator that has started selling masonry restraint channel products.
- Alderdale is also a general steel fabricator and has achieved significant market share in a number of products, including masonry restraint channels (around [10–20] per cent) and windposts (around [5–10] per cent).
- Vista, a supplier of wall ties, moved into supply of windposts and masonry support systems.
- BRC, a supplier of masonry reinforcement products, moved into supply of punching shear reinforcement (all of its manufacture is subcontracted) to become the lead supplier in this product having entered only four years ago. It has also moved into the supply of balcony connections.
- Hyten supplies reinforcement bars but recently expanded into supplying punching shear reinforcement and re-bend reinforcement (via subcontractor).
- Erico recently increased its product range to include punching shear reinforcement and a bolted coupler system.

89. Finally, the parties told the OFT that Ancon itself recently moved into the supply of punching shear reinforcement products with less than [six to nine] months lead time.

90. The OFT has been able to corroborate these examples of entry with third parties and with some of the entrants themselves.

91. As noted above already, competitors have told the OFT that the industry does not suffer from capacity constraints and they are able to expand easily enough to increase production in response to customer demands.

92. The OFT has not found it necessary to conclude on barriers to entry in this case given the lack of any substantive competition concerns, although the

prevalence of recent, successful entry indicates that barriers to entry and expansion are probably low.

### **Countervailing buyer power**

93. The OFT was told by the parties that their customers are large, multinational companies with sophisticated buying departments, and therefore their buyers are able to exercise countervailing buyer power. Ancon in particular has a concentrated customer base – its top two customers account for [ ] per cent of its sales and half of its sales are accounted for by only [5–15] customers.
94. The parties told the OFT that it is common in the industry for the initial bid price to be negotiated down by the customer by using the other bids as leverage. The OFT also received evidence from the parties showing customers switching suppliers, sometimes even within the one construction project. [ ].
95. Customers corroborated the parties' view as did competitors.
96. However, internal documents submitted by CRH presented a mixed picture of countervailing buyer power. Due diligence on Ancon showed that [ ].
97. The OFT is also mindful that countervailing buyer power exercised by one customer will not protect another customer from price rises.
98. Overall, the evidence indicates that some customers do possess countervailing buyer power although the evidence is not strong enough to persuade the OFT that it is pervasive across the industry. In this case the OFT has not found it necessary to conclude on countervailing buyer power.

### **THIRD PARTY VIEWS**

99. The OFT undertook extensive questioning of third parties in this case, approaching over fifty customers and competitors combined through a written questionnaire or by telephone.
100. All four competitors that responded were concerned by the high market shares the company would have post-merger. However, of the ten

customer responses, the majority were unconcerned, indicating a range of alternative suppliers. Of those that were concerned, one mentioned a loss of business if the merged entity decided not to use third parties distributors (such as builders' merchants). However, the evidence before the OFT indicates that other suppliers in each of the product categories will remain after the merger. Also, the parties have different routes to market with the bulk of CRH's products being supplied directly to construction firms. Therefore, the merger effect in terms of its impact on distributors will be relatively small.

101. Another customer was concerned about the loss of customer choice following the merger. However, as reflected above, the OFT believes that a sufficient number of competitors will remain in all product categories.

## **ASSESSMENT**

102. The parties overlap in the manufacture and supply of 14 individual reinforced and non-reinforced anchoring products for use in the construction industry. Given insufficient evidence to aggregate the products into broader product groups the OFT has taken a cautious approach and assessed the merger at the narrower level of the supply of each product separately.
103. For eight of these 14 products (listed in paragraph 60 above) competition concerns arising from the proposed merger were dismissed on the basis that the parties together hold a small share of supply and/or the increment from the proposed merger is small.
104. For the remaining six products, shares of supply are higher. However, in the supply of bar couplers the parties will become only the third largest supplier following the merger. In brickwork support, windposts, cast-in channels and re-bend reinforcement significant competitors, none of whom have indicated capacity constraints, will continue to provide an effective competitive constraint; in each case this constraint, measured by share of supply, is stronger than the increment associated with the merger. In the supply of masonry restraint channels, for which the parties' share of supply is significantly higher, the increment is notably low and significant competitors remain post-merger to provide sufficient choice for customers.

105. Given the competitive tendering process that characterises industry supply, the share of supply data highlights that significant competitors will remain to bid against the parties after the merger in the supply of the products. Furthermore, bidding data submitted by the parties indicate that they have bid against each other on only a limited number of occasions and therefore have not been particularly close competitors.
106. There is some evidence of recent entry into the industry for most of the six remaining overlapping product groups. Third party competitors have told the OFT that they are not capacity constrained and could increase production in the response to customer demand after the merger. There is also some evidence, although not conclusive, of countervailing buyer power, with customers negotiating significant discounts. Although the evidence suggests that barriers to entry are probably low and that some customers do have countervailing buyer power, the OFT has not found it necessary to conclude on entry or buyer power given the lack of substantive competition concerns.
107. The OFT has obtained no evidence to suggest that the proposed merger would create or strengthen coordinated behaviour in the industry.
108. While concerns were raised by all competitors, few customers raised concerns. In view of the fact that these concerns are either non-merger specific or relate to horizontal or vertical concerns precluded by the OFT's analysis, 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**

109. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.

## ANNEX A A DESCRIPTION OF THE OVERLAPPING PRODUCTS

- A1. **Re-bend reinforcement.** These products are used to link one construction element to another construction element by connecting the reinforcement in one to an adjoining reinforcement in the other (for example, connecting a concrete floor to a column).
- A2. **Bar couplers.** A bar coupler is a system to connect a reinforcement bar of one concrete element to another concrete element which will be put in place at a later stage of the construction process, or to extend the length of an existing reinforcement bar. The bar coupler is set in concrete and can be screwed into another coupler. There is a range of reinforced bar couplers including tapered threaded, parallel threaded and mechanically bolted couplers.
- A3. **Shear dowels.** Shear dowels are used when shear loads need to be transferred across expansion and contraction joints between concrete building elements. Shear load or stress occurs where the stress is parallel or tangential to a face of the material, as opposed to normal stress, which is perpendicular to the face of the material.
- A4. **Balcony connection systems.** These products join external concrete balconies to internal floor slabs. They are used to provide continuity to reinforcement between the balcony and the floor slab without interruption to the insulation. Standard systems include duplex stainless steel shear reinforcement and conventional reinforcing bars to provide tension and compression reinforcement.
- A5. **Punching shears.** A punching shear is a reinforced system of studs and rail designed to bear shear stress. Without a punching shear, shear loads, if sufficient and where additional reinforcement is not provided, would result in the column punching through the slab.
- A6. **Brickwork support systems.** These products fix brickwork cladding to the main structural framework of the building, especially in buildings of three storeys and higher.
- A7. **Lintels.** Lintels are used to support brickwork over window and door openings.

- A8. **Natural stone support.** These products are used to stabilise the stone façade of a building to its structure and perform a similar anchoring function to that of brickwork support or lintel structures.
- A9. **Wall ties.** Wall ties are used to help stabilise walls by providing a mechanism to connect the wall to some stabilising structure such as a windpost.
- A10. **Masonry restraint channels.** These products are used with wall ties to provide the necessary restraint to the outer leaf of masonry and provide a strong connection from the masonry wall to the rest of the building's structure.
- A11. **Windposts.** Windposts are stainless steel posts placed in the cavity between the main structure of the building and the brickwork cladding. They prevent the brickwork from falling in or away from the building. The inner wall is strengthened by windposts to bear the load of the outer wall.
- A12. **Brickwork reinforcement.** Brickwork reinforcement products are placed in horizontal bed joints and are designed to increase the strength of masonry. They resist the stresses that are inherent in loaded masonry panels and thus substantially reduced the risks of cracks developing.
- A13. **Tension rods.** Bracing or structural support is provided by tension rods. They are used particularly for the suspension of filigree structures (such as roof, truss or glazing structures) and bracings.
- A14. **Cast-in channels.** These are rolled steel sections with anchors attached which, when used with bolts, allow for structural connections to concrete. They are cast in to concrete systems when the concrete is wet rather than having to use an alternative product which would need to be drilled in when the concrete is set. Cast-in channels have a broad range of applications such as connecting mechanical services – an escalator or a lift – to a concrete element.