



**BREEDON AGGREGATES LIMITED**

**COMPLETED ACQUISITION OF THE SCOTTISH ASSETS OF  
AGGREGATE INDUSTRIES UK LTD ("TARGET ASSETS")**

**INITIAL SUBMISSION REGARDING REFERRAL DECISION DATED 24 SEPTEMBER 2013**

**1. EXECUTIVE SUMMARY**

- 1.1 Breedon submits that its acquisition of the Target Assets (the "**Present Transaction**") neither results, nor may be expected to result, in a substantial lessening of competition or an anti-competitive outcome on any market in the UK for goods or services. Breedon submits that on each of the markets affected by the acquisition, there remains effective and vibrant competition.
- 1.2 As explained in Breedon's submission to the Competition Commission ("**CC**") of 30 September 2013, Breedon is not considered to be one of the five "Majors" in the Construction Materials industry in Great Britain. Instead, it is a comparatively minor player: the CC has previously identified Breedon as being one of ten medium-tier independent firms<sup>1</sup>. Breedon commenced operations in 2010 and its strategy is to position itself as a real competitor to the Majors throughout Great Britain by growing its business both organically and through earning enhancing acquisitions at the lower, fragmented end of the sector.
- 1.3 The Present Transaction affects the following product areas: aggregates, ready mix concrete ("**RMX**"), asphalt, and contract surfacing<sup>2</sup>.
- 1.4 As regards aggregates, Breedon notes the following high-level points:
- 1.4.1 There is a single market for aggregates, including both: (a) sand and gravel and crushed rock primary aggregates; and (b) recycled/secondary aggregates. As regards primary aggregates, Breedon submits that it would be artificial to seek to segment this market, particularly as there is substantial evidence that these products are used interchangeably depending on locality.
- 1.4.2 As regards recycled/secondary aggregates, it is unrealistic to exclude these from any assessment of the Present Transaction. Both at a UK, Scotland, and local level, recycled/secondary aggregates are prevalent and producers of such materials can and do compete effectively with primary aggregates producers for significant projects. Taking full account of the impact of recycled/secondary aggregates in the relevant markets is particularly important in this transaction because, as is discussed in greater detail below, the majority of Breedon's external sales are made to its general construction and fills customers where such aggregates are fully substitutable with primary aggregates.

---

<sup>1</sup> Competition Commission, Aggregates, cement and ready-mix concrete market investigation, Provisional Findings Report dated 23 May 2013 (the "**MIR Provisional Findings**"), at paragraph 3.64.

<sup>2</sup> Breedon notes that it also acquired from Aggregate Industries some concrete block activities and some assets in the Outer Hebrides. Since it commenced operations in 2010, Breedon has: (a) not been involved in concrete block activities; and (b) had no operations in the Hebrides. As such no overlaps arise in these markets as a result of the Present Transaction.



- 1.4.3 Fascia count, rather than market share, is the more appropriate measure of competition in the aggregates sector. Focussing on market share and ignoring the impact of the significant number of independent competitors which remain within the relevant local markets would be unrealistic: market shares in particular fail to fully capture the extent of competition in the context of markets characterised by excess capacity, product homogeneity and procurement processes involving formal and informal tenders, as is the case with the aggregates industry.
    - 1.4.4 To the extent that a focus on market share is probative of the effects on competition in the areas of overlap, market shares on an external sales basis are more relevant than market shares based on total sales.
    - 1.4.5 In any event, on any measure, Breedon remains subject to significant competitive constraints in all overlap areas.
  - 1.5 As regards RMX, Breedon submits that:
    - 1.5.1 The relevant product market includes RMX supplied from volumetric trucks. While Breedon acknowledges that such suppliers may not compete for all projects in Scotland, they do supply a significant proportion of the market and exert a competitive constraint on fixed-plant operators, such as Breedon, for a large proportion of the available demand.
    - 1.5.2 The relevant geographic market, although local, is significantly wider than that used by the OFT in its assessment. *Inter alia*, analysis of Breedon's delivery distances shows that a radial of up to 20 miles from each site would be a reasonable geographic market.
    - 1.5.3 Regardless of the parties' share of sites in the local overlap areas, there remain a number of independent competitors in each area (with limited exceptions). These competitors have excess capacity and continue to exert a competitive constraint on Breedon post-transaction.
- 1.6 In relation to asphalt, Breedon notes that in each of the relevant markets, Breedon will remain subject to strong competition from the remaining players (each of which has excess capacity).
- 1.7 In respect of contract surfacing, there is no basis to consider that the acquisition could result in a substantial lessening of competition. In particular, the assets acquired are not such as could give rise to a material change in the market, comprising just a few gangs of employees, some low value equipment, and some on-going contracts. In addition, on any reasonable market definition, Breedon is subject to competitive constraint from a large number of competitors including both national players and local operators.
- 1.8 More generally, Breedon considers that the most likely counterfactual would be retention of the Target Assets by Aggregate Industries. Breedon considers it likely that, in such circumstances, the Target Assets would suffer from a lack of investment, leading to a decrease in productivity and, ultimately, closure. As such, the Present Transaction does not result in a substantially less competitive outcome than the relevant counterfactual.



## 2. BACKGROUND ON BREEDON AND THE TARGET BUSINESS

***Brief histories of Breedon and the target business, with chronologies of significant events in the last five years. Include details of:***

- ***their organizations***
- ***merger activities***
- ***the history of any previous market entry and exit in relation to the supply of construction materials***
- ***financial structures and principal activities, including those outside Scotland, if appropriate.***

### Breedon Aggregates Limited ("**Breedon**")

- 2.1 Breedon is a public company listed on the Alternative Investment Market (AIM) of the London Stock Exchange. Breedon's operations are divided between its two wholly-owned subsidiaries, Breedon Aggregates England Limited ("**Breedon England**", which holds the group's operations in England) and Breedon Aggregates Scotland Limited ("**Breedon Scotland**", which holds the group's operations in Scotland). The group is financially integrated, with Breedon producing consolidated financial reports on behalf of the group.
- 2.2 Breedon is the largest independent aggregates business in the UK, with 37 quarries, 22 asphalt plants and 48 RMX plants. The group serves primarily the North, West and East of Scotland, together with the East & West Midlands and East Anglia, North Wales, Greater Manchester and South Yorkshire. The group's Scottish operations employ around 550 people, with their headquarters being located just outside Dundee.
- 2.3 Breedon was first set up in June 2008 as a special purpose vehicle to pursue a "buy-and-build" strategy in the UK (then called Marwyn Materials Limited). It did not commence operations in its current form until September 2010, when it acquired Breedon Holdings Limited (Breedon also adopted the "Breedon" name) which had, in March 2009, acquired out of administration Ennstone plc's aggregates, RMX, asphalt and contracting operations in England and Scotland. Breedon continues to pursue this "buy and build" strategy and plans on continuing to invest in the acquired Target business to improve productivity and to take advantage of major projects that will arise in Scotland in the medium term.
- 2.4 Since the purchase of the Ennstone business, Breedon has made the following acquisitions:
- 2.4.1 On 21 July 2011, Breedon England acquired the assets of C&G Concrete Limited from the Administrator of that company.
- 2.4.2 On 16 January 2012, Breedon England acquired the entire issued share capital of Nottingham Ready Mix Limited.
- 2.4.3 On 16 July 2012, Breedon Scotland acquired the assets of Speyside Sand & Gravel Quarries Limited at Rothes Glen.
- 2.4.4 On 30 April 2013, Breedon England acquired certain quarrying assets located in England from Marshall Mono Limited.



- 2.5 In 2012, Breedon launched its 1stMix business. 1stMix operates a small fleet of 'mini-mixers' carrying small loads of up to four cubic metres of RMX, supplied from five RMX plants in the English Midlands, to provide a local service to local customers. Breedon believes that customers prefer to deal with a local supplier who is able to respond quickly and efficiently to their needs.
- 2.6 Also in 2012, Breedon entered into an unincorporated joint venture with TSL Contractors Limited to launch Mobile Concrete Solutions, which provides a mobile concrete batching service for customers who need it in remote and inaccessible locations.
- 2.7 Breedon is active in the aggregates, asphalt and RMX sectors and provides certain construction related contracting services. Breedon was not active in the concrete-block sector at the time of the Present Transaction<sup>3</sup>.
- 2.8 As the CC has recognised in its market investigation (the "**MIR**"), the five largest heavy building materials producers in Great Britain are: Aggregate Industries, Cemex, Hanson, Hope Construction Materials ("**HCM**") and Lafarge Tarmac (together, the "**Majors**")<sup>4</sup>. All of the Majors have significant RMX operations in Great Britain, and all except HCM have significant aggregates operations in Great Britain<sup>5</sup>. On the CC's figures, the Majors account for a combined 80 per cent share of supply of aggregates and 71 per cent share of supply of RMX<sup>6</sup>. By comparison, Breedon is a relatively minor player, accounting for (on the CC's figures) a share of supply of three per cent of aggregates and two per cent of RMX<sup>7</sup>. The CC has identified Breedon as being one of ten medium-tier independent firms<sup>8</sup>.

#### Target

- 2.9 Aggregate Industries UK Limited ("**Aggregate Industries**") is a "*major heavy building materials*" producer in Great Britain<sup>9</sup>. Its ultimate parent company is Holcim Limited ("**Holcim**"), one of the world's largest suppliers of cement and aggregates. Aggregate Industries is the main UK holding company for all of Holcim Group's operations in Great Britain.
- 2.10 The Target Assets are made up of Aggregate Industries' operations in northern Scotland (the Hebrides, central Highlands and Grampian/Tayside). The operations include 11 quarries (of which six are active), four active asphalt plants, two contract surfacing centres (consisting of three work gangs, one at Inverness and two in Aberdeen), eight concrete plants (of which seven were active), closed/dormant units, and two concrete block factories. In 2012, the turnover generated by the Target assets was £[~~£~~]. A map of the

---

<sup>3</sup> For completeness, Breedon notes that between 2008 and 2009 (i.e. prior to Breedon's acquisition of the Breedon Holdings business), the plants of Westhill, Cupar and Cunmont had block activities. Those concrete block plants were either sold or closed prior to Breedon's acquisition of the business in 2010.

<sup>4</sup> MIR Provisional Findings, at paragraph 17.

<sup>5</sup> MIR Provisional Findings, at paragraph 19. Breedon notes that the MIR did not consider the market for asphalt but in any event, all of the majors are active in asphalt production.

<sup>6</sup> MIR Provisional Findings, at paragraph 3.1.

<sup>7</sup> MIR Provisional Findings, at table 3.13. For completeness, the Majors also account for a combined 99 per cent share of supply of cement, in which Breedon is not active at all – MIR Provisional Findings, at paragraph 3.1.

<sup>8</sup> MIR Provisional Findings, at paragraph 3.64.

<sup>9</sup> MIR Provisional Findings, at paragraph 3.4.



Target's active sites is attached at Annex A, and a more detailed list of the assets acquired is set out at Annex B.

- 2.11 These assets have been acquired on a stand-alone basis, without the underlying infrastructure or support services to enable them to operate as going concerns independently of Breedon. As the CC is aware, the infrastructure and the support services required by these assets is currently being provided by Breedon which will ensure that the collection of assets will be able to continue to operate, in accordance with the interim undertakings given by Breedon to the OFT and adopted by the CC. For completeness, Breedon notes that the Target Assets were sold absent, in particular:
- 2.11.1 senior management;
  - 2.11.2 IT<sup>10</sup>, accounting or administrative staff;
  - 2.11.3 human resources support (including payroll and benefits);
  - 2.11.4 financial support;
  - 2.11.5 health, safety and environmental management support;
  - 2.11.6 operational support, including technical services, maintenance and transport and distribution management;
  - 2.11.7 raw materials procurement facilities;
  - 2.11.8 insurance and risk management support;
  - 2.11.9 estates and planning support;
  - 2.11.10 contract surfacing management and administration, including surveyors, estimators and commercial staff; and
  - 2.11.11 branding (with the exception of one concrete-blocks brand related to the Kemnay facility).
- 2.12 Some very limited general management support has transferred with the Target Assets, but Breedon notes that, prior to the transaction, such functions were performed centrally by Aggregate Industries from either England or its central belt operations in Scotland. As such, the support that has been transferred is limited.
- 2.13 Furthermore, Breedon notes that the Target had no financial means independent of its parent company: it had no independent bank account and no working capital facilities. The only credible way for the Target Assets to continue to operate pending the outcome of the CC's review has been to integrate them with the Breedon systems, to the extent permitted by the undertakings given by Breedon to the OFT and adopted by the CC.
- 2.14 Finally, it should be noted that Breedon is subject to pre-existing legal obligations with its lenders, led by Barclays Bank, which [redacted].

---

<sup>10</sup> Breedon notes that the Target's facilities at Kemnay (producing concrete blocks) did, exceptionally, receive temporary IT support for three months following completion pursuant to a contract with the Holcim Group, because Breedon was not previously active in the concrete-block sector at the time of the acquisition.



Market entry/exit

- 2.15 Breedon entered the Construction Materials sector in 2010 when it acquired Breedon Holdings Limited which had, in March 2009, acquired out of administration Ennstone plc's aggregates, RMX, asphalt and contracting operations in England and Scotland.
- 2.16 The history of Aggregate Industries dates back to Ellis & Everard which listed on the London Stock Exchange in 1988. In 1991 the company merged with Evered plc to form Evered Bardon. Aggregate Industries entered the Scottish market following the merger with Everd plc which had previously acquired John Fyfe, a medium-sized producer in Scotland. Several subsequent acquisitions were made.
- 2.17 In 1997, Evered Bardon merged with CAMAS plc to form Aggregate Industries. Aggregate Industries was acquired by Holcim in 2005. In 2006 Aggregate Industries acquired Foster Yeoman, a major producer of aggregates with two large quarries – the coastal super-quarry at Glensanda and another in Somerset.
- 2.18 Generally, Breedon notes that there were historically nine listed "big name" UK building materials companies. All have ceased to be independent, and minerals markets in the UK are now dominated by global cement companies.
- 2.19 Outside of the Majors, Construction Materials markets are highly fragmented, and Breedon estimates there to be over 200 independent operators across all segments of the construction industry (i.e. including aggregates, RMX and asphalt). As may be seen from Breedon's acquisition history, businesses are often under financial pressure and may suffer insolvency, and there is accordingly a certain amount of market entry and exit on this basis.
- 2.20 Breedon is aware of several examples of significant new entry and expansion since 2010. As shown in the table below, new entry/expansion has included both larger, established operators, as well as smaller operators.

Examples of market entry since 2010

| Date | Name   | Site/Activity  | Type        |
|------|--|--|-------------|
| 2010 | Leiths   | New Asphalt Plant at Parkhill                                      | Expansion   |
| 2010 | Grampian Construction  | New RMX plant at Rothiemay   | New entrant |
| 2010 | Geddes   | Opened new Balado quarry near Kinross, Fife                        | New entrant |
| 2010 | Robert Purvis  | Langside Quarry Kennoway - started recycling operation             | New entrant |
| 2010 | Tayside Contracts  | New recycling centres in several sites in Perth, Dundee & Arbroath | New entrant |
| 2011 | James Jamieson   | Purchased Ardlethen Quarry from Les Taylor                         | New entrant |
| 2011 | James Jamieson   | Started recycling operation at Ardlethen                           | New entrant |
| 2011 | Harbro Foodstuffs (trading as Savoch Quarry and Recycling Limited) | Purchased Savoch Quarry, Peterhead from Les Taylor                 | New entrant |
| 2011 | Miller Plant   | Purchased North Mains quarry from Les Taylor                       | Expansion   |



| Date | Name                       | Site/Activity  | Type        |
|------|----------------------------|--|-------------|
| 2011 | Miller Plant               | Purchased Drumlithie Quarry  | New entrant |
| 2011 | Allan Munro Construction   | Took over Broomhill Quarry, Dalnain from HQC                           | New entrant |
| 2011 | UB Civils                  | Took over Achnasheen and Gollan Field Quarries from HQC                | New entrant |
| 2011 | Skene                      | Leslie Quarry, Added a new rock reserve to existing sand & gravel site | Expansion   |
| 2011 | St Michaels Tippers        | St Michaels - New recycling centre                                     | New entrant |
| 2011 | Geddes                     | New Hard Rock Quarry at Wester Bleaton near Kirkmichael                | New entrant |
| 2012 | James Jamieson             | Opened new quarry at Balmedie  | Expansion   |
| 2012 | Leiths Quarries            | New concrete plant at Mid Lairgs                                       | Expansion   |
| 2012 | Collier Quarry & Recycling | Opened new quarry at Goat Hill, Fife                                   | New entrant |
| 2012 | Norman Jamieson            | Carnoustie - Recycling & Washing facility with full product range      | New entrant |
| 2013 | Gavin Tennant              | Purchased Grampian Construction Volumetrics                            | Expansion   |
| 2013 | Leiths Quarries            | Planning Application for Asphalt at Mid Lairgs                         | Expansion   |
| 2013 | Leiths Quarries            | New concrete plant at Park Quarry, Dufftown                            | Expansion   |
| 2013 | Alan Ross                  | New business at Wester Ury Sand & Gravel                               | New entrant |
| 2013 | Billy Miller               | Acquired mothballed quarry at Clarky Hill, Burghead                    | New entrant |

2.21 Breedon is also aware of a small number of market exits in this period, as set out in the table below.

Examples of market exit since 2010

| Date | Name                          | Site/Activity   | Reason for exit                     |
|------|-------------------------------|---|-------------------------------------|
| 2011 | Les Taylor                    | Operated four quarries in North East Scotland               | Entered administration              |
| 2011 | Les Taylor                    | Haddo Quarry at Methlick (mothballed – landlord dispute)    | Entered administration              |
| 2011 | Highland Quality Construction | Operated three quarries in North Scotland                   | Entered administration              |
| 2012 | Grant Construction            | Removed from Kelty Open cast mine after dispute with owners | Consequence of a commercial dispute |
| 2013 | Grampian Construction         | Contractor/builder with concrete plant                      | Entered administration              |





3. **INFORMATION ABOUT THE TRANSACTION**

*(See Part 3 of Merger Assessment Guidelines, CC2 (Revised).)*

***A statement of the circumstances leading up to the acquisition, together with the history of the previous relationship between the companies (if any) including relevant legal or financial issues. This should include details of the negotiations with AI and the timetable of events leading up to the acquisition.***

***A statement explaining the rationale for undertaking this acquisition, including the benefits and financial synergies expected to be gained from it.***

Circumstances leading up to the acquisition, negotiations and the acquisition agreement

3.1 [REDACTED]<sup>11</sup>.

3.2 [REDACTED]

3.3 As a result of the Sale and Purchase Agreement executed on 10 April 2013 between Aggregate Industries, Breedon and Breedon Scotland, Breedon Scotland acquired control over the Target assets.

3.4 An RNS announcement was made by Breedon when conditional contracts were exchanged on 10 April 2013, at the same time that Breedon announced a share placing to fund the acquisition. The acquisition and share placing were conditional upon, amongst other things, shareholder approval for the placing at an Extraordinary General Meeting held on 26 April 2013.

3.5 [REDACTED]<sup>12 13 14</sup>

Rationale for the transaction

3.6 The acquisition fits Breedon's strategy of growing its business both organically and through earnings enhancing acquisitions at the fragmented, smaller end of the heavyside building materials industry, and will assist Breedon in challenging the "Majors" in Great Britain. [REDACTED] The acquisition expands the geography and product range of Breedon and the acquired assets should benefit from Breedon's service-oriented and customer relationship driven approach. In this context Breedon notes that the CC has previously considered Breedon to be a suitable potential purchaser of Midland Quarry Products in the context of the Anglo/Lafarge joint venture. It also notes that it was one of the final two parties involved in the sale process that created Hope Construction Materials and was likely to qualify as a suitable potential purchaser for those assets also.

3.7 The assets being acquired were remote to Aggregate Industries' other UK operations and, in Breedon's view, were not considered to be a priority for capital expenditure by Holcim. As such, and as a reflection of the tough economic conditions and reduced construction

---

<sup>11</sup> Prior to these discussions and other than trading in the ordinary course, there was no pre-existing relationship between Aggregate Industries and Breedon.

<sup>12</sup> [REDACTED]

<sup>13</sup> [REDACTED]

<sup>14</sup> [REDACTED]





activity, the assets had not enjoyed any investment in recent years: a number of sites had been closed or mothballed<sup>15</sup>. [REDACTED]

- 3.8 Breedon has previously provided details of the financial analysis used to assess the acquisition<sup>16</sup>. [REDACTED]

---

<sup>15</sup> The mothballed/closed sites include: Ardchronie (aggregates), Edzell (RMX), Perth (RMX), and Fort William (RMX). Following the acquisition, Breedon has re-opened Ardchronie (aggregates) and Perth (RMX).

<sup>16</sup> Please see the external investor presentation relating to the Present Transaction and the financial analysis of the acquisition and the equity fundraising, both of which were provided to the OFT on 17 May 2013. These are the principal documents that explain the economic rationale of the transaction.



4. THE RELEVANT MARKETS

*(See Part 5.2 of Merger Assessment Guidelines, CC2 (Revised).)*

***An explanation of what you consider to be the economic markets for this inquiry—both in terms of (a) the product and (b) the geographic market.***

***Breedon's views on competition within the product and geographic markets identified in the terms of reference, and any other market definition it considers relevant. This should include comments as appropriate on Breedon's competitors, customers and suppliers in relation to the relevant markets, on the level of prices and variety and quality of products in the relevant markets, and on any capital structure and financing issues.***

***Please summarize Breedon's current strategy in relation to the supply of construction materials to the extent that it is not explained in the latest versions of Breedon's strategy documents submitted in response to the CC's initial factual information request (see [Annex C](#)).***

- 4.1 The markets in which the Target Assets are active are: (a) aggregates; (b) RMX; (c) asphalt; (d) contract surfacing; and (e) concrete blocks. Breedon notes that the OFT, in its reference decision of 24 September 2013 (the "**Reference Decision**"), did not identify any realistic prospect of a substantial lessening of competition in contract surfacing. Moreover, as described above, Breedon was not active in the production of concrete blocks in Scotland pre-transaction,<sup>17</sup> and there is therefore no overlap between the parties in this market.

**A. AGGREGATES**

Product market

- 4.2 The aggregates market consists of crushed rock, sand and gravel, as well as secondary<sup>18</sup> and recycled<sup>19</sup> aggregates<sup>20</sup>. Breedon agrees with the approach adopted by the CC as set out in its MIR Provisional Findings to the effect that the aggregates market is one market including all types of aggregates: primary and recycled/secondary<sup>21</sup>.

Primary aggregates: Crushed rock and sand and gravel

- 4.3 The use of crushed rock and sand and gravel is largely influenced by geology and local availability and, therefore, Breedon submits that their end use is interchangeable and that these types of aggregates belong to the same product market.

---

<sup>17</sup> See footnote 3 above.

<sup>18</sup> Secondary aggregates are typically by-products of other processes, such as china clay production, colliery processing or blast furnace activities.

<sup>19</sup> Recycled aggregates are typically waste products generated in, for example, demolition of buildings, road planing, etc.

<sup>20</sup> For completeness, Breedon understands that the OFT and the CC have previously noted that specialist aggregates such as rail ballast and high-purity limestone form separate markets. Breedon confirms that in the areas of overlap, with the exception of rail ballast at Breedon's Balmullo quarry in Fife, neither Breedon nor the Target sites produce rail ballast, High PSV stone or FGD materials.

<sup>21</sup> MIR Provisional Findings report, at paragraphs 5.24 and 6.1.



- 4.4 In its Reference Decision, the OFT noted that it did not receive any evidence to the contrary and, as such, and in line with the CC's findings in Anglo/Lafarge, the OFT did not consider it appropriate to segment the market on this basis. In this respect, Breedon agrees with the OFT's and CC's various findings that there is a single aggregates market including both crushed rock and sand and gravel.

Recycled/secondary aggregates

- 4.5 The CC's working paper on market definition for aggregates, cement and RMX indicated that recycled/secondary aggregates have taken an increasing share of the UK aggregates market, reaching approximately 29% in 2011<sup>22</sup>. Importantly, this increase in the importance of recycled/secondary aggregates has occurred despite the significant drop in the total market size that resulted from the recessions experienced post-2007, thus suggesting that significant volumes of recycled/secondary aggregates have been used in place of primary aggregates. Breedon notes that part of the reason for the increased use of recycled/secondary aggregates is the price advantages which arise as a result of recycled/secondary aggregates not attracting the aggregates levy of £2/tonne (a significant advantage in light of the fact that the average price (including the levy) for primary aggregates is around £10/tonne). This makes recycled/secondary aggregates very competitive with quarried materials, particularly in the general construction and fills sector which accounts for the vast majority of Breedon's external sales of aggregates.
- 4.6 Breedon notes that the Scottish Environmental Protection Agency ("**SEPA**") has estimated that in 2009, 20% of construction aggregates in Scotland were accounted for by recycled aggregates<sup>23</sup>. Breedon considers that this percentage has increased since that time and further notes that there has been a policy drive to promote the use of recycled aggregates in Scotland which has culminated in the development of an accreditation scheme launched in August 2012<sup>24</sup>. Breedon's conservative estimate is that, currently, approximately 25% of construction aggregates in Scotland are made up of recycled or secondary aggregates.
- 4.7 Breedon notes that in previous cases, the OFT has suggested that a single market including both primary and secondary aggregates is appropriate. For example, in MQP/Griff/Hanson, the OFT noted that "*[a]lthough aggregates can be sorted and graded differently, the OFT has previously considered there to be a single relevant market for aggregates*"<sup>25</sup>. This approach was also adopted in the subsequent decision of Aggregate Industries/Foster Yeoman<sup>26</sup>, where the OFT again employed a product scope for all aggregates, incorporating both primary aggregates (gravel, crushed rock and sand) and recycled/secondary aggregates.

---

<sup>22</sup> Competition Commission, *Aggregates, cement and ready-mix concrete market investigation – Working paper on market definition for aggregates, cement and RMX*, dated 1 November 2012 ("**CC Market Definition Working Paper**"), at Figure 1.

<sup>23</sup> Available at: [www.sepa.org.uk/waste/waste\\_regulation/aggregates.aspx](http://www.sepa.org.uk/waste/waste_regulation/aggregates.aspx). SEPA states: "*In Scotland construction aggregate demand is around some 29 million tonnes of which in the region of 20% is met with recycled aggregates*".

<sup>24</sup> See WRAP article "*New directory to boost confidence in recycled aggregate industry*", published 24 August 2012, available at <http://www.wrap.org.uk/content/new-directory-boost-confidence-recycled-aggregate-industry>.

<sup>25</sup> ME/1274/04 *Anticipated Acquisition of Midland Quarry Products Limited of the Griff Quarry currently owned by Hanson Quarry Products Europe Limited*, OFT decision dated 27 September 2004 ("**MQP/Griff/Hanson**"), at paragraph 6.

<sup>26</sup> COMP/M-4298, *Completed acquisition by Aggregate Industries Limited of Foster Yeoman Limited*, OFT decision dated 20 November 2006 ("**AI/Foster Yeoman**").



- 4.8 Breedon notes that subsequent decisions (both at the OFT level and the CC level) have paid closer attention to the various end-uses of aggregates, and whether or not recycled/secondary aggregates provide a competitive constraint in relation to all or only some of those end uses. In the OFT's Anglo/Lafarge decision, it noted that the data suggested that recycled/secondary aggregates provided the most significant competitive constraint in the context of lower value structural fill and sub-base applications (used in general construction and fills) rather than 'value-added' applications<sup>27</sup> (i.e. asphalt or RMX production). The CC's Statement of Issues in its on-going market investigation noted a similar pattern, stating that "*recycled or secondary aggregates are likely to be a close substitute to primary aggregates for low-specification construction applications and possibly for asphalt production, but they are unlikely to be a close substitute for RMX and concrete block production*"<sup>28</sup>. Breedon advanced similar views to the CC during the course of that investigation, stating that for lower specification applications (e.g. sub-base and fill applications), recycled/secondary aggregates were fully substitutable with primary aggregates<sup>29</sup>. Breedon further stated that "*recycled aggregates would continue to be used for lower-grade products for the foreseeable future*"<sup>30</sup>. In that regard, it is worth noting that the general construction and fills sector accounts for a substantial part (around 50%) of the total aggregates usage in Great Britain. In its MIR Provisional Findings<sup>31</sup>, the CC found that there was "*significant scope for substitution between recycled and secondary aggregates and primary aggregates for about half of total aggregate sales and limited substitution for the remainder*".
- 4.9 The CC identified the main factors affecting the extent of substitution as being the intended application, and the availability of recycled aggregates. In particular, the CC referred to data indicating that recycled/secondary aggregates accounted for between 5% and 15% of aggregates used for the production of RMX and concrete products, 10% to 20% of aggregates used in the production of asphalt, and 40 to 50% of aggregates used in general construction and fills<sup>32</sup>. The CC further considered that recycled/secondary aggregates were substitutes for primary aggregates in uses accounting for approximately 50% of all aggregates used, and in addition to which there was "limited" scope for substitution in respect of a further 30% and "some scope for substitution" in respect of a further 11%<sup>33</sup>. Breedon considers that this data reflects the homogenous nature of aggregates, particularly when used for construction purposes, such that any variation between areas is likely to be explained by the availability, rather than substitutability, of recycled/secondary aggregates. To the extent that differences in applications may impact on substitutability, these are less likely to be relevant in this case due to the nature of Breedon's external customer base. As regards the availability of recycled/secondary aggregates, as Breedon has previously submitted, the relevant areas of overlap between Breedon and the Target are near urban areas where there will be more demolition activity, and therefore greater,

---

<sup>27</sup> ME/5007/11, *Proposed joint venture between Anglo American PLC and Lafarge S.A.*, decision of the OFT dated 2 November 2011 ("**Anglo/Lafarge (OFT)**"), at paragraphs 58-64.

<sup>28</sup> Competition Commission, *Aggregates, cement and ready-mix concrete market investigation – Updated Statement of Issues* dated 26 November 2012, at page 4 ("**Updated Statement of Issues**").

<sup>29</sup> Summary of hearing with Breedon held on 10 October 2011 at 7 and summary of hearing held on 26 September 2012, at 25.

<sup>30</sup> *Ibid.*

<sup>31</sup> MIR Provisional Findings, at paragraph 5.23.

<sup>32</sup> See MIR Provisional Findings, at paragraph 5.15, and Appendix 5.1, Tables 7 to 10.

<sup>33</sup> MIR Provisional Findings, at paragraph 5.23 and table 5.1.



more reliable, production of recycled aggregates than in less densely populated/more rural areas. Further details on this are provided below.

- 4.10 Ultimately, the CC considered it appropriate in the MIR to define a relevant market including crushed rock, sand and gravel, and recycled/secondary aggregates<sup>34</sup>. Breedon submits that there is no reason to depart from this analysis in this case. In its MIR Provisional Findings, the CC did acknowledge that this market definition differed from that adopted in its earlier decision in *Anglo/Lafarge*<sup>35</sup>, where the CC concluded that while recycled/secondary aggregates did not form part of a single overall market with primary aggregates: it noted that where available in local markets, it was relevant to consider the possible constraint arising from recycled/secondary aggregates. The CC accounted for this difference on the basis that its market study concerned competition in the sector as a whole, as opposed to the conditions of competition in the local overlap areas.
- 4.11 Breedon considers that the conditions of competition in the local overlap areas concerned in the Present Transaction warrant a wider market definition that includes both primary aggregates and recycled/secondary aggregates. Breedon notes that the survey commissioned by the CC in *Anglo/Lafarge* found that the primary reason given by aggregates customers who said they could not switch, or who said they could only switch one-quarter or less of purchases of primary aggregates to purchases of recycled/secondary aggregates, was the lack of availability of the product<sup>36</sup>. As set out below, these concerns do not arise in the local overlap areas relevant to the Present Transaction given the prevalence of recycled/secondary aggregates suppliers in the key areas of overlap (Aberdeenshire and Tayside/Fife), and in particular since the vast majority of Breedon's external sales are accounted for by the general construction and fills sector where recycled demolition materials constitute a significant source of aggregates supply.
- 4.12 In its submission of 19 August 2013, Breedon provided the OFT with examples of recycled operations that compete fiercely with Breedon in the relevant overlap areas. Additionally, Breedon notes that several of Breedon's competitors for primary aggregates are also active in producing recycled aggregates<sup>37</sup>. [REDACTED]
- 4.13 In its MIR Provisional Findings Report, the CC considered that "*the extent of substitutability of recycled and secondary aggregates for primary aggregates varies significantly by application. Consideration of the different end-uses for aggregates suggests that while recycled and secondary aggregates are an imperfect substitute for primary aggregates (in that they could not entirely replace primary aggregates in all applications) they are nonetheless an effective substitute for a substantial part of the market (in particular for low-specification direct construction uses, where recycled and secondary aggregates account for almost a half of all aggregates used)*"<sup>38</sup>.
- 4.14 Breedon agrees that recycled/secondary aggregates are more likely to be used in respect of general construction and fills applications. However, in practice, a large proportion of

---

<sup>34</sup> MIR Provisional Findings, at paragraph 5.24.

<sup>35</sup> Competition Commission, *Anglo American PLC and Lafarge S.A. – A report on the anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.*, dated 1 May 2012 ("**Anglo/Lafarge (CC)**").

<sup>36</sup> *Anglo/Lafarge (CC)*, *Appendix G – Supporting material for product market definition*, at paragraph 52.

<sup>37</sup> See, for example the website for Leiths at <http://www.leiths-group.co.uk/quarry-concrete-products/recycled-materials/>.

<sup>38</sup> MIR Provisional Findings, at paragraph 5.22.



aggregates users for which recycled/secondary aggregates are less substitutable (i.e. RMX, and asphalt producers) are vertically integrated with primary aggregates production<sup>39</sup>. Accordingly, when assessing the substitutability of recycled/secondary aggregates, account should be taken of the fact that the proportion of the contestable market for which recycled/secondary aggregates are viable substitutes is greater than the CC's figures alone would suggest. This is particularly relevant in the context of this transaction because, [X].

#### Geographic market

- 4.15 Previous cases have consistently assessed aggregates mergers on the basis of a 30 mile radius around the target company locations. For instance in *Anglo/Lafarge (OFT)*<sup>40</sup> and, more recently in *Northstone/Catherwood*<sup>41</sup> the OFT considered that it is economical to transport aggregates around 30 miles<sup>42</sup>.
- 4.16 Breedon believes this to be a reasonable basis for analysis of the geographic market (subject to certain exceptions that can occur due to specific local market conditions - for example, if a quarry is remote and a long way from demand or from any centre of population or if a quarry is rail, river or sea linked or has very special quality or colour properties that mean there is demand for that product from a much wider geography. With the exception of decorative aggregates, for which Breedon considers the market to be at least regional, none of these factors apply to any of the parties' sites in the areas of overlap identified by the OFT).
- 4.17 Breedon notes that in its Reference Decision the OFT assessed a geographic market of [X] radial miles centred on each site, this being the weighted average distance over which 80% of supplies were made from Breedon's existing quarries in overlap areas in 2011. Breedon considers that this approach takes an unduly narrow view of aggregates markets, and submits that the CC should adopt a geographic market of at least 30 miles around each site to more accurately capture the competitive constraints faced by Breedon.
- 4.18 In particular, to the extent that the quarries are located close to sources of demand, this will drive delivery distances downwards. This does not mean, however, that the merging parties' sites are not constrained by competitors based further from these sources of demand which can and do travel to these sources of demand to compete. Nor does it mean that it is not economically viable for the merging parties' deliveries to compete – and be subject to competitive constraints – over a wider area<sup>43</sup>.

---

<sup>39</sup> Breedon notes that concrete block customers could consider recycled/secondary aggregates to be non-substitutable for primary aggregates.

<sup>40</sup> *Anglo/Lafarge (OFT)*, at paragraph 78.

<sup>41</sup> ME/5923/13 *Anticipated acquisition by Northstone (NI) Limited of RMC Catherwood Limited*, OFT decision dated 3 April 2013 ("**Northstone/Catherwood**"). See for example paragraph 23: "*The OFT therefore considers a 30-mile radius to be a reasonable catchment area and, for the purpose of this assessment, it considers the impact of the Transaction on the supply of primary aggregates within a 30-mile catchment area*".

<sup>42</sup> COMP-M/4298, *Complete acquisition by Aggregate Industries Limited of Foster Yeoman Limited*, OFT decision dated 20 November 2006, at 17; ME/1274/04, *Anticipated acquisition by Midland Quarry Products Limited of the Griff Quarry currently owned by Hanson Quarry Products Europe Limited*, OFT decision dated 27 September 2004, at 8; ME/5007/11, *Proposed joint venture between Anglo American PLC and Lafarge S.A.*, OFT decision dated 2 November 2011, at 79.

<sup>43</sup> Additionally, important sources of demand for many of the relevant quarries are populations close to the sea. As such, there is no reason (or scope) for quarries to deliver materials further away.





4.19 Breedon has identified a number of recent examples<sup>44</sup> of jobs that it has lost in the Aberdeen area to a competitor from a quarry that is further from the job site than the Breedon quarry:

[REDACTED]

4.20 [REDACTED]

4.21 [REDACTED] This suggests that suppliers are willing to travel further distances (and not only to the main centres of demand) and make lower margins on sales to customers located further away to secure volume.

4.22 Breedon considers that the use of an 80% catchment area is in any event arbitrary in that it does not reflect any meaningful measure of competition. Breedon notes, for example, that extending the analysis to the 90<sup>th</sup> percentile would produce a catchment area of approximately [REDACTED] miles and that, necessarily, yet another 10% of deliveries are made at distances beyond this. This clearly demonstrates that the use of the 80% catchment area does not represent a realistic view of competition in this market.

*Delivery by ship*

4.23 For completeness, Breedon is aware of Norwegian quarries (Yeoman Halsvik, a company owned by Aggregate Industries) supplying into the East Coast of Scotland in the past but does not have any specific details as to the volumes or value of product concerned or the customers served. Breedon also believes that Aggregate Industries' super-quarry at Glensanda on the West Coast of Scotland could supply into this market if there was a suitable contract. Glensanda is a large coastal quarry which produced 6.4m tonnes in 2011<sup>45</sup> (approximately [REDACTED] times that produced by Breedon's Craigenlow and Target's Tom's Forest sites combined), all exported by ship to the South East of England and continental Europe as far afield as Latvia. It regularly supplies markets in Glasgow and Edinburgh (via Leith docks). Exact tonnages are not available to Breedon, but Breedon estimates that in the region of 100 to 200 thousand tonnes per annum is supplied to these locations.

4.24 Breedon does not have any coastal quarries that lend themselves to exporting significant volumes of aggregates over such distances by ship.

**B. RMX**

4.25 RMX is a mixture of cement and/or cement substitutes (e.g. GGBS), water, and sometimes chemical additives. RMX is typically batched at static plants and then transported to the customer's site using special delivery vehicles that rotate the RMX in drums during delivery to prevent it from setting. Breedon considers the market for RMX to include all grades of RMX and believes there is a degree of substitution that can take place between precast products such as bridge decks, stairs and box culverts where the customer has the choice to cast in place using RMX, or purchase precast products. In addition, approximately 10% of the RMX market is supplied in specialist volumetric trucks that batch the concrete on site and supply the customer in the same way as a conventional mixer. In Breedon's view, there is no difference in RMX produced by volumetric trucks and RMX produced from static

---

<sup>44</sup>

[REDACTED]

<sup>45</sup> Source: BDS.





plants and delivered by mixers. In its Updated Statement of Issues<sup>46</sup>, the CC appears to share this view, noting that while RMX supplied by volumetric trucks may be of inferior quality, there was a degree of substitutability (particularly for smaller jobs). In its MIR Provisional Findings, the CC determined that it should include RMX from volumetric trucks within the product market for RMX, noting the evidence suggested that "*volumetric trucks are a substitute for RMX from fixed plants for relatively small projects [...] though there is some recent evidence that volumetric trucks are also now being used on some larger projects*", and that "*internal documents [...] suggest that volumetric trucks are perceived as a threat by some Majors*"<sup>47</sup>.

- 4.26 Previous case studies have assumed a geographic market comprising a radius of 10 miles from static RMX plants in the UK. This reflects average supply distances but is only a starting point. Breedon believes that the characteristics of RMX markets in the Present Transaction require further examination to understand the competitive dynamics of operators in the market. For example, the 10 mile radius would not be appropriate in heavily built up areas like Greater London or Greater Manchester where it would be unusual for RMX to travel more than a few miles. The relevant market area will also be affected by the density of plants, with RMX being supplied over much greater distances in rural areas where plant densities are low. Further, RMX which is produced at a quarry-based plant in order to save on the transport costs of aggregates will usually be transported much further than that produced at a remote satellite plant located close to the source of demand (and which may have significantly higher aggregate costs reflecting the transport costs associated with bringing in the aggregates to the RMX plant from the quarry). [REDACTED] In Scotland, a number of competitors with single plant operations and their own trucks travel much further than 10 miles, thus confirming that it is economically viable to travel further distances to secure supply.
- 4.27 Breedon believes that in rural markets like northern Scotland, RMX can, and does, travel greater distances than the 10 miles used by the OFT/CC in recent market studies. This is particularly the case for RMX plants that are located at quarries. In such cases, the RMX may travel 15 miles or more to deliver into a source of demand.
- 4.28 Breedon notes that there was analysis during the OFT's investigation of the catchment area produced by looking at 80% of RMX deliveries. As stated above Breedon notes this is not an appropriate way to ascertain the geographic market, however for completeness, this analysis is provided below. The table below shows the average distance in road miles travelled per load for Breedon's RMX deliveries in Scotland in 2010 and 2011 [REDACTED]. Adopting the approach previously utilised by the OFT and CC, Breedon has set out, for plants in Scotland, the catchment area defined by the shortest distance over which 80% of the volumes are delivered:
- [REDACTED]
- 4.29 [REDACTED]
- 4.30 By way of example, Breedon has reviewed data for RMX deliveries from [REDACTED]. Based on the data available [REDACTED], an analysis of the road distance to supply these quoted jobs shows a volume weighted average of [REDACTED]miles. Similarly, the OFT estimated that the weighted

---

<sup>46</sup> Updated Statement of Issues, at page 5.

<sup>47</sup> MIR Provisional Findings report, at 5.49 to 5.50.



average 80% catchment area for RMX quarry-based sites was [X]miles in 2010 and [X]miles in 2011; for RMX sites not based on a quarry, these figures were [X]miles and [X]miles, respectively<sup>48</sup>. Breedon submits that this provides further support to the argument that the market radius should be drawn wider than 10 miles to accurately capture the competitive environment.

### **C. ASPHALT**

- 4.31 Asphalt is used for surfacing of roads, car parks, footpaths, pavements and other surfaces. It is produced by heating and mixing aggregates and a viscous binding agent, usually bitumen. Asphalt competes with RMX products that are produced to supply the same end use, as well as concrete block paving products that are currently favoured in many applications as they have a perceived higher aesthetic value.
- 4.32 Previous cases have used a market of 30 miles radius around the acquired assets as representative of the average supply distances in the UK. Breedon believes this to be a reasonable basis for an analysis of the geographic market, again subject to certain exceptions that can occur due to specific local market conditions (especially in more remote geographic regions).

### **D. CONTRACT SURFACING**

- 4.33 Contract surfacing is the service provided to the end client whereby the service provider procures mainly asphalt, but also RMX or aggregates, and uses these materials to build or surface roads, car parks, footpaths, pavements etc. It is therefore a construction services activity, rather than a Construction Materials supply business.
- 4.34 Breedon refers the CC to section 12 of its submission to the OFT dated 13 June 2013, which describes the market for contract surfacing and the parties' activities in detail.
- 4.35 Breedon notes that the OFT considered the market for contract surfacing but did not identify any competition concerns arising from the transaction. Breedon notes in particular that the Target Assets in this market are limited to a small number of workers together with some low-cost equipment. Competition in this sector is strong, reflecting the broader geographic scope of the market and strong incentives for competitors to use surfacing activities as a route to market for road surfacing materials.

### **E. CONCRETE BLOCKS**

- 4.36 The market for concrete blocks is considered to be national in scope, with both dense aggregate blocks and high quality architectural facing blocks being relatively easy to deliver across the country. Barriers to entry for dense aggregates blocks are low whilst they are high for high quality facing blocks.

---

<sup>48</sup> See the Reference Decision, at 55.



4.37 Breedon was not active in this sector before the Present Transaction<sup>49</sup> and, as such, it does not give rise to a substantial lessening of competition.

**F. STRATEGY**

4.38 Breedon's strategy is to develop and grow its business through a combination of acquisitions and greenfield investments. Following a period of consolidation in the industry, the Majors have market shares of around 70% - 80% in most products. [X]

4.39 [X]

---

<sup>49</sup> See footnote 3.



5. **BARRIERS TO MARKET ENTRY/EXIT**

*(See Part 5.8 of Merger Assessment Guidelines, CC2 (Revised).)*

***A description of all the barriers to entry and the barriers to exit in the provision of construction materials in Scotland. In addressing this issue, please explicitly consider factors such as legal or regulatory barriers, patents or know-how, licences, the importance of economies of scale and/or scope, the minimum efficient scale for a business and access to sources of supply. Please also consider the role of incumbency advantages in the form of information, reputation and cost as a barrier to entry.***

***Breedon's views as to which firms would be likely to enter or expand in response to any worsening of terms (eg increases in price) due to the acquisition.***

***Breedon's views as to whether there will be any sizeable entry into the supply of construction materials in Scotland in the next three years. Similarly, Breedon's views on whether there will be any sizeable exit in the next three years.***

A. **CONSTRUCTION MATERIALS EXCLUDING CONTRACT SURFACING**

Low barriers to entry and expansion

- 5.1 Barriers to expansion in the aggregates market in the relevant areas of Scotland are relatively low given the current state of the construction industry and the excess capacity that exists in current operational units and dormant quarry sites. Unlike the South East of England, there is no shortage of hard rock in Scotland. In Breedon's view, most current competitors, assuming sufficient financial resources, would be capable of increasing output when demand recovers.
- 5.2 Breedon considers that a new entrant could easily enter the aggregates market. Initial set-up costs can be reduced by the use of mobile crushing and screening equipment which is available either on a contract hire or leasing basis. Securing planning consent to open a quarry will take time, possibly one to two years, however it is not uncommon for farmers and merchants to obtain consent to produce aggregates and, as a general observation, the planning process is more straightforward in rural Scotland than in more densely populated areas of the UK such as the South East of England. Additionally, Breedon notes that the time required to obtain consent for a mobile crushing/screening plant is considerably shorter and in the region of six months. Such planning consent is less onerous than that for fixed plant aggregate operations, which means that the barriers to entry are lower.
- 5.3 New entrants can enter the market for RMX and asphalt relatively easily. The cost of a second-hand asphalt plant is approximately [£] and a second-hand RMX plant could be purchased for less than [£]. To the extent not done so already, existing aggregates producers would find it easy to expand into downstream markets, siting the plant on their quarry and using their own aggregates. There are no particular technical difficulties or intellectual property in producing asphalt or RMX, and branding plays no role. Most producers of RMX and asphalt in Scotland have their own aggregates supplies, but elsewhere in the UK there are many examples of independent producers that do not have their own aggregates and where purchase from other suppliers is necessary – therefore vertical integration is not essential.



Capacity for expansion

- 5.4 In addition to new entry, Breedon believes that there is substantial spare capacity among existing operators in all Construction Materials markets. As a result, there exists significant competitive constraint across these markets, as competitors have sufficient capacity to compete for large numbers of contracts and high product volumes.
- 5.5 By way of example, Breedon has spare production capacity at all of its sites. If market conditions permitted, Breedon could increase production quite easily with relatively little investment. Additional production capacity could be brought on stream by working longer hours or, if necessary, introducing an additional shift. [X]
- 5.6 In direct contrast to the actions of Aggregate Industries, who had curtailed investment in the Target assets, competitors in the overlap market areas (Grampian, Tayside and Inverness) such as Leiths, Lovie, Laird, Skene, Geddes and Pat Munro have all continued to invest in their downstream activities in RMX, asphalt and concrete products and Breedon believes they have available capacity to service any future market growth competitively. Breedon notes in particular the comments made by James Jamieson, (the operator of Ardlethen quarry) in the article submitted to the OFT on 27 August 2013 where he stated that: "*[t]here is land available for expansion [at Ardlethen quarry] and we have got planning permission for this... We have also prepared land that can be used as storage or in the future as a concrete plant. This is a realistic proposal*".
- 5.7 Competitors' capacity in aggregates and asphalt is discussed further below<sup>50</sup>.

Aggregates

- 5.8 In the period since 2007 there have been some quarry closures in the Grampian area, notably Les Taylor's quarries at Ardlethen, North Mains, Savocho, and Haddo. However, the North Mains quarry has been taken over by Miller Plant; Ardlethen has been taken over by Jamieson; and Savocho has been taken over by Savocho Quarry and Recycling Limited, and all are now operational again. Breedon notes that the quarries at North Mains and Ardlethen have exercised an increasing and significant competitive constraint on Breedon's operations since reopening. During this period Bruce Plant also opened their quarry operation at Ury. Breedon believes that capacity available in the Aberdeenshire market remains around the level of demand of five years ago, while demand has declined by approximately 34%<sup>51</sup>, resulting in significant spare capacity. Breedon considers that this is likely to be adequate for any general market recovery. Breedon believes that opportunities will exist for competitors to increase installed capacity should market demand support this.
- 5.9 In Tayside, Aggregate Industries opened the Powmyre quarry and Laird opened their Blairgowrie operation in 2008. Similar levels of capacity exist in that market as exhausted quarries have been replaced with new operations. Breedon has calculated that demand in

---

<sup>50</sup> Breedon notes that BDS data is not available on a local basis for RMX. Accordingly, Breedon is unable to comment in detail on competitors' capacity in these markets. Breedon believes, however, that competitors in RMX are likely to have similar levels of spare capacity.

<sup>51</sup> Calculated on the basis of a comparison of 2007 output volumes with 2011 output volumes. Breedon notes that there is likely to be additional spare capacity available, as it is unlikely that all sites were operating at maximum capacity in 2007.



this region fell by approximately 30% between 2007 and 2011<sup>52</sup>, which implies that there is significant capacity available today for competitors to expand their operations.

*Asphalt*

- 5.10 As regards the Grampian overlap areas (as identified by the OFT) there are, post-transaction, two strong competitors in each overlap area (Leith and Aberdeenshire Council), each holding shares of production of [X] on a 30-mile radius and with substantial excess capacity to expand quickly should demand increase. Breedon calculates that demand in this region fell by approximately 33% between 2007 and 2011<sup>53</sup>.
- 5.11 Similarly, in each of the overlap areas identified by the OFT in the Highland area (i.e. centred on Mid Lairgs and Daviot), there will remain two strong competitors (Leith and Pat Munro Alness), each holding shares of production of [X] on a 30-mile radius and with significant spare capacity due to a recent drop in demand of up to 40%<sup>54</sup>. Accordingly, Breedon remains constrained post-merger by effective competitors with substantial spare capacity and any attempt to raise prices would result in a significant loss of business.

**B. CONTRACT SURFACING**

- 5.12 Barriers to entry in contract surfacing are low. The business mainly comprises people, including operatives and support staff such as estimators and quantity surveyors. The equipment is not expensive, and, by way of example, a new paving machine costs [X]. Other equipment such as compressors, tractors and rollers can be hired from most major plant hire companies. There is considerable overlap with civil engineering and groundwork contracts. Some larger civil engineering companies do their own surfacing and there are many smaller contractors.

---

<sup>52</sup> See footnote 51.

<sup>53</sup> See footnote 51.

<sup>54</sup> See footnote 51.



6. THE COUNTERFACTUAL

*(See Part 4.3 of Merger Assessment Guidelines, CC2 (Revised).)*

***A description of what would have happened, in the absence of the merger situation, to the target business and in the market in general.***

- 6.1 Breedon believes that, if the Present Transaction had not taken place, it is most likely that Aggregate Industries would have retained the Target Assets and that it would have continued to operate the assets in keeping with its approach pre-merger, i.e. without making any significant investment. As such, Breedon believes that the assets would have gradually been closed or mothballed.
- 6.2 Breedon believes that in such circumstances, it is likely that Aggregate Industries would regard the Target Assets as non-core assets, and that it would be unwilling to make any significant investment in the assets in the short to medium-term future. [REDACTED]<sup>55</sup>
- 6.3 Over time, therefore, Breedon believes that the quality of equipment and morale of personnel in the Target Assets, and therefore their capacity, ability, and incentive to supply customers, would have deteriorated. Breedon considers it to be a realistic possibility that Aggregate Industries would, in the short to medium-term, have closed or reduced its operations at some or all of the Target Assets, in effect causing it to exit the local markets in which the assets are situated.

Sale to a third party

- 6.4 For completeness, Breedon notes that it is conceivable that Aggregate Industries might have sought to sell the Target Assets to an alternative third party purchaser. Breedon notes that, [REDACTED]. Consequently, Breedon believes that a list of potential buyers of the Target Assets would be limited to either one of the Majors or, potentially, one of the largest medium-tier companies.
- 6.5 Breedon does not consider it likely that one of the Majors would have been interested in purchasing the assets in the current economic and regulatory climate. As to the non-Majors, Breedon does not believe that any of the other medium-tier operators could have financed an acquisition of the whole of the Target Assets. As such, Breedon does not consider this to be the most likely scenario and as such, the relevant counterfactual.
- 6.6 Accordingly, Breedon submits that the Present Transaction does not result in a substantially less competitive outcome than the most likely counterfactual – that is, retention by Aggregate Industries and a gradual weakening of the business over time through lack of investment. As such, there is no substantial lessening of competition on the basis of this counterfactual.

[REDACTED]

6.7 [REDACTED]

6.8 [REDACTED]<sup>56</sup>

---

<sup>55</sup> [REDACTED]  
<sup>56</sup> [REDACTED]





HERBERT  
SMITH  
FREEHILLS

6.9

[<sup>57</sup>].

---

57

[]



7. THE COMPETITIVE EFFECTS OF THE MERGER

(See Parts 4.2 and 5 of Merger Assessment Guidelines, CC2 (Revised).)

A statement setting out the expected consequences of the acquisition on competition, including in particular the effect on customers. You may wish to cover in your answer the expected effects on prices, quality, availability and innovation. The submission should address the issues identified by the OFT on the referral of the merger to the CC.

A. INTRODUCTION

7.1 As set out above, Breedon is a medium-tier operator. Post-transaction, Breedon's Construction Materials business remains small by comparison with the Majors at a GB-wide or Scotland only level. The increment to Breedon's market shares on this basis is also small [%].

7.2 Post transaction, the combined business (including Breedon England) has the following shares of supply on a GB-wide basis<sup>58</sup>:

Post-transaction combined shares in GB 2011

|            | Breedon<br>Aggregates<br>Group<br>(000s) | Target<br>Assets<br>(000s) | Combined<br>Volume<br>(000s) | Combined GB share of<br>supply        |
|------------|--|----------------------------|------------------------------|---------------------------------------|
| Aggregates | [%]                                      | [%]                        | [%]                          | [%] <sup>59</sup> / [%] <sup>60</sup> |
| Asphalt    | [%]                                      | [%]                        | [%]                          | [%]                                   |
| RMX        | [%]                                      | [%]                        | [%]                          | [%]                                   |

7.3 Post transaction, the merged entity in Scotland has the following shares of supply<sup>61</sup>:

Post-transaction combined shares in Scotland 2011

|            | Breedon<br>Aggregates<br>Scotland<br>(000s) | Target<br>Assets<br>(000s) | Combined<br>Volume<br>(000s) | Combined Scotland<br>share of supply  |
|------------|---|----------------------------|------------------------------|---------------------------------------|
| Aggregates | [%]   | [%]                        | [%]                          | [%] <sup>62</sup> / [%] <sup>63</sup> |
| Asphalt    | [%]   | [%]                        | [%]                          | [%]%                                  |
| RMX        | [%]   | [%]                        | [%]                          | [%]%                                  |

7.4 Based on these figures, Breedon submits that it remains a medium-tier operator post-transaction, and in particular, that it remains subject to strong competition at the GB and Scotland levels. The Present Transaction, therefore, has no impact on competition in any product market at these levels.

7.5 [%]<sup>64</sup>

<sup>58</sup> For aggregates, RMX and asphalt, the data is based on BDS Marketing Research figures for 2011.

<sup>59</sup> [%]

<sup>60</sup> [%]

<sup>61</sup> For aggregates, RMX and asphalt, data based on BDS Marketing Research figures for 2011.

<sup>62</sup> [%]

<sup>63</sup> [%]



7.6 [✂]

Local area analysis

7.7 Breedon has analysed the markets around the acquired locations and identified the areas where there is an overlap with existing Breedon operations on the basis of:

7.7.1 for aggregates and asphalt, a 30 mile radius around Target sites;

7.7.2 for RMX, shares of production on a regional basis and site counts based on the alternative delivery radials described below; and

7.7.3 a market for contract surfacing that is at least regional or national in scope.

7.8 Breedon notes that the individual circumstances of the geographic markets should be taken into account. Nonetheless, applying this methodology, Breedon has identified overlaps arising in the following product and geographical areas:

7.8.1 Aggregates: Grampian, Tayside;

7.8.2 Asphalt: Grampian, Highlands;

7.8.3 RMX: Grampian, Tayside, Inverness; and

7.8.4 Contract surfacing: Scotland.

7.9 At Annex A, Breedon has identified on a map the sites that the CC provisionally considers to be relevant to its investigation. [✂]

7.10 In relation to the Target Assets, Breedon notes that:

7.10.1 Breedon and the Target do not overlap in any activity in the Hebrides<sup>65</sup>: pre-transaction, Breedon had no interests in the area;

7.10.2 Breedon and the Target do not overlap in the concrete block sector<sup>66</sup>: pre-transaction, Breedon was not active in this sector; and

7.10.3 in relation to the aggregate activity at the Target quarry at Beaully (Highlands region), Breedon notes that: (a) the OFT did not consider this quarry to fall within an area of overlap; and (b) the OFT did not identify competition issues centred on the Beaully quarry. Breedon agrees with this assessment. However, Breedon notes the CC plans to revisit this region in light of the fact that Breedon has quarries at Meadowside and Morefields (approximately 31 and 39 miles away from Beaully respectively). Breedon has not yet had the opportunity to analyse this potential overlap closely and, as such, the below submissions will focus on the Grampian and Tayside Regions only.

7.11 In addition, the Target Assets include a number of closed or occasional use sites, including: (a) two quarries on the Hebrides which are used intermittently (and where pre-

---

<sup>64</sup> [✂]

<sup>65</sup> Operational Target Assets in this area are Marybank, Drum Reallsger and Garbh Eilean.

<sup>66</sup> Target Assets active in the concrete block sector are Kemnay and Marybank. See also footnote 3, above.



transaction Breedon had no activity); (b) Ardchronie quarry, which had been closed prior to the Present Transaction but which has subsequently been reopened on a campaign basis; (c) Corrennie quarry which, again, is used intermittently with material being processed at Tom's Forest; (d) Kemnay, which is a closed quarry; and (e) the RMX plants at Perth and Edzell, which had been mothballed by Aggregate Industries but of which Perth has been re-opened. With the exception of Perth and Edzell RMX plants, these sites have been included in Breedon's analyses where they fall within overlaps between other sites, but Breedon has not based any separate analysis centred on these sites.<sup>67</sup>

- 7.12 On the basis of 2011 BDS data (as updated by Breedon<sup>68</sup>), the combined market share post-acquisition is above [X] in some local markets, but as set out above, the combined market share in Scotland overall is below [X] and for the whole of GB is below [X] in all products. Additionally, in those areas where, on the basis of this data, the combined market share exceeds [X], then, with limited exceptions in the context of RMX, Breedon will nonetheless face strong competition from effective competitors, both large and small, in each of the local overlap areas.

## B. AGGREGATES

- 7.13 On the basis of the 30 mile radial referred to above, Breedon has identified the following sites that fall within the local overlap areas:

### Grampian Region:

7.13.1 Breedon sites: Craigenlow and Stirlinghill; and

7.13.2 Aggregate Industries sites: Tom's Forest and Corrennie.

### Tayside Region:

7.13.3 Breedon sites: Ethiebeaton, Cunmont, Capo, Clatchard and Balmullo; and

7.13.4 Aggregate Industries sites: Powmyre and Edzell.

- 7.14 Each party's sales data for 2011 has previously been submitted in spreadsheet format at Appendices 3 and 4 of Breedon's submission of 13 June 2013. Updated marketshare data is also attached at Annex C of this paper.

- 7.15 In addition to the above, as discussed at 7.10.3 Breedon acquired a quarry in the Highlands Inverness area (Beauly)<sup>69</sup>, which does not fall within 30 miles of any existing Breedon quarry.

### Fascia count

- 7.16 As a general comment, based on the BDS data (as updated by Breedon) Breedon notes that in each of these overlap areas, Breedon will face significant competition from a number of competitors. Even on the OFT's narrow assessment of the geographic market (i.e. at [X]miles), within each local overlap area there remain *at least* [X] independent

---

<sup>67</sup> Breedon notes that no external sales analysis has been provided for Corrennie quarry.

<sup>68</sup> [X]

<sup>69</sup> As set out above, this quarry sits approximately 31 miles from Breedon's Meadowside quarry, and approximately 39 miles from Breedon's Morefields quarry.



competitors and, in some areas, as many as [redacted]<sup>70</sup>. There is ample evidence available of the effectiveness of these competitors, including Breedon's recent customer loss data set out in Sections 2.28 and 4.3 of Breedon's response to the OFT's Issues Letter, which demonstrates the vibrancy of competition in the sector.

7.17 More importantly, Breedon submits that fascia counts are more relevant than market shares for the purposes of competitive assessment given the characteristics of the aggregates industry (i.e. product homogeneity, excess capacity and tendering processes). Breedon has set out below the fascia counts in each of the overlap areas that were identified at on the basis of the 30 mile radial ("**Overlap Areas**"). These fascia counts have been calculated on a very conservative basis: (a) Breedon adopted the OFT's very narrow [redacted] mile market and excluded recycled/secondary aggregates; and (b) Breedon then took account only of those competitors with at least a [redacted] share of supply. This analysis confirms that there will remain a sufficient number of credible competitors post-merger to ensure competition remains effective:

**Fascia counts within [redacted]-mile radials (primary aggregates only)<sup>71</sup>**

| Centred site | Rival fascia | Fascia change | Rival fascia with at least 5% market share | Fascia change with at least 5% share |
|--------------|--------------|---------------|--|--------------------------------------|
| [redacted]   | [redacted]   | [redacted]    | [redacted]                                 | [redacted]                           |
| [redacted]   | [redacted]   | [redacted]    | [redacted]                                 | [redacted]                           |
| [redacted]   | [redacted]   | [redacted]    | [redacted]                                 | [redacted]                           |
| [redacted]   | [redacted]   | [redacted]*   | [redacted]                                 | [redacted]*                          |
| [redacted]   | [redacted]   | [redacted]    | [redacted]                                 | [redacted]                           |
| [redacted]   | [redacted]   | [redacted]    | [redacted]                                 | [redacted]                           |
| [redacted]   | [redacted]   | [redacted]    | [redacted]                                 | [redacted]                           |
| [redacted]   | [redacted]   | [redacted]    | [redacted]                                 | [redacted]                           |
| [redacted]   | [redacted]   | [redacted]    | [redacted]                                 | [redacted]                           |
| [redacted]   | [redacted]   | [redacted]    | [redacted]                                 | [redacted]                           |

\* [redacted]

Internal/External sales

7.18 Breedon submits that, to the extent that a focus on market share is probative of unilateral effects in the areas of overlap, the effect of the transaction on competition in the aggregates market should be assessed by reference to the market for external or third-party sales, excluding internal use in vertically integrated operations. Moreover, the potential to flex internal and external supply is not relevant for the competition assessment in the supply of aggregates in the Overlap Areas, for the reasons set out below.

<sup>70</sup> This does not take into account the numerous smaller competitors not listed in the BDS data report (or in the BDS data as updated by Breedon) for which output data is not available.

<sup>71</sup> [redacted]



- 7.19 The uses for aggregates may generally<sup>72</sup> be grouped into: (a) production of RMX, asphalt and concrete blocks for which aggregates are an input; and (b) general construction and fills uses.
- 7.20 With respect to the first of these groups, in the areas of current overlap, the vast majority of RMX, asphalt and concrete blocks producers are vertically integrated and self-supply aggregates (as is the case with Breedon and the Target)<sup>73</sup>. Consequently, producers of these products normally do not buy aggregates on the open market: Breedon estimates that as much as [REDACTED] of aggregates for such uses is self-supplied. [REDACTED]<sup>74</sup>.
- 7.21 As such, supplies to producers of RMX, asphalt or concrete blocks are not relevant for the competitive assessment of the Present Transaction. Accordingly, Breedon submits that aggregates producers' shares of total production output are irrelevant to the extent that they include production for self-supply: such supplies do not influence competition in the supply of aggregates.
- 7.22 As set out above, the potential to flex internal and external supply is not relevant for the competition assessment in markets where, as in aggregates markets, the industry is characterised by substantial spare capacity such that selling more externally would not require a reduction in internal sales. In the Present Transaction, the parties' rivals have sufficient spare capacity to supply the external market in the event of an increase in demand or a reduction in output by the merging parties. The existence of substantial spare capacity among rivals is far more informative of their ability to compete for external customers than the degree of internal sales that they make.
- 7.23 Moreover, that total shares can be misleading can be demonstrated with a simple example. Consider a competitor that: (i) only made internal sales; (ii) had a very large internal demand (and hence a large share of local production); and (iii) did not supply the external market at all (for example because it was a deliberate strategy to focus on internal sales). The "total share" based approach would suggest that competitor to be a material constraint due to its large share, yet it would not supply the external market at all. On the other hand, an approach that considered external shares would capture its limited constraint quite clearly.
- 7.24 The more relevant question is, therefore, the impact of the merger on external sales [REDACTED]. By way of example, Breedon has undertaken an analysis of its external customer base at [REDACTED]<sup>75</sup>, as shown in the table below:

---

<sup>72</sup> This excludes specialist applications, in which neither Breedon nor the Target Assets are active, with the exception of rail ballast at Breedon's Balmullo quarry in Fife.

<sup>73</sup> Breedon notes that operators typically self-supply aggregates of a comparatively high specification.

<sup>74</sup> [REDACTED]

<sup>75</sup> [REDACTED]



| Analysis By Customer Type | (Volume tonnes) | Percentage of Total External Sales |
|---------------------------|-----------------|------------------------------------|
| [REDACTED]                | [REDACTED]      | [REDACTED]                         |
| [REDACTED]                | [REDACTED]      | [REDACTED]                         |

7.25 [REDACTED]<sup>76</sup>. Not only is this the sector for which the vast majority of competition for the supply of aggregates takes place, but it is also the sector where, consistent with the MIR Provisional Findings, recycled/secondary aggregates are fully substitutable with primary aggregates. The constraint of recycled/secondary aggregates is therefore particularly relevant to the competitive assessment of this transaction.

7.26 Breedon's and Target's market shares of aggregates overall (including primary and recycled/secondary) based on such external sales are set out in the spreadsheets at Appendix 7 to Breedon's submission of 3 July 2013. [REDACTED]<sup>77 78</sup>.

7.27 A summary of the combined Breedon and Target aggregates market shares calculated: (a) on the basis of a 30 mile radius; and (b) allowing for an estimate of the share of the market of 25% for recycled/secondary products, is set out below<sup>79</sup>:

| Grampian (centred on the named site) | Breedon share (external) | AI share (external) | Est. combined share (external) | Increment  |
|--------------------------------------|--------------------------|---------------------|--------------------------------|------------|
| Tom's Forest (Target)                | [REDACTED]               | [REDACTED]          | [REDACTED]                     | [REDACTED] |
| Craigenlow (Breedon)                 | [REDACTED]               | [REDACTED]          | [REDACTED]                     | [REDACTED] |
| Stirlinghill (Breedon)               | [REDACTED]               | [REDACTED]          | [REDACTED]                     | [REDACTED] |

| Tayside (centred on the named site) | Breedon share (external) | AI share (external) | Est. combined share (external) | Increment  |
|-------------------------------------|--------------------------|---------------------|--------------------------------|------------|
| Powmyre (Target)                    | [REDACTED]               | [REDACTED]          | [REDACTED]                     | [REDACTED] |
| Ethiebeaton (Breedon)               | [REDACTED]               | [REDACTED]          | [REDACTED]                     | [REDACTED] |

76

[REDACTED]

77

[REDACTED].

78

[REDACTED]

79

There have been suggestions that the percentage of the market represented by recycled/secondary aggregates in Scotland is lower than the UK average (on account of there being less demolition activity and greater availability of natural rock). Breedon believes that this approach is wrong (in part because it fails to take account of the impact of the Aggregates Levy), and that the estimate Breedon has generally used in its submissions of approximately 25% of the market overall is reasonable. Breedon notes that a full data capture of recycled aggregates activity is difficult on account of the fact that many suppliers do not belong to recognised associations. Further, it should be noted that relevant areas of overlap between Breedon and Target are near urban areas where there will be more demolition activity than in more rural parts of Scotland.





| <b>Tayside<br/>(centred on<br/>the named<br/>site)</b> | <b>Breedon<br/>share<br/>(external)</b> | <b>AI share<br/>(external)</b> | <b>Est. combined<br/>share<br/>(external)</b> | <b>Increment</b> |
|--|---|--------------------------------|---|------------------|
| Edzell (Target)  | [REDACTED]                              | [REDACTED]                     | [REDACTED]                                    | [REDACTED]       |
| Capo<br>(Breedon)                                      | [REDACTED]                              | [REDACTED]                     | [REDACTED]                                    | [REDACTED]       |
| Cunmont<br>(Breedon)                                   | [REDACTED]                              | [REDACTED]                     | [REDACTED]                                    | [REDACTED]       |
| Clatchard<br>(Breedon)                                 | [REDACTED]                              | [REDACTED]                     | [REDACTED]                                    | [REDACTED]       |
| Balmullo<br>(Breedon)                                  | [REDACTED]                              | [REDACTED]                     | [REDACTED]                                    | [REDACTED]       |

7.28 The methodology used to assess market shares of external sales in the areas of overlap was:

7.28.1 in the case of Breedon and Target, to take actual external sales of aggregates; and

7.28.2 for the other competitors, by calculating the internal aggregates demand (using BDS data and Breedon estimates) for the asphalt and RMX sales of those competitors. (Where competitors have block plants, the aggregates input to those block plants has been estimated<sup>80</sup>.) These internal volumes are then subtracted from the BDS aggregates data to arrive at an external sales volume. [REDACTED]<sup>81</sup>.

7.29 Notwithstanding Breedon's arguments that the CC should focus on external market shares, Breedon has revisited the overall market shares submitted to the OFT which included all sales (i.e. internal and external). [REDACTED]. These tables appear at Annex C, but for ease of reference the updated market shares are set out below:

| <b>Grampian<br/>(centred on<br/>the named<br/>site)</b> | <b>Breedon<br/>share (overall)</b> | <b>Aggregate<br/>Industries<br/>share (overall)</b> | <b>Est. combined<br/>share (overall)</b> | <b>Increment</b> |
|---|------------------------------------|---|--|------------------|
| Tom's Forest<br>(Target)                                | [REDACTED]                         | [REDACTED]  | [REDACTED]                               | [REDACTED]       |
| Corrennie<br>(Target)                                   | [REDACTED]                         | [REDACTED]  | [REDACTED]                               | [REDACTED]       |
| Craigenlow<br>(Breedon)                                 | [REDACTED]                         | [REDACTED]  | [REDACTED]                               | [REDACTED]       |
| Stirlinghill<br>(Breedon)                               | [REDACTED]                         | [REDACTED]  | [REDACTED]                               | [REDACTED]       |

<sup>80</sup> Breedon is not aware of BDS or similar data in respect of blocks producers.

<sup>81</sup> [REDACTED]



| Tayside<br>(centred on<br>the named<br>site) | Breedon<br>share (overall) | AI share<br>(overall) | Est. combined<br>share (overall) | Increment  |
|--|----------------------------|-----------------------|----------------------------------|------------|
| Powmyre<br>(Target)                          | [REDACTED]                 | [REDACTED]            | [REDACTED]                       | [REDACTED] |
| Ethiebeaton<br>(Breedon)                     | [REDACTED]                 | [REDACTED]            | [REDACTED]                       | [REDACTED] |
| Edzell (Target)                              | [REDACTED]                 | [REDACTED]            | [REDACTED]                       | [REDACTED] |
| Capo<br>(Breedon)                            | [REDACTED]                 | [REDACTED]            | [REDACTED]                       | [REDACTED] |
| Cunmont<br>(Breedon)                         | [REDACTED]                 | [REDACTED]            | [REDACTED]                       | [REDACTED] |
| Clatchard<br>(Breedon)                       | [REDACTED]                 | [REDACTED]            | [REDACTED]                       | [REDACTED] |
| Balmullo<br>(Breedon)                        | [REDACTED]                 | [REDACTED]            | [REDACTED]                       | [REDACTED] |

7.30 As can be seen from these tables, in no local overlap area does Breedon's combined market share exceed [REDACTED] when the market is examined on a 30 mile radial and where account is taken of the presence of recycled/secondary aggregates. This is the case even where – an approach that Breedon submits is unrealistic – account is taken of internal as well as external sales. Breedon will discuss the conditions of competition in each region in more detail below.

Grampian

7.31 Breedon refers the CC to the tables at Annex C. As can be seen from these tables, even where internal sales have been included, the combined market shares of the parties in the overlap areas does not exceed [REDACTED]. Furthermore, the merged entity will face competition from as many as [REDACTED] independent competitors.

7.32 When the radial is centred on Tom's Forest quarry site, it is clear that, although there is some overlap with Breedon's operations at Craigenlow and Stirlinghill, there are numerous quarries and numerous competitors in the market including strong competitors such as [REDACTED]<sup>82</sup>. Further, excess capacity is available in the market in the Grampian region as output volumes have declined more than 30% since 2007, and most operators have the ability to increase their output.

7.33 Consequently the merged entity remains effectively constrained post-merger by numerous rivals with excess capacity and, accordingly, the transaction does not give rise to a substantial lessening of competition in the supply of aggregates in the Grampian region. Should there ever be a scarcity of aggregates supply, or the price of aggregates increases in the Aberdeen market then, in Breedon's view, existing suppliers would be able to increase their capacity quickly and easily and there would be the potential for imports to come in by sea either from Glensanda (Aggregate Industries' West Coast<sup>83</sup> super-quarry),

<sup>82</sup> [REDACTED]

<sup>83</sup> Breedon notes that, in contrast with Breedon's West coast sites, Aggregate Industries' quarry at Glensanda, benefits from sea transport links offering cost-efficient shipping for products around



from Norwegian quarries, or in the form of marine dredged aggregates. Breedon notes that Glensanda quoted for supplying aggregates from the West Coast of Scotland to the second Forth Road Bridge contract on the East Coast of Scotland. These are all common routes to market for large international competitors, with cities such as London, Amsterdam, Hamburg and Antwerp being supplied with aggregates by sea.

#### Tayside

- 7.34 Breedon refers the CC to the tables at Annex C. As with the Grampian region, these tables demonstrate that, even where an approach that includes internal sales is adopted, the combined market shares of the parties in the overlap areas do not exceed [X]. Furthermore, the merged entity will face competition from as many as nine independent competitors.
- 7.35 When the radial is centred on each of the relevant sites – namely Breedon Ethiebeaton, Balmullo, Capo, Clatchard and Cunmont, and Target Powmyre and Edzell – it is clear that there a numerous competitors in the market including strong competitors such as [X]. Furthermore, excess capacity is available in the market in the Tayside region as volumes have declined 30% since 2007 and most operators have the capability to increase their output. Further, the potential for imports to come in by sea either from Glensanda or from Norwegian quarries or in the form of marine dredged aggregates constitutes an additional constraint.

#### Conclusion

- 7.36 As set out above, Breedon does not consider that the transaction gives rise to a substantial lessening of competition in relation to the supply of aggregates in any relevant local or regional market in Scotland. It considers that any reasonable definition of the market would include recycled/secondary aggregates and would be assessed by applying a radial of at least 30 miles. Furthermore, any reasonable assessment would focus on external sales only. In Breedon's view, these parameters reflect the local conditions of competition and, on these bases, it is clear that Breedon's post-transaction market share will not be such as to give rise to concerns about unilateral effects. Breedon will remain constrained by a significant number of independent competitors, many of which enjoy substantial market shares [X].

### **C. RMX**

#### Basis of assessment of market shares

- 7.37 Breedon notes that in previous cases, the OFT and CC have assessed the RMX markets on various measures. Breedon notes that every case should be considered on the facts and account taken of the characteristics/specifics of the region in question. Breedon submits that RMX markets in North Scotland are wider than the radials considered by the OFT. In any event, as volume data is not currently available to Breedon at a narrower than

---

Scotland. Breedon's West Coast sites do not have comparable transport links, and in any event do not operate on a sufficient scale to be able to transport products over such distances cost-effectively.



regional<sup>84</sup> level, Breedon has calculated the parties' shares of supply (by volume) on a regional basis, based on BDS data for 2011.

- 7.38 As set out above, Breedon considers that volumetric trucks compete with fixed plant in the supply of RMX in Scotland. BDS data for RMX does not, however, allow for volumes supplied by volumetric trucks. The BDS data for 2011 does, however, identify 17 companies operating volumetric trucks in Scotland without providing volume output estimates<sup>85</sup>. Breedon estimates that volumetric trucks account for up to [%] of sales of RMX in Scotland<sup>86 87</sup>, and consistent with the CC's findings in its Provisional Findings, that volumetric trucks are in particular suited to competing for smaller-volume contracts. It considers in particular that RMX from volumetric trucks is substitutable for supplies from fixed sites for smaller projects. To reflect this, an assumption of [%] market share for volumetric trucks has been incorporated<sup>88</sup> into the total figures used below<sup>89</sup>.
- 7.39 At a local level, Breedon does not have access to market share data based on volume output. In any event, however, Breedon considers that the number of competing fascia in a particular local market represents a more relevant measure of competition in the supply of RMX. As with aggregates, Breedon notes in particular that market shares fail to fully capture the extent of competition in the context of excess capacity, product homogeneity and procurement processes (with informal and formal tenders) which are features of RMX markets. Notwithstanding this reservation, Breedon notes that the OFT used the number of sites operated by each party as a proxy for market shares and for ease of reference, it has therefore provided this data in this submission. Breedon has also considered the impact of the transaction on the number of competing fascia.
- 7.40 Breedon notes that the OFT calculated site shares based on 10-mile radii centred on each of the Target's sites and Breedon's sites, subject to sense-checking using 15-mile radii. However, Breedon submits that concrete generally travels further in Scotland than the rest of the UK, as evidenced by historic delivery data, and therefore that a catchment area of [%] miles is more representative of the area over which competition takes place<sup>90</sup>. Breedon is therefore providing site share data based on radii around the Target and Breedon sites of [%] miles.
- 7.41 In addition, Breedon notes that during its initial investigation, the OFT considered whether delivery distances from satellite plants differed from those from quarry-based plants. The OFT requested Breedon to produce sites share data based on catchment areas of: (a) [%]

---

<sup>84</sup> Please note that the "regions" used are based on the approach taken by BDS in compiling its data, rather than any defined geographic market.

<sup>85</sup> Please see the BDS data submitted to the OFT by email on 6 June 2013.

<sup>86</sup> Breedon notes the CC's findings that approximately 9% of RMX sales in the UK are accounted for by volumetric trucks based on BDS data for 2010 – see Anglo/Lafarge (CC), at paragraph 2.23, and the MIR Provisional Findings, at paragraph 2.75.

<sup>87</sup> Breedon notes that it cannot rule out that some input materials used by volumetric trucks may come from a fixed location, which might include a plant.

<sup>88</sup> CC Market Definition Working Paper, cement and RMX, available at: [http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/aggregates-cement-and-ready-mix-concrete/market\\_definition\\_housestyeled.pdf](http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/aggregates-cement-and-ready-mix-concrete/market_definition_housestyeled.pdf) at [64].

<sup>89</sup> [%]

<sup>90</sup> Breedon notes, for example, that the OFT estimated that the 80% weighted catchment area for Breedon's quarry RMX sites in Scotland was [%] miles in 2010 and [%] miles in 2011. For non-quarry RMX sites, the OFT estimated that the relevant figures were [%] miles and [%] miles, respectively.



miles where the overlapping site is a satellite site; and (b) [X] miles where the overlapping site is a quarry site. This data is also provided below.

Inverness

7.42 In the Inverness region, pre-transaction Breedon had one RMX site at Inverness, to which it has now added the Target's site at Beaulieu. The Inverness site is a "satellite" site, in that it is not located at a quarry, whereas Beaulieu is a quarry site.

7.43 The market around Inverness is largely rural and does not support large RMX volumes. As described in section 5, above, significant spare capacity exists with other producers in the market and barriers to entry are low. Furthermore, as shown in the tables below, there are several competitors active in the region and in the areas surrounding each of the parties' sites. In addition to the fixed-plant competitors shown, Accumix supplies RMX from volumetric trucks in this area.

*Regional shares*

7.44 The table below shows the parties' share of supply by volume for the Inverness region, i.e. on a basis wider than the particular radius of the Inverness/Beaulieu RMX overlap area.

[X]

7.45 Breedon notes that the parties' combined share of supply post-transaction remains below [X]. The next largest competitors, [X], and a further [X] competitors have shares in excess of [X]. At a regional level, Breedon therefore remains subject to significant competitive constraint from independent competitors and submits that there are no competition concerns on this basis.

*Local markets*

7.46 The table below shows the parties' RMX plants and the competitors' RMX plants<sup>91</sup> together with their distances from each of the parties' sites. Breedon has also set out the parties' combined *share of sites*: (a) based on catchment areas of [X] miles from the centred site; and (b) based on a catchment area of [X] miles for satellite sites and [X] miles for quarry sites (as explained at paragraphs 7.40 and 7.41, above).

| Company | Plant | Quarry or satellite | Post code | BEAULIEU RMX (Target)  | INVERNESS RMX           |
|---------|-------|---------------------|-----------|------------------------|-------------------------|
|         |       |                     |           | Distance from Beaulieu | Distance from Inverness |
| [X]     | [X]   | [X]                 | [X]       | [X]                    | [X]                     |
| [X]     | [X]   | [X]                 | [X]       | [X]                    | [X]                     |
| [X]     | [X]   | [X]                 | [X]       | [X]                    | [X]                     |
| [X]     | [X]   | [X]                 | [X]       | [X]                    | [X]                     |

<sup>91</sup> The table shows those competitor plants that fall within [X] miles of either of the party's plants.



|                  |            |            |            |            |            |
|------------------|------------|------------|------------|------------|------------|
| [REDACTED]       | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED]       | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Total RMX market | [REDACTED] |            |            | [REDACTED] | [REDACTED] |
| Total RMX market | [REDACTED] |            |            | [REDACTED] | [REDACTED] |
| Total RMX market | [REDACTED] |            |            | [REDACTED] | [REDACTED] |
| Total RMX market | [REDACTED] |            |            | [REDACTED] | [REDACTED] |

7.47 Breedon notes that the combined post-transaction share in a [REDACTED]-mile radius centred on the acquired Beauty site is [REDACTED]. However, as explained above, Breedon considers this to be an unduly narrow geographic market, and not representative of the conditions of competition in this local market. On all other measures, although the parties' combined share reaches [REDACTED], Breedon notes that in practice this equates to no more than two sites, compared with a total of up to [REDACTED] independent competitors. Breedon notes that the volume share of supply figures at 7.44 above show that the parties' combined share is much lower and Breedon considers these shares to be reflective of local volume shares. Breedon also notes that this market is highly competitive and that Breedon's competitors will continue to exercise significant competitive constraint on it.

7.48 Furthermore, as explained above, barriers to entry and expansion are low in the context of RMX, and there is significant excess capacity in this market. In Breedon's view, any attempt by Breedon to raise prices would be likely to lead to new entry or expansion and loss of business by Breedon. In light of these factors, Breedon submits that, regardless of the parties' share of sites, no competition issues arise in respect of this area or the Inverness region.

Grampian

7.49 Pre-transaction, Breedon had four active RMX plants in the Aberdeenshire area: Craigenlow, Westhill, Bridge of Don and Inverurie (in addition to one closed site at Deeside). Three of these are satellite sites, while Craigenlow is a quarry site. In this area, the Target Assets include three RMX plants: Dyce, Tullos and Tom's Forest, of which Tom's Forest is a quarry site.

7.50 Around Peterhead, Breedon has one existing RMX site at Stirlinghill, in addition to the acquired Target site at Peterhead. Stirlinghill is a quarry site and Peterhead is a satellite site.

*Regional shares*

7.51 The table below shows the parties' share of supply by volume for the Grampian region.

[REDACTED]

7.52 The parties' combined share of supply in this region is [REDACTED]. Breedon's [REDACTED] largest competitors in this region are [REDACTED].



7.53 Breedon notes that there are a large number of alternative suppliers in the region (including volumetric truck operators<sup>92</sup>) and, furthermore, the effective reduction of independent competitors from [X] is not sufficiently significant to give rise to competition concerns. In addition, since the barriers to entry remain low for RMX, should any effects of a lessening in competition occur, then Breedon would expect that other existing competitors would look to expand capacity, or new entrants would be attracted. In this context, Breedon refers to paragraphs 5.6 where it notes that Jamieson (the operator of the Ardlethen quarry) has already signalled his intention to enter the RMX space. In light of the number of independent competitors (which include significant Major and medium-tier companies), Breedon submits that, notwithstanding the parties' combined share of supply, there will remain strong competition in this market.

7.54 Breedon is aware, however, that the CC may wish to examine these markets further.

*Local markets – Aberdeenshire*

7.55 The table below shows the parties' RMX plants and their competitors' RMX plants<sup>93</sup> together with their distance from each of the parties' sites in Aberdeenshire. Breedon has set out the parties' combined *share of sites* based on catchment areas of [X] miles from the centred site, and also based on a catchment area of [X] miles for satellite sites and [X] miles for quarry sites (as explained at paragraphs 7.40 and 7.41, above).

| Company | Plant | Quarry or satellite plant | Post Code | DYCE RMX (Target)  | TULLOS RMX (Target)  | TOMS FOREST RMX (Target)  |
|---------|-------|---------------------------|-----------|--------------------|----------------------|---------------------------|
|         |       |                           |           | Distance from Dyce | Distance from Tullos | Distance from Toms Forest |
| [X]     | [X]   | [X]                       | [X]       | [X]                | [X]                  | [X]                       |
| [X]     | [X]   | [X]                       | [X]       | [X]                | [X]                  | [X]                       |
| [X]     | [X]   | [X]                       | [X]       | [X]                | [X]                  | [X]                       |
| [X]     | [X]   | [X]                       | [X]       | [X]                | [X]                  | [X]                       |
| [X]     | [X]   | [X]                       | [X]       | [X]                | [X]                  | [X]                       |
| [X]     | [X]   | [X]                       | [X]       | [X]                | [X]                  | [X]                       |
| [X]     | [X]   | [X]                       | [X]       | [X]                | [X]                  | [X]                       |
| [X]     | [X]   | [X]                       | [X]       | [X]                | [X]                  | [X]                       |
| [X]     | [X]   | [X]                       | [X]       | [X]                | [X]                  | [X]                       |

<sup>92</sup> Breedon notes that on its website, the volumetric truck operator Tennants (which Breedon believes operates in this region) states that volumetric truck operations "offer substantial advantages over traditional methods of concrete delivery" available at: <http://www.scottishcobble.co.uk/products/ready-mix-concrete/>.

<sup>93</sup> The table shows those competitor plants that fall within [X] miles of either of the party's plants.





|                  |     |     |     |     |     |     |
|------------------|-----|-----|-----|-----|-----|-----|
| [X]              | [X] | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] | [X] |
| Total RMX market | [X] |     |     | [X] | [X] | [X] |
| Total RMX market | [X] |     |     | [X] | [X] | [X] |
| Total RMX market | [X] |     |     | [X] | [X] | [X] |
| Total RMX market | [X] |     |     | [X] | [X] | [X] |

(Ex-quarry denotes RMX plants that were in quarry but the quarry has now closed.)

|         |       |                           |           | CRAIGENLOW RMX           | WESTHILL RMX           |
|---------|-------|---------------------------|-----------|--------------------------|------------------------|
| Company | Plant | Quarry or satellite plant | Post Code | Distance from Craigenlow | Distance from Westhill |
| [X]     | [X]   | [X]                       | [X]       | [X]                      | [X]                    |
| [X]     | [X]   | [X]                       | [X]       | [X]                      | [X]                    |
| [X]     | [X]   | [X]                       | [X]       | [X]                      | [X]                    |
| [X]     | [X]   | [X]                       | [X]       | [X]                      | [X]                    |
| [X]     | [X]   | [X]                       | [X]       | [X]                      | [X]                    |
| [X]     | [X]   | [X]                       | [X]       | [X]                      | [X]                    |
| [X]     | [X]   | [X]                       | [X]       | [X]                      | [X]                    |
| [X]     | [X]   | [X]                       | [X]       | [X]                      | [X]                    |
| [X]     | [X]   | [X]                       | [X]       | [X]                      | [X]                    |
| [X]     | [X]   | [X]                       | [X]       | [X]                      | [X]                    |
| [X]     | [X]   | [X]                       | [X]       | [X]                      | [X]                    |



|                  |     |  |  |     |     |
|------------------|-----|--|--|-----|-----|
| Total RMX market | [X] |  |  | [X] | [X] |
| Total RMX market | [X] |  |  | [X] | [X] |
| Total RMX market | [X] |  |  | [X] | [X] |
| Total RMX market | [X] |  |  | [X] | [X] |

(Ex-quarry denotes RMX plants that were in quarry but the quarry has now closed.)

|                  |       |                           |           | BRIDGE OF DON RMX           | INVERURIE RMX           |
|------------------|-------|---------------------------|-----------|-----------------------------|-------------------------|
| Company          | Plant | Quarry or satellite plant | Post Code | Distance from Bridge of Don | Distance from Inverurie |
| [X]              | [X]   | [X]                       | [X]       | [X]                         | [X]                     |
| [X]              | [X]   | [X]                       | [X]       | [X]                         | [X]                     |
| [X]              | [X]   | [X]                       | [X]       | [X]                         | [X]                     |
| [X]              | [X]   | [X]                       | [X]       | [X]                         | [X]                     |
| [X]              | [X]   | [X]                       | [X]       | [X]                         | [X]                     |
| [X]              | [X]   | [X]                       | [X]       | [X]                         | [X]                     |
| [X]              | [X]   | [X]                       | [X]       | [X]                         | [X]                     |
| [X]              | [X]   | [X]                       | [X]       | [X]                         | [X]                     |
| [X]              | [X]   | [X]                       | [X]       | [X]                         | [X]                     |
| [X]              | [X]   | [X]                       | [X]       | [X]                         | [X]                     |
| [X]              | [X]   | [X]                       | [X]       | [X]                         | [X]                     |
| [X]              | [X]   | [X]                       | [X]       | [X]                         | [X]                     |
| Total RMX market | [X]   |                           |           | [X]                         | [X]                     |
| Total RMX market | [X]   |                           |           | [X]                         | [X]                     |
| Total RMX market | [X]   |                           |           | [X]                         | [X]                     |
| Total RMX market | [X]   |                           |           | [X]                         | [X]                     |

(Ex-quarry denotes RMX plants that were in quarry but the quarry has now closed.)

7.56 Breedon notes that the parties' combined sites share on all measures and on all overlaps in this area is above [X]. Nonetheless, there will remain up to [X] independent competitors in addition to Breedon in each overlap area, and Breedon reiterates that low barriers to



entry, product homogeneity, and the nature of the tender processes used in purchasing RMX means that there will remain significant competitive constraints in these areas. However, Breedon acknowledges that the CC may wish to examine these markets further.

*Local markets – Peterhead*

7.57 The table below shows the parties' RMX plants and the competitors' RMX plants<sup>94</sup> together with their distance from each of the parties' sites in Peterhead. Breedon has set out the parties' combined *share of sites*: (a) based on catchment areas of [X] miles from the centred site; and (b) based on a catchment area of [X] miles for satellite sites and [X] miles for quarry sites (as explained at paragraphs 7.40 and 7.41, above).

| Company          | Plant | Quarry or satellite plant | Post Code | PETERHEAD RMX (Target)  | STIRLINGHILL RMX           |
|------------------|-------|---------------------------|-----------|-------------------------|----------------------------|
|                  |       |                           |           | Distance from Peterhead | Distance from Stirlinghill |
| [X]              | [X]   | [X]                       | [X]       | [X]                     | [X]                        |
| [X]              | [X]   | [X]                       | [X]       | [X]                     | [X]                        |
| [X]              | [X]   | [X]                       | [X]       | [X]                     | [X]                        |
| [X]              | [X]   | [X]                       | [X]       | [X]                     | [X]                        |
| [X]              | [X]   | [X]                       | [X]       | [X]                     | [X]                        |
| [X]              | [X]   | [X]                       | [X]       | [X]                     | [X]                        |
| Total RMX market | [X]   |                           |           | [X]                     | [X]                        |
| Total RMX market | [X]   |                           |           | [X]                     | [X]                        |
| Total RMX market | [X]   |                           |           | [X]                     | [X]                        |
| Total RMX market | [X]   |                           |           | [X]                     | [X]                        |

7.58 As explained above, Breedon believes that a catchment area of up to [X] miles is representative of the area over which competition takes place. At [X] miles, the parties' combined sites share is [X]. Breedon notes that the sites shares are significantly higher on other, narrower measures, which Breedon considers inappropriate in the context of these local areas.

7.59 In this area, as in other areas, there remain at least [X] strong fixed-plant competitors post-transaction. Of these, [X] has a larger site share than Breedon post-transaction [X]. In addition, as set out above, Breedon considers there to be low barriers to entry in this market.

<sup>94</sup> The table shows those competitor plants that fall within [X] miles of either of the parties' plants.



7.60 As with the Aberdeen area, Breedon acknowledges that the CC may wish to examine these markets further.

Tayside

7.61 Pre-transaction, Breedon had three RMX sites in the Tayside region, at Ethiebeaton, Clatchard and Capo, all of which are quarry sites. The Target Assets include three RMX sites, Dundee, Perth and Edzell, of which Edzell is a quarry site. Breedon notes that Aggregate Industries had mothballed both the Perth and Edzell RMX plants in 2011; as such, Breedon acquired only one operational RMX site in this region. Consequently, the 2012 RMX volumes from these sites would have been significantly lower than the 2011 volumes that have been used to compile the tables below.

*Regional shares*

7.62 The table below shows the parties' share of supply by volume for the Tayside region<sup>95</sup>.

[X]

7.63 Breedon notes that the parties' combined share of supply in this region is below [X]. Moreover, as explained above, Breedon believes the Target Assets' production in 2012-2013 has been significantly less than that shown in the BDS data for 2011. Breedon estimates that the parties' combined share of supply in this region would be closer to [X].

7.64 In addition, there remain [X] significant fixed-plant competitors in this region, including [X], as well as volumetric truck operators, such as Spotmix. Accordingly, Breedon submits that there is substantial competition in this market, and that it therefore does not give rise to competition concerns.

*Local markets*

7.65 The table below shows the parties' RMX plants and the competitors' RMX plants<sup>96</sup> together with their distance from each of the parties' sites at Dundee and Ethiebeaton. Breedon has also set out the parties' combined *share of sites*: (a) based on catchment areas of [X] miles from the centred site; and (b) also based on a catchment area of [X] miles for satellite sites and [X] miles for quarry sites (as explained at paragraphs 7.40 and 7.41, above).

| Company | Plant | Quarry or satellite plant | Post Code | DUNDEE RMX (Target)  | ETHIEBEATON RMX           |
|---------|-------|---------------------------|-----------|----------------------|---------------------------|
|         |       |                           |           | Distance from Dundee | Distance from Ethiebeaton |
| [X]     | [X]   | [X]                       | [X]       | [X]                  | [X]                       |
| [X]     | [X]   | [X]                       | [X]       | [X]                  | [X]                       |
| [X]     | [X]   | [X]                       | [X]       | [X]                  | [X]                       |

<sup>95</sup> Based on BDS data for 2011.

<sup>96</sup> The table shows those competitor plants that fall within [X] miles of either of the parties' plants.



|                  |            |            |            |            |            |
|------------------|------------|------------|------------|------------|------------|
| [REDACTED]       | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED]       | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED]       | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED]       | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED]       | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED]       | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED]       | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED]       | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED]       | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Total RMX market | [REDACTED] |            |            | [REDACTED] | [REDACTED] |
| Total RMX market | [REDACTED] |            |            | [REDACTED] | [REDACTED] |
| Total RMX market | [REDACTED] |            |            | [REDACTED] | [REDACTED] |
| Total RMX market | [REDACTED] |            |            | [REDACTED] | [REDACTED] |

7.66 Breedon notes that the parties' combined sites shares do not exceed [REDACTED] on any measure in these local areas. In addition, there remain five significant competitors, including two of the Majors. On this basis, Breedon submits that there remains substantial competition and that no competition concern arises.

7.67 The table below shows the parties' RMX plants and the competitors' RMX plants<sup>97</sup> together with their distance from each of the parties' sites at Perth and Clatchard. Breedon has also set out the parties' combined *share of sites*: (a) based on catchment areas of [REDACTED] miles from the centred site; and (b) also based on a catchment area of [REDACTED] miles for satellite sites and [REDACTED] miles for quarry sites (as explained at paragraphs 7.40 and 7.41, above).

| Company    | Plant      | Quarry or satellite plant | Post Code  | PERTH RMX <sup>98</sup> | CLATCHARD RMX           |
|------------|------------|---------------------------|------------|-------------------------|-------------------------|
|            |            |                           |            | Distance from Perth     | Distance from Clatchard |
| [REDACTED] | [REDACTED] | [REDACTED]                | [REDACTED] | [REDACTED]              | [REDACTED]              |
| [REDACTED] | [REDACTED] | [REDACTED]                | [REDACTED] | [REDACTED]              | [REDACTED]              |

<sup>97</sup> The table shows those competitor plants that fall within [REDACTED] miles of either of the parties' plants.  
<sup>98</sup> Breedon notes that this site was closed prior to the Present Transaction, but was reopened by Breedon following completion of the transaction.



|                  |     |     |     |     |     |
|------------------|-----|-----|-----|-----|-----|
| [X]              | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] |
| [X]              | [X] | [X] | [X] | [X] | [X] |
| Total RMX market | [X] |     |     | [X] | [X] |
| Total RMX market | [X] |     |     | [X] | [X] |
| Total RMX market | [X] |     |     | [X] | [X] |
| Total RMX market | [X] |     |     | [X] | [X] |

- 7.68 Although [X], Breedon notes, again, that there are at least [X] competitors in this area [X], rising to [X] on some measures. Given that these are significant competitors, Breedon again submits that there remains substantial competition in this market and that the transaction therefore does not give rise to competition concerns.
- 7.69 The table below shows the parties' RMX plants and the competitors' RMX plants<sup>99</sup> together with their distance from each of the parties' sites at Edzell and Capo. Breedon has also set out the parties' combined *share of sites*: (a) based on catchment areas of [X] miles from the centred site; and (b) also based on a catchment area of [X] miles for satellite sites and [X] miles for quarry sites (as explained at paragraphs 7.40 and 7.41, above).

<sup>99</sup> The table shows those competitor plants that fall within [X] miles of either of the parties' plants.



|                  |            |                           |            | EDZELL RMX<br>(Target closed site) | CAPO RMX           |
|------------------|------------|---------------------------|------------|------------------------------------|--------------------|
| Company          | Plant      | Quarry or satellite plant | Post Code  | Distance from Edzell               | Distance from Capo |
| [REDACTED]       | [REDACTED] | [REDACTED]                | [REDACTED] | [REDACTED]                         | [REDACTED]         |
| [REDACTED]       | [REDACTED] | [REDACTED]                | [REDACTED] | [REDACTED]                         | [REDACTED]         |
| [REDACTED]       | [REDACTED] | [REDACTED]                | [REDACTED] | [REDACTED]                         | [REDACTED]         |
| [REDACTED]       | [REDACTED] | [REDACTED]                | [REDACTED] | [REDACTED]                         | [REDACTED]         |
| [REDACTED]       | [REDACTED] | [REDACTED]                | [REDACTED] | [REDACTED]                         | [REDACTED]         |
| [REDACTED]       | [REDACTED] | [REDACTED]                | [REDACTED] | [REDACTED]                         | [REDACTED]         |
| Total RMX market | [REDACTED] |                           |            | [REDACTED]                         | [REDACTED]         |
| Total RMX market | [REDACTED] |                           |            | [REDACTED]                         | [REDACTED]         |
| Total RMX market | [REDACTED] |                           |            | [REDACTED]                         | [REDACTED]         |
| Total RMX market | [REDACTED] |                           |            | [REDACTED]                         | [REDACTED]         |

7.70 Notwithstanding the parties' share of sites in this area, Breedon submits that no competition concern arises in light of the fact that Edzell had been mothballed prior to the transaction and remains closed. The CC's Merger Assessment Guidelines<sup>100</sup> state that in considering whether there is a loss of actual potential competition, the OFT will consider:

- 7.70.1 whether one of the merger parties would, in the absence of the merger, be likely to enter the market;
- 7.70.2 whether such entry would lead to greater competition; and
- 7.70.3 whether there are any other potential entrants in the area<sup>101</sup>.

7.71 Breedon submits that there is no evidence to suggest that Aggregate Industries would have reopened the Edzell plant in the absence of the transaction. As described in relation to the counterfactual, there is also no reason to believe that any third party would have acquired this plant. Thus, Breedon believes that, in the absence of the transaction, the Edzell site would have remained closed and therefore would not have exercised any competitive constraint on Breedon. [REDACTED]. Accordingly, assessing this market against the relevant pre-merger and counterfactual, Breedon submits that there has been no impact on competition. (Breedon notes that these arguments also apply in respect of the Perth site, considered above.)

<sup>100</sup> CC2, OFT1254, *Merger Assessment Guidelines*, September 2010 (the "**Merger Assessment Guidelines**").

<sup>101</sup> *Merger Assessment Guidelines*, at paragraph 5.4.15.





**D. ASPHALT**

7.72 On the basis of the 30 mile radial, Breedon has identified the following relevant sites:

Grampian

7.72.1 Breedon sites: Craigenlow and Stirlinghill; and

7.72.2 Aggregate Industries site: Tom's Forest.

Highlands:

7.72.3 Breedon site: Daviot; and

7.72.4 Aggregate Industries site: Mid Lairgs.

7.73 In both of these regions, although the number of competitors are small (two other independent competitors in each region), in reality, these competitors are very effective and exercise a significant competitive constraint on Breedon's activities. As set out in the Reference Decision, [redacted].

7.74 For ease of reference, Breedon has set out Table 7 of the OFT's Issues Paper, which Breedon considers to be broadly accurate:

| Region     | Centred site | % Breedon  | % AI       | % Combined | Other suppliers | % of 2 <sup>nd</sup> supplier | % of 3 <sup>rd</sup> supplier |
|------------|--------------|------------|------------|------------|-----------------|-------------------------------|-------------------------------|
| [redacted] | [redacted]   | [redacted] | [redacted] | [redacted] | [redacted]      | [redacted]                    | [redacted]                    |
| [redacted] | [redacted]   | [redacted] | [redacted] | [redacted] | [redacted]      | [redacted]                    | [redacted]                    |
| [redacted] | [redacted]   | [redacted] | [redacted] | [redacted] | [redacted]      | [redacted]                    | [redacted]                    |
| [redacted] | [redacted]   | [redacted] | [redacted] | [redacted] | [redacted]      | [redacted]                    | [redacted]                    |
| [redacted] | [redacted]   | [redacted] | [redacted] | [redacted] | [redacted]      | [redacted]                    | [redacted]                    |

Grampian

7.75 As regards the Grampian region, in keeping with the OFT/CC's guidance and previous decisions<sup>102</sup>, Breedon submits that the transaction does not give rise to a lessening of competition given that Breedon's market share will remain below 40% and given that it will remain subject to strong competition from remaining players, each of which has excess capacity). There is no reasonable justification identified in the Reference Decision for departing from the guidance and Breedon submits that no such reason exists.

<sup>102</sup> See Anglo/LaFarge (OFT) at paragraphs 167 to 171; Merger Assessment Guidelines at paragraph 5.3.5; see also the CC's approach to its consideration of Breedon's suitability as a potential purchaser of the Midland Quarry Products assets divested at part of the undertakings package in Anglo/Lafarge (CC), in which it stated that, having first identified the 30-mile catchment area around each of the parties' sites (i.e. the divestiture assets and Breedon's existing sites), it calculated each party's share of production within each radial and applied a 40% filter rule to identify potential areas of concern.



- 7.76 In particular, in the OFT's Reference Decision, insufficient weight has been attributed to the presence of competitors in these local overlap areas which, as set out in the table above, each hold significant market shares comparable to that of the merging parties. Here, [REDACTED] strong competitors will remain [REDACTED], each holding shares of production of at least [REDACTED] (and on one analysis as much as [REDACTED]) on a 30-mile radius. Furthermore, there is excess capacity available in the market in this region as volumes have declined 34% since 2007, and most operators have the capability to increase their output.

#### Highlands

- 7.77 The overlap that arises in the Highlands is a result of Breedon's acquisition of the Target site of Mid Lairgs. This site, and the circumstances around the acquisition, are referred to in more detail in Section 6 (Counterfactual).

- 7.78 [REDACTED]<sup>103</sup>

- 7.79 [REDACTED], Breedon notes that the market in this area is relatively small and well-endowed with asphalt plants to service the demand. As with the Grampians region, post-transaction, Breedon is faced with competition from [REDACTED] significant undertakings, [REDACTED]. [REDACTED] these competitors are strong and Breedon notes that [REDACTED] is a particularly fierce competitor to Breedon, being of similar size and having a similar expansion strategy.

- 7.80 Furthermore, excess capacity is available in the market in the Highland region as volumes have declined 42% since 2007, and most operators have the capability to increase output. Although [REDACTED], the existence of [REDACTED] other strong competitors with surplus capacity means that a reduction from [REDACTED] competing operators in the market will not give rise to a substantial lessening of competition as any attempt to increase price without good reason would inevitably result in customers switching suppliers.

#### Conclusion

- 7.81 As set out above, Breedon does not consider that the transaction gives rise to a substantial lessening of competition in relation to asphalt, particularly in light of the strength of the independent competitors that will remain in each of the overlap areas.

### **E. CONTRACT SURFACING**

- 7.82 As explained in section 4, above, contract surfacing is the service provided to the end client whereby the service provider procures mainly asphalt, but also RMX or aggregates, and uses these materials to build or surface roads, car parks, footpaths, pavements etc. It is therefore a construction services activity, rather than a Construction Materials supply business. Contracts for contract surfacing work are normally based on completion of a project as a whole, and do not always specify details such as the volume of material to be used. Accordingly, Breedon is not able to provide a detailed breakdown of the materials used in all contracts individually, but is in the process of collating available data. Breedon

---

<sup>103</sup> [REDACTED]



notes that, [REDACTED]. Typically, asphalt is therefore the most significant materials input into contract surfacing operations, [REDACTED].

7.83 Most asphalt producers in the UK undertake contract surfacing activities. The size and scope of the contracting activities varies: some would undertake other contracting work such as civil engineering, groundworks, utilities, street lighting and other general maintenance contract work. Lafarge Tarmac is the largest operator and specialises in major highway work and framework contracts with local authorities.

7.84 There are a large number of companies active in contract surfacing and barriers to entry are generally low. Consequently operating profit margins [REDACTED].

7.85 To Breedon's knowledge, there is no published data available on market shares for contracting operators working in the field of contract surfacing. An estimate can, however, be derived for Breedon's and Target's operations by using the estimated market for asphalt as set out in the BDS data for 2011. Assuming that all of this asphalt was laid by one contractor or another, Breedon has set out below its estimated market shares:

| Region     | Total Market ('000 tonnes) | Breedon tonnes laid ('000 tonnes) | Target tonnes laid ('000 tonnes) | Combined tonnes laid ('000 tonnes) | Combined market share % |
|------------|----------------------------|-----------------------------------|----------------------------------|------------------------------------|-------------------------|
| [REDACTED] | [REDACTED]                 | [REDACTED]                        | [REDACTED]                       | [REDACTED]                         | [REDACTED]              |
| [REDACTED] | [REDACTED]                 | [REDACTED]                        | [REDACTED]                       | [REDACTED]                         | [REDACTED]              |
| [REDACTED] | [REDACTED]                 | [REDACTED]                        | [REDACTED]                       | [REDACTED]                         | [REDACTED]              |
| [REDACTED] | [REDACTED]                 | [REDACTED]                        | [REDACTED]                       | [REDACTED]                         | [REDACTED]              |

7.86 [REDACTED]

7.87 Breedon notes that no issues in relation to contract surfacing were identified in the Lafarge Tarmac merger, where both companies had large in-house contract surfacing businesses. The Present Transaction gives rise to a limited overlap in the Aberdeen and Inverness markets where the Target Assets include three paving gangs which carry out surfacing using supplies from the Target's asphalt plants and compete against a wide range of small local contractors. Breedon notes that no competition concerns were identified in the OFT's Reference Decision.

7.88 In light of these factors, a detailed analysis in relation to this sector has not been performed. However, for the reasons set out above, Breedon does not consider the Present Transaction to give rise to a substantial lessening of competition in the supply of contract surfacing services.

**F. VERTICAL INTEGRATION**

7.89 Pre-transaction, Breedon was vertically integrated in the following ways:

7.89.1 supply of aggregates to its asphalt and RMX plants;

7.89.2 supply of asphalt to its contract surfacing division; and



7.89.3 sub-contract surfacing provided to an associated company, BEAR Scotland.

7.90 Post-transaction, this form of integration will remain largely unchanged, with the exception of concrete blocks. Prior to the transaction, Breedon was not active in the concrete block sector<sup>104</sup>. Post-transaction, however, Breedon will be vertically integrated insofar as it supplies aggregates for concrete blocks at the acquired Kemnay site. [X] As such, no third party is impacted by the transaction.

7.91 Breedon does not believe that the transaction gives rise to the possibility of foreclosure. First, the majority of the downstream producers are themselves vertically integrated and do self-supply. Reflecting the degree of vertical integration that is already present in the markets, [X]. Second, non-integrated downstream producers would have access to numerous sources of supply, particularly because there is significant excess capacity available in each of the sectors identified. As such, it is simply not credible for Breedon to benefit by withholding supply to other downstream customers or by charging uncompetitive prices. In Breedon's view, it would be very easy for the customer to approach one of the other suppliers of the relevant product to acquire the necessary input or even for a new entrant to enter the market, particularly in light of the low barriers to entry.

#### **G. COORDINATED EFFECTS**

7.92 As an initial point, Breedon notes that co-ordination is more complex where the terms of co-ordination must be agreed over a number of local markets as in the case of aggregates, asphalt and RMX. This point was identified by the CC in its Provisional Findings<sup>105</sup>.

7.93 The OFT/CC's joint Merger Assessment Guidelines provide that a merger may be said to give rise to a substantial lessening of competition through coordinated effects where either:

7.93.1 there is evidence that firms in the market were coordinating pre-merger, and the merger makes coordination more stable or effective, given the characteristics of the market; or

7.93.2 there is no evidence of pre-merger coordination, but the merger makes it more likely that firms in the market will start to coordinate, given the characteristics of the market.

7.94 Paragraph 5.5.9 of the Merger Assessment Guidelines identifies three conditions which must be satisfied for coordination to be possible:

7.94.1 firms need to be able to reach and monitor the terms of coordination;

7.94.2 coordination needs to be internally sustainable among the coordinating group – i.e. firms have to find it in their individual interests to adhere to the coordinated outcome; and

7.94.3 coordination needs to be externally sustainable, in that there is little likelihood of coordination being undermined by competition from outside the coordinating group.

---

<sup>104</sup> See footnote 3, above.

<sup>105</sup> MIR Provisional Findings report, at paragraphs 6.130(b) and 9.70.



- 7.95 As an initial point, Breedon notes that for each of the sectors described below, Breedon has some customers that operate nationally throughout Scotland. [REDACTED]<sup>106</sup>. Most customers trade with several suppliers depending on both the location and price.

Aggregates

- 7.96 Breedon submits that there is no evidence to suggest that firms in the sector were coordinating pre-merger. The aggregates sector is made up of a series of local markets which, as noted by the CC in its MIR Provisional Findings, renders coordination more complex. Indeed the CC did not identify any feature giving rise to a substantial lessening of competition in any market in Great Britain for the supply of construction aggregates. It follows that the CC did not consider pre-existing coordination to be occurring or that coordination was likely to occur.
- 7.97 This series of local markets would make it very difficult for firms to reach and monitor the terms of coordination. Demand conditions and transport costs differ by each local market. Indeed, in general the transient and unpredictable nature of demand for aggregates undermines the scope for reaching and monitoring coordination. Furthermore, Breedon is one of a significant number of competitors in the aggregates market which further undermines the ability to reach and monitor coordination.
- 7.98 While Breedon does supply some customers which operate nationally throughout Scotland, contracts are negotiated on a local basis and are subject to competition at a local level. As highlighted by the CC, competitive conditions vary between local areas<sup>107</sup>, which again makes coordination less likely from a practical perspective as the terms of coordination would have to be agreed in respect of each individual local market.
- 7.99 Contracts for the supply of aggregates typically range from large one-off supply contracts for a particular job lasting a couple of weeks to annual supply contracts for precast concrete works or builders' merchants. Sometimes customers will split large contracts into several packages over different timeframes. Large contracts may last for several years, although the supply of materials may be split into several different packages with different suppliers.
- 7.100 There is little transparency as regards Breedon's pricing: Breedon's price lists are confidential and the majority of its sales are subject to individual negotiation. Annual price increase letters concerning particular products are sent to relevant customers but in most cases the customer's price increase (if any) is then subject to individual negotiation. Breedon submits that these factors make it very difficult for firms to reach and monitor coordination on price.
- 7.101 In the Grampian region, Breedon competes with a significant number of competitors. Based on updated BDS data (provided in Annex C), Breedon (including the Target sites) is one of at least [REDACTED] competitors in the market, operating [REDACTED] facilities within a 30-mile radius of the Tom's Forest facility. In Tayside, Breedon is one of at least [REDACTED] competitors<sup>108</sup>. Given the number of competitors, together with the variation in competitive conditions across the local overlap areas, Breedon considers that it is unlikely that

---

<sup>106</sup> [REDACTED]

<sup>107</sup> MIR Provisional Findings, at paragraphs 6.19 and 6.130(b).

<sup>108</sup> One of [REDACTED] competitors within a 30 mile radius of the Target's Powmyre facility, and one of [REDACTED] competitors within a 30 mile radius of the Target's Edzell facility.



agreement on the terms of coordination could be reached, and that it would not in any event be practicable to monitor compliance with any such agreement. The absence of pricing transparency also makes it difficult for parties to monitor and enforce coordination. Breedon, therefore, submits that the first condition for coordination is not satisfied.

- 7.102 Breedon notes that the number of competitors also makes it less likely that any attempt at coordination would be internally sustainable, given that the greater the number of firms in a putative coordinating group, the larger the profit that would be generated by a party deviating from coordination. Furthermore, Breedon notes that there are significant asymmetries between the competitors that do fall within the overlap areas and that these competitors have substantial excess capacity. This both reduces the incentive to coordinate and provides scope for profitable deviation.
- 7.103 Breedon notes also the importance of transport costs which not only hinder any attempt to agree coordination, but also undermine the internal stability of such coordination, as the commercial interests of the participants diverge where one of them benefits from a cost advantage. This is particularly so where, as in Scottish aggregates markets, competitors have significant unused capacity which could be utilised to fulfil profitable contracts and customers are already typically willing to source aggregates from a range of suppliers. Accordingly, any attempt at coordination would lack internal stability and the second condition for coordinated effects would not be satisfied.
- 7.104 As such, in Breedon's view the significant number of competitors does not allow for alignment on the terms of coordination among all aggregates players. However, even an attempt to coordinate between a narrower sub-group would be undermined because there would remain several parties out of any coordinating group which would be in a position to undermine any such coordination. Barriers to entry in aggregates markets, in Scotland, are relatively low and, furthermore, there is significant excess capacity in both current operational units and dormant quarry sites<sup>109</sup>: most current competitors would be capable of increasing output to meet increased demand, and new entrants are likely to be attracted if demand outstrips supply. Breedon notes that initial set-up costs can be limited by use of mobile crushing and screening equipment.
- 7.105 It is therefore likely that a non-coordinating competitor would be able to disrupt any proposed coordination such that the third condition for coordination is not satisfied.

#### RMX

- 7.106 Breedon submits that there is no evidence that firms in the market were coordinating pre-merger. As with the aggregates sector, the CC in its Provisional Findings noted that there are multiple local RMX markets which renders coordination more complex<sup>110</sup>. Again, the CC did not identify any feature giving rise to an adverse effect on competition in any market in Great Britain for the supply of RMX. It follows that the CC did not consider pre-existing coordination to be occurring or that coordination was likely to occur.

---

<sup>109</sup> Breedon estimates that demand volumes have declined by as much as 30% since 2007, but that operational capacity has largely remained intact during this period. It notes that there is also scope for competing supplies to be imported by sea.

<sup>110</sup> MIR Provisional Findings, at paragraph 9.70.



- 7.107 As Breedon has previously set out in its submissions to the OFT<sup>111</sup>, there are a number of alternative suppliers for RMX. As recognised in the CC's Provisional Findings, barriers to entry and expansion in RMX markets are very low<sup>112</sup>. An appropriate plant is capable of being installed at [X], and the use of volumetric trucks enables entry at a small scale with limited investment. Raw materials are widely available and planning permission is unlikely to constitute a barrier.
- 7.108 As with aggregates markets, internal price lists are not generally published and [X]. As with aggregates markets, most of Breedon's customers will also source RMX from Breedon's competitors and there is little transparency as regards pricing. As noted by the CC in its MIR Provisional Findings, customers tend to purchase on a per-project basis<sup>113</sup>. By way of example, Breedon considers that RMX supplies to a small housing estate might last 2-3 months.
- 7.109 Given the number of competitors in RMX markets, the local nature of competition, the tendency for customers to purchase on a per-project basis or otherwise exert buyer power, and the general lack of concluded price transparency, it is unlikely that agreement on coordination could be achieved or its implementation monitored. Accordingly, the first condition for coordinated effects would not be satisfied.
- 7.110 In RMX, as in the aggregates sector, given the number of different competitors that must coordinate across the local overlap areas (for example, Leiths, Lovie, Lafarge Tarmac, Cemex, Hanson, Hope, Chap Quarries, Kirkmyers, Barmix, Laird Bros, Geddes and Skene, in addition to volumetric truck operators), Breedon submits that it is very unlikely that any attempt at coordination would be internally sustainable. Again, Breedon notes that there are significant asymmetries between the competitors that do fall within the overlap areas. For example, many of the competitors in these markets are private family run business which have been successful over a period of time and have a different approach to both the Majors and the other larger companies. This also reduces the incentives to coordinate, particularly bearing in mind the low barriers to growth enabling deviation to occur.
- 7.111 As set out above, there are several competitors in RMX markets, and barriers to entry and expansion are low. In addition, the structure of the market and typical contracts means that customers are in a position to exert pressure on suppliers and take advantage of more competitive offerings from non-coordinating parties. Any attempt at coordination would therefore lack external stability as it would be subject to disruption by third parties, such that the third condition for coordinated effects would not be met.

#### Asphalt

- 7.112 Breedon submits that there is no evidence that firms in the market were coordinating pre-merger.
- 7.113 As with the aggregates and RMX markets, there are multiple local asphalt markets, which renders coordination very complex to achieve.

---

<sup>111</sup> See, for example, the competitor plant count data provided at Appendix 9 to Breedon's 3 July 2013 response to the OFT's List of information outstanding and List of additional questions dated 19 June 2013.

<sup>112</sup> MIR Provisional Findings, at paragraphs 9.44 to 9.52.

<sup>113</sup> MIR Provisional Findings, at paragraph 9.66.





- 7.114 Further, while Breedon has customers which are active throughout Scotland, it supplies them on a local basis. Breedon considers that a contract to supply asphalt for a small local road repair project might last only one week.
- 7.115 In Breedon's view, coordination is unlikely to be feasible as the ability of parties to reach a common understanding and to monitor coordination on price will likely be undermined by the presence of a large degree of price dispersion.
- 7.116 In addition, as set out above, barriers to entry in asphalt markets are low. Any attempted coordination would therefore lack external stability, as coordination would be likely to be undermined by entry from third parties or expansion by existing competitors.
- 7.117 Finally, Breedon notes that asphalt customers in particular enjoy significant buyer power. [REDACTED]<sup>114</sup>.

**HERBERT SMITH FREEHILLS LLP**

---

<sup>114</sup> [REDACTED].

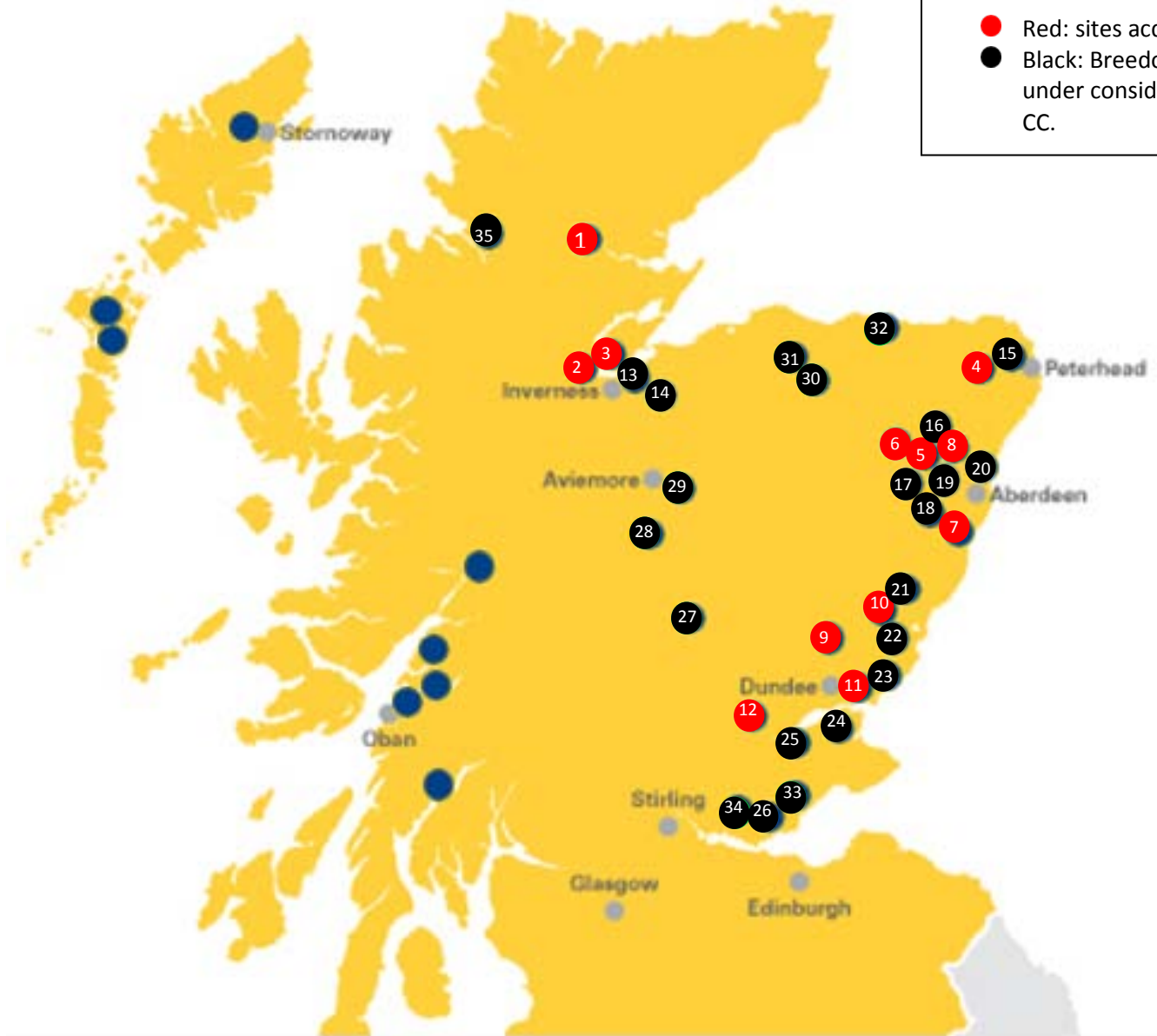


ANNEX A

1. Ardchronie (Aggs)
2. Beauly
3. Mid Lairgs (Asphalt)
4. Peterhead (RMX)
5. Tom's Forest (Aggs, RMX, Asphalt)
6. Kemnay (Blocks)
7. Tullos
8. Dyce (RMX)
9. Powmyre (Aggs)
10. Edzell (Aggs, RMX)
11. Dundee
12. Perth (RMX)
13. Inverness (RMX)
14. Daviot (Asphalt)
15. Stirlinghill (Aggs, RMX, Asphalt)
16. Inverurie (RMX)
17. Westhill (RMX)
18. Deeside(RMX)
19. Craigenlow (Aggs, RMX, Asphalt, contracting)
20. Bridge of Don (RMX)
21. Capo (Aggs, RMX)
22. Cunmont (Aggs.)
23. Ethiebeaton (Aggs, RMX, Asphalt, contracting)
24. Balmullo (Aggs)
25. Clatchard (Aggs, RMX, Asphalt, contracting)
26. Orrock (Aggs, RMX, Asphalt)
27. Shierglas (Aggs, RMX, Asphalt)
28. Meadowside (Aggs)
29. Aviemore (RMX)
30. Rothes Glen (Aggs, RMX)
31. Netherglen (AGGS)
32. Boyne Bay (Aggs, RMX)
33. Kirkcaldy (RMX)
34. Dunfermline (RMX)
35. Morefields (Aggs, RMX)

**Key**

- Red: sites acquired from AI
- Black: Breedon's existing sites under consideration by the CC.





## ANNEX B

### The operational aggregates sites being acquired are:

- Toms Forest, Kintore, Aberdeen, AB51 0YU
- Beauly Quarry, Balblair, Beauly, Invernesshire, IV4 7BG
- Powmyre Quarry, Powmyre Farm, Strathmore Estate, Glamis, Angus. DD8 1QD
- Edzell, Arnhall Edzell, Angus, DD9 7UZ
- Marybank Quarry, Isle of Lewis, HS1 0DD
- Drum Reallasger, Isle of North Uist, HS6 5HA

In addition to the operational quarries, there are "borrow pit"<sup>115</sup> type activities at Loch Airigh na Lic and Bennadrove, Isle of Lewis, and Caen an Ora, Isle of Harris and Corrennie Quarry, Tillyflourie, Aberdeenshire.

### The operational ready-mix plants being acquired are:

- Dyce, Mill O'Dyce, Aberdeen, AB21 0HA
- Beauly Quarry, Balblair, Beauly, Invernesshire, IV4 7BG
- Peterhead, Faichfield Quarry, Longside, Nr Peterhead, AB42 3ED
- Tullos, Greenbank Crescent, Aberdeen, AB12 3BG
- Dundee, Longtown Street, Dundee, DD4 8LF
- Marybank, Isle of Lewis, HS1 0DD
- Kintore, Toms Forest Quarry, Kintore, Inverurie, Aberdeenshire, AB51 0YU

In addition to the operational concrete plants, there are mothballed concrete plants or plants that are used intermittently currently at Edzell and Inveralmond Road, Perth.

### The operational asphalt plants being acquired are:

- Toms Forest, Kintore, Aberdeen, AB51 0YU
- Marybank, Isle of Lewis, HS1 0DD
- Mid Lairgs, Daviot, Inverness, IV1 2XH
- Gairbh Eilean, North Uist, HS6 5HP

[]<sup>116</sup>

### The operational block plants being acquired are:

- Marybank, Isle of Lewis, HS1 0DD
- Kemnay, Aquithie Road, Kemnay, Aberdeenshire, AB51 9PD

The Kemnay plant produces, in addition to blocks for general construction and fills uses, a range of high quality architectural facing blocks which are supplied across the UK. Marybank, on the other

---

<sup>115</sup> i.e. sites which are worked for individual projects as and when contracts are won for their material.

<sup>116</sup> []



hand, produces solely dense blocks for general construction and fills purposes in the local market in the Hebrides.

The contracting activities being acquired are:

- A civil engineering and road surfacing business in Stornoway.
- Three road surfacing gangs operating out of Beaully (Inverness) and Toms Forest (Aberdeen).

Non-operational sites

In addition to the operational sites acquired, there are a number of leasehold and freehold land interests relating to past quarrying activities or ready-mix concrete production, none of which have processing plant on them capable of producing aggregates or ready-mix concrete. For completeness, the non-operational sites acquired are:

- Annfield – an exhausted leasehold quarry in Aberdeenshire, Breedon has assumed the final restoration obligations for this site. Assessed as having no aggregates production potential.
- Borrowstone – Breedon has acquired Aggregate Industries' mineral rights in this site in Caithness but these are effectively sterilised as Breedon has no surface working rights. Assessed as no operational potential.
- Fledmyre Farm, Forfar – Breedon has acquired Aggregate Industries' mineral rights in this site but these are effectively sterilised as Breedon has no surface working rights. Assessed as no operational potential.
- Carrs Corner, Fort William – Breedon has acquired this freehold site on an industrial estate which is occupied by a scrapped RMX plant which is beyond repair. It may consider a possible sale of the site for industrial use.

Two other non-active sites, Achnagart and Tipperty, did not transfer to Breedon as related post-completion obligations were not satisfied.

Other Assets Acquired

On the operational sites all plant and machinery and buildings are included in the transaction, this includes aggregates processing plant, mobile plant – excavators, loading shovels etc, RMX processing plant and ancillary equipment, asphalt processing plant and ancillary equipment and storage facilities, road surfacing equipment, leased cars and vans, some road delivery vehicles and personal computers and printers at the sites. No computer software is included in the transaction. Some contract hauliers that operate exclusively for Aggregate Industries in the operations will transfer to Breedon.

Employees Transferring with the Business

The following is a summary of the numbers of employees who will be transferring with the trade and assets under TUPE regulations (TUPE imposes certain obligations on Breedon that will require to be implemented immediately upon completion of the acquisition):



| Location   | Total Number of Employees | Production / transport (incl quarry mgmt./ technical/ distribution) | Sales/admin/mgmt. |
|------------|---------------------------|---|-------------------|
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |
| [REDACTED] | [REDACTED]                | [REDACTED]  | [REDACTED]        |

[REDACTED]<sup>117</sup>

[REDACTED]

---

<sup>117</sup> [REDACTED]