OFFICE OF FAIR TRADING

Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited

ME/6082/13

The OFT's decision on reference under section 22(1) given on 24 September 2013. Full text of decision published 14 November 2013.

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

PARTIES

1. Breedon Aggregates Scotland Limited ('**Breedon Scotland**') is a wholly-owned subsidiary of Breedon Aggregates Limited ('**Breedon**'). Breedon is listed on the Alternative Investment Market (AIM) of the London Stock Exchange. Breedon produces and supplies aggregates (primary and recycled), asphalt (and asphalt surfacing services), and ready-mix concrete ('**RMX**') in the UK. Breedon's turnover amounted to £173.4 million in 2012 in the UK.

2. Aggregate Industries UK Limited ('**AI**') is part of Holcim Limited (a global supplier). AI produces and supplies aggregates (primary, secondary and recycled), asphalt (and asphalt surfacing services), RMX, and other concrete products.

3. The assets acquired by Breedon Scotland include 11 aggregates quarries (six of which are active[1]), four active asphalt plants (including asphalt surfacing services), seven active RMX plants (and two mothballed

[1] Breedon acquired one closed quarry at Kemnay, which has not been used for many years (the estimated cost of preparing this site for operational use is [ ]). It also acquired quarries which are used only occasionally. These include two quarries on the Hebrides which are used intermittently and the Corrennie quarry (in Grampian) which is used on a project basis. The Ardchronie quarry in the Highlands is currently producing aggregates on an occasional basis (depending on projects in the area).

plants[2]), closed units,[3] and two concrete block factories, all of which are located in the Grampian, Tayside and Fife, and Highland regions of mainland Scotland and on the Hebrides (together, the '**Target**').[4] The Target generated a turnover of £34.2 million in the UK in 2012.

TRANSACTION

4. On 10 April 2013, AI, Breedon, and Breedon Scotland entered into a Sale and Purchase Agreement relating to certain Scottish assets (including the goodwill, stock, fixed and moveable plants, machinery, equipment, employees and records) of AI for a consideration of £34 million in cash (the '**merger**'). Completion took place at close of business on 30 April 2013.[5]

5. The Office of Fair Trading (OFT) was not notified of the deal and began its investigation after the merger was made public in April 2013. The OFT sent an enquiry letter to Breedon on 26 April 2013 and received sufficient information to commence its administrative timetable on 10 July 2013.

---

[2] The RMX plant at Perth was mothballed by AI in 2012 but it has been re-opened since the merger and is used as a replacement of Breedon's Clatchard plant, which has now been temporarily closed. The RMX plant at Edzell was mothballed in 2012, but Breedon stated that it could be re-opened at relatively low cost.

[3] As part of the merger, Breedon also acquired closed units from AI which it considers have no potential to be operational contrary to the other assets. These include two sites with an expired leasehold, two sites with no surface working rights, one site where the RMX plant is beyond repair and one site which is agricultural land (restored from previous quarry use). These are distinct from sites which are currently closed or used occasionally but are operational and could be re-opened at low cost.

[4] The operational quarries acquired by Breedon include the Bablair quarry at Beauly, Tom's Forest quarry in Aberdeenshire, Edzell and Powmyre quarries in Tayside and Fife, Marybank and Drum Reallasger in the Hebrides. Closed or occasional use quarries include Ceann An Ora (Ardhasaig, Harris), Bennadrove (Lewis) quarries on the Hebrides, Corrennie and Kemnay quarries in Grampian and Ardchronie quarry in the Highlands. Operational asphalt plants acquired by Breedon include the Midlairgs plant in Inverness (the Highlands), Tom's Forest in Grampians, as well as Marybank and Garbh Eilean on the Hebrides. Operational RMX plants include plants at Beauly in Inverness (Highlands), Tom's Forest, Peterhead, Dyce, Tullos in Grampian, Dundee in Tayside and Fife and Marybank on the Hebrides. Closed or occasional use RMX plants include Perth and Edzell (Tayside and Fife). The two concrete blocks are located in Kemnay (Grampian) and Marybank (Hebrides). Asphalt surfacing units are located at Beauly (Highlands), Tom's Forest (Grampian) and Marybank (Hebrides). Breedon also acquired non-operational units which include sites at Achanagart, Annfield, Borrowstone, Fledmyre Farm (Forfar), Carrs Corner (Fort William) and Tipperty Point (Aberdeenshire). Other sites include Travelty, Kintore; Loch Airigh Na Lic, Isle of Lewis (Hebrides); and Grimsay quarry (Western Isles).

[5] 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.

The administrative deadline is 20 September 2013 and the statutory deadline is 22 November 2013.

JURISDICTION

6. As a result of the merger, Breedon Scotland and the Target (the '**parties**') ceased to be distinct.

7. The parties were both active in the supply of primary aggregates, RMX, asphalt, and asphalt surfacing in various areas in the North of Scotland. The OFT considers that the share of supply test in section 23(3) of the Enterprise Act (the '**Act**') is met since the parties' combined share of supply exceeded 25 per cent in primary aggregates in 2011 in Grampian and Tayside and Fife (table 1); in RMX in 2013 in Grampian, Tayside and Fife, and the Highlands regions of Scotland (tables 2 and 3); and in asphalt in 2011 in Grampian and the Highlands (table 4). The OFT considers that together these areas constitute a substantial part of the UK.[6] In this regard, the OFT notes that the cities of Aberdeen, Dundee, and Inverness are within the relevant overlap areas.

8. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created, satisfying the test in section 23(2) of the Act.

BACKGROUND

9. The OFT and the Competition Commission (CC) recently considered the markets for aggregates, asphalt, RMX, and cement in relation to the creation of a joint venture between Anglo American PLC and Lafarge S.A. ('Anglo American/Lafarge JV').[7]

10. The CC is also currently conducting an investigation into the markets for aggregates, RMX, and cement following a reference from the OFT on 18

[6] See the *OFT's Jurisdictional and procedural guidance*, OFT527, June 2009, at paragraph 3.56.
[7] OFT's decision in the *Proposed joint venture between Anglo American PLC and Lafarge S.A.*, ME/5007/11, 2 November 2011 ('**OFT's decision in *Anglo American/Lafarge JV***'); Competition Commission's ('**CC**') *Final Report in Anglo American PLC and Lafarge S.A.*, 1 May 2012 ('**CC's decision *in Anglo American/Lafarge JV***').

January 2012.[8] It published its preliminary findings on 23 May 2013 (market investigation reference report, '**MIR report**').

11. In this case, the OFT has, subject to the implications of its different legal test and evidence available within a first phase merger control timetable, taken into account the approach of the CC in the *Anglo American/Lafarge JV* decision. While the OFT takes note of the provisional findings of the market investigation report, it also notes that this report is only provisional at this stage and has a different focus and purpose to that of merger assessment.[9]

FRAME OF REFERENCE

12. The OFT considers that market definition is a useful tool, but not an end in itself. Market definition provides a framework for assessing the competitive effects of the merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of a merger in a mechanistic way, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[10]

13. The product areas affected by the merger are:

    a) aggregates, which are used as base materials in the construction of roads, buildings, and other infrastructure, including primary aggregates (quarried from land or dredged from the sea), secondary aggregates (derived from waste products of other mining or industrial activities), and recycled aggregates (derived from recycled sources such as demolition sites and construction waste)

    b) RMX, which comprises a mix of aggregates, cement, and water supplied in a ready-mixed form

    c) asphalt, produced from aggregates and bitumen and primarily used in asphalt surfacing and maintenance activities

---

[8] OFT1358ref Aggregates - The OFT's reason for making a market investigation reference to the Competition Commission, January 2012.

[9] As stated by the CC, the focus of its assessment for the market investigation was on competition in the sector as a whole rather than examining it in specific overlap areas. See in particular, the CC's MIR report, at paragraphs 5.26 and 5.27.

[10] *Merger Assessment Guidelines, A joint publication of the Competition Commission and the Office of Fair Trading*, OFT1254, September 2010, ('**Merger Assessment Guidelines**') at paragraph 5.2.2.

d) asphalt surfacing services, which use asphalt for applications such as surfacing roads, car parks, footpaths, and pavements.

14. The OFT considers the relevant frame of reference with respect to these areas of overlap between the parties below.

Product scope

Aggregates

15. In recent decisions, the OFT and the CC have distinguished between aggregates for construction applications (or construction aggregates) and aggregates for specialist applications (or specialist aggregates).[11]

16. Construction aggregates refer to aggregates used for construction purposes, including as a sub-base and for other structural fills (also referred to as general construction applications), in the production of RMX, in the production of other concrete products, and in the production of asphalt. Specialist aggregates include rail ballast, limestone, and high purity limestone.

17. In this case, Breedon supported the view that specialist aggregates form separate markets. Breedon submitted that in the overlap areas, with the exception of rail ballast at Balmullo quarry in Fife, neither Breedon nor the Target sites produce rail ballast, high polished stone value aggregates or flue gas desulphurization materials.

18. The OFT sees no reason to depart from its previous approach. Based on the evidence submitted by Breedon, the OFT found no overlap in the supply of specialist aggregates.

Decorative aggregates

19. During the OFT's investigation, some of the parties' customers raised concerns relating to 'decorative aggregates'. The OFT notes that this type of specialist aggregates was not assessed separately in previous OFT and CC decisions.

20. Customers told the OFT that granite has its own characteristics and that different types of granite constitute different products (due to, in particular, colour variations), which are relevant for the applications they

[11] OFT's decision in *Anglo American/Lafarge JV*, at paragraph 72; CC's decision *in Anglo American/Lafarge JV*, at paragraphs 2.17, 2.18 and 5.22.

are used in (for instance, pre-cast concrete products with an aggregates finish). The underlying aggregates material can also be (and is commonly) used for other end uses and applications as well.

21. For the purposes of the current assessment, the OFT does not consider it necessary to come to a firm conclusion on the extent to which decorative aggregates form a separate market to that of primary aggregates for construction applications given that, on the evidence presented to it, no separate competition concerns arise in relation to decorative aggregates on any possible market. On a cautious basis, for the purposes of the competition assessment, noting the difference with other aggregates in terms of use, price, and delivery distance, the OFT has considered decorative aggregates separate from other primary aggregates for construction applications.

Construction aggregates

22. Breedon submitted that the OFT should consider the merger on the basis of a market for all aggregates (including recycled and secondary aggregates and without further segmentation between crushed rock and sand and gravel) and that it should only take into account the parties' external sales. The OFT discusses the issues in turn below.

The constraint from secondary and recycled aggregates on primary aggregates

23. In this case, Breedon submitted that there is a single market for the production and supply of 'construction aggregates' comprising all grades and sizes of primary aggregates, as well as secondary and recycled aggregates. In support of its view, Breedon raised several arguments, including:

- The share of secondary/recycled aggregates in the UK aggregates market has increased despite the recessions and consequent overall reduction in demand[12] for all aggregates experienced after 2007 which suggests that significant volumes of secondary/recycled have been used in place of primary aggregates. According to Breedon, this could partly be explained by the price advantage of secondary and recycled

[12] CC's MIR report, at paragraph 2.13.

aggregates (they are not subject to the aggregates levy of £2/tonne[13]).[14]

- As set out in the CC's MIR report, the general construction segment for which secondary/recycled aggregates are more likely to be used represents 50 per cent of the total aggregates usage in Great Britain and 40 to 50 per cent of the aggregates used in the general construction sector is accounted for by recycled/secondary aggregates. Moreover, the vast majority [ ].[15]
- The MIR report's findings on the proportion of secondary/recycled aggregates used for the production of RMX and concrete products (five-10 per cent), for the production of asphalt (10-20 per cent), and for general construction (40-50 per cent) reflect the homogeneous nature of aggregates (particularly for general construction), such that any variations between areas is likely to be explained by the availability of secondary/recycled aggregates. In this regard, the relevant overlap areas are near urban areas (Aberdeenshire and Tayside/Fife) where there will be more demolition activity, and therefore greater, more reliable, production of recycled aggregates than less densely populated areas.
- In this case a large proportion of aggregates customers for downstream applications are vertically integrated with primary aggregates producers (with the exception of concrete blocks customers). Thus, the contestable market for which secondary/recycled aggregates are viable substitutes is greater than the CC's figures set out in the MIR report would suggest.
- The fact that there is a lower degree of substitutability for some end uses does not preclude the findings of a single product market in particular in the context of this merger where the majority of the parties' sales are to the general construction sector.
- Breedon's estimated proportion of the market represented by secondary and recycled aggregates in Scotland of 20 per cent is

[13] The aggregates levy (currently £2 per tonne when primary aggregates are commercially exploited) is a tax on the commercial exploitation in the UK of rock, sand and gravel. It was introduced in 2002 with the aims of reflecting some the environmental costs of quarrying and introducing a price incentive to encourage the use of waste, spoil and recycled aggregates.
[14] Breedon also submitted that mobile crushing and screening plants that are used to produce secondary or recycled aggregates are inexpensive and do not require the same level of planning permissions as permanent sites.
[15] [ ].

supported by the estimate for Scotland published on the website for the Scottish Environmental Protection Agency.

24. However, the vast majority of customers responding to the OFT's investigation stated that they would not switch from primary to secondary and/or recycled aggregates following a price increase. For example, one customer told the OFT that it purchased crushed rock which was used as a sub-base and that due to specifications for some projects, it could not use recycled aggregates. Another customer stated that they are a reseller of primary aggregates and therefore only purchase those.

25. The OFT notes the points made by Breedon but given the views of customers in this case, and in line with recent OFT and CC decisions,[16] the OFT has considered the merger on the basis of the supply of primary aggregates.[17] Nevertheless, where evidence has been submitted on the strength of the constraint from secondary and/or recycled aggregates in any specific local area, the OFT has taken this into account as part of its assessment. The OFT also considers below Breedon's argument in relation to external sales, as well as substitutability between sand and gravel and crushed rock.

The constraint from self-supply (or internal sales) on external sales

26. In *Anglo American/Lafarge JV*, the CC explained that Anglo American and Lafarge had the ability to switch between internal and external volumes. It therefore considered internal and external volumes together.[18]

27. In this case, Breedon submitted that the product market should be based on external sales only (with the exclusion of internal sales). In support of its argument, Breedon stated that:

- The fact that suppliers could switch between internal and external sales is not relevant in this case because internal sales represent self-supply and many aggregates customers are vertically integrated and self-supply aggregates.

---

[16] OFT's decision in *Anglo American/Lafarge JV*, at paragraphs 69-71; CC's decision *in Anglo American/Lafarge JV*, at paragraphs 5.26-5.27.

[17] The OFT notes that the market investigation was designed to investigate wider market issues that were not specific to the parties or this merger, and, as such only limited inferences can be drawn from the MIR report. As set out above, the OFT has followed the approach of the CC in *Anglo American/Lafarge JV.*

[18] CC's decision in *Anglo American/Lafarge JV*, at paragraph 6.30.

- Due to the high degree of vertical integration in the industry, the vast majority of external sales are made to customers in the general construction sector.
- There is substantial excess capacity in the industry which means that selling more externally will not lead to a reduction in internal sales.
- Taking into account total sales can be misleading as it would include shares of suppliers who do not supply external customers.

28. The OFT considers that internal supply should be included in the market where production would be shifted from internal to external sales following a small but significant non-transitory increase in the relative price of external sales.[19] Given the range of uses downstream, a firm that is vertically integrated may benefit from the same price increase as its competitors in those areas where it is also active downstream and would have a preference to retain the margin downstream, other things equal. A price increase in external sales in end uses in which the integrated firm is not active may still induce switching away from the internal use.

29. In terms of assessing this, the OFT has relied on production data from BDS[20] which provides internal and external sales together but does not distinguish between them. The OFT notes the ease with which switching between internal and external sales can be undertaken.[21]

Crushed rock and sand and gravel

30. With respect to the use of sand and gravel and crushed rock, Breedon submitted that it was largely influenced by geology and local availability as set out in the MIR report such that they were interchangeable for most applications.

31. The OFT did not receive any evidence from third parties that substitution between crushed rock and sand and gravel was limited such that it would not consider them to belong to separate markets in this case.

32. As a result, and in line with the recent CC decision in *Anglo American/ Lafarge JV*, the OFT did not consider that a further segmentation between

---

[19] *Merger Assessment Guidelines*, at paragraph 5.2.20.
[20] BDS Marketing Research Ltd is an independent marketing and market research consultancy specialising in the construction materials and waste sectors.
[21] The OFT notes that even if it were to consider external sales separately the OFT did not have available evidence or independent data on external sales only.

crushed rock and sand and gravel was appropriate. Nevertheless, the OFT took into account the fact that substitutability varies significantly by application in its competitive assessment.[22]

Ready-mix concrete

33. In *Anglo American/Lafarge JV*, the CC defined a single product market for the supply of RMX (produced either by fixed or by site plants), which did not include volumetric trucks (that is to say, trucks which carry RMX ingredients and mix them on site).[23] The CC considered the competitive constraints exerted by volumetric trucks in its competitive assessment.

34. In this case, Breedon submitted that the market for RMX should include all grades of RMX and that there is a degree of demand-side substitution between precast products (such as bridge decks, stairs and box culverts) where the customer has the choice to cast on site using RMX or purchase precast products. In addition, Breedon argued that there is demand-side substitution between volumetric trucks and conventional mixers. In this regard, it submitted that approximately 10 per cent of the RMX market is supplied in specialist volumetric trucks that batch the concrete on site and supply the customer in the same was as a conventional mixer.[24]

35. In this case, the OFT received no evidence suggesting that demand-side substitution between RMX and precast products was possible.

36. In addition, in relation to volumetric trucks, the OFT was provided with evidence that pointed to minimal constraint from, and presence of, volumetric trucks in general and in each local area.[25]

37. Therefore, in line with previous decisions and based on the evidence available to it, the OFT has considered the merger on the basis of the supply of RMX which does not include volumetric trucks or precast products.[26] In this case, the OFT notes that it was not provided with

[22] CC's decision in *Anglo American/Lafarge JV*, at paragraphs 5.29-5.32.
[23] CC's decision in *Anglo American/Lafarge JV*, at paragraphs 5.46-5.50. *See also* OFT's decision in *Anglo American/Lafarge JV*, at paragraph 101.
[24] Breedon also argued that this was supported by the CC in its updated statement of issues in the MIR of 26 November 2012, noting that while RMX supplied by volumetric trucks may be of inferior quality, there was a degree of substitutability (particularly for smaller jobs).
[25] With respect to local areas, BDS data provided by Breedon listed one volumetric truck in Dundee, Tayside and three volumetric trucks in Inverness with no evidence of volume produced by these trucks.
[26] OFT's decision in *Anglo American/Lafarge JV,* at paragraph 101; CC's decision in *Anglo American/Lafarge JV,* at paragraphs 5.48-5.50.

sufficient information to take into account volumetric trucks in its competitive assessment.

Asphalt

38. In previous decisions, the OFT and the CC have defined a relevant market for the supply of asphalt (from both fixed and mobile plants).[27]

39. In this case, Breedon submitted that asphalt competes with RMX concrete 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.

40. The OFT has received no evidence suggesting a wider product market than the supply of asphalt, that would include RMX concrete products, as well as concrete block paving products. Therefore, the OFT sees no reason to depart from its previous approach and has considered the merger on the basis of the supply of asphalt.

41. With regard to mobile plants, Breedon did not submit that there were mobile plants in the catchment areas around the Target's sites. Therefore, in this case, there is no need to consider whether there is any constraint from mobile plants on the parties' fixed plants.

Asphalt surfacing

42. Breedon submitted that the market was the supply of services for contract surfacing, which are provided to the end client. The service provider procures asphalt, RMX or aggregates, and uses these materials for applications such as building or surfacing roads, car parks, footpaths, and pavements.

43. In a previous decision, the OFT considered the market for the supply of road surfacing.[28]

44. Breedon acquired assets relating to services for asphalt surfacing, whereby asphalt is used for the surfacing of roads, car parks, footpaths, pavements, and other surfaces, as well as airport runways and sporting

---

[27] OFT's decision in *Anglo American/Lafarge JV*, at paragraph 87; CC's decision in *Anglo American/Lafarge JV*, at paragraph 5.45.
[28] OFT's decision in *Completed Acquisition by Aggregate Industries Limited of Foster Yeoman Limited*, ME/4298/06, 22 December 2006, at paragraph 31.

arenas. The OFT therefore considers that it is more appropriate to refer to 'asphalt surfacing'.

45. Therefore, the OFT has considered the merger on the basis of the supply of asphalt surfacing.

Geographic scope

46. The OFT has taken a cautious approach and used a 30-mile basis as a starting point to identify overlaps between the parties. It then refined its analysis for each product based on catchment areas, as set out below.

Decorative aggregates

47. Customers told the OFT that decorative aggregates may be supplied distances of between 50 and 100 miles. For the purposes of the current assessment, the OFT does not consider it necessary to come to a firm conclusion as to the precise geographic market given that, on the evidence presented to it, no separate competition concerns arise in the supply of decorative aggregates on any possible frame of reference.

Primary aggregates for construction applications

48. In *Anglo American/Lafarge JV*, the CC calculated the weighted average radius around each relevant production site within which those sites derived a large proportion of their business.[29] In line with this approach, Breedon provided data on the distance over which its production sites which overlap on a 30-mile radius deliver 80 per cent of their business (no data was provided for the Target's sites). The OFT then averaged these figures across all Breedon production sites for which data had been provided. The OFT weighted each site's distance by the total volume delivered by the site to derive a weighted average distance across Breedon's sites. This data shows a weighted average distance of [ ] miles for primary aggregates.

49. The OFT notes that Breedon provided data for catchment areas in primary aggregates, RMX and asphalt based on road distance while the OFT was seeking data on a radius basis. Radial distances are often smaller than road distances, which the OFT took into account in determining the

[29] The radii of the catchment areas were the distances (in a straight line) within which 80 per cent of the parties' sites' external sales volumes were delivered. CC's decision in *Anglo American/Lafarge JV*, paragraphs 6.11-6.20 and Appendix I.

appropriate radii. Breedon however provided data for shares of production/ sites in primary aggregates, RMX and asphalt on a radius basis.

50. Breedon did some sensitivity checks by calculating delivery distances within which 70 per cent ([ ] miles) and 90 per cent ([ ] miles) of its sites' external sales volumes are delivered to customers.

51. Customers confirmed that the geographic scope for the supply of primary aggregates was local due to transport costs. Responses received from customers and competitors of the parties are consistent with the catchment areas considered by the OFT in this case.

52. Breedon argued in this case that the 30-mile radius used in previous decisions[30] was representative of the average supply distances for aggregates in the UK (subject to certain exceptions due to specific local market conditions, for example, if a quarry is remote or a long way from any centre of population). Breedon submitted that a [ ]-mile catchment area represented a narrowly defined geographic scope. It argued that it did not fully capture the conditions of competition, particularly in North East Scotland. In this regard, Breedon stated that narrow catchment areas may simply reflect the fact that the production site is located close to a source of demand and that this does not mean, however, that the merging parties' sites are not constrained by competitors based further from these sources of demand or that it is not economically viable for the merging parties' sites to travel further distances. Breedon provided examples of tenders that it had lost [ ]. Moreover, Breedon submitted that the incremental cost of travelling the extra [ ] miles (from [ ] to 30 miles away) of its Craigenlow site was [ ] per ton, which represents [ ] per cent of the delivered price for [ ] miles and 30 miles.

53. The OFT notes Breedon's arguments but considers that the geographic area outlined above is a reasonable starting point for its competition assessment. The use of a generalised radius applicable to any site (as used in previous decisions) and the use of standardised distances may not take into account material differences of actual distribution of primary

[30] In decisions prior to the CC's decision in *Anglo American/Lafarge JV*, a uniform 30-mile radius was applied to each site, regardless of the specific area or local characteristics of that area. See for example, OFT's decision in *Anglo American/Lafarge JV*, at paragraphs 78-79 and OFT's decision in *Completed Acquisition by Aggregate Industries Limited of Foster Yeoman Limited*, at paragraph 17.

aggregates between areas.[31] The OFT acknowledges that a geographic market may be wider than a catchment area using the above method. However, the OFT considers that the radii estimated above represent a reasonable starting point in its assessment of competition in local areas. The OFT also notes that the number of overlap areas in this case is not so great as to make taking into account area specific evidence (that is, in determining a weighted average distance) unduly onerous. To ensure that its assessment is sufficiently robust, the OFT has also assessed whether the use of a 30-mile catchment would make a material difference to the assessment in local areas. Further, the OFT has taken a cautious approach and used a 30-mile basis to identify overlaps between the parties.

54. In summary, in line with the CC's approach in *Anglo American/ Lafarge JV*, the OFT has therefore considered the merger on a [ ]-mile radius around the relevant Target sites in primary aggregates. The OFT has conducted some sensitivity analysis around the catchment areas and also considered a 30-mile radius.

Ready-mix concrete

55. Using data on Breedon's 80 per cent catchment areas for each of its RMX sites in Scotland, similar to the approach for primary aggregates and the approach of the CC *in Anglo American/Lafarge JV*, the OFT estimates that the weighted[32] average 80 per cent catchment area for RMX quarry-based sites was [ ] miles in 2010 and [ ] miles in 2011. For RMX sites not based on a quarry it was [ ] miles in 2010 and [ ] miles in 2011. However, focusing only on the Breedon sites which overlap with the Target's RMX sites, these catchment areas are [ ] and typically around [ ] miles [ ].

56. The OFT however refers to its comments at paragraph 49 above on the fact that it was provided with road distance data for its catchment area analysis.

57. In contrast with its arguments in relation to aggregates, Breedon submitted that the characteristics of each individual area means that they need to be examined separately. In relation to the North of Scotland, Breedon argued that in rural markets RMX can and does travel greater

[31] There may be a number of reasons explaining why different catchment areas are appropriate in relation to different sites. These reasons are outlined in the CC's decision in *Anglo American/Lafarge JV*, see paragraphs 6.16 *ff*.
[32] By external volumes.

distances than 10 miles[33] and in particular for RMX plants located at quarries. In such cases, RMX may travel [ ] miles or more to deliver into an urban area.

58. Breedon further argued that RMX plants located at quarries may deliver RMX over greater distance than other plants, pointing to evidence showing that the average distance in road miles for deliveries from quarry-based RMX plants was [ ] and [ ] miles in 2010 and 2011, respectively, whereas for non-quarry based sites it was [ ] miles and [ ] miles, respectively. These catchment areas are for all Breedon sites, rather than overlapping sites which are the focus of the assessment.

59. The OFT does not consider that the evidence points to distinguishing between quarry and non-quarry sites. Furthermore, the majority of customers did not consider that there was a major difference in terms of distance between quarry-based RMX plants and fixed plants elsewhere.

60. As a result, based on the data available to it, the OFT has considered the merger on the basis of a 10-mile radius as a starting point. It has also conducted a sense check and considered the merger on the basis of a 15-mile radius.

Asphalt

61. Breedon argued in this case that a 30-mile radius catchment area was representative of the average supply distances for asphalt in the UK with the exception of specialist markets or remote geographic regions.[34]

62. Breedon provided data on the average delivery distance for 80 per cent of its three sites' (in overlap areas) external sales volumes of asphalt. The OFT calculated a weighted average distance of [ ] miles. The OFT notes however that the data provided by Breedon was based on road distance rather than on a radius and therefore considers that using a 30-mile radius is more appropriate as a starting point to assess the merger but notes

---

[33] A 10-mile radius has been used as a standardised catchment area in previous decisions. See, for example, the OFT's decision in *Anglo American/Lafarge JV*, at paragraph 105; OFT's decision in *Proposed Acquisition of Hanson plc by Pioneer plc*, 19 April 2000, OFT's decision in *Proposed acquisition by Anglo American plc of Tarmac*, 18 February 2000.

[34] A 30-mile radius has been used in previous decisions. See for example, OFT's decision in *Anglo American/Lafarge JV*, at paragraph 95; OFT's decision in *Anticipated acquisition by Midland Quarry Products Limited of the Griff Quarry currently owned by Hanson Quarry Products Europe Limited*, ME/1274/04, 27 September 2004, at paragraphs 9-12.

where using a [ ]-mile catchment area would make a material difference to the assessment.[35]

63. The OFT however refers to its comments at paragraph 49 above on the fact that it was provided with road distance data for its catchment area analysis.

64. Therefore, in accordance with previous decisions and based on the data available to it, the OFT has considered the merger on the basis of a 30-mile radius around the relevant sites.

Asphalt surfacing

65. In a previous decision, the OFT assessed the merger in relation to road surfacing on the basis of Great Britain. Nevertheless, the OFT did not conclude on the geographic scope.[36]

66. In this case, Breedon submitted that the geographic market for asphalt surfacing is at least national in scope (that is, Scotland) and potentially wider, highlighting instances of competition from national asphalt surfacing contractors. Breedon argued that contractors, from across the UK, especially other parts of Scotland, were able to compete with the parties' offerings. They could mobilise equipment and labour to undertake asphalt surfacing work or sub-contract for other firms from temporary rental office accommodation close to the location of the work.

67. Nevertheless, Breedon also indicated that its contracting business operates [ ]. Moreover, the three surfacing 'squads' acquired by Breedon from AI undertake asphalt surfacing operations only in the North of Scotland, principally in and around Aberdeen and Inverness.[37]

68. Some third parties told the OFT that the market was significantly narrower than national (for example, potentially even within 50 to 100 miles). The OFT understands that the geographic scope may differ depending on the size or complexity of a project (the market may be wider

[35] The OFT notes that using a [ ]-mile radius catchment area does not materially affect its assessment.
[36] OFT's decision in *Completed Acquisition by Aggregate Industries Limited of Foster Yeoman Limited*, at paragraphs 32-34.
[37] Surfacing squads operate in teams with an asphalt paving machine and related equipment such as rollers, emulsion sprayers, forklifts and jack hammers.

for largest or most complex projects. For smaller projects, the geographic scope may however be regional (only local firms would compete)).

69. As no competition concerns arise on any reasonable frame of reference, the OFT does not consider it necessary to come to a firm conclusion on the exact scope of the geographic market. The OFT has assessed the merger on a regional basis.

HORIZONTAL ISSUES

70. The OFT has investigated whether the merger gives rise to unilateral effects in the supply of primary aggregates, RMX, asphalt, and asphalt surfacing. The OFT considers each product area in turn below.[38]

Aggregates

Decorative aggregates

71. The OFT received concerns from the parties' customers in relation to the supply of granite (red and grey) around the parties' quarries of Tom's Forest and Craigenlow (grey granite) and Stirlinghill and Corennie (red granite). These customers stated that Breedon would own both of the main decorative aggregate quarries in the North of Scotland. Customers stated that they only had few alternatives to the parties' sites.

72. Breedon argued that there were no issues relating to red granite quarries compared to other granite quarries for 90 per cent of applications. It added that small quantities of red granite were used as decorative aggregates for driveways, rockeries and other landscape applications. Breedon stated that it constituted a small niche market which attracted higher prices and materials travelled further. Breedon also stated that there are numerous decorative aggregates suppliers in the Aberdeenshire area.

[38] The OFT has also considered closed or occasional use sites acquired by Breedon that are operational. These include a quarry in Corrennie and RMX plants in Perth and Edzell. They are considered in the assessment of the relevant areas. The quarry at Kemnay was not considered further as it would require [ ]. In addition, the quarry at Ardchronie is not within a 30-mile radius of a Breedon quarry and no realistic prospect of a substantial lessening of competition was identified.

73. The OFT considers that any issues relating to decorative aggregates would be addressed by any competition concerns the OFT identifies in relation to primary aggregates for construction applications. The OFT recognises that competition concerns may arise in relation to decorative aggregates but has not found it necessary for the purposes of this decision to identify separate competition concerns in the supply of decorative aggregates from those identified in relation to primary aggregates for construction applications on the evidence presented to it.

Primary aggregates for construction applications

Analytical approach

Use of fascia counts and demand centring

74. Breedon submitted that the OFT should adopt the same approach as the CC in *Anglo American/Lafarge JV* and in the MIR report. In particular, Breedon argued that:

- Fascia counts better assess the conditions of competition than market shares given the characteristics of the aggregates industry (that is to say, product homogeneity,[39] excess capacity, and informal tendering process with bilateral negotiations).
- Even where the market is examined on the basis of: (a) primary aggregates only; and (b) only suppliers of primary aggregates that are represented in the BDS report, there are at least six fascia post-merger in all relevant local areas defined on a [ ] - or 30-mile basis. Moreover, Breedon argued that these suppliers constitute very credible competitors who regularly tender for and win significant contracts against Breedon.
- Even where competitors which did not have at least a five per cent share of production in the relevant radial are excluded, in all areas of overlap there remained at least four fascia with at least a five per cent share of production.
- The OFT should have considered demand centring. Breedon noted that when [ ]- and 30-mile radii were drawn around each external customer location where Breedon delivered aggregates in 2011 from its

[39] Breedon refers in particular to regulations such as specifications for highway works and BS/EN standards and argued that within a particular product grade, there is no material differential between products of different geological types or products of different suppliers.

Craigenlow site, all of Craingenlow's customers would have a choice of at least four suppliers post-merger and as such, this merger should not raise any competition concerns in the Grampians area.

- The CC did not express any concerns in several local areas where the combined shares of production exceeded 33 per cent.

75. The OFT carefully considered the arguments made by Breedon. As a general point, the OFT does not consider that it is obliged to adopt a similar approach to that taken by the CC in *Anglo American/Lafarge JV* (or any other decision). The test for reference and the procedural time-limitations, especially in completed cases, mean that the OFT has certain limits with regard to the evidence gathering and analysis it can carry out. Moreover, each merger case and the assessment of its effects on competition are fact- and case- specific (for example, it cannot necessarily follow that the CC itself would adopt the precise same methodology in one case as in another; it will often depend on the evidence available).

76. Turning nevertheless to the arguments presented by Breedon, with respect to a demand-centred assessment, the OFT notes that it does not have the data necessary to conduct such an analysis. In addition, with respect to the use of fascia counts, the OFT, first, notes that the CC did not rely on fascia counts in its analysis and did not indicate that fascia counts better assess the conditions of competition in these markets but instead undertook a price concentration analysis. Second, the OFT considers that it is not appropriate to follow the same general filtering approach in this case given that the number of overlap areas does not justify the use of a filtering methodology.[40] The OFT notes that a price concentration analysis, similar to the one relied on by the CC,[41] was not available to it in this case (and such analysis is not commonly available as part of a first phase review). Therefore, it has not been able to fully assess the effect that the number of competing firms of different sizes or the parties competing against each other would have on prices.

77. The OFT further notes that it recognises the presence of other suppliers in the relevant local areas. However, the OFT considers that, based on the evidence available to it, the extent to which these suppliers may exert a

[40] The CC's filtering methodology in *Anglo American/Lafarge JV* was designed to ensure that no area that may raise competition concerns was excluded from the analysis and to focus on those areas that may potentially raise concerns, at paragraphs 6.21-6.25.
[41] CC's decision in *Anglo American/Lafarge JV*, at paragraphs 6.21-6.25.

competitive constraint on Breedon is not clear, as no or limited evidence has been received pointing to such a constraint. Breedon provided internal documents referring to [ ]. However, the OFT was not provided with bidding data, or with data on shares of production over several years. Therefore, on a cautious basis, the OFT placed more weight on shares of production for 2011 based on actual output of the parties and BDS data for competitors' sites. The OFT is sceptical of the weight, if any, it can attach to these suppliers, particularly given that many of them have low shares of production.

Market shares

78. Market shares of firms in the market, both in absolute terms and relative to each other, can give an indication of the potential extent of a firm's market power. The parties' combined market shares, when compared with their respective market shares pre-merger, can provide an indication of the change in market power resulting from a merger.[42]

79. In *Anglo American/Lafarge JV*, the OFT considered combined market shares in excess of 33 per cent to identify overlaps in which to focus its competition assessment.[43] It noted that it constitutes a more conservative approach compared to the 40 per cent indicator for homogeneous markets only which is referred to in the OFT/CC's *Merger Assessment Guidelines*. The OFT nevertheless considered this level to be more appropriate since: (i) differing levels of closeness of competition may exist between suppliers located in different positions within a given radial, thereby meaning that suppliers are geographically differentiated; (ii) transport costs indicate a significant cost differential between differently located production sites; and (iii) the parties' gross margins in the supply of aggregates are high.

80. In the same case, the CC considered shares of production, together with other evidence in its local assessment. As part of its assessment, the CC decided not to pursue catchment areas with combined shares of production in primary aggregates of less than 33 per cent.[44]

81. The OFT considers that the same factors apply in this case, noting in particular, first, that different suppliers are located in different positions within any catchment area and that this may affect the degree to which

[42] *Merger Assessment Guidelines*, at paragraph 5.3.4.
[43] OFT's decision in *Anglo American/Lafarge JV*, at paragraph 7.
[44] CC's decision in *Anglo American/Lafarge JV*, at paragraph 6.33.

those suppliers can and do compete against each other. Second, the variable profit margins of the Target's aggregate sites range from [10-20 to 30-40] per cent. [45] The variable profit margins of Breedon's aggregate sites range from [10-20 to 30-40] per cent on a similar basis.[46] These variable profit margins are [ ].

82. With regard to profit margins, Breedon submitted that the OFT's calculations of profit margins should consider the parties' overall profitability instead of variable profit margins. It also noted that the more standard measure of margin within the business was [ ]. Finally, it considered that different operators will employ different accounting methodology (in particular as regards transfer pricing for input materials supplied internally) and that the OFT should therefore exercise caution when comparing producers' profitability.

83. The OFT notes Breedon's arguments and recognises that, in some circumstances, costs that may otherwise appear to be fixed, can inform a firm's price setting process and that margins may not be a reflection of the price sensitivity of customers and the competitive pressure faced by a firm. However, the OFT has not been persuaded that this is the case here and considers that variable profit margins provide an indication of the value of sales recaptured by the merged firm (Breedon) following a price rise, that it would otherwise have lost (and be disciplined by) pre-merger. The OFT therefore considers that when variable profit margins are high, the same market shares can indicate greater potential price effects from the merger than otherwise.[47]

84. As a result, for the reasons identified by the OFT and the CC in *Anglo American/Lafarge JV*, the OFT followed the same approach in this case. In particular, the OFT has taken into account the parties' variable profit margins in its assessment together with other factors and considered that it would not pursue catchment areas with combined shares of production in primary aggregates of less than 33 per cent.[48]

85. The market shares used in this case are based on BDS data. Breedon considered the BDS volume estimates for smaller companies outside the

---

[45] This depends on the specific site and whether wages are included in variable costs.
[46] [ ]
[47] *Merger Assessment Guidelines*, at paragraph 5.3.2.
[48] OFT's decision in *Anglo American/Lafarge JV*, at paragraph 7; CC's decision in *Anglo American/Lafarge JV*, at paragraph 6.33.

majors, and particularly for the family-run, independent businesses to be inaccurate.

86. Breedon also argued that the shares of production calculated by the OFT did not provide a reasonable basis for analysis as market shares could be materially affected by 'lumpy contracts'.

87. The OFT relied on the 2011 BDS data provided by Breedon (similar data had been used in the past by the CC). The OFT, as mentioned above, was not provided with data over several years and was thus not able to appreciate possible variation of shares of production. Therefore, the OFT considered that shares of production based on 2011 BDS data constituted an appropriate basis to assess the conditions of competition in local areas.

Local area analysis

Shares of production

88. Table 1 below sets out the parties' shares of production in primary aggregates on [ ]- and 30-mile radii around the Target's sites at Tom's Forest (in Grampian) and Powmyre (in Tayside and Fife).

Table 1: Parties' shares of production in primary aggregates in Grampian and Tayside and Fife (2011)

Area	**Centred site**	**Catchment area (miles)**	**Breedon's share in primary aggregates (per cent)**	**Target's share in primary aggregates (per cent)**	**Combined share in primary aggregates (per cent)**
Grampian	Toms Forest (AI)	30.0	[10-20]	[10-20]	[30-40]
	Toms Forest (AI)	[ ]	[20-30]	[20-30]	[40-50]
Tayside and Fife	Powmyre (AI)	30.0	[10-20]	[10-20]	[30-40]
	Powmyre (AI)	[ ]	[30-40]	[10-20]	[50-60]

Source: OFT analysis based on actual output of the parties' sites and BDS data for competitors' sites

Catchment area in Grampian

89. The OFT assessed the merger by centring the catchment area on the Target's site of Tom's Forest. On this basis, the parties' combined share

of production on a [ ]-mile radius is [40-50] per cent, with a [20-30] per cent increment. This share of production is based on the overlap between the Target's site at Tom's Forest and Breedon's site at Craigenlow.[49]

Breedon's views

90. Breedon submitted that in addition to the competitors listed by BDS, it is aware of five other small aggregates operators in the overlap area in Aberdeenshire that currently sell aggregates in this market. These are crushed rock sites operated by J Herd in Rothienorman and Jamieson at Whitecairns, and sand and gravel operations at Hatton Castle, Longside Peterhead, and Cairballoch Alford.

91. Breedon further argued that competitors compete with it and win significant contracts. Breedon provided internal documents referring to competing suppliers as well as a list of contracts within the Aberdeenshire area that it had lost to local competitors within the last six to eight months. Breedon noted that the volume of these additional contracts was [ ].

92. Breedon estimated that there are [ ] other suppliers (with a fascia change of [ ] to [ ]) on a [ ]-mile radius of the Target's Tom's Forest site. When taking into account only suppliers with at least a five per cent market share, there are [ ] suppliers (with a fascia change of [ ] to [ ]).

93. Breedon also submitted that secondary/recycled aggregates were widely available in the overlap areas.[50] With regard to Grampian, Breedon provided a list of recycled aggregates suppliers as well as a list of jobs lost by Breedon to suppliers of recycled aggregates within the last six to eight months (with an approximate tonnage of [ ]). Breedon added that many other smaller suppliers of recycled aggregates have good relationships with local companies and are more likely to win contracts with these customers than the larger suppliers. Breedon nevertheless considered that there was no scope for the supply of recycled aggregates

---

[49] The OFT notes that centring the catchment area on Breedon's site at Craigenlow does not materially affect its assessment. When centring on Breedon's site at Craigenlow, the parties' combined share of production is [40-50] per cent on a [ ]- mile radius and [40-50] per cent on a 30-mile radius. Breedon's site at Stirlinghill is 27 miles from the Target's site at Tom's Forest [ ]. When centring on Breedon's site at Stirlinghill, the parties' combined share of production is [30-40] per cent on a 30-mile radius.

[50] In this regard, Breedon noted that the reason why it does not have the same level of contemporaneous evidence (and in particular references to secondary/recycled aggregates in internal documents) for the Aberdeen area as for the Tayside and Fife region is because [ ].

to expand further (in response to higher prices) and that all material suitable for use in aggregates in the local market was being used for these purposes.

Third parties' views

94. The OFT received significant concerns from all customers that responded to the OFT relating to the overlap area in Grampian. Several customers mentioned that the parties' Tom's Forest and Craigenlow sites were their preferred alternatives and that they had kept each other competitive. Customers dismissed alternative suppliers as not being effective competitors. Their concern was that prices were likely to rise as a result of the merger. A customer who did not raise concerns told the OFT that it would pass price increases to customers.

OFT's views

95. The parties' share of production on a [ ]-mile radius is [40-50] per cent, with a [20-30] per cent increment. Moreover, Breedon's and the Target's sites are geographically closest to each other (within six miles), the next closest competitor is seven miles away.

96. In addition, the OFT also considers that the parties' sites are close competitors in terms of competitive offering. Both quarries are the two largest in the area and they produce crushed rock. Their estimated combined share in crushed rock on a [ ]-mile radius is approximately [60-70] per cent.

97. Other competitors in the area include Aberdeen Council and Leiths. The OFT was not provided with sufficient evidence to assess the constraint posed by these other suppliers in the catchment area in Grampian.[51]

98. With respect to the constraint posed by secondary/recycled aggregates, the OFT considered that it was not provided with sufficient evidence to determine the extent of the constraint posed by recycled (and secondary aggregates) on primary aggregates in the catchment area in Grampian.[52] The OFT notes that the losses pointed to may suggest that recycled and

[51] The OFT refers to its analysis at paragraphs 74-87 of the decision.
[52] As set out by the CC in its *Anglo American/Lafarge JV decision*, such evidence could include primary aggregates being replaced by secondary and/or recycled aggregates or prices of primary aggregates responding to sales being lost or potentially lost to secondary and/or recycled aggregates, at paragraph 6.30 (g).

secondary aggregates account for around [20-30] per cent of the aggregates market in the catchment area Grampian. Even if these recent losses are taken into account, the parties' combined market share would be [30-40] per cent. The OFT also notes that based on the evidence available to it, it could not establish the degree to which these losses were constraining the parties' prices or the quality of their services.

99. The OFT also notes that the presence of Corennie, which is used on a project basis (seven miles), and Stirlinghill (27 miles), [ ] within 30 miles constitutes an exacerbating factor of the competition concerns that it had identified as it serves to increase the parties' presence in the wider area.

Catchment area in Tayside and Fife

100. The OFT assessed the merger by centring the catchment area on the Target's site of Powmyre. With respect to the Target's quarry site of Powmyre, the parties' combined share of production on a [ ]-mile radius is [40-50] per cent with a [10-20] per cent increment. This share of production is based on overlaps between the Target's sites at Powmyre and Edzell and Breedon's sites at Ethiebeaton, Capo, Clatchard and Balmullo.[53]

Breedon's views

101. Breedon submitted that the share of production on which the OFT has based its analysis has changed in the case of Powmyre. Breedon noted that between 2011 and 2012, the output of the Target's site of Powmyre [ ].

102. Breedon stated that the quarries in the catchment area around Powmyre would face significant competition post-merger from at least [ ] independent competitors (with a fascia change of [ ] to [ ]). When only taking into account competitors with a share at or above five per cent, there would be [ ] other competitors (with a fascia change from [ ] to [ ]).

[53] The OFT notes that when centring on Breedon's site at Ehiebeaton, the parties' combined share of production is [30-40] per cent with a [10-20] per cent increment on a [ ]-mile radius; when centring on the Target's site at Edzell, the parties' combined share of production is [40-50] per cent with a [20-30] per cent increment on a [ ]-mile radius; when centring on the Breedon's sites at Capo and Clatchard the parties' combined shares of production are [30-40] per cent (with a [10-20] per cent increment) and [30-40] per cent (with a [0-10] per cent increment), respectively, on a [ ]-mile radius; when centring on Breedon's site at Balmullo, the parties' combined share of production is [20-30] per cent (with a [0-10] per cent increment) on a [ ]-mile radius. The OFT notes that Breedon's site at Cunmont is within the catchment area but produces recycled aggregates.

103. Breedon also argued that as evidenced by internal documents submitted to the OFT, there was a widespread availability of recycled aggregates around Powmyre. For instance, the February 2013 monthly board report states '[ ]'. Also, the August 2012 monthly board report states that '[ ]'.

Third parties' views

104. Some customers indicated that there would be fewer suppliers in that area and that prices could increase. A customer who was not concerned about the merger told the OFT that it would pass on price increases to customers.

OFT's views

105. The parties' combined share of production is [50-60] per cent with a [10-20] per cent increment. When taking into account [ ], the parties' combined share of production is [40-50] per cent with a [10-20] per cent increment on a [ ]-mile radius. On a 30-mile radius, the parties' combined share of production is [30-40] per cent.

106. In addition, the OFT took into account the fact that the Target's site at Powmyre overlaps with all Breedon sites (Ethiebeaton, Balmullo, Capo, Clatchard and Cunmont[54]) and the Target's site at Edzell on a [ ]-mile radius. Moreover, the OFT notes that Breedon's Craigenlow site is within 45 miles.

107. Other competitors in the area include D Geddes, Tayside Contracts, and Skene but as stated above Breedon did not provide sufficient evidence on the constraint posed by these sites.[55]

108. With respect to the constraint posed by secondary/recycled aggregates in the catchment area in Tayside and Fife, the OFT acknowledges that some of Breedon's internal documents refer to [ ]. In addition, several Monthly Board Reports refer to [ ]. The OFT has therefore considered that these references in the parties' internal documents are not sufficient to

[54] The OFT notes for clarity that Breedon's site at Cunmont produces recycled aggregates. Therefore, its production output was not included when calculating the parties' combined share of production in primary aggregates.
[55] The OFT refers to its analysis at paragraphs 74-87 of the decision.

determine the extent of the constraint posed by recycled (and secondary aggregates) in the catchment area in Tayside and Fife.[56]

109. The OFT also re-centred on the sites around Powmyre and found similar concerns, although it notes that the parties' shares of production were lower.[57]

Barriers to entry and expansion

110. Entry or expansion of existing firms can mitigate the initial effect of the merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the OFT considers whether such entry or expansion would be timely, likely and sufficient.[58]

111. Breedon submitted that there was excess capacity in the industry. In particular, Breedon noted that on the basis of BDS data, capacity utilisation proxied by total volume in 2011 divided by total volume in 2007 indicated that in 2011, the Grampian aggregates sites operated at 62 per cent capacity when compared with 2007, and the Tayside aggregates sites operated at 55 per cent capacity, on average. It added that third-parties' sites [ ] the merging parties in the Grampians, and [ ] the parties in Tayside and Fife.[59] Breedon also suggested that the level of spare capacity in the industry might be higher, because certain quarries were not operating at full capacity even during the peak of demand in 2007.

112. Breedon further argued that there was significant spare capacity in the supply of aggregates in the Grampians and Tayside and Fife with volumes declining by 30 per cent since 2007 in each region. This appeared to be mainly as result of a fall in demand.

---

[56] In particular, the OFT notes that these are not sufficient to establish that primary aggregates are being replaced by secondary and/or recycled aggregates or that prices of primary aggregates are responding to sales being lost or potentially lost to secondary and/or recycled aggregates, CC's decision in *Anglo American/Lafarge JV*, at paragraph 6.30.

[57] In this regard, the OFT notes that the parties' share of production is [30-40] per cent on a 30-mile radius of the Target's site at Powmyre. Nevertheless, the OFT has identified concerns taking into account all the evidence set out above.

[58] *Merger Assessment Guidelines*, at paragraphs 5.8.1- 5.8.3.

[59] Considering third parties' sites only (excluding Breedon's and the Target's), Breedon estimated that the average capacity utilisation is [ ] per cent for Grampian aggregates sites and [ ] per cent for Tayside aggregates sites.

113. Breedon stated that during this period there have been some quarry closures, notably Les Taylor's quarries at North Mains and Haddo in Grampian. However, it noted that the North Mains quarry was now operational again and that during this period Bruce Plant also opened their quarry operation at Ury. Breedon therefore submitted that capacity available in the market remained around the level of demand of five years ago. Breedon considered this likely to be adequate for any general market recovery. Breedon also believed that opportunities would exist for competitors to increase installed capacity should market demand support this.

114. In Tayside and Fife, Breedon explained that Aggregate Industries opened the Powmyre quarry and Laird opened their Blairgowrie operation in 2008. It therefore submitted that similar levels of capacity existed in that market as exhausted quarries have been replaced with new operations.

115. Breedon estimated that the costs associated with increasing production are minimal since the rated hourly production of the plants can already accommodate these volumes, with no modification or capital investment. However, it did note that additional transport would be required. It explained that increased capacity would be achieved by working more hours and, if necessary, introducing a second shift. It submitted that costs would remain largely the same except that overtime rates would be applied (these are typically [ ] per cent above standard day working rates). If a second shift were to be introduced, [ ].

116. For a 25 per cent increase in quarry capacity, Breedon estimated that wage costs would increase by approximately [ ] per cent [ ]. For a 50 per cent increase in capacity, Breedon estimated that wage costs would increase by approximately [ ] per cent.

117. The OFT notes that no third parties suggested that they were planning to increase capacity at the current prices. Most competitors did say that they had significant spare capacity with some saying 50-70 per cent and others saying that they had produced at 200 per cent of normal 'capacity' in recent years by hiring extra staff and equipment. Nevertheless, the OFT considered that it was unclear whether this would be sufficient to overcome the effects of the merger, particularly because some customers have said that some of the alternatives were not price-competitive. In this regard, sites that are mainly operated to provide inputs into downstream products may not be set up to compete for large external volumes or

some sites may not compete effectively with the parties. It is not clear that the presence of extra capacity has constrained the parties to any greater degree than previously and so that current shares of production are not generally reflective of the competition between suppliers, irrespective of capacity (particularly as the parties also have spare capacity).

118. Therefore, although there is some evidence of spare capacity in the local catchment areas in Grampian and Tayside and Fife, the OFT considers that it was provided with insufficient evidence to conclude that this would provide a price competitive constraint on the parties to counteract the lessening of competition arising from the merger. The OFT did not see evidence that the existence of competitors' spare capacity in the past had an impact on the parties' competitive position. The OFT also notes that third parties have not referred to spare capacity being an important consideration in past negotiations or leading to a lack of concern about future pricing.

119. With respect to entry, Breedon argued that barriers to entry in the aggregates market in the relevant areas of Scotland are relatively low (subject to planning) 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 and new entrants are likely to be attracted if demand outstrips supply. 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.

120. In terms of entry/expansion to the aggregates market, Breedon estimates that it is likely to take new entrants longer as securing planning consent to open a quarry will take time, possibly one to two years. Breedon also referred to several cases of farmers and merchants obtaining consent to produce aggregates and stated that generally the planning process is more straightforward in rural Scotland than in more densely populated areas of the UK such as the South East. Additionally, Breedon notes that the time required to obtain consent for a mobile crushing/screening plant (to produce recycled/secondary aggregates) is considerably shorter and in the region of six months.

121. The OFT first notes that substantial excess capacity at a local level would act as a barrier to entry by reducing the incentives for new entry. A new entrant would perceive that its ability to make entry profitable would be reduced if existing market participants could react quickly to its entry by increasing their output.[60]

122. More specifically, with respect to aggregates, the OFT considers that limited availability of suitable greenfield sites, along with the difficulties and costs in obtaining planning permission, would make any entry slow and expensive.[61]

123. In addition, the OFT did not find evidence of specific entry plans in those local aggregates markets in which it found that the proposed merger raised a realistic prospect of a substantial lessening of competition.

124. The OFT has therefore considered that Breedon's submissions on the existence of spare capacity and possible entry in primary aggregates are not sufficient to allay the concerns it identified in the catchment areas in Grampian and in Tayside and Fife.

Countervailing buyer power

125. The OFT notes that in some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices ('countervailing buyer power'). The existence of countervailing buyer power will be a factor in making a substantial lessening of competition finding less likely.[62]

126. Breedon stated that it supplies a large number of customers in both the public and the private sectors, including local authorities, Transport Scotland, builders' merchants, house builders, utility companies and general contractors. As part of the supply chain, Breedon delivers materials to facilitate the construction or maintenance of commercial, industrial, infrastructure and other projects. Customers with large orders to place will generally secure better prices as potential suppliers compete for work. Orders are won through a combination of price, quality and service, although, as there is little product differentiation between suppliers, price tends to be the main factor in winning work. Breedon also

[60] CC's *Anglo American/Lafarge JV* decision, at paragraph 6.283.
[61] CC's *Anglo American/Lafarge JV* decision, at paragraph 6.284.
[62] *Merger Assessment Guidelines*, at paragraphs 5.9.1-5.9.8.

argued that customers typically shop around and are likely to seek quotes from several suppliers.

127. Breedon argued that there is a large degree of customer concentration in aggregates which give theses customers a high degree of bargaining power. In respect of Craigenlow, Breedon estimated that the quarry's top [ ] customers account for approximately [ ] per cent of external sales.

128. Breedon added that the aggregates market is characterised by sophisticated customers who source aggregates through informal (and sometimes formal) tenders and negotiate prices bilaterally. Moreover, Breedon referred to the CC survey in *Anglo American/Lafarge JV* and stated that the majority of customers often obtain quotes from several suppliers.

129. In this case, no third party claimed that they had sufficient buyer power to prevent price rises. On the contrary, a significant number of customers raised concerns about the merger.

130. The OFT considers that a customer's negotiating strength will be stronger if it can easily switch its demand away from the supplier, particularly if there are several alternative suppliers to which the customer can credibly switch. Customers in this case said that they negotiated with the parties on the basis of volumes but that a reduction in the choice of suppliers was still considered a risk that prices could increase as a result of the merger.

131. Moreover, the OFT notes that even if larger customers are protected to some degree by buyer power the parties can still identify and increase prices to smaller customers as many orders are individually negotiated and delivered to sites.[63]

132. The OFT therefore concluded that Breedon's submissions on countervailing buyer power in primary aggregates are not sufficient to allay its concerns in the catchment areas as set out above.

Conclusion

133. The OFT therefore considers that the merger raises a realistic prospect of a substantial lessening of competition with respect to the supply of primary aggregates in the overlap areas in Grampian and Tayside and Fife.

[63] *Merger Assessment Guidelines*, at paragraph 5.9.6.

The OFT is concerned that prices will rise or that the non-price factors of competition (such as timely delivery) will worsen as a result of the merger.

Ready-mix concrete

Differentiation by geography

134. Breedon submitted that suppliers were undifferentiated by geography.[64] In particular, it stated that customers could switch to alternative, more distant suppliers within a viable supplying distance of the customer in the event of a price increase by the parties. Breedon added that this was particularly relevant in the context of excess capacity and that there were many examples of RMX sites in the relevant areas of Scotland winning volumes at distances beyond [ ] miles from their plant. Breedon further stated that the distance between the site and the source of demand was more relevant.

135. Breedon also argued that the OFT should take into account RMX producers outside of the radial (but supplying customers inside the radial) as although they would not be treated as exercising a competitive constraint on the centred site on the basis of a supply-centred approach, from the customer's perspective, these suppliers would be an effective alternative to the centre site.

136. The OFT notes that customers within [ ] miles of Breedon's RMX sites account for over [ ] per cent of Breedon's RMX sales when adjusting for the number of potential customers there could be in a given distance band. This suggests that customers who are closer to Breedon's RMX sites are more likely to use Breedon's RMX sites.

137. The OFT also notes that it used a 10-mile radius as a starting point but also considered the merger on the basis of a 15-mile radius, thus taking into account constraints outside of the market.

Parties' variable profit margins

138. The OFT notes that the variable profit margins of the Target's RMX sites ranged from [0-10 to 10-20] per cent depending on the specific site and

[64] Breedon criticised the OFT's approach of taking into account the distribution of Breedon RMX volumes by delivery distance bands. The OFT had concluded that customers who are closer to Breedon's RMX sites are more likely to use Breedon's sites.

whether wages are included in variable costs. The variable profit margins of Breedon's RMX sites ranged from [0-10 to 10-20] per cent on a similar basis. [ ]

139. The OFT refers to Breedon's comments on the OFT's calculations set out above in relation to aggregates.

140. In summary, in line with the analysis in primary aggregates, the OFT has taken into account the extent to which suppliers may be differentiated by location and the parties' variable profit margins in its assessment together with other factors and considers it appropriate to take a cautious approach, specifically that it would not assess in detail catchment areas with combined shares of sites in RMX of less than 33 per cent.

Closed or occasionally used Target sites as potential competition

141. The OFT has considered not only loss of current head-to-head competition between the parties but also the possible loss of potential competition. A loss of potential entry may lead to higher prices or worsening of non-price factors of competition relative to the conditions of competition without the merger. OFT guidance states that, in assessing this, the OFT will consider whether one of the parties would have entered absent the merger, such entry would have increased competition, and whether there are any potential entrants in the area.[65]

142. In this case, Breedon explained that it had acquired from Aggregate Industries five closed or occasional use sites that were all to some extent 'operational'. These include RMX plants in Perth (non-quarry based) and Edzell (quarry based). Both sites made sales each year between 2008 and 2012.

143. Breedon argued that in the absence of evidence to support the position that the Target would have been likely to re-open the sites at Perth and Edzell (absent the merger), there is no basis for the OFT to treat these sites as potential competitors.

144. In addition, Breedon stated that the Perth site has been re-opened and the Clatchard site closed since the merger. Therefore, it concluded that it would not be possible to identify competition concerns on this basis as it is not possible to assess what competitive constraints might

[65] *Merger Assessment Guidelines*, paragraph 5.4.15.

hypothetically have been experienced by the Perth site pre-merger (when it was non-operational) or insofar as it would have remained non-operational in future, and therefore there is no valid counterfactual against which to assess the merger.

145. The OFT took into account the situation pre-merger when Breedon's Clatchard site was active and considered that it might have stayed active if the merger had not taken place and internalised competition between the Breedon's Clatchard site and the Target's Perth site. The OFT considered that the fact that the Target's site at Perth was re-opened after the merger showed that re-opening the site and new competition between these sites was a possibility. The OFT notes that [ ].

146. Based on the evidence available to it, and in particular the fact that the plants had made sales each year between 2008 and 2012 and that they could be re-opened at relatively low cost should there be a contract requiring their capacity,[66] the OFT has considered that the Target's RMX plants at Edzell and Perth posed a constraint as potential competitors on Breedon's Capo and Clatchard sites in Tayside and Fife North and South, respectively. These two overlap areas are assessed in the local analysis below.

Local area analysis

Shares of sites

147. Table 2 and Table 3 below set out the parties' shares of sites in RMX (which is the best data available to the OFT) on 10- and 15-mile radii around the Target's sites in the Grampian (at Tom's Forest, Peterhead, Dyce, and Tullos), in Tayside and Fife (at Dundee, Perth, and Edzell), and in the Highlands (at Beauly).[67]

[66] The Target's site at Perth was re-opened since the Acquisition. Moreover, the OFT notes that Edzell is located on a quarry and could therefore be supplied in aggregates.
[67] Breedon submitted that the data it provided did not take into account mobile RMX plants.

Table 2: Parties' shares of sites in RMX on a 10-mile radius (2013)

Region	Centred site	Breedon site share (per cent)	Target site share (per cent)	Combined share of sites (per cent)
Grampian S	Dyce (AI)	[30-40]	[50-60]	[80-90]
Grampian S	Tullos (AI)	[20-30]	[20-30]	[50-60]
Grampian S	Tom's Forest (AI)	[30-40]	[50-60]	[80-90]
Grampian N	Peterhead (AI)	[50-60]	[50-60]	[90-100]
Tayside and Fife C	Dundee (AI)	[10-20]	[10-20]	[20-30]
Tayside and Fife S	Perth (AI - closed)[68]	[30-40]	0	[30-40]
Tayside and Fife N	Edzell (AI - closed)	[50-60]	[50-60]	[90-100]
Highlands	Beauly (AI)	[30-40]	[30-40]	[60-70]

Source: OFT analysis based on parties' data. Figures are rounded.

Table 3: Parties' shares of sites in RMX on a 15-mile radius (2013)

Region	Centred site	Breedon site share (per cent)	Target site share (per cent)	Combined share of sites (per cent)
Grampian S	Dyce (AI)	[20-30]	[30-40]	[60-70]
Grampian S	Tullos (AI)	[30-40]	[30-40]	[60-70]
Grampian S	Tom's Forest (AI)	[30-40]	[40-50]	[70-80]
Grampian N	Peterhead (AI)	[20-30]	[20-30]	[40-50]
Tayside and Fife C	Dundee (AI)	[10-20]	[20-30]	[30-40]
Tayside and Fife S	Perth (AI - closed)[69]	[20-30]	[20-30]	[50-60]
Tayside and Fife N	Edzell (AI - closed)	[30-40]	[30-40]	[60-70]
Highlands	Beauly (AI)	[20-30]	[20-30]	[40-50]

Source: OFT analysis based on parties' data. Figures are rounded.

148. In Tayside and Fife Central the parties' combined share of sites is [20-30] per cent on a 10-mile radius of the Target's site in Dundee. This share of

[68] The parties' sites are within 11 miles of each other. While there is no overlap on a 10-mile radius, the parties' share of sites is [50-60] per cent on a 15-mile radius.
[69] The parties' sites are within 11 miles of each other. While there is no overlap on a 10-mile radius, the parties' share of sites is [50-60] per cent on a 15-mile radius.

sites is based on the overlap between the Target's site at Dundee and Breedon's site at Ethiebeaton. The parties are not each other's closest competitor as they are four miles from each other and another competitor is one mile away from the Target's site. The OFT also notes that there are five other competitors active in that area. The OFT does not consider that there is a realistic prospect of a substantial lessening of competition arising from the merger with respect to the supply of RMX in Tayside and Fife Central. The other overlap areas are discussed below.[70]

Catchment area in Grampian South

149. The OFT centred its analysis on the Target's RMX plants in Dyce, Tullos, and Tom's Forest. On a 10-mile radius from the Target's sites, the parties' combined shares of sites are high at between [50-90] per cent (table 2). The OFT notes that using a 15-mile radius does not significantly affect its analysis (table 3).[71] These shares of sites are based on overlaps between the Target's sites at Dyce, Tullos and Tom's Forest and Breedon's sites at Bridge of Don, Craigenlow, Inverurie and Westhill. All of the parties' sites overlap on a 15-mile radius (except for Tullos and Inverurie which are within 16 miles of each other).

150. Breedon submitted that the fascia change on a 10-mile radius would be from three to two (and five to four on a 15-mile radius).

151. Many third parties told the OFT that competition in the supply of RMX (particularly around Aberdeen) would be severely affected market by the merger. They raised concerns that the merger would lead to fewer RMX suppliers in and that prices could rise as a result or that they could face delays.

152. The OFT also notes that it was not provided with sufficient evidence on the constraint posed by other suppliers in the overlap area in Grampian South.[72]

---

[70] When centred on Breedon's site at Ethiebeaton, the parties' combined share of sites is [20-30] per cent on a 10-mile radius and [20-30] per cent on a 15-mile radius.

[71] When centred on Breedon's sites in Grampian South, the parties' combined shares of sites are [80-90] per cent at Craigenlow, [60-70] per cent at Westhill, [60-70] per cent at Bridge of Don, and [80-90] per cent at Inverurie on a 10-mile radius. On a 15-mile radius, the parties' combined shares of sites are [70-80] per cent at Breedon's sites in Craigenlow, Westhill and Bridge of Don and [70-80] per cent at Inverurie.

[72] The OFT refers to its analysis at paragraphs 74-87 of the decision.

Catchment area in Grampian North

153. The OFT centred its analysis on the Target's RMX plant in Peterhead. On a 10-mile radius, the parties' combined share of sites is [90-100] per cent [ ] and the merger is thus a merger to monopoly (table 2). On a 15-mile basis, the parties' combined share of sites is [40-50] per cent (table 3). These shares of sites are based on the overlap between the Target's site at Peterhead and Breedon's site at Stirlinghill. The OFT notes that changing the radial from a 10-mile to a 15-mile radius leads to a significant reduction of the parties' combined share of site. This is due to other competitors being taken into account. Nevertheless, the OFT has taken into account the fact that the parties are each other's closest competitor. They are within four miles of each other (the first competitor is 13 miles away). The OFT also notes that it was not provided with sufficient evidence on the constraint posed by other suppliers in the overlap area in Grampian North.[73]

154. In addition, several customers of the parties told the OFT that they had concerns about the merger in RMX in this area.

Catchment area in Tayside and Fife South

155. The RMX plant at Perth was closed by AI in 2012. As set out above, it made sales between 2008 and 2012 and Breedon indicated that it could be re-opened at relatively low cost. The OFT has therefore considered the Target's RMX plant at Perth as a potential competitor of Breedon's Clatchard site.

156. The OFT centred its analysis on the Target's RMX plant in Perth. The Target's site in Perth and Breedon's Clatchard plant are within 11 miles of each other. While there is no overlap on a 10-mile radius, the parties' combined share of sites is [50-60] per cent on a 15-mile radius (table 3).[74]

157. Breedon submitted that there were two other competitor sites (including a site closed by Hanson) with substantial spare capacity and each holding a [20-30] per cent share of sites if they were to be taken into account. Moreover, it submitted that the Clatchard site would only be the third closest competitor of the Target's site at Perth and significantly more

[73] The OFT refers to its analysis at paragraphs 74-87 of the decision.
[74] When centred on Breedon's site at Clatchard, the parties' combined share of production is [20-30] per cent on a 10-mile radius and [50-60] per cent on a 15-mile radius.

distant (11 miles) than its two closest competitors' sites on a 10-mile radius (which are located three and four miles from the Perth site, respectively). On a 15-mile radius, an additional competitor (Cemex) would have a site share of [20-30] per cent and would be closer to Breedon's Clatchard site than are the parties' other sites at Dundee and Kirkcaldy.

158. Breedon also stated that other competitors' closed sites should also be taken into account.

159. Some customers told the OFT that they had concerns in relation to the impact of the merger on the supply of RMX in Tayside and Fife South. They stated that competition would be reduced around Perth.

160. In addition to the parties' high combined share of sites, the OFT took into account the concerns raised by customers. The OFT also notes that it was not provided with sufficient evidence on the constraint posed by other suppliers in the overlap area in Tayside and Fife South.[75]

Catchment area in Tayside and Fife North

161. The RMX plant at Edzell was closed in 2012. According to Breedon, it could be opened at relatively low cost. As set out above, the OFT has therefore considered the Target's RMX plant at Edzell as a potential competitor of Breedon's Capo site.

162. The OFT centred its analysis on the Target's site in Edzell. The parties' combined share of sites is [90-100] per cent on a 10-mile radius (table 2). The parties' combined share of sites is [60-70] per cent when centred on Edzell on a 15-mile basis (table 3).[76]

163. A few customers raised concerns in relation to the impact of the merger on the supply of RMX in Tayside and Fife North. A competitor of the parties also referred to the parties' strength in that area.

164. The OFT also took into account the fact that the parties are each other's closest competitors (the closest competitor is 13 miles away while the parties' sites are two miles from each other).

---

[75] The OFT refers to its analysis at paragraphs 74-87 of the decision.
[76] When centred on Breedon's site at Capo, the parties' combined share of production is [90-100] per cent on a 10-mile radius and [60-70] per cent on a 15-mile radius.

165. The OFT also notes that it was not provided with sufficient evidence on the constraint posed by other suppliers in the overlap area in Tayside and Fife North.[77]

Catchment area in the Highlands

166. The OFT centred its analysis on the Target's site at Beauly. The parties' combined share of sites is [60-70] per cent on a 10-mile radius. The parties' combined share of sites is [40-50] per cent on a 15-mile radius.[78] These shares of sites are based on the overlap between the Target's site at Beauly and Breedon's site at Inverness.

167. Breedon argued that given its rural location in the central Highlands, RMX deliveries from the Target's Beauly site could be expected to travel further than in other area.

168. In addition to the parties' combined share of sites, the OFT took into account the fact that the parties' sites are the closest to each other (10 miles) and that competitors' sites are 13 miles away. The OFT also notes that it was not provided with sufficient evidence on the constraint posed by other suppliers in the overlap area in the Highlands.[79]

Barriers to entry and expansion

169. Entry or expansion of existing firms can mitigate the initial effect of the merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the OFT considers whether such entry or expansion would be timely, likely and sufficient.[80]

170. Breedon submitted that barriers to entry to the RMX market are very low, requiring minimal start-up costs. In Breedon's view, a small second hand plant could be installed for less than £200,000 (and even lower for a volumetric operator) and that there are no particular difficulties in producing RMX. It mentioned that there are many examples in the UK of

[77] The OFT refers to its analysis at paragraphs 74 to 87 of the decision.
[78] When centred on Breedon's site at Inverness, the parties' combined share of sites is [30-40] per cent on a 10-mile radius and [40-50] per cent on a 15-mile radius.
[79] The OFT refers to its analysis at paragraphs 74-87 of the decision.
[80] *Merger Assessment Guidelines*, at paragraphs 5.8.1 to 5.8.3.

independent producers who do not have their own aggregates and purchase from other suppliers.

171. Breedon also stated that there was excess capacity in the RMX industry. The OFT also refers to Breedon’s statements on the costs for increasing production set out above at paragraph 115.

172. The OFT considers that even if third parties had the capacity to supply additional volumes in the markets were the OFT identified a realistic prospect of a substantial lessening of competition, it cannot conclude from this that they would do so to an extent sufficient to offset the reduction in rivalry in each of those areas.

173. In this regard, a customer told the OFT that there was a lack of RMX capacity in the North of Scotland due to wind farms projects.

174. With respect to entry, the OFT first notes that substantial excess capacity at a local level would act as a barrier to entry by reducing the incentives for new entry. A new entrant would perceive that its ability to make entry profitable would be reduced if existing market participants could react quickly to its entry by increasing their output.[81]

175. In addition, the OFT did not find evidence of specific entry plans in relation to the catchment areas identified above.

176. With respect to expansion, the parties did not provide any evidence of past expansion or plans to invest in the future in relation to the catchment areas identified above in which it found that the merger raised a realistic prospect of a substantial lessening of competition.

177. The OFT has therefore considered that Breedon’s submissions on excess capacity and possible entry/expansion in ready-mix concrete were not sufficient to allay the concerns it identified in the catchment areas in Grampian South, Grampian North, Tayside and Fife South, Tayside and Fife North, and the Highlands.

Countervailing buyer power

178. The OFT notes that in some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices ('countervailing buyer power'). The existence of

[81] CC’s decision in *Anglo American/Lafarge JV*, at paragraph 6.283.

countervailing buyer power will be a factor in making a substantial lessening of competition finding less likely.[82]

179. Breedon argued that there is large degree of customer concentration in RMX which gives these customers a high degree of bargaining power. In respect of Breedon's RMX plant at Westhills, Breedon estimated that the plant's top [ ] customers account for approximately [ ] per cent of external sales.

180. In this case, no third party claimed that they had sufficient buyer power to prevent price rises. On the contrary, a significant number of customers raised concerns about the merger. Customers said that they negotiated with the parties on the basis of volumes but that a reduction in the choice of suppliers was still considered a risk that prices could increase as a result of the merger.

181. Moreover, the OFT considered that even if larger customers are protected to some degree by buyer power the parties can still identify and increase prices to smaller customers as many orders are individually negotiated and delivered to sites.[83]

182. The OFT has therefore considered that Breedon's submissions on the existence of countervailing buyer power in RMX was not sufficient to allay its concerns in the catchment areas as set out above.

Conclusion

183. The OFT therefore considers that the merger raises a realistic prospect of a substantial lessening of competition with respect to the supply of RMX in the overlap areas in Grampian (South and North), Tayside and Fife (South and North), and the Highlands. The OFT is concerned that prices will rise or that the non-price factors of competition (such as timely delivery) will worsen as a result of the merger.

Asphalt

Analytical approach

184. Breedon argued that the OFT should not identify competition concerns in areas where the parties' combined share of production is below 40 per

---

[82] *Merger Assessment Guidelines*, at paragraphs 5.9.1 ss.
[83] *Merger Assessment Guidelines*, at paragraph 5.9.6.

cent. It referred to the OFT's approach in *Anglo American/Lafarge JV* and stated that the criteria relied upon by the OFT to reach its conclusions in that case were also present in relation to the merger.[84]

185. Breedon also argued that when considering the suitability of Breedon as a potential purchaser of the Midland Quarry Products assets divested as part of the undertakings package in *Anglo American/Lafarge JV*, the CC had applied a 40 per cent filter rule of thumb. Breedon added that the CC has explained that it also looked at the number of fascia in each overlap area, noting that in its final report in *Anglo American/Lafarge JV* it had identified possible problem areas based on a fascia reduction. Breedon submitted that in line with this approach in those areas where the OFT considers that the parties have a share in excess of 40 per cent the OFT should apply a second filter excluding overlaps where at least three suppliers, including Breedon, with market shares of at least five per cent will remain.

186. The OFT refers to its comments on fascia counts and analytical approach in relation to aggregates.[85] In particular, the OFT did not have the benefit of a price concentration analysis that was undertaken as part of an in-depth phase two investigation by the CC. Nevertheless, given the number of overlaps, the OFT has assessed each area individually based on the evidence available to it.

187. The OFT further notes that the variable profit margins of the Target's asphalt sites range from [0-10 to 0-10] per cent depending on the specific site and whether wages are included in variable costs. In contrast, the variable profit margins of Breedon's asphalt sites range from [10-20 to 20-30] per cent when wages are included and [10-20 to 20-30] per cent when wages are excluded. [ ]

188. The OFT refers to Breedon's comments on the OFT's calculations set out above in relation to aggregates.

189. In summary, in line with the analysis in primary aggregates and ready-mix concrete, the OFT has taken into account the extent to which suppliers may be differentiated by location and the parties' variable profit margins in its assessment together with other factors and considers it appropriate to take a cautious approach, specifically that it would not assess in detail

[84] OFT's decision in *Anglo American/Lafarge JV*, paragraphs 167 to 171.
[85] The OFT refers to its analysis at paragraphs 74-87 of the decision.

catchment areas with combined shares of production in asphalt of less than 33 per cent.

Local area analysis

Shares of production

190. Table 4 below sets out the parties' shares of production in asphalt in 2011 (which is the best data available to the OFT) on a 30-mile radius around the Target's sites in Grampian (at Tom's Forest), and in the Highlands (at Midlairgs).

Table 4 - Shares of production – Asphalt with 30 mile catchment area (2011)

		Shares			Second largest supplier's share (per cent)	Third largest supplier's share (per cent)
Region	**Centred site**	**Breedon (per cent)**	**Target (per cent)**	**Combined (per cent)**		
Grampian	Tom's Forest	[20-30]	[10-20]	[30-40]	[30-40]	[30-40]
Highlands	Midlairgs	[20-30]	[20-30]	[40-50]	[20-30]	[20-30]

Source: OFT analysis based on actual output of the parties' sites and BDS data for competitor sites.

Catchment area in Grampian

191. The OFT centred its analysis on the Target's Tom's Forest site. On a 30-mile radius, the parties' combined share of production is [30-40] per cent, with an [10-20] per cent increment when centred on the Target's Tom's Forest site. This share of production is based on overlaps between the Target's site at Tom's Forest and Breedon's sites at Craigenlow and Stirlinghill.[86]

192. Breedon submitted that two strong competitors would remain post-merger (Leiths and Aberdeenshire Council), each holding shares of production of [30-40] per cent or more on a 30-mile radius. Breedon also provided examples of contracts lost to each of Leiths and Aberdeenshire Council in the last six to eight months. Breedon also noted that [ ].

[86] When centred on Breedon's site at Craigenlow, the parties' combined share of production is [30-40] per cent on a 30-mile radius. When centred on Breedon's site at Stirlinghill, the parties' combined share of production is [20-30] per cent.

193. Some customers of the merged entity raised concerns that the merger would lead to a reduced number of suppliers and that prices might rise as a result, in particular near Aberdeen and west and south west of Aberdeenshire. Customers also told the OFT that prices were already higher in Grampian than in other areas of Scotland. This was also the view of some of the parties' competitors in the North of Scotland.

194. The OFT took into account the parties' combined share of product, as well as the fact that the parties are close to each other (six miles) while their closest competitors are seven and nine miles away. The OFT also considered the concerns raised by several customers who referred in particular to the Grampian area. The OFT also notes that only two other competitors will remain after the merger and that it was not provided with evidence to assess the constraint that they pose on the merged entity.[87]

Catchment area in the Highlands

195. The OFT centred its analysis on the Target's site at Midlairgs. The parties' combined share of production is [40-50] per cent with a [20-30] per cent increment when centred on the Target's site in Midlairgs (table 4). This share of production is based on the overlap between the Target's site at Midlairgs and Breedon's site at Daviot.[88]

196. Breedon stated that [ ].[89] Breedon also noted that [ ]. Finally, Breedon submitted that [ ].

197. Breedon also argued that two strong competitors would remain (Leiths and Pat Munro Alness) in the Highlands, each holding shares of production of [20-30] per cent on a 30-mile radius.

198. Some of the customers and competitors of the parties who raised concerns about the merger in asphalt referred to the Highlands. These included large customers of the parties.

199. With respect to the Midlairgs site [ ], the OFT notes that [ ].

200. The OFT took into account the parties' combined share of production and [ ] increment as well as the fact that the parties' sites are the closest to

[87] The OFT refers to its analysis at paragraphs 74-87 of the decision.
[88] When centred on Breedon's site at Daviot, the parties' combined share of production is [40-50] per cent on a 30-mile radius.
[89] Breedon explained that [ ].

each other (three miles while the next supplier is 20 miles away). The OFT has also considered the fact that two other suppliers remain after the merger. However, the OFT was not provided with evidence to assess the constraint posed by other suppliers in the area.[90]

Barriers to entry and expansion

201. Entry or expansion of existing firms can mitigate the initial effect of the merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the OFT considers whether such entry or expansion would be timely, likely and sufficient.[91]

202. Breedon argued there were low barriers to entry and significant spare capacity in the supply of asphalt, noting that in Inverness and Tayside volumes had declined by 40 per cent and 34 per cent respectively since 2007, which would act as a constraint against any proposed price increase. Breedon submitted that the cost of a second hand asphalt plant is approximately £1 million and that there are no particular difficulties in producing asphalt. It also stated that there are many examples in the UK of independent producers who do not have their own aggregates and purchase from other suppliers.

203. The OFT also refers to Breedon's statements on the costs for increasing production set out above at paragraph 115.

204. Although there is some evidence of spare capacity in asphalt in the local catchment areas in Grampian and the Highlands, the OFT considers that it was provided with insufficient evidence to conclude that this would provide a price competitive constraint on the parties to counteract the lessening of competition arising from the merger. The OFT did not see evidence that the existence of competitors' spare capacity in the past had an impact on the parties' competitive position. The OFT also notes that third parties have not referred to spare capacity being an important consideration in past negotiations or leading to a lack of concern about future pricing.

---

[90] The OFT refers to its analysis at paragraphs 74-87 of the decision.
[91] *Merger Assessment Guidelines*, paragraphs 5.8.1 to 5.8.3.

205. In addition, even if third parties had the capacity to supply additional volumes in the markets were the OFT identified a realistic prospect of a substantial lessening of competition, the OFT considers that it cannot conclude from this that they would do so to an extent sufficient to offset the reduction in rivalry in each of those areas.

206. With respect to entry, the OFT considers that current market conditions (both in terms of excess capacity and fall in market demand) combined with the initial capital requirements to serve a limited local market appear to make entry unlikely.[92]

207. With respect to expansion, the parties did not provide any evidence of past expansion or plans to invest in the future in relation to the catchment areas identified above in which it found that the merger raised a realistic prospect of a substantial lessening of competition.

208. The OFT has therefore considered that Breedon's submissions on excess capacity and possible entry/expansion in asphalt are not sufficient to allay its concerns in the catchment areas in Grampian and the Highlands.

Countervailing buyer power

209. The OFT notes that in some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices ('countervailing buyer power'). The existence of countervailing buyer power will be a factor in making a substantial lessening of competition finding less likely.[93]

210. Breedon stated that for its asphalt plants in the relevant overlap areas, the respective top [ ] customers of the plants accounted for around [ ] per cent of the external sales (volume weighted average).

211. In this case, no third party claimed that they had sufficient buyer power to prevent price rises. On the contrary, a significant number of customers raised concerns about the merger. Customers said that they negotiated with the parties on the basis of volumes but that a reduction in the choice of suppliers was still considered a risk that prices could increase as a result of the merger.

[92] CC's decision *in Anglo American/Lafarge JV*, at paragraph 6.284.
[93] *Merger Assessment Guidelines*, at paragraphs 5.9.1-5.9.8.

212. Moreover, the OFT considered that even if larger customers are protected to some degree by buyer power the parties can still identify and increase prices to smaller customers as many orders are individually negotiated and delivered to sites.[94]

213. The OFT has therefore considered that Breedon's submissions in relation to countervailing buyer power in asphalt are not sufficient to allay its concerns in the catchment areas as set out above.

Conclusion

214. The OFT therefore considers that on the basis of the evidence available to it the merger raises a realistic prospect of a substantial lessening of competition with respect to the supply of asphalt in Grampian and the Highlands. The OFT is concerned that prices will rise or that the non-price factors of competition (such as quality of the product) will worsen as a result of the merger.

Asphalt surfacing

215. As set out in Table 5 below, the parties' combined shares of supply in asphalt surfacing are [30-40] and [30-40] per cent in the Highlands and Grampian, respectively. The parties' combined share in Scotland is [10-20] per cent.

Table 5 Market share – Asphalt surfacing (2011)

	Breedon share (per cent)	**Target share (per cent)**	**Combined market share (per cent)**
Scotland	[10-20]	[0-10]	[10-20]
Scotland (excluding the Islands)	[10/20]	[0-10]	[10-20]
Highlands	[10-20]	[10-20]	[30-40]
Grampian	[20-30]	[0-10]	[30-40]

Source: Parties using BDS data

216. Breedon stated that it would normally only provide asphalt surfacing services as a route to market for asphalt products and that, consequently, Breedon's asphalt surfacing division does not, in general, lay asphalt supplied by other producers.

[94] *Merger Assessment Guidelines*, at paragraphs 5.9.6.

217. Some third parties told the OFT that prices had increased as a result of the merger. Most third parties' concerns related to the link between asphalt and asphalt surfacing, which the OFT addressed with the horizontal issues identified in asphalt. Other customers told the OFT that integrated asphalt contractors might be cheaper than independent ones. Nevertheless, the OFT understands that most customers would be satisfied if they could obtain asphalt from an independent source (and in particular asphalt contracting firms considered that they could compete on this basis). Some customers also stated that there were enough suppliers.

218. Breedon argued that it had not increased prices after the merger and that there were a large number of competitors in all of the areas considered which would exert continued competitive constraint. Breedon submitted evidence (margin data) to show that prices had not increased following the merger and that it was often not possible to make costs comparisons between projects.

219. Breedon also argued that the assets that it acquired (which included employees and low-value equipment) could be easily acquired by other suppliers at low cost. It added that there was a very large number of competitors at the regional level (some of which were part of major national operators) and that many competitors were specialist operators whereas Breedon primarily uses its asphalt surfacing operations as a route to market for asphalt products.

220. On the basis of the evidence available to it the OFT does not consider that the merger raises a realistic prospect of a substantial lessening of competition in relation to asphalt surfacing.

Barriers to entry and expansion

221. Entry or expansion of existing firms can mitigate the initial effect of the merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the OFT considers whether such entry or expansion would be timely, likely and sufficient.[95]

222. Breedon argued that barriers to entry in asphalt surfacing were low. Breedon submitted that the business mainly comprises people, including

[95] *Merger Assessment Guidelines*, paragraphs 5.8.1-5.8.3.

operatives and support staff such as estimators and quantity surveyors and that the equipment is not expensive, for example a new paving machine costs less than £200,000. 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.

223. As the merger does not give rise to competition concerns over unilateral effects in the supply of services in asphalt surfacing, the OFT considers that it is not necessary to reach a firm conclusion regarding barriers to entry and expansion in asphalt surfacing.

Countervailing buyer power

224. The OFT notes that in some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices ('countervailing buyer power'). The existence of countervailing buyer power will be a factor in making a substantial lessening of competition finding less likely.[96]

225. The OFT was not provided with sufficient evidence on countervailing buyer power in asphalt surfacing. Nevertheless, the OFT considers that there is no need to reach a conclusion on countervailing buyer power in asphalt surfacing because the merger does not give rise to competition concerns over unilateral effects in the supply of services in asphalt surfacing.

Conclusion

226. On the basis of the evidence available to it the OFT does not consider that the merger raises a realistic prospect of a substantial lessening of competition in relation to asphalt surfacing.

VERTICAL ISSUES

227. The OFT considered whether the merger could lead to vertical issues, including in relation to concrete blocks.

[96] *Merger Assessment Guidelines*, at paragraphs 5.9.1-5.9.8.

228. Breedon argued and competitors confirmed that most (if not all) are vertically integrated in some downstream products, such as asphalt and RMX, with their own quarries (or are on a quarry owned by another provider such as Hope on a Lafarge quarry). It is often only in the area of asphalt surfacing that this issue arises.

229. No third party pointed to any vertical impacts that could not be dealt with via the assessment of the horizontal effects of the merger. Given this, the OFT has not found it necessary to conclude on vertical issues in this case.

COORDINATED EFFECTS

230. A merger may give rise to a substantial lessening of competition through coordinated effects.[97] The OFT notes that the coordinated effects identified in the CC's decision in *Anglo American/Lafarge JV* related to cement which neither party produces in this case.

231. Moreover, contrary to what in part prompted the market study into aggregates, RMX, and cement, very few of the national operators ('Majors')[98] are present in the North of Scotland. There are instead local independents who may not be expected to coordinate more widely across the country. The OFT notes that Lafarge does have some operations in the area. Aggregate Industries is the largest Major in the area that has sold its local assets to Breedon (which itself is not generally considered a Major in the industry).

232. When assessing coordinated effects, the OFT analyses the characteristics of the market that could be conducive to coordination. The OFT will first assess whether there is any evidence of coordination pre-merger. If so, the OFT will examine whether the merger makes coordination more stable or effective, given the characteristics of the market. The OFT will also assess whether there is evidence of the ability for firms to coordinate: (i) firms need to be able to reach and monitor the terms of coordination; (ii) coordination needs to be internally sustainable; (iii) as well as externally sustainable.[99]

---

97 *Merger Assessment Guidelines*, at paragraph 5.5.1.
98 The term 'Major' refers to the five largest suppliers of construction materials in the UK.
99 *Merger Assessment Guidelines*, at paragraphs 5.5.1-5.5.19.

233. In this case, the OFT has not found any evidence of pre-existing coordination at the local level. Moreover, the OFT has not found any evidence of co-ordination more widely (across Scotland) through an implicit understanding among suppliers to avoid supplying each others' customers. The OFT notes that there is no evidence of either type of co-ordination in the internal documents provided by Breedon and AI.

234. Breedon argued that that co-ordination is more complex where the terms of coordination must be agreed over a number of local markets as in the case of aggregates, RMX and asphalt. As for co-ordination involving customer sharing (that is, an agreement on who supplies certain customers) across Scotland, Breedon told the OFT that it does not supply any customers on a national basis. It explained that its customers multi-source and that it is not possible for Breedon to identify customers on the basis of which supplier they use.

235. Most third parties told the OFT that they had no problems getting quotes from all the suppliers and that there had never been any significant issue with pricing across areas. Only one customer commented on the reluctance of suppliers to increase the geographic reach of their supply but nonetheless noted it often got quotes from other suppliers. Another noted there had been price fixing of RMX in Aberdeen pre-merger but would not provide any evidence or further details.

236. With respect to aggregates, Breedon told the OFT that there were a very wide number of suppliers. Together with the significant differences in the locations and output of each of these suppliers, and customer's propensity to multi-source, the OFT considers that this may limit the ability of competitors to reach and monitor the terms of co-ordination in aggregates in this case. The large number of competitors also increases the profit any supplier could earn from deviating from any co-ordinated outcome, particularly for suppliers with smaller output but spare capacity. The incentives to co-ordinate, and hence the internal sustainability of co-ordination, may therefore be weak in aggregates in this case.

237. In RMX, Breedon pointed to the CC's MIR report which sets out that the complexity of maintaining co-ordination in multiple local RMX markets made widespread co-ordination unlikely.[100] The OFT notes that in some of

[100] CC's MIR report, at paragraph 9.70.

the specific local markets in the present case, the parties compete with three or fewer other firms. The scope for co-ordination in these areas may therefore be higher to some extent.

238. With respect to asphalt, Breedon noted that in the two overlap areas, there were only two competitors post-merger (however, only Leiths was present in both) and both areas involve a fascia change of four to three. The three firms are expected to be relatively equal in size post-merger. Breedon however provided data to show that prices are non-transparent and would be difficult to coordinate. Third parties did not raise specific concerns about coordination in asphalt. The OFT also notes that one of the key competitors in one of the overlap area is Aberdeenshire Council that may have different incentives to the private operators.

239. The OFT has not found it necessary to conclude on coordinated effects given its findings on horizontal effects being that the test for reference is met. Its preliminary assessment, based solely on the limited evidence available to it on this issue, would indicate that a significant risk of coordinated effects is unlikely to arise on the facts of this case.

THIRD PARTY VIEWS

240. The OFT received comments from some of the parties' customers and competitors in Grampian, Tayside and Fife, and the Highlands. The OFT also received comments from some of the Target's customers in the Hebrides.

241. The majority of the parties' customers who responded to the OFT's enquiry raised concerns that the merger would lead to fewer suppliers in primary aggregates, asphalt and RMX in Grampian, Tayside and Fife and the Highlands and that prices could rise as a result of the merger. The OFT notes in this regard that aggregates are important building resources which are essential to infrastructure projects for municipal and private construction work. Breedon's and the Target's sites were referred to as close competitors (proximity of their sites and similar offering). Several of these customers indicated that the parties were geographically close in a number of areas and that they were often comparing their respective quotes to get the most competitive. Other suppliers were not considered

to be as competitive.

242. Some customers who did not raise concerns stated that they were not sure at this stage whether there would be a price increase. One of them also mentioned that prices for construction materials in Grampian and the Highlands were already more expensive than in other areas.

243. Other customers who did not raise concerns told the OFT that they would pass on the costs of a price increase to their own customers. Other customers also stated that they thought other suppliers would remain post-merger, in particular in asphalt surfacing around Inverness.

244. The Target's customers on the Hebrides did not raise concerns about the merger. They stated that although the Target had a strong position in asphalt and RMX, Breedon was never active on the Hebrides.

245. Third party comments have been dealt with above where relevant.

UNDERTAKINGS IN LIEU

246. Where the duty to make a reference under section 22(1) of the Act applies, pursuant to section 73(2) of the Act the OFT may, instead of making such a reference, and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept undertakings from the parties as it considers appropriate.

247. The OFT notes that undertakings in lieu are appropriate only where the remedies proposed are clear cut and remove all competition concerns meeting the test for reference. Furthermore, they must be capable of ready implementation.[101]

248. In lieu of a reference to the CC, Breedon offered to divest [ ], as well as [ ]. Breedon also offered behavioural undertakings in relation to [ ].

249. With respect to Breedon's undertakings in [ ], the OFT considers that they would not remove the increment in [ ] in all the areas where the OFT has

[101] OFT's *Mergers – Exceptions to the duty to refer and undertakings in lieu of reference,* OFT1122, at paragraph 5.7.

identified a realistic prospect that the merger has or may be expected to result in a substantial lessening of competition. In particular, Breedon did not offer undertakings in relation to the overlap area in [ ].

250. With respect to Breedon's undertakings in [ ], the OFT considers that they would not remove the increment in [ ] where the OFT has identified a realistic prospect that the merger has or may be expected to result in a substantial lessening of competition.

251. With respect to Breedon's undertakings in [ ], the OFT considers that they would not remove the increment in [ ] where the OFT has identified a realistic prospect that the merger has, or may be expected to, result in a substantial lessening of competition. Moreover, the OFT notes that a structural solution is normally the most appropriate remedy.[102]

252. The OFT therefore considers that the remedies offered are not capable of clearly addressing the local competition concerns identified as arising from the merger.[103]

253. Accordingly, the OFT has decided not to exercise its discretion under section 73(2) of the Act to consider whether to accept undertakings in lieu of a reference.

ASSESSMENT

254. The parties were both active in the supply of primary aggregates, RMX, asphalt, and asphalt surfacing in Grampian, Tayside and Fife, and the Highlands in Scotland. The OFT considers that the share of supply test in section 23(3) of the Act is met with respect to the supply of primary aggregates, RMX, and asphalt in local areas in Grampian, Tayside and Fife, and the Highlands, which together constitute a substantial part of the UK.

255. The OFT has assessed the case on the basis of the available evidence, and where appropriate or possible, has taken account of the methodology adopted in previous decisions, including the recent CC's decision in *Anglo*

[102] *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, at paragraph 5.20.

[103] In order to accept undertakings in lieu of a reference the OFT will seek to restore pre-merger competition, *Exceptions to the duty to refer and undertakings in lieu of reference guidance*, at – paragraphs 5.10–5.15 on restoring competition.

American/Lafarge JV and its own decisions in the same case and a number of other merger cases.

256. The OFT has assessed the impact of the merger on the supply of primary aggregates on a []-mile radius, of RMX on 10- and 15-mile radii and of asphalt on a 30-mile radius. Where appropriate, the OFT has carried out a sense check in relation to catchment areas.

257. In its competitive assessment, the OFT has taken into account the parties' variable profit margins together with other factors, such as geographic differentiation between suppliers, and decided that it would not assess in detail catchment areas with combined shares of production/sites in primary aggregates, RMX, and asphalt of less than 33 per cent. As to the presence of other competitors in local catchment areas, the OFT has considered that it was not provided with sufficient evidence on the extent of the competitive constraint that they exert on Breedon. The OFT was therefore not able to attach weight to these suppliers for the purposes of its assessment, particularly given that many of them have low shares of production. Finally, the OFT has also taken into consideration Breedon's submissions in relation to excess capacity, absence of barriers to entry and expansion and the presence of countervailing buyer power for each of the catchment areas but considered that these were not sufficient to allay its concerns.

258. With respect to the supply of primary aggregates, the OFT has identified competition concerns in the catchment areas in Grampian and Tayside and Fife given the level of the parties' combined shares of production, the proximity of the parties' sites as well as concerns raised by customers of the parties that the merged entity would be in a position to increase prices. The OFT considered that it was not provided with sufficient evidence to appreciate the extent of the constraint of recycled and secondary aggregates on primary aggregates in each catchment area. The OFT therefore focused its assessment on the constraints between primary aggregates. The parties' combined shares of production are approximately [40-50] per cent with a [20-30] per cent increment and approximately [40-50] per cent with a [10-20] per cent increment on a []-mile radius around the Target's sites in Tom's Forest (Grampian) and Powmyre (Tayside and Fife), respectively. In the catchment area in Grampian, the OFT found that the Target's site at Tom's Forest and Breedon's site at Craigenlow are close competitors in terms of geography and are both

large suppliers of crushed rock. In the catchment area in Tayside and Fife, the Target's site of Powmyre overlaps with all Breedon's sites and the Target's site at Edzell in the catchment area. The OFT concluded that the merger gives the merged entity (Breedon) the ability to increase prise or worsen non-price aspects of the competitive offering post-merger with respect to primary aggregates in the catchment areas in Grampian and Tayside and Fife.

259. With respect to the supply of RMX, the OFT considered that the Target's Edzell and Perth RMX plants were potential competitors of the Breedon's sites in the respective catchment areas because they both had sales between 2008 and 2012 and could be re-opened at relatively low cost. The OFT has identified competition concerns in the catchment areas in Grampian South, Grampian North, Tayside and Fife South, Tayside and Fife North and the Highlands based on the level of the parties' combined shares of sites, the fact that in a number of areas the parties' sites were geographically closest to each other and the concerns raised by customers of the parties. In the catchment area in Grampian South, the parties' combined share of sites are between [50-60] and [80-90] per cent and most of the parties' seven RMX plants overlap with each other. In the catchment area in Grampian North, the parties' share of sites is [90-100] per cent on a 10-mile radius and [40-50] per cent on a 15-mile radius. The OFT recognises that changing the radial leads to a significant reduction in the parties' combined share of sites. Nevertheless, the OFT found that the parties' sites were each other's closest competitor geographically. In the catchment area in Tayside and Fife South, the OFT found that while there is no overlap on a 10-mile radius, the parties' combined share of sites is [50-60] per cent on a 15-mile radius which itself gives cause for concerns. In the catchment area in Tayside and Fife North, the OFT's combined share of sites is [90-100] per cent on a 10-mile radius and [60-70] per cent on a 15-mile radius and the parties are each other's closest competitor geographically. In the catchment area in the Highlands, the parties' combined share of sites is [60-70] per cent on a 10-mile radius and [40-50] per cent on a 15-mile radius and the parties' are each other's closest competitor geographically. The OFT concluded that the merger gives the merged entity (Breedon) the ability to increase prices or worsen non-price aspects of the competitive offering post-merger with respect to RMX in the catchment areas in Grampian South, Grampian North, Tayside and Fife South, Tayside and Fife North and the Highlands. However, the OFT has not identified any realistic prospect of a

substantial lessening of competition in the catchment area in Tayside and Fife Central because the parties' combined share of sites is [20-30] per cent on a 10-mile radius of the Target's site in Dundee, the parties are not each other closest competitor geographically and there are five other competitors active in that area.

260. With respect to asphalt, the OFT has identified concerns in the catchment areas in Grampian and in the Highlands given the level of the parties' combined shares of production, the proximity between the parties' sites and third party concerns. The parties' combined share of production is [30-40] per cent with a [10-20] per cent increment in the catchment area in Grampian, and [40-50] per cent with a [20-30] per cent increment in the catchment area in the Highlands. In the catchment area in Grampian, the parties' sites of Tom's Forest and Craigenlow are close to each other. Moreover, Breedon's site at Stirlinghill also overlaps with the Target's site (27 miles). In the catchment area in the Highlands, in the absence of evidence to the contrary, the OFT has considered that the Midlairgs asphalt plant [ ]. Moreover, the OFT found that the parties' sites are each other's closest competitor geographically. The OFT concluded that the merger gives the merged entity (Breedon) the ability to increase prise or worsen non-price aspects of the competitive offering post-merger with respect to asphalt in catchment areas Grampian and the Highlands.

261. With respect to asphalt surfacing, the OFT considered that some of the concerns it received related to the link between asphalt and asphalt surfacing and that this would be addressed by the horizontal issues identified in asphalt. The OFT also took into account the parties' estimated combined share of supply ([30-40] per cent with a [10-20] per cent increment in the Highlands and [30-40] per cent with a [0-10] per cent increment in Grampian), as well as the number of competitors active on a regional (and wider) level. In addition, the parties submitted evidence to show that prices had not increased following the merger. The OFT did not identify a realistic prospect of a substantial lessening of competition in asphalt surfacing.

262. With regard to vertical issues, the OFT considered that no third party pointed to any vertical impacts that could not be dealt with via the assessment of the horizontal effects of the merger.

263. The OFT was not provided with any evidence in relation to coordinated effects in any of the areas under review.

264. The majority of the parties' customers who responded to the OFT's investigation raised concerns, including public sector organisations.

265. Consequently, the OFT believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

266. This merger will therefore **be referred** to the Competition Commission under section 22(1) of the Act.