

Anticipated acquisition by Fayat SAS of Dynapac Compaction Equipment AB

Decision on relevant merger situation and substantial lessening of competition

ME/6680-17

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 30 May 2017. Full text of the decision published on 13 June 2017.

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

SUMMARY

1. Fayat SAS (**Fayat**) has agreed to acquire Dynapac Compaction Equipment AB (**Dynapac**) (the **Merger**). Fayat and Dynapac are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that, accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. In the UK, the Parties overlap in the supply of road construction equipment, specifically asphalt and soil compaction rollers, and pavers (used to spread asphalt). The CMA believes that, based on the limited demand-side substitutability between these products and, in particular, design considerations and consumer preferences for certain types of compaction roller for different uses, it is appropriate to assess the impact of the Merger in:
 - (a) the supply of light asphalt compaction rollers in the UK;
 - (b) the supply of heavy asphalt compaction rollers in the UK;

- (c) the supply of soil compaction rollers in the UK; and
 - (d) the supply of pavers in the UK.
4. The CMA found that, in all frames of reference, the Parties' combined share is limited and the increment brought about by the Merger is small (no greater than [5-10]%). The CMA also found that the Parties are not each other's closest competitor and that other competitors will continue to provide a sufficient constraint on the Parties post-Merger.
 5. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
 6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

7. Fayat is a global construction and industrial company, whose operations include the supply of road construction equipment via its subsidiary, Bopparder Maschinenbau-Gesellschaft mbH, and its associated subsidiaries (**Bomag**). Through this subsidiary, and under the Bomag brand, Fayat develops, manufactures, and supplies:
 - (a) equipment for the compaction of asphalt and soil, which is primarily used in road construction; and
 - (b) other road construction equipment, including equipment to spread and compact asphalt (pavers).
8. Fayat's turnover in the financial year ending 30 September 2016 was around €3,528 million worldwide, and around [X] in the UK.
9. Dynapac is the road construction equipment division of Atlas Copco AB (**Atlas Copco**).¹ This division is active worldwide in the supply of road construction equipment, and develops, manufactures, and supplies:

¹ For the purposes of the Merger, Atlas Copco will transfer to Dynapac all of the assets, liabilities and companies which make up its road construction equipment division, as described in the Master Transfer Agreement between Atlas Copco and Fayat dated 16 January 2017.

- (a) equipment for the compaction of asphalt and soil; and
 - (b) other road construction equipment, including solutions to enable roads to be paved.
10. Dynapac's turnover in the financial year ending 31 December 2016 was around [X] worldwide, and around [X] in the UK.

Transaction

11. Fayat proposes to acquire the entire issued share capital of Dynapac.
12. Fayat informed the CMA that the Merger is also subject to review by competition authorities in Germany and Poland.

Jurisdiction

13. As a result of the Merger, the enterprises of Fayat and Dynapac will cease to be distinct.
14. The Parties overlap in the supply of light and heavy asphalt compaction rollers, with estimated combined shares of supply (by volume) of [40-50]% (increment [5-10]%) and [30-40]% (increment [0-5]%), respectively; and in the supply of soil compaction rollers, with an estimated combined share of supply (by volume) of [40-50]% (increment [5-10]%).² The CMA therefore believes that the share of supply test in section 23 of the Act is met.
15. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 6 April 2017 and the statutory 40 working day deadline for a decision is therefore 6 June 2017.

Counterfactual

17. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess a merger against an alternative counterfactual where,

² See Tables 1-3 at paragraphs 49, 62 and 69 below.

based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive as between the parties than these conditions.³

18. In this case, there is no evidence supporting a different counterfactual, and Fayat and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

19. Market definition provides a framework for assessing the competitive effects of a 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 the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁴
20. The Parties overlap in the supply of asphalt and soil compaction roller equipment and pavers to customers in the UK and globally.

Product scope

Compaction rollers

21. Compaction rollers are used in a range of construction projects, including road construction, and can be used to compact various materials such as asphalt, soil and limestone.
22. The Parties overlap in the supply of compaction rollers. Customers are a mixture of dealers, rental companies and end-users (eg road construction companies). Fayat submitted that the narrowest plausible candidate product markets are the supply of:⁵

³ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

⁴ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁵ Merger Notice, paragraph 115.

- (a) light asphalt compaction rollers, comprising such rollers up to 4.9 tonnes in operating weight, and including tandem and combination rollers (**light asphalt compaction rollers**);
 - (b) heavy asphalt compaction rollers, comprising such rollers over 4.9 tonnes in operating weight, and including tandem, combination and pneumatic rollers (**heavy asphalt compaction rollers**); and
 - (c) soil compaction rollers, comprising all operating weights and sizes and including single drum compaction rollers and embankment compactors (**soil compaction rollers**).
23. The CMA considered delineating compaction rollers by both type and weight to determine appropriate frames of reference, as discussed below.

Types of compaction rollers

24. Fayat submitted that there are five principle types of compaction roller:
- (a) tandem compaction rollers (equipped with two vibratory roller drums. These machines can achieve up to 20-25% gradeability);
 - (b) single drum compaction rollers (equipped with a vibratory roller drum in front and two large treaded rubber rear tyres. These machines can achieve 45-60% gradeability);⁶
 - (c) combination compaction rollers (equipped with a vibratory drum unit in front, and typically four smooth rubber rear tyres. These machines can achieve up to 30-35% gradeability);
 - (d) pneumatic compaction rollers (equipped with a row of four static pneumatic rubber tyres at both the front and rear, which offer static compaction through the weight of the machine, ie there is no active vibration. These machines can achieve 20-25% gradeability); and
 - (e) embankment or tamping compactors (which are very heavy machines that use their weight to compact, rather than a vibratory drum. A blade attachment can be fitted which means they may typically be expected to perform a role combining the functions of a bulldozer and a compactor. Embankment compactors are used less commonly in the UK).

⁶ Also referred to as self-propelled or 'ride-on' rollers.

25. Fayat submitted that each type of compaction roller does not constitute a separate frame of reference.⁷ However, Fayat said that, based on their intended use, the various types of compaction roller can be grouped under two broad categories: (i) asphalt compaction rollers; and (ii) soil compaction rollers.
26. Fayat noted that, while some roller types can be used for compacting both asphalt and soil (and are marketed as such), most are better suited to one use. In particular, Fayat noted that single drum compaction rollers and embankment compactors are not suitable for asphalt compaction because the tyres (which have a treaded pattern) leave indentations in the finished surface. Therefore, these types are only used for soil compaction. This view was supported by a number of third parties.
27. Fayat said that it is possible to substitute between different types of compaction roller for each of the two uses (asphalt and soil). This was supported by submissions from third party customers and competitors. These submissions indicated that, while the type of compaction rollers falling under each category will vary to some extent (eg gradeability, quality of surface finish, etc.), the differences are limited and, in general, the different types of compaction rollers are substitutable.

Weight of compaction roller

28. Fayat submitted that there is significant demand-side substitutability between compaction rollers of different sizes and weights because they are all generally capable of being used for the same functions.⁸ However, Fayat submitted that asphalt compaction rollers can be segmented into 'light' and 'heavy' categories because:⁹
 - (a) light rollers are more manoeuvrable and versatile and will often be used for smaller projects; and
 - (b) heavy rollers are used for more specific applications (eg a large road construction project).
29. Third parties confirmed that this segmentation was appropriate.
30. Fayat said that soil compaction rollers should not be segmented by weight as they are less versatile than compaction rollers and tend to be used for more specific applications. Fayat added that, on the supply-side, in view of the

⁷ Merger Notice, paragraph 103.

⁸ Merger Notice, paragraph 103.

⁹ Merger Notice, paragraphs 114 and 115.

design of a single drum compaction roller, suppliers are readily able to produce different size and weight classes. No third party provided evidence to indicate that soil compaction rollers should be further segmented, by weight or otherwise.

Conclusion on compaction rollers

31. For the reasons given above, the CMA assessed the impact of the Merger on the supply of light asphalt rollers, heavy asphalt rollers and soil compaction rollers separately. However, it was not necessary for the CMA to reach a conclusion on the appropriate product frame of reference since, as set out below, no competition concerns arise on any plausible basis.

Pavers

32. The Parties overlap in the supply of pavers to customers in the UK. Pavers are machines used to lay an asphalt road surface. The CMA understands pavers will vary in terms of size and the width of road surface they can lay.
33. Fayat submitted that the narrowest plausible candidate product market is the supply of all pavers. Third party customers and competitors did not provide information indicating that a narrower frame of reference would be appropriate.
34. For these reasons, the CMA assessed the impact of the Merger on the supply of pavers. As above, it was not necessary for the CMA to reach a conclusion on the appropriate product frame of reference since, as set out below, no competition concerns arise on any plausible basis.

Aftersales services

35. The Parties each provide aftersales services (eg technical support, spare parts, and maintenance and repair services) in respect of the road construction equipment that they supply to customers in the UK. While the cost of providing certain aftersales services is factored into the price of the product, other aftersales services are charged separately.
36. While the Parties only provide aftersales services for their own products, third parties told the CMA that other manufacturers differ in their approach to providing aftersales services: some provide aftersales services directly to customers, and others use a licenced dealer network to provide aftersales services in respect of their products. In addition, there are other companies offering aftermarket services for road construction equipment, and some customers have in-house repair and maintenance capability.

37. As the Parties provide aftersales services only for their own products, and aftersales services is a factor on which manufacturers of road construction equipment compete, the CMA considered these activities as part of the relevant product frame of reference for the supply of the equipment.

Used road construction equipment

38. Fayat submitted that the Parties have a limited overlap in relation to the supply of used road construction equipment in the UK as their activities in this area typically only result from customers offsetting the purchase price of new equipment by "trading in" their current equipment. In these circumstances, the manufacturer will resell the used equipment. The Parties said that their supply of used equipment is sporadic and ad hoc.
39. Given the limited presence of the Parties in the supply of used road construction equipment, as well as third party evidence indicating that the supply of used road construction equipment is competitive (including many specialist companies, dealers and auction houses), the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in relation to the supply of any type of used road construction equipment. The CMA has therefore not considered these activities further.

Conclusion on product scope

40. For the reasons set out above, the CMA has assessed the impact of the Merger in the following product frames of reference:
- (a) the supply of light asphalt compaction rollers;
 - (b) the supply of heavy asphalt compaction rollers;
 - (c) the supply of soil compaction rollers; and
 - (d) the supply of pavers.
41. However, it was not necessary for the CMA to reach a conclusion on the appropriate product frame of reference since, as set out below, no competition concerns arise on any basis.

Geographic scope

42. Fayat submitted that some features suggest that the geographic scope for the supply of the overlap products is at least EEA wide, including:

- (a) the Parties' products sold in the UK are imported from manufacturing sites in Germany, Sweden, Italy and China¹⁰ and the Parties' competitors also import products from manufacturing sites outside of the UK, including from the United States; and
- (b) transport costs and times for all products across the EEA are broadly comparable, with transport costs representing around [0-5]% of the cost of the machine.

43. However, Fayat also submitted that other features suggest that the geographic scope for the supply of the overlap products is national (UK-wide), including:

- (a) both Parties make sales in the UK using a national sales team or dealer network;
- (b) the provision of aftersales services takes place on a national basis, which enables manufacturers to differentiate their offerings from those of their competitors; and
- (c) certain competitors appear to be stronger in certain countries across the EEA.

These views were confirmed by third party competitors and customers.

Conclusion on geographic scope

- 44. On the basis of this evidence, the CMA has assessed the impact of the Merger in the UK for all product frames of reference.
- 45. However, it was not necessary for the CMA to reach a conclusion on the appropriate geographic frame of reference since, as set out below, no competition concerns arise on any plausible basis. In particular, the CMA did not receive any evidence to suggest that concerns would arise on an EEA-wide basis.

Conclusion on frame of reference

- 46. For the reasons set out above, the CMA has assessed the impact of the Merger in the following frames of reference:

¹⁰ Bomag manufactures [REDACTED] in Germany and China and [REDACTED] in Italy; Dynapac manufactures [REDACTED] in Sweden and [REDACTED] in Germany.

- (a) the supply of light asphalt compaction rollers in the UK;
- (b) the supply of heavy asphalt compaction rollers in the UK;
- (c) the supply of soil compaction rollers in the UK; and
- (d) the supply of pavers in the UK.

Competitive assessment

Horizontal unilateral effects

47. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.¹¹ Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of: (i) light asphalt compaction rollers; (ii) heavy asphalt compaction rollers; (iii) soil compaction rollers; and (iv) pavers, in the UK.

Light asphalt compaction rollers

Shares of supply

48. Fayat submitted share of supply estimates by volume of sales in the UK, using, for the total market size, anonymised data published by the Committee for European Construction Equipment (**CECE**), for each of the 12 month periods ending 30 September 2014, 2015 and 2016.¹²
49. Taking the Parties' estimated shares of supply as a starting point, the CMA supplemented this data with actual volume sales provided by some competitors. The share of supply table below (Table 1) reflects an average of the shares across 2015 and 2016¹³ using: (a) the Parties' figures for their own supply; (b) information from third parties on their own supply where this was

¹¹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

¹² Fayat told the CMA that it was unable to provide estimated shares of supply by value, given the difficulty in estimating the negotiated prices paid by customers. In particular, CECE does not provide aggregated revenue data.

¹³ This is to account for variations across years, which can be significant, but also because some data received by the CMA related to calendar years, while other data related to the period October-September.

available; and (c) the Parties' estimates where information from third parties on their own supply was not available.¹⁴

Table 1: Shares of supply for light asphalt compaction rollers (volume average 2015-16)		
Competitor	Units	Share (%)
Fayat (Bomag)	[X]	[30-40]%
Dynapac	[X]	[5-10]%
Combined	[X]	[40-50]%
Wirtgen Group (Hamm)	[X]	[30-40]%
Volvo	[X]	[5-10]%
Wacker Neuson	[X]	[0-5]%
JCB	[X]	[5-10]%
CAT	[X]	[0-5]%
Ammann	[X]	[0-5]%
Terex	[X]	[0-5]%
Others	[X]	[0-5]%
Total	[X]	

50. The CMA believes the above shares of supply are credible estimates.

Closeness of competition

51. Fayat submitted that the Parties are not close competitors in the supply of light asphalt compaction rollers and that Wirtgen Group¹⁵ is Fayat's closest competitor.

¹⁴ The CMA has calculated shares of supply based on the total market size estimated by CECE. This is because the CMA considered this to provide the best available estimates of the Parties' shares of supply. Due to the inclusion of some estimated figures, the shares of supply of all suppliers do not sum to exactly 100%. The CMA considered it was not necessary to reconcile these differences because they are small and not material to the CMA's competitive assessment.

¹⁵ Wirtgen Group operates internationally under the brand 'Hamm' in respect of light and heavy asphalt compaction rollers and soil compaction rollers.

52. Fayat's internal documents support the contention that Fayat competes most closely with Wirtgen Group, [REDACTED].¹⁶
53. Furthermore, [REDACTED], which assesses the threats to its business, does not identify Dynapac as a competitive threat in relation to light asphalt compaction rollers¹⁷ but does identify as "*existing competitors*" each of: [REDACTED].¹⁸
54. Fayat submitted that Dynapac is not a close competitor because the two firms offer different types of products and are perceived by customers to be of differing "relevance".
55. This was supported by customers which submitted that, while the Parties do compete with one another in the supply of light asphalt rollers, there is some differentiation between their offerings. In particular, customers consistently noted that:
- (a) Fayat's Bomag products are more expensive as it is the market leader in terms of design, quality and usability;
 - (b) Dynapac's products are more mid-priced utility machines; and
 - (c) Fayat faces a strong constraint from Wirtgen Group, which has increased its share of supply in recent years by pricing competitively.
56. This third-party feedback was consistent across all asphalt and soil compaction rollers.

Competitive constraints

57. Fayat submitted that customers are typically sophisticated and well-informed purchasers which often request quotations from a number of suppliers.
58. Third parties generally said that there are a number of other credible providers of light asphalt rollers, and evidence from both competitors and customers showed that customers frequently multi-source.
59. Some third parties were concerned by the prospect of two competitors merging; however, no third party expressed specific concerns about light asphalt compaction rollers, or substantiated their general concerns to indicate that there could be a concern regarding the supply of this product.

¹⁶ [REDACTED], Annex 6b to the Merger Notice, states [REDACTED] (albeit the CMA notes this statement is made in a broader context, of which competition in the supply of light asphalt compaction rollers is a part); and [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED], Annex 8 to Merger Notice, page 8.

60. Evidence from competitors showed that they are not capacity constrained.

Conclusion on light asphalt compaction rollers

61. The CMA has found that the Merger leads to a small increment in Fayat's share of supply in light asphalt compaction rollers, that the Parties are not each other's closest competitor for this product and that they will continue to face competitive constraints from Wirtgen Group and other suppliers. Therefore, the CMA does not believe the Merger will give rise to a realistic prospect of an SLC in the supply of light asphalt compaction rollers in the UK.

Heavy asphalt compaction rollers

Shares of supply

62. Fayat submitted share of supply estimates by volume of sales in the UK. The CMA used the same methodology described at paragraph 49 above to determine its estimates, as shown in Table 2.

Table 2: Shares of supply for heavy asphalt compaction rollers (volume average 2015-16)		
Competitor	Units	Share (%)
Fayat (Bomag)	[REDACTED]	[30-40]%
Dynapac	[REDACTED]	[0-5]%
Combined	[REDACTED]	[30-40]%
Wirtgen Group (Hamm)	[REDACTED]	[40-50]%
CAT	[REDACTED]	[0-5]%
Volvo	[REDACTED]	[5-10]%
Ammann	[REDACTED]	[0-5]%
JCB	[REDACTED]	[0-5]%
Others	[REDACTED]	[5-10]%
Total	[REDACTED]	

Closeness of competition

63. Fayat submitted that the Parties are not close competitors. In particular, Fayat noted that [REDACTED].

64. Fayat said that its closest competitor is Wirtgen Group, and that [REDACTED] are closer competitors than Dynapac.
65. The shares of supply set out above are consistent with Wirtgen Group being Fayat's closest competitor. This is also supported by a Fayat internal document which compared a Bomag heavy asphalt compaction roller with a competing product of Wirtgen Group, but does not mention a competing Dynapac product (or indeed a competing product of any other brand, even though other internal documents of a similar nature do compare a number of alternatives).¹⁹ Bomag's [REDACTED], which assesses the threats to its business in respect of heavy asphalt compaction rollers, also identifies as “existing competitors” both [REDACTED], but not Dynapac.²⁰
66. The third-party submissions described at paragraph 55 are also relevant to the assessment of the Parties' offering in respect of heavy asphalt compaction rollers, indicating that the Parties are not close competitors for this product.

Competitive constraints

67. The CMA refers to the evidence on other competitors set out above at paragraphs 57 to 60 in relation to light asphalt compaction rollers and notes that the same points were made in respect of heavy asphalt compaction rollers.

Conclusion on heavy asphalt compaction rollers

68. The CMA has found that the Merger leads to a small increment in Fayat's share of supply in heavy asphalt compaction rollers, that the Parties are not each other's closest competitor for this product and that they will continue to face competitive constraints from Wirtgen Group and other suppliers. Therefore, the CMA does not believe the Merger will give rise to a realistic prospect of an SLC in the supply of heavy asphalt compaction rollers in the UK.

¹⁹ [REDACTED], Annex 11.b. to the Merger Notice.

²⁰ [REDACTED], Annex 8 to Merger Notice, page 11.

Soil compaction rollers

Shares of supply

69. Fayat submitted share of supply estimates by volume of sales in the UK. The CMA used the same methodology described at paragraph 49 above to determine its estimates, as shown in Table 3.

Table 3: Shares of supply for soil asphalt compaction rollers (volume average 2015-16)		
Competitor	Units	Share (%)
Fayat (Bomag)	[REDACTED]	[40-50]%
Dynapac	[REDACTED]	[5-10]%
Combined	[REDACTED]	[40-50]%
Wirtgen Group (Hamm)	[REDACTED]	[40-50]%
Volvo	[REDACTED]	[5-10]%
Ammann	[REDACTED]	[0-5]%
JCB	[REDACTED]	[0-5]%
CAT	[REDACTED]	[10-20]%
Total	[REDACTED]	

70. Over the past three years, Dynapac has achieved significant growth, increasing its sales from [REDACTED] units in 2014 to [REDACTED] units in 2016. If share of supply estimates for 2016 are viewed in isolation, Dynapac's share of supply is around [5-15]%. However, this appears to represent a one-year spike and, as shown in Table 4 below, Dynapac's internal sales projections suggest future sales, in the absence of the Merger, [REDACTED].²¹

²¹ Dynapac told the CMA that the growth it had achieved in soil compaction rollers was [REDACTED].

Table 4: Dynapac sales (volume) and internal projections

	Actual			Projections		
Year	2014	2015	2016	2017	2018	2019
Units	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Dynapac

Closeness of competition

71. Fayat stated that the Parties are not close competitors. In particular, Fayat submitted that its closest competitor for soil compaction rollers is Wirtgen Group, and that both [REDACTED] are closer competitors than Dynapac.
72. This is supported by internal documents, [REDACTED], which stated that, in relation to "self-propelled SDR"²² (ie soil compaction rollers), threats to Bomag's activities in the UK include:²³
- (a) those existing competitors which offer a full line of product packages plus repair and maintenance services, including [REDACTED]; and
 - (b) Wirtgen Group, which offers a full range of products and prices aggressively.
73. Dynapac is not identified in this document as a competitive threat in relation to soil compaction rollers. However, the CMA notes that Dynapac's share of supply growth in 2016 occurred after the strategic plan was prepared so the recent competitive constraint from Dynapac might not be fully reflected.
74. The third-party submissions described at paragraph 55 are also relevant to the assessment of the Parties' offering in respect of soil compaction rollers, indicating that the Parties are not close competitors for this product.

Competitive constraints

75. Fayat submitted that there are a number of alternative competitors in the supply of soil compaction rollers. This is supported by a Fayat internal document which compares a Bomag soil compaction roller with competing products of various competitors, [REDACTED].²⁴

²² SDR meaning 'single drum rollers'.

²³ [REDACTED], Annex 8 to Merger Notice, page 10.

²⁴ [REDACTED], Annex 11.c. to the Merger Notice.

76. The CMA refers to the evidence on other competitors set out above at paragraphs 57 to 60 in relation to light asphalt compaction rollers and notes that the same points were made about soil compaction rollers.

Conclusion on soil compaction rollers

77. The CMA has found that the Merger leads to a small increment in Fayat's share of supply in soil compaction rollers, that the Parties are not each other's closest competitor for this product and that they will continue to face competitive constraints from Wirtgen Group and other suppliers. Therefore, the CMA does not believe the Merger will give rise to a realistic prospect of an SLC in the supply of soil compaction rollers in the UK.

Pavers

Shares of supply

78. Fayat submitted share of supply estimates by volume of sales in the UK. The CMA used the same methodology described at paragraph 49 above to determine its estimates, as shown in Table 5.²⁵

Table 5: Shares of supply for pavers (volume average 2015-16)		
Competitor	Units	Share (%)
Fayat (Bomag)	[REDACTED]	[5-10]%
Dynapac	[REDACTED]	[10-20]%
Combined	[REDACTED]	[10-20]%
Wirtgen Group (Vögele) ²⁶	[REDACTED]	[50-60]%
Volvo	[REDACTED]	[5-10]%
CAT	[REDACTED]	[5-10]%
Ammann	[REDACTED]	[0-5]%
Total	[REDACTED]	

²⁵ [REDACTED].

²⁶ Wirtgen Group operates internationally under the brand 'Vögele' in respect of pavers.

79. Based on these shares of supply and the small increment, the CMA found no *prima facie* concerns in the supply for pavers.

Closeness of competition and competitive constraints

80. Fayat submitted that the Parties do not compete closely in pavers. In particular, Fayat stated that it supplies traditionally-operated equipment, while Dynapac is focussed on supplying pavers that operate through a more sophisticated ‘CAN BUS system’, which enables the equipment to operate using a number of software packages, which is preferred in the UK.
81. The Parties added that the [REDACTED].
82. No third parties raised concerns with the Merger in respect of the supply of pavers. Third parties generally commented that Dynapac is more established in the supply of pavers and that the likely reason for the Merger was for Fayat to increase its presence in this sector.
83. Internal documents from the Parties appear to support this view, showing greater customer awareness of Dynapac in this area. A customer survey commissioned by Bomag in 2016 indicates that, in the UK, [REDACTED].²⁷ The same survey also highlights a general lack of awareness in the UK of [REDACTED].²⁸

Conclusion on pavers

84. The CMA has found that the Parties have small shares of supply in pavers, they are not close competitors for this product and they will continue to face competitive constraints from other suppliers. Therefore, the CMA does not believe the Merger will give rise to a realistic prospect of an SLC in the supply of pavers in the UK.

Barriers to entry and expansion

85. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC.²⁹
86. In the present case, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

²⁷ [REDACTED], Annex 9 to the Merger Notice, page 9.

²⁸ [REDACTED], Annex 9 to the Merger Notice, page 12.

²⁹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

Third party views

87. The CMA contacted customers and competitors of the Parties as well as relevant industry associations. The feedback to the CMA was mixed. Some customers and competitors were neutral, while others said that the Merger could enhance competition. Several customers raised concerns regarding the reduction in the number of suppliers of asphalt and soil compaction rollers.
88. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

89. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.
90. The Merger will therefore **not be referred** under section 33(1) of the Act.

Andrew Wright
Director, Mergers
Competition and Markets Authority
30 May 2017