

Anticipated acquisition by Breedon Group PLC of four aggregates quarries (including one asphalt plant) from Tarmac Trading Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6718/17

The CMA'S decision on reference under section 33(1) of the Enterprise Act 2002 given on 26 April 2018. Full text of the decision published on 15 May 2018.

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. Breedon Group PLC (**Breedon**) has agreed to acquire four aggregates quarries (including one asphalt plant) (the **Target Assets**) from Tarmac Trading Limited (**Tarmac**) (the **Merger**). Breedon and the Target Assets 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. The Parties overlap in the supply in Great Britain (**GB**) of primary aggregates which are used as base materials in the construction of roads, buildings, and other infrastructure, and are quarried from land or dredged from the sea.¹

¹ The Parties also overlap in the supply of asphalt in GB. However, the CMA notes that there are no local overlaps in respect of this product as the nearest Breedon asphalt plants to the target asphalt plant at Minffordd are located at each of Leaton and Leinthall, both of which are more than 65 miles away from Minffordd.

4. In addition, Breedon is a producer of RMX and asphalt. There is a vertical relationship between the Parties' activities because aggregates are a key input in the production of RMX and asphalt.
5. The CMA considered the impact of the Merger in relation to the following frames of reference:

Aggregates

6. For the supply of aggregates, in line with its precedent cases,² the CMA considered the effects of the Merger within a product frame of reference including all types of primary aggregates (ie sand, gravel and crushed rock), all grades of primary aggregates (ie fine, coarse, graded/mixed aggregates) and all sources of aggregates, including primary, secondary and recycled aggregates.
7. Aggregates are supplied on a local basis and the CMA has used the following catchment areas around each primary aggregates site as the starting point for local competitive assessment: (i) 18 miles; and (ii) [X] miles.

RMX

8. In line with its precedent cases,³ the CMA considered the effects of the Merger within a product frame of reference for all types of RMX, including RMX produced by fixed plant, mobile plant or by volumetric truck. The CMA considered any differentiation between RMX offerings as part of its competitive assessment.
9. RMX is supplied on a local basis and in line with previous decision, has used catchment areas of [X] miles for the competitive assessment of this market.⁴ It was not, however, necessary to reach a conclusion in relation to the product or geographic frame of reference for asphalt because no competition concerns arose on any plausible basis.

² See for example: CMA's decision on [Breedon Aggregates / Hope Construction Materials merger inquiry](#), 12 April 2016, paragraph 71; [Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited](#), paragraph 4.13; [Aggregates, cement and ready-mix concrete market investigation - Final report](#), paragraph 5.24.

³ CMA Report on [the completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited](#), 9 April 2014, paragraph 4.27; CMA's decision on [Breedon Aggregates / Hope Construction Materials merger inquiry](#), 12 April 2016, paragraph 89.

⁴ CMA's decision on [Breedon Aggregates / Hope Construction Materials merger inquiry](#), 12 April 2016, paragraph 92 and 113; CC market investigation reference report: [Aggregates, cement and ready-mix concrete market investigation - Final report](#), 14 January 2014, paragraph 5.104.

Asphalt

10. In line with its precedent cases,⁵ the CMA considered the effects of the Merger within a product frame of reference for asphalt including all specifications of asphalt, including asphalt supplied by fixed and mobile plants. The CMA also considered that geographic markets are local, as asphalt is a perishable product that must be delivered hot.
11. In previous decisions, the CMA has used catchment areas of 17-25 miles for the competitive assessment of this market.⁶ It was not, however, necessary to reach a conclusion in relation to the product or geographic frame of reference for asphalt because no competition concerns arose on any plausible basis.
12. Within the frames of reference described above, the CMA considered the following theories of harm in assessing the effects of the Merger:

Horizontal unilateral effects arising from the loss of existing competition in the production and supply of aggregates at the local level

13. The CMA assessed whether there is a realistic prospect that the Merger will give rise to a substantial lessening of competition (**SLC**) in the supply of primary aggregates at the local level, as a result of the merged firm increasing the price (or otherwise worsening the competitive offer) of its primary aggregates products due to the loss of existing competition between the merging Parties.
14. The available evidence indicates that there will be a number of effective competitors remaining in each of the local areas in which the Parties overlap which will ensure that a sufficient competitive constraint will remain on the merged firm. The CMA therefore believes that there is no realistic prospect of an SLC arising in the supply of primary aggregates in any local area as a result of the Merger.

Vertical effects

15. The CMA considered whether the change in Breedon's position in both the production and supply of primary aggregates upstream and the production and supply of RMX and asphalt downstream brought about by the Merger could give rise to foreclosure concerns.

⁵ *Anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A*, paragraph 5.45 and *Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited*, paragraph 4.39.

⁶ *Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited*, paragraphs 4.60 and 4.63.

16. With respect to input foreclosure, the CMA believes that Breedon would not have the ability to engage in input foreclosure of its downstream rivals in the supply of primary aggregates for their RMX and asphalt production, given that Breedon would not have sufficient market power to be able to engage in such a strategy.
17. The CMA believes that there is no realistic prospect of an SLC arising through vertical effects as a result of the Merger.

Conclusion

18. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

19. Breedon is a public company listed on the Alternative Investment Market of the London Stock Exchange. Breedon is a UK focused materials group and employs around 2,300 people across GB. It has one cement plant, c.60 operational quarries (excluding depots), 26 operational asphalt plants, c.200 operational RMX plants, 3 concrete products plants and 9 regional road surfacing hubs. Breedon also operates a traffic management company.⁷ The turnover of Breedon in the financial year ending 31 December 2016 was £454.7m in GB.⁸
20. The Target Assets are currently operated by Tarmac. Tarmac is a British building materials company which produces and supplies cement, aggregates, RMX and asphalt.
21. The Target Assets are located at:
 - (i) Daviot, Inverness, IV2 5XL (**Daviot**);
 - (ii) Low Plains, Armathwaite, Penrith, CA4 9TR (**Low Plains**);
 - (iii) Borrass, Holt Road, Wrexham, LL13 9SE (**Borrass**); and

⁷ Breedon Merger Notice, paragraph 3.2.

⁸ Breedon Merger Notice, paragraph 6.1.

(iv) Minffordd, Penrhyndevdraeth, LL48 6HP (**Minffordd**).⁹

22. The turnover of the Target Assets in financial year ending 31 December 2016 was [X] in GB ([X]).¹⁰

Transaction

23. On 12 December 2017, Breedon and Tarmac entered into: (i) an agreement for Breedon's purchase of the Target Assets; (ii) an agreement for the purchase by Tarmac of the business and assets of certain RMX sites owned by Breedon; and (iii) a master transaction agreement (together the **Transaction Agreements**).
24. Under the terms of the Transaction Agreements, Tarmac will transfer the Target Assets to Breedon. As consideration, Breedon will transfer to Tarmac the 27 RMX sites and will pay Tarmac a cash consideration of £[X] million (the **Tarmac Transaction**).¹¹

Jurisdiction

25. As a result of the Merger, Breedon and the Target Assets will cease to be distinct.
26. The Parties overlap in the production and supply of primary aggregates in GB, with a combined share of supply (by volume) in at least one of the local areas affected by the Merger above 25%. The Parties' combined share of production of primary aggregates (by volume) within [X] miles of the Parties' sites at each of Daviot, Beauly and Meadowside is equal to or more than 25%, with an increment brought about by the Merger in each case. The [X]-mile catchment areas of the Parties' sites at Daviot, Beauly and Meadowside have a total population of approximately 170,000 and include the city of Inverness.¹² The CMA believes these areas are collectively of such a size, character and importance as to make them worth consideration for the purposes of the Act. These areas therefore constitute a substantial part of the UK and accordingly the share of supply test in section 23 of the Act is met.¹³

⁹ This is the quarry at which the asphalt plant is located.

¹⁰ Breedon Merger Notice, paragraph 6.2.

¹¹ Breedon and Tarmac have submitted that the Tarmac Transaction constitutes a distinct relevant merger situation. The Tarmac Transaction is subject to a separate CMA investigation (<https://www.gov.uk/cma-cases/tarmac-trading-limited-breedon-group-plc-merger-inquiry>).

¹² CMA estimate based on data from Scotland's Census 2011.

¹³ In the CC's merger inquiry report [Tesco plc/Co-operative Group \(CWS\) Limited store at Uxbridge Road, Slough](#), published on 28 November 2007, the population of Slough being 120,000 was considered to constitute a substantial part of the UK for the purposes of the Act.

27. 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.
28. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 7 March 2018 and the statutory 40 working day deadline for a decision is therefore 3 May 2018.

Counterfactual

29. 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 the merger against an alternative counterfactual where, 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 than these conditions.¹⁴
30. In this case, there is no evidence supporting a different counterfactual, and Breedon 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.

Background

31. This industry has been considered by competition authorities on a number of occasions. The Office of Fair Trading (**OFT**) referred the acquisition by Breedon of certain Scottish assets of Aggregate Industries UK Limited (**Breedon/Aggregate Industries**) to the Competition Commission (**CC**) in 2013. The CMA¹⁵ published its report (which considered the markets for aggregates, RMX, and asphalt) on the merger on 9 April 2014.¹⁶ In 2014 the CC completed an investigation into the markets for aggregates, RMX, and

¹⁴ [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).

¹⁵ The CMA was established on 1 October 2013. By virtue of the Enterprise and Regulatory Reform Act 2013 and the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional Provisions and Savings) Order, No 416 of 2014, the CC's merger control functions were transferred to the CMA on 1 April 2014.

¹⁶ CMA Report on [the completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited](#), 9 April 2014

cement following a reference from the OFT on 18 January 2012.¹⁷ It published its report on 14 January 2014 (**the market investigation into aggregates, cement and RMX**).¹⁸ The OFT also referred the anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A (*Anglo / Lafarge*) to the CC in September 2011. The CC published its report (which considered the markets for cement, aggregates asphalt and RMX) on the joint venture on 1 May 2012.¹⁹

32. The most recent case in this sector was the acquisition by Breedon Aggregates Limited of Hope Construction Materials Limited in 2016, which was cleared in Phase 1 after the acceptance of undertakings in lieu of reference.²⁰
33. In this case, the CMA has taken into account the approach of the CMA and decisions in the same and related sectors by the OFT, CC and the European Commission as well as the market investigation into aggregates, cement and RMX.

Frame of reference

34. 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 merging 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.²¹

The products and overlaps

35. Primary aggregates (along with cement or other cementitious products) form the basic ingredients of RMX. Similarly, primary aggregates and bitumen form the basic ingredients of asphalt. Most aggregates are used for construction purposes. Around 50% of all the aggregates produced in the UK are used as a sub base (the layer of stone which forms the foundation for many

¹⁷ OFT Market investigation reference: *Aggregates: The OFT's reason for making a market investigation reference to the Competition Commission* - , January 2012.

¹⁸ CC market investigation reference report: *Aggregates, cement and ready-mix concrete market investigation - Final report*, January 2014.

¹⁹ CC Report on a report on *the anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A*, May 2012.

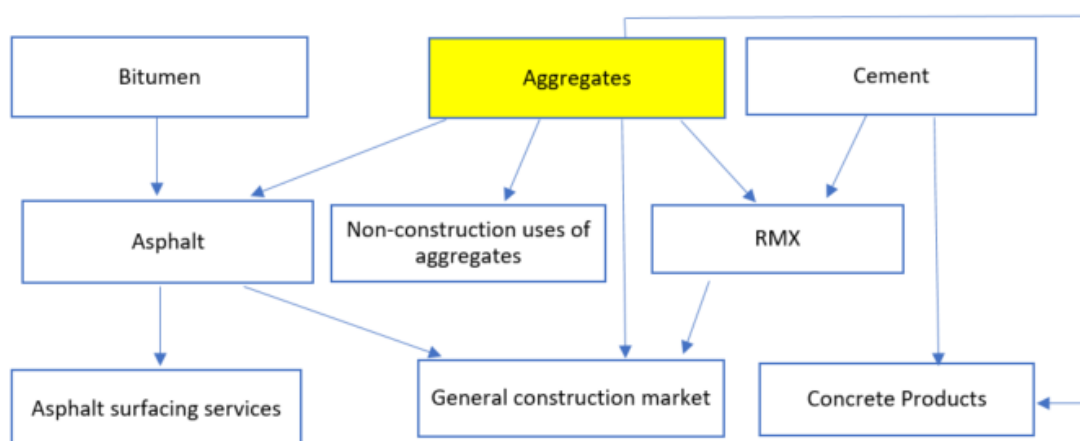
²⁰ *Breedon Aggregates / Hope Construction Materials merger inquiry*, CMA's decision of 12 April 2016.

²¹ *Merger Assessment Guidelines*, paragraph 5.2.2.

construction/road building projects) and for other structural fills in construction.²²

36. A simplified overview of the relationship between aggregates, RMX, their inputs and other key heavy building materials is presented in Figure 1 (with the main area of overlap between the Parties highlighted in yellow).

Figure 1: Simplified overview of the relationships between major heavy building materials



Source: CMA

37. Breedon and the Target Assets overlap in GB in the production and supply of primary aggregates.²³
38. In addition, Breedon is a producer of asphalt and RMX. As aggregates are a key input in the production of RMX and asphalt, the Merger changes the extent of Breedon's vertical integration because of the vertical relationships between the Parties' activities within certain local areas.
39. The vertical relationships between these different products are also shown in Figure 1 above.

²² [Breedon Aggregates / Hope Construction Materials merger inquiry](#), CMA's decision of 12 April 2016, paragraph 54.

²³ The Parties both supply asphalt in GB. However, the CMA notes that there are no local overlaps in respect of this product as the nearest Breedon asphalt plants to the target asphalt plant at Minffordd are located at each of Leaton and Leinthall, both of which are more than 65 miles away from Minffordd.

Aggregates

Product frame of reference

40. Aggregates are the granular base materials used in the construction of roads, buildings, and other infrastructure. Aggregates are also used in the production of RMX, concrete products and asphalt. Aggregates may be divided into 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).
41. Primary aggregates are classified as either fine aggregates, coarse aggregates or granular aggregates. The precise classification is determined by reference to the grade (ie size) of the material. Fine aggregates are generally materials with a particle size of less than 5mm diameter. Coarse aggregates are materials that are produced to a specific grading above 5mm diameter.²⁴ Granular aggregates do not have a uniform size and are used to provide stability in foundation layers and bulk fill applications. They are composed of a combination of coarse and fine materials.
42. Breedon submitted that the relevant product frame of reference should be the production and supply of all types of primary and secondary and recycled aggregates.

Primary aggregates of different types (sand, gravel and crushed rock).

43. Breedon submitted that it considered that all types of primary aggregates supplied to all construction end users should be included in the same product market.
44. Previous competition investigations have typically found that all types of primary aggregates (ie sand, gravel and crushed rock) supplied to all construction end-users should be included in the same product market.²⁵ In the market investigation, the CC noted that, while there is significant scope for substitution between different types of primary aggregates for applications accounting for a substantial part of total primary aggregates sales (ie the manufacture of RMX, the manufacture of concrete products and construction

²⁴ [Aggregates, cement and ready-mix concrete market investigation - Final report](#), paragraph 2.9.

²⁵ [Breedon Aggregates / Hope Construction Materials merger inquiry](#), CMA's decision of 12 April 2016, paragraph 63. [Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited](#), paragraph 4.13; [Aggregates, cement and ready-mix concrete market investigation - Final report](#), paragraph 5.105.

uses), there is more limited scope for substitution for other applications (such as the manufacture of asphalt, in which crushed rock appears generally more suitable than sand and gravel).²⁶ This is consistent with the conclusion reached by the CC in *Anglo American / Lafarge*,²⁷ in which the CC recognised that the constraint imposed by different primary aggregates products may vary (which it took into account, to the extent relevant, within its competitive assessment).²⁸

45. Consistent with previous decisions, the CMA therefore considers that the appropriate frame of reference should include all types of primary aggregates. However, the available evidence indicates that differentiation between each type of primary aggregate (eg crushed rock, sand and gravel) means that some quarries may compete more closely than others depending on their product output. The CMA has therefore taken into account the different nature of the competitive constraints imposed by crushed rock and sand and gravel facilities, to the extent relevant, within its competitive assessment.

Different grades of primary aggregates

46. Breedon submitted that all grades of primary aggregates should be included in the same product frame of reference.
47. Previous competition investigations have considered whether different grades of primary aggregates (namely fine and coarse graded/granular aggregates)²⁹ fall within the same product frame of reference. In *Breedon / Aggregate Industries*, the CMA concluded that all types of primary aggregates, including different grades of primary aggregates, supplied to all construction end-users should be included in the same product market.³⁰ The CC reached the same conclusion in the market investigation into aggregates, cement and RMX.³¹
48. In *Anglo/Lafarge*, the CC found that different grades of the same type of primary aggregates were unlikely to be easily substitutable from the demand

²⁶ [Aggregates, cement and ready-mix concrete market investigation - Final report](#), paragraph 5.23.

²⁷ CC Report on a report on [the anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.](#), May 2012.

²⁸ CC Report on [the anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.](#), May 2012, paragraph 5.38.

²⁹ For example, the [Aggregates, cement and ready-mix concrete market investigation - Final report](#), paragraph 2.9 explained that aggregates are classified by the grade (ie size) of the material (a) Fine aggregates are generally materials with a particle size of less than 5mm diameter. (b) Coarse aggregates are materials that are produced to a specific grading above 5mm diameter. (c) Granular aggregates do not have a uniform size and are used to provide stability in foundation layers and bulk fill applications. They are composed of a combination of coarse and fine materials.

³⁰ [Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited](#), paragraph 4.13

³¹ [Aggregates, cement and ready-mix concrete market investigation - Final report](#), paragraph 5.105

side.³² However, as quarries usually produce various grades of primary aggregate products, and there was some scope to switch production between these grades, the CC concluded that different grades of the same type of primary aggregates should be considered as part of the same relevant product market.³³

49. In line with previous cases, the CMA therefore considered that all grades of primary aggregates are included in the same product frame of reference.

Secondary and recycled aggregates

50. Breedon submitted that secondary and recycled aggregates should be considered to fall within the same product market as primary aggregates.
51. Previous competition investigations have concluded that all sources of aggregates should be included in the same product frame of reference.³⁴ However, in previous cases, it was also indicated that secondary and recycled aggregates were an imperfect substitute to primary aggregates, and that substitutability varies significantly by application and availability (which has been reflected within the competitive analyses in those cases).³⁵
52. Consistent with previous mergers cases within this sector, the CMA considers that all primary, secondary and recycled aggregates are part of the same product frame of reference. However, the CMA recognises the imperfect nature for substitution between secondary and recycled aggregates and primary aggregates.
53. The Parties only provided data in relation to the number, location and shares of production of primary aggregates sites and provided only very limited information on the presence of, and competitive constraint presented by, secondary and recycled aggregates in specific areas.
54. For these reasons, the CMA considered that, as the Parties overlap in the production and supply of primary aggregates, the CMA should focus its

³² [Anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.](#), paragraph 5.35.

³³ [Anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.](#), paragraph 5.36.

³⁴ [Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited](#), paragraph 4.14; [Aggregates, cement and ready-mix concrete market investigation - Final report](#), paragraph 5.24. In Anglo American / Lafarge, the CC concluded that the relevant product market for primary aggregates did not include secondary and recycled aggregates. However, the CC did consider any competitive constraint posed by secondary and recycled aggregates on primary aggregates in their local competitive effects analysis ([Anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.](#), paragraph 5.27).

³⁵ CC market investigation reference report: [Aggregates, cement and ready-mix concrete market investigation - Final report](#), 14 January 2014, paragraph 5.25.

competitive assessment primarily on competition between producers of primary aggregates. Where the CMA was presented with views that other types of aggregates exercise a competitive constraint in a particular area, the local competitive assessment considered whether there was evidence supporting the existence of such a constraint.

Conclusion

55. The CMA believes that the appropriate product frame of reference includes:
- (a) All types of primary aggregates (i.e. sand, gravel and crushed rock);
 - (b) All grades of primary aggregates (i.e. fine, coarse, graded/mixed aggregates); and
 - (c) All sources of aggregates, including primary, secondary and recycled aggregates.
56. For the reasons set out in paragraphs 54, the CMA has focussed its competitive assessment primarily on competition between producers of primary aggregates.

Geographic frame of reference

57. Previous competition investigations in this sector have consistently found that the geographic frame of reference for primary aggregates is local because the cost of transportation relative to the total price is high. As a starting point for the delineation of local markets, previous inquiries have used catchment areas calculated on the basis of the average distance over which 80% of the external sales of a quarry or depot were delivered:
- (a) In *Breedon/Aggregate Industries*, the CC used the weighted³⁶ average catchment area for both parties of 18 miles;³⁷
 - (b) In *Northstone / Catherwood*, the OFT applied a 30-mile catchment area as suggested by the merging parties (and largely supported by third parties) in that case.³⁸

³⁶ Weighted by the volume of aggregates delivered by each site.

³⁷ [Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited](#), paragraph 4.54.

³⁸ OFT decision on the [Anticipated acquisition by Northstone \(NI\) Limited of RMC Catherwood Limited](#), 3 April 2013, paragraph 23.

58. Breedon submitted that the geographic frame of reference for aggregates is local and calculated that the weighted average distance over which it delivered 80% of its primary aggregates external sales (by volume) across GB was [§] miles (the **Average Catchment Area for aggregates**).³⁹
59. The CMA therefore believes that the appropriate geographic frame of reference is local and uses the following catchment areas as a starting point for its local competitive assessment:
- (a) 18 miles (consistent with the lower bound of distances in prior OFT, CC, CMA and European Commission decisions relating to this industry); and
 - (b) [§] miles (the Average Catchment Area for aggregates calculated by Breedon and consistent with the higher bound of distances in prior OFT, CC, CMA and European Commission decisions relating to this industry).
60. However, in its competitive assessment, the CMA has not applied these catchment areas in a mechanistic way but has considered the constraint posed by competitors both inside and outside these areas, while also recognising that the strength of competition is likely to vary in different parts of each catchment area.
61. The CMA notes that it is not necessary to reach a conclusion on the product or geographic frame of reference for aggregates in this case, since no competition concerns arise. However, the CMA has not materially diverted from the product and geographic frames of reference used in previous decisions relating to this industry.

RMX

Product frame of reference

62. RMX is concrete which is produced in a freshly-mixed and unhardened state. RMX is manufactured by mixing specific quantities of cement, and (if desired) other cementitious products, with fine and coarse aggregates, water and other additives. The specific composition and resulting properties of RMX can be customised to suit different applications.⁴⁰

³⁹ Breedon Merger Notice, paragraph 13.19.

⁴⁰ [Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited](#), paragraph 2.36.

63. Previous competition investigations have concluded that the appropriate product frame of reference includes all types of RMX, including RMX produced by fixed plant, mobile plant and volumetric trucks.⁴¹
64. However, in these previous cases, the CMA and its predecessors noted that the competitive constraint on fixed plants posed by mobile plants and volumetric trucks was limited, as mobile plants only appeared to be suitable for larger projects and volumetric trucks tend to be a substitute for fixed plants for smaller projects (eg typically requiring 50m³ of RMX or less).⁴² This was taken into account, to the extent relevant, within the competitive assessments conducted in those cases.⁴³
65. Based on the available evidence, and in line with the approach adopted in previous cases, the CMA believes that the product frame of reference includes all grades of RMX whether produced by fixed plant, mobile plant or by volumetric truck. However, based on the evidence available, the CMA recognises that mobile plants and volumetric trucks may provide a limited constraint on RMX produced by fixed plants (eg for certain project sizes).

Geographic frame of reference

66. Previous competition investigations have consistently found that the geographic frame of reference for RMX is local. This is due to the high cost of transportation relative to the price of RMX and the perishability of the product, which limits the distance over which it can be transported.⁴⁴
67. Consistent with previous decisions, the CMA therefore believes that the appropriate geographic frame of reference for RMX is local. In *Breedon / Hope*, the CMA considered that the appropriate geographic frame of reference was local and used catchment areas of [X] miles and [X] miles as a starting point for local assessment. In the competitive assessment, for the identification of overlaps, the CMA also considered a catchment area of [X] miles.⁴⁵
68. The market investigation into aggregates, cement and RMX found that RMX markets were local in nature, with catchment areas in the region of 8 to 10

⁴¹ CMA Report on [the completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited](#), 9 April 2014, paragraph 4.27; CMA's decision on [Breedon Aggregates / Hope Construction Materials merger inquiry](#), 12 April 2016, paragraph 89.

⁴² CMA Report on [the completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited](#), 9 April 2014, paragraph 4.26.

⁴³ [ibid], paragraph 4.27.

⁴⁴ RMX is best used a short time after production (preferably within two hours).

⁴⁵ CMA's decision on [Breedon Aggregates / Hope Construction Materials merger inquiry](#), 12 April 2016, paragraph 92 and 113.

miles, albeit with some scope for variation according to local factors and the means available for distributing the product (ie via volumetric trucks or conventional mixer trucks).⁴⁶

69. In *Holcim / Lafarge*, the European Commission considered that the relevant geographic market should be defined by reference to a radius of 25 km (15.5 miles) around each RMX plant.⁴⁷
70. In line with previous decisions, the CMA used catchment areas of [X] miles for the competitive assessment of this market. However, the CMA notes that it is not necessary to reach a conclusion on the product or geographic frame of reference for RMX in this case because no competition concerns arise in relation to the supply of RMX on any plausible basis.

Asphalt

Product frame of reference

71. Asphalt is a product manufactured by heating and mixing aggregates with a binding agent (normally bitumen). It is principally used for road surfacing, car parks, footpath pavements, airport runways and other surfaces. Previous inquiries have consistently found that there was a single product market for all specifications of asphalt, including asphalt supplied from fixed plants and mobile plants.⁴⁸
72. Consistent with previous cases, the CMA believes that the product frame of reference includes all specifications of asphalt, including asphalt supplied by fixed and mobile plants.

Geographic frame of reference

73. Previous decisions relating to this industry have consistently found that geographic markets are local, as asphalt is a perishable product that must be delivered hot.
74. Consistent with previous decisions, the CMA therefore believes that the appropriate geographic frame of reference for RMX is local. In some previous

⁴⁶ CC market investigation reference report: [Aggregates, cement and ready-mix concrete market investigation - Final report](#), 14 January 2014, paragraph 5.104.

⁴⁷ *Holcim / Lafarge*, COMP/M.7252, European Commission decision of 15 December of 2014, paragraph 286.

⁴⁸ For example [Anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.](#), paragraph 5.45 and [Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited](#), paragraph 4.39.

decisions, the CMA used catchment areas of 17-25 miles for the competitive assessment of this market.⁴⁹

75. The CMA notes that it is not necessary to reach a conclusion on the product or geographic frame of reference for asphalt in this case because no competition concerns arise on any plausible basis.

Conclusion on frame of reference

76. For the reasons set out above, the CMA has considered the impact of the Merger, at a local level, in the following frames of reference:
- The production and supply of primary aggregates;
 - the production and supply of RMX; and
 - the production and supply of asphalt.

Competitive assessment

Horizontal unilateral effects

77. 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.⁵⁰ Horizontal unilateral effects are more likely when the merging parties are close competitors.
78. 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 primary aggregates at the local level as a result of the merged firm increasing the price of its primary aggregates products (or otherwise worsening its competitive offer) due to the loss of competition between the merging Parties.

Framework of the local assessment

79. The CMA followed a number of steps in carrying out the local competitive assessment, in particular:

⁴⁹ [Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited](#), paragraphs 4.60 and 4.63.

⁵⁰ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

- (i) Delineation of catchment areas;
 - (ii) identification of overlaps;
 - (iii) filtering to exclude from the analysis overlap sites/areas where competition concerns do not arise; and
 - (iv) local competitive assessment of sites/areas which fail the filters.
80. The CMA considers that the appropriate geographic frame of reference is local and, as a starting point for its analysis, it identified local geographic catchment areas as explained in paragraph 59 above.
81. The CMA identified overlaps whenever at least one Breedon primary aggregate quarry was located within [X] miles of a Target Asset.⁵¹ Of the four Target Assets, all four involve an overlap with Breedon within [X] miles.
82. Applying the methodology used in previous merger investigations within this sector,⁵² after identifying the relevant overlaps, the CMA applied filters to remove areas in which the Merger does not raise competition concerns from further consideration. The CMA considered that competition concerns can be excluded in areas where none of the following filters are met:
- (i) The Parties' post-transaction production shares⁵³ of primary aggregates would be greater than 33% within the 18 miles or [X] miles catchment area; or
 - (ii) The Parties' sites are located within 18 miles of each other and the post-Merger fascia count within that distance would be three or lower (including the Parties).
83. Having applied the filters, the CMA found that five sites required a more detailed competitive assessment. These sites are the following:
- (i) Daviot (Target Asset);
 - (ii) Beaully (Breedon site);
 - (iii) Meadowside (Breedon site);

⁵¹ Twice the size of Average Catchment Area for aggregates calculated by Breedon.

⁵² Previous OFT filters in *Breedon / Aggregate Industries* and *Anglo / Lafarge* focused exclusively on shares of supply. The CC inquiries in these cases used a combination of shares of supply and fascia counts in filtering.

⁵³ Production shares have been used instead of market shares based on sales revenue or shares of capacity as this is the only data that is available. In addition, there are difficulties in obtaining reliable figures for capacity in aggregates, as reserves give an indication of long-term capacity but may be difficult to access in the short to medium term and there are many variables in determining short-term capacity.

(iv) Minffordd (Target Asset); and

(v) Tan y Foel (Breedon site).

Local competitive assessment

84. The CMA assessed the likelihood of the Merger resulting in horizontal unilateral effects in each of the overlap areas identified in paragraph 83. The assessment was made by reference to the following factors:

a) **Closeness of competition between the Parties:**

(i) the Parties' shares of production of primary aggregates⁵⁴ and increment (if any)⁵⁵ within 18 miles and [X] miles of the site being assessed;

(ii) the number of Parties' sites and their geographic location within or just outside the local area;

(iii) the distance between the Parties' sites; and

(iv) third parties' views on the closeness of competition between the Parties in the local area, to the extent available.

b) **Competitive constraints:**

(i) the number, identity and location of competitors (relative to the Parties' sites) within or just outside the local area;

(ii) the shares of production of primary aggregates of the competitors within 18 and [X] miles of the focal site; and

(iii) third parties' views on the constraint from competitors in the local area, to the extent available.

Daviot (Target Asset)

85. The share of production of primary aggregates of Breedon post-Merger would be [40-50]% (with an increment of [10-20]%) within the 18-mile catchment area and [30-40]% (with an increment of [10-20]%) within the [X]-mile catchment area.

⁵⁴ Production shares have been used instead of market shares based on sales revenue or shares of capacity as this is the only data that is available. It is also very difficult to reliably measure capacity at an aggregates sites.

⁵⁵ Increment in this context means the addition in the production share the Parties will hold post-Merger, after adding the Party with the smallest share of production in that area.

86. The Parties' sites at Daviot and Beaully, a sand and gravel quarry, are geographically close to each other (within 18 miles). The heat maps for Daviot and Beaully suggest that the Parties are competing for similar customers. The Parties' only other quarry within [redacted] miles of Daviot is Meadowside, a hardstone quarry. The CMA notes that there appears to be limited overlap in the location of the customers of Daviot and Meadowside based on customer heat maps for the relevant sites.
87. In terms of the competitive constraints remaining post-Merger, the CMA notes that the Merger would not lead to a reduction in fascia (as Tarmac will continue operating in this area) and there would be at least seven and eleven credible competitors located within the 18-mile and the [redacted]-mile catchment areas respectively. The available evidence indicates that these competitors will exercise a significant constraint on that site.
88. Some third parties who responded to the CMA's merger investigation raised competition concerns in relation to this area. According to these third parties, the Merger will reduce the number of aggregates' suppliers as Breedon will become the owner of all the hard-rock aggregates quarries in this area, which could lead to an increase in prices for this type of aggregates.
89. As stated in paragraph 45, the CMA acknowledged that quarries producing a particular type of primary aggregate may be competing more closely than others producing a different type of primary aggregates. Considering the suppliers of hard-rock aggregates in this area, the CMA noted that Breedon will be the only supplier in the 18-mile catchment area (as Tarmac is now) but will face three additional competitors within the [redacted]-mile catchment area. The CMA notes that Breedon's competitive presence is likely to be overstated by the share of supply data available for this area, which include additional volumes produced by one Breedon quarry (Meadowside) which was granted a temporary extension to its usual planning restrictions in order to service a one-off contract.
90. On the basis of the available evidence, on balance, the CMA believes that the Parties are a moderate competitive constraint on each other at present and that the remaining operators are credible competitors that will exercise a sufficient competitive constraint on Breedon post-Merger.
91. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the production and supply of primary aggregates in this local area.

Beaully (Breedon site)

92. The share of production of primary aggregates of Breedon post-Merger would be [40-50]% (with an increment of [10-20]%) within the 18-mile catchment area and [30-40]% (with an increment of [10-20]%) within the [X]-mile catchment area.
93. The Parties' sites at Beaully and Daviot are geographically close to each other (within 18 miles). As indicated in paragraph 86, the CMA notes that there appears to be some overlap in the location of the customers of Beaully and Daviot based on customer heat maps for the relevant sites.
94. However, in terms of the competitive constraints remaining post-Merger, the CMA notes that the Merger would not lead to a reduction in fascia and that there were at least six and nine credible suppliers located within the 18-mile and the [X]-mile catchment area respectively. The available evidence indicates that these competitors will exercise a significant constraint on the Breedon Beaully site.
95. No third parties raised competition concerns in relation to this area.
96. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the production and supply of primary aggregates in this local area.

Meadowside (Breedon site)

97. The share of production of primary aggregates of Breedon post-Merger would be [60-70]% within the 18-mile catchment area (with no increment resulting from the Merger) and [60-70]% (with an increment of [20-30]%) within the [X]-mile catchment area. Whilst the increment resulting from the Merger in the wider [X]-mile catchment area is significant, as indicated in paragraph 89 above, the CMA notes that Breedon's share of production was overstated in relation to its plant at Meadowside, as it included the volumes produced for a one-off contract for which Breedon was granted a temporary extension to its usual planning restrictions.
98. The CMA noted that the Parties' sites are not particularly close to each other (about 22 miles apart) and, therefore, are not particularly close competitors by geography. The CMA also notes that there appears to be limited overlap in the location of the customers of Meadowside and Daviot (the Target Asset that overlaps with Daviot in the [X]-mile catchment area) based on customer heat maps for the relevant sites.

99. The CMA then considered the competitive constraints remaining post-Merger. The CMA noted that the Merger would not lead to a reduction in fascia and there are at least six suppliers located within the 18-mile catchment area and eight suppliers within the [X]-mile catchment area. The available evidence indicates that these competitors will exercise a significant constraint on that site.
100. No third parties raised competition concerns in relation to this area.
101. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the production and supply of primary aggregates in this local area.

Minffordd (Target Asset)

102. The share of production of primary aggregates of Breedon post-Merger would be [50-60]% within the 18-mile catchment area and [10-20]% within the [X]-mile catchment area, with no increment resulting from the Merger in either of these catchment areas.
103. The Parties sites are geographically far away from each other (more than 30 miles away) and, therefore, are not particularly close competitors by geography. The CMA also notes that there appears to be limited overlap in the location of the customers of Minffordd and Tan y Foel (Breedon's only quarry within [X] miles of Minffordd that did not pass the filters) based on customer heat maps for the relevant sites.
104. The Merger does not bring about an increment in the share of supply in either catchment area surrounding the target Minffordd plant. As such, there are no competitive effects resulting from the proposed Merger in this area. The CMA also notes that there are at least seven credible competitors located within [X] miles of the site and the available evidence indicates that these competitors will exercise a competitive constraint on that site.
105. [X]. However, as noted above, under any plausible catchment area the Parties' activities do not overlap in this area and, as such, the CMA considers that this customer's dependence on Breedon for its supply of primary aggregates will not be increased as a result of the Merger.
106. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the production and supply of primary aggregates in Minffordd.

Tan-y-Foel (Breedon site)

107. The Parties' combined share of production post-Merger within 18 miles is [90-100]% but relatively low within [X] miles, at [10-20]%, and there is no increment in either catchment area as a result of the Merger.
108. The CMA considered that the Parties sites are geographically far away from each other (more than 30 miles away) and, therefore, are not particularly close competitors by geography. The CMA also notes that, as indicated in paragraph 103, there appears to be limited overlap in the location of the customers of Tan y Foel and Minffordd based on customer heat maps for the relevant sites.
109. In terms of the competitive constraints remaining post-Merger, the CMA notes that the Merger would not lead to a reduction in fascia and there are at least 4 suppliers located within the [X]-mile catchment area. The available evidence indicates that these competitors will exercise a significant constraint on that site.
110. No third parties raised competition concerns in relation to this area.
111. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the production and supply of primary aggregates in Tan-y-Foel.

Conclusion

112. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the production and supply of primary aggregates in any of the local areas affected by the Merger.

Vertical effects

113. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer.
114. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such

foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.⁵⁶

115. In the present case, the CMA has considered whether the Merger could lead to (i) vertical effects arising through input or customer foreclosure of primary aggregates into asphalt at the local level; and to (ii) vertical effects arising through input or customer foreclosure of primary aggregates into RMX at the local level.
116. Primary aggregates are one of the key inputs (along with cement or other cementitious products) in the production of RMX and asphalt. The Parties are active in the production and supply of primary aggregates and asphalt. Breedon, but not the Target Assets, is active in the production and supply of RMX at a local level.
117. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.⁵⁷ This is discussed below.

RMX

118. The CMA considered whether the Merger, by changing Breedon's position in both the production and supply of primary aggregates (upstream) and the production and supply of RMX (downstream) may give rise to input and/ or customer foreclosure.
119. As regards input foreclosure, as indicated in paragraphs 78 to 112, Breedon faces competition from a number of other primary aggregates suppliers in all local markets affected by the Merger. Therefore, the CMA considers that competing RMX suppliers have alternative options of supply available.
120. On this basis, the CMA concluded that there is no realistic prospect of Breedon having the ability to foreclose the supply of primary aggregates to downstream RMX competitors post-Merger.
121. As regards customer foreclosure, on the basis of the available evidence, the available evidence indicates that Breedon is not a key customer for rival aggregates suppliers, which have a variety of other routes to market. The majority of Breedon's RMX plants near the Target quarries are either inactive or already self-supplied. The CMA also notes that no third parties raised

⁵⁶ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

⁵⁷ [Merger Assessment Guidelines](#), paragraph 5.6.6.

competition concerns about losing Breedon as a customer. The CMA therefore believes that there is no realistic prospect of an SLC arising through customer foreclosure to upstream competitors in the supply of aggregates for RMX at the local level.

Asphalt

122. The CMA considered whether the Merger, by changing Breedon's position in both the production and supply of primary aggregates (upstream) and the production and supply of asphalt (downstream), may give rise to input and/or customer foreclosure.
123. As regards input foreclosure, as indicated in paragraphs 78 to 112, Breedon faces competition from a number of other primary aggregates suppliers in all local markets affected by the Merger. Therefore, the CMA considers that competing asphalt suppliers have credible alternative options of supply available. The CMA also noted that most asphalt suppliers are already vertically integrated, as they have their own aggregates source of supply. In relation to Daviot, Breedon has an asphalt plant located on the same site as the Target Asset but competing local asphalt suppliers have their own aggregates sources and are not supplied by the Target Asset at Daviot. There are no Breedon asphalt plants located within [X] miles of the Target Assets at Minffordd,⁵⁸ Borrás or Low Plains.
124. On this basis, the CMA concluded that there is no realistic prospect of Breedon having the ability to foreclose the supply of primary aggregates to downstream asphalt competitors post-Merger.
125. As regards customer foreclosure, Breedon submitted that it does not have any asphalt plants located within [X] miles of the Target Assets at Minffordd, Borrás or Low Plains. Breedon has an asphalt plant located on the same site as the Target Asset in Daviot, however, Breedon confirmed that this plant's aggregate requirement is already solely supplied from the Daviot quarry. As none of the Parties are an asphalt customer of any rivals, post-Merger Breedon would not be able to reduce rivals aggregates suppliers' access to asphalt customers. On this basis, the CMA believes that there is no realistic prospect of an SLC arising through customer foreclosure to upstream competitors in the supply of aggregates for asphalt at the local level.

⁵⁸ In relation to the Target Asset at Minffordd, Breedon is acquiring both the aggregates site and the asphalt plant and therefore the Merger does not give rise to an incentive to foreclose asphalt competitors in this area.

Conclusion on vertical effects

126. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects.

Barriers to entry and expansion

127. 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. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁵⁹

128. 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.

Decision

129. 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 United Kingdom.

130. The Merger will therefore **not be referred** under section 33(1) of the Act.

Colin Raftery
Director, Mergers
Competition and Markets Authority
26 April 2018

⁵⁹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.