

Completed acquisition by CRH plc of Alun Griffiths (Contractors) Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6740/18

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 29 June 2018. Full text of the decision published on 24 July 2018.

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SUMMARY

1. On 4 January 2018, CRH plc (**CRH**), through its subsidiary Tarmac Trading Limited (**Tarmac**), acquired Alun Griffiths (Contractors) Limited (**Griffiths**) (the **Merger**). CRH (including all its subsidiaries) and Griffiths are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Tarmac and Griffiths is an enterprise; that these two enterprises ceased to be distinct as a result of the Merger; and that the turnover test is met. The four-month period for a decision, as extended, has

not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

3. The Parties overlap in the supply of road and highway works, where this refers to:
 - (a) the application of asphalt to surface or resurface roads, car parks, footpaths and pavements (**contract surfacing**); and
 - (b) the road and highways element of civil infrastructure engineering services. Civil infrastructure engineering services cover a wide range of construction and design services primarily relating to roads, railways, utilities, and energy.
4. In addition, CRH is a producer of asphalt, aggregates, and ready-mixed concrete (**RMX**) which are inputs in the supply of road and highway works.
5. The CMA considered the impact of the Merger in relation to the following frames of reference:

Supply of road and highway works

6. The CMA considered the effects of the Merger within a product frame of reference which includes both contract surfacing and civil infrastructure engineering services (together, **road and highway works**). Road and highway works are typically procured in two ways: through framework agreements or via open tenders. Having taken into account the context in which road and highway works are procured, the CMA assessed the effect of the Merger in relation to the:
 - (a) supply of road and highway works outside of existing framework agreements; and
 - (b) supply of road and highway works within existing framework agreements.
7. The CMA assessed the effect of the Merger in those local areas where the Parties currently operate and there is some overlap on a regional basis, namely: (i) South Wales; (ii) Mid Wales; (iii) North Wales; (iv) the south west of England (the **South West**); and (v) the West Midlands. On a cautious basis, the CMA also assessed the effects of the Merger on a country-wide basis in Wales.

Asphalt, aggregates, and RMX

8. In line with its precedent cases, for all three inputs, the CMA assessed the effect of the Merger within three product frames of reference for the supply of: all types of primary aggregates; all specifications of asphalt; and all types of RMX. For all three inputs, the geographic frame of reference was local, with the CMA using catchment areas consistent with precedent cases relevant to asphalt,¹ aggregates,² and RMX.³

Horizontal unilateral effects arising from the loss of competition in the supply of road and highway works

9. The CMA assessed whether there is a realistic prospect that the Merger will give rise to a significant lessening of competition (**SLC**) in the supply of road and highway works outside of existing framework agreements and within existing framework agreements, as a result of the merged firm increasing the price of its services (or otherwise worsening its competitive offer), due to the loss of existing competition between the merging Parties.
10. In relation to competition outside of existing framework agreements, the CMA found that the Parties were not competing closely with each other as they focussed primarily on different types of projects: in general, CRH bid for projects with a significant element of contract surfacing, whereas Griffiths bid for projects involving a large element of civil infrastructure engineering and a considerably smaller element of contract surfacing. In South Wales where they compete more frequently than in other areas, the CMA found that there are sufficient close competitors remaining in the local area affected by the Merger who provide a more significant competitive constraint on each of the Parties in their respective spheres of expertise. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of road and highway works outside of framework agreements in Wales or any of the regions where the Parties overlap.
11. The CMA then examined all framework agreements where the Parties are both 'approved suppliers' and found that they did not compete closely with each other and that the remaining approved suppliers pose sufficient competitive constraints on the merged firm. In one framework agreement, the

¹ *Anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.*, paragraph 5.45; *Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited*, 9 April 2014, paragraphs 4.39, 4.60 and 4.63.

² *Anticipated acquisition by Tarmac Trading Limited of certain assets of Breedon Group PLC*, 15 May 2018, paragraph 9; *Breedon/Hope*, 12 April 2016, paragraph 71; *Breedon Aggregates/Aggregate Industries*, paragraph 4.14; *Aggregates, cement and ready-mix concrete market investigation*, 25 February 2016, paragraph 5.24.

³ *Breedon Aggregates/Aggregate Industries*, paragraph 4.27; *Breedon/Hope*, 12 April 2016, paragraphs 89, 92 and 113; *Aggregates, cement and ready-mix concrete market investigation*, paragraph 5.104.

CMA found that the Merger will result in a reduction in approved suppliers from 4 to 3 post-Merger in a single sub-division of the framework agreement (**lot**); however, there remain credible alternative options for supply and this framework agreement is due to expire in December 2018. As such, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of road and highway works within existing framework agreements in Wales or any of the regions where the Parties overlap.

Vertical effects arising through input foreclosure of asphalt, aggregates, and RMX into road and highway works at the local level

12. The CMA considered whether, as a result of the Merger, the Parties' presence in the production and supply of asphalt, aggregates and RMX (upstream) and the supply of road and highway works (downstream) may give rise to input foreclosure of downstream rivals of Griffiths.
13. The CMA found that CRH's ability to foreclose downstream competitors was limited in all regions where the Parties compete, as downstream customers would be able to access the supply of asphalt, aggregates and RMX from other suppliers with an established market presence. The CMA also found that the Merger will not result in a material change in CRH's downstream market position (as it is already vertically integrated) and that the downstream presence of Griffiths is limited on any basis, based on the evidence available to the CMA. As such, the CMA believes the Merger is highly unlikely to result in any material change to CRH's ability or incentive to pursue a foreclosure strategy.
14. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC through the foreclosure of the supply of asphalt, aggregate and RMX to downstream competitors in the supply of road and highway works at the local level.

Conclusion

15. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

16. Tarmac is a private limited company registered in England and Wales. Tarmac operates primarily in Great Britain (**GB**), where it produces and supplies asphalt, aggregates and RMX, as well as building products including

blocks, mortar and flooring solutions. Tarmac is also active in the surfacing and repair of roads, traffic management, and highway and local authority road maintenance. In the year ending 31 December 2016, Tarmac's turnover was £2.2 billion.

17. Tarmac's immediate parent company is Tarmac Holdings Limited, a wholly-owned subsidiary of CRH plc (**CRH**). CRH is the parent company of an international group of building material businesses. It provides civil infrastructure engineering and contract surfacing services primarily through entities which include Tarmac Contracting and Northstone (NI) Limited (trading as **Farrans**). Tarmac is the only CRH subsidiary whose activities overlap meaningfully with Griffiths' activities and, as such, it is the only CRH company considered in the competitive assessment.
18. Alun Griffiths (Contractors) Limited (**Griffiths**) is a civil infrastructure engineering contractor active in Wales, the West Midlands, and the **South West**. It primarily serves public sector bodies. Griffiths is a wholly-owned subsidiary of Purple Alpha Limited. On the basis of unaudited accounts, Griffiths achieved turnover of £[~~] in the year ending 31 December 2017. £[~~] was generated from contract surfacing services, whereas £[~~] was generated from civil infrastructure engineering services.~~~~~~

Transaction

19. On 4 January 2018, Tarmac acquired the entire issued share capital of Purple Alpha Limited (the holding company of Griffiths) and Wales and Border Counties Plant Hire Limited (a company which provides plant and machinery to Griffiths).

Procedure

20. The CMA's mergers intelligence function identified this transaction as warranting an investigation.⁴

Jurisdiction

21. Each of Tarmac and Griffiths is an enterprise. As a result of the Merger, these two enterprises have ceased to be distinct.

⁴ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

22. The UK turnover of Griffiths exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
23. The Merger completed on 4 January 2018 and was first made public on 10 January 2018. The four-month deadline for a decision under section 24 of the Act is 6 July 2018, following extension under section 25(2) of the Act.
24. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
25. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 10 May 2018 and the statutory 40 working day deadline for a decision is therefore 5 July 2018.

Counterfactual

26. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers, the CMA generally adopts the pre-merger 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.⁵
27. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

Frame of reference

28. 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

⁵ [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).

than others. The CMA will take these factors into account in its competitive assessment.⁶

The products and overlaps

29. CRH and Griffiths overlap in the supply of road and highway works, which can include a range of different types of services (including, in particular, contract surfacing and civil infrastructure engineering services). In practice, the scope of services sought by customers for a given project can vary. In some cases, for example, a customer might tender for civil infrastructure engineering contracts for road and highway works frequently together with contract surfacing, whereas in other circumstances such services might be tendered for separately. Road and highway works require a range of inputs that includes asphalt, aggregates and RMX.
30. CRH is a major producer of asphalt, aggregates, and RMX and, as a result, there are also vertical relationships between the Parties.

Product frame of reference

Road and highway works

31. The Parties submitted that contract surfacing (also known as contracting, asphalt surfacing, road surfacing and road maintenance services) refers to the application of asphalt to surface or resurface roads, car parks, footpaths and pavements. Specifically, it describes the process in which asphalt is laid onto a prepared foundation in layers, with each layer being compacted by paving machines to form the finished top surface. The Parties argued that, in line with previous decisions at the UK and EC level, contract surfacing should be considered a distinct product frame of reference.⁷
32. The Parties also submitted that civil infrastructure engineering services, should be considered a distinct product frame of reference in line with previous decisions at the UK and EC level.⁸ Civil infrastructure engineering services have a range of elements, including (i) designing, planning, and constructing works in relation to sectors including earth works and road construction (ie construction and maintenance of dykes, sewerage systems, roads, and highways); (ii) water-engineering works (ie construction and

⁶ *Merger Assessment Guidelines*, paragraph 5.2.2.

⁷ See: *Breedon Aggregates/Aggregate Industries UK*, 9 April 2014; *Aggregate Industries Limited/Foster Yeoman Limited*, 28 November 2006; EC Report on *Holcim/Lafarge*, 15 December 2014; EC Report on *CRH/Holcim Lafarge Divestment Business*, 24 April 2015.

⁸ See: *Balfour Beatty plc/Birse Group plc*, 11 September 2006; and EC Report on *AMEC/Financiere Spie Batignolles/Spie Batignolles*, 6 February 1997

maintenance of viaducts, tunnels, and embankments); and (iii) works in relation to energy and utilities (ie the construction and maintenance of renewable energy sites).

33. Based on the available evidence, the CMA considers that there is some overlap in the services that comprise the two frames of reference suggested by the Parties. In particular:
- (a) Civil infrastructure engineering contracts for road and highway works frequently include a contract surfacing element (and *vice versa*).
 - (b) Griffiths and CRH have sometimes classified the same kind of work as forming part of 'civil infrastructure engineering' services or 'contract surfacing' services.⁹
 - (c) Public authorities tendering for the services at issue typically do not observe a clear-cut distinction between civil infrastructure engineering and contract surfacing services (although some customers did recognise that Griffiths undertook more civil engineering work than CRH and that CRH was particularly active in contract surfacing).
 - (d) Responses from third parties indicate that there is a spectrum of work ranging from the routine resurfacing of existing roads to the construction of major new roads (and that such work can include different amounts of contract surfacing and civil infrastructure engineering).
34. For these reasons, the CMA does not consider it appropriate in the present case to segment the product market into contract surfacing and civil infrastructure engineering services and has therefore considered the impact of the Merger in relation to the supply of road and highway works.

Segmentation by customer type

35. Road and highway works are procured by two main groups of customers: public sector bodies and private enterprises (which also include construction companies seeking to subcontract a portion of the works they have been contracted to provide).
36. The CMA's investigation found that public sector bodies award contracts for road and highway works in two main ways:

⁹ See, for example, Annexes 1-4 submitted in response to the CMA's RFI 2, dated 26 April 2018. In these spreadsheets, Griffiths classified several contracts containing 'surfacing' or 'resurfacing' in their titles as 'civil infrastructure engineering'.

- (a) Through framework agreements, where contractors are selected for given lots (typically defined by region, project type, and project value). Once selection has taken place, no additional suppliers can be added to lots (unless the administering authority has included a provision to allow reserve contractors). Public bodies seeking to contract work through the framework agreement can only award contracts to the appointed contractors available on the lot through which they are procuring work. Work will then be awarded on the basis of a contractor's pre-determined 'ranking' within the lot, or following a tendering exercise ('mini competition') involving all companies within the relevant lot.
 - (b) Through open tenders, in which contractors that meet certain criteria are invited to bid for specific contracts.
- 37. The CMA found that private enterprises commonly procure through open tenders, and that they typically do not procure through framework agreements.
- 38. These different forms of procurement lead to some variation in competitive conditions depending on whether the envisaged work is already subject to a framework agreement. If a supplier is competing to win a place on a new framework agreement or to win a contract through an open tender, it will have to compete with any firm that can undertake the required works. On the other hand, once a firm has been appointed to a given framework agreement, it will only be competing with the other contractors appointed to the lot(s) within the agreement for which it has been selected as a potential supplier.
- 39. The CMA focussed its assessment on competition for future opportunities (ie competition for open tenders as well as competition to be in future framework agreements). For completeness, the CMA also considered competition within existing framework contracts on which the Parties are both present.
- 40. The CMA therefore decided to assess the impact of the Merger using two separate product frames of reference:
 - (a) the supply of road and highway works outside of existing framework agreements (where this includes competition for open tenders as well as competition to be in future framework agreements); and
 - (b) the supply of road and highway works within existing framework agreements.

Asphalt

41. The Parties told the CMA that there is significant supply-side substitutability between different grades of asphalt and that the main differences between grades lies in variations in bitumen content, the type of aggregates, and the types of additives used.
42. In previous cases,¹⁰ the CMA has found that there is a single product market for all specifications of asphalt, including asphalt supplied from fixed plants and mobile plants. The one exception is *IKO/Pure Asphalt*, where the CMA considered mastic asphalt. This specific type of asphalt is, however, not relevant to this investigation. The CMA found no reason to deviate from its precedents for the purposes of this investigation.

Aggregates

43. The Parties submitted that the relevant product frame of reference should be the supply of all primary and secondary and recycled aggregates, excluding specialist aggregates.
44. In *Tarmac/Breedon*, the CMA noted that the appropriate product frame of reference for aggregates includes:¹¹
 - (a) all types of primary aggregates (ie sand, gravel and crushed rock);
 - (b) all grades of primary aggregates (ie fine, coarse, graded/mixed aggregates); and
 - (c) all sources of aggregates, including primary, secondary and recycled aggregates.
45. The CMA found no reason to depart from this approach in the present case.¹²

RMX

46. The Parties submitted that the relevant product market should include:
 - a) all types of RMX; and

¹⁰ See: [Anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A](#), 17 January 2012, paragraph 5.45 and [Breedon Aggregates/Aggregate Industries](#), 9 April 2014, paragraph 4.39.

¹¹ See: [Tarmac/Breedon](#), 15 May 2018, paragraph 76,

¹² Competition Commission (2014) *Aggregates, cement and ready-mix concrete market investigation*: 'Crushed rock appears generally more suitable but sand & gravel are also used in smaller proportions' and for 'direct construction uses (mainly: non-structural fill, structural fill, capping layer, sub-base) [...] crushed rock and sand&gravel are substitutable'.

- b) all RMX produced by fixed plant, mobile plant or by volumetric truck.
47. This is consistent with the product frame of reference adopted by the CMA in *Tarmac/Breedon*.¹³
48. The CMA found no reason to depart from this approach in the present case.

Geographic frame of reference

Road and highway works

49. The Parties submitted that the market for civil infrastructure engineering is at least national in scope. However, on a cautious basis, CRH also provided analysis on a sub-national basis. With regards to contract surfacing, CRH submitted that it could only serve contracts for works in locations that were within a certain catchment area of its surfacing sites. The maximum radius for its sites in Wales, the South West and the West Midlands ranged from [X] miles to [X] miles. As a result, CRH proposed the adoption of a sub-national geographic market definition, in line with the decisional practice of the CMA and the EC.¹⁴
50. Third parties told the CMA that Griffiths was only active in Wales, the South West, and the West Midlands.
51. For these reasons, the CMA believes that it is appropriate to assess the effect of the Merger in those regions where the Parties currently operate and there is some overlap on a regional basis namely: (i) South Wales; ii) Mid Wales; iii) North Wales; iv) the South West; and v) the West Midlands. On a cautious basis, the CMA also assessed the effect of the Merger on a country-wide basis (Wales).
52. The CMA noted that, in relation to competition within existing framework agreements, the geographic scope is already defined within the scope of each of the framework agreements in which the Parties compete:
- (a) the South East Wales Highways and Civil Engineering Contractors' Framework Agreement (**South East Wales Framework Agreement**);
 - (b) the South West Wales Regional Civil Engineering Contractors Framework Agreement (**South West Wales Framework Agreement**);

¹³ See: [Tarmac/Breedon](#), 15 May 2018

¹⁴ See, for example, [Breedon Aggregates/Aggregate Industries](#), 9 April 2014

- (c) the North & Mid Wales Trunk Road Authority Highways Framework Agreement (**North and Mid Wales Framework Agreement**);
- (d) the Powys County Council framework agreement for highway works (**Powys Framework Agreement**); and
- (e) the GEN 3.2 South West England Framework Agreement (**South West England Framework Agreement**).

Asphalt

53. Previous decisions found that the geographic market for asphalt is local, as it is a perishable product that must be delivered at a certain temperature. Taking the average distance over which 80% of the external sales of an asphalt plant were delivered as a starting point, the CMA has previously considered catchment areas of between 17 and 30 miles (*Anglo/Lafarge; Breedon/Aggregate Industries*).¹⁵ The CMA did not find any evidence to suggest that a departure from this geographic frame of reference could be appropriate.

Aggregates

54. In *Tarmac/Breedon*, the CMA considered that the appropriate geographic frame of reference for the supply of aggregates is local and used 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) [X] 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).
55. The CMA did not find any evidence to suggest that a departure from this geographic frame of reference would be appropriate. The CMA therefore considered the impact of the Merger as set out above.

¹⁵ See *Anglo/Lafarge*, paragraph 95 and *Breedon Aggregates/Aggregate Industries*, paragraph 4.60.

RMX

56. In *Tarmac/Breedon*, the CMA considered that the appropriate geographic frame of reference for the supply of RMX is local and used the following catchment areas for its local competitive assessment:
- (a) [X] miles (the lower bound of distances in the precedents);
 - (b) [X] miles; and
 - (c) [X] miles (representing two contiguous [X]-mile catchment areas).
57. The CMA did not find any evidence to suggest that a departure from this geographic frame of reference could be appropriate.

Conclusion on frame of reference

58. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) the supply of road and highway works outside of existing framework agreements at the regional level and in Wales;
 - (b) the supply of road and highway works within existing framework agreements at the regional level and in Wales;
 - (c) the supply of asphalt (as an input for road and highway works) at a local level;
 - (d) the supply of aggregates (as an input for road and highway works) at a local level; and
 - (e) the supply of RMX (as an input for road and highway works) at a local level.

Competitive assessment

Horizontal unilateral effects

59. 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.¹⁶ Horizontal unilateral effects are more likely when the merging parties are close competitors.

60. 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:

- (a) supply of road and highway works outside of existing framework agreements at the regional level and in Wales; and
- (b) supply of road and highway works within existing framework agreements at the regional level and in Wales.

Horizontal unilateral effects arising from the loss of competition in the supply of road and highway works outside of existing framework agreements

Shares of supply

61. CRH provided share of supply estimates on a country-level and regional basis in relation to contract surfacing activities (see Table 1).¹⁷

Table 1: Contract surfacing share of supply estimates (2017)

	Est. total asphalt production (kt)	Asphalt laid by CRH (kt)	Asphalt laid by Griffiths (kt)	Est. share CRH	Est. share Griffiths
Wales	[£]	[£]	[£]	[10-20]%	[5-10]%
South Wales	[£]	[£]	[£]	[20-30]%	[10-20]%
Mid Wales	[£]	[£]	[£]	[20-30]%	[0-5]%
North Wales	[£]	[£]	[£]	[0-5]%	[0-5]%
South West	[£]	[£]	[£]	[10-20]%	[0-5]%
West Midlands	[£]	[£]	[£]	[10-20]%	[0-5]%

Source: Parties' estimates based on BDS and MPA data

62. CRH also provided share of supply estimates for civil infrastructure engineering services on a country-wide and regional basis, though it did not provide figures for South, Mid, and North Wales (see Table 2).

Table 2: Civil infrastructure engineering share of supply estimates (2017)

	CRH		Griffiths		Combined
Wales	[0-5]%	(£[£])	[5-10]%	(£[£])	[5-10]%
South West	[0-5]%	(£[£])	[0-5]%	(£[£])	[0-5]%
West Midlands	[0-5]%	(£[£])	[0-5]%	(£[£])	[0-5]%

¹⁶ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

¹⁷ The shares of supply figures contained in tables 1 and 2 refer to all works awarded (outside and within existing framework agreements).

63. As noted in paragraph 33, there have been some inconsistencies in the approach to classifying projects into either civil infrastructure engineering and contract surfacing (in part due to the fact that these projects exist on a spectrum) and the CMA was unable to independently verify these figures. The CMA therefore attached limited weight to these share of supply figures, instead placing greater weight on the degree to which the Parties compete, measured by the instances when they bid against one another, as well as third party views on the strength of other competitors.
64. Nevertheless, the CMA noted that the combined shares of supply for both contract surfacing and civil infrastructure engineering are relatively modest and would not, in themselves, raise concerns regarding horizontal unilateral effects. The CMA also recognised that Griffiths' contract surfacing activities, as defined by the Parties, are limited to South Wales.

Closeness of competition

65. The CMA examined the closeness of competition between the Parties and considered within its assessment evidence from tender data.
66. The Parties told the CMA that Griffiths typically supplied and competed for civil infrastructure engineering services, whereas CRH (through Tarmac) typically supplied and competed for contract surfacing services.
67. This is supported by the evidence from customers who responded to the CMA's investigation, the clear majority of which told the CMA that the Parties never or rarely competed against each other for contracts they tendered. The majority of customers considered that Tarmac and Griffiths focus on different types of work; whereas Tarmac competes for work with a significant element of contract surfacing, Griffiths tends to compete for work involving a significant element of civil infrastructure engineering. Only a small number of customers indicated that the Parties had previously competed for the same types of contract.
68. During 2016 and 2017, Griffiths submitted a total of [redacted] bids outside of framework agreements. CRH (via Tarmac) bid against Griffiths on [redacted] of these occasions:
- (a) [redacted] instances for projects in South Wales (twice for contracts worth more than £[redacted]);

- (b) [redacted] instances for projects in Mid and North Wales (in each instance for contracts worth less than £[redacted]);
- (c) [redacted] instances for projects in the South West (only once for a contract worth more than £[redacted]); and
- (d) [redacted] instances in other locations, where one of these was for a project in [redacted], while the other was for a surfacing contract [redacted].

69. The available evidence therefore indicates that the Parties have competed with each other relatively infrequently in the West Midlands and North Wales, but have competed slightly more frequently in Mid Wales and the South West and most frequently in South Wales.

Competitive constraints

70. Unilateral effects are more likely where customers have little choice of alternative supplier. The CMA considered whether there are alternative suppliers of road and highway works in (i) South Wales; (ii) Mid Wales; and (iii) the South West which would provide a competitive constraint on the merged entity. In each region, the CMA took into account the number, identity and location of competitors, as well as third party views on the constraint from competitors.

- *South Wales*

71. While two third parties raised concerns about a reduction in the number of competitors after the Merger, three out of four public authorities that responded to the CMA stated that there remained sufficient competition from alternative suppliers following the Merger. Both competitors and customers listed several other suppliers of contract surfacing and civil infrastructure engineering of varying sizes active in the region. These include Hanson Contracting and Cemex (each specialising in contract surfacing and active in all the regions where the Parties compete); Dyer & Butler (specialising in civil infrastructure engineering and active in all areas where the Parties compete); and GD Harries (specialising in contract surfacing and active in Mid and South Wales).

- *Mid Wales*

72. Two of three public authorities that responded to the CMA stated that there remained sufficient competition from alternative suppliers following the Merger. Both competitors and customers listed several other suppliers of

contract surfacing and civil infrastructure engineering, of varying sizes, active in the region, including the suppliers mentioned above for South Wales.

- *South West*

73. Four of five public authorities that responded to the CMA stated that there remained sufficient competition from alternative suppliers following the Merger. In addition to the contractors mentioned for South Wales, third parties mentioned the following, amongst others, as being active in the South West: E & JW Glendinning (specialising in contract surfacing), and Buckingham Group Contracting (specialising in civil infrastructure engineering).

Conclusion on supply of road and highway works outside of existing framework agreements

74. The CMA's investigation found that the Parties do not compete closely with each other at present, in particular because they focus primarily on different types of work: in general, Tarmac typically bids for work with a significant element of contract surfacing, whereas typically Griffiths bids for work involving a large element of civil infrastructure engineering and a considerably smaller element of contract surfacing. Even where the Parties compete more frequently against each other (ie South Wales), the CMA found that there are a sufficient number of competitors remaining in the local area affected by the Merger that provide a more significant competitive constraint on each of the Parties (given their respective spheres of expertise). Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of road and highway works outside of existing framework agreements in Wales or any of the regions in the where the Parties overlap.

Horizontal unilateral effects arising from the loss of competition in the supply of road and highway works within existing framework agreements

75. The CMA assessed each of the framework agreements in which both Parties are appointed to the same lot. These are:
- (a) the South East Wales Framework Agreement;
 - (b) the South West Wales Framework Agreement;
 - (c) the North and Mid Wales Framework Agreement;
 - (d) the Powys Framework Agreement; and
 - (e) the South West England Framework Agreement.

76. For each framework agreement, the CMA assessed the degree to which both Parties compete, as well as the remaining constraints. For the most part, the CMA found very limited competitive interaction between the Parties within these framework agreements. In particular:
- (a) no CRH company bid against Griffiths over the course of 2016 and 2017 under the South West Wales Framework;
 - (b) there was only one instance of a CRH company bidding against Griffiths over the course of 2016 and 2017 under the North and Mid Wales Framework;
 - (c) the Powys Framework expired in April 2018 and a new framework agreement is expected to be in place in July 2018; and
 - (d) 8 other companies will remain in the only lot of the South West England Framework to which both Parties were appointed.
77. The CMA also noted that third parties did not identify any concerns in relation to these framework agreements.
78. The CMA focussed its analysis on the South East Wales Framework Agreement, within which the available evidence suggested there could be a more significant degree of competitive interaction between the Parties (in particular because the Parties will form part of a limited number of suppliers for certain lots post-Merger).

South East Wales Framework Agreement

79. The South East Wales Framework Agreement commenced on 31 March 2013 and is used by public bodies in South East Wales to procure highway and road works in the region.
80. There are six lots (out of a total of 12) in which both Parties have been appointed. In four of these lots, the Merger will result in a reduction in the number of approved suppliers from six to five. For the remaining two lots, the Merger will result in a reduction in the number of approved suppliers from five to four and four to three respectively.
81. Over the course of 2016 and 2017, across the six lots, the CMA noted that Griffiths submitted a total of [X] bids, with Tarmac bidding against Griffiths on [X] occasions. [X] of these [X] were for projects defined by Griffiths as contract surfacing.

82. The CMA noted that there is likely to be a more significant degree of competitive interaction between the Parties within this framework agreement. The CMA also noted, however, that customers will, in all cases, continue to have at least two alternative options for supply (across all lots) for the remainder of this framework agreement. Finally, this framework agreement is due to expire shortly (on 31 December 2018), and therefore customers will have the opportunity to introduce additional suppliers within this framework area in short order.

Conclusion on supply of road and highway works within existing frameworks

83. The CMA examined five framework agreements where the Parties were both approved suppliers in the same lot(s) and found that there was typically only very limited competitive interaction between them. On one framework agreement where there appears to be a more significant degree of competitive interaction between the Parties (ie the South East Wales Framework Agreement), the CMA found that there remain credible alternative options for supply in all cases and that customers will soon have the opportunity to establish additional supply options upon the expiry of the existing framework agreement in December 2018. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of road and highway works within existing framework agreements in Wales or any of the regions in the where the Parties overlap.

Vertical effects

84. 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.
85. 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.¹⁸
86. 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

¹⁸ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

to do so, and (c) the overall effect of the strategy on competition.¹⁹ This is discussed below.

87. The CMA noted that, pre-Merger, CRH was already vertically integrated as it was both an upstream supplier of asphalt, aggregates, and RMX and a downstream supplier of road and highway works (and other services). The CMA's analysis therefore focussed on the change in CRH's incentives that might be brought about by the expansion of its downstream position as a result of the Merger.

Input foreclosure of asphalt

88. CRH submitted that there remain a number of upstream competitors supplying asphalt into Wales, the South West, and the West Midlands which have the capability to continue to compete with the merged entity post-Merger.
89. Three downstream competitors raised concerns relating to the possibility of CRH foreclosing other firms active in road and highway works with a large surfacing element from supplies of asphalt. One competitor suggested that the Merger could enable CRH to foreclose downstream rivals in competing for strategic network contracts and terms maintenance contracts (large highways maintenance contracts) in England.
90. CRH is already vertically integrated in this regard and therefore the Merger does not change the degree of vertical integration in the market. The CMA therefore examined CRH's ability and incentive to foreclose its downstream rivals in the supply of asphalt in the areas where Griffiths has a material presence (ie in the South Wales region).
91. In particular, in relation to the concern that the Merger would enable CRH to foreclose its downstream rivals with regards to strategic network contracts and terms maintenance contracts (large highways maintenance contracts) in England, the CMA noted that there were no instances of the Parties bidding against one another in either 2016 or 2017 for a strategic network contract (confirmed by Highways England) or a terms maintenance contract in England. Indeed, Griffiths' 2017 share of supply for contract surfacing services is [0-5]% in both the South West and the West Midlands. Its 2017 share of supply for civil infrastructure engineering services (for which asphalt is generally not considered to be an important input) is [0-5]% in both the South West and the West Midlands. As the Merger will not bring about any material change in CRH's downstream market position, the CMA considered

¹⁹ [Merger Assessment Guidelines](#), paragraph 5.6.6.

that the Merger would not provide CRH with the ability and incentive to pursue a foreclosure strategy of this type.

Ability

92. CRH provided share of supply estimates for asphalt:
93. As can be seen in Table 3, CRH has a significant share of asphalt production in Wales, and especially in South Wales. The other 5 producers of asphalt in South Wales are shown in Table 4 below:

Table 4: Asphalt share of production estimates in South Wales (2016-2017)

	2017		2016	
	Est. volume produced (kt)	share	Est. volume produced (kt)	share
CRH	[REDACTED]	[50-60]%	[REDACTED]	[50-60]%
Hanson	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Cemex	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
GD Harries	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
Aggregate Industries (LafargeHolcim)	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Total	[REDACTED]	[90-100]%	[REDACTED]	[90-100]%

Source: Parties based on BDS and MPA data

94. All suppliers of road and highway works that responded to the CMA's market testing that are not vertically integrated and are active in South Wales sourced the vast majority of their asphalt for works in South Wales from the five suppliers shown in Table 4.
95. [REDACTED], Cemex, and GD Harries all responded to the CMA's request for information. They were each able to confirm that they were all currently operating at below capacity:
- a) [REDACTED].²⁰
 - b) Cemex stated that if it operated at full capacity both of its asphalt plants that are capable of serving South Wales, it could theoretically produce an estimated additional [REDACTED] per annum.²¹
 - c) GD Harries stated that its three plants, all of which are located in Wales, were operating at around [REDACTED] capacity.²²

²⁰ [REDACTED].

²¹ One of the plants mentioned is located in Gloucestershire, at around 20 miles driving distance from South Wales. The other plant is located in South East Wales.

²² Two of its plants are located in Pembrokeshire, with the remaining one being located in Ceredigion.

96. All three suppliers stated that increasing production to full capacity would not require any further upgrades or capital investments, and that capacity could be increased considerably through modest capital investments within a short time frame.
97. The available evidence therefore indicates that downstream customers would be able to access the supply of asphalt from other suppliers with an established market presence that would be well-placed to expand production to meet any additional demand. The CMA therefore believes that CRH's ability to foreclose downstream competitors is limited in all regions where the Parties compete.

Incentive

98. Given the CMA's finding that CRH does not have the ability to partially foreclose, incentive was not considered as a decisive factor. In any case, available evidence suggests that the increment in incentive would likely be limited.
99. In addition, the available evidence indicates that the downstream presence of Griffiths is limited on any basis and therefore that the acquisition of this business would not result in any change to CRH's incentive to pursue a foreclosure strategy within these regions. In particular:
- (a) The Parties provided data on the proportion of all asphalt laid (for any purpose) that the Parties accounted for in 2017 in each of the three regions of Wales. On this basis, Griffiths accounted for [10-20]% of all asphalt laid in South Wales.²³
100. Accordingly, while the Merger would bring about no material change in the ability of CRH to foreclose its downstream rivals for these contracts from the supply of asphalt (for the reasons set out above), the CMA also believes that Merger will not have a significant impact on CRH's incentives to foreclose downstream competitors for this work.²⁴

Input foreclosure of aggregates and RMX

101. The evidence available to the CMA indicated that CRH's upstream market position in relation to aggregates and RMX is more limited than its position in asphalt in South Wales (where Griffiths is most active), in Wales as a whole,

²³ CRH's 2017 share for South Wales is [10-20]%.

²⁴ Partial foreclosure includes the ability of CRH to price discriminate, to impose margin squeeze, and to engage in other forms of (non-pricing) anti-competitive behaviour.

and in the West Midlands.²⁵ The CMA also noted that aggregates (except as an input into asphalt) and RMX constitute a small proportion of the overall costs of providing road and highway works.

102. In any case, the CMA found that downstream rivals would continue to have access to sufficient alternative suppliers of both aggregates and RMX, so CRH would not have the ability to partially foreclose. In addition, as explained in paragraph 74, the Merger will not result in a material change in CRH's downstream market position. As a result, the CMA believes the Merger is highly unlikely to bring about any material change in incentive to foreclose.

Conclusion on vertical effects

103. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC through the foreclosure of the supply of asphalt, aggregates and RMX to downstream competitors in the supply of road and highway works at the local level.

Barriers to entry and expansion

104. 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.²⁶
105. However, 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

106. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
107. The Merger will therefore **not be referred** under section 22(1) of the Act.

²⁵ CRH's share of production of aggregates in South Wales is around [10-20]%, [20-30]% in Wales, and [30-40]% in the West Midlands.

²⁶ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

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