

# Completed acquisition by Breedon Group plc of certain assets of Cemex Investments Limited

## Decision on relevant merger situation and substantial lessening of competition

ME/6862-19<sup>1</sup>

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 26 August 2020. Full text of the decision published on 9 October 2020.

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. On 31 July 2020, Breedon Group plc (**Breedon**) acquired a portfolio of assets, together with associated freehold property, employees, inventory, contracts, intellectual property and permits (the **Target Business**) from Cemex Investments Limited (**Cemex**) (the **Merger**).
2. Breedon and the Target Business are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.
3. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Breedon and the Target Business is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the turnover test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
4. Breedon is a public company listed on the Alternative Investment Market of the London Stock Exchange and is a fully integrated construction materials group with activities in the UK and Ireland. Cemex is a global building products company with operations in over 50 countries.
5. The Target Business comprises the following portfolio of Cemex assets:

- (a) 42 aggregates sites (including one site producing aggregates of polished stone value (**PSV**) 68 or above (**High PSV Aggregates**) and three sites producing aggregates of PSV between 60 and 67 (**Medium PSV Aggregates**));
  - (b) 53 ready mix (**RMX**) plants (as well as two on-site mortar plants);
  - (c) 18 asphalt plants;
  - (d) one cement terminal;
  - (e) four building products plants; and
  - (f) certain contract surfacing assets, comprising mobile plant and equipment.
6. The CMA considered the impact of the Merger against the pre-Merger conditions of competition.

### **Frame of reference**

7. The Parties overlap in:
- (a) the production and supply of aggregates (specifically non-specialist aggregates, High PSV Aggregates and Medium PSV Aggregates);
  - (b) the production and supply of RMX;
  - (c) the production and supply of asphalt;
  - (d) the production and supply of concrete blocks; and
  - (e) the supply of bulk cement.
8. There are also vertical relationships between the Parties. Aggregates, for example, are an input into the production of each of asphalt, RMX and building products.
9. The CMA's investigation primarily focussed on:
- (a) horizontal unilateral effects in the production and supply of each of (i) non-specialist aggregates; (ii) RMX and (iii) asphalt, each at the local level;
  - (b) horizontal unilateral effects in the production and supply of High PSV Aggregates in the UK; and
  - (c) coordinated effects in the supply of bulk cement in the East of Scotland.

## ***Aggregates***

10. The available evidence indicates non-specialist aggregates, High PSV Aggregates and Medium PSV Aggregates are not viable substitutes. The CMA has therefore assessed each of (i) non-specialist aggregates; (ii) High PSV Aggregates; and (iii) Medium PSV Aggregates under separate frames of reference.
11. The CMA has assessed the impact of the Merger (i) using a catchment area of 64 minutes travel time around each of the Parties' sites for non-specialist aggregates as a starting point for its local competitive assessment, (ii) on a national basis for High PSV Aggregates, and (iii) in the local areas around Edinburgh, the Lake District and Belfast (being the locations of the Parties' quarries with non-trivial external sales) for Medium PSV Aggregates.

## ***RMX***

12. In line with its precedent cases, 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 volumetric truck. The fact that both Parties only overlap in the supply of RMX from fixed plants was taken into account within the CMA's competitive assessment.
13. RMX is also supplied on a local basis. The CMA has assessed the impact of the Merger using a catchment area of 29 minutes travel time around each of the Parties' sites as a starting point for its local competitive assessment.

## ***Asphalt***

14. In line with its precedent cases, the CMA considered the effects of the Merger within a product frame of reference for all types of asphalt, including asphalt supplied by fixed plants and mobile plants, although the fact that both Parties only overlap in the supply of asphalt from fixed plants was taken into account within the CMA's competitive assessment .
15. Asphalt is also supplied on a local basis. Using the same methodology as for non-specialist aggregates and RMX, the CMA assessed the impact of the Merger using a catchment area of 67 minutes travel time around each of the Parties' sites as a starting point for its local competitive assessment.

## **Cement**

16. In line with its precedent cases, the CMA considered the effects of the Merger within a product frame of reference for the supply of bulk cement (including all types of cement, and both domestically-produced and imported cement).
17. In previous investigations, the CMA has not typically concluded on the appropriate geographic market for the supply of bulk cement; in some cases, this market has been analysed on a national basis and in others a sub-national or regional basis. In this case, the evidence available to the CMA, including evidence relating to market characteristics (such as plant locations, delivery distances and existing supply patterns), references in some of the Parties' internal documents and information submitted by third parties, indicate that the geographic frame of reference may be regional. Therefore, on a cautious basis, the CMA assessed the effects of the Merger within the East of Scotland region.

## **Competitive assessment**

### ***Horizontal unilateral effects in the production and supply of each of (i) non-specialist aggregates; (ii) RMX; and (iii) asphalt, at the local level***

18. The CMA assessed whether there is a realistic prospect that the Merger will result in a substantial lessening of competition (**SLC**) in the production and supply of each of (i) non-specialist aggregates; (ii) RMX; and (iii) asphalt at the local level, as a result of the Merged Entity increasing the price of its non-specialist aggregates, RMX and/or asphalt (or otherwise worsening its competitive offer), due to the loss of existing competition between the Parties.
19. Consistent with previous investigations in relation to non-specialist aggregates, RMX and asphalt, the CMA's local competitive assessment was based on: (i) the identification of overlaps and the delineation of catchment areas for specific sites; (ii) filtering to exclude those overlap sites/areas where there is no realistic prospect of competition concerns arising; and (iii) a local competitive assessment of sites/areas which fail these filters.
20. The CMA found that there is a realistic prospect that the Merger will give rise to an SLC in the local areas around: (i) 13 RMX plants; (ii) one non-specialist aggregates quarry; and (iii) one asphalt plant.

***Horizontal unilateral effects in the production and supply of High PSV Aggregates in the UK***

21. The CMA assessed whether there is a realistic prospect that the Merger will result in an SLC in the production and supply of High PSV Aggregates in the UK, as a result of the Merged Entity increasing the price of its High PSV Aggregates (or otherwise worsening its competitive offer), due to the loss of existing competition between the Parties.
22. On the basis of the evidence gathered during its investigation, the CMA found that the Parties' combined shares of supply are relatively modest ([20-30]%), and that the Parties do not appear to be particularly close competitors.
23. The CMA therefore believes that there is no realistic prospect of an SLC arising as a result of the Merger as a result of horizontal unilateral effects in relation to the production and supply of High PSV Aggregates in the UK.

***Coordinated effects in the supply of bulk cement in the East of Scotland***

24. The CMA assessed whether coordinated effects would arise in the supply of bulk cement in the East of Scotland, whereby the Merger would make it more likely that the Merged Entity and certain other bulk cement suppliers in the East of Scotland would recognise that they can reach a more profitable outcome if they align their behaviour by allocating customers and competing less strongly.
25. In line with its standard approach to assessing whether coordinated effects could arise as a result of the Merger, the CMA considered whether there is evidence of pre-existing coordination. Only three cement suppliers have sites in the East of Scotland (Tarmac, Breedon and the Target Business). While the evidence in relation to pre-existing coordination is mixed, the CMA found that customer switching between suppliers in the East of Scotland is limited and that suppliers do not appear to be seeking to win customers from other suppliers.
26. The CMA also examined whether that the market characteristics in the East of Scotland are conducive to coordination and found that the market characteristics (including concentrated supply by vertically integrated firms, a homogeneous product, the relatively limited number of customers and the ready ability of suppliers to track lost sales volumes) are conducive to reaching and monitoring coordination, and to punishing deviation. The evidence also indicated that coordination would be internally sustainable within the coordinating group and externally sustainable from outside

competitive constraints, in particular because there appear to be high barriers to market entry.

27. On this basis, the CMA found that there is evidence of pre-existing coordination (by customer allocation) in the supply of bulk cement in the East of Scotland. The CMA also found that the Merger would make pre-existing coordination more sustainable and/or effective.
28. The CMA therefore believes that there is a realistic prospect that the Merger will give rise to an SLC in the supply of bulk cement in the East of Scotland, as a result of coordinated effects.

## **Decision**

29. As noted above, the CMA believes that the Merger will give rise to a realistic prospect of an SLC, as a result of:
  - (a) horizontal unilateral effects in the production and supply of, separately, each of (i) RMX (in respect of the local area around 13 RMX plants); (ii) non-specialist aggregates (in respect of the local area around one non-specialist aggregates quarry); and (iii) asphalt (in respect of the local area around one asphalt plant); and
  - (b) coordinated effects in the supply of bulk cement, in the East of Scotland.
30. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). Breedon has until 3 September 2020 to offer undertakings to the CMA that might be accepted by the CMA. If no such undertakings are offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

## **ASSESSMENT**

### **Parties**

31. Breedon is a public company listed on the Alternative Investment Market of the London Stock Exchange (AIM) and is a fully integrated construction materials group with activities in the UK and Ireland. The turnover of Breedon in 2019 (its latest financial year) was £929.6 million worldwide and £793.3 million in the UK.
32. Cemex is a global building products company with operations in over 50 countries. The ultimate parent company of Cemex is Cemex SAB de C.V. which is listed on the New York and Mexican stock exchanges.

33. The Target Business comprises the following portfolio of Cemex assets, employees and customers:
- (a) 42 aggregates sites (including one site High PSV Aggregates and three sites producing Medium PSV Aggregates);
  - (b) 53 RMX plants (as well as two on-site mortar plants);
  - (c) 18 asphalt plants;
  - (d) one cement terminal (the **Target Cement Terminal**);
  - (e) four building products plants; and
  - (f) contract surfacing assets comprising mobile plant and equipment, currently located at Cemex's sites at Sheffield and Wick.
34. The turnover of Target Business in 2019 was approximately £[~~3~~] million (prior to inter-company eliminations) in the UK.

## Transaction

35. On 8 January 2020, Breedon and Cemex executed a Business Purchase Agreement (**BPA**), pursuant to which Breedon agreed to acquire the Target Business from Cemex. The Merger was announced on the same day.<sup>1</sup> The Merger completed on 31 July 2020.<sup>2</sup>

## Procedure

36. The Merger was considered at a Case Review Meeting.<sup>3</sup>

## Jurisdiction

37. Each of Breedon and the Target Business is an enterprise.<sup>4</sup> As a result of the Merger, these enterprises have ceased to be distinct.

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<sup>1</sup> Breedon Press Release, *Acquisition of CEMEX assets and operations in the UK*, 8 January 2020, available at: <https://www.breedongroup.com/news-media/acquisition-of-cemex-assets-and-operations-in-the-uk>.

<sup>2</sup> Breedon Press Release, *Completion of acquisition of assets*, 3 August 2020, available at: [https://www.breedongroup.com/images/uploads/articles/CEMEX\\_completion\\_announcement\\_200731.pdf](https://www.breedongroup.com/images/uploads/articles/CEMEX_completion_announcement_200731.pdf).

<sup>3</sup> See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraph 7.34 onwards.

<sup>4</sup> The CMA considers that the Target Business constitutes an enterprise on the basis that it comprises the sale of assets, along with associated transfer of customers, employees (under the provisions of TUPE), intellectual property, inventory and freehold property (in accordance with paragraph 4.8 of *Mergers: Guidance on the CMA's jurisdiction and procedure*).

38. The UK turnover of the Target Business exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
39. The Merger completed, and the CMA was informed about completion, on 31 July 2020. The four month deadline for a decision under section 24 of the Act is 30 November 2020.
40. The CMA therefore believes that it is, or may be the case that, a relevant merger situation has been created.
41. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 1 July 2020 and the statutory 40 working day deadline for a decision is therefore 26 August 2020.

## **Counterfactual**

42. 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.<sup>5</sup>
43. In this case, the CMA has not received any evidence to suggest that the counterfactual against which to assess the impact of the Merger should be anything other than the pre-Merger conditions of competition, and Breedon and third parties have not made any submissions in this respect.
44. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

## **Frame of reference**

45. 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

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<sup>5</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5 onwards. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#), Annex D).



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.<sup>6</sup>

### ***Product scope***

46. The CMA's approach to the frame of reference is typically to begin with the parties' overlapping products in the narrowest plausible candidate frame of reference and then to see if this should be widened. The CMA pays particular regard to demand-side factors (ie the behaviour of customers and its effects). However, it may also consider supply-side factors (ie the capabilities and reactions of suppliers in the short-term) and other market characteristics.<sup>7</sup>
47. The Parties overlap in the production and supply of:<sup>8</sup>
  - (a) aggregates, including non-specialist aggregates, Medium PSV Aggregates and High PSV Aggregates;
  - (b) RMX;
  - (c) asphalt; and
  - (d) building products.
48. The Parties also overlap in the supply of bulk cement.

### ***Aggregates***

49. Aggregates are the granular base materials used in the construction of roads, buildings, and other infrastructure. The different types of aggregates include crushed rock, sand and gravel. Aggregates are also used in the production of RMX, concrete products and asphalt.
50. Medium and High PSV Aggregates assist with skid resistance. Typically, they are used on bends or approaches to junctions, on high speed or trunk roads, and other roads where there has been a record of accidents caused by skidding.

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<sup>6</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>7</sup> [Merger Assessment Guidelines](#), section 5.2.17

<sup>8</sup> The Parties also overlap in the supply of contract surfacing. However, the Parties have combined share of supply below [0-5]% in each of the regions in which they overlap. The CMA found that there were several credible competitors with higher market shares than the Parties in these regions. On this basis, the CMA did not identify any competition concerns in relation to the supply of contract surfacing and this frame of reference is not considered further in this decision.

### *Non-specialist aggregates*

51. The CMA considered whether the frame of reference should be widened to include both specialist and non-specialist aggregates.
52. Breedon submitted that there were separate frames of reference for specialist and non-specialist aggregates,<sup>9</sup> but noted that only small quantities of aggregates are used for specialist applications (such as decorative and paint additives).<sup>10</sup> Breedon submitted that the Parties do not sell a significant quantity of such aggregates.<sup>11</sup>
53. The CMA has therefore considered the production and supply of specialist aggregates in a separate product frame of reference to the production and supply of non-specialist aggregates.

### *High PSV Aggregates*

54. The CMA has considered a further segmentation between the production and supply of High PSV Aggregates and Medium PSV Aggregates.
55. Breedon submitted that a specification change by the customer could allow for substitution of High or Medium PSV Aggregates with aggregates of a lower PSV and furthermore that high friction coating could be applied to the surface of the road instead of using High or Medium PSV Aggregates.<sup>12</sup> Breedon further submitted that there is a progressive move away from rigid specification of PSV in road building to new alternative products/solutions.<sup>13</sup>
56. Cemex separately submitted that aggregates with a lower PSV are not suitable substitutes for those with a higher PSV. Cemex submitted that aggregates of lower PSV have reduced ability to withstand the polishing effect of vehicle traffic when used as a surfacing dressing in asphalt roads. This breaches the designed safety standard of the road and accelerates wear of the road surface. However, Cemex submitted that aggregates with a higher PSV can be used in place of aggregates of a lower PSV, as they exceed standards for lower PSVs.<sup>14</sup>

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<sup>9</sup> Merger Notice submitted by Breedon on 26 June 2020 (**Merger Notice**), paragraph 13.20.

<sup>10</sup> *Merger Notice*, footnote 35.

<sup>11</sup> *Merger Notice*, footnote 35.

<sup>12</sup> Breedon response 3 July 2020 to CMA s109 Notice 30 June 2020, questions 4 and 7.

<sup>13</sup> Breedon's response to the CMA's Issues Letter, 4 August 2020, paragraphs 23-25.

<sup>14</sup> Cemex response 3 July 2020 to CMA s109 Notice 30 June 2020, question 3.

57. The Competition Commission (**CC**), in *Aggregates, Cement and Ready-Mix Concrete Market Investigation (Market Investigation)* final report<sup>15</sup>, considered High PSV Aggregates and found a separate product frame of reference for High PSV Aggregates due to the lack of demand-side substitutability.<sup>16</sup>
58. This was confirmed by the CMA's investigation in this case, which found that High PSV Aggregates have separate uses to non-specialist aggregates and Medium PSV Aggregates. This is also reflected in publicly available specification information from certain local authorities, which sets out that they have particular requirements in terms of the level of PSV for road surfacing works. For example, Derbyshire County Council's list of approved suppliers of High PSV Aggregates specifies certain quarries supplying aggregates with PSV of above 68.<sup>17, 18</sup>
59. Furthermore, an internal Cemex document sets out that '68+ PSV material – used only for asphalt production'.<sup>19</sup> Breedon's website also states that 'High PSV stone has a high skid resistance and is therefore in great demand for surfacing roads with heavy traffic flows'.<sup>20</sup>
60. Third party feedback further confirmed a lack of viable substitutes for High PSV Aggregates:
- (a) two competitors submitted that there are no substitutes to using aggregates of a specified PSV; and
  - (b) one customer also submitted that there are no substitutes for High PSV Aggregates. Another customer submitted that calcined bauxite could be considered as separate from, and an alternative to, High PSV Aggregates. However, calcined bauxite needs to be imported (eg from

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<sup>15</sup> CC's *Aggregates, cement and ready-mix concrete market investigation - Final Report (Market Investigation Final Report)*, 14 January 2014.

<sup>16</sup> *Market Investigation Final Report*, paragraph 5.5(b) and 5.6(b).

<sup>17</sup> See Derbyshire County Council document, *Aggregates Approved for Asphalt Surfacing Materials & 14/20 PCC*, updated 26 November 2018, available at: <https://www.derbyshiregov.uk/site-elements/documents/pdf/transport-roads/roads-traffic/supply-of-aggregates-approved-list.pdf>.

<sup>18</sup> Lincolnshire County Council's list of approved suppliers of High PSV Aggregates specifies certain quarries supplying aggregates with PSV of above 66 (see Lincolnshire County Council document, *Approved suppliers – Information Booklet*, from 6 August 2020, available at: <https://www.lincolnshiregov.uk/downloads/file/1909/approved-suppliers-list-2019-pdf>). However, the CMA notes that the quarries are listed as supplying aggregates with a PSV of 66 (Ballystockart and Ghyll Scour) in fact appear to supply aggregates with a PSV of 68 or above.

<sup>19</sup> [X] April 2019.

<sup>20</sup> Breedon website, *High PSV Stone*, available at: <https://www.breedongroup.com/products/aggregates/high-psv-stone> (last visited 18 August 2020).

China or India) at significant cost, indicating limited substitutability outside of those regions.

61. The CMA has therefore assessed the production and supply of High PSV Aggregates within a separate frame of reference.

### *Medium PSV Aggregates*

62. Breedon submitted that aggregates with a PSV between 60 and 67 are used to achieve skid resistance on surfaces. The project designer specifies the PSV required for the intended use.<sup>21</sup> High friction coating can be added to aggregates with a lower PSV to increase its skid resistance and make it more of a substitute to aggregates with a higher PSV.<sup>22</sup> Cemex submitted that the Design Manual for Roads & Bridges sets out the minimum PSV that is permitted for different categories of road type and traffic flow. Cemex further submitted that aggregates with a lower PSV are not suitable substitutes for aggregates with a higher PSV as they breach the designed safety standard of asphalt roads and accelerate the wear of the road surface.<sup>23</sup> Cemex also submitted that aggregates with a higher PSV can substitute aggregates of a lower PSV, because they exceed the standards set for aggregates with a lower PSV.<sup>24</sup>
63. Medium PSV Aggregates were not discussed in the *Market Investigation Final Report*.<sup>25</sup>
64. As set out at paragraph 60 above, third parties submitted that there are generally no substitutes for aggregates with a higher PSV, subject to limited exceptions. In particular:
  - (a) two competitors submitted that there are no substitutes to using aggregates with a higher PSV. However, one competitor submitted that customers can substitute aggregates with lower PSV with aggregates with a higher PSV; and
  - (b) four customers also submitted that there are no alternatives to using aggregates that meet the necessary PSV requirements specified by the project designer. While one of those customers suggested that alternative ways to measure friction on roads (such as the Scrim<sup>26</sup> test) have been

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<sup>21</sup> Breedon response 3 July 2020 to CMA s109 Notice 30 June 2020, question 7.

<sup>22</sup> Breedon response 3 July 2020 to CMA s109 Notice 30 June 2020, question 7.

<sup>23</sup> Cemex response 3 July 2020 to CMA s109 Notice 30 June 2020, question 6.

<sup>24</sup> Cemex response 3 July 2020 to CMA s109 Notice 30 June 2020, question 6.

<sup>25</sup> [Market Investigation Final Report](#).

<sup>26</sup> Scrim stands for Sideway-force Coefficient Routine Investigation Machine, which is a machine used for friction testing.

developed, the CMA has not received any evidence indicating that these are currently regularly used in the UK.

65. As above, the CMA has received evidence indicating that High PSV Aggregates have only a limited substitutability with Medium PSV Aggregates. The CMA has therefore assessed the production and supply of Medium PSV Aggregates within a separate frame of reference.

### *RMX*

66. 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.
67. Breedon submitted that the appropriate product frame of reference should be the production and supply of RMX.<sup>27</sup> Breedon submitted that the appropriate product frame of reference for RMX should include:<sup>28</sup>
- (a) all types of RMX; and
  - (b) all RMX produced by fixed plant, mobile plant and volumetric trucks (albeit Breedon recognised that the CMA's substantive assessment may focus, at least initially, on competition between producers of RMX from fixed plants).

### *Segmentation by RMX grade*

68. The CMA has previously found that all grades of RMX should be included in the same product market.<sup>29</sup> This is consistent with findings in previous cases

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<sup>27</sup> *Merger Notice*, paragraph 13.3.

<sup>28</sup> *Merger Notice*, paragraph 13.3.

<sup>29</sup> CC's decision of 9 April 2014 in the case no. ME/6082/13, [Completed acquisition by Breedon Aggregates Limited of certain assets of Aggregate Industries UK Limited - Final Report](#), (**Breedon/Aggregate Industries Final Report**), paragraph 4.27; CMA's decision of 12 April 2016 in the case no. ME/6566/15, [Anticipated acquisition by Breedon Aggregates Limited of Hope Construction Materials Limited \(Breedon/Hope\)](#), paragraphs 8 and 89; CMA's decision of 26 April 2018 in the case no. ME/6718/17, [Anticipated acquisition by Breedon Group PLC of four aggregates quarries \(including one asphalt plant\) from Tarmac Trading Limited \(Breedon/Tarmac\)](#), paragraph 8 and 65.

of the predecessors of the CMA, the CC<sup>30</sup> and the Office of Fair Trading (OFT).<sup>31</sup>

69. Based on the available evidence in this case, and in line with the approach adopted in previous cases, the CMA has considered all grades of RMX within the same product frame of reference.

#### *Segmentation by plant type and volumetric trucks*

70. Breedon submitted that (consistent with decisional practice) RMX sold from mobile plants and volumetric trucks competes with RMX sold from fixed plants and that, therefore, the narrowest and most appropriate candidate product market would be the production and supply of RMX, including RMX supplied from fixed plants, mobile plants and volumetric trucks.<sup>32</sup>
71. Breedon further submitted that volumetric trucks can travel a considerable distance from their base location and can supply aggregates in the local area surrounding job sites. Drivers can also sleep overnight in trucks, if required. As a result, volumetric suppliers can economically supply aggregates across broad geographic areas.<sup>33</sup>
72. Breedon also submitted that the use of volumetric trucks continues to be popular with customers, with the volumetric trucks/on-site batching segment now accounting for around 11% of the total market.<sup>34</sup>
73. In *Tarmac/Breedon*<sup>35</sup> (the most recent CMA case which considered RMX in detail), the CMA considered that, consistent with previous cases, all RMX produced by fixed plant, mobile plant or by volumetric truck should be included in the same product frame of reference.<sup>36</sup> In that case, the CMA recognised that mobile plants and volumetric trucks may provide a limited constraint on RMX produced by fixed plants (eg for certain project sizes).<sup>37</sup>
74. Based on the available evidence, and in line with the approach adopted in previous cases, the CMA believes that all types of RMX production, ie fixed

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<sup>30</sup> For example, CC's decision of 1 May 2012 in the case no. ME/5007/11, *Anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A. – Final Report (Anglo American/Lafarge Final Report)*, paragraph 5.48.

<sup>31</sup> For example, OFT's decision of 24 September 2013 in the case no. ME/6082/13, *Completed acquisition by Breedon Aggregates Limited of certain Scottish assets of Aggregate Industries UK Limited*, paragraph 37.

<sup>32</sup> *Merger Notice*, paragraph 13.35.

<sup>33</sup> *Merger Notice*, paragraph 13.36.

<sup>34</sup> *Merger Notice*, paragraph 13.37 (referencing Annex 33c to the *Merger Notice*, a BDS report entitled *Estimated market shares of ready mixed concrete companies in Great Britain (2018)*).

<sup>35</sup> CMA's decision of 26 April 2018 in the case no. ME/6719-17, *Anticipated acquisition by Tarmac Trading Limited of certain assets of Breedon Group PLC (Tarmac/Breedon)*.

<sup>36</sup> *Tarmac/Breedon*, paragraph 57. This finding is consistent with precedent cases – see, for example: *Breedon/Aggregate Industries Final Report*, paragraph 4.27; or *Breedon/Hope*, paragraphs 8 and 89.

<sup>37</sup> *Tarmac/Breedon*, paragraph 57.

plant, mobile plant and volumetric truck, can be considered within a single frame of reference.

75. In line with previous cases, the CMA also believes that mobile plants and volumetric trucks may provide only a limited constraint on RMX produced by fixed plants. The Parties were only able to provide complete data on the number and location of fixed RMX plants. By contrast, the Parties only provided limited information in relation to the location of and nature of the competitive constraint posed by volumetric trucks in certain local areas affected by the Merger. The Parties did not provide any information on mobile plants.
76. For these reasons, the CMA considered that, as the Parties overlap in the production and supply of RMX produced by fixed plants, the CMA should primarily focus its analysis on the degree of competition that exists between producers of RMX from fixed sites. The CMA has limited evidence of the constraint provided by volumetric trucks or mobile plants but, where evidence on the constraint from mobile plants and volumetric trucks in a local area is available, it is taken into account below in the competitive assessment.

### *Asphalt*

77. Asphalt is a product manufactured by heating and mixing aggregates and a binding agent (normally bitumen). It is principally used for road surfacing, car parks, footpath pavements, airport runways and other surfaces.
78. Breedon submitted that the appropriate product frame of reference for asphalt should include the production and supply of all specifications of asphalt, including asphalt supplied by fixed and mobile plants.<sup>38</sup> However, Breedon also recognised that the CMA's substantive assessment may focus (at least initially) on competition between producers of asphalt from fixed plants.<sup>39</sup>
79. Previous merger investigations have consistently found that all types of asphalt should be included in the same product frame of reference, including asphalt supplied by fixed and mobile plants.<sup>40</sup>
80. Based on the available evidence, and in line with the approach adopted in previous cases, the CMA believes that the production and supply of all

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<sup>38</sup> *Merger Notice*, paragraph 3.4.

<sup>39</sup> *Merger Notice*, paragraph 3.4.

<sup>40</sup> *Breedon/Hope*, paragraphs 10 and 96; *Breedon/Tarmac*, paragraph 72; CMA's decision of 29 June 2018 in the case no. ME/6740/18, *Completed acquisition by CRH plc of Alun Griffiths (Contractors) Limited (CRH/Alun Griffiths)*, paragraph 42.

specifications of asphalt, including asphalt supplied by fixed and mobile plants should be included in the frame of reference.

81. As the Parties overlap in the production and supply of asphalt from fixed plants, the CMA has primarily focused its analysis on fixed plants but has also taken account of the constraint imposed by mobile plants in its competitive assessment (where relevant evidence is available). The evidence on the constraint from mobile plants is considered further in the competitive assessment.

### *Building products*

82. The building products category incorporates a number of concrete-based construction products (including, in particular, concrete blocks and bricks, and concrete block paving), which are used for a number of purposes, including in particular in the construction of walls and buildings.
83. Both Parties sell concrete blocks, specifically dense aggregate concrete blocks. In addition:
- (a) Breedon has limited sales of Fyfestone decorative block and other concrete building products such as block paving or t-beams. Breedon has three building product plants in Scotland (Kemnay, Marybank and Beaully) and one in South West England (Naunton); and
  - (b) some plants forming part of the Target Business also sell concrete bricks and landscaping products. The Target Business has two building products plants in Scotland (Hyndford, West Calder), one in South West England (Wickwar) and one in East of England (Lenwade).
84. Breedon submitted that it was not necessary for the CMA to reach a firm conclusion on the appropriate product market and that types of building products have been considered by the CMA in the past without conclusions having been reached on the frame of reference.
85. Previous merger investigations have not considered an overall frame of reference for all building products but instead have considered separate types of building products, specifically dense aggregate concrete blocks and aircrete concrete blocks. These investigations have consistently not



concluded on product frame of reference due to the lack of competition concerns in those cases.<sup>41</sup>

86. As the CMA has only assessed building products in the context of an input foreclosure theory of harm, which could affect all types of building products, it has assessed the impact of the Merger on the production and supply of all building products.<sup>42</sup> However, the CMA has not had to conclude on the precise frame of reference as no competition concerns arise on any plausible basis.

### *Cement*

87. Cement is the 'glue' binding together the components of building materials.
88. The Parties overlap in the supply of bulk cement to customers in GB:
- (a) Breedon supplies both bulk and bagged cement in GB. It has one cement production plant in GB, at Hope (Derbyshire) and operates three cement terminals in Blyth (Northumberland), Runcorn (Cheshire) and Dundee (Scotland) and four cement depots in Dagenham (Romford), Dewsbury (Wakefield), Theale (Reading) and Walsall (West Midlands);<sup>43, 44</sup> and
  - (b) the Target Business includes the Target Cement Terminal in Leith (Scotland), which has only sold bulk cement [redacted]<sup>45</sup>.
89. Breedon submitted that the appropriate product frame of reference is the supply of bulk cement (including all types of cement, and both domestically produced and imported cement). Breedon submitted there was a separate product frame of reference for the supply of bagged cement (including all types of cement and both domestically produced and imported cement).

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<sup>41</sup> OFT's decision of 3 April 2013 in the case no. ME/5923/13, *Anticipated acquisition by Northstone (NI) Limited of RMC (Northstone/RMC)*, paragraph 16; OFT's decision of 21 December 2001 in the case no. ME/1610/01, *Proposed acquisition by Tarmac Ltd of the Durox Building Products business from RMC Group Plc (Tarmac/Durox)*.

<sup>42</sup> The CMA also considered whether the Merger might result in a realistic prospect of horizontal unilateral effects in the production and supply of building products. However, as a) the narrowest relevant plausible frame of reference in which the Parties overlap is dense aggregate concrete blocks b) the evidence from Parties and third-parties suggests that there is supply side substitution from lightweight aggregate blocks to dense aggregate blocks (which indicates that the narrowest frame of reference in which the Parties overlap is concrete blocks as a whole) and c) shares of supply in concrete block even on a narrow local basis are low to moderate ([10-20]% when centring on the Target's Wickwar plant and [20-30]% when centring on Breedon's Naunton plant), the CMA considers that no competition concerns arise on any plausible basis and this theory of harm is not discussed further in this decision.

<sup>43</sup> Breedon has a further cement plant and cement terminal in Ireland.

<sup>44</sup> *Merger Notice*, paragraph 15.28.

<sup>45</sup> See footnote 2 of Annex 14 to the *Merger Notice*.

90. Previous CMA merger investigations have consistently considered separate product frames of reference for: (i) the supply of bulk cement (including all types of cement and both domestically produced and imported cement); and (ii) the supply of bagged cement (including all types of cement and both domestically produced and imported cement).<sup>46</sup>
91. Based on the available evidence, and in line with the approach adopted in previous cases, the CMA believes that there are separate product frames of reference for bulk cement and bagged cement (including in each case both domestically produced and imported cement).

### *Conclusion on product scope*

92. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
- the production and supply of non-specialist aggregates;
  - the production and supply of High PSV Aggregates;
  - the production and supply of Medium PSV Aggregates;
  - the production and supply of RMX;
  - the production and supply of asphalt;
  - the production and supply of building products; and
  - the supply of bulk cement.

### *Geographic scope*

#### *The production and supply of non-specialist aggregates*

93. Breedon submitted that the appropriate geographic frame of reference for non-specialist aggregates is local.
94. Previous CMA merger investigations have consistently found that the geographic frame of reference for aggregates is local.<sup>47</sup> This is due to the high cost of transportation relative to the total price.

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<sup>46</sup> For example: [Anglo American/Lafarge Final Report](#), paragraph 5.20. [Market Investigation Final Report](#), paragraphs 5.38 and 5.105(b).

<sup>47</sup> [Tarmac/Breedon](#), paragraph 9; [Breedon/Tarmac](#), paragraph 7; [Breedon/Hope](#), paragraph 7; [Breedon/Aggregate Industries Final Report](#), paragraphs 4.51-4.54.

95. In order to identify the appropriate geographic boundaries of local markets, previous investigations have calculated the average straight-line distance over which 80% of external sales were delivered.
96. The methodology used to identify the relevant geographic frame of reference in this case varied from that used in previous cases. In previous cases, the CMA has relied on straight-line distances to identify relevant catchment areas. In the present case, the CMA obtained data from the UK major suppliers<sup>48</sup> (the **Majors**) (including the Parties) on the travel time within which 80% of external sales of aggregates were delivered.<sup>49</sup> The CMA considers that relying on travel times more accurately identifies the relevant geographic frame of reference, as it takes into account the specific local transportation routes and features (eg physical barriers such as rivers) that are not captured by straight-line distances. On the basis of this analysis, the CMA has calculated that the average 80% catchment area for non-specialist aggregates is a travel time of 64 minutes.
97. On this basis, the CMA has assessed the impact of the Merger on the production and supply of non-specialist aggregates on a local basis, using a catchment area of 64 minutes travel time as a starting point for its local competitive assessment.

#### *The production and supply of High PSV Aggregates*

98. Breedon supplies High PSV Aggregates from its quarries in Northern Ireland (Ballystockart), Scotland (Barbae) and mid-Wales (Tan-y-Foel), while the Target Business assets include a quarry supplying High PSV Aggregates in Southern Wales (Target Gilfach). The available evidence shows that quarries supplying High PSV Aggregates are predominantly located in the West of GB and Northern Ireland, with no active High PSV Aggregate quarries in East England or (other than Cornwall) Southern England. Most suppliers are also located close to the coast.
99. Breedon submitted that the vast majority of high PSV sales are collected, not delivered, and deliveries were only made to a limited number of external customers.<sup>50</sup> However, Breedon also submitted that it had analysed the locations to which it understood customer collections from its Tan y Foel and

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<sup>48</sup> That is, AI (part of LafargeHolcim), Tarmac and Hanson, as well as the Parties.

<sup>49</sup> Based on data obtained both from the Parties and also from each of the remaining UK major suppliers: AI (part of LafargeHolcim), Tarmac and Hanson.

<sup>50</sup> In 2019, [80-90]% of Target Gilfach sales, [90-100]% of Breedon Barbae sales, and [90-100]% of Breedon Tan-y-Foel and Ballystockart sales (in GB) were collected. See Breedon and Cemex response dated 3 July 2020 to CMA s109 Notice dated 30 June 2020, question 2.

Barbae quarries were transported by its most significant customer of High PSV Aggregates from those sites, [REDACTED].

100. The CMA considers that an analysis of these locations indicates that Breedon's High PSV Aggregates are collected over long distances, consistent with a national frame of reference for High PSV aggregates.<sup>51</sup> In particular:
- (a) Breedon's High PSV Aggregates from its Tan-y-Foel quarry located in mid-Wales were collected from as far as North East England; and
  - (b) Breedon's High PSV Aggregates from its Barbae quarry located in Scotland were collected from as far as the Midlands.
101. Third party evidence on the geographic frame of reference for the production and supply of High PSV Aggregates was mixed, with some evidence suggesting a national frame of reference:
- (a) a significant customer of both Parties submitted that High PSV Aggregate quarries from all over the country provide a strong alternative to Cemex Gilfach (located in South Wales);
  - (b) two customers submitted that Breedon Ballystockart (located in Northern Ireland) delivers aggregates to wharfs in Cornwall, Ipswich and on the Thames near Dagenham; and
  - (c) publicly available lists of approved suppliers of High PSV Aggregates for local authorities include suppliers from all over the UK.<sup>52</sup> This suggests that suppliers from all over the UK are able to supply these local authorities.
102. On the other hand, some third party evidence suggested that, in certain regions, suppliers that are geographically closer to customers or have access to better transport links might be more competitive than others. In particular:
- (a) one customer [REDACTED] submitted that only Hanson Craig-yr-Hesg and Target Gilfach in South Wales and Glendenning in Cornwall were viable alternatives to Breedon Ballystockart (in Northern Ireland). That customer

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<sup>51</sup> Annex 7 and Annex 8 to Breedon's response to the CMA's Issues Letter of 30 July.

<sup>52</sup> Derbyshire County Council document, *Aggregates Approved for Asphalt Surfacing Materials & 14/20 PCC*, updated 26 November 2018, available at: <https://www.derbyshiregov.uk/site-elements/documents/pdf/transport-roads/roads-traffic/supply-of-aggregates-approved-list.pdf>; Lincolnshire County Council document, *Approved suppliers – Information Booklet*, from 6 August 2020, available at: <https://www.lincolnshiregov.uk/downloads/file/1909/approved-suppliers-list-2019-pdf>. As discussed in footnote 18, the quarries on that list which are supposed to supply aggregates with a PSV of 66 (Ballystockart and Ghyll Scour) appear to instead supply aggregates with a PSV of 68 or above.

did not list suppliers from North Wales, the Lake District or Scotland as alternatives to Breedon Ballystockart;

- (b) a customer [REDACTED] that purchases High PSV Aggregates from Breedon Ballystockart submitted that another supplier in Northern Ireland was a strong alternative supplier to Breedon Ballystockart. The same customer submitted that the Hanson Craig-yr-Hesg and Cemex Gilfach quarries in South Wales as well as the Gyll Scar Quarry in the Lake District were weaker alternatives;
- (c) two competitors considered only other plants located in Wales to be alternatives to Cemex Gilfach (located in South Wales). One competitor only considered plants located in Wales, Cornwall and Northern Ireland to be alternatives to Cemex Gilfach (located in South Wales); and
- (d) one competitor only considered plants located in Wales to be alternatives to Breedon Tan-y-Foel (also located in Wales). The same competitor also only considered plants located in Wales and Pigsdon Quarry located in Cornwall to be an alternative to Breedon Ballystockart.

103. The CMA is not aware of any previous investigations which considered the geographic frame of reference for High PSV Aggregates.

104. On the basis of the evidence above, the CMA considers that geographic location plays a role in determining the closeness of competition between suppliers to a particular customer. However, as there is demand for High PSV Aggregates from across the UK, quarries are mostly located in the west of GB and Northern Ireland, and customer feedback indicates that the Parties supply High PSV Aggregates nationally, the CMA has considered the impact of the Merger on the production and supply of High PSV Aggregates on a national basis.

#### *The production and supply of Medium PSV Aggregates*

105. The Parties' plants with non-trivial external sales of Medium PSV Aggregates are located near Edinburgh (Target Cowieslinn), Lake District (Target Roan Edge) and Belfast (Breedon Temple Quarry).<sup>53</sup>

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<sup>53</sup> Breedon has a number of other plants which manufacture Medium PSV Aggregates but these plants either had no or very few external Medium PSV Aggregates sales in 2018 to YTD 2020. In particular, Breedon Leaton only had [0-5]% of external (as opposed to [90-100]% of internal) Medium PSV Aggregates sales in 2018 and [REDACTED] in 2019. Breedon Minford only had [0-5]% of external Medium PSV Aggregates sales in 2019 and less than [0-5]% in 2018.

106. Breedon has not made any submissions on the geographic frame of reference for Medium PSV Aggregates. The CMA is also not aware of any previous investigations which considered this geographic frame of reference.
107. Evidence collected from the Parties' competitors shows that they have plants producing and supplying Medium PSV Aggregates across the UK, with the exception of the South East of England.
108. Customers, with the exception of those located in the South East of England, generally considered that competition for the production and supply of Medium PSV Aggregates was relatively local. In particular:
- (a) three customers, none of which are based in the South East of England, considered local providers to be strong alternatives to Target Roan Edge, Target Cowieslinn and Breedon Temple Quarry respectively. One of these customers also considered Northern Irish importers to be strong alternatives to Breedon Temple Quarry; and
  - (b) in relation to the South East of England, customers considered importers (particularly those from Northern Ireland), as well as the plants located in Wales or near Shrewsbury, to be the relevant alternatives to Breedon Temple Quarry.
109. On this basis, the CMA has assessed the impact of the Merger on the production and supply of Medium PSV Aggregates in the local areas around Edinburgh (for Target Cowieslinn), the Lake District (for Target Roan Edge) and Belfast (for Breedon Temple Quarry). In the present case, the CMA has not had to conclude on the precise geographic frame of reference, as no competition concerns arise on any plausible basis.

#### *The production and supply of RMX*

110. Breedon submitted that the appropriate geographic frame of reference for RMX is local.<sup>54</sup>
111. Previous merger investigations have consistently found that the geographic frame of reference for RMX is local.<sup>55</sup> 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 it can be transported.<sup>56</sup>

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<sup>54</sup> *Merger Notice*, paragraph 13.3.

<sup>55</sup> *Market Investigation Final Report*, paragraph 5.104; *Breedon/Aggregate Industries Final Report*, paragraph 4.58; *Breedon/Hope*, paragraph 92; *Tarmac/Breedon*, paragraph 70.

<sup>56</sup> RMX is best used a short time after production (preferably within two hours).

112. In order to identify the appropriate geographic boundaries of local markets, previous investigations have calculated the average straight-line distance over which 80% of external sales were delivered.
113. As noted above, the methodology used to identify the relevant geographic frame of reference in this case varied from that used in previous cases. The CMA obtained data from the Majors (including the Parties) on the travel time within which 80% of external sales of RMX were delivered.<sup>57</sup> The CMA considers that relying on travel times more accurately identifies the relevant geographic frame of reference for the same reasons as set out above in relation to non-specialist aggregates. On the basis of this analysis, the CMA has calculated that the average 80% catchment area for RMX is a travel time of 29 minutes.
114. On this basis, the CMA has assessed the impact of the Merger on the production and supply of RMX on a local basis, using a catchment area of 29 minutes travel time as a starting point for its local competitive assessment.

#### *The production and supply of asphalt*

115. Breedon submitted that the appropriate geographic frame of reference for asphalt is local, as it is a perishable product that must be delivered hot. Breedon submitted that this requirement constrains the amount of time during which asphalt can be transported, which in turn imposes a natural constraint on the distance over which asphalt can be delivered.<sup>58</sup>
116. Previous merger investigations have consistently found the relevant geographic frame of reference for asphalt to be local for the reasons provided by Breedon above. Typically, the precise geographic areas have been delineated by reference to local straight-line catchment areas.<sup>59</sup>
117. The methodology used to identify the relevant geographic frame of reference in this case varied from that used in previous cases. The CMA obtained data from the Majors (including the Parties) on the travel time within which 80% of external sales of asphalt were delivered.<sup>60</sup> The CMA considers that relying on travel times more accurately identifies the relevant geographic frame of reference for the same reasons as set out above in relation to non-specialist aggregates and RMX. On the basis of this analysis, the CMA has calculated

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<sup>57</sup> Based on data obtained both from the Parties and also from each of the remaining UK major suppliers: AI (part of LafargeHolcim), Tarmac and Hanson.

<sup>58</sup> *Merger Notice*, paragraph 13.56.

<sup>59</sup> *Breedon/Aggregate Industries Final Report*, paragraph 4.63; *Breedon/Hope*, paragraphs 99-100; *Breedon/Tarmac*, paragraph 10; and *CRH/Alun Griffiths*, paragraph 53.

<sup>60</sup> Based on data obtained both from the Parties and also from each of the remaining UK major suppliers: AI (part of LafargeHolcim), Tarmac and Hanson.

that the average 80% catchment area for asphalt is a travel time of 67 minutes.

118. On this basis, the CMA has assessed the impact of the Merger on the production and supply of asphalt on a local basis, using a catchment area of 67 minutes travel time as a starting point for its local competitive assessment.

#### *The production and supply of building products*

119. Breedon submitted that building products should be assessed with reference to a national frame of reference. Breedon also submitted that the most significant customers are large national building merchants.<sup>61</sup>
120. Previous merger investigations considered the frame of reference for dense aggregate concrete blocks and aircrete concrete blocks on a national basis.<sup>62</sup>
121. In line with previous cases, the CMA has assessed the impact of the Merger in the production and supply of building products on a national basis. However, in the present case, the CMA has not had to conclude on the precise geographic frame of reference, as competition concerns do not arise on any plausible basis.

#### *The supply of cement*

122. Breedon submitted that the geographic frame of reference for cement is national.<sup>63</sup> Breedon also submitted that imported cement should be considered to be part of the relevant frame of reference (given the ability to substitute imported cement for GB-produced cement).<sup>64</sup>
123. In previous investigations, the CMA has not typically concluded on the appropriate geographic market for the supply of bulk cement; in some cases, this market has been analysed on a national basis and in others a sub-national or regional basis.
124. In this case, the Parties' Scottish cement terminals are both located in the East of Scotland region: Breedon's cement terminal is located in Dundee and the Target Cement Terminal is located in Leith. In light of the location of the Parties' overlapping cement activities, the CMA considered whether the

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<sup>61</sup> See *Merger Notice*, Annex 15.

<sup>62</sup> *Northstone/RMC*, paragraph 25; *Tarmac/Durox*.

<sup>63</sup> See *Merger Notice*, paragraph 13.5

<sup>64</sup> See *Merger Notice*, paragraph 13.5.



geographic frame of reference for the supply of bulk cement may be narrower than national. In making this assessment, the CMA has considered:

- (a) evidence from previous investigations;
- (b) the geographic location of suppliers;
- (c) an analysis of supply distances to major population centres submitted by Breedon;
- (d) evidence from the Parties' internal documents;
- (e) evidence from customers of the Parties; and
- (f) evidence from competitors of the Parties.

*The Parties' submissions*<sup>65</sup>

125. As noted above, Breedon submitted that the scope of supply is national. With respect to the position in the East of Scotland, Breedon submitted that suppliers from the West of Scotland and Ireland appear at least as able to compete for external sales as Breedon in the East of Scotland. Breedon noted, in particular, that:
- (a) Hanson has a rail terminal at Bellshill (east of Glasgow) and an import terminal in Glasgow. Its rail terminal at Bellshill is located east of Glasgow in very close proximity to the M8, which is the main motorway running through the central belt of Scotland and connecting Glasgow with Edinburgh. Hanson therefore is particularly well-situated to serve customers throughout the central belt of Scotland (including into the East of Scotland and around Edinburgh);<sup>66</sup>
  - (b) Aggregate Industries (**AI**) has import terminal in Glasgow; and
  - (c) Breedon understands that Quinn (Ireland) supplies cement into Scotland.
126. Breedon further submitted that suppliers in the West of Scotland supply customers in the East of Scotland, with Hanson supplying more customers in the East of Scotland than Breedon (which only has [redacted] in Scotland). Breedon submitted that it also believes that Scotscreed in Dundee is served by AI. [redacted].
127. Breedon submitted that if it is possible to supply customers in the West of Scotland from the East of Scotland then the reverse should also hold, all else

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<sup>65</sup> Response to the Issues Letter, Appendix 1(b), 6.2.3.

<sup>66</sup> See also Breedon response to CMA email of 13 August 2020 (cement), including Annex 1.

being equal. In this context, Breedon submitted that Cemex has supplied external customers in the west of Scotland.

128. Breedon further submitted that a frame of reference according to local government boundaries was in economic terms an arbitrary definition given there is no reason why the supply of bulk cement would be affected by local government boundaries. In particular, an East of Scotland frame of reference would be incoherent in stretching 140 miles by road from Aberdeen in the north to Penicuik in the south but excluding Glasgow, which is less than 50 miles from Edinburgh.
129. Breedon submitted that even if it were to accept that the cement market was narrower than GB-wide (which it does not), a more logical narrower area to identify would be the central belt of Scotland including Glasgow and Edinburgh. In this regard, Breedon submitted that the vast majority of purchasers of cement (ie RMX plants, and producers of pre-cast concrete and concrete products) are located in the central belt, which is consistent with the fact the central belt is the area in Scotland with the most concentrated population density and, therefore, the highest level of construction activity.<sup>67</sup>

#### *The CMA's approach*

130. Similar to the approach taken in relation to the product frame of reference, as described in paragraph 46, the CMA's approach to the geographic frame of reference is typically to begin with the Parties' overlapping products in the narrowest plausible candidate frame of reference and then to see if this should be widened.
131. In making its assessment, the CMA has considered:
- (a) evidence from previous investigations;
  - (b) the geographic location of suppliers;
  - (c) an analysis of supply distances to major population centres submitted by Breedon;
  - (d) the Parties' internal documents;
  - (e) evidence from customers; and
  - (f) evidence from competitors.

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<sup>67</sup> Breedon response to CMA email of 13 August 2020 (cement), including Annex 1.

132. Consistent with the CMA's established practice, the definition of the relevant geographic frame of reference is intended to identify the most significant competitive alternatives available to the customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger. Accordingly, limited or anecdotal examples of supply from outside a putative frame of reference do not necessarily support the position that the frame of reference should be expanded, and the CMA will instead look at all of the available evidence in the round in order to determine the most appropriate geographic frame of reference.

- *Previous investigations*

133. While the supply of bulk cement has been considered in a number of previous cases by both the CMA (and its predecessors) and the European Commission, the geographic dimension of the relevant market has typically been left open. Both national and sub-national frames of reference were adopted in these cases. For example:

(a) In *Anglo/Lafarge*, the CC did not conclude on the geographic frame of reference but focussed its assessment primarily on competitive dynamics at a national level, taking into account the constraints from imported cement.<sup>68</sup>

(b) In *Breedon/Hope*, the CMA did not conclude on the geographic frame of reference but noted that it considered that the appropriate geographic frame of reference for cement was GB.<sup>69</sup>

(c) In *Lafarge/Tarmac*, the CMA considered competition in the supply of bulk cement on a regional basis, using Economic Planning Regions such as Wales.<sup>70</sup>

(d) In *Lafarge/Holcim*, the European Commission considered that the relevant geographic market should be defined by reference to circular areas of 150km and 250km around the relevant cement plants, reflecting the distance within which cement suppliers can economically sell cement.<sup>71</sup>

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<sup>68</sup> [Anglo American/Lafarge Final Report](#), paragraph 6.112.

<sup>69</sup> [Breedon/Hope](#), paragraph 107.

<sup>70</sup> CMA's decision of 9 April 2014 in the case no. ME/6290/13, [Completed acquisition by Lafarge Tarmac Holdings Limited of Tarmac Building Products Limited](#), paragraphs 62 and 63. By way of example, the decision referred to standard EPRs: Scotland, South East, North, North West, Yorkshire and Humberside, East Midlands, West Midlands, South West, East Anglia and Wales.

<sup>71</sup> [Holcim/Lafarge](#), COMP/M.7252, European Commission decision of 15 December of 2014, paragraph 68. See also, [CRH/Holcim Lafarge Divestment Business](#), COMP/M.7550, European Commission decision of 24 of April 2015, paragraph 47. 66 CC market investigation

(e) In the Market Investigation, the CC indicated that for Tarmac's Aberthaw plant the 80% catchment area distance was [90-100] miles (ie approximately 150km), covering most of the South West and parts of the central region of GB.

134. The CMA most recently considered the relevant frame of reference for the supply of cement in *Tarmac/Breedon*. Although the CMA did not need to conclude on the exact boundaries of the geographic frame of reference in that case, the CMA focussed its competitive assessment on the supply of bulk cement in the South Wales region.<sup>72</sup> This was based (among other things) on the 80% catchment areas of the cement plants, significant variations in shares of supply across local areas and third party evidence, which indicated that distance was an important factor in customers' purchasing decisions.

- *Geographic location of suppliers*

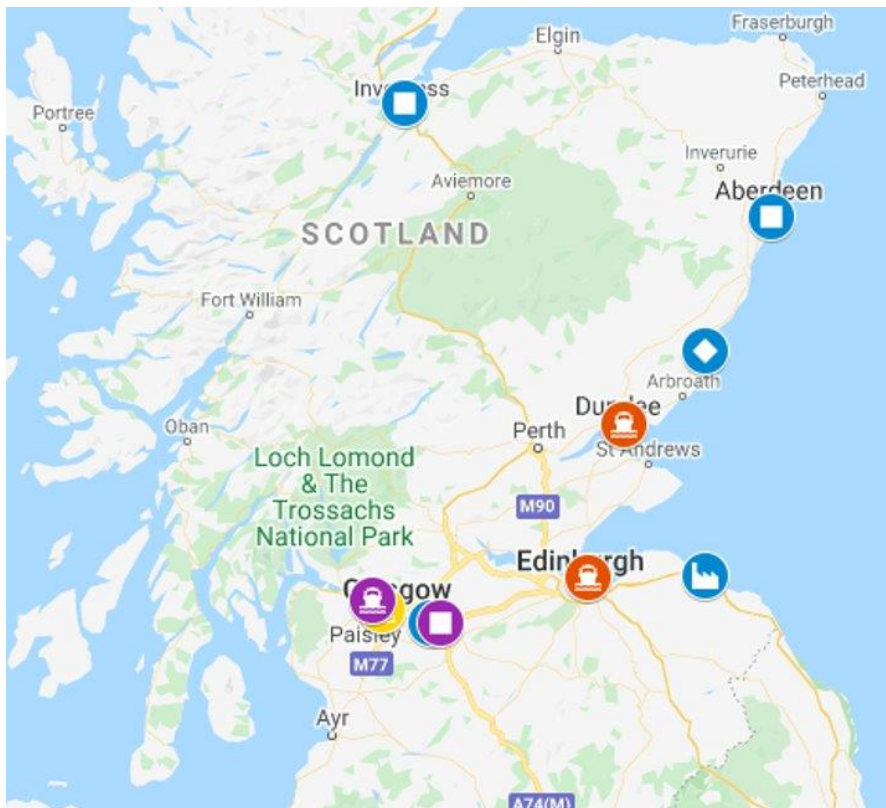
135. The CMA notes that the geographic location of individual cement suppliers in Scotland is divided between the East and the West of the country but that, as described below, delivery distances do not suggest that the scope of supply is national. As shown in Figure 1, only Tarmac (along with Premier Cement, another CRH-owned company) is present across different regions in Scotland. The other four suppliers active in Scotland are located either only in the East of Scotland (in the case of Breedon and Cemex) or only in West Central Scotland<sup>73</sup> (in the case of AI and Hanson).

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<sup>72</sup> *Tarmac/Breedon*, paragraphs 98 - 103.

<sup>73</sup> As defined by the Scottish Government in accordance with the Eurostat Nomenclature of Units for Territorial Statistics classification, suppliers in West Central Scotland include AI's cement terminal in Glasgow, Hanson's cement terminal in Glasgow and depot in Bellshill, and Tarmac's cement depot in Glasgow. See Scottish Government Official Website, *Review of Nomenclature of Units for Territorial Statistics (NUTS) Boundaries*, published 25 February 2016 (last visited 20 August 2020); available at: <https://www.gov.scot/publications/review-nomenclature-units-territorial-statistics-nuts-boundaries/>.

**Figure 1– Cement suppliers in Scotland<sup>74</sup>**



Source: CMA

- *Breedon’s analysis of supply distances to major population centres*

136. Breedon submitted that the supply terminals of Hanson and AI are closer to population centres within the East of Scotland than the facilities operated by the Parties located in the East of Scotland:

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<sup>74</sup> Tarmac (a CRH company) has a cement plant in Dunbar (see blue plant) and cement depots in Glasgow, Aberdeen and Inverness (see blue squares). Premier Cement (another CRH company) has a cement terminal in Montrose (see blue diamond). Breedon and Cemex’s cement terminals are in Dundee and Leith respectively (see red ships). AI has a cement terminal in Glasgow (see yellow ship). Hanson has a cement terminal in Glasgow (see purple ship) and a cement depot in Bellshill (see purple square).

**Table 1: Supply distances from various west and east of Scotland cement terminals**

Customer location	Supply distance (miles)			
	Dundee (Breedon)	Bellshill (Hanson)	Glasgow (Hanson/Al)	Leith (Cemex)
Perth	23.4	60.2	69.1	46.0
Livingston	58.8	23.9	40.7	20.1
Edinburgh	56.7	37.3	54.1	3.1
Stirling	56.4	27.7	36.6	38.9

Source: RBB Economics

137. Breedon submitted that the data in the table demonstrates that Hanson’s Bellshill terminal and Hanson’s and Al’s Glasgow terminals are closer to Edinburgh, Livingston and Stirling, for example, than Breedon’s Dundee terminal. Breedon also submitted that these West Central Scotland terminals are also closer to Stirling than the Target Cement Terminal.
138. The CMA notes that there are certain limitations to this analysis that limit the weight that can be placed on it. For example, the analysis does not account for real world drive-times, taking account of traffic, and therefore may not fully reflect the time that it would take suppliers located in West Central Scotland to service customers located in the East of Scotland. More broadly, the analysis provides only partial insight into the willingness of suppliers in West Central Scotland to service customers located in the East of Scotland, as it does not reflect that suppliers in Glasgow may face demand for supply from customers located closer to their facilities, as well as other factors that could influence the willingness and incentives of suppliers in West Central Scotland to seek to win business from customers in the East of Scotland.
- *Internal documents*
139. The internal documents that the Parties provided to the CMA generally contained little insight into how the Parties view the potential geographic segmentation of the market in Scotland.
140. To the limited extent that such documents relevant to this issue were available, the CMA notes that two Cemex internal documents appear to segment the market on a sub-national basis. More specifically:

(a) One Cemex internal document [REDACTED].<sup>75</sup>

(b) Another Cemex internal document considers [REDACTED].<sup>76</sup>

141. In relation to the document discussed in paragraph 140(b), Cemex submitted that the document was drafted by a non-competition expert in the context of [REDACTED]. The CMA considers, however, that this does not materially affect the weight that can be given to this document. Cemex told the CMA that the document was prepared for or by Cemex's senior management,<sup>77</sup> who can be considered to oversee the strategic direction of the business, and contains commentary on competitive conditions in Scotland. The CMA frequently takes documents prepared by or for a company's senior management into account in its investigations and is plainly not limited to relying on evidence prepared by so-called competition 'experts'.

142. Cemex also submitted that most references to geographical areas in the same document are [REDACTED]. The CMA notes that this interpretation is not consistent with a plain reading of the document (and Cemex has not otherwise provided any evidence to support its position). In particular, [REDACTED].

- *Evidence from customers*

143. While one customer in the East of Scotland indicated that cement from Glasgow is an alternative to cement from Edinburgh, the majority of customers located in the East of Scotland submitted that cement suppliers based in West Central Scotland are not viable alternatives and typically do not compete strongly for business in the region. For example:

(a) two customers located in the East of Scotland submitted that only Cemex and Tarmac could viably supply cement in the East of Scotland. Neither of these customers considered either AI or Hanson (both of which are located in West Central Scotland) to be viable alternatives;

(b) one of these customers further submitted that AI tends to supply cement in the West of Scotland and only seldom supplies external customers in the East of Scotland, instead mainly supplying only their own plants in the East of Scotland. This customer added that Hanson does not tend to supply into the East of Scotland;

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<sup>75</sup> See [REDACTED], Undated.

<sup>76</sup> See [REDACTED], October 2018.

<sup>77</sup> Cemex submitted that this document was provided as a result of a search 'for documents prepared by, or for, or received by, any member of the board of directors of Cemex or Cemex senior management'. . (Cemex internal document production methodology to Draft Merger Notice, 3 February 2020, paragraph 3.6).

- (c) the other of these two customers submitted that distance was a relevant factor in supplying cement and that distance prevented Hanson being competitive on price (although it recognised that it did purchase very small quantities from Hanson at present); and
- (d) a further customer located in the East of Scotland [redacted] submitted that it had very little choice beyond two suppliers located in East of Scotland [redacted].

144. Furthermore, while some customers purchased cement from Hanson in Glasgow for their operations in the East of Scotland [redacted], such volumes were very limited for most of these customers [redacted].<sup>78</sup> These customers also told the CMA that the supply of such limited volumes cannot be taken to mean that Hanson would be a viable alternative for their main supply sources (from East of Scotland suppliers). The CMA therefore considers that Breedon's submission that Hanson supplies more external customers in the East of Scotland than Breedon (which does not take supply volumes into account) does not, for the purposes of assessing the geographic frame of reference in this case, establish that Hanson is a viable supplier for customers located in the East of Scotland.

145. For completeness, the CMA notes that one customer referred to the possibility of purchasing from suppliers in Cumbria, England [redacted]. The CMA notes, however, that this customer is located in South West Scotland, and therefore its views are of limited relevance to competition in the East of Scotland region. No other customers considered suppliers of cement in Northern England to be a competitive constraint on suppliers in the East of Scotland. Moreover, no customers in the East of Scotland referred to Quinn (located in Ireland) as a viable alternative source of supply.

- *Evidence from competitors*

146. In the round, the CMA found that evidence from competitors indicated that bulk cement is supplied on a narrower than national basis, and that competitive interaction between suppliers in West Central Scotland and the East of Scotland may be limited. More specifically:

- (a) one competitor with cement assets in West Central Scotland [redacted] submitted [redacted]. While another competitor with cement assets in West Central Scotland indicated [redacted].

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<sup>78</sup> In relation to one customer [redacted], it was not clear to the CMA from the evidence submitted that this customer purchased cement from Hanson for its operations in the East of Scotland given that customer was located in both East and West Central Scotland and also purchased cement from an East of Scotland provider.



- (b) Tarmac submitted that the straight-line travel distance from its sites in Scotland within which 80% of external volumes of bulk cement were delivered in 2019 ranged from [REDACTED] miles.
- (c) The equivalent figures submitted by [REDACTED] and [REDACTED] were [REDACTED] miles and [REDACTED] miles respectively. These straight-line distances [REDACTED];

### *Conclusion*

147. On the basis of the evidence above, the CMA notes that:
- (a) the geographic location of individual cement suppliers in Scotland is divided between the East and the West of the country, and that the delivery distances of these suppliers do not suggest that they are supplying on a national basis;
  - (b) evidence from customers in the East of Scotland indicates that cement suppliers based in West Central Scotland may not be viable alternatives for these customers and typically do not compete strongly for business in the region. Customers which purchase cement from suppliers in West Central Scotland for their operations in the East of Scotland also generally indicated that the very limited volumes that they obtain from these suppliers do not mean that these suppliers would be a viable alternative for their main supply sources in the East of Scotland; and
  - (c) evidence from competitors indicated that bulk cement is supplied on a narrower than national basis, and that competitive interaction between suppliers in West Central Scotland and the East of Scotland may be limited.
148. The CMA notes that the position that markets for the supply of cement may be regional in scope is broadly consistent with the findings in previous competition investigations. The evidence in the Parties' internal documents, to the limited extent relevant to this question, also indicates that the markets are sub-national (with one document including direct reference to [REDACTED]).
149. The CMA has therefore assessed the impact of the Merger on the supply of bulk cement in the East of Scotland.
150. The CMA has defined the East of Scotland region by reference to the following local authority areas: Angus, City of Dundee, Clackmannanshire,

Fife, East Lothian, Midlothian, City of Edinburgh, Falkirk, Perth and Kinross, Stirling, West Lothian, City of Aberdeen and Aberdeenshire.<sup>79</sup>

151. For the avoidance of doubt (given Breedon's submissions on this point, as described in paragraph 128 above), the CMA notes that these local authority areas are intended to denote the bounds of the East of Scotland region, but that local government boundaries were not a relevant consideration in arriving the appropriate geographic frame of reference in this case. Instead, the definition of the relevant geographic market for the supply of cement in this case is based on the various demand- and supply-side factors described in detail above.
152. The CMA has also taken into account the constraint from other suppliers of cement in its competitive assessment where the evidence supports the existence of such a constraint.

### ***Conclusion on frame of reference***

153. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
  - the production and supply of non-specialist aggregates at the local level;
  - the production and supply of High PSV Aggregates in the UK;
  - the production and supply of Medium PSV Aggregates in the local areas around Edinburgh (for Target Cowieslinn), the Lake District (for Target Roan Edge) and Belfast (for Breedon Temple Quarry);
  - the production and supply of RMX at the local level;
  - the production and supply of asphalt at the local level;
  - the production and supply of building products in the UK; and
  - the supply of bulk cement in the East of Scotland.

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<sup>79</sup> These local authority areas fall within the regions of Eastern Scotland and North Eastern Scotland, as defined by the Scottish Government in accordance with the Eurostat Nomenclature of Units for Territorial Statistics classification: see Scottish Government Official Website, *Review of Nomenclature of Units for Territorial Statistics (NUTS) Boundaries*, published 25 February 2016 (last visited 20 August 2020); available at: <https://www.gov.scot/publications/review-nomenclature-units-territorial-statistics-nuts-boundaries/>.

## Competitive assessment

154. The CMA focussed its assessment on the following theories of harm:
- (a) horizontal unilateral effects in the production and supply of RMX at the local level;
  - (b) horizontal unilateral effects in the production and supply of non-specialist aggregates at the local level;
  - (c) horizontal unilateral effects in the production and supply of asphalt at the local level;
  - (d) horizontal unilateral effects in the production and supply of Medium PSV Aggregates in the local areas around Edinburgh (for Target Cowieslinn), the Lake District (for Target Roan Edge) and Belfast (for Breedon Temple Quarry);
  - (e) horizontal unilateral effects in the production and supply of High PSV Aggregates in the UK;
  - (f) coordinated effects in the supply of bulk cement in the East of Scotland;
  - (g) vertical effects arising through input foreclosure of primary aggregates into RMX at the local level;
  - (h) vertical effects arising through input foreclosure of primary aggregates into asphalt at the local level; and
  - (i) vertical effects arising through input foreclosure of primary aggregates into building products at the local level.

### ***Horizontal unilateral effects***

155. 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.<sup>80</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or

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<sup>80</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1

may be expected to result, in an SLC in relation to horizontal unilateral effects in the production and supply of:

- (a) RMX at the local level;
- (b) non-specialist aggregates at the local level;
- (c) asphalt at the local level;
- (d) Medium PSV Aggregates in the local areas around Edinburgh (for Target Cowieslinn), the Lake District (for Target Roan Edge) and Belfast (for Breedon Temple Quarry); and
- (e) High PSV Aggregates in the UK.

*Horizontal unilateral effects in the production and supply of each of RMX, non-specialist aggregates and asphalt*

156. The CMA has considered under this theory of harm whether the removal of one party as a competitor could allow the merged entity to increase prices, lower quality, reduce the range of their services and/or reduce innovation in respect of the production and supply of each of RMX, non-specialist aggregates and asphalt at the local level.
157. When analysing whether a merger may result in a realistic prospect of a SLC in cases involving a large number of local overlaps, the CMA may use a filtering methodology to screen out overlap areas where there is no realistic prospect of competition concerns arising.<sup>81</sup> The filtering methodology used in a given case is driven by the characteristics of the market at issue, based on the evidence available to the CMA.

*Framework for the local assessment*

158. Breedon submitted a filtering methodology for the assessment of local overlaps and the assessment of unilateral horizontal effects in each of aggregates, RMX and asphalt that Breedon submitted was based on previous CMA decisional practice. Breedon further submitted that the CMA should use additional share of supply and fascia filters on the basis of different geographic area delineations in order to reduce the number of areas warranting an individual analysis.

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<sup>81</sup> See the CMA Guidance, [Retail Mergers Commentary \(Guidance CMA62\)](#), 10 April 2017, paragraph 3.2.

159. Consistent with previous investigations in relation to RMX, non-specialist aggregates and asphalt, the CMA's local competitive assessment has been based on:
- (a) the identification of overlaps and the delineation of catchment areas for specific sites;
  - (b) filtering to exclude those overlap sites/areas where there is no realistic prospect of competition concerns arising; and
  - (c) a local competitive assessment of sites/areas which fail these filters.
160. In order more accurately to identify overlaps and capture competitive conditions within a particular local area, the CMA has in this case applied several enhancements to the filtering methodologies used in previous investigations in relation to overlaps in these markets. As set out below, these enhancements better identify overlapping sites that may give rise to competition concerns and merit detailed individual assessment. Specifically, the CMA has:
- (a) used travel times rather than straight line radials to identify catchment areas, taking into account road speeds, the local road network, local topography and traffic (historic averages) so as to more accurately identify overlapping sites and to avoid spurious overlaps (eg sites on opposite sides of an estuary);
  - (b) applied a single 1.5 times 80% catchment area both to identify overlaps and to apply share of supply and competitor count thresholds. The CMA has used a 1.5 times catchment area because customer overlaps can occur when the sites are outside each other's 80% catchment area.<sup>82</sup> The CMA considers that the use of 80% travel times (which, as set out above, are more accurate than straight line radials) means that it is appropriate to apply filters based on the area that extends to 1.5 times the size of the centroid site's catchment area, without needing to test whether these filters are also passed on other distances;
  - (c) calculated linear weighted market shares<sup>83</sup> to reflect the relative proximity of other sites (belonging to both the other Party or third parties) to the

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<sup>82</sup> Whilst customer overlaps can conceptually occur beyond this area, in practical terms the constraint of each site on the other becomes progressively smaller as the distance between them increases. The CMA considers that, where one party's site is more than 1.5 times the travel time away from the centroid site, it is unlikely to impose a significant constraint.

<sup>83</sup> The linear weighting is achieved by adjusting the volume produced by a site by its proportional distance in the 1.5 times the 80% travel time catchment area from the centroid site: ie a competitor site located half way (in

centroid site, reflecting the fact that plants located further away from one another will typically compete less closely (due to less customer overlap and the importance of transport costs in these markets<sup>84</sup>); this also avoids the binary fallacy that a competitor just inside the catchment area is given the same weight as a competitor right next to the centroid site, whilst a competitor just outside the catchment area is disregarded entirely; and

- (d) used a weighted increment filter to identify local areas that are likely to be non-problematic and to take into account that competition concerns may arise even with small increments where one Party's existing share of supply in a local area is high. The CMA has used a 5% threshold for the increment that decreases pro rata as the Parties' combined post-Merger share increases above 40%.

- *Share of supply calculations*

161. The weighted shares of supply used by the CMA in the filters described in paragraph 160 above are based on:

- (a) for the Majors, supplies to external customers in 2018 from each RMX, non-specialist aggregates and asphalt site. This includes delivery data and customer collection data for known customer postcodes; and
- (b) for the independents, based on the findings of the *Market Investigation* and consistent with a proportionate analysis for a Phase I investigation:
- (i) RMX: site names from BDS and 2018 supply data from each site assumed equal to 75% of average external supplies per site postcode of the Majors (because BDS volumes are not available for RMX);<sup>85</sup> and
- (ii) non-specialist aggregates and asphalt: 2018 production volumes at each site based on BDS data,<sup>86</sup> reduced by 20% as an estimate of independents' external supply.<sup>87</sup>

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terms of travel time) between the centroid site and the 1.5 times the 80% travel time catchment boundary would have its volume reduced by 50%.

<sup>84</sup> See for example *Tarmac/Breedon*, paragraph 114.

<sup>85</sup> *Market Investigation Final Report*, paragraph 9.12 and footnote 4; and *Tarmac/Breedon*, paragraph 123.

<sup>86</sup> This information is not available for RMX.

<sup>87</sup> The Market Investigation found that: (i) in 2011 independents sourced [X] of their aggregates for their RMX production internally (BDS Report from 2011), whilst (ii) the equivalent figure for the majors was [X] (Table 5 of Appendix 2.3). On the basis that (iii) the majors on average used [X] of their aggregates internally in 2011 (Table 3 of Appendix 2.3), this would suggest that (assuming independents' internal usage of aggregates relative to the majors for other products was similar to RMX) independents used [X] of their aggregates internally in 2011.

162. When applying the filters to this data set, the CMA has accounted for the following:
- (a) Parties' sites that have already been sold were reallocated to the purchaser, whereas sites that have already been converted to other uses or otherwise permanently closed (rather than mothballed)<sup>88</sup> were removed from the analysis;<sup>89</sup>
  - (b) Third party competitor sites which Breedon or third parties submitted have been permanently closed were removed from the analysis;
  - (c) additional competitors already present in a local area, but not reflected in the 2018 BDS data, were included in the analysis (where verified). In particular:
    - (i) Breedon identified suppliers that it understood to be present in local areas but that did not appear in the 2018 BDS data. As a first step, the CMA sought to match these competitors to existing suppliers in the BDS data set. Where this was not possible, the CMA sought to verify the presence of these additional competitors during its market testing. Where the market test confirmed the existence of a competitor's site, the CMA took this into account in its filtering analysis; and
    - (ii) the CMA has included third party sites opened since 2018 in its analysis where these were identified and verified by third parties.<sup>90</sup>
163. Breedon submitted that the CMA appears to have attributed shares to certain mothballed sites (both centroids and non-centroids) on the basis that these were included in the 2018 BDS data. Breedon submitted that the shares of supply in those relevant local areas is therefore likely to be overstated.<sup>91</sup>

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<sup>88</sup> A mothballed site is a site that is temporarily non-operational, rather than permanently closed.

<sup>89</sup> This applied in respect of **RMX**: Peterborough Oxney (sold in 2018) and Hartlepool North (which Breedon submitted has been demolished and the lease has expired) and Hartlepool South (which Breedon submitted has been closed since October 2019 (with the lease expiring in September 2020) and that it intends to demolish (See Breedon's Commentary on certain local areas – RMX 2 June 2020); **Aggregates**: Breedon Broadwood (which Breedon stated has been closed since 2015) and Breedon Duckett Hill (which Breedon stated has been non-operational since 2017). (See Breedon's Commentary on certain local areas – Aggregates 2 June 2020)

<sup>90</sup> Based on the Parties' submissions, the CMA notes that no new sites have been opened by the Parties since [REDACTED].

<sup>91</sup> This factor is relevant in the following local areas: **RMX**: Breedon King's Lynn, Target King's Lynn and Breedon Peterborough; **Aggregates**: Breedon Shierglas, Breedon Low Harperley and Target Middleton.

164. However, the CMA considers that Breedon did not provide sufficient evidence in relation to these mothballed sites to suggest that these sites could not be re-opened, as discussed further in paragraph 179.

165. The CMA has therefore not removed these sites from its analysis. However, the CMA has considered the impact of these sites being mothballed within its post-filtering assessment (see Table 1, Table 2 and Table 3).

166. The CMA has not included within its filtering analysis any competitor sites that have not yet opened. Rather, any competitor plans for the opening of new sites are considered within the CMA's assessment on entry and expansion (see paragraph 361 onwards).

- *Identifying Overlaps and Filtering*

167. As set out in the frame of reference, consistent with the approach in previous cases:

(a) the RMX filtering focuses on fixed RMX plants;

(b) the non-specialist aggregates filtering focuses on primary aggregates; and

(c) the asphalt filtering focuses on fixed asphalt plants.

168. Based on the data that the CMA has obtained from the Majors (including the Parties), the CMA has calculated that the applicable 80% catchment areas for the relevant products are:<sup>92</sup>

(a) 29 minutes for RMX;

(b) 64 minutes for non-specialist primary aggregates; and

(c) 67 minutes for asphalt.

169. For each of RMX, non-specialist aggregates and asphalt, the CMA identified overlapping sites falling within the respective 1.5 times 80% catchment area.

170. The CMA then applied filters to identify which of these overlapping areas could be ruled out on the basis that the Merger does not raise competition

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<sup>92</sup> The CMA used postcode data and HERE API to geocode (ie obtain latitudes and longitudes) for each valid site-customer UK postcode pair; HERE API to calculate the travel-times for each valid site-customer pair with the following settings: fastest, truck, disable traffic; it then calculated the travel time over which 80% of external sales volumes were supplied for each site and used data on external supplies from each site to calculate the weighted average travel time over which 80% of the Majors' external sales volumes were supplied for each of aggregates, RMX and asphalt. HERE API takes into account historical traffic data (flow speeds) when calculating travel times. The use of these HERE API settings therefore provides different drive times to the use of Google car drivetimes.



concerns. The CMA considers that competition concerns can be excluded in local areas around sites where:

- (a) the weighted linear post-Merger market share is less than 35% and there are three or more remaining competitors to the Parties within the 1.5 times 80% catchment area;
- (b) given the presence of retained Cemex sites in certain areas, the Merger results in a reduction in concentration and no reduction in the number of competitors in the 1.5 times 80% catchment area; or
- (c) where there are three or more remaining competitors to the Parties within the 1.5 times 80% catchment areas and the weighted increment is not material (a <5% increment for post-Merger shares up to 40%, reducing pro rata for shares above 40%).

- *Results of CMA filtering*

171. Based on its filtering analysis, the CMA found that competition concerns can be excluded in most overlapping areas. However, the CMA identified the following sites that required a more detailed assessment:

- (a) 23 RMX plants;
- (b) three non-specialist aggregates quarries; and
- (c) one asphalt plant.

172. A list of these sites is provided in Table 1, Table 2 and Table 3.

*Framework of the local assessment of the 27 sites failing the filters*

- *Breedon's submissions regarding local assessment*

173. Breedon made submissions on how the CMA should approach the local area assessment in respect of the sites failing the filters and what weight the CMA should give to certain factors in assessing the potential loss of competition between Breedon and the Target Business in given areas. It also made

detailed submissions on each local area failing the filters.<sup>93</sup> Breedon's submissions in this respect were that:

- (a) in terms of the need to consider individual local areas, Breedon submitted that it was not possible for a mechanical filtering approach to capture the specifics of all local competitive situations and that, having applied a filter, the CMA must consider the output of that filtering analysis to ensure it has not produced outcomes that are inconsistent with the factual level of competition on the ground in a particular local area;
- (b) in terms of the use of weighted shares of supply, Breedon submitted that:
  - (i) considering weighted shares of supply is not appropriate in certain conurbations where there is a cluster of plants in close proximity, each of which is able to serve the same customer demand. Shares of supply in such areas should therefore not be discounted in the filtering. Breedon also submitted that in some local areas, the Parties are serving two different conurbations and a mechanical analysis does not reflect this;<sup>94</sup>
  - (ii) in some areas, the combined share of supply is not credible as there are many additional competitors present;<sup>95</sup> and
  - (iii) in some areas, the CMA should be mindful that its analysis includes mothballed sites which had volumes in 2018 which have been attributed share.<sup>96</sup>
- (c) Breedon also submitted customer heat maps for all local areas failing the filters and submitted that the CMA should take these into account in its local assessment. Breedon submitted that the CMA should engage with heat maps where these show an outcome that is inconsistent with the

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<sup>93</sup> Breedon also submitted that *de minimis* share has been attributed to certain plants that produce multiple products with the result that the CMA might be potentially double-counting. Breedon submitted this in respect of **RMX**: Target Whisby, Breedon Norton Bottoms, Breedon Peterborough, Target Peterborough, Breedon West Deeping and in relation to **Aggregates**: Breedon Low Harperley. In this respect, the CMA has based its analysis on the 2018 data provided by the Parties, but it notes that, in any event, the relevant share in these instances is *de minimis* (less than [0-5]%) and therefore not material in the context of the Parties' combined share. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>94</sup> Breedon submitted this in relation to **RMX**: Breedon King's Lynn, Target King's Lynn, Target Peterborough, Target Malton, Breedon Peterborough, Breedon West Deeping, Breedon Kilmarnock, Breedon Northallerton. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>95</sup> Breedon submitted this in relation to **RMX**: Breedon West Deeping and Target Peterborough. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>96</sup> Breedon submitted this in relation to **Aggregates** Breedon Low Harperley. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

linear weighting given to a plant in the CMA's methodology.<sup>97</sup> Breedon submitted that the heat maps demonstrated that, in some local areas, the Parties are serving two different conurbations, which is not reflected by the weighted share analysis;

(d) Breedon provided commentary with respect to the distance between the Parties' overlapping sites and the distance between the Parties' sites and those of third Parties in a number of local areas, including that:

(i) in some areas there is no overlap within the 80% drive time<sup>98</sup> area and/or that there are several competitors within the 80% drive time area;<sup>99</sup> and

(ii) in some areas there are competitors that are close to one or other Party site, in some cases closer than the overlap site;<sup>100</sup>

(e) in terms of competitors present in local areas post-Merger, Breedon submitted that:

(i) in some areas there is no reduction in the number of competing suppliers count post-Merger (ie Cemex remains in the area)<sup>101</sup> and that in some areas the acquisition of a single failing centroid did not

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<sup>97</sup> Breedon made specific submissions about heat maps in relation to **RMX**: Breedon Kilmarnock, Target Malton, Breedon Northallerton, Target Thetford, Breedon Snetterton, Breedon Costessey, Breedon King's Lynn, Target King's Lynn, Breedon Peterborough, Target Peterborough, Breedon West Deeping and in relation to **Asphalt**: Breedon Longwater. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>98</sup> Breedon submitted this in relation to **RMX**: Breedon Kilmarnock, Breedon Livingston, Breedon Dumbarton, Target Malton, Breedon Northallerton, Target Hartlepool and in relation to **Asphalt**: Breedon Longwater. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>99</sup> Breedon submitted this in relation to **RMX**: Breedon Livingston, Target Thetford, Breedon Snetterton, Breedon Costessey, Target Hartlepool, Breedon Peterborough, Target Peterborough, Breedon West Deeping, Target Whisby and in relation to **Aggregates**: Breedon Low Harperley, Target Middleton and in relation to **Asphalt**: Breedon Longwater. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>100</sup> Breedon submitted this in relation to **RMX**: Breedon Northallerton, Breedon Kilmarnock, Breedon Livingston, Breedon Dumbarton, Target Malton, Target Thetford, Target Hartlepool, Breedon Peterborough, Breedon West Deeping, Target Whisby, Breedon King's Lynn, Target King's Lynn, Breedon Costessey, Target Hartlepool, Target Peterborough, Breedon Norton Bottoms and Breedon Snetterton and in relation to **Aggregates**: Breedon Shierglas, Breedon Low Harperley, Target Middleton and in relation to **Asphalt**: Breedon Longwater. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>101</sup> Breedon submitted this in relation to **RMX**: Breedon Kilmarnock, Breedon Dumbarton, Target Northallerton, Breedon Peterborough, Target Peterborough, Breedon West Deeping, Target Kidderminster, Breedon Stourport, Breedon Norton Bottoms, Target Malton and in relation to **Aggregates**: Breedon Low Harperley. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

materially alter the competitive dynamic within a cluster of sites / areas;<sup>102</sup>

- (ii) in some areas specific competitors have multiple plants;<sup>103</sup>
  - (iii) all suppliers (not just Majors) are able to compete and exert significant competitive pressure on the Parties and that the CMA should therefore not distinguish between the competitive constraint from a Major and that from an independent supplier. Breedon submitted that while national players may have some cost advantages in, for example, procurement processes, this is likely to be offset to some extent by higher costs in other areas, such as IT and overheads (eg compliance costs, such as legal, quality accreditations, tax and environmental requirements); Breedon also submitted that independents have better local knowledge and customer service;
  - (iv) in some areas there are additional competitor plants in the periphery of the catchment area;<sup>104</sup> and
  - (v) in one area a competitor site without volumes in 2018 has since opened.<sup>105</sup>
- (f) considering the impact of the Merger, Breedon submitted that in some areas combined shares are below 40% and the increment is small with a good number of remaining competitors. In particular, where there is a large distance between the two Parties in a local area, but the filter is failed, taking into account other competitors present, Breedon submitted that in practice it is not credible that the removal of the other plant would result in a realistic prospect of an SLC; and

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<sup>102</sup> Breedon submitted this in relation to **RMX**: Breedon Kilmarnock, Breedon Dumbarton, Target Malton and Breedon Northallerton. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>103</sup> Breedon submitted this in relation to **RMX**: Breedon Kilmarnock, Breedon Livingston, Breedon Dumbarton, Target Malton, Breedon Northallerton, Target Thetford, Breedon Snetterton, Breedon Costessey, Target Hartlepool, Breedon King's Lynn, Target King's Lynn, Breedon Peterborough, Target Peterborough, Breedon Stourport, Target Kidderminster, Target Whisby, Breedon Norton Bottoms; **Aggregates**: Breedon Low Harperley, Target Middleton, Breedon Shierglas, and in relation to **Asphalt**: Breedon Longwater. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>104</sup> Breedon submitted this in relation to **RMX** Target King's Lynn. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>105</sup> Breedon submitted this in respect of Breedon Shierglas. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

- (g) Breedon submitted that third party comments must be substantiated and noted in some areas that there was a lack of third party concern;<sup>106</sup> it also noted that the CMA should be cautious not to place weight on assertions of Breedon's competitors, which Breedon suggested could be 'self-serving'.
174. With respect to RMX and aggregates specifically, Breedon submitted that the CMA's local assessment should take into account the presence of operators of volumetric trucks and recycled aggregates sites respectively. In this context, Breedon identified the number of operators of volumetric trucks or recycled aggregates suppliers operating in several areas failing the filters.<sup>107</sup>
175. Breedon also made specific submissions on the failing non-specialist aggregates sites. In particular:
- (a) Breedon submitted that the CMA should take into account the fact that certain Party sites included in the 2018 BDS analysis are greenfield sites (ie previously undeveloped and/or subject to planning permission);<sup>108</sup>
  - (b) Breedon made submissions regarding the differentiation between the Parties' products (ie by identifying, for each local area, which of the Parties' sites are (i) hard rock quarries, or (ii) sand and gravel quarries);<sup>109</sup>
  - (c) Breedon further submitted that some independent aggregates competitors in certain local areas are not vertically integrated, and that for such independent competitors no discounting of volume to account for internal sales would be appropriate;<sup>110</sup> and

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<sup>106</sup> Breedon submitted this in relation to **RMX**: Breedon Kilmarnock, Breedon Dumbarton, Target Malton, Target Hartlepool, Target Kidderminster, Breedon Stourport and Target Whisby. Breedon noted the absence of customer concerns in relation to **RMX**: Breedon West Deeping, Breedon Norton Bottoms and Breedon King's Lynn. Breedon stated that concerns were unreasoned in relation to **RMX**: Breedon Peterborough, Target Peterborough and in relation to **Aggregates**: Breedon Low Harperley and Target Middleton. Breedon queried the basis for the customer concerns in relation to **RMX** Breedon Northallerton. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>107</sup> Breedon submitted this in relation to **RMX**: Breedon Kilmarnock, Breedon Livingston, Breedon Dumbarton, Target Malton, Breedon Northallerton, Target Thetford, Breedon Snetterton, Breedon Costessey, Target Hartlepool, Breedon Peterborough, Target Peterborough, Breedon West Deeping, Target Kidderminster, Breedon Stourport, Target Whisby, Breedon Norton Bottoms and in relation to **Aggregates** Breedon Shierglas. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>108</sup> This Breedon submitted this in relation to Breedon Low Harperley. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>109</sup> Breedon submitted this in relation to Breedon Low Harperley, Breedon Shierglas and Target Middleton. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

<sup>110</sup> This factor is relevant in the following local areas: Breedon Shierglas, Target Middleton and Breedon Low Harperley. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

(d) Breedon submitted that it was aware of planning permission extensions being granted in respect of some competitor sites.<sup>111</sup>

- *Overview: The CMA's approach to local assessment*

176. In considering the assessment of the effect of the Merger in the local areas around the 27 sites failing the filters, the CMA has had regard to the following broad principles:

- (a) there is limited time available within a Phase 1 investigation to conduct a detailed competitive assessment of a large number of local areas;
- (b) the enhanced filtering methodology applied by the CMA already takes into account certain specific features of the local areas (eg the relative strength of competitors based on their distance from the centroid site – see further paragraph 178 below);
- (c) the competitive assessment should be based on an assessment of factors that can be systematically applied across all local areas (and therefore should not be capable of potentially undermining the position that competition concerns can be excluded in areas that have passed the filters); and
- (d) any factors that cannot be systemically applied (ie factors unique to a particular area) need to be supported by sufficient evidence in order to be taken into account.

177. The CMA has considered the submissions made by Breedon as to how it should approach the assessment of local areas failing the filters. In conducting its local assessment, the CMA has distinguished between:

- (a) factors it considers appropriate to consider in its analysis of all sites failing the initial filters;
- (b) factors it considers appropriate to take into account where they arise in specific local areas and have been verified; and
- (c) factors it does not consider appropriate to take into account.

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<sup>111</sup> Breedon submitted this in relation to Breedon Low Harperley, Breedon Shierglas and Target Middleton. See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

- *Factors the CMA considers relevant in all local areas*

178. The CMA has considered the following factors in the round when assessing the effect of the Merger on competition in each of the local areas that fail the filters.

(a) The Parties' combined weighted shares of supply and increment. The CMA considers weighted shares of supply are important in understanding the degree of market power the Parties have in a local area. This is particularly the case given that shares are weighted by distance from the centroid site, meaning that they take into account relative volumes sold and geographical closeness between the Parties, as well as geographical closeness of competitor sites.<sup>112</sup> Higher shares, as well as a greater increment brought about by the Merger, are likely to indicate a higher level of concern. In addition, the use of weighted shares of supply calculated by drivetime (rather than straight line area) provides that:

- (i) shares of supply remain relevant to assessing market power in urban settings where there are plants in relatively close proximity, because the weighting reflects real-world truck drive time conditions which, in an urban area, can be significant and which are particularly important where the product (eg RMX) is perishable;
- (ii) it is not necessary to give additional consideration to the number of plants a particular competitor has in an area, the distance between Party plants or the relative distance of competitor plants to a Party, as the significance of these factors to competitive assessment is already reflected in the weighted market shares;
- (iii) it is not necessary to separately account for plants at the periphery outside the 1.5 times 80% catchment area (as these would be accorded very little weight in terms of shares of supply even if included at the margin); and
- (iv) it is not necessary to separately account for whether there is, or is not, an overlap within the 80% catchment area; such distinctions are already catered for in the weighted shares of supply with suppliers within the 80% catchment area carrying greater weight in terms of share of supply than suppliers outside the 80% catchment area.

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<sup>112</sup> Where the Parties have submitted that a competitor closed in 2018 has reopened a site, the CMA has sought to verify this (and the associated appropriate volumes) with that competitor but has not attributed volume to such a competitor without a basis for doing so.

- (b) Number of remaining competitors in a local area. Fewer remaining competitors mean fewer alternative sources of supply for customers and may therefore indicate a higher level of concern. The CMA considers that it is also relevant in this respect to consider whether the number of competitors in the area is changed by the Merger – ie whether Cemex remains in the local area so there is no reduction in the number of competitors present.
- (c) Number of remaining Majors in a local area. The available evidence indicates that majors may be expected to exert a more significant competitive constraint on the Parties than independents given their greater economies of scale, buyer power, financial resources and reputation. The CMA does not accept Breedon’s submission that independent competitors may have better local knowledge and customer service. Breedon provided no evidence for this submission and it is not clear why individual local sites of the Majors would not compete strongly on these parameters of competition. Fewer Majors in a local area may therefore indicate a higher level of concern. However, independent competitors are not discounted outright and are taken into account in the local analysis.
- (d) Third party concerns about the impact of the Merger. Where the CMA has received reasoned and area-specific concerns from third parties about the impact of the Merger on competition in a local area, this may indicate a higher level of concern. Similarly, where third parties indicated that they had no concerns on the impact of the Merger, this may indicate a lower level of concern. In this context, the CMA has taken into account the nature of third party comments, as well as the distinction between customer and competitor comments, in its local analysis. Further to Breedon’s submission on third party comments, the CMA notes that it has significant experience of interpreting and weighting third party submissions, and typically seeks to take into account the extent to which submissions made are substantiated by additional evidence, as well as the incentives that might be held by a third party that engages with a CMA investigation. This approach has also been applied in this case.

- *Factors the CMA considers relevant in specific local areas*

179. The CMA has taken the following factors into account in local areas where these could be verified.

- (a) Mothballed and greenfield sites belonging to the Parties: The CMA considers that Party mothballed sites (whether centroid or otherwise) and greenfield sites in a local area failing the filters should be included in its



local assessment as an ‘aggravating factor’, even where those sites have no volume attributed to them in the 2018 BDS data. This is because the Parties retain the ability to open or re-open these sites, which would enhance their market position in that local area and potentially aggravate the impact of the Merger.<sup>113</sup> For instance, Breedon submitted it could take as little as two or three months to re-open a mothballed aggregates site.<sup>114</sup> The CMA considers that, in order to exclude these sites from the competitive assessment, the Parties would have needed to adduce specific evidence demonstrating that there is no realistic prospect that the relevant site could be operative within the foreseeable future.

(b) Competitor entry and extension plans: The CMA has considered any competitor entry plans within the context of its barriers to entry framework: this involves an assessment of whether the entry would be timely, likely and sufficient to prevent an SLC from arising in a particular local area (see paragraphs 361 onwards).

- *Factors the CMA does not consider appropriate to take into account*

180. The CMA has not considered the following factors in its local analysis.

(a) Customer heat maps

(i) The CMA considers that customer heat maps are of less evidential value in this case, compared to previous cases, in light of the enhanced filtering methodology. This enhanced methodology already takes into account the relative strength of the Parties and their competitors in each local area through the linear weighted market shares. To the extent that the Parties do not compete because of geographic features in the local area, including local topography, the CMA considers that such factors are better reflected by, and have already been taken into account through the use of, travel times rather than straight-line radials. In these circumstances, customer location maps are therefore a less accurate tool to take into account the impact of such factors on competition in each local area, which the CMA considers is more accurately represented by the linear weighted market shares.

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<sup>113</sup> As noted in Tables 1-3 below, this factor is relevant in the following local areas: **RMX**: Target Wisbech (which had a 0% share based on 2018 data) in the area around Breedon King’s Lynn, Target King’s Lynn and Breedon Peterborough. **Aggregates**: Target Carrat Farm in the area around Breedon Shierglas (where Target Carrat Farm had a 0% share based on 2018 data).

<sup>114</sup> *Merger Notice*, paragraph 21.2.

- (ii) As prices in RMX, asphalt and non-specialist aggregates are negotiated individually, a heat map showing only a few overlapping customer locations does not necessarily indicate that the Merger will not result in competitive harm in the local area. Absent a factor that is not captured by the drive times and weighted shares, heat maps only indicate the pattern of supply during a specific period. It cannot be precluded that different patterns of demand would be observed depending on the period selected, which limits the insight heat maps provide on competitive conditions.
  - (iii) In addition to the reduced evidentiary value of customer heat maps in principle in this case, the CMA considers, as a more practical consideration, that the maps provided by the Parties in this case do not enable the CMA to reliably test the conclusions that the Parties seek to draw from them. The Parties' customers are not shown on the same maps and each Party's maps are of a different type and scale. In particular, Breedon sites are not marked on the Target Business maps, making any reliable form of visual analysis virtually impossible. In many cases, Breedon accepts that there is some degree of overlap between the relevant Party sites in a heat map but submits that it is limited or not material: the assessment of this kind of submission is made particularly challenging given the maps submitted in the present case. The CMA therefore considers that it is not possible to draw any meaningful conclusions as regards the relative closeness of competition between the Parties from the heat maps provided, particularly within the limited time available within a Phase 1 investigation.
- (b) Presence of volumetric truck operators and recycled aggregates sites: As discussed in the Frame of reference section above, the CMA considers that each of these sources of competition is potentially relevant to the competitive assessment. However, the CMA considers that the available evidence is not sufficient to demonstrate that these sources of competition are a strong constraint on the Parties in any specific local area under consideration. In particular:
- (i) Breedon has only referred to competitor websites of volumetric truck operators, recycled aggregates sites and/or temporary mobile asphalt plants, without providing evidence on the constraint that these provide within specific local areas;
  - (ii) Breedon has not provided any evidence of the volumes supplied by each of these suppliers or any other evidence quantifying the extent

or size of the constraint posed by each of these suppliers in each relevant local area;

- (iii) Breedon has not provided any evidence intended to show how the Parties' own competitive strategy is impacted by such volumetric truck operators and recycled aggregates sites in particular local areas, or on the extent to which such suppliers have been successful in winning business in that local area;
- (iv) third parties have only referred to these sources of supply as being viable, or potentially viable, in limited circumstances, such as for a specific project or as a temporary supply solution. More broadly, the evidence from third parties does not indicate that these act as a strong constraint on the Parties in any individual area;
- (v) the CMA's existing information from previous cases<sup>115</sup> indicate that the competitive constraint that these trucks can pose is more relevant to smaller projects (ie up to 50m<sup>3</sup>); and

- (c) Sites active in 2018 (whether centroid or otherwise) which have since been mothballed:<sup>116</sup> As explained above, the CMA considers that the Parties (or third parties where relevant) retain the ability to re-open or reactivate a mothballed site and therefore the CMA considers it appropriate to continue to attribute volumes and share of supply to such mothballed sites (belonging to the Parties and third parties) to the extent they had volumes in 2018.

181. With respect to non-specialist aggregates in particular, the CMA has not considered the following factors in its local analysis.

- (a) Differentiation between the Parties' non-specialist aggregates sites: The CMA considers that differentiation is potentially relevant in assessing closeness of competition in a local area. However, the CMA considers that the available evidence does not support any findings of a lack of closeness of competition between the Parties within a particular local area. In particular:
  - (i) as discussed in the Frame of reference section, the CMA considers that all types, grades and sources of primary aggregates can be

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<sup>115</sup> See for example [Tarmac/Breedon](#), paragraphs 150-152 and 159(c).

<sup>116</sup> This factor is relevant in relation to Breedon Helbeck aggregates quarry, which the Parties stated has been non-operational since 2017 (but is included in Target Middleton and Breedon Low Harperley). See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX.

considered within a single product frame of reference. The CMA notes in this respect that the Parties submitted that most aggregates are used for general construction purposes and, are generally homogenous and substitutable for a variety of purposes.<sup>117</sup> In this context, the CMA considers that there would need to be specific evidence that differentiation between the Parties in a particular local area resulted in a lack of closeness of competition (eg due the particular end uses within that area). The CMA considers that, in areas where Breedon has provided evidence of differentiation between the Parties' sites, it has not provided sufficient evidence that customers do not view them as viable alternatives;

- (ii) based on the evidence provided by Breedon, even in local areas where there is an element of product differentiation between the centroid site<sup>118</sup> and the other Party site with the highest weighted share, a number of the Parties' other sites in the relevant local areas are more similar to the centroid site in terms of product output (ie there is little or no product differentiation). The CMA considers that this is relevant, given that a loss of competition brought about the Merger impacts not only the centroid site and one other Party site but the whole local area; and
- (iii) none of the third parties contacted by the CMA in the relevant local areas identified product differentiation (either between the Parties, or between other suppliers) as an important parameter of competition in respect of non-specialist aggregates.

- (b) Vertical integration of independent non-specialist aggregate competitors: The CMA considers that, consistent with a proportionate analysis in a Phase 1 investigation, it should not, as part of its local assessment, depart from its original approach to calculating volumes for independent non-specialist aggregate competitors (see paragraph 161(b)(ii) above). In its filtering exercise, the CMA has applied an average percentage value to all independent non-specialist aggregate competitors. The application of this percentage assumes that there will be variation across the group with some supplying more or less aggregates externally than is assumed by the average. Breedon has only identified individual independent non-specialist aggregate competitors in certain local areas that it understands are not vertically integrated (without providing any specific evidence in this regard). Breedon has not provided any evidence or submissions

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<sup>117</sup> *Merger Notice*, paragraph 13.16.

<sup>118</sup> This factor is relevant in relation to each of Breedon Shierglas, Target Middleton and Breedon Low Harperley.

regarding the extent to which other independent aggregates competitors in the relevant local areas are vertically integrated (and may therefore have a lower percentage of external supply than the average). Accordingly, in order to appropriately and consistently evaluate Breedon's submissions, the CMA would need to verify and evaluate the extent of vertical integration across all independent competitors identified in that local area. The CMA does not consider that this would be a feasible or proportionate exercise in the context of a Phase 1 merger investigation.

*Local assessment of the 27 sites failing the filters*

- *Overview*

182. On the basis of the factors discussed above, the CMA has carried out a competitive assessment of each of the 27 local areas that failed the filters. The relevant factors have been considered in the round and, as such, no single factor is determinative of the CMA's assessment of a particular local area.

183. For each of the centroid sites failing the filters, the CMA sets out the Parties' weighted market share, the number of competitors remaining in the local area, the number of Majors remaining in the local area, a summary of any reasoned and relevant third party concerns, as well as any relevant aggravating factors in Table 1, Table 2 and Table 3 below.<sup>119</sup>

**Table 1: Details of sites failing the filters - RMX**

No.	Site name	Breedon / Target site	Breedon share	Cemex (Target) share	Parties' weighted share	Remaining competitors (including Majors and independents)	Remaining Majors	Third party concerns	Aggravating Factors <sup>120</sup>
1.	Stourport Concrete Plant	Breedon	[70-80]%	[10-20]%	[80-90]%	2	2	No reasoned or relevant third party concerns.	N/A
2.	Kidderminster	Target	[50-60]%	[20-30]%	[80-90]%	4	2	No reasoned or relevant third party concerns.	Potential removal of Alpha Aggregates <sup>121</sup>
3.	Malton Concrete Plant	Target	[5-10]%	[70-80]%	[70-80]%	3	2	No reasoned or relevant third party concerns.	N/A

<sup>119</sup> For completeness, in some instances, the number of third party concerns has been updated from that disclosed to the Parties in the Issues Letter. This is to account for additional submissions received since the date of the Issues Letter, as well as minor corrections to the data.

<sup>120</sup> Breedon submitted that the combined share attributed to the Breedon and Target plants in certain areas is likely to be overstated because the CMA has attributed share to Target Wisbech which has been mothballed since 2017 (see Breedon's Commentary on certain local areas – RMX 2 June 2020). In fact, however, based on 2018 data, Target Wisbech has been accorded no volume/share in the CMA's calculations, and this is therefore an aggravating factor in this area in accordance with paragraph 179 above.

<sup>121</sup> Breedon submitted that Alpha Aggregates is a concrete merchant, not an RMX producer, which would reduce the number of remaining competitors in the area and increase the Parties' market share in the local area (see Breedon's Commentary on certain local areas – RMX 2 June 2020). The CMA has not been able to verify the Parties' submissions and has included Alpha Aggregates as a competitor in the local area on the basis that this exclusion would only increase the concerns in this area.

4.	Norton Bottoms Concrete	Breedon	[40-50]%	[10-20]%	[60-70]%	3	2	One competitor raised concerns about the Merger enabling the Merged Entity to strengthen its dominance in the area.	N/A
5.	Whisby Concrete Plant	Target	[30-40]%	[20-30]%	[50-60]%	2	1	No reasoned or relevant third party concerns.	N/A
6.	West Deeping Concrete	Breedon	[40-50]%	[10-20]%	[50-60]%	6	4	One competitor raised concerns about the loss of alternatives in the area and the Merged Entity holding a dominant position.	N/A
7.	Dumbarton Concrete	Breedon	[40-50]%	[5-10]%	[40-50]%	5	4	No reasoned or relevant third party concerns.	N/A
8.	Peterborough Concrete Plant	Target	[20-30]%	[10-20]%	[40-50]%	7	4	Three customers raised concerns about the Merger leading to limited alternatives in the area, increased prices and reduced supply.	N/A
9.	Hartlepool Concrete Plant	Target	[10-20]%	[30-40]%	[40-50]%	4	2	No reasoned or relevant third party concerns.	N/A
10.	Kilmarnock Concrete	Breedon	[30-40]%	[5-10]%	[40-50]%	4	2	No reasoned or relevant third party concerns.	N/A
11.	Kings Lynn Concrete Plant	Breedon	[30-40]%	[10-20]%	[40-50]%	5	1	One competitor raised concerns about the Merger enabling the Merged Entity to strengthen its dominance in the area.	Presence of Target Wisbech (mothballed)
12.	Kings Lynn Concrete Plant	Target	[20-30]%	[10-20]%	[40-50]%	4	1	Two customers raised concerns concerned about the Merger resulting in increased prices, reduction of choice and reduction of supply in the area.	Presence of Target Wisbech (mothballed)
13.	Peterborough Concrete Plant	Breedon	[20-30]%	[10-20]%	[30-40]%	7	4	Two customers raised concerns about the Merger resulting in a reduction of choice and enabling the Merged Entity to increase prices.	Presence of Target Wisbech (mothballed)
14.	Livingston Concrete	Breedon	[30-40]%	[5-10]%	[30-40]%	6	3	Two customers raised concerns about the Merger reducing choice and enabling the Merged Entity to increase prices.	N/A
15.	Northallerton Concrete	Breedon	[30-40]%	[5-10]%	[30-40]%	8	4	Three customers raised concerns about a serious loss of viable alternatives. Customers indicated that the Parties are currently close competitors.	N/A
16.	Huntingdon	Breedon	[30-40]%	[5-10]%	[30-40]%	8	4	No reasoned or relevant third party concerns.	N/A
17.	Snetterton Concrete Plant	Breedon	[20-30]%	[10-20]%	[30-40]%	7	2	One customer raised concerns about the Merger resulting in a lack of viable alternative suppliers in the area. One competitor raised concerns about the Merger strengthening the dominance of the Merged Entity in the area.	N/A
18.	Thetford Concrete Plant	Target	[10-20]%	[20-30]%	[30-40]%	6	2	One customer raised concerns about the Merger resulting in substantially less choice in the area.	N/A
19.	East Kilbride	Target	[5-10]%	[30-40]%	[30-40]%	5	3	No reasoned or relevant third party concerns.	N/A
20.	Falkirk	Breedon	[20-30]%	[10-20]%	[30-40]%	5	3	No reasoned or relevant third party concerns.	N/A
21.	Costessey Concrete Plant	Breedon	[20-30]%	[10-20]%	[30-40]%	6	1	One competitor raised concerns about the Merger strengthening the dominance of the Merged Entity in the	N/A

								area. Two customers raised concerns about the Merger resulting in a reduction of choice and enabling the Merged Entity to increase prices.	
22.	Stockton	Breedon	[10-20]%	[20-30]%	[30-40]%	7	4	No reasoned or relevant third party concerns.	N/A
23.	Stockton	Target	[10-20]%	[20-30]%	[30-40]%	7	4	No reasoned or relevant third party concerns.	N/A

**Table 2: Details of sites failing the filters – non-specialist aggregates**

No.	Site name	Breedon / Target site	Breedon share	Cemex (Target) share	Parties' weighted share	Remaining competitors (including Majors)	Remaining Majors	Third party concerns	Aggravating Factors
24.	Shierglas Quarry	Breedon	[30-40]%	[5-10]%	[40-50]%	10	0	One customer raised concerns about the Merger strengthening the dominance of the Merged Entity in the area.	Presence of Target Carrat Farm (greenfield) <sup>122</sup>
25.	Middleton Quarry	Target	[10-20]%	[20-30]%	[30-40]%	12	3	One customer raised concerns about the Merger resulting in increased prices.	N/A
26.	Low Harperley Quarry	Breedon	[20-30]%	[5-10]%	[30-40]%	15	4	Two customers raised concerns about the Merger resulting in reduced local competition and resulting in higher prices. Two competitors raised concerns that smaller competitors could face difficulties competing against the Merged Entity.	N/A

**Table 3: Details of sites failing the filters - asphalt**

No.	Site name	Breedon / Target site	Breedon share	Cemex (target) share	Parties' weighted share	Remaining competitors (including Majors)	Remaining Majors	Third party concerns	Aggravating Factors
27.	Longwater Asphalt Plant	Breedon	[50-60]%	[0-5]%	[50-60]%	2	1	One competitor raised concerns that the Merger could facilitate the Merged Entity becoming dominant in Northern East Anglia. One customer raised concerns about the Merger resulting in a reduction of choice.	N/A

- *Local competitive assessment – RMX*

184. The CMA carried out local competitive assessments in relation to all 23 RMX plants which it had identified as requiring a more detailed competitive assessment. Table 1: Details of sites failing the filters - RMX above contains a summary of the main factors the CMA has considered when carrying out this detailed competitive assessment for each of these sites.

<sup>122</sup> Breedon previously stated that the combined share attributed to the Breedon and Target plants in this area is likely to be overstated because the CMA has attributed share to Target Carrat Farm, which is a greenfield site (see Breedon Aggregates – Commentary on certain local areas 2 June 2020). In fact, however, based on 2018 data, Target Carrat Farm has been accorded no volume/share in the CMA's calculations, and this is therefore an aggravating factor in this area in accordance with paragraph 179 above.

Breedon Huntingdon, Breedon Stockton, Target Stockton, Breedon Falkirk, Target East Kilbride, Target Malton, Breedon Dumbaron, Breedon Kilmarnock, Breedon Northallerton and Breedon Livingston

185. Having carried out this detailed analysis of the local areas, the CMA considers that the Merger will not result in a realistic prospect of an SLC in the production and supply of RMX in relation to ten of the 23 RMX sites listed in Table 1 above on the basis that sufficient competitive constraints will remain post-Merger. The CMA considers that the remaining competitors in these areas will exert a sufficient constraint on the Parties post-Merger to prevent a realistic prospect of an SLC arising. In particular, considering the 1.5 times 80% catchment areas around each of the following plants:<sup>123</sup>

- In respect of the areas around Breedon Huntingdon, Breedon Stockton, Target Stockton, Breedon Falkirk and Target East Kilbride, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the production and supply of RMX because combined weighted market shares in each area are moderate, there remain three or four<sup>124</sup> competing Majors to Breedon in each area, and no concerns were raised by any customers of those plants about the impact of the Merger.<sup>125</sup>
- In respect of the area around Target Malton, whilst Breedon's share of supply around Target Malton will increase from [5-10]% to [70-80]%, Cemex has (and will retain post-Merger) its own site in York. Cemex's pre-Merger share [70-80]% was comparable to Breedon's post-Merger share and Cemex's post-Merger share will be [0-5]%, which is comparable to Breedon's pre-Merger share. The increase in concentration brought about by the Merger is therefore minimal. There is also no reduction in the number of competing suppliers. No concerns were raised by third parties in this area. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC in the production and supply of RMX in the area around Target Malton.
- In respect of the area around Breedon Dumbaron, although Breedon's share post-Merger will be higher than 40% ([X]), four competing Majors remain in the area post-Merger (including Cemex, meaning

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<sup>123</sup> In the paragraphs that follow, the CMA refers to 'area' as meaning 'the area comprising 1.5 times the 80% catchment area around the relevant centroid plant' unless otherwise specified.

<sup>124</sup> Cemex remains present in some of these areas (around Breedon Huntingdon, Breedon Stockton and Target Stockton) meaning there is no reduction in the number of competing suppliers in these three areas.

<sup>125</sup> To the extent that there were concerns received from customers of other RMX plants overlapping with these centroid plants, those RMX sites (and the complaints received from customers) are all considered separately below.



there is no reduction in the number of competing suppliers), as well as an additional independent supplier (Patersons of Greenoakhill). Furthermore, the increment brought about by the Merger is low ([5-10]%) and no third parties raised concerns about the impact of the Merger in the local area. On this basis, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the production and supply of RMX in the area around Breedon Dumbarton.

- In respect of the area around Breedon Kilmarnock, Breedon's share post-Merger will be [40-50]%. However, two competing Majors remain in the area around Breedon Kilmarnock post-Merger, as well as two independent suppliers (Patersons of Greenoakhill and Hillhouse Quarry Group). There is also no reduction in the number of competing suppliers in the area given that Cemex remains present. No third parties raised concerns about the impact of the Merger in the local area. On this basis, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the production and supply of RMX in the area around Breedon Kilmarnock.
- In respect of the area around Breedon Northallerton, Breedon's share post-Merger will remain moderate ([30-40]%), with a modest increment ([5-10]%). Furthermore, post-Merger, four competing Majors (including Cemex), as well as four further independents remain in the area around Breedon Northallerton. While third party feedback in respect of this area was mixed, on balance, the CMA believes that the remaining Majors and independent suppliers are credible competitors that will exercise a sufficient competitive constraint on Breedon post-Merger. On this basis, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the production and supply of RMX in the area around Breedon Northallerton.
- In respect of the area around Breedon Livingston, Breedon's post-Merger share will be moderate ([30-40]%) with a modest increment ([5-10]%). Furthermore, three competing Majors will remain in the area around Breedon Livingston, as well as three further independent suppliers (Patersons of Greenoakhill, Hillhouse Quarry Group and Skene). Customer feedback in this area was mixed, with a few customers expressing concern but several being satisfied that the Merger would not affect competition. No competitors expressed concerns. On balance, the CMA believes that the remaining Majors and independent suppliers are credible competitors that will exercise a sufficient competitive constraint on Breedon post-Merger. On this basis, the CMA believes that the Merger does not give rise to a realistic

prospect of an SLC in the production and supply of RMX in the area around Breedon Livingston.

Breedon Stourport and Target Kidderminster

186. Breedon Stourport overlaps with the Target Kidderminster plant and both sites fail the CMA's filtering methodology.<sup>126</sup>
187. Breedon submitted that competition concerns would not arise in respect of the each of the areas around Breedon Stourport or Target Kidderminster within this local area because:<sup>127</sup>
- (a) around Breedon Stourport, there is no reduction in the number of competing suppliers as Cemex retains two plants in the local area and two competing Majors remain in the local area;
  - (b) around Target Kidderminster, there is no reduction in the number of competing suppliers as Cemex retains three plants in the local area and there will be four competitors to Breedon remaining in the local area (including two competing Majors); and
  - (c) no third party concerns had been identified in respect of this area.
188. The available evidence indicates that, although third parties did not raise concerns in respect of this area:
- (a) the weighted shares of supply of Breedon post-Merger would be very high (above 80%) within the areas around both plants (with an increment of [10-20]% in respect of Breedon Stourport and [20-30]% in respect of Target Kidderminster). The CMA considers that weighted shares of supply of this level and the respective increments are strongly indicative of competition concerns; and
  - (b) only two other suppliers in the area around Breedon Stourport and four suppliers in the area around Target Kidderminster (including Cemex in both cases) would remain post-Merger.
189. On this basis, the CMA believes that the Merger raises significant competition concerns in relation to the supply of RMX in the local areas around each of Breedon Stourport and Target Kidderminster.

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<sup>126</sup> Both sites also include Breedon Worcester within their 1.5 times 80% catchment area, which did not itself fail the CMA filtering.

<sup>127</sup> In addition, Breedon pointed to the AI site at Kidderminster (although the CMA was informed by AI that this site had been permanently closed, and hence it was not included in the CMA analysis).

## Breedon Norton Bottoms and Target Whisby

190. Breedon Norton Bottoms overlaps with Target Whisby plant and both sites fail the CMA's filtering methodology.<sup>128</sup>
191. Breedon submitted that competition concerns would not arise in respect of the areas around Breedon Norton Bottoms and Target Whisby because:<sup>129</sup>
- (a) around Breedon Norton Bottoms, three competitors to Breedon would remain in the local area, including Tarmac with four plants, as well as The Concrete Company (a significant regional independent with two plants) and there is no reduction in the number of competing suppliers as Cemex remains at Grantham;
  - (b) around Target Whisby, two strong competitors would remain in the local area-post-Merger, namely Tarmac and The Concrete Company (a significant regional independent with two plants); and
  - (c) no customer raised concerns in relation to these areas, and the CMA should not place weight on concerns expressed by a single competitor.
192. The available evidence indicates that, although customers did not raise concerns in respect of these areas:
- (a) the weighted shares of supply of Breedon post-Merger would be high in the area around Breedon Norton Bottoms ([60-70%] with an increment of [10-20]%) and in the area around Target Whisby ([50-60]% with an increment of [20-30]%). The CMA considers that weighted shares of supply of this level and the respective increments are strongly indicative of competition concerns;
  - (b) only one Major would remain in the area around Target Whisby post-Merger. Only two Majors would remain in the area around Breedon Norton Bottoms. Furthermore, with regard to each local area, there would only be one further independent present; and

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<sup>128</sup> Breedon Norton Bottoms also includes Breedon Grantham and Breedon Sleaford within its 1.5 times 80% catchment area, but these sites do not themselves fail the filtering methodology.

<sup>129</sup> Breedon submitted that no RMX share should be separately attributed to the aggregates quarry at Breedon Norton Bottoms (however small) (See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX): in respect of the attribution of share to Breedon Norton Bottoms Quarry, the CMA has based its analysis on the 2018 data provided by Breedon, but it notes that, in any event, the volume of Breedon Norton Bottoms Quarry ( $[\text{m}^3]$ ) and the share attributed to Norton Bottoms Quarry is *de minimis* (significantly less than [0-5]%) and therefore not material in the context of this overlap and the Parties' combined share.

(c) one competitor to Breedon Norton Bottoms submitted that the Merger would strengthen Breedon's existing dominance in the local area.

193. On the basis of the evidence described above, the CMA believes that the Merger raises significant competition concerns in relation to the production and supply of RMX in the local areas around each of Breedon Norton Bottoms and Target Whisby.

#### Breedon West Deeping, Breedon Peterborough and Target Peterborough

194. Each of Breedon West Deeping and Breedon Peterborough overlaps with Target Peterborough, and all three sites fail the CMA's filtering methodology.<sup>130</sup>

195. Breedon submitted that competition concerns would not arise in respect of each of the areas around Breedon West Deeping, Breedon Peterborough and Target Peterborough because:<sup>131</sup>

(a) around Breedon West Deeping, there would remain six competitors to Breedon post-Merger (the four Majors Cemex, AI, Hanson and Tarmac as well as The Concrete Company and Mick George). Furthermore, Cemex is retaining a plant in the area at Baston Fen, meaning there will be no reduction in the number of competitors in this local area;

(b) around Breedon Peterborough and Target Peterborough, there would remain seven competitors to Breedon post-Merger, including all four of the remaining Majors, namely Tarmac, Cemex, AI and Hanson, as well as The Concrete Company, Mick George (each of whom Breedon submitted are significant regional independents) and Gemmix;

(c) around Breedon Peterborough, the combined share of supply post-Merger is less than 40%;

(d) Target Wisbech has been non-operational since 2017 (mothballed) and made only limited deliveries in 2017 and no deliveries in 2018; and

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<sup>130</sup> Breedon West Deeping includes Breedon Peterborough within its 1.5 times 80% catchment area (and vice-versa). Breedon Peterborough and Target Peterborough also both include Breedon Huntingdon in their respective 1.5 times 80% catchment areas (Breedon Huntingdon is discussed at paragraph 185 above)). Breedon Peterborough also includes the mothballed Target Wisbech site in its 1.5 times 80% catchment area, which itself passed the CMA filtering.

<sup>131</sup> In addition, Breedon noted that share has been allocated to Peterborough Screed and the CMA should ensure that it is not double counting Breedon's RMX share in this area (See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX): in respect of the attribution of share to share to Peterborough Screed, the CMA has based its analysis on the 2018 data provided by Breedon, but it notes that, in any event, the volume ( $[<]m^3$ ) and the share attributed to Peterborough Screed is *de minimis* (significantly less than [0-5]%) and therefore not material in the context of this overlap and the Parties' combined share.

(e) as regards third party concerns:

- (i) no customer concerns were identified from customers of Breedon West Deeping. Breedon submitted that the competitor concern about the loss of alternatives in the area and that the Merged Entity would hold a dominant position was not consistent with the share and competitor count identified in this area; and
- (ii) as regards concerns expressed from customers with regard to Breedon Peterborough and Target Peterborough, Breedon submitted that these comments did not reflect the reality of competition in this area and also did not they appear to advance any explanation as to how the Merger would enable Breedon to increase prices. Breedon also submitted that no competitor concerns were identified in respect of the Peterborough plants.

196. The CMA considers that the Merger raises significant competition concerns in relation to the production and supply of RMX within the local areas around each of Breedon West Deeping, Breedon Peterborough and Target Peterborough because:

- (a) the weighted shares of supply of Breedon post-Merger would be significant in the area around Breedon West Deeping ([50-60]%) with an increment of [10-20]%. The weighted shares of supply around Target Peterborough would also be above 40% with a significant increment of [10-20]% and the weighted shares of supply around Breedon Peterborough would be ([30-40]%, with a moderate increment of [10-20]%). The CMA considers that (around Breedon West Deeping and Target Peterborough) weighted shares of supply of this level and the respective increments are indicative of competition concerns;
- (b) the CMA regards the presence of Target Wisbech (mothballed) as an aggravating feature as regards the assessment of the area around Breedon Peterborough (see paragraph 179(a) above). To the extent that Breedon were to re-open the acquired Target Wisbech plant, this would be expected to increase Breedon's share in this area, contributing to its market power and increasing the impact of the Merger; whilst the Parties have submitted that Target Wisbech has not been operational since 2017, they have not provided an explanation as to why Breedon is purchasing a mothballed plant or any evidence that there is no realistic prospect that the relevant site could be operative within the foreseeable future; and
- (c) concerns were raised by a majority of the customers of Breedon Peterborough and Target Peterborough as regards the impact of the

Merger in these areas. In addition, one competitor raised concerns about the impact of the Merger on Breedon West Deeping.

197. On the basis of the evidence described above, the CMA believes that the Merger raises significant competition concerns in relation to the production and supply of RMX in the local areas around each of Breedon West Deeping, Breedon Peterborough and Target Peterborough.

#### Target Hartlepool

198. Target Hartlepool overlaps with Breedon Middlesbrough, Breedon Stockton and Breedon Crime Rigg.<sup>132</sup> Of these, Target Hartlepool and Breedon Stockton fail the CMA filters.<sup>133,134</sup>
199. Breedon submitted that no competition concerns would arise within the area around Target Hartlepool because:
- (a) four competitors to Breedon would remain post-Merger, namely Hanson and Tarmac (ie two of the Majors), Minimix North East and Ready Mix Tees Valley;
  - (b) shares of supply do not exceed 50% meaning at least 50% of the market is served by competitors; and
  - (c) no third party concerns have been identified in this local area.
200. The available evidence indicates that, although no third party concerns were identified in this local area:
- (a) the weighted shares of supply of Breedon post-Merger would be above 40% ([40-50]% with a moderate increment of [10-20]%; and
  - (b) only two Majors, with a reduction in the number of Major suppliers, and only two independent suppliers would remain present in the area post-Merger.

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<sup>132</sup> Breedon Durham is just outside the 1.5 times 80% catchment area. Breedon Raisby (which Breedon submitted is intended to be a replacement for Breedon's RMX plant at Durham) is just inside the 1.5 times 80% catchment area but had no volumes in 2018 (see Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX).

<sup>133</sup> The area around Breedon Stockton is considered at paragraph 185 above.

<sup>134</sup> Target Hartlepool includes Target Middlesbrough and Target Stockton within its 1.5 times 80% catchment area. Of these two sites, Target Stockton fails the CMA filter; the area around Target Stockton is considered at paragraph 185 above.

201. On the basis of the evidence described above, the CMA believes that the Merger raises significant competition concerns in relation to the production and supply of RMX in the local area around Target Hartlepool.

Breedon King's Lynn and Target King's Lynn

202. Breedon King's Lynn overlaps with Target King's Lynn and both sites fail the CMA's filtering methodology.<sup>135</sup>
203. Breedon submitted that competition concerns would not arise within the areas around Breedon King's Lynn and Target King's Lynn because:
- (a) around Breedon King's Lynn, five competitors to Breedon would remain post-Merger, namely Tarmac, The Concrete Company, C&H Quickmix (the Carter/Tarmac JV), GM Concrete and Gemmix. Except for Gemmix, these competitors are also present in the area around Target King's Lynn;<sup>136</sup>
  - (b) around each of Breedon King's Lynn and Target King's Lynn, the combined weighted shares would not exceed 50%, meaning at least 50% of the market is served by competitors;
  - (c) no customer concerns have been identified in respect of Breedon King's Lynn; and
  - (d) the customer concern relating to Target King's Lynn regarding increased prices, reduction of choice and reduction of supply in the area, and the competitor concern relating to Breedon King's Lynn regarding strengthening of dominance in the area is not consistent with the share and competitor count identified above.
204. The available evidence indicates that:
- (a) the weighted shares of supply of Breedon post-Merger would be ([40-50]% in the area around each plant (with an increment of [10-20]% around Breedon King's Lynn and [10-20]% around Target King's Lynn));
  - (b) five competing suppliers would remain in the area around Breedon King's Lynn, and four competing suppliers would remain in the area around

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<sup>135</sup> Both sites also include Breedon Long Sutton and Target Wisbech (mothballed) within their 1.5 times 80% catchment areas, neither of which fails the CMA filtering.

<sup>136</sup> Breedon also submitted that it was 'artificial' for certain competitor plants around Breedon King's Lynn not to be included in the competitor set for Target King's Lynn on the basis they are outside of the 1.5 times 80% catchment area (See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX): see in this respect the CMA's assessment at paragraph 178(a).

Target King's Lynn. However, in each case, only one other major supplier (Tarmac) would remain,<sup>137</sup> with the Merger resulting in a reduction in the number of Major suppliers in this area;

- (c) the CMA regards the presence of Target Wisbech (mothballed) as an aggravating feature in this area as regards the assessment for each of Breedon King's Lynn and Target King's Lynn. To the extent that Breedon were to re-open the acquired Target Wisbech plant, this would be expected to increase Breedon's share in this area, contributing to its market power and increasing the impact of the Merger. Whilst the Parties have stated that Target Wisbech has not been operational since 2017, they have not provided an explanation as to why Breedon is purchasing a mothballed plant or any evidence that there is no realistic prospect that the relevant site could be operative within the foreseeable future; and
- (d) third parties raised concerns with regard to the impact of the Merger in both areas (including customers around Target King's Lynn).

205. On the basis of the evidence described above, the CMA believes the Merger raises significant competition concerns in relation to the production and supply of RMX in the local areas around each of Breedon King's Lynn and Target King's Lynn.

Breedon Snetterton, Target Thetford and Breedon Costessey

206. Each of Breedon Snetterton and Breedon Costessey overlap with Target Thetford, and all three sites fail the CMA's filtering methodology.<sup>138</sup>

207. Breedon submitted that competition concerns would not arise in the areas around Breedon Snetterton, Target Thetford and Breedon Costessey because:<sup>139</sup>

- (a) the combined share of supply of the Parties around each of the three centroid sites (Breedon Snetterton, Thetford Target and Breedon Costessey) is below 40%; and

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<sup>137</sup> The CMA has counted C&H Quickmix (the Carter/Tarmac JV) as an independent supplier separately to Tarmac for these purposes but has not included it as a separate Major supplier.

<sup>138</sup> Breedon Snetterton includes Breedon Costessey within its 1.5 times 80% catchment area (and vice-versa). All three sites also include Target Norwich in their 1.5 times 80% catchment areas, and Target Thetford also includes Target Newmarket, although neither Target Norwich nor Target Newmarket themselves fail the CMA filtering.

<sup>139</sup> Breedon submitted that no RMX share should be attributed to the Target Norwich Mortar Plant, particularly given the overall combined share is less than 40% in this area, which only narrowly exceeds the CMA's filter (See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX). In respect of the attribution of share to Target Norwich, the CMA has based its analysis on the 2018 data



- (b) around Target Thetford, six competitors to Breedon would remain post-Merger, namely Hanson, Carter/Tarmac (JV), The Concrete Company, Mobile Concrete, Whitton & Frost and Eastern Concrete. Around Breedon Snetterton, seven competitors would remain post-Merger given that (in addition to those listed for Target Thetford) there is also Mix A Man Concrete. Around Breedon Costessey, six competitors would remain post-Merger (as for Target Thetford, but with Mix A Man Concrete and TBL Concrete instead of Whitton & Frost and Hanson);
- (c) the customer concern raised with regard to Target Thetford is not consistent with the share and competitor count in this area and no competitor concerns were raised; and
- (d) the customer concern raised with regard to Breedon Snetterton is not consistent with the competitor count or the fact that more than 60% of the market is served by third parties; and
- (e) the competitor concern raised with regard to Breedon Costessey is not consistent with the share and competitor count identified.

208. The CMA considers, however, that the Merger raises significant competition concerns in respect of the local areas around each of Breedon Snetterton, Breedon Costessey and Target Thetford because:

- (a) although the weighted shares of supply of Breedon post-Merger are relatively modest in each area ([30-40]% for Breedon Snetterton (with an increment of [10-20]%), [30-40]% for Target Thetford (with an increment of [10-20]%) and [30-40]% for Breedon Costessey (with an increment of [10-20]%), they are at a level that does not allow competition concerns to be ruled out;
- (b) only one Major would remain in the area around Breedon Costessey and only two Majors would remain in the areas around Breedon Snetterton and Target Thetford.<sup>140</sup> In each area, the Merger would also give rise to a reduction in the number of Major suppliers as Cemex would no longer remain present;

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provided by the Parties, but the CMA notes that in any event the volume attributed to the Target Norwich Mortar Plant was *de minimis* ([§<]) such that the share accounted for by this volume in each area would be significantly less than 1% and therefore not material).

<sup>140</sup> The CMA has counted C&H Quickmix (the Carter/Tarmac JV) as a Major supplier because Tarmac is not otherwise present in the area and the CMA understands that C&H Quickmix is treated as part of the Tarmac Group.

- (c) as set out in Table 1 above, customers raised concerns in each of the areas around Breedon Snetterton, Target Thetford and Breedon Costessey (where only one customer was not concerned); and
- (d) with respect to each of Breedon Costessey and Breedon Snetterton, a competitor raised concerns about the impact of the Merger, including in one case that the Merger would strengthen the Parties' dominance in the local area.

209. On the basis of the evidence described above, the CMA believes that the Merger raises significant competition concerns in relation to the production and supply of RMX in the local areas around each of Breedon Snetterton, Target Thetford and Breedon Costessey.

- *Local competitive assessment – non-specialist aggregates*

210. The CMA carried out local competitive assessments in relation to the three non-specialist aggregates quarries which it had identified as requiring a more detailed competitive assessment. Table 2 above contains a summary of the main factors the CMA has considered when carrying out this detailed competitive assessment for each of these sites.

#### Breedon Low Harperley and Target Middleton

211. Having carried out this detailed analysis of the local areas, the CMA found that the Merger will not result in a realistic prospect of an SLC in relation to Breedon Low Harperley and Target Middleton, on the basis that sufficient competitive constraints will remain post-Merger. The CMA found that the remaining competitors in these areas will exert a sufficient constraint on the Parties post-Merger to prevent a realistic prospect of an SLC arising. In particular:

- (a) in respect of Breedon Low Harperley, the combined share of supply post-Merger would be moderate [x], with an increment of [5-10]%. Furthermore, 15 competing suppliers will remain post-Merger (including all four Majors), and there will be no reduction in the number of competing suppliers in the area given that Cemex remains present. Although some customers and competitors raised concerns with regard to the local area, on balance the CMA considers that the remaining competitors will exercise a sufficient competitive constraint on Breedon post-Merger. On this basis, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the production and supply of non-specialist aggregates in the area around Breedon Low Harperley; and

(b) in respect of Target Middleton, Breedon's share post-Merger would also be moderate [✂], albeit with a larger increment ([10-20]%). Post-Merger, twelve competing suppliers would remain in the area, including three Majors. Third party feedback in this area was mixed. Although one customer and one competitor expressed concerns, several other customers and competitors were satisfied that the Merger would not impact competition. On balance, the CMA believes that the remaining suppliers will exercise a sufficient competitive constraint on Breedon post-Merger. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC in the production and supply of non-specialist aggregates in the area around Target Middleton.

### Breedon Shierglas

212. Breedon Shierglas overlaps with Target Loanleven, Target Collessie and Target Carrat Farm (greenfield), none of which fails the CMA filtering.
213. Breedon submitted that competition concerns would not arise within this local area because:<sup>141</sup>
- (a) ten competitors to Breedon would remain post-Merger (including 'significant' regional independents such as D Geddes, Leiths, Pat Munro, Skene Group and Tillicoultry Quarries), such that customers will continue to have a range of competitive choices available to them post-Merger;
  - (b) the Parties' combined share would not exceed 50%, meaning at least 50% of the market is served by competitors;
  - (c) for the CMA to afford any weight to third party comments, such comments must be substantiated, and unsubstantiated comments (particularly from a small number of respondents) should not overly influence decision-making; and
  - (d) Breedon identified four competitors that had either obtained planning permissions to extend their quarries, re-opened a previously closed site or otherwise had potential entry and expansion plans in this area.
214. The CMA considers, however, that the Merger raises significant competition concerns in this area, because:

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<sup>141</sup> In addition, Breedon pointed to a possible D Geddes site at Wester Bleaton (See Breedon's response to the Issues Letter, Appendix 3 – Horizontal unilateral effects – aggregates, asphalt and RMX); however, as the CMA was not able to obtain information during its market investigation as to whether this site is functioning or is mothballed, or its volumes (if functioning), the CMA has not included this site in its analysis.

- (a) the weighted shares of supply of Breedon post-Merger [40-50]% with an increment of [5-10]% are at a level that is indicative of potential competition concerns;
- (b) although there are ten competing suppliers in the area around Breedon Shierglas, there are no other Majors;
- (c) one customer raised concerns with regard to the impact of the Merger in the local area;
- (d) the CMA regards the presence of Target Carrat Farm (greenfield) as an aggravating feature in this area. To the extent that Breedon were to activate the acquired Target Carrat Farm plant, this would be expected to increase Breedon's share in this area, strengthening its market position and increasing the impact of the Merger. Whilst the Parties have stated that Target Carrat Farm is not currently operational, they have not provided an explanation as to why Breedon is purchasing a greenfield site, or any evidence demonstrating that there is no realistic prospect that the relevant site could be operative within the foreseeable future; and
- (e) the CMA has not identified any evidence to suggest that entry or expansion would be timely, likely or sufficient so as to offset its concerns in this area (as further explained at paragraph 361 below).<sup>142</sup>

215. On the basis of the evidence described above, the CMA believes the Merger raises significant competition concerns in relation to the production and supply of non-specialist aggregates in the local area around Breedon Shierglas.

- *Local competitive assessment – asphalt*

216. The CMA carried out local competitive assessments in relation Breedon Longwater, which it had identified as requiring a more detailed competitive assessment. Table 3 above contains a summary of the main factors the CMA has considered when carrying out the detailed competitive assessment for this site.

217. Breedon Longwater overlaps with the Target Ely plant, which did not fail the CMA's filters.

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<sup>142</sup> [Merger Assessment Guidelines](#), section 5.8.

218. Breedon submitted that competition concerns would not arise within this local area because:
- (a) the increment accruing as a result of the Merger in the local area around Breedon Longwater is particularly limited and it is not credible to suggest it is sufficient to give rise to a realistic prospect of an SLC in this area;
  - (b) around Breedon Longwater, two competitors to Breedon would remain post-Merger, namely:
    - (i) Tarmac, a Major that is well-represented in this area; and
    - (ii) Vinci, a global construction group that is a significant player in this area (and is also the parent of Eurovia – which, Breedon submitted, was a very significant business in the construction industry in the UK). Breedon further submitted that Ringway (a subsidiary of Eurovia) has been appointed by Highways England as its contractor for a new £420m maintenance and response contract for the east of England (including Norfolk) and that Breedon therefore anticipated that that Ringway would be sourcing the vast majority of its asphalt supply for this project from the Vinci plant at Brightwell; and
  - (c) the CMA should not place undue weight on the third party concerns expressed in respect of the area around Breedon Longwater.
219. The CMA considers, however, that the Merger raises significant competition concerns in this area, because:
- (a) although the increment is limited at [0-5]%, the combined weighted shares of supply post-Merger would be high ([50-60]%). The CMA considers that these combined weighted shares of supply are strongly indicative of competition concerns;
  - (b) the number of competing suppliers around Breedon Longwater is limited. In particular, there is only one Major and one other supplier in the area around Breedon Longwater; and
  - (c) one customer and one competitor raised concerns about the impact of the Merger in the local area, with one citing the possible reduction of choice in the local area as a result of the Merger.
220. On the basis of the evidence described above, the CMA believes the Merger raises significant competition concerns in relation to the production and supply of asphalt in the local area around Breedon Longwater.

*Horizontal unilateral effects in the production and supply of Medium PSV Aggregates*

221. The Parties' sites are not located particularly close to each other. Breedon Temple Quarry is located in Northern Ireland, while Target Roan Edge and Target Cowieslinn are in the North West of England and Scotland respectively. The available evidence indicates that for each site, there are currently several competitor sites that are closer than the other Party's respective Medium PSV Aggregates quarries.
222. The Parties also generally deliver to different geographic areas:
- (a) Breedon's Temple Quarry only appears to deliver Medium PSV Aggregates to customers in Wales, Essex and Yorkshire in the UK; and
  - (b) by contrast, the Target Business' plants are located in Scotland and North West of England, and deliveries are predominantly made in those and nearby regions.
223. Evidence received from third parties indicates that the Parties do not compete particularly closely with one another:
- (a) no Cemex customers referred to Breedon as a viable alternative supplier;
  - (b) only one Breedon customer considered Cemex to be an alternative to Breedon Temple Quarry, albeit a very weak one; and
  - (c) no competitors submitted that the Parties' sites compete closely, with one competitor submitting that this was due to their respective geographical locations.
224. While one customer expressed a concern regarding Breedon's position in the 'high PSV aggregate market' in response to the CMA's question on concerns regarding the production and supply of Medium PSV Aggregates, no third parties raised Merger-specific concerns with respect to Medium PSV Aggregates. Furthermore, the customer raising a concern did not identify Target Roan Edge or Target Cowieslinn as viable alternatives to Breedon Temple Quarry in the production and supply of Medium PSV Aggregates.
225. On the basis of the evidence described above, the CMA believes that the Parties are not close competitors and that third party suppliers provide an effective competitive constraint on the Parties. As such, the CMA believes there is no realistic prospect of an SLC arising as a result of the Merger in relation to the production and supply of Medium PSV Aggregates in the local areas around Target Roan Edge, Target Cowieslinn and Breedon Temple Quarry.

*Horizontal unilateral effects in the production and supply of High PSV Aggregates*

226. Breedon supplies High PSV Aggregates from its quarries in Northern Ireland (Ballystockart), Scotland (Barbae) and mid-Wales (Tan-y-Foel), while the Target Business includes a quarry supplying High PSV Aggregates in Southern Wales (Target Gilfach). Breedon submitted that:<sup>143</sup>

- (a) the combined share of supply of the Parties post-Merger would be below the level at which horizontal unilateral effects might typically be found;
- (b) there are a significant number of additional competitors supplying High PSV Aggregates in GB;
- (c) there is no particular closeness of competition between Breedon and Target Gilfach in High PSV Aggregates; and
- (d) there is a progressive move away from rigid specification of PSV in road building to new alternative products/solutions.

227. The CMA's share of supply estimates, based on 2019 external volumes submitted by the Parties and third-parties, are set out in Table 4. Consistent with Breedon's submissions, the CMA estimates that the combined share of the Parties is moderate, at [20-30]% with an increment of [5-10%].<sup>144</sup>

**Table 4: Shares of supply for High PSV Aggregates**

Shares of supply	2019 external volume of aggregates with a PSV of 68 or above (tonnes)	Share
Breedon <sup>145</sup>	[REDACTED]	[10-20]%
Target Business	[REDACTED]	[5-10]%
<b>Combined</b>	[REDACTED]	<b>[20-30]%</b>
Bryn	[REDACTED]	[20-30]%
Conexpo	[REDACTED]	[10-20]%
Hanson	[REDACTED]	[10-20]%
AI	[REDACTED]	[5-10]%

<sup>143</sup> Breedon's response to the Issues Letter, Appendix 2, paragraphs 2 and 6.

<sup>144</sup> Breedon submitted that Tarmac's quarry at Pwlch Ffos (mid Wales) could also supply High PSV Aggregates but that it understood that this was mothballed (See Breedon response 3 July 2020 to CMA s109 Notice 30 June 2020, question 4). Tarmac confirmed that it does not currently produce High PSV Aggregates in GB.

<sup>145</sup> Includes Breedon Barbae, Tan-y-Foel and Ballystockart.

Shares of supply	2019 external volume of aggregates with a PSV of 68 or above (tonnes)	Share
Others <sup>146</sup>	[REDACTED]	[5-10]%

Source: Parties and third parties.

228. The evidence gathered by the CMA also suggests that the Parties do not compete particularly closely with each other. While one Cemex internal document [REDACTED]<sup>147</sup>, most third parties indicated that numerous credible alternatives to the Parties would remain post-Merger, such as [REDACTED], [REDACTED], and [REDACTED], and that the Parties were not comparatively closer competitors to each other as compared to other suppliers.
229. Most third parties did not raise concerns about competition in the production and supply of High PSV Aggregates, and only one third party suggested that the Parties compete closely with each other.
230. On the basis of this evidence, the CMA believes that the Parties are not close competitors and that third party suppliers provide an effective competitive constraint on the Parties. The CMA therefore believes that there is no realistic prospect of an SLC arising as a result of the Merger as a result of horizontal unilateral effects in relation to the production and supply of High PSV Aggregates in the UK.

### ***Coordinated effects in the supply of bulk cement***<sup>148</sup>

231. Coordinated effects may arise when firms operating in the same market recognise that they are mutually interdependent and that they can reach a more profitable outcome if they coordinate to limit their rivalry.<sup>149</sup> Firms may coordinate by dividing the market between them, for example by geographic area or customer characteristics, or by allocating contracts among themselves in bidding competitions. However, coordination need not involve all aspects over which firms compete.<sup>150</sup> Coordination can also be explicit or tacit. Explicit coordination is achieved through communication and agreement between the

<sup>146</sup> 'Others' include Kinegar ([REDACTED]; [0-5]%), Patersons ([REDACTED];[0-5]%), E&J Glendinning ([REDACTED];0-5]%), and Arkil ([REDACTED];[0-5]%).

<sup>147</sup> [REDACTED], April 2019.

<sup>148</sup> The CMA also considered whether the Merger might result in a realistic prospect of horizontal unilateral effects in the supply of bulk cement in the East of Scotland. However, due to the moderate combined shares of supply and the lack of concerns from third parties on this basis, the CMA does not consider that there is a realistic prospect of a substantial lessening of competition as a result of unilateral effects. As such, this theory of harm is not discussed further in this decision.

<sup>149</sup> [Merger Assessment Guidelines](#), paragraph 5.5.1.

<sup>150</sup> [Merger Assessment Guidelines](#), paragraph 5.5.2.



parties involved. Tacit coordination is achieved through implicit understanding between the parties, but without any formal arrangement.<sup>151</sup>

232. When assessing coordinated effects, the CMA has regard to whether there is evidence of pre-existing coordination, including by looking at current market characteristics.<sup>152</sup> The CMA examines the extent to which these market characteristics are conducive to coordination, including whether firms have the ability to reach and monitor the terms of coordination, and whether this would be internally and externally sustainable. If the pre-Merger market displays coordinated outcomes (whether tacit or explicit), the CMA considers whether the conditions for coordination have been strengthened or weakened as a result of the merger.<sup>153</sup> If there is no evidence of pre-merger coordination, the CMA examines whether the merger makes it more likely that firms in the market will start to coordinate, given the characteristics of the market.<sup>154</sup>
233. As noted above, coordination need not involve all aspects over which firms compete. The Guidelines set out that all three of the following conditions must be satisfied for coordination to be possible:<sup>155</sup>
- (a) firms need to be able to reach and monitor the terms of coordination.
  - (b) coordination needs to be internally sustainable among the coordinating group, ie firms find it in their individual interests to adhere to the coordinated outcome.
  - (c) coordination needs to be externally sustainable, in that the coordination is not undermined by competition from outside the coordinating group.
234. Whether these conditions are met involves an assessment of all of the available evidence in the round. As in any case, the available evidence in relation to a question that the CMA is required to consider may be mixed. Moreover, given the nature of coordination (particularly tacit coordination which, as noted above, can exist without any formal agreement between a coordinating group), it is particularly important to consider all of the available evidence together (within the context of the markets at issue).

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<sup>151</sup> [Merger Assessment Guidelines](#), paragraph 5.5.3.

<sup>152</sup> [Merger Assessment Guidelines](#), paragraph 5.5.5.

<sup>153</sup> [Merger Assessment Guidelines](#), paragraph 5.5.8.

<sup>154</sup> [Merger Assessment Guidelines](#), paragraph 5.5.4.

<sup>155</sup> [Merger Assessment Guidelines](#), paragraph 5.5.9.

### *Possible forms of coordination*

235. The CMA's assessment of the potential for coordinated effects was considered a specific hypothetical form of coordination. Based on the CMA's assessment of the characteristics of the supply of cement in the East of Scotland and the evidence set out below, the CMA considered that were tacit coordination to occur pre-Merger, it would most likely have the following characteristics:
- (a) pre-Merger, the CMA believes that there is a realistic prospect that the hypothetical coordinating group includes all of Tarmac, Cemex and Breedon.
  - (b) customers would be the most likely focus of coordination because of the degree of transparency around customer acquisition.
  - (c) the terms of coordination would be most likely to be brought about over time through repeated interaction in the market. Members of the coordinating group would refrain from responding (or quote supra-competitive prices in response) to pricing requests from customers and/or refrain from proactively seeking additional business. This position would be based on the view that it is more profitable to forego short-term customer gains in anticipation of greater profits from more elevated market prices in the longer-term.
236. There is some evidence to suggest that Breedon is less likely than the other two suppliers to form part of the coordinating group. Therefore, for completeness, the CMA has also considered whether competition concerns arise under this theory of harm even if Breedon were not to form part of the coordinating group pre-merger. For the reasons set out in paragraph 334, the CMA ultimately considers that whether Breedon is considered part of the coordinating group does not ultimately affect the outcome of the CMA's conclusion in relation to this theory of harm.

### *Pre-existing coordination*

237. The CMA has assessed the likelihood of pre-existing coordination in the relevant frame of reference by first looking at previous attempts to coordinate / its past investigations. The CMA then assessed, separately, whether either current market outcomes or current market characteristics (or both) are consistent with pre-existing coordination.

*Previous attempts to coordinate / past investigations*

238. The *Market Investigation* found evidence in 2013 that the (then) three GB cement producers (Cemex, Hanson and Lafarge) recognised the current (and past) structural susceptibility of the supply of cement to coordination and took steps to exploit this susceptibility, using shares of sales as a focal point.<sup>156</sup> The CC found that the GB cement markets were characterised by high concentration, a significant degree of transparency, frequent interactions between the main cement producers and a lack of complexity in the competitive environment and the products. The CC found that these factors, taken together, indicated that the GB cement producers had strong awareness of each other's actions and were able to anticipate each other's future actions, leading to strategic interdependence in the competitive behaviour of the cement suppliers and coordination between Cemex, Hanson and Lafarge. Additional factors that, in the CC's view, increased the structural susceptibility of these markets to coordination included high barriers to entry, limits to the competitive constraint imposed by imported cement and vertical integration into downstream operations.<sup>157</sup>
239. Breedon submitted that the prevailing circumstances are different to those that informed the *Market Investigation*, as is the geographic area and specific theory of harm adopted. In particular, Breedon submitted that:<sup>158</sup>
- (a) the CMA's coordination concerns in the present case are centred purely around a customer allocation mechanism, whereas such a concern was not identified by in the *Market Investigation Final Report*
  - (b) the theory of harm developed in the *Market Investigation Final Report* was a national one, whereas the CMA's concern in this case relates to the supply of bulk cement in the East of Scotland involving a sub-set of the players that are active at a national level (ie Tarmac, Target, and Breedon); and
  - (c) the *Market Investigation Final Report* focused on coordination between GB producers of cement. It found that the strength of the competitive constraint provided by imported cement was limited, whereas in the present case both Target and Breedon predominantly import to the East of Scotland.

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<sup>156</sup> [Market Investigation Final Report](#), paragraph 38.

<sup>157</sup> [Market Investigation Final Report](#), paragraph 36.

<sup>158</sup> Response to the Issues Letter, Appendix 1(b).

240. Breedon also submitted that the CMA should consider the extent to which the remedies from the *Market Investigation Final Report*, as well as structural changes to the market following the Anglo/Lafarge merger investigation, affect its assessment on coordinated effects.<sup>159</sup> In this regard, Breedon highlighted in particular:
- (a) the creation of a fifth UK cement producer; and
  - (b) the restrictions on the publication of GB cement market data and prohibition of the practice of issuing generic price announcement letters.
241. Breedon further submitted that the CMA offers no evidence that the structure of bulk cement supply in the East of Scotland is more conducive to coordination effects today than it was at the time the CC concluded its *Market Investigation* and decided on appropriate remedies, in the expectation that they would address its coordination concerns.
242. It is, of course, the case that the theory of harm investigated by the CMA in this case differs to that investigated in the *Market Investigation Final Report*. The CMA's investigation in this case has found, however, that many of the structural features that were considered to enable coordination in the *Market Investigation Final Report* exist today in the East of Scotland market. In particular, the East of Scotland cement market is characterised by a high level of concentration, a significant degree of transparency, high barriers to entry, a lack of product complexity and the vertical integration of cement suppliers into downstream operations. The CMA considers that this indicates that the structure of the East of Scotland cement market is, in principle, susceptible to, coordination, particularly given that tacit collusion between cement suppliers in Great Britain has been observed in the past.
243. While the CMA has carefully considered the remedies put in place in the *Market Investigation Final Report*, as well as structural changes to the market (including those brought about by the Anglo/Lafarge merger investigation), the CMA considers that these do not exclude competition concerns under a coordinated effects theory of harm. In particular:
- (a) while a fifth UK GB cement producer has been created, the CMA has found in this case that the relevant market may be narrower than national in scope. On this basis, the market structure in the East of Scotland, which features only three players, would be of the type that gave rise to concern in the *Market Investigation Final Report*;

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<sup>159</sup> Response to the Issues Letter, Appendix 1(b).

- (b) the remedies intended to reduce market transparency in the *Market Investigation Final Report* were aimed at addressing coordination based on shares of supply as a focal point, whereas the CMA's theory of harm in this case considers coordination based on customer allocation (which would not be materially affected by this remedy). For the reasons set out in detail in paragraphs 283 to 288 below, the CMA considers that the structure of supply and demand in the East of Scotland would allow suppliers to directly observe customer movements and changes in order volumes and therefore monitor any deviation from coordination based on customer allocation; and
- (c) notwithstanding these remedies and structural market changes, most structural features that were considered to enable coordination in the *Market Investigation Final Report* are currently present in the East of Scotland (as set out in paragraph 242 above).
244. More broadly, the CMA is required to consider, on the basis of the available evidence, whether the Merger gives rise to the realistic prospect of an SLC. While market developments in recent years should be taken into account, there is no basis, in fact or law, to assume that remedies put in place in a previous market investigation will necessarily prevent all possible forms of future coordination (including coordination that is different in nature from that which the remedies were originally intended to address) from emerging.
245. On this basis, Breedon's submission that the CMA is required to consider whether the supply of cement in the East of Scotland is 'more conducive' to coordination effects today than it was at the time the CC concluded its *Market Investigation* is incorrect. The CMA is required to assess the extent to which the current structure of supply is conducive to coordination, and whether the impact of the Merger will strengthen the conditions for coordination or make it more likely that such conditions will prevail.
246. Accordingly, absent evidence that the structure of supply has materially changed since the findings of the *Market Investigation Final Report*, the CMA considers it appropriate to rely on those findings (in conjunction with subsequent market developments) as part of its assessment in this case. In this regard, the Parties have not submitted any evidence showing that the features of the market that the CMA considers are conducive to coordination (for the reasons explained above) are no longer present in the East of Scotland market.

### *Current market outcomes*

247. The CMA has assessed whether current market outcomes are consistent with pre-existing coordination by looking at:

- (a) evidence from cement customers;
- (b) evidence from the Parties' internal documents;
- (c) evidence on shares of supply and pricing; and
- (d) evidence on capacity utilisation.

- *Evidence from cement customers*

248. In response to the concern raised that suppliers did not appear to be competing for new business, Breedon submitted that it did quote for new external business in the East of Scotland.<sup>160</sup> However, Breedon also submitted during the Issues Meeting that it had not approached customers to offer quotes but had instead been approached by them.<sup>161</sup> Breedon also stated that, when it had been approached by customers recently, it had quoted [redacted] margin (excluding transport costs) to these customers [redacted].

249. Breedon further submitted that cement competition in the East of Scotland is imperfect and that not all competitors being viable alternatives for all customers is consistent with non-coordinated competition concerns, particularly given the presence of significant transport costs.<sup>162</sup> Breedon submitted that, in any event, customers in the East of Scotland multi-source and that this would make it more difficult to establish and sustain a coordinated understanding.<sup>163</sup>

250. Several customers submitted that they had not switched suppliers in several years. For example:

- (a) one customer submitted that it had been with its East of Scotland supplier for seven to eight years;

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<sup>160</sup> Response to the Issues Letter, Appendix 1(b), 6.2.2.

<sup>161</sup> One customer [redacted] currently served by Cemex indicated that it was approached by Breedon for a quote. However, the CMA notes that this customer is located outside of the relevant geographic frame of reference and would therefore have likely not been served by Breedon's terminal in Dundee, as Breedon submitted that its terminal in Scotland cannot supply cement as far as South of Scotland.

<sup>162</sup> Response to the Issues Letter, Appendix 1(b).

<sup>163</sup> Response to the Issues Letter, Appendix 1(b), section 6.3.2.

- (b) another customer submitted that it had been with its East of Scotland supplier for two to three years; and
  - (c) another customer submitted it had been purchasing from its suppliers for four to six years.
- 251. While one customer indicated that it plays suppliers off against each other to get a better price, some third parties submitted to the CMA that suppliers in the East of Scotland do not appear to be interested in acquiring new business. In particular:
  - (a) one customer submitted that 'I have only had two phone calls from different suppliers in the last ten years. The cement manufacturers do not chase new business; it's very much a closed shop'; and
  - (b) another customer submitted that suppliers serve their own customer base, which seldom changes, and then fight with one another if a customer changes supplier (ie they will reduce the price and take another customer from them). The same customer also submitted that Cemex had 'not shown any interest in providing a quote as [...] they don't tend to chase down custom, rather stick with what they have'.
- 252. Overall, the majority of customers in the East of Scotland submitted that the existing level of competition between suppliers in the East of Scotland, as well as between suppliers East of Scotland and suppliers in West Central Scotland, was weak and that they faced limited choice in supplier. In particular:
  - (a) one customer in the East of Scotland submitted that it had very little choice beyond [redacted] two suppliers located in East of Scotland. That customer did not consider [redacted] to be an alternative supplier, even though it used to be served by Cemex in the past, submitting that [redacted] had stopped providing a viable alternative, with it being 'hard to pin down why';
  - (b) another customer similarly submitted that there were only two viable suppliers ([redacted] and [redacted]). This customer did not regard [redacted] and [redacted] as being competitive in terms of pricing, even though this supplier's RMX plants are located in close proximity to [redacted];
  - (c) as noted above, another customer in the East of Scotland submitted that cement suppliers on the East Coast did not tend to compete against each other for business and focused on serving their own customer base. It stated that suppliers in Glasgow did not tend to supply customers to any significant extent on the East Coast. The customer also submitted that Cemex, which could be a viable alternative, has 'not shown any interest in

providing a quote as... they don't tend to chase down custom, rather stick with what they have';

- (d) a further customer in the East of Scotland did not regard Breedon, AI or Hanson as viable suppliers. The customer was concerned that the Merger would effectively leave customers with a single supplier of cement (Tarmac).

253. Furthermore, with one exception (a customer located in Southern Scotland and therefore outside the geographic frame of reference), no customers considered suppliers of cement in Northern England to be a competitive constraint on suppliers in the East of Scotland. No customers in the East of Scotland regarded Quinn (located in Ireland) as a strong competitive constraint.

254. With regard to multi-sourcing, some customers located in the East of Scotland submitted that they multi-source. For example:

- (a) one customer submitted that it splits its cement purchases in roughly similar proportions between Tarmac and Breedon; and

- (b) another customer submitted that it splits its purchases in similar proportions between Cemex, Tarmac and Hanson.<sup>164</sup>

255. The CMA also notes, however, that some customers either appear to currently purchase cement exclusively or predominantly from a single supplier,<sup>165</sup> and that the available evidence provides limited overall insight into the extent of customer multi-sourcing.

- *The CMA's assessment of customer evidence*

256. The CMA notes that the evidence from customers, while mixed, in the round indicates that: (i) switching is limited; and (ii) responses to requests for quotes from suppliers are weak. The CMA considers that this indicates that suppliers are not competing hard to win customers from each other, which is consistent with pre-existing coordination between suppliers.

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<sup>164</sup> One more customer [X] submitted that it purchases cement from both Cemex (located in the East of Scotland) and Hanson (located in West Central Scotland). However, this customer is located in both the East and West Central Scotland and therefore it is not clear to the CMA from the evidence submitted whether this is multi-sourcing or sourcing from different suppliers for different locations.

<sup>165</sup> One customer [X] purchased cement exclusively from [X]. Another customer [X] currently purchases cement predominantly from Tarmac. While that customer also purchases cement from Cemex and Hanson, the volumes of cement purchased from Hanson are negligible and it has 'not purchased a lot of cement from Cemex this year due to supply issues'.



257. The CMA notes that there is some evidence of customer multi-sourcing, which could, in principle, make customer allocation more difficult. The CMA also notes, however, that the evidence in relation to customer multi-sourcing is relatively limited, and therefore that it is not able to conclude that customer multi-sourcing would preclude coordinated effects concerns (particularly where customer multi-sourcing in the market today appears not to have prevented the market outcomes consistent with pre-existing coordination described in detail above).

258. The CMA further notes, in this regard, that multi-sourcing in itself is not incompatible with a coordinated outcome. For example, customer allocation could relate to a proportion of customer demand or only certain customer sites.

259. The CMA therefore considers that, taken in the round, customer evidence is consistent with pre-existing coordination, whereby cement suppliers tend to focus on their existing customers and do not seek to win customers from other suppliers.

- *Evidence from the Parties' internal documents*

260. An undated Cemex internal document prepared for or by its senior management [REDACTED].<sup>166</sup> The internal document [REDACTED]. The document further sets out [REDACTED]. A further slide sets out [REDACTED]. For example, [REDACTED].

261. Breedon submitted that this particular document does not identify [REDACTED], but instead focuses on [REDACTED]. Breedon submitted therefore that this document does not go to evidencing coordination between the three identified competitors in the particular region of East of Scotland and cannot therefore be given weight in the CMA's assessment of this theory of harm.<sup>167</sup>

262. Cemex submitted that the document is not UK specific. It submitted that its [REDACTED] refers to a [REDACTED]. It submitted that decisions on Cemex's approach to UK cement strategy including customer pricing involve a [REDACTED].<sup>168</sup>

263. Cemex submitted that [REDACTED] competitors, Cemex submitted that:<sup>169</sup>

(a) [REDACTED]

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<sup>166</sup> Cemex submitted that this document was provided as a result of a search 'for documents prepared by, or for, or received by, any member of the board of directors of Cemex or Cemex senior management'.. (Cemex internal document production methodology to Draft Merger Notice, 3 February 2020, paragraph 3.6).

<sup>167</sup> Email from Nigel Seay dated Mon 24/08/2020 17:58.

<sup>168</sup> See *Cemex comments on internal document relating to cement market*, submitted on 24 August 2020.

<sup>169</sup> See *Cemex comments on internal document relating to cement market*, submitted on 24 August 2020.

(b) [REDACTED]

(c) [REDACTED]

264. Finally, Cemex [REDACTED].

265. The CMA does not agree with Breendon's suggestion that this document cannot therefore be given weight in the CMA's assessment of this theory of harm because it does not go to evidencing coordination between the three identified competitors in the particular region of East of Scotland. As noted in paragraph 234 above, the CMA is required to reach its assessment by considering all evidence in the round, rather than assessing whether there is clear and conclusive evidence of all elements of a theory of harm within a single item of evidence.

266. The CMA considers, in this regard, that this document, which was prepared for or by Cemex's senior management, provides some insight into Cemex's commercial strategy in Scotland (including in the East of Scotland, which, as described in paragraph 142 above, is referred to as [REDACTED] in another Cemex document).

267. Cemex specifically submitted that this document was produced [REDACTED]. Further, Cemex submitted that [REDACTED]. The CMA therefore considers that Cemex's description of this document confirms that it provides insight into Cemex's commercial strategy in the East of Scotland.

268. While Cemex suggests that these documents show that it was [REDACTED], the CMA notes that this is not consistent with the position set out on the face of the document, which [REDACTED].

269. The CMA therefore considers that this document is consistent with the existence of pre-existing coordination, given that it [REDACTED]. [REDACTED], and therefore the CMA considers that this document is consistent with pre-existing coordination through customer allocation

- *Evidence on shares of supply and pricing*

270. Breendon submitted that one of the conditions making the market more susceptible to coordination, namely stability in shares, tended to be observed to a lesser extent at a regional level than at the national level in the *Market Investigation*.<sup>170</sup>

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<sup>170</sup> Response to the Issues Letter, Appendix 1(b), section 3.2.

271. Cemex submitted that price stability is not probative of the CMA’s theory of harm given that the CMA’s theory of harm relating to coordinated effects in cement in Scotland is premised on coordination by way of customer allocation and not coordination of prices.<sup>171</sup>
272. The coordinated effects theory of harm being investigated in this case relates to potential customer allocation. As there can be some variance in the level of customer demand from year to year, stability in shares would not necessarily be a market outcome that would be observed under this theory of harm. On the other hand, an absence of customer switching could (depending on variances in customer demand) produce relatively stable market shares. The CMA notes that, to the extent available, shares of supply at the regional level, as presented in Table 5 below, appear to be stable (albeit over a relatively short period).

**Table 5: Shares of supply in Scotland, 2017 and 2019, excluding Breedon**

Supplier	External bulk cement sales (in thousand tonnes) to Scotland		Share	
	2017	2019	2017	2019
Tarmac	[redacted]	[redacted]	[60-70]%	[60-70]%
Cemex	[redacted]	[redacted]	[5-10]%	[5-10]%
AI	[redacted]	[redacted]	[5-10]%	[5-10]%
Hanson	[redacted]	[redacted]	[20-30]%	[20-30]%

*Source: Cemex’s responses to the CMA’s questions of 19 May 2020, third-parties. The estimates exclude Breedon for which 2017 data was not available (see Breedon’s responses to the CMA’s questions of 19 May 2020)*

273. The CMA also considers that stable prices are consistent with pre-existing coordination based on customer allocation, given that such coordination would lead to weakening of competition and therefore price stability.
274. The evidence also indicates that, to the extent available, prices in the East of Scotland similarly appear to be relatively stable (albeit over a relatively short period). In particular, the average price per tonne of the Cemex’s Leith cement terminal was [redacted] in 2016, [redacted] in 2017 and [redacted] in 2018, despite some variance in the level of sales over that period.<sup>172</sup>

- *Evidence on capacity utilisation*

275. Breedon submitted that its Kinnegad plant in Dublin, which supplies its Dundee import terminal in Scotland, has been operating [redacted].<sup>173</sup> Breedon

<sup>171</sup> See *Cemex comments on internal document relating to cement market*, submitted on 17 August 2020.

<sup>172</sup> See Cemex Annex 30 (May 2019).

<sup>173</sup> Breedon response to CMA email of 13 August 2020 (cement) including Annex 1.

submitted that [REDACTED] this impacts Breedon's competitiveness as a supplier of external customers in the East of Scotland.

276. Breedon submitted that it assessed its current practical notional capacity of the Kinnegad plant to be between [REDACTED] tonnes to [REDACTED] tonnes per annum. Breedon further submitted that output in 2017, 2018 and 2019 had been [REDACTED] ([REDACTED] tonnes, [REDACTED] tonnes and [REDACTED] tonnes respectively).<sup>174</sup> Breedon submitted that its (pre-COVID-19) budgeted volumes for 2020 were [REDACTED] tonnes.
277. The CMA considers that the available evidence, while mixed, indicates that the Dublin plant may have spare capacity to increase supply within the East of Scotland:
- (a) in each of the past three years, the Dublin plant's output was [REDACTED]; and
  - (b) the level of spare capacity appears to be [REDACTED]. A comparison of the mid-point of practical notional capacity identified by Breedon with the Dublin plant's output over the past three years indicates [REDACTED] tonnes on average over this period.<sup>175</sup> This amounts to [REDACTED] Breedon's current external volumes from its terminal in Dundee (which amount to [REDACTED] tonnes per year<sup>176</sup>). If Breedon was to [REDACTED], it would effectively [REDACTED], increasing its share of supply in the East of Scotland [REDACTED]<sup>177</sup> [REDACTED].
278. The Parties' import terminals in Scotland also appear to be have significant amounts of spare capacity:
- (a) Breedon submitted that its notional maximum annual capacity of the Dundee terminal would be approximately [REDACTED] tonnes per annum. This compares with total (ie both internal and external sales) of that terminal of approximately [REDACTED] tonnes of cement in 2019;<sup>178</sup> and

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<sup>174</sup> Breedon response to CMA email of 13 August 2020 (cement) including Annex 1. Breedon submits that [REDACTED].

<sup>175</sup> Based on paragraph 275, the mid-point of Dublin plant's practical notional capacity would be [REDACTED] tonnes. Comparing this with the output of the Dublin plant in each of 2017, 2018 and 2019 of [REDACTED] tonnes, [REDACTED] tonnes and [REDACTED] tonnes respectively, would imply spare capacity of [REDACTED] tonnes, [REDACTED] tonnes and [REDACTED] tonnes respectively in each of 2017, 2018 and 2019 ([REDACTED] tonnes on average). Including 2020 budget in this estimate would not materially affect this figure (ie it would result in spare capacity of [REDACTED] tonnes on average).

<sup>176</sup> Based on Breedon's response to the CMA's questions of 18 February. Breedon submitted that, in 2019, Dundee terminal sold [REDACTED] tonnes of cement, of which [70-80]% was for internal supply within Breedon. This implies external volumes of the Dundee terminal in 2019 to be [REDACTED] tonnes.

<sup>177</sup> Based on total external volumes of the Parties' cement terminals in Dundee and Leith (see Annex 14 to *the Merger Notice* and Breedon's response to the CMA's questions of 18 February), as well as total external volumes of Tarmac plant/depots in the East of Scotland (see email from [REDACTED]).

<sup>178</sup> See Breedon's response to the CMA's questions of 18 February.

(b) the Parties submitted that the Target cement terminal in Leith had capacity utilisation rates of [50-60]%, [60-70]% and [60-70]% in 2017, 2018, and 2019 respectively.<sup>179</sup>

279. The CMA also notes that Breedon is likely to have to obtain additional supplies of cement (whether from internal or external sources) within the medium-term future, given that it will operate the Target Cement Terminal in Leith post-Merger. Absent the closure or sale of that terminal (which Breedon has not indicated to the CMA), [REDACTED].

280. In the round, the CMA therefore considers that Breedon's submissions that capacity constraints impact its ability to be an effective competitor in the East of Scotland are not credible, and therefore do not preclude coordinated effects concerns.

- *Conclusion on market outcomes*

281. The CMA considers that the evidence on current market outcomes set out above is consistent with pre-existing coordination in the supply of bulk cement in the East of Scotland.

*Current market characteristics*

282. The CMA has examined the extent to which market characteristics are conducive to coordination, including:

- (a) whether firms have the ability to reach and monitor the terms of coordination;
- (b) whether coordination is internally sustainable ie whether firms find it in their individual interests to adhere to the coordinated outcome; and
- (c) whether coordination is externally sustainable ie whether there is little likelihood of coordination being undermined by competition from outside the coordinating group.

- *Ability to reach and monitor the terms of coordination*

283. For coordination to emerge, the firms involved need to be able to reach a common understanding. In general, the fewer firms in the market, the easier it will be to reach a common understanding.<sup>180</sup> Likewise, reaching and

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<sup>179</sup> See Breedon's response to the Issues Letter, Appendix 1(b), section 2.1.

<sup>180</sup> [Merger Assessment Guidelines](#), paragraph 5.5.11.

monitoring terms of coordination will be easier where the products supplied are homogeneous. In addition, the more transparent the market, the easier it will be to monitor any terms of coordination (although market transparency need not be total or 'perfect' in order for coordinated effects to exist).

284. Breedon submitted that, while there are only three suppliers in the East of Scotland (Tarmac, Breedon and the Target Business), there are substantial asymmetries between the scale and cost economics of Tarmac on the one hand and Breedon and Cemex on the other, which would make it more difficult for the coordinating group to reach an understanding. In particular, Breedon submitted that Tarmac's Dunbar plant provides it with a large-scale source of cheap cement in the East of Scotland and that Tarmac has strong incentives to ensure the plant is fully utilised. In contrast, Breedon submitted that Breedon and Target rely on imported cement and operate at a smaller scale.<sup>181</sup>
285. Breedon also submitted that there were a number of additional factors that mitigated against the ability to reach and monitor the terms of coordination, including:
- (a) the Cement Market Data Order 2016 and Price Announcement Order 2016, which restrict the disclosure and publication of cement production, sales volume and price data leading to limited availability of information to estimate overall cement sales or individual supplier shares;
  - (b) customer multi-sourcing, which precludes a clear-cut allocation of East of Scotland customers between Tarmac and the Target Business; and
  - (c) the CMA's suggestion (based on customer feedback) that customers did not consider Breedon to be a competitor for external sales would, according to Breedon's submission, lead to the conclusion that it could not meaningfully form part of a coordinated understanding in respect of those sales.<sup>182</sup>
286. The CMA considers that there are a number of characteristics (as described in more detail elsewhere in this decision) of the supply of cement in the East of Scotland that are conducive to reaching and monitoring hypothetical terms of coordination on customer allocation. In particular:

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<sup>181</sup> Response to the Issues Letter, Appendix 1(b), section 6.2.1.

<sup>182</sup> Response to the Issues Letter, Appendix 1(b), section 6.2.1.

- (a) cement is a homogenous product. The homogeneity of cement means that monitoring of switching is made easier, as it is not complicated by different products, grades or types;<sup>183</sup>
- (b) there are only three suppliers of bulk cement located in the East of Scotland (Breedon, the Target Cement Terminal and Tarmac). As set out further below (paragraph 327), the CMA believes that Breedon has the ability to compete for at least some external customers in the East of Scotland.
- (c) the number of customers in the East of Scotland region appears to be limited;<sup>184</sup>
- (d) customer feedback suggests that customers do not often switch suppliers;
- (e) most customers that spoke to the CMA purchase cement from a limited number of suppliers, thereby making it easier for suppliers to track where volumes are lost;
- (f) the available evidence also indicates that customers tend to purchase cement from fixed locations, which is likely to further support the ability of suppliers to track lost volumes of supply;<sup>185</sup> and
- (g) all three of the cement suppliers in the East of Scotland are vertically integrated. Since they are active in downstream markets (such as RMX and building products), they have additional knowledge of the conditions of competition in those markets. Although demand for RMX and building products is likely to vary depending on economic cycles and the impact in construction, these trends are observable to cement suppliers.<sup>186</sup>

287. In light of these characteristics, the CMA does not believe that the other factors identified by Breedon would preclude the ability to reach and monitor the terms of coordination. In particular:

- (a) while supplier asymmetry could make it more difficult to reach an understanding on price, such an understanding is not a necessary part of coordination based on customer allocation. Instead, customer allocation can result from less complex mechanisms (such as refraining from

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<sup>183</sup> See also [Market Investigation Final Report](#), paragraph 7.21.

<sup>184</sup> Breedon [X]. The Target Cement Terminal only has around [X] external customers in Scotland and [X] in the East of Scotland (Based on the Cemex customer heat map. See response to question 31 of the 17 January 2020 Request for Information).

<sup>185</sup> In particular, the majority of customers the CMA spoke to only appeared to operate ready-mix-concrete plants in fixed locations. Only a small number of customers operated mobile RMX plants/volumetric trucks, on top of fixed RMX plants.

<sup>186</sup> See also [Market Investigation Final Report](#), paragraphs 7.25-7.26.

providing competitive offers to customers of the other members of the coordinating group, in the way suggested by the evidence received from customers described at paragraph 252 above).

- (b) while supplier asymmetry could, more broadly, make it more difficult to reach an understanding, coordinated outcomes can occur where there are differences in business models, scale and cost economics between different suppliers for example because the preferred strategies of suppliers within the market in question may vary (which the CMA considers may be the case, for the reasons described below in paragraph 327(a), with respect to Breedon);
- (c) while the Cement Market Data Order 2016 and Price Announcement Order 2016 could have had an impact on price/market share coordination, this is less relevant for reaching an understanding when coordinating on customer allocation, where the establishment of a common price/market share as a focal point is not a requirement; and
- (d) For the reasons set out in paragraphs 256 to 259 above, the CMA does not believe that the existence of multi-sourcing is incompatible with coordination based on customer allocation.

288. The CMA therefore considers that the characteristics of the market are conducive to reaching and monitoring coordination through customer allocation. This reduced threat of competition would, in turn, reduce competitive pressure on the prices offered by different suppliers to their existing customers. The CMA notes that such customer allocation would enable coordinating firms to detect easily when a participant has deviated from coordinated behaviour.

- *Internal sustainability*

289. Coordination will be sustainable only where the additional profit from coordination is sufficiently high, and there is an effective mechanism to punish deviation. If coordination is not sufficiently profitable, or the punishment is not sufficiently swift and painful, a firm may prefer to deviate. It might do so if the short-term gain that the firm makes from having a more competitive offer than the coordinating firms outweighs the costs to it of future punishment. Such punishment may take the form of a reversion to more intense competition by the other firms rather than a deliberate punitive strategy on their part.<sup>187</sup>

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<sup>187</sup> [Merger Assessment Guidelines](#), paragraph 5.5.15.



290. As co-ordination is not necessarily an ‘all or nothing’ proposition, the punishment of any deviation need not necessarily entail a complete breakdown in co-ordinating conduct across the board. In the case of customer allocation, deviation on a local and selective basis may be responded to with localised retaliatory punishment. Therefore, a tit-for-tat response to customer poaching might not be particularly costly for the responding firm. In fact, engaging in a tit-for-tat strategy in response to customer poaching (and therefore gaining a customer) would likely be more profitable than the alternative of not retaliating (and therefore losing a customer).
291. In assessing whether coordination would be internally sustainable, the CMA has considered whether there would be strong incentives for coordinating firms to deviate and to what extent such deviation could be punished by rivals.
292. Breedon submitted that the allocation of customers is not clear-cut. As noted above, Breedon submitted that customers multi-source and that it has continued to quote for new customers (although it also submitted that it quoted a [redacted] margin (excluding transport costs) to new customers [redacted]). Breedon also submitted that it has lost customers in Scotland in recent years [redacted] and has not sought or made gains from other suppliers in the East of Scotland to punish such losses.
293. Finally, Breedon submitted that Cemex [redacted].<sup>188</sup>
294. Taking the available evidence in the round, the CMA considers, however, that this evidence indicates that coordination would be internally sustainable.
295. First, as set out above, the CMA considers that the small number of suppliers in the East of Scotland would tend to help sustain coordination.<sup>189</sup> In this context, there are only three suppliers of bulk cement located in the East of Scotland (Breedon, the Target Cement Terminal and Tarmac).
296. Second, as set out at paragraph 286 above, the available evidence indicates that the cement market in the East of Scotland displays a number of features that make customer switching easy to detect and monitor. Hence, it would be difficult for a supplier to deviate without being detected as any substantial sales efforts would be noticed by rival suppliers.
297. Third, to the extent that any supplier did seek to win customers more aggressively, the CMA considers that other suppliers could punish such deviation by targeting the established customers of the deviating firm with a

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<sup>188</sup> See Response to the Issues Letter, Appendix 1(b), section 6.2 and Breedon response to CMA email of 13 August 2020 (cement) including Annex 1.

<sup>189</sup> [Merger Assessment Guidelines](#), paragraph 5.5.16.

selectively discounted price. Given that the supply of cement appears to be characterised by frequent and steady orders, and customers are typically not subject to any exclusivity requirements, a punishment consisting of tit-for-tat retaliation could quickly follow any deviation.

298. In this regard, one customer [redacted] stated its explicit belief that cement suppliers are monitoring – and punishing – customer poaching by other suppliers, stating that ‘Cemex and Tarmac fight with one another in the event of one supplier moving - they will reduce the price and take someone else.’ The CMA further notes that tit-for-tat retaliatory behaviour was a feature of the conduct observed by the CC in the *Market Investigation Final Report* (and the existence of remedies put in place at the time of that investigation does not itself provide a basis to conclude that this behaviour has necessarily been fully removed from the market).
299. In relation to Breedon’s submission that it has lost customers in Scotland in recent years and has not sought or made gains from other suppliers in the East of Scotland to punish such losses, the CMA notes Breedon’s submission during the Issues Meeting that these customers were located outside of the relevant geographic frame of reference (in South of Scotland), [redacted]. The CMA therefore considers that such customer losses are not relevant for the CMA’s assessment of this theory of harm.
300. Fourth, coordination will be harder to sustain where there is a firm with substantially different incentives to coordinate than its rivals, and with the capacity to take significant share from any group of firms that tried to coordinate without its participation. Such a firm is sometimes termed a ‘maverick’.<sup>190</sup> Based on the information available to it, the CMA considers that there is no evidence suggesting that any of the suppliers in the East of Scotland acts as a maverick firm to disrupt any potential pre-existing coordination. In this context, the CMA considers that Breedon’s submissions with regard to the margins it quotes to new customers is consistent with it not seeking to compete strongly for these customers. The CMA also considers, as discussed in paragraph 308, that the constraint from suppliers in West-Central Scotland is weak and that there is no evidence that any of these suppliers has acted as a maverick in the past.
301. Fifth, while there is some asymmetry in the positions of the coordinating group, the CMA notes that coordinated outcomes can occur in spite of differences in business models, scale and cost economics between different suppliers. The CMA also notes that a customer allocation mechanism is able,

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<sup>190</sup> [Merger Assessment Guidelines](#), paragraph 5.5.18.

in principle, to accommodate more significant asymmetries between members of the coordinating group given the means of detecting deviation (sales losses involving individual customers) and punishment (ie localised retaliation in circumstances in which suppliers are able to price discriminate).<sup>191</sup>

302. Sixth, as noted above, the CMA considers that multi-sourcing does not preclude coordination based on customer allocation given the level of transparency that remains in the market. For example, the CMA notes, in this regard, that the members of the coordination group are vertically integrated and therefore compete downstream with their customers. This leaves the coordinating group well-placed to detect any material changes in its customers' volumes (and therefore whether their customers are being supplied by another member of the group).
303. Finally, while Breedon has suggested that [redacted], the CMA does not believe that this position is credible. In particular, the CMA understands [redacted].
304. On this basis, the CMA believes that there may be sufficient internal sustainability to support coordination between bulk cement suppliers in the East of Scotland.

- *External sustainability*

305. Coordination will be sustainable only if the outside competitive constraints on the firms involved in coordination are relatively limited. It is not necessary for all firms in the market to be involved in coordination but those firms which coordinate need to be able collectively to exercise a degree of market power.<sup>192</sup>
306. Breedon submitted that suppliers from West Central Scotland appear at least as able to compete for external sales as Breedon in the East of Scotland. In particular, Breedon submitted that:
- (a) The supply terminals of Hanson and AI are closer to population centres within the East of Scotland than some of the facilities operated by the suppliers located in the East of Scotland (see paragraphs 137 and 138);
  - (b) given the location of its cement facilities, Hanson is particularly well-situated to serve customers throughout the central belt of Scotland

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<sup>191</sup> This contrasts with the example from the *Merger Assessment Guidelines* above, which relates to retaliation being potentially costly in cases in which coordination takes place on price where suppliers are not able to price discriminate.

<sup>192</sup> [Merger Assessment Guidelines](#), paragraph 5.5.17.

(including into the East of Scotland and around Edinburgh) (see paragraph 125(a));<sup>193</sup>

- (c) if it is possible to supply customers in the West of Scotland from the East of Scotland then the reverse should also hold, all else being equal. In this context, Breedon submitted that Cemex has supplied external customers in the West of Scotland (see paragraph 127); and
- (d) Hanson supplies more customers in the East of Scotland than Breedon (which [redacted]). Breedon submitted that it also believes that Scotscreed in Dundee is served by AI (see paragraph 126).

307. In relation to external constraints on the coordination group from outside of Scotland, Breedon submitted that:

- (a) it understood that Quinn (Ireland) supplies cement into Scotland (see paragraph 125(c)); and
- (b) between [20-30]% and [20-30]% of Cemex's annual external sales in the East of Scotland were not supplied by Leith in the period 2017-2019 (ie they were supplied from England).<sup>194</sup>

308. The CMA considers that the evidence taken in the round suggests that suppliers in West Central Scotland do not act as a material competitive constraint on suppliers in the East of Scotland. In particular:

- (a) Hanson and AI submitted that the straight-line travel distances from their sites in Scotland within which 80% of external volumes of bulk cement were delivered in 2019 were [redacted] and [redacted] miles respectively. These straight-line distances reach only into a relatively limited part of East of Scotland (in case of [redacted]), or in case of [redacted], do not reach East of Scotland at all;
- (b) as described in paragraph 143, the majority of customers located in the East of Scotland submitted that cement suppliers based in West Central Scotland are not viable alternatives and typically do not compete strongly for business in the region;
- (c) while some customers purchased cement from Hanson in Glasgow for their operations in the East of Scotland, such volumes were very limited for most of these customers (see paragraph 144). These customers also told the CMA that the supply of such limited volumes cannot be taken to

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<sup>193</sup> See also Breedon response to CMA email of 13 August 2020 (cement) including Annex 1.

<sup>194</sup> See Response to the Issues Letter, Appendix 1(b), footnote 8.

mean that Hanson would be a viable alternative for their main supply sources (from East of Scotland suppliers).

(d) one competitor with cement assets in West Central Scotland submitted that it considered itself to be a weak competitor to the Parties' operations in the East of Scotland. While another competitor with cement assets in West Central Scotland indicated that it is a material competitor to the Parties, it also stated, more specifically, that it competed with Cemex 'in most areas around Bellshill and Glasgow'; so, in West Central Scotland rather than in the East of Scotland.

309. In relation to external constraints on the coordinating group outside of Scotland, as discussed in paragraph 145, no customers based in the East of Scotland considered suppliers of cement in Northern England to be a competitive constraint on suppliers in the East of Scotland. Further, no customers in the East of Scotland regarded Quinn (located in Ireland) as a viable alternative source of supply.

310. In relation to Breedon's submission that between [20-30]% and [20-30]% of Cemex's annual external sales in the East of Scotland were supplied from England, the CMA notes that Breedon has not provided any evidence to support these submissions. Further, no third party has told the CMA that Cemex supplies cement into Scotland through any other means than through its terminal in Leith.

311. The CMA therefore considers that the available evidence indicates that suppliers of cement from outside Scotland do not act as a strong competitive constraint on suppliers in the East of Scotland.

312. Finally, as noted below at paragraphs 375-379 and 385, the CMA considers that the market is characterised by high barriers to entry and expansion and that countervailing buyer power is limited.

313. On this basis, the CMA considers that there may be limited external constraints which would disrupt potential coordination.

- *Conclusion on current market characteristics*

314. Accordingly, for the reasons described in detail above, the CMA considers that:

(a) the characteristics of the market are conducive to reaching and monitoring coordination through customer allocation;

- (b) there may be sufficient internal sustainability to support coordination between cement suppliers in the East of Scotland; and
- (c) there may be limited external constraints which would disrupt the coordination.

#### *CMA's current view on pre-existing coordination*

315. Based on the previous findings in the *Market Investigation Final Report* of tacit coordination in the supply of cement (see paragraphs 238 to 246), as well as current market outcomes and characteristics described in paragraphs 275 and 335, the CMA believes that there is or may be pre-existing coordination between Cemex, Tarmac and Breedon in the supply of bulk cement in the East of Scotland.<sup>195</sup>

#### *Merger effect*

316. The CMA has considered whether the conditions for coordination have been strengthened or weakened as a result of the Merger. In this context, the CMA generally considers that a merger in a market already showing coordinated outcomes would be likely to make coordination more sustainable or effective.<sup>196</sup>
317. The CMA has assessed the impact of the Merger on each of:
- (a) the ability to reach and monitor terms of coordination;
  - (b) internal sustainability of coordination; and
  - (c) external sustainability of coordination.

#### *Ability to reach and monitor the terms of coordination*

318. Breedon submitted that it is difficult to see how the Merger will result in a material change in understanding in the ability to reach and monitor any terms of coordination, given the presumption of pre-existing coordination involving customer allocation, the nature of the Merger, whereby Breedon effectively assumes Cemex's position in Leith, and the small reduction in asymmetry

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<sup>195</sup> The CMA notes that any explicit agreement between cement suppliers to coordinate their behaviour (and in particular to allocate customers) may breach the Chapter I prohibition in the Competition Act 1998 (as well as the equivalent EU prohibition). This decision does not consider whether the potential coordination in this market is tacit or explicit (and therefore whether the behaviour falls under Chapter I prohibition of the Competition Act 1998).

<sup>196</sup> [Merger Assessment Guidelines](#), paragraph 5.5.8.

between Tarmac (which will continue to operate at a much larger scale) and the remaining suppliers.<sup>197</sup>

319. The CMA notes, however, that the Merger would:
- (a) lead to a reduction in the number of suppliers from 3 to 2 in the East of Scotland in a market that already displays signs of coordination; and
  - (b) increase symmetry by making the Merged Entity a materially larger supplier. Tarmac, with a share of supply of [70-80]%, is larger than the two other suppliers in the East of Scotland, with shares of supply of [5-10]% (Breedon) and [10-20]% (Target) respectively.<sup>198</sup> This gap will be narrowed as a result of the Merger.
320. As the number of firms in the market falls and symmetry increases, it becomes easier to align behaviour, reach a collusive outcome and monitor the terms of coordination.<sup>199</sup>

#### *Internal sustainability*

321. The CMA *Merger Assessment Guidelines* indicate that the lower the number of firms and the higher symmetry, the more internally sustainable coordination becomes.<sup>200</sup>
322. Breedon submitted that the Merger should not have any material impact on firms' relevant monitoring capabilities, despite the reduction in the number of suppliers in the hypothesised coordinating group, because the other supplier would immediately detect deviation.<sup>201</sup>
323. Breedon also submitted that the Merger might plausibly destabilise any pre-Merger coordinated understanding, by giving Breedon access to the Leith terminal and (potentially) a cheaper source of imported cement, thereby changing the cost economics of supply.<sup>202</sup> Breedon submitted that it is, in any

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<sup>197</sup> Response to the Issues Letter, Appendix 1(b), section 6.2.

<sup>198</sup> Based on total external volumes of the Parties' cement terminals in Dundee and Leith (see Annex 14 to the *Merger Notice* and Breedon's response to the CMA's questions of 18 February), as well as total external volumes of Tarmac plant/depots in the East of Scotland (see email from Mike Nicholls received in Monday, August 3, 2020 2:07 PM).

<sup>199</sup> *Merger Assessment Guidelines*, paragraph 5.5.11 and 5.5.13.

<sup>200</sup> *Merger Assessment Guidelines*, paragraph 5.5.16.

<sup>201</sup> Response to the Issues Letter, Appendix 1(b), section 6.3.2.

<sup>202</sup> Response to the Issues Letter, Appendix 1(b), section 6.3.2.

event, currently unable to compete for external customers, meaning that there would be no merger effect.<sup>203</sup> In particular, Breedon submitted that:<sup>204</sup>

- (a) Breedon supplies [REDACTED], whereas Hanson, which the CMA does not consider a strong competitive constraint on suppliers in the East of Scotland, serves a greater number of customers in the East of Scotland than Breedon;
- (b) [REDACTED];<sup>205</sup>
- (c) [REDACTED] which, as set out above, Breedon submits [REDACTED]; and
- (d) Breedon has quoted in response to external sales opportunities out of Dundee but [REDACTED] has been unsuccessful in doing so in practice.

324. Breedon also submitted that it understands that [REDACTED].<sup>206</sup>

325. The CMA believes that monitoring deviations would be made easier by the Merger, given that, in particular, the Merger would reduce the number of firms from 3 to 2 and increase the symmetry between Tarmac and Breedon. This means that for example, if Tarmac were to lose a customer in the East of Scotland post-Merger to another supplier, there would be more certainty about which supplier it lost the customer to than there was before the Merger.

326. Regarding any impact of the Merger on Breedon's economics of supply, the CMA considers that, if Breedon were to obtain a cheaper source of supply of cement post-Merger, this would be likely to bring its cost structure more in line with that of Tarmac,<sup>207</sup> which would also reduce asymmetry between Tarmac and the Merged Entity.

327. The CMA notes that Breedon's submissions on its inability to compete for external customers were provided without any supporting evidence to enable the CMA to understand the economics of supplying cement from its Dundee terminal. However:

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<sup>203</sup> On the basis that, if Breedon could not compete for external customers, Breedon would not be included in the coordination group because Tarmac or Cemex could sell to Breedon's customers without risk of retaliation. Similarly, if Breedon could not compete for external customers, it would not have the ability to be a disruptor.

<sup>204</sup> Response to the Issues Letter, Appendix 1(b), sections 6.3.2 and 2.1. Breedon response to CMA email of 13 August 2020 (cement) including Annex 1.

<sup>205</sup> For example, Breedon submits that it has earned an average margin over variable costs, including the direct costs of importing cement to the terminal from Breedon's Irish cement plant, of £[REDACTED] per tonne on the contract to its [REDACTED] over the last two years. This margin excludes transport costs, [REDACTED]. In comparison, Breedon estimates that the costs of transporting cement from its Dundee terminal to Edinburgh, for instance, are around £[REDACTED] per tonne.

<sup>206</sup> Response to the Issues Letter, Appendix 1(b), section 6.2.2.

<sup>207</sup> Breedon's submissions suggest that Tarmac is able to obtain cement more cheaply than Breedon and Cemex.



- (a) while Breedon supplies [REDACTED] (it accounts for [5-10]% of the East of Scotland market). Further, Breedon's submissions during the Issues Meeting that [REDACTED] suggest that Breedon has a material incentive to [REDACTED] of this scale that is willing to acquire product at the [REDACTED] offered at present by Breedon, and therefore to minimise the risk that other suppliers could seek to win that customer from Breedon. In particular, Breedon submitted that its [REDACTED];
- (b) even if Breedon's submission [REDACTED] is accurate (for which only limited underlying evidence has been provided), this would suggest that Breedon should be able to compete in at least some parts of the East of Scotland;
- (c) while there are likely to be some differences in the economics of the two businesses, Cemex currently supplies many external customers across both East and West Central Scotland using imported cement (from [REDACTED]). Furthermore, the evidence discussed in paragraphs 275 to 280 is consistent with Breedon having spare capacity to service additional customers in the East of Scotland. This suggests that Breedon might similarly be able to compete for many external customers in East of Scotland using imported cement;
- (d) Breedon submitted that 'there is a need for imports of cement into Scotland by rail and road from England, and/or by ship into the West and East of Scotland, including the Breedon and Target Cemex facilities' as 'the total usage of cement in Scotland exceeds domestic Scottish production'.<sup>208</sup> This indicates that there might be an additional incentive (and therefore lower opportunity cost) for Breedon to supply cement externally into Scotland; and
- (e) while Breedon submitted that it has quoted in response to external sales opportunities out of Dundee, Breedon submitted during the Issues Meeting that it quoted [REDACTED] (excluding transport costs) to these customers [REDACTED]. The CMA considers that this is more consistent with a lack of interest in competing for customers rather than a lack of ability to compete.

328. [REDACTED].

329. On this basis, the CMA believes that the Merger would make coordination more internally sustainable.

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<sup>208</sup> Response to the Issues Letter, Appendix 1(a).

### *External sustainability*

330. Breedon submitted that it sees no reason why the strength of the threat from suppliers in the West Central Scotland would be diminished by the Merger.<sup>209</sup>
331. As discussed in paragraphs 308, the CMA does not consider that suppliers in West-Central Scotland generally act as a strong competitive constraint on suppliers to customers in the East of Scotland. More broadly, the CMA considers that there may be limited external constraints which would disrupt potential coordination (see paragraph 313).

### *Conclusion on merger effect*

332. The Merger would reduce the number of firms from 3 to 2 and make the market more symmetric. This would increase the ability to reach and monitor the terms of coordination and make pre-existing coordination more sustainable and/or effective.

### *Alternative position if Breedon were not to form part of the coordinating group*

333. As noted above, there is some evidence to suggest that Breedon is less likely than the other two suppliers to form part of the coordinating group (in particular because it has [X] at present) pre-Merger. For completeness, the CMA has also considered whether competition concerns would arise under this theory of harm if Breedon were not part of the coordinating group pre-merger.
334. Based on the available evidence, the CMA considers that concerns would still arise even if Breedon were considered not to form part of the coordinating group pre-merger. In this respect, the CMA considers that:
- (a) the Merger would increase the ability to reach and monitor the terms of coordination post-Merger to some extent given that it would reduce symmetry between Tarmac and Cemex pre-Merger and Tarmac and the Merged Entity post-Merger;
  - (b) given that the East of Scotland market is already conducive to coordination, and this conduciveness will be increased post-Merger, the CMA considers that the Merged Entity (including Breedon) would have an incentive to be part of the coordinating group post-Merger; and

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<sup>209</sup> Response to the Issues Letter, Appendix 1(b), section 6.2.2.

- (c) the Merger would also enhance external sustainability, given that pre-Merger Breedon would be a relevant supplier outside the coordinating group in the East of Scotland with an ability to supply at least some external customers in the East of Scotland (see paragraph 327) that would be removed by the Merger.

#### *CMA's view on coordinated effects*

335. The CMA considers that there is or may be evidence of pre-existing coordination in terms of customer allocation in the supply of bulk cement in the East of Scotland. Furthermore, the CMA considers that the Merger would make pre-existing coordination more sustainable and/or effective.
336. For these reasons, the CMA believes that the Merger gives rise to significant concerns in the supply of bulk cement in the East of Scotland as a result of coordinated effects.

#### **Vertical effects**

337. 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 or a downstream competitor of the supplier's customers.
338. 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.<sup>210</sup>
339. The CMA has considered whether the Merger could lead to (i) vertical effects arising through input foreclosure of primary non-specialist aggregates into RMX at the local level, (ii) vertical effects arising through input foreclosure of primary aggregates into asphalt at the local level, and (iii) vertical effects arising through input foreclosure of primary aggregates into building products at the local level.<sup>211</sup>

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<sup>210</sup> In relation to this theory of harm 'foreclosure' means either total foreclosure of a rival or competitively weakening a rival (ie partial foreclosure).

<sup>211</sup> The CMA has also considered the following vertical theories of harm: vertical effects arising through input foreclosure of cement into, separately, RMX and building products, vertical effects arising through input foreclosure of asphalt into contract surfacing, vertical effects arising through customer foreclosure of primary aggregates into, separately, RMX, asphalt and building products, vertical effects arising through customer foreclosure of cement into, separately, RMX and building products and vertical effects arising through customer foreclosure of asphalt into contract surfacing. However, as no competition concerns arise on any plausible basis, these theories of harm are not discussed further in this decision.

340. Primary aggregates are one of the key inputs (along with cement or other cementitious products) in the production of RMX, asphalt and building products. The Parties are active in the production and supply of primary aggregates, RMX, asphalt and building products.
341. 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.

*Vertical effects arising through input foreclosure of primary non-specialist aggregates into RMX at the local level*

*Framework of the local assessment*

342. Consistent with previous investigations, the CMA's competitive assessment has been based on:
- (a) the identification of vertical links and the delineation of catchment areas for specific sites;
  - (b) filtering to exclude those sites/local areas where there is no realistic prospect of competition concerns arising; and
  - (c) a local competitive assessment of sites/areas which fail these filters.

- *Identifying vertical links*

343. The CMA has identified vertical links at the local level where one Party's Aggregate site overlaps with the other Party's RMX site. Specifically, a link is identified if a Target RMX site is located within the 80% catchment of a Breedon centroid aggregates site (or vice versa).<sup>212</sup>

- *Filtering*

344. After identifying the relevant vertical links, the CMA applied filters to remove from further consideration areas in which the Merger does not raise competition concerns. As with the horizontal analysis, these filters were based on the calculation of weighted shares of supply. The CMA considered that competition concerns can be excluded in areas where the Parties would have

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<sup>212</sup> In the horizontal analysis, it is necessary to look beyond each centroid's site 80% catchment area to identify overlap situations where the Parties' two competing aggregate sites do not lie within each other's 80% catchment area, but where there are shared customers that could be impacted by the Merger. This is achieved by use of the 1.5 x 80% catchment area. In the vertical analysis, it is not appropriate to widen the 80% catchment area in this respect, as vertical concerns may arise without any increment in upstream market power. The upstream market share analysis is therefore based on supply in the 80% catchment area.

a combined weighted upstream share of less than 35% **provided** there will be 3 or more remaining competitors to the Merged Entity.

345. Following the application of the filtering methodology above, the following local areas remained for consideration:
- (a) **Breedon:** Clearwell Quarry, Crime Rigg Quarry, Dunsville Quarry, Kelsey Road Quarry, Kettleby Quarry, Low Harperley Quarry, North Cave Merchanting/Quarry, Raisby Quarry, Caistor Quarry, Longhaven Quarry, Witch Hill Quarry
  - (b) **Target Business:** Cowieslinn Quarry, Middleton Quarry, Newbridge Quarry, Norton Subcourse Quarry, Wangford Quarry, Collessie Quarry, Flixton Park Quarry, Loanleven Quarry, Taffs Well Quarry, Wenvoe Quarry, Brandon Depot, Wormit Quarry<sup>213</sup>.
- *Local competitive assessment*
346. For each of the local areas that failed the filters, the CMA considered whether the combined Breedon and Target Business could have the ability and incentive to foreclose its downstream RMX rivals at the local level in the area surrounding these sites.
347. In relation to each of the following areas, the CMA considers that the Parties would not have the ability to foreclose competitors on the basis that several (at least six) alternative aggregates suppliers would remain post-Merger and provide an effective competitive constraint on the Parties:
- (a) **Breedon:** Crime Rigg Quarry, Dunsville Quarry, Kelsey Road Quarry, Kettleby Quarry, Low Harperley Quarry, North Cave Merchanting/Quarry, Raisby Quarry, Caistor Quarry, Longhaven Quarry, Witch Hill Quarry
  - (b) **Target Business:** Collessie Quarry, Flixton Park Quarry, Loanleven Quarry, Taffs Well Quarry, Wenvoe Quarry, Brandon Depot, Wormit Quarry.
348. For each of the Target Newbridge and Target Cowieslinn quarries, the CMA considers that the Merged Entity would not have an ability to foreclose

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<sup>213</sup> Breedon understands that Target Wormit Quarry has been closed since 2009. See *Proposed acquisition by Breedon of a portfolio of assets from Cemex. Comments on certain local areas – aggregates*. The CMA did not have to decide whether Target Wormit Quarry has been closed (or not). The CMA considers that, even if Target Wormit Quarry was open, the Parties would not have the ability to foreclose competitors in this local area on the basis that several (at least six) alternative aggregates suppliers would remain post-Merger and provide an effective competitive constraint on the Parties (see paragraphs 347 and 355).

downstream rivals as the Parties do not supply any downstream RMX sites in the Target Newbridge and Target Cowieslinn quarry catchment areas.

349. The CMA considers that the Merged Entity would not have an ability to foreclose downstream rivals of the Breedon Clearwell Quarry given:
- (a) its combined weighted upstream share of supply is [below 40%];
  - (b) there are 5 other competing aggregates suppliers (including 4 majors);  
and
  - (c) the Parties only supplied [X] of the 17 downstream RMX sites, none of which raised concerns.
350. With regard to the Target Middleton Quarry, the Parties' combined weighted upstream share of supply is high at [60-70]%. However, the Target did not supply any downstream RMX sites in the local area and [X]. This customer obtained only [X] of its supplies from Breedon, identified a number of alternative suppliers and had no concerns about the impact of the Merger in the local area. On this basis, the CMA considers that the Merged Entity will not have the ability to foreclose downstream rival RMX suppliers in the area around the Middleton Quarry.
351. With regard to Target Norton Subcourse quarry, the Parties' combined weighted upstream share of supply is [less than 40%] and 4 other competing aggregates suppliers (including Tarmac [a major]) remain in the local area post-Merger. Breedon does not supply any downstream RMX competitors while the Target only supplies [X] (out of 11) downstream RMX competitors. [X] customer submitted [X]. [X] customer did not raise concerns [X]. In addition, given the presence of a further [X] RMX competitors who are not supplied by the Parties, the CMA considers that the Merger is unlikely to have a substantial effect on competition in the downstream RMX market as a result of vertical effects.
352. In relation to Target Wangford Quarry, the combined weighted upstream share of supply is [50-60]% and [X] downstream RMX competitors were partly supplied by the Target ([X] were supplied by Breedon). [X] of these customers raised any concerns, with one noting that [X]. On this basis, the CMA considers that Merger is unlikely to give rise to competition concerns in the downstream RMX market as a result of vertical effects.
353. On this basis, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in input foreclosure of primary aggregates into RMX in each of the 80% catchment areas around each of the Parties' quarries identified in paragraph 345.

*Vertical effects arising through input foreclosure of primary aggregates into asphalt at the local level*

354. Consistent with the methodology applied in paragraph 342, the CMA has identified vertical links at the local level where one Party's primary aggregate site overlaps with the other Party's asphalt site. After identifying the relevant vertical links, the CMA applied the same filter as outlined in paragraph 344 to remove from further consideration areas in which the Merger does not raise competition concerns. Following the application of the filtering methodology above, 18 local areas fail the filters, namely: Breedon Clearwell Quarry, Breedon Crime Rigg Quarry, Breedon Dunsville Quarry, Breedon Kelsey Road Quarry, Breedon Kettleby Quarry, Breedon Low Harperley Quarry, Breedon North Cave Merchanting/Quarry, Breedon Raisby Quarry, Breedon Caistor Quarry, Breedon Helbeck Quarry, Breedon Longhaven Quarry, Breedon Witch Hill Quarry, Target Norton Subcourse Quarry, Target Collessie Quarry, Target Flixton Park Quarry, Target Loanleven Quarry, Target Brandon Depot, Target Wormit Quarry.
355. With regards to all areas listed above except for the Target Norton Subcourse and Breedon Clearwell quarries, the CMA considered that the Parties would not have the ability to foreclose competitors on the basis that several (at least six) alternative aggregates suppliers would remain post-Merger and provide an effective competitive constraint on the Parties.
356. In relation to Norton Subcourse quarry, the CMA considers that the Merged Entity will not have an ability to foreclose downstream rivals as the Parties do not supply any rival downstream asphalt sites in the Norton Subcourse quarry catchment area.
357. In relation to Breedon Clearwell Quarry, the Parties' combined weighted share of supply is [below 40%], there are 5 other competing aggregates suppliers (including 4 majors) and the Parties only supply [~~8~~] of 10 downstream asphalt sites. None of these customers raised any concerns relating to the Merger in the local area. On this basis, the CMA considers that the Merger is unlikely to give rise to competition concerns in this downstream asphalt market as a result of vertical effects.

*Vertical effects arising through input foreclosure of primary aggregates into building products at the local level*

358. Consistent with the methodology applied in paragraph 342, the CMA has identified vertical links at the local level where one Party's aggregate site overlaps with the other Party's building products' site. After identifying the relevant vertical links, the CMA applied the same filter as outlined in

paragraph 344 to remove from further consideration areas in which the Merger does not raise competition concerns. Following the application of the filtering methodology above, 1 local area fails the filter, Breedon Clearwell Quarry.

359. In relation to Clearwell Quarry, the Parties' combined weighted share of supply is [below 40%], there are 5 other competing aggregate suppliers (including 4 majors) and the Parties only supply [X] downstream building products sites. None of these customers raised any concerns relating to the merger in the local area. On this basis, the CMA considers that the Merger is unlikely to give rise to competition concerns downstream as a result of vertical effects.

#### *Conclusion on vertical effects*

360. 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***

361. 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.<sup>214</sup> In terms of timeliness, the CMA's guidelines indicate that the CMA may consider entry or expansion within less than two years as timely, but this is assessed on a case-by-case basis, depending on the characteristics and dynamics of the market, as well as on the specific capabilities of potential entrants.<sup>215</sup>

#### *RMX*

362. In relation to RMX, Breedon submitted that barriers to entry and expansion are generally low. In particular, Breedon submitted that new and second-hand RMX plants, mobile RMX plants and mixer-trucks could be acquired easily and inexpensively. In addition, Breedon submitted that planning permission can be obtained cheaply and quickly where it is required and that the re-opening of mothballed and closed RMX plants can occur quickly and at a relatively low cost. Breedon also pointed to the potential for entry through the use of volumetric trucks.

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<sup>214</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

<sup>215</sup> [Merger Assessment Guidelines](#), paragraph 5.8.11.



363. In line with its assessment in previous cases considering RMX, the CMA considers that, although barriers of entry are relatively low, entry is only likely to occur in areas where an operator takes the view that there will be enough new projects in that locality to support its investment. The CMA did not receive evidence of sufficient demand arising from new projects in the relevant local areas.
364. For the reasons set out above, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

#### *Non-specialist Aggregates*

365. In relation to aggregates, Breedon submitted that entry and expansion is most likely to occur by way of restoring mothballed or closed sites to operation, rather than new entry or expansion of an entirely new quarry, given that planning permission for a new quarry takes multiple years. Breedon indicated that costs and timeline for restoration of a mothballed site varied but indicated that work could be completed quickly and inexpensively in at least some cases with costs and time being greater for re-opening a closed site. Breedon accepted that planning permission operates as a potential barrier to new entry / expansion in respect of primary aggregates, whilst noting that this factor does not apply to recycled and secondary aggregates (where barriers to entry are generally lower).
366. Breedon made specific submissions in relation to potential competitor entry and expansion plans in respect of the supply of aggregates in certain local areas that failed the CMA's filters.
367. For Breedon Shierglas, Breedon identified potential entry and expansion plans by its competitors Leiths (extension of Dalwhinnie quarry with planning permission granted in 2018), Craigrossie Sand & Gravel (extension of Auchterarder quarry with planning permission granted in 2020), Laird Aggregates (opening of a new sand and gravel quarry at Kinloch Farm in Collesie) and Tarmac (re-opening of quarry at Friarton (Perth)).<sup>216, 217</sup>
368. For each of Target Middleton and Breedon Low Harperley, Breedon identified potential entry and expansion plans by its competitors AI (extension of Heights quarry) and Kearton Farms (extension of Kilmondwood quarry).<sup>218</sup>

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<sup>216</sup> Comments on certain local areas – aggregates dated 2 June 2020.

<sup>217</sup> Breedon's response to the CMA's Issues Letter, Appendix 3, paragraph 3.14.

<sup>218</sup> Comments on certain local areas – aggregates dated 2 June 2020.

369. The CMA contacted each of the potentially entering or expanding competitors in the relevant local areas, in order to ascertain the timing and extent of such potential entry or expansion. In particular:
- (a) Leiths submitted that [redacted] ;
  - (b) Craiggrossie submitted that they had received planning permission in April 2020 [redacted] which indicates that the works should not be characterised as an expansion;
  - (c) Laird Aggregates submitted that they plan to open the Kinloch Farm quarry [redacted]; and
  - (d) Tarmac submitted that although Friarton (Perth) was operational in 2019, this occurred on a one off basis to supply materials to a specific project that will be completed in 2020.
370. The CMA also considered whether there is evidence of future competitor entry or expansion in respect of the supply of primary aggregates in any of the relevant local areas but did not receive evidence of planned entry or expansion that would be sufficient, timely or likely to mitigate an SLC that would otherwise arise in respect of the supply of aggregates in a local area.
371. For the reasons set out above, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

### *Asphalt*

372. In relation to asphalt, Breedon submitted that barriers to entry and expansion are generally low. Breedon submitted that both new and second-hand asphalt plants could be acquired and made operational relatively inexpensively, with previously owned trucks also being cheaply available. Breedon further submitted that planning permission can typically be obtained within a few months and that the re-opening of mothballed asphalt plants can occur quickly and at a relatively low cost.
373. The CMA considers that barriers to entry and expansion as regards asphalt are relatively low. However, the CMA did not receive evidence of planned entry or expansion that would be timely or likely or sufficient to mitigate an SLC that would otherwise arise in respect of the supply of asphalt in a local area.

374. For the reasons set out above, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

### *Cement*

375. In relation to cement, Breedon submitted that the barriers to becoming a cement producer in GB are likely to be high given the high capital cost associated with obtaining plant and equipment, and the need to obtain planning permission.<sup>219</sup> However, Breedon submitted that barriers to entry would be lower as regards the import of cement, given that a cement producer in Europe would only face the costs and planning permission for an import terminal. Breedon provided three examples of new important terminals that have opened in England between 2015 and 2017.

376. With regard to import terminals, Breedon submitted that third party importers could feasibly establish an import terminal for cement in Scotland.

377. The CMA considers that barriers to entry and expansion for a new cement production site are high, with a new plant costing many millions of pounds and requiring planning permission. In terms of barriers to entry through cement imports, the evidence the CMA has seen indicates that the establishment of an import terminal is comparatively more likely given the lower cost.

378. However, the evidence received by the CMA from Breedon and third parties does not suggest that entry or expansion through the establishment of a cement import terminal is timely, likely and sufficient. In particular:

- (a) Breedon was not aware of any new import terminals for cement in Scotland that had been established in the last five years. Breedon was also not aware of any competitors considering establishing an import terminal in Scotland;
- (b) Majors that provided information to the CMA did not consider the establishment of a new cement producer was likely. The Majors indicated that potential entry by way of an import terminal would require less capital expenditure than establishing a new production facility;
- (c) the CMA did not receive evidence of any specific plans by an importer to establish a terminal in Scotland, specifically in the East of Scotland; and

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<sup>219</sup> *Merger Notice*, paragraph 21.5.

(d) the CC found in the *Market Investigation Final Report* that a large barrier to entry for an independent importer was the vertical integration of the major suppliers, as it would be difficult for these independents to find customers.<sup>220</sup> Given that all suppliers in the East of Scotland are vertically integrated, this may act as a further disincentive for an independent importer to establish an import terminal in Scotland.

379. The CMA considers that barriers to entry and expansion for a new cement production site are high, with a new plant costing many millions of pounds and requiring planning permission. In terms of barriers to entry through cement imports, the evidence the CMA has seen indicates that the establishment of an import terminal is comparatively more likely given the lower cost.

380. For the reasons set out above, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

### ***Countervailing buyer power***

381. In some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. The existence of countervailing buyer power will be a factor in making an SLC finding less likely. If all customers of the merged firm possess countervailing buyer power post-merger, then an SLC is unlikely to arise. However, often only some, not all, customers of the merged firm possess countervailing buyer power. In such cases, the CMA assesses the extent to which the countervailing buyer power of these customers may be relied upon to protect all customers.<sup>221</sup>

### ***RMX, Non-specialist Aggregates, and Asphalt***

382. In relation to non-specialist aggregates, RMX and asphalt, Breedon submitted that:

(a) each of RMX, non-specialist aggregates and asphalt are homogeneous products;

(b) customers (regardless of size) tend to multi-source, typically obtaining two to three quotations before placing their orders and focussing primarily on the pricing offered; and

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<sup>220</sup> *Market Investigation Final Report*, paragraph 7.86.

<sup>221</sup> *Merger Assessment Guidelines*, paragraph 5.9.1.

(c) in Breedon's experience, all types of customers are generally well placed to negotiate favourable terms, including in respect of price.

383. The CMA considers that some Majors could exert countervailing power to the extent that Breedon may be dependent upon obtaining materials from the other Majors in other product markets and local areas. However, independent customers of the Parties are generally of small size and scale. Therefore, the Parties are less dependent on them. The CMA has not received evidence that suggests that these customers have buyer power.
384. On this basis, the CMA believes that it does not have sufficient evidence that countervailing buyer power would prevent an SLC that would otherwise arise in respect of the supply of non-specialist aggregates, RMX or asphalt in a local area.

### *Cement*

385. Breedon did not make specific submissions as regards the potential for countervailing buyer power in respect of cement. The customers of Breedon and the Target Cement Terminal are non-Major competitors who do not have access to their own internal sources of cement and for whom cement comprises an essential input into their own operations. The CMA has not received evidence that suggests that these customers have buyer power. On this basis, the CMA believes that it does not have sufficient evidence that countervailing buyer power would prevent an SLC that would otherwise arise in respect of the supply of bulk cement in a local area.

### **Conclusion on substantial lessening of competition**

386. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in relation to the local areas around the sites listed in Annex 1 and coordinated effects in relation to the supply of bulk cement in the East of Scotland.

### **Decision**

387. Consequently, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (iii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
388. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised whilst the CMA is

considering whether to accept undertakings under section 73 of the Act instead of making such a reference.<sup>222</sup> Breedon has until 3 September 2020<sup>223</sup> to offer an undertaking to the CMA.<sup>224</sup> The CMA will refer the Merger for a phase 2 investigation<sup>225</sup> if Breedon does not offer an undertaking by this date; if Breedon indicates before this date that it does not wish to offer an undertaking; or if the CMA decides<sup>226</sup> by 10 September 2020 that there are no reasonable grounds for believing that it might accept the undertaking offered by Breedon, or a modified version of it.

389. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 30 November 2020. For the avoidance of doubt, the CMA hereby gives Breedon notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by Breedon and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from Breedon stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

**Colin Raftery (Senior Director, Mergers)**  
**Competition and Markets Authority**  
**26 August 2020**

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<sup>222</sup> Section 22(3)(b) of the Act.

<sup>223</sup> Section 73A(1) of the Act.

<sup>224</sup> Section 73(2) of the Act.

<sup>225</sup> Sections 22(1) and 34ZA(2) of the Act.

<sup>226</sup> Section 73A(2) of the Act.

## ANNEX 1: LOCAL HORIZONTAL SLC SITES

**Table 6: RMX**

No.	Site name	Breedon / Target site
1.	Stourport Concrete Plant	Breedon
2.	Kidderminster	Target
3.	Norton Bottoms Concrete	Breedon
4.	Whisby Concrete Plant	Target
5.	West Deeping Concrete	Breedon
6.	Kings Lynn Concrete Plant	Breedon
7.	Kings Lynn Concrete Plant	Target
8.	Hartlepool Concrete Plant	Target
9.	Peterborough Concrete Plant	Target
10.	Thetford Concrete Plant	Target
11.	Snetterton Concrete Plant	Breedon
12.	Peterborough Concrete Plant	Breedon
13.	Costessey Concrete Plant	Breedon

**Table 7: Non-specialist aggregates**

No.	Site name	Breedon / Target site
1.	Shierglas Quarry	Breedon

**Table 8: Asphalt**

No.	Site name	Breedon / Target site
1.	Longwater Asphalt Plant	Breedon

**End notes:**

<sup>i</sup> Following the announcement of the CMA's decision, AI provided the following correction: AI's site at Kidderminster was not permanently closed (see footnote 128 above), but was mothballed and AI has no plans to reopen that site. The CMA's view is that this information, had it been available to the CMA prior to making its decision, would not have changed its conclusion that the Merger raises significant competition concerns in relation to the supply of RMX in the local areas around each of Breedon Stourport and Target Kidderminster.