

Acquisition by Hanson Quarry Products Europe Limited of Mick George Limited

Decision on relevant merger situation and substantial lessening of competition

ME/7034/22

The Competition and Markets Authority's decision on relevant merger situation and substantial lessening of competition under section 33(1) of the Enterprise Act 2002 given on 24 November 2023. Full text of the decision published on 18 January 2024.

The Competition and Markets Authority (**CMA**) has excluded from this published version of the decision information which the CMA considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [§]. Some numbers have been replaced by a range, which are shown in square brackets.

SUMMARY

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by Hanson Quarry Products Europe Limited (**Hanson**) of Mick George Limited (**MGL**), gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in relation to the production and supply of non-specialist aggregates and ready-mix concrete (**RMX**) in several local markets within the UK.
2. Hanson has agreed to acquire the whole of the issued share capital of MGL (the **Merger**). Hanson and MGL (each a Party) are together referred to as the Parties and, for statements referring to the future, as the Merged Entity.
3. As the CMA has found that the Merger gives rise to a realistic prospect of an SLC, the Parties have until 1 December 2023 to offer undertakings in lieu of a reference (**UILs**) to the CMA that will remedy the competition concerns identified. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Enterprise Act 2002 (the **Act**).

Who are the businesses and what products/services do they provide?

4. Hanson supplies heavy building materials including cementitious materials, aggregates, asphalt, concrete and other downstream materials to the UK construction sector, with production facilities and customers throughout the UK.
5. MGL supplies non-specialist aggregates and RMX and is a supplier of additional services such as bulk excavation and earthworks, recycling, demolition and environmental removal, skip hire, and waste management services. MGL focusses its activities in the East of England and the East Midlands.
6. The products that the CMA looked at in detail were:
 - (a) **Primary non-specialist aggregates:** Aggregates, broadly categorised as sand & gravel or crushed rock, are the granular base materials used in the construction of roads, buildings and other infrastructure. Primary aggregates may be extracted from quarries or pits on land or dredged from the seabed.
 - (b) **RMX:** RMX is concrete that is produced in a freshly mixed and unhardened state. RMX is manufactured by mixing highly specific quantities of cement and (if desired) other cementitious products with fine aggregates and coarse aggregates, water and other additives.

Why did the CMA review this merger?

7. The CMA has a duty to investigate mergers that could raise competition concerns in the UK where certain jurisdictional tests are met.
8. A relevant merger situation is created when, as a result of the transaction, the parties cease to be distinct enterprises and where either (a) the target company generates more than £70 million of turnover in the UK; or (b) the merger results in the parties having a share of supply of goods or services of any description in the UK (or substantial part of the UK) of 25% or more, and the merger results in an increment to the share of supply.
9. In December 2022, Hanson and the owners of MGL entered into an agreement for Hanson to purchase 100% of the share capital of MGL. The CMA considers the Parties are each an 'enterprise' within the meaning of section 129 of the Act and that, as a result of the Merger, these enterprises will cease to be distinct for the purposes of sections 23(1)(a) and 26 of the Act. Further, the turnover threshold is met as MGL's turnover is above £70 million.

What evidence has the CMA looked at?

10. In assessing this Merger, the CMA considered a wide range of evidence.
11. In particular, the CMA received multiple submissions and responses to information and requests from the Parties. This included information about the nature of the Parties' businesses, as well as data on their internal and external sales volumes. The CMA also examined the Parties' own internal documents, which show, for example, their rationale for pursuing the Merger.
12. The CMA spoke to and gathered evidence from the Parties' customers and competitors to understand better the competitive landscape and to get their views on the impact of the Merger. The CMA also collected external sales data from some competitors.

What did the evidence tell the CMA about the effects on competition of the Merger?

Horizontal unilateral effects in the supply of non-specialist aggregates and RMX

13. The CMA assessed whether there is a realistic prospect that the Merger will result in an SLC in the production and supply of each of (i) non-specialist aggregates; and (ii) RMX.
14. The CMA considered whether to further segment non-specialist aggregates by product type; ie sand & gravel and crushed rock. Evidence from the Parties and third parties showed that, while there are some applications that require the use of crushed rock, many others could, in theory, use either sand & gravel or crushed rock. The CMA also found that, while both types are widely available and a similar price in some areas, there is limited local availability of crushed rock in some areas (eg in the East of England), where crushed rock is therefore more expensive.
15. To account for these different competitive conditions, the CMA conducted three separate product market analyses in relation to: (a) sand & gravel; (b) crushed rock; and (c) sand & gravel and crushed rock together.
16. The CMA focussed its RMX competitive assessment on the supply of RMX from fixed plants. Evidence from third parties showed that volumetric trucks and mobile plants do not pose a significant constraint in relation to many projects, and the CMA concluded it was not appropriate to include these within its frame of

reference (although the CMA also considered to what extent volumetric trucks and mobile plants should be taken into account as an out-of-market constraint).

17. As competition between aggregates and RMX producers takes place at a local level, the CMA first identified the specific areas within which to analyse whether the Merger could give rise to an SLC. This was based on the delineation of catchment areas (based on where 80% of the Parties' external sales occurred, with a 1.5 times uplift) and identification of overlaps between the Parties.
18. The CMA then applied a decision rule in each local area where the Parties overlap to determine whether there was a realistic prospect of an SLC. The CMA found the use of a decision rule to be appropriate in this case because the key parameters of competition at a local level can be reflected within a systematic measure that can be used to assess the impact of the Merger on competition in a clear and consistent basis across all of the local areas in which the Parties overlap. It determined that the Merger would give rise to competition concerns in a local area if the following conditions were met.
19. First, the Merger would result in a material increment to the Parties' combined shares of supply. The threshold for an increment to be considered material was set between 0.5% and 5%, depending on the Parties' combined share in the relevant local area.
20. Second, any of the following conditions also apply in the relevant local area:
 - (a) the Parties have a combined share of supply of at least 35% and there are two or fewer remaining competitors with market share of at least 10% (and, the case of an aggregates supplier, with sufficient reserves to maintain its level of supply for five years); or
 - (b) the Parties have a combined share of supply of greater than 50%; or
 - (c) there would be only one remaining competitor after the Merger.
21. On this basis, the CMA concluded that there was a realistic prospect of an SLC in (i) 11 local areas in relation to non-specialist aggregates (10 of which also created a realistic prospect of SLC under a sand & gravel analysis); and (ii) 7 local areas in relation to RMX.

Input foreclosure in the supply of non-specialist aggregates to the producers of RMX

22. The CMA considered whether the Merged Entity would have the ability or incentive to foreclose providers of RMX from access to non-specialist aggregates. It

delineated catchment areas based on 80% of the Parties' external sales of non-specialist aggregates and identified vertical links between the Parties' upstream and downstream sites and considered their market shares.

23. The CMA found that in each area where there was a vertical link, the Merged Entity would not have the ability and/or incentive to pursue an input foreclosure strategy. This was on the basis of upstream market shares, the amount supplied to customers and downstream market shares.

Input foreclosure in the supply of non-specialist aggregates to producers of asphalt

24. The CMA considered whether the Merged Entity would have the ability to foreclose providers of asphalt from access to non-specialist aggregates. The CMA did not identify any vertical links between the Parties in relation to their non-specialist aggregates sites and asphalt sites and therefore concluded that the Merged Entity would not have the ability to foreclose any rival asphalt sites competing with the Parties.

What happens next?

25. As a result of these concerns, the CMA believes the Merger gives rise to a realistic prospect of SLC(s) in (i) 11 local areas in relation to non-specialist aggregates (10 of which also created a realistic prospect of SLC under a sand & gravel analysis); and (ii) 7 local areas in relation to RMX.
26. The Parties have until 1 December 2023 to offer an undertaking which might be accepted by the CMA to address the SLC. If no such undertaking is offered, or the CMA decides that any undertaking offered is insufficient to remedy its concerns to the phase 1 standard, then the CMA will refer the Merger for an in-depth phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

PARTIES

27. Hanson is a provider of heavy building materials to the UK construction sector, with production facilities and customers throughout the UK. It is a wholly-owned subsidiary of its ultimate parent Heidelberg Materials AG,¹ a publicly listed company headquartered in Germany and a global supplier of heavy building materials, including cementitious materials, aggregates, asphalt, concrete and other downstream materials.
28. MGL is a UK-based producer of non-specialist aggregates and ready-mix concrete (**RMX**), and a supplier of additional services such as bulk excavation and earthworks, recycling, demolition and environmental removal, skip hire, and waste management services. It focusses its activities on the East Midlands and East of England.

TRANSACTION

29. The Merger will be effected through a share purchase agreement dated 10 December 2022, pursuant to which Hanson will wholly own MGL. Under the terms of this agreement, Hanson agreed to pay [X] on completion, and an earn-out payment of up to a further [X] subject to the performance of the MGL business [X].
30. According to the Parties, the Merger will [X].²

PROCEDURE

31. The Merger was considered at a Case Review Meeting.³
32. The CMA issued a number of notices under section 109 of the Act to the Parties requiring production of documents and information relevant to the CMA's review of the Merger. The statutory 40 working day deadline for the phase 1 decision was

¹ Final Merger Notice submitted to the CMA on 14 September 2023 (**FMN**), paragraph 1. Heidelberg Materials AG was formerly known as HeidelbergCement AG: FMN, footnote 2 and Annex 012.

² FMN, paragraph 2.13.

³ See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), December 2020, from page 46.

extended when MGL failed to provide the required documents and information by the deadline of one of these notices.⁴

JURISDICTION

33. The CMA considers the Parties are each an ‘enterprise’ within the meaning of section 129 of the Enterprise Act (the **Act**) and that, as a result of the Merger, these enterprises will cease to be distinct for the purposes of sections 23(1)(a) and 26 of the Act.
34. The turnover threshold as set out in section 23(1)(b) of the Act is met as a result of the Merger: in its financial year ending September 2022, MGL generated around £228 million turnover in the UK.
35. Therefore, the turnover test is satisfied, and there is no need to consider whether the share of supply test is also satisfied.
36. Accordingly, the CMA believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation within section 33(1)(a) of the Act.
37. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 19 September 2023 and the statutory 40 working day deadline for a decision is 27 November 2023, following extension under 34ZB(1) of the Act.

COUNTERFACTUAL

38. The CMA assesses a merger’s impact relative to the situation that would prevail absent the merger (ie the counterfactual). The counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.⁵
39. In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment.⁶ The CMA also seeks to avoid predicting the precise details or circumstances that would have arisen absent the merger. For example,

⁴ See [Notice of extension](#) (24 October 2023).

⁵ [CMA’s Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.2.

⁶ [CMA129](#), paragraph 3.9.

the CMA might assess the likelihood that one of the merger firms would have entered or significantly expanded, but not the precise characteristics of the product or service it would have introduced or the level of sales it would have achieved.⁷

40. As described in paragraphs 132 to 141 below, there is evidence that regardless of the Merger, MGL will have opened new sites and closed one site in the course of 2024. The CMA considers the relevant counterfactual to be the prevailing conditions of competition modified to account for these changes, which are: the opening of three new MGL sand & gravel quarries at Husbands Bosworth, Willow Hall Farm and Great Billing; the opening of a new MGL RMX site at Husbands Bosworth; and the closure of MGL's RMX site at Mountsorrel.

BACKGROUND

41. The Parties are both active in the production and supply of primary non-specialist aggregates and RMX.

Aggregates

42. Aggregates are the granular base materials used in the construction of roads, buildings and other infrastructure. Aggregates are used mainly for construction purposes, including as a sub-base (the layer of aggregate material which forms the foundation for many construction projects) and other structural fills; and in the production of RMX, other concrete products, mortar, and asphalt.
43. Aggregates are purchased by a range of customers which broadly include:
- (a) building contractors or sub-contractors, and public bodies (such as the Highways Agency) who purchase aggregates for end-use;
 - (b) builders' merchants who purchase aggregates for onward sale to end-customers; and
 - (c) customers with fixed points of consumption (eg customers operating RMX plants, including a supplier's own downstream business and those of other operators).

⁷ [CMA129](#), paragraph 3.11.

44. Aggregates comprise **sand & gravel** and **crushed rock** (and a number of products within these two broad categories).⁸ Aggregates may be categorised as '**specialist**' or '**non-specialist**', depending on their application.

Non-specialist aggregates

45. Non-specialist aggregates include:

- (a) '**Primary aggregates**', which may be land-won (ie extracted from quarries or pits) or marine aggregates that are dredged from the seabed. Crushed rock aggregates are mainly quarried from hard, naturally occurring rock deposits eg granite, gritstone and limestone. Sand & gravel may be land-won or sourced from naturally occurring alluvial deposits on the seabed.
- (b) '**Secondary aggregates**', which are the by-products of industrial and mining processes (eg blast furnace or steel slag).
- (c) '**Recycled aggregates**', which are produced, for example, from demolition sites and construction waste.⁹

Specialist aggregates

46. Specific types of primary aggregates are used for certain 'specialist' applications. These include (but are not limited to):

- (a) Rail ballast, which is a specific type of crushed rock aggregate used as a bedding material underneath railway tracks.
- (b) High-purity limestone, which is limestone with a calcium carbonate content of over 95 per cent, and which is used for its chemical characteristics. It is also known as chemical stone.
- (c) Aggregates with a polished stone value of 60 or greater (medium and high PSV aggregates), which are derived from crushed rock or sand & gravel sources. The higher the PSV of a particular aggregate, the greater the skid resistance. High PSV aggregates are therefore typically used for road-surfacing.

⁸ For example, crushed rock aggregates include graded, sub-base, fill and dust products and sand & gravel aggregates include gravel, fine sand and coarse sand products.

⁹ Other sources include highway resurfacing (which produces asphalt planings), rail ballast, excavation, municipal waste and utility operations.

Transportation of aggregates

47. Aggregates may be imported by sea or by rail, into ports and railheads, respectively.
- (a) Ports enable aggregates to be imported into local areas from other parts of the UK and abroad. Hanson has an indirect interest in Stema Shipping (**Stema**),¹⁰ which imports sand, gravel, and stone from Germany and Scandinavia into UK ports including Great Yarmouth.
 - (b) Railheads (or rail depots) are located at the end of a rail siding (the spur off a mainline track) and may stockpile aggregates. Railheads may be owned by an aggregates' producer itself or by a third party such as Network Rail.
48. There is limited crushed rock available in the East of England as a result of local geology, and ports and railheads are therefore the main source of crushed rock.
49. Marine wharves are used to land marine aggregates dredged from the seabed.

RMX

50. RMX is concrete that is produced in a freshly mixed and unhardened state. RMX is manufactured by mixing highly specific quantities of cement and (if desired) other cementitious products with fine aggregates and coarse aggregates, water and other additives. The specific composition (and resulting properties) of RMX can be customised to suit different applications.
51. RMX can be produced:
- (a) in a fixed plant and distributed to site by a concrete mixer;
 - (b) in a mobile plant at (or near) the customer site (also known as a 'site plant');
or
 - (c) in a volumetric truck (a specialist vehicle which carries the ingredients separately and mixes them on-site (also known as 'on-site batching')).
52. RMX is a perishable product and can only be transported for a limited time after it has been mixed.

¹⁰ Hanson's parent company, Heidelberg, holds a 60% interest in Mibau Holding GmbH which operates Stema's shipping business.

FRAME OF REFERENCE

53. 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 there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.¹¹

Product scope

Non-specialist aggregates

54. Hanson and MGL are active in the supply of primary non-specialist aggregates.

55. In *Breedon/Cemex*, the CMA considered the production and supply of non-specialist aggregates in a separate product frame of reference to the production and supply of specialist aggregates.¹² The Parties submitted that they agreed with this approach,¹³ and the CMA has seen no evidence in this case that suggests the need for any change in this approach.

56. The following sections outline the CMA's assessment in relation to other aspects of the frame of reference in which the CMA did not agree with the Parties' submissions, specifically:

- (a) whether the frame of reference should be widened to include secondary aggregates and recycled aggregates; and
- (b) whether the frame of reference should be further segmented into separate product markets for (i) primary sand & gravel, and (ii) primary crushed rock.

Primary non-specialist aggregates vs recycled and secondary aggregates

57. The Parties submitted that recycled and secondary aggregates operate in the same market as primary non-specialist aggregates. In particular, they submitted that:

¹¹ [CMA129](#), paragraph 9.4.

¹² [Completed acquisition by Breedon Group plc of certain assets of Cemex Investments Limited](#), [ME/6862-19] (*Breedon/Cemex*), paragraph 53.

¹³ FMN, paragraphs 10 and 11.

- (a) Recycled and secondary aggregates are substitutable with their primary counterparts as they can be used for most of the same end-uses.¹⁴
- (b) The Parties expect that recycled aggregates will be accepted for use in nearly all end-uses in the future (subject to processing and standard changes), as the sustainability focus of the industry continues to develop in favour of secondary materials.¹⁵
- (c) In the Competition Commission's (**CC**) Aggregates, Cement and Ready-Mix Concrete Market Investigation,¹⁶ the CC found a single frame of reference for both primary and recycled aggregates, with the CC stating that primary aggregates can be substituted with recycled aggregates for about half of total aggregates sales.¹⁷

58. In *Anglo/Lafarge*, the CC found that switching from primary to recycled and secondary aggregates had appeared to level off in the previous few years and that survey evidence indicated that the scope for further switching might be limited.¹⁸ The CC concluded that the constraints exerted by recycled and secondary aggregates were not sufficient to include them within the frame of reference for primary recycled aggregates. Similarly, in *Breedon/Cemex*, the CMA did not place weight on recycled or secondary aggregates in its competitive assessment.

59. In this case, the CMA has received evidence that recycled and secondary aggregates can, in principle, be used instead of primary aggregates for bulk earthworks activities, in particular those that involve structural fills and ground stabilisation work.¹⁹ There are financial incentives to use recycled and secondary aggregates for this purpose,²⁰ and a third party told the CMA that these aggregates are preferred over primary aggregates for sub-base and fill uses.²¹

60. However, the CMA has also received evidence that, in practice, there is limited use of recycled aggregates. In particular:

¹⁴ Parties' response to the Draft Methodology Note, 17 July 2023, paragraphs 2.6 to 2.13.

¹⁵ Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 2.21.

¹⁶ [Aggregates, cement and ready-mix concrete market investigation: Final Report](#) (January 2014).

¹⁷ Parties' response to the Draft Methodology Note, 17 July 2023, paragraphs 2.24 to 2.25.

¹⁸ [Anticipated construction materials joint venture between Anglo American plc and Lafarge S.A. \(Anglo/Lafarge\)](#), paragraph 5.26.

¹⁹ Note of a call with a third party, July 2023; Responses to the CMA's questionnaire from a number of third parties, September 2023.

²⁰ In general, recycled aggregates are cheaper than primary aggregates since they are not subject to the aggregates levy (£2 per tonne).

²¹ Note of a call with a third party, July 2023.

- (a) Third parties told the CMA that the availability of recycled and secondary aggregates is generally limited.²² There is an inconsistent supply of recycled aggregates since the production of such aggregates depends on the incoming waste streams and the input waste needed is difficult to source.^{23,24}
- (b) A large earthworks contractor told the CMA that, on average, it is not possible to carry out an earthworks project only using recycled aggregates and that primary aggregates will always be used even though they are more expensive.²⁵
- (c) Evidence from the Parties and third parties shows that recycled aggregates have limited use in the production of RMX and are mainly used to produce low quality mixes.^{26,27}
- (d) Evidence from asphalt suppliers indicate that recycled asphalt planings (**RAP**) used in asphalt production are different from recycled aggregates. No asphalt suppliers that responded to the CMA's questionnaires mentioned the use of recycled aggregates to produce asphalt.²⁸
- (e) Recycled aggregates would need to be of a sufficient quality to replace primary non-specialist sand & gravel demands of the customers.²⁹ A number of third parties told the CMA that recycled aggregates would not meet relevant customer specifications,³⁰ or would not consistently be of sufficient quality to meet customer demands.³¹

61. The CMA considers that the above factors are also likely to apply to secondary aggregates. In *Anglo/Lafarge*, the CC found that for applications such as RMX and asphalt, there are limitations on the usage of secondary aggregates. The survey conducted by the CC indicated that 83% of RMX customers mentioned that they could not switch to recycled and secondary aggregates.³² Further, third parties that responded to the CMA's questionnaires mentioned that, like recycled

²² Response to the CMA's questionnaire from a number of third parties, September 2023; Note of a call with a third party, June 2023.

²³ Response to the CMA's questionnaire from a third party, September 2023.

²⁴ Response to the CMA's questionnaire from a third party, September 2023.

²⁵ Note of a call with a third party, July 2023.

²⁶ FMN, Annex 078, question 12. See also Hanson's internal document, Annex 91 to the FMN (s109doc10), titled 'Project study Recycled Aggregates (RA) & after use of concrete', dated 12 June 2019, slide 28.

²⁷ Responses to the CMA's questionnaire from a number of third parties, September 2023.

²⁸ Responses to the CMA's questionnaire from a number of third parties, September 2023.

²⁹ Response to the CMA's questionnaire from a third party, September 2023; Notes of calls with third parties, July 2023.

³⁰ Responses to the CMA's questionnaire from a number of third parties, September 2023.

³¹ Note of a call with a third party, July 2023.

³² [Anglo / Lafarge](#), paragraph 5.26.

aggregates, secondary aggregates are constrained by availability and hence cannot replace the demand for primary aggregates.³³

62. Based on the above, the CMA considers that for some applications there is limited scope to use secondary or recycled aggregates, and in applications where they can be used, customers are already sourcing as much recycled and secondary aggregates as they can (due to their lower prices) such that there is limited scope in practice for customers to use even more in response to higher prices of primary aggregates. The CMA has therefore not included secondary and recycled aggregates within the frame of reference for primary non-specialist aggregates.

Further segmentation for primary non-specialist aggregates by type

63. As noted in paragraph 45(a), primary aggregates comprise sand & gravel, and crushed rock (and a number of products within these two broad categories).³⁴
64. The Parties submitted that all primary non-specialist aggregates operate in the same market. Specifically, that:
- (a) For the majority of end-uses, both crushed rock and sand & gravel aggregates can be used interchangeably;³⁵
 - (b) In the East of England, due to the local geology, customers are accustomed to using sand & gravel aggregates since these are locally available;³⁶
 - (c) There is a chain of substitution between different types of aggregate, although the Parties did not explain how this would work in practice;³⁷
 - (d) the role of merchants and hauliers makes it difficult to price discriminate against certain types of customers.³⁸
65. Evidence received by the CMA indicates there are some downstream applications which require crushed rock aggregates. For example:

³³ Response to the CMA's questionnaire from a third party, September 2023; Response to the CMA's questionnaire from a third party, September 2023. See also Hanson's internal document, Annex 91 to the FMN (s109doc111), 'Recycled Aggregates Project', dated 28 February 2022, slide 6, which recognises securing a supply of recycled and secondary aggregates consistent in terms of volume and quality as a barrier to their use; Hanson's internal document, Annex 91 to the FMN (s109doc10) 'Project study Recycled Aggregates (RA) & after use of concrete', dated 12 June 2019, slide 41.

³⁴ For example, crushed rock aggregates include graded, sub-base, fill and dust products and sand & gravel aggregates include gravel, fine sand and coarse sand products.

³⁵ Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 2.15.

³⁶ Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 2.16.

³⁷ Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 7.8. To the extent that these submissions relate to price discrimination, they are considered below in paragraphs 67 to 69.

³⁸ Parties' response to the Final Methodology Note, 22 August 2023, paragraph 2.31.

- (a) A third party told the CMA that certain types of earthworks projects involve elements of ‘structural fills’ for which sand & gravel cannot be used.³⁹
- (b) Hanson’s internal data indicates that crushed rock is the main aggregate used for the production of asphalt. This has also been confirmed by asphalt suppliers, which also noted that crushed rock was required for asphalt production.⁴⁰

66. Although there are applications which in theory could use either sand & gravel or crushed rock aggregates as an input (such as RMX),⁴¹ the available evidence suggests that there are some areas, in particular in the East of England (where the Parties’ operations overlap), where the higher price of crushed rock and the specific type of crushed rock available locally means it is unlikely to be a substitute for sand & gravel. In particular:

- (a) The Parties’ data indicates that, in the East of England, the average sales price of crushed rock is significantly higher than sand & gravel, particularly when the crushed rock is imported via a port or a railhead.⁴²
- (b) Operators of railheads and ports told the CMA that crushed rock imported into the East of England and surrounding areas tends to command a higher price than the locally available sand & gravel, and that the associated transport cost for the crushed rock means that it cannot economically compete with land and marine won aggregates in the locality.⁴³
- (c) Evidence from RMX suppliers indicates that, in general, primary crushed rock is not used to produce RMX in the East of England.⁴⁴ Evidence from third parties also indicated that, for some applications (including RMX), customers are unlikely to use crushed rock instead of sand and gravel in the East of England and its surrounding areas. Reasons given included lower grade limestone in the area not being suitable in all construction applications (including RMX, precast and some sub bases) and it being prohibitively expensive to use crushed rock instead of sand and gravel in the area.⁴⁵ For

³⁹ Note of a call with a third party, July 2023.

⁴⁰ Responses to the CMA’s questionnaire from a number of third parties, September 2023.

⁴¹ However, one third party told the CMA that, in the manufacture of concrete and mortar, crushed rock could only be a substitute for sand & gravel in a blend with natural sand (Response to the CMA’s questionnaire from a third party, September 2023). The CMA has not received further evidence on uses that require sand & gravel specifically.

⁴² FMN, Annex 080, question 19.

⁴³ Note of a call with a third party, July 2023; Note of a call with a third party, April 2023; Note of a call with a third party, June 2023.

⁴⁴ Responses to the CMA’s questionnaire from a number of third parties, September 2023; Note of a call with a third party, June 2023.

⁴⁵ Third party responses to the CMA’s questionnaire, September 2023.

example, one third party specifically mentioned that, even if the price of primary sand & gravel increased by 5%, it would likely still not be economical to use crushed rock instead.⁴⁶ Furthermore, no RMX supplier that responded to the CMA's questionnaire stated that a 5-10% increase in the price of sand & gravel would be sufficient to make it economical to use primary crushed rock instead of sand & gravel in the East of England.⁴⁷

67. In some areas, however, where both crushed rock and sand & gravel are widely available through local quarries, both types of primary aggregates may be similar in price (such as in parts of the East Midlands, where the Parties also both operate). In these areas, if the presence of customers who can substitute between different types of aggregates would effectively protect those who cannot from possible price increases arising from the Merger, analysing the impact of the Merger through a single frame of reference (combining crushed rock and sand & gravel) could be appropriate.
68. The CMA considers that there may be a sufficient number of customers that would use either type of aggregate (given that their prices are similar) in those areas for this to be a key group of customers that quarry operators compete for. In addition, it may not be possible for quarry operators to increase prices to customers that have a specific requirement for, for example crushed rock, due to the presence of merchants and hauliers. Some third parties that responded to the CMA's questionnaires indicated that merchants are able to purchase a large volume of aggregates and, by taking advantage of transport efficiencies, may be able to offer customers better prices.⁴⁸ This means that if, for example, quarry operators were to increase the price of crushed rock to customers that have a specific requirement for crushed rock in those areas, those customers could source crushed rock through hauliers and merchants (who may have bought the crushed rock from quarry operators at the lower price). The CMA considers that in areas where the price of crushed rock and sand & gravel is similar, a single frame of reference combining both these types of aggregate could therefore be appropriate, referred to as a '**combined analysis**' below.
69. However, in areas where the price of crushed rock and sand & gravel significantly differs, such as areas in the East of England where crushed rock is more

⁴⁶ Response to the CMA's questionnaire from a third party, September 2023.

⁴⁷ Third party responses to the CMA's questionnaire, September 2023. See also: note of a call with a third party, June 2023.

⁴⁸ Responses to the CMA's questionnaire from a number of third parties, September 2023.

expensive, the CMA considers that it is appropriate to use separate analyses (and frames of reference) of crushed rock and sand & gravel.

- (a) In such areas, the price of crushed rock means that it is unlikely to constrain the price of sand & gravel for the reasons already set out in paragraph 66. Merchants and hauliers, like other customers, would need to buy crushed rock at higher prices in these areas given the shortage of supply of crushed rock locally available and higher transport costs involved in importing crushed rock through railheads and ports. Merchants and hauliers would, therefore, not be able to bring the price of crushed rock down to a level at which crushed rock would significantly constrain sand & gravel.
- (b) In such areas sand & gravel is also unlikely to constrain crushed rock. The limited availability of crushed rock in these areas (reflected in the higher price and costs of import) indicates that, in these areas, crushed rock is being used in applications where sand & gravel is not a substitute. For applications where sand & gravel is a substitute, customers would generally be expected to use less expensive sand & gravel rather than more expensive crushed rock. Quarries, railheads and ports supplying crushed rock are not therefore competing with sand & gravel in any significant way in these areas, and this would not change even if some of the crushed rock customers used merchants and hauliers.

Crushed rock and sand & gravel from ports and railheads

- 70. The Parties submitted that the CMA should take into account the constraints imposed by railheads and ports (which import crushed rock into the relevant geographic areas) when conducting the combined analysis to reflect chains of substitution between the different types of aggregates.⁴⁹ Furthermore, the Parties submitted that the exclusion of railheads and ports from the combined analysis is inconsistent with an approach to the crushed rock analysis which takes into account both ports and railheads.⁵⁰
- 71. The CMA considers that in the combined analysis, it is appropriate to only include crushed rock and sand & gravel from quarries and wharves and to exclude any imported volumes brought in by ports and railheads. This is to reflect the higher prices associated with imported material that makes it less likely that customers

⁴⁹ As noted in paragraph 64(c) above, the Parties did not explain how a chain of substitution would work in practice.

⁵⁰ Parties' response to the Issues Paper, 23 October 2023, paragraph 3.26.

would switch away from land won crushed rock and sand & gravel in area where these are both widely available as described above.

72. In the crushed rock analysis, the CMA has included crushed rock from quarries, ports and railheads. This reflects how in some areas, such as in the East of England, ports and railheads are the main source of crushed rock. To the extent that there are a limited number of crushed rock quarries in such areas, they may also compete with railheads and ports in the supply of crushed rock. The price of crushed rock from all sources (quarries, ports and railheads) may be higher in these areas given the limited local availability of crushed rock.

Conclusion

73. To ensure the different local conditions and competitive dynamics noted above are comprehensively captured, and on a conservative basis in line with the test for reference applied in a phase 1 investigation, the CMA conducted three separate product market analyses in relation to the supply of non-specialist aggregates:
- (a) The supply of primary sand & gravel non-specialist aggregates (to reflect the limited constraint from primary crushed rock in areas where crushed rock is more expensive and needs to be imported);
 - (b) The supply of primary non-specialist crushed rock, to reflect the limited constraint from primary sand & gravel in some areas where crushed rock is likely only used for applications that specifically require crushed rock due to limited local availability and its higher price;⁵¹ and
 - (c) The supply of primary sand & gravel and crushed rock together (a combined analysis) to reflect that these different types of aggregates may constrain each other in areas where both are similar in price and locally available.

RMX

74. Hanson and MGL are both active in the supply of RMX. As noted above, RMX can be produced in a: (a) fixed plant and distributed to site by a concrete mixer; (b) mobile plant at (or near) the customer site (also known as a 'site plant'); or (c) volumetric truck. Both Parties operate a number of fixed plants. Hanson operates

⁵¹ Sourced either from a quarry or a port/railhead.

a number of mobile plants and MGL operates one mobile plant, [X]. Neither party operates volumetric trucks.⁵²

75. The Parties submitted that fixed plants, volumetric trucks and mobile plants compete against each other in the same market.^{53, 54} Specifically, they submitted that:
- (a) Hanson has lost many jobs to volumetrics operators on a national scale, supported by analysis showing that it lost [X] customers to volumetric trucks operators in the past 24 months.⁵⁵
 - (b) Volumetric trucks increasingly compete for a wider spectrum of work for which the Parties also compete given their lower costs, flexibility, and increased acceptance in the market since past CMA decisions.⁵⁶ The capabilities of volumetric trucks have materially increased in recent years, with the trucks now more technically advanced, capable of carrying admixtures and fibres and providing all of the same mix designs as fixed plants.⁵⁷
 - (c) Only a small number of concrete pours are unsuitable for volumetric operators. In *Tarmac/Breedon*, the CMA referred to a 50m³ threshold below which volumetric trucks may be a substitute for fixed plants.⁵⁸ The Parties submitted that many Hanson jobs were below this threshold: the average Hanson RMX job is around [X]m³ on a per-day basis; [X]% of MGL's jobs in 2021 had daily pours which were 50m³ or less, and [X]% of Hanson's jobs are for a volume of less than 50m³ for the total job.⁵⁹ The Parties submitted that volumetrics can be used for more than [X]% of RMX jobs supplied by Hanson and MGL.⁶⁰

⁵² FMN, paragraphs 3.1 and 3.25.

⁵³ Parties' response to the Final Methodology Note, 22 August 2023, paragraph 3.1.

⁵⁴ FMN, Annex 042. Hanson and Mick George each operate fixed plants and mobile plants, but neither operates any volumetric trucks.

⁵⁵ Parties' response to the Draft Methodology Note, 17 July 2023, Table 3.

⁵⁶ Parties' response to the Issues Paper, 23 October 2023, paragraphs 3.3 to 3.4 and 3.9; Parties' response to the Final Methodology Note, 22 August 2023, paragraphs 3.5 and 3.7.

⁵⁷ Parties' response to the Issues Paper, 23 October 2023, paragraph 3.3.

⁵⁸ [Anticipated acquisition by Tarmac Trading Limited of certain assets of Breedon Group PLC](#), [ME/6719-17] (*Tarmac/Breedon*), paragraph 57b.

⁵⁹ Parties' response to the Final Methodology Note, 22 August 2023, paragraph 5.11.

⁶⁰ Parties' response to the Issues Paper, 23 October 2023, paragraph 3.5.

- (d) Volumetric operators with a large fleet of trucks can supply most larger projects (ie projects in excess of 50m³ per day through the combination of a number of trucks from their volumetric fleet).⁶¹
- (e) The time between order reception and delivery is similar between volumetric trucks and trucks from fixed plants.⁶²
- (f) Fixed plants involve significant investment and maintenance in the plant itself which is a cost avoided by volumetric truck operators.⁶³
- (g) Volumetric trucks account for at least 13% of RMX volumes in the Eastern region⁶⁴ in most years since 2016.⁶⁵
- (h) An industry dataset of RMX produced by volumetric trucks and mobile plants is now available in BDS 2021 and was not available at the time of *Breedon/Cemex*.⁶⁶

76. In *Breedon/Cemex*, the CMA considered RMX produced and supplied from fixed plants, volumetric trucks and mobile plants within a single frame of reference.⁶⁷ However, it did not find any evidence of volumetric trucks or mobile plants exerting a strong competitive constraint in any local areas in the competitive assessment.⁶⁸

77. Indeed, as noted in *Tarmac/Breedon*, the competitive interaction between fixed plants, mobile plants and volumetric trucks has been considered in several previous competition investigations. Evidence in these cases indicated that RMX supplied by volumetric trucks tends to be a substitute for fixed plants for smaller projects, may serve different types of projects or customers and may be of a lower quality, and that mobile plants only appeared to be suitable for larger projects.⁶⁹

78. The CMA's assessment of the constraint imposed by volumetric trucks and fixed plants is set out below.

⁶¹ Parties' response to the Issues Paper, 23 October 2023, paragraph 3.5. Parties' response to the Update Paper, 3 November 2023, paragraph 2.1

⁶² Parties' response to the Update Paper, 3 November 2023, paragraph 2.2.5.

⁶³ Parties' response to the Update Paper, 3 November 2023, paragraph 2.2.4.

⁶⁴ Sites from the following counties were included: Bedfordshire, Berkshire, Buckinghamshire, Cambridgeshire, Derbyshire, Essex, Hertfordshire, Leicestershire, Lincolnshire, Norfolk, Northamptonshire, Nottinghamshire, Oxfordshire, Staffordshire, Suffolk, and Warwickshire.

⁶⁵ Parties' response to the Issues Paper, 23 October 2023, paragraph 3.4; Parties' response to the Draft Methodology Note, 17 July 2023, Table 4.

⁶⁶ Parties' response to the Issues Paper, 23 October 2023, paragraph 3.9; Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 3.31.

⁶⁷ [Breedon/Cemex](#), paragraph 74.

⁶⁸ [Breedon/Cemex](#), paragraph 180b.

⁶⁹ [Tarmac/Breedon](#), paragraph 57.

Volumetric trucks

79. Evidence from third parties indicates that volumetric trucks are a viable alternative for smaller projects and may even have a cost advantage when competing for very small projects, as well as being able to deliver at longer distances or perform multiple small deliveries.⁷⁰
80. However, evidence from third parties also consistently indicates that volumetric trucks compete significantly less often for larger projects compared to smaller projects, with this being the case even for volumetric truck operators with large fleets.⁷¹ Although one third party considered that volumetric trucks operators with large fleets could, in principle, compete for projects up to a size of 100m³, both it and another third party operator of volumetric trucks indicated that the average size of project served by volumetric truck operators is small (eg a delivery of below [0-10]m³).⁷² A third-party operator of volumetric trucks also said that, in practice, its volumetric trucks tend work alone and it rarely uses multiple volumetric trucks to serve a single project given that this would not utilise its strengths.⁷³ The CMA also notes that these average job sizes are significantly smaller than the average Hanson RMX job of around [8<]m³ on a per-day basis.⁷⁴
81. Third parties noted that volumetric trucks are less suitable for larger projects,⁷⁵ and that any competitive advantage they may have is in relation to very small projects,⁷⁶ with one third party noting that volumetric trucks would have no major impact on static plants.⁷⁷ One major operator of both volumetric trucks and fixed RMX plants told the CMA that it considered its volumetric truck fleet to be complementary to its fixed plant offering.⁷⁸
82. Third parties also told the CMA that:
- (a) volumetric trucks are more expensive to purchase and maintain than trucks used by fixed plants, and therefore, for most project sizes, RMX from

⁷⁰ Responses to the CMA's questionnaire from a number of third parties, September 2023; Notes of calls with third parties, October 2023.

⁷¹ Notes of calls with third parties, October 2023.

⁷² Notes of calls with third parties, October 2023.

⁷³ Note of a call with a third party, October 2023.

⁷⁴ Parties' response to the Final Methodology Note, 22 August 2023, paragraph 5.11.

⁷⁵ Responses to the CMA's questionnaire from a number of third parties, September 2023. Note of a call with a third party, October 2023; Note of a call with a third party, October 2023.

⁷⁶ Third party response to the CMA's questionnaire, September 2023.

⁷⁷ Response to the CMA's questionnaire from a third party, September 2023.

⁷⁸ Note of a call with a third party, October 2023.

volumetric trucks is usually more expensive per m³ than RMX from fixed plants; and

- (b) trucks from fixed plants may also be preferable to customers given they can complete a pour much more quickly once on site than volumetric trucks, as volumetric trucks need to mix at the customer location.⁷⁹

83. The CMA considers that the analyses submitted by the Parties do not provide a reliable indication of the constraint volumetric trucks exert on the Parties' static RMX plants:

- (a) The Parties' loss analysis only describes Hanson's losses to volumetric trucks, rather than providing a comparison of these losses to the number/scale of jobs lost to static plant operators. It is not possible to establish from this analysis to what extent there are types of projects that volumetric trucks do not compete as closely with Hanson's static plants, compared to competition from other static plants. It is not clear whether each customer loss involves one discrete job or is comprised of multiple jobs or separate pours (and if so what the sizes of each of these jobs/pours is).
- (b) As described above, the evidence collected by the CMA from third parties in the present case does not support the Parties' use of a 50m³ threshold to substantiate the constraint posed by volumetric trucks on fixed plants. The Parties have not demonstrated that volumetric trucks are a strong constraint up to this threshold. In any case, even if that threshold was applied, the CMA notes that [§<] % of Hanson's jobs involve more than 50m³ of RMX for the total job.⁸⁰ On this basis, a significant proportion of projects served by the Parties cannot be served by volumetric trucks.

84. In the round, the evidence available to the CMA (including from the Parties and third parties) indicates that although volumetric trucks may provide some constraint on fixed plants in the supply of RMX for small or very small projects, they are unlikely to materially constrain fixed plants for other types of project.

⁷⁹ Notes of calls with third parties, October 2023.

⁸⁰ The Parties also provided analysis based on daily volumes. MGL provided analysis regarding daily pours below a threshold volume per day; Hanson provided analysis regarding jobs below a threshold volume per day. However, the Parties did not explain how these estimates were calculated. For instance, the figures provided by Hanson may understate the number of jobs that included a daily pour of over 50m³ if its results were calculated using the average daily pour of a job over the entirety of a jobs lifetime. Parties' response to the Issues Paper, 23 October 2023, Figures 4 and 5.

Mobile plants

85. Evidence from RMX customers and competitors consistently indicates that, while mobile plants are a viable alternative for larger projects, they are unsuitable for smaller projects.⁸¹ One RMX customer indicated that the costs and laydown areas of mobile plants are typically not warranted unless the project has very large volume requirements over a lengthy period, and even when a project does have sufficient volumes, there may not be suitable space to allow for an establishment of a plant.⁸²
86. Furthermore, one RMX customer indicated that there are projects for which neither volumetric trucks nor mobile plants are suitable. It said that volumetric trucks are not suitable for its purposes due to the larger volumes that it works with, but that difficulties establishing mobile plants can also preclude it from using them.⁸³
87. The CMA considers that, in the round, the evidence available to the CMA (including from the Parties and third parties) indicates that mobile plants are only a substitute for fixed plants when used on larger projects due to their large set up costs and space requirements.

Conclusion

88. Based on the evidence set out above, the CMA considers that there are many projects for which volumetric trucks and mobile plants do not pose a significant constraint on fixed plants.
89. Given the scope to vary prices by customer, the CMA considers it is appropriate to focus its competitive assessment on customers who are most likely to be harmed (ie those for whom volumetric trucks and mobile plants are unlikely to be effective alternatives). This is consistent with the purpose of market definition, which is to identify the most significant competitive alternatives available to customers of the merger firms.⁸⁴
90. The CMA has therefore not included volumetric trucks or mobile plants within the relevant frame of reference. The CMA has considered to what extent the constraint from volumetric trucks and mobile plants should be taken into account, as an out-of-market constraint, within the CMA's competitive assessment.

⁸¹ Responses to the CMA's questionnaire from a number of third parties, September 2023.

⁸² Response to the CMA's questionnaire from a third party, September 2023.

⁸³ Response to the CMA's questionnaire from a third party, September 2023.

⁸⁴ [CMA129](#), paragraph 9.2

Geographic scope

91. The Parties have submitted that the appropriate frame of reference for each of non-specialist aggregates and RMX is local.
92. Previous CMA merger investigations have consistently found that the geographic frame of reference for non-specialist aggregates is local due to the high cost of transportation relative to the local price. Similarly, previous CMA merger investigations have consistently found that the geographic frame of reference for RMX is local, due to the high cost of transportation relative to the price of RMX and the perishability of the product. The CMA considers that these factors continue to apply.
93. On this basis, the CMA has assessed the impact of the Merger in both product frames of reference on a local basis.
94. The CMA sets out its conclusions in relation to the relevant geographic boundaries for each of the above in paragraphs 124 and 125 below.

Conclusion on frame of reference

95. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
 - (a) Primary non-specialist aggregates, which is further segmented into the supply of:
 - (i) sand & gravel;
 - (ii) crushed rock; and
 - (iii) sand & gravel and crushed rock (ie no segmentation between these aggregates),on a local basis; and
 - (b) RMX from fixed plants on a local basis.

COMPETITIVE ASSESSMENT

Horizontal unilateral effects in the supply of non-specialist aggregates and RMX

96. 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.⁸⁵ Horizontal unilateral effects are more likely when the merging parties are close competitors.
97. The CMA investigated whether it is or may be the case that the Merger may be expected to result in an SLC in relation to horizontal unilateral effects in the production and supply of:
- (a) primary non-specialist aggregates, which is further segmented into the supply of:
 - (i) sand & gravel;
 - (ii) crushed rock;
 - (iii) sand & gravel and crushed rock a combined analysis; and
 - (b) RMX from fixed plants.

Local area analysis using a decision rule

98. As competition between suppliers of primary non-specialist aggregates and RMX takes place at the local level, the CMA has carried out a local area analysis to identify specific areas where the Merger gives rise to a realistic prospect of an SLC.
99. The CMA has conducted separate local analysis for the supply of:
- (a) primary non-specialist aggregates, which is further segmented into the supply of:
 - (i) sand & gravel;

⁸⁵ [CMA129](#), paragraph 4.1.

- (ii) crushed rock;
 - (iii) sand & gravel and crushed rock (ie a combined analysis); and
- (b) RMX from fixed plants.

Parties' submissions

100. The Parties have submitted that the use of a decision rule approach is inappropriate, both as a matter of principle and in the specific form proposed by the CMA, and that a filtering approach would be more appropriate for the following reasons:
- (a) Decision rules are better suited to cases where there are a large number of overlap areas for assessment and the number of overlapping MGL and Hanson sites does not indicate that a decision rule is required on this basis.⁸⁶
 - (b) The CMA has excluded significant volumes from the markets for non-specialist aggregates and RMX (ie secondary and recycled aggregates, and RMX produced by mobile plants and volumetric trucks) so that the decision rule as proposed cannot provide an accurate picture of the relevant markets,⁸⁷ and instead will likely result in false positives.⁸⁸
 - (c) Having separate and alternative analyses for different types of primary non-specialist aggregates is also inappropriate for a decision rule. A distinction between sand & gravel, and crushed rock is incorrect because of existing demand-side substitution between each product. Furthermore, the Parties argue that the geology of the UK and the availability of railheads and the proximity of seaports make a separation of the non-specialist aggregates market unworkable.⁸⁹

⁸⁶ Parties' response to the Issues Paper, 23 October 2023, paragraph 1.2; Parties' response to the CMA's Supplemental Methodology, 5 October 2023, paragraph 1.1.1.

⁸⁷ Parties' response to the Issues Paper, 23 October 2023, paragraphs 1.2 and 1.4.2; Parties' response to the CMA's Supplemental Methodology, 5 October 2023, paragraph 1.1.3.

⁸⁸ Parties' response to the CMA's Supplemental Methodology, 5 October 2023, paragraph 1.1.2.

⁸⁹ Parties' response to the CMA's Supplemental Methodology, 5 October 2023, paragraph 1.1.4.

CMA assessment

101. The CMA has a wide margin of appreciation in its use of evidence.⁹⁰ Given the case-specific nature of merger investigations, the CMA may apply different analytical methodologies and approaches in different cases.⁹¹
102. The CMA's Merger Assessment Guidelines (**MAGs**) state that 'where a filter has been applied and local areas remain for further consideration, there may be limited time available (or it may not be compatible with the efficient conduct of the CMA's investigation) to conduct a detailed competitive assessment of a large number of local areas' and that 'in some cases, [where] a filtering approach may not be capable of reducing the number of local areas under consideration to a sufficiently small number [...] the CMA may apply a "decision rule" approach'.⁹²
103. In contrast to the Parties' submissions, these paragraphs of the MAGs do not specify that the CMA may apply a decision rule only in cases involving a very large number of local areas (but instead provide one example of a circumstance in which a decision rule may be used).
104. As described in a number of recent cases involving local area analyses,⁹³ the CMA considers that a decision rule may be an appropriate analytical approach where the key parameters of competition at a local level can be reflected in a decision rule. A decision rule ensures that all local areas of overlaps are assessed systematically by reference to the same factors, and enables consistency and replicability for future mergers in the sector.
105. In this case, the CMA considers that all factors relevant to the conditions of competition in each local area can be taken into account in a decision rule. The CMA has already set out the evidence it relied upon in reaching conclusions as to the appropriate frame of reference to be used in the calculations of the decision rule in this case.
106. Furthermore, the CMA notes the Parties' arguments around how a decision rule is incompatible with separate analyses for sand & gravel, crushed rock, and combined product. The CMA has already outlined its assessment on why these

⁹⁰ See [Société Coopérative de Production SeaFrance SA v CMA \[2015\] UKSC 75](#), paragraph 44.

⁹¹ [JD Sport Fashion plc v Competition and Markets Authority \[2020\] CAT 24](#), paragraph 97.

⁹² [CMA129](#), paragraphs 4.32 to 4.34.

⁹³ [Completed acquisitions by Medivet Group Limited of multiple independent veterinary business \[CMA/11/23\] \(Medivet\)](#), paragraph 143; [Anticipated acquisition by LKQ Corporation of Uni-Select Inc. \[ME/7039/23\] \(LKQ\)](#), paragraph 73.

products should be separate for its analysis in paragraphs 63 to 73 above, and does not agree with the Parties that this should impact the use of a decision rule.

107. On this basis, the CMA finds it appropriate to use a decision rule approach reflecting the evidence it has gathered.
108. In order to assess the competitive impact of the Merger at a local level, the CMA has considered:
- (a) the delineation of appropriate geographic catchment areas;
 - (b) which of the Parties' sites to include in the analysis;
 - (c) the identification of overlaps between the Parties;
 - (d) which measure of the underlying shares of supply within each catchment area is most appropriate for use in the CMA's assessments; and
 - (e) the appropriate threshold for combined shares of supply, material increment bought about as a result of the merger, and other measures appropriate to use in the CMA's assessment, such as the level of non-specialist aggregates reserves and the number of remaining strong competitors.

Catchment areas

109. The CMA considers that it is appropriate to use catchment areas to identify overlapping sites that may give rise to competition concerns and merit an assessment.
110. The CMA has used the drivetime⁹⁴ within which 80% of the external sales volumes in 2022 were made by the Parties and applied a 1.5 times uplift to this drivetime to identify relevant catchment areas. This follows the same broad approach as *Breedon/Cemex*, which used external sales data from the UK major suppliers (the **Majors**) to estimate the same type of catchment area.
111. The following sections outline the Parties' submissions, the CMA's assessment and further details on how the CMA estimated catchment areas.

⁹⁴ In line with the Retail Merger Guidelines, the CMA uses drivetimes rather than straight line radials to identify the catchment areas, taking into account road speeds, the local road network, local topography and traffic so as to more accurately identify overlapping sites and to avoid spurious overlaps (such as sites on opposite sides of an estuary). See [CMA's Retail Mergers Commentary \(CMA62\)](#), 10 April 2017, paragraph 2.14.

Parties' submissions

112. The Parties made the following submissions in relation to the calculation of catchment areas based on external sales volumes:
- (a) Catchment areas should be calculated based on the drivetime of 80% of customers (ie without weighting by the sales to each customer).⁹⁵ The CMA's approach of considering the drivetime of 80% of external sale volumes results in narrower catchment areas.
 - (b) There is an asymmetric risk that weighting by external sales will overestimate the 'true' size of the catchment area particularly in cases where: a small number of large customers are located near the quarry or plant; there are one-off large orders and year-on-year variation in the location of large construction projects; and/or there is evidence that customers are willing to travel much longer distances.⁹⁶
 - (c) Considering drivetimes of 80% of customers will capture a larger and more representative set of the Parties' customers.⁹⁷ In particular:
 - (i) Ordering aggregates or RMX is a 'considered' purchase undertaken by professional buyers sourcing large volumes of material for build projects, often to critical timelines for the deliverability of the project. They may be prepared to source over a material distance given they purchase on the basis of service, relationship, and product knowledge, showing a degree of customer loyalty, and so are prepared to source over a material distance.⁹⁸ The fact that customers located further away make the choice to source from the site despite the transport costs and closer available alternatives implies that catchment areas based on customers (rather than sales) are a more reliable reflection of competition in the local market.⁹⁹
 - (ii) The catchment areas calculated by the CMA based on external sales, even after applying a 1.5 times uplift, still excludes a large proportion of customers making a considered purchase from the Parties' sites.

⁹⁵ The Parties note that the MAGs are not prescriptive as to whether catchment areas are calculated by external sales volume or customers and the CMA can choose the appropriate basis on which to measure where the majority of a store's "custom" is located. See Parties' response to the Issues Paper, 23 October 2023, paragraphs 2.7 to 2.9.

⁹⁶ Parties' response to the Issues Paper, 23 October 2023, paragraph 2.16

⁹⁷ Parties' response to the Issues Paper, 23 October 2023, paragraphs 2.7, 2.16; Parties' response to the Final Methodology Note, 22 August 2023, paragraphs 3.1 to 3.11.

⁹⁸ Parties' response to the Issues Paper, 23 October 2023, paragraph 2.22.

⁹⁹ Parties' response to the Issues Paper, 23 October 2023, paragraph 2.23.

113. The Parties raised concerns about using a single year's data to calculate drive times, submitting that the CMA should calculate average drivetimes across several years (especially if it uses external sales). In particular, the Parties submitted that the use of a single year's data distorts key customer movements over time since a one-off large project near to centroid sites might lead to shorter drivetimes in that year.¹⁰⁰ For example, the Parties explained that, in 2019, Hanson supplied a significant amount of non-specialist aggregates volume from [X] to a customer located more than [X] minutes' drivetime away from the Hanson supply site. [X]. The drivetime within which 80% of [X] external sales volumes are made was therefore much shorter in 2021/22 than currently, which includes the large volumes purchased by the aforementioned customer.^{101,102}
114. The Parties also submitted that the CMA should give more weight to the wider catchment areas in *Breedon/Cemex*¹⁰³ where the CMA collected information from the Majors across their national operations to estimate drivetimes and that the catchment area used in the decision was actually larger than implied by Hanson's data submitted at the time.¹⁰⁴ For example, in *Breedon/Cemex* the CMA estimated a drivetime of around 29 minutes for 80% of RMX customers, which was then multiplied by 1.5 to suggest that each site competed over approximately 43.5 minutes of drivetime, although there were customers also served further away.¹⁰⁵ The Parties submitted that, against this benchmark, selected Hanson and MGL sites have a weighted average 80% of customers delivery range of approximately 20 minutes in 2022 which is much narrower than found in *Breedon/Cemex*, or the potential delivery range of RMX when wet.¹⁰⁶
115. Separately, the Parties noted that the majority of volumes sold from Hanson sites are routed via collections rather than deliveries, implying that Hanson is not always aware of the end customer's location.¹⁰⁷ In this context, the Parties submitted that using only MGL's drivetime is a better reflection over which suppliers can transport materials in the relevant area.¹⁰⁸

¹⁰⁰ Parties' response to the Issues Paper, 23 October 2023, paragraph 2.24 to 2.25.

¹⁰¹ Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 4.37.

¹⁰² The Parties made similar submissions related to the drivetime for RMX, suggesting that the drivetime has reduced from 2019 to 2022.

¹⁰³ Parties' response to the Final Methodology Note, 22 August 2023, paragraph 3.38.

¹⁰⁴ Parties' response to the Final Methodology Note, 22 August 2023, paragraph 3.30.4.

¹⁰⁵ Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 5.5.

¹⁰⁶ Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 5.6.

¹⁰⁷ FMN, Annex 078, question 5.

¹⁰⁸ Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 4.37.

CMA assessment

116. The CMA has calculated catchment areas based on 80% of the Parties' external sales for the most recent full calendar year upon which data is available (2022). For the reasons set out below, the CMA considers that this is an appropriate means to estimate the geographic catchment area within which the majority of a site's "custom" is located and is a pragmatic approach to identifying the most significant competitive alternatives available to customers of the merger firms.¹⁰⁹ In particular:
- (a) It is appropriate to place more weight on customers with larger sales volume (ie base the catchment area on sales volumes) to take account of how these customers may be more price sensitive and seek to avoid higher transport costs from purchasing large volumes from competitors located further away. There will also be increased competitive focus on winning these larger contracts.
 - (b) The CMA has not received any evidence that there are a significant number of customers (barring the Needingworth example) making considered purchases outside of the CMA's estimated catchment area, for example purchasing large quantities of aggregates or RMX. There may be customers making smaller purchases from further away but these are less likely to be considered purchases, for example, due to these smaller purchases accounting for a small component of the overall project costs of a customer. In line with the Parties' submissions, there may also be loyal customers that are prepared to purchase small volumes over longer distances. Such purchases may reflect customer loyalty rather than being considered purchases (with such customers choosing which supplier to use most of the time based on their larger projects). Including these types of small purchases made over longer distances in the catchment area analysis is less likely to reflect the drivetime for identifying the strongest alternatives available in general to customers of the Parties.
 - (c) Lastly, in any case, the drivetimes calculated by the CMA based on external sales, following a 1.5 times uplift, are larger than drivetimes based on the 80th percentile customer. Therefore, the drivetimes used in the local analysis, to a large extent already reflect the sales to these further away customers and captures these weaker alternatives available to customers.

¹⁰⁹ [CMA129](#), paragraph 9.15

117. The CMA considers that it is appropriate to use a weighted average drivetime when estimating a single catchment area for quarries and wharves (ie the same catchment area applying to all these sites), and a single catchment area for RMX sites. This is consistent with the approach adopted in *Breedon/Cemex* and remains appropriate given that there are a number of relevant sites and the geographic scope of competition is unlikely to vary significantly across sites. To calculate the weighted average figure for quarries and wharves, individual drivetimes from all relevant¹¹⁰ quarries and wharves operated by the Parties are weighted by the volumes of non-specialist aggregates externally sold from the respective sites. The CMA followed the same approach for RMX sites.¹¹¹ This enables the CMA to take account of the size of the relevant quarry, wharf or RMX site in calculating average drivetimes.
118. The CMA considers it is appropriate to use individual drivetimes to estimate catchment areas for each of the railheads and ports operated by the Parties. The evidence received from the Parties indicates that the drivetimes for ports and railheads are different from quarries and wharves.¹¹² The CMA used individual drivetimes of these ports and railheads to reflect how the costs, scope and scale of their operations may vary between sites and lead to different catchment areas around each port and railhead. The Parties also have a limited number of such sites from which to estimate an average.
119. In relation to the Parties' submission that the CMA should give more weight to the wider catchment areas in *Breedon/Cemex*, which also took into account the Majors' drivetimes,¹¹³ the CMA considers the CMA's proposed approach based on the Parties' drivetimes in the broad area where both are active (the East of England and its surrounding area) is preferable to using the *Breedon/Cemex* catchment areas. The *Breedon/Cemex* catchment areas take into account drivetimes nationally and may not therefore accurately reflect the local conditions of competition relevant to the Merger. The Parties have also noted how the East of England is different to other parts of the country, specifically submitting that the natural minerology of the East of England is inherently sand & gravel heavy.¹¹⁴

¹¹⁰ The CMA has taken into consideration all the aggregate sites operated by MGL. For Hanson, the CMA has taken into consideration only a sub-set of aggregate sites that Hanson operates in the East of England and surrounding areas. This excludes Hanson sites for which there is no conceivable local overlap with MGL sites.

¹¹¹ The CMA has taken into consideration all the fixed RMX plants operated by MGL. For Hanson, the CMA has taken into consideration only a sub-set of RMX fixed plants that Hanson operates in the East of England and surrounding areas. This excludes Hanson sites for which there is no conceivable local overlap with MGL sites.

¹¹² FMN, Annex 078, question 20.

¹¹³ Parties' response to the Final Methodology Note, 22 August 2023, paragraph 3.38.

¹¹⁴ FMN, paragraph 11.

120. While data on the drivetimes of other competitors may also be informative, the CMA considers that it is appropriate to focus on the Parties' drivetimes, particularly for a phase 1 investigation of a merger. The Parties have noted that Hanson has located its plants near key customers or customer areas.¹¹⁵ Other competitors have incentives to follow a similar strategy to increase their sales, and there is no reason to believe that Hanson's strategy on where it locates its sites is materially different to other competitors. Therefore, there is likely to be limited benefit from undertaking an extensive data collection exercise on other competitors' catchment areas. With the exception of *Breedon/Cemex*, this follows the same approach as other recent mergers in this sector, including *Tarmac/Breedon*, *Breedon/Tarmac*, *Breedon/Hope*, and *Breedon/Aggregate Industries*, which also focused on the Parties' drivetimes.
121. The CMA considers that it is appropriate to use a single year's (2022) drivetimes to calculate catchment area in this case. The changes being induced in the drivetimes by including data from as far back as 2019 appear to be driven to a significant extent by one large Hanson customer around the [redacted] quarry. The CMA's view is that this single customer is an outlier to the analysis and an increase in the weighted average drivetime for quarries being induced primarily by one customer is not appropriate.¹¹⁶ The analysis of 2023 data for [redacted] undertaken by the CMA indicates that the drivetimes from 2022 are broadly similar with those of the first half of 2023. As such, the CMA has not seen any evidence that indicates that these drivetimes are expected to increase to 2019 levels.
122. Additionally, in its competitive assessment, the CMA aims at capturing current competitive conditions. In principle, the use of an average drivetime across several years may not indicate the economic reality of the market today by giving equal weight in the calculations to less recent data. In the circumstances of this case, the CMA has not considered it appropriate to use an average drivetime across a multi-year period, to account for year-to-year fluctuations, because the data available to the CMA does not show material variation between different years (with the exception of variance caused by the large purchaser from the [redacted] quarry in 2019, as described above). In particular, the average 2021 drivetime ([redacted]) is similar to the average 2022 drivetime ([redacted]), both based on 80% of the Parties' external sales as set out above. Therefore, the CMA considers that the use of 2022

¹¹⁵ Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 5.12.1.

¹¹⁶ Needingworth is one of Hanson's largest quarries in the relevant geographic area and carries the largest weight in the calculation of weighted average drivetimes for quarries and wharves. Any increase in the drivetime of this quarry brought about by using 2019 data may artificially increase the drivetime for all other quarries that are delivering aggregates over shorter distances.

drivetimes to calculate catchment areas is appropriate for conducting the local analysis.

123. Finally, while a majority of Hanson sales are routed via collections, rather than via deliveries, Hanson still makes significant sales via deliveries. Therefore, the CMA does not consider it necessary or appropriate to exclude Hanson’s deliveries data when estimating the catchment areas, as suggested by the Parties.

Catchment area results

124. Based on the data that the CMA has obtained from the Parties, the CMA has calculated that the applicable 80% catchment areas with a 1.5 times uplift for the following sites is as follows:

- (a) 78 minutes for non-specialist aggregates sourced from quarries or wharves; and
- (b) 30 minutes for RMX.

125. The individual drivetimes for non-specialist aggregates sourced from ports and railheads are set out in Table 1 below.

Table 1: Drivetimes for railheads and ports operated by the Parties

<i>Site name</i>	<i>Site type</i>	<i>Drivetime (minutes)</i>
Chesterton	Railhead	[60-70 minutes]
Snetterton	Railhead	[90-100 minutes]
Appleford	Railhead	[80-90 minutes]
Kidlington	Railhead	[50-60 minutes]
Great Yarmouth	Port	[80-90 minutes]
Northfleet	Port	[70-80 minutes]
Tilbury	Port	[90-100 minutes]

Source: Parties’ analysis

Note: Drivetimes for ports and railheads are relevant only for the purposes of the CMA’s crushed rock analysis, therefore crushed rock specific drivetimes have been used.

Parties’ sites to include in the analysis

126. As part of its analysis the CMA has taken into account the Parties’ mothballed sites and joint venture sites, as set out below.

Mothballed sites belonging to the Parties.

127. A mothballed site is a site that is temporarily non-operational; ie not permanently closed.
128. The Parties submitted that their mothballed sites should be excluded from the analysis on the basis that it is expensive (and therefore unlikely) that either Party will re-open a site once it becomes non-operational.
129. The CMA considers that the Parties' mothballed sites should be included in the analysis. This is consistent with *Breedon/Cemex*, where the CMA found that the parties' mothballed sites that fall in the catchment area should be included in its local assessment.¹¹⁷ This is because the parties retain the ability to re-open these sites which would enhance their position in the local area and aggravate the impact of the merger.¹¹⁸ In *Breedon/Cemex*, Breedon had submitted that it could take as little as two or three months to re-open a mothballed aggregates site.¹¹⁹
130. The CMA has seen no evidence to suggest that the Parties' mothballed sites could not be re-opened or that there is no realistic prospect that these could be operative in the foreseeable future. The CMA therefore considers it appropriate to include mothballed sites in its competitive assessment.

Joint venture sites

131. Hanson part-owns several joint ventures, including Smiths Concrete which operates in some of the same geographic areas as MGL.¹²⁰ In addition, Heidelberg, Hanson's parent company, owns a 60% interest in Stema, which operates ports on the east coast of the UK.¹²¹ On a cautious basis, the CMA considers that any site operated by these joint ventures should be considered a Hanson site for the purposes of the local assessment. This is to reflect the fact that Hanson would not have a strong incentive to compete with joint venture sites where it has a financial interest in the performance of that site. Similarly, Hanson and Heidelberg could use their influence over the joint venture and Stema sites to reduce the extent to which those sites compete with Hanson sites.¹²²

¹¹⁷ [Breedon/Cemex](#), paragraph 179(a).

¹¹⁸ [Breedon/Cemex](#), paragraph 179(a).

¹¹⁹ [Breedon/Cemex](#), paragraph 179(a).

¹²⁰ FMN, paragraph 310.

¹²¹ FMN, paragraph 3.22.

¹²² The Mendip rail (**MRL**) joint venture between Hanson and AI has been excluded from the list of relevant Hanson sites on account of the Parties' submissions that MRL is a logistics based joint venture which does not include the actual production and sale of aggregates.

Aggregate sites scheduled to be opened and/or closed by the Parties

132. At a late stage of the investigation, following the Issues Meeting, the Parties advised the CMA that MGL plans to open, or had recently opened, several new sand & gravel quarries in 2024, specifically:
- (a) a new quarry at Husbands Bosworth;
 - (b) a new quarry at Willow Hall Farm, planned to open in [redacted] in order to [redacted];¹²³ and
 - (c) quarries at Mayton Wood and Great Billing¹²⁴ which have recently become operational or are due to become operational in the course of [redacted] for the production of aggregates and hence do not have external sales data for a full calendar year.^{125,126}
133. At the same time as providing evidence on new MGL sites, the Parties also submitted that Hanson's [redacted] quarry, which is located [redacted], is not expected to operate beyond the end of 2024 due to the amount of remaining reserves [redacted].¹²⁷
134. The CMA has included all new MGL sites in the analysis, allocating an external sales volume to these sites based on the average external sales across all of MGL's quarries.¹²⁸
135. For Great Billing, the Parties submitted that MGL's forecasted external sales from this site in 2024 would be [redacted] tonnes of sand & gravel.¹²⁹ However, the total production capacity at Great Billing is estimated to be [redacted] tonnes of aggregates. As such, the CMA does not have sufficient evidence to depart from the standard approach to estimating volumes at new sites as set out in paragraph 110.¹³⁰
136. The CMA considers that although it may be the case that [redacted] and [redacted] will close in the near future, the Parties have not provided compelling evidence that this will be the case. In addition, given the late stage of the investigation at which this

¹²³ MGL's response to the CMA's Section 109 Notice dated 23 October 2023 (s109(3)), question 1.

¹²⁴ The Parties submitted that [redacted] was used as a depot in 2021 and externally sold small volumes of crushed rock. On a conservative basis, the CMA has included these crushed rock volumes at [redacted] when allocating an external sales figure.

¹²⁵ MGL's response to the CMA's s109(3), question 1.

¹²⁶ MGL's response to the CMA's Section 109 Notice dated 31 October 2023 (s109(4)), question 2.

¹²⁷ Parties' response to the Update Paper, 3 November 2023, paragraphs 4.4 to 4.7.

¹²⁸ Final Methodology Note, August 2023, paragraph 15.

¹²⁹ MGL's response to s109(3), questions 1, 2, and 3.

¹³⁰ In any case, using the Parties submitted figure of sand & gravel volumes at [redacted] would not change the outcome of the CMA's competitive assessment.

information was submitted, the CMA has been unable to analyse and investigate thoroughly whether these sites would close.

- (a) For [X], the Parties' estimates of usable reserves running out [X] are based on certain assumptions made under a [X].¹³¹ The geological survey within which these estimates were made was commissioned at an advanced stage of the CMA's investigation (and therefore after the Merger was in contemplation). The very late stage at which this evidence was submitted to the CMA means that it has been unable to properly test the weight that can be placed on the survey. Furthermore, the Parties have not been able to provide any contemporaneous (eg documentary) evidence on plans to close [X] or to show that [X] is a replacement site for [X] so, with sufficient certainty, that the operation of the two sites would be mutually exclusive (ie that [X] will only become operational once [X] closes).
- (b) Similarly, for [X], the Parties submitted one geological survey at an advanced stage of the CMA's investigation without any contemporaneous (eg documentary) evidence on its planned closure or a scheduled closing date for the quarry.¹³²

137. In addition, notwithstanding the Parties' arguments that [X] will replace [X], the Parties' own [X] estimates indicate that [X] could remain open until early 2025 and that there therefore would be a period during which both quarries would be operational.

138. Based on the above, and in line with the conservative approach adopted in a phase 1 investigation, the CMA has included [X] and [X] in the analysis.

RMX specific site considerations

139. MGL submitted that the Leicester site at Mountsorrel is scheduled to be closed and replaced with a new MGL site at Husbands Bosworth. MGL further submitted that the opening of the Husbands Bosworth site is contingent on the closing of the Mountsorrel site as MGL plans to transfer plants and machinery from Mountsorrel to Husbands Bosworth.¹³³ MGL provided evidence of its decision to shut the

¹³¹ In Annex 2 of MGL's response to s109(4), the parties assume that the [X]. However, there is no additional evidence provided to support this.

¹³² Parties' response to the Update Paper, 3 November 2023, paragraphs 4.4 to 4.6 and Attachment.

¹³³ Parties' response to the Final Methodology Note, 22 August 2023, paragraphs 6.1 to 6.3.

Mountsorrel site at a board meeting in [redacted].¹³⁴ At the Issues Meeting, MGL also provided a scheduled closing date for Mountsorrel of [redacted] 2024.

140. The CMA also considered the evidence available in relation to the business strategy and economic rationale for MGL to move machinery from one site to the other, rather than operating both plants at the same time by purchasing new machinery for Husbands Bosworth. MGL provided evidence showing that the cost of moving plant and equipment from Mountsorrel to Husbands Bosworth would be substantially cheaper than purchasing and installing a new plant. Additionally, MGL provided evidence showing that Mountsorrel was a waste transfer station which was used for its recycling activities and that there was not enough space at Mountsorrel to both produce recycled products and RMX (and that MGL has a broader commercial strategy to expand its recycling activities, such that it is not feasible that the recycling activities at Mountsorrel would be reduced or discontinued to facilitate continued RMX production). This means that a move to Husbands Bosworth would be needed to sustain MGL's RMX operations, with Mountsorrel becoming a full-time recycling facility.¹³⁵
141. Based on the evidence received, the CMA therefore considers that it is sufficiently likely that the opening of the Husbands Bosworth site will result in the closure of the Mountsorrel site to exclude the latter site from the CMA's local analysis.

Overlap sites

142. For each of the non-specialist aggregates and RMX analysis, the CMA identified which sites of the Parties fall within each other's catchment areas.
143. The CMA then undertook an analysis of each of the Parties' sites that fall within an overlap area. The CMA refers to the site over which this analysis is centred on as the **centroid site**.

Share of supply calculations

Measure for shares of supply

144. The CMA calculated market shares within each catchment area of a relevant centroid site.

¹³⁴ MGL Internal Document provided in response to the CMA's section 109 request, 'Concrete Board Minutes.xlsx', 31 January 2023, row 517.

¹³⁵ Parties' response to the Final Methodology Note, 22 August 2023, paragraphs 6.4.

145. In line with *Breedon/Cemex*, the CMA used volumes externally sold by the Parties and third parties to calculate shares of supply. The CMA considers the external volumes to be the most appropriate measure with which to calculate shares of supply. The Parties did not make any submissions contesting this approach.

Calculating weighted shares

146. As in *Breedon/Cemex*, the CMA used linearly weighted volumes to calculate shares of supply to reflect the proximity of a site (belonging to any party) to the centroid site.¹³⁶ This approach takes into account 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 the supply of aggregates).¹³⁷

Data used

147. For the Parties' non-specialist aggregates and RMX volumes, the CMA used the Parties' own data on their external sales in 2021. While the CMA had access to the Parties' 2022 data, 2021 data was used to ensure consistency with third party data. The latest publicly available data on aggregates and RMX at the time of the investigation was from 2021.

148. For third parties' volumes of non-specialist aggregates, the CMA made some adjustments to the 2021 BDS data which includes both internal and external sales and small volumes of specialist aggregates:

- (a) For the Majors, the CMA collected data from each Major on the proportion of non-specialist aggregates that a Major used across all its sites to supply internally their own downstream activities. The CMA used this proportion for each Major to down weight their BDS site level production data to remove this self-supply. The CMA removed Majors' specialist aggregates volumes using their own data on specialist aggregates volumes.¹³⁸
- (b) For independent competitors, the BDS site level production data was down-weighted by 20% to account for self-supply, as set out in paragraphs 154 and

¹³⁶ For example, a site that is 25% (75%) of the drivetime from the centroid to the edge of the (uplifted) catchment area is weighted by 75% (25%).

¹³⁷ See for example [Tarmac/Breedon](#), paragraph 114.

¹³⁸ The CMA did not consider it necessary for a phase 1 investigation, however, to collect this data from smaller competitors where this adjustment is not likely to make a significant difference to the analysis and for which the CMA is already down weighting the BDS data by 20% as set out below.

160 This approach is consistent with *Breedon/Cemex* and the data obtained in the CC's market investigation.¹³⁹

(c) For third parties' ports, wharves and railheads, the CMA used data from these third parties on their external sales volumes, split by type of non-specialist aggregates.¹⁴⁰

149. For third parties' volumes of RMX, the CMA took into account volumes from fixed plants and treated all RMX volumes in the BDS data as external sales.

150. The CMA's share of supply analysis has also accounted for the following:

(a) Third party sites that have been newly opened (since 2021). The CMA collected data on volumes of external sales from these sites directly from the relevant third parties.

(b) Third party sites that the Parties submitted have been permanently closed were removed from the analysis.¹⁴¹ To identify the permanently closed sites, the Parties compared the 2021 BDS output with the 2023 BDS directory which provides a list (but not volumes) of all aggregates and RMX suppliers in relevant local areas across the East of England and the East Midlands.

(c) For the Parties' mothballed sites, the CMA used their external sales volumes in the last 12 months that they were operational.

151. The Parties submitted that not including competitors' mothballed sites (in circumstances where the Parties' own mothballed sites were included) resulted in the Parties' shares of supply being overestimated in areas with competitor mothballed sites.¹⁴²

152. The CMA considers that in principle and subject to data availability limitations, competitors' mothballed sites should be excluded from the analysis. This is because there is no evidence to suggest these sites are likely to reopen in a sufficiently timely manner and is in line with the conservative approach adopted in a phase 1 investigation. However, the CMA notes that the data used to carry out the local analysis is from 2021 and therefore may include third party sites that have been mothballed since the release of the 2021 BDS data. Therefore, in

¹³⁹ [Aggregates, cement & ready-mix concrete market investigation: Appendices 1.1–7.8](#), Appendix 2.3, Table 3.

¹⁴⁰ While the BDS data does provide information on volumes imported via railheads, it does not distinguish between primary crushed rock and sand & gravel.

¹⁴¹ The Parties made submissions on sites that have been closed and mothballed.

¹⁴² Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 4.1.

practice, the CMA recognises that the analysis conducted might include third-party mothballed sites given that there are limitations in the data used.

153. As explained in paragraphs 129 and 130, the CMA considers that a different approach is appropriate for the Parties' mothballed sites, which should be included in the analysis. This reflects the approach in a phase 1 investigation to the counterfactual. In phase 1 investigations, if the CMA must consider multiple potential counterfactual scenarios, where each of those scenarios is a realistic prospect, it will choose the one where the merger firms exert the strongest competitive constraint on each other, and where third parties exert the weakest competitive constraints on the merger firms.¹⁴³

Down-weighting of independent aggregate suppliers' volumes

154. As set out above, the BDS site level production data of independent competitors was down-weighted by 20% to account for self-supply.
155. The Parties submitted that this was not appropriate given that not all independent suppliers of non-specialist aggregates had RMX or other downstream operations.¹⁴⁴ The Parties conducted desktop research to identify whether independent aggregates' suppliers are active in downstream markets, and estimated the share of upstream aggregates production that accounted for the downstream production.¹⁴⁵ Based on this evidence, the Parties submitted that:
- (a) the 20% down-weighting was appropriate only for the 10 largest sand & gravel producers;
 - (b) the adjustment is inappropriate for other sand & gravel producers, and any down-weighting assumption applied should be smaller (such as 10%); and
 - (c) market intelligence does not support the case for down-weighting the volumes of crushed rock producers given there is no public evidence of significant vertical integration.¹⁴⁶
156. The CMA considers that the available evidence does not support the Parties' submissions in this regard for several reasons.

¹⁴³ [MAGs](#), paragraph 3.12.

¹⁴⁴ Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 4.38.

¹⁴⁵ Parties' response to the Issues Paper, 23 October 2023, paragraph 4.6.

¹⁴⁶ Parties' response to the Issues Paper, 23 October 2023, paragraph 4.7.

157. First, while BDS data identifies whether suppliers are active in RMX, vertical integration can take different forms and goes beyond RMX to include other downstream activities such as asphalt, concrete products, groundworks, road surfacing and bulk earthworks. Internal sales could also include export of the aggregates via rail or sea (which should not be included in the analysis as they are not sold to local customers). All these downstream activities can involve the use of non-specialist aggregates as an input to another product or service.
158. Second, the CMA considers that the evidence submitted by the Parties likely understates the number of vertically-integrated providers. Other than for RMX, the Parties have relied on products listed on the companies' websites to determine their presence in downstream activities. When a company does not have an official website, the Parties have assumed that it is not vertically integrated.
159. Finally, the CMA's analysis of the Parties' own evidence shows that 32 out of the 47 suppliers in question are in fact vertically integrated. The CMA has therefore not seen any evidence to suggest the 20% down-weighting should be applied only for the top 10 sand & gravel suppliers.
160. The CMA therefore concluded that, consistent with the approach adopted in *Breedon/Cemex*, the production data of independent competitors should be down-weighted by 20% to account for self-supply.

Decision Rule

161. As discussed in paragraphs 101 to 107 above, the CMA assessed the Merger's impact on competition through the use of a decision rule. In summary, this decision rule will find a realistic prospect of an SLC where:
- (a) there is a **material increment** (the size of which may be between 0.5% and 5% market share depending on the size of the Parties' combined share); and
 - (b) **any one** of the following conditions are satisfied:
 - (i) the Parties have a combined share of supply of at least 35%, and there are two or fewer remaining 'strong competitors', each of which have at least a 10% market share, and (in market for the supply of non-specialist aggregates) have sufficient reserves to maintain its level of supply in (as measured by its output in 2021) for 5 years or more (**Condition 1**); or

- (ii) the Parties have a combined share of greater than 50% (**Condition 2**);
or
- (iii) there is only one remaining competitor other than the Parties (**Condition 3**).

162. In their submissions on this Merger, the Parties highlighted various factors that had been taken into account in the post-filtering analysis of competition in *Breedon/Cemex*.¹⁴⁷ As noted above, the CMA's approach to competitive assessment may vary on a case-by-case basis and a decision rule may be an appropriate analytical approach where the key parameters of competition at a local level can be reflected in a decision rule. Nevertheless, the CMA has, for completeness (and reflecting the submissions made by the Parties), specifically considered whether the factors considered post-filtering in *Breedon/Cemex* are sufficiently reflected in the decision rule applied in this case.

Material increment

163. For each of the overlapping sites, the CMA considers it is appropriate to first determine whether the Merger will result in a material increment.

164. In line with the Parties' submissions,¹⁴⁸ the CMA has set the material increment threshold at 5% for combined shares up to 40% which then declines in a straight line from 5% towards 0% as the Parties' combined share increases from 40% to 100%.¹⁴⁹ The CMA made one further adjustment to this threshold to treat any increment of 0.5% or below as not material.

Condition 1: Combined share of supply of at least 35% and 2 or fewer strong competitors

Combined share of supply of at least 35% in Condition 1

165. In previous cases, the CMA identified areas where a merger may give rise to competition concerns by identifying areas exceeding both a combined share threshold and an increment threshold.¹⁵⁰ In addition to the material increment defined above, the CMA considers that in this case a combined share of supply threshold of 35% is most appropriate. This is consistent with *Breedon/Cemex*, where the CMA used a market share threshold of 35% as part of its filter (and while some post-filtering analysis was carried out in that case, that analysis

¹⁴⁷ Parties' response to the Issues Paper, 23 October 2023, paragraphs 5.6.2 and 5.7 to 5.9.

¹⁴⁸ Parties' response to the Issues Letter, 23 October 2023, paragraph 6.4.1 to 6.4.4.

¹⁴⁹ This follows a broadly similar approach as [Breedon/Cemex](#), paragraph 160d.

¹⁵⁰ See eg [Tarmac/Breedon](#), paragraph 113.

primarily focussed on the number of strong alternatives to the Parties, and no areas were cleared solely on the basis of the Parties having a low combined market share).¹⁵¹

166. The Parties submitted that if the CMA does not include volumetric trucks and mobile plants in its competitive assessment of RMX, and secondary and recycled aggregates in its competitive assessment of non-specialist aggregates, the combined market share threshold should be increased from 35% to 40% for both sets of analysis to reflect constraints from these sources. In addition, the Parties submitted that in the case of RMX a higher threshold of 40% would be justified to reflect the fact the market has been previously recognised as competitive, competitors have spare capacity and that it has been recognised that barriers to entry are low.¹⁵²
167. As set out in paragraphs 79 to 88, and in keeping with the approach in *Breedon/Cemex*, the CMA considers that volumetric trucks and mobile plants are unlikely to constrain fixed plants for many customers. Similarly, as set out in paragraphs 57 to 62 the CMA considers that the constraint imposed on primary non-specialist aggregates by recycled and secondary aggregates is limited. In addition to excluding volumetric trucks and mobile plants for the frame of reference, the CMA also considers (based on the available evidence in relation to the nature of the constraint), that supply from volumetric trucks and mobile plants should not be given material weight within its competitive analysis as an out-of-market constraint. On this basis, the CMA does not consider that the market share threshold should be adjusted to reflect any out-of-market constraint from volumetric trucks and mobile plants.
168. The CMA also considers that it would not be appropriate to adjust the combined share threshold to reflect any scope for entry and expansion. The Parties have been provided the opportunity to make submissions in relation to entry and expansion in areas of concern. If the CMA were to take into account entry and expansion, this would be on the basis of specific competitors meeting the timely, likely and sufficient criteria. The extent of entry and expansion varies materially within different local areas and the CMA has not seen evidence to suggest that entry and expansion 'as a matter of course' should be reflected within its competitive assessment of all local areas. On this basis, the CMA does not believe

¹⁵¹ [Breedon/Cemex](#), paragraph 170(a).

¹⁵² Parties' response to the Draft Methodology Note, 17 July 2023, paragraphs 5.36 to 5.37; Parties' response to the Supplementary Methodology, 4 October 2023, paragraph 6.3.

that it is appropriate to take entry or expansion into account by increasing the threshold across all areas in its initial SLC assessment.

Strong competitor test in Condition 1

169. In assessing whether the merger gives rise to a realistic prospect of an SLC in the relevant local areas, the CMA has accounted for the extent to which the Parties will face constraints from ‘strong competitors’. The CMA considers that there should be at least three remaining strong competitors to the Parties to mitigate any competition concerns that would otherwise exist post-merger.¹⁵³ This is also consistent with the approach adopted in the post-filtering analysis in *Breedon/Cemex*, where the CMA primarily focussed on the number of remaining competitors, in particular the number of remaining Majors.¹⁵⁴
170. In *Breedon/Cemex*, the CMA in its post-filter analysis took into account the presence of other Majors in the relevant catchment areas based on the evidence that the 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.¹⁵⁵ In this case, the CMA has sought to take into account the specific circumstances of the merger (in light of the test for reference in a phase 1 investigation), in which a Major is acquiring an independent competitor with a significant regional presence in the East of England and its surrounding area. Therefore, the CMA has also considered whether there are other strong competitors in addition to the Majors.
171. The CMA sets out below how it has assessed who is a ‘strong competitor’ and its reasoning behind the specific criteria applied.

Share threshold for strong competitors

172. The Parties submitted that the shares of remaining competitors in the relevant catchment area depreciate rapidly by linear weighting, making it less likely that a share threshold of 15% or more in the strong competitor test is met. The Parties noted that having more competitor locations in the market makes it more difficult to meet the strong competitor market share threshold, as each additional competitor reduces the share of others.¹⁵⁶ Therefore, the Parties submitted that the use of linear weighting means that CMA should instead consider an alternative strong

¹⁵³ [CMA129](#), paragraph 2.18(a).

¹⁵⁴ [Breedon/Cemex](#), paragraph 178(b) and (c).

¹⁵⁵ [Breedon/Cemex](#), paragraph 178(c).

¹⁵⁶ Parties’ response to the Draft Methodology Note, 17 July 2023, paragraphs 4.43, 5.42 and 5.43.

competitor test which calculates whether the next three largest competitors have a combined linear weight market share of 30%.¹⁵⁷

173. In addition, if not using the Parties' suggested approach, the Parties submitted that, where a local market is fragmented (ie where there are many competitors present), the market share threshold for identifying a strong competitor should be adjusted as follows:
- (a) for RMX, if there are four or more remaining competitor sites, the threshold should be 5% for Majors; and
 - (b) for non-specialist aggregates, if there are 15 or more remaining competitor sites, the threshold should be 5% for Majors; and
 - (c) where all of the remaining Majors are present in a local market and each have a linear weighted share of 5% or more, the strong competitor test should be passed.
174. The CMA considers that linear weighting is important to capture the fact that sites located further away from a centroid site are less likely to compete closely with the Parties' sites. This is because, all else equal, customers prefer to purchase from sites that are closer to their location and therefore customers located closer to the Parties' sites are less likely to purchase from competitors that are further away. Furthermore, linear weighting of shares also avoids the fallacy that arises when a competitor that is marginally inside the catchment area is given the same weight as a competitor very close to the centroid site.
175. The CMA considers that, in this case, market shares are a good indicator of competitive conditions in a local market. In light of the Parties' submissions regarding the use of a share threshold of 15% or more for strong competitors, the CMA considers that a threshold of 10% is sufficient to indicate that a competitor is likely to be a strong competitor.
176. The CMA considers that the alternative approach proposed by the Parties based on the combined share of the three largest remaining competitors would not adequately capture the key competitive dynamics. The objective of the strong competitor test is to ensure that there are a number of (ie more than one) strong competitors remaining to constrain the Parties, on the basis that competition and choice for customers is strongest when there are multiple credible alternatives available. By contrast, the Parties' suggestion in this case would allow for one

¹⁵⁷ Parties' response to Supplementary Methodology, 4 October 2023, paragraph 6.4.

competitor with a 30% share and two competitors with a 1% share to be considered sufficient to constrain the Parties.

177. The CMA considers that, in the circumstances of this case, a share threshold of 5% is too low to be used to define a strong competitor, regardless of the level of fragmentation of the market or whether that player is a Major. Competitors with weighted shares as low as 5% could be located further away from the centroid site (reflecting how linear weighting reduces their weighted shares) and/or supply limited volumes. These competitors may therefore not exert as strong a constraint as competitors with higher weighted shares. Applying a strong competitor share threshold of 5% is therefore unlikely to be sufficient to alleviate the loss of competition between the Parties in areas where the Parties have a combined share of 35% or more and in many cases an increment significantly larger than 5% (see section below on Outcomes of the local analysis below).

Reserves

178. Reserves are the total volumes of non-specialist aggregates that can be won from existing quarries or locations with planning permission to extract aggregates.
179. The Parties submitted that the CMA should not take account of reserves in its decision rule as there are significant deficiencies in the BDS data available,¹⁵⁸ and competitors may have many ways to import materials into the region.¹⁵⁹ Furthermore, MGL submitted that the majority of its sites have less than [~~3~~] years of reserves remaining, although it did not explain how this was calculated, nor the number of sites that this applied to.¹⁶⁰
180. The CMA considers that competitors with low reserves may in the future stop competing with the Parties at their current intensity, particularly given the shortage of reserves in the East of England.¹⁶¹ Indeed, one third party raised a concern that it would not be able to effectively compete with the Parties post-merger since its reserves were running low.¹⁶²
181. The CMA considers that to be categorised as a strong competitor, a competitor must hold sufficient reserves such that it will remain a long-lasting constraint on the Parties. Specifically, the CMA considers that a competitor with quarries would need to have reserves to continue to sell the same volume of non-specialist

¹⁵⁸ Parties' response to the Draft Methodology Note, 17 July 2023, paragraph 4.5.

¹⁵⁹ Parties' response to Supplementary Methodology, 4 October 2023, paragraph 6.5.

¹⁶⁰ Parties' response to Supplementary Methodology, 4 October 2023, footnote 13.

¹⁶¹ BDS, [Latest report on Aggregates Reserves confirms worrying decline](#) (9 September 2022).

¹⁶² Note of a call with a third party, March 2023.

aggregates as it did in 2021 in the same local area for at least five years from the time of its assessment to be classified as a strong competitor.¹⁶³ The CMA considers that five years reserves is an appropriate threshold as several third parties said this was the amount of time it can take a competitor to obtain planning permission to quarry a new site.¹⁶⁴ There was even some evidence that planning approval may take longer than this (eg one third party told the CMA it may take ‘at least’ five years¹⁶⁵).

182. To calculate this estimate, the CMA has, using the BDS database, divided the total reserves volumes for quarries operated by third parties by the volumes of non-specialist aggregates externally sold in 2021 from the same quarries; this is referred to as the reserve ratio below. Therefore, a reserve ratio of 5 is considered sufficient to satisfy this criterion of the strong competitor test.¹⁶⁶
183. In relation to the Parties’ submission on imports, the CMA notes it takes into account the constraint where relevant from such imports through the inclusion of ports and railheads in its analysis. As ports and railheads do not hold reserves volumes, this criterion is not relevant to these types of sites.

Condition 2: Combined share of supply of greater than 50%

184. The CMA considers that areas where the Parties have a combined share of 50% are likely to give rise to a realistic possibility of competition concerns due to the very high market share the Parties would hold, regardless of the presence of three strong competitors, and therefore have included this as a criterion in its decision rule.

Condition 3: Only one remaining competitor

185. The CMA considers that a merger that results in a duopoly in a market is likely to give rise competition concerns regardless of the Parties’ total level combined market shares.¹⁶⁷ Therefore, this criterion has been included in the decision rule.

¹⁶³ The CMA used BDS data on reserves from 2021, which means in practice this condition is in relation to a competitor’s ability to endure as a competitor at its currently level of supply until at least 2026.

¹⁶⁴ Note of a call with a third party, March 2023; Note of a call with a third party, April 2023; Note of a call with a third party, June 2023.

¹⁶⁵ Note of a call with a third party, March 2023.

¹⁶⁶ For completeness, the CMA observes that no sites are SLCs as a result of competitors who have 10% market share (as per the Decision Rule) having a reserve ratio of less than 5.

¹⁶⁷ The CMA notes that the 0.5% minimum material increment still applies throughout its decision rule. Therefore, a merger to duopoly would not be considered as an SLC if the level of increment was at or below 0.5%.

Outcome of local analysis

186. For the purposes of this Decision, the Hanson or MGL owned sites that are identified by the decision rule as raising competition concerns are referred to as ‘**SLC Sites**’. Together, and including their respective catchment areas, they are referred to as the ‘**SLC Areas**’.

187. The CMA’s findings are summarised below and in Tables 2 to 4.

Non-specialist aggregates

188. For non-specialist aggregates, the CMA finds 11 SLC Sites in total, specifically:

- (a) Ten SLC sites in the supply of non-specialist aggregates using the sand and gravel analysis (Hanson sites at Needingworth and Earls Barton and MGL sites at: Waterbeach, Worlington, Mepal, Witcham Meadlands, Crimplasham, Watlington, Great Billing and Willow Hall Farm¹⁶⁸).
- (b) No SLC site in the supply of non-specialist aggregates using the crushed rock analysis.
- (c) Eleven SLC sites in the supply of non-specialist aggregates using the combined analysis (Hanson sites at: Needingworth and Earls Barton and MGL sites at: Waterbeach, Mepal, Witcham Meadlands, Worlington, Crimplasham, Watlington, Great Billing, Willow Hall Farm and Ringstead).

189. The CMA notes that the Ringstead SLC Site is only captured under the combined analysis. The CMA did not receive any evidence, such as evidence on prices in the area, that a combined analysis is not appropriate for this site.

190. The Parties submitted that the SLC at [X] is marginal with at least three other majors present in the local area.¹⁶⁹ Additionally, as mentioned in paragraph 133, the Parties submitted that [X] is likely to run out of useable reserves in [X].

191. The CMA’s considerations on the potential closing of [X] are covered in paragraph 136. Based on the evidence available to the CMA, the CMA included [X] in the analysis and found an SLC at this site based on, among other factors, there being an insufficient number of strong competitors constraining the Parties at [X], as reflected in the CMA’s Decision Rule.

¹⁶⁸ MGL’s Willow Hall Farm site is located in Haddenham.

¹⁶⁹ Parties’ response to the Update Paper, 3 November 2023, paragraph 2.2.5.

RMX

192. For RMX, the CMA finds 7 SLC sites in total, specifically:

- (a) Hanson sites at: Market Harborough, Wellingborough, Ely and St Ives; and
- (b) MGL sites at: Husbands Bosworth, Burton Latimer and Northampton.

Table 2: Summarised combined shares of supply in the supply of non-specialist aggregates using the sand & gravel analysis

<i>Party</i>	<i>Site name</i>	<i>Combined shares</i>	<i>Hanson shares</i>	<i>MGL shares</i>	<i>Remaining strong competitors</i>	<i>Largest competitor</i>	<i>Largest competitor's share</i>	<i>Largest competitor' reserve ratio</i>	<i>Largest competitor has quarry</i>	<i>2nd largest competitor</i>	<i>2nd largest competitor's share</i>	<i>2nd largest competitor' reserve ratio</i>	<i>2nd largest competitor has quarry</i>	<i>3rd largest competitor</i>	<i>3rd largest competitor's share</i>	<i>3rd largest competitor' reserve ratio</i>	<i>3rd largest competitor has quarry</i>
MGL	Worlington	[40-49.99%]	[20-29.99%]	[20-29.99%]	1	SRC Aggregates	[10-19.99%]	<5 years	Yes	Tarmac	[10-19.99%]	[5+ years]	Yes	Aggmax	[0-4.99%]	NA	Yes
MGL	Willow Hall Farm	[40-49.99%]	[20-29.99%]	[10-19.99%]	1	Tarmac	[20-29.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	<5 years	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes
MGL	Waterbeach	[40-49.99%]	[20-29.99%]	[20-29.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	SRC Aggregates	[5-9.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	<5 years	Yes
Hanson	Needingworth	[40-49.99%]	[30-39.99%]	[10-19.99%]	1	Tarmac	[20-29.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	<5 years	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes
MGL	Mepal	[40-49.99%]	[20-29.99%]	[10-19.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	<5 years	Yes
MGL	Witcham Meadlands	[40-49.99%]	[20-29.99%]	[10-19.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	<5 years	Yes
MGL	Crimplesham	[40-49.99%]	[10-19.99%]	[30-39.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	Middleton Aggregates	[5-9.99%]	[5+ years]	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes
MGL	Watlington	[40-49.99%]	[10-19.99%]	[20-29.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	Middleton Aggregates	[5-9.99%]	[5+ years]	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes
MGL	Great Billing	[30-39.99%]	[30-39.99%]	[5-9.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	<5 years	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes
Hanson	Earls Barton	[30-39.99%]	[20-29.99%]	[5-9.99%]	1	Tarmac	[20-29.99%]	[5+ years]	Yes	Breedon	[10-19.99%]	<5 years	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes

Source: CMA analysis

Table 3: Summarised combined shares of supply in the supply of non-specialist aggregates using the combined analysis

<i>Party</i>	<i>Site name</i>	<i>Combined shares</i>	<i>Hanson shares</i>	<i>MGL shares</i>	<i>Remaining strong competitors</i>	<i>Largest competitor</i>	<i>Largest competitor's share</i>	<i>Largest competitor' reserve ratio</i>	<i>Largest competitor has quarry</i>	<i>2nd largest competitor</i>	<i>2nd largest competitor's share</i>	<i>2nd largest competitor' reserve ratio</i>	<i>2nd largest competitor has quarry</i>	<i>3rd largest competitor</i>	<i>3rd largest competitor's share</i>	<i>3rd largest competitor' reserve ratio</i>	<i>3rd largest competitor has quarry</i>
MGL	Willow Hall Farm	[50-59.99%]	[20-29.99%]	[20-29.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	[<5 years]	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes
MGL	Ringstead	[50-59.99%]	[20-29.99%]	[20-29.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	[<5 years]	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes
Hanson	Needingworth	[40-49.99%]	[20-29.99%]	[20-29.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	[<5 years]	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes
MGL	Worlington	[40-49.99%]	[20-29.99%]	[20-29.99%]	1	SRC Aggregates	[10-19.99%]	[<5 years]	Yes	Tarmac	[10-19.99%]	[5+ years]	Yes	Brett	[0-4.99%]	[5+ years]	Yes
MGL	Waterbeach	[40-49.99%]	[20-29.99%]	[20-29.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	SRC Aggregates	[5-9.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	[<5 years]	Yes
MGL	Mepal	[40-49.99%]	[20-29.99%]	[20-29.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	[<5 years]	Yes
MGL	Witcham Meadlands	[40-49.99%]	[20-29.99%]	[20-29.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	[<5 years]	Yes
MGL	Crimplesham	[40-49.99%]	[10-19.99%]	[30-39.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	Middleton Aggregates	[5-9.99%]	[5+ years]	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes
MGL	Watlington	[40-49.99%]	[10-19.99%]	[30-39.99%]	1	Tarmac	[10-19.99%]	[5+ years]	Yes	Middleton Aggregates	[5-9.99%]	[5+ years]	Yes	Aggregate Industries	[5-9.99%]	[5+ years]	Yes
Hanson	Earls Barton	[30-39.99%]	[20-29.99%]	[10-19.99%]	2	Aggregate Industries	[20-29.99%]	[5+ years]	Yes	Tarmac	[10-19.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	[<5 years]	Yes
MGL	Great Billing	[30-39.99%]	[20-29.99%]	[10-19.99%]	2	Tarmac	[20-29.99%]	[5+ years]	Yes	Aggregate Industries	[10-19.99%]	[5+ years]	Yes	Breedon	[5-9.99%]	[<5 years]	Yes

Source: CMA analysis

Table 4: Summarised combined shares of supply in the supply of RMX

<i>Party</i>	<i>Site name</i>	<i>Combined share</i>	<i>Hanson Share</i>	<i>MGL share</i>	<i>Remaining strong competitors</i>	<i>Largest competitor</i>	<i>Largest competitor's share</i>	<i>2nd largest competitor</i>	<i>2nd largest competitor's share</i>	<i>3rd largest competitor</i>	<i>3rd largest competitor's share</i>
Hanson	Market Harborough	[50-59.99%]	[20-29.99%]	[30-39.99%]	2	Breedon	[20-29.99%]	CEMEX	[10-19.99%]	DK Concrete	[5-9.99%]
MGL	Husbands Bosworth	[50-59.99%]	[10-19.99%]	[40-49.99%]	2	Tarmac	[20-29.99%]	Aggregate Industries	[10-19.99%]	CEMEX	[0-4.99%]
MGL	Burton Latimer	[50-59.99%]	[10-19.99%]	[30-39.99%]	1	Aggregate Industries	[20-29.99%]	CEMEX	[5-9.99%]	Gemmix	[5-9.99%]
Hanson	Wellingborough	[40-49.99%]	[10-19.99%]	[30-39.99%]	1	Aggregate Industries	[20-29.99%]	Tarmac	[5-9.99%]	Breedon	[5-9.99%]
MGL	Northampton	[40-49.99%]	[10-19.99%]	[30-39.99%]	2	Tarmac	[10-19.99%]	Breedon	[10-19.99%]	CEMEX	[5-9.99%]
Hanson	Ely	[40-49.99%]	[30-39.99%]	[10-19.99%]	2	Eastern Concrete	[10-19.99%]	The Concrete Company	[10-19.99%]	Aggregate Industries	[5-9.99%]
Hanson	St Ives	[30-39.99%]	[10-19.99%]	[20-29.99%]	2	Breedon	[20-29.99%]	Madmix	[20-29.99%]	Aggregate Industries	[5-9.99%]

Source: CMA analysis

Conclusion on horizontal unilateral effects in the supply of non-specialist aggregates and RMX.

193. For the reasons set out above, the CMA believes that Hanson's acquisition of MGL is likely to give rise to competition concerns in relation to the SLC areas. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the local supply of non-specialist aggregates and RMX.

Input foreclosure

194. Input foreclosure is where a merger involves one party that supplies an input to rivals of the other party. The merged entity may restrict these rivals' access to this input or offer it on worse terms, directly harming the rival's competitiveness and therefore competition in the downstream market.
195. The CMA's approach to assessing input foreclosure 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. These conditions are cumulative; if the CMA considers that one is not met it may decide not to consider other conditions.¹⁷⁰
196. Primary aggregates are one of the key inputs in the production of RMX and asphalt. The Parties are active in the production and supply of primary aggregates, RMX, and asphalt. The CMA focussed its assessment on the supply of non-specialist aggregates to producers of RMX; and to the producers of asphalt.
197. As discussed in paragraphs 92 in the frame of reference, the products and services supplied by the Parties are supplied on a local basis. Therefore, the CMA has considered the Merged Entity's ability and incentive to pursue an input foreclosure strategy, as well as the effect on competition such a strategy would have, on a local basis.

Input foreclosure in the supply of non-specialist aggregates to producers of RMX

198. In assessing the Merged Entity's ability to pursue an input foreclosure strategy, the CMA calculated the market share of the Parties and their competitors in the local

¹⁷⁰ [CMA129](#), paragraph 7.10.

area around the Parties' non-specialist aggregates sites using data and analysis from the Parties and 2021 data from BDS.¹⁷¹

199. In keeping with the local analysis used in the horizontal assessment in paragraph 99 the CMA considered the volumes supplied of each of (i) sand & gravel, (ii) crushed rock and (iii) sand & gravel and crushed rock combined when estimating market shares.
200. When identifying catchment areas, in the horizontal analysis it was necessary to look beyond each centroid's site 80% catchment area to identify situations where the Parties' competing sites do not lie within each other's 80% catchment area but may have shared customers. In the vertical analysis, the CMA does not consider it appropriate to widen the 80% catchment area in this respect.
201. Therefore, vertical links were identified as follows:
 - (a) one Party's RMX site is located in the 80% catchment area (ie without a 1.5 times uplift) of the other Party's non-specialist aggregates site; or
 - (b) one Party's non-specialist aggregates site is located in the 80% catchment area of the second Party's non-specialist aggregate site where the second Party's non-specialist aggregates site also has an integrated RMX provider in its 80% catchment area.
202. Where there were vertical links, the CMA assessed the ability, and in some cases, the incentive to pursue a foreclosure strategy.
203. The CMA considered there to be no reasonable prospect of the Merged Entity having the ability to pursue an input foreclosure strategy from its non-specialist aggregates sites where:
 - (a) the combined market share of the Parties is below 35%, with market shares calculated as set out in paragraphs 144 to 160; and/or
 - (b) the Parties are currently supplying a very small amount of non-specialist aggregates to that customer.
204. In assessing the Merged Entity's incentive to pursue an input foreclosure strategy, the CMA estimated market shares in the downstream market for RMX using the potential input foreclosure target (ie the Parties' customers) as the centroid, using

¹⁷¹ See paragraphs 147 to 150 for a description of the data used for this exercise.

data and analysis from the Parties and 2021 data from BDS.¹⁷² Aside from the centroid, the methodology used to calculate market shares is the same as in the horizontal assessment in the supply of RMX, as set out in paragraphs 144 to 161.

205. For all potential input foreclosure targets, one or more of the following applied:
- (a) the Parties' market share around their corresponding upstream non-specialist aggregates sites was below 35% and/or the Parties supply a very small amount (eg 10 tonnes per year) of non-specialist aggregates to the potential target, with each of these factors indicating no ability to foreclose;
 - (b) the Parties' downstream RMX sites either did not overlap with the potential target, or had a low (below 25%) share of supply in the local area around the potential target, indicating no incentive to foreclose.
206. Based on the above, the CMA considers that the Merged Entity would not have the ability and/or incentive to pursue an input foreclosure strategy against any rival RMX sites competing with the Parties. The CMA therefore did not assess the effect of such foreclosure on competition.

Input foreclosure in the supply of non-specialist aggregates to producers of asphalt

207. In assessing the Merged entity's ability to pursue an input foreclosure strategy against the providers of asphalt, the CMA followed the same methodology in relation to catchment areas and identifying vertical links used in assessing input foreclosure against RMX providers, as set out in paragraphs 199 to 201 above.
208. As producers of asphalt cannot in general use sand & gravel, the CMA only considered the volumes supplied of crushed rock and when estimating market shares.
209. As there were no vertical links identified between the Parties in relation to their non-specialist aggregates and asphalt sites, the CMA considers that the Merged Entity would not have the ability to foreclose any rival asphalt sites competing with the Parties. The CMA therefore did not assess whether the Merged Entity would have the incentive to engage in input foreclosure of asphalt producers, or the effects of such foreclosure on competition.

¹⁷² Parties' response to the CMA's section 109 notice dated 28 September 2023 (s109(2)), question 1.

Conclusion on input foreclosure

210. For the reasons set out above, the CMA considers that the Merged Entity would not have the ability and/or incentive to pursue an input foreclosure strategy against any rival RMX sites competing with the Parties. Further, the CMA considers that the Merged Entity would not have the ability to foreclose any rival asphalt sites competing with the Parties. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of input foreclosure in relation to the supply of non-specialist aggregates to producers of RMX; and to the producers of asphalt.

ENTRY AND EXPANSION

211. 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.¹⁷³

Non-specialist aggregates

212. The Parties did not make submissions in relation to expected entry and/or expansion by competitors specifically in the SLC Areas. The CMA did not receive evidence of planned entry or expansion that would be timely, likely or sufficient to mitigate an SLC that would otherwise arise in respect of the supply of aggregates in a local area.
213. Previous CMA decisions, including *Breedon/Cemex*, have recognised that planning permission operates as a barrier to new entry or expansion in respect of primary aggregates. This is consistent with evidence received by the CMA in the course of this investigation.¹⁷⁴

RMX

214. The Parties submitted that barriers to entry in relation to RMX are low. In particular, the Parties submitted that the acquisition of volumetric trucks or mobile

¹⁷³ [CMA129](#), March 2021, from paragraph 8.40.

¹⁷⁴ Note of a call with third party, March 2023; Note of a call with a third party, June 2023.

plants requires little capital expenditure, and mobile RMX businesses can be scaled up to enable investment in fixed plants.¹⁷⁵

215. However, the Parties did not make submissions in relation to expected entry and/or expansion by competitors in the SLC Areas specifically (including in relation to static plants).
216. In *Breedon/Cemex* the CMA noted that barriers to entry are relatively low. However, in line with its assessment in previous cases considering RMX, the CMA considered that entry was only likely to occur in areas where an operator took the view that there will be enough new projects in a locality to support its investment.¹⁷⁶

Conclusion on entry and expansion

217. 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.

CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION

218. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC in the local areas identified in Tables 2 to 4 above as a result of horizontal unilateral effects in relation to the supply of (i) primary non-specialist aggregates (including both crushed rock and sand and gravel, (ii) primary non-specialist aggregates (including sand and gravel only), and (iii) RMX.

¹⁷⁵ FMN, paragraphs 16.61 and 16.65.

¹⁷⁶ [Breedon/Cemex](#), paragraph 363.

DECISION

219. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
220. The CMA therefore believes that it is under a duty to refer under section 33(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.¹⁷⁷ The Parties have until 1 December 2023¹⁷⁸ to offer an undertaking to the CMA.¹⁷⁹ The CMA will refer the Merger for a phase 2 investigation¹⁸⁰ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides¹⁸¹ by 8 December 2023 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
24 November 2023

¹⁷⁷ Section 33(3)(b) of the Act.

¹⁷⁸ Section 73A(1) of the Act.

¹⁷⁹ Section 73(2) of the Act.

¹⁸⁰ Sections 33(1) and 34ZA(2) of the Act.

¹⁸¹ Section 73A(2) of the Act.