

# Completed acquisition by Lafarge Tarmac Holdings Limited of Tarmac Building Products Limited

## Summary

1. The parties notified the anticipated merger to the Office of Fair Trading (OFT) on 3 February 2014. The merger subsequently completed on 1 April 2014. The merger was investigated under the OFT's administrative timetable, extended to 9 April 2014.<sup>1</sup>
2. Lafarge Tarmac Holdings Limited (LT) is a joint venture between Anglo American plc (Anglo) and Lafarge S.A., constituting the UK construction building materials businesses of Anglo and Lafarge S.A. Prior to the merger, Tarmac Building Products Limited (TBP) was indirectly wholly-owned by Anglo. LT acquired sole control of TBP on 1 April 2014. The Competition and Markets Authority (CMA) considers that the parties have ceased to be distinct and it has jurisdiction on the basis of the turnover test and a relevant merger situation has therefore been created. The CMA assessed the merger against the conditions of competition prevailing pre-merger.
3. The parties overlap in the downstream production of construction and building materials, specifically in the supply of screed, bagged aggregates, packed cement, packed cementitious products and packed lime. While TBP focuses on these downstream markets, LT primarily focuses its business activities on the manufacture and supply of heavy side construction materials, in particular, bulk aggregates, bulk cement, bulk lime and ready-mixed concrete (RMX). Pre-merger, LT supplied TBP with the majority of its bulk aggregates, cement and lime requirements which are used as input materials in the parties' downstream production and supply of building products. The parties therefore also had a vertical relationship.

## ***Horizontal issues***

4. In relation to the supply of screed at GB level, the CMA found that a number of viable alternative suppliers of screed would constrain the parties post-merger,

---

<sup>1</sup> Under the CMA, a merger investigation is now considered under a (40) working day statutory timetable.

and that the significant degree of spare capacity would add to the significant constraints remaining on the parties.

5. At a local level, the CMA's analysis shows that in none of the catchment areas identified for potential concerns would there be a reduction in fascia of four to three or worse. Further, there will be sufficient remaining competing fascias and there is significant spare capacity. The CMA therefore considered that no competition concerns would arise in relation to the supply of screed at a local level.
6. In the supply of bagged aggregates at GB level, the CMA does not consider the merger would raise competition concerns on the basis that the parties' post-merger share of supply will only be [20-30%] with significant constraints from alternative suppliers. At a local level, the CMA considers that there will remain a large fringe of local suppliers in each overlap area identified for potential concerns, many of whom were regarded by customers as credible suppliers. In combination with evidence showing significant spare capacity, the CMA considers that no competition concerns would arise at a local level.
7. In relation to packed cement, the CMA considers that no competition concerns would arise at GB or local level, due to the small increment as a result of the merger. In relation to packed concrete and mortar, the parties estimated that LT's share of supply was significantly less than for packed cement both at GB and Economic Planning Region (EPR) level. Given the number of remaining competitors for both products, and the limited third party concerns raised, the CMA does not consider that competition concerns would arise at GB or EPR level. In packed lime, TBP supplies predominantly to one customer with limited sales and volume. On this basis the CMA does not consider that the merger would raise competition concerns.
8. Accordingly, the CMA did not consider that the merger would give rise to concerns from a horizontal unilateral effects perspective.

### ***Vertical issues***

9. The CMA also assessed a number of foreclosure theories of harm, in particular examining the parties' potential ability and incentive to engage in input foreclosure strategies. On the basis of the available evidence, the CMA concluded that LT would not have the incentive to engage in such foreclosure strategies in the supply of bulk cement, and would not have the ability to foreclose customers in the supply of bulk aggregates.
10. Therefore, on the basis of the evidence available to the CMA, it does not consider that the merger would give rise to a realistic prospect of a substantial

lessening of competition (SLC), either as a result of horizontal unilateral effects or as a result of input foreclosure in relation to bulk cement or bulk aggregates.

### **Decision**

11. This merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

### **Parties**

12. LT was created in January 2013 by virtue of a 50:50 joint venture between Anglo and Lafarge S.A. LT combined the UK construction buildings materials businesses of Lafarge S.A. trading as Lafarge UK and Anglo trading as Tarmac Quarry Materials (TQM). TQM formed part of Tarmac Limited (Tarmac), a wholly owned subsidiary of Anglo. Prior to the joint venture, Tarmac was split into TQM and TBP as part of Anglo's rationalisation process commenced in 2010. TBP did not form part of the LT joint venture and Anglo therefore retained 100% ownership of TBP.
13. LT is headquartered in Solihull, West Midlands and its main activities are in the supply of heavy building materials including bulk aggregates, asphalt, cement and RMX. LT also has a number of downstream operations such as the supply of mixed screed and packed building materials, including bagged aggregates through a 50% shareholding in GRS (Bagging) Ltd.
14. TBP is active mainly in the downstream production of heavy building products such as mixed screed and mortar and packed aggregates and cement. TBP had no upstream operations in the heavy bulk building materials sector. TBP's UK turnover in 2012 was approximately £[redacted] million.

### **Transaction**

15. The parties entered into an agreement on 24 September 2013 following a bidding process. Under the terms of the agreement, LT acquired sole control over TBP for a total value of £[redacted] million. The parties formally notified the OFT (now the CMA)<sup>2</sup> by providing a satisfactory submission on 3 February 2014 and the extended administrative timetable expires on 9 April 2014. The parties completed the merger on 1 April 2014.

---

<sup>2</sup> The (CMA) was established on 1 October 2013. By virtue of the Enterprise and Regulatory Reform Act 2013, the OFT's functions were transferred to the CMA on 1 April 2014.

## Jurisdiction

16. LT and TBP are both enterprises (undertakings carried on for gain or reward). As a result of this merger, LT and TBP have ceased to be distinct, in that Lafarge S.A. has acquired indirect joint control over TBP through its 50% shareholding in LT. The UK turnover of TBP exceeds £70 million, so the turnover test in section 23(1) (b) of the Act is satisfied. The merger completed on 1 April 2014, so the parties did not cease to be distinct more than four months before the date of this decision. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

## Counterfactual

17. [REDACTED]. For the CMA to accept an 'exiting firm' argument, it would need, on the basis of compelling evidence, to believe that it was inevitable that TBP would have exited the market and be confident that there was no substantially less anti-competitive purchaser for TBP or its assets. The CMA would also consider what would have happened to TBP's sales in the event of exit.<sup>3</sup>
18. In considering these factors, the CMA noted that [REDACTED].
19. Based on the evidence available to the CMA, it was not clear that TBP would have been unable to meet its financial obligations in the near future and that further restructuring would not have been possible. Furthermore, Anglo did not submit evidence, such as internal documentation, [REDACTED]. Therefore, the CMA does not consider that there is sufficient evidence to conclude that TBP's exit from the market was inevitable.
20. For completeness the CMA also considered whether it could be confident that there was no substantially less anti-competitive alternative purchaser(s) for TBP. Anglo submitted details of several firms that had entered into initial discussions with Anglo for the purchase of TBP. It is not therefore clear that there was no substantially less anti-competitive purchaser for TBP.
21. Therefore, on the basis of the available evidence, the CMA does not consider that a counterfactual other than the prevailing conditions of competition would be appropriate to assess this merger.

---

<sup>3</sup> See [Merger Assessment Guidelines](#), joint publication of the Competition Commission and OFT, September 2010, paragraph 4.3.10. The Merger Assessment Guidelines have been adopted by the CMA. See [Mergers: Guidance on the CMA's Jurisdiction and Procedure, CMA2](#), Annex D January 2014.

## Frame of reference

22. The parties overlap in the downstream production of construction and building materials, specifically in the supply of screed, bagged aggregates, packed cement, packed cementitious products (namely, packed concrete and packed mortar) and packed lime. In addition, the parties also have a vertical relationship in that LT supplies TBP with the majority of its requirements for bulk aggregates, cement and lime.
23. In considering the relevant frames of reference in this case, the CMA has taken account of a number of previous decisions and reports including the Competition Commission's (CC) market investigation in *Aggregates, cement and ready-mix concrete (2014)* - (CC MIR - *aggregates, cement and RMX (2014)*), and the CC's decision in *anticipated construction materials joint venture between Anglo American plc and Lafarge SA (2012)* - (CC - *AA/Lafarge S.A. JV (2012)*).

## Product scope

### *Upstream input materials*

24. The overlapping (downstream) products are essentially made from a number of upstream input materials such as aggregates, cement and lime. These core materials are generally sold to downstream suppliers of construction and building materials in bulk form.

### *Bulk aggregates as an input material*

25. Aggregates are granular base materials used in construction and are produced from crushed rock, sand and gravel. Aggregates may be subdivided depending on their origin (primary, secondary, recycled) and are classified by the grade of the material (fine, coarse or mixed). There is also a range of specialty primary aggregates (rail ballast, high-purity limestone, high polished stone value aggregates) and decorative aggregates.<sup>4</sup>
26. For some applications, including the manufacture of concrete products, there may be limited scope for demand-side substitutability between different types of aggregates.<sup>5</sup> However, for the purpose of the competition assessment, the CMA in this case considered the supply of all bulk aggregates, and has

---

<sup>4</sup> CC MIR – *aggregates, cement and RMX (2014)*, pp. 2-1 *et seq.*

<sup>5</sup> CC MIR – *aggregates, cement and RMX (2014)*, p. 5-8.

distinguished between different types of aggregate (for example, sand and gravel or crushed rock), where appropriate. This approach was also taken by the CC in *AA/Lafarge S.A. JV (2012)*.<sup>6</sup>

### ***Bulk cement as an input material***

27. Cement is the 'glue' that binds together the components of building materials. Cement is made from a mixture of limestone or chalk, clay and sand, which are heated in a kiln. The resulting clinker is then ground and mixed with additives such as gypsum.<sup>7</sup> There are different (standardised) formulations of cement<sup>8</sup> which are specific to the intended application and the environment in which they can be used.
28. For the purpose of the competition assessment, the CMA considers the supply of all types and formulations of bulk cement together. However, the CMA does not consider it necessary to conclude on the precise product scope given that no competition concerns arise on any plausible basis.

### ***Bulk lime as an input material***

29. Lime is produced when limestone is burnt in a rotary or shaft kiln. It is used in a wide variety of construction materials as a binding and plasticising ingredient. It is also used in the production of cement clinker (see above), and as a minor additional constituent in the production of all cement types.<sup>9</sup>
30. TBP buys all of its bulk lime requirements from LT. Third party buyers of bulk lime (and downstream competitors to the parties) which responded to the CMA's investigation, noted that they buy 'hydrated lime' (calcium hydroxide) from the parties. Hydrated lime is a processed material originating from naturally occurring limestone. Its production is energy intensive and requires specific equipment.
31. For the purpose of the competition assessment and on a cautious basis, the CMA considers the supply of hydrated lime separately from other types of lime, but the CMA has not needed to reach a conclusion given that no competition concerns arise on any plausible basis.

---

<sup>6</sup> CC – *AA/Lafarge S.A. JV (2012)*, paragraph 5.38.

<sup>7</sup> CC MIR – *aggregates, cement and RMX (2014)* pp. 2-10 *et seq.*

<sup>8</sup> CC MIR – *aggregates, cement and RMX (2014)*, pp. 5-10 *et seq.*

<sup>9</sup> CC MIR – *aggregates, cement and RMX (2014)*, pp. 2-13 *et seq.*

## ***Downstream construction materials***

### ***Screed***

#### ***Supply of screed from mortar and ready-mixed concrete plants***

32. The parties overlapped in the supply of screed but TBP supplies screed from its mortar plants, whereas LT supplies screed from its ready-mixed concrete plants.
33. Screed is used specifically as a thin top layer of flooring, whereas mortar and ready-mixed concrete have other uses. Mortar is used to join construction blocks together, fill gaps between the blocks and to fix or point masonry. Ready-mixed concrete can be customised to suit a variety of different construction applications.
34. Given their different uses, there is limited scope for demand-side substitution from screed to mortar or ready-mixed concrete. This was confirmed by third parties.
35. The parties submitted and third party suppliers confirmed that there is a significant degree of supply side substitution of mortar and ready-mixed concrete into screed.<sup>10</sup> This is on the basis that all mortar plants and ready-mixed concrete plants are capable of producing screed. However, it is not the case that all suppliers of mortar or ready-mixed concrete actually supply screed and the conditions of competition in the supply of each is materially different. Therefore, on a cautious basis, the CMA has excluded the supply of mortar and ready-mixed concrete in its competitive assessment of the parties' overlap in the supply of screed.

#### ***Traditional and anhydrite screed***

36. The parties submitted that historically, all screed supplied in the UK was sand/cement (traditional) screed. Sand/cement screed has a dense consistency and, once delivered, must be physically raked and packed down into position by a team of workers in order to produce a flat surface. The laying of sand/cement screed is therefore labour intensive. Anhydrite screed or 'flowing' screed is a newer, value added product (VAP) that is more liquid in consistency

---

<sup>10</sup> The CMA considers the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone. However, there are circumstances where the CMA may aggregate several narrow relevant markets into one broader one on the basis of considerations about the response of suppliers to changes in prices. See *Mergers Assessment Guidelines* (paragraph 5.2.17) for details of the CMA's approach to supply-side substitution.

and consequently offers quicker and less labour intensive installation because it is self-levelling. Anhydrite screed can be readily produced by replacing the cement input by anhydrite or hemi-hydrate binder.

37. The parties submitted that both types of screed are substitutable on the demand side. In addition, the parties submitted that there is supply side substitutability as VAP can be produced by replacing cement for anhydrite or hemi-hydrate binder. The CMA received a mixed response from customers to its investigation on whether they would switch between traditional and VAP screed following a 5% price increase from all suppliers of one type of screed.<sup>11</sup> For example, one customer who would not switch explained that the two types of screed are used for different applications in that VAP screed is used for thinner flooring.
38. On the supply-side, the CC noted in *AA/Lafarge S.A. (2014)* that switching production to VAP would require a 'conversion' of sites because the production of VAP requires more space for an additional silo.<sup>12</sup>
39. Given the mixed third party responses received during its investigation, the CMA notes that there may be a distinction between traditional and VAP screed and therefore considered them separately on a cautious basis. However, as any distinction is not material to the competitive assessment, the CMA has not needed to reach a conclusion as to whether there is a distinction.

### ***Site-mixed screed***

40. The parties further submitted that screed suppliers are also constrained by screed that is mixed on the construction site itself. However, cost estimates provided to the CMA by the parties suggests that it may be more costly for customers to mix screed on-site than to buy it in ready-mixed form. Third party responses suggest that there would be little switching to site-mixed screed in response to a 5% price rise of screed. On a cautious basis therefore the CMA excludes site mixed screed from the relevant frame of reference.

---

<sup>11</sup> For the purposes of defining a market, the CMA may assess whether a hypothetical firm that is the only present and future seller of the products in the candidate market (here, for example, traditional screed) would find it profitable to raise prices by at least a small but significant non-transitory amount (a SSNIP). See [Merger Assessment Guidelines](#), paragraph 5.2.10.

<sup>12</sup> CC – *AA/Lafarge S.A. JV (2012)*, p. 131. In addition, the CC noted that some of the parties' sites were too small to be converted to VAP production.



### ***Volumetric trucks***

41. In addition, the parties submitted that screed suppliers are also constrained by volumetric truck suppliers. Volumetric trucks carry the raw materials in separate compartments and mix them on-site, and are also capable of delivering ready-mixed screed to site. The parties therefore submitted that volumetric trucks provide a constraint on local fixed-site screed suppliers. Third party responses from volumetric truck operators supplying screed indicated that they could take on similar jobs to the parties' fixed plants but at a higher price (due to greater customer service for example, on-site product/batching advice and bespoke service). However, customer responses suggest that there would be little switching from screed supplied by fixed plants to screed supplied by volumetric trucks.
42. The parties did not submit any evidence of the actual use of volumetric trucks to supply screed or any examples where a customer has chosen to purchase its screed requirements from a volumetric truck operator. Therefore, in light of insufficient evidence on the possible constraints imposed by volumetric trucks, and on a cautious basis, the CMA has not included volumetric trucks in the frame of reference.

### ***Mortar***

43. The parties submitted that a specific formulation of ready-mixed (wet) mortar and dry silo mortar (which is mixed on the construction site) are in principle substitutable for customers but that this would depend on the required volume, distance to a mortar supplier and whether there is space for a silo and water supply at the construction site. TBP supplies both ready-mixed (wet) mortar and dry silo mortar whereas LT is absent from the supply of mortar. However, mortar is discussed here on the basis that vertical foreclosure concerns in bulk cement were raised with the CMA by a mortar supplier (detailed below).
44. One supplier of ready-mixed mortar noted that in its area TBP supplies dry silo mortar but not ready-mixed mortar. As its concern about LT foreclosing it from cement (an input in the production of mortar) is premised on dry silo mortar competing with ready-mixed mortar, the CMA considers the supply of all types of mortar on a cautious basis in its vertical assessment.

### ***Bagged aggregates***

45. The parties submitted that TBP supplies bagged aggregates that include different grades of sand and gravel as well as specialist products. LT is also active in bagging through its 50% shareholding in GRS (Bagging) Limited (GRS) through which it supplies bagged aggregates and other bagged

products.<sup>13</sup> Bagged aggregates are typically supplied in bulk 1-tonne bags or 20/25 kilogram bags to builders' merchants and DIY retail outlets. The parties submitted to the CMA that there is a single product market for bagged aggregates comprising all the different types (sand and gravel and specialist products to all customers).

46. The CC considered in its MIR – *aggregates, cement and RMX (2014)*<sup>14</sup> and in its merger inquiry in *AA/Lafarge S.A. (2012)*<sup>15</sup> that demand side substitution varies between different types of aggregate material and different grades of aggregates depending on the application. Both reports considered crushed rock and sand and gravel aggregates to be part of the same relevant product market. For RMX and concrete, these reports pointed to the two types of primary aggregates being used interchangeably in many cases.
47. The CC considered in its MIR - *aggregates, cement and RMX (2014)*<sup>16</sup> that in general construction, where bagged aggregates are used most, sand and gravel aggregates are used in relatively small proportions but are potentially interchangeable with crushed rock.<sup>17</sup>
48. In *Breedon/Aggregate Industries*, the OFT did not receive any evidence from third parties that switching between crushed rock and sand and gravel was limited.<sup>18</sup> It therefore did not consider that further segmentation between crushed rock and sand and gravel was appropriate.
49. On the supply-side, the CC MIR – *aggregates, cement and RMX (2014)* considered that such substitution for aggregates is limited for some primary materials due to geological conditions and the availability of such material in certain regions.<sup>19</sup> However, this investigation was not focused specifically on bagged aggregates. Baggers such as TBP did not operate any quarries and furthermore the parties explained that bagging facilities can be used for different types of aggregates. This suggests that in the case of bagged aggregates there may be a degree of supply-side substitutability.
50. There may be a case, in line with previous decisions, for considering bagged crushed rock and bagged sand and gravel together. However, the CMA does

---

<sup>13</sup> LT has two bagging plants producing bulk bags only, namely Erith (Kent) and Swansea (Wales).

<sup>14</sup> CC MIR – *aggregates, cement and RMX (2014)*, pp 5-2 – 5-9

<sup>15</sup> CC – *AA/Lafarge S.A. JV (2012)*, pp. 41-44

<sup>16</sup> CC MIR – *aggregates, cement and RMX (2014)*, pp. 5-2 – 5-9.

<sup>17</sup> CC MIR – *aggregates, cement and RMX (2014)*, paragraph 5.11.

<sup>18</sup> Also in the CC's provisional findings report in the merger inquiry in *Breedon Aggregates and Aggregate Industries UK (2014)*, paragraph 4.9, third parties considered that crushed rock and sand and gravel were generally substitutable.

<sup>19</sup> CC MIR – *aggregates, cement and RMX (2014)*, pp. 5-3.

not need to conclude on whether or not there is a distinction, as it is not determinative to the outcome of its competitive assessment.

### ***Packed cement***

51. Both LT and TBP supply packed cement primarily to builders' merchants and DIY merchant chains. There are different formulations of cement in bagged format.<sup>20</sup> In addition, the parties submitted that these products may be marketed under specific brand names.<sup>21</sup>
52. As regards a possible distinction between packed and bulk cement, the CC defined packed cement as a separate product market due to the lack of demand-side substitutability between bulk and packed cement, with both forms of cement being bought by different customers.<sup>22</sup> However, the CC considered that there is scope for supply-side substitution between bulk and packed cement if cement producers operate bagging facilities. As the parties do not overlap in the supply of bulk cement, the CMA has on a cautious basis considered the impact of the merger on packed cement separately.
53. As regards a possible distinction between different types of cement, the CC in its MIR - *aggregates, cement and RMX (2014)*, considered that there is a degree of demand-side substitution between different types depending on the application and consistent with the CC's merger inquiry in *AA/Lafarge S.A. (2012)* found all types of bulk cement form part of the same relevant product market.<sup>23</sup> The CC also considered that there is a degree of supply-side substitution provided that the necessary additives for different cement types are available to producers.<sup>24</sup> These different types of cement are standardised formulations and are also available in packed format. The CMA's investigation in the present case did not suggest a different approach. Therefore, the CMA has considered the supply of all types of packed cement together in the competitive assessment.

### ***Packed cementitious products (packed concrete and mortar only)***

54. The parties supply a range of packed cementitious products primarily to builders' merchants and DIY chains, which the parties submitted may be

---

<sup>20</sup> As is the case with bulk cement detailed above.

<sup>21</sup> E.g. 'Mastercrete', 'Procem' or 'Sulfacrete'. The CMA has not received evidence that branding is relevant for its competitive assessment.

<sup>22</sup> CC MIR – *aggregates, cement and RMX (2014)*, pages 5-11 – 5-12.

<sup>23</sup> CC MIR – *aggregates, cement and RMX (2014)*, page 5-10, paragraph 5.38(a)

<sup>24</sup> CC MIR – *aggregates, cement and RMX (2014)*, page 5-10.

marketed under specific brand names.<sup>25</sup> The product range for packed cementitious products includes concrete, mortar, renders, tile adhesives, grouts and levellers. The parties overlap only in packed concrete and packed mortar.

55. The parties submitted that there is a single product market that encompasses all packed cementitious products. From a supply side perspective, the parties submitted that producers can change the formulation of cementitious products and hence switch production to other types of cementitious products. This would require no change of machinery or equipment and no significant knowledge. Moreover, packaging equipment would allow producers to be able to switch between different package sizes.<sup>26</sup>
56. However, the CMA noted that some suppliers of cementitious products do not supply packed concrete or packed mortar and the conditions of competition in the supply of both are materially different. Therefore, for the purpose of the competition assessment, the CMA considers the supply of packed concrete and of packed mortar separately. There is no need to conclude on the precise product scope, although the CMA has considered specific types of these products where it received concerns on this basis.

### ***Packed lime***

57. The parties overlapped in the supply of packed hydrated (calcium hydroxide) lime for construction purposes. The parties do not overlap in the supply of other types of lime. Further, third parties told the CMA that other forms of lime (for instance, quick lime (calcium oxide)) may not be good substitutes, due to their chemical properties and necessary further processing.<sup>27</sup> For the purpose of the competition assessment, the CMA does not therefore consider other forms of lime and on a cautious basis considers the supply of packed hydrated lime separately.

### **Geographic scope**

58. When assessing mergers involving a large number of local geographic markets, as in this case, the CMA may examine the geographic catchment area within which the great majority of a firm's customers are located.<sup>28</sup> This approach has

---

<sup>25</sup> TBP's packed products are sold under the trade names 'Cempak', 'Pozament' or 'U-can'. The CMA has not received evidence that branding is relevant for its competitive assessment.

<sup>26</sup> TBP has a wider packaging format for cementitious products that include 500g plastic packs up to 25kg paper sacks.

<sup>27</sup> Calcium oxide is highly reactive and needs to be converted to calcium hydroxide by hydration.

<sup>28</sup> *Merger Assessment Guidelines*, joint publication of the Competition Commission and OFT, September 2010, paragraph 5.2.25.

been applied below either where evidence has been available in this case to enable a catchment area to be determined or where recent previous decisions provide a guide on an appropriate catchment area for specific products.

## **Upstream input materials**

### *Bulk aggregates as an input material*

59. The CC calculated in its *Anglo American PLC and Lafarge S.A.* decision<sup>29</sup> average 80% catchment area distances between [X] and [X] miles from the parties' production plants and depots.<sup>30</sup> The variance is explained by the finding that for urban sites, the radii around Lafarge sites were smaller than those around Tarmac sites, while the radii for non-urban sites were very similar for Lafarge and Tarmac. The CC used [X] mile radials around the parties' production/delivery sites in its vertical assessment in this decision.
60. In the current case, third party producers and buyers of bulk aggregates reported viable supply distances of between 15 and 100 miles. The CMA did not obtain evidence in the current case to suggest a different approach to the CC.
61. For the purpose of vertical effects in the competition assessment, the CMA considers therefore that it remains appropriate to use a [X] mile radial distance catchment areas around the parties' production/delivery sites on a cautious basis.

### *Bulk cement as an input material*

62. The parties submitted that the market for the supply of bulk cement is at least GB wide.<sup>31</sup> Third parties told the CMA that cement prices are 'market prices' (that is, there is a certain degree of price transparency) and that the market is highly concentrated. However, distance appears to be a key factor that can hinder switching between suppliers. For example, one third party competitor of TBP's products which buys cement from LT told the CMA that there is no other viable producer of cement in its area ([X]), suggesting limited scope for suppliers further away to supply into the area.

---

<sup>29</sup> Competition Commission (2012) *Anglo American PLC and Lafarge S.A.*, pp. 41-44.

<sup>30</sup> Similarly, see: The CC MIR – *aggregates, cement and RMX* (2014), p. 5-9 and pp. 6-4, where average 80% catchment area distance was [ ] miles.

<sup>31</sup> The parties' production sites overlap in GB only.

63. For the purpose of the competition assessment, the CMA considers the supply of bulk cement on the basis of EPRs.<sup>32</sup> This reflects the third party concern above, and is in line with the approach taken by the OFT in *Anglo American / Lafarge S.A.*<sup>33</sup> In any case, it is not necessary to conclude on the precise geographic scope as no competition concerns arise on any basis.

### ***Bulk lime as an input material***

64. The parties submitted that lime is produced by them at the main natural deposit of limestone in GB near Buxton (Derbyshire). In GB, lime is supplied from only two regions from which different producers operate: the Buxton area, and East Yorkshire. Furthermore, third parties submitted that imports of lime (without additives) do not play a role in GB, so the CMA has not considered a wider geographic market than GB.
65. The CMA therefore considers the supply of bulk lime within GB.

### **Downstream construction materials**

#### *Screed*

66. All screed supplied by the parties is delivered in a ready-mixed form and therefore perishable. The parties submitted that as a result of screed's perishable nature, it is supplied in local areas that are no wider than [REDACTED] miles around the plant, the maximum delivery distance considered by the parties as economically viable. In particular, the parties submitted that in 2012, 80% of the parties' screed volumes were delivered on average within [REDACTED] miles of LT and TBP plants.
67. The CMA therefore considers the supply of ready-mixed screed primarily on a local basis (measured by a radial distance of [REDACTED] miles around the parties' production/delivery sites as a starting point, as well as site-specific radials). The CMA also considers the supply of screed in GB due to a concern raised by a competitor in relation to suppliers with a national presence. However, there is no need for the CMA to reach a conclusion on the geographic scope given that no concerns arise on any geographic scope.

---

<sup>32</sup> These standard EPRs for example Scotland, South East, North, North West, Yorkshire and Humberside, East Midlands, West Midlands, South West, East Anglia and Wales.

<sup>33</sup> OFT Decision dated 2 November 2011 on the *Anticipated Joint Venture Between Anglo American plc and Lafarge S.A.*, paragraph 115.

## *Mortar*

68. TBP operates 17 plants that supply wet ready-mixed mortar which is delivered directly to construction sites in mixer trucks, and five plants that deliver to customer sites in tankers and deposit dry silo mortar into specialist silos.
69. The parties submitted that 80% of TBP's ready-mixed mortar volume in 2012 was delivered within [X] miles of its sites and 80% of TBP's dry silo mortar volume in 2012 was delivered within [X] miles of its plants. Third party suppliers of mortar also told the CMA that they deliver over a distance of around 70 miles.
70. For the purposes of the vertical assessment, concerns only arise if there is a geographic overlap between TBP's dry silo mortar plant and a competitor's ready-mixed mortar plant. There is no such overlap on the basis of TBP's ready-mixed mortar supply radial so on a cautious basis, the CMA uses the supply of mortar within a [X] miles radius of TBP's dry silo mortar plants as a starting point in this vertical assessment.

## *Bagged aggregates*

71. TBP operates 13 sites for the supply of bagged aggregates. LT (through its 50% share in GRS) operates nine sites and one recycling site.
72. The parties submitted that the overwhelming majority of TBP's sales are accounted for by national customers. In 2012, over [X]% of sales volumes were accounted for by national customers.<sup>34</sup> GRS customers typically procure materials on a regional basis because GRS does not have the necessary geographic coverage to supply customers on a national basis. In addition the parties submitted that, given there is little or no variation in the prices offered by TBP to national merchants and DIY customers irrespective of the customers' location or volume purchased, the geographic scope of bagged aggregates is national.
73. However, the parties submitted that to the extent that a local market is considered appropriate, 80% of TBP's bagged aggregate volumes were delivered on average around [X] miles in urban and [X] miles in non-urban areas. The parties submitted that several sites [X] deliver these products over distances of around [X] miles or farther at the 80<sup>th</sup> percentile and that therefore this is a

---

<sup>34</sup> The parties submitted that national customers include major merchants, DIY retailers and independent merchants who purchase through buying groups.

further indication that there is a national market for a significant proportion of TBP's bagged aggregates sales.

74. However, further evidence submitted by the parties showed that individual catchment areas vary significantly across TBP's bagged aggregates sites (between [X] and [X] miles) and some increase considerably at the transition from the 80<sup>th</sup> to the 90<sup>th</sup> percentile ([X] to [X] miles).
75. Information also provided by third party producers of bagged aggregates showed that they supply over distances of around 37 miles on average.<sup>35</sup>
76. In line with previous decisional practice<sup>36</sup> the CMA therefore considers the supply of bagged aggregates both on a GB-wide and, on a cautious approach, a local geographic basis (measured by the average [X] (urban) and [X] (non-urban) miles radius centred at the specific production site as a starting point, as well as site-specific catchment areas).

#### *Packed cement*

77. The parties submitted that they supply packed cement primarily to builders' merchants and DIY retailers. The parties submitted that these merchants typically negotiate a single price irrespective of delivery destination. On this basis therefore, the parties submitted that the appropriate geographic scope for packed cement is national.
78. The parties also submitted that LT's packed cement sales are controlled through a central sales office, which negotiates a single national price for its packed cement. TBP operates a similar structure, according to the parties. Regional customers receive a regional price, with any variation in regional prices reflecting TBP's relative distribution costs as opposed to being flexed according to local competitive conditions.
79. However, in considering catchment areas, the parties submitted that 80% of TBP's packed cement volumes were, on average, delivered within a radial of [X] miles and 80% of LT's packed cement volumes were, on average, delivered within a radial of [X] miles around its packed cement manufacturing plants in 2011.

---

<sup>35</sup> CMA calculation based on 12 third party responses. Standard deviation around 12.33.

<sup>36</sup> OFT decision, ME/3978/08 - *Completed acquisition by Aggregate Industries UK Limited of Atlantic Aggregates Limited and of Stone Haul Limited* (2009).



80. On the basis of the evidence available and for the purpose of the competition assessment, on a cautious basis the CMA considers both regional markets (based on EPRs submitted by the parties)<sup>37</sup> and a GB-wide market.

*Packed cementitious products (packed concrete and mortar only)*

81. In line with other packed products, the parties submitted that the geographic scope for packed cementitious products is GB-wide on the basis that the majority of the parties' customers are national customers.

82. The CMA also considered the parties' respective catchment areas. This showed that 80% of TBP packed cementitious volumes are, on average, delivered within a radial of [X] miles around its plants and 80% of LT packed cementitious volumes are delivered within a radial of [X] miles around LT's (only) site manufacturing packed cementitious products.

83. However, on the basis of the evidence available to it, the CMA considers the geographic scope in its competition assessment on regional markets (leaving the precise boundaries open as they make no difference to the outcome of the competitive assessment) and on a GB-wide basis.

*Packed lime*

84. The parties submitted that the appropriate geographic scope for packed lime is national on the basis that both LT and TBP supply all customers across GB from a single site.

85. For the purpose of the competition assessment the CMA considers the supply of packed hydrated lime on a GB-wide basis.

**Conclusion on frame of reference**

86. The CMA has used the following relevant frames of reference in its competitive assessment of *horizontal issues* with the specific local geographic frames below used as starting points for its local analysis:

- The supply of all types of ready-mixed screed from fixed plants (leaving open the question whether or not traditional screed is distinct from VAP screed) on a GB-wide basis and on a local basis using a radial distance of [X] miles from the parties' production/delivery sites;

---

<sup>37</sup> The parties had no share of supply data available on a catchment area basis, and therefore the CMA has used EPRs as a proxy.

- The supply of all types of bagged aggregates on a GB-wide basis and on a local basis using radial distances of [X] (urban) and [X] (non-urban) miles from the parties' production/delivery sites;
- The supply of packed cement on a GB-wide basis and on a regional basis (using EPRs submitted by the parties);
- The supply of packed concrete and mortar on a GB-wide basis and on a regional basis (using EPRs submitted by the parties); and
- The supply of packed hydrated lime on a GB-wide basis

87. The CMA has used the following frames of reference for upstream inputs in its competitive assessment of *vertical issues*, alongside the downstream frames of reference as above, with the specific local geographic frames below used as starting points for its local analysis:

- The supply of bulk aggregates over a radial distance of [X] miles from the parties' production/delivery sites;
- The supply of bulk cement in EPRs; and
- The supply of bulk hydrated lime on a GB-wide basis.

88. The CMA left open the question of whether there were any further distinctions within each of these product frames.

### **Horizontal issues**

89. Horizontal effects can arise in a merger when a firm merges with a competitor that previously provided a competitive constraint, potentially allowing the merged firm to profitably raise prices unilaterally and/or degrade the quality of service offered to its customers compared with what would occur absent the merger.<sup>38</sup>

90. The CMA considers below evidence on share of supply, the closeness of competition between the parties, and the effectiveness of competing suppliers in relation to the horizontal overlaps discussed above; namely the supply of screed, bagged aggregates, packed cement and packed mortar, and packed lime.

---

<sup>38</sup> See *Merger Assessment Guidelines*, paragraphs 5.4.1 to 5.4.12.

## Screed

### GB-wide assessment

#### *Shares of supply and competing suppliers*

91. Table 1 below sets out the parties' estimate of shares of supply for the supply of screed. The parties submitted that their estimated combined share of supply for screed (including both traditional and VAP screed) in GB is [40-50%] with an increment of [0-10%] from LT. Other major suppliers were Cemex with [20-30%], Premier Mortars with [10-20%], and Hope Construction with [10-20%].

**Table 1: GB shares of production of traditional and VAP screed (2012)**

	<b>Volume (kt)</b>	<b>Shares excluding site-mixed screed (%)</b>
TBP	[X]	[30-40]
LT	[X]	[0-10]
<b>TBP/LT combined</b>	[X]	<b>[40-50]</b>
Cemex	[X]	[20-30]
Premier Mortars	[X]	[10-20]
Hope Construction		
Materials	[X]	[10-20]
Aggregate Industries	[X]	[0-10]
Other mortar suppliers	[X]	[0-10]

*Source: CMA calculation based on parties' estimates.*

92. One customer raised concerns about the reduction in choice at a national level, indicating that the reduction in alternative suppliers may cause higher prices and poorer quality of service. However, this third party also confirmed that it would consider switching to Aggregate Industries and Premier Mortars. All other customers told the CMA that LT was relatively expensive and did not provide an especially strong or disproportionate competitive constraint to TBP relative to its share of supply. All other customers also referred to other suppliers as credible alternatives that they could easily switch to without raising concerns on price or quality of service.
93. Although the parties' estimated post-merger share of supply will be relatively high, customers appear to have viable alternatives, in particular, with suppliers such as Cemex, Premier Mortars and Hope Construction who have significant

shares of supply exceeding the increment to the merged firm's share from the merger.

### **Spare capacity**

94. The parties submitted that one of the key characteristics of this market is the existence of a significant degree of spare capacity. Where spare capacity of competing firms is high it may be difficult for the parties' to raise prices or otherwise degrade their competitive offering as customers could easily switch their screed requirements to other suppliers who are not constrained by capacity issues and can easily supply the required volumes demanded. This is particularly the case where the products that firms offer are broadly homogenous and capacity is a key factor in the overall prices charged by suppliers.<sup>39</sup>
95. The parties estimated industry-wide (including competitors) capacity utilisation to be around 25% on a typical working day (8am to 4pm), with spare capacity therefore running at 75%. One competitor broadly confirmed that there was significant spare capacity in screed production in general, with its RMX plants' spare capacity ranging from 50 to 80%. The parties also submitted that the existence of spare capacity is also indicated by the fact that current production levels are 11% below their peak in 2010 with no material change to capacity.
96. In addition, the parties submitted that output is readily scalable within a plant's capacity without incurring additional fixed costs and that variable costs would not increase significantly.
97. On the basis of the evidence available to the CMA, it does not consider that the merger raises significant competition concerns at the national level. In particular, the CMA received limited third party concern at national level and despite the relatively high combined share of supply of the parties post-merger, the parties will continue to be constrained by other competitors, which customers have highlighted as being credible alternatives. In addition, the existence of a significant amount of spare capacity amongst those competitors such that they would be able to meet demand from any customers who may switch away from the parties, makes it difficult for the parties to profitably increase prices or degrade quality of service.

---

<sup>39</sup> See [Merger Assessment Guidelines](#), paragraph 5.4.11. See also, for example, the OFT's decision in *Kingspan/CRH (ME/4807/10)*, paragraphs 30 - 55. Existing certifications and measurable properties of screed (see for instance: The British Standards Institution, BS EN 13813:2002, *screed material and floor screeds. Screed material. Properties and requirements*) suggest that screed of the same type may be considered a relatively homogeneous product.

## Conclusion

98. For the reasons set out above, the CMA does not consider that there is a realistic prospect that the merger will result in an SLC in the supply of screed at a GB level. The CMA considers its assessment above also applies to VAP screed and traditional screed separately, as the CMA did not obtain any evidence that the competitive position is materially different between these products and no third parties raised concerns specific to each of these products.

## Local assessment

99. The parties were unable to estimate their share of supply on a revenue basis. In the absence of such information, the CMA therefore estimated the parties' share of sites at a local level using the parties' 80% catchment areas. In most local overlap areas, the parties' share of sites was below 33% on this basis, there were at least three other competitors, typically nine or more competing sites, and no third party concerns. The CMA further notes that competitors operate at significant levels of spare capacity (as explained above). In these areas, the CMA therefore considers that there is no realistic prospect of an SLC.
100. In three areas, the parties had a combined share of sites between 33% and 35%. These sites were in Chesterfield (where there would be a fascia reduction from five to four), Sheffield (six to five) and Nottingham (eight to seven). However, in each of these areas, there are at least three competing national screed suppliers active, each with at least two sites.
101. On a cautious basis, in these three areas and other areas where third parties raised concerns,<sup>40</sup> the CMA additionally considered the parties' share of screed sites within a site-specific 80% catchment area radial. These site-specific radials ranged from [X] to [X] miles. In these areas, the parties' combined share of sites ranged from 11 to 31%. Moreover, using these site-specific catchment radials, in all areas there were at least two remaining competitors and there were at least nine competing sites. Further, as noted above, competitors operate with significant levels of spare capacity.
102. On the basis of the evidence available to the CMA, it does not, therefore, consider that there is a realistic prospect that the merger will result in an SLC for the supply of screed at local level. Given that the CMA did not obtain any

---

<sup>40</sup> Three customers raised concerns about reduced local competition in relation to Nottingham, Derby, Bristol, London and south east England. However, the CMA notes that there was a lack of third party concern more generally.

evidence that the competitive position is materially different between traditional and VAP screed and no third parties had concerns specific to either of these products, the CMA considers its assessment above also applies to each of these products.

## **Bagged aggregates**

### **GB-wide assessment**

103. The parties estimated, on the basis of independent market data,<sup>41</sup> that their combined share of supply for bagged aggregates at GB level will be 21% with an increment to share of supply of 9.3%<sup>42</sup> from LT.
104. One competitor said that the merger removes one of only a few full-range national suppliers. However, none of the national customers contacted by the CMA raised concerns about the merger. The CMA considers that at the GB level the parties will face significant competition from at least three competitors (confirmed by its investigation with third parties): Hanson, with a share of supply of [0-10%], Aggregate Industries ([0-10%]) and Cemex ([0-10%]). In any event, the parties' combined share of supply is not at a level that would typically give the CMA cause for concern.<sup>43</sup>
105. On the basis of the evidence available to the CMA, it therefore does not consider that there is a realistic prospect that the merger will give rise to an SLC in the supply of bagged aggregates at GB level. Given that the CMA did not obtain any evidence that the competitive position is materially different between types of bagged aggregates, the general lack of third party concern and absence of concerns about a specific type of aggregate, the CMA considers that the same conclusion applies to specific types of bagged aggregates.

### **Local assessment**

106. The CMA considered the parties' combined share of production volumes around each of the parties' sites using a number of variations to the catchment area analysis. In applying this varied approach to the analysis, the CMA found that in eight of the 16 areas where the parties' sites overlap, their combined share was below 33% and, given also the absence of third party concerns for these areas, the CMA considers these areas did not give rise to competition

---

<sup>41</sup> BDS *Estimates of the outputs of packed products plants in Great Britain (2012)*.

<sup>42</sup> This assumes that the GRS share is allocated to LT.

<sup>43</sup> See *Merger Assessment Guidelines*, paragraph 5.3.5.

concerns. This approach is in line with the approach taken in other recent cases involving aggregates.<sup>44</sup>

107. As regards the other eight overlap areas, one approach the CMA used was to take the average 80% catchment area radial across TBP's sites (weighted by volumes).<sup>45</sup> These radials were [X] miles in rural areas and [X] miles in urban areas. Using these radials, the CMA found that in eight areas the parties' combined share of supply was above 33% (in no case is the combined share above 45%).<sup>46</sup>
108. Another approach considered by the CMA was to use the site-specific 80% catchment area radials for these eight areas. This showed a variation from [X] miles (in Crown Farm) to [X] miles (in Dewsbury). Taking this approach did not result in a change to the share of supply for most of TBP's sites where the parties' combined share of supply was around [30-40]% or more. However, by taking this site-specific catchment area approach, the parties' combined share of supply around Crown Farm and Nuneaton were [50-60]% and [40-50]% respectively.
109. The CMA considers that there is a large fringe of local suppliers of bagged aggregates, as in each local overlap area there are at least 11 competitors (using the 80% average catchment area radials approach) of which there are at least two other national suppliers.<sup>47</sup> Further, at the local level the CMA received only one concern from a third party who was both a customer and a competitor to the parties.
110. In addition, the parties submitted that the significant spare capacity in screed equally applies to bagged aggregates.<sup>48</sup> Using the parties estimates and independent BDS data, the CMA found that in each overlap area, the competitors' combined spare capacity was of a similar size to the increment to the parties' spare capacity resulting from the merger, if not significantly larger.<sup>49</sup>
111. Therefore, although in some local areas the parties will have a significant combined share of supply in bagged aggregates, there was a lack of third party concerns and the CMA considers there will remain a large number of credible

---

<sup>44</sup> See OFT's decision *ME/6082/13 - Completed acquisition by Breedon Aggregates Limited of certain assets of Aggregate Industries UK Limited*, paragraph 75 and CC's decision- *Anticipated Joint Venture Between AA/ Lafarge S.A. (2012)*, paragraph 6.34

<sup>45</sup> LT did not have such data available for its sites, which are part of its GRS joint venture.

<sup>46</sup> These eight areas were; Cliffe, Harefield, Hatfield, Husbands Bosworth, Linford, Rainham, Sevenoaks and Tyttenhanger.

<sup>47</sup> That is, Aggregate Industries, Cemex or Hanson.

<sup>48</sup> Based on independent data from BDS and the parties own estimates.

<sup>49</sup> This was using site-specific or average 80% catchment area radials.

competitors, some of which have been highlighted by customers as feasible alternatives they could switch to, and which the CMA has confirmed have significant spare capacity to meet demand that switches from the parties and therefore constrain the parties.

112. On the evidence available to the CMA, it does not therefore consider that there is a realistic prospect that the merger will result in an SLC in the supply of bagged aggregates in any local area. Given that the CMA did not obtain any evidence that the competitive position is materially different between specific types of bagged aggregates and the general lack of third party concern and absence of concerns about a specific type of aggregate, the CMA considers that the same conclusion applies to specific types of bagged aggregates.

## **Packed cement**

### **GB-wide assessment**

113. Based on independent market data,<sup>50</sup> the parties estimated their share of supply by volume to be 55.5% with a very small increment from TBP of 1.3%. The parties submitted therefore that the overlap is limited. According to this independent market data, Cemex has a share of supply (by volume) of 19% and Hanson of 18%. These competitors therefore have a more significant share of supply than TBP who, unlike these competitors, does not supply bulk cement, and for whom packed cement is not core business. The parties submitted that TBP supplies packed cement to fill a perceived gap in its product range. The CMA did not receive any third party concerns at GB level.
114. Although the parties' combined post-merger share of supply is relatively high, for the reasons set out above, the CMA therefore considers that there is no realistic prospect that the merger will result in an SLC for the supply of packed cement at the GB level.

### **Local assessment**

115. The CMA considered the local market on the basis of the parties' EPRs.<sup>51</sup> The parties' shares of supply in these regions broadly mirrored their share of supply at the GB level (from around 44 to 61% with a very low increment to the combined share of supply from TBP at no more than [0-10]%), with the exception of Scotland where the parties' combined share of supply (by volume)

---

<sup>50</sup> Mineral Products Association data

<sup>51</sup> The parties had no data available on a catchment area basis so the CMA has used EPRs as a proxy



is approximately [80-90]%. However, in Scotland TBP's share is negligible at [0-10]%

116. The CMA considers, therefore, that in all regions TBP's increment to the combined share of supply is small and was not providing a strong constraint on LT pre-merger, with at least two alternative suppliers remaining in each region, post-merger, with higher shares of supply than TBP.
117. On the basis that there were no third party concerns at local level and on the evidence available to the CMA – in particular the minimal increment and presence of strong credible competitors post-merger – it considers that there is no realistic prospect that the merger will result in an SLC for the supply of packed cement at the local level.

### **Packed cementitious products**

118. The parties submitted that they were not aware of an independent source for share of supply data but that post-merger there will remain 12 competitors for packed concrete and 14 competitors for packed mortar in GB. In addition, the parties submitted that they expected LT's share of supply in packed concrete and mortar to be significantly less than its share of supply in packed cement given the great number of competitors.
119. A map of the parties' packed concrete and mortar sites showed a cluster of seven sites in the Midlands area. The parties submitted that they can deliver across GB from their sites in this area. The same also appears to be the case for Cemex. In addition, customers confirmed that switching between suppliers of packed cement and packed cementitious products is relatively easy. Customers were also able to point to a range of alternative suppliers they could switch to and were generally unconcerned about the merger.
120. However, the CMA received one concern regarding the supply of a particular type of packed concrete.<sup>52</sup> The third party considered that, post-merger, there would be a reduction in the number of suppliers of this product from four to three firms in its area. However, the CMA noted three further viable suppliers as being active in the area, all located near LT's sites and producing a similar product to TBP. That said, the CMA notes that this third party stated that LT's higher pricing meant that it would not consider switching from TBP to LT. This suggests that LT was not constraining the price of TBP's product. Rather, the

---

<sup>52</sup> The CMA has avoided publishing specific details of the complaint to avoid identifying the third party.

supplier had quoted the price of another competitor to obtain better prices from TBP.

121. On the basis of the evidence available to the CMA, it does not consider that there is a realistic prospect of an SLC in the supply of packed cementitious products (namely packed concrete and mortar).

### **Packed lime**

122. The parties submitted that there is limited overlap between them in packed lime with TBP supplying insignificant quantities. The parties submitted that in 2012 TBP's sales of packed lime generated sales revenue of approximately £[redacted] most of which was sold to a single customer. On the other hand, LT's sales of packed lime for the same period totalled approximately £[redacted].
123. Nevertheless, the CMA received one concern from a customer of packed and bulk lime. It should be noted, however, that this customer considered only lime from Buxton as viable, whereas other producers pointed out that for construction purposes a wide variety of lime is suitable. In addition, the customer who raised the concern was not aware of the production and bagging arrangements between the parties<sup>53</sup> since it purchased its lime requirements through a third party seller. In essence, therefore, there is no constraint by TBP on LT in any event.
124. On the basis of the evidence available to the CMA, and in particular TBP's negligible sales, it does not consider that there is a realistic prospect of an SLC in the supply of packed lime.

### **Vertical issues**

125. Although vertical mergers do not involve a direct loss of competition between firms in the same market, some can weaken competition and may result in an SLC.<sup>54</sup> The CMA has therefore assessed whether post-merger the parties would be likely to engage in a strategy of full or partial input foreclosure of rivals of TBP.
126. In line with the *Merger Assessment Guidelines*, the CMA has framed its foreclosure analysis by reference to the following three questions:

---

<sup>53</sup> LT simply adds the bulk lime into TBP bagging and therefore TBP is not constraining LT.

<sup>54</sup> [Merger Assessment Guidelines](#), paragraph 5.6.1.

- *Ability*: would the merged entity have the ability to weaken the competitive offering of rival products, for example through raising prices or refusal to supply them?
- *Incentive*: would the merged entity find it profitable to do so?
- *Effect*: would the effect of any action by the merged entity be sufficient to reduce competition in the affected market to the extent that it gives rise to an SLC?<sup>55</sup>

127. Given the range of vertical links between the parties and the number of local areas in which they operate, there were a number of hypothetical foreclosure theories of harm considered by the CMA in the main as well as contacting all third parties that could be hypothetically foreclosed. However, the CMA received only limited concerns from third parties with the most significant concerns relating to the vertical theories of harm outlined below:

- LT foreclosing TBP's mortar competitors from cement;
- LT foreclosing TBP's (and LT's) screed competitors from bulk aggregates; and
- LT foreclosing TBP's (and LT's) bagged aggregates competitors from bulk aggregates.

128. The CMA's investigation also revealed some other concerns. The CMA assessed the credibility of such foreclosure concerns against a number of factors, in particular, the pre-merger vertical links between LT and TBP (Anglo owning 50% of LT and 100% of TBP), the fact that many of the third parties are vertically integrated and more generally, the extent of spare capacity in aggregates and the substantial choice of credible alternative suppliers. Overall, and on the basis of the evidence available, the CMA considered that there was no realistic prospect of input or customer foreclosure relating to these other concerns and the CMA has therefore not discussed these in the decision.

#### *Input foreclosure of TBP's mortar competitors from cement*

129. One competing supplier of ready-mixed mortar in [X] raised concerns that LT could foreclose it from the supply of bulk cement. The competitor currently sources its cement requirements from LT and explained that although it could switch to other suppliers of cement this would have the effect of increasing its costs due to the greater distances involved in obtaining its supply. The third party said that TBP has a dry silo mortar plant near [X].

---

<sup>55</sup> [Merger Assessment Guidelines](#) paragraph 5.6.6.

### *Ability to foreclose*

130. LT's upstream share of supply of bulk cement in Scotland is [60-70]%. In addition, cement constitutes approximately [%] of the variable cost of producing ready-mixed mortar according to the parties' estimates which represents a significant proportion.<sup>56</sup> That said, the extent of LT's ability to foreclose this mortar competitor is somewhat unclear given that another mortar competitor ([%]) in [%] confirmed that it could switch to other cement suppliers in the event that LT tried to foreclose it from the supply of ready-mixed mortar and therefore had no concerns. However, this competitor is located approximately [%] and may therefore face less costly supply alternatives of bulk cement.
131. The importance of transport costs is shown by estimates provided by two third parties that suggest that transport costs represent between around 20 and 30% of the total cost of cement.

### *Incentive to foreclose*

132. An initial assessment of the parties' upstream and downstream profit margins may suggest a potential incentive to engage in a foreclosure strategy. TBP's variable profit margins for mortar are higher (£[%] per tonne of dry mortar<sup>57</sup>) than the amount that LT would stand to lose upstream from not supplying other mortar suppliers with cement (£[%] per tonne of wet mortar<sup>58</sup> produced by competitors). These figures are based on the parties' estimates of their variable profit margins and how much cement is used to produce one tonne of wet mortar.<sup>59</sup>
133. However, the CMA considers there are a number of reasons why the parties may not have the incentive to foreclose the concerned third party. In particular, the concerned competitor also purchases cement from LT to produce RMX, in relation to which the parties do not have an incentive to foreclose as they are not active in the RMX market in the relevant area. Given that the parties do not control or even have visibility over what the concerned competitor uses the

---

<sup>56</sup> The extent to which downstream rivals can avoid a price increase by switching to alternatives and the relative importance of the cost of the input are key factors determining the ability to foreclose. See [Merger Assessment Guidelines](#), paragraph 5.6.10.

<sup>57</sup> Here the CMA considers dry mortar variable profit margins, as this is the type of mortar that TBP could supply in [%].

<sup>58</sup> Here the CMA considers the cement used to produce wet mortar as this is the type of mortar that the concerned third party supplies.

<sup>59</sup> While cement earns [%] profit margins in terms of pounds per tonne of cement, only [%] tonnes of cement is used to produce [%] tonne of wet mortar. This means LT earns [%] profit margins in terms of the cement it supplies to a competitor to produce one tonne of wet mortar.

cement for, it would be very difficult for the parties to target its mortar business. In effect, the parties would risk losing significantly greater upstream sales of cement with a highly uncertain and potentially small return from increased downstream sales of mortar.

134. Furthermore, it is not clear to the CMA that TBP would be in a position to gain the mortar sales from the foreclosed competitor. TBP's mortar plant is around [X] miles from the concerned competitor's plant and only around [X]% of TBP's sales are between [X] miles from its own plant. Moreover, the other mortar supplier in the area could pick up a significant amount of the foreclosed mortar competitor's sales. This made it even less certain whether the parties would gain the foreclosed competitor's sales.
135. For the reasons set out above, the CMA therefore considers that the parties' have no incentive to engage in a foreclosure strategy regarding the supply of bulk cement in Scotland. It is therefore not necessary to consider the effect of such a strategy.
136. Overall, on the basis of the evidence available to the CMA, it does not consider that there is a realistic prospect of an SLC arising from input foreclosure effects from bulk cement of a mortar supplier.

*Input foreclosure of screed and bagged aggregates competitors from bulk aggregates*

137. The CMA received two input foreclosure concerns around bulk aggregates, one in relation to the use in bagged aggregates and the other in screed.
138. In relation to the foreclosure concerns raised by a *bagged aggregates* competitor, the CMA considered that although LT has a share of supply of around [60-70]%<sup>60</sup> in the upstream supply of bulk aggregates in the geographic area of concern, and hence a *prima facie* ability to foreclose, the concerned competitor also operates a haulage business that buys bulk aggregates. The parties do not operate a haulage business and therefore do not have control or visibility of how the competitor splits its bulk aggregates between its two businesses. As above, the parties would risk losing significantly upstream sales with significant uncertainty over the extent of downstream gains. The CMA, therefore, does not consider that the parties will have the incentive to foreclose.

---

<sup>60</sup> Estimated by the parties.

139. Overall, on the evidence available to the CMA therefore, it does not consider that there is a realistic prospect of an SLC arising from input foreclosure effects from bulk aggregates of a bagged aggregates supplier.
140. In relation to the foreclosure concerns raised by a *screed* supplier, the concerned competitor told the CMA that the price of bulk aggregates could rise given that it currently competes with TBP in the supply of ready-mixed screed. However, the parties estimated LT's upstream share of supply of sand and gravel to be below [30-40]% in an area of [X] miles<sup>61</sup> around the third party's site. This is below the threshold the CMA would typically have cause for concern<sup>62</sup> and the CMA has no other evidence to suggest the parties will have the ability to foreclose
141. Overall, on the evidence available to the CMA, it does not therefore consider that there is a realistic prospect of an SLC arising from a foreclosure of bulk aggregates to a screed supplier.

### **Countervailing buyer power**

142. The parties submitted that there is significant countervailing buyer power in relation to the supply of bagged aggregates. They explained that this is because buyers have low switching costs, are large purchasers and because the majority of bagged aggregates are purchased using informal tender processes. However, the CMA notes that it is not clear that any such countervailing buyer power<sup>63</sup> extends to smaller customers.<sup>64</sup>
143. However, on the basis that no competition concerns arise, the CMA does not consider it necessary to conclude on countervailing buyer power.

### **Barriers to entry and expansion**

144. The CC in its MIR – *aggregates, cement and RMX (2014)*,<sup>65</sup> also considered that imports of aggregates from outside GB is relatively small and that the capital cost of developing the upstream production of aggregates could be in

---

<sup>61</sup> The same radial distance used by the CC in its decision *Anglo American plc and Lafarge S.A. (2012)*

<sup>62</sup> *Merger Assessment Guidelines*, paragraph 5.3.5.

<sup>63</sup> *Merger Assessment Guidelines*, paragraph 5.9.1.

<sup>64</sup> For example, third parties informed the CMA that buying groups may not be an option for some customers who want to keep an element of control over the product range they offer. Also, TBP's internal documents showed that TBP has different sales teams for key accounts and local accounts, which may suggest that smaller/local customers may not be protected by any negotiating strength of larger customers.

<sup>65</sup> See paragraph 6.32.

the region of £0.25 million for a small sand and gravel site to potentially over £40 million for a crushed rock site.<sup>66</sup>

145. Third party responses suggested that entry into the production of input material such as cement, aggregates and lime is relatively more difficult than entry into bagged products. However, third parties also said that margins for baggers are low and therefore necessary investments would only be recouped after a relatively long time. Third parties further noted that entry into the production of dry silo mortar and VAP screed requires investments in specialist equipment. The parties did not submit evidence to suggest that entry into any of the affected markets would be timely, likely and sufficient.<sup>67</sup>

146. However, on the basis that no competition concerns arise in any of the affected markets, the CMA does not consider it necessary to conclude on barriers to entry and expansion.

### **Third party views**

147. The CMA contacted in excess of 300 third parties and received a substantial number of responses which have been reflected above where appropriate. The number of third parties, including customers that raised concerns was limited.

### **Decision**

148. This merger will therefore **not be referred** under section 22(1) of the Act.

---

<sup>66</sup> See paragraph 6.49.

<sup>67</sup> *Merger Assessment Guidance*, paragraphs 5.8.1 to 5.8.3.