



EUROPEAN COMMISSION
DG Competition

CASE M.7054 –CEMEX / HOLCIM ASSETS

(Only the English text is authentic)

MERGER PROCEDURE REGULATION (EC) 139/2004

Article 8 (1) Regulation (EC) 139/2004

Date: 9/9/2014

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EUROPEAN COMMISSION

Brussels, 9.9.2014
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PUBLIC VERSION

COMMISSION DECISION

of 9.9.2014

**addressed to:
Cemex España, S.A. (Spain)**

**declaring a concentration to be compatible with the internal market
and the functioning of the EEA Agreement
(Case M.7054 – Cemex / Holcim Assets)**

(Only the English version is authentic)

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COMMISSION DECISION

of 9.9.2014

**declaring a concentration to be compatible with the internal market and the EEA
agreement**

(Case M.7054 - CEMEX / HOLCIM ASSETS)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹, and in particular Article 8(1) thereof,

Having regard to the Commission's decision of 23 April 2014 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations²,

Having regard to the final report of the Hearing Officer in this case³,

Whereas:

- (1) On 28 February 2014, the European Commission received a notification of a proposed transaction by which Cemex España, S.A. ("Cemex España", Spain) (the "Notifying Party") intends to acquire sole control over the production and distribution assets of Holcim España, S.A. ("Holcim Assets")⁴, in cement, ready-mix concrete ("RMX"), aggregates and mortar in Spain ("the proposed transaction").⁵ Cemex España and Holcim España together will be referred to as "the Parties".

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² OJ C 438, 06/12/2014, p.17.

³ OJ C 438, 06/12/2014, p.19.

⁴ The Holcim Assets also include a number of companies owned by Holcim España S.A. that are unrelated to the building materials sector. These companies are Filona S.R.L. (holding of shares and participations), Geocycle España, S.A. (collection, treatment and sale of polluting waste for disposal and/or recovery), Holcim Logística S.L. (road transport of goods), and Vera Consignatarios, S.L. (ship consignment). The Holcim Assets, however, do not include Holcim Trading, S.A., a company dedicated to the trading and transport of cementitious products from various locations around the world.

⁵ OJ C 72, 11.3.2014, p. 34.

1. THE PARTIES

1.1. Cemex

- (2) Cemex España is controlled by Cemex, S.A.B. de C.V., which is headquartered in Mexico and, along with the rest of the Cemex companies, constitutes the Cemex Group. All companies of the Cemex Group are hereinafter referred to as "Cemex".
- (3) Cemex is a global building materials company active in cement, RMX, aggregates and related building materials. It has operations in Africa, the Americas, Asia, Europe and the Middle East. In Spain, Cemex undertakes its activities through the Notifying Party, which is the sole holding company of Cemex España Operaciones S.L.U. ("Cemex España Operaciones", Spain), which owns Cemex's cement, mortar, concrete plants and aggregate quarries in Spain.

1.2. Holcim

- (4) The Holcim Assets include plants and quarries dedicated to the production and supply of cement, aggregates, RMX and mortar in Spain. The Holcim Assets are currently controlled by Holcim Ltd ("Holcim"), a joint stock company established under Swiss Law, which is the ultimate parent company of the Holcim Group. All companies of the Holcim Group are hereinafter referred to as "Holcim".
- (5) Holcim is a global supplier of cement, aggregates, mortar, RMX, asphalt, cementitious materials and related building materials with operations in more than 70 countries.

2. THE PROPOSED TRANSACTION AND THE CONCENTRATION

- (6) On 12 July 2013, Holcim and Cemex signed a Memorandum of Understanding ("MoU") concerning a series of transactions by which Holcim will acquire certain Cemex assets located primarily in western Germany ("Cemex West") whilst Cemex will acquire control of the whole of Holcim's activities in cement, RMX and aggregates in the Czech Republic and Spain. According to the terms of the MoU, the transactions are related and dependent on each other.⁶
- (7) In order to compensate for the valuation difference between Holcim's Czech business (to be acquired by Cemex) and Cemex West, Holcim will pay Cemex an amount of EUR 70 million at closing. In consideration for contributing its operations in Spain to Cemex, Holcim will acquire a 24.9 % minority shareholding in Cemex España Operaciones, the company which will combine the Spanish activities of each of the Parties in cement, mortar, RMX and aggregates.⁷ Holcim has an exit right that allows it to sell its shareholding in Cemex España Operaciones after a five-year period.
- (8) The transactions subject to the MoU cannot be assessed under Regulation (EC) No 139/2004 as a single concentration as two or more transactions can only be regarded as a single concentration if control is ultimately acquired by the same undertaking.⁸ The transaction relating to the acquisition of Cemex West by Holcim had a Union dimension and was declared compatible with the internal market and the EEA

⁶ See MoU, section C.2.

⁷ Based on the MoU, these minority rights will not confer on Holcim any degree of control over Cemex España Operaciones.

⁸ See paragraph 41 of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008, p. 1).

Agreement by the Commission on 5 June 2014.⁹ In contrast, the parallel transactions relating to the acquisition by Cemex of Holcim's businesses in Spain and the Czech Republic do not have a Union dimension.

- (9) As a result of the proposed transaction Cemex España will acquire sole control over the Holcim Assets and the related business and activities of Holcim in the markets for cement, RMX, aggregates and mortar in Spain.
- (10) Therefore, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004.

3. UNION DIMENSION

- (11) The proposed transaction does not meet the turnover thresholds of Article 1(2) or Article 1(3) of Regulation (EC) No 139/2004. It does therefore not have a Union dimension.
- (12) The Commission decided, however, to examine the proposed transaction by adopting a decision on 18 October 2013 pursuant to Article 22(3) of Regulation (EC) No 139/2004. That decision followed a request from Spain of 12 September 2013 pursuant to Article 22(1) of the aforementioned Regulation.¹⁰

4. PROCEDURE

- (13) The proposed transaction was notified to the Commission on 28 February 2014.
- (14) On 23 April 2014, the Commission found that the proposed transaction raised serious doubts as to its compatibility with the internal market and the EEA Agreement. Therefore, the Commission adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of Regulation (EC) No 139/2004 ("the Article 6(1)(c) decision").
- (15) On 24 April 2014, the Commission provided non-confidential versions of certain key submissions of third parties collected during the Phase I investigation to the Notifying Party.
- (16) On 6 May 2014, the Notifying Party submitted its written comments on the Article 6(1)(c) decision ("Reply to the Article 6(1)(c) decision"), together with two reports, one concerning the Madrid area¹¹ and the other one the Levante area.¹² On 23 May 2014, the Notifying Party submitted amended versions of its two reports.
- (17) On 3 July 2014, the Commission adopted a Statement of Objections ("SO") pursuant to Article 18 of Regulation (EC) No 139/2004.
- (18) Cemex replied to the SO on 17 July 2014 ("Reply to the SO") and requested the opportunity to develop its arguments at a formal Oral Hearing. Holcim also replied to the SO on the same date.

⁹ Commission's decision of 5 June 2014 in Case M.7009 – Holcim/Cemex West.

¹⁰ By letter of 1 October 2013 the Czech Republic informed the Commission of its decision not to join Spain in its request for a referral under Article 22(1) of Regulation (EC) No 139/2004. The parallel transaction relating to the acquisition by Cemex of Holcim's businesses in the Czech Republic was cleared without conditions by the Czech Office for the Protection of Competition on 12 March 2014.

¹¹ See Reply to the Article 6(1)(c) decision, Annex 2 "Coordinated effects in Madrid: additional economic assessment".

¹² See Reply to Article 6(1)(c) decision, Annex 3 "Unilateral effects in Levante: economic assessment".

- (19) The Oral Hearing was held on 23 July 2014. A representative of Holcim and its external legal advisors also attended the Oral Hearing.
- (20) On 28 July 2014, the Notifying Party agreed with the Commission to extend the periods previously set pursuant to Article 10(3) second subparagraph, third sentence of Regulation (EC) No 139/2004 by five working days.
- (21) The Advisory Committee on Concentrations met on 26 August 2014.

5. OVERVIEW OF THE CEMENT INDUSTRY

- (22) The proposed transaction concerns the building materials industry and more specifically cement, clinker, RMX, mortar and aggregates, which both Parties produce and sell.
- (23) The acquired assets of the proposed transaction are: (i) 4 cement manufacturing facilities¹³; (ii) 91 RMX plants; (iii) 30 aggregates quarries; and (iv) 5 mortar plants.¹⁴
- (24) *Cement* is one of the main input products in modern construction. Cement is used as an intermediary product, mainly for the production of RMX, and also in the production of concrete products and mortar.¹⁵ Cement is a fine powder used in the building and construction sector because it has the power to set to a hard mass when mixed with water. There are two main types of cement, white cement and grey cement. The Parties' activities only overlap in grey cement as Holcim is not active in white cement in Spain.
- (25) *Clinker* is the main raw material used in the production of cement. It is produced through the conversion of limestone in a thermal, chemical reaction to the desired calcined mineral. It is then ground and blended with gypsum and/or other components to the desired cement product, either in a specific grinding mill or within the cement plant. Therefore, the Notifying Party argues that there are two main types of cement production facilities in Spain: integrated cement plants and grinding mills.¹⁶
- (26) An integrated cement plant is a manufacturing facility that covers the entire cement production process. This includes the following steps: (i) raw material extraction or mining from a quarry; (ii) raw material preparation and blending, i.e. limestone and clay or shale crushing; (iii) raw feed preparation out of the raw materials in the form of meal; (iv) clinker production, which forms the main process, converting raw feed in a thermal, chemical reaction to the desired calcined mineral (the 'clinker' that has the actual hydraulic properties in cement); (v) grinding and blending of clinker with gypsum and/or other components to the desired cement product including storage; and (vi) cement products handling for, and including, dispatch.¹⁷

¹³ Three of the four cement facilities are integrated plants and are located in Almeria (Gador and Carboneras) and the province of Cadiz (Jerez). The fourth plant has been transformed into a grinding station and is located in the province of Toledo (Yeles). See recitals (26) and (27) for a definition of the terms "integrated plants" and "grinding station".

¹⁴ [...].

¹⁵ Form CO, paragraph 57.

¹⁶ Form CO, paragraph 58.

¹⁷ Form CO, paragraph 59.

- (27) A grinding mill typically does not include the mining and the thermal process of producing the clinker, but the final grinding and blending steps, with clinker and other cementitious materials being delivered from a separate plant or sourced elsewhere.¹⁸
- (28) In Spain, there are mainly two sources of clinker: (i) the integrated cement plants and (ii) imports. Imports of clinker have traditionally been important for the coastal areas of Spain, such as Levante. The imported clinker comes mainly from non-EU countries such as China, Thailand, Turkey and Egypt. Sales of clinker produced by integrated cement plants in Spain to third parties typically take place at a more regional level.
- (29) *Aggregates* encompass the three primary raw materials used in construction and civil engineering: gravel, crushed rock and sand.¹⁹
- (30) *RMX* is produced by mixing cement and aggregates with water. Concrete is mixed either on-site or, more commonly, in a dedicated plant before being subsequently transported to the point of use in specific mixer trucks.²⁰
- (31) *Mortar* is a building material obtained from the mixture of a binding material (cement and/or lime), sand and water. It is used, among other things, for bonding bricks and stones, as well as for rendering and plastering.²¹
- (32) The proposed transaction gives rise to affected markets with regard to grey cement, aggregates, RMX, mortar and clinker.
- (33) As the proposed transaction does not give rise to affected markets with regard to white cement, this market will not be discussed further in this Decision.

6. GREY CEMENT

6.1. Relevant product market

6.1.1. Previous decisional practice

- (34) As mentioned in recital (24), there are two main types of cement: white cement and grey cement. In past decisions, the Commission has defined distinct product markets for white cement and grey cement.²²
- (35) Within grey cement, there are a large number of different classes available and further grades can be produced according to customer requirements. Cement classes are defined by strength development and setting times, which are in turn determined by the proportions and nature of the different raw cementitious products used to

¹⁸ Form CO, paragraph 61.

¹⁹ Form CO, paragraph 94.

²⁰ Form CO, paragraphs 99 and 100.

²¹ Form CO, paragraph 104.

²² Commission's decision of 14 March 2005 in Case No COMP/M.3713 – Holcim/Aggregate Industries, paragraph 7; Commission's decision of 8 December 2004 in Case No COMP/M.3572 – Cemex/RMC, paragraph 11; Commission's decision of 28 May 2004 in Case No COMP/M.3415 – CRH/SEMAPA/Secil JV, paragraph 10; Commission's decision of 1 March 2001 in Case No COMP/M.2317 – Lafarge/Blue Circle (II), paragraph 9; Commission's decision of 11 November 1998 in Case No COMP/M.1157 – Skanska/Scancem, paragraph 31; and Commission's decision of 5 June 2014 in Case No/M.7009 – Holcim/Cemex West, paragraph 24.

make that particular cement type.²³ The EU standard EN 197-1 defines five classes of common cement that comprise Portland cement as a main constituent.²⁴

Table 1: Classes of common cement according to EN 197-1

CEM I	Portland cement	Comprising Portland cement and up to 5% of minor additional constituents
CEM II	Portland-composite cement	Portland cement and up to 35% of other single constituents
CEM III	Blast furnace cement	Portland cement and higher percentages of blast furnace slag
CEM IV	Pozzolanic cement	Portland cement and up to 55% of pozzolanic constituents (volcanic ash)
CEM V	Composite cement	Portland cement, blast furnace slag or fly ash and pozzolana

Source: European Committee for Standardisation.

- (36) In the past the Commission has considered that the market for grey cement should not be further segmented according to grades or classes (CEM I to CEM V).²⁵
- (37) Moreover, grey cement is sold both bulk and bagged.²⁶ Bags containing about 25-30 kg of grey cement are sold through do-it-yourself stores and building material retailers whereas bulk grey cement meets the demand of RMX plants, plants producing concrete products and building sites.²⁷

6.1.2. *The Notifying Party's arguments*

- (38) The Notifying Party submits that there is an overall market for the manufacture and sale of grey cement, regardless of its grade and packaging.²⁸ The Notifying Party submits that the main suppliers are in a position to produce different types and packaging of grey cement. Moreover, there is a large degree of demand-side substitutability since both bulk cement and bagged cement are suitable substitutes for customers and represent modalities of distribution rather than product characteristics.

6.1.3. *Responses to the market investigation*

6.1.3.1. White versus grey cement

- (39) The market investigation in this case has supported the Commission's earlier findings and the Notifying Party's view that grey cement and white cement constitute separate product markets.
- (40) Most of the competitors and the vast majority of customers that responded to the market investigation distinguished between white cement and grey cement. Customers explained that white cement is used for different purposes and is more expensive than grey cement. Moreover, competitors explained that grey cement and

²³ See UK Competition Commission's report of 1 May 2012: "*Anglo American PLC and Lafarge S.A.: A report on the anticipated construction materials joint venture between Anglo American PLC and Lafarge S.A.*".

²⁴ Commission's decision of 5 June 2014 in Case No M.7009 – Holcim/Cemex West, paragraph 36.

²⁵ Commission's decision of 5 June 2014 in Case No M.7009 – Holcim/Cemex West, paragraph 45.

²⁶ Commission's decision of 16 May 2011 in Case No COMP/M.6153 – Anglo American/Lafarge/JV, paragraph 25; Commission's decision of 4 March 2008 in Case No COMP/M.4898, Compagnie De Saint-Gobain/Maxit, paragraph 210; and Commission's decision of 5 June 2014 in Case No M.7009 – Holcim/Cemex West, paragraph 39.

²⁷ Form CO, paragraph 64.

²⁸ Form CO, paragraph 65.

white cement are different, mainly for the following reasons: (i) the raw material used for their production is different, (ii) it is difficult to produce grey and white cement at the same production site and (iii) the production cost of white cement is higher than grey cement.²⁹

6.1.3.2. Classes

- (41) The market investigation in this case has supported the Commission's earlier findings that the market for grey cement should not be further segmented according to grades or classes (CEM I to CEM V).
- (42) A large majority of competitors indicated that cement producers are able to switch between the production of different cement classes (for instance from CEM I to CEM III) at short notice and without incurring significant costs, although there may be some constraints with regard to specific raw materials for certain classes of cement.³⁰ A large majority of customers indicated that the suppliers of the different grades of cement are usually the same.³¹ As one customer observed "*the national producers of cement often have the full range of these types of cement*".³²

6.1.3.3. Bagged versus bulk

- (43) The market investigation in this case has supported the Commission's earlier findings³³ that the market for grey cement could be further segmented according to whether grey cement is sold bulk or bagged.
- (44) First, although suppliers of grey cement in Spain that responded to the market investigation indicated that they sell both bulk and bagged cement, additional investment would be required to switch production from bulk cement to bagged cement if there is no bagging and palletising installation in place.³⁴
- (45) Second, from the demand-side perspective there appear to be differences in terms of customers, prices and performance. Nearly all the customers that responded to the market investigation have not switched from bagged to bulk cement (and vice versa) and the majority of customers would not switch from bagged to bulk cement (and vice versa) in case of a small but significant non-transitory increase in price.³⁵

6.1.4. Conclusion on the product market definition

- (46) In light of the above, the Commission considers that for the purpose of the assessment of the proposed transaction, the relevant product market is the overall market for grey cement. However, the exact product market definition can be left

²⁹ See replies to question 23 - Phase I questionnaire to competitors-cement, replies to question 10 - Phase I questionnaire to customers-cement and replies to question 9 - Phase II questionnaire to customers-cement (Q7).

³⁰ See replies to question 27 - Phase I questionnaire to competitors-cement.

³¹ See replies to question 18 - Phase I questionnaire to customers-cement.

³² The Spanish original reads "*Los productores nacionales de cemento suelen disponer de la gama completa que abarca estos diferentes tipos de cemento*". See reply to question 18 - Phase I questionnaire to customers-cement.

³³ Commission's decision of 5 June 2014 in Case No M.7009 – Holcim/Cemex West, paragraph 49.

³⁴ See replies to questions 24 and 25 - Phase I questionnaire to competitors-cement and replies to question 2 - Phase II questionnaire to competitors-cement.

³⁵ See replies to question 17 - Phase I questionnaire to customers-cement and replies to question 16 - Phase II questionnaire to customers-cement (Q7).

open since the competitive assessment would not change even if a narrower segmentation between bagged and bulk grey cement were considered.³⁶

6.2. Relevant geographic market

6.2.1. Previous decisional practice

- (47) In past decisions, the Commission has considered that the geographic market for grey cement consists of a group of geographic markets centred on different cement plants, overlapping one another.³⁷ The scope of the relevant geographic markets was determined by the distance from the plant at which cement may be sold.
- (48) In previous decisions, the Spanish Competition Authority (Comisión Nacional de los Mercados y la Competencia, "CNMC") has analysed the geographic market for grey cement by zones encompassing several Autonomous Communities,³⁸ such as the Centre zone (comprising the Autonomous Communities of Madrid, Castilla-La Mancha, Castilla-Leon and Extremadura), the zone of Levante (comprising the Autonomous Communities of Cataluña, Valencia and Murcia), and the Autonomous Community of Andalusia.³⁹ The precise geographic market was, however, ultimately left open.

6.2.2. The Notifying Party's arguments

- (49) The Notifying Party submits that the relevant geographic market for grey cement covers the territory of mainland Spain. Alternatively, it submits that the relevant geographic markets comprise "clusters" of provinces included in circles defined by 150 or 250 km radii around the Parties' plants.⁴⁰
- (50) The Notifying Party puts forward the following element in this respect. Grey cement is a relatively heavy product with low added value, for which transportation is a very relevant cost element and competitive driver. In consequence, grey cement will normally not travel much further than a given distance from the plant even if a faraway customer would be prepared to pay a premium price for it.⁴¹
- (51) As concerns the methodology for determining clusters, the Notifying Party defines the radii based on linear distances, that is to say, based on the shortest distance

³⁶ According to the Notifying Party, sales of bulk grey cement accounted for [80-90]* % of its overall grey cement sales with the remaining [10-20]* % being bagged. For Holcim, the split is [70-80]* % / [20-30]* %. In light of the foregoing, the Notifying Party submitted market shares for its competitors for the bulk and bagged grey cement segments by splitting the overall grey cement market by [80-90]* % (bulk) / [20-30]* % (bagged). The overall results of the market investigation support this approximation.

³⁷ Commission's decision of 6 July 1994 in Case No IV/M.460 – Holdercim/Cedest, paragraph 16; Commission's decision of 16 December 1997 in Case No COMP/M.1030 – Lafarge/Redland, paragraph 16; Commission's decision of 11 November 1998 in Case No COMP/M.1157 – Skanska/Scancem, paragraph 56; Commission's decision of 1 March 2001 in Case No COMP/M.2317 – Lafarge/Blue Circle (II), paragraph 8; Commission's decision of 8 December 2004 in Case No COMP/M.3572 – Cemex/RMC, paragraph 20 and Commission's decision of 5 June 2014 in Case No M.7009 – Holcim/Cemex West, paragraph 63.

³⁸ An autonomous community is a political and administrative division of Spain, which includes one or several provinces.

³⁹ CNMC's decision (ex-CNC) of 30 July 2013 in Case No C/0517/13 - Cementos Molins/Cemex-Activos, paragraph 32, CNMC's decision (ex-CNC) of 19 November 2008 in Case No C/0112/08 - Cemex/Oriónidas, section IV.2, and CNMC's decision (ex-CNC) decision of 13 March 2008 in Case No C/0052/08 - Lafarge/Grupo GLA, section V.2.1.

⁴⁰ Reply to the SO, paragraph 6 and Form CO, paragraph 82.

⁴¹ Form CO, paragraph 91.

between two points. Additionally, when calculating the total size of the cement market in each territorial cluster based upon a 150/250 km radius around a particular cement plant, the Notifying Party includes the provinces totally or partially comprised in that radius.⁴² This means that even if a significant fraction of a province geographically lies outside the boundary of the relevant radius, it is nonetheless included by the Notifying Party in that cluster.

6.2.3. Responses to the market investigation and the Commission's assessment

- (52) The Commission considers that the relevant geographic markets in this case should be defined not as national but as circular areas around the relevant cement plants reflecting the distance up to which cement suppliers can economically sell cement. In that regard, the Commission considers that 150 km is the appropriate radii of the circle around the relevant grey cement plants.
- (53) Responses to the market investigation supported the Commission's view that the relevant geographic market for grey cement in this case is not national in scope.
- (54) First, a large majority of respondents to the market investigation indicated that the competitive conditions are not homogeneous throughout the territory of Spain. In particular, respondents claimed that prices and suppliers differ according to the region considered.⁴³ As one competitor indicated, *"The impact of the transport costs on the final price of grey cement is high. Therefore, the competition in a particular area depends on the number of suppliers who are able to sell there with similar transport costs"*.⁴⁴ Moreover, the majority of the competitors that responded to the market investigation indicated that the average transport costs for supplying a customer located at a distance of 150 km is between 5-10 % of the final price, increasing to 15-20 % for a distance of 250 km.⁴⁵
- (55) Second, cement suppliers that responded to the market investigation indicated that more than 70 % of their total sales of grey cement are supplied within a radius of 150 km around each plant. This average figure reaches approximately 90 % if the radius is extended to 250 km.⁴⁶
- (56) Third, customers that responded to the market investigation indicated that 80 % of their total purchases of grey cement are supplied from a distance of up to 150 km from their location and 89 % of their total purchases of grey cement are supplied from a distance of up to 250 km from their location.⁴⁷
- (57) The Commission acknowledges that defining the relevant geographic markets as radius around a grey cement supplier's plant may lead to the inclusion of customers facing differing supply conditions in the same relevant geographic market, in

⁴² Form CO, paragraph 88.

⁴³ See replies to question 4 - Phase II questionnaire to competitors-cement, replies to question 4 - Phase II questionnaire to customers-cement (Q6) and replies to question 22 - Phase II questionnaire to customers-cement (Q7).

⁴⁴ The Spanish original reads *"La repercusión del coste de transporte en el precio de venta del cemento en destino, es elevada. Por lo que la competencia en cada punto de España depende del número de productores que puedan acceder a dicho punto con un coste de transporte más o menos semejante"*. See reply to question 4 - Phase II questionnaire to competitors-cement.

⁴⁵ See replies to question 34 - Phase I questionnaire to competitors-cement.

⁴⁶ See replies to question 29 - Phase I questionnaire to competitors-cement.

⁴⁷ See replies to question 23 - Phase I questionnaire to customers-cement and replies to question 18 - Phase II questionnaire to customers-cement (Q7).

particular as far as the number of alternatives available to each customer is concerned.⁴⁸

- (58) Grouping together only customers facing similar supply conditions would, however, lead to the definition of many different geographic markets. The Commission therefore uses the approach of drawing a radius around the Parties' plants which include the customers for which the respective plant is a potential source of supply. In any case, the fact that within a given radius customers may face differing supply conditions will be taken into account in the ensuing competitive assessment.
- (59) As regards the calculation of market shares in these radii, the Notifying Party has estimated the total size of the relevant geographic markets (radii of 150 km around the Parties' plants in Spain) by adding up the cement consumption in each of the provinces totally or partially included in a given radius. The reason is that the historical statistics of sales of cement in Spain (as compiled and published by La Agrupación de Fabricantes de Cemento de España, the Spanish Cement Producer Association known as "Oficemen") are broken down per province, and not per infra-provincial territorial units. Arguably, a fraction of the included province can lie outside the boundary of the relevant radius. However the analysis by the Commission of sales data and supply patterns showed that this methodology does not affect the accuracy and reliability of the market estimates. Moreover it also helps to capture the cement sales made at more distant locations.
- (60) As regards the dimension of the radius to consider, the Commission notes that by including provinces that are only partially covered by a given radius, the clusters defined by the Notifying Party based on the 150 km radius include areas that are located more than 150 km from the cement plant in question. In most cases, this includes regions located more than 250 km from the plant in question.
- (61) Additionally, and given that linear distances represent significantly shorter distances than by road, the 150 km radius per se already comprises areas located more than 150 km away from a given plant by road distance.
- (62) In this respect, an analysis of Cemex's own sales data confirms that the vast majority of sales are transported over a distance of less than 150 km. In particular, the distribution of sales by distance shows that overall in Spain more than 80 % of the volumes sold to third parties are delivered to addresses located less than 150 km away from the plants where the grey cement was produced.⁴⁹ A radius of 150 km appears therefore to reflect the distance up to which cement suppliers typically sell cement in Spain.

6.2.4. *Conclusion on the geographic market definition*

- (63) For the purpose of the assessment of the proposed transaction, the Commission considers that the relevant geographic market for grey cement corresponds to clusters

⁴⁸ Due to transport costs, depending on its location, a cement supplier may be in a better position to make a competitive offer to certain segments of the cluster (those nearer to its plant) than to other segments located far away from its plant. As a consequence, the alternatives that a customer has available will thus differ depending on its geographic location within the cluster. Moreover, since prices are negotiated individually with customers in the grey cement markets, cement suppliers can enter into price competition for each individual customer's business.

⁴⁹ This figure is about 75 % using Holcim's transaction data. The Commission considers Holcim's data incomplete for the purpose of this analysis, however as more than 40 % of transactions refer to pick-up sales where the delivery destination and distance is not recorded. The Commission has therefore been unable to draw any conclusion from that data.

of provinces totally or partially included in circles of 150 km radii around the Parties' plant in Spain. In this respect, for each relevant geographic market the provinces included are presented in Table 2.

Table 2: Provinces covered by each relevant geographic market

Clusters	Provinces in the cluster
Holcim's Yeles plant	Albacete, Ciudad Real, Cuenca, Guadalajara, Toledo, Avila, Salamanca, Segovia, Valladolid, Badajoz, Caceres, Madrid
Holcim's Jerez plant	Cadiz, Cordoba, Huelva, Malaga, Sevilla, Badajoz, Faro (Portugal)
Holcim's Gador-Carboneras plants ⁵⁰	Almeria, Granada, Jaen, Malaga, Albacete, Murcia, Alicante
Cemex's Alcanar plant	Barcelona, Tarragona, Valencia, Lerida, Castellon, Huesca, Teruel, Zaragoza
Cemex's Morata plant	Zaragoza, Huesca, Navarra, Alava, La Rioja, Burgos, Soria, Guadalajara, Cuenca, Teruel, Castellon
Cemex's Buñol plant	Valencia, Castellon, Teruel, Guadalajara, Cuenca, Albacete, Murcia, Alicante
Cemex's Alicante plant	Alicante, Valencia, Cuenca, Albacete, Murcia, Almeria
Cemex's Lloseta plant	Balearic Islands
Cemex's Castillejo plant	Albacete, Ciudad Real, Cuenca, Guadalajara, Toledo, Avila, Segovia, Badajoz, Caceres, Madrid

Source: Form CO, paragraph 84.

- (64) The Gador-Carboneras, Alicante and Buñol clusters will hereinafter be referred to as the "Levante region clusters". The Yeles and Castillejo clusters will hereinafter be referred to as the "Centre region clusters". All the other clusters will hereinafter be referred as "Other regions of Spain clusters".

6.3. The competitive landscape

6.3.1. The Parties' activities

- (65) Both Parties are active in the production and supply of grey cement.
- (66) Holcim owns three integrated plants in southern Spain, two of the plants (Gador and Carboneras) are located in the province of Almeria and one integrated plant (Jerez) in the province of Cadiz. In addition it operates one grinding mill in Yeles⁵¹ (province of Toledo) and a number of terminals.⁵²
- (67) The grey cement production facilities of Cemex are concentrated in eastern Spain where it operates five integrated cement plants: one in Buñol (province of Valencia), one in Alicante, one in Alcanar (province of Tarragona), one in Morata (province of

⁵⁰ These two plants are less than 60 km from each other, and thus the two circles around them overlap significantly. For this reason, the two plants are considered to form a single cluster for the purpose of this decision. Form CO, paragraph 83.

⁵¹ Yeles was irrevocably transformed into a grinding station after the kilns for clinker production were dismantled in 2012.

⁵² Form CO, paragraph 19, and Cemex's reply to the Commission's request for information 7 March 2014, Question 1.

Zaragoza) and one in Lloseta (Balearic Islands). In addition it operates one grinding mill in Castillejo⁵³ (province of Toledo) and a number of terminals.⁵⁴

6.3.2. *Other suppliers and their production facilities*

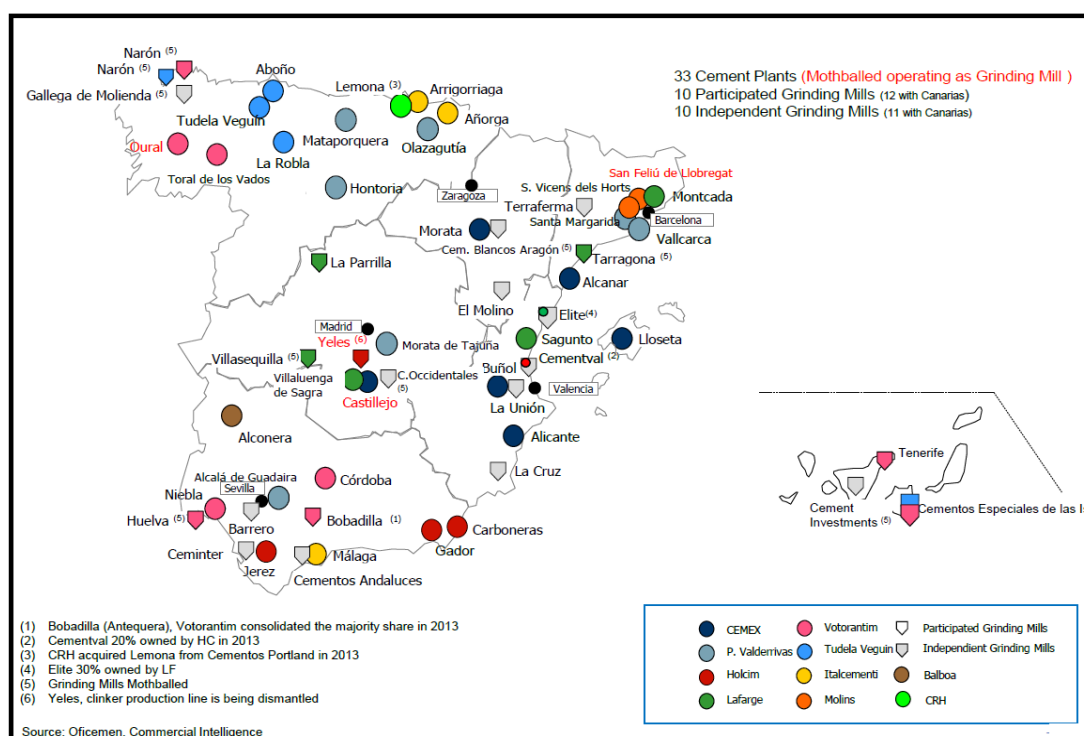
- (68) In addition to the Parties, several competitors are active in the production and supply of grey cement close to the Parties' production facilities in Spain, in the 150 km clusters.
- (69) In Spain, there are ten integrated cement producers which belong to the Spanish Cement Producer Association Oficemen. Apart from the Parties, the integrated players are the following.
- (70) Cementos Portland Valderrivas, S.A. ("CPV") is the largest Spanish cement producer in Spain. It owns seven integrated plants throughout Spain, namely in the provinces of Sevilla, Madrid, Navarra, Palencia, Cantabria and Barcelona.
- (71) Grupo Votorantim ("Votorantim") is a major Brazilian cement group present in 24 countries. Votorantim entered the Spanish market in 2012 by acquiring the Spanish assets of the Portuguese company Cimpor. It currently owns 4 integrated cement plants in western Andalusia and the provinces of Leon and Huelva. It also owns 4 grinding mills.
- (72) Lafarge Cementos, S.A. ("Lafarge") is one of the leading manufacturers of grey cement worldwide with a presence in 64 countries. In Spain, Lafarge owns 3 integrated plants in the provinces of Barcelona, Valencia and Toledo. It also owns 3 grinding mills.
- (73) Cementos Tudela Veguín, S.A. ("Tudela Veguín") owns three integrated plants and one grinding mill in northern Spain.
- (74) Sociedad Financiera y Minera, S.A. ("FYM") is the Spanish subsidiary of the Italian Italcementi group, an international group which is present in 22 countries. In Spain it owns 3 cement integrated plants in the Basque Country and the province of Malaga.
- (75) Cementos Molins Industrial, S.A. ("Molins") owns two integrated plants in the province of Barcelona.
- (76) Cementos Balboa, S.A. ("Balboa") owns an integrated plant in the province of Badajoz.
- (77) CRH plc. ("CRH") is a leading Irish building materials operator active in 35 countries. CRH has recently entered the Spanish market through the acquisition of Cementos Lemona, S.A., an integrated plant located in the Basque country which belonged to CPV.
- (78) In addition, a number of grinding mills are active in Spain, in particular in eastern Spain. The main grinding mills are the following.
- (79) Cementos La Unión, S.A. ("CLU") belongs to the Cementos La Unión Group and owns a grinding mill in the province of Valencia.
- (80) Cementos La Cruz, S.L. ("CLC") is an independent operator that owns a grinding mill in the province of Murcia.

⁵³ Castillejo plant is an integrated plant. It currently functions, however, only as a grinding station given that in 2012 Cemex mothballed the kilns for clinker production. Form CO, Annex 2.2

⁵⁴ Form CO, Annex 2.2 and Cemex's reply to the Commission's request for information 7 March 2014, Question 1.

- (81) Cementval Materiales de Construcción, S.L. ("Cementval") operates a grinding mill in the province of Valencia. Holcim owns a 20 % stake in Cementval.
- (82) Elite Cementos, S.L. ("Elite") operates a grinding mill in the province of Castellon. Lafarge owns a 35 % stake in Elite.
- (83) Cementos Barrero, S.A. ("Barrero") operates a grinding mill in the province of Sevilla.
- (84) Cementos El Molino, S.L. ("El Molino") operates a grinding mill in the province of Teruel.
- (85) Hormigones y Cementos Andaluces, S.L. ("C. Andaluces") operates a grinding mill in the province of Malaga.
- (86) A number of importers are also active in Spain.
- (87) Colacem S.p.A. ("Colacem") is an importer which belongs to the Italian Financo Group, active in the production and sales of cement and concrete. Colacem operates exclusively in Spain and its only activity is the import of cement from the Financo Group and its marketing in Spain. Colacem has two terminals, one in the province of Alicante and one in the province of Murcia.
- (88) Ceminter Hispania, S.A. ("Ceminter") is also an importer which operates one grinding mill in the province of Cadiz. It also operates two terminals, one is located in the province of Almeria and another is located in the province of Granada.
- (89) The locations of cement production facilities in Spain are shown in Figure 1.

Figure 1: Grey cement production facilities. The cement facilities of Cemex are marked by blue dots while those of Holcim are marked by red dots



Source: Form CO, Annex 6.3.A.

6.4. Market shares and market structure

- (90) As shown in Table 3, the Parties' activities primarily overlap in the clusters located in the Centre of Spain ("Centre region clusters" around the plants of Yeles and Castillejo) and those located in the South-Eastern part of the country ("Levante

region clusters" around the plants of Gador-Carboneras, Alicante and Buñol). In the other regions of Spain (Catalonia, Zaragoza, Western Andalusia and Balearic Islands), the overlap is less than [0-5]* % as shown in Table 4.

Table 3: Market shares in the Centre region and Levante region clusters in 2013

	Centre region clusters (150 km radii)		Levante region clusters (150 km radii)		
	Yeles	Castillejo	Gador-Carbone ras	Alicante	Buñol
Market size (thousand tonnes)	[...]*	[...]*	[...]*	[...]*	[...]*
Cemex	[10-20]* %	[10-20]* %	[10-20]* %	[10-20]* %	[10-20]* %
Holcim	[5-10]* %	[10-20]* %	[20-30]* %	[10-20]* %	[10-20]* %
Combined	[20-30]* %	[20-30]* %	[40-50]* %	[30-40]* %	[20-30]* %
CPV	[20-30]* %	[30-40]* %	[0-5]* %	[0-5]* %	[0-5]* %
Lafarge	[20-30]* %	[20-30]* %	[0-5]* %	[5-10]* %	[5-10]* %
Votorantim	[5-10]* %	[0-5]* %	[5-10]* %	[0-5]* %	[0-5]* %
FYM	[0]* %	[0]* %	[5-10]* %	[0-5]* %	[0]* %
Balboa	[10-20]* %	[10-20]* %	[0-5]* %	[0-5]* %	[0-5]* %
Tuleda Veguín	[0-5]* %	[0-5]* %	[0]* %	[0]* %	[0]* %
CLC	[0-5]* %	[0-5]* %	[5-10]* %	[10-20]* %	[10-20]* %
CLU	[0-5]* %	[0-5]* %	[5-10]* %	[10-20]* %	[10-20]* %
Cementval	[0]* %	[0]* %	[0-5]* %	[0-5]* %	[5-10]* %
Other	[0-5]* %	[0-5]* %	[20-30]* % ⁵⁵	[20-30]* % ⁵⁶	[20-30]* % ⁵⁷

Source: Cemex's reply to the Commission's request for information, 17 June 2014, Question 2.

Table 4: Market shares in Other regions of Spain clusters in 2013

Other regions of Spain clusters (150 km radii)
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⁵⁵ The competitors included in the category 'Other' for the Gador-Carboneras cluster are: Molins, El Molino, C. Andaluces, Barrero and Ceminter, as well as imports.

⁵⁶ The competitors included in the category 'Other' for the Alicante cluster are: Molins, El Molino, C. Andaluces, Barrero, Ceminter and Elite, as well as imports.

⁵⁷ The competitors included in the category 'Other' for the Buñol cluster are: Molins, El Molino and Elite, as well as imports.

	Jerez	Lloseta	Alcanar	Morata
Market size (thousand tonnes)	[...]*	[...]*	[...]*	[...]*
Cemex	[0-5]*%	[70-80]* %	[20-30]* %	[20-30]* %
Holcim	[10-20]* %	[0-5]*% %	[0-5]*% %	[0-5]*% %
Combined	[10-20]* %	[70-80]* %	[20-30]* %	[20-30]* %
CPV	[20-30]* %	[0-5]* %	[20-30]* %	[30-40]*%
Lafarge	[0-5]* %	[0-5]* %	[10-20]* %	[0-5]* %
Votorantim	[20-30]* %	[0]* %	[0]* %	[0-5]* %
FYM	[10-20]* %	[0]* %	[0]* %	[10-20]* %
Balboa	[5-10]* %	[0]* %	[0]* %	[0]* %
Tudela Veguín	[0]* %	[0]* %	[0]* %	[0-5]* %
CLC	[0]* %	[0-5]* %	[0-5]* %	[0-5]* %
CLU	[0]* %	[0-5]* %	[5-10]* %	[0-5]* %
Cementval	[0]* %	[0]* %	[0-5]* %	[-]
Other	[10-20]* % ⁵⁸	[10-20]* % ⁵⁹	[30-40]* % ⁶⁰	[10-20]*% ⁶¹

Source: Cemex's reply to the Commission's request for information, 17 June 2014, Question 2.

6.5. Competitive assessment - non-coordinated effects

6.5.1. Analytical framework

- (91) A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers, who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. The reduction in these competitive constraints could lead to significant price increases in the relevant market.⁶²
- (92) Generally, a merger giving rise to such non-coordinated effects would significantly impede effective competition by creating or strengthening the dominant position of a single firm, one which, typically, would have an appreciably larger market share than the next competitor post-merger. Furthermore, mergers in oligopolistic markets

⁵⁸ The competitors included in the category 'Other' for the Jerez cluster are: C. Andaluces, Barrero and Ceminter, as well as imports.

⁵⁹ The competitors included in the category 'Other' for the Lloseta cluster are: Molins, as well as imports.

⁶⁰ The competitors included in the category 'Other' for the Alcanar cluster are: Molins, Terraferma, El Molino, Elite and Cementos Blancos de Aragon, as well as imports.

⁶¹ The competitors included in the category 'Other' for the Morata cluster are: Molins, Cementval, El Molino, Elite and Cementos Blancos de Aragon, as well as imports.

⁶² Guidelines on the assessment of horizontal mergers under the Council regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004 ("Horizontal Merger Guidelines"), paragraph 24.

involving the elimination of important competitive constraints that the parties previously exerted upon each other together with a reduction of competitive pressure on the remaining competitors may, even where there is little likelihood of coordination between the members of the oligopoly, also result in a significant impediment to competition. The Merger Regulation clarifies that all mergers giving rise to such non-coordinated effects shall also be declared incompatible with the internal market.⁶³

- (93) In evaluating the likelihood of non-coordinated effects potentially caused by a merger, it is important to assess the extent to which the products sold by one merging party are close substitutes to the products sold by the other merging party. The merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the products of the merging firms than when they offer less close substitutes.⁶⁴
- (94) The Commission is unlikely to find that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition when rival firms have available capacity and find it profitable to expand output sufficiently. In other words, the extent to which competitors to the merged entity constrain the merged entity from raising prices not only depends on the level of their spare capacity but also on whether these firms have the incentive to react aggressively to a post-merger price increase.⁶⁵
- (95) Furthermore, non-merging firms in a given market can benefit from the reduction of competitive pressure that can result from a merger, since any price increase by merging firms may switch some demand to rival firms, which, in turn, may find it profitable to increase their prices.⁶⁶

6.5.2. *The Notifying Party's arguments*

- (96) The Notifying Party submits that the proposed transaction will not significantly impede effective competition in the markets for grey cement within the 150 km clusters around the Parties' cement production facilities in Spain due to non-coordinated effects.
- (97) First, the Notifying Party submits that the Spanish market is characterised by the presence of nation-wide players (both Spanish and international), plus a wide array of regional suppliers. In total, 24 different operators currently manufacture cement in Spain. The market includes 56 manufacturing facilities, 33 of which are integrated cement plants and 23 are clinker grinding units. Moreover, the Notifying Party argues that importers have been traditionally present in the Spanish market. Switching by customers between those various players is consequently common and customers are unlikely to lack alternatives as a result of the proposed transaction.⁶⁷
- (98) In this context, the Notifying Party presents an analysis of the structure of each of the relevant geographic markets.
- (99) In the case of the Jerez, Morata and Alcanar clusters, the Notifying Party submits that the combined market shares are below [20-30]* % and the overlap is minimal. Therefore, the proposed transaction does not bring any appreciable change in these

⁶³ Horizontal Merger Guidelines, paragraph 25.

⁶⁴ Horizontal Merger Guidelines, paragraph 28.

⁶⁵ Horizontal Merger Guidelines, paragraph 33.

⁶⁶ Horizontal Merger Guidelines, paragraph 24.

⁶⁷ Form CO, paragraphs 140-148.

markets. In the Lloseta cluster the Notifying Party submits that the overlap between the Parties is very small since Holcim's market share is insignificant.

- (100) In the case of the Yeles cluster, the Notifying Party first argues that the combined market share is below [20-30]* % and Holcim's contribution is moderate (less than [10-20]* %). Second, the Notifying Party indicates that there are several integrated players with at least [5-10]* % market share each.
- (101) In the case of the Castillejo cluster, the Notifying Party submits that although the combined market shares are slightly above [20-30]* %, there are a number of sizeable players which attained market shares of at least [5-10]* %.
- (102) In the case of the Levante region clusters, the Notifying Party submits that the proposed transaction would not afford any market power, despite the combined market shares being above [30-40]* % or even [40-50]* %. First, the Notifying Party argues that the merged entity would face a large number of players and manufacturing facilities. These companies belong to two different categories: (i) integrated sizeable international players such as Votorantim, Italcementi (which owns FYM), Lafarge and the Spanish market leader CPV; and (ii) independent grinding mills, which have lower investment costs when compared to integrated plants and are typically more flexible and dynamic from a commercial perspective, such as CLC and CLU, with grinding stations located in Murcia and Valencia respectively.
- (103) In the Reply to the SO, the Notifying Party provided an assessment of the number of alternatives post-merger⁶⁸ for Cemex's customers within the Gador-Carboneras and Alicante clusters. On the basis of transaction data submitted by Cemex for 2013, the Notifying Party claims that for the majority of customers representing [70-80]* % in number and approximately [70-80]* % in volume there will be at least three alternatives to Cemex post-merger in the Gador-Carboneras cluster. The corresponding figures for the Alicante cluster will be [70-80]* % and [70-80]* %.
- (104) Moreover, the Notifying Party submits that the Levante region clusters are located in a region where significant imports of grey cement have taken place in the past (225 000 tonnes in 2011 which equates to more than half of the total volume imported into Spain). Although these imports have declined since 2007, this is due to the rapid collapse of the construction market, which had a downward effect on prices charged by Spanish cement producers as well. There is a positive correlation between prices charged by Cemex between 2005 and 2010 and the level of imports in Levante. Should prices increase again in Levante post-transaction, this would immediately attract imports of both grey cement and clinker, as has happened in the past when demand and price levels were higher.⁶⁹
- (105) Second, the Notifying Party submits that Cemex and Holcim are not each other's closest competitor in any of the Levante region clusters. In a market where competition is driven by transportation costs and where cement players have a natural economic incentive to concentrate their sales in the provinces close to their plants, Cemex and Holcim cannot be considered as close competitors since the location of their plants is largely complementary. Holcim's cement facilities are located in Almeria, Cadiz and Toledo, while Cemex's cement plants are located in the provinces of Zaragoza, Tarragona, Alicante, Valencia and Toledo, and the island

⁶⁸ Reply to the SO, Annex 1 "An economic assessment of the SO", Tables 8 and 9.

⁶⁹ Form CO, paragraph 156-160.

of Mallorca. Therefore, the Parties' facilities are only physically close to each other in one Spanish province (Toledo).⁷⁰

- (106) It is further submitted that the geographic footprint of the two operators is also "*very different*" in these three clusters.⁷¹ Holcim's cement facilities are located in Andalusia (two plants in the province of Almeria and one plant in the province of Cadiz) whereas Cemex's plants are located in the provinces of Alicante and Valencia. This difference in location is reflected in the sales of Holcim and Cemex, which are concentrated in different areas.⁷² For example, while most of Holcim's volume of sales to third parties in 2012 was to customers located in Almeria and Murcia ([70-80]* %), Cemex's sales to third parties were more concentrated in Alicante and Valencia, which represented [50-60]* % of its sales volume. The differences would also be apparent in terms of revenue.
- (107) With a view to assessing the closeness of competition between the Parties and their competitors in the Levante region clusters, the Notifying Party has provided win/loss data between Cemex and its main competitors (including Holcim). This data reports the proportion of volumes lost or won by Cemex to each of its main competitors in the Levante region clusters in 2011 and 2012, as collected through Cemex's market intelligence.⁷³ According to the Notifying Party, CLC, Lafarge, and Colacem were the competitors with which Cemex had most interaction in 2011.⁷⁴ As regards 2012, the Notifying Party claims that Colacem, CLC, CLU and Lafarge were much more relevant competitors for Cemex than Holcim in these clusters.⁷⁵ The picture is similar regardless of whether the assessment is carried out in the clusters around the Gador-Carboneras, Alicante and Buñol plants.⁷⁶
- (108) Regarding closeness of competition, the Notifying Party also notes that Cemex and Holcim have a very different structure in the Spanish market. Cemex is a larger player, both in terms of number of facilities, capacity installed and volume of cement produced. Their respective degree of vertical integration is also different, since Holcim has a comparatively higher presence in the downstream RMX and aggregates market despite having a significantly smaller position in the upstream cement market.⁷⁷
- (109) Third, in addition to the high number of operators, the most salient feature of the current grey cement market in Spain is its high overcapacity, as a direct consequence of the crash of the construction and property markets in Spain since 2007. Cement manufacturers in Spain therefore have an incentive to expand output in order to

⁷⁰ Form CO, paragraphs 180-184.

⁷¹ Reply to the Article 6(1)(c) decision, paragraph 68.

⁷² Reply to the Article 6(1)(c) decision, Annex 3 "Unilateral effects in Levante: economic assessment", paragraph 23.

⁷³ The Commission notes that the analysis undertaken by the Notifying Party is based on win/loss data which has limited evidentiary value, as it is not systematically compiled by Cemex through its market intelligence. As acknowledged by Cemex, "*the information on lost and won customers is not systematically registered in Cemex's systems [...] this information is not complete at all [...] the reliability of this information is highly questionable*".

⁷⁴ The proportion of volumes lost to or won from Holcim in 2011 represented only [0-5]* % of the total volumes lost or won by Cemex in 2011 in each of the Levante region clusters.

⁷⁵ The proportion of volumes lost to or won from Holcim in 2012 represented only [5-10]* % of the total volumes lost or won by Cemex in 2012 in each of the Levante region clusters.

⁷⁶ Reply to the Article 6(1)(c) decision, Annex 3 "Unilateral effects in Levante: economic assessment", paragraph 30.

⁷⁷ Form CO, paragraph 185.

reduce unitary costs, which would counteract any attempts by the merged entity to reduce output or increase prices. This is evidenced by the current available capacities of the Parties' plants in Spain with clinker capacity utilisation varying between [20-30]* % (Jerez) and [60-70]* % (Carboneras) and grey cement capacity utilisation varying between [10-20]* % (Buñol) and [50-60]* % (Lloseta).⁷⁸

- (110) Overall, according to one of the Parties' economic studies⁷⁹, the Parties have not been pivotal⁸⁰ (individually or collectively) pre-merger and will not become so post-merger. Cement consumption would need to more than double in the Gador-Carboneras cluster and more than triple in the Alicante cluster for the Parties to become pivotal post-merger. In the context of such levels of excess capacity, if Cemex attempted to increase prices post-merger, competitors would have the ability to expand output and render such a price increase unprofitable.
- (111) According to the Notifying Party, with an overcapacity of 74 %, Spanish cement manufacturers have the strongest and most direct incentive to expand output in order to reduce unitary costs. Any strategy by the merged entity to reduce production and increase prices would be counteracted by an immediate increase in output by its many competitors wishing to win demand and improve their poor utilization rate. This would exclude upfront any hypothetical exercise of market power by the merged entity post-transaction.⁸¹
- (112) Fourth, the Spanish cement market is reasonably open with surmountable barriers to entry. No significant customs tariffs are imposed by the EU on imported cement or clinker and the construction of a grinding mill requires a much lower investment than a full integrated cement plant.⁸²
- (113) Regarding in particular the investment costs to set up an integrated plant, no technical or commercial barriers exist, since no intellectual property rights apply to the cement industry and the investment in distribution networks and brand building is not relevant. Moreover, there is no scarcity of raw materials or qualified personnel to enter these markets and newcomers like Votorantim or CRH have shown that entry is not difficult.⁸³

6.5.3. *The Commission's assessment*

- (114) For the reasons set out in this section the proposed transaction would not significantly impede effective competition in the markets for grey cement within the 150 km clusters around the Parties' plants due to non-coordinated effects.

6.5.3.1. Assessment of the Levante region clusters

- (115) The Commission has analysed (i) market shares and market structure, (ii) closeness of competition between the Parties and (iii) the ability and incentives of competitors to increase supply if the merged entity were to increase prices in the Levante region clusters.

⁷⁸ Form CO, paragraph 174.

⁷⁹ Reply to the SO, Annex 1 "*An economic assessment of the SO*", para. 44.

⁸⁰ A firm is non-pivotal if, in case this firm were to withdraw all of its capacity from the market, rivals would have enough capacity to cover the entire market demand.

⁸¹ Form CO, paragraph 176.

⁸² The Notifying Party considers that an investment of at least EUR [...] million would be required to achieve a production capacity of 2 million tonnes per year. Also according to the Notifying Party, a grinding unit with production capacity of 500 000 tonnes per year would require an investment between EUR [...]. Form CO, paragraph 396.

⁸³ Form CO, paragraph 236 (c).

(116) For the reasons set out in the remainder of this section, the Commission has concluded that the proposed transaction would not significantly impede effective competition in the markets for grey cement within the Levante region clusters due to non-coordinated effects.

(a) Market shares and market structure

(117) In the Gador-Carboneras, Alicante and Buñol clusters, the Parties' combined 2013 market share was [40-50]* %, [30-40]* % and [20-30]* % respectively. The merged entity will, post-transaction, continue to face competition from a number of competitors within the three clusters.

(118) The table below shows the Parties' market shares in the Gador-Carboneras, Alicante and Buñol clusters for the period between 2011 and 2013.

Table 5 - Evolution of Parties' market shares in the Levante region clusters (150 km radii)

	2011			2012			2013		
	Gador-Carboneras	Alicante	Buñol	Gador-Carboneras	Alicante	Buñol	Gador-Carboneras	Alicante	Buñol
Total market size (thousand tonnes)	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Cemex	[10-20]*% %	[20-30]* %	[20-30]* %	[10-20]* %	[20-30]* %	[20-30]* %	[10-20]* %	[10-20]* %	[10-20]* %
Holcim	[20-30]* %	[20-30]* %	[10-20]* %	[20-30]* %	[20-30]* %	[10-20]* %	[20-30]* %	[10-20]* %	[10-20]* %
Combined	[40-50]* %	[40-50]* %	[30-40]* %	[40-50]* %	[40-50]* %	[30-40]* %	[40-50]* %	[30-40]* %	[20-30]* %

(119) Source: Form CO and Cemex's reply to the Commission's request for information, 17 June 2014, Question 2

(120) In the Gador-Carboneras cluster, the Parties' combined 2013 market share was [40-50]* % with an overlap of [10-20]* %. The Parties' market shares remained stable during the period 2011-2013.

(121) The competitive landscape in the Gador-Carboneras cluster is very fragmented. In terms of market share, the Parties' nearest competitors are CLU, CLC, FYM and Votorantim (all with 5-10 %). CPV, Lafarge and Balboa have no plants in the Gador-Carboneras cluster and achieved limited sales (0-5 %) in that cluster. This is also the case of the grinding mill Cementval whose plant is also located outside the Gador-Carboneras cluster.

(122) In the Alicante cluster, the Parties' combined market share in 2013 was approximately [30-40]* %, with an overlap of [10-20]* %. Although the Parties' market share was above [40-50]* % in 2011 and 2012, it has been in decline since 2011.

(123) The rest of the market in the Alicante cluster was also fragmented. In terms of market share, the Parties' nearest competitors were two grinding mills CLU ([10-20]* %), with a plant in the province of Valencia, and CLC (10-15 %) with a plant in the province of Murcia. The grinding mills were followed by the integrated player Lafarge (5-10 %) with a plant in Sagunto (province of Valencia) and a silo in Cartagena (province of Murcia). Other integrated players such as CPV, FYM, Votorantim and Balboa have no plants in the Alicante cluster and achieved limited

sales (0-5 %) in this cluster. Also Cementval (grinding mill in the province of Valencia) had marginal sales (0-5 %) in the Alicante cluster.

- (124) In the Buñol cluster, the Parties' share has been in decline since 2011, reaching [20-30]* % in 2013, with an overlap of [10-20]* %.
- (125) The competitive landscape in the Buñol cluster was similar to that prevailing in the Alicante cluster. In terms of market share, the Parties' nearest competitors were CLU ([10-20]* %) and CLC ([10-20]* %). The grinding mills were followed by the integrated player Lafarge (5-10 %) and the grinding mill Cementval (5-10 %). Other integrated players such as CPV, Votorantim and Balboa have no plants in the Buñol cluster and achieved limited sales (0-5 %) in this cluster.
- (126) It can be concluded from the above that the Levante region clusters are characterised by a significant number of players. On average, and although not all players have the same strength and geographic footprint, between 12 and 14 cement producers are active in the Levante region clusters, including both integrated and non-integrated (grinding mills) players. Moreover, Votorantim has acquired a majority stake in a grinding mill in the province of Malaga (Cementos Antequera) in May 2013 which is likely to enable Votorantim to develop and increase its market presence in the Gador-Carboneras cluster.⁸⁴
- (127) Moreover, the majority of competitors and customers that responded to the market investigation indicated that a number of grey cement suppliers compete in the Levante region clusters.
- (128) In this respect, one cement competitor explained that *"there is such a high cement offer for such a low demand in this area that it will not be very relevant whether both companies or only one of them operates there because, considering both grinding mills and integrated players, there are seven or eight competitors in the area"*.⁸⁵
- (129) A cement customer active in Murcia and other regions of Spain stated that *"in the markets where our company operates (RMX and aggregates) a risk of concentration of cement offer due to this operation is not expected"* and in the Levante region clusters in particular it considers that *"a high overcapacity will remain and therefore cement customers will have at least 3 or 4 alternative suppliers"*.⁸⁶
- (130) Another customer active in Castellon, Valencia and Malaga mentioned that the proposed transaction will not have any impact on its company and *"the market will not shrink because there are enough cement suppliers"*.⁸⁷

⁸⁴ See <http://www.diariosur.es/v/20130522/malaga/multinacional-brasilena-votorantim-compra-20130522.html>. In this article Votorantim explains that the company brings clinker from Cordoba and process it in this plant and that the main target of the cement produced in this grinding mill remains Malaga and neighbouring provinces, such as Granada.

⁸⁵ The Spanish original reads: *"Hay tanta oferta y tan poca demanda en la región (Levante) que no tendrá demasiada relevancia que opere una sola de estas empresas o las dos, porque entre fabricantes integrados y molineras existen entre siete y ocho competidores"*. Agreed minutes of the call with a competitor, 4 June 2014.

⁸⁶ The Spanish original reads: *"En los mercados en los que opera nuestra empresa (hormigón y áridos) no se anticipa riesgo de concentración de oferta de cemento en base a esta operación (...) seguirá existiendo un exceso de capacidad de producción muy elevado en este mercado, haciendo que los consumidores de cemento seguirán contando por lo menos con 3 o 4 alternativas de suministro"*. See reply to question 32 and 35 - Phase II questionnaire to customers-cement.

⁸⁷ The Spanish original reads: *"Existen suficientes operadores para que no se contraiga el mercado"*. See reply to question 32 and 35- Phase II questionnaire to customers-cement.

- (131) It also appears that the intensity of competition between cement players has increased during 2013 in the Levante region clusters. Cement customers responding to the market investigation have explained for example that "*the cement price has decreased considerably in 2013 in comparison to the market prices during previous years due to the low demand of cement and the high competition*"⁸⁸, that 2013 was characterized by "*an aggressive lowering of prices*"⁸⁹ or that "*all [cement suppliers] have experienced a sharp decline in prices*"⁹⁰.
- (132) Finally, within the Gador-Carboneras and Alicante clusters, where the Parties' combined market share in 2013 exceeded [30-40]* %, the Commission also assessed the number of alternative suppliers post-merger for Cemex's customers. For the majority of customers representing [70-80]* % in number and approximately [60-70]* % in volume there will still be at least three alternatives to Cemex post-merger in the Gador-Carboneras cluster. The corresponding figures for the Alicante cluster will be [70-80]* % and [60-70]* %.⁹¹
- (b) Closeness of competition
- (133) Products may be differentiated within a relevant market such that some products are closer substitutes than others. The higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices significantly. For example, a merger between two producers offering products which a substantial number of customers regard as their first and second choices could generate a significant price increase. Thus, the fact that rivalry between the parties has been an important source of competition on the market may be a central factor in the analysis. High pre-merger margins may also make significant price increases more likely. The merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the products of the merging firms than when they offer less close substitutes. It is therefore less likely that a merger will significantly impede effective competition, in particular through the creation or strengthening of a dominant position, when there is a high degree of substitutability between the products of the merging firms and those supplied by rival producers.⁹²
- (134) Cement is a relatively homogenous product with high transportation costs. In the cement industry, distance between the supplier and the customer can affect the latter's decision to source from one supplier or the other. If the Parties have a very different geographic footprint, customers will not consider them as the closest alternatives. Therefore, the distance from the customer to a supplier is a differentiating factor in this market.
- (135) For the reasons set out in the reminder of this section, the Commission has concluded that a price increase by the merged entity post-merger would not be profitable since,

⁸⁸ The Spanish original reads: "*Se ha bajado el precio del cemento considerablemente con respecto a los precios de otros años, creemos que influye la poca demanda de este y la alta competencia que existe*". See reply to question 31.4 - Phase II questionnaire to customers-cement.

⁸⁹ The Spanish original reads: "*Bajada de precios agresivos*". See reply to question 31.4 - Phase II questionnaire to customers-cement.

⁹⁰ The Spanish original reads: "*Todos han realizado una gran bajada de precios*". See reply to question 31.4 - Phase II questionnaire to customers-cement.

⁹¹ Based on 2012 transaction data by Cemex. Only deliveries to third party customers have been included in this analysis.

⁹² Horizontal Merger Guidelines, paragraph 28.

apart from Holcim, there are several other close competitors to Cemex in the Levante region clusters.

- (136) First, in the Levante region clusters, the Parties have a relatively different geographic footprint in terms of integrated plants (Cemex in Valencia and Alicante, and Holcim in Almeria). However, this difference is mitigated by the operating of silos or terminals in the areas where the Parties are not present, therefore increasing the Parties' footprint overlap. Cemex and Holcim operate three terminals in Castellon, Valencia and Motril (province of Granada), and Valencia, Cartagena (province of Murcia) and Motril⁹³ (province of Granada) respectively. The analysis of 2013 sales data indicates that Holcim achieved [90-100]* % of its sales in the Alicante province from its terminal in Cartagena, located 120 km away from Alicante. The Cartagena terminal is the closest access gate to the markets located to the north of Gador and Carboneras. The Cartagena terminal is also widely used for deliveries in the province of Murcia: [40-50]* % of sales in this province pass through this terminal with [50-60]* % being provided directly from the plants. The same is true for Albacete, where [70-80]* % of sales in this province pass through this terminal with [20-30]* % being provided directly from the plants. Likewise, [90-100]* % of Holcim's sales in the province of Valencia originated from Holcim's silo in Valencia.
- (137) Second, there are several competitors that can be considered as equally close or even closer alternatives for Holcim's customers than Cemex. Likewise, some Levante clusters' rivals can be considered as close or equally close alternatives for Cemex's customers than Holcim. The following elements are relevant in that respect.
- (138) In the first place, in the Alicante and Gador-Carboneras clusters in 2013, where the Parties' combined market share in 2013 was above [30-40]* %, the Notifying Party has carried out an analysis⁹⁴ in which it presents (i) the closest alternative supplier and (ii) the first and second closest alternative suppliers for Cemex's customers. The Commission has verified the data provided by the Notifying Party and considers that these elements are correct.
- (139) In the Alicante cluster, the analysis indicates that Holcim is the closest alternative supplier for [20-30]* % in number ([20-30]* % in volume) of Cemex's customers. The corresponding figure for [competitor 1] is higher ([20-30]* % in number and [20-30]* % in volume), followed by [competitor 2] and [competitor 3] that are the closest alternative suppliers for [10-20]* % and [10-20]* % in number of Cemex's customers in the Alicante cluster respectively ([10-20]* % and [10-20]* % in volume respectively). Holcim is the closest or second closest alternative for [50-60]* % in number ([50-60]* % in volume) of Cemex's customers in the Alicante cluster, whereas [competitor 1], [competitor 3] and [competitor 2] are the closest or second closest for [40-50]* %, [30-40]* % and [30-40]* % in number of Cemex's customers respectively ([30-40]* %, [30-40]* % and [20-30]* % in volume respectively). Even if Holcim figures are higher than their competitors, for those customers for which Holcim is the closest or second closest alternative, the additional distance for reaching the alternative supplier is relatively short (it varies on average between 3 and 30 km).
- (140) In the Gador-Carboneras cluster, the analysis indicates that Holcim is the closest alternative supplier for [10-20]* % in number ([10-20]* % in volume) of Cemex's customers. This figure is exceeded by both [competitor 1] and [competitor 3] that are

⁹³ [...].

⁹⁴ Reply to the SO, Annex 1 "An economic assessment of the SO".

the closest alternative supplier for [40-50]* % and [20-30]* % in number of Cemex's customers in the Gador-Carboneras cluster respectively ([30-40]* % and [20-30]* % in volume respectively). Also in terms of the number of Cemex's customers for which a competitor is either the closest or the second closest alternative supplier, [competitor 1] and [competitor 3] exceed Holcim's figures. Holcim is the closest or second closest alternative for [40-50]* % in number ([40-50]* % in volume) of Cemex's customers in the Gador-Carboneras cluster, whereas [competitor 1] and [competitor 3] are both the closest or second closest for [50-60]* % in number of the customers ([50-60]* % and [50-60]* % in volume respectively).⁹⁵

- (141) In the second place, the Notifying Party has provided extracts of Cemex's weekly commercial reports showing constant and frequent commercial initiatives conducted by rival firms (among them CLC, CLU, Colacem, Lafarge, CPV and Cementval) vis-à-vis Cemex's customers between July 2013 and April 2014.⁹⁶
- (142) Third, the Notifying Party submitted an analysis⁹⁷ of the volumes relating to customers that multi-sourced from both Parties in 2012.⁹⁸ An analysis of multi-sourcing of customers constitutes a useful indication of customers that consider the Parties as close substitutes and who would therefore lose a relevant supplier as a result of the proposed transaction. The results suggest that in 2012 the volume that the customers that purchased from both Cemex and Holcim in the Gador-Carboneras cluster represents on Cemex's sales is approximately [10-20]* % and on Holcim's sales is [5-10]* %. In the Alicante cluster the corresponding figures are [10-20]* % with respect to Cemex's sales and [10-20]* % with respect to Holcim's sales.⁹⁹
- (143) Fourth, there are no elements in the file (market investigation, internal documents) indicating that the Parties are closer competitors to each other than to other competitors such as Colacem, CLC and CLU in the Levante region clusters.
- (c) Ability and incentives of competitors to increase supply if the merged entity were to increase prices
- (144) For the reasons set out in recitals (145) to (154), the Commission considers that competitors, in particular grinding mills, will have the ability and incentives to increase supply if the merged entity were to increase prices in the Levante region clusters. First, grinding mills will have the possibility to source clinker from alternative sources, and in particular from overseas, should they wish to expand cement output and compete against the merged entity post-transaction. Second, post-

⁹⁵ Reply to the SO, Annex 1 "An economic assessment of the SO", tables 8-11 and supporting data as provided by the Notifying Party.

⁹⁶ Due to Cemex's Information Retention Policy, documents sent by e-mail such as these commercial weekly reports are not stored longer than 60 days.

⁹⁷ Reply to the SO, Annex 1 "An economic assessment of the SO", para. 27-28

⁹⁸ On 23 May 2014, the Notifying Party provided an analysis of the competitors that Cemex lost customers to, or won customers from, in 2011 and 2012 in the Levante region clusters. According to this data, in these clusters, Cemex lost or gained more customers to Colacem, La Cruz and La Unión as opposed to Holcim in 2012. According to the Notifying Party, these switching patterns support the view that Holcim is not Cemex's closest competitor in the Levante region clusters. The Commission notes that the analysis undertaken by the Notifying Party is based on win/loss data which has limited evidentiary value, as it is not systematically compiled by Cemex through its market intelligence. As acknowledged by Cemex, "the information on lost and won customers is not systematically registered in Cemex's systems [...] this information is not complete at all [...] the reliability of this information is highly questionable".

⁹⁹ These figures correspond to delivered transactions only due to the impossibility to identify the provinces of delivery for Holcim pick-up sales.

merger, the capacity of competitors, including grinding mills, will remain significantly above total market demand, with the result that any increase in price by the merged entity is likely to be counteracted by an increase in output by competitors.

- (i) Grinding mills will have the possibility to source clinker from alternative sources

- (145) As previously described in recitals (122) to (126), the Parties' competitors in the Levante region clusters are (i) integrated plants and (ii) grinding mills. Integrated plants produce their own raw material (clinker) while grinding mills have to source it externally, normally from integrated players. Therefore, the key determinant of the ability of grinding mills to expand cement output is the availability of clinker.
- (146) The Commission has concluded that grinding mills in the Levante region clusters are not dependent on the sourcing of domestic clinker from the Parties for their production of grey cement. This is because the evidence suggests that grinding mills can resort to imported clinker whenever they deem it appropriate, with little apparent difficulty or additional cost. The availability of imports as a viable alternative for grinding mills to source clinker implies that the Parties will not have the ability, post-merger, to limit the availability, or increase the price, of clinker.
- (147) First, historically (2007-2009), all the grinding mills in Spain sourced the vast majority (close to 100 %) of their clinker needs from abroad (mainly China, Thailand, Turkey and Egypt). Spain was the principal importer of clinker in Europe. For example, in 2008, Spain's share of cement imports into Western Europe was 16 %, while its share of clinker imports was 66 %.¹⁰⁰ In 2007 cement production reached 55 million tonnes with clinker production of 32 million tonnes. That difference was compensated by imports of clinker, notably by grinding mills, to satisfy the pre-crisis cement demand.
- (148) From 2008 onwards, cement and clinker production in Spain started to decline in line with the drop in demand (cement production fell from 42 million tonnes in 2008 to 22 million tonnes in 2011). Clinker imports declined from 5.4 million tonnes in 2008 to 0.5 million tonnes in 2011 whereas at the same time clinker exports started to increase (from zero in 2007 up to 1.6 million tonnes in 2011). Cement imports followed the same trend, from 3.1 million tonnes in 2006 to 0.4 million tonnes in 2012. As regards more specifically the Levante region clusters, clinker imports have considerably decreased in recent years from approximately one million tonnes in 2009 to practically zero in 2012. This drop in imports can be explained by the fact that the demand for clinker has been met from 2010 onwards domestically by integrated players located in Spain. As explained by a grinding mill, the contracts for the national supply of clinker are normally negotiated on a yearly basis so that the national price for clinker set by integrated producers in Spain always remains below the import price.¹⁰¹ Imports of clinker have slightly recovered in 2013 (60 000 tonnes).

¹⁰⁰ See "Outlook on the global cement and clinker trade" available at http://www.asocem.org.pe/bivi/dsi/Diseminacion_industria/Outlook%20on%20the%20global%20cement%20and%20clinker%20trade.pdf.

¹⁰¹ The Spanish original reads: "*En cuanto a los contratos de suministro de clinker, (...) señala que se firman para un año y que se renegocian a finales de éste de forma que los precios nacionales siempre están por debajo de los precios de importación*". Agreed minutes of the call with a competitor, 10 June 2014.

- (149) Second, although imports are slightly more costly than domestic sourcing, and more challenging from a logistical perspective, the main grinding mills active in the Levante region clusters that responded to the market investigation indicated that they have resumed imports of clinker in 2013. For example, CLC, which did not import clinker in 2012, has imported in 2013 one third of its needs from Turkey. CLU has been importing the majority of its clinker needs in 2014 to date and Elite has sourced around 12 % of its requirements from Egypt in 2013.
- (150) In particular CLC explains that *"we have only sourced national clinker from Holcim and Cemex and we would not have any problem in sourcing clinker if these two providers were to disappear. CLC would in that case go back to clinker imports (from Eastern countries and China). Moreover, CLC wants to freely choose its clinker supplier and not to depend on an exclusive one."*¹⁰² CLC adds that *"the reason why we have changed sourcing from Cemex to Turkey in 2013 is because we are not bound by any exclusive purchasing clause and we have always combined the sources of clinker in our own interest and that our strategy is to constantly seek for the best commercial conditions and clinker quality both among Spanish producers and producers in the rest of the world"*.¹⁰³
- (151) In addition, CLU explains that *"if the negotiations to import clinker are carried out in advance and for annual contracts (around 300 000 tonnes) it is possible to obtain prices and quality similar to those offered by Cemex. CLU has imported clinker during many years, because national producers did not sell clinker to grinding mills in the past, and therefore knows very well the clinker import market"*.¹⁰⁴
- (152) Other grinding mills have confirmed that they would turn to clinker imports should the national clinker price become higher than the imported one. As explained by a grinding mill *"the last year that we imported clinker was 2009. The reason we stopped importing was the possibility to buy it slightly cheaper in the national market (...) We will go back to clinker imports whenever the national clinker becomes more expensive than the imported one"*¹⁰⁵. Another grinding mill added that *"currently it is more convenient to buy clinker nationally but if the price were to increase we would*

¹⁰² The Spanish original reads: *"La Cruz indica que, aparte de Cemex y Holcim, no ha tenido más proveedores nacionales y señala que la empresa no tendría problemas en abastecerse de clinker si estos dos proveedores desapareciesen, porque volverían a acudir al mercado exterior para importarlo (países del Este y China)".* Agreed minutes of the call with a competitor, 21 March 2014.

¹⁰³ The Spanish original reads: *"De Cemex a clinker de Turquía, en el año 2013, como en ocasiones anteriores y el motivo del cambio es por no estar obligados a exclusividad de compra y siempre hemos compatibilizado los suministros a conveniencia (...) Nuestra estrategia es la búsqueda continuada tanto entre los productores españoles como entre los productores del resto del mundo de las mejores condiciones de compra en base a la exigencia de calidad del clinker a adquirir. Así ha sido desde siempre y así seguirá siendo en el futuro."* See reply to question 12.1 and 17 - Phase II questionnaire to competitors-cement.

¹⁰⁴ The Spanish original reads: *"CLU indica que si las negociaciones para importar clinker se llevan a cabo con antelación y con contratos anuales (alrededor de 300 000 toneladas) es posible conseguir precios y calidad similares a las ofrecidas por Cemex. CLU ha importado durante muchos años porque los productores locales no les vendían clinker y conoce muy bien el mercado de importación de clinker"*. Agreed minutes of the call with a competitor, 19 June 2014.

¹⁰⁵ The Spanish original reads: *"El último año que compramos clinker de importación fue en 2.009. El motivo para dejar de importar fue el hecho de poder adquirirlo algo más barato en el mercado nacional (...) Volveremos a importar clinker en el momento en el que nos cueste más el clinker nacional que el de importación."* See reply to question 11.1 and 13.2 - Phase II questionnaire to competitors-cement.

have to import it"¹⁰⁶. Two other grinding mills expressed the view that "it is possible to import as long as the price is competitive"¹⁰⁷ "[changing from national clinker to imports] and "would depend on the commercial conditions"¹⁰⁸.

(ii) The level of spare capacity held by the Parties' competitors

- (153) The Commission has concluded that the level of spare capacity held by the Parties' competitors in the Levante region clusters is sufficient to give them the ability to make any increase in prices by the merged entity unprofitable. The Parties are therefore not pivotal, either individually and collectively, both pre- and post-merger.
- (154) This is because, if post-merger, the Parties were to withdraw all their capacity from the Alicante, Gador-Carboneras and Buñol clusters, competitors would have enough capacity to cover the entire market demand.¹⁰⁹ As regards the Gador-Carboneras cluster, the total capacity of competitors in the cluster is estimated to be 2.3 times the total current demand in the cluster.¹¹⁰ This means that even if the Parties were to reduce output so as to withdraw all their capacity, competitors would have the ability to cover the entire market demand. As regards the Alicante cluster, the total capacity of competitors in the cluster is estimated to be 2.7 times the total current demand in the cluster,¹¹¹ whereas the corresponding figure for the Buñol cluster is 1.7.¹¹²

(d) Conclusion

- (155) For the reasons set out in recitals (115) to (154), the Commission has concluded that the proposed transaction would not significantly impede effective competition in the

¹⁰⁶ The Spanish original reads: "Actualmente por precio es más conveniente en España, si suben el precio habría que importarlo." See reply to question 13.2 - Phase II questionnaire to competitors-cement.

¹⁰⁷ The Spanish original reads: "(...) cabe la posibilidad si hay precio competitivo". See reply to question 13.2 - Phase II questionnaire to competitors-cement.

¹⁰⁸ The Spanish original reads: "(...) depende de las condiciones de compra". See reply to question 13.2 - Phase II questionnaire to competitors-cement.

¹⁰⁹ In order to conduct such an assessment, the Commission has estimated the total capacity available to the Parties' main rivals in each of the Levante region clusters by looking at the total capacity available at the rivals' plants which are located in those clusters. The rivals' plants located in the Gador-Carboneras cluster are those of Votorantim (Bobadilla), Italcementi (Malaga), Hormigones y Cementos Andaluces (Malaga). The rivals' plants located in the Alicante and Buñol clusters are those of Lafarge (Sagunto), La Union (Valencia) and Cementval (Valencia). For each of the rivals' plants located in each of the Levante region clusters, the effective capacity attributable to the cluster has been estimated as the difference between the total capacity of the plant and the total volume that the plant sells outside the cluster. These sales represent a part of the capacity which is already "taken" by customers that are located outside the relevant cluster and is therefore not relevant for the assessment of the available capacity in the cluster. The effective capacity of the plants achieving positive sales in more than one cluster has been split according to the current sales split of those plants into those clusters. The capacity of competitors located outside the Levante region clusters but which currently have sales into the Levante region clusters (e.g. El Molino, Elite etc) has not been taken into account. This can be considered conservative in this case, as accounting for this additional capacity would further increase the level of available spare capacity for rivals in the clusters. The total consumption of cement in a cluster has been estimated based on data from Oficemen on total sales of cement by province. Oficemen provided the sales of each of its members by province and also provided an estimate of the total sales of non-members by province. The consumption relating to provinces belonging to more than one cluster (e.g. the province of Almeria belonging to Gador and Alicante) has been apportioned across the relevant clusters, in order to avoid double counting.

¹¹⁰ The total consumption in this cluster is 1 084 000 tonnes and the total available capacity of competitors is 2 526 000 tonnes.

¹¹¹ The total consumption in this cluster is 739 000 tonnes and the total available capacity of competitors is 2 023 000 tonnes.

¹¹² The total consumption in this cluster is 1 034 000 tonnes and the total available capacity of competitors is 1 736 000 tonnes.

markets for grey cement within the Levante region clusters due to non-coordinated effects.

6.5.3.2. Assessment of the Centre region clusters

- (156) The table below sets out the Parties' market shares in the Castillejo and Yeles clusters for the period between 2011 and 2013.

Table 6 - Evolution of Parties' market shares in the Centre region clusters (150 km radii)

	2011		2012		2013	
	Castillejo	Yeles	Castillejo	Yeles	Castillejo	Yeles
Total market size (thousand tonnes)	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Cemex	[10-20]*%	[10-20]* %	[10-20]* %	[10-20]* %	[10-20]* %	[10-20]*%
Holcim	[5-10]* %	[5-10]* %	[10-20]* %	[5-10]* %	[10-20]* %	[5-10]* %
Combined	[20-30]* %	[20-30]* %	[20-30]* %	[20-30]* %	[20-30]* %	[20-30]*%

Source: Form CO and Cemex's reply to the Commission's request for information, 17 June 2014, Question 2

- (157) For the reasons set out in recitals (158) to (163), the Commission has concluded that the proposed transaction would not significantly impede effective competition in the markets for grey cement within the Centre region clusters due to non-coordinated effects.
- (158) First, the Parties' combined 2013 market share in the Yeles cluster was below [20-30]* % ([20-30]* %). In the Castillejo cluster the combined 2013 market share was only slightly above [20-30]* % ([20-30]* %). Moreover, the combined market shares have been decreasing since 2011.
- (159) Second, as can be seen from Table 3, several other competitors are active in those clusters and they own integrated cement plants in contrast to the Parties' plants in this region which are both grinding mills. There are two competitors of comparable market size to the Parties, namely CPV with [20-30]* % market share and Lafarge with [20-30]* % market share. There are also other competitors with market shares in excess of [5-10]* %, namely Balboa with market shares above [10-20]* % in both clusters and Votorantim with a market share above [5-10]* % in the Yeles cluster. Moreover, post-transaction, CPV would continue to be the market leader in both clusters.
- (160) Third, the spare capacity of CPV, Lafarge, Votorantim and Balboa was sufficient to cover the Parties' sales in the Castillejo and Yeles clusters in 2013. Therefore, these competitors will have the ability to compensate for any output reduction by the merged entity.
- (161) Fourth, a large majority of customers that responded to the market investigation indicated that there are a number of alternative viable suppliers in that area, including

the main suppliers CPV and Lafarge.¹¹³ Internal documents of the Parties confirmed the existence of several competitive interactions between the Parties and these competitors in the centre region.¹¹⁴

- (162) Fifth, Lafarge and CPV are close competitors to the Parties. Customers do not see any major difference between the Parties and Lafarge and CPV in terms of prices, reliability and location.¹¹⁵ Both CPV and Lafarge have plants located close to the Parties' plants, respectively in Morata de Tajuña (in the province of Madrid) and Villaluenga de la Sagra (in the province of Toledo). Moreover, CPV and Lafarge concentrate most of their sales from these plants in the provinces of Madrid and Toledo,¹¹⁶ which are the two provinces where the Parties have higher sales from the Castillejo and Yeles plants (namely [60-70]* % and [70-80]* % of the total 2013 sales, respectively).¹¹⁷
- (163) Sixth, the plants of Balboa and Votorantim are located in the southern part of the clusters (namely in the provinces of Badajoz and Cordoba, respectively), at a greater distance from the Parties' plants. Therefore, these two competitors will act as a constraint on the Parties in the southern region, (albeit that they are at a disadvantage to compete with the Parties in the centre and northern provinces of the clusters).

6.5.3.3. Assessment of the Other regions of Spain clusters

- (164) The table below shows the Parties' market shares in the Jerez and Lloseta clusters for the period between 2011 and 2013.

Table 7 - Evolution of Parties' market shares in the Jerez and Lloseta clusters (150 km radii)

	2011		2012		2013	
	Jerez	Lloseta	Jerez	Lloseta	Jerez	Lloseta
Total market size (thousand tonnes)	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Cemex	[0-5]*%	[70-80]* %	[0-5]* %	[70-80]* %	[0-5]* %	[70-80]*%
Holcim	[10-20]* %	[0-5]*%	[10-20]* %	[0-5]* %	[10-20]* %	[0-5]* %
Combined	[10-20]* %	[70-80]* %	[10-20]* %	[70-80]* %	[10-20]*%	[70-80]*%

Source: Form CO and Cemex's reply to the Commission's request for information, 17 June 2014, Question 2

- (165) The table below shows the Parties' market shares in the Alcanar and Morata clusters for the period between 2011 and 2013.

¹¹³ See replies to question 30 - Phase I questionnaire to customers-cement.

¹¹⁴ See Holcim's reply to the Commission's requests for information, 16.05.2014, Question C2 and Reply to the Article 6(1)(c) decision, Annex 1.

¹¹⁵ See replies to question 31 - Phase I questionnaire to customers-cement.

¹¹⁶ Holcim's internal document, entitled "Matriz de estimación mensual del consumo aparente provincial (t cemento) 2012", submitted on 8 May 2014.

¹¹⁷ See Cemex's reply to the Commission's requests for information, 17 June 2014, Question 3 and Holcim's reply to the Commission's request for information, 17 June 2014, Question 1.

Table 8 - Evolution of Parties' market shares in the Alcanar and Morata clusters (150 km radii)

	2011		2012		2013	
	Alcanar	Morata	Alcanar	Morata	Alcanar	Morata
Total market size (thousand tonnes)	[...]*	[...]*	[...]*	[...]*	[...]*	[...]*
Cemex	[20-30]* %	[20-30]* %	[20-30]* %	[20-30]* %	[20-30]* %	[20-30]* %
Holcim	[0-5]* %	[0-5]* %	[0-5]* %	[0-5]* %	[0-5]* %	[0-5]* %
Combined	[20-30]* %	[20-30]* %	[20-30]* %	[20-30]* %	[20-30]* %	[20-30]* %

Source: Form CO and Cemex's reply to the Commission's request for information, 17 June 2014, Question 2

- (166) For the reasons set out in recitals (167) to (169), the Commission has concluded that the proposed transaction would not significantly impede effective competition in the markets for grey cement in the Jerez, Lloseta, Alcanar and Morata clusters due to non-coordinated effects.
- (167) First, the increment brought about by the proposed transaction is less than [0-5]* % in each of the four clusters.
- (168) Second, as can be seen from Table 4, the combined market shares of the Parties in 2013 in the Jerez, Alcanar and Morata clusters was low and a number of alternative suppliers exist. In the Jerez cluster, the Parties' combined 2013 market share was below [20-30]* % and there would be large number of alternative suppliers (such as CPV, Votorantim, FYM and Balboa). In the Alcanar cluster, the Parties' 2013 combined market share was [20-30]* % and there would be a large number of alternative suppliers (such as CPV, Lafarge and CLU). In the Morata cluster, the Parties' 2013 combined market share was [20-30]* % and the merged entity will continue to face strong competition from CPV and FYM representing together 40-50 % of the market.
- (169) Third, Holcim had only limited sales in the Lloseta cluster in 2013 ([...]* tonnes) and other suppliers of comparable size such as CPV, Lafarge, CLC and CLU are also present in this cluster. Therefore, the impact of the proposed transaction on competition in this market is negligible.

6.5.4. Conclusion on non-coordinated effects

- (170) Based on the considerations set out in recitals (114) to (169) and the information available to it, the Commission concludes that the notified transaction would not significantly impede effective competition in the markets for grey cement within the 150 km clusters around the Parties' cement production facilities in Spain due to non-coordinated effects.

6.6. Competitive assessment - Coordinated effects

6.6.1. Framework of assessment

- (171) According to the Horizontal Merger Guidelines, horizontal mergers may significantly impede effective competition, in particular by creating or strengthening a dominant position, by changing the nature of competition in such a way that firms

that previously were not coordinating their behaviour, are now significantly more likely to coordinate and raise prices or otherwise harm effective competition. A merger may also make coordination easier, more stable or more effective for firms which were coordinating prior to the merger (coordinated effects).¹¹⁸

- (172) In some markets the structure may be such that firms would consider it possible, economically rational, and hence preferable, to adopt on a sustainable basis a course of action on the market aimed at selling at increased prices through a coordination of their behaviour.¹¹⁹ Coordination may take various forms, such as setting prices above the competitive level, limiting production or capacity, or dividing the market, for instance by geographic area or other customer characteristics, or by allocating contracts in bidding markets.¹²⁰
- (173) Coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination. In addition, three conditions are necessary for coordination to be sustainable. First, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. Second, discipline requires that there is some form of credible deterrence mechanism that can be activated if deviation from coordination is detected. Third, the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, should not be able to jeopardise the results expected from the coordination.¹²¹ According to the case law, in applying those criteria, it is necessary to avoid a mechanical approach involving the separate verification of each of those criteria taken in isolation, while taking no account of the overall economic mechanism of a hypothetical tacit coordination.¹²²
- (174) For competitors to reach a common perception as to how the coordination should work coordinating firms should have similar views regarding which actions would be considered to be in accordance with the aligned behaviour and which actions would not.¹²³ In particular, coordination by way of market division will be easier if customers have simple characteristics that allow the coordinating firms to readily allocate them. Such characteristics may be based on geography, on customer type or simply on the existence of customers that typically buy from one specific firm. Coordination by way of market division may be relatively straightforward if it is easy to identify each customer's supplier and the coordination device is the allocation of existing customers to their incumbent supplier.¹²⁴
- (175) Publicly available key information, exchange of information through trade associations, or information received through cross-shareholdings or participation in joint ventures may also help firms reach terms of coordination.¹²⁵

¹¹⁸ Horizontal Merger Guidelines, paragraph 22.

¹¹⁹ Horizontal Merger Guidelines, paragraph 39.

¹²⁰ Horizontal Merger Guidelines, paragraph 40.

¹²¹ Case T-342/99 *Airtours v Commission*, ECLI:EU:T:2002:146, paragraph 62 ; Case C-413/06 P *Bertelsmann and Sony Corporation of America v Impala*, ECLI:EU:C:2008:392, paragraph 123; Horizontal Merger Guidelines, paragraph 41.

¹²² Case C-413/06 P *Bertelsmann and Sony Corporation of America v Impala*, ECLI:EU:C:2008:392, paragraph 125.

¹²³ Horizontal Merger Guidelines, paragraph 44.

¹²⁴ Horizontal Merger Guidelines, paragraph 46.

¹²⁵ Horizontal Merger Guidelines, paragraph 47.

- (176) Firms may find it easier to reach a common understanding on the terms of coordination if they are relatively symmetric, especially in terms of cost structures, market shares, capacity levels and levels of vertical integration. Structural links such as cross-shareholdings or participation in joint ventures may also help in aligning incentives among the coordinating firms.¹²⁶
- (177) Coordinating firms are often tempted to increase their share of the market by deviating from the terms of coordination, for instance by lowering prices, offering secret discounts, increasing product quality or capacity or trying to win new customers. Only the credible threat of timely and sufficient retaliation keeps firms from deviating. Markets therefore require sufficient transparency to allow the coordinating firms to monitor to a sufficient degree whether other firms are deviating, and thus know when to retaliate. Transparency in the market is often higher, the lower the number of active participants in the market. Further, the degree of transparency often depends on how market transactions take place in a particular market.¹²⁷
- (178) In some markets where the general conditions may seem to make monitoring of deviations from coordination difficult, firms may nevertheless engage in practices which have the effect of easing the monitoring task, even when these practices are not necessarily entered into for such purposes. These practices, such as meeting-competition or most-favoured-customer clauses, voluntary publication of information, announcements, or exchange of information through trade associations, may increase transparency or help competitors interpret the choices made. Cross-directorships, participation in joint ventures and similar arrangements may also make monitoring easier.¹²⁸
- (179) The possibility of retaliation is important for the stability of coordination. Coordination is not sustainable unless the consequences of deviation are sufficiently severe to convince coordinating firms that it is in their best interest to adhere to the terms of coordination. It is thus the threat of future retaliation that can keep the coordination sustainable. However the threat is only credible if, where deviation by one of the firms is detected, there is sufficient certainty that some deterrence mechanism will be activated.¹²⁹
- (180) Retaliation need not necessarily take place in the same market as the deviation. If the coordinating firms have commercial interaction in other markets, these may offer various methods of retaliation.¹³⁰
- (181) As regards the specific effects of a merger, a merger may increase the likelihood that firms are able to coordinate their behaviour and raise prices, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU. A merger may also make coordination easier, more stable or more effective for firms that were already coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices,¹³¹ for example by facilitating the detection of deviation, limiting the

¹²⁶ Horizontal Merger Guidelines, paragraph 48.

¹²⁷ Horizontal Merger Guidelines, paragraphs 49 and 50.

¹²⁸ Horizontal Merger Guidelines, paragraph 51.

¹²⁹ Horizontal Merger Guidelines, paragraph 52.

¹³⁰ Horizontal Merger Guidelines, paragraph 55.

¹³¹ Case C-413/06 P Bertelsmann and Sony Corporation of America v Impala, ECLI:EU:C:2008:392, paragraph 122; Horizontal Merger Guidelines, paragraph 39.

ability and incentives of some market players to deviate and allowing more efficient retaliation.¹³²

- (182) After summarizing the Notifying Party's arguments (section 6.6.2), the Commission will assess whether the proposed transaction would significantly impede effective competition in the Centre region clusters by making pre-existing coordination easier, more stable or more effective (section 6.6.3.1) or by making coordination significantly more likely (section 6.6.3.2).

6.6.2. *The Notifying Party's arguments*

- (183) The Notifying Party argues that the proposed transaction will not significantly impede effective competition with respect to grey cement in Spain as a whole, as well as more specifically in the Centre region clusters.
- (184) Regarding Spain in general, the Notifying Party put forward the following reasons.¹³³
- (185) First, there is no likelihood of coordination given that the grey cement market is open and competitive. In each of the clusters around the Parties' plants in Spain, at least six rivals will remain active post-transaction, plus an undetermined number of importers. Spanish cement manufacturers are also profoundly asymmetric and heterogeneous (for example national versus international producers, producers with integrated plants versus grinding stations, newcomers versus traditional producers). In addition, given the unstable economic environment (with a sharp decrease in demand for grey cement), it would be difficult for firms to reach a common understanding on the terms of coordination.
- (186) Second, monitoring is difficult given that prices for grey cement are subject to confidential negotiations with customers on a case-by-case basis and are not published or otherwise publicly available per company or region.
- (187) Third, there is limited possibility for retaliation. Given the fall in demand and the resulting excess capacity, if one coordinating cement producer were to try to reduce its prices in order to attract customers of other coordinating firms, it would not be able in the short-term to subsequently re-increase prices, since customers (both existing and new) would simply request that the reduced prices be maintained over time or would otherwise switch suppliers and ask quotations to match the newly reduced price. Moreover, Spanish cement producers have few structural links between each other which could provide additional retaliation mechanisms.
- (188) Fourth, regarding competitors' reactions and in view of excess of capacity, any cement producer has a compelling and direct incentive not to raise prices in order not to lose customers. Moreover, customers regularly switch cement suppliers and hence can simply ask other manufacturers to undercut the hypothetically coordinated price. There is a number of grinding mills which are also independent from the integrated producers. Moreover, a price rise (due to coordinated strategies) could attract imports of both grey cement and clinker.
- (189) Regarding the Centre region clusters, the Notifying Party puts forward the following arguments.¹³⁴
- (190) In the first place, the Notifying Party submits that apart from Cemex and Holcim, three integrated competitors (CPV, Lafarge and Balboa) have sizeable sales with

¹³² Horizontal Merger Guidelines, paragraph 42.

¹³³ Form CO, paragraphs 195 to 210.

¹³⁴ Form CO, paragraph 213 and Cemex's amended report submitted on 23 May 2014.

shares above [10-20]* %, and two more (Votorantim and Tudela Veguín) have shares above [5-10]* %.

- (191) In the second place, when assessing symmetry, all of the dimensions of such symmetry amongst suppliers should be taken into account, including not only symmetry in market shares but also incremental costs, customer loyalty and capacity.
- (192) In the third place, the Notifying Party claims that market shares are unstable and there is a significant customer switching in the Centre region clusters.
- (193) In the fourth place, the Notifying Party observes that Cemex's prices in the Madrid province are not systematically higher than the prices of Cemex in the provinces of the Levante region.
- (194) In the fifth place, the Notifying Party alleges that the level of Cemex's margins in the Centre region clusters (namely Castillejo) are very similar to the margins that Cemex obtains from its plants in the Levante region clusters (namely Buñol and Alicante) and are insufficient to cover their fixed and variable costs. In this context, the Notifying Party suggests that the Return on Capital Employed ("ROCE") is the relevant measure to assess profitability and that this has been below the Weighted Average Cost of Capital (WACC) since 2010. This evidence is used by the Notifying Party to support its claim that prices in the Centre region clusters are not above the competitive level.

6.6.3. *Assessment of the Centre region clusters*

- (195) The Commission has analysed whether the proposed transaction will make pre-existing coordination easier, more stable or more effective or make coordination significantly more likely in the Centre region clusters.¹³⁵
- (196) While certain features of the Centre region clusters may make them prone to potential coordination and there are elements compatible with potential current coordination, the Commission has not found a sufficiently cogent and consistent body of evidence that the proposed transaction will make coordination easier, more stable or more effective (see section 6.6.3.1).
- (197) Similarly, the Commission has not found a sufficiently cogent and consistent body of evidence that competitors that were previously not coordinating will be significantly more likely to engage in coordination as a result of the proposed transaction (see section 6.6.3.2).

6.6.3.1. *Assessment of a strengthening of potential current coordination*

- (198) This section outlines the results of the Commission's competitive assessment of coordinated effects by way of a strengthening of potential current coordination.

¹³⁵ The Commission has also analysed whether the proposed transaction will make pre-existing coordination easier, more stable or more effective or make coordination significantly more likely in the Levante region clusters and in the other regions of Spain clusters. The Commission has not found a sufficiently cogent and consistent body of evidence to support the conclusion that this would be likely. In the Levante region clusters, the market structure will remain fragmented (more than ten players) and market shares will continue to be highly asymmetric. As for the other regions of Spain clusters, the increment brought about by the proposed transaction will be less than [0-5]* % in each of the four clusters. Moreover, there will continue to be a high degree of asymmetry in terms of vertical integration in each of the four clusters, with the presence of integrated cement producers, grinding mills and importers.

- (199) The first part of this section presents the Commission's findings on the existence of potential current coordination (section 6.6.3.1(a)(i)) and examines the facilitating factors for such coordination (section 6.6.3.1(a)(ii)) such as the ability of competitors to reach the terms of coordination, of monitoring deviations and of activating effective deterrence mechanisms as well as outsiders' ability to jeopardise the coordination's expected outcome.
- (200) The second part of this section describes the Commission's findings on the merger-specific effects of the proposed transaction with regard to the strengthening of potential current coordination (section 6.6.3.1(b)).
- (a) Assessment of potential current coordination
- (i) Evidence of potential current coordination
- (201) The Commission considers that the most likely mechanism for potential current coordination in the Centre region clusters would be customer allocation whereby competitors would refrain from approaching rivals' customers with low prices. This potential current coordination would involve the Parties, Lafarge and CPV (hereafter denominated as "the four major cement producers").
- (202) The Commission has thus investigated the hypothesis that the four major cement producers might face limited incentives to strive to attract new customers aggressively. Under such a scenario, the four major cement producers could benefit from potential current coordination through increased margins and therefore profits.
- (203) For the reasons set out in recitals (204) to (272), the Commission has not found a sufficiently cogent and consistent body of evidence of potential current coordination between the four major cement producers in the Centre region clusters.
- (1) Market investigation
- (204) A limited number of customers that responded to the market investigation indicated that there may be some current coordination in the grey cement supply in the Centre region clusters.¹³⁶ Despite these claims, overall the Commission considers that it is unlikely that there is any potential current coordination.
- (205) First, independent distributors would have the potential to undermine the sustainability of any potential current coordination. As distributors sell cement from different producers, this means that whenever a customer is lost to a distributor, it is not straightforward for one of the four major cement producers to monitor to which rival the customer has been effectively lost. In that regard, respondents to the market investigation indicated that distributors have a strong presence in the Centre region clusters. One competitor mentioned that *"the presence of distributors is well developed in Madrid, Castilla Leon and Castilla La Mancha. It is reduced in Levante and inexistent in Cataluña"*.¹³⁷ Additionally, in the last years the percentage of the sales of grey cement to distributors has been increasing in the Centre region clusters. As one competitor with a plant in the Centre region clusters mentioned *"since the*

¹³⁶ See replies to questions 34 and 45 - Phase I questionnaire to customers-cement and agreed minutes of the call with a customer, 13 March 2014 and See replies to question 29 - Phase II questionnaire to customers-cement (Q6) and replies to question 48 - Phase II questionnaire to customers-cement (Q7).

¹³⁷ The Spanish original reads: *"la presencia de distribuidores está muy desarrollada en Madrid, Castilla León y Castilla La Mancha. Es reducida en Levante e inexistente en Cataluña"*. Reply to question 32 - Phase II questionnaire to competitors-cement.

*beginning of the crisis, reducing the risk of default is a relevant factor that drives us to channel more sales through distribution".*¹³⁸

- (206) Second, a large majority of customers in the Centre region clusters indicated that they changed grey cement supplier at least once, if not more often, in the last three years.¹³⁹ Two of the main reasons for switching suppliers mentioned by respondents were price and quality.¹⁴⁰ A majority of customers mentioned that they receive price offers from their usual supplier and at least one more supplier.¹⁴¹ Additionally, a majority of customers mentioned that none of the four major cement producers has ever refused to supply them when they have requested.¹⁴²
- (207) Third, there appears to have been aggressive competition between the four major cement producers during 2013. One customer indicated, with respect to the Centre region clusters, that *"in the last year, Holcim behaved more aggressively with lower prices and gained market share. As a consequence, CPV and Cemex replied by also decreasing the prices in the places where Holcim has customers in order to capture all the customers from Holcim"*.¹⁴³ [Reference to Cemex internal document].¹⁴⁴ [Reference to Holcim internal document].¹⁴⁵

(2) The Commission's quantitative analysis

- (208) The Commission has also analysed a number of quantitative elements about the grey cement market in the Centre region clusters, namely the evolution of market shares, customer switching and margins.

Market shares and their evolution

- (209) The Commission requested and obtained data from Oficemen on the sales of its members per plant and per province since 2005, as well as aggregate estimates regarding the sales of non-members in order to compute market shares.
- (210) On the one hand, in a context where demand increased until 2007 and then fell sharply (by 72 % until 2012), the four major cement producers maintained relatively stable market shares in the Madrid province. Moreover, the data indicates that, at least since 2005, competitors other than the four major cement producers have had a minimal and insignificant presence in the Madrid province (less than 2 % market share overall during 2005-2013).

¹³⁸ The Spanish original reads: *"Desde que empieza la crisis, reducir el riesgo de impago es un factor relevante que nos impulsa a canalizar más ventas a través de la distribución"*. Reply to question 31 - Phase II questionnaire to competitors-cement.

¹³⁹ See replies to question 8 - Phase II questionnaire to customers-cement (Q6) and to replies to question 33 - Phase II questionnaire to customers-cement (Q7).

¹⁴⁰ See replies to question 8 - Phase II questionnaire to customers-cement (Q6) and replies to question 33 - Phase II questionnaire to customers-cement (Q7).

¹⁴¹ See replies to question 30 - Phase II questionnaire to customers-cement (Q6) and replies to question 50 - Phase II questionnaire to customers-cement (Q7).

¹⁴² See replies to question 38 - Phase I questionnaire to customers-cement and replies to question 34 - Phase II questionnaire to customers-cement (Q7).

¹⁴³ The Spanish original reads: *"Holcim en el último año y medio, se ha comportado de manera más agresiva con precios más baratos y ha ganado cuota de mercado. Ante este hecho, Cementos Portland y Cemex han respondido bajando también los precios en los lugares donde se consume Holcim para intentar captar a todos los compradores de Holcim"*. Agreed minutes of the call with a distributor, 13 March 2014.

¹⁴⁴ [Reference to Cemex internal document].

¹⁴⁵ [Reference to Holcim internal document].

- (211) On the other hand, the analysis has shown a less stable trend in market shares in the other provinces of the Centre region clusters, resulting in an absence of stability of market shares in the Centre region clusters.

Switching

- (212) The Commission assessed switching data in the Centre region clusters as this can provide indications as to possible current coordination.
- (213) In order to be able to conduct its assessment, and in the absence of a reliable win/loss database¹⁴⁶, the Commission performed an analysis of the purchasing patterns of the Parties' customers. This analysis was based on sales volumes, as recorded in the transaction data sets submitted by the Parties.¹⁴⁷
- (214) Overall, the Commission could not establish a clear switching pattern during the period for which data is available. On the one hand, over the last few years (2010-2013), out of the total volumes delivered by the Parties in the Centre region clusters, less than [20-30]* % related to new customers, in any given year. On the other hand, the specific proportion of new volumes in a given year varied significantly. Periods of low levels of volumes sold by the Parties to new customers were followed by years of high new volumes.

Margins

- (215) The Commission has analysed the average gross margins achieved by the Parties in the Centre region clusters for the period between 2005 and 2013 as this can also provide indications as to possible current coordination.¹⁴⁸ The Commission's analysis was based on sales, revenues, production and cost data submitted by Cemex and Holcim.
- (216) The results of the Commission's analysis of average gross margins in the Centre region clusters are the following.
- (217) First, overall, in Spain, demand for cement significantly dropped between 2007 and 2013. As a consequence, spare capacity for producing cement has become widely available to all competitors (in the range of 60-80 % for the Parties). In a competitive market for a homogeneous product characterised by excess capacity¹⁴⁹, profit maximising behaviour by the four major cement producers would be expected to bring prices close to the average variable costs, with a consequent decrease in the average gross margins.

¹⁴⁶ As acknowledged by Cemex, "the information on lost and won customers is not systematically registered in Cemex's systems [...] this information is not complete at all [...] the reliability of this information is highly questionable."

¹⁴⁷ The Commission has measured switching by the proportion of new customers in any given year (that is, customers that were not buying from a given company the year before). The proportion of lost customers is not a meaningful proxy for customer switching in the grey cement industry, given that the sharp fall in demand is such that many customers lost are customers potentially exiting the market as opposed to customers lost to competitors.

¹⁴⁸ Average gross margins by cluster have been computed as the difference between ex-works prices and unit variable production costs (including fuel, electricity and raw material costs, including clinker). The unit variable production cost associated to each transaction was the cost of the plant originating the cement sold in that transaction.

¹⁴⁹ It is also characterised by the possibility to price discriminate. See replies to question 44 – Phase II questionnaire to competitors-cement. In addition, customers tend to be rather localised and rarely active across different regions. This limited activity and interaction of customers across different regions is consistent with a low level of awareness about prices charged by their supplier to other customers.

- (218) In this respect, while the average gross margins of the Parties in the Centre region clusters have significantly decreased between 2007 and 2013, the average gross margins achieved by Cemex in the Castillejo cluster were still approximately EUR [...] per tonne in 2013.
- (219) Second, in order to complete its assessment of average gross margins in the Centre region clusters during the period between 2005 and 2013, and in the absence of reliable average gross margin estimates for Holcim¹⁵⁰, the Commission has also collected sales, production and cost data from the other major cement producers in the Centre region clusters.
- (220) The analysis has shown that while all of the four major cement producers in the area had average gross margins above their variable production costs during the period between 2005 and 2013, there was significant variability among the average gross margins achieved by the four major cement producers. This variability may reflect differences in the current business models adopted by the four major cement producers in the Centre region clusters, such as different levels of vertical integration and different proportions of sales achieved via independent distributors. It may also be affected by differences in the recording of sales and costs data associated to a particular product.
- (ii) Possible facilitating factors of potential current coordination
- (1) Reaching terms of coordination
- (221) For competitors to reach a common perception as to how coordination should work, coordinating firms should have similar views regarding which actions would be considered to be in accordance with the aligned behaviour and which actions would not.¹⁵¹ Coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination.
- (222) There are certain market characteristics that make it relatively simple to reach a common understanding on the terms of coordination. A stable economic environment, a small number of competitors, a homogeneous product, a relative symmetry of competitors and the existence of structural links between competitors are factors that can make it easier for competitors to reach terms of coordination.¹⁵²
- (223) For the reasons set out in recitals (224) to (235), the Commission has not found a sufficiently cogent and consistent body of evidence that the structural features of the Centre region clusters would make it relatively simple for the four major cement producers to reach a common understanding on potential current coordination.
- (224) On the one hand, a number of structural features of the Centre region clusters could make it easier for the four major cement producers to reach a common understanding on potential current coordination.

¹⁵⁰ The average gross margins achieved by Holcim in the Yeles cluster decreased from EUR [...] in 2012 to just above EUR [...] in 2013, following the dismantling of the clinker facility in Yeles. The Commission notes, however, that the costs information provided by Holcim is insufficient to make a reliable inference based on these figures. This is because the Parties acknowledged that the split between the upstream and downstream costs of the integrated plants is not currently recorded by Holcim in a way that would allow the Commission to reliably identify the cost of clinker for the production of cement for each plant.

¹⁵¹ Horizontal Merger Guidelines, paragraphs 44-48.

¹⁵² Horizontal Merger Guidelines, paragraph 45.

- (225) First, apart from the four major cement producers, a limited number of other competitors are active in the two clusters in the Centre region. As mentioned in recital (162), only Lafarge and CPV have plants located close to the Parties' plants. The remaining competitors with sales in the clusters, Balboa and Votorantim, have plants located further away, just outside or in the southern part of the clusters.
- (226) Given the importance of transport costs for the competitive constraint posed by competitors in the Centre region clusters (see recital (163)), Balboa and Votorantim are at a competitive disadvantage vis-à-vis the four major cement producers in the centre and northern areas of the Centre region clusters. As one of these two competitors noted *"the volumes it sells in Madrid and Toledo are very small"* and *"it does not consider itself an important competitor in the area of Madrid given the transport cost from its plant to this area"*.¹⁵³ The other competitor noted that *"after trying to sell cement in the area of Madrid from its closer plant located at 400 km, the idea was abandoned given that the distances and the prices in that market make it non profitable"*.¹⁵⁴
- (227) The shares of supply in the Madrid province (located in the middle of the Centre region clusters) support this conclusion. The four major cement producers supplied [90-100]* % of sales in the Madrid province 2012, with only [0-5]* % remaining covered by other cement producers.¹⁵⁵ This is also confirmed by the data received from the Parties according to which 85–95 % of customers in the Centre region clusters currently have only the four major cement producers (or fewer) as an option within a 150 km radius.¹⁵⁶
- (228) Second, the four major cement producers in the Centre region clusters have contacts in several neighbouring geographic and product markets, including other European markets with the exception of CPV. They are present as cement producers in different regions of Spain and in different European countries, as producers of aggregates and are also vertically integrated downstream into RMX and mortar and upstream into clinker.¹⁵⁷
- (229) Third, grey cement is a largely homogeneous product with a high degree of standardisation due to the existence of national and European standards as outlined in recital (134), in particular with respect to sales for the production of RMX. Reaching a common undertaking on potential current coordination in the Centre region clusters is potentially easier for the four major cement producers since they produce a similar product, face similar customers and are subject to similar shocks to demand and production.

¹⁵³ The Spanish original reads: *"las cantidades que venden en Madrid y en Toledo son "muy pequeñas" and "no se considera a sí mismo como un competidor importante en la zona de Madrid por el coste de transporte que supone la distancia de su fábrica a esta zona"*. Agreed minutes of the call with a competitor, 3 June 2014.

¹⁵⁴ The Spanish original reads: *"tras varios intentos de vender cemento a la zona de Madrid desde su planta [...], la más cercana a esta zona pero a unos 400km, han abandonado la idea debido a que las distancias y los precios del mercado hacen la operación no rentable"*. Agreed minutes of the call with a competitor, 3 April 2014.

¹⁵⁵ Form CO, paragraph 167.

¹⁵⁶ Source: Commission's calculations based on transaction data submitted by the Parties, complemented by distance data (also submitted by the Parties) between each of the Parties' customers and each of the cement plants in Spain.

¹⁵⁷ Form CO, paragraph 371.

- (230) Fourth, the technology used to produce cement has reached a mature stage.¹⁵⁸ Accordingly, the four major cement producers share similar cost components in terms of operations.
- (231) On the other hand, a number of structural features of the Centre region clusters would not make it relatively easy for the four major cement producers to reach a common understanding on potential current coordination.
- (232) First, competitive conditions in the Centre region clusters have been unstable from 2010 to 2013, given the decline in grey cement demand in Spain, including in these two clusters. Since 2010, demand has dropped by 57 % in the Yeles cluster and 58 % in the Castillejo cluster.

Table 9: Total size of the market in the Centre region clusters (thousand tonnes)

	2010	2011	2012	2013
Yeles cluster	[...]*	[...]*	[...]*	[...]*
Castillejo cluster	[...]*	[...]*	[...]*	[...]*

Source: Form CO and Cemex's reply to the Commission's request for information, 17 June 2014, Question 2.

- (233) This decreasing demand would make it more difficult for the four major cement producers to reach a common understanding on potential current coordination. This is because if one of the four major producers were to lose significant volumes of sales, it would have the incentive to try to find new customers to compensate for these lost volumes.
- (234) Second, there are no significant structural links between the four major cement producers, such as cross-shareholding or participation in joint ventures.¹⁵⁹
- (235) Third, the four major cement producers have different business models as regards the level of integration in the production of grey cement (with the Parties operating as grinding mills in the Centre region and Lafarge and CPV operating as integrated units) and the level of presence in the supply chain (for instance, Holcim selling [20-30]* % of its production from Yeles to distributors and Cemex selling only [0-5]* %).¹⁶⁰ Moreover, contrary to the other three major cement producers, CPV is present only in Spain.

(2) Monitoring deviations - Transparency

- (236) Transparency regarding sales volumes, market shares, prices and customers can enhance a market player's awareness of the competitive strategies of other market players. This can facilitate market players in their monitoring of potential deviations, thereby potentially supporting a viable coordinated scheme.¹⁶¹
- (237) For the reasons set out in recitals (238) to (247), the Commission has not found a sufficiently cogent and consistent body of evidence that the degree of transparency of

¹⁵⁸ The Notifying Party has stated that research and development ("R&D") expenditure for grey cement is less than 5 % of their turnover in Spain. Form C, paragraph 419.

¹⁵⁹ See replies to questions 5, 6, 8 and 9 - Phase I questionnaire to competitors-cement.

¹⁶⁰ Source: Commission's calculations based on transaction data supplied by the Parties.

¹⁶¹ Horizontal Merger Guidelines, paragraph 50.

the Centre region clusters would make it relatively simple for the four major cement producers to reach a common understanding on potential current coordination.

- (238) On the one hand, certain elements could be indicative of a high degree of transparency in the Centre region clusters.
- (239) First, the four major cement producers appear to be able to track their market shares as well as, to a certain extent, those of the other major cement producers per province. [reference to Holcim internal document].¹⁶² [reference to Cemex internal document].¹⁶³ Oficemen collects and publishes monthly aggregated data about grey cement production, sales, imports and exports at national, regional and sub-regional level.¹⁶⁴ This information is also published at a disaggregated level by province or by plant with a delay of one year.
- (240) Second, as regards prices, the four major cement producers seem to have extensive information regarding the price letters of both the other three major cement producers and of other competitors and even their price levels. Respondents to the market investigation indicated that the four major cement producers inform their customers by letters on a regular basis of future price increases.¹⁶⁵ The Parties confirmed that they sent letters announcing their general intention to increase prices, however the Parties have not generally increased prices recently.¹⁶⁶ Some customers pointed towards competitors announcing similar price increases at the same time, generally towards the end of the year.¹⁶⁷
- (241) Holcim's internal strategy documents contain numerous references to the price increases announced by the four major cement producers and by other competitors, suggesting a degree of transparency on the future evolution of prices. [Reference to Holcim internal documents].¹⁶⁸ Internal documents of Cemex also show that monitoring the price offers of competitors is part of its business intelligence and decision-making.¹⁶⁹
- (242) Third, as regards transparency of customers lost, transaction data from the Parties indicates that even if the Parties have between [...] and [...] customers in a given year across Spain, the bulk of the customer base is rather concentrated, with a long tail of small customers.¹⁷⁰ This concentration of the customer base could facilitate the ability of the four major cement producers to identify to which competitor a customer

¹⁶² [Reference to Holcim internal document].

¹⁶³ [Reference to Cemex internal document].

¹⁶⁴ Oficemen publishes information for the following regions of Spain: Andalusia, Cataluña, Centre, North and West. As regards the information on sales of grey cement by the Oficemen members, the Centre region is further disaggregated into the sub-regions of Extremadura, Levante-La Mancha (including Comunidad Valenciana, Murcia and Castilla-La-Mancha) and Comunidad Madrid (which corresponds to the Madrid province). These sub-regions are defined such that at least four companies are active in the sub-region. See "Reglamento de Estadística", Oficemen.

¹⁶⁵ See replies to question 54 - Phase I questionnaire to competitors-cement; replies to question 24 - Phase II questionnaire to customers-cement (Q6) and replies to question 48 - Phase II questionnaire to customers-cement (Q7).

¹⁶⁶ The Parties claimed that they have not sent letter recently [...].

¹⁶⁷ See replies to question 29 - Phase II questionnaire to customers-cement (Q6) and replies to question 48 - Phase II questionnaire to customers-cement (Q7). See also agreed minutes of the call with a customer, 3 June 2014.

¹⁶⁸ [Reference to Holcim internal document].

¹⁶⁹ [Reference to Cemex internal document].

¹⁷⁰ According to the transaction data provided by the Parties, the top 50 customers in 2012 represent between [50-70] % of all volumes sold by each party in that year.

was lost. The ability of the four major cement producers to complement the information on their own market share by monitoring a relatively limited number of customers is supported by the internal documents of the Parties.[Reference to Holcim internal document].¹⁷¹[Reference to Cemex internal document].¹⁷² One competitor also explained that it is able to identify the competitor winning its customers through *"the communication by other customers, or comments of other customers, or because a visit by a sales person coincides with a delivery to the plant, or by seeing the bags of the other supplier, or advertising"*.¹⁷³

- (243) Fourth, the Centre region clusters are characterised in general by the existence of cross-supply relationships of clinker and grey cement between three of the four major cement producers (Holcim, Cemex and Lafarge). [References to clinker supply agreements].¹⁷⁴
- (244) On the other hand, other elements are not compatible with a high degree of transparency in the Centre region clusters.
- (245) First, price letters are not necessarily binding and the majority of competitors, confirmed that the final price is ultimately determined by oral bilateral negotiation with the customers.¹⁷⁵
- (246) Second an analysis of the role of distributors in the Centre region clusters has highlighted that distributors could potentially jeopardise the ability of the four major cement producers to understand to which rivals a given customer was lost. While Cemex appears to currently make limited use of distributors, Holcim, Lafarge and most notably CPV do appear to sell significant shares of their volumes through distributors in the Centre region clusters.¹⁷⁶ Distributors sell cement from different producers and this means that whenever a customer is lost to a distributor, it is not straightforward for one of the four major cement producers to monitor to which rival the customer has been effectively lost.
- (247) Third, the cross supplies of clinker and grey cement between CPV and the other three major cement producers are limited. Regarding clinker, CPV does not have any agreement with any of the other three major cement producers. As for grey cement, during the period 2010-2012, out of Holcim's total purchases of grey cement in Spain, [10-20]* % came from CPV, although these were small volumes compared to Holcim's total sales (less than [0-5]* % of its total sales of grey cement in Spain). As for Cemex's total purchases of grey cement in Spain only [0-5]* % came from CPV. Cemex's grey cement sales to CPV were minor during this period, while Holcim did not sell any grey cement to CPV.

(3) Deterrence mechanism

- (248) The possibility of retaliation following a deviation is important for the stability of coordination. Coordination is not sustainable unless the consequences of a deviation are sufficiently severe to convince coordinating firms that it is in their best interest to

¹⁷¹ [Reference to Holcim internal document].

¹⁷² [Reference to Cemex internal document].

¹⁷³ The Spanish original reads: *"porque nos lo indica el cliente, o por comunicación de otros clientes, o por comentarios de otros clientes, o por coincidir con un suministro en la planta del cliente durante la realización de una visita comercial, por ver los sacos de otro proveedor, publicidad"*. Reply to question 39 - Phase II questionnaire to competitors-cement.

¹⁷⁴ [...].

¹⁷⁵ See replies to question 43 - Phase II questionnaire to competitors-cement.

¹⁷⁶ See recital (269).

adhere to the terms of coordination. It is thus the threat of future retaliation that can keep the coordination sustainable. However, that threat is only credible if, where deviation by one of the firms is detected, there is sufficient certainty that some deterrence mechanism will be activated.¹⁷⁷

- (249) For the reasons set out in recitals (250) to (260), the Commission has not found a sufficiently cogent and consistent body of evidence that the threat of future retaliation in the Centre region clusters would keep any potential current coordination sustainable.
- (250) On the one hand, it appears that certain credible deterrence mechanisms could be activated if deviation were detected.
- (251) First, the four major cement producers could reduce the price to the deviator's cement customers so as to reduce its grey cement volumes and margins. This mechanism could be effective given the lack of long-term contracts, the regularity of cement purchasing and customer price sensitivity, as well as the excess capacity that appears to characterise the supply of grey cement in the Centre region clusters.
- (252) This punishment mechanism, if focused only in the Centre region, is unlikely to disrupt prices of grey cement in other regions in Spain because there are many local segments of a given geographic market and because prices do not seem to be transparent for grey cement customers (unlike for producers). The large majority of customers that responded to the market investigation indicated that they do not know the prices charged by grey cement producers to other customers.¹⁷⁸ This is consistent with information submitted by the Parties, showing evidence of significant price dispersion in the Centre region clusters. This lack of transparency on the customer side would make it relatively inexpensive for the punishing firm to implement such a punishment.
- (253) Second, three of the four major cement producers (Holcim, Cemex and Lafarge) could stop buying grey cement or clinker from the deviator, preferring to substitute it for own production. This could have an impact on the deviator,¹⁷⁹ without affecting the other major cement producers carrying out the punishment to the same extent.
- (254) Third, the four major cement producers could punish deviations in the grey cement markets in the Centre region clusters through targeted reductions in the price of RMX and mortar sold by their integrated downstream businesses or by reducing the price of aggregates.
- (255) Fourth, the four major cement producers have contacts in several Spanish regions as well as in other European countries in what concerns the production of grey cement, aggregates, RMX and mortar. As a result, any deviation from potential current coordination in the supply of grey cement in the Centre region clusters may be penalised in one or more other markets where the four major cement producers are active.
- (256) On the one hand, certain elements indicate that any deterrence mechanisms would not be credible.

¹⁷⁷ Horizontal Merger Guidelines, paragraph 52.

¹⁷⁸ See replies to question 28 - Phase II questionnaire to customers-cement (Q6); replies to question 48 - Phase II questionnaire to customers-cement (Q7) and replies to question 44 - Phase II questionnaire to competitors-cement.

¹⁷⁹ For example, by not being able to reach the CO₂ targets.

- (257) First, regarding clinker supply, any deterrence mechanism would not be accessible to CPV or to the other three major cement producers against CPV, given the absence of any clinker transaction between CPV and the other three major cement producers.
- (258) Second, regarding grey cement, given that cross-supplies involve small volumes,¹⁸⁰ any deterrence effect would not be strong.
- (259) Third, the Commission did not find indications in the Parties' internal documents that the Parties tend to react to expansion attempts by the other major cement producers by using targeted counter measures which could be interpreted as deterrence mechanisms in relation to potential current coordination. In particular, the Commission did not find in the Parties' internal documents any concrete example of targeted reactions to behaviour by the other major cement producers as part of its strategic behaviour intended to alleviate competitive pressure.
- (260) Fourth, respondents to the market investigation did not provide any evidence of such behaviour in the recent past.

(4) Reactions of customers, outsider competitors and potential entry

- (261) For coordination to be successful, the actions of non-coordinating firms and potential competitors, as well as customers, should not be able to jeopardise the outcome expected from coordination.¹⁸¹ As regards the countervailing buyer power of customers, by concentrating a large amount of its requirements with one supplier or by offering long-term contracts, a large buyer may make coordination unstable by successfully tempting one of the coordinating firms to deviate in order to gain substantial new business.¹⁸²
- (262) For the reasons set out in recitals (263) to (272), the Commission has not found a sufficiently cogent and consistent body of evidence that the actions of customers, outsider competitors and potential entry could not jeopardise the outcome expected from potential current coordination between the four major cement producers in the Centre region clusters.
- (263) On the one hand, certain elements suggest that customers, outsider competitors and potential entry could not jeopardise the outcome expected from potential current coordination between the four major cement producers in the Centre region clusters.
- (264) First, regarding the reaction of outsider non-integrated suppliers, their strength in the Madrid area has already been reduced by past consolidation of the major suppliers. [Reference to Holcim internal document].¹⁸³
- (265) Second, entry barriers in Centre region clusters seem to be high and entering the clusters by building an integrated cement plant is largely irreversible. The Notifying Party estimates the investment necessary for a greenfield investment with a capacity of 2 million tonnes per year to be at least EUR [...] million.¹⁸⁴ Factors inhibiting such entry include the access to a limestone quarry to produce cement and the need to comply with environmental regulations.

¹⁸⁰ See Cemex's reply to the Commission request for information, 21 March 2014, question 4, and Holcim's reply to the Commission request for information, 21 March 2014, question 4.

¹⁸¹ Horizontal Merger Guidelines, paragraph 56.

¹⁸² Horizontal Merger Guidelines, paragraph 57.

¹⁸³ [Reference to Holcim internal document].

¹⁸⁴ Form CO, paragraph 396.

- (266) Third, imports may be insufficient to jeopardise the result expected from any potential current coordination. Given their inland location, it is more expensive for imports to reach the Centre region clusters with a competitive offer. According to information provided by Oficemen, of the total imports of grey cement into Spain in 2012, only 0.5 % was delivered to Centre region clusters.¹⁸⁵
- (267) Fourth, given the lack of substitutable products for grey cement and the reduced number of producers in those clusters, the likelihood of customers being able to jeopardise the results expected from potential current coordination seems to be low.
- (268) On the other hand, a number of elements suggest that customers, outsider competitors and potential entry could jeopardise the outcome expected from potential current coordination between the four major cement producers in the Centre region clusters.
- (269) First, distributors play an important role in the Centre region clusters (see recital (205)), and have the potential to jeopardise any potential current coordination. This is supported by both the internal documents of the Parties and the responses to the market investigation. [Reference to internal documents of the Parties].¹⁸⁶ As one competitor explained *"distributors often regulate prices of the zones, if there is an excessive price at some point, they buy cement in another province and send it to where is more expensive"*.¹⁸⁷ Regarding the responses to the market investigation, they indicated that distributors in the Centre region potentially offer cement to all customers, except to those that are already buying from the brand that the distributor offers. As one distributor selling cement of Lafarge mentioned, *"it can offer cement to clients that usually buy from other distributors or producers such as Holcim and CPV"*.¹⁸⁸ Additionally, and since some distributors buy cement from several of the four major cement producers, they may even offer one of the cement brands they represent to customers that are buying cement of the other brands they represent. As one distributor in the Centre region noted that *"if in a given area a customer is buying cement from Lafarge, (...) may offer this customer cement from Holcim"*.¹⁸⁹
- (270) Second, there are alternative integrated cement producers with plants located in the proximity of the Centre region clusters such as Tudela, Veguín and Balboa which would have some potential to jeopardise the outcome expected from potential current coordination between the four major cement producers in certain parts of the Centre region clusters. This potential is however limited notably because, given the location of their plants, some in north of the cluster (namely Tudela Veguín), others in southwest of the cluster (Balboa and Votorantim), the alternative cement producers would have difficulties in jeopardising the outcome expected from potential current coordination in all parts of the Centre region clusters. For example, a competitor located in a neighbouring province to the Centre region clusters noted that *"the price in the area of Madrid would have to increase by EUR [15-35] per tonne to become*

¹⁸⁵ Source: Oficemen.

¹⁸⁶ [Reference to Cemex internal document].

¹⁸⁷ The Spanish original reads: *"Los distribuidores suelen regular los precios de las zonas, ya que si en algún punto hay un precio excesivo, lo distribuidores compran el cemento en otra provincia y lo envían donde se venda más caro"*. Reply to question 32 - Phase II questionnaire to competitors-cement.

¹⁸⁸ The Spanish original reads: *"puede ofertar cemento a clientes que compran habitualmente cemento a otros fabricantes o distribuidores Holcim, Cementos Portland Valderrivas"*. Agreed minutes of the call with a distributor, 4 June 2014.

¹⁸⁹ The Spanish original reads: *"si en una zona determinada un cliente consume cemento de Lafarge, [...] le puede ofrecer cemento de la marca de Holcim"*. Agreed minutes of the call with a distributor. 3 June 2014.

profitable for it to sell in this area".¹⁹⁰ Another competitor located outside the Centre region clusters noted, regarding sales in Madrid, that *"for having positive margins it would have to sell cement EUR 10 per tonne more expensive"*.¹⁹¹ Two competitors with plants located in the Centre region clusters also mentioned that they would not be able to compete in some areas of the clusters (see recital (226)).

- (271) Third, instead of building an integrated cement plant, an outside competitor or potential supplier could simply set up a grinding station and ship clinker from within the group or purchase it from third parties, which would lower the costs of such an initial investment. According to the Notifying Party, the investment cost for a grinding station of approximately 500 kt could amount to between EUR 30 and 50 million.¹⁹²
- (272) Fourth, several customers in the Centre region clusters confirmed that they request price offers from several of the major cement producers in order to compare their supplier's offer.¹⁹³ In addition, one customer mentioned that *"it is easier to switch supplier [in the Centre region]"*.¹⁹⁴

(iii) Conclusion on potential current coordination

- (273) Based on the considerations set out in sections 6.6.3.1(a)(i) and 6.6.3.1(a)(ii), the Commission concludes that the current market outcomes in the Centre region clusters are, on balance, not sufficiently indicative of the existence of potential current coordination amongst the four major cement producers.

(b) Assessment of merger-specific changes

- (274) As established in sections 6.6.3.1(a)(i) to 6.6.3.1(a)(iii), it is unlikely that the current market outcomes in the Centre region clusters can be associated with the existence of potential current coordination amongst market participants.
- (275) As a result, the Commission does not have to make a finding as to whether the changes that this merger brings about will make coordination easier, more stable or more effective to a degree that could be considered to give rise to a significant impediment to effective competition in the Centre region clusters.

6.6.3.2. Assessment of a potential creation of coordination

- (276) The Commission has also assessed whether, as a result of the proposed transaction, the four major cement producers in the Centre region clusters will be significantly more likely to coordinate their competitive behaviour. The Commission has concluded that this will not be the case.
- (277) First, the reduction in the number of competitors brought about by the proposed transaction is unlikely to have a significant effect on market transparency and, therefore, on the possibility to monitor deviations from coordination. As outlined in section 6.6.3.1(a)(ii)(2), market transparency in the Centre region clusters derives

¹⁹⁰ The Spanish original reads: *"el precio del cemento en la zona de Madrid tendría que incrementarse en unos [15-35€ por tonelada] para que resultase rentable vender en esta zona"*. Agreed minutes of the call with a competitor, 4 June 2014.

¹⁹¹ The Spanish original reads: *"para poder tener márgenes de beneficio tendría que vender en origen el cemento a 10 €/tonelada más caro"*. Agreed minutes of the call with a competitor, 21 March 2014.

¹⁹² Form CO, paragraph 396.

¹⁹³ See replies to question 30 - Phase II questionnaire to customers-cement (Q6) and replies to question 50 - Phase II questionnaire to customers-cement (Q7).

¹⁹⁴ The Spanish original reads: *"facilidad que cree que existe para cambiar de proveedor en su zona"*. Agreed minutes of the call with a distributor. 27 May 2014.

from commercial links between the four major cement producers, from publications of trade associations, from the sending of price increase announcement letters as well as from information obtained directly from customers. It is therefore unlikely that the proposed transaction will make it easier for the four major cement producers to access those sources of information and will therefore not improve market transparency in any significant way.

- (278) Second, there is no indication that the proposed transaction will strengthen the possible deterrence mechanisms by increasing the retaliatory power held by the four major cement producers. Holcim does not have any plants located close to Lafarge's and CPV's plants, with the exception of the Jerez plant which is in the same area as one of CPV's plant (see Figure 1).
- (279) Third, cross-supplies of grey cement will continue to be low after the proposed transaction and CPV does not have any agreement for the supply of clinker with the Parties.
- (280) Fourth, there is no indication that the proposed transaction will lead to a weakening of the possible reaction of non-coordinating firms or new entrants. In particular, there are no indications that the incentives of possible outsiders or new entrants would change as a result of the proposed transaction. After the proposed transaction, distributors (which are used to a significant extent by Holcim, Lafarge and CPV in the Centre region clusters) will still be in a position to jeopardise the customer sharing resulting from the coordination scheme.

6.6.4. *Conclusions on coordinated effects*

- (281) Based on the considerations set out in recitals (195) to (280) and the evidence available to it, the Commission concludes that the notified transaction would not significantly impede effective competition in the Centre region clusters due to coordinated effects.

6.7. **Competitive assessment - Vertical effects**

6.7.1. *Analytical framework*

- (282) A vertical merger may give rise to foreclosure. A merger is said to result in foreclosure where the access of actual or potential rivals to markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.¹⁹⁵
- (283) Two forms of foreclosure can be distinguished. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).¹⁹⁶
- (284) Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may lead the merged entity to profitably increase the price charged to consumers,

¹⁹⁵ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008 ("Non-Horizontal merger guidelines"), paragraph 29.

¹⁹⁶ Non-Horizontal merger guidelines, paragraph 30.

resulting in a significant impediment to effective competition.¹⁹⁷ In assessing the likelihood of such scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.¹⁹⁸

- (285) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete. In turn, this may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may allow the merged entity profitably to establish higher prices on the downstream market.¹⁹⁹ In assessing the likelihood of a customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.²⁰⁰

6.7.2. *Notifying Party's arguments*

- (286) The Notifying Party submits that the integration of Holcim's cement, RMX and mortar assets into Cemex would not result in any vertical foreclosure effects.
- (287) Regarding input foreclosure,²⁰¹ first, the Notifying Party submits that the proposed transaction would not give it the ability to adopt such a strategy since the merged entity will compete with several cement producers and importers which could easily supply cement to RMX and mortar producers given the excess capacity in the grey cement market and the absence of long-term and exclusivity contracts. Additionally, the Parties' combined market shares both in the upstream grey cement and downstream RMX and mortar markets will be moderate.
- (288) Second, the Notifying Party argues that the merged entity will not have the incentive to adopt an input foreclosure strategy due to (i) the absence of capacity constraints of downstream RMX and mortar competitors, (ii) the moderate market shares in the downstream RMX and mortar markets, and (iii) customer buyer power.
- (289) Third, the Notifying Party argues that any attempt by the merged entity to raise cement prices will be unfeasible and unable to have any impact on effective competition given that (i) no downstream RMX and mortar producer represents a high proportion of the Parties' sales of grey cement, (ii) entry barriers in the downstream RMX and mortar markets are low, (iii) there are credible competitors in the downstream RMX and mortar markets, and (iv) customers have a high bargaining power.
- (290) Regarding customer foreclosure,²⁰² first, the Notifying Party argues that the merged entity will not have the ability to adopt such a strategy since it will not be an

¹⁹⁷ Non-Horizontal merger guidelines, paragraph 31.

¹⁹⁸ Non-Horizontal merger guidelines, paragraph 32.

¹⁹⁹ Non-Horizontal merger guidelines, paragraph 58.

²⁰⁰ Non-Horizontal merger guidelines, paragraph 59.

²⁰¹ Form CO, paragraphs 233-250.

²⁰² Form CO, paragraphs 251-261.

important customer for any producer and there are sufficient alternatives in the downstream RMX and mortar markets.

- (291) Second, the Notifying Party argues that the merged entity will not have the incentive to adopt a customer foreclosure strategy. This is due to (i) the unlikelihood of price rises in the upstream grey cement market in case of the adoption of such a strategy and (ii) the moderate market shares in the downstream RMX and mortar markets.
- (292) Third, the Notifying Party argues that a strategy for the Parties to stop purchasing grey cement from rival firms is unlikely to raise prices in the downstream RMX and mortar markets as: (i) rival cement players only supply a tiny fraction of the Parties' requirements for RMX and mortar purposes, (ii) there is no capacity constraint in the grey cement market, (iii) there are no entry barriers in the RMX and mortar markets; and (iv) RMX and mortar producers enjoy high bargaining power.

6.7.3. The Commission's assessment

- (293) The proposed transaction results in a number of vertically affected markets, namely in relation to the supply of grey cement to mortar plants and the supply of grey cement to RMX plants.
- (294) For the reasons set out in recitals (295) to (296), the Commission has concluded that the proposed transaction would not significantly impede effective competition in the markets for grey cement and in the markets for RMX and mortar due to vertical effects.
- (295) First, as described in section 6.5, the merged entity will not have market power in the upstream markets of grey cement since the combined market shares are relatively low (as in the case of the Buñol, Yeles, Castillejo, Alcanar, Jerez and Morata clusters). Moreover, there will be a number of alternative suppliers of grey cement available post-transaction. The only exception could be the Lloseta cluster, but in this case the Parties are not present in any vertically related market downstream.
- (296) Second, the Parties will not have significant degree of market power in the downstream RMX and mortar markets as will be described in sections 8.3.3 and 9.3.3 and there will be a number of alternatives in those markets.

6.7.4. Conclusions on vertical effects

- (297) Based on considerations set out in recitals (282) to (296) and the evidence available to it, the Commission concludes that the notified transaction would not significantly impede effective competition in the various geographic markets for grey cement defined by circles with radii of 150 km drawn around the Parties' cement production facilities in Spain due to vertical effects.

6.8. Conclusion on grey cement

- (298) The Commission therefore concludes that the proposed transaction would not significantly impede effective competition on the relevant markets for grey cement.

7. AGGREGATES

7.1. Relevant product market definition

7.1.1. Previous decisional practice

- (299) Aggregates are used as base materials in the construction of roads, buildings and other infrastructure, as well as raw materials used to make products such as concrete, asphalt, and mortar. They may be quarried from land and dredged from the sea (together, "primary aggregates"); obtained from the waste products of other mining

or industrial activities (“secondary aggregates”); or obtained from recycled sources such as demolition sites and construction waste (“recycled aggregates”). They are typically used in construction, although they are also supplied for non-construction uses such as railway ballast.²⁰³

- (300) In previous decisions the Commission has considered aggregates as a single, separate product market.²⁰⁴ Moreover, the Commission considered, but ultimately left open, a further segmentation between (i) primary aggregates (crushed rock, gravel and sand) and (ii) secondary / recycled aggregates (such as colliery and china clay waste, slate, power station ash, slags and demolition/construction waste.)²⁰⁵ Within the primary aggregates category, the Commission also considered but left open a further distinction between (i) sand and gravel and (ii) crushed rock²⁰⁶

7.1.2. *The Notifying Party's arguments*

- (301) The Notifying Party submits that despite a certain lack of demand-side substitutability between gravel and crushed rock on the one hand and sand on the other hand, aggregates have consistently been found to constitute a single product market. This is due to the fact that the choice between crushed rock or sand and gravel is largely influenced by geology and availability for ready-mix concrete and concrete production.²⁰⁷ In any event, the Notifying Party submits that the precise product market definition for aggregates can be left open as the proposed transaction gives rise to very limited local overlaps between the Parties' activities in Spain and these only relate to primary aggregates.

7.1.3. *Conclusion on the product market definition*

- (302) For the purpose of the assessment of the proposed transaction, the exact market definition can be left open as the proposed transaction would not lead to a significant impediment to effective competition in the EEA or any substantial part of it under any plausible market definition.

7.2. **Relevant geographic market definition**

7.2.1. *Previous decisional practice*

- (303) In previous decisions, the Commission has considered the aggregates market to be local/regional or at most national in scope and has retained a radius of 50 to 80 km around each production site depending on the particularities of the areas concerned.²⁰⁸ This is due to the fact that aggregates are heavy and voluminous products with significant transport costs.

²⁰³ Commission's decision of 16 May 2011 in Case No COMP/M.6153 – Anglo American/Lafarge/JV, paragraph 11.

²⁰⁴ Commission's decision of 25 May 2004 in Case No COMP/M.3415 CRH/Semapa/Secil JV, paragraph 10; Commission's decision of 1 August 2003 in Case No COMP/M.3141 - Cementbouw/Enci/JV paragraph 11.

²⁰⁵ Commission's decision of 13 January 2000 in Case No. COMP/M.1779 – Anglo American/Tarmac, paragraph 20.

²⁰⁶ Commission's decision of 10 June 2010 in Case No. Comp/M.5803 - Eurovia/Tarmac, paragraph 10.

²⁰⁷ Form CO, paragraph 94.

²⁰⁸ Commission's decision of 14 March 2005 in Case No COMP/M.3713 - Holcim/Aggregate Industries, paragraph 8, and Commission's decision of 1 March 2001 in Case No COMP/M.2317 – Lafarge/Blue Circle (II), paragraph 10.

7.2.2. *The Notifying Party's arguments*

- (304) In light of the decisional practice of the Commission and the Spanish Competition Authority²⁰⁹, the Notifying Party has provided market share data for the radii of 50 and 80 km around the Parties' quarries.²¹⁰

7.2.3. *Conclusion on the geographic market definition*

- (305) For the purpose of the assessment of the proposed transaction, the exact market definition can be left open as the proposed transaction would not lead to a significant impediment to effective competition in the EEA or any substantial part of it under any plausible market definition.

7.3. **Competitive assessment**

7.3.1. *The Parties' activities*

- (306) Cemex's aggregate quarries are located in Valencia, the centre region of Spain (Madrid, Ciudad Real, Soria) as well as in other regions of Spain (Tarragona, Barcelona, Menorca, Mallorca, Zaragoza, Ibiza). Holcim's aggregate quarries are located in the Andalusian and Levante regions (Alicante, Almeria, Murcia, Cadiz, Jaen, Malaga), the centre region of Spain (Ciudad Real, Madrid) as well as in other regions of Spain (Castellon, Pontevedra).²¹¹

7.3.2. *The Notifying Party's arguments*

- (307) The Notifying Party submits that there is no local area in which the Parties' activities overlap and result in a combined share equal to or higher than 20 %. As such, the Notifying Party considers that the concentration will not affect competition in the aggregates market in the EEA or a substantial part of it.²¹²
- (308) Moreover, the Notifying Party argues that both input and customer foreclosure effects can be excluded in the vertical relationship between aggregates and (i) RMX and (ii) mortar.²¹³ In relation to *input foreclosure*, the merged entity would lack the ability and the incentive to adopt this strategy given: (i) the moderate market shares in both the upstream aggregate and downstream RMX and mortar markets; (ii) the competitors' overcapacity in each of the upstream aggregate markets; (iii) the absence of capacity constraints of downstream RMX and mortar competitors; (iv) customer buyer power; and (v) the absence of long-term/exclusivity contracts.
- (309) As concerns *customer foreclosure*, the Notifying Party argues that there is no ability and incentive to adopt such a strategy since: (i) neither Party is an important customer in the markets at issue; (ii) there are sufficient alternative customers; (iii) any price rise in each of the upstream aggregate markets is unlikely due to producers' overcapacity and their low dependence on the Parties; and (iv) market shares in each of the downstream RMX and mortar markets are moderate.

²⁰⁹ CNMC's decision (ex-CNC) of 30 July 2008 in Case No C/0083/08 – Holcim/Tarmac, section V.2.1 and CNMC's decision (ex-CNC) of 14 February 2008 in Case No C/0042/08 – Lafarge/OBMH, section V.2.2.

²¹⁰ Form CO, paragraph 98.

²¹¹ See Cemex's reply to the Commission's request for information, 07.03.2014, Question 1.

²¹² Form CO, paragraphs 222-223.

²¹³ Form CO, paragraphs 289-306.

7.3.3. *The Commission's assessment*

- (310) The Parties' aggregates activities in Spain are restricted to primary aggregates. The proposed transaction will not lead to any horizontally affected markets in primary aggregates as the Parties' combined shares will remain below 20 % in all local areas. The proposed transaction would, however, lead to two horizontally affected markets in the 80 km cluster if primary aggregates were further segmented between (i) sand and gravel and (ii) crushed rock. For the radii of 50 km around the Parties' quarries, the proposed transaction would not lead to affected markets under any plausible market definition.
- (311) Those two horizontally affected markets would be: (i) in the 80 km cluster around Holcim's La Pola quarry (Madrid) in respect of sand and gravel and (ii) in the 80 km cluster around Cemex's San Martin de la Vega quarry (Madrid) for crushed rock. In those local areas, the Parties' combined market shares in 2012 were [20-30]* % and [30-40]* %, respectively.²¹⁴ Although in the cluster around San Martin de la Vega, the Parties' combined market share in 2012 was [30-40]* %, the merged entity will continue to face competition from a number of competitors post-transaction such as Maresa and Hanson with markets share of 5-10 % respectively. Moreover, the Parties' market shares were volatile during the period 2010-2012 in both clusters with a variation of more than 10 percentage points from 2011 to 2012.
- (312) Regarding vertical effects, the proposed transaction would not significantly impede effective competition as the merged entity will neither have market power in the upstream markets for aggregates as mentioned in recitals (310) to (311) nor in the downstream markets for RMX and mortar (as will be described in sections 8.3.3 and 9.3.3).
- (313) Furthermore, no third party has put forward claims in the market investigation according to which effective competition would be significantly impeded in any local aggregates market.

7.4. **Conclusion on aggregates**

- (314) The Commission therefore considers that the proposed transaction would not significantly impede effective competition on the relevant markets for aggregates.

8. **READY MIX-CONCRETE**

8.1. **Relevant product market definition**

8.1.1. *Previous decisional practice*

- (315) RMX is an industrially manufactured product which is obtained from the mixture of cement (10-15 % of the product), aggregates (85-90 %), water and additives and subsequently transported in a semi-wet form in specific vehicles ("mixer trucks") to the point of use (civil works or buildings). RMX is usually sold in large volumes.²¹⁵

²¹⁴ The Notifying Party indicates that market shares in 2013 do not differ significantly from market shares for 2012 as estimated in the Form CO. See Cemex's reply to the Commission's request for information, 17 June 2014, Question 5.

²¹⁵ Form CO, paragraph 100.

(316) In previous decisions, the Commission has consistently considered RMX as a single, distinct product market.²¹⁶

8.1.2. The Notifying Party's arguments

(317) The Notifying Party submits that while there are different qualities and varieties of RMX, RMX constitutes a single distinct product in line with the Commission's previous decisions.²¹⁷

8.1.3. Responses to the market investigation

(318) The vast majority of RMX customers and producers that responded to the market investigation stated, in line with the Commission past decisional practice, that RMX is a product distinct from any other product used in construction.²¹⁸

8.1.4. Conclusion on the product market definition

(319) For the purpose of the assessment of the proposed transaction, the Commission considers that RMX constitutes a distinct relevant product market.

8.2. Relevant geographic market definition

8.2.1. Previous decisional practice

(320) The geographic market for RMX is determined by road connections and the time span during which the material can be safely transported before hardening. Previous Commission investigations considered but left open a radius of 15-40 km around a production site.²¹⁹ The Spanish Competition Authority has stated on several occasions that the geographic scope of the RMX market in Spain can be defined as the area around each concrete plant up to a maximum distance of 20 to 30 kilometres.²²⁰

8.2.2. The Notifying Party's arguments

(321) The Notifying Party submits that for the purposes of the present case, the relevant geographic market should be as a radius of 25 km around each of the Parties' RMX plants.²²¹

8.2.3. Responses to the market investigation

(322) Respondents to the market investigation indicated that RMX does not travel long distances.

²¹⁶ Commission's decision of 8 December 2004 in Case No COMP/M.3572 CEMEX/RMC, paragraph 12; Commission's decision of 7 August 2007 in Case No COMP/M.4719 HeidelbergCement/Hanson, paragraph 21, and Commission's decision of 16 May 2011 in Case No COMP/M.6153 Anglo American/Lafarge / JV, paragraph 22.

²¹⁷ Form CO, paragraph 102.

²¹⁸ See replies to question 29 - Phase I questionnaire to customers-cement and replies to question 7 – Phase I questionnaire to customers-RMX.

²¹⁹ Commission's decision of 1 March 2001 in Case No COMP/M.2317 Lafarge Blue Circle (II), paragraph 11; Commission's decision of 14 March 2005 in Case No COMP/M.3713 Holcim/Aggregate Industries, paragraph 9; Commission's decision of 8 December 2004 in COMP/M.3572 Cemex/RMC, paragraph 24; Commission's decision of 7 August 2007 in Case No COMP/M.4719 HeidelbergCement/Hanson, paragraphs 21 and 29; and Commission's decision of 5 June 2014 in Case M.7009 – Holcim/Cemex West.

²²⁰ CNMC's decision (ex-CNC) of 14 February 2008 in Case No C-0042/08 Lafarge/OBMH, section V.2.3, and CNMC's decision (ex-SDC) of 17 November 2005 in Case No N-05101 Lafarge Asland/Ready mix Asland, section V.2.

²²¹ Form CO, paragraph 103.

(323) First, RMX suppliers that responded to the market investigation indicated that more than 74 % of their total sales of RMX are supplied within a radius of 25 km around each RMX plant. This average figure reaches approximately 97 % if the radius is extended to 40 km.²²²

(324) Second, customers that responded to the market investigation indicated that 82 % of their total purchases of RMX are supplied from a distance of up to 25 km from their location and 96 % of their total purchases of RMX are supplied from a distance of up to 40 km from their location.²²³

8.2.4. *Conclusion on the geographic market definition*

(325) For the purpose of the assessment of the proposed transaction, the Commission considers that the relevant geographic market corresponds to a radius of 25 km around each of the Parties' RMX plants.

8.3. **Competitive assessment**

8.3.1. *The Parties' activities*

(326) Cemex's RMX plants are located in the centre region (Madrid, Toledo, Guadalajara, Salamanca, Ciudad Real and Soria), the Levante region (Valencia, Castellon, Alicante and Murcia), and in other regions of Spain (Mallorca, Menorca, Ibiza, Tarragona, Barcelona, Zaragoza, and Teruel).²²⁴

(327) Holcim's RMX plants are located in the centre region (Madrid, Toledo, Salamanca and Valladolid), the Levante and Andalusian regions (Valencia, Alicante, Murcia, Almeria, Cadiz, Jaen, Granada, Malaga and Sevilla) and in other regions of Spain (Pontevedra, Barcelona, and Tarragona).²²⁵

8.3.2. *The Notifying Party's arguments*

(328) The Notifying Party submits that the proposed transaction will not give rise to unilateral or coordinated horizontal effects in the RMX market.²²⁶

(329) First, the Notifying Party argues that the supply for RMX markets in Spain includes many players, including national players, local or regional players. As a result, supply is highly diversified and atomised. In Spain, there are hundreds of RMX producers of a varying size and geographic reach. The industry trade association²²⁷ reports 288 manufacturers as "active members".

(330) Second, the Notifying Party submits that the markets for RMX have low entry barriers. According to the Notifying Party, an RMX plant is a simple and affordable facility (with a total cost of around EUR [...]*), which can be installed anywhere outside urban centres. RMX's main raw material is grey cement and aggregates, which are plentiful and affordable across Spain due the extreme excess capacity of cement plants and quarries.

(331) Third, the Notifying Party states that market shares in the markets for RMX are highly volatile in the mid-term. This results from the fact that customers are

²²² See replies to question 29 - Phase I questionnaire to customers-cement.

²²³ See replies to question 8 - Phase I questionnaire to customers-RMX.

²²⁴ See Cemex's reply to the Commission's request for information, 07 March 2014, Question 1. Cemex's total RMX plants are 115, however only 59 are open or mothballed.

²²⁵ See Cemex's reply to the Commission's request for information, 07 March 2014, Question 1. Holcim's total RMX plants are 91, however only 47 are open or mothballed.

²²⁶ Form CO, paragraphs 216-221.

²²⁷ Asociación Nacional Española Fabricantes de Hormigón Preparado (ANEFHOP)

construction, building and public works companies, which purchase RMX when and as long as they are developing a construction project in a particular area. In this regard, RMX manufacturers may reach sizeable markets shares when they are selected to supply a large construction project close to their relevant plants. This market share drops significantly when the relevant construction project ends.

- (332) Fourth, the Notifying Party argues that both input and customer foreclosure effects can be excluded in the vertical relationship between the upstream aggregate and grey cement markets and the downstream RMX markets.

8.3.3. *The Commission's assessment*

- (333) According to the Notifying Party, Cemex's and Holcim's activities in RMX overlap in a relatively limited number of local areas. Out of these overlapping areas, only in 14 relevant markets does the proposed transaction give rise to affected markets. The Parties' 2012 combined market shares were above [20-30]* % only in 10 relevant markets.²²⁸

Table 10: Market shares in RMX clusters in 2012

	Total market size (Thousand tonnes)	Cemex	Holcim	Combined market shares	Number of alternative suppliers
Alicante/Fontcalent cluster	[...]*	[5-10]* %	[20-30]* %	[30-40]* %	13
Campello cluster	[...]*	[5-10]* %	[30-40]* %	[40-50]* %	13
Elche cluster	[...]*	[5-10]* %	[20-30]* %	[20-30]* %	12
Muchamiel cluster	[...]*	[5-10]* %	[30-40]* %	[40-50]* %	13
El Vergel cluster	[...]*	[5-10]* %	[20-30]* %	[30-40]* %	9
Buñol cluster	[...]*	[30-40]* %	[5-10]* %	[40-50]* %	5
Constantí cluster	[...]*	[10-20]* %	[5-10]* %	[20-30]* %	10
Hospitalet cluster	[...]*	[10-20]* %	[5-10]* %	[20-30]* %	5
Valls cluster	[...]*	[20-30]* %	[5-10]* %	[20-30]* %	5
Vila-seca cluster	[...]*	[10-20]* %	[5-10]* %	[20-30]* %	10

Source: Form CO, Annex 7.1 b.

- (334) The Commission considers that the proposed transaction would not significantly impede effective competition in the relevant markets for RMX. In particular, the Commission has taken into account a number of factors, such as the combined shares of the Parties, the limited increment post-transaction (maximum [5-10]* %) under any of the alternative market definitions considered, the large number of national, local and regional competitors and the low barriers to entry on the market.
- (335) The Parties' highest combined market shares in the RMX clusters are in the clusters of Campello, Muchamiel and Buñol. Despite having a strong position in those three local areas, the proposed transaction would not significantly impede effective

²²⁸

The Notifying Party indicates that market shares in 2013 do not differ significantly from market shares for 2012 as estimated in the Form CO. See Cemex's reply to the Commission's request for information, 17 June 2014, Question 5.

competition. In the Buñol cluster, the merged entity will continue to face strong competition from a number of credible competitors. Out of the five alternatives in this cluster, three have more than [20-30]* % market shares. In the Campello and Muchamiel clusters, there will still be a large number of alternatives (13, including Hormigones y Morteros Serranos, S.L; Hormigones Relosa S.A; Lafarge Áridos y Hormigones, S.A.U and HORMAR XXI, S.L) representing a combined market share of more than [50-60]* %. Moreover, the Parties' market shares were volatile during the period 2010-2012 in those clusters with a variation of more than 10 percentage points during that period.

- (336) Regarding vertical effects, the proposed transaction would not significantly impede effective competition as the merged entity will not have market power either in the upstream markets for grey cement and aggregates (as outlined in sections 6.5 and 7.3.3) or in the downstream markets for RMX.
- (337) First, a majority of customers that responded to the market investigation indicated that they can change supplier of RMX without incurring any significant cost.²²⁹ In addition, when questioned if they have switched RMX supplier, the majority of customers indicated that they have switched supplier in the last 5 years.²³⁰ As one customer stated *"If the price and the product are the same, there is no problem in switching"*.²³¹ In this regard, the majority of the customers also stated that the contracts with RMX producers are for less than one year. Generally the contracts are valid for the time of the works which sometimes may even be lower than one month.²³²
- (338) Second, a majority of customers that responded to the market investigation also stated that neither Holcim nor Cemex are indispensable RMX suppliers in the areas where they are present. The vast majority of customers indicated the existence of alternative suppliers in all these areas.²³³
- (339) Third, a majority of RMX suppliers that responded to the market investigation indicated that the proposed transaction would not have any impact on the price of RMX in Spain.²³⁴ Moreover, a majority of RMX customers indicated that the proposed transaction will not have any impact on price and availability of RMX in the areas where they are present.²³⁵
- (340) Fourth, no third parties have put forward substantiated claims according to which effective competition would be significantly impeded in the RMX markets.

8.4. Conclusion on ready mix-concrete

- (341) The Commission concludes that the proposed transaction would not significantly impede effective competition in the relevant markets for RMX.

²²⁹ See replies to question 13 - Phase I questionnaire to customers-RMX.

²³⁰ See replies to question 14 - Phase I questionnaire to customers-RMX.

²³¹ The Spanish original reads: *"Si el precio no cambia y el producto es el mismo no hay problema"*. See reply to question 13 - Phase I questionnaire to customers-RMX.

²³² See replies to question 16 - Phase I questionnaire to customers-RMX.

²³³ See replies to question 15 - Phase I questionnaire to customers-RMX.

²³⁴ See replies to questions 63 - Phase I questionnaire to customers-cement.

²³⁵ See replies to questions 17 and 18 - Phase I questionnaire to customers-RMX.

9. MORTAR

9.1. Relevant product market definition

9.1.1. Previous decisional practice

- (342) Mortar is a building material obtained from the mixture of a binding material (cement and/or lime), sand and water. It is used, among other things, for bonding bricks and stones, as well as for rendering and plastering. Depending on a number of factors, certain additives can also be used to produce mortar.²³⁶ Mortar is a relatively homogeneous product with no obvious substitutes.
- (343) The Commission has previously analysed the market for mortar and considered but left open a possible distinction based on the production technique between (i) on-site mortars and (ii) pre-mix mortars.²³⁷ Within the pre-mix mortars category, the Commission has also considered but left open a further distinction between (i) dry mortars, (ii) wet mortars and (iii) ready-to-use paste.²³⁸ Moreover, the Commission has considered but left open, a possible segmentation based on the end-applications between (i) construction, (ii) facade and (iii) tile fixing.
- (344) The Spanish Competition Authority has also considered but left open the possibility of distinguishing between on-site mortars and pre-mix mortars and, within pre-mix mortars, between wet and dry mortars.²³⁹

9.1.2. The Notifying Party's arguments

- (345) The Notifying Party submits that pre-mix and on-site mortars are part of the same market as they are essentially the same product and are used for the same purposes. The only difference is that pre-mix mortar is supplied in finalised form to the customer while on-site mortar is mixed by the customer itself.²⁴⁰
- (346) Regarding wet and dry mortars, the Notifying Party submits that there is no supply-side substitutability between wet and dry mortar. This is due to the fact that wet and dry mortars have different physical features and are manufactured in different facilities. Transportation and delivery of the products are also different.²⁴¹
- (347) Finally, the Notifying Party submits that final uses of mortar, that is to say ordinary (construction) and special mortars (facade and tile-fixing) are different. Construction mortar is used for various building construction purposes (for example floor levelling, plastering, laying of masonry blocks, concrete repair, etc.). Facade mortar

²³⁶ Form CO, paragraph 104.

²³⁷ On-site mortars are mortars mixed by the building contractor at the construction site while pre-mix mortars are mortars pre-mixed at the factory of a mortar manufacturer. Commission's decision of 13 January 2000 in Case No COMP/M.1779 - Anglo-American/Tarmac, paragraph 18; Commission's decision of 8 December 2004 in Case No COMP/M.3572 - Cemex/RMC, paragraph 13, and Commission's decision of 4 March 2008 in Case No COMP/M.4898 - Saint Gobain/Maxit, paragraph 16.

²³⁸ Dry mortars are mortars supplied in a dry powder form while wet mortars are mortars ready-mixed with water at the factory. Ready-to-use paste is a mortar supplied as paste, including organic compounds as binders. Commission's decision of 8 December 2004 in Case No COMP/M.3572 Cemex/RMC, paragraph 16 and Commission's decision of 4 March 2008 in Case No COMP/M.4898 - Saint Gobain/Maxit, paragraphs 20 to 22.

²³⁹ CNMC's decision (ex-CNC) of 14 February 2008 in Case No C-0042/08 Lafarge/OBMH, section V.1.4, CNMC's decision (ex-CNC) of 17 December 2008 in Case No C-0117/08 CIMPOR/Cemex, section V.1.c), and CNMC's decision (ex-SDC) of 17.11.2005 in Case No N-05101 Lafarge Asland/Ready mix Asland, section V.1.

²⁴⁰ Form CO, paragraph 109.

²⁴¹ Form CO, paragraphs 106 and 108.

is applied to building facades as an outer layer for protective and/or aesthetic purposes or as part of an external thermal insulation system. Tile-fixing mortar is used as a material for fixing tiles in bathrooms, swimming pools and indoor/outdoor tiles. Therefore, demand-side substitutability is low. However, supply-side substitutability between these three types of dry pre-mix mortar segmented by final use is high. This is due to the fact that (i) the large majority of mortar manufacturers in Spain supply the three types of product; (ii) mortar manufacturers produce those types in the same facilities and (iii) they use roughly the same raw materials and equipment.²⁴²

9.1.3. *Responses to the market investigation*

- (348) The vast majority of the suppliers that responded to the market investigation considered that wet mortars should be distinguished from dry mortars in terms of producers, price and the production equipment needed.²⁴³ Moreover, the large majority of customers that responded to the market investigation have indicated that dry mortar and wet mortar are not comparable in terms of technical features, type of customer and price.²⁴⁴
- (349) Regarding the distinction per final use within dry pre-mix mortar, the majority of customers that responded to the market investigation have confirmed that construction, tile-fixing and facade mortars are not comparable in terms of technical features, type of customer, final use and price.²⁴⁵ From the supply-side point of view, although the majority of the mortar producers that responded to the market investigation considered that the producers for the three types of mortar are the same, a large majority of them acknowledged that the products differ in terms of price.²⁴⁶

9.1.4. *Conclusion on the product market definition*

- (350) For the purpose of the assessment of the proposed transaction, the Commission analyses the market for dry pre-mix mortar and its potential segmentations according to the final use, that is to say construction, facade and tile-fixing. However, the exact definition of the relevant market can be left open as the proposed transaction would not lead to a significant impediment to effective competition in the internal market or any substantial part of it under any plausible market definition.²⁴⁷

9.2. **Relevant geographic market definition**

9.2.1. *Previous decisional practice*

- (351) The Commission has previously considered but left open the relevant geographic market for mortar to be based on a radius of 120 km around the production plant²⁴⁸ whilst acknowledging that higher value products such as ready-to-use paste mortars

²⁴² Form CO, paragraph 110.

²⁴³ See replies to question 19 – Phase I questionnaire to customers-cement.

²⁴⁴ See replies to question 7 – Phase I questionnaire to customers- mortar.

²⁴⁵ See replies to question 8 – Phase I questionnaire to customers-mortar.

²⁴⁶ See replies to question 20 – Phase I questionnaire to customers-cement.

²⁴⁷ The Parties only commercialise pre-mix mortar and their activities only overlap in dry mortar. Form CO, paragraph 111.

²⁴⁸ Commission's decision of 13 January 2000 in Case No COMP/M.1779 - Anglo-American/Tarmac, paragraph 23, Commission's decision of 7 August 2007 in Case No COMP/M.4719 – Heidelberg Cement/Hanson, paragraph 32, and Commission's decision of 4 March 2008 in Case No COMP/M.4898–Saint Gobain/Maxit, paragraph 27.

for tile-fixing or facade renderers can be transported economically over longer distances.²⁴⁹

9.2.2. *The Notifying Party's arguments*

- (352) The Notifying Party submits that the relevant geographic market for dry construction mortar is the cluster of municipalities comprised by a circle defined by a 120 km radius around a mortar plant. However, the Notifying Party considers that the geographic scope of the two "special mortars", that is to say dry mortar for facades and tile-fixing, is national insofar as these products have an increased added value and are sold across the national market and beyond.²⁵⁰

9.2.3. *Responses to the market investigation*

- (353) The majority of mortar customers and producers that responded to the market investigation stated, in line with the Commission's past decisional practice, that the vast majority of their sales or purchases of dry mortar take place within 120 km of their plant or location respectively.
- (354) First, dry mortar suppliers that responded to the market investigation indicated that more than 92 % of their total sales of dry construction mortar are supplied within a radius of 120 km around each plant. Moreover, these suppliers did not provide any indication that the geographic scope of the market for dry facade mortar and dry tile-fixing mortar would differ from that for dry construction mortar.²⁵¹
- (355) Second, mortar customers that responded to the market investigation indicated that 96 % of their total purchases of dry construction mortar are supplied from a distance of up to 120 km from their location. The corresponding figures for dry facade mortar and dry tile-fixing mortar are 91 % and 86 % respectively.²⁵²

9.2.4. *Conclusion on the geographic market definition*

- (356) For the purpose of the assessment of the proposed transaction, the Commission considers that the relevant geographic market corresponds to a radius of 120 km around each of the Parties' mortar plants.

9.3. **Competitive assessment**

9.3.1. *The Parties' activities*

- (357) The Parties are not active in the production and sale of wet mortar or ready-to-use paste. In Spain, the Parties only commercialise dry pre-mix mortar for the three end applications, that is to say construction, tile-fixing and facade.²⁵³
- (358) Cemex's plants are located in the Levante region (Valencia and Alicante) and in other regions of Spain (Mallorca, Ibiza, Zaragoza, Menorca and Tarragona). Holcim's plants are located in Alicante, Malaga and Madrid.²⁵⁴

²⁴⁹ Commission's decision of 4 March 2008 in Case No COMP/M.4898 – Saint Gobain/Maxit, paragraph 29.

²⁵⁰ Form CO, paragraphs 112 and 113.

²⁵¹ See replies to question 28- Phase I questionnaire to customers-cement.

²⁵² See replies to question 10 - Phase I questionnaire to customers- mortar.

²⁵³ Form CO, paragraph 111.

²⁵⁴ See Cemex's reply to the Commission's request for information, 07 March 2014, Question 1. Cemex's mortar plants in Campo Real (Madrid), St. Feliu de Llobregat (Barcelona) and Malagon (Ciudad Real) are closed; Holcim's mortar plants in Quart de Poblet (Valencia) and Sevilla are closed.

9.3.2. *The Notifying Party's arguments*

- (359) The Notifying Party submits that the proposed transaction will not significantly alter the competitive structure of any of the local markets in which the Parties' activities in mortar overlap.²⁵⁵
- (360) First, in most of the local markets the overlap between the Parties' activities is either negligible or the Parties' combined market shares do not exceed [20-30]* %.
- (361) Second, in the two local markets where the Parties' combined market shares exceed [20-30]* % (Buñol and Focalent (construction)), there are a sufficient number of competitors with sizeable market shares.
- (362) Third, there are no significant barriers to entry to the mortar markets in Spain. The setting-up and operation of a mortar plant is a relatively simple and low cost process. Although there are certain regulatory barriers relating to the production of mortar, they do not pose a significant obstacle for new entrants.
- (363) Fourth, the Notifying Party argues that both input and customer foreclosure effects can be excluded in the vertical relationship between the upstream aggregate and grey cement markets and the downstream mortar markets for the reasons outlined in section 6.7.3.

9.3.3. *The Commission's assessment*

- (364) The Parties' activities in the production and supply of mortar lead to three affected markets for construction mortar²⁵⁶ and two affected markets each in respect of tile-fixing and facade mortar.^{257 258}
- (365) Given the Parties' low market shares, the limited overlaps and the presence of alternative competitors in the mortar markets, the proposed transaction would not significantly impede effective competition in those markets.

²⁵⁵ Form CO, paragraphs 224-228.

²⁵⁶ There are other markets where the combined market share would exceed 20 %, namely around Cemex's plants in Muel (Zaragoza) and Vendrell (Tarragona) and Holcim's plant in Quart de Poblet (Valencia). However, the increment brought by Holcim in the Muel and Vendrell clusters is [0-5]* % and [0-5]* % respectively, and therefore these clusters are not considered in the assessment. Additionally, Holcim's mortar plant in Quart de Poblet was closed in 2013. See Form CO, paragraph 225.

²⁵⁷ The Notifying Party submits that market shares in 2013 do not differ significantly from market shares for 2012 as estimated in the Form CO. See Cemex's reply to the Commission's request for information, 17 June 2014, Question 5.

²⁵⁸ Holcim closed down its dry mortar production assets in Spain in July 2014. Holcim, however, expects to continue to market dry mortar in the regions of Levante and Andalusia pursuant to an agreement with Cementos Capa. See Holcim's reply to the Commission's request for information, 21 August 2014, Question 1.

Table 11: Market shares in mortar clusters in 2012

		Total market size (Thousand tonnes)	Cemex	Holcim	Combined market shares	Number of alternative suppliers
CONSTRUCTION	Vicalvaro cluster (Madrid)	[...]*	[0-5]* %	[20-30]* %	[20-30]* %	6
	Fontcalent / Alicante cluster	[...]*	[10-20]* %	[10-20]* %	[30-40]* %	3
	Buñol cluster (Valencia)	[...]*	[10-20]* %	[20-30]* %	[30-40]* %	4
TILE-FIXING	Vicalvaro cluster (Madrid)	[...]*	[5-10]* %	[10-20]* %	[20-30]* %	11
	Fontcalent / Alicante cluster	[...]*	[20-30]* %	[0-5]* %	[30-40]* %	5
FACADE	Vicalvaro cluster (Madrid)	[...]*	[5-10]* %	[10-20]* %	[20-30]* %	10
	Fontcalent / Alicante cluster	[...]*	[20-30]* %	[0-5]* %	[30-40]* %	7

Source: Form CO, Annex 7.1 c.

- (366) In some of the local markets the Parties' activities overlap is limited. This is the case in the Vicalvaro cluster for construction mortar (with an increment of [0-5]* %) and in the Fontcalent/Alicante cluster for tile-fixing and facade mortar (with an increment of [0-5]* %). The Parties' combined shares in the Vicalvaro cluster do not reach [20-30]* % for any of the types of mortar under consideration and there are between six and eleven alternative suppliers depending on the mortar type. In the Fontcalent/Alicante cluster for construction mortar, where the Parties' combined market share is [30-40]* %, the merged entity will continue to face competition from three competitors each having a market share in the region of [20-30]* %. In the Buñol cluster (construction), the Parties will face competition from at least four other manufacturers. Moreover, the overall markets for dry mortar, which include the three types of mortar, present similar characteristics, in so far as the combined market shares and number of alternative suppliers are concerned.
- (367) Regarding vertical effects, the proposed transaction would not significantly impede effective competition as the merged entity will have market power neither in the upstream markets for grey cement and aggregates (as outlined in sections 6.5 and 7.3.3) nor in the downstream markets for mortar.
- (368) First, the majority of mortar customers that responded to the market investigation stated that neither Holcim nor Cemex are indispensable dry mortar suppliers in the

areas where they are present. Moreover, the vast majority of customers highlighted the existence of alternative suppliers in all these regions²⁵⁹ and confirmed that the proposed transaction will not have any impact on price and availability of dry mortar in the areas where they are present.²⁶⁰

(369) Second, the majority of mortar suppliers that responded to the market investigation indicated that the proposed transaction will not have any impact on the price of dry mortar in Spain.²⁶¹

(370) Third, no third parties have put forward substantiated claims according to which competition would be significantly impeded.

9.4. Conclusion on mortar

(371) The Commission concludes that the proposed transaction would not significantly impede effective competition in the relevant markets for mortar.

10. CLINKER

10.1. Relevant product market definition

10.1.1. Previous decisional practice

(372) Clinker is the main raw material for cement production. It is produced through the conversion of limestone in a thermal, chemical reaction to the desired calcined mineral. Then it is ground and blended with gypsum and/or other components to the desired cement product, either in a specific grinding mill or within the cement plant if it is integrated. Clinker can thus be used in-house or sold to third parties (for example grinding mills).²⁶²

(373) The Commission has not previously had to consider the relevant product market for clinker in the context of a merger case.²⁶³ The Spanish Competition Authority, however, has previously examined clinker as a relevant product market in the context of a merger case when it is commercialised as an intermediate raw material.²⁶⁴

10.1.2. The Notifying Party's arguments

(374) According to the Notifying Party, clinker is not a separate relevant product market because it does not have an autonomous economic purpose unrelated to the manufacture of cement.²⁶⁵

10.1.3. Responses to the market investigation

(375) The vast majority of cement producers that responded to the market investigation stated that clinker cannot be replaced by any other product in the production of cement.²⁶⁶

²⁵⁹ See replies to question 17 - Phase I questionnaire to customers-mortar.

²⁶⁰ See replies to questions 19-21 - Phase I questionnaire to customers- mortar.

²⁶¹ See replies to questions 62 - Phase I questionnaire to customers-cement.

²⁶² Form CO, paragraph 67.

²⁶³ However the Commission has considered clinker as a relevant product market in the context of an antitrust procedure. See COMP/F-2/38.401 EN 197-1 Standard - EMC/European Cement Producers, paragraph 77.

²⁶⁴ CNMC's decision (ex CNC) of 1 April 2008 in Case No C-0054/08 Cementia/BMM, section V.1 (ii).

²⁶⁵ Form CO, paragraphs 67 and 68.

²⁶⁶ See replies to questions 22 - Phase I questionnaire to producers-cement.

10.1.4. Conclusion on the product market definition

- (376) For the purpose of the assessment of the proposed transaction, the Commission considers that clinker constitutes a distinct relevant product market.

10.2. Relevant geographic market definition

10.2.1. Previous decisional practice

- (377) The Commission has not previously had to consider the relevant geographic market for clinker in the context of either an antitrust or merger case. The Spanish Competition Authority has, however, considered the relevant geographic market for clinker in the context of a merger case at a national level and regional level (that is to say the northern and eastern regions of Spain), but left open the exact geographic market definition.²⁶⁷

10.2.2. The Notifying Party's arguments

- (378) According to the Notifying Party, if clinker were to be defined as a relevant product market distinct from cement itself, its geographic scope would be global or, at least, EEA-wide given the significant level of cross-border trade flows. In this respect, the Notifying Party submits that between 2002 and 2012 imported clinker in Spain amounted to 54.11 million tons. This amount represented almost 20 % of the total clinker consumed in Spain. A higher percentage (72 %) of the clinker imported into Spain originated in third countries rather than in EU Member States.²⁶⁸

10.2.3. Responses to the market investigation

- (379) Respondents to the market investigation stated that clinker travels longer distances than cement. The market investigation indicated that more than half of the clinker sold by cement producers in Spain is supplied within a radius exceeding 150 km from the production plant.²⁶⁹ The market investigation also indicated that although the volume of imports of clinker into Spain at present is relatively low, as noted in recital (148), they were significant up to and including 2008 and still occur albeit at a reduced level.

10.2.4. Conclusion on the geographic market definition

- (380) For the purpose of the assessment of the proposed transaction, the exact market definition can be left open as the proposed transaction would not lead to a significant impediment to effective competition in the EEA or any substantial part of it under any plausible market definition.

10.3. Competitive assessment

10.3.1. The Parties' activities

- (381) The Parties produce clinker in their integrated plants namely those located in the Levante region clusters and the other regions of Spain clusters.

²⁶⁷ In Cementia/BMM, the CNMC referred to the eastern region of Spain as comprising the Autonomous Communities of Catalonia, Valencia, Murcia and Andalusia. The northern region is not further defined in that decision. In the previous decision CEMEX/Activos READY MIX ASLAND, the CNMC referred to the northern region of Spain as comprising the Autonomous Communities of Rioja, Aragon, Navarra, Galicia, Asturias, Cantabria and the Basque country.

²⁶⁸ Form CO, paragraph 69.

²⁶⁹ See replies to questions 29 - Phase I questionnaire to producers-cement.

10.3.2. *The Commission's assessment*

- (382) Regarding non-coordinated effects, the Parties' activities in the production and supply of clinker would not lead to an affected market if the relevant geographic market were to be defined as global since the Parties' combined market shares would be below [10-20]* %. If the relevant geographic market were to be defined as national, however, the Parties' activities in the production and supply of clinker would lead to an affected market since the Parties' combined market shares would be above 20 %. However, given that the Parties' combined market share would remain below [20-30]* %, and the presence of a number of alternative competitors (namely CPV as the market leader and six more national competitors as well as the presence of imports which have been significant in the past), the proposed transaction would not significantly impede effective competition in this hypothetical market.
- (383) Regarding vertical effects, the proposed transaction would not significantly impede effective competition as the merged entity will have market power neither in the upstream markets for clinker nor in the downstream markets for grey cement. This conclusion is supported by the following two factors.
- (384) First, the majority of clinker customers that responded to the market investigation stated that there will be sufficient alternatives to the Parties²⁷⁰ and that the proposed transaction will not have any impact on the price of clinker.²⁷¹
- (385) Second, no third parties have put forward substantiated claims according to which competition would be significantly impeded.

10.4. **Conclusion on clinker**

- (386) The Commission concludes that the proposed transaction would not significantly impede effective competition on the relevant market for clinker.

11. **CONCLUSION**

- (387) Therefore, it is concluded that the proposed transaction would not significantly impede effective competition in the internal market or a substantial part thereof.

²⁷⁰ See replies to question 42 - Phase I questionnaire to producers-cement.

²⁷¹ See replies to questions 67 - Phase I questionnaire to producers-cement.

HAS ADOPTED THIS DECISION:

Article 1

The notified operation whereby Cemex España S.A. acquires sole control of Holcim Assets within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004 is hereby declared compatible with the internal market and the EEA Agreement.

Article 2

This Decision is addressed to:

Cemex España, S.A.
C/ Hernández de Tejada, nº 1
28027 Madrid
Spain

Done at Brussels, 9.9.2014

For the Commission
(Signed)
Joaquín ALMUNIA
Vice-President