

DETERMINATION OF MERGER NOTIFICATION

**M/23/060 - Kilsaran / Certain
Assets of Kilmurray**

25 July 2024



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
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Commission

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1. INTRODUCTION

Introduction

- 1.1 On 15 November 2023, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a merger notification form (the “Merger Notification Form”) concerning a proposed acquisition whereby Kilsaran Concrete Unlimited Company (“Kilsaran”) would acquire lands (a sand and gravel pit) at Derryarkin, Rhode, Co. Offaly, fixed assets, a chip processing plant, stock, vehicles, plant, supply and sale contracts, interest in leased assets, goodwill, and two small freehold properties (the “Target Assets”) from Kilmurray Precast Concrete Limited (“Kilmurray”) (the “Proposed Transaction”). Kilsaran and Kilmurray are referred to as the “Parties” in this Determination.

The Proposed Transaction

- 1.2 The Proposed Transaction is to be implemented pursuant to an asset purchase agreement, dated 7 November 2023, between Kilmurray, Conor Kilmurray and Kilsaran (“APA”). Under the terms of the APA, Kilsaran will acquire the Target Assets from Kilmurray.

The Undertakings Involved

The Acquirer – Kilsaran

- 1.3 Kilsaran is a private unlimited company incorporated in the State and forms part of the Kilsaran group of companies (“Kilsaran Group”). Chelsea Wood Unlimited Company is the ultimate holding company for the majority of the Kilsaran Group, with the exception of Kilsaran Precast Limited and its subsidiaries. Chelsea Wood Unlimited Company and Kilsaran Precast Limited are each owned by members of the McKeown family.
- 1.4 Kilsaran Group is active in the manufacture and supply of a range of building materials, including aggregates, ready-mix concrete, concrete blocks, asphalt and tarmacadam products, paving and masonry products, precast products and dry products (including mortar).
- 1.5 Kilsaran Group operates fifteen extractive sites (comprising both rock quarries and sand and gravel pits) in the State, from which it extracts aggregates. Kilsaran Group supplies its products in the State and runs a small export business to the United Kingdom. Kilsaran Group also undertakes surfacing contracts for road construction, building and civil engineering works.

1.6 For the financial year ending 30 June 2022, Chelsea Wood Unlimited Company’s worldwide turnover was approximately [REDACTED], of which approximately [REDACTED] was generated in the State. For the financial year ending 31 December 2022, Kilsaran Precast Limited’s worldwide turnover was approximately [REDACTED], of which [REDACTED] was generated in the State.

The Target Assets

1.7 Kilmurray is a private company limited by shares and incorporated in the State. Kilmurray is controlled by Conor Kilmurray¹. Conor Kilmurray also owns a hardware store (Kilmurray’s Homevalue) and an imprint concrete supply business (trading as Allcrete). These businesses do not form part of the Proposed Transaction.

1.8 Kilmurray is the owner of the Target Assets. The Target Assets include a single sand and gravel pit located at Derryarkin, Rhode, Co. Offaly (the “Target Site”). The Target Site is a sand and gravel pit situated on approximately 388 acres.² Kilmurray extracts and processes sand and gravel from the Target Site, producing approximately [REDACTED] tonnes of sand and gravel from the Target Site in 2023.³ Kilmurray stated that it has approximately [REDACTED] years of extraction remaining, based on current extraction rates.⁴ Kilmurray sells the sand and gravel it extracts from the Target Site to a range of customers, including concrete manufacturers and construction contractors.⁵ From 2021 to 2023, Kilmurray extracted crushed rock from the Target Site; [REDACTED].⁶ Kilmurray also purchases crushed rock and sand and gravel for re-sale.⁷

1.9 For the financial year ending 31 December 2022, Kilmurray’s worldwide turnover was approximately €[REDACTED] million, all of which was generated in the State. All of Kilmurray’s turnover is attributed to the Target Assets.

¹ Kilmurray is wholly owned by Conor Kilmurray Holdings Limited which is in turn wholly owned by Conor Kilmurray.

² Kilmurray Phase 1 RFI Response, question 12.

³ Kilmurray Phase 1 RFI Response, question 2.

⁴ Kilmurray Phase 1 RFI Response, question 12. Kilmurray was most recently granted planning permission in August 2022.

⁵ Merger Notification Form, Annex 4.8(b), “Target Business Customers”.

⁶ Kilmurray response to the Commission’s questions, dated 21 February, question 1. Kilmurray also purchases crushed rock from third parties for resale.

⁷ Kilmurray Phase 1 RFI Response, question 2.

1.10 The Target Site is shown in Figure 1 below.

Figure 1: The Target Site



Source: Kilmurray⁸

Rationale for the Proposed Transaction

1.11 Kilsaran stated the following in the Merger Notification Form in relation to the rationale for the Proposed Transaction:

“Kilsaran Group believes that the Proposed Transaction will help to ensure it has a sustainable raw material supply chain for its operations, including for both internal manufacturing and external aggregate sales. [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] The Proposed Transaction will provide Kilsaran Group with reserves of approximately [REDACTED] tonnes of sand and gravel.

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

⁸ Kilmurray’s website, accessible at [Home – Kilmurray Group \(kilmurrays.ie\)](https://www.kilmurrays.ie)

[REDACTED]

1.12 Kilmurray stated the following in relation to the rationale for the Proposed Transaction:

“During the past five years, all of these businesses [Kilmurray Group] have been growing successfully but these businesses have to be managed and they take significant resources to keep up to date with all the compliance requirements that is [sic] required by law. Over the past few years, Kilmurray Precast Concrete Limited has had the most significant growth and with that growth, it required more resources to keep up to date with all compliance requirements...”

[REDACTED]

Preliminary Investigation (“Phase 1”)

Contact with the undertakings involved

1.13 On 21 December 2023, the Commission served a requirement for further information (“RFI”) on each of Kilsaran and Kilmurray pursuant to section 20(2) of the Act (the “Kilsaran Phase 1 RFI” and the “Kilmurray Phase 1 RFI” respectively and together, the “Phase 1 RFIs”). The service of the Kilsaran Phase 1 RFI adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.

1.14 Kilsaran and Kilmurray provided a full response to the Phase 1 RFIs on 1 February 2024 (the “Kilsaran Phase 1 RFI Response” and the “Kilmurray Phase 1 RFI Response” respectively).

1.15 Upon receipt of the Kilsaran Phase 1 RFI Response, the “appropriate date” (as defined in section 19(6)(b)(i) of the Act) became 1 February 2024.¹¹

⁹ Merger Notification Form, section 2.6, page 6.

¹⁰ Kilmurray Phase 1 RFI Response, question 1(a).

¹¹ The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

1.16 During the Phase 1 investigation, the Commission requested and received further information and clarifications from the Parties.

Third party submissions

1.17 One third-party submission was received during the Commission's Phase 1 investigation. This submission was fully considered by the Commission insofar as it related to potential competition concerns arising from the Proposed Transaction.

Market enquiries

1.18 The Commission conducted market enquiries during the Phase 1 investigation and engaged with third parties in relation to its assessment of the competitive effects of the Proposed Transaction. This engagement included carrying out calls with third parties and issuing information requests to a range of third parties. The third parties contacted by the Commission included:

- customers of the Parties;
- competitors of the Parties;
- an industry representative body;¹²
- a local authority;¹³ and,
- a government department.¹⁴

1.19 During the Phase 1 investigation, the Commission engaged with approximately 29 third parties.

1.20 Having considered all the available information in its possession at the time, the Commission was unable to form the view, at the conclusion of its Phase 1 investigation, that the result of the Proposed Transaction would not be to substantially lessen competition in any market for goods or services in the State.

¹² The Irish Concrete Federation ("ICF").

¹³ Offaly County Council.

¹⁴ Department of the Environment, Climate and Communications.

- 1.21 On 12 March 2024, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22 of the Act.

Full Investigation (“Phase 2”)

Contact with the undertakings involved

- 1.22 On 2 April 2024, the Commission served an RFI on each of Kilsaran and Kilmurray in accordance with section 20(2) of the Act (the “Kilsaran Phase 2 RFI” and the “Kilmurray Phase 2 RFI” respectively and together, the “Phase 2 RFIs”). In accordance with section 22(4A) of the Act, the issuance of the Kilsaran Phase 2 RFI had the effect of adjusting the deadline by which the Commission had to conclude its assessment of the Proposed Transaction in Phase 2.
- 1.23 Kilsaran provided a full response to the Kilsaran Phase 2 RFI on 25 June 2024 (the “Kilsaran Phase 2 RFI Response”).
- 1.24 Kilmurray provided a full response to the Kilmurray Phase 2 RFI on 28 June 2024 (the “Kilmurray Phase 2 RFI Response”).
- 1.25 During the Phase 2 investigation, the Commission requested and received, on an ongoing basis, further information and clarifications from the Parties.

Third party submissions

- 1.26 One third party submission was received during the Phase 2 investigation. This submission was fully considered by the Commission insofar as it related to potential competition concerns arising from the Proposed Transaction.

Market enquiries

- 1.27 During the Phase 2 investigation, the Commission continued to seek the views of, and engage with, relevant third parties in relation to the potential competitive effects of the Proposed Transaction. This engagement included conducting calls, issuing information requests and visiting the premises of certain third parties.
- 1.28 Such third parties included:
- customers of the Parties;
 - competitors of the Parties;

- Industry representative bodies;¹⁵ and,
- State agencies.¹⁶

1.29 The Commission engaged with approximately 30¹⁷ third parties during its Phase 2 investigation into to the Proposed Transaction.

Information Sources Relied Upon

1.30 In forming its views on the Proposed Transaction, as set out in this Determination, the Commission has considered all the relevant information available to it at the time of making the Determination including information provided by the Parties in response to the Commission's Phase 1 RFIs, Phase 2 RFIs and information requests, information obtained from third parties, and other information available in the public domain.

¹⁵ Building Materials Federation and the ICF.

¹⁶ National Standards Authority Ireland and National Building Control and Market Surveillance Office.

¹⁷ The Commission engaged with certain third parties during its Phase 1 investigation and again during its Phase 2 investigation.

2. INDUSTRY BACKGROUND

Introduction

2.1 The Proposed Transaction involves the acquisition of the Target Assets by Kilsaran. Kilmurray has owned and operated the Target Assets since 2005 and has been extracting aggregates from the Target Site since 2006.¹⁸ Kilsaran has stated that [REDACTED]

[REDACTED]¹⁹

2.2 The purpose of this section is to provide context for the identification of potential relevant product and geographic markets and for the Commission's assessment of the likely competitive effects of the Proposed Transaction set out later in this Determination. This section provides background information on:

- (a) Aggregates;
- (b) Uses of aggregates; and,
- (c) The supply of aggregates in the State.

Aggregates

2.3 Aggregates are materials used in construction and include a range of granular particulate matter.²⁰ Aggregates can be made up of sediments, rocks or other materials and can be extracted from natural deposits or produced from the by-products of industrial processes. There are different types and classifications of aggregates, which can be based on their source, size and characteristics.

2.4 Aggregates are the most commonly used construction minerals²¹ and are used in a wide range of construction projects, including in the construction of buildings, roads, wastewater systems and other infrastructure. Aggregates are also used to produce other building materials, such as ready-mix concrete, concrete blocks, asphalt, tarmacadam, paving and walling products,

¹⁸ Kilmurray Phase 1 RFI Response, question 12.

¹⁹ Merger Notification Form, section 2.6, page 6.

²⁰ Aggregates Europe. (2021). *Annual Review 2020-2021*, page 4, accessible at [https://www.aggregates-europe.eu/wp-content/uploads/2023/03/Final - UEPG-AR2020_2021-V05_spreads72dpiLowQReduced.pdf](https://www.aggregates-europe.eu/wp-content/uploads/2023/03/Final_-_UEPG-AR2020_2021-V05_spreads72dpiLowQReduced.pdf)

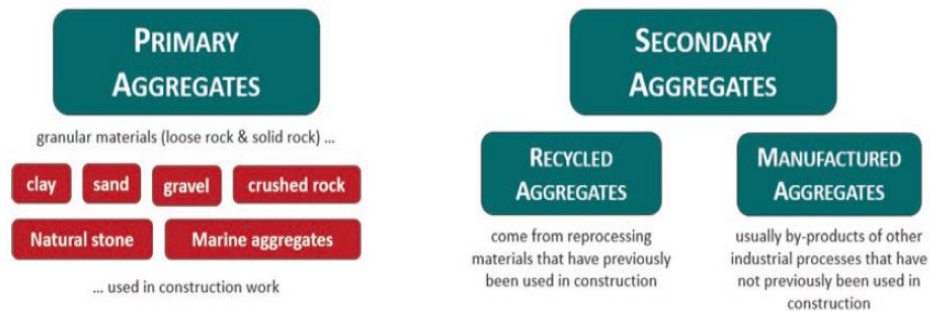
²¹ Aggregates Europe. (2022). *Sustainable Supply Of Aggregates In Europe (Final Report 12/2022)*, page 6.

facades and mortars, and precast concrete. Kilsaran has referred to these products as “aggregate-based construction products”.²²

Types of Aggregates

- 2.5 There are different types of aggregates. Aggregates can be classified according to how they have been extracted or produced. In this respect, there are two main types of aggregates: (i) primary aggregates; and (ii) secondary aggregates.
- 2.6 Primary aggregates refer to aggregates that have been directly extracted from natural deposits, such as rock quarries and sand and gravel pits. There are two main types of primary aggregates: (i) crushed rock; and (ii) sand and gravel.
- 2.7 In contrast to primary aggregates, secondary aggregates are obtained from the waste or by-products of other mining or industrial processes, and include colliery and china clay waste, slate, power station ash, slag²³ and demolition or construction waste. Secondary aggregates are sometimes referred to as recycled aggregates or manufactured aggregates.²⁴ Figure 2 below provides a high level representation of these two main types of aggregates.

Figure 2: Primary Aggregates and Secondary Aggregates



Source: Aggregates Europe (2022)²⁵

²² Merger Notification Form, section 5.1, page 21.

²³ Slag is a stone-based by-product of the smelting or refining of ore and recycled materials.

²⁴ Aggregates Europe. (2022). *Sustainable Supply Of Aggregates In Europe (Final Report 12/2022)*, page 6, accessible at https://www.aggregates-europe.eu/wp-content/uploads/2023/03/20221205_Leoben2_Final_version.pdf

²⁵ Aggregates Europe. (2022). *Sustainable Supply Of Aggregates In Europe (Final Report 12/2022)*, page 6.

- 2.8 The Parties stated in the Merger Notification Form that “neither Kilsaran Group nor the Target Business is involved in the production of secondary aggregates.”²⁶ As neither Kilsaran nor Kilmurray produces secondary aggregates, this type of aggregate is not considered further in this Determination.
- 2.9 Primary aggregates (hereafter referred to as “aggregates”) can be divided into two main groups: (i) crushed rock, and (ii) sand and gravel.²⁷
- 2.10 Crushed rock is material that has been extracted from a rock quarry and been put through a crushing process. The specific type of rock deposits from which crushed rock is extracted can vary. Particle size and shape are factors that are considered when crushed rock (and aggregates more generally) are classified.²⁸ The extraction and processing of crushed rock produces materials of different sizes and characteristics which are all classified as crushed rock. For example, Figure 3 below shows various grades of crushed rock.

Figure 3: Different grades of crushed rock



Source: Kilmurray²⁹

- 2.11 Sand and gravel are materials that have been extracted from a sand and gravel pit. In contrast to crushed rock, which is primarily a coarse material, sand and gravel are fine materials.

²⁶ Merger Notification Form, section 5.1, page 20.

²⁷ Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, page 5 and the ICF, “Aggregate”, accessible at [Aggregates - Irish Concrete](#).

²⁸ Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, pages 26-34.

²⁹ Kilmurray, accessible at <https://kilmurrays.ie/quarry-stone/>. Kilmurray stated in its Kilmurray Phase 1 RFI Response, question 2(a) that [REDACTED]

Furthermore, sand is more rounded in shape, whereas crushed rock is more angular.³⁰ While sand and gravel do not typically go through a crushing process, the extracted material may be washed and sorted into various types of sand and gravel.

Figure 4: Stockpiles of sand



Source: Manuel Bustillo Revuelta (2024)³¹

2.12 Significantly more crushed rock is produced in the State than sand and gravel. Aggregates Europe reported that 30 million tonnes of crushed rock was produced in the State in 2019, compared to 8 million tonnes of sand and gravel.³²

Uses of Aggregates

2.13 There are two main ways in which primary aggregates are used:

- **Bounded uses:** aggregates used as an input to produce other construction materials; and,

³⁰ Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, page 32, table 2.2.

³¹ Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, page 13.

³² Aggregates Europe. (2021). *Annual Review 2020-2021*, page 19.

- **Unbounded uses:** aggregates used directly in construction work.³³

Bounded uses of Aggregates

- 2.14 Aggregates are a key input in the manufacture of a range of construction materials, including ready-mix concrete, concrete blocks, asphalt, tarmacadam, paving and walling products, facades and mortars, and precast concrete.
- 2.15 One of the main uses of aggregates is as an input into the production of concrete. As noted by Manuel Bustillo Revuelta, “*aggregates form the skeleton of concrete.*”³⁴ Different types of aggregates, namely crushed rock and sand and gravel, are mixed with cement and water to produce concrete. The specific ratios of these inputs can be varied according to the intended end use of the concrete and the type of aggregates used. Aggregates typically make up 60-80% of concrete.³⁵
- 2.16 At a high level, using smooth and rounded aggregates produces a more workable (place, shape etc) concrete mix, whereas rough and annular aggregates produce a concrete mix which is harder to place and compact.³⁶ The National Standards Authority of Ireland (the “NSAI”) stated that “*sand can assist with filling the voids between the larger coarse aggregates and helps obtain a more workable concrete mix.*”³⁷

Unbounded uses of Aggregates

- 2.17 Aggregates are also used directly in the construction of buildings, roads and other infrastructure. For the construction of buildings and roads, different types of aggregates are commonly used to construct base or sub-base layers upon which concrete is laid. Aggregates typically make up more than 90% of the layers of roads.³⁸ Aggregates are also used by construction contractors when laying pipework, cables and wiring.

³³ Merger Notification Form, section 4.4. page 12 and Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, page 13.

³⁴ Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, page 13.

³⁵ Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, page 260.

³⁶ Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, page 267.

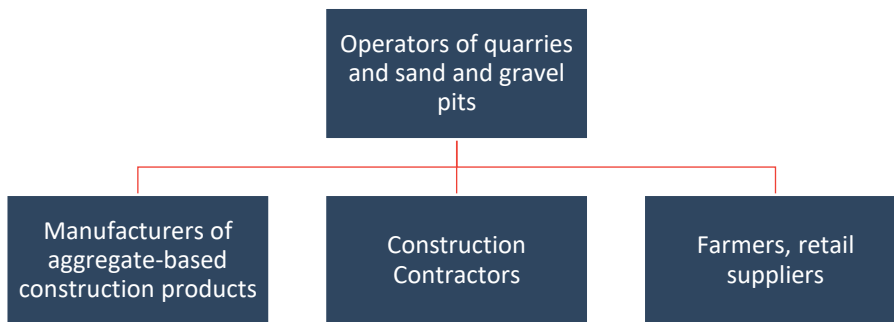
³⁷ NSAI Call Note, dated 10 April 2024, page 3.

³⁸ Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, page 277.

The Supply of Aggregates in the State

2.18 Aggregates are extracted, processed, sold and used in a range of ways in the State. Figure 5 shows the aggregate supply chain in the State.

Figure 5: The Aggregates Supply Chain in the State



Source: The Commission

2.19 The following paragraphs will outline:

- how aggregates are extracted and processed;
- the different types of aggregate suppliers in the State;
- the transportation of aggregates in the State; and,
- aggregate customers and the demand for aggregates in the State.

Extraction sites and extraction methods

2.20 According to the Irish Concrete Federation (“ICF”) there were approximately 500 active quarries in the State in 2022, with approximately 38 million tonnes of aggregates extracted.³⁹ As noted above, aggregates are extracted from two types of sites: rock quarries and sand and gravel pits. There are currently more rock quarries in the State than sand and gravel pits.

³⁹ ICF, “Irish Quarry and Concrete Products Industry 2022”, accessible at: <https://irishconcrete.ie/industry-at-a-glance/>. It is uncertain whether this number relates sold to rock quarries or includes sand and gravel pits.

- 2.21 Crushed rock is extracted from solid rock deposits in rock quarries and is produced by blasting and drilling. Following extraction, the material is put through a crushing process to produce crushed rock of different sizes.⁴⁰
- 2.22 Sand and gravel are extracted from a sand and gravel pit. Sand and gravel pits are generally shallower than rock quarries given the material is deposited closer to the surface.⁴¹ The extraction of sand and gravel does not require blasting. Once extracted, the material is typically washed to remove silt and clay and screened into different sizes of material or aggregate.
- 2.23 Extracting and producing crushed rock is generally seen as a more complicated and intensive process than extracting and producing sand and gravel as it requires blasting and crushing.⁴² Blasting and crushing is usually not required when extracting sand and gravel.
- 2.24 Operators of rock quarries and sand and gravel pits need to obtain planning permission from the relevant local authority to operate quarries and sand and gravel pits. The ICF stated that the average decision-making time frame with respect to rock quarry planning applications is 76 weeks, with some decisions taking over 2 years.⁴³

Suppliers of aggregates

- 2.25 There are two types of aggregate suppliers active in the State: vertically integrated suppliers and independent suppliers.

Vertically integrated suppliers

- 2.26 Vertically integrated suppliers operate their own extractive sites (rock quarries and/or sand and gravel pits) and use the extracted aggregates to produce downstream aggregate-based construction products, such as ready-mix concrete, precast concrete and concrete blocks. Some of these vertically integrated suppliers also sell aggregates externally, but many retain the majority of their aggregates for internal use, and also purchase aggregates from external suppliers to meet their own downstream manufacturing demands.⁴⁴ By operating their own

⁴⁰ Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, page 145.

⁴¹ Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, page 145.

⁴² Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, page 148.

⁴³ ICF. (2023). *Essential Aggregates-Providing for Ireland's Needs to 2040*, page 4, accessible at [untitled \(irishteam.com\)](https://www.irishteam.com/essential-aggregates-providing-for-ireland-s-needs-to-2040)

⁴⁴ ██████████ Call Note, Keegan Quarries Call Note, O'Reilly Concrete Call Note, Roadstone Call Note and Shay Murtagh Call Note.

extractive sites, vertically integrated suppliers can ensure that they have a guaranteed supply of aggregates and can set up manufacturing plants nearby to minimise transportation costs.⁴⁵

- 2.27 The largest vertically integrated suppliers of aggregates in the State include Roadstone, Kilsaran and Breedon. Other vertically integrated suppliers include [REDACTED], Keegan Quarries and Shay Murtagh Precast Limited.

Independent suppliers

- 2.28 The second type of suppliers are independent suppliers. These suppliers are not vertically integrated as they are not active in the downstream manufacture of aggregate-based construction products. Instead, their business is focused on extracting and selling aggregates to a range of customers, including downstream manufacturers of aggregate-based construction products, local authorities, construction contractors, and farmers. Kilmurray is an example of an independent supplier. Other independent suppliers in the midlands include Nally Sand and Gravel and Harton's Sand and Gravel. Independent suppliers often operate a single extractive site or a small number of extractive sites.

Competition between vertically integrated suppliers and independent suppliers

- 2.29 As noted above, vertically integrated suppliers typically use most (if not all) of their own aggregates to produce aggregate-based construction products; they typically do not focus on selling aggregates to third parties. In many instances, vertically integrated suppliers also purchase aggregates from independent suppliers. Therefore, the degree to which vertically integrated suppliers and independent suppliers of aggregates compete with one another depends on whether, and to what extent, vertically integrated suppliers also supply aggregates to third party customers.

Transportation of aggregates

- 2.30 As noted by the ICF, "*aggregates can only be accessed where they occur.*"⁴⁶ Consequently, location is a key factor for customers in determining from which supplier they purchase aggregates.

⁴⁵ Aggregates Europe. (2022). *Sustainable Supply Of Aggregates In Europe (Final Report 12/2022)*, page 15.

⁴⁶ ICF. (2023). *Essential Aggregates-Providing for Ireland's Needs to 2040*, page 4, accessible at [untitled \(irishconcrete.ie\)](https://www.irelandconcrete.ie)

2.31 Aggregates are generally supplied within a local area as prices are highly sensitive to transport distances.⁴⁷ The Commission engaged with several third parties with respect to the distance over which aggregates are usually supplied. While different distances were cited by different third parties, most third parties indicated that aggregates are not supplied on a national basis and that increased transport costs disincentivises aggregates being transported over long distances.⁴⁸ Consequently, aggregates tend to be supplied on a local or regional basis and are seen to have a “*high place value*” as transporting aggregates over long distances can increase the final price.⁴⁹ Indeed, the European Environmental Agency has stated the following with respect to transport distances:

“Since aggregates are low-cost, high-volume products, the economic supply radius of a quarry is very limited. Companies are very transport-sensitive, with transport costs in the extraction sector accounting for about 13 % of total costs. Therefore, it is simply uneconomical to transport the material further than about 50 kilometres (obviously always depending on the price of diesel).”⁵⁰

2.32 Kilmurray referred to the role location plays in its aggregate pricing in its Phase 1 RFI Response:

*“the part of the price that varies between suppliers of sand and gravel is the haulage of the materials. Therefore, the supplier that is closest to the delivery address can be the most competitively priced to win the job. In other words, the closer we are from [sic] the delivery address, the more competitive we are on price”.*⁵¹

2.33 Aggregates Europe stated the following with respect to the distances over which aggregates are supplied:

“Due to the wide distribution of aggregate minerals across the European Union, the high demand and their relatively low cost per tonne, the markets tend to be relatively

⁴⁷ Aggregates Europe. (2022). *Sustainable Supply Of Aggregates In Europe (Final Report 12/2022)*, page 19.

⁴⁸ P. Plunkett Sand and Gravel Call Note, Snows Quarries Call Note, Breedon Group Call Note, [REDACTED] Call Note, [REDACTED] Call Note, Hinch Plant Hire Call Note, Keegan Quarries Call Note, Killeshal Precast Concrete Call Note, O’Reilly Concrete Call Note and Shay Murtagh Precast Call Note.

⁴⁹ Manuel Bustillo Revuelta. (2024). *The Basics of Aggregates*, Springer, page 3.

⁵⁰ EPA. (2008). *Effectiveness of Environmental Taxes and Charges for Managing Sand, Gravel and Rock Extraction in Selected EU Countries*, page 19.

⁵¹ Kilmurray Phase 1 RFI Response, question 6.

close to the production sites. The economic transport radius by road is typically in the range of about 30-50 km.”⁵²

2.34 Aggregates are distributed using trucks, trailers and tractors and may be sold as bagged products or in bulk.⁵³ Aggregates can be delivered by the supplier using their own fleet of vehicles or customers can collect the aggregates directly from the rock quarry or sand and gravel pit.

Customers of aggregates, supply terms and the demand for aggregates

2.35 The two main types of aggregate customers are: (i) manufacturers of aggregate-based construction products; and (ii) construction contractors. Aggregates are also sold to local authorities, retail stores, farmers and local builders.⁵⁴

2.36 Customers typically purchase aggregates from suppliers located relatively close to their own site as the price increases the further aggregates are transported.⁵⁵ One competitor stated to the Commission that *“this distance [from the extractive site to the relevant project site] is key when estimating haulage costs in the pricing.”*⁵⁶ Another customer stated to the Commission that *“the distance it is willing to travel depends on the price its own customers are willing to pay.”*⁵⁷ Hinch Plant Hire, an aggregate supplier, stated that *“delivery costs drive the price of aggregates.”*⁵⁸ Killeshal Precast Concrete Limited, a precast concrete manufacturer, stated that *“if you travel an extra 15 miles it could add an extra 20 percent on the cost of its own product.”*⁵⁹

2.37 Manufacturers of aggregate-based construction products typically operate from a fixed manufacturing site and will therefore routinely purchase aggregates from the same supplier (or set of suppliers) that is in relatively close proximity to its site. In contrast, construction

⁵² Aggregates Europe. (2022). *Sustainable Supply Of Aggregates In Europe (Final Report 12/2022)*, page 54.

⁵³ Bagged aggregates are aggregates sold in bags rather than in large quantities.

⁵⁴ Merger Notification Form, section 4.4, page 14.

⁵⁵ The Commission considers the distance over which aggregates are typically supplied in more detail in section 3 of this Determination.

⁵⁶ [REDACTED] Call Note, dated 9 January 2024, page 2.

⁵⁷ [REDACTED] Call Note, dated 7 December 2023, Competitor 1 call note, page 3.

⁵⁸ Hinch Plant Hire Call Note, dated 4 March 2024, page 2.

⁵⁹ Killeshal Precast Call Note, dated 19 February 2024, page 3.

contractors may only purchase aggregates from a particular supplier on a once-off basis, when the relevant construction site is located close to the supplier.

- 2.38 The terms and conditions under which aggregates are supplied can vary significantly. Certain customers may only require aggregates to be supplied over a relatively short period, while other customers may require aggregates to be supplied over a long period. Similarly, certain customers may only require a single delivery of aggregates whereas others may require numerous daily deliveries over an extended period.
- 2.39 The demand for aggregates is closely linked to the level of new construction work. The demand for aggregates in the State in 2019, at approximately 12 tonnes per capita, was double that of the average demand in the EU in the same period.⁶⁰

⁶⁰ ICF. (2023). *Essential Aggregates-Providing for Ireland's Needs to 2040*, page 4, accessible at [untitled \(irishconcrete.ie\)](#).

3. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Introduction

3.1 In this section, the Commission identifies the potential product and geographic markets that are relevant for the assessment of the competitive effects of the Proposed Transaction. This section sets out:

- (a) The relevant principles that apply to market definition;
- (b) The horizontal and vertical overlaps between the activities of the Parties;
- (c) The potential relevant product markets;
- (d) The potential relevant geographic markets; and,
- (e) The Commission's conclusions on relevant market definition.

3.2 Market definition provides a framework for assessing the competitive effects of a merger; it is a means to an end. The boundaries of a market do not in themselves determine the outcome of the analysis of competitive effects by the Commission in its merger review, as there may be competitive constraints on the merging parties from outside the relevant market or from a segmentation within the relevant market or other ways in which some constraints will be more significant than others.⁶¹ The Commission takes such factors into account in its assessment of competitive effects, where relevant.

Relevant Principles

3.3 The role of market definition is explained in the Commission's Merger Guidelines as follows:

*"Market definition is a conceptual framework within which relevant information can be organised for the purposes of assessing the competitive effect of a merger. Identifying the precise relevant market involves an element of judgement. It is often not possible or even necessary to draw a clear line around the fields of rivalry. Indeed, it is often possible to determine a merger's likely impact on competition without precisely defining the boundaries of the relevant market."*⁶²

⁶¹ The Commission's Merger Guidelines, paragraphs 2.1 and 2.3.

⁶² The Commission's Merger Guidelines, paragraph 2.3.

“...if an SLC [substantial lessening of competition] can be shown when a merger is evaluated with respect to a number of alternative markets, there is no need to choose between them; it will be sufficient to show that the merger will result in an SLC regardless of the choice of market definition.”⁶³

3.4 According to the Commission’s Merger Guidelines:

“The relevant product market is defined in terms of products rather than producers. It is the set of products that customers consider to be close substitutes. In identifying the relevant product market, the Commission will pay particular attention to the behaviour of customers, i.e., demand-side substitution. Supply-side substitution (i.e., the behaviour of existing and/or potential suppliers in the short term) may also be considered.”⁶⁴

3.5 The relevant market contains the most significant alternatives available to the customers of the merging parties. Identifying the precise relevant market involves an element of judgement, with appropriate weight being given to factors on both the demand and supply side.⁶⁵

3.6 The Commission’s Merger Guidelines note that:

“Whether or not a product is a close substitute of a product supplied by one or more of the merging parties will depend on the willingness of customers to switch from one product to the other in response to a small but significant and non-transitory increase in price (or an equivalent decrease in quality). This will involve an assessment of the characteristics and functions of the products in question”.⁶⁶

3.7 The standard economic test for defining the relevant market is the small but significant non-transitory increase in price (“SSNIP”) test.⁶⁷ The SSNIP test seeks to identify the smallest group of products and geographic areas within which a hypothetical monopolist could profitably impose a SSNIP (usually 5-10%), or an equivalent decrease in quality, without a sufficient number of consumers/service purchasers switching to alternative products to render the price

⁶³ The Commission’s Merger Guidelines, paragraph 2.4.

⁶⁴ The Commission’s Merger Guidelines, paragraph 2.8.

⁶⁵ The Commission’s Merger Guidelines, paragraph 2.2.

⁶⁶ The Commission’s Merger Guidelines, paragraph 2.9.

⁶⁷ The SSNIP test is discussed in detail in the Commission’s Merger Guidelines, paragraphs 2.9-2.14.

increase non-profitable. However, the Commission notes that the SSNIP test is just one of the tools used in defining the relevant product market, and its applicability varies depending on pricing practices in the market. A substantial emphasis should also be placed on product characteristics, price and intended use as well as observed substitution patterns between various products that can potentially be included in the same product market.

3.8 As noted in the Commission’s Merger Guidelines: *“Market definition should not restrict the range of competitive effects to be assessed by the Commission in its merger review.”*⁶⁸ In coming to a view of the relevant product and geographic markets, the Commission may therefore *“consider segmentation within the relevant market or factors outside the relevant market that impose competitive constraints on firms in the relevant market.”*⁶⁹

3.9 Ultimately, the Commission’s definition of the relevant market or markets depends on the specific facts, circumstances, and evidence of the merger or acquisition under investigation.⁷⁰

Horizontal and vertical overlaps

Horizontal overlaps

3.10 In the Merger Notification Form, the Parties have addressed the horizontal overlaps between their respective activities as follows:

*“Kilsaran Group and [Kilmurray] overlap in the production and supply of aggregates in Ireland.”*⁷¹

Vertical overlaps

3.11 With respect to vertical overlaps between their respective activities, the Parties stated that:

“There is a vertical overlap in that [Kilmurray] produces and supplies aggregates, and Kilsaran Group uses aggregates as an input for the manufacture and supply of its aggregate-based construction products.”

⁶⁸ The Commission’s Merger Guidelines, paragraph 2.1.

⁶⁹ The Commission’s Merger Guidelines, paragraph 2.1.

⁷⁰ The Commission’s Merger Guidelines, paragraph 2.6.

⁷¹ Merger Notification Form, section 4.1, page 9.

These include ready-mix concrete, concrete blocks, asphalt and tarmacadam, precast concrete, paving and walling products, dry-bagged products (including mortars), and the supply of road surfacing and contracting services.”⁷²

- 3.12 The Commission notes that there is an existing vertical relationship between the Parties, as Kilmurray currently supplies aggregates to Kilsaran. Kilsaran uses these aggregates when producing various aggregate-based construction products.

Potential relevant product markets

- 3.13 The Commission considers (i) the supply of aggregates; and (ii) the supply of aggregate-based construction products as potential relevant product markets.

The supply of aggregates

Previous decisions of the European Commission: the supply of aggregates

- 3.14 The Commission has not previously considered a merger in the aggregates sector. The Commission has considered previous merger decisions of the European Commission in the aggregates sector that are of some relevance to its assessment of the Proposed Transaction.
- 3.15 The European Commission has considered the aggregates sector in several merger investigations.
- 3.16 In Case M.10529 - *HEIDELBERGCEMENT / THOMA BRAVO / COMMAND ALKON*, while ultimately leaving the precise market definition open, the European Commission assessed the transaction by reference to a single market for primary aggregates and secondary aggregates.⁷³
- 3.17 In Case M.9316 - *PEAB / YIT'S PAVING AND MINERAL AGGREGATES BUSINESS*, while ultimately leaving the precise market definition open, the European Commission assessed the transaction by reference to a single aggregates market and did not distinguish between sand and gravel on the one hand and crushed rock on the other.⁷⁴

⁷² Merger Notification Form, section 4.2, page 9.

⁷³ Case M.10529 - *HEIDELBERGCEMENT / THOMA BRAVO / COMMAND ALKON*, paragraph 43.

⁷⁴ Case M.9316 - *PEAB / YIT'S PAVING AND MINERAL AGGREGATES BUSINESS*, paragraph 37. The European Commission did not distinguish between primary and secondary aggregates for the purpose of its assessment in this case.

3.18 In Case M.7252 - *HOLCIM / LAFARGE*, while ultimately leaving the precise market definition open, the European Commission assessed the transaction by reference to a single market for aggregates and, within the UK, a market for specialist aggregates.⁷⁵

3.19 In Case M.7744 - *HEIDELBERGCEMENT / ITALCEMENTI*, while ultimately leaving the precise market definition open, the European Commission assessed the transaction by reference to a single market for aggregates.⁷⁶

Decisions of other national competition authorities

3.20 The UK Competition and Markets Authority (“CMA”) has also considered the aggregates sector under its merger review powers.

3.21 In *Breedon Aggregates / Hope Construction Materials*, the CMA assessed the transaction by reference to a single market for all types of primary aggregates.⁷⁷ This product frame of reference included:

- All types of primary aggregates (i.e. sand and gravel and crushed rock);
- All grades of primary aggregates (i.e. fine, coarse, graded/mixed aggregates); and,
- All sources of aggregates, including primary, secondary and recycled aggregates.⁷⁸

3.22 In *Breedon Aggregates and Aggregate Industries UK*, the CMA assessed the transaction by reference to a single product market for aggregates, which included all types of primary aggregates (except decorative aggregates)⁷⁹ and recycled aggregates. The CMA did not differentiate between aggregates that were sold to external customers or those used internally for the downstream product of ready-mix concrete, asphalt or other aggregate-based construction products.⁸⁰

⁷⁵ Case No COMP/M.7252 - *HOLCIM / LAFARGE*, paragraphs 333-334.

⁷⁶ Case M.7744 - *HEIDELBERGCEMENT / ITALCEMENTI*, paragraph 51.

⁷⁷ ME/6566/15 - *Breedon Aggregates / Hope Construction Materials*, paragraph 71.

⁷⁸ ME/6566/15 - *Breedon Aggregates / Hope Construction Materials*, paragraph 71.

⁷⁹ Decorative aggregates are typically used in gardens and outdoor spaces for landscaping and design purposes.

⁸⁰ *Breedon Aggregates and Aggregate Industries UK*, 9 April 2014, see paragraph 4.44.

3.23 In its market investigation of the aggregates, cement and ready-mix concrete sector, the UK Competition Commission assessed the market for all construction aggregates, including crushed rock, sand and gravel and, on balance, recycled and secondary aggregates.⁸¹

Views of the Parties

3.24 In the Merger Notification Form, Kilsaran stated that:

“Kilsaran Group submits the most appropriate and credible product market is that for the supply of all primary aggregates.”⁸²

3.25 In its response to the Phase 1 RFI, Kilsaran stated that:

“Overall, because there is no broader industry specification of different uses as between sand/gravel and crushed rock, they tend to be priced similarly.”⁸³

“Aggregates extracted from both hard rock quarries and sand and gravel pits are used for broadly the same applications across the construction and aggregate-based construction products sector.”⁸⁴

“Users and purchasers do not ordinarily specify whether their aggregate is to come from a hard rock quarry or a sand and gravel deposit; in the main the most locally available type will be used for a given project or application as it is often the most economic.”⁸⁵

3.26 In response to the Kilsaran Phase 2 RFI, Kilsaran stated:

“Within the industry, it is not a natural distinction to treat some suppliers as supplying “crushed rock aggregates” and others as supplying “sand and gravel aggregates”. Both sand and gravel pits and hard rock quarry operations involve crushing rock; both types of site are producing many of the same types of aggregate to specifications.”⁸⁶

⁸¹ Breedon Aggregates and Aggregate Industries UK – Final Report, 9 April 2014, see paragraph 5.24.

⁸² Merger Notification Form, section 5.1, page 21.

⁸³ Kilsaran Phase 1 RFI, question 12, page 11.

⁸⁴ Kilsaran Phase 1 RFI, question 12, page 12.

⁸⁵ Kilsaran Phase 1 RFI, question 12, page 12.

⁸⁶ Kilsaran Phase 2 RFI, question 18, page 15.

- 3.27 Kilsaran noted how the extent of substitution between crushed rock and sand and gravel varies depending on end use:

“Across these two main sub-categories (sand and gravel, and crushed rock), sand and gravel aggregates are partially but not entirely substitutable with crushed rock. While they are not suitable in road construction or in certain niche situations like railway ballast, water or effluent filtration or sea and river defences, sand/gravel can be used in the production of ready-mix concrete, precast concrete and concrete blocks and paving. Both crushed rock and gravel can be used in pipe bedding, and each of crushed rock, sand and dust can be used as infill or to make asphalt.”⁸⁷

- 3.28 Furthermore, Kilsaran stated that:

“One reason for this broad substitutability is that aggregates are but one input in the construction product ‘mix’ and other variables can be adjusted to accommodate changes. For example, someone making precast concrete would require a different amount of cement if they were to change from using sand/gravel to using crushed rock.”⁸⁸

- 3.29 In its Presentation to the Commission, dated 21 March 2024, Kilsaran stated that:

“Aggregates extracted from both hard rock quarries and sand & gravel pits are used for broadly the same applications across the construction and concrete products sector.”⁸⁹

Views of third parties

- 3.30 As noted in Section 1, the Commission engaged with several third parties in relation to the Proposed Transaction. These third parties included aggregate suppliers, concrete manufacturers, construction contractors and industry stakeholders. The Commission sought the views of these third parties with respect to whether crushed rock and sand and gravel are substitutable.

⁸⁷ Merger Notification Form, section 4.4, page 12.

⁸⁸ Merger Notification Form, section 4.4, page 12.

⁸⁹ Kilsaran Presentation, dated 21 March 2024, slide 15.

Aggregate Producers & Suppliers

3.31 Aggregate suppliers who engaged with the Commission expressed differing views as to whether (i) sand and gravel and (ii) crushed rock are substitutable. Overall, aggregate suppliers expressed the following views:

- ***The two types of aggregates are not substitutable:*** Several aggregate suppliers were of the view that crushed rock and sand and gravel are not substitutable.⁹⁰ When asked whether these aggregate types are substitutable, Moyglare, an aggregate supplier, stated that “*crushed rock and sand are two different products*” and noted that crushed rock and sand and gravel are used for different purposes, as crushed rock is used for roadmaking whereas sand and gravel is used for drainage and building blocks.⁹¹ Snow Quarries stated that “*there is no substitutability between crushed rock aggregates and sand and gravel aggregates [...] aggregates from sand and gravel pits are round in shape and can be used for concrete production but cannot be used around houses.*”⁹²
- ***The two types of aggregates are substitutable:*** Other aggregate suppliers viewed the two aggregate types as substitutable with one another. Hanlon Concrete, a concrete manufacturer,⁹³ stated that there is not much difference between crushed rock and sand and gravel.⁹⁴ Hanlon Concrete stated that it could use crushed rock instead of sand and gravel when making concrete, if required.⁹⁵ Hanlon Concrete also noted that the type of aggregate that is used can also depend on an area’s geology and the location of suppliers.⁹⁶ ██████████ stated that “*some of the rock left over from sand production may be substitutable with some rock sold by quarries.*”⁹⁷
- ***Substitutability varies by intended end-use:*** Other aggregate suppliers noted that substitutability depends on the intended end use of the product. ██████████ stated that the decision to use crushed rock or sand and gravel, and the extent to which these

⁹⁰ Roadstone, Moyglare, Keegans Quarries, Owens Quarry Products, P. Plunkett and Snow Quarries Call Notes.

⁹¹ Moyglare Call Note, dated 5 April 2024, page 3.

⁹² Snow Quarries Discussion Note, dated 9 April 2024, page 2.

⁹³ Hanlon Concrete formerly sold aggregates.

⁹⁴ Hanlon Concrete Discussion Note, dated 9 April 2024, page 2.

⁹⁵ Hanlon Concrete Discussion Note, dated 9 April 2024, page 2.

⁹⁶ Hanlon Concrete Discussion Note, dated 9 April 2024, page 3.

⁹⁷ ██████████ Call Note, dated 24 January 2024, page 5.

aggregate types can be substituted, depends on the intended end use of the aggregate.⁹⁸

- **Manufacturing processes can be altered to account for greater or less amounts of a given aggregate:** Breedon stated that, with respect to concrete, *“the amount of sand used to mix concrete can be lessened but not removed completely.”*⁹⁹
- **Different extraction processes:** While stating that crushed rock and sand and gravel are substitutable, Hanlon Concrete noted that both aggregate types are produced differently, as crushed rock is extracted from a quarry by blasting.¹⁰⁰ Sand and gravel is primarily extracted from sand and gravel pits and does not require blasting.

Industry stakeholders

3.32 The Commission engaged with the ICF, the NSAI and the National Building Control and Market Surveillance Office (“NBCO”). These industry stakeholders considered crushed rock and sand and gravel to be largely substitutable:

- **ICF:** The ICF stated that the distinction between crushed rock and sand and gravel is based on each materials’ size, with crushed rock comprising of large rocks and stones while sand is a finer material.¹⁰¹ The ICF noted that *“it is also possible to produce sand by taking a larger rock product and crushing it down to produce sand.”*¹⁰² The ICF noted both aggregate types are typically used to produce concrete, although concrete can be produced without sand.¹⁰³
- **NBCO:** The NBCO stated that *“crushed rock fines have been used as a fine aggregate replacement in place of natural sand in the production of ready-mix concrete”*.¹⁰⁴ The NBCO stated that crushed rock or sand can be used for non-concrete purposes, such

⁹⁸ [REDACTED] Call Note, dated 7 December 2023, page 2.

⁹⁹ Breedon Call Note, dated 15 January 2024, page 2

¹⁰⁰ Hanlon Concrete Discussion Note, dated 9 April 2024, page 2.

¹⁰¹ ICF Call Note, dated 10 January 2024, page 2.

¹⁰² ICF Call Note, dated 10 January 2024, page 2.

¹⁰³ ICF Information Request Response, dated 21 May 2024, question 25.

¹⁰⁴ National Building Control and Market Surveillance Office, dated 11 April 2024, page 2.

as bedding and pipe laying, and noted that crushed rock fines are often used for pipe bedding as it is more economical and accessible than sand.¹⁰⁵

- **NSAI:** The NSAI explained that SR-16 is the relevant standard applied to aggregates that are used in the production of concrete.¹⁰⁶ NSAI stated that this standard is applied to both crushed rock and sand and gravel that are used in concrete.¹⁰⁷ The NSAI stated that it is possible to create concrete without sand, but this would be a “harsh mix”.¹⁰⁸ The NSAI stated that “*in any concrete mix, coarse and fine aggregates should be graded in a way to minimise voids and allow for necessary workability. Sand can assist with filling the voids between the larger coarse aggregates and helps obtain a more workable concrete mix.*”¹⁰⁹ The NSAI stated that it is possible to fill voids by using other fillers such as dust.¹¹⁰

Aggregate customers

3.33 The Commission engaged with a range of aggregate customers. These aggregate customers expressed differing views as to whether crushed rock and sand and gravel are substitutable. Specifically, aggregate customers expressed the following views:

- **Substitutability varies by intended end-use:** ██████████ a concrete manufacturer, stated that the decision to use crushed rock or sand and gravel, and the extent to which these aggregate types can be substituted, depends on the intended end use of the aggregate.¹¹¹ Bretland Construction, a construction contractor, stated that the type of aggregate used when laying pipe bedding depends on what is needed.¹¹² Bretland Construction also stated that that the aggregate used “*depends on the ground conditions and the depth of the trench.*”¹¹³ Rycroft Construction stated that for

¹⁰⁵ National Building Control and Market Surveillance Office, dated 11 April 2024, page 3.

¹⁰⁶ S.R. 16 is the Irish national guidance on the harmonised standard, I.S. EN 12620:2002+A1:2008. It outlines the characteristics and properties that aggregates which are used in concrete must comply with.

¹⁰⁷ NSAI Call Note, dated 10 April 2024, pages 2–3.

¹⁰⁸ NSAI Call Note, dated 10 April 2024, pages 2.

¹⁰⁹ NSAI Call Note, dated 10 April 2024, pages 3.

¹¹⁰ NSAI Call Note, dated 10 April 2024, pages. 3.

¹¹¹ ██████████ Call Note, dated 7 December 2023, pages 2.

¹¹² Bretland Construction Call Note, dated 6 March 2024, pages 3.

¹¹³ Bretland Construction Call Note, dated 6 March 2024, pages 3.

its purposes, crushed rock could not be used instead of sand.¹¹⁴ P. Plunkett stated that sand is not substitutable with crushed rock.¹¹⁵ Sisk, one of the largest construction companies in the State, stated that substitutability between sand and gravel and crushed rock depends on the engineering and chemical properties required.¹¹⁶ Sisk further stated that it views sand and gravel and crushed rock as substitutable, provided the properties of the constituent materials are assessed and the overall design mix is adjusted accordingly.¹¹⁷ Sisk also noted that all materials cannot be used in all situations. BAM, one of the largest construction companies in the State, stated that “[s]and and gravel can substitute crushed rock in various applications, albeit with considerations. For road bases, sand and gravel suffice where crushed rock is scarce, albeit with potentially less stability. In concrete, they offer alternatives for lower strength mixes but may lack durability in high-strength applications.”¹¹⁸ However, BAM noted that “[u]ltimately, the choice depends on project needs, material availability, and desired performance characteristics, often utilizing a mix for optimal results.”¹¹⁹

- **Crushed rock can produce a sand substitute when further processed:** [REDACTED] stated that crushed rock can be crushed to produce very fine particles with similar characteristics to sand. This is commonly referred to as “manufactured sand” in the industry. Killeshal Precast Concrete also stated that a rock quarry will produce dust, which can be substitutable with sand depending on the end product.
- **Manufacturing processes can be altered to account for greater or less amounts of a given aggregate:** As noted above, Breedon stated that, with respect to concrete, “the amount of sand used to mix concrete can be lessened but not removed completely.”¹²⁰ Keegan Quarries also stated that the specific amounts of different aggregate types can be varied when making concrete. Killeshal Precast Concrete stated that the production

114 Rycroft Construction Call Note, dated 10 January 2024, page 3.

115 P. Plunkett Sand and Gravel Discussion Note, dated 9 April 2024, page 2.

116 Sisk response to the Commission’s information request, question 4(i).

117 Sisk response to the Commission’s information request, question 10.

118 BAM response to the Commission’s information request, question 4(i).

119 BAM response to the Commission’s information request, question 4(i).

120 Breedon Call Note, dated 15 January 2024, page 2.

processes of different end products require difference consistencies and grades of aggregates.

Commission's analysis of relevant product markets

3.34 In the following section, the Commission has taken the horizontal overlap (the production and supply of aggregates) between the activities of Kilsaran and Kilmurray as the starting point for identifying the appropriate potential product market for the purposes of assessing the competitive effects of the Proposed Transaction.

3.35 The Target Site only produces sand and gravel.¹²¹ Therefore, the narrowest core overlap is the supply of sand and gravel. In coming to a view on the potential relevant product market(s), the Commission has considered whether the market should be wider, and in particular whether the supply of sand and gravel should be in the same product market as the supply of crushed rock.

Is the supply of sand and gravel in the same potential market as the supply of crushed rock?

Demand side substitution

3.36 In accordance with the Commission's Merger Guidelines, the Commission begins by considering demand side substitution, that is whether a customer of sand and gravel would consider alternative products to be a close substitute for this product, such that they would switch to an alternative product and render a price increase in sand and gravel unprofitable.

3.37 In principle, the supply of sand and gravel and the supply of crushed rock would be in the same market if customers considered both types of products to have sufficiently similar characteristics, functionality and pricing such that they would be willing to switch from sand and gravel to crushed rock in response to a SSNIP or equivalent decrease in quality of sand and gravel.

3.38 For some intended uses and in some circumstances, crushed rock may be used as a substitute for sand and gravel. Evidence from third parties as set out above indicates that the degree to which sand and gravel can be substituted with crushed rock largely depends on the end use. However, even when crushed rock may be a functional substitute for sand and gravel, there is variation in the extent to which some customers would find crushed rock to be an acceptable substitute for sand and gravel. This variation could be due to price, functional aspects of each

¹²¹ [REDACTED]

type of aggregate as inputs for an end product, or proximity to certain types of quarries or pits. For example, the proportion of crushed rock and sand and gravel can be varied in the production of concrete depending on the characteristics required for the concrete.

- 3.39 Overall, the Commission considers that, while there is a fairly high functional substitutability in certain cases such that some customers of sand and gravel may switch to crushed rock in response to a SSNIP in the price of sand and gravel, the evidence is not definitive on whether the extent of a switch by customers would be sufficient to render the price increase unprofitable.

Supply side substitution

- 3.40 In setting out the Commission's approach to assessing potential supply side substitution, the Commission's Merger Guidelines state that:

"The boundaries of the relevant product market are generally determined by reference to demand-substitution alone. The reaction of suppliers to price changes is generally considered in the analysis of the competitive effects of the merger, either under rivalry or potential new entry, rather than as part of market definition. However, there may be circumstances where the Commission will consider the responses of suppliers to changes in price.

A product is a supply-side substitute for another in cases where the capacity for producing that product could profitably be switched to supply the other product quickly and without significant investment in response to a small price increase by the hypothetical monopolist. The precise period for determining whether suppliers would switch to supplying the relevant products will vary from market to market."¹²²

- 3.41 While the boundaries of the relevant product market are generally determined by reference to demand-substitution alone, for completeness the Commission has also considered the extent to which a supplier of crushed rock would switch to supplying sand and gravel in response to a SSNIP in the price of sand and gravel.

¹²² The Commission's Merger Guidelines, paragraphs 2.15-2.16

Different extraction sites and processes

- 3.42 Aggregates are extracted from two types of sites: rock quarries and sand and gravel pits. Rock quarries do not typically produce sand and gravel, while sand and gravel pits do not typically produce crushed rock.
- 3.43 As noted above in Section 2, the extraction and production process for each aggregate type is different. Extracting crushed rock requires blasting; no blasting is required in the extraction of sand and gravel. To switch to supplying sand and gravel, a crushed rock supplier would need to acquire a sand and gravel pit. This would entail said supplier acquiring an active sand and gravel pit or acquiring a greenfield site to start extracting.
- 3.44 Sand and gravel pits are less common than rock quarries and any greenfield sites will likely require planning permission. Certain aggregate suppliers stated that planning permission can be difficult and expensive to obtain. As noted in Section 2, the ICF has stated the average decision-making time frame with respect to quarry planning applications is 76 weeks, with some decisions taking over 2 years.¹²³
- 3.45 Therefore, the Commission considers that it is unlikely that a crushed rock supplier would switch to supplying sand and gravel in response to a SSNIP in the price of sand and gravel.

Conclusion

- 3.46 The Commission considers that the evidence available indicates that there is a level of functional substitutability between sand and gravel and crushed rock. Some customers may find the products substitutable in some circumstances, and this is likely to depend on the end use.
- 3.47 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, the Commission has decided to leave the precise product market definition open, as its assessment of the competitive effects of the Proposed Transaction would be unchanged whether the Proposed Transaction is assessed by reference to a broad potential product market (the supply of all primary aggregates) or a narrow potential product market (the supply of sand and gravel). For the purposes of its competitive assessment, the Commission has assessed the competitive effects of the

¹²³ ICF. (2023). *Essential Aggregates-Providing for Ireland's Needs to 2040*, page 4, accessible at [untitled \(irishconcrete.ie\)](https://www.untitled.irishconcrete.ie)

Proposed Transaction by reference to the narrowest potential product market: the supply of sand and gravel.

The supply of aggregate-based construction products

Previous Commission decisions

- 3.48 The Commission has not previously considered a single potential market for the supply of aggregate-based construction products.
- 3.49 In M/21/043 – *Colas Teoranta/SIAC Bituminous Products Limited*, while ultimately leaving the precise market definition open, the Commission considered a potential product market for the supply of asphalt (a type of aggregate-based construction product).¹²⁴

Previous decisions of the European Commission: the supply of aggregate-based construction products

- 3.50 The European Commission has previously considered mergers and acquisitions in the aggregates-based construction products sector. The following is included as background to the current analysis.
- 3.51 The European Commission's general approach has been to assess the supply of specific types of aggregate-based construction products separately. Consequently, the European Commission has previously assessed various markets, including the supply of ready-mix concrete,¹²⁵ mortar¹²⁶ and precast concrete.¹²⁷

Decisions of other national competition authorities

- 3.52 The CMA has also has previously considered mergers and acquisitions in the aggregates-based construction products sector. The CMA's general approach has been to assess the supply of specific types of aggregate-based construction products separately. Therefore, the CMA has

¹²⁴ M.21.043- Colas/SIAC determination at <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m-21-043-colas-siac/>

¹²⁵ Case M.10529 - HEIDELBERGCEMENT / THOMA BRAVO / COMMAND ALKON, paragraphs 54-56 and Case M.7744 - HEIDELBERGCEMENT / ITALCEMENTI, paragraphs 55-57.

¹²⁶ Case M.9736 - LONE STAR / BASF CONSTRUCTION CHEMICALS (EB) BUSINESS, paragraph 22.

¹²⁷ Case M.10529 - HEIDELBERGCEMENT / THOMA BRAVO / COMMAND ALKON, paragraphs 60-67.

previously assessed the supply of various aggregate-based construction products, such as ready-mix concrete and asphalt.¹²⁸

Views of the Parties

3.53 In the Merger Notification Form, Kilsaran stated that:

“[Kilsaran] does not consider it necessary for the CCPC to come to a decision as to the precise product market definition, nor to further segregate the product market definition of "aggregate-based construction products", as the Proposed Transaction does not raise concerns under any narrower product market definitions.”¹²⁹

Commission’s analysis of relevant product markets

3.54 As noted above, Kilmurray does not sell aggregate-based construction products. Kilsaran sells a variety of aggregate-based construction products, including ready-mix concrete, precast asphalt and mortar. [REDACTED]

3.55 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, the Commission has decided to leave the precise product market definition open, as its assessment of the competitive effects of the Proposed Transaction would be unchanged whether the Proposed Transaction is assessed by reference to a single potential product market encompassing all aggregate-based construction products or separate potential product markets for individual types of aggregate-based construction products. For the purposes of its competitive assessment, the Commission has assessed the Proposed Transaction by reference to the supply of aggregate-based construction products.

Commission’s conclusion on the relevant product markets

3.56 In this instance, the Commission has decided to leave the precise product market definition open. This does not alter the Commission’s assessment of the competitive effects of the Proposed Transaction. For the purposes of its competitive assessment, the Commission has

¹²⁸ Breedon Aggregates Limited/Hope Construction Materials Limited dated 27 July 2016 and Breedon Group plc/certain assets of Cemex Investments Limited dated 1 December 2020.

¹²⁹ Merger Notification Form, section 5.1, page 22.

assessed the Proposed Transaction by reference to the following two potential product markets:

- The supply of sand and gravel; and,
- The supply of aggregate-based construction products.

Relevant Geographic Markets

Relevant principles

3.57 The role of geographic market definition is explained in the Commission’s Merger Guidelines as follows:

“The product market(s) affected by a merger may be geographically bounded if geography limits some customers’ willingness or ability to switch products or some suppliers’ willingness or ability to supply to customers. The relevant geographic market is usually defined in terms of the location of suppliers and it includes those suppliers that customers consider to be feasible substitutes. The relevant geographic market may be local, regional, national or wider.”¹³⁰

“The approach to defining the relevant geographic market is similar to that of product market definition. Both can use the SSNIP test as an analytical tool.”¹³¹

3.58 According to the Commission’s Merger Guidelines:

“The relevant geographic market consists of all supply locations that would have to be included for the hypothetical monopolist to find it profitable to impose a small but significant non-transitory increase in price. Beginning with the location of each of the merging parties, the SSNIP test is applied by considering what would happen if a hypothetical monopolist of the relevant product at that location imposed a small but significant non-transitory increase in price. If enough customers switch to suppliers in other locations, the next closest location where customers can purchase the relevant product is included. The SSNIP test is thus iteratively applied until a hypothetical monopolist could profitably increase the price of the relevant product in a location or

¹³⁰ The Commission’s Merger Guidelines, paragraph 2.19.

¹³¹ The Commission’s Merger Guidelines, paragraph 2.20.

group of locations by a small but significant non-transitory amount. This location or group of locations is thus defined as the relevant geographic market.”¹³²

3.59 Having identified two potential relevant product markets, the Commission now assesses the geographic dimension of both potential markets.

The supply of sand and gravel

Previous decisions

3.60 As noted above, the European Commission has previously considered mergers in the aggregates sector.

3.61 In Case M.10529 - *HEIDELBERGCEMENT / THOMA BRAVO / COMMAND ALKON*, the European Commission noted that its market investigation confirmed the relevance of the European Commission’s previous decisional practice,¹³³ but ultimately left the precise geographic market open, and assessed the transaction by reference to the sale of aggregates within national markets.¹³⁴

3.62 In Case M.9316 - *PEAB / YIT’S PAVING AND MINERAL AGGREGATES BUSINESS*, the European Commission considered that the appropriate geographic market with respect to the sale of aggregates was generally within a radius of 50 km from the relevant site.¹³⁵

3.63 In Case No COMP/M.7252 - *HOLCIM / LAFARGE*, the European Commission considered that assessing the local construction aggregates markets within a radius of 50-80km of the relevant site was appropriate.¹³⁶

¹³² The Commission’s Merger Guidelines, paragraph 2.21.

¹³³ Case M.10529 - *HEIDELBERGCEMENT / THOMA BRAVO / COMMAND ALKON*, paragraph 44. The European Commission noted that it had previously considered the aggregates market to be local or at most national in scope and has retained a radius of 50 to 80 km depending on the particularities of the areas concerned.

¹³⁴ Case M.10529 - *HEIDELBERGCEMENT / THOMA BRAVO / COMMAND ALKON*, paragraph 46.

¹³⁵ Case M.9316 - *PEAB / YIT’S PAVING AND MINERAL AGGREGATES BUSINESS*, paragraph 48. The European Commission noted that it would also take into account regional variations in the competitive assessment. The most important regional variation is that in northern Norway boat transport is also used and this increases the area within which aggregates suppliers compete.

¹³⁶ Case No COMP/M.7252 - *HOLCIM / LAFARGE*, paragraph 343.

- 3.64 In Case M.7744 - *HEIDELBERGCEMENT / ITALCEMENTI*, while ultimately leaving the precise geographic market definition open, the European Commission assessed the transaction by reference to catchment areas of between 50-80km around the parties' aggregate facilities.¹³⁷
- 3.65 As noted above, the CMA has also previously considered mergers within the aggregates sector.
- 3.66 In *Breedon Aggregates / Hope Construction Materials*, the CMA stated that it considered the geographic frame of reference for primary aggregates to be local. The CMA noted that its geographic frame of reference was consistent with the lower and higher bounds of distances in prior CMA and European Commission decisions relating to the aggregates industry (50-80km).¹³⁸
- 3.67 In *Breedon Aggregates and Aggregate Industries UK*, the CMA assessed the transaction by reference to the sale of aggregates within two specific radii from the relevant sites, namely 18 miles and 27 miles.¹³⁹
- 3.68 In its market investigation in relation to the aggregates, cement and ready-mix concrete sector, the UK Competition Commission concluded that aggregates markets are local in nature, but that their precise geographic specifications could vary based on local factors.¹⁴⁰ The Competition Commission applied catchment areas distances of 20 miles (urban areas) and 28 miles (rural areas) respectively when assessing the sale of aggregates. These distances were based on the location of customers.¹⁴¹

Views of the Parties

- 3.69 In the Merger Notification Form, Kilsaran stated the following in respect of geographic market definition:

"Kilsaran Group has identified the supply of primary aggregates as a relevant product market and submits that the appropriate geographic market is the supply of primary aggregates within an 80 km radius of the relevant manufacturing/production site.

¹³⁷ Case M.7744 - *HEIDELBERGCEMENT / ITALCEMENTI*, paragraph 54 and paragraphs 201-207.

¹³⁸ ME/6566/15 - *Breedon Aggregates / Hope Construction Materials*, paragraph 75.

¹³⁹ *Breedon Aggregates and Aggregate Industries UK – Final Report*, 9 April 2014, see paragraph 4.70.

¹⁴⁰ Competition Commission. (2014). *Aggregates, cement and ready-mix concrete market investigation Final report*, paragraph 5.30.

¹⁴¹ Competition Commission. (2014). *Aggregates, cement and ready-mix concrete market investigation Final report*, paragraph 6.13 – 6.17.

However, Kilsaran Group submits that it is not necessary for the CCPC to reach a firm conclusion on market definition because the Proposed Transaction will not lead to an SLC in the State on any plausible view of the market.”¹⁴²

“Based on its experience supplying aggregates in the State and on the island of Ireland more broadly (where aggregates are readily transported further than 50 km, and in some cases much closer to 100 km), Kilsaran Group considers in this instance that an assessment made on an 80 km radius would be appropriate.”¹⁴³

3.70 Kilmurray stated the following in its Phase 1 RFI Response:

“We would consider that the radius from the Derryarkin Pit within which all competing sand and gravel pits are located is 50 kms. The main reason for this is the cost of haulage. If any competitors had to travel more than 50 kms to deliver product to their customers, the cost of the haulage would leave them uncompetitive.

When we review the list of sand and gravel pits over 50kms, we don't come across these competitors competing for work that we are pricing or work that we are getting.”¹⁴⁴

3.71 When asked for the distance within which the nearest 80% of its customers are located, Kilmurray stated the following:

“If based on number of customers, 80% of our number of customers are based between Portarlinton, Tullamore, Moate, Mullingar and Edenderry. These four geographical regions are up to 50 kms from the [Target Site]. If our customers are over 50 kms, there are lots of competitors so it would be hard to compete as the haulage would leave your price uncompetitive.”¹⁴⁵

Views of third parties

3.72 As noted in Section 1, the Commission engaged with several third parties in relation to the Proposed Transaction. These third parties included aggregate suppliers, concrete

¹⁴² Merger Notification Form, section 5.1, page 20.

¹⁴³ Merger Notification Form, section 5.1, page 21.

¹⁴⁴ Kilmurray Phase 1 RFI Response, question 7.

¹⁴⁵ Kilmurray Phase 1 RFI Response, question 8.

manufacturers, construction contractors and industry stakeholders. The Commission sought the views of these third parties with respect to the relevant geographic market.

Aggregate Suppliers

3.73 Most aggregate suppliers which engaged with the Commission were of the view that aggregates (both crushed rock and sand and gravel) are supplied within a local market. All but one of the 13 aggregate suppliers identified that their customers were, for the most part, closer than 50km from their facility, and 6 of those indicated that their customers would typically be closer than 35km. One aggregate supplier stated that their customers could be up to 80km from their facility.

Industry stakeholders

3.74 The Commission also engaged with several industry stakeholders. The ICF stated that the supply of aggregates is a local market and stated that aggregates are supplied within 30-40 miles of the extractive site. The ICF stated that aggregates could not travel much further as transport costs would be too high.¹⁴⁶

Aggregate customers

3.75 Most aggregate customers that engaged with the Commission noted that their key concerns when purchasing aggregates were price and availability rather than distance. While, in principle, aggregates could be sourced from anywhere in the country, the cost of haulage is a significant part of the overall price, and local suppliers are likely to be more cost-effective.

Commission's analysis of the relevant geographic market for the supply of sand and gravel

3.76 The Commission has considered Kilsaran's view that the relevant geographic market should be within an 80km radius of the Target Site. Kilsaran provided information about how far it supplies sand and gravel from its own sand and gravel pits within 50km of the Target Site, on both an intra-group and external customer basis, as shown in Figure 6 below.

¹⁴⁶ ICF Call Note, dated 10 January 2024, page 3.

Figure 6: Kilsaran’s sand and gravel supplies from its sand and gravel pits within 50km of the Target Site

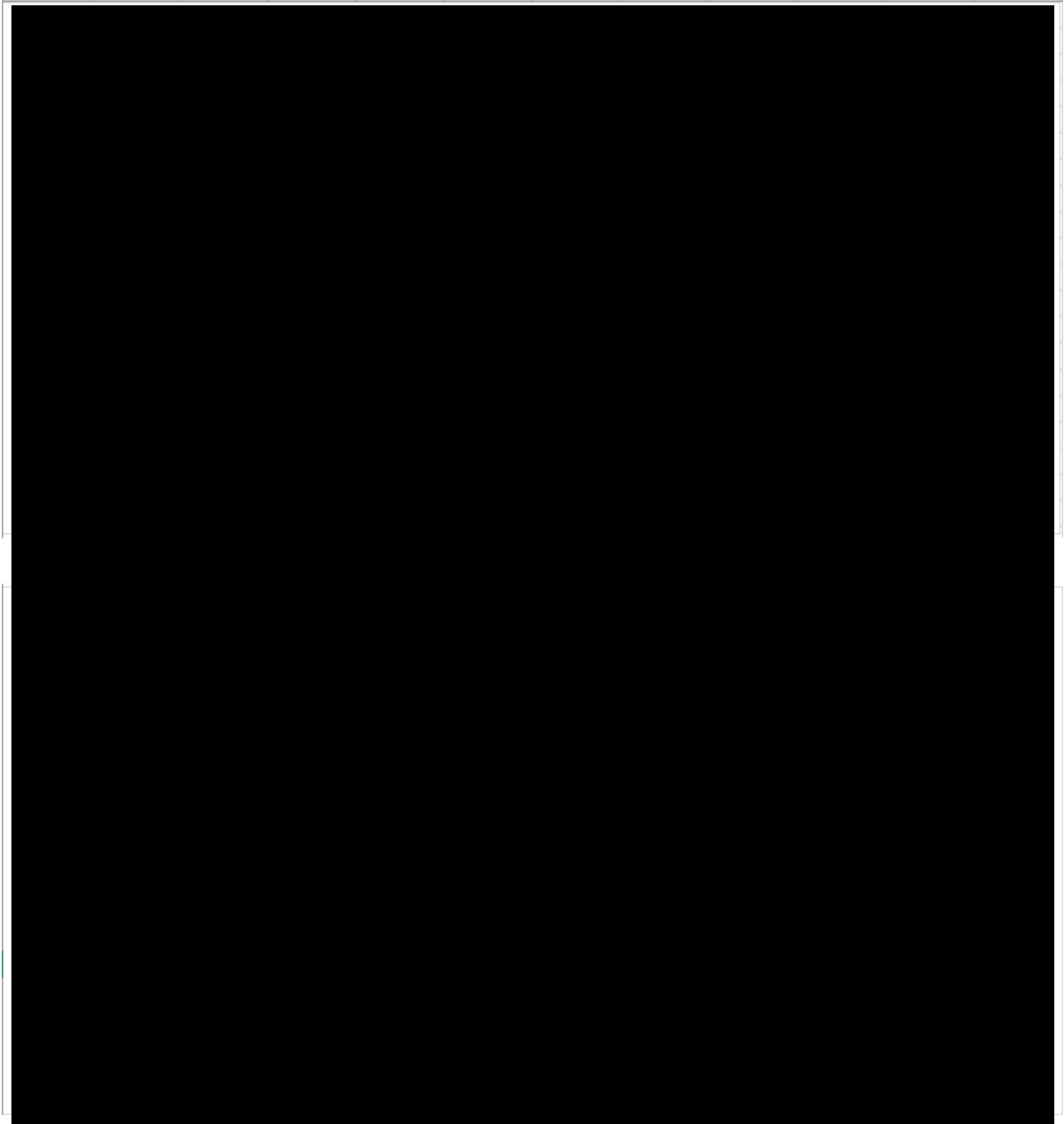
Plant	Distance to locations within Kilsaran group	Approx % intra-group sales	Jan-Nov 2023 sales value (€)	80% of Jan-Nov 2023 sales value (€)	Comment on customer distance
Thomtons/ Ballynamona	Naul (29 km) Lucan (26 km) Navan (18 km)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Brownstown	Curragh (5 km) Tallaght (31km) South Bank Rd (41 km) Kilpeddar (42 km) Kilcullen (5 km)				
Curragh	Curragh (0 km)				
Clonard	Castletown (16 km) Clonee (37 km) Navan (36 km) Tullamore (43 km)				
Tullamore	Castletown (58 km) Killeen Rd (83 km) Lucan (76 km) Millennium (85 km) Navan (76 km) Portlaoise (33 km) Naul (94 km)				

Source: Kilsaran Phase 1 RFI Response.

3.77 For [REDACTED] of Kilsaran’s sand and gravel pits [REDACTED], all internal and external sales were [REDACTED]. Kilsaran’s [REDACTED] sand and gravel pits were the only sites which [REDACTED],¹⁴⁷ as shown in Figure 7 below.

¹⁴⁷ [REDACTED]

Figure 7: Sand and gravel sales from Kilsaran sites within 50km of the Target Site¹⁴⁸



Source: Kilsaran

- 3.78 While there are instances of Kilsaran supplying sand and gravel beyond 50km, it is clear that it typically supplies sand and gravel to customers located within 50km.
- 3.79 Kilmurray also provided information with respect to how far it supplies sand and gravel. From January to November 2023 approximately:

¹⁴⁸ 40 radials refer to 40km.

- [REDACTED] of Kilmurray's sales were to customers within 50km;
- [REDACTED] of Kilmurray's sales were to customers located within 80km; and,
- [REDACTED] of its sales were to customers beyond 80km.

3.80 [REDACTED]

3.81 Kilmurray stated that when based on number of customers, as opposed to value of sales, "80% of our number of customers are based between Portarlington, Tullamore, Moate, Mullingar and Edenderry. These four geographical regions are up to 50 kms from the [Target Site]."¹⁴⁹

3.82 As noted earlier, Kilmurray considers that its competitors are located within a 50km radius of its site. This is consistent with the Commission's evidence that suppliers of aggregates tend to supply customers within 50km of their sites. While customers of aggregates are not concerned with distance per se, they do recognise that transport costs make up a large proportion of the price of aggregates, and that transport costs are dependent on distance.

Commission's conclusion with respect to the relevant geographic market for the supply of sand and gravel

3.83 Evidence from the Parties, competitors and customers indicates that the market for the supply of sand and gravel is local to the extractive site. The Commission's market enquiries indicated that while there are instances of sand and gravel being supplied to customers further afield, 50km is an appropriate radius within which to assess the supply of sand and gravel.

3.84 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, the Commission has decided to leave the precise geographic market definition open, as its assessment of the competitive effects of the Proposed Transaction would be unchanged whether the Proposed Transaction is assessed by reference to a broad potential geographic market or a narrow potential geographic market. For the purposes of its competitive assessment, the Commission has assessed the competitive effects of the Proposed Transaction with reference to the narrowest potential geographic market: the supply of sand and gravel within 50km of the Target Site.

The supply of aggregate-based construction products

¹⁴⁹ Kilmurray Phase 1 RFI Response, question 8.

Previous decisions

- 3.85 The Commission has previously assessed the supply of asphalt within a 40km radius of the relevant asphalt production facility.¹⁵⁰
- 3.86 The European Commission has previously assessed the sale of ready-mix concrete within varying radii around the relevant production facility.¹⁵¹ It has considered the sale of ready-mix concrete within radii of 15-40km, and more recently, 25km. The Commission has also assessed the sale of ready-mix concrete on a national basis.
- 3.87 The UK Competition Commission determined that the supply of ready-mix concrete was highly localised and applied narrow catchment areas of about 8 to 10 miles (13-16km).¹⁵²
- 3.88 In *Hanson/Mick George*, the CMA considered the supply of ready-mix concrete on a local basis. The CMA used 80% catchment areas when assessing the sale of local ready-mix concrete markets, which resulted in catchment areas of approximately 30 minutes' drive time from the relevant production facility.¹⁵³
- 3.89 In *Breedon*, the CMA assessed the sale of ready-mix concrete within 29 minutes' drive time from the relevant production facility.¹⁵⁴

Views of the Parties

- 3.90 Kilsaran stated the following in the Merger Notification Form with respect to the geographic market for aggregate-based construction products:

“[Kilsaran] submits that the geographic market for aggregate-based construction products as an umbrella group should be national in scope, with the above radii for ready-mix (25 km) and asphalt (40 km) as narrower options. This is because, broadly, conditions of competition for this umbrella group of products are set at a national level, with multiple large and vertically integrated producers (who also manufacture

¹⁵⁰ M/21/043 – *Colas Teoranta/SIAC Bituminous Products Limited*, paragraph 31.

¹⁵¹ Commission decision of 26 May 2016 in case M.7744 – *HeidelbergCement / Italcementi*, paragraphs 58-59.

¹⁵² Competition Commission- *Aggregates, cement and ready-mix concrete market investigation*, Final report, page 5-26.

¹⁵³ *Acquisition by Hanson Quarry Products Europe Limited of Mick George Limited*.

¹⁵⁴ *Breedon Group plc of certain assets of Cemex Investments Limited*.

cement), supplying large national contractors as well as large merchants with a wide geographic scope.

Regardless, Kilsaran Group submits it is not necessary for the CCPC to come to a decision on the precise geographic market, as the Proposed Transaction does not raise any concerns in relation to the vertical overlap under any plausible market definition.”¹⁵⁵

Commission’s analysis of the relevant geographic market for aggregate-based construction products

- 3.91 Aggregate-based construction products can be supplied on a local, regional or national basis depending on the particular product. For example, ready-mix concrete and asphalt are typically supplied within the local area surrounding the relevant production site, whereas mortar may be supplied on a regional or national basis.
- 3.92 Kilsaran owns 8 production facilities within 50km of Kilmurray that produce aggregate-based construction products, namely ready-mix concrete, concrete blocks and asphalt.
- 3.93 As noted above, Kilmurray does not sell aggregate-based construction products. Kilsaran sells a variety of aggregate based construction products, including ready-mix concrete, precast asphalt and mortar. [REDACTED]
- 3.94 The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, the Commission has decided to leave the precise geographic market definition open, as its assessment of the competitive effects of the Proposed Transaction would be unchanged whether the Proposed Transaction is assessed by reference to narrow geographic markets surrounding each Kilsaran production facility or a wider potential geographic market. For the purposes of its vertical competitive assessment, the Commission has assessed the Proposed Transaction by reference to the supply of aggregate-based construction products within 50km of the Target Site.

Overall conclusion on relevant market definition

¹⁵⁵ Merger Notification Form, section 5.1, page 22.

3.95 For the purposes of its competitive analysis of the horizontal overlap that exists between the Parties, the Commission has assessed the competitive effects of the Proposed Transaction by reference to the following potential market:

- The supply of sand and gravel within 50km of the Target Site.

3.96 For the purposes of its competitive analysis of the vertical relationship that exists between the Parties, the Commission has assessed the competitive effects of the Proposed Transaction by reference to the following potential market:

- The supply of aggregate-based construction products within 50km of the Target Site.

3.97 As the Commission has not come to a definitive view in respect of any relevant market, throughout this Determination a reference to “market” or “markets” implies a potential market or potential markets.

4. RELEVANT COUNTERFACTUAL

Introduction

4.1 The test in section 22(3) of the Act requires an assessment of whether a merger will, or will not, on the balance of probabilities, result in an SLC in a relevant market. In assessing the likely effects of a merger on competition, the Commission typically compares the competitive situation that may be expected to arise following the merger with that which would have prevailed without the merger. The market situation without the merger is often referred to as the “*counterfactual*”.

4.2 The Commission’s Merger Guidelines state that:

“The term ‘counterfactual’ refers to the state of competition without the merger or acquisition. In other words the “actual” situation is the merger being put into effect and the “counterfactual” is the situation in the absence of the merger being put into effect. The counterfactual provides the reference point, or the point of comparison, for assessing competitive effects arising from a merger.”¹⁵⁶

4.3 The sole purpose of establishing the counterfactual is therefore to provide a point of comparison for assessing the competitive effects arising from a given merger.¹⁵⁷ The “actual” situation for the purposes of assessing the competitive effects of a notified merger is that particular merger coming into effect, i.e., being implemented. This is compared with the “counterfactual” situation which identifies the most plausible conditions of competition which would have arisen in the **absence** of the notified merger. The absence of the notified merger is not the same as the notified merger not being implemented.¹⁵⁸

4.4 Paragraph 1.15 of the Commission’s Merger Guidelines states the following:

“[T]he Commission will expect the merging parties to substantiate any counterfactual they propose with objective evidence supported, where necessary, by independent

¹⁵⁶ The Commission’s Merger Guidelines, paragraph 1.12.

¹⁵⁷ The Commission’s Merger Guidelines, paragraph 1.12

¹⁵⁸ The CCPC’s approach to establishing the counterfactual is consistent with that of other merger control authorities. The CCPC’s perspective is *ex ante* (as opposed to *ex post*) in the sense that it examines the situation absent the proposed transaction the time frame of which can begin before the transaction in question was proposed.

expert analysis. Such evidence and analysis should obviously be consistent with the parties' own internal pre-merger assessments of the likely counterfactual."

4.5 The very act of the relevant parties agreeing to the merger and actions taken in pursuance of a merger may affect the competitive conditions arising on a given market.¹⁵⁹ For this reason, the Commission must distinguish between competitive effects that are specific to the merger, and other effects that may occur during the relevant period but which are not specific to the merger. As set out in recent determinations, the Commission's position is that:

*"[a]ctions that are directly related to a merger or arise as a consequence of a merger would not have occurred in the absence of the merger. They are therefore irrelevant to the counterfactual assessment."*¹⁶⁰

4.6 The Commission generally adopts the prevailing conditions of competition as the counterfactual against which it assesses the impact of the merger, i.e., the situation prior to the merger or acquisition. However, as the counterfactual is necessarily forward-looking, this will not always be the case.¹⁶¹ The Commission will consider whether the prevailing conditions of competition would likely have continued in the absence of the notified merger.¹⁶²

Views of the Parties

4.7 In the Merger Notification Form, Kilsaran outlined its views on the appropriate counterfactual as follows:

"[Kilsaran] submits that the relevant counterfactual is that the [Target Site] will continue to operate in the market,

[REDACTED]

¹⁵⁹ For instance, one of the parties to a given merger (or indeed competitors of the parties to a merger) may put business plans into abeyance in anticipation of the merger being put into effect which they may not have done if the merger had never been contemplated in the first place. As these events are a consequence of the agreeing of a merger, they cannot be taken into account by the Commission.

¹⁶⁰ Commission's determination in merger notification M/21/079 – *Uniphar/NaviCorp*, paragraph 4.27 (a) and (b); M/21/021 – *Bank of Ireland/Certain Assets of KBC*, paragraphs 5.13 and 5.14.

¹⁶¹ The Commission's Merger Guidelines, paragraph 1.14. Typically, the prevailing conditions of competition involve the merging parties continuing to compete independently in the relevant market(s) identified by the Commission.

¹⁶² This approach is consistent with that of other merger control authorities.

[REDACTED]

4.8 When asked if it had considered any exit plans from the supply of sand and gravel in the last 5 years (other than the Proposed Transaction), Kilmurray stated:

“No, we have never considered any exit plans from the supply of sand and gravel aggregates

[REDACTED]

The Commission’s assessment of the relevant counterfactual

4.9 The Commission has seen no evidence indicating that Kilmurray would cease supplying sand and gravel from the Target Site absent the Proposed Transaction or that the prevailing conditions of competition in the supply of sand and gravel would change absent the Proposed Transaction.

The Commission’s conclusion on the relevant counterfactual

4.10 For the purposes of assessing the competitive effects of the Proposed Transaction, the Commission considers that the relevant counterfactual is that, absent the Proposed Transaction, Kilmurray would remain active in the supply of sand and gravel from the Target Site and the prevailing conditions of competition in the supply of sand and gravel would be maintained.

¹⁶³ Merger Notification Form, section 5.3, page 25.

¹⁶⁴ Kilmurray Phase 1 RFI Response, question 13.

5. COMPETITIVE ASSESSMENT UNILATERAL EFFECTS

Introduction

- 5.1 In this section, the Commission sets out its analysis of the likelihood of horizontal unilateral effects occurring from the implementation of the Proposed Transaction in the potential market for the supply of sand and gravel within 50km of the Target Site.

Relevant Principles

- 5.2 Unilateral effects, as explained in paragraph 4.8 of the Commission’s Merger Guidelines, occur when *“a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors.”*
- 5.3 In addition, the European Commission’s “Guidelines on the assessment of horizontal mergers under the Council Regulations on the control of concentrations between undertakings”, (the “EC Horizontal Merger Guidelines”) state the following in respect of *“Non-coordinated effects”*:

“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. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms’ price increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market.

A number of factors, which taken separately are not necessarily decisive, may influence whether significant non-coordinated effects are likely to result from a merger. Not all of these factors need to be present for such effects to be likely”.

5.4 In considering the likelihood of the Proposed Transaction resulting in unilateral effects, the Commission assessed the arguments put forward by the Parties and the evidence collected from the Parties and third parties.

The likelihood of unilateral effects

5.5 During the course of its investigation, the Commission identified one potential unilateral horizontal effects theory of harm (i.e., how the Proposed Transaction could result in an SLC):

- **Potential Theory of Harm** – the Proposed Transaction may result in Kilsaran reducing the amount of sand and gravel sold externally from the Target Site, thereby significantly lessening competition and resulting in higher prices among the remaining suppliers.

5.6 The Commission assesses the likelihood of this potential theory of harm below.

The supply of sand and gravel within 50km of the Target Site

Market structure and concentration

5.7 As outlined above, Kilmurray owns and operates the Target Site, from which it extracts and sells sand and gravel. Kilsaran owns and operates five sand and gravel pits within 50km of the Target Site.¹⁶⁵

Market shares provided by the Parties

5.8 The Parties provided estimated market shares in the production and supply of primary aggregates in the Merger Notification Form. These estimates did not distinguish between sand and gravel pits and rock quarries and were based on a supplier's number of sites. The Parties stated the following in relation to their market share estimates:

“The above estimates assume that sites are the same size and produce the same amount, and as such are artificial. Further, they do not reflect that [sic] fact that each site within the radius has its own localised market (put another way, its own separate radius) which will include its own set of competitors, and so are not a reasonable

¹⁶⁵ [REDACTED]

representation of competition exerted by competitors outside the boundaries of the radius.”¹⁶⁶

5.9 The Commission considers that there are several issues with the estimated market shares provided by the Parties:

- First, as the estimated shares are based on the number of sites each supplier owns, they do not capture the relative size of each site (and, by extension, each supplier) within the catchment area;
- Second, some suppliers, such as Roadstone, are also active in the downstream production of aggregate-based construction products. These suppliers use (to varying degrees) the sand and gravel they produce for their own downstream production requirements. Therefore, site ownership does not reflect the extent to which suppliers sell sand and gravel to third parties; and,
- Third, some of the listed suppliers informed the Commission that they are no longer active in the production and supply of sand and gravel.

Commission’s approach to market shares

5.10 In light of the above, and in order to be able to fully assess market structure and concentration, the Commission sought information from the Parties and third parties.

5.11 The Commission sought to engage with every supplier of sand and gravel located within 80km of the Target Site.¹⁶⁷ This included contacting the suppliers identified by the Parties, as well as suppliers identified by third parties and suppliers identified by the Commission’s own market research. The Commission specifically sought information in relation to suppliers’ production and sales of sand and gravel. This information was gathered through the issuing of information requests, emails, calls and site visits.

5.12 While the Commission engaged with a considerable number of third parties during its review of the Proposed Transaction, some third parties did not engage with the Commission or were

¹⁶⁶ Merger Notification Form, section 5.2.




¹⁶⁷ Kilsaran views 80km as the appropriate geographic market, see Merger Notification Form, section 5.1.

otherwise uncontactable.¹⁶⁸ The Commission visited certain suppliers’ sites where it was unable to contact these suppliers by phone or email.¹⁶⁹

5.13 The Commission has compiled production and sales information from a wide range of suppliers of sand and gravel and has used this information to produce estimated shares in the supply of sand and gravel within 50km of the Target Site in 2023.¹⁷⁰ However, given not all suppliers engaged with the Commission and the different levels of engagement the Commission received, these estimated shares are likely to represent an incomplete picture of the structure of the market. Specifically, it is likely that each listed party’s true share of the supply of sand and gravel within 50km of the Target Site in 2023 is less than that listed in Table 1, but it has not been possible for the Commission to determine by how much.

5.14 Table 1 lists the estimated shares of different suppliers of sand and gravel within 50km of the Target Site in 2023.



Table 1: The supply of sand and gravel within 50km of the Target Site in 2023

Supplier	Number of sand and gravel pits	Supply in 2023 (tonnes)	Estimated Share of supply of sand and gravel within 50km of the Target Site in 2023
Kilmurray	1		[20-25]%
Kilsaran	5		[0-5]%
Combined	6		[20-25]%



¹⁶⁸ Several suppliers listed by the Parties did not have an online presence, phone number or email.

¹⁶⁹ The Commission visited six third party sites during the course of its review of the Proposed Transaction. Several suppliers listed by the Parties did not have an online presence or an identifiable office or sand and gravel pit on Google Maps.

¹⁷⁰ Certain suppliers listed in Table 2 are located just over 50km from the Target Site. These suppliers are Dowling Quarries, J.W. Carnegie, Hudson Brothers, and Dempsey Sand and Gravel. Several third parties have identified these suppliers as alternative suppliers to Kilmurray. Given these suppliers are located just outside the 50km catchment area and have been cited as alternative suppliers by customers, the Commission has included them for the purposes of calculating estimated market shares.

Roadstone	3		[20-25]%
Dowling Quarries	1		[10-15]%
J.W. Carnegie	1		[10-15]%
Hudson Brothers	1		[10-15]%
Dempsey S&G	1		[0-5]%
JJ Flood	1		[0-5]%
Others ¹⁷¹	7		[5-10]%
Total	21+		100%¹⁷²

Source: The Commission, based on information provided by the Parties and third parties

5.15 As shown in Table 1, Kilsaran’s estimated share will increase from under  to approximately  in the supply of sand and gravel within 50km of the Target Site following the implementation of the Proposed Transaction. A number of other suppliers of sand and gravel will remain active in the relevant catchment area following the implementation of the Proposed Transaction, including Roadstone [20-25]%, Dowling Quarries [10-15], J.W. Carnegie [10-15]% and Hudson Brothers [10-15].

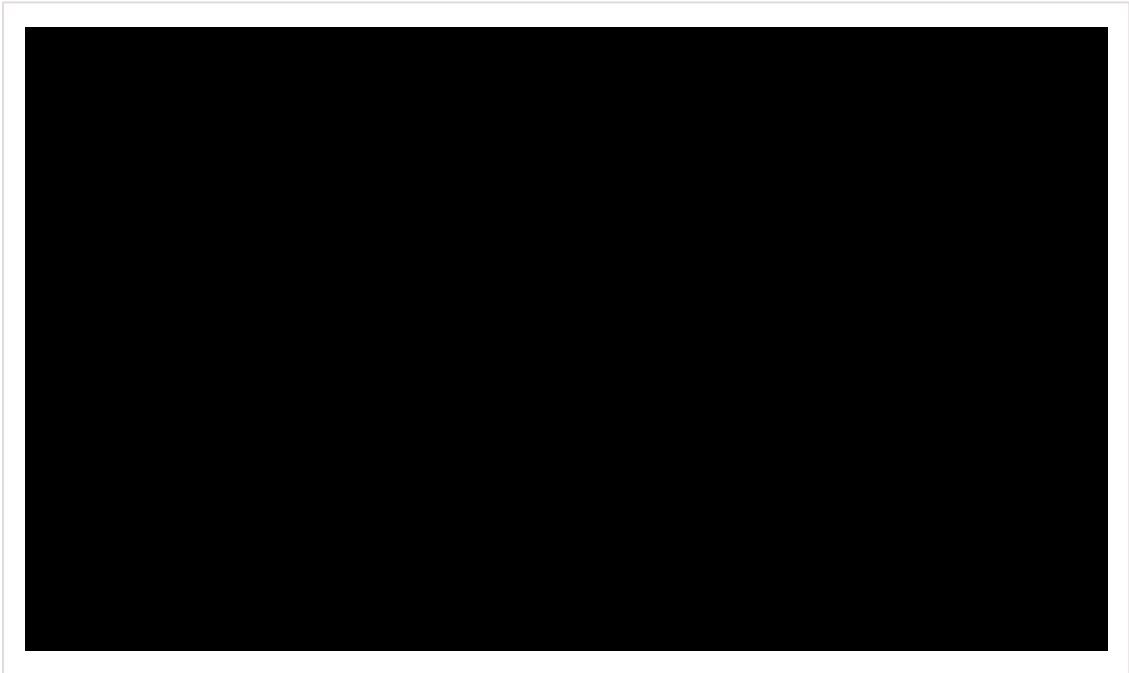
The Target Site’s estimated share

5.16 The Commission notes that the Target Site’s annual production of sand and gravel has varied in recent years (see Figure 8 below).

¹⁷¹ Owens Quarry Products, Loughnane Concrete, Hinch Hire Plant, Harton Sand and Gravel, Smyth Sand and Gravel, N & C Building Company 1, P. Plunkett.

¹⁷² Market shares have been rounded.

Figure 8: The Target Site's Sand and Gravel Production, 2019 to 2023



Source: The Commission, based on information provided by Kilmurray¹⁷³

- 5.17 The Target Site's production of sand and gravel in 2023 was approximately [redacted] higher than its 2022 level (and [redacted] higher than its 2021 level and [redacted] higher than its 2020 level).
- 5.18 Kilmurray accredits this variation in production to numerous factors, including: (i) an increase in the amount of aggregates it purchased for resale (thereby preserving its own sand and gravel reserves);¹⁷⁴ and (ii) switching to producing crushed rock on a temporary basis.¹⁷⁵
- 5.19 The Commission does not have sufficient production and sales data from third parties to assess whether the estimated market shares in the supply of sand and gravel within 50km of the Target Site have remained stable in recent years. The Commission recognises that the Target Site's production of sand and gravel has varied in recent years and that 2023 may not be fully representative of average annual production.

¹⁷³ Kilmurray Phase 1 RFI Response, question 2.


















¹⁷⁴ Kilmurray purchases aggregates for resale from a range of suppliers, including Kilsaran, Roadstone, Snow's Quarry, Breedon, [redacted], Shay Murtagh and Arkil.

¹⁷⁵ Kilmurray Phase 1 RFI Response, question 1 and 2. [redacted]

Kilsaran’s presence as a supplier of sand and gravel to third parties

5.20 While Kilsaran operates five sand and gravel pits within 50km of the Target Site, it uses most of the sand and gravel that it produces in these sites for its own downstream production requirements (see Table 2 below).

Table 2: Kilsaran’s sales of sand and gravel within 50km of the Target Site, 2019 to 2023

Kilsaran site	Percentage of sand and gravel produced that was sold to external customers				
	2019	2020	2021	2022	2023
Thorntons / Ballynamona					
Brownstown					
Curragh					
[REDACTED]					
Tullamore					

Source: The Commission, based on information provided by Kilsaran¹⁷⁶

5.21 Given that Kilsaran uses most of the sand and gravel that it produces from these sites for its own downstream production requirements, it has a relatively small presence in the potential market for the supply of sand and gravel within 50km of the Target Site ([0-5]% share in 2023).

¹⁷⁶ Kilsaran Phase 2 RFI Response, question 35(i).

- 5.22 During the Commission’s review of the Proposed Transaction, several third parties expressed concern that Kilsaran would cease supplying sand and gravel to third parties from the Target Site following the implementation of the Proposed Transaction.
- 5.23 The Commission has noted the limited extent to which Kilsaran currently sells sand and gravel to third parties and the fact that it is one of Kilmurray’s largest customers. This has been taken into account in considering the likely competitive impact if, following the implementation of the Proposed Transaction, Kilsaran stopped or significantly reduced sales of sand and gravel from the Target Site to third parties.

The Target Site following the implementation of the Proposed Transaction

- 5.24 Kilsaran stated the following with respect to the commercial rationale for the Proposed Transaction:

“Kilsaran Group believes that the Proposed Transaction will help to ensure it has a sustainable raw material supply chain for its operations, including for both internal manufacturing and external aggregate sales.”¹⁷⁷

Kilsaran’s current practice (i.e. prior to the Proposed Transaction)

- 5.25 Kilsaran primarily uses sand and gravel (whether extracted from its own pits or purchased from other suppliers) to produce aggregate-based construction products, namely concrete. Sand and gravel, as well as crushed rock, is a key input into the production of these aggregate-based construction products.
- 5.26 Kilsaran stated that it currently sells approximately [REDACTED] of the aggregates that it produces (both crushed rock and sand and gravel) to third parties, [REDACTED].¹⁷⁸ Kilsaran provided the following explanation of the importance of aggregates to its aggregate-based construction products business:

- “[a]ggregate resources are the foundation of Kilsaran’s business, both in value-added manufacturing and [REDACTED] as a direct supplier of aggregates (including

¹⁷⁷ Merger Notification Form, section 2.6.

¹⁷⁸ Merger Notification Form, section 5.3. Kilsaran did not distinguish between sand and gravel and crushed rock.

sand and gravel) to the open market. [REDACTED] [REDACTED]
[REDACTED]”¹⁷⁹

- [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]”¹⁸⁰

5.27 Aggregates are a key input into Kilsaran’s downstream production process. While Kilsaran sells approximately [REDACTED] of its total aggregates (crushed rock and sand and gravel) externally, [REDACTED]
[REDACTED] (see Table 2 above). The Commission considers that Kilsaran’s five sites within 50km of the Target Site are [REDACTED] focused toward producing sand and gravel for its own downstream production needs and not supplying third parties.

Kilsaran’s proposed practice (Post Transaction)

5.28 Kilsaran outlined its plans for the Target Site following the implementation of the Proposed Transaction in a presentation to the Commission. In this presentation, Kilsaran stated that:

- *“Kilsaran’s objective is to ensure a sustainable supply of aggregate raw materials for its aggregate-based construction products business [REDACTED] [REDACTED]”*¹⁸¹
- [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]”¹⁸²

¹⁷⁹ Kilsaran Phase 1 RFI Response, question 13.

¹⁸⁰ Kilsaran Presentation, dated 21 March 2024, slide 4.

¹⁸¹ Kilsaran Presentation, dated 21 March 2024, slide 4.

¹⁸² Kilsaran Presentation, dated 21 March 2024, slide 12.

- *“External supply to the local market forms another key part of this transaction. Kilsaran’s production assumptions indicate that a figure of [REDACTED]. could be made available to the local market from the Derryarkin site.”¹⁸³*

5.29 Several third parties contacted by the Commission questioned whether Kilsaran would continue to sell sand and gravel from the Target Site following the implementation of the Proposed Transaction, with some third parties stating that they believe Kilsaran would cease supplying sand and gravel from the Target Site.¹⁸⁴

5.30 Sand and gravel are key inputs into Kilsaran’s downstream production processes and are finite resources. [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Based on the information available to it, the Commission considers that it is possible that following the implementation of the Proposed Transaction, Kilsaran may reduce the amount of sand and gravel that is sold to third parties from the Target Site, and instead use the sand and gravel from the Target Site to supply its downstream production processes. However, the Commission also notes that the proportion of sand and gravel Kilsaran produces within 50km of the Target Site which is currently sold externally, as set out in Table 2, is [REDACTED] its level of external sales nationally, and therefore it appears that the Proposed Transaction will not lead to a significant reduction in the amount of sand and gravel sold externally by Kilsaran, after implementation of the Proposed Transaction.

5.31 Therefore, the Commission considered whether this would result in a substantial lessening of competition in the potential market for the supply of sand and gravel within 50km of the Target Site.

The supply of sand and gravel within 50km of the Target Site following the implementation of the Proposed Transaction

5.32 As outlined above, the Commission considers that Kilsaran may reduce sales of sand and gravel from the Target Site following the implementation of the Proposed Transaction. The Commission considers, however, that were this reduction in supply to occur, it would not lead

¹⁸³ Kilsaran Presentation, dated 21 March 2024, slide 4.

¹⁸⁴ Snow’s Quarry Call Note, dated 9 April 2024 and [REDACTED] Call Note, dated 7 December 2023.

to an SLC in the market for the supply of sand and gravel within 50km of the Target Site for the following reasons:

- A number of alternative suppliers of sand and gravel will remain active within 50km of the Target Site following the implementation of the Proposed Transaction; and,
- A reduction in the supply of sand and gravel from the Target Site following the implementation of the Proposed Transaction will likely be offset by an expansion in the supply of sand and gravel by existing suppliers located within 50km of the Target Site.

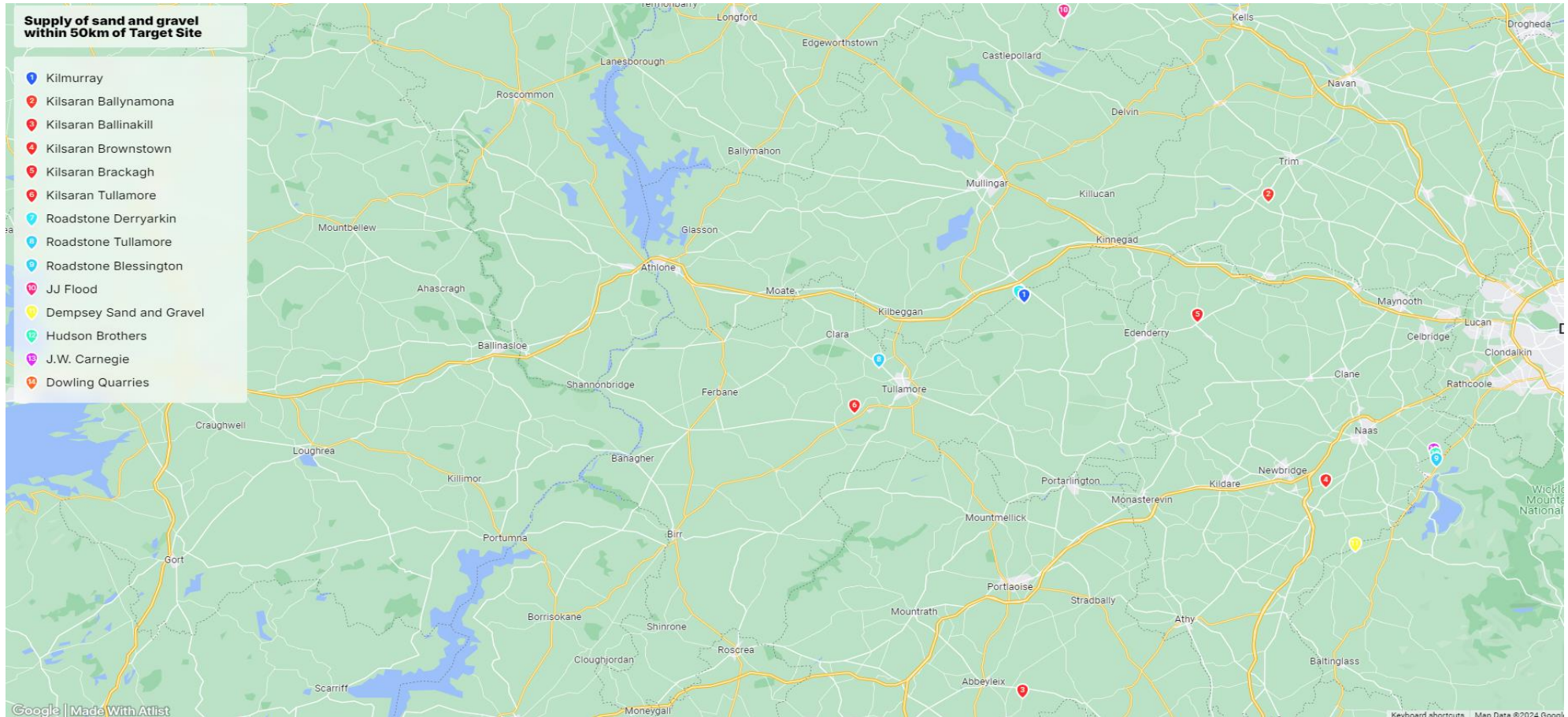
5.33 The Commission discusses both reasons in detail below.

Alternative suppliers of sand and gravel

5.34 As shown in Map 1 below, a number of alternative suppliers of sand and gravel will remain active within 50km of the Target Site following the implementation of the Proposed Transaction. The largest remaining sand and gravel suppliers located within 50km of the Target Site include Roadstone, Dowling Quarries, J.W. Carnegie's and Hudson Brothers.¹⁸⁵

¹⁸⁵ As noted above, certain third party suppliers are located just beyond 50km from the Target Site but have been cited by several third parties as alternative suppliers to the Target Site. Consequently, the Commission has included these suppliers within the catchment area for the purposes of its assessment of the Proposed Transaction.

Map 1: Certain suppliers of sand and gravel within 50km of the Target Site¹⁸⁶



Source: The Commission, based on information provided by the Parties and third parties

¹⁸⁶ Map 1 only lists those suppliers with an estimated share above 2%. As listed in Table 2, there are several suppliers with estimated shares below 2% that are not listed on Map 1.

5.35 As can be seen in Table 1 above, Roadstone is the second largest supplier of sand and gravel within 50km of the Target Site, with an approximately [REDACTED] share. Roadstone owns and operates three sand and gravel pits located within 50km of the Target Site:

- Derryarkin, Co. Westmeath, approximately 2km from the Target Site;
- Tullamore, Co. Offaly, approximately 20km from the Target Site; and,
- Blessington, Co. Wicklow, approximately 55km from the Target Site.¹⁸⁷

5.36 While Roadstone is active in the downstream production of aggregate-based construction products, it also sells sand and gravel to third parties. In 2023:

- [REDACTED] of the sand and gravel produced by Roadstone from its pit in Derryarkin was sold to third parties;
- [REDACTED] of the sand and gravel produced by Roadstone from its pit in Tullamore was sold to third parties; and,
- [REDACTED] of the sand and gravel produced by Roadstone from its pit in Blessington was sold to third parties.¹⁸⁸

5.37 Therefore, while Roadstone uses [REDACTED] of the sand and gravel its sites produce, it also sells a [REDACTED] its sand and gravel externally. Reflecting this, numerous third parties contacted by the Commission identified Roadstone as an alternative sand and gravel supplier to whom they would switch, or consider switching, if they could no longer purchase sand and gravel from Kilmurray. Furthermore, several third parties informed the Commission that they currently purchase sand and gravel from Roadstone (either in addition to purchasing from Kilmurray or as an alternative to purchasing from Kilmurray). One third party informed the Commission that they recently switched their purchases of sand and gravel from Kilmurray to Roadstone.¹⁸⁹

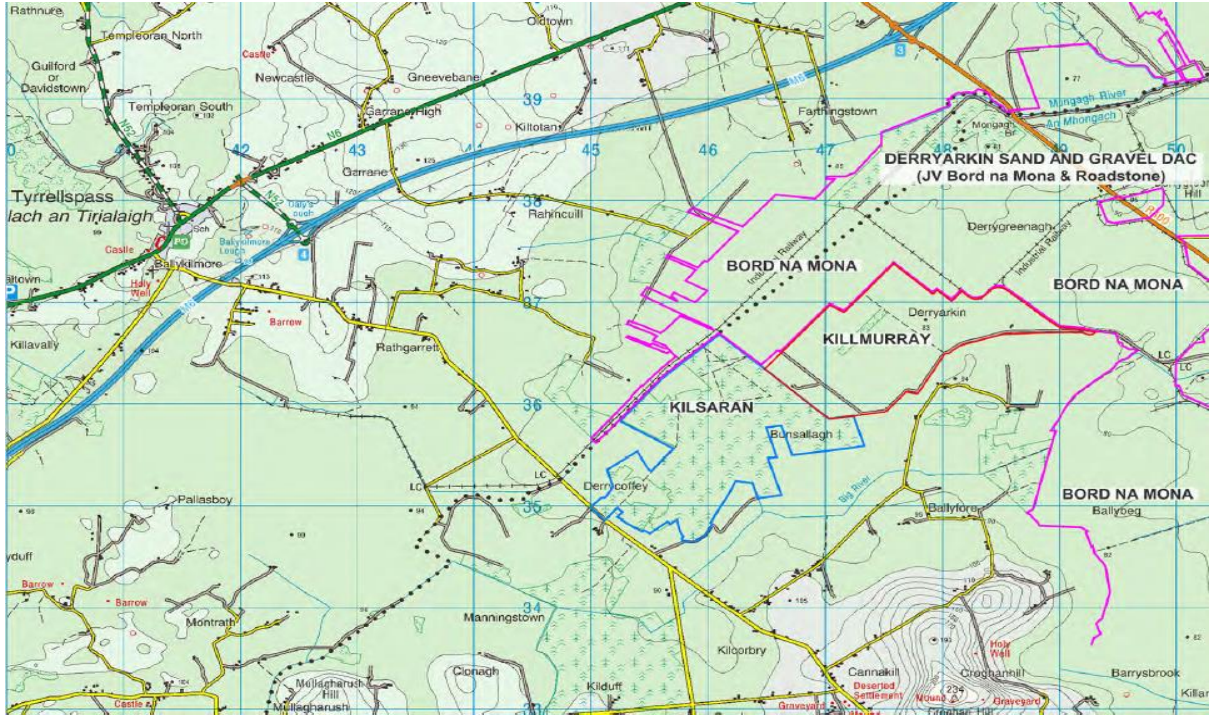
¹⁸⁷ As noted above, the Commission has included suppliers that reside just beyond 50km from the Target Site in its assessment of the supply of sand and gravel.

¹⁸⁸ Roadstone response to Information Request, Appendix 1.

¹⁸⁹ Killeshal Precast Concrete Limited Call Note, dated 19 February, page 2.

5.38 Roadstone’s nearest sand and gravel pit is located next to the Target Site, as shown in Map 2 below.

Map 2: The Target Site & Roadstone’s sand and gravel pit (labelled Bord na Móna)



Source: Kilsaran¹⁹⁰

5.39 Following the implementation of the Proposed Transaction, customers will continue to be able to purchase sand and gravel from Roadstone, which is a large supplier, with a site located directly next to the Target Site.

5.40 In addition to Roadstone, there are other suppliers that will continue to sell sand and gravel following the implementation of the Proposed Transaction. The following suppliers have been cited by several third parties as alternative suppliers of sand and gravel:

- **J.W. Carnegie:** J.W. Carnegie’s sand and gravel pit is located near Blessington, Co. Wicklow, and holds an approximately [10-15]% share in the supply of sand and gravel within the catchment area. J.W. Carnegie supplies sand and gravel to concrete manufacturers, construction contractors and local authorities. Similarly to Kilmurray, J.W. Carnegie is not active in the production of aggregate-based construction products.

¹⁹⁰ Kilsaran Phase 2 RFI Response, question 43, document titled “Prod1446”.

- **Dowling Quarries:** Dowling Quarries owns a hard rock quarry and a sand and gravel pit, both located in Co. Laois. Dowling Quarries holds an approximately [10-15]% share in the supply of sand and gravel within the catchment area and supplies sand and gravel to a range of customers. Dowling Quarries is vertically integrated as it also sells ready-mix concrete.
- **Hudson Brothers:** Hudson Brothers operates one extractive site located in Blessington, Co. Wicklow, from which it extracts both crushed rock and sand and gravel. Hudson Brothers holds an approximately [10-15]% share in the supply of sand and gravel within the catchment area. Hudson Brothers is an independent supplier; it does not produce aggregate-based construction products.
- **Owens Quarry Products:** Owens Quarry Products owns a rock quarry and a sand and gravel pit located in Co. Westmeath. Owens Quarry Products holds an approximately [0-5]% share in the supply of sand and gravel and is located approximately 25km from the Target Site. Owens Quarry Products also produces concrete.

5.41 The Commission considers that these suppliers and others¹⁹¹ will continue to sell sand and gravel following the implementation of the Proposed Transaction and will continue to compete for customers within 50km of the Target Site.

Expansion of the supply of sand and gravel

5.42 The Commission has also considered whether competing suppliers located within 50km of the Target Site would increase the amount of sand and gravel they sell should demand increase. This increase in demand could arise from Kilmurray's current sand and gravel customers switching to other suppliers if Kilsaran were to significantly reduce the amount of sand and gravel sold from the Target Site following the Proposed Transaction.

5.43 The following suppliers informed the Commission that they could increase their sales of sand and gravel to meet an increase in demand:

¹⁹¹ Loughnane Concrete, Hinch Hire Plant, Harton Sand and Gravel, Smyth Sand and Gravel.

- **Roadstone:** Roadstone stated that it generally seeks to meet customer requirements for sales of sand and gravel and would continue to do so if demand were to increase, subject to available reserves.¹⁹²
- **Dowling Quarries:** Dowling Quarries, one of the largest suppliers of sand and gravel within 50km of the Target Site, informed the Commission that it *“would increase our sales of sand & gravel if demand were to increase. We wouldn’t see any challenges as we [REDACTED] [REDACTED]”*¹⁹³ With respect to spare capacity, Dowling Quarries stated that its [REDACTED] spare capacity of [REDACTED] [REDACTED].¹⁹⁴
- **Hudson Brothers:** Hudson Brothers, a large supplier of sand and gravel within 50km of the Target Site, informed the Commission that it *“would increase sales if demand for sand and gravel were to increase”*. Hudson Brothers stated, however, that *“the main challenge we are facing is the current planning restrictions which curtail our production.”*
- **Owens Quarry Products:** Owens Quarry Products stated that it would increase its sales of sand and gravel if demand were to increase and that it would face no challenges in doing so.¹⁹⁵
- **Loughnane Concrete:** Loughnane Concrete informed the Commission that it would increase sales if demand for sand and gravel were to increase as they have spare capacity and no immediate issues with planning permission. With respect to spare capacity, Loughnane Concrete stated that [REDACTED] spare capacity [REDACTED] [REDACTED].
- **Hinch Plant Hire:** Hinch Plant Hire informed the Commission that it would increase sales of sand and gravel if demand increased. With respect to spare capacity, Hinch

¹⁹² Roadstone email to the Commission.

¹⁹³ Dowling Quarries email to the Commission.

¹⁹⁴ Dowling Quarries email to the Commission.

¹⁹⁵ Owens Quarry Products email to the Commission.

Plant Hire stated that [REDACTED] spare capacity of [REDACTED]
[REDACTED]

- **JJ Flood:** JJ Flood, another supplier of sand and gravel in the catchment area, stated that if demand were to increase, it would have “no problems” increasing production of sand and gravel.¹⁹⁶
- **P. Plunkett:** P. Plunkett stated that it would increase sales in line with demand and noted that the availability of raw materials would be the biggest challenge.¹⁹⁷

5.44 Other suppliers located within 50km of the Target Site did not respond to the Commission’s questions about their ability to increase their sales of sand and gravel in response to an increase in demand.

5.45 The Commission considers that the suppliers listed in paragraph 5.44 above would likely increase their sales of sand and gravel in response to an increase in demand. The Commission notes that certain of these suppliers, such as Hudson Brothers, are not vertically integrated and are likely to be fully incentivised to increase their sales of sand and gravel if demand were to increase.

5.46 Taking into account Kilsaran’s own estimated internal requirements and committed supply arrangements for sand and gravel, the Commission notes that approximately [REDACTED] tonnes of sand and gravel per annum could potentially be withdrawn from the market by Kilsaran following the implementation of the Proposed Transaction. However, Dowling Quarries’ stated spare capacity [REDACTED], if supplied to third parties in response to an increase in demand, would largely offset the reduction in supply that would arise if Kilsaran stopped selling sand and gravel to third parties from the Target Site following the implementation of the Proposed Transaction.¹⁹⁸

5.47 The Commission considers that, in the event that Kilsaran significantly reduces the supply of sand and gravel to third parties from the Target Site, the remaining suppliers active within 50km of the Target Site would likely increase their sales of sand and gravel to meet a resulting

¹⁹⁶ JJ Flood email to the Commission.

¹⁹⁷ P. Plunkett email to the Commission.

¹⁹⁸ [REDACTED]
[REDACTED]

increase in demand, and, in that scenario, the market will remain competitive with a number of competing suppliers.

Commission's conclusion

5.48 Therefore, for the reasons set out above, the Commission considers that the Proposed Transaction does not raise horizontal competition concerns in the supply of sand and gravel within 50km of the Target Site.

6. COMPETITIVE ASSESSMENT COORDINATED EFFECTS

- 6.1 Coordinated effects can occur where a proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will coordinate their behaviour by, for example, raising prices and/or decreasing output. Thus, the key question¹⁹⁹ is whether a proposed transaction would materially increase the likelihood that firms would successfully coordinate their behaviour or would strengthen existing coordination between firms in this market.
- 6.2 Section 5 sets out that, based on the information in the possession of the Commission, the likely effects of the Proposed Transaction are mainly unilateral in nature.
- 6.3 On the basis of the information in the possession of the Commission, no plausible coordinated effects theory of harm was identified given the relevant counterfactual. Therefore, no further discussion of coordinated effects is carried out for the purposes of assessing the likely effects of the Proposed Transaction in the identified potential relevant markets.

¹⁹⁹ The Commission's Merger Guidelines, paragraph 4.23.

7. VERTICAL RELATIONSHIP

Introduction

7.1 The Commission has identified one vertical relationship between the Parties, as Kilsaran currently purchases sand and gravel from Kilmurray.

Relevant Principles

7.2 Vertical effects can occur where a proposed transaction changes the ability and incentives of the parties involved in the transaction, making it more likely that the merged entity will engage in either customer foreclosure or input foreclosure. Thus, the key question for the Commission to consider is whether a proposed transaction would materially increase the likelihood of customer foreclosure or input foreclosure due to the merger's effects on the merged entity's ability and incentive to foreclose its upstream and/or downstream competitors.²⁰⁰

7.3 The Commission's analysis of foreclosure arising from a merger involving a vertical overlap includes an examination of (i) the ability of the merged party to foreclose upstream or downstream competitors in spite of competitive constraints and/or consumer behaviour, (ii) the incentive for the merged entity to foreclose upstream or downstream competitors, and (iii) the likely effect on competition, particularly whether foreclosure would result in an SLC. The merged entity's ability and incentive to foreclose competitors does not depend on the existence of a vertical relationship pre-merger. Rather, the ability and incentive to foreclose depends on the scenario post-merger.²⁰¹

Potential Theory of Harm

7.4 The Commission has assessed the arguments put forward by the Parties and the evidence collected from the Parties and third parties. The Commission has identified the following potential theory of harm (i.e., how the Proposed Transaction is likely to result in an SLC):

- **Theory of Harm** – the Proposed Transaction may result in Kilsaran foreclosing rival downstream concrete manufacturers in the supply of sand and gravel, thereby significantly lessening competition.

²⁰⁰ The Commission's Merger Guidelines, paragraph 5.7- 5.17.

²⁰¹ The Commission's Merger Guidelines, paragraph 5.8.

7.5 The Commission assesses the likelihood of this potential theory of harm below.

The supply of aggregate-based construction products

7.6 Kilmurray sells the sand and gravel it extracts from the Target Site to third parties, including Kilsaran. The Commission has considered whether the Proposed Transaction gives rise to vertical foreclosure concerns, namely input foreclosure and customer foreclosure.

Input foreclosure

7.7 As outlined in Section 5 above, Kilsaran’s sand and gravel pits within 50km of the Target Site are [redacted] focused on supplying Kilsaran’s own downstream concrete production requirements; [redacted] [redacted] [redacted] [redacted] [redacted] [redacted], the Commission considers it possible that Kilsaran will reduce the quantity of sand and gravel that is sold from the Target Site to third parties following the implementation of the Proposed Transaction.²⁰³

7.8 The Commission has considered whether the Proposed Transaction would give Kilsaran the ability or incentive to foreclose its downstream rivals and whether the effect of such foreclosure (should it occur) would result in an SLC.

7.9 While Kilsaran may limit sand and gravel sales from the Target Site following the implementation of the Proposed Transaction, the Commission considers that the Proposed Transaction does not result in Kilsaran gaining the ability to engage in input foreclosure for the following reasons:

7.10 **First, Kilsaran would not have sufficient market power in the upstream supply of sand and gravel within 50km of the Target Site following the implementation of the Proposed Transaction.** As noted in the Commission’s Merger Guidelines, competition concerns may arise from input foreclosure only where the merged entity has market power in the upstream market

²⁰² Table 2 above.

²⁰³ In this respect, the Commission notes paragraph 45 of the European Commission’s Vertical Merger Guidelines, which states that “[i]n its assessment of the likely incentives of the merged firm, the Commission may take into account various considerations such as the ownership structure of the merged entity, the type of strategies adopted on the market in the past (emphasis added) or the content of internal strategic documents such as business plans.” As explained in detail in paragraphs 5.20 – 5.23 and 5.25 to 5.27 above, the Commission considers that, given the limited extent of Kilsaran’s sales of sand and gravel to third parties within 50km of the Target Site, and the importance of sand and gravel as an input into Kilsaran’s downstream production processes, it is likely that Kilsaran may be incentivised to significantly limit sand and gravel sales from the Target Site following the implementation of the Proposed Transaction.

(in this case, the supply of sand and gravel within 50km of the Target Site).²⁰⁴ As outlined in Section 5 above, Kilsaran will have an approximately [20-25]% share in the supply of sand and gravel within 50km of the Target Site following the Proposed Transaction.²⁰⁵ Kilsaran will continue to be constrained by a range of suppliers, including Roadstone [20-25]%, Dowling Quarries [10-15]%, J.W. Carnegie [10-15]%, Hudson Brothers [10-15]% and others following the implementation of the Proposed Transaction.²⁰⁶ Furthermore, several competing suppliers stated that they have the ability to increase sales if demand were to increase, or competing suppliers were to decrease supply. Consequently, any attempt by Kilsaran to engage in an input foreclosure strategy following the implementation of the Proposed Transaction is unlikely to be successful as downstream competitors (i.e., concrete manufacturers) can easily switch to alternative sand and gravel suppliers. Therefore, following the Proposed Transaction, Kilsaran does not have the required market power in the upstream supply of sand and gravel to have the ability to engage in input foreclosure.

7.11 **Second, most concrete manufacturers that currently purchase sand and gravel from Kilmurray are vertically integrated and operate their own sand and gravel pit(s).** The Commission contacted several concrete manufacturers that have recently purchased sand and gravel from Kilmurray. The majority of these concrete manufacturers have their own sand and gravel pit(s) and self-supply sand and gravel to varying degrees, ranging from approximately two-thirds of their requirement for sand and gravel to being almost fully self-sufficient. Most concrete manufacturers will therefore continue to be able to draw on their own internal supplies of sand and gravel following the implementation of the Proposed Transaction. Consequently, any attempt by Kilsaran to engage in an input foreclosure strategy following the implementation of the Proposed Transaction is unlikely to be successful as downstream competitors (i.e., concrete manufacturers) can self-supply their own sand and gravel.²⁰⁷

²⁰⁴ The Commission's Merger Guidelines, paragraph 5.10.

²⁰⁵ As noted in Section 5 above, the Commission notes that the Target Site's production has varied over time, [REDACTED]. Consequently, Kilmurray's share in the supply of sand and gravel within the catchment area may be lower than [20-25]% going forward.

²⁰⁶ Numerous third parties have identified these suppliers as alternative suppliers of sand and gravel to Kilmurray.

²⁰⁷ Paragraph 50 of the European Commission's Vertical Merger Guidelines, which states "[i]f there remain sufficient credible downstream competitors whose costs are not likely to be raised, for example because **they are themselves vertically integrated** (emphasis added) or they are capable of switching to adequate alternative inputs, competition from those firms may constitute a sufficient constraint on the merged entity and therefore prevent output prices from rising above pre-merger levels."

7.12 In light of these reasons, the Commission considers that Kilsaran does not have the ability or the incentive to engage in input foreclosure in the supply of sand and gravel within 50km of the Target Site.

Customer foreclosure

7.13 The Commission considers that the implementation of the Proposed Transaction would not give Kilsaran the ability or incentive to engage in customer foreclosure of sand and gravel suppliers for the following reason:

7.14 **Sand and gravel suppliers can continue to sell to a range of other customers.** Should Kilsaran cease purchasing sand and gravel from third party suppliers, said suppliers can continue to sell sand and gravel to a range of customers, including concrete manufacturers (Keegans, [REDACTED] and others) and construction contractors. The Commission also notes that no suppliers raised concerns with regard to Kilsaran ceasing or limiting its purchases of sand and gravel from third party suppliers.

Conclusion

7.15 In light of the above, the Commission considers that the Proposed Transaction does not raise vertical competition concerns in the State.

8. ANCILLARY RESTRAINTS

8.1 No ancillary restraints were notified.

9. CONCLUSION

- 9.1 In light of its analysis of all the information and evidence available to it, as set out in this Determination, the Commission has formed the view that the Proposed Transaction will not result in a substantial lessening of competition in any of the potential relevant markets.

10. DETERMINATION

The Competition and Consumer Protection Commission (the “Commission”), in accordance with section 22(3)(a) of the Competition Act 2002, as amended, (the “Act”) has determined that the result of the proposed acquisition whereby Kilsaran Concrete Unlimited Company would acquire lands (a sand and gravel pit) at Derryarkin, Rhode, Co. Offaly, fixed assets, a chip processing plant, stock, vehicles, plant, supply and sale contracts, interest in leased assets, goodwill, and two small freehold properties from Kilmurray Precast Concrete Limited will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, that the acquisition may be put into effect.

Before making a determination in this matter, the Commission, in accordance with section 22(8) of the Act, had regard to any relevant international obligations of the State, and concluded that there were none.

For the Competition and Consumer Protection Commission

Brian McHugh

Chairperson

Competition and Consumer Protection Commission



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

