

6 Views of main parties

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Introduction

6.1. This chapter summarizes the views of H+H Celcon and MBM. Paragraphs 6.2 to 6.72 cover their joint views, as set out in submissions common to both of them. Paragraphs 6.73 to 6.133 deal separately with the views of each party on the basis of individual submissions, other documents and hearings.

Jurisdiction

6.2. In their initial joint submission, the main parties took the view that the merger did not qualify for investigation under the assets test in the Act, since MBM's unaudited pro-forma gross assets in 2001 (£[§] million) were below the Act's threshold of £70 million. Nor did the transaction qualify under the 'share of supply' test in the Act because the merged entity would not account for more than 25 per cent of UK supply of all concrete blocks—which, they maintained, was the relevant market—if measured by volume. Both parties pointed to the difficulties in obtaining reliable figures for market share based on value. MBM thought it would be about 25 per cent. However, the main parties conceded that it would be open to the CC to conclude that the share of supply test would be met on the basis of a description of goods confined to aircrete blocks.

6.3. In separate hearings, each of the parties subsequently accepted—without prejudice to the issue of the relevant economic market for the inquiry—that the CC had jurisdiction (see paragraphs 6.74 and 6.119).

Reasons for the merger

6.4. H+H Celcon explained in the main parties' joint memorandum that until 1998 its parent company, H+H International, had been a diversified conglomerate with divisions involved in lightweight concrete products (both aircrete and aggregate), gravel and kitchen furniture. In 1998, however, the company had decided to concentrate its business on the manufacture, sale and marketing of aircrete and lightweight concrete, and the extraction of sand and gravel. By May 2001, all the company's other businesses (including the extraction of sand and gravel) had been sold off.

6.5. As a listed company on the Copenhagen stock exchange, H+H International needed to show that its restructured business was growing and prospering. Among other things, that meant striving to achieve cost effectiveness and innovation, thereby increasing its sales of aircrete in the UK in the face of competition from aggregate blocks and alternative forms of construction.

6.6. Against that background, when H+H International had been approached by Etex as a possible purchaser of MBM/Thermalite, it had taken the view that the acquisition would give it a strategic opportunity to grow its UK business and that the integration of the two aircrete companies would result in synergies and cost savings.

6.7. The cost savings were expected to rise from about £5.7 million in the first year after the merger to about £7.5 million a year in the fourth year and thereafter. Five main potential sources of savings had been identified:

- (a) more efficient manufacture, due mainly to longer production runs;
- (b) elimination of duplicated overheads by combining the two companies' management and administration departments;
- (c) reduced transport costs for finished products due to shorter average travelling distances from a geographically wider range of factories;
- (d) rationalization of stockholding; and
- (e) increased purchasing power stemming from a greater volume of raw materials.

6.8. These synergies would render production more efficient and generate cost savings which would, in particular, enable higher expenditure on R&D. Product development and innovation was one of H+H International's main objectives, especially given competitive pressures from prefabricated construction techniques and the expected consolidation of aircrete manufacturers on the Continent. The increased efficiency resulting from the integration of H+H Celcon and MBM's aircrete block production would generate revenue to develop further H+H Celcon's new Jämerä concept. In the longer term, the synergies would enable H+H International to develop in the UK a new business specializing in the design and manufacture of aircrete production plant and facilities for export around the world in competition with large Continental suppliers such as Ytong.

6.9. There were no plans, however, to reduce the number of factories in production. This would ensure that any redundancies were kept to a minimum.

The relevant markets

6.10. In the opinion of the main parties, the relevant product market for the purpose of the inquiry was at least as wide as all types of concrete blocks. There was, however, increasing evidence of competition from other materials and prefabricated building methods—including timber and steel frame construction and housebuilding panel systems—suggesting that the market could be as wide as all types of material and techniques used for building external or internal walls.

6.11. Whatever the scope of the relevant economic market, the relevant geographic market was at least as wide as the UK.

6.12. Within the UK, each of the main parties had three aircrete manufacturing sites, and both companies distributed blocks across the whole of Great Britain. Prices were negotiated with customers at standard delivered rates, regardless of the size of customers or where their sites or depots were located. Reductions were offered, not on the basis of a customer's distance from an aircrete factory, but according to volume purchased.

6.13. Most large suppliers of aggregate blocks also delivered throughout Great Britain and beyond, though the average distance travelled tended to be shorter than for aircrete: aggregate plants were more numerous and widespread and the product had a relatively lower value-to-weight ratio.

6.14. In addition, there were examples of aircrete blocks being regularly delivered across the whole of the UK. One supplier based in Northern Ireland, Quinn, made sales in Great Britain and the Isle of Man (estimated by H+H Celcon at 50,000m³ a year), as well as in Northern Ireland and the Republic of Ireland.

6.15. Deliveries were made by the main parties either direct to building sites or to builders' merchants. In both cases, transport relied almost entirely on contract hauliers. Accordingly, there was no need to set up extensive distribution networks.

Substitutability between aircrete and aggregate blocks

6.16. Although aircrete and aggregate blocks were manufactured by different processes, they were physically very similar, and offered an overlapping range of properties in terms of density, insulation and load-bearing strength. This meant that the two types of block were substitutable across a comprehensive range of applications. For each part of a house—including foundations, floors, the inner and outer leaves of an external wall and internal partition and party walls—builders could choose from a wide menu of aircrete and aggregate blocks, all capable of performing the same function. There were no applications of aircrete for which aggregate blocks could not be used as a substitute. The reverse, however, was not always the case because aircrete could not be used as a load-bearing block in buildings of over three or four storeys.

6.17. In support of their argument on the extent of substitutability, the main parties presented detailed information from their own and other block manufacturers' product brochures. This identified a wide range of blocks, both aircrete and aggregate, which their makers had promoted as suitable for each of the areas in a house where aircrete could be used.

6.18. It was also not difficult for housebuilders to amend building specifications so as to switch (in either direction) between aircrete and aggregate blocks whilst ensuring compliance with the thermal value requirements of the Building Regulations. Many housebuilders were able to do this for themselves, and block makers typically offered free technical support. Given that construction methods were the same for both aircrete and aggregate blocks, it would be no more difficult to convert specifications from the former to the latter than from one type of aircrete block to another.

Price competition

Price competition between aircrete and aggregate blocks

6.19. The main parties presented a graph, based on figures obtained from an independent firm of quantity surveyors, Davis Langdon and Everest, showing indicative prices for aircrete and lightweight and dense aggregate blocks from 1987 to 2002 (see paragraph 5.25). They interpreted this as demonstrating that:

- (a) trends in aircrete and aggregate block prices over the past 15 years had been very similar; and
- (b) in consequence, the price differential between the two types of blocks had remained broadly constant, at about £1.50. It was therefore deduced that cost increases affecting one type of block but not the other had not been passed on to customers unilaterally. That reflected the strength of competition within the overall market for concrete blocks.

The installed cost of a wall

6.20. The comparative cost of blocks on their own was not, however, the sole, or most important factor in determining the choice between aircrete and aggregate blocks. Despite the fact that aircrete blocks were more expensive, the total installed cost of constructing a wall in a house to meet the Building Regulations was much the same regardless of the type of block. A decision to use aggregate rather than aircrete blocks would mean lower block costs, but involve higher costs for other materials in the wall, notably insulation.

6.21. The main parties said that architects and builders designed houses to a particular set of specifications within a fixed budget. They chose the best materials or methods for the job, taking account of design, cost and the need to ensure compliance with the Building Regulations. These imposed minimum requirements for factors such as thermal insulation, sound insulation and loading. The performance of materials varied against the requirements; so architects and builders specified the products needed to build a house as an integrated package, rather than piecemeal on the basis of individual component cost comparisons.

6.22. Expanding on this point, the parties produced a further piece of analysis by Davis Langdon and Everest (see Appendix 6.1). This gave estimates for seven optional ways of building an external wall with a brick outer leaf and block inner leaf to meet the Building Regulations (that is post-2002). The options included three in which the cavity between the inner and outer leaves was fully filled, and four in which it was partly filled. And for each set, the figures were prepared in terms of a lightweight aggregate block, an aircrete block and a typical medium density aggregate block. The prices ranged from £67.05 per m² to £72.50 per m² (a difference of only £5.45), with the options in which aircrete was used falling between the extremes. Taking account only of those costs that varied according to the type of block which was used (that is, excluding the brick outer skin, plastering of the inner skin and labour) the prices ranged from £19.30 per m² to £24.75 per m².

Impact of regulatory and fiscal changes

6.23. In his advice to the Secretary of State on the proposed merger, the DGFT had commented that 'Imminent fiscal and regulatory changes are likely to reduce the degree of substitutability between aircrete and other concrete blocks'.

6.24. According to the main parties, this approach suggested that the starting point of the DGFT's analysis had been that until the changes were implemented, the products were substitutable and formed part of the same market. In logic, the question was whether the fiscal and regulatory changes at issue would have such a big impact on the relative attractiveness of either aircrete or aggregate blocks that the two could no longer be said to be part of the same product market since customers could not be expected to switch between them in the event of price increases. In fact, the two changes to which the DGFT had referred—amendments to Part L of the Building Regulations and the introduction of the Aggregates Levy—together with a third to which he had not referred—amendments to Part E of the Building Regulations—would have no such effect.

Amendments to Part L of the Building Regulations

6.25. The purpose of these amendments, introduced in April 2002, was to improve the energy efficiency of buildings. The changes to Part L1, relating to dwellings, had reduced the threshold for energy loss through particular elements of the building fabric, including walls. The measurement of energy loss was known as the 'U-value'.¹

6.26. Contrary to the views of the DGFT, the changes to Part L would not reduce substitutability between aircrete and aggregate blocks, for the following reasons:

- (a) It had been possible to meet the U-value for walls under the earlier regulations with a cavity wall using aircrete blocks for the inner leaf and no added insulation. But under the new regulations, additional insulation would be needed, regardless of whether aircrete or aggregate blocks were used.
- (b) Aggregate block manufacturers had produced promotional and technical material to demonstrate how their products could be used to meet the new requirements.
- (c) The U-value for walls had been reduced, by proportionately larger amounts, in 1990 (from 1.0 to 0.6 W/m²K) and again in 1995, to 0.45 W/m²K. But these changes had not led to any significant increase in aircrete's share of the market for concrete blocks. They therefore did not affect the substitutability between different types of blocks.

Amendments to Part E of the Building Regulations

6.27. Part E of the Building Regulations covered sound insulation. The proposed changes—expected to be introduced before the end of 2002—would raise the performance standards for party walls and floors; and, for the first time, introduce standards for walls and floors between rooms within a dwelling.

6.28. The main parties noted that aircrete blocks were a relatively poor sound insulant. The best were widely considered to be dense aggregate blocks, which could, therefore, be expected to benefit from the amendments to Part E at the expense of aircrete.

The Aggregates Levy

6.29. The purpose of the levy, being introduced from April 2002, was to reduce demand for primary aggregates by imposing a specific tax charge to reflect the environmental costs of extraction. The levy was £1.60 per tonne of sand, gravel and aggregates subjected to commercial exploitation in the UK. In practice, the levy did not apply to the raw materials used in the manufacture of aircrete.²

6.30. The main parties contended that, as with the amendments to Part L of the Building Regulations, it was not logical to conclude that the Aggregates Levy would materially reduce the degree of substitutability between aircrete and aggregate blocks. The levy would apply neither to synthetic

¹In the case of walls, the U-value measures, for 1m² of wall, the number of watts of energy transmitted for each degree difference either side of the wall (W/m²K).

²In cases where aircrete manufacturers use virgin silica sand as a raw material (rather than recycled sand or PFA), the levy applies only if the sand performs a mechanical function, as an aggregate, rather than a chemical function.

aggregates, which were used in lightweight aggregate blocks, nor to recycled aggregates, which were increasingly used in the manufacture of many types of dense aggregate blocks.

Alternatives to blocks for building walls

6.31. Prefabricated building techniques and products were a significant and potentially growing competitive constraint on concrete block makers. The parties considered that the constraint was already sufficiently strong to extend the relevant product market definition to all types of walling materials and methods.

6.32. The main alternatives to traditional cavity wall masonry construction were:

- (a) timber and steel frame construction, involving off-site fabrication of frames, to which inner and outer panels were then attached; and
- (b) housebuilding systems based on panels manufactured off-site which were then bolted together to form the house structure.

6.33. Each of these techniques could be used in place of concrete blocks for external walls and their internal leaves, and for partitions.

6.34. The importance of the different construction techniques varied between different parts of the UK and also varied over time within each region. This, the main parties said, demonstrated the existence of a variety of different, but equally effective, methods of construction. In Scotland, for example, 43 per cent of new houses in 2001 were built using timber frames, compared with 5 per cent in England, and 11 per cent in Wales.

6.35. The Scottish figure had recently varied between 40 per cent (in 1995) and 50 per cent (2000). In England, the range had been from 2 per cent (1997) to 5 per cent (currently). And the corresponding figures for Wales were 3 per cent (1998) and 11 per cent (currently).

6.36. In his advice on the transaction, the DGFT had commented that: 'While it has been argued by the parties that the relevant product market should be defined as being that for all walling materials, the limited extent of substitution between other materials such as timber frames does not, in my view, support such a definition.'

6.37. However, market definition was an inherently dynamic concept. The relevant consideration was not the current market shares of particular materials and techniques, but whether a significant proportion of customers would switch between them in response to relative price movements. That was especially pertinent at a time when significant new capacity for alternative building techniques and materials was being installed. Examples included:

- (a) the Space 4 system, for which Westbury had set up a factory capable of producing walls and floors for over 5,000 houses a year;
- (b) the Panablok system marketed by Marshalls (a manufacturer of building materials); and
- (c) H+H Celcon's own Jämerä concept, which used panels of reinforced concrete.

6.38. These and similar developments had been boosted by the publication in July 1998 of the Egan report. Although this had not dealt specifically with concrete blocks, it had proposed targets relating to reductions in construction costs and the number of defects. The report had said that to achieve these targets, the construction industry would 'need to make radical changes to the processes through which it delivers its projects'. As such, the industry had seen the report as being of clear benefit to prefabricated building methods at the expense of traditional brick and block construction.

6.39. Moreover, the trend towards prefabricated methods was likely to be reinforced by the amendments to Part L of the Building Regulations because such methods were able to meet the required thermal standards with relatively thin external walls.

6.40. In short, therefore, the parties argued that both frame and prefabricated panel systems were currently growth areas. As new manufacturing capacity came on stream, the competitive threat against concrete blocks was bound to increase in the short to medium term. Whether or not that threat was yet sufficient to justify a wider product market definition than concrete blocks, the competition which the neighbouring set of products represented could not be ignored. In the light of this, any attempt by the parties to introduce an unjustified price increase would be foolhardy and would further accelerate the trend away from traditional masonry techniques.

Concrete block suppliers: market shares and competition

6.41. Without prejudice to their proposition that the relevant product market might be wider than just concrete blocks, the main parties presented data and other information intended to show the high level of competition among block makers.

6.42. The market for concrete blocks was fragmented. The top 10 suppliers had accounted for about 75 per cent of sales in the year 2000, with over 40 or so further companies responsible for the remainder.

6.43. The main parties' combined share of the supply of concrete blocks for construction in Great Britain had been 20.8 per cent by volume in 2000 (see Table 3.2). If the merger were to proceed, the new entity would remain the second-largest concrete block supplier after Tarmac/Durox,¹ which was currently the only manufacturer of both aircrete and aggregate blocks in the UK. The parties accepted that taking aircrete blocks alone, the merged entity would have a share of over two-thirds by volume.

6.44. One indicator of vigorous competition between suppliers of concrete blocks was price movements over the last 15 years. In the late 1980s, the real (inflation-adjusted) prices of all types of concrete blocks had fallen sharply, and they had remained low ever since. The prices of all types of blocks were lower in 2001 than they had been in 1987, and there had been no material increase in the price of aircrete blocks since the early 1990s.

6.45. Continual product innovation was said by the parties to be a further indicator of competition in the sector. Manufacturers sought to maximize the appeal of their own particular blocks against other blocks and alternative construction methods, or to reduce the advantage gained by a particular feature of a competitor's block. For example:

- (a) Tarmac had developed aggregate blocks with a foil insulating layer;
- (b) Hanson had developed hollow blocks in which the chamber was filled with polyurethane insulation;
- (c) several aggregate block makers had introduced cellular blocks to meet health and safety guidelines on lifting heavy weights, and blocks with thermal characteristics closer to those of aircrete;
- (d) H+H Celcon, MBM and Durox had developed thin joint masonry products;
- (e) MBM had introduced tongue & groove foundation blocks which slotted together; and
- (f) H+H Celcon had invested in a new plant to produce reinforced aircrete elements for walls, floors and roofs.

Countervailing buyer power

6.46. The parties noted with approval the DGFT's comments in his advice on the H+H Celcon/MBM transaction that:

¹Tarmac had acquired Durox from RMC, following regulatory clearance in late 2001.

The largest customers of aircrete block manufacturers are likely to have some degree of buyer power. National buying companies negotiate a national price for aircrete blocks, which may be subject to variations in current prices, but is otherwise fixed for the negotiated period. Similarly, smaller local buyers are often part of national buying groups in order to benefit from national negotiations and possible pricing benefits similar to those available to national builders' merchants.

6.47. MBM's customer base was particularly concentrated, with its five biggest purchasers among housebuilders accounting for over 34 per cent of its total sales in 2000. H+H Celcon's top 5 housebuilder customers, together with its top 5 customers among builders' merchants, accounted for over 45 per cent of its total sales in 2000.

6.48. In recent years, there had been a high degree of concentration in the housebuilding sector and this was continuing. Housebuilders enjoyed considerable buyer power and could switch to aggregate blocks if aircrete blocks were not supplied to them on acceptable terms. The annual contracts negotiated between the parties and the major housebuilders effectively set a maximum price. It was open to the housebuilder to seek to negotiate a lower price during the course of the year. In addition, block makers were contractually bound to make specified volumes available, whereas their customers were not obliged to purchase any particular volume at all.

6.49. A trend towards consolidation had also been apparent in the builders' merchants sector. In addition, some merchants were part of large international groups and were well placed either to import aircrete blocks or to sponsor an alternative manufacturer from the Continent. Further, many of the smaller merchants had joined together to form buyer groups to obtain better prices and volume discounts from concrete block manufacturers.¹ In 2000, the three leading buyer groups had together accounted for more than one-quarter of MBM's total sales.

6.50. The main parties pointed out that the CC had noted the extent of buyer power within the builders' merchants sector in its report on Icopal Holding A/S and Icopal a/s:²

In recent years there has been a growing consolidation with the largest players getting bigger. Among the builders' merchants, examples are Builder Center, Travis Perkins and Jewsons ...

These companies have a strong position in their respective sectors, a sophisticated approach to procurement and considerable buying power. Their market strength is illustrated by their ability to attract customers independently of the branding offered by the manufacturers. As a consequence, they have a clear incentive to price products as part of their own marketing strategy, and they do not see themselves as intermediaries who simply pass on the prices of their suppliers.

6.51. Because merchants handled orders and invoicing in connection with contracts between block makers and major housebuilders, they had a good idea of the prices in those contracts. So they were able to check that the prices which they had negotiated for their own purchases were competitive. If a merchant felt that this was not the case, it would typically threaten to reduce the number of depots at which the particular supplier's product was stocked.

6.52. Merchants were therefore extremely price sensitive customers, and competition between them was intense. Moreover, the imperative on builders' merchants to source products at the best possible prices had been enhanced in recent years by the increased competition that they faced from suppliers of building materials, such as Wickes and B&Q (Trade Counters), which traditionally concentrated on the DIY sector. Finally, if the merger were to proceed and the new entity sought to increase prices above the competitive level, the merchants would be well placed to import aircrete blocks and could bypass the merged entity altogether.

¹The groups included the National Merchant Buying Society, Great Central Merchants and the Combined Buyer Association. The first two merged in June 2001.

²*Icopal Holding A/S and Icopal a/s: a report on the merger situation*, The Stationery Office, Cm 5089, April 2001.

Competition from new entrants

6.53. In his advice on the Tarmac/Durox case, the DGFT had said: ‘There are high, but not insurmountable, barriers to entry for aircrete block production, as indicated by a relatively recent entrant [Quinn] producing only aircrete blocks.’

6.54. The estimated cost of establishing a new aircrete plant with annual capacity of 300,000m³ (larger than the 150,000m³ minimum viable level) was about £20 million, compared with about £5 million for a new aggregate block plant (assuming in each case that land was already available).

6.55. A company starting to produce aircrete from scratch could operate efficiently at a single well-located plant with capacity of about 150,000m³ to 200,000m³ (about 5 to 7 per cent of total UK aircrete production in 2000). A plant in south-east England, for example, would be well placed to supply the buoyant residential construction sector in that area.

6.56. The cost of new entry could be reduced by purchasing a second-hand aircrete plant, for which there was a market. A recent advertisement for one such plant with capacity of 160,000m³ a year had an asking price of €2.3 million (about £1.4 million); the main parties estimated that the total installed cost would be about twice this figure.

6.57. Turning to the possible expansion of production at existing aircrete plants, it was believed that Tarmac could increase the annual output of its Durox factory by around 200,000m³ if it were to adopt seven-day working rather than five-day. Similarly, Quinn was thought to have considerable spare capacity at its plant in Northern Ireland, giving it the ability to increase output without new investment or changes in working patterns.

6.58. Although H+H International had said publicly that ‘vast know-how’ was needed to get a good result, the techniques for producing aircrete were quite well-known; no patents were needed and neither of the parties had licences for significant intellectual property rights relating to aircrete. For a manufacturer of aircrete, the main requirement was having the necessary technical expertise to meet British Standards for the quality of the product.

6.59. It was also not difficult to get suitably qualified staff to provide technical support to customers in the form of advice on design, product choice between different types of concrete blocks, and compliance with the Building Regulations.

6.60. Although all the suppliers of aircrete used brand names (Celcon, Thermalite, Durox and Toplite), it was essentially a standard product, and brand recognition was not, therefore, a barrier to entry. That was true of basic building products as a whole: builders’ merchants and housebuilders were sophisticated purchasers who could readily assess product quality.

6.61. The main parties exemplified their argument on new entry and expansion in the UK by pointing to the following cases:

- (a) Quinn had set up an aircrete plant in Northern Ireland in 1995, and had started exporting to Great Britain about three years ago.
- (b) Tarmac had applied for planning permission to modernize and expand its aircrete plant at Alfreton.
- (c) Thomas Armstrong, an aggregate concrete block maker, had obtained conditional planning permission in April 2002 to build a substantial aircrete factory in Yorkshire with—the main parties estimated—annual capacity of 400,000m³. It was understood that the company had acquired a second-hand plant from Germany and had already approached raw material suppliers in the UK and elsewhere.
- (d) H+H Celcon had itself invested in a new factory at Pollington, Yorkshire (to manufacture Jämerä elements and blocks).

6.62. H+H International was much smaller than the groups to which many of H+H Celcon’s block-making competitors belonged. This, together with the fact that relatively small businesses like Quinn and

Thomas Armstrong were expanding into aircrete manufacture, suggested that if profitable opportunities arose, there was a real possibility of an existing block maker or building materials supplier entering into aircrete production in the UK. Possible entrants included Lafarge, Hanson and Forticrete. It was also quite credible that a major supplier of other building products to the UK could enter aircrete manufacture.

6.63. There were, in addition, a number of recent examples of expansion or entry in the manufacture of aggregate concrete blocks in the UK.

Potential competition from imports

6.64. Given the relatively high value-to-weight ratio of aircrete blocks and, therefore, relatively low transport costs, competition from imports could not be ruled out. Quinn was already shipping blocks to Great Britain from Northern Ireland, and there was now great potential for competition from aircrete producers based on the Continent.

6.65. First, it would not be difficult for Continental aircrete producers to meet British standards; and the dimensions of their blocks could, as necessary, easily be altered to suit the UK market.

6.66. Second, there was thought to be significant spare capacity for aircrete production on the Continent. The main parties believed that, following a downturn in the construction sector in Germany, spare capacity at German aircrete plants was more than sufficient to supply all UK demand. Much spare capacity was also available in Poland, and additional capacity was thought to exist in the Netherlands.

6.67. Overcapacity in mainland Europe created not only the potential for exports, but also a stock of second-hand plant that could be used to start or expand aircrete production in the UK. A particular case concerned two major Continental aircrete manufacturers, Hebel and Ytong, which had just been acquired by the German building products group Haniel: surplus equipment was likely to become available as the new company stripped out excess capacity.

6.68. The third reason why imports were a threat was that physical distance did not represent an obstacle. It was quite common for aircrete to be delivered over long distances and across borders in Continental Europe. For instance, H+H International supplied aircrete blocks from its Finnish plant to customers in northern Sweden and Norway. This involved road journeys of up to 700 km and a sea crossing of about 10 hours.

6.69. Fourth, H+H International had evidence that the manufacturing costs of some Continental aircrete producers (notably in Germany) were so low that the total price of a consignment to the UK, including transport costs, would be comparable to the ex-works cost of aircrete in the UK.

6.70. Fifth, an aircrete producer based in mainland Europe could establish a presence in the UK step by step and with very little risk. A producer with plants in northern Europe might start by exporting aircrete to the UK by sea. A storage depot might then be set up relatively cheaply in south-east England. And if this toe in the water proved successful, it would be feasible to dismantle a surplus Continental factory and reassemble it in the UK.

6.71. Sixth, some third parties had indicated that there had been imports in the past, notably from Belgium and Germany.

6.72. Finally, in relation to new entry or expansion, a Continental aircrete supplier could form a partnership with a UK builders' merchant, thereby gaining access to an established distribution and sales network. That would reduce the risk of entry and the scale of irrecoverable (sunk) costs. Builders' merchants were well placed to sponsor aircrete imports on this basis. Many already imported other materials and therefore had good contacts on the Continent; one major merchant (Jewson) was part of a French Group (Saint-Gobain) and another (Builder Center) was active on the Continent. Moreover, merchants were already offering 'own-label' products, which could give Continental suppliers access to the UK market without advertising or promotional costs.

Further views of H+H Celcon and MBM

6.73. Paragraphs 6.74 to 6.118 (relating to H+H Celcon) and 6.119 to 6.133 (MBM) summarize the further views of each party individually to the extent that they supplement what is said in paragraphs 6.1 to 6.72.

H+H Celcon

Jurisdiction

6.74. H+H Celcon accepted that because the share of supply test in the Act referred to ‘goods and services of any description’, it was open to the CC to conclude that the test had been satisfied without an analysis of demand and supply substitutability issues. However, that did not preclude the need for detailed economic and factual assessment of the relevant markets affected by the merger.

The relevant markets

Economic market

6.75. H+H Celcon acknowledged that in considering the width of the relevant economic market, a key issue was whether a small (5 to 10 per cent) increase in the relative price of aircrete would induce customers to switch to alternative materials on a scale which rendered the price rise unprofitable.

6.76. A 5 to 10 per cent increase in the price of aircrete would add £60 to £120 to the total construction cost of a house. Taking a round figure of £100, a big housebuilder such as Persimmon (which constructed about 14,000 dwellings a year) could incur additional costs of about £1.4 million a year if it failed to resist any hypothetical aircrete price increase. Whilst it was true that this might represent only a fraction of overall construction costs, the total comprised numerous small elements, all of which had to be controlled if a builder were to operate efficiently. It was therefore difficult to believe that sophisticated purchasers would be prepared to accept the increase. The incentive to resist it also extended to smaller housebuilders.

6.77. We sent to H+H Celcon (and MBM) a digest of the third party views which the CC had received in response to its survey among industry participants. H+H Celcon prepared a detailed analysis of the responses in which it categorized them according to its own assessment of how far they were meaningful and/or internally consistent. It argued that, although many of the responses were not internally consistent, the broad picture arising from the digest was that the majority of respondents supported the views which had been put to the CC by the main parties.

6.78. In particular, H+H Celcon interpreted the digest of views as indicating that:

- (a) the majority of respondents seemed to consider that aircrete and other concrete blocks, and in many cases other building materials, competed in the same market;
- (b) the majority of respondents were in favour of, or at least unconcerned by, the prospect of the merger; and
- (c) half of all those who gave a meaningful response to a question on switching said that they would at least consider switching in response to a 5 per cent increase in the price of aircrete. And a clear majority would at least consider switching in the event of a 10 per cent price increase.

6.79. This evidence, H+H Celcon contended, reinforced the view that the price of aircrete was constrained by the price of aggregate blocks. In any event, H+H Celcon simply could not afford to take the risk of testing the proposition.

6.80. Moreover, it was important to note that the basic market definition test applied by the OFT was whether there was effective substitution between two products. That in turn relied on ‘... the existence of

enough marginal consumers who would switch ...'.¹ The test did not require there to be 100 per cent switching for two products to be in the same economic market. All that was needed was that sufficient sales of the product in question would be lost—by consumers switching wholly or partly to other products—to render a 5 to 10 per cent price increase unprofitable.

6.81. H+H Celcon was surprised by comments from some third parties about potential obstacles to switching between aircrete and aggregate blocks. (It also observed that it had seen no factual evidence to support the comments.) Two obstacles in particular had been cited. The first was that switching to aggregate blocks for external walls, whilst retaining an empty cavity, would increase the width of walls, thereby reducing either the size of rooms or the number of houses which could be built on a given site. In H+H Celcon's view, that proposition ran counter to material produced by the Concrete Block Association (CBA) and individual aggregate block makers. This showed that compliance with Part L of the Building Regulations could be achieved by using aggregate blocks which, even with insulation, were thinner than equivalent aircrete blocks.

6.82. The second obstacle which had been cited by third parties concerned the need to receive fresh NHBC approval if any materials in a building were changed from those originally specified. In H+H Celcon's opinion, this reflected a complete misunderstanding of the process for approving building materials in the UK. Any new material coming on to the market had to be certified by the BBA. But once that had happened, the material could be used, without further approval, in any UK building project. So if a builder's plans had been approved by the NHBC on the basis of aggregate blocks, but the specification then changed to aircrete (or vice versa), there was no need for further recourse to the NHBC as long as the chosen block had already received a BBA certificate or was in accordance with British Standards.

6.83. H+H Celcon submitted an analysis of customer churn—ie switching (in either direction) between aircrete and aggregate blocks. The analysis was based on information about the extent to which H+H Celcon's customers had increased or reduced their purchases from the company over a given period. H+H Celcon pointed out that it could not identify all of the cases in which large customers switched between aircrete and aggregate blocks because such customers did not always seek the assistance of H+H Celcon's field representatives. Subject to this, the analysis in respect of major housebuilders indicated that:

- (a) Since 1996, there had been [§] on which H+H Celcon had entirely lost the business of one of its major housebuilder customers. There had also been [§] on which the company had won new housebuilder customers from its competitors.
- (b) In 2000 to 2001, almost [§] of the major housebuilders supplied by H+H Celcon had adjusted their purchases from the company by at least 50 per cent.

6.84. As regards medium-sized customers, the analysis of churn indicated that:

- (a) in 1999 to 2000, H+H Celcon had entirely lost the business of [§] customers out of 1,679 sampled. In the following year, a further [§] customers had been lost; and
- (b) in 1999 to 2000, about [§] of the company's medium-sized customers adjusted their purchases by at least 50 per cent. In 2000 to 2001, this figure had risen to over [§].

6.85. H+H Celcon also said that it had been expanding its aircrete sales in Scotland. Suppliers of aggregate blocks had become so concerned about this that they had asked the CBA to create a marketing campaign to help them defend their own sales. They would not have reacted in this way if they had not seen themselves as being in direct competition with aircrete blocks.

6.86. Finally, on the relevant economic market, H+H Celcon noted that in March 2002 Germany's Federal Cartel Office (Bundeskartellamt) had cleared (subject to ancillary provisions) a merger between two major aircrete producers, Haniel and Ytong. The Bundeskartellamt had found that the relevant product market was masonry wall building materials as a whole. Arguments that products within this definition would not be substitutable were rejected, despite the fact that such products had different thermal, acoustic and load-bearing properties.

¹Market Definition in UK Competition Policy. OFT research paper, February 1992.

Geographic market

6.87. Responding to comments by third parties that there were regional/local variations in the price of aggregate blocks, H+H Celcon said that the national delivered prices for aircrete which it negotiated with its major customers inevitably took account of such variations. This was because those customers carried out sophisticated cost/benefit analyses in deciding whether to use aggregate blocks purchased at regional prices, or aircrete blocks purchased at their previously agreed national prices.

6.88. H+H Celcon also had to pay attention to the prices offered by smaller suppliers of aggregate blocks in particular parts of the UK: regional/local housebuilders and builders' merchants were fully aware of local aggregate block prices and could readily switch between aircrete and aggregate blocks in response to a shift in their relative prices.

6.89. H+H Celcon produced data showing that across the counties of Great Britain, its average aircrete price, before rebates, varied from less than £[£] per m³ to over £[£] per m³. The company explained that, although the data suffered from technical limitations, the broad picture which they revealed was wholly consistent with a national market. In the majority of counties, H+H Celcon's prices were within a 10 per cent band; and many of the counties which fell outside the band did so by only a very narrow margin. To the extent that price variations existed (and could not be explained by data limitations), H+H Celcon believed that they reflected its responsiveness to the regional pricing initiatives of aggregate block suppliers.

Substitutability

6.90. H+H Celcon accepted that, in theory, it was logical to suppose that if aircrete prices were above competitive levels, there would be more substitution than if prices were at lower levels (see paragraph 2.51). However, it maintained that the proposition was not relevant to the present inquiry. The existence of strong competitive constraints on both itself and MBM was demonstrated by the trend of aircrete prices over the past 15 years or so (see paragraph 6.44), and by the fact that neither company had been earning excess profits.

6.91. In H+H Celcon's case, the average return on capital employed (on an indexed replacement cost basis) for the period 1991 to 2001 was estimated at about 14.3 per cent. If actual replacement costs were assumed (at about 20 per cent higher than indexed costs), the average return on capital for the period would have been 12.1 per cent.

● *Price correlation between blocks*

6.92. Commenting on the CC's regional telephone survey of block prices charged by a sample of builders' merchants, H+H Celcon said:

- (a) The static nature of the survey was a very serious flaw. It provided only 'snapshot' information on prices from a small sample of builders' merchants at a particular point in time. There was no information on how the price relativities of the various blocks changed over time, or on how far the customers of builders' merchants responded to changes in relative prices.
- (b) Although the survey showed that snapshot price discrepancies between different types of block varied across regions, there were no accompanying data on the respective market shares of the different types of blocks in those regions. In particular, it might be the case that in a region where aircrete blocks were significantly more expensive than aggregate blocks, they had a lower market penetration than elsewhere in England. If that were so, the results of the survey would be wholly consistent with there being a market which was at least as wide as all concrete blocks.
- (c) All that was required for aircrete and aggregate blocks to be in the same market was that they were perceived by a sufficient number of customers to be substitutes for one another, taking into account their installed costs (rather than prices), attributes and functions. The survey did not assist on this issue.

● *Amendments to Part L of the Building Regulations*

6.93. H+H Celcon maintained that the relative attractiveness of aircrete in constructing the inner leaf of external walls had been reduced by the changes to Part L of the Building Regulations, which came into effect in April 2002, and that this increased the substitutability between aircrete and aggregate blocks. Before April 2002, the regulations had required a U-value for walls of $0.45\text{W/m}^2\text{K}$. But it had been possible to increase this figure—to a maximum of $0.7\text{W/m}^2\text{K}$ —by taking advantage of other energy efficiencies relating to, for example, glazing, loft and floor insulation, and the choice of boiler.

6.94. The ability to trade-off in this way had given aircrete a unique selling point, because it was possible to achieve a U-value of $0.7\text{W/m}^2\text{K}$ in walls of conventional width and without added insulation.

6.95. The changes introduced in April 2002 had affected most elements of house construction but, in particular, had reduced the U-value for walls to $0.35\text{W/m}^2\text{K}$ and increased the insulation needed in other areas. Boilers also had to achieve a minimum efficiency standard. Moreover, reductions in the maximum U-value for floors and roofs had diminished the trade-off available to designers. As a result, there was now little or no scope to use aircrete without insulation in a wall of conventional width.

Competitive constraints

Alternatives to blocks for building walls

6.96. H+H Celcon expanded on the argument (see paragraphs 6.31 to 6.40) that the main parties faced a significant competitive threat from alternative construction techniques, including prefabricated, timber and steel frame and concrete panel.

6.97. There was a clear consensus among those involved in timber frame construction that this technique would continue to expand, due to:

- (a) increased speed of construction;
- (b) less reliance on skilled site-based workers, at a time when their numbers were dwindling;
- (c) improved levels of build quality and customer satisfaction; and
- (d) the fact that costs were generally the same as for aircrete or aggregate block construction.

6.98. In addition, mortgage lenders, insurance companies and the NHBC did not differentiate between timber framed and masonry houses. Indeed, the NHBC stated on its web site that, according to its claims record, timber framed homes tended to perform better than masonry homes.

6.99. There was also the potential for steel frame construction to expand, approaching the 15 per cent market share which it enjoyed in the USA and Australia. As with timber frame, steel frame involved reduced construction time; it also easily met thermal and technical building standards and offered improved accuracy in construction.

6.100. H+H Celcon presented further examples of the growth and attractiveness of alternative construction techniques to supplement the information summarized at paragraph 6.37. These examples included:

- (a) a block of flats in Yorkshire built for a housing association using factory-made units. According to a press report, the association had said that ‘The project has developed apartments that are ten per cent more spacious than social housing norms in about half the time it takes to build a traditional development, and still meet the tough cost guidelines set out by the Housing Corporation’;
- (b) the launch by Nexfor (UK) Ltd, a timber products manufacturer, of a timber frame home extension kit. According to another press report, the kit could be assembled by two workers in six hours and it complied with Part L of the Building Regulations; and

- (c) a statement by Wilson Connolly, a housebuilder, that: ‘Timber frame is an important and effective capability for the Group particularly where shorter build times are required and to reflect growing labour and quality pressures in some parts of the country. However where timber frame provides no bottom line benefits, we will no longer use it. Looking ahead, we estimate timber frame will account for about a third of the Group’s future output.’ H+H Celcon interpreted this statement as indicating, not only that Wilson Connolly was prepared to switch a significant proportion of its output to timber frame, but also that it would switch back to traditional methods if timber frame ceased to be profitable. That suggested active substitution and reinforced the point that cost increases which affected housebuilders’ profitability would cause them to switch promptly to alternative construction methods.

6.101. H+H Celcon also noted that Westbury’s 2001 Annual Report had quoted the then Secretary of State for Trade and Industry as having said of the company’s Space 4 system (see paragraph 6.37): ‘this is going to be one of the technologies of the future. It won’t just be good news for building in Britain, but good news for building throughout the world.’

6.102. In response to a suggestion that house buyers would be reluctant to purchase timber frame homes, H+H Celcon said that the great majority of customers neither knew nor cared how their homes were constructed.

Potential competition from imports

6.103. Commenting on a question as to why there had been no significant imports of aircrete into the UK in the past, H+H Celcon noted—in respect of Germany—that the current overcapacity in aircrete production stemmed from the ending of the post-reunification building boom. The boom had led to a big increase in aircrete capacity, much of which was now surplus to requirements. Annual output of new houses in Germany had fallen from 750,000 in the early 1990s to the present level of about 250,000.

6.104. Further, H+H Celcon believed that at one stage Ytong had exported aircrete to the UK from its plants in northern Europe. Its parent company, RMC, which at that point also owned Durox, had stopped the trade because it was not sensible for its two subsidiaries to compete against each other. However, RMC had since sold both subsidiaries (Ytong to Haniel, Durox to Tarmac) and Ytong was therefore well placed to resume exports to the UK.

Effects of the merger

The risk of tacit collusion

6.105. H+H Celcon rejected any suggestion that there might be a risk of tacit collusion between the two remaining aircrete suppliers in the UK if the merger were to go ahead. It observed that the relevant market was wider than aircrete and that even after the merger, there would be a large number of concrete block suppliers. Such a fragmented market could not support any tacit collusion. In any event, it was not the case that there would be only two aircrete suppliers after the merger, given the entry of Quinn and the impending entry of Thomas Armstrong.

6.106. H+H Celcon argued that there were four reasons why market conditions in the present case would not support a stable anti-competitive oligopoly.

6.107. First, all of the actual or potential suppliers of aircrete had mutually inconsistent market share aspirations:

- (a) If Thomas Armstrong failed to achieve high capacity utilization at its new plant, its investment would be wasted. It therefore had no interest in adhering to any hypothetical coordination between the two main suppliers.
- (b) Quinn’s desire to expand in Great Britain had been demonstrated by its recent application to join the Autoclaved Aerated Concrete Production Association.

- (c) Tarmac/Durox's market share would be about half that of the merged company. It would have incentives to increase that share and thereby its share of industry profits.
- (d) H+H Celcon itself was expanding its aircrete capacity with the new investment at Pollington and therefore had absolutely no incentive to reach any tacit agreement over prices which might prevent it from winning market share.

6.108. Second, Tarmac/Durox and, prospectively, Thomas Armstrong supplied both aircrete and aggregate blocks. If they reached any tacit agreement on prices with the merged entity, it would jeopardize their aggregate block sales because these were, or would be, made to the same customer base as their aircrete sales.

6.109. Third, the construction industry was cyclical and subject to cost and demand shocks. And the aircrete sector was opaque, in the sense that suppliers had little knowledge of their competitors' prices and output. These factors would help to upset any tacit coordination among suppliers.

6.110. Fourth, demand for aircrete was price elastic, so the gains to independent competition were great: any reduction in price would increase overall sales volumes for the product.

6.111. Above all, aircrete was H+H Celcon's only business in the UK and the company would do nothing that might endanger it.

Access to raw materials

6.112. H+H Celcon did not accept that, due to its size, the merged entity might be in a position to gain an advantage over any of its competitors, including Tarmac, in terms of raw material supplies. For example, Tarmac was part of a much larger diversified group with a high level of purchasing power. In the case of cement, for instance, Tarmac's purchases would be far greater than those of the merged entity. Part of the rationale for the merger was indeed that the new company ought to be able to negotiate improved terms for the supply of raw materials. But it would be neither big enough nor strong enough to place Tarmac or other competitors at a disadvantage.

Ability to control prices

6.113. In response to the point that one of H+H Celcon's board papers, in October 2001, had said that a merger with MBM would give the new company greater control of the market—and that this might be particularly important in the event of a recession, when price stability would be easier to maintain even if volumes fell—H+H Celcon said that this statement had appeared in a document whose purpose was to assess the relative merits of a number of strategic options which were open to the company at the time. It was therefore potentially misleading to take the statement in isolation. The essential point was that, of the available options, a merger with MBM offered the best opportunity for a flexible response to a downturn in demand through, for example, adjustments in patterns of shift working and stockholding.

6.114. In short, H+H Celcon contended that to sustain any conclusion that the merger might be expected to operate against the public interest, the CC would have to be satisfied that:

- (a) as a result of the merger, the new company would run the risk of increasing prices, or otherwise worsening the terms of supply at a time when it had made significant new investments;
- (b) customers would not react by switching to alternative construction materials and methods and/or sponsoring new entry into the sector; and
- (c) competitors would not react with imports, new entry and expansion.

6.115. In H+H Celcon's opinion, the facts demonstrated that these hypotheses were unsustainable.

Remedies

6.116. H+H International said that if the merger were blocked, it would be denied the ability to establish a company which was strong enough to compete on the world stage with Ytong, the biggest European aircrete manufacturer, as regards the development and supply of engineering and production facilities. In particular, although H+H Celcon would continue to invest and innovate, the planned expansion of its R&D, on which global ambitions rested, would be impaired.

6.117. As to possible remedies if the merger were to be only conditionally approved, H+H International's preferred option was a price cap of limited duration. This might be based on the RPI or a basket of aircrete production costs. The price cap might remain in place for whichever was the shorter of two options: a fixed term of, say, two years; or until such time as a new entrant to aircrete manufacturing (for example, Thomas Armstrong) achieved a specified share of UK supply.

6.118. H+H International was also prepared to contemplate divestment of one of the six aircrete factories which the merged entity would operate, though it believed that such a remedy would be disproportionate. (The company found it impossible to see why there could be any requirement to divest two plants, describing this notion as wholly disproportionate.) Even the divestment of one plant would require renegotiation of the terms of the merger with Etex. Of the plants in question, the least undesirable candidates for divestment were [*Details omitted. See note on page iv.*], each of which had capacity amounting to about [§<] per cent of aircrete sales in Great Britain. It was reasonable to expect that there would be interest in either plant from more than one prospective purchaser.

Views of MBM

Jurisdiction

6.119. MBM acknowledged that in terms of value, the merged entity was likely to account for about 25 per cent of the supply of all concrete blocks in the UK. Further, the company accepted that it would not be unreasonable for the CC to conclude that the share of supply test under the Act could be applied to a definition of the relevant economic market narrower than concrete blocks as a whole.

Relevant economic market

Substitutability

6.120. Commenting on a question as to whether aircrete and lightweight (ie not dense) aggregate blocks might be considered as part of the same product market, MBM said that aircrete faced competition from all types of aggregate blocks. Given the wide range of applications in which lightweight and dense aggregate blocks were interchangeable, it did not seem logical to consider that lightweight blocks competed with aircrete whereas dense blocks did not.

6.121. MBM did, however, recognize that aircrete had more in common with lightweight aggregate blocks than with dense ones. Customers might, therefore, be more willing to switch between aircrete and lightweight blocks than between aircrete and dense blocks (although for foundations, most of the switching examples which MBM received concerned switching between dense aggregate and aircrete blocks). But if the relative price of aircrete were to increase, inducing customers to switch to lightweight blocks, suppliers of dense aggregate blocks could seek to benefit by shifting their production to lightweight blocks; that could be done relatively quickly.

6.122. Moreover, cellular aggregate blocks, the benefits of which were being promoted by the CBA, were becoming increasingly popular. These had hollowed-out parts, and so were more like aircrete in terms of weight and, in certain circumstances, thermal insulation properties. The fact that cellular blocks could be made with either dense or lightweight aggregate showed that:

- (a) aggregate blocks competed with aircrete by trying to adopt many of its characteristics; and

- (b) in seeking to achieve this outcome, manufacturers did not distinguish between lightweight and dense aggregate blocks.

6.123. MBM also referred to some EC and German antitrust cases concerning the building materials sector. Many of these, the company noted, defined the relevant product market as that for ‘wall building materials’, which including a number of different products.

6.124. Further, in one case, the European Commission had considered the installed cost of a wall using different building materials. Although no definitive decision had been necessary in that case, the European Commission had appeared to accept the view of both the parties and their competitors that ‘a correct comparison between prices for any building material has to take into account the cost of the whole wall construction’.

6.125. As to the digest of third party responses which the CC had sent to the main parties (see paragraph 6.77), MBM observed that some of the comments not only supported the view that all types of concrete blocks were substitutable, but also recognized the move towards prefabricated building methods.

Cellophane fallacy

6.126. Regarding the hypothetical question as to whether there might be greater substitutability than otherwise between aircrete and aggregate blocks if aircrete prices were above competitive levels, MBM argued that concerns on this score—associated with the so-called ‘cellophane fallacy’—were more relevant to dominance cases than to merger inquiries. The latter were about whether a proposed transaction might lead to an increase in prices from the pre-merger level. But in dominance cases, the issue was whether prices were already above competitive levels due to the ability of a firm, or firms, to act independently of other players in the market.

6.127. MBM noted that the 1992 Horizontal Merger Guidelines issued by the US anti-trust authorities (collectively known as ‘the Agency’) had stated, as regards the SSNIP test (see paragraph 5.36), that ‘the Agency will use prevailing prices of the products of the merging firms and possible substitutes for such products, unless pre-merger circumstances are strongly suggestive of coordinated interaction’. Against that background, MBM did not believe the cellophane fallacy was relevant to the present inquiry.

6.128. In addition, any assessment of whether the extent of substitutability between aircrete and aggregate blocks resulted from prices being above competitive levels had to be accompanied by an assessment of whether aggregate block prices were similarly above so-called competitive levels. Therefore, not only was it wrong to apply the cellophane fallacy in the present inquiry, but to do so would require an analysis of the profitability of aggregate block suppliers.

6.129. MBM’s own profitability was not high by comparison with that of UK manufacturing as a whole. Taking account of the replacement cost of capital, the return on capital employed had been 12 per cent in 1999, 14 per cent in 2000, and, again, 12 per cent in 2001. There was some validity in the argument that the profitability of aircrete manufacturers might fluctuate over time, depending on capacity utilization and the need to build plant of a minimum economic size. At certain points, therefore, the profitability of a particular producer might appear to be relatively high. But it should not be forgotten that this might simply reflect the producer’s efficiency in the market.

6.130. In any event, MBM’s prices for aircrete had recently been falling in real terms. Between 1998 and 2001 the real average gross price (before discounts and rebates) had fallen from £[§<] per m³ to £[§<]; the corresponding figures for the real net average price were £[§<] and £[§<]. The reductions were evidence of the significant competition that MBM faced, including from aggregate block makers; and it was therefore incorrect to suppose that the extent of existing substitutability between aircrete and aggregate blocks could be explained by any allegation that aircrete prices were above competitive levels.

6.131. MBM also noted that any consideration of the cellophane fallacy implicitly recognized that substitution between aircrete and aggregate blocks was currently taking place. In this light, statements by some third parties indicating that they would not switch from aircrete to aggregate blocks if faced by a small increase in the price of aircrete appeared to be unfounded.

Churn

6.132. MBM, like H+H Celcon, submitted several examples of customer requests concerning switching between different types of block (mainly from aggregate to aircrete). According to MBM, these showed that:

- (a) customers considered switching even when the potential cost savings were very small in terms of the total price of a block and/or relatively modest in terms of an overall housing development; and
- (b) builders could and did switch between aggregate blocks and aircrete within very short periods of time.

Remedies

6.133. MBM said that if the merger were blocked, [
Details omitted. See note on page iv.
]. If divestment were to be a condition of approval for the merger, that would be a matter for H+H International to consider.