



DETERMINATION OF MERGER NOTIFICATION M/21/043 – COLAS TEORANTA/SIAC BITUMINOUS PRODUCTS LIMITED

Section 21 of the Competition Act 2002

Proposed acquisition of sole control of SIAC Bituminous Products Limited by Colas Teoranta.

Dated 9 September 2021

Introduction

1. On 6 August 2021, 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 notification of a proposed acquisition whereby Colas Teoranta Limited (“Colas”), would acquire sole control of SIAC Bituminous Products Limited (“SBP”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction will be implemented pursuant to a share purchase agreement dated 31 December 2020 (“SPA”) between Colas and Collingford Limited (“Collingford”), for the sale and purchase of the 50% shareholding held by Collingford in SBP. Collingford is a wholly owned subsidiary of SIAC Holdings (Ireland) Limited (“SIAC”) which in turn is a wholly owned subsidiary of XTA Investments Limited (“XTA”)¹.
3. The parties state in the notification that SBP is currently solely controlled by XTA. Colas currently holds a 50% non-controlling interest in SBP pursuant to a share subscription agreement with SIAC, dated 16 January 2014. Following implementation of the Proposed Transaction, SBP will be solely owned and controlled by Colas.

¹ Colas holds a 35.77% non-controlling interest in XTA.



The Undertakings Involved

The Acquirer – Colas

4. Colas is a limited company incorporated in Ireland with registered number 90485 and a registered address in Maynooth, County Kildare. Colas, its subsidiaries and joint ventures supply: bitumen; bitumen emulsion; asphalt; aggregates; bitumen emulsion surfacing services; and asphalt surfacing services, to local authorities and private contractors nationally.
5. Colas is part of the Colas Group, an industrial group active internationally in road construction and maintenance; production and recycling of construction materials; and railways. The parent company of the Colas Group is Colas SA (“Colas SA”), a French société anonyme which is registered in the Paris Register of Commerce with company number 552 025 314.
6. The Colas Group is in turn part of the Bouygues Group, a supplier of contract surfacing services, the parent company of which is Bouygues SA, a French société anonyme which is registered in the Paris Register of Commerce with the companies’ number 572 015 246. Bouygues Group business focuses on construction; telecoms; and media.
7. Bouygues Group is active on the island of Ireland through the following entities:
 - Colas and its subsidiaries and joint ventures of which it is a part;
 - Continental Bitumen Limited (“Continental Bitumen”);
 - Colas Limited (“Colas UK”);
 - Colas Projects;
 - Bouygues E&S Ireland Limited;
 - Axione; and;
 - TF1.
8. Colas SA and its subsidiaries (including Colas) are active in the following on the island of Ireland:



Table 1: Activities of Colas SA and its subsidiaries (including Colas) on the island of Ireland

Company	Business Activity
Atlantic Bitumen Company Limited	Imports and distributes bitumen throughout the island of Ireland to manufacturers of asphalt or bitumen emulsion.
Chemoran Limited	Manufactures and provides bitumen emulsifiers.
Colas Bitumen Emulsions (West) Limited	Currently inactive, previously manufactured and distributed bitumen emulsion throughout the island of Ireland.
Colas Bitumen Emulsions (East) Limited	Currently inactive, previously manufactured and distributed bitumen emulsion throughout the island of Ireland.
Colas Bitumen Emulsions (South) Limited	Currently inactive, previously manufactured and distributed bitumen emulsion throughout the island of Ireland.
Colas Contracting Limited	Supplies bitumen emulsion surfacing services nationally.
[...]	[...]
[...]	[...]
Street Sweep Limited	Provider of contract planning and contract sweeping services.
Colas UK	A subsidiary of Colas SA that recently successfully tendered for the rehabilitation of runway 16/34 at Cork Airport.
ICB Emulsions	A subsidiary of Colas UK that manufactures and distributes bitumen emulsion throughout Northern Ireland.
Continental Bitumen	A subsidiary of Colas SA active in the trading, transport and storage of bitumen.

Source: information provided by the parties.

9. As mentioned above, Colas holds a 35.77% non-controlling interest in XTA and a 50% non-controlling interest in SBP. In addition, Colas holds a number of jointly controlling interests in a number of other entities in the State as described in Table 2 below:

Table 2: Entities in the State in which Colas and Colas SA hold an interest

Company	Business Activity
[...]	[...]
[...]	[...]
[...]	[...]
[...]	[...]
Colas Roadbridge JV	Colas UK holds a 30% interest in the Colas Roadbridge JV, an incorporated joint venture with Roadbridge Limited formed in 2012 to bid for a motorway maintenance and renewals contract. ²
[...]	[...] ³
Dust-A-Side (Ireland) Holdings Limited	A limited company providing dust suppression solutions jointly controlled by Colas SA and Dasvest

² [...]

³ [...]



	Holdings (Ireland) Limited (“Dasvest”). Colas SA and Dasvest each have a 50% interest.
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Source: information provided by the parties.

10. For the financial year ending 31 December 2020, Bouygues Group’s worldwide turnover was approximately €34.7 billion, of which approximately €[...] million was generated in the State.

The Target Company – SBP

11. SBP is a company incorporated in the State, registered under company number 219906 with a registered office in Clondalkin, Dublin 22. SBP supplies asphalt and asphalt surfacing services, to local authorities and private contractors nationally.

12. Collingford owns 50% of the shares in SBP. Collingford is a direct subsidiary of SIAC. SIAC is active in civil engineering, roofing, cladding, paving traffic management and mechanical and electrical services Collingford is an indirect subsidiary of XTA, the holding company of SIAC. The parties state in the notification that SBP is solely controlled by XTA for merger control purposes. As set out above, Colas owns a 50% non-controlling interest in SBP.

13. For the financial year ending 31 March 2021, SBP’s worldwide turnover was approximately €[...], [...] of which was generated in the State.

Asphalt

14. Bouygues Group and SBP are both active in the supply of asphalt in the State. Asphalt is used for surfacing roads, car parks, footpath pavements, airport runways, and other sites. Asphalt mix is typically composed of 95% aggregates (crushed rock, sand and gravel) and 5% bitumen. Asphalt is typically purchased by private contractors engaged by public authorities in road construction and by those engaged in commercial and residential construction (such as surfacing around retail and housing developments).

Contract Surfacing Services

15. Bouygues Group and SBP both provide contract surfacing services in the State. Contract surfacing services are associated with the construction and maintenance of



roads and other surfaces. As set out below, contract surfacing services may include both asphalt surfacing services and bitumen emulsion surfacing services.

16. Asphalt surfacing services are required for road surfaces with a high skidding resistance, such as road surfaces in urban areas. They are also required for the construction of new roads or for the replacement of road surfaces which have completely failed. The equipment required to provide these services is primarily road planers, road sweepers, trucks and pavers.
17. Bitumen emulsion surfacing services are typically carried out on road surfaces undergoing maintenance and strengthening work. The equipment required for bitumen emulsion surfacing services is primarily emulsion 'sprayers' and chipping 'spreaders'.
18. Bouygues Group is active in the provision of both asphalt surfacing services and bitumen emulsion surfacing services, whereas SBP is active in the supply of asphalt surfacing services only.

Rationale for the Proposed Transaction

19. The parties state in the notification:

“The acquisition of sole control of SBP by Colas will enable SBP to benefit from investment and support to enable it to gain in efficiency, profitability and improvement of services for its intended market.”

Third Party Submissions

20. No submission was received.

Competitive Analysis

Horizontal Overlap

21. As described above, Colas and SBP are both active in the supply of contract surfacing services in the State. In particular, the parties are active in the provision of asphalt and



asphalt surfacing services. This gives rise to a horizontal overlap between the activities of Colas and SBP in the State.

Relevant Product Market

22. Neither the Commission nor the Commission's predecessor the Competition Authority have previously considered the supply of asphalt or asphalt surfacing services.
23. The European Commission has previously considered the relevant product markets for the supply of asphalt and the supply of contract surfacing services. In COMP/M.7252 – Holcim/Lafarge,⁴ the European Commission found the supply of asphalt to constitute a single distinct product market.
24. In relation to the supply of contract surfacing services, the European Commission considered contract surfacing to be a relevant product market in itself, consisting of the construction and maintenance of roads and other surfaces.⁵

Views of the parties on product market definition

25. With regard to the supply of asphalt, the parties agree with the European Commission's view that asphalt constitutes a distinct product market.
26. In relation to contract surfacing, in the notification, the parties disagree with the view of the European Commission, stating:

“on the basis of the manner in which the services are supplied and purchased in the Republic of Ireland, the parties consider that contract surfacing services should be divided into two distinct categories, namely: (i) asphalt surfacing services and (ii) bitumen emulsion surfacing services.”

Views of the Commission on product market definition

⁴ COMP/M.7252 – Holcim / Lafarge available at: https://ec.europa.eu/competition/mergers/cases/decisions/m7252_20141215_20212_4126522_EN.pdf.

⁵ *Ibid.*



27. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. It is not necessary for the Commission to define the precise relevant product market or markets in this instance because the product market definition adopted will not alter the Commission's assessment of the competitive impact of the Proposed Transaction, whether the product market is defined as a broad market (i.e., contract surfacing) or a narrow market (i.e., asphalt surfacing services).
28. For the purposes of carrying out its competitive assessment of whether the Proposed Transaction might result in a substantial lessening of competition from a horizontal perspective, the Commission analysed its impact by reference to the following two potential product markets:
- i. the supply of asphalt; and
 - ii. the supply of asphalt surfacing services.

Relevant Geographic Market

29. In relation to the supply of asphalt, the European Commission in *COMP/M.7252 – Holcim / Lafarge*⁶ concluded that the relevant geographic market was a radius of 40km around each asphalt facility. Similarly, the CMA in *Breedon Aggregates/Aggregate Industries UK* found an average catchment area of 17 miles (27km) and an extended catchment area of up to 25 miles (40km) in the United Kingdom was appropriate.⁷

⁶ *COMP/M.7252 – Holcim / Lafarge* available at: https://ec.europa.eu/competition/mergers/cases/decisions/m7252_20141215_20212_4126522_EN.pdf.

⁷ CMA final report available at: <https://assets.publishing.service.gov.uk/media/5344d883e5274a571e00002d/CMA26-final-report.pdf>.



30. In the notification, the parties agree with the previous approach adopted by the European Commission.
31. It is not necessary for the Commission to define the precise geographic market in this instance because the geographic market definition adopted will not alter the Commission's assessment of the horizontal competitive impact of the Proposed Transaction. For the purpose of the competitive assessment of the Proposed Transaction the Commission analysed its impact by reference to the narrowest geographic market, a radius of 40 km around each asphalt facility.
32. With regard to the supply of asphalt surfacing services, the European Commission has previously considered the relevant geographic market for the broader product market of the supply of contract surfacing services to be national.⁸
33. Similarly, as set out in the notification, in the parties' view, the relevant geographic market for contract surfacing is national.
34. For the purpose of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest geographic market, i.e., the supply of asphalt surfacing services in the State.

Horizontal Competitive Analysis

The supply of Asphalt and the supply of Asphalt surfacing services

Supply of Asphalt

Table 3: Estimated Market Shares for the Supply of Asphalt in the State

Company	Tonnes of Asphalt Used	No. of Asphalt Plants	% Market Share
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⁸ *Ibid.*



Bouygues Group ⁹	[...]	[...]	[0-10%]
SBP	[...]	[...]	[0-10%]
Combined	[...]	[...]	[0-10%]
CRH plc	[...]	[...]	[25-35%]
Lagan Materials Limited	[...]	[...]	[15-25%]
Kilsaran Concrete Unlimited Company	[...]	[...]	[10-20%]
Harrington Concrete & Quarries and Harrington Concrete (Sligo) Group	[...]	[...]	[0-10%]
Arkil Limited	[...]	[...]	[0-10%]
McSweeney Bros. Contracts Limited	[...]	[...]	[0-10%]
McCaffreys & Sons Limited	[...]	[...]	[0-10%]
Cassidy Brothers Concrete Products Limited	[...]	[...]	[0-10%]
Mullafarry Quarry Limited	[...]	[...]	[0-10%]
McGrath's Limestone (Cong) Limited	[...]	[...]	[0-10%]
Carroll Concrete Concepts Limited	[...]	[...]	[0-10%]
Behan Asphalt Company Limited	[...]	[...]	[0-10%]
Casey Paving Limited	[...]	[...]	[0-10%]
Scotshouse Quarries Limited	[...]	[...]	[0-10%]
MC Group	[...]	[...]	[0-10%]
Hanly Brothers Limited	[...]	[...]	[0-10%]
Total	[...]	[...]	100.00

Source: estimates provided by the parties.

35. In relation to the supply of asphalt, Colas / Bouygues Group and SBP do not operate in the same relevant geographic market, as the asphalt plants of each of the undertakings are located at a distance of greater than 40 km from one another.
36. Colas, as part of the Bouygues Group, supplies asphalt from plants located in (i) [...],¹⁰ (ii) [...];¹¹ and (iii) [...].¹² SBP's asphalt plant is located in [...], more than 40 km away from any of the Bouygues Group plants.

⁹ As explained in paragraph 9 above, the Bouygues Group includes [...] and [...] in which the Bouygues Group holds jointly controlling interests. [...] has [...], using [...] tonnes of asphalt, accounting for a market share of [...]%. [...] has [...], using [...] of asphalt, accounting for a market share of [...]

¹⁰ [...]

¹¹ [...]

¹² [...]



37. As demonstrated in Table 3 above, even if the relevant geographic market for the supply of asphalt was defined more broadly as national in scope, Bouygues Group and SBP account for [0-10]% and [0-10%] estimated market share, respectively. Therefore, following implementation of the Proposed Transaction, the combined market share of the parties would be [0-10%]. [...] Additionally, the merged entity would have control of [...] of the [...] asphalt plants active in the State.
38. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State in relation to the supply of asphalt.

Asphalt Surfacing Services

39. The parties informed the Commission that the market share estimates for the supply of asphalt and the market shares for the supply of asphalt surfacing services directly correlate as: (i) asphalt and asphalt surfacing services typically tend to be supplied to customers as a combined product and service; and (ii) the primary input and cost in providing asphalt surfacing services relates to the supply of asphalt itself.
40. Nonetheless, although no local authorities in the State manufacture or supply asphalt, several local authorities do self-supply asphalt surfacing surfaces. This is reflected in Table 4 below, and the inclusion of the local authorities does not significantly impact the distribution of market shares.

Table 4: Estimated Market Shares for the Supply of Asphalt Surfacing Services in the State

Company	Tonnes of Asphalt Used	% Market Share
Bouygues Group ¹³	[...]	[0-10%]
SBP	[...]	[0-10%]
Combined	[...]	[5-15%]
Local Authorities	[...]	[0-10%]
CRH plc	[...]	[25-35%]
Lagan Materials Limited	[...]	[15-25%]

¹³ As explained in paragraph 9 above, the Bouygues Group includes [...] and [...] in which the Bouygues Group holds jointly controlling interests. [...] has [...], using [...] tonnes of asphalt, accounting for a market share of [...%]. [...] has one asphalt plant, using [...] tonnes of asphalt, accounting for a market share of [...%].



Kilsaran Concrete Unlimited Company	[...]	[5-15%]
Harrington Concrete & Quarries and Harrington Concrete (Sligo) Group	[...]	[0-10%]
Arkil Limited	[...]	[0-10%]
McSweeney Bros. Contracts Limited	[...]	[0-10%]
McCaffreys & Sons Limited	[...]	[0-10%]
Cassidy Brothers Concrete Products Limited	[...]	[0-10%]
Mullafarry Quarry Limited	[...]	[0-10%]
McGrath's Limestone (Cong) Limited	[...]	[0-10%]
Carroll Concrete Concepts Limited	[...]	[0-10%]
Behan Asphalt Company Limited	[...]	[0-10%]
Casey Paving Limited	[...]	[0-10%]
Scotshouse Quarries Limited	[...]	[0-10%]
MC Group	[...]	[0-10%]
Hanly Brothers Limited	[...]	[0-10%]
Total	[...]	100.00

Source: estimates provided by the parties.

41. Furthermore, the Proposed Transaction does not increase the symmetry of firms competing in the market, and following implementation of the Proposed Transaction, the merged entity will continue to face competition from a large number of competitors offering asphalt surfacing services in the State. Therefore, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State in relation to the supply of asphalt surfacing services.

Supply of Contract Surfacing Services

42. For completeness, the Commission has also considered the Proposed Transaction by reference to the broader potential market of the supply of contract surfacing services in the State, as set out in Table 5 below.

Table 5: Supply of Contract Surfacing Services in the State



Company/Local Authorities	Estimated Tonnes of Bitumen required to manufacture the asphalt or bitumen emulsion used for the contract surfacing services	% Market Share
Local Authorities (Self-supply)	[...]	[10-20%]
Bouygues Group	[...]	[0-10%]
SBP	[...]	[0-10%]
Combined	[...]	[10-20%]
Watterson Surfacing Limited	[...]	[0-10%]
Calington Limited	[...]	[0-10%]
Michael Murphy Tarmacadam Limited	[...]	[0-10%]
Bennett Tarmacadam Limited	[...]	[0-10%]
Francis Daniels Limited	[...]	[0-10%]
CRH plc	[...]	[20-30%]
Lagan Materials Limited	[...]	[15- 25%]
Kilsaran Concrete Unlimited Company	[...]	[0-10%]
Harrington Concrete & Quarries and Harrington Concrete (Sligo) Group	[...]	[0-10%]
Arkil Limited	[...]	[0-10%]
McSweeney Bros. Contracts Limited	[...]	[0-10%]
McCaffreys & Sons Limited	[...]	[0-10%]
Cassidy Brothers Concrete Products Limited	[...]	[0-10%]
Mullafarry Quarry Limited	[...]	[0-10%]
McGrath's Limestone (Cong) Limited	[...]	[0-10%]
Carroll Concrete Concepts Limited	[...]	[0-10%]
Behan Asphalt Company Limited	[...]	[0-10%]
Casey Paving Limited	[...]	[0-10%]
Scotshouse Quarries Limited	[...]	[0-10%]
MC Group	[...]	[0-10%]
Hanly Brothers Limited	[...]	[0-10%]
Total:	[...]	100

Source: estimates provided by the parties.



43. As demonstrated by Table 5 above, the Bouygues Group and SBP account for [0-10%] and [0-10%], respectively, of the potential market for the supply of contract surfacing services in the State. Therefore, following implementation of the Proposed Transaction, the combined market share of the parties would be [10-15%]. As above in relation to the potential market for the supply of asphalt surfacing services, following implementation of the Proposed Transaction, the merged entity will face competition from a large number of competitors in the State offering contract surfacing services.
44. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

45. Bouygues Group is active upstream in the retail supply of bitumen and bitumen emulsion on the island of Ireland through Colas; Atlantic Bitumen Company Limited; Chemoran Limited; Colas Contracting Limited; ICB Emulsions Limited; Continental Bitumen; [...]. SBP is involved downstream in the supply of asphalt and asphalt surfacing services in the State and sources over [...]% of its bitumen purchases from Atlantic Bitumen Company Limited. Therefore, the Proposed Transaction gives rise to a vertical relationship between the parties in the State.
46. Bitumen is produced by refining crude oils. Bitumen production is a specialist activity and is not carried out in all oil refineries. There are no bitumen refineries on the island of Ireland, though there are seven bitumen terminals in the island of Ireland, into which Colas and competing importers of bitumen import refined bitumen.

Relevant Product Market

47. The European Commission in *COMP/M. 7849 – MOL Hungarian Oil and Gas/ ENI Hungaria/ ENI Slovenija*¹⁴ noted that different types of bitumen, such as standard

¹⁴ *M. 7849 – MOL Hungarian Oil and Gas/ ENI Hungaria/ ENI Slovenija* available at: https://ec.europa.eu/competition/mergers/cases/decisions/m7849_386_3.pdf.



bitumen, bitumen emulsions and modified bitumen, are part of one single product market.

Views of the parties on relevant product market

48. The parties disagree with the previous view of the European Commission. In the notification, the parties argue that the markets for bitumen and bitumen emulsion are two separate product markets as bitumen is an input used by customers to manufacture other products such as asphalt, whereas bitumen emulsion customers are typically local authorities carrying out bitumen emulsion surfacing.

Views of the Commission on relevant product market

49. It is not necessary for the Commission to define the precise relevant product market or markets in this instance because the product market definition adopted will not alter the Commission's assessment of the competitive impact of the Proposed Transaction.
50. Nonetheless, given that SBP does not purchase any bitumen emulsion from Bouygues Group and the limited demand-side substitutability between bitumen and bitumen emulsions, for the purposes of carrying out its competitive assessment of whether the Proposed Transaction might result in a substantial lessening of competition from a vertical perspective, the Commission analysed its impact by reference to the potential product market for the supply of bitumen.

Relevant Geographic Market

51. In COMP/M. 7849 – MOL Hungarian Oil and Gas/ ENI Hungaria/ ENI Slovenija, the European Commission found the broad market for the supply of bitumen, bitumen emulsion and modified bitumen to be national, although it was left open whether the geographic market could be considered wider in scope.

Views of the parties on relevant geographic market

52. The parties agree with the European Commission's view of the relevant geographic market for the supply of bitumen. In the notification form, the parties state that



further that there is no geographic limitation on the distribution of bitumen on the island of Ireland.

Views of the Commission on relevant geographic market

53. The Commission accepts that it is not necessary to conclude on the relevant geographic market in respect of the supply of bitumen as regardless of whether the potential geographic market is narrower (i.e., national) or broader (i.e., EEA wide), the Proposed Transaction is unlikely to raise any competition concerns.
54. However for the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrowest potential geographic markets i.e., supply of bitumen on the island of Ireland.

Vertical Competitive Analysis

The supply of bitumen on the island of Ireland

55. Table 6 below sets out the market shares for the supply of bitumen on the island of Ireland.

Table 6: Retail supply of Bitumen, island of Ireland

Company	Current Throughput (Tonnes per annum)	% Market share estimate
Bouygues Group	[...]	[20-30%]
CRH plc	[...]	[20-30%]
Irish Tar & Bitumen Suppliers Limited	[...]	[20-30%]
Lagan Materials Limited	[...]	[20-30%]
[...]	[...]	[0-10%]
Total	259,008	100%

Source: the Commission's estimates based on information provided by the parties.

56. As demonstrated by Table 6, following implementation of the Proposed Transaction, although it has the largest market share [20-30%], Bouygues Group is subject to a



significant competitive constraint from Irish Tar & Bitumen Suppliers Limited [...] with a market share of [20-30%]. Additionally, Lagan Materials Limited and CRH plc both account for substantial market shares of [20-30%] and [20-30%], respectively.

57. The Commission considers that the Proposed Transaction will not lead to input or customer foreclosure in the State for the following reasons:

- There are several large competitors in the retail supply of bitumen from where suppliers of asphalt and asphalt surfacing services can readily source bitumen; and
- There will remain several larger and similarly sized competitors to the merged entity in the downstream market for asphalt and asphalt surfacing services.

58. Based on the above, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

59. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

60. No ancillary restraints were notified.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby Colas Teoranta Limited, would acquire sole control of SIAC Bituminous Products 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.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection Commission