Opinion of the Advisory Committee on mergers given at its meeting of 21 March 2017 regarding a draft decision relating to Case M.7878 — HeidelbergCement/Schwenk/Cemex Hungary/Cemex Croatia

Rapporteur: Spain

(2017/C 440/07)

Operation

1. The Advisory Committee (11 Member States) agrees with the Commission that the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

Union Dimension

2. The Advisory Committee (10 Member States) agrees with the Commission that the undertakings concerned by the Transaction are HeidelbergCement and Schwenk.

   A minority of Member States (1 Member State) abstains.

3. The Advisory Committee (10 Member States) agrees with the Commission that the Transaction has a Union dimension pursuant to Article 1(2) of the Merger Regulation. A minority of Member States (1 Member State) abstains.

Product and Geographic Markets

4. The Advisory Committee (10 Member States) agrees with the Commission's definition of the relevant product market for grey cement, leaving open a potential sub-segmentation concerning bagged/bulk cement and different cement types and grades. A minority of Member States (1 Member State) abstains.

5. The Advisory Committee (10 Member States) agrees with the Commission's definition of the relevant geographic markets for grey cement defining the markets as 250 km catchment areas, leaving open whether such catchment areas should be circular or modified. A minority of Member States (1 Member State) disagrees.

Competitive Assessment

6. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the Transaction would significantly impede effective competition through non-coordinated effects, which could amount to the creation of a dominant position, in the circular and modified catchment areas of 250 km around Cemex Croatia's plant in Split. A minority of Member States (1 Member State) disagrees.

7. The Advisory Committee (10 Member States) agrees with the Commission's assessment that the Transaction would significantly impede effective competition within a substantial part of the internal market. A minority of Member States (1 Member State) disagrees.

8. The Advisory Committee (10 Member States) agrees with the Commission that the final commitments offered by the Parties on 26 January 2017 are insufficient to render the concentration compatible with the internal market. A minority of Member States (1 Member State) disagrees.

Compatibility with Internal Market

9. The Advisory Committee (10 Member States) agrees with the Commission that the Transaction should be declared incompatible with the internal market and the functioning of the EEA Agreement in accordance with Articles 2(3) and 8(3) of the Merger Regulation and Article 57 of the EEA Agreement. A minority of Member States (1 Member State) disagrees.