# PUBLICATION

## What Consolidation in the Aggregates Industry Means for Your Bottom Line

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**What would happen to your construction company's bottom line if the cost of the material you use most in your building projects increased dramatically? This is a question your company should be prepared to answer in light of an attempted multi-billion dollar takeover in the U.S. aggregates industry that would combine the nation's largest two aggregates producers and which could dramatically alter the supply and price of aggregates throughout the United States.**

A discussion of aggregate materials (i.e., crushed stone, gravel, and sand) is not necessarily the most sexy topic related to the construction and development industries, but they are likely the most critical items to construction projects, particularly road construction and commercial buildings. In 2008, approximately 2.48 billion metric tons of construction aggregates were produced in the U.S., with a value of $21.2 billion. These aggregates were used for many purposes in construction projects, mainly to create concrete (80% of which consists of aggregates) and asphalt pavement (90 percent of which consists of aggregates).

The market for aggregates may change dramatically in the coming years, with large, but unpredictable effects on the price and supply of these materials. The second largest producer of aggregates in the U.S., Martin Marietta Materials, is attempting a $4.8 billion all-stock hostile take-over bid of the largest producer of aggregates in the U.S., Vulcan Materials. The proposed merger would create the world's largest producer of sand, gravel, and crushed stone. To put this proposed merger in perspective, for the aggregates industry, this is the rough equivalent of Subway or Burger King attempting to engage in a hostile take-over of McDonalds.

This take-over attempt is the subject of investigations by the U.S. Department of Justice for antitrust concerns, a state court lawsuit pending in Delaware, and numerous other lawsuits between the two companies. The issue to be decided in the Delaware lawsuit is whether the terms of a prior confidentiality agreement entered into between the two companies during prior merger negotiations bars Martin Marietta from pursuing its hostile take-over bid. Vulcan also alleges that Martin Marietta obtained “highly sensitive, material, nonpublic and confidential information” during the prior negotiations and is now attempting to use that information in its take-over attempt despite a prohibition on it doing so in the earlier confidentiality agreement. The trial of the lawsuit lasted four days and the judge has requested that the parties submit post-trial briefs before the end of March 2012. The judge has given some indication that he will delay the attempted acquisition at least temporarily and that his ruling will decide for how long he will do so.

Even if the Delaware court allows Martin Marietta to pursue the hostile take-over, Martin Marietta will have to convince the Department of Justice that the take-over will not unreasonably harm competition in the aggregates industry, and Martin Marietta has agreed not to close the deal without DOJ approval until August 2012 at the earliest. Although distinguishable from this acquisition, the DOJ recently demonstrated its aversion to mergers of industry leaders when it effectively prevented the merger of two of the five largest wireless telephone companies, T-Mobile and AT&T.

Vulcan Materials of Birmingham, Alabama had $2.4 billion in net sales in 2011 and has an estimated 15 billion tons of aggregates reserves, while Martin Marietta of Raleigh, North Carolina had $1.5 billion in net sales in 2011 and has approximately 12.5 billion tons of aggregates reserves. Additionally, Vulcan Materials shipped an estimated 143 million tons of aggregates in 2011, while Martin Marietta shipped an estimated 125 million tons. The combined company would have aggregate shipments more than double those of its closest peers (the third largest producer, Oldcastle Materials, shipped an estimated 121 million tons).

Additionally, the footprints of these companies substantially overlap, particularly in Texas and the southeastern U.S., and the merger would result in less competition among aggregate suppliers, thus possibly leading to higher prices for construction companies needing aggregates for their building projects. This is particularly true because the aggregates industry is inherently local because of the prohibitively high costs associated with long-distance transport of aggregates from their supply point. It is possible that the merger could lead to economies of scale and lower prices for consumers. It is also possible, however, that the merger could drive smaller players out of business as the merged company is able to undercut these smaller companies' prices in the short run and buy their quarries in the medium and long-run, thus further consolidating the market and reducing competition (i.e., the WalMart effect). Finally, these companies could be required to divest assets to competitors before the Department of Justice will approve the acquisition.

The potential combination of these two companies is of great importance to any business in the construction or development industries, and companies should make it a priority to monitor the results of the Delaware case, the Department of Justice investigation, and the status of the take-over bid.