

***Case No COMP/M.4898 -  
COMPAGNIE DE  
SAINT-GOBAIN /  
MAXIT***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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**ARTICLE 6(1)(b) DECISION  
IN CONJUNCTION WITH ARTICLE 6(2) -  
NON-OPPOSITION  
Date: 04/03/2008**

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04-III-2008

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION IN  
CONJUNCTION WITH  
ARTICLE 6(2)

**To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.4898 – Compagnie de Saint-Gobain/ Maxit  
Notification of 22/10/2007 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>**

1. On 22 October 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the French undertaking Compagnie de Saint-Gobain ("Saint-Gobain") acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the Swedish company Maxit Holding AB ("Maxit") from HeidelbergCement Group ("Heidelberg").
2. This notification was declared incomplete in the sense of Article 5(2) of Commission Regulation (EC) No 802/2004 on 21 November 2007. The undertakings concerned provided the further information required. The notification became complete within the meaning of Article 10(1) of Council Regulation (EC) No 139/2004 on 15 January 2008.
3. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation. Following submission by the parties of undertakings designed to eliminate serious doubts identified by the Commission, in accordance with Article 6(2) of the Merger Regulation, the Commission has concluded that the notified operation does not raise serious doubts

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

as to its compatibility with the common market and with the functioning of the EEA Agreement.

## **I. THE PARTIES**

4. Saint-Gobain is a French company active in the production and sale of materials such as glass, ceramics, plastics and certain building materials, including premix mortars (through its subsidiary Saint-Gobain Weber ("SG Weber")), as well as natural raw anhydrite and gypsum products (through its subsidiary BPB). Saint-Gobain is also active in the distribution of building materials.
5. Maxit is a Swedish company primarily active in the production and supply of premix mortars as well as natural raw anhydrite and gypsum products. Maxit is a wholly-owned subsidiary of Heidelberg, a German cement producer.

## **II. THE OPERATION**

6. On 7 August 2007, Saint-Gobain and Heidelberg announced that they had entered into Share Purchase Agreement whereby Saint-Gobain will acquire the entirety of the shares of Heidelberg's wholly-owned subsidiary, Maxit.
7. The notified operation will confer on Saint-Gobain sole control over Maxit. It, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Saint-Gobain EUR 41 596 million in 2006, Maxit EUR 1 237 million)<sup>2</sup>. Each of them have a Community-wide turnover in excess of EUR 250 million (Saint-Gobain EUR [CONFIDENTIAL], Maxit EUR [CONFIDENTIAL]), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **IV. COMPETITIVE ASSESSMENT**

9. The concentration concerns premix mortars and calcium sulphate products (namely natural raw anhydrite, natural raw gypsum and gypsum-based products), where both parties are active.
10. In addition, the concentration concerns External Thermal Insulation Composite Systems ("ETICS"), an external wall insulation technique usually composed of different types of façade mortars, insulation materials and glass fibre mesh fabrics. Saint-Gobain and Maxit are both active in the production of ETICS, and there is a vertical relationship between ETICS and Saint-Gobain's activities in components for ETICS (mostly insulation materials).

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<sup>2</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

11. Last, Saint-Gobain, through its business Saint-Gobain Distribution Bâtiment ("SGDB"), is also active in the distribution of building materials. Maxit is not active on this market, but this market is relevant because of the vertical relationship that exists between SGDB companies and Maxit (as a producer of premix mortars).
12. The present decision examines in turn the relevant market definition and competitive assessment of the proposed transaction for premix mortar sector (**Section A**), calcium sulphate products (**Section B**), ETICS (**Section C**) and the vertical relationship between Saint-Gobain's distribution activities and the new entity's activities in premix mortars post-merger (**Section D**).

## A. Mortars

### 1. Product market definition

13. Mortar is a mixture of aggregates (mostly sand), binders (mostly cement and to a lesser extent lime or gypsum) and a variety of additives of different nature (e.g. pigments, plasticisers, defoamers). In essence, mortars are used to bind construction materials together and fill the gap between them.
14. Depending on the type of construction materials on which mortars are applied and on the specific additional functions they should provide, three broad ranges of applications can be identified:
  - (i) **Construction:** mortars used for various building construction purposes such as floor levelling, plastering, laying of masonry blocks, concrete repair, etc. ("construction mortars");
  - (ii) **Façade:** mortars applied on to a building façades as an outer layer for protective and/or aesthetic purposes or as part of an external thermal insulation compound system ("façade mortars") and
  - (iii) **Tile-fixing:** mortars used as a material for fixing tiles in bathrooms, swimming pools, indoor/outdoor tiles etc. ("tile fixing mortars"). This category comprises both mortars used to fix tiles on a substrate (adhesive mortars) and mortars used as sealants between tiles (grouts).
15. Although composition can be quite similar in particular within the three above mentioned ranges of application, each mortar product is formulated in view of a specific end use. In other words and as a general rule, a particular mortar product is only suitable for the particular end-usage for which it has been designed. This holds between the three ranges of applications (construction, façade, tile fixing) but also within these categories between narrower application segments (for example concrete repair mortars and self-levelling floor mortars are not substitutable for customers although they both belong to the "construction" category). As confirmed by the market investigation, there is very little, if any, demand-side substitutability between categories of mortars narrowly defined by application.

16. Different production techniques are suitable to manufacture mortar products targeting the same application. A first distinction can be drawn between **on-site mortars** (mortars mixed by the building contractor at the construction site<sup>3</sup>) and **premix mortars** (premixed at the factory of a mortar manufacturer). In past decisions<sup>4</sup>, the Commission has examined whether on-site mortars and premix mortars form part of the same product market but ultimately left the question open.
17. Evidence gathered in the course of the market investigation cannot support any definitive conclusion on this issue. Most respondents underlined that most simple mortars, i.e. mortars whose formulation is well-known and does not require sophisticated additives, can be either mixed on-site or in a factory. For example, it is not unusual to mix "commodity" construction mortars on-site for large construction projects. However, more complex mortar products can simply not be manufactured on-site for lack of qualified personnel, specific equipment and/or raw materials. It is sometimes impossible to mix on-site because of lack of space or local environmental constraints. Furthermore, on-site mixing is only economically feasible for large volumes as it entails significant logistics costs (bulk handling of raw materials, storage and mixing space on the construction site, etc.). *A contrario*, some respondents to the market investigation submitted that in some instances, e.g. large volumes of commodity mortars, on-site mixing can come at a significant cost advantage. Some construction companies pointed also that on-site mixing makes the management of the construction project more complex (raw materials sourcing, timing of the deliveries, etc.) and that premix mortars provide the building contractor with a higher quality insurance. The market investigation has also revealed that premix mortars, due to the additional functionalities they can provide the user with, have been gaining market share to the detriment of on-site mixed mortars.
18. The notifying party submitted that on-site mixed mortars exert a significant competitive constraint on premix mortars. The results of the Commission's investigation do not fully support this view. However, it should be borne in mind that, in some specific instances (e.g. large volumes of non-sophisticated mortar products) customers of premix mortars can indeed switch to on-site mixing, thereby constraining the pricing strategy of the merged entity.
19. However, as the proposed transaction does not raise competition concerns under any alternative product market definition, the question of whether on-site mixed mortars and premix mortars belong to the same product market can be left open. Saint-Gobain and Maxit are both only active in the production and sale of premix mortars.
20. Within premix mortars, a further distinction can be made between the three following types of mortars: (i) **dry mortars** (mortars supplied in a dry powder form), (ii) **wet**

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<sup>3</sup> The building contractor can either source raw materials pre-batched by a mortar manufacturer, or it can fabricate its own mortar formulation, sourcing the raw materials from various suppliers, batching and mixing the raw materials entirely on site.

<sup>4</sup> See Commission decisions in Case COMP/M.1779 Anglo-American/Tarmac paragraph 18, Case COMP/M.3415 CRH/Semapa/Secil JV paragraph 12 and Case COMP/M.3572 Cemex/RMC paragraphs 14 to 17.

**mortars** (mortars ready-mixed with water at the factory) and (iii) **ready-to-use paste** (mortars supplied as paste, including organic compounds as binders). The Commission has already examined in past decisions<sup>5</sup> the question whether wet mortars and dry mortars form part of the same product market but ultimately left it open.

21. With regard to supply-side substitutability, the respondents to the Commission's investigation unanimously confirmed that, as submitted by the parties, the manufacturing of these three categories of mortars require different production equipment and know-how.
  - Indeed, wet mortars are ready-mixed with water in ready-mixed concrete factories. It is a perishable product, which requires specific transport equipment (mixer lorries).
  - Ready-to-use paste mortars comprise organic compounds as binding components, instead of the more common mineral binders (cement, lime, gypsum) used for the production of dry and wet mortars.
  - Furthermore, although some mortar companies are active in the three segments, most are specialized in one of the three depending on their core businesses. For example, some cement and ready-mixed concrete groups conduct wet mortars activities which complement well their main businesses. Similarly, some chemical companies started ready-to-paste activities as a natural extension of their glue or paints/coatings activities.
22. On the demand side, although dry and wet mortars can be substituted for some applications (e.g. commodity construction mortars delivered in bulk on a construction works), both types are not suitable for all applications. As a general rule, dry mortars are more sophisticated products, containing several additives and thus providing additional properties. Ready-to-use paste mortars are even more complex products, at the fringe of paints/glue and mortars. They essentially target the renovation segment. Moreover the three categories do not come at comparable prices: on average in the EEA, dry mortars are sold within a price range of EUR 150-200 per tonne; wet mortars are in general at a 10% discount compared to dry mortars; and ready-to-use paste mortars are much more expensive ( EUR 1,100-1,500 per tonne). The price difference between (i) ready-to-use paste and (ii) dry/wet mortars suggest that ready-to-use paste mortars constitute a separate product market. The situation is less clear for dry and wet mortars for some applications.
23. However, as the proposed transaction does not raise competition concerns under any alternative product market definition, the exact product market definition (overall premix mortar market or separate markets for dry, ready-to-use paste and wet mortars) can be left open. The parties are both active in dry and ready-to-use paste mortars. Maxit is only active in wet mortars in Denmark where there is no overlap with Saint-Gobain.

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<sup>5</sup> See Commission decisions in Case COMP/M.3415 CRH/Semapa/Secil JV paragraph 12 and Case COMP/M.3572 Cemex/RMC, paragraphs 14 to 17.

24. Taking into account the two segmentations within premix mortars proposed by the parties and confirmed by the market investigation based on the end applications of mortars ((i) construction, (ii) façade, and (iii) tile fixing) and the form of premix mortars ((i) dry, (ii) wet, (iii) ready-to-use paste), the parties have identified the following narrowest product markets where they are both active for the competitive assessment of this transaction:
- (i) premix dry mortars for construction,
  - (ii) premix dry mortars for façade,
  - (iii) premix dry mortars for tile-fixing,
  - (iv) premix ready-to-use paste mortars for façade, and
  - (v) premix ready-to-use paste mortars for tile-fixing<sup>6</sup>.
25. The market investigation has broadly confirmed that no further segmentation is relevant for the competitive assessment of this transaction than these five narrowest product markets. In particular, although some replies mention narrower product categories within dry mortars as possible relevant product markets<sup>7</sup>, respondents acknowledge the existence of supply-side substitutability between different dry mortar formulations (the same equipment is used, with only different additives or ingredients, to produce different formulations)<sup>8</sup>.
26. In any event, as the proposed transaction does not raise competition concerns under any alternative product market definition (an overall dry premix mortar markets or separate markets for dry mortars for construction, dry mortars for façade and dry mortars for tile-fixing), the question whether different dry mortar formulations are substitutable from the supply side and belong to the same product market can be left open.

#### Geographic market definition

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<sup>6</sup> Ready-to-use pastes are not used for construction applications.

<sup>7</sup> E.g., self-levelling floor screeds, concrete repair mortars, coloured renders, historical building renovations mortars.

<sup>8</sup> While there exists a significant supply-side substitutability within all dry mortar formulations, the market investigation has nevertheless suggested that some smaller mortar producers tend to specialize in very specific premix mortar categories (e.g. floors screeds) or across a particular usage range (e.g. tile fixing). These producers may to a certain extent lack the know-how, marketing capabilities and/or brand reputation to actually switch their production of certain category of premix dry mortar to another. Their situation and strategic focus are consequently significantly different from international mortar manufacturers which operate multi-product plants and can indeed manufacture premix dry mortars across the whole formulation spectrum.

27. In past decisions<sup>9</sup>, although it left the exact geographic market definition open, the Commission has considered the mortar markets as local in scope and used a 120 km radius from the production plant to define the delivery area.
28. The outcome of the market investigation is rather mixed on this issue. Indeed, due to national differences in building techniques and customs, and the fact that suppliers organise their sale at a national level, the markets appear to be national. In addition, due to high transportation cost compared to product value, the market investigation has indicated that mortar markets have generally a local/regional reach. However, higher value products such as ready-to-use paste mortars for tile-fixing or façade renderers can be transported economically over longer distances (up to 1,000 km) from a plant. The notifying parties provided also examples of single plants serving a national territory such as France for certain products.
29. However, in view of the results of the market investigation, it was not possible to assess the competitive impact of the transaction on mortar markets with a national scope, as initially submitted by the notifying party. The competitive impact of the transaction has therefore also been assessed on the basis of narrow local/regional markets. It should however be borne in mind for the competitive assessment that for some products and in some geographic areas (including across borders), especially for high value mortars, competitors' plants located outside these narrow local markets can exert a competitive constraint on the merged entity.
30. The notifying party has identified for some mortar product markets affected markets at the local/regional level, where Saint-Gobain and Maxit have plants located within a road distance not exceeding 250 km from each other and where the parties will have a combined market share exceeding 15% post-merger: two regions in France (Alsace-Lorraine and Rhône-Alpes), four in Germany (Berlin + Brandenburg, Nordrhein-Westfalen, Baden-Württemberg + Bavaria, Sachsen) and three in Spain (Madrid, Murcia, and Pais Vasco).
31. The notifying party has also identified for some mortar product markets nine affected markets at the national level: Belgium, Czech Republic, France, Germany, Ireland, the Netherlands, Portugal, Spain and the UK.

## 2. Competitive assessment

### *Overview of the mortar markets in the EEA*

32. The overall mortar sector in the EEA represents approximately [CONFIDENTIAL] tonnes<sup>10</sup>. Dry premix mortars and ready-to-use paste mortars, on which the transaction results in overlapping activities, represent respectively [40-50]% and [0-5]% of the market. Ready mix mortars (wet), for which Maxit has a limited presence

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<sup>9</sup> See Commission decisions in Case COMP/M.1779 Anglo-American/Tarmac paragraph 23, Case COMP/M.3415 CRH/Semapa/Secil JV paragraph 16 and Case COMP/M.3572 Cemex/RMC paragraphs 26.

<sup>10</sup> Form Co, p.32



in Denmark, account for [5-10]% of the market. Last, on site-mixed mortars, from which both Weber and Maxit are absent, represent [40-50]% of the market.

33. As submitted by the notifying party and confirmed by the market investigation, the mortar markets are characterized by a high degree of fragmentation. Indeed, the number of actors in these markets is extremely high. For instance, regarding dry premix mortars, it is estimated that the market has more than 300 suppliers, the 10 largest producers having no more than 55% of the total capacity<sup>11</sup>. The fragmentation level is particularly strong in countries where the construction sector is dynamic, such as Spain (the 5 largest producers representing less than half of the market) or Italy (the 5 largest producers representing around one third of the market).
34. The actors on the market range from large companies, in possession of a network of plants disseminated throughout the EEA territory (Maxit, Mapei, Knauf, Saint-Gobain, ParexLanko), to medium and small companies with a regional/local focus. Business models differ according to the size of the company. Large companies are usually producing all types of mortars. On the contrary, smaller actors tend to specialize in one or two types of products.
35. Overall, the mortar markets are characterized by a very strong growth, directly connected to the growth of the construction sector (both resulting from new constructions and renovation).
36. The market investigation has confirmed that mortars markets are characterized by fierce competition.
37. First, spare capacity in EEA is important, plant utilization being estimated of about 75%<sup>12</sup>. The market investigation has confirmed the existence of important capacities, often relating to a common pattern of 2 shift operation that may be increased up to 3 shift operation per day. Furthermore, due to the dynamism of the market, actors of the market are planning to build new plants<sup>13</sup>.
38. Secondly, distributors of mortar products have not raised significant concerns regarding this operation, thus dismissing the possibility that the new entity, would take advantage from the possession of any "must have product".
39. Thirdly, while confirming that mortars markets should be assessed primarily at a local/regional level, the market investigation has also made clear that competitive external pressure is being exerted on local markets, across the territory of a country, or even on a cross-country basis (in particular for high value mortar products). The notifying party thus indicated that, prior to the transaction, SG Weber has been supplying ready-to-use paste mortars in [CONFIDENTIAL] from a single plant in

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<sup>11</sup> ZKG INTERNATIONAL, *Market review of the premixed dry mortar industry in Europe*, June 2007.

<sup>12</sup> ZKG INTERNATIONAL, *Market review of the premixed dry mortar industry in Europe*, June 2007; see also, for France, Form CO p. 74.

<sup>13</sup> In France, the notifying party estimates SG Weber's utilisation rate to be of [CONFIDENTIAL]% - [CONFIDENTIAL].

each of these countries<sup>14</sup>. The market investigation has further confirmed that some mortars are supplied across borders (for instance a significant part of mortars for tile-fixing in Portugal is sourced from suppliers with plants in Spain and even Italy (see below)).

40. Fourthly, as submitted by the parties and confirmed by the market investigation, Saint-Gobain and Maxit have, with regard to mortar products, a complementary product range (Maxit focuses on low value, high volume mortars, contrary to Saint-Gobain) and a complementary geographic focus (Saint-Gobain being mostly present in France, Italy and Spain and Maxit in Benelux, Germany and Scandinavia). For a number of affected mortar markets, the concentration brings therefore only a marginal increase to one of the parties' position.
41. Finally, even taking into account a certain degree of specialisation, mortars markets have relatively low barriers to entry. Indeed, the market investigation has confirmed that the production of mortars does not require any specific know-how that could constitute a barrier to entry. Similarly, access to raw material (aggregates, binders, additives) is overall easy. The parties estimate that a new mortar plant would cost around EUR [CONFIDENTIAL] (which is also confirmed by [CONFIDENTIAL]).

#### *Horizontal assessment*

42. As explained above, Saint-Gobain and Maxit are both active in the production of dry premix mortars and ready-to-use paste mortars. The parties have identified the following narrowest product markets where they are both active for the competitive assessment of this transaction:
  - (i) premix dry mortars for construction,
  - (ii) premix dry mortars for façade,
  - (iii) premix dry mortars for tile-fixing,
  - (iv) premix ready-to-use paste mortars for façade, and
  - (v) premix ready-to-use paste mortars for tile-fixing.

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<sup>14</sup> Source – Form CO, p. 39

43. The table below shows all the horizontally affected markets (where the parties' combined market share exceeds 15%). The competitive assessment focuses on the markets for which the new entity's market share exceeds 25% and for which the overlap will be more than 1% (see the bold figures in the table below)<sup>15</sup>.

Relevant geographic level	Types of premix mortars					
	Overall premix (dry and paste)	Dry for façade	Ready to use paste for façade	Dry for tile-fixing	Ready to use paste for tile-fixing	Dry for construction
<b>Belgium</b>	[20-30]%			<b>[20-30]%</b>		[15-25]%
<b>Czech Republic</b>	[10-20]%	[20-30]%	<b>[20-30]%</b>			
<b>France</b>	<b>[30-40]%</b>	<b>[30-40]%</b>	[20-30]%			<b>[20-30]%</b>
Alsace-Lorraine	<b>[30-40]%</b>	<b>[35-45]%</b>	<b>[30-40]%</b>			<b>[30-40]%</b>
Rhône-Alpes	<b>[30-40]%</b>	<b>[30-40]%</b>		<b>[20-30]%</b>		<b>[30-40]%</b>
<b>Germany</b>	[15-20]%	[20-30]%				[15-20]%
Baden-Wurtemberg+Bavaria		[15-20]%				
Brandenburg+Berlin		<b>[20-30]%</b>				[20-30] %
Nordrhein-Westfalen		<b>[20-30]%</b>				
Sachsen		<b>[20-30]%</b>				
<b>Ireland</b>		<b>[25-35]%</b>				
<b>Netherlands</b>	[20-30]%					[20-30]%
<b>Portugal</b>	[15-20]%		[15-20]%	<b>[40-50]%</b>	<b>[50-60]%</b>	
<b>Spain</b>		[15-25]%		[20-30]%	<b>[20-30]%</b>	
Region around Madrid		[15-25]%		[15-20]%		
Region around Murcia		<b>[20-30]%</b>		<b>[25-35]%</b>		
Pais Vasco		[15-25]%		[15-25]%		
<b>UK</b>		[15-20]%				

<sup>15</sup> All market shares are expressed either in volume or in value, based on the most conservative approach.

## Belgium

44. The new entity will have a market share post transaction of [20-30]% (SG Weber [15-25]%, Maxit [0-5]%) on the market for dry mortars for tile-fixing in Belgium. However, the increment of market share is limited. Furthermore, post-transaction the new entity will continue to face competition from international players such as Mapei ([15-20]%), Knauf ([5-10]%), Cantillana ([5-10]%), Ardex ([0-5]%), Forbo ([0-5]%), and Henkel ([0-5]%)<sup>16</sup>.
45. Any attempt to raise prices would also have to contend with the competitive pressure exerted from competitors located in neighbouring countries <sup>17</sup> mainly the Netherlands (due to the presence of important players such as Henkel, Mapei<sup>18</sup> and Megamix in the southern part of the Netherlands) and France. [CONFIDENTIAL].
46. The market investigation has confirmed that the market for dry mortars for tile-fixing in Belgium is competitive and that due to the existence of spare capacity, the competitive pressure of competitors (including competitors located in neighbouring countries) and low barriers to entry, the operation is unlikely to raise any competition concerns.
47. For these reasons, the Commission takes the view that the transaction does not raise any competition concerns on the market for dry mortars for tile-fixing in Belgium.

## Czech Republic

48. The new entity's market share post transaction will be of [20-30]% (SG Weber [20-30]%, Maxit [0-5]%) on the market for ready-to-use paste mortars for façade in the Czech Republic. However, the increment in market share is very limited ([0-5]%) and the new entity will continue to face numerous strong competitors such as Baunit ([15-20]%), Stomix ([10-15]%), Follmann ([5-10]%) and BASF ([0-5]%)<sup>19</sup>.
49. The market investigation has confirmed that the market for ready-to-use paste mortars for façade in the Czech Republic is competitive and that due to the existence of spare capacity, competitive pressure of competitors and low barriers to entry, the transaction is unlikely to raise any competition concerns.
50. For these reasons, the Commission takes the view that the transaction does not raise any competition concerns on the market for ready-to-use paste mortars for façade in the Czech Republic.

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<sup>16</sup> Some competitors indicated having higher market shares than submitted by the notifying party .

<sup>17</sup> A competitor indicated that the Benelux constitutes a single geographic market .

<sup>18</sup> A respondent to the market investigation mentioned that it has switched from SG Weber to Mapei, and that although still partly buying from SG Weber, it considered Mapei's offer as more competitive.

<sup>19</sup> A competitor respondent to the market investigation indicated that post merger the new entity's market share will not exceed [15-20]%, and that other competitors will have a higher market share.

## France

51. Saint-Gobain (SG Weber) has a strong market position in France, its traditional home market. Due to Maxit's presence in France, the operation results in a series of horizontally affected markets. However, as further exposed and confirmed by the market investigation, the transaction does not raise any competition concerns on the French mortar markets.
52. As regards dry mortars for construction, the merged entity will have a market share of [20-30]% post-transaction at the national level ([10-15]% SG Weber, [10-15]% Maxit), of [30-40]% in Alsace-Lorraine ([5-10]% SG Weber, [20-30]% Maxit) and [30-40]% in Rhône-Alpes ([5-10]% SG Weber, [30-40]% Maxit). However, the new entity will continue to face significant competitors, both at the national level ([5-10]% Vicat, [5-10]% PRB, [5-10]% Materis) and at the regional level, in both Alsace-Lorraine (Materis [20-30]%, Vicat [5-10]%, PRB [0-5]%) and Rhône-Alpes (Materis [25-35]%, Mapei 5-10%). In Alsace-Lorraine in particular, the entity will face the competitive pressure exerted by competitors' plants located in Germany<sup>20</sup>.
53. The market investigation has confirmed that the markets for dry mortars for construction in France, Alsace-Lorraine and Rhône-Alpes are competitive and that due to the absence of significant barriers to entry and to remaining capacities, competitors would be able to increase their sales and take market share to the detriment of the new entity, should it increase prices post-merger.
54. As regards dry mortars for tile fixing, the operation results in a limited increment of market share for the new entity in Rhône-Alpes ([20-30]% SG Weber, [0-5]% Maxit, i.e. a [20-30]% market share post transaction). The new entity will however be confronted with the significant pressure of Materis ([20-30]%), and also PRB (5-10%), Mapei (5-10%), Vicat (5-10%).
55. The market investigation has confirmed that the market for dry mortars for tile fixing in Rhône-Alpes is competitive and that that due to the absence of significant barriers to entry and to remaining capacities competitors would be able to take market shares to the detriment of the new entity, should it increase prices post merger. It has also confirmed that the increment of market share resulting from the acquisition of Maxit is so limited that any competition concern can be dispelled. One of the main competitors for instance even estimated that Maxit had a market share of 0%.
56. As regards ready-to-use paste mortars for façade, the operation results in a significant increment of market share for the new entity in Alsace-Lorraine ([15-20]% SG Weber, [15-20]% Maxit, i.e. a [30-40]% market share post transaction). The new entity will however face the significant pressure of STO ([30-40]%), and also Materis ([10-15%]) thus dispelling any competition concern.
57. The market investigation has confirmed that the market for ready to use paste mortars for façade in Alsace-Lorraine is competitive and that due to the absence of significant

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<sup>20</sup> For instance, Sakret has a construction plant located in Germany 141 km from SG Weber's plant, Schwenk has a plant located in Germany 219 km from SG Weber's plant.

barriers to entry and to remaining capacities competitors would be able to take market shares to the detriment of the new entity should it increase prices post-merger.

58. As regards dry mortars for façade, the merged entity will have a market share of [30-40%] at the national level ([30-40]% SG Weber, [0-5]% Maxit), [35-45]% in Alsace-Lorraine ([20-30]% SG Weber, [15-20]% Maxit) and [30-40]% in the Rhône-Alpes region ([20-30]% SG Weber, [0-5]% Maxit). However, the new entity will face significant competitive pressure, both at the national level ([10-15]% PRB, [25-35]% Materis) and at the regional level, in Alsace-Lorraine (PRB 15-20%, Materis 10-15%) and in the Rhône-Alpes region (where Materis will remain the market leader with a [30-40]% market share).
59. The market investigation has confirmed that the markets for dry mortars for façade in France, Alsace-Lorraine and Rhône-Alpes are competitive and that that due to the absence of significant barriers to entry and to remaining capacities, competitors would be able to take market shares to the detriment of the new entity should it increase prices. In Alsace-Lorraine in particular, where the new entity will be the market leader with a market share of [35-45]%, it will nevertheless still face post merger important competitive pressure from (i) Parex Lanko and PRB, both of which supply the market from other regions of France, (ii) the numerous factories located in Germany, such as those owned by Fema, Fornaci, Knauf, Sakret and Schwenk, that exert a significant constraint on prices. Furthermore, pre merger SG Weber and Maxit were not close competitors in Alsace-Lorraine, SG Weber mainly producing and selling monocouche and coloured renders for façade ([CONFIDENTIAL]), while Maxit sells mostly grey cement based basecoats ([CONFIDENTIAL])<sup>21</sup>.
60. For these reasons, the Commission takes the view that the transaction does not raise any competition concerns on the mortar markets in France, whether at the national level or in the Alsace Lorraine and Rhône Alpes regions.

## Germany

61. In Germany, the new entity will have a market share exceeding 25% on the markets for dry mortars for façade in three regions: [20-30]% in the region of Brandenburg-Berlin ([5-10]% SG Weber, [15-20]% Maxit), [20-30]% in Nordrhein-Westfalen ([15-20]% SG Weber, [5-10]% Maxit), and [20-30]% in Sachsen ([0-5]% SG Weber, [15-20]% Maxit).
62. The new entity will nevertheless continue to face numerous competitors in Brandenburg-Berlin (Quick Mix 10-15%, STO, Caparol, Sakret, Knauf 5-10% each), Nordrhein-Westfalen (Knauf 15-20%, Caparol 10-15%, STO, Brillux, Quick-Mix 5-10% each), and Sachsen (Knauf, Quick-Mix, Sakret 10-15% each, STO, Caparol 5-10% each).
63. The market investigation has further confirmed that the markets for dry mortars for façade in Brandenburg-Berlin, Nordrhein-Westfalen and Sachsen are competitive and

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<sup>21</sup> Source Form Co

that due to the absence of significant barriers to entry and to remaining capacities competitors would be able to take market shares to the detriment of the new entity should it increase prices.

64. For these reasons, the Commission takes the view that the transaction does not raise any competition concerns on the market for dry mortars for façade in any region of Germany.

### **Ireland**

65. The transaction results in one affected market, the market for dry mortars for façade, where the new entity will have a [25-35]% market share post merger ([20-30]% SG Weber, [0-5]% Maxit).
66. However, the new entity will continue to face strong competitive pressure from Euromix ([10-15]%), Materis ([10-15]%) and CRH ([5-10]%). [CONFIDENTIAL].
67. It should also be noted that neither Saint-Gobain nor Maxit have production plants in Ireland but that they are both importing from other countries (Saint-Gobain from [CONFIDENTIAL] and Maxit for [CONFIDENTIAL]). Imports would therefore also constrain the parties post merger.
68. For these reasons, the Commission takes the view that the transaction does not raise any competition concerns on the market for dry mortars for façade in Ireland.

### **Spain**

69. The new entity will have a market share exceeding 25% in four markets: (i) dry mortars for tile fixing at the national level; (ii) ready-to-use paste mortars for tile fixing at the national level; (iii) dry mortars for façade in the region of Murcia; and (iv) dry mortars for tile fixing in the region of Murcia.
70. As regards the national level, the new entity will have a market share post merger of [20-30]% for ready to use paste mortars ([20-30]% SG Weber, [0-5]% Maxit) and of [20-30]% for dry mortars ([20-30]% SG Weber, [0-5]% Maxit). Nevertheless, the overlaps are very limited, and the new entity will have to face fierce competition both on the market of ready-to-use paste mortars (Mapei [5-10]%, Kerakoll [5-10]%, Puma [5-10]%, Bostik [5-10]%) and on the market of dry mortars ([20-30]% Puma, [10-15]% Propamsa, [5-10]% Plima).
71. As regards the region of Murcia, the new entity will have a market share post merger of [20-30]% for dry mortars for façade ([10-15]% SG Weber, [10-15]% Maxit) and [25-35]% ([25-35]% SG Weber, [0-5]% Maxit) for dry mortars for tile fixing. The new entity will continue to face significant competitors on the market for dry mortars for façade (Puma 15-20%, Mediterraneo 10-15%, Materis 5-10%), and on the market for dry mortars for tile fixing (Puma [20-30]%, Materis 5-10%).
72. For these reasons, the Commission takes the view that the transaction does not raise any competition concerns on the mortar markets in any region of Spain.

### **Portugal**

73. Saint-Gobain has a strong position in Portugal in tile fixing mortars, where it is the market leader. Maxit is also present with one plant in Portugal, where it is the seventh supplier for tile fixing mortars. Post-merger, the new entity will have high market shares on both the market for dry mortars for tile fixing ([40-50]%, SG Weber [40-50]%, Maxit [0-5]%), and the market for ready-to-use paste mortars for tile fixing ([50-60]%, SG Weber [50-60]%, Maxit [0-5]%)<sup>22</sup>.
74. However, the Commission's market investigation has shown that the transaction will not lead to any serious competition concerns.
75. Firstly, the increment brought about by the merger is limited ([0-5]% for dry mortars and [0-5]% for ready to use paste mortars). According to the notifying party, Saint-Gobain has also been losing [CONFIDENTIAL] market share in recent years.
76. Secondly, the new entity will continue to face Diera's competitive pressure. Diera is a well-established Portuguese mortar supplier, with a 25-30% market share in ready-to-use paste mortars for tile-fixing, and a [10-15]% market share for dry mortars for tile-fixing. Furthermore, as explained here below, although having so far limited market shares, Mapei (0-5% for ready-to-use paste mortars for tile-fixing, [5-10]% for dry mortars for tile-fixing), and Kerakoll ([5-10]% for ready-to-use paste mortars for tile-fixing, [5-10]% for dry mortars for tile-fixing) exert a significant competitive pressure on the Portuguese tile-fixing mortar markets.
77. Thirdly, the new entity would only own about [5-15]% of total capacity for premix mortars in Portugal. The Portuguese market for tile-fixing mortars represent about [CONFIDENTIAL] metric tonnes and the market investigation has confirmed the existence of substantial spare capacity. For instance, regarding dry mortars for tile fixing, while Maxit's production represents [CONFIDENTIAL] metric tonnes in 2006<sup>23</sup>, competitors indicated that their plants in Portugal had significant spare capacity (a competitor has a remaining capacity of [CONFIDENTIAL] metric tonnes and indicated it could increase its production in a short time and at no additional cost; another competitor has remaining capacity of [CONFIDENTIAL] metric tonnes). Such remaining capacity could easily supply the market, should the new entity try to increase the prices and/or restrict its output. Given the significant supply side substitutability within dry mortars, dry mortar producers could easily expand their production of tile-fixing mortars. The parties estimate that total production capacities for dry mortars in Portugal is [CONFIDENTIAL] metric tonnes.
78. Fourthly, the market investigation has further confirmed that, as submitted by the parties, the new entity will face significant competitive pressure from imports of tile-fixing mortars. It should be recalled that tile-fixing mortars are high value mortars which are economically transported over long distances. Imports represent today 10-15% according to the parties' estimates. For instance, Kerakoll is expanding in Portugal and set up a commercial subsidiary in 2006. Kerakoll sources the ready-to-

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<sup>22</sup> On an overall market for tile fixing mortars, the HHI delta would thus be limited to 62 (Source Form Co, p. 112)

<sup>23</sup> Source Form CO, p.106



use paste and dry mortars for tile fixing it sells in Portugal from production facilities in Italy and in Spain (region of Valencia). Kerakoll also plans to open a new factory in the region of Valencia, which will increase its capacity to source the Portuguese market of dry tile fixing mortars and ready to use paste tile fixing mortars. Last, Kerakoll made public its intention, should market opportunities in Portugal justify it, to build a production plant in Portugal. Another competitor of the new entity also made clear that it sourced the ready-to-use paste mortars it sells in Portugal from facilities it has in other European countries (France, Italy etc.).

79. Fifthly, the distributors of tile fixing mortar products did not express concerns regarding the possession of any "must have" product that SG Weber would acquire through Maxit.
80. For these reasons, the Commission takes the view that the proposed transaction does not raise any competition concerns on the markets for dry and ready-to-use paste mortars for tile fixing in Portugal.

## **B. Calcium sulphate**

### **1. Market definition**

81. Calcium sulphate is a mineral which occurs naturally in two forms depending on the presence of water: (i) calcium sulphate dihydrate ( $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$ ), also called "gypsum", and (ii) calcium sulphate dehydrate ( $\text{CaSO}_4$ ) also called "anhydrite". Natural gypsum or natural anhydrite may be extracted by open-cast quarrying or by deep mining. The characteristics of calcium sulphate deposits vary across Europe. Depending on the condition and geologic history of the deposits, the calcium sulphate turns into gypsum or anhydrite. Deposits located in Central Europe generally contain both gypsum and anhydrite. In other areas (France, Spain), gypsum deposits do not contain any anhydrite.
82. Anhydrite is sold only as a raw material after mining/quarrying.
83. The gypsum value chain can be divided into three main stages:
  - After quarrying/mining: gypsum as a raw material (sold as stone, crushed stone or milled)
  - After calcination and grinding into a powder: basic semi-hydrate plaster or semi-finished products (sold either pure or as a mixture to be further transformed or formulated); and
  - After further transformation and formulation: finished gypsum-based products (ready-to-use products).

## *Raw anhydrite and raw gypsum*

### (i) Product markets

84. Raw gypsum can be natural (extracted in quarries or mines) or synthetic as a by-product from an industrial process. In particular, synthetic gypsum is obtained from the desulphurisation of flue gas from coal power plants. Synthetic gypsum is thus widely available in countries where a significant share of electricity production is made out of coal.
85. Raw gypsum is used for the manufacture of gypsum based products such as plasters and plasterboards, as a setting modifier of cement and in various industries (chemical for the production of paints and ceramic tile adhesives, or food and beverage).
86. Natural raw anhydrite is mainly extracted in quarries and mines. Synthetic anhydrite is also produced as a by-product from industrial process, but in a relatively limited quantity. Anhydrite is mainly used as an additive in cements (setting modifier of cement) and for fertilizers, but also in certain construction mortar products (as hardener for floor screed mortars).
87. Saint-Gobain and Maxit are only active in the extraction of natural raw materials.

### Substitutability between anhydrite and gypsum

88. As for demand-side substitutability, according to the parties' estimates, for 80% of applications involving raw gypsum, anhydrite would not be a viable substitute:
  - In particular, only raw gypsum can be used as a raw material for plaster-related products.
  - The market investigation has also indicated that while both products can be used as additive to cement or mortar, each of them has very different properties and cannot be substituted to the other<sup>24</sup>. Cement and mortar manufacturers usually need a combination of the two products, which thus appear to be complements rather than substitutes.
  - Anhydrite is commonly used as a constituent for fertilisers where it fulfils two different functions: as a filler and as a source of sulphur. The market investigation has confirmed that raw gypsum could also be used as a filler. Nevertheless, because raw gypsum contains less sulphur per weight unit than anhydrite, the substitution of anhydrite with gypsum would require fertilizer manufacturers to use an alternative source of sulphur. For this reason, anhydrite and raw gypsum do not appear to be perfect substitutes also in relation to fertilizers.
89. As for supply-side substitutability, anhydrite and gypsum are generally extracted in different quarries or mines although in a limited number of sites both products can be

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<sup>24</sup> According to the parties, gypsum will give a softer, longer to harden while anhydrite results in a harder, faster hardening product.

extracted. Synthetic gypsum and anhydrite, which are by-products of other industrial process, are by definition not substitutable on the supply side.

90. The market investigation has overall confirmed that anhydrite and gypsum constitute separate markets.

*Substitutability between synthetic and natural gypsum*

91. The parties indicate that these two products are substitutable on the demand side, since both materials can be used for the majority of their applications, and certain plants, but not all, use both natural and synthetic gypsum in the production of the same products.
92. Natural and synthetic gypsum are however not substitutable for applications where a high degree of purity is necessary, such as food industry or personal care sector.
93. Furthermore, many respondents to the market investigation have indicated that the two products have different mechanical and chemical properties which prevent them from being substituted using the same equipment. Substitution of natural gypsum by synthetic gypsum is indeed possible in many circumstances but it implies investments (dryers, calcinations, storage and handling equipment) and process adaptations. In other words, customers would not be able to switch from one product to another in case of a non-transitory and permanent relative price increase of 5%.
94. From a supply-side perspective, the parties recognize that natural and synthetic gypsum are not substitutable as deposits of natural gypsum are owned by vertically-integrated companies active in the gypsum industry, while synthetic gypsum is a by-product of an industrial process. Availability of synthetic gypsum varies depending on the existence of coal and lignite power plants in the area concerned. Last, synthetic and natural gypsum have different prices (synthetic gypsum is sometimes given away or is half the price of natural gypsum).
95. The market investigation has overall confirmed that natural gypsum and synthetic gypsum constitute separate product markets.

*Substitutability between synthetic and natural anhydrite*

96. On the demand side, the market investigation has confirmed synthetic and natural anhydrite can both be used for certain applications. For instance, both products can be used as an additive for cement or as binder in the production of floor screed mortars. However, as in the case of gypsum, substitution also requires investments and process adaptation. Furthermore, there are certain applications where only natural anhydrite can be used (fillers, medical care and food industry).
97. As in the case of gypsum, there is no supply-side substitutability between natural anhydrite and synthetic anhydrite as the sources of supply are entirely different (mines/quarries and industrial processes).
98. The market investigation has also indicated that natural raw anhydrite and raw synthetic anhydrite constitute separate product markets.

Conclusion on product market definition

99. The Commission therefore takes the view that the relevant product markets are (i) natural raw gypsum, and (ii) natural anhydrite.
- (ii) Geographic market
100. Both natural gypsum and natural anhydrite are ponderous products. Consequently, certain producers of gypsum based products are located near quarries and mines in order to minimize transportation costs. The delivery area of a particular natural gypsum/natural anhydrite extraction site depends on the means of transportation available to serve distant customers, as well as on the location of alternative sources.
101. As for natural raw gypsum, the parties indicate that in exceptional circumstances they perform sale at a distance higher than 300 km from the production site. However, they indicate that a radius of 300 km appears appropriate to assess the impact of the transaction.
102. In Germany, raw gypsum quarries and mines are concentrated in two different areas of the country (Saxony-Anhalt and Baden-Württemberg). Similarly, in Austria, all quarries and mines are located in the same area in the centre of the country. The viable transport distance for gypsum supplies depends on the location of alternative sources for the customer. Most customers in Austria and Germany have access to alternative sources of supply within a radius of 300 km. Hence, 300 km appears *prima facie* to be the maximum shipping distance of raw gypsum in Germany and Austria. It should be noted that this view is not fully supported by the parties' sales data. Indeed, while most of the parties' sales of natural gypsum in Austria and Germany are made within a circle of 500km from the extraction site, some substantial amount of gypsum supplies are delivered to customers located between 300 and 500 km from the extraction sites. Nevertheless, customers unanimously took the view that 300 km is the maximum distance from which they can economically source raw gypsum. In any event, it is not necessary to conclude on the maximum viable transport distance for natural gypsum (500 km vs. 300 km) as this does not affect the conclusions of the Commission's assessment.
103. As for anhydrite, the parties indicate that, in relation to the plant of [CONFIDENTIAL], they supply customers who are located further away than 300 km from this plant. The parties thus consider that in this case the geographic market definition is national in scope. However, most of the respondents to Commission's investigation consider that raw anhydrite can be transported up to a distance between 200 and 300 km.
104. Given the central location of mines and quarries in Germany and Austria, the areas delimited by a radius of 300 km around these production sites broadly corresponds to national markets.
105. In any event, the exact geographic market definition for natural raw gypsum and natural anhydrite can be left open for the purpose of this decision. Indeed, the merging parties' quarries and mines are located in the same areas and regardless of the precise geographic market, Saint-Gobain/BPB's and Maxit's quarries and mines in Germany (respectively Austria) constitute competing sources of supply for customers

in the area where they are located. The remedies submitted by Saint-Gobain to address the serious doubts identified in some calcium sulphate markets (see below) and which consist in the divestiture of the two main Maxit subsidiaries active in calcium sulphate products remove the entire overlap in the EEA as regards natural raw gypsum and almost the entire overlap in the EEA as regards natural anhydrite<sup>25</sup>.

106. Against this background, the position of the merging parties on the markets for natural gypsum and natural anhydrite are assessed on a national basis for the purpose of the competitive assessment of this case.

#### *Gypsum-based semi-finished products*

##### (i) Product market

107. Gypsum based semi-finished products result from "calcination" (dehydration) of raw gypsum. When mixed with water, calcinated gypsum recovers the original chemical properties of the raw material. Depending on the calcination methodology, alpha type or beta type plaster or a mixture of the two may be obtained. This intermediary product can be used internally or sold to third party manufacturers of finished products.
108. The parties recognize that alpha and beta type plasters are not substitutable from the demand side, due to their different technical characteristics and different end uses<sup>26</sup>, but claim that they are produced using the same equipment and production process. According to the parties, it is rather the quality of the raw gypsum that would determine the type of plaster produced, alpha type or beta type. Most companies would produce both types of products and most of their sales would be a mixture of alpha and beta type plasters.
109. The market investigation has however suggested that alpha- and beta-type plasters are not substitutable from a supply-side perspective.
110. The exact product market definition can nevertheless be left open as the remedies submitted by Saint-Gobain to address the serious doubts identified in some calcium sulphate markets (see below) and which consist in the divestiture of the two main Maxit subsidiaries active in calcium sulphate products remove almost the entire overlap in the EEA as regards semi-finished gypsum-based products<sup>27</sup>.

##### (ii) Geographic market

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<sup>25</sup> [CONFIDENTIAL]

<sup>26</sup> Alpha type crystals are a compact crystal with a low specific surface and low water demands to produce hard, low-porosity casts. They are used mainly in industrial plaster formulations for their high mechanical strength. Beta type crystals have a high specific surface and high water demands. Beta plaster casts have high porosity but low mechanical properties and are therefore used in lightweight building applications or moulds in ceramic applications for their absorbent properties.

<sup>27</sup> [CONFIDENTIAL]

111. The merging parties indicated that they supply customers at a 600 km distance from their production site. They thus consider that the market is at least national in scope.
112. The market investigation has confirmed that semi-finished products can be economically transported up to a distance of approximately 400 km. Given the geographic dimension of the countries where the parties overlap and the location of their plant, the affected markets can be assessed on a national basis for the purpose of this decision. For these products, neighbouring countries of Austria (i.e., the Czech republic, Hungary and Slovakia) and Germany (i.e., the Netherlands, Belgium, and Luxembourg) which are partly supplied from the parties' plants are also affected by the transaction.

*Gypsum-based plasters for building applications*

(i) Product market

113. Ready-to-use plasters can be obtained by mixing gypsum based semi-finished products with sand and other additives (thickeners, retarders) and are sold for a diversified range of applications traditionally grouped in two broad categories (a) building applications and (b) industrial or special applications. "Plâtre de Paris" used for coating walls or ceilings is an example of gypsum-based finished products for building applications.
114. The market investigation has confirmed that plaster for building application constitutes a separate product market from plaster for special applications, which requires different mechanical properties as well as a higher degree of purity.

(ii) Geographic market

115. The parties have indicated that they supply customers with gypsum-based plasters in an area of up to 300 km from their production sites. They thus submit that in view of the geographic dimension of the countries where the parties are active the affected markets are national in scope.
116. The market investigation has confirmed that the affected market can be defined as national.

*Gypsum-based plasters for the ceramics industry*

(i) Product market

117. Plaster is also used for the production of moulds in the ceramics industry (sanitary wares, etc.). The parties indicate that this market is different from other plasters for special application, such as plaster for the personal care sector (dental plaster, bandage plasters) and for metal casting. The parties indicate that other moulding techniques such as "high pressure casting" with ceramics mould constitute an alternative and are included in the same market as gypsum based plasters for the ceramics applications.

118. The market investigation has demonstrated that, while for certain applications ceramics moulds or other techniques can be substituted to plaster moulds, for many complex ceramic pieces, only plaster moulds could be used.

119. The Commission therefore takes the view that the relevant product market is the market for gypsum-based plasters for the ceramic industry.

(ii) Geographic market

120. Saint-Gobain produces these plasters in [CONFIDENTIAL] different countries in the EEA ([CONFIDENTIAL]) and Maxit in [CONFIDENTIAL] ([CONFIDENTIAL]). The notifying party considers that the geographic market of gypsum based plaster for the ceramic industry is at least European wide. The market investigation has confirmed that this market is EEA-wide.

121. In any event, the exact geographic market can be left open for the purpose of the present decision as the transaction raises serious doubts on this market both at the EEA level or at the level of several individual Member States, and the remedy submitted by Saint-Gobain consists in the divestiture of Maxit's sole plant for gypsum-based plasters for ceramics, thereby removing the entire overlap between the parties for these products in the EEA.

2. Competitive assessment

122. The table below presents all the horizontally-affected markets (where the parties have a combined market share exceeding 15%) in the EEA<sup>28</sup>. The table shows that the transaction will result in the creation of dominant positions (and even monopolies) in several relevant calcium sulphate markets.

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<sup>28</sup> [CONFIDENTIAL]

	Affected markets				
	Raw natural gypsum	Raw natural anhydrite	Gypsum-based semi finished products	Gypsum-based building plasters	Gypsum-based plasters for the ceramics industry
<b>Austria</b>	--	[90-100]% (SG [30-40]%, M [50-60]%)	[50-60]% (SG [20-30]%, M [30-40]%) [[45-55]% in value]	[15-25]% (SG [15-20]%, M [5-10]%)	[90-100]% (SG [15-20]%, M [75-85]%)
<b>Belgium</b>	--	--	[50-60]% (SG [40-50]%, M [5-10]%) [[60-70]% in value]	--	--
<b>Czech Republic</b>	--	--	--	--	[90-100]% (SG [80-90]%, M [10-15]%)
<b>France</b>	--	--	--	[45-55]% (SG [45-55]%, M [0-5]%)	--
<b>Germany</b>	[70-80]% (SG [40-50]%, M [30-40]%) [[80-90]% in value]	[20-30]% (SG [15-20]%, M [10-15]%) [40-50% in value]	[30-40]% (SG [5-10]%, M [25-35]%) [[30-40]% in value]	[15-20]% (SG [0-5]%, M [15-20]%)	[80-90]% (SG [40-50]%, M [40-50]%) [[80-90]% in value]
<b>Hungary</b>	--	--	--	[50-60]% (SG 50-60]%, M [0-5]%) [[60-70]% in value]	[90-100]% (SG [80-90]%, M [10-15]%)
<b>Italy</b>	--	--	--	--	[40-50]% (SG [20-30]%, M [20-30]%) [[40-50]% in value]
<b>Netherlands</b>	--	--	[40-50]% (SG [15-20]%, M [20-30]%) [[50-60]% in value]	[15-20]% (SG [10-15]%, M [5-10]%) [[10-15]% in value]	--
<b>Poland</b>	--	--	--	--	[70-80]% (SG [60-70]%, M [10-15]%) [[80-90]% in value]
<b>Portugal</b>	--	--	--	--	[40-50]% (SG [30-40]%, M [10-15]%) [[45-55]% in value]
<b>EEA</b>	--	--	--	[30-40]% (SG [30-40]%, M [0-5]%) [[30-40]% in value]	[70-80]% (SG [55-65]%, M [10-15]%) [70-80]% in value]



123. The market investigation has confirmed the existence of serious doubts on four calcium sulphate markets:

- (i) the market for natural raw gypsum in Germany;
- (ii) the market for natural anhydrite in Austria;
- (iii) the market for semi-finished gypsum-based products in Austria, and Belgium; and
- (iv) the EEA market for gypsum-based plasters for ceramics (or alternatively, if the relevant geographic market is national, several individual Member States).

124. Many respondents to the market investigation complained that these markets were not competitive, and that the merger would deprive them of a choice of suppliers and leaves them facing a monopolist.

*Natural raw gypsum in Germany*

125. In Germany, post transaction, the new entity will have an [70-80]% market share. The market investigation has furthermore confirmed that the market for natural raw gypsum is characterized by important barriers to entry/expansion.

126. The opening of new quarries or mines, indeed, not only requires an appropriate geological site to be found, but also administrative authorisations<sup>29</sup>. Hence, competitors would have difficulties to enter the market, should the new entity engage into anticompetitive behaviour.

127. In addition, customers of raw gypsum indicated that, given their location and that of Saint-Gobain's and Maxit's mines or quarries, they would not have any alternative supplier to the new entity post transaction. The transaction will deprive them from the possibility to switch from one supplier to the other.

128. Overall, the market investigation has confirmed the existence of serious doubts on the market for natural raw gypsum in Germany.

*Natural anhydrite in Austria*

129. Post-merger, the new entity will hold a [90-100%] on the market for natural anhydrite in Austria. The market investigation has furthermore confirmed that the market for natural anhydrite is characterized by important barriers to entry/expansion.

130. The market investigation has confirmed that such a [90-100%] would be particularly difficult to challenge. Indeed, should the new entity engage into an anticompetitive

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<sup>29</sup> The notifying party considers that a period of 5 years is needed from initial contacts to the competent authority to the opening of the quarry.

behaviour, potential entrants would not be able to open new anhydrite quarries or mines (assuming the existence of appropriate geological sites) in a short period of time in response to a permanent and non transitory price increase.

131. Many customers also indicated that there would be no other alternative post transaction but to source their needs from the new entity. The transaction will thus deprive them from the possibility to switch from one supplier to the other.
132. Overall, the market investigation has confirmed the existence of serious doubts on the market for natural anhydrite in Austria.

*Semi-finished gypsum-based products in Austria and Belgium*

133. Post-merger, the new entity will have very important market shares on the markets for semi-finished gypsum-based products, whether in volume (Austria: [50-60]%, Belgium: [50-60]%, Germany: [30-40]% and the Netherlands: [40-50]%) or value (Austria: [45-55]%, Belgium: [60-70]%, Germany: [30-40]% and the Netherlands: [50-60]%).
134. The market investigation has confirmed that the merging parties have important production capacities, both in Austria and Germany (from where they supply [CONFIDENTIAL] countries ([CONFIDENTIAL])).
135. Saint Gobain/BPB and Maxit Baustoffe constitute the main suppliers of semi-finished gypsum-based products on the merchant markets in these countries.
136. An analysis solely based on the market share overlap does not allow concluding as to the existence of serious doubts in the markets in Germany and the Netherlands. It is however not necessary for the purposes of the present decision to carry out a more in-depth competitive analysis, since the remedies submitted by the parties to remove the serious doubts identified by the Commission on the market for semi-finished gypsum-based products in Belgium and the EEA market for gypsum-based plasters for ceramics (see below for the description of the remedies) will also remove the entire overlap between the parties on the market for semi-finished gypsum-based products in the Netherlands and will lead to a *de minimis* increment of less than 1% on the market for semi-finished gypsum-based products in Germany<sup>30</sup>.
137. Overall, the market investigation has confirmed the existence of serious doubts on the markets for semi-finished gypsum-based products in Austria and Belgium.

*EEA market for gypsum-based plasters for ceramics*

138. Post-merger the new entity will have a very high market share on the market for gypsum-based plasters for ceramics in the EEA ([70-80]% in volume and [70-80]% in value) as well as in several EU countries ([90-100]% in Austria, the Czech Republic and Hungary; [80-90]% in Germany, [70-80]% in Poland).

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<sup>30</sup> [CONFIDENTIAL]

139. Respondents to the market investigation indicated that gypsum-based plasters for the ceramic industry are a very specific material which is produced in very specific plants. Against this background, the market investigation has confirmed the existence of significant barriers to entry on this market. Only a limited number of plants in the EEA can manufacture this product. Customers would thus not have the possibility to switch to an alternative supplier to the new entity, should the latter engage into an anticompetitive behaviour post transaction.
140. Overall, the market investigation has confirmed the existence of serious doubts on the market for gypsum-based plasters for ceramics in the EEA (or individual national markets if the relevant geographic market is national).

*Other calcium sulphate markets*

141. The market investigation has dismissed the existence of serious doubts as regards the other calcium sulphate markets. In particular, the proposed transaction will lead to a *de minimis* increment in France and Hungary where Maxit have very limited sales. In any event, the remedy submitted to remove the serious doubts identified on some calcium sulphate markets also substantially decrease the overlap on the other markets where there are no serious doubts, so that the transaction will not raise any competition concerns on these other calcium sulphate markets.

*Conclusion*

142. The Commission therefore takes the view that the proposed transaction raises serious doubts on four calcium sulphate markets:
- (i) the market for natural raw gypsum in Germany;
  - (ii) the market for natural anhydrite in Austria;
  - (iii) the market for semi-finished gypsum-based products in Austria, and Belgium;  
and
  - (iv) the EEA market for gypsum-based plasters for ceramics.

**C. ETICS**

143. External Thermal Insulation Composite Systems ("ETICS") is an on-site applied system of prefabricated products for external wall insulation mainly used in the northern regions of Europe (Germany, Austria, Central Europe and Scandinavia) where it can significantly enhance the thermal performance of the buildings at a competitive cost. It has also an aesthetic function as it covers the external wall. It is usually composed of different types of façade mortars, insulation materials and glass fibre mesh fabrics. For the purpose of the assessment of this transaction, the following products are of relevance: ETICS, mortars (only for sake of completeness), insulation materials, and glass fibre mesh fabrics.

## 1. Market definition

### *ETICS*

144. Most respondents to the market investigation consider that ETICS do not compete with other insulation systems. ETICS can either be sold separately ("component sales") or as a complete system ("system sales"). System sales are most of the time guaranteed by a certification scheme and therefore provide additional benefits for the user. The market investigation has confirmed that due to this additional quality insurance, a switch from system purchases to components purchases does not appear likely in case of a small but significant increase in ETICS system prices. Furthermore, in Germany, where the transaction may lead to a significant increment of the market position of the parties with regard to ETICS, system sales account for 80% of the demand. In any event, the exact product market definition can be left open for the purpose of the present decision, as the transaction does not raise any competition concerns under any alternative market definition.
145. The market investigation has confirmed that the market for ETICS is national due to specific national building regulations and transportation costs.

### *Insulation materials*

146. Most ETICS comprise an insulation board made either out of Expanded Polystyrene ("EPS") or of stone wool. Due to its relatively low cost, EPS is preferred to stone wool. However, some building regulations impose the use of stone wool. For example, in Germany, the use of stone wool is mandatory for the parts of the buildings above 22 metres. Competitors of the parties in ETICS also take the view that EPS and stone wool belong to distinct product markets, mostly due to the significant price differences. However, in line with past Commission practice<sup>31</sup>, the parties submit that the insulation materials markets should not be further subdivided by application (namely narrower markets of EPS boards used for ETICS or stone wool boards used for ETICS) due to the high supply-side substitutability. This has been confirmed by the market investigation.
147. In any event, the exact product market definition can be left open for the purpose of the present decision, as the transaction does not raise any competition concerns under any alternative market definition.
148. The market investigation has confirmed that, as submitted by the notifying party, these markets are at least national in scope.

### *Glass fibre mesh*

149. Glass fibre mesh fabrics are materials used for various applications but primarily by the construction industry. The market investigation has indicated that, due to the high supply-side substitutability, it is not relevant to further distinguish glass fibre mesh fabrics market according to the application.

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<sup>31</sup> See Case COMP/M.3943 – Saint-Gobain/BPB paragraph 28.

150. In line with the Commission's conclusions in Owens Corning/Saint-Gobain Vetrotex<sup>32</sup> on the similar market for glass fibre reinforcements, the market for glass fibre mesh fabrics would be at least EEA-wide.

## 2. Competitive assessment

### *Horizontal effects (ETICS)*

151. Germany is the only country where the market ETICS (system sales) is horizontally affected. However, the combined share of the parties will still remain limited ([15-20]% - Saint-Gobain: [5-10]%, Maxit: [5-10]%). The new entity will also continue to face strong competitors such as STO (market share: 20-30%), Caparol-Alsecco (15-20%), Brillux (10-15%) and Knauf (Marmorit) (5-10%). No particular competition concern has been raised by the respondents to the market investigation with regard to the horizontal effects.

### *Vertical effects (ETICS – mortars)*

152. Some respondents to market investigation raised concerns about the vertical integration of the merged entity with regards to ETICS and mortars used for ETICS. However, these concerns were little substantiated. First, it should be noted that, in the case of (certified) ETICS system sales, the ETICS systems are typically assembled by mortar producers, which are therefore vertically-integrated in the production of mortars for ETICS. In any event, there exists no relevant product market of "mortars for ETICS". The market investigation has confirmed that these mortars form part of the wider "dry mortars for façade" category which is dealt with in the section dedicated to mortars and for which the transaction will not give rise to any competition concerns. Even considering a hypothetical narrower market of mortars for ETICS, there would be no vertically affected market in this respect, as the parties' combined market share on such a market does not exceed 25% in any relevant geographic market (national or regional level).

### *Vertical effects (ETICS – insulation materials)*

153. Saint-Gobain is active in the production and sale of both EPS boards (through its subsidiary Rigips) and stone wool boards (through its subsidiary Isover). Maxit is not selling these products. Some respondents to the market investigation raised concerns about the association of Saint-Gobain's insulation boards activities and both parties' position in ETICS in Germany.

154. However, the Commission takes the view that the proposed transaction will not give rise to any competition concerns arising from Saint-Gobain's activities in insulation materials used in ETICS and the parties' activities as suppliers of ETICS systems.

155. First, Saint-Gobain is already vertically-integrated pre-merger.

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<sup>32</sup> Case COMP/M.4828 – Owens Corning/Saint-Gobain Vetrotex, para 56.

156. Secondly, among the countries where Maxit is selling ETICS, Saint-Gobain is selling EPS boards in Austria and Germany and stone wool boards in Austria, Denmark and Germany. In all these countries, Saint-Gobain's market share on the upstream markets of EPS boards or stone wool boards is below 25% (at most [20-30]% for EPS boards in Germany), and the merged entity's market share in the downstream markets of ETICS systems (with the increment of Maxit's market share) remains significantly below 25% in each country (at most [15-20]% in Germany).
157. Furthermore, it appears from the answer of ETICS competitors of the parties that they purchase only a minor fraction of their insulation boards' needs from Saint-Gobain, most of them multi-sourcing their purchases. The merged entity will still continue to face strong competitors such as Rockwool and Knauf (both are selling stone wool to ETICS manufacturers).
158. Considering the low share of Saint-Gobain in its competitors' purchases and the fact that there are other significant competitors, it is clear that the merged entity will not have the ability to engage into a foreclosure strategy post-merger.
159. It is also unlikely that the new entity's incentives to foreclose its downstream rivals in ETICS will be significantly changed post-transaction considering that Saint-Gobain is already vertically-integrated into insulation boards (where Maxit is not active) and that the merged entity's market on the downstream markets will remain limited ([15-20]% at most).
160. In view of the overall low market of the merged entity in ETICS in the different countries concerned, any risks of customer foreclosure can also be dismissed.

*Vertical effects (ETICS – Glass fibre mesh)*

161. Saint-Gobain, through its business division Saint-Gobain Technical Fabrics and its subsidiary Vertex, is the market leader in glass fibre mesh fabrics in the EEA (market share: [30-40]%). Consequently, all national ETICS market where Maxit is active are vertically-affected by the transaction.
162. The Commission however takes the view that the transaction does not give rise to any competition concerns due to the vertical relationship between Saint-Gobain's activities in glass fibre mesh used in ETICS and the parties' activities as suppliers of ETICS systems.
163. In all the countries except Germany and Sweden, Maxit has a market share in ETICS (system sales) of less than [0-5]%. The transaction is therefore unlikely to raise competition concerns in these countries.
164. The merged entity's market share in ETICS will be of [15-20]% in Germany (Saint-Gobain: [5-10]%, Maxit: [5-10]%) and of [40-50]% in Sweden (Saint-Gobain: [0-5]%, Maxit: [40-50]%).
165. The market investigation has confirmed that the new entity will not have the ability to engage in an input foreclosure strategy post-merger, neither in Sweden nor in Germany. In Germany most ETICS producers are sourcing only a fraction of their glass fibre mesh needs from Saint-Gobain, and that multi-sourcing is a common

pattern. In Sweden, Saint-Gobain is currently selling glass fibre mesh fabrics only to Maxit (i.e. no other ETICS system suppliers). Moreover, the merged entity will continue to face strong competitors in glass fibre mesh: Press Daimler (market share: [5-10]%), OMFA ([5-10]%), Tolnatex ([5-10]%). These producers are currently selling glass fibre mesh to ETICS producers. Most respondents to the market investigation acknowledge the existence of alternative glass fibre mesh supply sources, should Saint-Gobain cease to supply them or increase prices for its downstream rivals in ETICS system.

166. In view of the overall low market of the merged entity in ETICS in the EEA (about [10-15]% of system sales), any risks of customer foreclosure can also be dismissed.

#### *Conclusion on the vertical effects*

167. For all these reasons, the Commission takes the view that the proposed transaction will not raise any competition concerns due to the vertical links between Saint-Gobain's activities in components materials for ETICS and the parties' activities as suppliers of ETICS.

### **D. Distribution**

168. Saint-Gobain, through its business division Saint-Gobain Distribution Bâtiment ("SGDB"), is also active in the distribution of building materials. Maxit is not active on this market, but this market is relevant because of the vertical relationships that exist between SGDB companies and Maxit (as a producer of premix mortars).

169. Building materials include a wide range of raw and finished materials which can be incorporated in construction works, such as aggregates, concrete, tiles, bricks, doors, plasterboard, sanitary products, etc. These materials are sold via wholesalers (trading in building materials) or retailers to the customers (either professionals or non-professionals). The companies part of SGDB focus on the retail sales of building materials to professionals.

#### **1. Product market definition**

##### *Market for the distribution of building materials to retail customers*

170. In past decisions<sup>33</sup>, the Commission identified the following subdivisions as regards the distribution of building materials: (i) the wholesale of building materials; (ii) the retail sale of building materials to professionals; and (iii) the retail sale of building materials to non-professionals (mainly through so-called DIY stores). The Commission also suggested a further possible subdivision for the retail sale of building materials to professionals between (i) the retail sale of building materials to professionals by generalists, and (ii) the retail sale of building materials to

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<sup>33</sup> See Case COMP/M.3142 CVC/Danske Traelast paragraphs 11 to 13, Case COMP/M.3407 Saint-Gobain/Dahl paragraph 12, Case COMP/M.3943 Saint-Gobain/BPB paragraphs 15 and 16.

professionals by specialists<sup>34</sup>. The Commission also examined possible sub-markets within the retail sale of building materials to professionals according to the specific products, considering that each building material serve a specific purpose and that some distribution channels (called "specialists") do not offer all the range of building materials<sup>35</sup>. However, the precise market definition was left open.

171. The parties do not agree with a distinction between (i) the retail sales of building materials to professionals and (ii) the retail sales of building materials to non-professionals. Indeed, the parties submit that, in many countries and in particular in France where SGDB has a strong position, professionals can and do shop both in retail outlets dedicated to them (either generalists or specialists) and in DIY stores (although these stores focus on non-professional customers). The parties furthermore submit that there is intense competition between generalists and specialists in particular in the case of mortars, and that DIY chains also compete strongly with generalists and specialists. It should also be noted that in some countries (for example in Germany), sales of mortars to professionals via retailers compete with direct sales from the producer. No definitive conclusion can be drawn from the results of the market investigation in this respect.
172. Nevertheless, to assess the market position of SGDB in the distribution of building materials, the parties have submitted market share data for two possible sets of distribution channels: a "**wider market**" including the retail sales of building materials through generalists/multi-specialists, specialists and DIY stores and, on the other hand, a "**narrower market**" excluding the DIY stores. As to the specific building materials in these markets, the parties included all the "heavy building materials"<sup>36</sup>. The parties have also estimated the market shares of SGDB in the sales of mortar products on the wider and the narrower market in the countries where SGDB has a strong market position. No specific concerns have been identified with regard to this approach in the course of the market investigation.
173. In any event, the precise product market definition can be left open as under any possible definition the transaction does not raise any competition concerns.

## 2. Geographic market definition

### *Market for the distribution of building materials to retail customers*

174. The parties submit that, although building materials retailers serve local areas, major players in this market operate national networks of sales points, have a uniform presentation, national purchasing policy, strategy and marketing, and that therefore the market for the distribution of building materials is national in scope.

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<sup>34</sup> See Case COMP/M.1974 Compagnie de Saint-Gobain/Raab Karcher paragraph 8, Case COMP/M.3407 Saint-Gobain/Dahl paragraph 14, Case COMP/M.3943 Saint-Gobain/BPB paragraphs 15 and 16.

<sup>35</sup> See Case COMP/M.3407 Saint-Gobain/Dahl paragraph 15.

<sup>36</sup> i.e., mortars, plaster-based products, bricks, concrete, draining and water-proof products, fences, portals, building site materials, wood products, tiling, heavy sanitary ware, etc.



175. In any event, according to the parties, as SGDB's presence is, in general, uniform on each national territory, the local/regional market shares reflect the national ones, and the parties only present market share data on a national basis. However, in Belgium, France, Germany and Spain where SGDB is relatively stronger, the parties have also provided market shares at regional level.
176. In past decisions, the Commission found that such a national scope was not entirely in line with some findings of the market investigation, but left open the exact market definition<sup>37</sup>. In this particular case, the exact market geographic market definition (national vs. regional) can also be left open, as the transaction does not raise competition concerns under any alternative definition.

### 3. Competitive assessment

#### *General assessment*

177. Although a few respondents to the market investigation raised some concerns, any serious doubt may be dispelled knowing that (i) such concerns were, with no exception, either very little substantiated and/or not merger-specific, (ii) taking into account the very strong competitors it has upstream and downstream and the very high proportion of sales it makes through competitors of SGDB, the new entity would have neither the incentive nor the ability to engage into an input or customer foreclosure of rivals, (iii) in Belgium, France, Germany, the Netherlands and Spain, Saint-Gobain is already active in the mortar business and it is doubtful that the increment in market share in mortars due to the acquisition of Maxit might change the ability or incentives of the merged entity, (iv) in both Norway and Sweden, i.e. the two countries where Saint-Gobain was not already selling mortars, the distribution arm of Saint-Gobain has limited market shares and faces strong competitors, and (v) the market investigation has revealed that there are no "must-have" mortars products manufactured by Maxit.
178. Some respondents to the market investigation also confirmed that, as stated by the notifying party, transactions between Saint-Gobain Weber and SGBD are conducted at "arm's length". In particular, this is not the first time Saint-Gobain will become vertically-integrated into the production of some building materials in countries where it also runs a distribution business; some respondents submitted that it did not trigger any change in their relationship with the distribution arm of Saint-Gobain. It appears that there are valid commercial reasons to run the distribution business independently from the building materials production activities, as submitted by the parties (high transportation costs, importance of brands, etc.).
179. The competitive assessment analyzes two types of risks: (i) input foreclosure, i.e. a possible reduction of the parties' sales and/or a possible increase of prices to competing distributors at the downstream level, and (ii) customer foreclosure, i.e. a possible reduction of the parties' purchases of mortars from competing mortar producers at the upstream level.

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<sup>37</sup> Case COMP/M.3943 – Saint-Gobain/BPB, paragraph 21.

*Affected markets because of SGDB's position in distribution (France)*

180. SGDB holds national or regional market shares above 25% in the distribution of building materials to retail customers (whether on the wider or on the narrower market) only in France. In this respect, the following mortar markets where Maxit is active in France are vertically-affected:

	<b>Dry premix mortars</b>	<b>Dry façade</b>	<b>Paste façade</b>	<b>Dry tile fixing</b>	<b>Paste tile fixing</b>	<b>Construction</b>
<i>France</i>	X	X		X		X
Rhône-Alpes	X	X		X		X
Alsace-Lorraine	X	X	X	X		X

**France**

181. Saint-Gobain is mainly active in France in the distribution of building materials mainly through its subsidiary Point P.

182. As regards the distribution of building materials, Saint-Gobain had a national market share of [20-30]% on the narrower market (i.e. the market for the retail sales of heavy building materials through generalists/multi-specialists, specialists, excluding sales done through DIY stores), and regional market shares ranging from [20-30]% to [40-50]% (in the Ile-de-France region) in 2006. As regards the distribution of mortar products, Saint-Gobain had a national market share of [20-30]% on the narrower market, and regional market shares ranging from [15-20]% to [45-55]% (in Ile-de-France).

183. With regard to risks of input foreclosure, the merged entity will not be able to stop supplying or supply at higher prices other distributors with its mortar products. Indeed the merged entity will not get market power upstream as a result of this operation (i.e. on mortar markets). The combined market share of the parties is above 25% at the national level for the three following product markets: dry mortars for façade (Saint-Gobain: [25-35]%, Maxit: [0-5]%), dry mortars for construction<sup>38</sup> (Saint-Gobain: [10-15]%, Maxit: [5-10]%), dry mortars for tile fixing (Saint-Gobain: [20-30]%, Maxit: [0-5]%). These three product markets are also vertically affected by the transaction at the regional level, in Rhône-Alpes and Alsace-Lorraine (with combined market shares up to 39% maximum), as well as the market for ready-to-use paste for façade in Alsace-Lorraine (Saint-Gobain: [10-15]%, Maxit: [10-15]%). As more extensively explained in the section of this decision dedicated to the horizontal

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<sup>38</sup> Only > 25% in volume, not in value.

analysis of markets for mortars, at the national level as well as in Alsace-Lorraine and Rhône-Alpes, the merged entity will still face strong competitors on any of these segments, such as Materis, PRB, Vicat, Mapei or Sicat. For façade and tile fixing products, the minor increment added by the transaction (Maxit has a market share of at most of [0-5]% at the national level) cannot trigger significant changes in the merged entity's ability and incentive to foreclose. With regard to construction mortars, Maxit is more focused on low cost, high volumes mortars, contrary to Saint-Gobain. It should also be noted that currently the share of the parties' output of mortar products going to SGDB is still limited ([20-40]% for Saint-Gobain, at most [10-30]% for Maxit for façade). Finally, the market investigation has ruled out the existence of any specific must-have mortar products on the French market.

184. As to customer foreclosure, Saint-Gobain will still compete with strong companies of national reach such as PBM ([5-10]%), Samse-Doras ([0-5]%), and Trialis ([0-5]%). At the regional level, SG also competes with regional players with strong local implantation. These companies would constitute alternative distribution channels for competing mortars producers. The merged entity will therefore not have the ability to engage in customer foreclosure of competing mortar companies. Furthermore, Maxit represents only a minor fraction of SGDB's purchases of mortars in France ([0-10]% in 2006).

*Affected markets because of the parties combined position in mortars*

185. The following markets are vertically affected by the transaction because the market share of the merged entity for these mortar products will be above 25%.

	<b>Dry premix mortars</b>	<b>Dry façade</b>	<b>Paste façade</b>	<b>Dry tile fixing</b>	<b>Paste tile fixing</b>	<b>Construction</b>
<i>Belgium</i>				X		
<i>Germany</i>						
Sachsen		X				
Brandenburg Berlin		X				
Nordrhein Westfalen		X				
<i>Netherlands</i>						X
<i>Norway</i>	X	X				
<i>Spain</i>				X	X	
<i>Sweden</i>	X	X				

**Belgium**

186. Saint-Gobain is active in Belgium in the distribution of building materials through its subsidiaries Binje Ackermans, LM Matériaux, Jans and Wagener.

187. As regards the distribution of building materials, Saint-Gobain has a national market share of [5-10]% in 2006 on the narrower market (excluding DIY), and regional market shares of [5-10]% in Flanders and [0-5]% in Wallonia. As regards the distribution of mortar products, Saint-Gobain has a national market share of [0-5]% on the narrower market.
188. With regard to risks of input foreclosure, the merged entity will not be able to stop supplying or supply at higher prices other distributors with its mortar products. Indeed the merged entity will not gain market power upstream (i.e. on mortar markets). Combined market share of the parties is only above 25% for dry mortars for tile fixing (Saint-Gobain: [20-30]%; [0-5]% Maxit). In this segment, it will still face strong competitors such as Mapei ([15-20]%), Knauf ([5-10]%) and Cantillana ([5-10]%) which constitute alternative supply sources for competing distributors. The minor increment added by the transaction cannot trigger a significant change in the merged entity's ability to foreclose. As to the incentives to foreclose, considering the limited market share of Saint-Gobain in the distribution of building materials in Belgium ([0-5]%), it seems unlikely that such a strategy could be profitable. It should also be noted that currently the share of the parties' output of mortar products going to SGDB is very limited (less than [0-10]% for any of the types of mortars for Saint-Gobain, negligible for Maxit). Finally, no specific must-have mortar products from Maxit could be identified on the Belgian market.
189. As to customer foreclosure, Saint-Gobain faces competition from many small family-owned companies in a very fragmented market, which could constitute alternative distribution channels for competing mortars producers, should the merged entity stop purchasing mortars from competing mortar companies. Furthermore, the parties represent only a minor fraction of SGDB's purchases of mortars in Belgium ([0-10]% in 2006).

## **Germany**

190. Saint-Gobain is active in Germany in the distribution of building materials through its subsidiary Raab Karcher.
191. As regards the distribution of building materials, Saint-Gobain had a national market share of [0-5]% in 2006 on the narrower market (excluding DIY) in 2006, and regional market shares of [0-5]% in Brandenburg and Berlin, [0-5]% in Nordrhein-Westfalen and [0-5]% in Sachsen. As regards the distribution of mortar products, Saint-Gobain had a national market share of [0-5]% on the narrower market.
192. With regard to risks of input foreclosure, the merged entity will not be able to stop supplying or supply at higher prices other distributors with its mortar products. Indeed the merged entity will not gain market power upstream (i.e. on mortar markets). Combined market share of the parties in sales of mortars are below 25% at the national level for any mortar product. At the regional level, the combined market share of the parties will reach [20-30]% (in volume only, market shares in value are below this threshold) in the following markets: dry mortars for façade in Sachsen (Saint-Gobain: [0-5]%, Maxit: [15-20]%), dry mortars for façade in Brandenburg and Berlin (Saint-Gobain: [5-10]%, Maxit: [15-20]%) and dry mortars for façade in Nordrhein-Westfalen (Saint-Gobain: [15-20]%, Maxit: [5-10]%). The parties will

still face strong competition from companies of national reach such as Knauf, Sto, Caparol, Quick-Mix and Brillux for façade mortars. They could constitute alternative supply sources for competing distributors. As to the incentives to foreclose, considering the limited market share of Saint-Gobain in the distribution of building materials in Germany ([0-0-5]%), it seems unlikely that such a strategy could be profitable. It should also be noted that currently the share of the parties' output of dry mortars for façade going to SGDB is very limited ([0-15]% for Saint-Gobain, [0-15]% for Maxit). Finally, no specific must-have dry mortar for façade products from Maxit could be identified on the German market.

193. As to customer foreclosure, Saint-Gobain faces competition from many distributors in a very fragmented market (stronger competitors: Baywa [market share: [0-5]%), Bauking [[0-5]%), Wego [[0-5]%)-, which could constitute alternative distribution channels for competing mortar producers, should the merged entity stop purchasing mortars from competing mortar companies.

### **Netherlands**

194. Saint-Gobain is active in the Netherlands in the distribution of building materials through its subsidiary Raab Karcher.
195. As regards the distribution of building materials, Saint-Gobain had a national market share of [15-20]% in 2006 on the narrower market (excluding DIY). As regards the distribution of mortar products, Saint-Gobain had a national market share of [0-5]% on the narrower market.
196. With regard to risks of input foreclosure, the merged entity will not be able to stop supplying or supply at higher prices other distributors with its mortar products. Indeed the merged entity will not gain market power upstream (i.e. on mortar markets). Combined market share of the parties is only above 25% for dry mortars for construction (in volume only, market shares in value are below) (Saint-Gobain: [0-5]%; Maxit: [20-30]%). In this segment, it will still face strong competitors such as BASF ([5-10]% in value), SigmaKalon ([10-15]%) and Megamix ([5-10]%), which constitute alternative supply sources for competing distributors. As to the incentives to foreclose, considering the limited market share of Saint-Gobain in the distribution of building materials in the Netherlands ([15-20]%), it seems unlikely that such a strategy could be profitable. It should also be noted that currently the share of the parties' output of dry mortars for construction going to SGDB is very limited ([10-20]% for Saint-Gobain, negligible for Maxit). In particular, only [CONFIDENTIAL] of Maxit's sales are made to DIY and to distributors. Finally, no specific must-have mortar products from Maxit could be identified on the Dutch market.
197. As to customer foreclosure, Saint-Gobain faces competition from CRH (market share: [20-30]%), Bouwcenter ([10-15]%), Imabo ([5-10]%), which could constitute alternative distribution channels for competing mortar producers, should the merged entity stop purchasing mortars from competing mortar companies.

### **Norway**

198. Saint-Gobain is active in Norway in the distribution of building materials through its subsidiaries Optimera and Dahl. It should be noted that Saint-Gobain is not active in the production and sale of mortar products in Norway. Maxit has a [20-30]% market share on the dry premix market in Norway.
199. As regards the distribution of building materials, Saint-Gobain had a national market share of [10-15]% in 2006 on the narrower market (excluding DIY). As regards the distribution of mortar products, Saint-Gobain had a national market share of [15-20]% on the narrower market.
200. With regard to risks of input foreclosure, the merged entity will not be able to stop supplying or supply at higher prices other distributors with its mortar products. Indeed the merged entity will not gain market power upstream (i.e. on mortar markets) ([20-30]% for the dry premix mortar market). It should be noted that Saint-Gobain is purchasing already [50-70]% of its mortars requirements for distribution from Maxit. As to the incentives to foreclose, considering the limited market share of Saint-Gobain in the distribution of building materials in Norway ([10-15]%), it seems unlikely that such a strategy could be profitable. Finally, no specific must-have mortar products from Maxit could be identified on the Norwegian market.
201. As to customer foreclosure, Saint-Gobain faces competition from Byggmaker ([10-20]%), BK Byggkjop ([10-15]%), and Maxbo ([5-10]%), which could constitute alternative distribution channels for competing mortars producers, should the merged entity stop purchasing mortars from competing mortar companies.

## **Spain**

202. SG distributes building materials in Spain mainly through its subsidiaries Point P and La Plataforma de la Construcción.
203. As regards the distribution of building materials, in 2006, SG had a national market share of [0-5]% on the wider market and of [0-5]% on the narrower market, and regional market shares ranging from [0-5]% to [0-5]% (in the Madrid area) on the wider market and from [0-5]% to [0-5]% (in the Madrid area) on the narrower market. As regards the distribution of mortar products, Saint-Gobain had a national market share of [0-5]% on the narrower market.
204. With regard to risks of input foreclosure, the merged entity will not be able to stop supplying or supply at higher prices other distributors with its mortar products. Indeed the new entity will not gain market power upstream (i.e. on mortar markets). Combined market share of the parties is only above 25% for dry mortars for tile fixing (Saint-Gobain: [20-30]%; Maxit: [0-5]%) and in ready-to-use paste mortars for tile fixing (Saint-Gobain: [20-30]%, Maxit: [0-5]%). With regard to dry mortars for tile fixing, the merged entity will still face strong competitors such as Puma ([20-30]%), Propamsa ([10-15]%) and Plima ([5-10]%). On the market for ready-to-use paste mortars for tile fixing, the merged entity will compete with Mapei ([5-10]%), Kerakoll ([5-10]%), Puma ([5-10]%) and Bostik ([5-10]%). These competitors constitute alternative supply sources for competing distributors. The minor increment added by the transaction (the market share of Maxit is below [0-5]% in the affected mortar product markets) cannot trigger a significant change in the merged entity's

ability to foreclose. This reasoning applies *mutatis mutandis* for the mortar markets where at the regional level the parties would hold more than 25% market share: dry mortars for façade in Murcia and dry mortars for tile fixing in Murcia. As to the incentives to foreclose, considering the limited market share of Saint-Gobain in the distribution of building materials in Spain ([0-5]%), it seems unlikely that such a strategy could be profitable. It should also be noted that currently the share of the parties' output of mortar products going to SGDB is very limited ([30-50]% for Saint-Gobain, negligible for Maxit). Finally, no specific must-have mortar products from Maxit could be identified on the Spanish market.

205. As to customer foreclosure, Saint-Gobain faces competition from e.g. Porcelanosa (market share: [0-5]%), Terapilar ([0-5]%) in a very fragmented market. These companies could constitute alternative distribution channels for competing mortars producers, should the merged entity stop purchasing mortars from competing mortar companies. Furthermore, the parties represent only a minor fraction of SGDB's purchases of mortars for tile fixing in Spain ([0-10]% in 2006).

## **Sweden**

206. Saint-Gobain is active in Sweden in the distribution of building materials through its subsidiaries Optimera and Dahl. It should be noted that Saint-Gobain is not active in the production and sale of mortar products in Sweden. Maxit has a [25-35]% market share on the dry premix market in Sweden.
207. As regards the distribution of building materials, Saint-Gobain has a national market share of [0-5]% in 2006 on the narrower market (excluding DIY). As regards the distribution of mortar products, Saint-Gobain has a national market share of [0-5]% on the narrower market.
208. With regard to risks of input foreclosure, the merged entity will not be able to stop supplying or supply at higher prices other distributors with its mortar products. Indeed the merged entity will not gain market power upstream (i.e. on mortar markets:[20-30]% for the dry premix mortar market). It should be noted that Saint-Gobain is purchasing already [50-70]% of its mortars requirements for distribution from Maxit. As to the incentives to foreclose, considering the limited market share of Saint-Gobain in the distribution of building materials in Sweden ([0-5]%), it seems unlikely that such a strategy could be profitable. Finally, no specific must-have mortar products from Maxit could be identified on the Swedish market.
209. As to customer foreclosure, Saint-Gobain faces competition from Byggmaker ([15-20]%), BK Byggkjop ([10-15]%), and Maxbo ([5-10]%), which could constitute alternative distribution channels for competing mortars producers, should the merged entity stop purchasing mortars from competing mortar companies.

*Affected markets because of Maxit's position in the sale of bagged grey cement*

210. For the sake of completeness, it should be mentioned that, in Norway and Sweden, Maxit is distributing bagged grey cement on behalf of its current parent company, Heidelberg, and holds on these markets a market share exceeding 25%. As Maxit is selling these cement supplies to distributors of building materials in these countries, the market for the distribution of building materials is vertically affected by the transaction. However, as, following the merger, Maxit will lose its relationship with Heidelberg, these markets are not further discussed in this decision.

## **VI. PROPOSED REMEDIES**

211. In order to render the concentration compatible with the common market, the undertakings concerned have modified the notified concentration by entering into the following commitments, which are annexed to this decision and form an integral part thereof (see **Attachment 1**).

212. These commitments consist in the divestiture to a suitable purchaser of two wholly-owned Maxit subsidiaries: Südharder Gipswerk GmbH ("SHG"), and Maxit Baustoffe GmbH & Co KG. ("Maxit Baustoffe").

213. SHG operates four plants in Germany (in Dorste, Ellrich, Sulzheim and Neckarzimmern), which produce and sell natural raw gypsum, natural anhydrite, gypsum-based semi-finished products, gypsum-based plasters for building applications and gypsum-based plasters for ceramics and other special applications. In particular, the Sulzheim plant is the only Maxit plant which produces gypsum-based plasters for ceramics.

214. Maxit Baustoffe operates the Kuchl plant in Austria, which is active in natural raw anhydrite, gypsum-based semi-finished products, and gypsum-based plasters for building applications.

## **VII. ASSESSMENT OF THE PROPOSED REMEDIES**

215. As explained in the Commission notice on remedies<sup>39</sup>, where a concentration raises serious doubts about its compatibility with the common market, the parties may seek to modify the concentration in order to resolve the serious doubts identified by the Commission. In order to remove the serious doubts identified by the Commission in four markets in the calcium sulphate sector, Saint-Gobain submitted remedies on 6 February 2008. The Commission market tested the proposed remedy package with a questionnaire sent to competitors and customers of the parties on 11 February 2008.

216. The Commission's competitive assessment of the proposed transaction includes its assessment of the proposed remedies. In assessing whether or not the remedy will restore effective competition, the Commission considers the type, scale and scope of the remedies by reference to the structure of and particular characteristics of the

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<sup>39</sup> Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.



markets in which serious doubts arise. In so doing, the Commission has to assess both (i) the independence, the viability and the competitiveness of the divested business on the long term and (ii) the effectiveness of the proposed remedy in removing the serious doubts.

217. With the objective of resolving the serious doubts identified by the Commission on (i) the market for natural raw natural gypsum in Germany; (ii) the market for natural anhydrite in Austria, (iii) the markets for semi-finished gypsum-based products in Austria, Belgium, Germany and the Netherlands, and (iv) the EEA market for gypsum-based plasters for ceramics, Saint-Gobain committed to the divestiture to a suitable purchaser of SHG and Maxit Baustoffe.
218. The Commission takes the view that the proposed remedies remove the serious doubts and restore effective competition, as they remove the entire overlaps between Saint-Gobain and Maxit on these markets where it identified serious doubts, and the divested businesses both constitute stand-alone viable entities.
219. As a result of the transaction and after remedies, Saint-Gobain will effectively only acquire Maxit's [CONFIDENTIAL] stake in the Franken Maxit joint venture, which operates the Krölpa plant in Germany. This plant is mainly active in gypsum-based plasters for building applications, for which the proposed transaction does not give rise to serious doubts given the parties' low market shares and/or the limited increment brought about by the merger (e.g., Saint-Gobain [0-5]%, Maxit [15-20]% in volume/[10-15]% in value in Germany; Saint-Gobain [5-10]% ([10-15]% in volume) and Maxit [5-10]% ([5-10]% in volume) in the Netherlands). [CONFIDENTIAL] does not have any external sales of natural raw gypsum (its limited annual production of [CONFIDENTIAL] metric tonnes is entirely used internally and it purchases synthetic gypsum) so that there is no overlap with Saint-Gobain on the market for natural raw gypsum in Germany. [CONFIDENTIAL] has an anhydrite quarry selling in the merchant market with a [0-5]% market share in volume and [5-10]% in value in Germany (so that Saint-Gobain's market share will only increase from [15-20]% to [15-20]% post merger in volume and from [10-15]% to [15-25]% in value). Last [CONFIDENTIAL] has limited sales in semi-finished gypsum-based plasters with a market share below [0-5]% in Germany.
220. The market test confirmed that the commitments are clear-cut and appropriate to remove competition concerns in this market.
221. The market test has furthermore confirmed that the divested businesses each has a sufficient size and autonomy to create a viable competitor. Furthermore, a majority of respondents acknowledged that it was not necessary to sell both SHG and Maxit Baustoffe to a common purchaser as they have different product and geographic focus and are each of a sufficient size to ensure the competitiveness of the divested businesses.
222. As confirmed by the market test, the divested businesses contain all tangible and intangible assets that the purchaser will need to conduct the business as a viable and independent business, notably the plant, the production equipment, the personnel, the relevant trademarks, product formulations, know-how, mines and quarries, supply contracts for raw materials, and customer contracts.

## SHG

223. The divestiture of SHG will remove the entire overlap between the parties on the markets for (i) natural raw gypsum in Germany; (ii) semi-finished gypsum-based products in Austria, Belgium and Germany ([CONFIDENTIAL] has *de minimis* sales to third parties of semi-finished products in Germany of less than [0-5]%; and (iii) gypsum-based plasters for ceramics in the EEA.
224. The divested business includes in particular:
- The Dorste, Ellrich, Sulzheim, and Neckarzimmern plants;
  - All quarries owned by SHG and/or related exploitation rights [CONFIDENTIAL]. SHG can therefore continue to operate and exploit the quarries independently as if it were the legal holder of these rights.
  - As regards the Neckarzimmern plant, a back-to-back contract of [CONFIDENTIAL] for the supply to SHG of synthetic gypsum [CONFIDENTIAL], and a long-term supply contract [CONFIDENTIAL] for the supply of [CONFIDENTIAL] natural raw gypsum [CONFIDENTIAL]; and a contract for the supply [CONFIDENTIAL] of synthetic gypsum [CONFIDENTIAL].
  - SHG's 11.2% shareholding in BBG Stadtoldendorf GmbH, a company from which SHG sources synthetic gypsum for its Dorste plant;
  - All production machinery and equipment
  - Key personnel and personnel employed by SHG
  - All intellectual property rights necessary for the production and sale of SHG's output (know-how, trademarks, etc.)
  - Transitional supply agreement for the supply by SHG of raw anhydrite ([CONFIDENTIAL]), natural raw gypsum ([CONFIDENTIAL]), gypsum-based products for building applications ([CONFIDENTIAL]) and other products (mortars, perlite and anhydrite floor screeds) to Maxit. [CONFIDENTIAL], SHG will supply the new entity Saint-Gobain/Maxit with these products in quantities equal to the intra-group transactions of 2007. [CONFIDENTIAL], SHG will have the possibility to continue selling these products to the new entity in quantities subject to negotiations. Should the new entity and SHG fail to agree on quantities, SHG will decide the volumes that will be supplied to the new entity. Supplies will be at [CONFIDENTIAL]. These downstream supply agreements will avoid a disruption of SHG's business during a transitional period while it grows its customer base for the products and give Maxit the time to find alternative sources for these products.

### *Maxit Baustoffe*

225. The divestiture of Maxit Baustoffe will remove the entire overlap between the parties on the markets for natural anhydrite in Austria and semi-finished gypsum-based products in Austria.
226. The divested business includes in particular:
- The Kuchl plant
  - The Abtenau gypsum mine and Moosegg gypsum and anhydrite quarry supplying the Kuchl plant and related exploitation rights
  - All production machinery and equipment
  - Key personnel and personnel employed by Maxit Baustoffe
  - All intellectual property rights necessary for the production and sale of Maxit Baustoffe's output (know-how, trademarks, etc.)
  - Transitional agreements for up to [CONFIDENTIAL] for the supply by Maxit Baustoffe to the new entity Saint-Gobain/Maxit of gypsum-based semi-finished products, gypsum-based plasters for building applications and mortars. [CONFIDENTIAL], Maxit Baustoffe will supply quantities equal to the current intra-group transactions (supplies by Maxit Baustoffe to Maxit were in 2006: [CONFIDENTIAL], Maxit Baustoffe will have the possibility to continue selling these products to the new entity in quantities subject to negotiations. Should the new entity and Maxit Baustoffe fail to agree on quantities, Maxit Baustoffe will decide unilaterally the quantities that will be supplied to the new entity. Supplies will be at [CONFIDENTIAL]. These downstream supply agreements will avoid a disruption of Maxit Baustoffe's business during a transitional period while it grows its customer base for the products and give Maxit Baustoffe the time to find alternative sources for these products.

### *Conclusion*

227. The Commission, therefore, concludes that the divestiture of SHG and Maxit Baustoffe will restore effective competition and that the proposed transaction does not raise serious doubts on condition of the implementation of this remedy.
228. For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the common market.
229. Sections B to D of the commitments annexed to the present decision constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the common market.

## VIII. CONCLUSION

230. The decision in this case is conditioned on the full compliance with Section B to D of the Commitments and the schedules of the Commitments submitted by the notifying party on 6 February 2008.
231. The remaining requirements set out in the other Sections of the Commitments submitted by the parties on 6 February 2008 are considered to constitute obligations.
232. The Commission has concluded that the remedies submitted by the Parties are sufficient to remove the serious doubts raised by the concentration. Accordingly, subject to the full compliance with the commitments submitted by the notifying party, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) and Article 6(2) of Council Regulation (EC) No 139/2004.
233. The detailed text of the commitments is annexed to this decision. The full text of the annexed commitments forms an integral part to this decision.
234. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the common market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Sections B to D of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission  
*(Signed)*  
Neelie KROES  
Member of the Commission

6 February 2008

**Non-confidential version**

Case No. COMP/M.4898 – Compagnie de Saint-Gobain / Maxit

COMMITMENTS TO THE EUROPEAN COMMISSION

Calcium sulphate

Linklaters



## Case No. COMP/M.4898 – Compagnie de Saint-Gobain / Maxit

### Commitments to the European Commission (Calcium sulphate)

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the “**Merger Regulation**”), Compagnie de Saint-Gobain (“**Saint-Gobain**”) hereby provides the following commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition of Maxit Holding AB (“**Maxit**”) by Saint-Gobain compatible with the common market and the EEA Agreement.

These Commitments shall take effect upon the date of adoption of the Commission Decision pursuant to Article 6(1)(b) of the Merger Regulation in this case (the “**Decision**”) but the divestiture commitments in Section B shall be subject to the closing of Saint-Gobain’s acquisition of Maxit.

This text of these Commitments shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, within the general framework of Community law, in particular the Merger Regulation and by reference to the Commission Notice on remedies acceptable under the Merger Regulation.

For the avoidance of doubt, Maxit is only a signatory of these Commitments because it commits to certain obligations in Section C below and only with regard to the time period prior to the closing of the Saint-Gobain/Maxit transaction; thereafter, these obligations will be assumed by Saint-Gobain, as Maxit’s ultimate parent company.

#### Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings:** undertakings controlled by the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission’s Consolidated Jurisdictional Notice under the Merger Regulation.

**Closing:** with respect to each Divestiture Business, the transfer of the legal title of the respective Divestiture Business to the Purchaser.

**Divestiture Businesses:** the businesses that Saint-Gobain commits to divest, as further defined in Section B below and the attached Schedules (each respective business defined in Section B is referred to below separately as a “**Divestiture Business**”).

**Divestiture Trustee:** one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Saint-Gobain and who has received from Saint-Gobain the exclusive mandate to sell the either of both of the Divestiture Businesses to one or more Purchaser(s) at no minimum price.

**Effective Date:** the date of the Decision.

**Extended Divestiture Period:** with respect to each Divestiture Business, the period of [CONFIDENTIAL] from the date of expiry of the First Divestiture Period, within which the Divestiture Trustee shall have the irrevocable and exclusive mandate from Saint-Gobain to sell the

Divestiture Business if a binding agreement is not yet concluded at the end of the First Divestiture Period.

**First Divestiture Period:** with respect to each Divestiture Business, the period of [CONFIDENTIAL] from the Effective Date within which Saint-Gobain may conclude a binding agreement to sell the Divestiture Business before providing a mandate to the Divestiture Trustee.

**Heidelberg:** HeidelbergCement AG, incorporated under the laws of Germany, with its registered office at Berliner Straße 6, 69120 Heidelberg, Germany.

**Hold Separate Manager:** the person(s) appointed by Saint-Gobain (or Maxit) to manage the day-to-day business of each Divestiture Business that is held separate pursuant to paragraph 10, under the supervision of the Monitoring Trustee.

**Maxit:** Maxit Holding AB, incorporated under the laws of Sweden, with its registered office at Norra Malmvägen 76, P.O. Box 415, SE-19124 Sollentuna, Sweden.

**Maxit Baustoffe:** Maxit Baustoffe GmbH & Co KG, incorporated under the laws of Austria, with its registered office at in A-5431 Kuchl, Kellau 75, Austria.

**Maxit GmbH:** Maxit Deutschland GmbH, incorporated under the laws of Germany, with its registered office at Kupfertorstraße 35, 79206 Breisach, Germany.

**Key Personnel:** with respect to each Divestiture Business, all personnel necessary to maintain the viability and competitiveness of the Divestiture Business, as listed in the applicable Schedule.

**Monitoring Trustee:** one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Saint-Gobain, and who has the duty to monitor Saint-Gobain's compliance with the conditions and obligations attached to the Decision.

**Parties:** Saint-Gobain and/or Maxit.

**Personnel:** with respect to each Divestiture Business, the personnel currently employed by the Divestiture Businesses, as listed in the applicable Schedule.

**Purchaser:** with respect to each Divestiture Business, the undertaking approved by the Commission as acquirer of the Divestiture Business in accordance with the criteria set out in Section D.

**Trustee(s):** the Monitoring Trustee and/or the Divestiture Trustee.

**Saint-Gobain:** Compagnie de Saint-Gobain, incorporated under the laws of France, with its registered office at Les Miroirs, 18, avenue d'Alsace, 92400 Courbevoie, France.

**SHG:** Südharzer Gipswerk GmbH, an Affiliated Undertaking of Maxit, incorporated under the laws of Germany, with its registered office at Pontelstraße 3, 99755 Ellrich, Germany.

## **Section B. The divestiture commitment**

### **Commitment to divest**

1. In order to maintain or restore effective competition, with respect to each Divestiture Business, Saint-Gobain commits to divest, or to procure the divestiture of, the Divestiture Business as a going concern to a Purchaser on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18 (the



**“Divestiture Commitment”**). Saint-Gobain commits to do so by the end of the Extended Divestiture Period. To carry out each divestiture, Saint-Gobain shall seek to find, for each Divestiture Business, a Purchaser and to enter into a final binding agreement for the sale of such Divestiture Business within the First Divestiture Period. If Saint-Gobain has not entered into such an agreement for a Divestiture Business at the end of the First Divestiture Period, Saint-Gobain shall grant the Divestiture Trustee an exclusive mandate to sell this Divestiture Business within the Extended Divestiture Period in accordance with the procedure described in paragraph 29. All Divestiture Businesses may be divested to one Purchaser or each Divestiture Business may be divested to a different Purchaser.

2. Saint-Gobain shall be deemed to have complied with the Divestiture Commitment if, with respect to each Divestiture Business, (i) by the end of the Extended Divestiture Period, Saint-Gobain or an Affiliated Undertaking has entered into a final binding sale and purchase agreement; (ii) the Commission approves the Purchaser and the terms of sale in accordance with the procedure described in paragraphs 17 and 18; and (iii) Closing takes place within a period not exceeding [CONFIDENTIAL] after the approval of the Purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Divestiture Commitment, Saint-Gobain shall, for a period of ten (10) years after the Effective Date, not acquire direct or indirect influence over the whole or part of either Divestiture Business, unless the Commission has previously found that the market structure has changed to such an extent that the absence of influence over the Divestiture Business concerned is no longer necessary to render the proposed concentration compatible with the Merger Regulation.
4. In any event, the sale of the Divestiture Businesses must only occur if the Saint-Gobain acquisition of Maxit has closed.

### **The Divestiture Businesses**

5. The Divestiture Businesses consists of the following:
  - (a) SHG, which is incorporated separately (the **“SHG Divestiture”**);
  - (a) Maxit Baustoffe, which is incorporated separately (the **“Maxit Baustoffe Divestiture”**);each time as further defined in the relevant Schedule.
6. The divestiture of the Divestiture Businesses will proceed by way of share and/or asset transactions (including transfer, sale, assignment, license, as the case may be and insofar as legally permissible). As a general rule, each Divestiture Business shall include the following elements, as more specifically defined in the relevant Schedule:
  - (a) all tangible and intangible assets (including the relevant intellectual property rights), by way of transfer, sale, assignment or license, which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestiture Business;
  - (a) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestiture Business;
  - (a) all contracts, leases, commitments and customer orders of the Divestiture Business;
  - (a) all customer, credit and other records of the Divestiture Business;

hereinafter collectively referred to as “**Assets**”

- (a) the Personnel, as further specified in the relevant Schedule;
- (a) transitional product or service, supply or license agreements with Saint-Gobain, Maxit, Heidelberg or Affiliated Undertakings, as specified in the relevant Schedule.

7. For the avoidance of doubt, the Divestiture Business shall not include:

- (a) intellectual property rights which do not contribute to the current operation of the Divestiture Business;
- (a) the Saint-Gobain and Maxit names and logos and the Maxit product names in any form, unless and to the extent explicitly provided otherwise;
- (a) books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that copies of such documents necessary for the Divestiture Business are provided to the Purchaser; and
- (a) general books of account and books of original entry that are part of permanent accounting or tax records (by Maxit or any Affiliated Undertaking) provided that copies of such documents necessary for the Divestiture Business are provided to the Purchaser.

## **Section C. Related commitments**

### **Preservation of viability, marketability and competitiveness**

8. From the Effective Date until Closing, each Party shall preserve the economic viability, marketability and competitiveness of the Divestiture Businesses in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential. In particular each Party commits:
- (a) to not carrying out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestiture Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestiture Businesses;
  - (a) to making available sufficient resources for the development of the Divestiture Businesses, on the basis and continuation of the existing business plans;
  - (a) to taking all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage Key Personnel to remain with their respective Divestiture Business.

### **Hold separate obligations**

9. Each Party commits, from the Effective until Closing and subject to paragraph 8, to (i) keep the Divestiture Businesses separate from the businesses that are retained by Saint-Gobain; (ii) ensure that Key Personnel (if applicable) of the respective Divestiture Business - including the Hold Separate Manager - have no involvement in any retained business and vice versa; and (iii) ensure that the Personnel do not report to any individual outside the respective Divestiture Business.

10. Prior to Closing, each Party shall assist the Monitoring Trustee in ensuring that each Divestiture Business is managed as a distinct and saleable entity or group of assets separate from the businesses which are retained by Saint-Gobain. Saint-Gobain shall also appoint, for each Divestiture Business, a Hold Separate Manager who shall be responsible for the management of the respective Divestiture Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestiture Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Saint-Gobain.
11. To ensure that each Divestiture Business is held and managed as a separate entity, the Monitoring Trustee shall, as appropriate, exercise the rights of Maxit or the relevant Affiliated Undertaking as shareholder in the Divestiture Business (except for its rights to dividends that are due before Closing), with the aim of acting in the best interest of the business, determined on a stand-alone basis, as an independent financial investor and with a view to fulfilling the Parties' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the right to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Parties. Upon request of the Monitoring Trustee, the Parties shall procure that any board member appointed by the Parties, or any of their Affiliated Undertaking, shall resign as member of the board.

### **Ring-fencing**

12. The Parties shall implement all necessary measures to ensure that they do not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestiture Businesses. In particular, the participation of the Divestiture Businesses in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestiture Businesses. However, the Parties may obtain information relating to each Divestiture Business which is reasonably necessary for the divestiture of the Divestiture Business or whose disclosure to either Party is required by law.

### **Non-solicitation clause**

13. Each Party undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestiture Businesses for a period of [CONFIDENTIAL] after Closing.

### **Due diligence**

14. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestiture Businesses, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process, (i) provide to potential purchasers sufficient information as regards the relevant Divestiture Business; and (ii) provide to potential purchasers sufficient information relating to the Personnel (where applicable) and allow them reasonable access to the Personnel.

## Reporting

15. Saint-Gobain shall submit written reports in English to the Commission and the Monitoring Trustee on potential purchasers of the Divestiture Businesses and developments in the negotiations with such potential purchasers. It shall do so no later than ten (10) days after the end of every month following the Effective Date (or otherwise at the Commission's request).
16. Saint-Gobain shall inform the Commission and the Monitoring Trustee about the preparation of data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum to potential purchasers.

## Section D. The Purchaser

17. In order to ensure the maintenance or immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must, with respect to the relevant Divestiture Business:
  - (a) be independent of and unconnected to the Parties;
  - (a) have the financial resources, proven expertise and incentive to maintain and develop the Divestiture Business as a viable and active competitive force in competition with Saint-Gobain and other competitors;
  - (a) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Divestiture Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestiture Business;

(the before-mentioned criteria for the purchaser are hereinafter referred to as the "**Purchaser Requirements**").
18. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Saint-Gobain has reached an agreement with a Purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Saint-Gobain must be able to demonstrate to the Commission that the Purchaser meets the Purchaser Requirements and that the Divestiture Business(es) is being sold in a manner consistent with the Divestiture Commitment. For the approval, the Commission shall verify that the Purchaser fulfils the Purchaser Requirements and that the Divestiture Business is being sold in a manner consistent with the Divestiture Commitment. In the event that Saint-Gobain receives offers from more than one potential purchaser which, upon verification by the Commission, fulfil the Purchaser Requirements, Saint-Gobain shall be free to take whichever offer that Saint-Gobain deems the most appropriate to its interests. The Commission may approve the sale of a Divestiture Business without one or more assets or members of the Personnel, as appropriate, if this does not affect the viability and competitiveness of the Divestiture Business after the sale, taking account of the proposed Purchaser.
19. The Divestiture Businesses may be divested together to one Purchaser or separately to two different Purchasers.

## **Section E. Trustee**

### **I. Appointment procedure**

20. Saint-Gobain shall appoint a Monitoring Trustee to carry out the functions specified below with regard to the Monitoring Trustee.
21. With regard to each Divestiture Business, If Saint-Gobain has not entered into a binding sale and purchase agreement one (1) month before the end of the First Divestiture Period or if the Commission has rejected a Purchaser proposed by Saint-Gobain at that time or thereafter, Saint-Gobain shall appoint a Divestiture Trustee to carry out the functions specified below with regard to the Divestiture Trustee with respect to that Divestiture Business. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestiture Period.
22. The Trustee(s) shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee(s) shall be remunerated by Saint-Gobain in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestiture Businesses, the fee shall also be linked to a divestiture within the Extended Divestiture Period.

### **Proposal by Saint-Gobain**

23. No later than one (1) week after the Effective Date, Saint-Gobain shall submit to the Commission for approval a list of one or more persons whom Saint-Gobain proposes to appoint as the Monitoring Trustee. No later than one (1) month before the end of the First Divestiture Period, Saint-Gobain shall submit to the Commission for approval a list of one or more persons whom Saint-Gobain proposes to appoint as Divestiture Trustee. The proposal shall contain sufficient information for the Commission to verify that the proposed entities fulfil the requirements set out in paragraph 22 and shall include:
  - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
  - (a) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
  - (a) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different Trustees are proposed for the two functions.

### **Approval or rejection by the Commission**

24. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Saint-Gobain shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Saint-Gobain shall be free to choose the Trustee to be appointed from among the names

approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

### **New proposal by Saint-Gobain**

25. If all the proposed Trustees are rejected, Saint-Gobain shall submit the names of at least two (2) more individuals or institutions within one (1) week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraph 23.

### **Trustee nominated by the Commission**

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Saint-Gobain shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

## **II. Functions of the Trustee**

27. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Saint-Gobain, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

### **Duties and obligations of the Monitoring Trustee**

28. The Monitoring Trustee shall:
- (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
  - (b) oversee the ongoing management of the Divestiture Businesses with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance with the conditions and obligations attached to the Decision, and in particular shall:
    - (i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestiture Businesses in accordance with paragraph 8;
    - (ii) ensure that the Divestiture Businesses are kept separate from the businesses retained by Saint-Gobain, in accordance with paragraph 9;
    - (iii) supervise the management of the Divestiture Businesses as distinct and saleable entities, in accordance with paragraph 10;
    - (iv) in consultation with Saint-Gobain, determine all necessary measures to ensure that after the Effective Date Saint-Gobain does not obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestiture Businesses, and in particular strive for the severing of the Divestiture Businesses' participation in a central information technology

network to the extent possible, without compromising the viability of the Divestiture Businesses,

- (v) decide whether, notwithstanding (iv) such confidential information may be disclosed to Saint-Gobain as its disclosure is reasonably necessary to allow Saint-Gobain to carry out the divestiture or as the disclosure is required by law;
  - (vi) monitor, if applicable, the splitting of assets and the allocation of Personnel between each of the Divestiture Businesses and Saint-Gobain or Affiliated Undertakings.
- (c) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision, including the monitoring of any transitional agreements referred to in the Schedules.
  - (d) propose to Saint-Gobain such measures as the Monitoring Trustee considers necessary to ensure Saint-Gobain's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestiture Businesses, the holding separate of Divestiture Businesses and the non-disclosure of competitively sensitive information.
  - (e) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (i) potential purchasers receive sufficient information relating to the relevant Divestiture Business and the Personnel (where applicable), in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (ii) potential purchasers are granted reasonable access to the Personnel.
  - (f) provide to the Commission a written report within fifteen (15) days after the end of every month, and send Saint-Gobain a non-confidential copy at the same time. The report shall cover the operation and management of the Divestiture Businesses so that the Commission can assess whether the Business are held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Saint-Gobain a non-confidential copy at the same time if it concludes on reasonable grounds that Saint-Gobain is failing to comply with these Commitments.
  - (g) within one (1) week after receipt of the documented proposal referred to in paragraph 18, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the relevant Divestiture Business after the sale and as to whether the Divestiture Business is being sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of a Divestiture Business without one or more assets or not all of the Personnel affects the viability of that Divestiture Business after the sale, taking account of the proposed purchaser.

### **Duties and obligations of the Divestiture Trustee**

29. Within the Extended Divestiture Period and with regard to the relevant Divestiture Business, if any, the Divestiture Trustee shall sell, at no minimum price, the Divestiture Business that remains unsold to a Purchaser, provided that the Commission has approved both the Purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 18. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale during the Extended Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Saint-Gobain, subject to Saint-Gobain's unconditional obligation to divest at no minimum price in the Extended Divestiture Period.
30. In the Extended Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within fifteen (15) days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Saint-Gobain.

### **III. Duties and obligations of Saint-Gobain**

31. Saint-Gobain shall provide, and shall cause its advisors to provide, the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Saint-Gobain's, Maxit's, their Affiliated Undertakings', or the Divestiture Businesses' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments. Saint-Gobain or the Divestiture Businesses shall provide the Trustee upon request with copies of any document. The Trustee shall agree in writing to keep any confidential information and business secrets disclosed to it in confidence, except to the extent necessary to perform its duties hereunder. Saint-Gobain, its Affiliated Undertakings, or the Divestiture Businesses shall make available to the Trustee, if so requested by the Trustee, one or more offices on its premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
32. Saint-Gobain shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestiture Businesses. This shall include all administrative support functions relating to the Divestiture Businesses which are currently carried out at headquarters level. Saint-Gobain shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Saint-Gobain shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
33. Saint-Gobain shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale during the Extended Divestiture Period, the Closing and all actions and declarations which the Divestiture



Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Saint-Gobain shall cause the documents required for effecting the sale and the Closing to be duly executed.

34. Saint-Gobain shall indemnify the Trustee and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Saint-Gobain for, any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
35. At the expense of Saint-Gobain, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Saint-Gobain’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the trustee mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. If Saint-Gobain refuses to approve the advisors proposed by the Trustee, the Commission may approve the appointment of such advisors instead, after having heard Saint-Gobain. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 34 shall apply *mutatis mutandis*. In the Extended Divestiture Period, the Divestiture Trustee may use advisors who served Saint-Gobain during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

#### **IV. Replacement, discharge and reappointment of the Trustee**

36. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
  - (i) the Commission may, after hearing the Trustee, require Saint-Gobain to replace the Trustee; or
  - (ii) Saint-Gobain, with the prior approval of the Commission, may replace the Trustee.
37. If the Trustee is removed according to paragraph 36, the Trustee may be required to continue its function until a new Trustee is in place to whom the Trustee has effected a full handover of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 20-26.
38. Besides the removal according to paragraph 36, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the re-appointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

#### **Section G. The review clause**

39. The Commission may, where appropriate, in response to a request from Saint-Gobain showing good cause and accompanied by a report from the Monitoring Trustee:
  - (a) grant an extension of the time periods foreseen in the Commitments; or

(a) waive, modify or substitute, in exceptional circumstances, one or more of the conditions or obligations in these Commitments.

40. Where Saint-Gobain seeks an extension of a time period, it shall submit a request to the Commission no later than one (1) month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Saint-Gobain be entitled to request an extension within the last month of any period.
41. If the approval of the Saint-Gobain/Maxit merger by another antitrust authority is made subject to requirements that (i) are potentially inconsistent with these Commitments or (ii) would, when combined with the obligations in these Commitments, result in the divestiture of assets or businesses beyond what is necessary to maintain or restore effective competition in the EEA, Saint-Gobain may request a review and adjustment of these Commitments in order to avoid such inconsistencies or obligations beyond those necessary to restore effective competition.

Name: Bernard van de Walle de Ghelcke  
Title: Partner, Linklaters LLP  
for and on behalf of Saint-Gobain  
Date: 6 February 2008

Name: Jonas Koponen  
Title: Partner, Linklaters LLP  
for and on behalf of Saint-Gobain  
Date: 6 February 2008

Name: Bernard van de Walle de Ghelcke  
Title: Partner, Linklaters LLP  
for and on behalf of Maxit  
Date: 6 February 2008

Name: Jonas Koponen  
Title: Partner, Linklaters LLP  
for and on behalf of Maxit  
Date: 6 February 2008

## Schedule I

### The SHG Divestiture Business

1. Saint-Gobain will procure the divestiture of Maxit's separately incorporated German subsidiary, Südharzer Gipswerk GmbH ("SHG"), a wholly-owned subsidiary of Maxit Deutschland GmbH, with registered offices in Pontelstraße 3, 99755 Ellrich, Germany.

SHG's activities comprise the extraction and sale of raw gypsum and anhydrite and the manufacturing and sale of semi-finished gypsum plaster products and finished gypsum based plasters for building, ceramics and personal care applications as well as other products (the "SHG Products"). A summary of SHG's product range (by manufacturing plant) is attached in Annex I-A.

This divestiture will occur by way of a share and/or asset purchase agreement, involving the sale and purchase of the entire SHG business currently held by Maxit GmbH. The current legal SHG ownership structure is provided in Annex I-B.

SHG is managed by a dedicated local management. A copy of SHG's organisational/management chart is attached in Annex I-C.

2. Following paragraph 5 of the Commitments (SHG), the SHG Divestiture Business includes but is not limited to:

(a) the following main tangible assets:

- (i) Finished goods inventory, sales promotional materials relating to the SHG Products held at the date of closing of the divestiture;
- (ii) The Ellrich, Dorste, Sulzheim and Neckarzimmern production facilities in Germany. Annex I-D describes each of these facilities and provides a site map of each facility.
- (iii) All quarries owned by SHG and/or related exploitation rights [CONFIDENTIAL].
- (iv) All production machinery, equipment and tooling located in the above-mentioned production facilities and quarries, in particular kilns, kettles, autoclaves, palletizers, mixers and packing machines, as listed by plant in the attached Annex I-E and all technical files and records related to such machinery and equipment.
- (v) All administrative, laboratory, storage and distribution facilities located in the above-mentioned facilities, including all essential transportation and distribution equipment operated by SHG to serve its customers, in particular silos, lorries and tankers.

There are no assets, including machinery, equipment or other tangible or intangible assets required to ensure viability of the SHG Divestiture Business as a stand-alone business, that are not located in the above-mentioned production facilities and quarries.

- (vi) All relevant data, books and records relating to the SHG Business and SHG's customers in existence at the date of Closing. A list of SHG customers is attached in Annex I-F.
  - (vii) All development data (or copies thereof), if any, concerning historic and current development efforts at or for the SHG Business.
  - (viii) Copies of any and all other materials that are specific to the SHG Business.
- (b) the following main intangible assets:
- (i) The intellectual property rights necessary for the manufacture and sale of the Products, including secret know-how for the manufacture of the Products. There are no patents involved in the manufacture of the Products.
  - (ii) All relevant trademarks attributable to the SHG Business, as listed in Annex I-G.
  - (iii) The domain name [www.shg-gips.de](http://www.shg-gips.de);

There are no assets, including machinery, equipment or other tangible or intangible assets required to ensure viability of the SHG Divestiture Business as a stand-alone business, that are not located in the above-mentioned production facilities and quarries.

- (c) The Personnel listed in Annex I-H.
- (d) The Key Personnel listed in Annex I-I.
- (e) All licenses, permits and other governmental authorisations relating to SGH above-mentioned facilities and the SHG Business.
- (f) All third party suppliers' contracts, including the contracts for the supply of raw gypsum and FGD gypsum to the Neckarzimmern plant.
- (g) Any other contracts (or portion thereof), to the extent they relate to the SHG Business and to the extent they are assignable.
- (h) SGH's shareholding in BBG Stadtoldendorf GmbH ("BBG"), with registered offices in Holeburgweg 24, 37627 Stadtoldendorf, Germany. BBG is a joint venture between five German gypsum suppliers to rationalise the purchase and distribution of flue gas desulphurization gypsum ("FGD") in Southern Lower Saxonia.
- (i) For the avoidance of doubt, the SHG Business shall not include the right to use the Saint-Gobain or Maxit name, logos and Maxit product names (mainly named as "IP" products) or domain names in any form, of any affiliate in the Saint-Gobain and Maxit groups.
- (j) Please note that by agreement of [CONFIDENTIAL], HeidelbergCement transferred a number of rights and contracts to SHG, including:
  - (i) The Technodur trademark.
  - (ii) the right for SHG to use exclusively, for an unlimited duration and without compensation, the trade names: "*Heidelberger Formengips*" and "*Heidelberger Specialgips*" for gypsum products.

(iii) The distribution agreement with [CONFIDENTIAL].

3. Saint-Gobain commits to enter into a transitional supply agreement with SHG and its Purchaser for the SHG Products. The agreement will have the following basic terms:
  - (a) The agreement will be for a duration of a minimum period of [CONFIDENTIAL] and up to [CONFIDENTIAL] at the election of the Purchaser.
  - (b) Products will be supplied by SHG to SG/Maxit at [CONFIDENTIAL].
  - (c) [CONFIDENTIAL] the respective quantities will correspond to those supplied by SHG to Maxit in 2007, or quantities otherwise agreed between the parties. For [CONFIDENTIAL], the parties will negotiate – [CONFIDENTIAL] before the end of the year - the quantities to be delivered for the following year. Should the parties fail to agree on the volumes, SHG will determine the volumes that it will supply to Maxit during the following year.
4. At the request of the Purchaser, Saint-Gobain commits to make available for interview to the Purchaser, at specific times during the term of the transitional supply agreement referred in paragraph 3 above, suitable sales personnel from within the Maxit organisation, up to a maximum of [CONFIDENTIAL] persons.
5. At the request of the Purchaser, SG/Maxit commits sell to, or put at the Purchaser's disposal on a long term basis, and on terms and conditions to be agreed with the Purchaser but in line with market conditions, the number of silos that are necessary for the Purchaser to supply in bulk finished gypsum products for building applications.

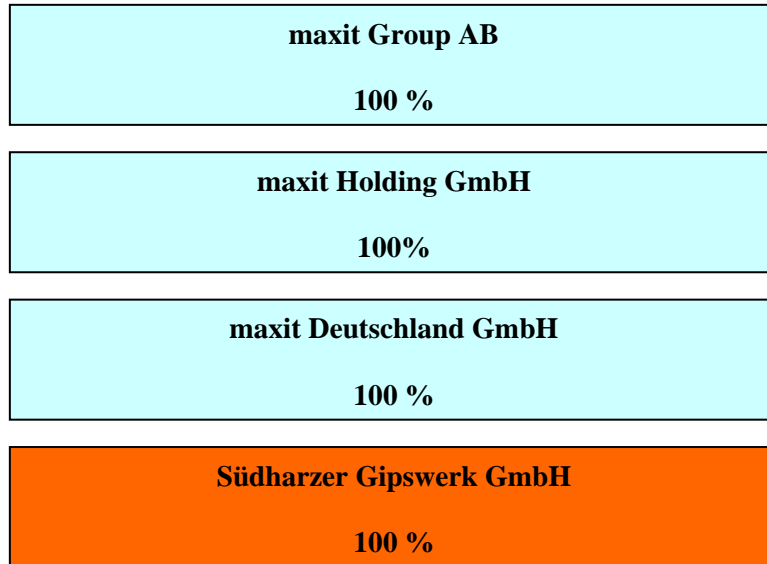
**Annex I-A**

**Summary of SGH's product range by plant**

[CONFIDENTIAL]

## **Annex I-B**

### **Current SHG legal ownership structure**



**Annex I-C**

**SHG organizational/management chart**

[CONFIDENTIAL]



## Annex I-D

### Description of SHG production facilities

#### Ellrich

The Ellrich plant is located at Pontelstraße 3, 99755 Ellrich. It currently occupies a surface area of 59.320 m<sup>2</sup> of land (plant area). The products manufactured in this plant are described in Annex I-A above. The attached site map provides a visual description of the site and buildings.



[CONFIDENTIAL]

#### Dorste

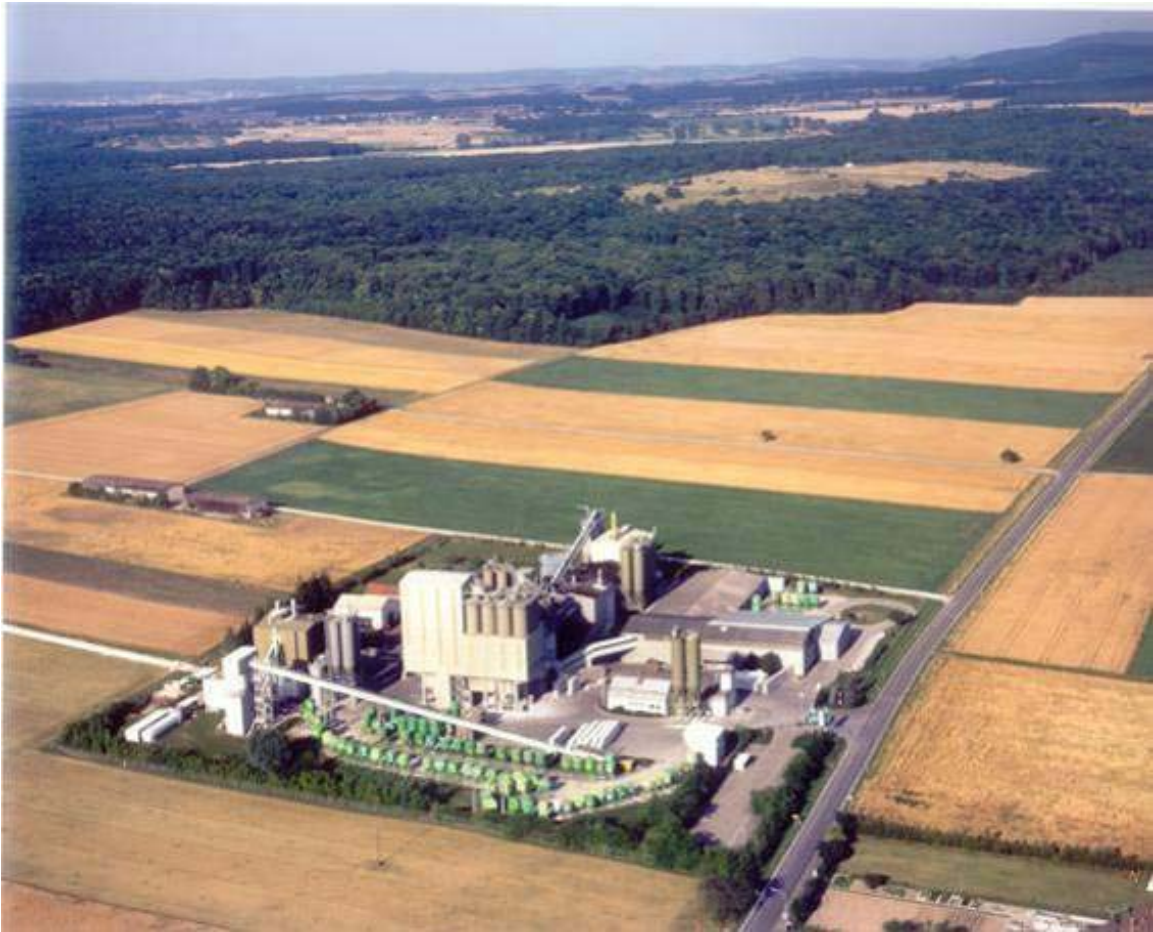
The Dorste plant is located at An der B 241, 37520 Osterode-Dorste. It currently occupies a surface area of 50.438 m<sup>2</sup> of land (plant area). The products manufactured in this plant are described in Annex I-A above. The attached site map provides a visual description of the site and buildings.



[CONFIDENTIAL]

### **Sulzheim**

The Sulzheim plant is located at Otto-Drescher-Straße 25, 97529 Sulzheim. It currently occupies a surface area of 75.007 m<sup>2</sup> of land (plant area). The products manufactured in this plant are described in Annex I-A above. The attached site map provides a visual description of the site and buildings.



[CONFIDENTIAL]

### **Neckarzimmern**

The Neckarzimmern plant is located at Heilbronner Straße 26, 74865 Neckarzimmern. It currently occupies a surface area of 5.617 m<sup>2</sup> of land (plant area). The products manufactured in this plant are described in Annex I-A above. The attached site map provides a visual description of the site and buildings.





[CONFIDENTIAL]

**Annex I-E**

**SHG production equipment by plant**

**Overview of the manufacturing process**

[CONFIDENTIAL]

**Annex I-F**  
**List of SHG Customers**  
[CONFIDENTIAL]

## **Annex I-G**

### **List of SHG trademarks**

SHG owns the following registered trademarks:

- Südanit® (Community trademark)
- Technodur® (registered in Germany, Switzerland, Austria, the UK, Benelux and France).

SHG owns the following trademarks which are not registered but which are used in SHG operational business:

- Keramod
- Alphapor
- Casufill
- Pegnit
- Paradigmat
- Kerapress

**Annex I-H**  
**SHG Personnel**  
[CONFIDENTIAL]



**Annex I-I**  
**Key Personnel**  
[CONFIDENTIAL]

## Schedule II

### The Maxit Baustoffe Divestiture Business

1. Saint-Gobain will procure the divestiture of Maxit's separately incorporated Austrian company, Maxit Baustoffe GmbH & Co KG ("Maxit Baustoffe"), a 100% owned subsidiary of Maxit Deutschland GmbH, with registered offices in A-5431 Kuchl, Kellau 75, Austria.
2. Maxit Baustoffe's activities comprise the extraction of raw gypsum and anhydrite, the sale of raw gypsum and anhydrite and the manufacturing and sale of semi-finished gypsum plaster products and finished gypsum based plasters for building applications as well as cement based mortars (the "Maxit Baustoffe Products"). The list of Maxit Baustoffe's product range is attached in Annex II-A.
3. This divestiture will occur by way of a share and/or assets purchase agreement, involving the acquisition of the entire participation in the Maxit Baustoffe business currently held by Maxit GmbH. The current legal Maxit Baustoffe ownership structure is provided in Annex II-B.
4. Maxit Baustoffe is managed by a dedicated local management. A copy of Maxit Baustoffe's organisational/management chart is attached in Annex II-C.
5. Following paragraph 5 of the Commitments, the Maxit Baustoffe Divestiture Business includes but is not limited to:
  - (a) the following main tangible assets:
    - (i) Finished goods inventory, sales promotional materials relating to the Maxit Baustoffe Products held at the date of Closing;
    - (ii) The Kuchl production facility (including the sand plant). Annex II-D describes the facility and provides a site map thereof.
    - (iii) The gypsum and anhydrite Moosegg quarry and the gypsum Abtenau mine supplying the above facility and the related exploitation rights. The Moosegg quarry is adjacent to the production facility. The Abtenau mine is located approximately 20km from the production facility.
    - (iv) All production machinery, equipment and tooling located in the above-mentioned production facility, quarry and mine, in particular kilns, palletisers, mixers and packing machines as listed in the attached Annex II-E and all technical files and records related to such machinery and equipment.
    - (v) All administrative, laboratory, storage and distribution facilities located in the above-mentioned facility, including all essential transportation and distribution equipment operated by Maxit Baustoffe to serve its customers, in particular silos, lorries and tankers.
    - (vi) There are no assets, including machinery, equipment or other tangible or intangible assets required to ensure viability of the Maxit Baustoffe Divestiture Business as a stand-alone business, that are not located in

the above-mentioned production facility (including the sand plant), quarry and mine.

- (vii) All relevant data, books and records relating to the Maxit Baustoffe Business and Maxit Baustoffe's customers in existence at the date of Closing. A list of Maxit Baustoffe customers is attached in Annex II-F.
  - (viii) All development data (or copies thereof), if any, concerning historic and current development efforts at or for the Maxit Baustoffe Business.
  - (ix) Copies of any and all other materials that are specific to the Maxit Baustoffe Business.
- (b) the following main intangible assets:
- (i) The intellectual property rights (by way of a license) necessary for the manufacture and sale of the Maxit Baustoffe Products, including secret know-how for the manufacture of these Products. There are no patents involved in the manufacture of the Maxit Baustoffe Products.
  - (ii) The Moldan trademark.
  - (iii) The domain name www.moldan.com.
  - (iv) The Personnel listed in Annex II-G.
  - (v) The Key Personnel listed in Annex II-H.
- (c) All licenses, permits and other governmental authorisations relating to Maxit Baustoffe above-mentioned facility and the Maxit Baustoffe Business.
- (d) All third party suppliers' contracts.
- (e) Any other contracts (or portion thereof), to the extent they relate to the Maxit Baustoffe Business and to the extent they are assignable. These contracts include the real estate renting agreement for the land where the sand plant is located and the agreement for the delivery to Maxit Baustoffe of the sand extracted from the related sand quarry, which Maxit Baustoffe does not own and a toll manufacturing agreement with [CONFIDENTIAL] concerning mortars.
- (f) For the avoidance of doubt, the Maxit Baustoffe Business shall not include the right to use the Saint-Gobain or Maxit name, logos and Maxit product names (mainly named as "IP" products) or Maxit domain names in any form, of any affiliate in the Saint-Gobain and Maxit groups.
- 6.** Saint-Gobain commits to enter into a transitional supply agreement with Maxit Baustoffe and its Purchaser for the Maxit Baustoffe Products. The agreement will have the following basic terms:
- (a) The agreement will be for a duration of a minimum period of [CONFIDENTIAL] and up to [CONFIDENTIAL], at the election of the Purchaser.
  - (b) Products will be supplied by Maxit Baustoffe to Saint-Gobain/Maxit at [CONFIDENTIAL].
  - (c) [CONFIDENTIAL] the respective quantities will correspond to those supplied by Maxit Baustoffe to Maxit in 2007, or quantities otherwise agreed between the parties. [CONFIDENTIAL] the parties will negotiate – [CONFIDENTIAL] before the

end of the year - the quantities to be delivered for the following year. Should the parties fail to agree on the volumes, Maxit Baustoffe will determine the volumes that it will supply to Maxit during the following year.

7. Maxit Baustoffe currently obtains semi-finished gypsum based plaster from SHG. In order to avoid a disruption of these sales and if the Maxit Baustoffe divestiture is not part of the SHG divestiture package, at the request of the purchaser, Saint-Gobain/Maxit shall enter into supply agreements with the Purchaser for an appropriate period of time not to exceed [CONFIDENTIAL]. Products will be supplied on a reasonable cost plus basis to be agreed with the Purchaser. After the transitional [CONFIDENTIAL] period, any supply agreement between Maxit Baustoffe and Maxit will be negotiated at arm's length.
8. Maxit Baustoffe currently also obtains mortar products from Maxit in Germany. At the request of the Purchaser, Saint-Gobain/Maxit shall supply the products used as raw materials by Maxit Baustoffe for its mortar production business (i.e., perlite and sand) for an appropriate period of time not to exceed [CONFIDENTIAL] and on a reasonable cost plus basis to be agreed with the Purchaser. After the transitional [CONFIDENTIAL] period, any supply agreement between Maxit Baustoffe and Maxit will be negotiated at arm's length.

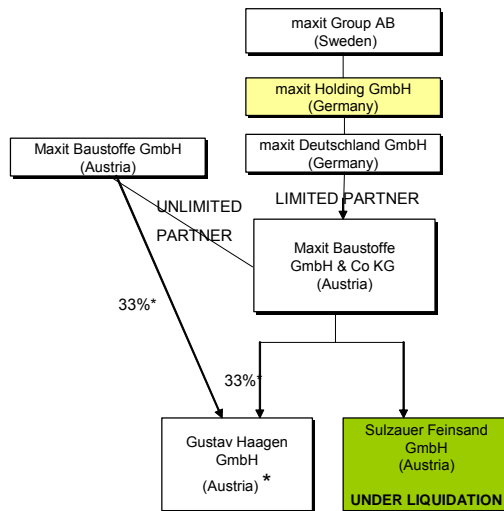
**Annex II-A**

**Maxit Baustoffe product range**

[CONFIDENTIAL]

**Annex II-B**  
**Maxit Baustoffe**  
**Structural chart**

maxit Group



\*) the remaining 33% is owned by [Business Secret]

**Annex II-C**

**Maxit Baustoffe**

**Organisational / Management chart**

[CONFIDENTIAL]

## Annex II-D

### Description of the Maxit Baustoffe production facility - Kuchl plant

The Kuchl plant is located at A-5431 Kuchl, Kellau 75, Austria. It currently occupies a surface area of 74.729 m<sup>2</sup> of land (plant area). The products manufactured in this plant are listed in Annex I-A above. The attached site map provides a visual description of the equipment and offices located in this facility. The Moosegg quarry is adjacent to the Kuchl plant. The Abtenau mine is located at A-Rigaus 5441 Abtenau, Austria.

The sand plant is located at A-5450 Werfen, Austria. It currently occupies a surface area of about 2.000 m<sup>2</sup> of land (plant area).



[CONFIDENTIAL]



**Annex II-E**  
**Production equipment in Kuchl**

[CONFIDENTIAL]

**Annex II-F**  
**Customers lists**  
[CONFIDENTIAL]

**Annex II-G**

**Maxit Baustoffe Personnel**

[CONFIDENTIAL]

**Annex II-H**  
**Key Personnel**  
[CONFIDENTIAL]