



EUROPEAN COMMISSION
DG Competition

CASE M.8909 -KME / MKM

(Only the English text is authentic)

MERGER PROCEDURE REGULATION (EC) 139/2004

Article 8(1) Regulation (EC) 139/2004

Date: 11/12/2018

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Brussels, 11.12.2018
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COMMISSION DECISION

of 11.12.2018

**declaring a concentration to be compatible with the internal market
and the EEA Agreement**

(Case M.8909 – KME/MKM)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings¹, and in particular Article 8(1) thereof,

Having regard to the Commission's Decision of 23 July 2018 to initiate proceedings in this case,

Having regard to the opinion of the Advisory Committee on Concentrations²,

Having regard to the final report of the Hearing Officer in this case³,

Whereas:

1. INTRODUCTION

- (1) On 4 June 2018, the Commission received notification of a concentration pursuant to Article 4 of Regulation (EC) No 139/2004 ('the Merger Regulation') which would result from a proposed transaction by which KME AG ('KME', Germany) intends to acquire control, within the meaning of Article 3(1)(b) of that Regulation, of the whole of MKM Mansfelder Kupfer and Messing GmbH ('MKM', Germany) by way of a purchase of shares ('the Transaction'). In this Decision, KME is also referred to as 'the Notifying Party' and KME and MKM are collectively referred to as 'the Parties'. The undertaking that would result from the Transaction is referred to as 'the Merged Entity'.

¹ OJ L 24, 29.1.2004, p. 1. With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this Decision.

² OJ C200. , p....

³ OJ C200. , p....

2. THE PARTIES AND THE TRANSACTION

- (2) KME, a European industrial group based in Germany, is active in the manufacturing and marketing of copper and copper alloy products, and copper tubes. It operates several production sites in Germany, Italy, France, Spain, the United States of America and China. KME is a wholly-owned subsidiary of Intek Group S.p.A., a listed joint stock corporation under Italian law, with headquarters in Milan, Italy.
- (3) MKM, incorporated in Germany, is a manufacturer of intermediate and semi-finished products made from copper and copper alloys. MKM manufactures, inter alia, copper wire, pre-rolled strip, rolled products and tubes. MKM has one plant in Germany. MKM is present worldwide through sales partners in 24 countries. The sole shareholder of MKM is Copper 1909 BidCo GmbH, a German limited liability company, which is indirectly owned by Copper KG, a German limited partnership whose sole General Partner is Copper GP, a German limited liability company.
- (4) The Transaction is to be achieved by means of the execution of a sale, purchase and transfer agreement by which KME is to acquire the entire share capital of Copper GP and all limited partnership interest in Copper KG, and hence to acquire indirect control MKM. A term sheet for the sale, purchase and transfer agreement was concluded on 28 March 2018.
- (5) It follows that the Transaction would result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (6) The Parties have a combined aggregate worldwide turnover of more than EUR 2,500 million (KME: [...]; MKM: [...]) and an EEA-wide turnover above EUR 100 million. In each of Germany, France and Italy, the combined aggregate turnover of the Parties is more than EUR 100 million and, in each of those Member States, the aggregate turnover of each of the Parties is more than EUR 25 million. The aggregate Union-wide turnover of each of the Parties is more than EUR 100 million (KME: [...] – MKM: [...]) and neither of the Parties achieves more than two-thirds of its aggregate Union-wide turnover within one and the same Member State.
- (7) Therefore, the concentration has a Union dimension within the meaning of Article 1(3) of the Merger Regulation.

4. PROCEDURE

- (8) On 4 June 2018, the Notifying Party formally notified the concentration to the Commission submitting Form CO.
- (9) During its initial (Phase I) investigation, the Commission contacted a large number of market participants (mainly customers and competitors of the Parties, as well as other stakeholders) requesting information by means of questionnaires, telephone calls and written requests for information pursuant to Article 11 of the Merger Regulation.
- (10) In addition, the Commission sent the Parties several written requests for information and reviewed internal documents submitted by the Parties at that stage.
- (11) On 26 June 2018, at a formal state of play meeting, the Commission explained that, on the basis of the Phase I investigation, the concentration raised serious doubts as regards its compatibility with the internal market, as it appeared to be likely to lead

to a significant impediment of effective competition in the form of increased prices for customers of rolled products and sanitary copper tubes.

- (12) On 2 July 2018, with a view to removing those serious doubts, the Notifying Party proposed a commitment of MKM's sanitary copper tubes business under the HETCU brand, including assignment of all rights in the HETCU brand and related trademarks and all intellectual property rights related to the business of sanitary copper tubes and transfer of commercial contracts, unfulfilled customer orders, and all records relating to the divested business. KME also proposed to transfer certain equipment necessary for production of sanitary copper tubes to the purchaser, if the purchase wanted. The Commission decided not to market test these commitments because they did not address all the doubts raised by the concentration and did not remove in a clear-cut way those that they were intended to address.
- (13) On 23 July 2018, the Commission found that the concentration raised serious doubts as to its compatibility with the internal market and the Agreement on the European Economic Area ('the EEA Agreement') and the Commission therefore adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation ('the Article 6(1)(c) Decision'). The Article 6(1)(c) Decision raised serious doubts in three areas: pre-rolled strip, rolled copper products and sanitary copper tubes.
- (14) On 27 July 2018, the Commission provided the Parties with non-confidential versions of certain key submissions of third parties collected during the Phase I investigation.
- (15) On 8 August 2018, the Parties requested an extension of the legal deadline by ten working days pursuant to the first sentence of the second subparagraph of Article 10(3) of the Merger Regulation.
- (16) On 23 August 2018, the Parties submitted their response to the Article 6(1)(c) Decision ('the Response to the Article 6(1)(c) Decision').
- (17) During its in-depth (Phase II) investigation, the Commission sent several requests for information to the Parties, in particular on commercial strategy, post-Transaction plans, and market data regarding sales, revenues and profitability.
- (18) In addition to collecting and analysing substantial amounts of information from the Parties (including internal documents, third party industry reports and submissions), the Commission also sent several requests for information to competitors and customers of the Parties.
- (19) On 3 December 2018, the Advisory Committee discussed a draft of this Decision and issued a favourable opinion.

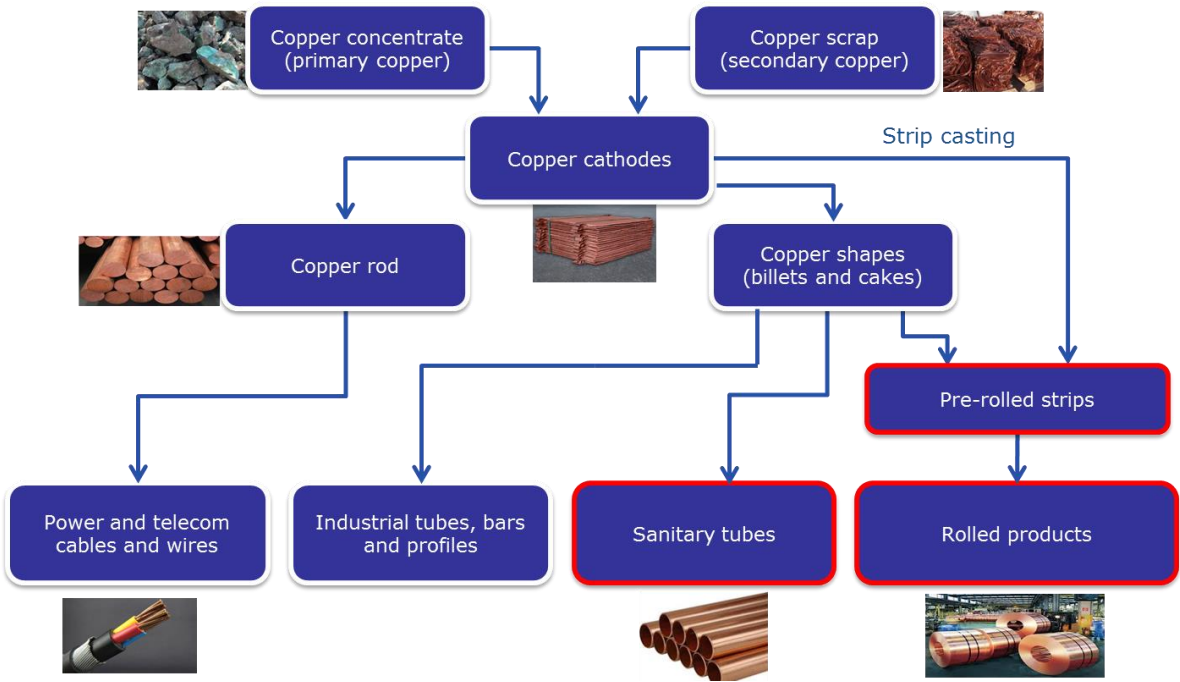
5. INDUSTRY OVERVIEW

5.1. Copper and copper alloys rolled products ('rolled products')

- (20) Copper is a malleable and ductile metallic natural product that is an excellent conductor of heat and electricity, with corrosion resistance and also anti-microbial properties.

- (21) Copper is obtained from copper ore, which contains only a low concentration of copper (below 5% copper content). After extraction from the copper mine, it is enriched in processing facilities into copper concentrates (25–40% copper content). As illustrated in Figure 1, both copper concentrate (primary copper) and copper scrap (recycled copper material, also known as secondary copper) are converted into anodes which are used to produce copper cathodes (flat pieces produced in various grades) in an electrolytic process in a copper tank house.
- (22) Copper cathodes, together with other secondary copper, are then further processed by smelting and casting into copper rods or copper shapes, or are used as an input for direct strip casting using a continuous vertical or horizontal casting technology, often referred to as 'strip casting'. Copper rods are the main input for power cables and wires. Copper shapes fall into two categories – billets or cakes – depending on their form. Billets have a circular section with a diameter varying from 100-800 mm and a length of around 600 mm. Cakes have a rectangular section and weigh up to 25 tonnes per cake. Billets are transformed into sanitary and industrial tubes, bars and profiles,⁴ whereas cakes (or slabs) are the input for pre-rolled strips, which are then further rolled down into rolled products.
- (23) The areas in which the Parties’ activities are affected by the Transaction are pre-rolled strip and rolled products, as highlighted in red in Figure 1.

Figure 1 Copper Production chain



Source: European Commission, based on Parties' information.

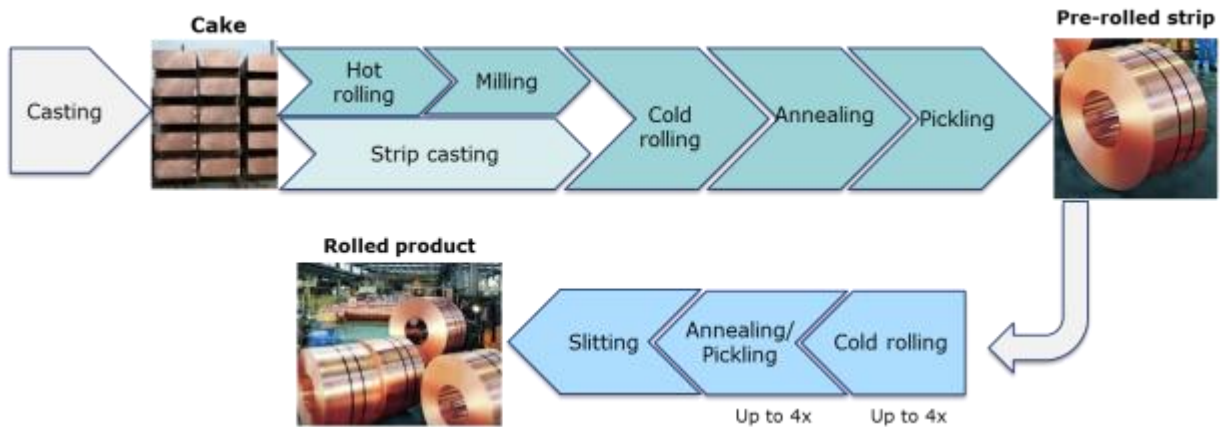
- (24) As shown in Figure 2, the manufacturing process of pre-rolled strip starts with a cake (either casted in-house, or purchased from third parties). A cake can have different chemical compositions, e.g. it can be made of pure copper or of copper alloys. The cake (or slab) is then hot rolled and milled. These two processes have the main objective of transforming a shape (that is, the cake) into a strip with thickness of 1.5

⁴ Copper profiles are extruded, drawn, forged or formed copper products used in a variety of electrical applications which are usually tailor-made according to specifications provided by a customer.

to 5 millimetres.⁵ In order to further reduce its thickness, the strip is further rolled at reduced temperature (cold rolling). The manufacturing process of pre-rolled strip is completed by an annealing and a pickling treatment, which have the main objectives of, respectively, enhancing certain physical properties (e.g. metal ductility) and removing impurities on the strip surface. After additional cold rolling, annealing and pickling of the pre-rolled strip, the resulting rolled product may be submitted to special surface treatments such as coating (with tin, nickel, multilayer coating) and is finally stretch-bent to coils. Often the strip is subject to longitudinal cuts, typically referred to as 'slits'.

- (25) If the rolled products are manufactured via strip casting, the hot rolling process does not take place because the casting process does not produce cakes, but rather strips ready to be further processed.

Figure 2 Manufacturing process of pre-rolled strip and rolled products



Source: European Commission, based on Form CO, page 21, on the Parties' response to the Commission's request for information RFI 6, Annex 2 and on Langner, Bernd E. (2011), "Understanding copper. Technologies, Markets and Business", figure 8.3.7.

- (26) Rolled products are available in different copper grades and copper alloy compositions, depending on the composition of the cake or pre-rolled strip used. They may take different shapes (plates, sheets, or strips) and are available in different dimensions. The grade, composition and dimension of the rolled product very much depend on the end application for which it will be used.
- (27) Rolled products are not finished products to the extent that they are an input in the manufacturing of, for example, electrical transformers, semiconductors, heat exchangers, and roofing materials.
- (28) Plants with all production steps for manufacturing both pre-rolled strip and rolled products are considered vertically or fully integrated plants. Plants that start their manufacturing processes with a pre-rolled strip are considered to be 're-rollers'.

5.2. Sanitary copper tubes

- (29) Copper tubes are manufactured from billets by extrusion process and subsequent drawing (that is, a different process from rolling). Extruded and drawn products are formed by pushing material through a die or a series of dies which reduces the product's cross-section ("extruded") and, subsequently, by pulling the material through one or more dies ("drawn").

⁵ Form CO, paragraph 137.

- (30) Copper tubes are produced for sanitary and industrial applications. Unlike rolled products, sanitary copper tubes are finished products used for drinking water installations, radiator connections, surface heating and cooling, and sanitary gas installations. Industrial copper tubes are used for various applications, such as air-conditioning and refrigeration, heating, ventilation, and electrical and telecoms applications. They are supplied to original equipment manufacturers or parts manufacturers and to refrigeration merchants.⁶
- (31) The Parties manufacture both industrial and sanitary tubes. However, due to a limited overlap in industrial copper tubes, the Transaction primarily concerns the manufacturing and distribution of sanitary copper tubes. Therefore, for the purposes of this Decision, only sanitary copper tubes are considered.

6. RELEVANT MARKETS

- (32) The Parties' activities overlap in the manufacture and supply of rolled copper and copper alloys products ('rolled products'). In addition, MKM is active upstream in the supply (on the merchant market) of pre-rolled strip, which is an input for rolled products.
- (33) The Parties' activities also overlap in the manufacture and supply of sanitary copper tubes.
- (34) In this Section, the relevant markets for rolled and pre-rolled products are defined first, followed by the relevant markets for sanitary copper tubes.

6.1. Relevant product markets for rolled products

6.1.1. Pre-rolled strip

- (35) As explained in Section 5.1, a pre-rolled strip is a thin strand of copper which can be produced by (1) processing copper cakes by a hot rolling process, or (2) by vertical or horizontal continuous strip casting when the production process starts directly with the copper cathodes, scrap and other metals being melted and casted into strip (that is, neither shape casting nor hot rolling is necessary), followed by a first stage of cold rolling, and material treatments such as annealing and pickling. Pre-rolled strip is further processed into rolled products.⁷
- (36) The chemical composition of a pre-rolled strip is determined at the casting stage by defining the copper grade or copper alloy composition of the cake or the metals being melted for continuous strip casting. For example, MKM uses an integrated Conti-M technology which does not require casting into shapes to produce strip and integrates the strip casting process with hot rolling and milling.⁸
- (37) Although a pre-rolled strip is an intermediate product, which is usually produced in-house by manufacturers of rolled products, it can also be purchased and sold on a merchant market. This merchant market serves the companies that do not have the capability to hot roll (or cast in a continuous strip casting) certain grades of copper and copper alloys. They buy the pre-rolled strip of the required compositions on the merchant market and further (cold) roll it to complete rolled products. These manufacturers are referred to as 're-rollers'.

⁶ Case M.3284 – *Boliden/Outokumpu*, recital 52.

⁷ Form CO, paragraph 104.

⁸ Parties' response to the Article 6(1)(c) Decision, Figure 1: Production Process – Main steps and assets, page 10.

6.1.1.1. The Parties' view

(38) The Notifying Party considered a "hypothetical" pre-rolled strip market based on the Commission's precedents, which left the exact market definition open.⁹ According to the Notifying Party, pre-rolled strip is an intermediary product "*which is generally not sold or demanded by any customer*". Furthermore, "*almost all manufacturers of rolled products have the machinery and the know-how to manufacture pre-rolled products. Therefore, only (...) where the purchase of pre-rolled product is economically advantageous over the in-house production, limited quantities of pre-rolled strip are purchased*"¹⁰.

6.1.1.2. The Commission's past practice

(39) In *Norddeutsche Affinerie/Cumerio*, the Commission considered an overall market of semi-finished rolled products downstream of copper shapes.¹¹ However, in a subsequent decision, *Aurubis / Luvata Rolled Products*, the Commission left open the exact market definition of pre-rolled strip in the absence of any horizontal overlap between Aurubis and Luvata in that market.¹²

6.1.1.3. The Commission's assessment

(40) The Commission considers that pre-rolled strip constitutes a distinct market from rolled products for the following reasons.

(41) First, there is no demand-side substitution between pre-rolled strip and rolled products. Due to differences in the physical properties of pre-rolled strip and rolled products (see recitals (24), (35) and (36)), it is not possible for rolled product customers to switch to pre-rolled strip, which would always be thicker and would not have the same finish as rolled products. Similarly, it is not possible for customers of pre-rolled strip to switch to rolled products. Customers of pre-rolled strip are typically re-rollers who will then further process the pre-rolled strip.

(42) Second, supply-side substitution between rolled products and pre-rolled products is limited. Not all suppliers of rolled products are capable of manufacturing pre-rolled strip with the chemical composition and characteristics needed for their downstream rolled product business. As explained in recital (35), for the production of pre-rolled strip, it is necessary to hot roll the slabs of copper or of copper alloys. As the market investigation has shown, there are several competitors that do not have the hot rolling capability necessary to process the slabs that will be cold-rolled later to produce rolled products, and they therefore rely on third parties.¹³ Moreover, those suppliers do not have the incentive to acquire such capability because it would be difficult for them to recoup the investment.

(43) In addition, the market investigation has shown that continuous strip casting technology cannot be used, at least not in an efficient manner, to manufacture certain grades of pure copper (Cu-ETP, CU-PHC) and certain copper alloys (certain copper iron and copper nickel alloys). Similarly, continuous strip casting technology cannot

⁹ Form CO, paragraphs 105 and 106.

¹⁰ Memorandum submitted by the Parties on 2 July 2018.

¹¹ Commission decision in case M.4781 – *Norddeutsche Affinerie/Cumerio*, recital 91.

¹² Commission decision in case M.6316 – *Aurubis/Luvata Rolled Products*, recital 26.

¹³ Questionnaire to Suppliers of Rolled Products, question 7.

be used to attain certain properties such as suitability for deep drawing.¹⁴ This shows that suppliers of rolled products who rely on continuous strip casting technology for some of their products need to source pre-rolled strip for further cold rolling for other products in their product range.

- (44) To the extent that the demand for pre-rolled strip comes from the demand for rolled products (see Section 6.1.2.3), the Commission considers that pre-rolled strip as described in this Section is a differentiated market. Pre-rolled strip is offered in different compositions and with different properties. The degree of differentiation is, however, not as great as it is in the rolled products market, due to several other properties that can be acquired in the later stages of production (from cold rolling onwards). However, there are significant differences in the production capability of the main suppliers of pre-rolled strip. Moreover, the differences in production capability are also reflected in the properties of the pre-rolled strip that is produced. Some pre-rolled strip is used mostly to manufacture high-end products, while other pre-rolled strip is used mostly to manufacture commoditised products. However, since there is no overlap between the Parties on the pre-rolled strip market, there is no need to further segment it. As explain further in Section 7.3, such market segmentation would have no impact on the competitive assessment of the Transaction.
- (45) In the light of the considerations set out in recitals (41) to (44), the Commission considers that the merchant market for pre-rolled strip of copper and copper alloys is a distinct, separate market from the rolled products market.

6.1.2. *Rolled products*

- (46) Rolled products are available in copper or copper alloys, depending on the composition of the cake or the composition chosen for the continuous strip casting (and subsequently, the composition of the pre-rolled strip). Rolled products can take different profiles – mainly plates, sheets or strips – and can be of different thicknesses. Rolled products are used in the manufacture of various different end-products, such as connectors, cables, semiconductors, transformers, transistors, musical instruments and sanitary equipment.

6.1.2.1. The Parties' view

- (47) The Notifying Party submits that the relevant product market includes all copper and copper alloys rolled products. According to the Notifying Party, from a supply-side perspective, the same production equipment can be used for the manufacturing of copper, brass, and bronze rolled products and most manufacturers can supply all different types of rolled products in all alloy compositions and sizes.¹⁵ The Notifying Party also argues that suppliers can and do shift cold-rolling productions between different alloys and even in cases where they do not have the casting nor hot rolling capabilities for a certain alloy, suppliers can purchase pre-rolled strip of that given composition and further roll it into a rolled finished product. The Notifying Party gives itself as an example: [...]¹⁶.

¹⁴ Questionnaire to Suppliers of Rolled Products, question 1. Questionnaire Q2 to Competitors of Rolled Copper Products, questions 7 and 8.2. Agreed non-confidential minutes of a call with a competitor, 27 June 2018.

¹⁵ Form CO, paragraph 112 and Parties' response to the Article 6(1)(c) Decision, paragraph 26.

¹⁶ Parties' response to the Article 6(1)(c) Decision, paragraphs 70 and 71.

- (48) Moreover, the Notifying Party argues that some rolled products, such as cable strip and transformer strip, are in direct competition with aluminium and that in the rolled products for roofing applications, the Parties compete "*in a general metals market, where there are alternative products made from zinc and aluminium*"¹⁷.

6.1.2.2. The Commission's past practice

- (49) As mentioned in recital (39), in the *Norddeutsche Affinerie/ Cumerio* case, the Commission considered an overall market of *semi-finished rolled products* downstream of copper shapes. In relation to that market in that case, the Commission analysed possible substitutability both in relation to alternative materials and in relation to different applications. The Commission underlined that the exact extent to which copper can be replaced by other materials depends on the characteristics of copper (*vis-a-vis* other materials), mainly with regard to electrical conductivity and processing characteristics. The Commission also underlined that copper products are used in different applications, namely electrical engineering and the electronics industry (appliances, air conditioning and circuit boards); the construction industry (plumbing and roofing); telecommunications (cables); the automotive industry (radiators); and machine construction (motors). The Commission ultimately left the market definition open.¹⁸

- (50) In *Norddeutsche Affinerie/Cumerio*, the Commission also investigated a product market upstream of rolled products: the market for shapes. The Commission considered the possibility of segmenting the copper shapes market according to the different qualities of copper and concluded that, from a demand-side point of view, the different qualities of copper are not fully substitutable. However, the Commission concluded that from the supply-side, shapes made from different copper qualities do not constitute a distinct product market - with the possible exception of oxygen-free copper shapes.¹⁹ The Commission left open the question whether it was necessary to define a separate market for oxygen-free copper shapes.²⁰ This precedent is relevant in that it found that the composition of copper rolled products depends on the composition of their feedstock.

- (51) In a subsequent case, *Aurubis/Luvata Rolled Products*, the Commission considered departing from the *Norddeutsche Affinerie/Cumerio* precedent with respect to the distinction drawn between pre-rolled strip and overall semi-finished rolled products. Furthermore, the Commission confirmed its findings in relation to possible segmentation of rolled products by end application. The Commission remarked that "*supply side substitutability may not be as easy as put forward by the notifying party*" and that the segmentation by application proposed in *Norddeutsche Affinerie/ Cumerio* "*may be appropriate*". The Commission also underlined that oxygen-free rolled products did not seem substitutable for other rolled products from a demand-side point of view.²¹ However, the Commission ultimately left the exact market definition open.

- (52) In *Aurubis/ Luvata Rolled Products*, the Commission's investigation also supported the previous finding in relation to the substitution of copper by other materials. Since the Commission noted that, for certain applications, alternative materials could be

¹⁷ Form CO, paragraph 112.

¹⁸ Commission decision in case M.4781– *Norddeutsche Affinerie/Cumerio*, recitals 93 to 99.

¹⁹ Commission decision in case M.4781– *Norddeutsche Affinerie/Cumerio*, recitals 65 and 67.

²⁰ Commission decision in case M.4781– *Norddeutsche Affinerie/Cumerio*, recitals 72, 73 and 84.

²¹ Commission decision in case M.6316 – *Aurubis/Luvata Rolled Products*, recitals 30 and 31.

used, it took into account the competitive constraint posed by other materials in its the competitive assessment.²²

6.1.2.3. The Commission's assessment

- (53) For the reasons set out in recitals (54) to (68), the Commission considers there is an overall market for rolled products. However, due to the different characteristics of the input material and the different parameters in the manufacture of rolled products, as well as the different requirements in various end-applications, this market is highly differentiated and consists of multiple segments, which exhibit different levels of know-how and intensities of competition and potential competitive pressure (see recital (193)).
- (54) First, the market investigation has not supported the finding of a wider product market where rolled products compete with products made from other materials, such as aluminium, steel, or plastic. With regard to the substitutability of rolled products by other materials, although such a possibility exists in relation to some products (for example, where electric connectivity plays no or only a minor role), the vast majority of respondents to the market investigation considered that copper cannot always be substituted by other materials because of its technical characteristics.²³
- (55) Second, although for most customers the different qualities of rolled products are not substitutable, the market investigation has shown that most suppliers are able to offer the different qualities of rolled products. The vast majority of respondents said they were able to cold roll, anneal, pickle and slit any type of alloy for any type of final function.²⁴ In addition there are minimum standards that most if not all suppliers can comply with, for example EN standards.²⁵
- (56) Third, there is a considerable degree of differentiation in the rolled products market, as demand substitution is very limited and supply substitution is not perfect.
- (57) Due to the specific requirements of customers, there is limited demand-side substitution between different kinds of rolled products. The restrictions start even at the chemical composition level, since different compositions provide different properties of the material. In fact, with regard, for example, to oxygen-free copper, the vast majority of customers do not consider oxygen-free copper to be technically interchangeable with other pure oxygen bearing copper compositions and copper alloys.²⁶ The technical requirements of customers will also dictate the qualities of the rolled products in terms of temper, strength conductivity, bendability, as well as the dimensions (width, thickness, length), the surface qualities (roughness, coatings) and even packaging formats.
- (58) Demand-side substitution is therefore limited by the technical specifications that the customer has to meet in order to manufacture its final product. The more stringent the requirements, the more limited demand-side substitution is. Furthermore, some end industries need to validate their rolled product suppliers and some validation

²² Commission decision in case M.6316 – *Aurubis/Luvata Rolled Products*, recitals 30 and 31.

²³ Questionnaire Q1 to Customers of Rolled Copper Products, questions 7 and 7.1.

²⁴ Questionnaire to Suppliers of Rolled Products, questions 16 and 16.1.

²⁵ EN Standards are European Standards for copper and copper alloys. The EN series of standards for copper and copper alloys offers a selection of materials to suit a very wide variety of end uses.

²⁶ Questionnaire Q1 to Customers of Rolled Copper Products, question 11.

processes even entail R&D efforts. In these cases, demand-side substitution is further reduced.

- (59) There are also limits to supply-side substitution leading to some suppliers being active and more focused on certain segments to the detriment of others. What rolled products manufacturers are able to supply depends not only on the technology (machines) they have, but also on their know-how, and their ability to be accredited for a certain application.
- (60) Although all suppliers can cold-roll the more commoditised products, that is the ones which do not require a specific know-how or a particular technology in the annealing, pickling or coating process, not all suppliers have the capability and know-how to manufacture certain tolerances, thicknesses, surface cleanliness, or flatnesses, or to coat with a certain quality. The majority of market respondents acknowledge they have been in situations where they were not able to meet customers' specifications due to limitations in their cold rolling, annealing, pickling and slitting capabilities.²⁷
- (61) Indeed, the more specialised the product, the fewer suppliers there are. As a customer explained: "*[a]s regards [the customer]'s standard business, all rolled copper product producers can supply the products requested by [the customer]. However, there are certain specific requests which only selected producers can serve. For example KME produces certain high performance alloy composition which no other company is able to produce. Also there are only a rare number of suppliers (incl. MKM) that produce oxygen free coppers.*"²⁸ As another customer simply put it: "*[n]icht jeder Lieferant kann jede Legierung herstellen*".²⁹
- (62) The market investigation has shown that within the rolled products market there are, on one hand, products that do not require a specific technology/ machinery and/or know-how and therefore have a lower value (the commoditised products) and, on the other hand, there are products that are know-how intensive, require a significant investment in technology/ machinery and have a higher value (the more specialised products). All these products belong to the same relevant market in the sense that there is a certain degree of supply-side substitutability between them, but they exhibit different degrees of know-how intensity, supply-side substitution and therefore competition.
- (63) High-end products are produced by fewer players and command usually higher conversion fees. Conversely, lower end products are produced by more players and command usually lower conversion fees.
- (64) High-end products include, amongst other products, connector strip for the automotive industry, in particular strip made from so-called High Performance Alloys ('HPAs'), or bronze strip for stampers compliant with strict tolerances, tin products and products made from high purity oxygen free copper. Lower end commodity products include, amongst others products, sheets for building and construction, roofing copper mainly made from so-called DHP copper, and standard cable strip made from so-called ETP copper. While the Parties and market participants acknowledge clear differences between the conditions of competition in the low-end (commoditised) and high-end (specialised) parts of the market, the exact

²⁷ Questionnaire to Suppliers of Rolled Products, questions 17, 18, 19 and 20.

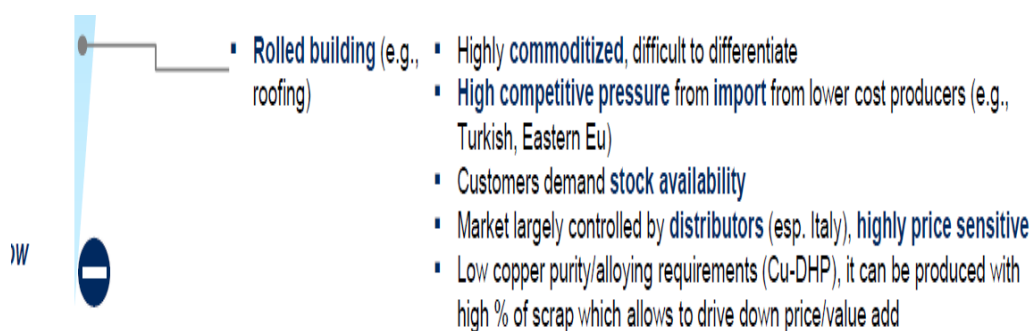
²⁸ Questionnaire to Customers of Rolled Copper Products, question 10.1.

²⁹ Questionnaire to Customers of Rolled Copper Products, question 10.1. (Free translation: "*not every supplier can produce every alloy*").

boundaries between segments are not always clear-cut and may gradually change over time (a formerly specialty product may gradually become commoditised).

- (65) Indeed, in a third party report conducted for KME, it is recognised that "[p]roducts (applications) show significant difference in value added, with more sophisticatedly/engineering (specialties) in the high part of the range, while roofing construction (rolled) at the bottom".³⁰
- (66) In the same report, the consultant explained in more detail the characteristics and features of low end commoditised products such as roofing.

Figure 3 Commoditized rolled products



Source: Parties' response to the Commission's request for information RFI 1, Annex 3 – [Notifying party's external consultant] – Market review, slide 18.

- (67) As mentioned in recital (49), the Commission has considered in previous decisions the possibility of segmenting the rolled products market by end application. However, the investigation has shown that such a segmentation does not adequately reflect the very limited demand-side substitutability. For example, within the telecommunications industry, a rolled copper strip for coaxial cables is not substitutable with a rolled copper strip for connectors as it does not fulfil the same functions. In addition, such a segmentation does not reflect the actual capabilities of suppliers. For example, a supplier may be able to produce copper strip to be used in connectors for the telecommunications and electrical engineering industries, but it might not have the ability to produce the copper strip to be used in connectors for the electric automotive industry because customer requirements are significantly different in that industry.
- (68) In *Nordeutsche Affinerie/Cumerio* and in *Aurubis/ Luvata*, the Commission also considered the possibility of distinguishing a market for oxygen-free copper shapes (that is, the feedstock for rolled products made of oxygen-free copper) and a market for rolled products made of oxygen-free copper. Although demand substitutability between oxygen-free and oxygen bearing copper rolled products is extremely limited, manufacturers of rolled products who do not necessarily have casting or hot rolling capabilities can purchase pre-rolled strip of oxygen-free copper and offer rolled products of oxygen-free copper. For this reason, the Commission does not consider it necessary to distinguish a separate market for rolled oxygen-free copper products.
- (69) In the Article 6(1)(c) Decision, the Commission identified the highly differentiated character of the relevant market. On a preliminary basis, the Commission envisaged

³⁰ Parties' response to the Commission's request for information RFI 1, Annex 3 – [Notifying party's external consultant] – Market review, slide 2.

a potential segmentation of rolled copper products by copper composition, in line with the distinction already noted for oxygen-free copper, corresponding at least to the following main families: (i) oxygen-free copper ('Cu-OF'); (ii) pure copper and likely further sub-segmentation by specific grade (e.g. Cu-DHP, Cu-ETP); (iii) high performance copper alloys ('HPA'); (iv) brass; (v) bronze; and (vi) other high alloyed copper.

- (70) However, following the Phase II market investigation, the Commission takes the view that such a segmentation is not relevant to specifically characterize the functioning of the market. This is mainly because demand-side substitution is limited by the technical specifications the customer has to meet in order to manufacture its final product and the certification process needed in some end industries. For example a "standard" oxygen-free copper would not cover the specific requirements of some sophisticated customers asking for a high degree of purity and the same goes for some specific segments of pure copper such as HCP and PHC.
- (71) Ultimately, for the segments where the activities of the Parties overlap, in particular for pure copper, the Commission did not consider that segmentation by different grades would reflect the competitive dynamics for the reasons set out in recital (70). The Commission has nevertheless carried out an assessment of the competitive positions of the Parties and their rivals in the main overlapping applications/ grades of pure copper, that is roofing copper/ DHP and copper used in electrical applications/ETP. These broad segments are significantly commoditised and therefore do not exhibit the same degree of intra-segment differentiation as the most sophisticated grades such as PHC or oxygen-free.
- (72) In the light of the reasons set out in recitals (54) to (68), the Commission concludes, in line with previous decisions, that there is an overall rolled products market, covering a wide spectrum where more commoditised products are located at the lower end of the spectrum and more specialised products at a higher end of the spectrum. However, the high degree of differentiation in terms of product performance, know-how and technology, specifications of customers, intensity of competition and pricing results in the existence of different segments within the overall market which exhibit different levels and intensities of competition.

6.2. The relevant geographic market for rolled products

6.2.1. Pre-rolled strip

6.2.1.1. The Parties' view

- (73) The Notifying Party submits that the relevant geographic market for pre-rolled strip is at least EEA-wide. The Notifying Party argues that not only is there no reason why a customer cannot source pre-rolled strip from any distance within the European Economic Area (EEA) but also that suppliers of pre-rolled strip in the EEA export to countries outside the EEA.³¹

6.2.1.2. The Commission's past practice

- (74) In *Norddeutsche Affinerie/ Cumerio*, the Commission left open whether the markets downstream of copper shapes were EEA-wide or worldwide in scope.³² In *Aurubis/ Luvata Rolled Products*, due to the absence of any overlap between the parties concerned, the Commission did not decide on the precise scope of the geographic

³¹ Parties' response to the Article 6(1)(c) Decision, paragraphs 125 – 127.

³² Commission decision in case M.4781 – *Norddeutsche Affinerie/ Cumerio*, recital 104.

market (either EEA-wide or worldwide) and only considered the notifying party's position in the EEA market in its competitive assessment.³³

6.2.1.3. The Commission's assessment

- (75) The results of the market investigation in this case indicate that EEA suppliers of rolled products who purchase pre-rolled strip do so from suppliers within the EEA.³⁴ When asked to indicate the maximum distance a supplier of pre-rolled strip can be located from their re-rolling plant (in order to have an economically viable supply), most of the respondents indicated distances from 250 km to 1500 km. Only one market respondent considered that there was no limit, even though that respondent only purchases pre-rolled strip from EEA suppliers.³⁵
- (76) The Commission therefore considers that the pre-rolled strip market is EEA-wide in scope.

6.2.2. *Rolled products*

6.2.2.1. The Parties' view

- (77) The Notifying Party argues that the relevant geographic market for rolled copper products is at least EEA-wide, if not global, due to the exports and imports of copper from and into the EEA. The Notifying Party argues that, in 2014, Germany exported 32% of its production of copper and copper alloys products (including rolled products), while Italy, France and the UK exported 27% of their respective production.³⁶ The Notifying Party also claims that there are imports from China and Turkey into the EEA.³⁷ According to the Notifying Party, the 4.8% duty imposed on Chinese companies is too low to hinder imports from China into the EEA.³⁸
- (78) In the Response to the Article 6(1)(c) Decision, the Notifying Party further argued that even if the Commission did not consider the relevant geographic market as global, it should take into account the competitive pressure from imports into the EEA in its assessment.³⁹

6.2.2.2. The Commission's past practice

- (79) In *Norddeutsche Affinerie / Cumerio* the precise geographic market definition was left open, although the Commission considered that the geographic scope of the market was at least EEA-wide⁴⁰.
- (80) In *Aurubis / Luvata Rolled Products*, the Commission considered the market to be EEA-wide in scope and conducted its assessment on that basis. Even though it recognised that there were exports, only a few customers pursued a multi-sourcing strategy outside the EEA.⁴¹

³³ Commission decision in case M.6316 – *Aurubis/Luvata Rolled Products*, recital 27.

³⁴ Questionnaire Q2 to Competitors of Rolled Copper Products and Sanitary Copper Tubes, questions 7 and 17; and Questionnaire to Suppliers of Rolled Products, question 22.

³⁵ Questionnaire to Suppliers of Rolled Products, question 25.

³⁶ Form CO, paragraph 130 and footnote 39 referring to RCG, Market monitoring of the relevant products and markets for KME, November 2015.

³⁷ Form CO, paragraph 131.

³⁸ Form CO, paragraph 262.

³⁹ Parties' response to the Article 6(1)(c) Decision, paragraph 28.

⁴⁰ Commission decisions in case M.4781 – *Norddeutsche Affinerie/Cumerio*, recital 104.

⁴¹ Commission decisions in case M.6316 – *Aurubis/Luvata Rolled Products*, recital 32.

6.2.2.3. The Commission's assessment

- (81) The results of the market investigation in this case suggest that the relevant geographic market for rolled products is EEA-wide and that there is no functioning price arbitrage between the main rolled product consumption regions in the world, namely the EEA, North America and Asia.
- (82) First, there are significant import duties for imports of rolled product into the EEA, but also into North America.
- (83) Second, those import duties and other factors such as transport costs lead to different market conditions in the EEA, North America and Asia. The competitive landscape is completely different in the European Union, the United States and Asia. European players are hardly or not active in the US (except for Wieland and Aurubis) or Asia (except Wieland and KME, the latter through a joint venture with two Chinese companies).
- (84) Third, the vast majority of customers do not source rolled products from outside the EEA and, when asked to identify what is the maximum distance for economically viable transportation of rolled products, the majority of respondents mentioned the EEA and around one fifth said that it is within a radius of 500 km.⁴² Although most competitors consider it to be economically viable to transport rolled products worldwide, the majority of them have not lost business in the EEA to imports from outside of the EEA.⁴³
- (85) Fourth, those responses are in line with the feedback from the market investigation, as well as an industry report commissioned by KME, where it is mentioned as a key message that:
- "European Copper product is a regional market with limited competition from imports (Europe is a net exporter)*
- Customer see clear benefit of proximity suppliers with reliable delivery performance making imports from overseas a limited threat.
- Chinese plants show utilization level around 70% - well above EU plants – limiting risk of import pressure toward the EU so far"⁴⁴
- (86) Fifth, the majority of respondents have expressed doubts as regards the ability of non-EEA suppliers to supply them with the quality they need. As explained by a customer: "[a]lthough we already had a look into markets outside EEA, we could not yet identify a single source able to meet our requirements".⁴⁵ Indeed, competitors of rolled products submitted that there was either no change or only a small increase in imports of rolled products into the EEA in the last three years.⁴⁶
- (87) In light of the considerations set out in recitals (81) to (86), the Commission concludes that the geographic scope of the market of rolled products (and its possible segments) is the EEA.

⁴² Questionnaire Q1 to Customers of Rolled Copper Products, questions 17 and 20.

⁴³ Questionnaire Q2 to Competitors of Rolled Copper Products and Sanitary Copper Tubes, question 20 and question 25.

⁴⁴ Parties' response to the Commission's request for information RFI 1, Annex 3 – [Notifying party's external consultant] – Market review, slide 3.

⁴⁵ Questionnaire Q1 to Customers of Rolled Copper Products, question 20.1.

⁴⁶ Questionnaire Q2 to Competitors of Rolled Copper Products and Sanitary Copper Tubes, question 24.

6.3. Relevant product market for sanitary copper tubes

6.3.1. The Parties' view

- (88) The Notifying Party submits that the relevant product market includes sanitary tubes made of various materials: copper, plastic, other metals (e.g. steel and stainless steel) and multi-layer tubes (aluminium tube with a plastic outer layer).
- (89) According to the Notifying Party, sanitary copper tubes are substitutable from the demand-side perspective for most, if not all, applications. Furthermore, the Notifying Party submits that, in certain applications, such as radiator connections and drinking water, sanitary copper tubes have been replaced to a significant degree by tubes made from other materials. Therefore, the Notifying Party argues that from a technical point of view copper tubes can be easily substituted with the tubes made of other materials and thus belong to the same relevant market.
- (90) In addition, the Notifying Party explains that substantial decline in demand for sanitary copper tubes, especially in the last years, has largely been driven by the increase in the raw material price for copper, which is the main input for the production of sanitary tubes, and by the introduction of new lighter and cheaper materials, such as plastics and aluminium, and their easier installation compared to the copper tubes.⁴⁷ The continuing trend of decreasing demand and ongoing substitution of copper tubes with the tubes of other materials indicate that sanitary tubes made of different materials belong to the same relevant market as sanitary copper tubes.
- (91) Finally, the Notifying Party explains that the growth of plastic and multi-layer tubes is driven by technological developments, improved product quality, easier and quicker joining techniques, cost advantages and changes in construction methods.⁴⁸ Furthermore, irrespective of the sharp decreases in copper price at certain periods, the Notifying Party submits that they are not aware of customers switching from multilayer tubes to copper tubes.⁴⁹

6.3.2. The Commission's past practice

- (92) In a previous case,⁵⁰ the Commission found that sanitary copper tubes constituted a separate market from other materials, in particular from plastic and multi-layer tubes.
- (93) The Commission acknowledged that sanitary tubes made of other materials exercised a certain competitive pressure on the sanitary copper tubes but that it varied from one application to another and also between countries in the EEA. The Commission concluded in that case that the competitive pressure was not sufficient to completely offset negative impacts such as price increases on the copper sanitary tubes market and therefore defined the market as comprising only sanitary copper tubes.⁵¹

6.3.3. The Commission's assessment

6.3.3.1. Substitutability of copper with alternative materials

- (94) The Commission's market investigation in the present case has provided strong indications for upholding the conclusion that the Commission reached in

⁴⁷ Parties' response to the Commission's Article 6(1)(c) decision, p. 43-44; Parties' Memorandum of 2 July 2018, section 1.1.2.

⁴⁸ Parties' Memorandum of 2 July 2018, section 1.1.2.

⁴⁹ Parties' response to the Commission's request for information RFI 23, question 11.

⁵⁰ See Case M.3284 – *Boliden/Outokumpu*.

⁵¹ Case M.3284 – *Boliden/Outokumpu*, recitals 33-35.

Boliden/Outokumpu, namely that sanitary copper tubes constitute a distinct product market.

- (95) The investigation carried out in the present case by the Commission to a large extent confirmed the Parties' submission that, from a technical perspective, sanitary copper tubes can be substituted with sanitary tubes made of other materials and in particular plastic or multilayer tubes in every application.⁵² However, as explained in recitals (96) to (103), the respondents to the market investigation have also indicated that sanitary copper tubes differ from other sanitary tubes in several respects: (a) distinctive product characteristics; (b) price level; (c) installation methods; and (d) customer preferences, which suggest that they belong to a distinct relevant market.
- (96) First, respondents to the market investigation provided indications why in certain instances copper tubes are still considered to be a preferred solution. In particular, the respondents to the market investigation highlighted that copper has antimicrobial properties and therefore copper sanitary tubes are best suited, or in some countries may be even required, for installations in public buildings such as hospitals.⁵³ Further, contrary to plastic or multilayer tubes, copper tubes are resistant to much higher temperatures and therefore are in particular suitable for boiler connections.⁵⁴ Some respondents to the market investigation also submitted that in some countries plastic or multilayer tubes cannot be used for gas installations while copper tubes provide for a necessary solution.⁵⁵ Other respondents to the market investigation noted that copper sanitary tubes have an advantage over other materials, such as plastic, because they are aesthetically appealing in particular for visible sanitary installations.⁵⁶ Finally, another customer also explained that sanitary copper tubes will be chosen over tubes made of other materials when replacing sanitary installations in old constructions where copper was initially used.⁵⁷
- (97) Second, prices of sanitary copper tubes are significantly higher than for sanitary tubes made of plastic and multi-layer tubes.⁵⁸ Whereas a significant price difference can in itself suggest the existence of a distinct market, the market investigation provides further indications that competition from the sanitary tubes made of other materials does not exert a sufficient constraint on copper tubes, for the following reasons.
- (98) Indeed, the respondents to the market investigation indicated that there is no apparent linear relationship between the price of copper relative to other materials and the demand for copper tubes.⁵⁹ Although the high copper price may have been one of the factors triggering the switch to sanitary tubes made of other materials, the increasing attractiveness of alternative materials may better explain the trend of decreasing

⁵² Questionnaire Q3 to customers of sanitary copper tubes, questions 7, 8.2.

⁵³ Questionnaire Q6 to customers of sanitary copper tubes (II), questions 7.2, 7.3, 13.1; Questionnaire Q3 to customers of sanitary copper tubes, question 7.1., agreed non-confidential minutes of a call of 28 August 2018 with a customer.

⁵⁴ Questionnaire Q6 to customers of sanitary copper tubes (II), question 7.2.

⁵⁵ Questionnaire Q5, question 11.1; Questionnaire Q3 to customers of sanitary copper tubes, question 7.1; agreed non-confidential minutes of a call of 28 August 2018 with a customer.

⁵⁶ Questionnaire Q2 to competitors of rolled copper products and sanitary copper tubes, question 16.1 and Questionnaire Q3 to customers of sanitary copper tubes, question 7.2.

⁵⁷ Questionnaire to customers of sanitary copper tubes II, question 7.2.

⁵⁸ Questionnaire Q3 to customers of sanitary copper tubes, questions 11, 11.1; Questionnaire Q6 to customers of sanitary copper tubes II, question 11.1.

⁵⁹ See e.g. Questionnaire Q3 to customers of sanitary copper tubes, question 7.3.; see also recital (102).

importance of sanitary copper tubes (see also recital (90)). This is even more the case in a market such as sanitary copper tubes where the demand is shaped by plumbers whose decision on what material to use may be determined by a number of other factors (i.e. habits, technical specifications of the project) in addition to the price (see also recital (102)).

- (99) In addition, referring to the economic submissions of the Parties,⁶⁰ the Commission notes that one can well observe the trend that, since 2000, the volume share of sanitary copper tubes has been decreasing while the use of multi-layer tubes in particular has been increasing.⁶¹ However, the Commission also notes that when considering the raw copper price (a significant cost factor in the cost of a copper tube) in relation to the use of multi-layer tubes, it is apparent that, in certain periods from 2000 to 2016, the volume of multi-layer tubes continued to grow even when the copper price sharply decreased. This was in particular the case between 2006 and 2009 and (to a lesser extent) between 2012 and 2016.
- (100) Furthermore, the economic submission of the Parties does not contest this point: "*While the general trend away from copper is fuelled by certain advantages of multi-layer and plastic tubes that can be viewed as independent of price, adding a pricing dimension can trigger, fuel or even accelerate the trend*". It appears that the Parties' attempt to explain why the trend of increasing multi-layer share does not perfectly correspond to the copper price index. Nonetheless, the years (2009, 2010 and 2016) when the average annual copper prices seem to record a sharp decrease while the annual multi-layer shares continue to increase seem to suggest that the two trends are not correlated. On the basis of these limitations of the Parties submissions (lack of price correlation, including the unavailability of SSNIP), the Commission considers that this data does not support the argument that there is substitution between sanitary copper tubes and the multi-layer tubes but only suggests that the market for multi-layer tubes is growing partly irrespective of price dynamics of copper.
- (101) Third, respondents to the market investigation have also submitted that copper tubes require different installation techniques, know-how and tools compared to the ones applied to the tubes made of other materials. As one customer explained: "*the technology for the plumber is quite different: copper is still mainly soldering (with people who have the knowledge/skill) while the multi-layer requires specific tools.*"⁶² The Commission considers that different technical characteristics of copper tubes compared to the sanitary tubes made of new lighter and less costly materials, as well as the need for different installation methods, know-how and tools, indicate the existence of distinct markets for sanitary copper tubes and the tubes made of other materials.
- (102) Fourth, despite the advantages provided by the new materials and the new installation techniques, the market investigation has shown that there is an important share of the demand specifically for sanitary copper tubes, which cannot be substituted by the sanitary tubes made of other materials. The respondents to the market investigation noted that the choice for copper tubes is driven by the habits of

⁶⁰ Sanitary Tubes Substitutability Analysis report prepared by NERA Economic Consulting, figure 3.3.; Parties' response to the Commission's request for information RFI 23, question 10.

⁶¹ Sanitary Tubes Substitutability Analysis report prepared by NERA Economic Consulting, figure 2.1.

⁶² Questionnaire Q3 to customers of sanitary copper tubes, question 7.1, 8.1, 8.3.

plumbers (rather than price fluctuations) who "want just copper tubes"⁶³ and technical specifications of construction projects.⁶⁴

- (103) Fifth, the Commission notes that the remaining demand for sanitary copper tubes (as explained in recitals (96) and (102)) can be corroborated by the industry report data provided by the Parties. This data suggests that while since 2000 the market for sanitary copper tubes has decreased by approximately 60%, the trend of decreasing demand has stabilised since 2012 and that any future contraction is unlikely to be significant.⁶⁵ The Commission observes that several respondents to the market investigation have also submitted that the drop in demand for sanitary copper tubes has reached a plateau and that the share of sanitary copper tubes will likely remain stable in the coming years.⁶⁶ For example, one respondent to the market investigation stated: "[T]here will also be a rest or part of technical application or customers that always ask for copper."⁶⁷
- (104) Although the market for sanitary copper tubes is a shrinking market and sanitary tubes made of other materials, in particular the cheaper and easier to install plastic and multi-layer tubes, exert certain competitive pressure on sanitary copper tubes, the Commission, on the basis of the available qualitative and quantitative evidence, is not in a position to conclude that sanitary copper tubes and the tubes made of other materials belong to the same relevant product market. In any event, and in order to fully appraise the impact of the Transaction on the market of sanitary copper tubes, and in particular whether post-Transaction price increases of sanitary copper tubes are likely, the Commission will consider the competitive constraints arising from sanitary tubes made of other materials, in particular plastic and multi-layers, in its competitive assessment (see Section 7.4.2).
- (105) In conclusion, in the light of the results of the market investigation and of the evidence available to it, the Commission considers that, for the purposes of this Decision, a separate market for sanitary copper tubes should be defined.
- 6.3.3.2. Distinction between sanitary copper tubes of the Sanco brand and sanitary copper tubes of other brands
- (106) During the market investigation, several market participants indicated that, in certain local areas, for example in some regions in France or Germany, customers have a specific preference for sanitary copper tubes with a Sanco ("Sans corrosion") brand, which is perceived to indicate superior quality. The Commission has established that only two market players, KME and Wieland, carry the Sanco brand. KME is the owner and licensor to Wieland of the Sanco brand.

⁶³ Agreed non-confidential minutes of a call of 6 September 2018 with a customer, see also Questionnaire Q3 to customer of sanitary copper tubes, question 7.3.

⁶⁴ Q3 Questionnaire to customers of sanitary copper tubes, question 7.3.

⁶⁵ See IWCC data "Domestic demand for copper water tube", RFI 5, Annex 1, which estimates the decrease in demand for 2018 and 2019 at less than 1% per year. Similarly, KWD Global Pipe report estimates in some countries a small increase or no change in demand for sanitary copper tubes when considered in absolute figures.

⁶⁶ See also agreed non-confidential minutes of: a call of 4 September 2018 with a competitor; a call of 29 August 2018 with a customer and a call of 6 September 2018 with another customer. See also Questionnaire Q3 to customers of sanitary copper tubes, question 8.1; Questionnaire Q5, question 13, majority of respondents estimated that the demand for sanitary copper tubes will not change or decrease by less than 5%.

⁶⁷ Q3 Questionnaire to customers of sanitary copper tubes, question 8.1.

(107) Given that there is no overlap between the Parties for the Sanco branded tubes and since the horizontal overlap of the Parties in the non-Sanco branded tubes does not change the assessment carried out for the overall sanitary copper tubes market, the Commission will leave open the question whether the market for sanitary copper tubes should be further segmented by distinguishing between tubes bearing or not the Sanco brand.

6.4. The relevant geographic market for sanitary copper tubes

6.4.1. The Parties' view

(108) In terms of geographic market definition, the Notifying Party submits that the market for copper sanitary tubes is at least EEA-wide for the following reasons. First, it is common practice for all EEA-based producers to supply sanitary copper tubes across the EEA. For example, MKM supplies sanitary copper tubes from its plant in Germany to Austria, Bulgaria, the Czech Republic, France, Hungary, etc. Second, suppliers from outside the EEA are becoming increasingly active in certain countries in the EEA. Based on that fact, the Notifying Party argues that transport costs do not represent a significant burden and that sanitary copper tubes can be economically transported at least within the EEA, if not further than the EEA.⁶⁸ Third, regulations and standards for sanitary copper tubes, which are homogenous products produced according to the same EN 1057 standard,⁶⁹ do not differ across EEA countries.

6.4.2. The Commission's past practice

(109) In *Boliden/Outokumpu*,⁷⁰ the Commission considered that the geographic market for sanitary copper tubes is at least regional for continental Europe and wider than regional for the Nordic countries, but it ultimately left the exact market definition open. In particular, as regards continental Europe, the Commission considered that manufacturers of sanitary copper tubes supply customers across the EEA, while customers (a) typically have several suppliers, (b) usually source copper tubes at a wider than national level, and (c) would not have difficulties finding alternative suppliers beyond national borders. The Commission in that case also considered certain narrower national markets in continental Europe, namely Spain and Portugal, where the combined market shares of the merging parties were the highest, but eventually it found that even in those two national markets customers could easily switch to alternative sources outside the national boundaries.

6.4.3. The Commission's assessment

(110) The market investigation in this case has provided strong indications that, for continental Europe, the geographic scope of the market for sanitary copper tubes is likely to be narrower than regional because the competition conditions vary to a significant extent in different countries across the EEA. The Commission has focused its assessment on the following countries where the Parties' activities overlap, namely Austria, Belgium, the Czech Republic, Denmark, France, Germany, Hungary and the Netherlands. The Commission has assessed the scope of the geographic market for sanitary copper tubes in particular by analysing (a) how prices are set across the EEA; (b) whether the sales are carried out directly from the production site or whether local presence in the country of a customer's business is

⁶⁸ The Parties' response to the Commission's Article 6(1)(c) decision, p. 47.

⁶⁹ EN 1057 is a European standard for copper tubes for water and gas in sanitary and heating applications adopted by the European Committee for Standardisation.

⁷⁰ Case M.3284 – Boliden/ Outokumpu, recitals 37-39.

important; (c) national certification requirements and quality marks; and (d) the presence of the main producers of sanitary copper tubes in different countries in the EEA.

- (111) First, the market investigation has shown that prices of sanitary copper tubes vary across the EEA. Respondents to the market investigation⁷¹ and the submissions of the Notifying Party⁷² have demonstrated that suppliers have a separate price list for each country, with varying rebates and discounts. [...].⁷³
- (112) Some customers active only in one Member State stated that they are not aware of prices in other countries, while customers belonging to bigger buying groups confirmed that prices vary from country to country. As one customer submitted: *"Price in Germany is much higher than in Belgium/France/Italy for instance"*.⁷⁴ The Commission considers that price setting on a country-by-country basis and its variation across the EEA indicates the existence of distinct national markets.
- (113) Second, producers mostly sell their products through a network of subsidiaries, agents and local distributors.⁷⁵ The Parties themselves have an established network of local subsidiaries and independent agents selling their products directly in the country of business. KME has sales subsidiaries in Germany, Benelux, Poland, and Spain, as well as agents in Austria, Croatia, Czechia, the Baltics, Greece, Hungary and Romania (the French and Italian markets are served by Trefimetaux which has sales teams in France and Italy). MKM has local sales teams in France and Germany but sales activities for all other countries are centrally organised and handled by the sales team in Hettstedt.⁷⁶
- (114) As regards the importance of local presence for customer sourcing behaviour, the results of the market investigation are less conclusive: while many customers have indicated that they buy sanitary copper tubes from the companies located in their country of business, other customers submitted that they source at a wider than national level.⁷⁷ Potential competitive constraints stemming from suppliers located outside the country where the customer is located will be further analysed in the competitive assessment (see Section 7.4.4).
- (115) Third, while sanitary copper tubes used in the EEA are manufactured according to the EN 1057 standard, the Notifying Party submitted that in many countries additional certificates issued by national certification bodies are necessary in order to bring copper tubes on the market.⁷⁸ Once the sanitary copper tube is certified by a national certification body, it bears a mark of the certification organisation (e.g. KIWI for the Netherlands, DVGW for Germany, and AFNOR for France). A customer during the market investigation explained that a tube has only one national certification mark.⁷⁹ The Commission understands that if the tube is intended for the

⁷¹ Agreed non-confidential minutes of a call of: 29 August 2018 with a customer, 4 September 2018 with a competitor, and a further call of 4 September 2018 with another competitor.

⁷² Parties' response to the Commission's request for information RFI 23, questions 1.1 and 7.

⁷³ Parties' response to the Commission's request for information RFI 5, question 6 and Parties' response to the Commission's request for information RFI 7, question 8.

⁷⁴ Q6 Questionnaire to customers of sanitary copper tubes II, question 12.1.

⁷⁵ Questionnaire Q2 to competitors of rolled copper products and sanitary copper tubes, question 28.

⁷⁶ Parties' response to the Commission's request for information RFI 5.

⁷⁷ Questionnaire Q3 to customers of sanitary copper tubes, question 17.1., questionnaire Q5, question 4.1; agreed non-confidential minutes of a call of 29 August 2018 with a customer.

⁷⁸ Parties' response to the Commission's request for information RFI 7, Annex 2.

⁷⁹ Agreed non-confidential minutes of a call of 29 August 2018 with a customer.

French market it will be marked with AFNOR mark and thus, even if technically all parameters were the same, it would not necessarily qualify for the sale on the German market, which requires a DVGW mark.⁸⁰ Furthermore, the respondents to the market investigation have also indicated that technical requirements in terms of wall thickness and temper also vary between countries in the EEA.⁸¹

- (116) In addition, in certain countries also other private quality marks are important as they indicate that the tube is of a certain quality which goes beyond the requirements of the EN 1057 standard. This is the case for example for RAL mark, which indicates that copper tubes were tested and certified by Copper tubes manufacturers' quality association⁸² in Germany. The market investigation has revealed that RAL mark plays an important role for marketing sanitary copper tubes in Germany. Accordingly, although the Parties submit that the certification process is generally quick and simple, the fact that MKM does not have certifications for specific countries (e.g. Austria)⁸³ would prevent it from selling to the customers in those countries immediately. The role and importance of national quality and certification marks will be further analysed in the competitive assessment (see Section 7.4.4).
- (117) Lastly, while it is correct that most EEA-established producers of sanitary copper tubes sell across Europe, the market shares of the main players differ considerably from one country to another. For example, KME has a market share above 40% in Austria and Germany but is not present in the Nordic countries, Spain or the UK. This is also the case for Cupori (the market leader in Finland, which holds a share of [30-40]% in Sweden but below 10% in other countries), Wieland (20-30% share in Central and Eastern Europe, Germany and France, but not active in Italy) and Mueller (market share above 50% in the UK and Sweden, but not active in Austria, Belgium or the Netherlands). These discrepancies in the market shares of the main players are in themselves indicative of the fact that different competitive conditions exist across different Member States.
- (118) In conclusion, the Commission considers that, for the purposes of this Decision, it is appropriate to assess the sanitary copper tubes market at the national level and also at the broader EEA level. In any event, the exact scope of the geographic market definition can be left open in this case because no competition concerns arise under either of the alternative market definitions.

7. COMPETITIVE ASSESSMENT

7.1. Framework of the Competitive Assessment in this case

7.1.1. Two transactions in the same industry

- (119) On 4 June 2018 KME notified the concentration which would result from the Transaction to the Commission.
- (120) On 13 June 2018, Wieland Werke AG ('Wieland') notified the Commission of its intention to acquire control, within the meaning of Article 3(1)(b) of the Merger Regulation, of the whole of Aurubis Flat Rolled Product business ('ARP') and of the

⁸⁰ See agreed non-confidential minutes of a call of 29 August 2018 with a customer.

⁸¹ Questionnaire Q2 to competitors of rolled copper products and sanitary copper tubes, question 31.1., agreed non-confidential minutes of a call of: 28 August 2018 with a customer and 29 August 2018 with another customer.

⁸² In the original language referred to as Gütegemeinschaft Kupferrohr e.V.

⁸³ Parties' response to the Commission's request for information RFI 7, question 4.

whole of Schwermetall Halbzeugwerk GmbH & Co. KG ('Schwermetall') (Case M.8900). The Wieland/ARP/Schwermetall transaction partially affects the same markets as the Transaction assessed in this Decision, that is to say, the markets for pre-rolled copper strip and rolled products (the market for sanitary copper tubes is not concerned by the Wieland/ARP/Schwermetall transaction).

- (121) The Commission notes, in that regard, that in assessing the competitive effects of a proposed transaction under the Merger Regulation, it needs to compare the competitive conditions that would result from the notified concentration with those that would have prevailed in the absence of the concentration. As a general rule, it is the competitive conditions prevailing at the time of notification that constitute the relevant framework for evaluating the effects of a transaction. In some circumstances, however, the Commission may take into account future changes to the market that can be reasonably predicted.⁸⁴
- (122) Based on those principles, the principle of equal treatment and the provisions of the Merger Regulation, notably Article 6(1) of it, the Commission has consistently taken the view that, in cases of parallel investigations into concentrations affecting the same relevant markets, the transaction that is notified to the Commission first is to be assessed on the basis of the market structure prevailing at the time of the notification.⁸⁵ Conversely, the transaction that is notified to the Commission second is to be assessed on the basis of the market structure resulting from the likely implementation of the first transaction.
- (123) In the current situation there is no reason to deviate from these general principles. The outcome of the merger notified second, the Wieland/ARP/Schwermetall merger, cannot be reasonably predicted and taken into account when assessing the Transaction in this Decision. It would be too speculative and uncertain to consider the full implementation of the second merger and even more hypothetical and risky to consider a partial implementation with possible commitments, which could have further implications on the structure of these markets. In the current situation the only possible way to guarantee sufficient legal certainty, transparency and objectivity is to assess the Transaction on the basis of the market structure prevailing at the date of notification.
- (124) Indeed the date of notification is the operational criterion that can ensure legal certainty and objectivity when applying the provisions of the Merger Regulation. Not only has the Commission to "*examine the notification as soon as it is received*"⁸⁶ but also the time limits are set by reference to the date of notification.⁸⁷ The priority principle is hence inherent to the system of the Merger Regulation.
- (125) For these reasons, in the context of the competitive assessment of the Transaction, the Commission has to take account of a likely market structure where the Parties'

⁸⁴ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004 p. 5, paragraph 9.

⁸⁵ See for example, Case M.6214 – *Seagate/HDD Business of Samsung*, Commission Decision of 19 October 2011; Case M.6203 – *Western Digital/Viviti Technologies*, Commission Decision of 23 November 2011; Case M.4942 – *Nokia/Navteq*, Commission Decision of 2 July 2008 and Case M.4854 – *TomTom/Tele Atlas*, Commission Decision of 14 May 2008; Case M.4601 – *Karstadtquelle/My Travel*, Commission Decision of 4 May 2007 and Case M.4600 – *TUI/First Choice*, Commission Decision of 4 June 2007.

⁸⁶ Article 6 (1) of the Merger Regulation.

⁸⁷ Article 10(1) of the Merger Regulation.

competitors, Wieland and Aurubis, are treated as two separate entities having a 50:50 stake in the joint-venture Schwermetall.

7.1.2. *Competitive Assessment Framework for Rolled Products*

- (126) The Transaction creates a horizontal overlap between KME's and MKM's activities in the rolled products market. In addition, the Transaction also gives rise to a vertical relationship between MKM's supply of pre-rolled strip and KME's manufacturing of rolled products. Both that horizontal overlap and that vertical relationship are required to be assessed according to the tests laid down in the Merger Regulation and the principles enshrined in the Horizontal and Non-Horizontal Merger Guidelines.
- (127) Article 2(3) of the Merger Regulation states that "*[a] concentration which would significantly impede effective competition, in the [internal] market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, shall be declared incompatible with the [internal] market.*" Article 2(1)(b) of the Merger Regulation requires the Commission, in making its assessment, to take account of, among other things, the need to maintain effective competition in view of the structure of the markets concerned, the market position of the undertakings concerned and their economic and financial power, as well as the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.
- (128) Recital (25) of the Preamble to the Merger Regulation clarifies that the language of Article 2 is meant to encompass the appraisal of the effects of concentrations in oligopolistic markets, and in particular those that may significantly impede effective competition by the elimination of important competitive constraints that the merging parties had exerted upon each other as well as by a reduction of the competitive pressure on the remaining competitors.
- (129) Recital (26) of the Preamble to the Merger Regulation records that the reference in Article 2(2) and (3) of that Regulation to the creation or strengthening of dominance was included with a view to preserving the guidance that may be drawn from past judgments of the European Courts and from Commission decisions adopted under the Regulation that preceded the Merger Regulation.
- (130) Recital (28) of the Preamble to the Merger Regulation notes that the Commission should publish guidance aimed at providing a sound economic framework for the assessment of concentrations, with a view to determining whether or not they may be declared compatible with the internal market.
- (131) In this context, the Horizontal Merger Guidelines⁸⁸ and Non-Horizontal Merger Guidelines⁸⁹ provide further guidance on the concepts underpinning the Commission's assessment.

7.1.2.1. Non-coordinated horizontal effects

- (132) Pursuant to Article 2(2) and (3) of the Merger Regulation, the Commission is required to examine whether notified concentrations are to be declared compatible or incompatible with the internal market by assessing whether they would significantly

⁸⁸ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004 p. 5 ('Horizontal Merger Guidelines').

⁸⁹ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 6 ('Non-Horizontal Merger Guidelines').

impede effective competition in the internal market or in a substantial part of it. Horizontal mergers may significantly impede effective competition through non-coordinated and/or coordinated effects. The competitive assessment of the Transaction in the rolled products market focuses on non-coordinated effects, which are characterised in the Horizontal Merger Guidelines as effects "*eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour (non-coordinated effects)*".⁹⁰

- (133) Paragraph 25 of the Horizontal Merger Guidelines distinguishes two ways in which non-coordinated effects result in a significant impediment of effective competition.
- (134) First, "[g]enerally, a merger giving rise to such non-coordinated effects would significantly impede competition by creating or strengthening the dominant position of a single firm".
- (135) Second, "*mergers in oligopolistic markets involving the elimination of important competitive constraints that the merging parties previously exerted upon each other together with the reduction of competitive pressure on the remaining competitors may [...] also result in a significant impediment of competition.*"
- (136) Section 7.1.2.1. of this Preamble first assesses, in accordance with Article 2 of the Merger Regulation and the Horizontal Merger Guidelines, whether the Transaction would lead to large combined market shares and a high degree of concentration⁹¹ on the overall rolled products market. Second, it assesses whether the Transaction is likely to eliminate competition between two important and close competitors, in particular in commoditised segments of the rolled products market where the activities of the Parties overlap. Third, it assesses whether the reaction of competitors to the merger is likely to defeat any likely price increase (see paragraphs 32 to 35 of the Horizontal Merger Guidelines). In particular, it considers: (a) the number of competitors of the Parties; (b) whether competitors have large amounts of overcapacity; (c) the likelihood of individual competitors to significantly challenge the Parties; and (d) the ease of entry/repositioning in the most affected segments of the rolled products market. Finally, in line with paragraph 31 of the Horizontal Merger Guidelines, Section 7.1.2.1. considers the ability of customers to switch suppliers. According to paragraph 31 of the Horizontal Merger Guidelines: "[c]ustomers of the merging parties may have difficulties switching to other suppliers because there are few alternative suppliers [...]. The merger may affect these customers' ability to protect themselves against price increases".
- (137) The Commission has carried out its assessment of the horizontal effects of the Transaction on the overall rolled products market, which is the relevant product market. However, as explained in recital (71), and as a complement to the overall assessment, the Commission has also carried out an analysis of the competitive positions of the Parties and their rivals in the main overlapping applications/grades of pure copper, that is roofing copper/DHP and copper used in electrical applications/ETP (which is referred to in this Decision as "electrical copper/ETP").
- (138) Despite the fact that, for these segments, the combined market share is higher than in the overall rolled products market, the Commission does not consider that these shares are indicative of risk of a significant impediment of effective competition.

⁹⁰ Horizontal Merger Guidelines, paragraphs 22.

⁹¹ Horizontal Merger Guidelines, paragraphs 14 to 21 and 27.

This is particularly because the drop in KME's sales and market shares is an indicator of a decline in KME's relevance in the rolled products market, including, but not limited to, these segments. Moreover, the characteristics of the overall rolled products market (overcapacity, presence of a large number of players that could swiftly react to a price increase and ability to switch for customers) apply particularly in these segments.

7.1.2.2. Non-coordinated vertical effects

- (139) As explained in recital (32), there is a vertical link to MKM's activities as a supplier of pre-rolled strip and KME's activities as a supplier of rolled products. Although these markets are not vertically affected markets (since the Parties' market shares are below the 30% threshold⁹²), the Commission has assessed the vertical effects of the Transaction, in order to address the input foreclosure concerns expressed by one of the Parties' competitors in the rolled copper market.
- (140) Input foreclosure is a situation where, post-merger, the new entity would be likely to restrict access to products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar process and conditions as absent the merger.
- (141) Taking into account that MKM is vertically integrated and KME has its own captive production of pre-rolled strip (and only sporadically may purchase pre-rolled strip on the merchant market), the Transaction does not change the number of customers of pre-rolled strip available on the downstream market. Hence, there was no reason to assess the risks of other forms of foreclosure, in particular customer foreclosure. Moreover, no customer foreclosure concerns were raised during the investigation.
- (142) In this case, the Commission has assessed whether the Merged Entity would be likely to raise the costs of downstream rivals by restricting their access to an important input. In particular, the Commission has assessed: (a) the importance of pre-rolled strip for the downstream competitors; (b) MKM's market position in the pre-rolled market and (c) the alternatives to MKM. Second, the Commission has determined whether the Merged Entity would have the incentive to engage in such foreclosure strategy. In particular, the Commission has assessed (a) the Merged Entity's position on the downstream market and (b) the competitive pressure exerted by the downstream competitors. Third, the Commission has assessed whether such foreclosure strategy could have a detrimental effect on competition downstream in the rolled products market.⁹³

7.1.3. *Competitive Assessment Framework for Sanitary Copper Tubes*

- (143) There is also a horizontal overlap between KME's and MKM's activities in the sanitary tubes market.

7.1.3.1. Non-coordinated Horizontal Effects

- (144) Similar to the assessment for the rolled products market, the Commission has assessed whether the Transaction would be likely to lead to non-coordinated horizontal effects on the market for sanitary copper tubes.

⁹² According to paragraph 25 of the Non-Horizontal Guidelines, under this market share threshold it is generally unlikely to find a concern.

⁹³ Non-Horizontal Guidelines, paragraphs 33 to 57.

- (145) In particular, the Commission has first assessed whether the Transaction is likely to lead to large combined market shares and a high degree of concentration.⁹⁴
- (146) Second, the Commission has assessed whether the reaction of competitors to the merger is likely to defeat any likely price increase⁹⁵, taking in particular account of (a) the number of competitors of the Parties; (b) whether competitors have large over-capacity; and (c) the ease of entry/repositioning into the most affected segments of the sanitary copper tubes market.

7.1.3.2. Coordinated Horizontal Effects

- (147) The Commission has assessed whether the Transaction is likely to result in coordinated effects on the market for sanitary copper tubes.
- (148) According to case-law, coordinated effects may arise where, in view of the actual characteristics of the relevant market and the alteration in its structure that the transaction would entail, the latter would make each member of the dominant oligopoly, as it becomes aware of common interests, consider it possible, economically rational, and hence preferable, to adopt on a lasting basis a common policy on the market with the aim of selling at above competitive prices, without having to enter into an agreement or resort to a concerted practice within the meaning of Article 101 EC and without any actual or potential competitors, let alone customers or consumers, being able to react effectively.⁹⁶
- (149) In line with the case-law, paragraph 39 of the Horizontal Merger Guidelines reads: "*a merger in a concentrated market may significantly impede effective competition, through the creation or the strengthening of a collective dominant position, because it increases the likelihood that firms are able to coordinate their behaviour in this way and raise prices, even without entering into an agreement or resorting to a concerted practice(...). A merger may also make coordination easier, more stable or more effective for firms, that were already coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices*".
- (150) As explained in the Horizontal Merger Guidelines,⁹⁷ in its assessment, the Commission is to examine whether it is possible to reach the terms of coordination and whether the coordination is likely to be sustainable. Coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding. In addition, for the coordination to be sustainable, three conditions must be met: a) coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to; b) there must be some form of a credible deterrent mechanism that can be activated if deviation is detected; and c) the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers, should not be able to jeopardise the results expected from the coordination.

⁹⁴ Horizontal Merger Guidelines, paragraphs 14 to 21 and 27.

⁹⁵ Horizontal Merger Guidelines, paragraphs 32 to 35.

⁹⁶ Case T-342/99, *Airtours v Commission*, T 2002/146, para 61.

⁹⁷ Horizontal Merger Guidelines, paragraphs 41 and 42.

- (151) In the Article 6(1)(c) Decision, the Commission noted that there were two mechanisms through which any tacit coordination could be made easier or more sustainable in sanitary copper tubes, namely a) the reduction of the number of competitors in the direct overlap countries (Germany, France, Austria, Belgium, Czechia, Denmark, Hungary, the Netherlands) and b) the additional interactions between MKM and current licensees of the Sanco brand (KME, Wieland and Trefimetaux) through a licence of the Sanco brand to MKM, depending on the scope of such a licence. The Commission will therefore assess in Section 7.5 whether any of these mechanisms could lead to a stable tacit collusive outcome.

7.2. Rolled Products: assessment of horizontal non-coordinated effects

7.2.1. The Transaction does not lead to large combined market shares nor to a high degree of concentration on the market for rolled products

7.2.1.1. Introduction

- (152) According to paragraph 14 of the Horizontal Merger Guidelines, *"market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors"*.

- (153) According to paragraph 27 of the Horizontal Merger Guidelines, *"the larger the market share, the more likely a firm is to possess market power. And the larger the addition of market share, the more likely it is that a merger will lead to a significant increase in market power"*.

- (154) With respect to market concentration, paragraph 16 of the Commission's Horizontal Merger Guideline states that *"The overall concentration level in a market may also provide useful information about the competitive situation. In order to measure concentration levels, the Commission often applies the Herfindahl-Hirschman Index (HHI). [...] While the absolute level of the HHI can give an initial indication of the competitive pressure in the market post-merger, the change in the HHI (known as the "delta") is a useful proxy for the change in concentration directly brought about by the merger"*.

- (155) Sections 7.2.1.2 to 7.2.1.5 demonstrate that on the overall market for rolled products the Parties have moderate market shares in volume and that the Transaction does not lead to large combined market shares nor to a high degree of concentration on the market for rolled products.

7.2.1.2. Market share and HHI estimations.

- (156) The Notifying Party provided in the Form CO and in response to a number of the Commission's requests for information market shares in value and in volume of the Parties and of their competitors.⁹⁸

- (157) With respect first to the market shares in volume, the various data provided by the Notifying Party did not appear always to be fully consistent. For the overall rolled product sales, for example, the Notifying Party provided inconsistent figures for their own sales, with for example significant discrepancies regarding sales figures for KME.

⁹⁸ Form CO, Section B "Market shares"; Parties' response to the Commission's request for information RFI 1, question 2, Annex 2; Parties' response to the Commission's request for information RFI 6, question 5; Parties' response to the Commission's request for information RFI 8, question 1.

- (158) The market shares in value provided by the Parties were based on the overall revenues, which also include metal prices charged to customers. As explained further in Section 7.2.1.4 and in the Annex to the present Decision, compared to overall revenues, conversion revenues (that is transformation fee or fabrication fee which excludes metal cost and metal premium) are better suited for estimating value market share. However, the Notifying Party has no access to, and limited knowledge of, the conversion revenues of its competitors. It is therefore not in a position to provide reliable figures for market shares based on conversion revenues.
- (159) The Commission could not fully rely on market shares from independent third parties because the existing reports of market analysts are limited in scope (e.g. pre-rolled strip market shares are not reported), they do not provide market shares of each market participant, and they are limited to market shares in volume. Nevertheless, these reports provide information on the total market size in volume, which the Commission took into account.
- (160) Therefore, market shares of the Parties and of their main rivals, as well as the resulting HHI values pre- and post-Transaction, have been estimated by the Commission by reconstructing the market size and sales of all market participants for the years 2015 to 2017. The Commission requested the main market participants to provide their sales of rolled products and pre-rolled strip and calculated market shares in volume and value. The methodology used for the market reconstruction, and the assumptions used by the Commission are described in the Annex to the present Decision.
- (161) With respect to sales of KMD, which is a joint-venture between KME (50%) and Chinese players Golden Dragon Copper (34%) and Chongqing Wanzhou Economy Technology Development Co (16%) and offers a wide range of copper strips for terminals and connectors,⁹⁹ the Commission conservatively attributed the whole of KMD's sales in the EEA to KME.
- (162) The main results of the market reconstruction for rolled products, with respect to the sales in volume and in value, are reported in Sections 7.2.1.3 and 7.2.1.4, respectively.
- 7.2.1.3. The Transaction leads to moderate combined volume market shares and to moderate concentration levels.
- (163) This Section presents the main results of the market reconstruction with respect to the market shares in volume and shows that: a) the Transaction leads to moderate combined volume shares; b) over the period 2015-2017, KMEs' sales declined in volume and whilst MKM's sales grew, the Parties' combined market share decreased, despite an increased market demand for rolled products; c) post-Transaction, although the Parties' combined market shares are the largest in the EEA, two other market participants have market shares of similar magnitude, followed by a number of smaller competitors; d) post-Transaction HHI levels are moderate.

⁹⁹ Parties' response to the Commission's request for information RFI 1, question 1, Annex 1.

- (164) Table 1 shows that, in 2017, KME's volume market share, which includes the sales of the JV KMD, is [10-20]%, while MKM's volume market share is [5-10]%, leading to a combined market share in volume of [20-30]%, just above the threshold below which concentrations are not considered liable to impede effective competition and may be presumed to be compatible with the internal market, pursuant to Recital 32 of the Preamble to the Merger Regulation and Paragraph 32 of the Horizontal Merger Guidelines.
- (165) If one considers the 2015-2017 period, the combined market shares of the Parties declined from [20-30]% in 2015 to [20-30]% in 2017. This trend was driven by the decline of KME's sales and market share, which was only partially counterbalanced by an increase of MKM' sales but a relatively small increase in market share, considering the growth in demand of rolled products
- (166) Table 1 also shows that in the period 2015-2017, KME's sales decreased by [0-5]% (that is, from [...] tonnes in 2015 to [...] tonnes in 2017), despite an increase of the total market of rolled products by more than 13% (that is, from 471 359 tonnes to 535 557 tonnes), which is indicative of significant underperformance of KME over the recent years.

Table 1 EEA sales and market shares in volume of rolled products for the years 2015 to 2017

| | 2015 | | 2016 | | 2017 | |
|---------------------|----------------|-----------------|----------------|-----------------|----------------|-----------------|
| | Sales (tonnes) | Market share | Sales (tonnes) | Market share | Sales (tonnes) | Market share |
| KME | [...] | [10-20]% | [...] | [10-20]% | [...] | [10-20]% |
| MKM | [...] | [5-10]% | [...] | [5-10]% | [...] | [5-10]% |
| Combined | [...] | [20-30]% | [...] | [20-30]% | [...] | [20-30]% |
| Wieland | [...] | [20-30]% | [...] | [20-30]% | [...] | [20-30]% |
| Aurubis | [...] | [10-20]% | [...] | [10-20]% | [...] | [10-20]% |
| Schwermetall | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Sofia Med | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Diehl | [...] | [0-5]% | [...] | [0-5]% | [...] | [5-10]% |
| EGM | [...] | [5-10]% | [...] | [5-10]% | [...] | [0-5]% |
| Kemper | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Messingwerk | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Competitor 1 | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Competitor 2 | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Competitor 3 | NA** | NA** | NA** | NA** | [...] | [0-5]% |
| Competitor 4 | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Competitor 5 | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Competitor 6 | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Imports | 23 568 | 5.0% | 24 845 | 5.0% | 26 778 | 5.0% |
| Total market | 471 359 | 100.0% | 496 898 | 100.0% | 535 557 | 100.0% |

Source: European Commission, based on market participants' data.

* the Commission anonymised six market participants for better preserving their business secrets. These market participants are (here in alphabetical order, which does not correspond to the order given in the table): Azienda Metalli Laminati, TG Griset, Medpovrly, Silmet, WMD, WMN.

** Competitor 3 provided data only for the year 2017.

- (167) The results of the market reconstruction also show that, in terms of sales in volume, pre-Transaction, Wieland has the largest market share in the EEA, which in 2017

amounts to [20-30]%. Post-Transaction, the combined market share of the Parties is in the same range as Wieland's market share, and is followed by Aurubis' market share, which is [10-20]%. The remaining competitors are much smaller than the merged entity, and have individual market shares of [0-5]%, with the exception of Diehl that, in 2017 (and only in 2017), holds a market share of [5-10]%.¹⁰⁰

- (168) When considering the 2017 market shares in volume, the Commission calculated that, post-Transaction, the HHI is [>1000], with an increase of [>250]. Although these values are above the threshold under which the Commission is unlikely to identify concerns,¹⁰¹ this HHI level and the corresponding increase remain moderate.
- (169) Based on the considerations in recitals (163)-(168), the Commission concludes that the Transaction leads to moderate combined volume market shares and to moderate concentration levels.
- 7.2.1.4. The Transaction leads to moderate combined value market shares and to moderate concentration levels.
- (170) Paragraph 55 of the Commission's notice on the definition of the relevant market for the purpose of Community competition law ('the Market definition notice') states that *"As a rule of thumb, both volume sales and value sales provide useful information. In cases of differentiated products, sales in value and their associated market share will usually be considered to better reflect the relative position and strength of each supplier- give idea of significance of differentiation (price range)"*. As pointed out in Section 6.1.2.3, the rolled products market is a highly differentiated market, and thus prices vary across commoditised and high-end products. Therefore, market shares in value provide for a better indication of the relative strength of the Parties and their main competitors. For this reason, in the Phase II market investigation, the Commission undertook a market reconstruction based on value.
- (171) The present Section demonstrates that: a) the Transaction leads to market shares in value which are moderate and lower than the market leader's market shares (in value), and have moreover declined from 2015 to 2017; b) the Parties' combined market shares in value are comparable to their combined market shares in volume; c) MKM's market share in value is lower than its market share in volume, suggesting that MKM is particularly active in the commoditised segments of the rolled products market; d) KME's market share in value is comparable to its market share in volume, suggesting that KME has a relatively balanced portfolio, spanning from commoditised to high-end market segments.
- (172) As explained in the Annex, for calculating market shares in value, the Commission used conversion revenues¹⁰² provided by the market participants. Differently from overall revenues, conversion revenues do not take into account the metal cost, and thus they represent in a more realistic way the value associated with the rolled product sales and the added value that the customer is willing to pay to the rolled copper manufacturer. As regards the metal costs, they are fully passed on to the

¹⁰⁰ EGM also had a market share of 5-10% in 2015 and 2016.

¹⁰¹ Paragraph 20 of the Horizontal Merger Guidelines states that *"The Commission is also unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1000 and 2000 and a delta below 250 [...]"*. However, as explained in paragraph 21 each of these HHI levels in combination with the respective delta *"do not give rise to a presumption of either the existence or the absence of such concerns"*.

¹⁰² For the purpose of the present Decision, the expressions 'conversion revenue', 'fabrication revenue', and 'net added value – NVA' are used by the Commission interchangeably.

rolled product customers at the price set by London Metal Exchange ('LME'). A number of internal documents of the Parties confirm that conversion revenues are used in the ordinary course of business as a metric of sale performance.¹⁰³

- (173) The Annex also explains that different market participants might have different definitions of conversion revenues. Consequently, for calculating market shares, the Commission used a conservative approach, which leads to a potential overestimate of the Parties' conversion revenues and a subsequent potential underestimate of the conversion revenues of their competitors (see the Annex for details). Therefore, the present analysis of the value market shares may lead to a potential overestimate of the Parties' value sales market share and market power.

Table 2 EEA Conversion revenues and market shares in value of rolled products for the years 2015 to 2017

| | 2015 | | 2016 | | 2017 | |
|---------------------|------------------------------|-----------------|------------------------------|-----------------|------------------------------|-----------------|
| | Convers. revenues ('000 EUR) | Market share | Convers. revenues ('000 EUR) | Market share | Convers. revenues ('000 EUR) | Market share |
| KME | [...] | [20-30]% | [...] | [10-20]% | [...] | [10-20]% |
| MKM | [...] | [5-10]% | [...] | [5-10]% | [...] | [5-10]% |
| Combined | [...] | [20-30]% | [...] | [20-30]% | [...] | [20-30]% |
| Wieland | [...] | [30-40]% | [...] | [30-40]% | [...] | [30-40]% |
| Aurubis | [...] | [10-20]% | [...] | [10-20]% | [...] | [10-20]% |
| Schwermetall | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Sofia Med | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Diehl | [...] | [5-10]% | [...] | [5-10]% | [...] | [5-10]% |
| EGM | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Kemper | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Messingwerk | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Competitor 1 | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Competitor 2 | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Competitor 3 | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Competitor 4 | NA** | NA** | NA** | NA** | [...] | [0-5]% |
| Competitor 5 | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Competitor 6 | [...] | [0-5]% | [...] | [0-5]% | [...] | [0-5]% |
| Imports | 29 123 | 5.0% | 30 197 | 5.0% | 33 606 | 5.0% |
| Total market | 582 472 | 100.0% | 603 958 | 100.0% | 672 122 | 100.0% |

Source: European Commission, based on market participants' data.

* the Commission anonymised six market participants for better preserving their business secrets. These market participants are (here in alphabetical order, which does not correspond to the order given in the table): Azienda Metalli Laminati, TG Griset, Medpovrly, Silmet, WMD, WMN.

** Competitor 4 provided data only for the year 2017.

- (174) As Table 2 shows, in 2017, KME's and MKM's value market shares are, respectively, [10-20]% and [5-10]%, leading to combined market share in value of [20-30]%, just above the threshold below which concentrations are not considered liable to impede

¹⁰³ See for example the Parties' response to the Commission's request for information RFI 16, Annex 11.7; the Parties' response to the Commission's request for information RFI 1, Annex 3, slides 16, 30, and 63; the Parties' response to the Commission's request for information RFI 6, Annex 4.1, slides 2-10; or the Parties' submission "Pricing presentation by KME", slides 2-6, submitted on 15 June 2018.

effective competition and may be presumed to be compatible with the internal market, pursuant to Recital 32 of the Preamble to the Merger Regulation and Paragraph 18 of the Horizontal Merger Guidelines.

- (175) Post-Transaction, Wieland, with its market share of [30-40]%, remains the company with the highest conversion revenues in the EEA, and with a market share above the Parties' combined value market share. Therefore, in terms of conversion revenues, the Transaction leads to the creation of the EEA second largest market player in rolled products. The third largest market player in terms of conversion revenues is Aurubis with a value market share of [10-20]%, followed by a number of smaller players with individual market shares below 5%, with the exception of Diehl, with a market share of [5-10]%.
- (176) Table 2 also shows that the Parties' combined value market share declined from [20-30]% in 2015 to [20-30]% in 2017, driven by KME's reduction in market shares, which decreased from [20-30]% in 2015 to [10-20]% in 2017 and is not counterbalanced by MKM's slight increase in sales and market share. KME's conversion revenues remained stable between 2015 and 2017. In a market which has grown by 15% in terms of conversion revenues between 2015 and 2017, highlighting the decline of commoditized rolled products and the trend to expanded sales of specialties, KME's performance can be considered as poor.
- (177) When comparing the Parties' market shares in value (Table 2 EEA Conversion revenues and market shares in value of rolled products for the years 2015 to 2017) with those in volume (Table 1 EEA sales and market shares in volume of rolled products for the years 2015 to 2017) for the years 2015, 2016, and 2017, it appears that: a) KME's market shares in value are moderately higher than its market shares in volume; and b) MKM's market shares in value are moderately lower than its market shares in volume. [...]. As further explained in Section 7.2.4.1, this comparison reflects the somewhat different market focus of the two companies, in particular that MKM is mainly focused on the commoditised market segment, where lower prices are charged, and that KME has a relatively balanced portfolio, spanning from commoditised to high-end market segments. Therefore, the overlap between MKM and KME lies in particular in commoditized segments, as it will be further explained in Section 7.2.4.1.
- (178) With respect to concentration levels, the Commission calculated that, post-Transaction, the HHI based on 2017 market shares in value is [>2000], with an increase of [>150]. Although these values are above the threshold under which the Commission is unlikely to identify concerns,¹⁰⁴ in this Transaction, this HHI level and the corresponding increase remain moderate.
- (179) Based on the reasons set out in recitals (170)-(178), the Commission considers that the combined value market shares of the Parties will be moderate and, in any event, lower than Wieland's value market share, and the resulting concentration levels will be moderate.

¹⁰⁴ Paragraph 20 of the Horizontal Merger Guidelines states that *"The Commission is also unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1000 and 2000 and a delta below 250, or a merger with a post-merger HHI above 2000 and a delta below 150 [...]"*. However, as explained in paragraph 21 each of these HHI levels in combination with the respective delta *"do not give rise to a presumption of either the existence or the absence of such concerns"*.

7.2.1.5. Conclusion on market shares and concentration levels

(180) Post-Transaction, the combined volume and value market shares of the Parties will be moderate and, in any event, lower than the market leader's market shares (when market shares in value are considered). In addition, the respective concentration levels will be moderate.

7.2.2. *The decline of KME has been ongoing for some years and has impacted its profitability.*

7.2.2.1. KME's decline has been ongoing for several years.

(181) The present Section demonstrates that KME has been declining for several years.

(182) KME has a wide portfolio of rolled products, which includes different fields of use (e.g. for building and construction, for industrial applications such as connectors, heat exchangers, cables, etc), and different alloys, including HPA, brass, bronze and pure copper of different grades.

(183) With respect to the rolled products market overall, as already indicated in Sections 7.2.1.3 and 7.2.1.4, in the period 2015-2017, both market shares in value and in volume of KME declined. [...].

Figure 4 KME rolled product sales growth, compared to the EEA rolled product demand for the years 2007-2017.

[...]

Source: for KME+KMD sale data: the Parties' response to the Commission's request for information RFI 30 (follow-up of 7 November 2018); for market demand: the Parties' response to the Commission's request for information RFI 12 "CU2 European market for Flat Rolled Products - 2003 – 2017", slide 8.

(184) An independent consulting company specialised in the copper markets confirms the decline of KME in the last years and makes the following statement: *"Once the major supplier for copper semi-finished products worldwide, in the last fifteen years, KME has suffered from a severe fall in volumes, margins and market shares that have brought to the closure of 5 manufacturing plants in Europe."*¹⁰⁵

(185) Another independent consulting company has indicated in a document prepared in December 2015 that *" KME sales volumes have fallen steadily over the last five years from [...] in 2010 to [...] in 2014 ([...]). Earnings have followed with EBITDA decreasing from [...] in 2014 and net losses were recorded over the last three years (also before non-recurring items)"*¹⁰⁶

(186) Based on the reasons set out in recitals (181)-(185), the Commission considers that KME decline has been ongoing for several years.

7.2.2.2. A profitability analysis confirms that KME is declining

(187) The present Section demonstrates that currently KME's rolled product division has not achieved profitable results in recent years, which is an indication that KME does not hold market power in the overall rolled products market.

(188) [...].

¹⁰⁵ Parties' response to the Commission's request for information RFI 12 "CU2 European market for Flat Rolled Products - 2003 – 2017", slide 177.

¹⁰⁶ Parties' response to the Commission's request for information RFI 3 Annex 7 "'A combination of KME and MKM, Hannam Investments", slide 3.

Figure 5 KME's profitability by products in 2015

[...]

Source: Parties' response to the Commission's request for information RFI 1, Annex 3, slide 7 (emphasis added by the Commission).

(189) [...].

(190) [...].

(191) The average conversion price per tonne increased by [...] from [...] in 2015 to [...] in 2017, indicating that KME might have been trying to orient towards more expensive high-end products. This orientation may have had a positive impact on EBITDA because 2017 was the first year in the three-year period from 2015 to 2017 when KME recorded positive profits at EBITDA level. In 2017, KME recorded an EBITDA profit of [...] for the EEA rolled product sales, corresponding to [...] of its conversion revenue for the same period, even if the EBT profit measure for KME [...]. This shows that KME has tried to restore its overall profitability but it has not yet achieved the expected results.

(192) This low profitability is further confirmed by a independent consulting company which has indicated in a document prepared in December 2015 that "*Negative net profit and cash flows make it impossible to list the company on the stock exchange in its current state*"¹⁰⁷

(193) [...].

7.2.3. Intermediate conclusion on market shares and profitability.

(194) At this stage of the assessment, the Commission considers that the combined volume and value market shares of the Parties, as well as the respective concentration levels, remain moderate. Moreover KME is experiencing a steady decline in terms of sales and market shares which is reflected in their weak financial performance and constitutes an indicator of a declining competitive relevance, which is not counterbalanced by MKM's growth. At this stage of the assessment, the Commission consider that the elements developed in Sections 7.2.1 and 7.2.2 do not point to a risk of a significant impediment of effective competition as a result of the Transaction.

(195) The Commission now turns to a more granular assessment in relation to the products where the activities of the parties overlap and notably the commoditized rolled products.

7.2.4. KME and MKM are close competitors in commodity segments of the market where (i) most competitors are present and (ii) there is overcapacity

(196) As explained in Section 6.1.2.3, the rolled products market is highly differentiated and consists of multiple segments, which exhibit different levels and intensities of competition and potential competitive pressure.

(197) The present Section demonstrates that the Parties overlap mainly in the low-end segments of the market, where most competitors are present, and there is overcapacity.

¹⁰⁷ Parties' response to the Commission's request for information RFI 3 Annex 7 "A combination of KME and MKM, Hannam Investments", slide 3.

- 7.2.4.1. KME and MKM mostly overlap in the commoditised [or "low-end"] pure copper products
- (198) In the rolled products market, the Parties' largest overlap is in the supply of pure copper rolled products. KME has significant sales in this area. This is also the core business of MKM which is hardly present in the supply of HPAs ([...] whereas KME had sales of [...]) and has a significantly smaller presence in brass and even smaller in bronze (only [...] whereas KME sells more than [...]) which are materials generally used in higher end rolled products;
- (199) The Parties are closer competitors in pure copper and in the more commoditised products made of pure copper. Focusing on pure copper grades, the Commission notes that the main overlaps are in DHP and ETP copper. DHP is a low purity grade that can be produced with a higher percentage of scrap and is generally used in building applications and low added value products (such as building and construction). ETP has higher purity requirements than DHP and is generally used in electrical applications and low to medium added value products (such as cable strip or transformer strip). The impact of the transaction for these particular grades will be assessed further in Section 7.2.8.
- (200) Such closeness of competition in commoditized grades is highlighted by a third party consultancy report which described it as follows: "KME [is] *historically strong in construction progressively shifting toward industrial*" while "MKM *focus on volumes/ utilization and cost efficiency, [having] an overall low value add portfolio*".¹⁰⁸ MKM itself recognises that it competes successfully by being flexible and producing at low cost rather than offering high-end products: "*The Company regularly manages to take away business from its competitors due to our manufacturing flexibility, better pricing as a consequence of a lower cost basis, high customer trust and supply reliability & quality*".¹⁰⁹ The fact MKM is more focused on low added value products is also supported by its value market shares that are lower than its volume market shares (as indicated in Section 7.2.1).
- (201) In the higher end segments of the market, the Parties have limited overlaps because KME is present but MKM is not active. In KME's documents produced in its ordinary course of business, MKM is never mentioned as a competitor in the high-end segments of the market. For example, in relation to HPAs, KME considers as its main competitor Wieland and the companies who purchase HPAs' pre-rolled strip from Schwermetall: Wieland, Aurubis-Stolberg, Kemper and Diehl. MKM indeed has very limited sales in HPAs ([...]). Neither in relation to bronze – which is not only used in high added value products – does KME consider MKM has a competitor (MKM indeed has sold only [...] of bronze in 2017 in the EEA). KME names the same companies as for HPAs and questions EGM (Ilnor) position in this segment, as shown in the two slides below.

Figure 6 KME's competitive assessment in HPA (left) and bronze (right)

[...]

Source: Parties' response to the Commission's request for information RFI 15, Annex 9.1, slide 6 and 7.

¹⁰⁸ Parties' Response to the Commission's request for information RFI 1, Annex 3 – [Notifying party's external consultant] – Market review, slide 27

¹⁰⁹ Parties' Response to the Commission's request for information RFI 19, power-point presentation "MKM MansfelderKupferund Messing GmbH Information Memorandum Refinancing", October 2017", slide 33.

- (202) Also in relation to stamping – which covers medium to high added value products –, KME considers as its main competitors only Wieland and Diehl, as shown in the table of the slide below which depicts the supply chain of stamped products where Wieland, Diehl and KME are the only suppliers of the material (copper).¹¹⁰

Figure 7 KME assessment of stamping market

[...]

Source: Parties' response to the Commission's request for information RFI 15, Annex 9.4, slide 3 (emphasis added by the Commission).

- (203) As demonstrated above KME and MKM are closer competitors in the low to mid added value segments of the market, notably in the most commoditised areas.

7.2.4.2. Most competitors are present in the segments where the Parties overlap, that is, in the commoditised [or "low-end"] pure copper and brass rolled products

- (204) As explained in Section 7.2.4.1, the Parties overlap mainly in pure copper, and, to a much lower extent in brass. The present Section demonstrates that in these two market segments where the Parties overlap, a large number of competitors, which are vertically integrated in pre-rolled strip production, are present.

- (205) Regarding pure copper in general, out of the 18 competitors that replied to the Commission's requests for information, 16 are active in pure copper. One of the two competitors that are not active in this market segment is Schwermetall, which has its core business in pre-rolled strips and sells a relatively small amount of rolled products in the niche segment of rolled products for coins.

- (206) For the purpose of comparison, with respect to the market segment of HPA, which is more widely used for high-end applications such as connectors, only 9 out of 18 competitors are active in this segment.

- (207) If a more granular view of the pure copper segments is taken, and sub-segments according to the copper grade are considered, a large majority of competitors are active in these sub-segments, particularly in ETP, where the highest number of competitors (15) are active.

- (208) With respect to brass, the competitive landscape is similar to pure copper. Also in this case, out of the 18 competitors that responded to the Commissions' requests for information, only 2 are not active in brass.

- (209) Therefore, for the reasons mentioned above, the Commission concludes that a large number of competitors, which are vertically integrated in pre-rolled strip production, are active in the market segments where the Parties overlap. A more detailed analysis of the segments where the activities of the Parties overlap, notably roofing copper DHP and electrical copper/ETP will be carried out in Section 7.2.8.

7.2.4.3. There is overcapacity in the commoditised [or "low-end"] pure copper products

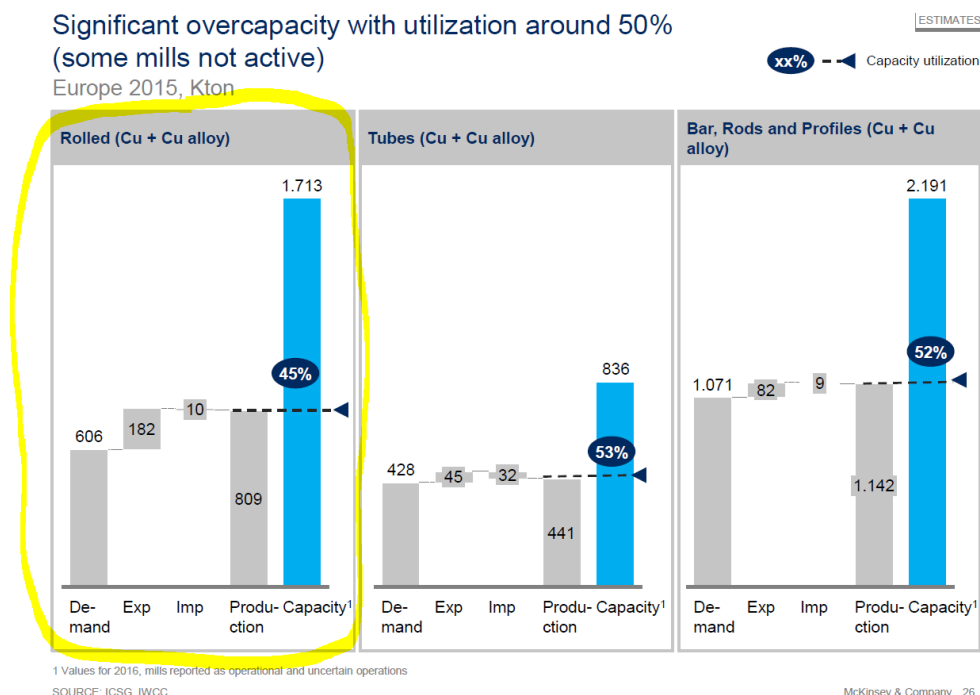
- (210) The present Section demonstrates that the overall market for rolled products is currently characterised by overcapacity. Such overcapacity is characteristic, in particular with respect to the manufacture of commoditised products, which, as set out in Section 7.2.4.1 above is the area of the market where the Parties compete most closely. As explained below, such a spare manufacturing capacity in areas where the

¹¹⁰ Parties' response to the Commission's request for information RFI 15, Annex 9.4, slide 3.

Parties' activities overlap the most is likely to exert a competitive constraint on the Parties' ability to raise prices.

- (211) Already in 2015, a third party consultant assessed a 45% capacity utilization rate, which indicates a significant overcapacity in the rolled products market. However, given the overall differentiation in the market, a 45% capacity utilization rate does not precisely establish as regards to which products there is currently overcapacity and to which extent it particularly impacts the areas in which the activities of the Parties overlap. The Commission will therefore demonstrate in the current section that the overcapacity particularly affects the commoditised part of the market.

Figure 8 Overview of productions and capacity in 2015



Source: Parties' response to the Commission's request for information RFI 1, Annex 3, slide 26 (emphasis added by the Commission).

- (212) According to the Parties,¹¹¹ switching from the production of one material to the other one is relatively easier for commoditized products such as pure copper grades than for more high end products. This is in particular due to the fact that high end products require additional production steps such as tinning or coating which are not needed for more low value-added products. As a consequence, different commoditized materials can be processed on the same line:¹¹² [...].
- (213) Accordingly, given that the presence of the Parties in the pure copper segments is relatively stronger as compared to the other segments, the Commission was provided with estimates for capacity in this segment. The Parties estimate the downstream spare capacity in pure copper to exceed 100,000 tonnes and report it to prevail mainly in the commoditised part of the pure copper products, that is, DHP and ETP. According to the Parties, many competitors have been somewhat redirecting their production to other segments, and partly ended up with large spare capacity in the

¹¹¹ Competitive effects analysis for pure copper rolled products report prepared by NERA Economic Consulting, submitted 18 September 2018.

¹¹² Parties' response to the Commission's request for information RFI 16, questions 4 and 5 (clarifications).

more commoditised segments, which would act as a competitive constraint on the Parties.

- (214) Moreover, in case of a significant price increase in the low-end segments, some producers in the high-end segments might consider, in view of prospects of higher profitability, re-entering the low-end segment and, hence, provide an additional competitive constraint on the Parties. This prospect of re-entry is particularly relevant as regards companies which have been in the past significantly active in the low-end segments, such as Wieland, and have therefore kept the technical capabilities to start producing commoditized products should they become more profitable. Such a constraint is facilitated by the fact that, as further explained in Section 7.2.5 below, there are limited barriers to enter the lower-end part of the market if a manufacturer is already present in the high-end market segments.¹¹³
- (215) As shown in Figure 9, based on the Parties' estimates, Aurubis, Sofia Med and Wieland would be able to supply more than 80 000 tonnes of pure copper products, and an additional volume of at least 10 000 tonnes could be produced by other vertically integrated firms. The total available capacity in pure copper established in Figure 8 is comparable to [...] and therefore act as a significant constraint on the Merged Entity's ability to raise prices. Eventually, some additional quantities could be processed by other downstream suppliers which source pure copper slabs or pre-rolled strip from the merchant market.

Figure 9 Pure copper capacity of some vertically integrated suppliers

[...]

Source: Parties' submission "Competitive effects analysis for pure copper rolled products", submitted 18 September 2018, page 8.

- (216) Aurubis in particular has a sizable portfolio (which is comparable to KME's given that it sells several grades of commoditized pure copper products) and significant available capacity that could be used to defeat a price increase in the lower end segment
- (217) The Commission also noticed that the potential production in the downstream market is not constrained by any upstream restriction for those competitors which are vertically integrated in pre-rolled strip production for pure copper commoditized grades. Indeed, the Parties estimate upstream spare capacity for pure copper to exceed 340 000 tonnes, which is more than three times the downstream spare capacity.
- (218) In conclusion, taking into account the fact that the production of grades which belong to the commoditised part of the market require less investment in production tools and the consequent relative easiness for competitors to shift towards the former, also due to the possibility to source pre-rolled strip or slabs and the particularly low rate of utilisation, the Commission considers that the overall spare capacity in the rolled copper market, and notably as regards the commoditised part of the market, exerts a competitive constraint on the Parties' ability to raise prices.

¹¹³ However, the opposite does not apply, that is, there are significant barriers for a manufacturer to redirect its production from the low-end to the high-end of the rolled products market. This also explains why some market participants, which require high-end rolled products, consider that their suppliers do not have spare capacity for increasing supply of rolled products (see Questionnaire Q1 to customers, q33).

7.2.5. *Competitors would be likely to react should the new entity try to increase prices*

- (219) Paragraph 24 of the Horizontal Merger Guidelines recognises that a horizontal merger in an oligopolistic setting may not only remove competitive constraints between the merging firms, but also on other competitors: "*Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price increase may switch some demand to rival firms, which, in turn, may find it profitable to increase their prices*". Paragraph 25 refers also a reduction of competitive pressure on the remaining competitors.
- (220) Conversely paragraphs 32 to 35 of the Horizontal Merger Guidelines recognise that there may be situations where competitors have both the ability and incentives to increase output so significantly that it is sufficient to defeat the negative effects of the merger. For this to happen competitors need to have both enough capacity to expand output significantly and find it even more profitable to expand output significantly than to just increase prices reactively within the meaning of paragraph 24 of the guidelines.
- (221) As demonstrated in Sections 7.2.3.3 and 7.2.3.4, there are several suppliers active and there is significant overcapacity in the lower, commoditised segments of the market where the Parties have significant overlaps.
- (222) In addition, the expansion barriers in the commoditised part of the market are lower than in the high-end segments. Unlike the high end segments of the market, in the commodities segments there is no need to invest in specific machinery, to acquire a specific know-how, nor to go through a quite often lengthy and costly qualification process, not only with the direct customer but also with the customer's customer.
- (223) Given the overcapacity and the low expansion barriers on the one hand, the economies of scale characteristics of the rolled products market, on the other hand competitors present in the commoditised segments would have the ability and incentive to expand out in response to a price increase.
- (224) In fact, there is evidence that some competitors, like Sofia Med and Aurubis, are growing also in the commoditised segments of the market. Sofia Med, for example, has been increasing its sales over recent years. The growth of Sofia Med is underlined in a report of a specialised copper consultancy: "*[o]ne of the clearest changes in the competitive positioning for copper and brass FRPs during the year 2017, has been the widespread growth of Sofia Med, whose market share has increased almost everywhere in the largest outlets, including Italy, Germany, Czech Republic + Slovakia, France and the UK*". In more detail: "*[o]ver the last couple of years, Sofia Med has registered an impressive growth pace in flat products, boosting its sales volume from 29,000 tons in 2015 to about 50,000 tons in 2017 (+72%). The company, which has an installed capacity of 100,000 tpy, has increased its presence not only to all the major European outlets but also in the MENAT area and Asia. Moreover, in addition to copper and brass, Sofia Med has enriched its offer by adding some HPAs (CuSn_{0,15}, CuFe_{0,10P}, CuFe_{2p}, CuNi_{1,5Si}, CuNi_{2Si}, CuNi_{2SiSn} and CuNi_{3SiMg}). (...). The company expects to keep on sharply increasing also in 2018*".¹¹⁴

¹¹⁴ Parties' response to the Commission's request for information RFI 12 "CU2 European market for Flat Rolled Products - 2003 – 2017", slide 169 and 180.

- (225) Aurubis, a leading supplier in pure copper and brass has also increased its market share in these areas. The growth of Aurubis is also commented in the report mentioned above: "*[o]ther positive slighter changes in terms of share have been recorded by both Aurubis Netherlands for brass (especially in France and Italy) and Aurubis Finland for copper (in Italy, Czech R.+Slovakia, the UK and Spain)*".¹¹⁵
- (226) Moreover, in case of a price increase, competitors present in the high-end segments, who have decided to leave the commoditised segments of the market could quickly revert to supply these commoditised products. For example, Wieland has decided to leave the more commoditised segments of the market and focus on the high added value segments, as KME as acknowledged: "*[Wieland's g]rowth has been initiated [in special alloys] by giving up standard alloys, for example cable strip*" (see Figure 6 above). The voluntary exit of Wieland from the commoditised products was also underlined by a common customer of the Parties, who used to be a customer of Wieland.¹¹⁶ To the extent these companies have the capabilities and the know-how - which are not that demanding for the commoditised products – they have the ability and could have an incentive to supply these segments in a response to a price increase.
- 7.2.5.1. Imports from Turkey and Serbia in the commoditised products exert some competitive constraints
- (227) Due to the reasons provided in section 6.2.3.3, the geographic market for rolled products is EEA-wide in scope and imports to the EEA are relatively small in the overall market. However, some suppliers in particular from Turkey and Serbia, which are vertically integrated in pre-rolled strip production, have been successful in entering in particular the low-end of the market, selling mainly DHP copper to customers in the EEA. These suppliers also compete in the EEA market and provide competitive pressure on established EEA-based players such as KME and MKM.
- (228) When comparing the market shares data based on the Commission's market reconstruction it can be observed that the vast majority of imports take place in the pure copper followed by brass. Similarly, when comparing the pure copper market share data with DHP and ETP data, it can be observed that these are the two grades of copper that make most (if not all) of the pure copper imports.¹¹⁷
- (229) A customer that purchases DHP copper, when asked for the reasons to have switched suppliers, replied that: "*[a]us Preisgründen kaufen wir bei Halcor in Griechenland. Weitere neue Bezugsquelle Braun Metallhandel (serbisches Kupfermaterial)*".¹¹⁸
- (230) As a third party consultant explains in relation to copper for building applications: "*high competitive pressure from imports from lower cost producers (e.g. Turkish, Eastern Europe)*".¹¹⁹

¹¹⁵ Parties' response to the Commission's request for information RFI 12 "CU2 European market for Flat Rolled Products - 2003 – 2017", slide 169.

¹¹⁶ Non-confidential agreed minutes with a customer, 21 June 2018.

¹¹⁷ In fact, as explained in more detail in Annex of this decision, in its market reconstruction the Commission found that imports into the EEA are primarily made of commoditised alloys, such as DHP.

¹¹⁸ Free translation: "*for price reasons, we buy from Halcor in Greece. A further new source of supply is Braun Metallhandel (Serbian supplier)*" in Questionnaire Q1 to Customers of Rolled Copper Products, question 26.1.

¹¹⁹ Parties' response to the Commission's request for information RFI 1, Annex 3 – [Notifying party's external consultant] – Market review, slide 18.

7.2.5.2. Conclusion

(231) The Commission concludes that the reaction of competitors to the merger is likely to defeat any likely price increase taking into consideration: the number of suppliers available (some of them growing), the overcapacity in the commoditised segments, the lower barriers to expand (in relation to the higher segments), the incentive to sell in order to benefit from economies of scale, and the pressure from imports.

7.2.6. Post-Transaction customers have several possibilities to switch suppliers

(232) The majority of respondents that are customers of the Parties have indicated that they would be concerned with price increases.¹²⁰ However, as it can be seen by their replies it has been difficult for the respondents to abstract themselves from the other publicly announced merger (Wieland/ARP/Schwermetall):¹²¹

"On the market for copper flat products we see an oligopoly. If MKM becomes a part of KME we would have two market leaders in Europe, Wieland-group and KME".

"Don't limit competition on the market. Wieland and Aurubis become one and MKM / KME. Only higher prices for the customers are the result and will go abroad with our sourcing activities and will not support the local industry".

"There are only a few manufacturers of copper products on the market in Europe. Further concentration such as the merger of MKM and KME, or WIELAND and AURUBIS, decisively weakens the competition".

"With Wieland acquisition of Aurubis there is a 2nd deal in preparation which leads to a shrinking selection for the customer. At the end the customers have less companies for the demands and that can cause a critical Situation in Terms of competition, Price and collaboration".¹²²

(233) The fact that respondents have also taken into consideration the merger of Wieland/ARP/Schwermetall means that they envisaged a scenario where the number of available suppliers would be further reduced, which is likely to have influenced their answers in a negative way. Hence, when analysing the responses received, the Commission considers that the negative feedback provided by some respondents to the market investigation should be treated with caution inasmuch as these concerns are not only linked to the Transaction assessed in the present Decision.

(234) In fact, where the Parties have their biggest overlaps, the majority of respondents are not concerned with the availability and choice of rolled products.¹²³ Moreover, the respondents to the market investigation have identified a significant number of alternative suppliers to the merging Parties. In particular, in the segments of DHP and ETP copper, they have not only identified suppliers in the EEA but also from outside the EEA such as: Kayalar, Gemciler and Sevojno.¹²⁴ In addition, a majority of respondents to the market investigation submitted that they already source rolled

¹²⁰ Questionnaire Q1 to customers of rolled copper products, question 45 and question 45.1; Questionnaire Q4 b to Customers of Pure Copper Rolled Products, questions 2.1, 3.1, 4.1, 5.1, 6.1.

¹²¹ In its first questionnaire to customers of the Parties the Commission has expressly requested the addresses to only take into account the impact of the KME/MKM transaction when responding.

¹²² Questionnaire Q4 to Customers of Pure Copper Rolled Products, question 26.

¹²³ Questionnaire Q4 b to Customers of Pure Copper Rolled Products, questions 2.2, 3.2, 4.2, 5.2, 6.2.

¹²⁴ Questionnaire Q4 to Customers of Pure Copper Rolled Products, question.6 and Questionnaire Q4b to Customers of Pure Copper Rolled Products, questions.2.5.1 and 3.5.1.

products from those alternative suppliers¹²⁵ and that, for example for ETP, they could easily switch their demand to the available alternative sources.¹²⁶

- (235) In fact, the majority of respondents have indicated that they multisource. Within this majority, the respondents have from 3 to up to 10 approved rolled products suppliers.¹²⁷
- (236) In addition, the market investigation shows that the necessary qualification processes in the commoditised segments would not pose a significant barrier for customers to switch volumes to alternative suppliers in case of price increases.
- (237) First, the results of the market investigation in this case indicate that, where qualification process is necessary,¹²⁸ it can last between a couple of weeks and several months. For the majority of respondents to the market investigation, the qualification process takes no longer than 6 months and costs less than EUR 30,000.¹²⁹ However, it can also be significantly shorter as one customer stated "*without product test 2 weeks, 1.000 EUR each dimension with product test 6 weeks, 20.000 EUR each dimension*".¹³⁰ Another customer provided that the qualification time would take less than a day: "*Time: 2-3 hours*".¹³¹ According to another customer, it appears that customers have certain flexibility and can adjust the qualification process to a specific situation – accelerate: "*Üblicherweise 4-6 Wochen, wenn es die Situation erfordert auch deutlich schneller*".¹³² or extend, if needed: "*If qualifications are difficult, we take more time*".¹³³
- (238) Second, the results of the market investigation show that only a small minority of customers in pure copper commoditised products was prevented from switching their suppliers in the previous 5 years due qualification process.¹³⁴
- (239) Two customers that source a specific copper strip from the Parties (HCP strip for radio frequency cables) have expressed their concerned that post-merger, they would lose a source of supply¹³⁵ in a segment where only three players are present, the Parties and Aurubis. One of the customers only purchases from the Parties, while the other customer also purchases from Aurubis.¹³⁶
- (240) Indeed, the product sourced by these customers represents a very small segment of the market (less than 1% of the overall rolled market). Given the limited demand size there has not been a commercial interest in offering this product. For example, Wieland has decided not to supply this product anymore.¹³⁷ Although both customers

¹²⁵ Questionnaire Q4 to Customers of Pure Copper Rolled Products, question.8.

¹²⁶ Questionnaire Q4b to Customers of Pure Copper Rolled Products, questions 2.5, 3.5.

¹²⁷ Questionnaire Q4 to Customers of Pure Copper Rolled Products, question.13.

¹²⁸ Few customers indicated that qualification of a supplier is not relevant for their business, Questionnaire Q4 to Customers of Pure Copper Rolled Products, question 15.

¹²⁹ Questionnaire Q4 to Customers of Pure Copper Rolled Products, question.20.

¹³⁰ Questionnaire Q4 to Customers of Pure Copper Rolled Products, question.20.

¹³¹ Questionnaire Q4 to Customers of Pure Copper Rolled Products, question.20.

¹³² Questionnaire Q4 to Customers of Pure Copper Rolled Products, question.20, free translation "usually 4-6 weeks, also significantly faster if the situation requires it."

¹³³ Questionnaire Q4 to Customers of Pure Copper Rolled Products, question.25.

¹³⁴ Questionnaire Q4 to Customers of Pure Copper Rolled Products, question.25; Questionnaire Q1 to Customers of Rolled Copper Products, question 30.

¹³⁵ Questionnaire Q1 to customers of rolled copper products, question 45.1, question 47.1, and question 49. Agreed minutes with a Customer, 21 June 2018.

¹³⁶ Questionnaire Q4 to Customers of Pure Copper Rolled Products, question 6.

¹³⁷ Non-confidential agreed minutes with a customer, 21 June 2018.

have mentioned that qualification makes it difficult to find alternative suppliers,¹³⁸ they have both been able to support new entry. According to one the customer "MKM (...) started to develop this business in 2014-2015 with strong support from [the Customer]".¹³⁹ Moreover, given that customers may support new entry, in case of a price increase, other competitors in addition to Aurubis, that already today sell the copper grade HCP (Sofia Med, EGM, Kemper, Messingwerk) would have an incentive to also run for qualification. In addition, Wieland already today has the ability to re-enter this segment and may have the incentives to do so should prices rise in these segments.

- (241) The Commission therefore considers that post-merger there are many alternative suppliers on the market and customers will likely be able to continue operating multi-sourcing strategies as under current market conditions.

7.2.7. *Conclusion on the overall rolled copper market*

- (242) In light of the considerations set out above in Sections 7.2.1 to 7.2.6, the Commission considers that the Transaction would lead to moderate market shares in the overall rolled products market. In this highly differentiated market, the Parties are particularly close in the commoditised segments, characterised by overcapacity and by the largest number of suppliers. In light of the above, the Commission considers that competitors will likely be able to defeat any attempt of the Parties to increase prices, while customers will continue having access to several alternatives suppliers.

- (243) In conclusion, the Commission considers that the horizontal overlap created by the Transaction does not lead to a significant impediment of effective competition in the rolled products market, nor in the commoditized grades where the parties compete in a close way.

7.2.8. *Competitive assessment in roofing copper/DHP and electrical copper/ETP*

- (244) In order to complement its overall analysis, the Commission will now demonstrate in the present Section that the Transaction does not impede effective competition in relation to two copper grades where the overlaps between the Parties are the most significant, that is roofing copper/DHP and electrical copper /ETP

- (245) The Commission takes the view that the Transaction would not significantly impede effective competition as a result of horizontal effects in the roofing copper/DHP segment and the electrical copper/ETP in the EEA.

- (246) The combined market share of the Merged Entity in the roofing copper/DHP segment in volume is [40-50]% (KME: [30-40]%, MKM: [10-20]%). The main competitors of the Merged Entity are Aurubis with a share between 10 and 20% as well as Sofia Med and EGM (between 5 and 10%) and Wieland (between 0 and 5%). Messingwerk, Altek from Turkey and Sevojno from Serbia are also present as well as 7 additional players. The roofing copper/DHP segment therefore includes a significant number of competitors already exerting or capable of exerting competitive constraints on the Merged Entity.

- (247) The combined market share of the Merged Entity in the electrical copper/ETP segment in volume is [40-50]% (KME: [10-20]%, MKM: [20-30]%). The main

¹³⁸ Although the costs involved in the qualification process (both in terms of time and money) differ significantly between these two customers- Questionnaire Q4 to Customers of Pure Copper Rolled Products, question 20, question 24 and question 25.

¹³⁹ Non-confidential agreed minutes with a customer, 21 June 2018.

competitors of the Merged Entity are Aurubis, Wieland and Sofia Med with a share between 10 and 20% each. Messingwerk, EGM and AML are also present as well as at least 7 additional players. Similarly to the roofing copper/DHP, the electrical copper/ETP segment therefore includes a significant number of competitors already exerting or capable of exerting competitive constraints on the Merged Entity

- (248) KME's sales and market share have significantly declined in the last three years in the roofing copper/DHP segment. While the overall segment has declined by 7.4% in the last three years, KME sales have fallen by [...] over the same period, leading to a drop in market shares from [30-40]% to [30-40]%. Though MKM has been growing during the same period, the combined sales of the Merged Entity have declined from [...] to [...], which provides an indication that KME's losses have also been picked up by other competitors and not only MKM.
- (249) Similarly to the roofing copper/DHP segment, KME's sales and market share have significantly declined in the last three years in the electrical copper/ETP segment. While the overall segment has increased by 12% in the last three years, KME sales have fallen by [...] over the same period, which is a sign of severe underperformance in a growing market, leading to a drop in market shares from [20-30]% to [10-20]%. Though MKM has been growing during the same period, the combined sales of the Merged Entity have declined from [...] to [...], which shows that other rivals have grown as a result of KME's losses and not only MKM.
- (250) Moreover, as explained above in Section 7.2.4.3, the Commission considers that the overall spare capacity in the rolled copper market and notably as regards the commoditised part of the market and in particular these two segments, exerts a competitive constraint on the Parties' ability to raise prices. The Merged Entity would be constrained by imports from outside the EEA since, as observed above in recital (228) DHP and ETP are the two grades of copper that make most (if not all) of the pure copper imports.
- (251) As regards reaction of customers, as explained above in recital (234), in the segments of DHP and ETP copper, customers have not only identified suppliers in the EEA but also from outside the EEA such as: Kayalar, Gemciler and Sevojno.¹⁴⁰ In addition, a majority of respondents to the market investigation submitted that they already source rolled products from those alternative suppliers and that, for example for ETP, they could easily switch their demand to the available alternative sources.¹⁴¹ On the basis of this evidence, the Commission takes the view as for other commoditized grades where customer requirements are not particularly stringent and qualification process would not pose a significant barrier for customers to switch volumes to alternative suppliers, customers of roofing copper/DHP and electrical copper/ETP will be in a position to continue a multi sourcing strategy similar as the one they were running pre-merger.

7.3. Rolled Products: assessment of vertical non-coordinated effects

7.3.1. There is no input foreclosure risk of pre-rolled strip

- (252) As referred above in recital (139), during the market investigation a competitor of the Parties, who sources pure copper pre-rolled strip from MKM, has expressed its concern that post-Transaction KME would either stop supplying or supply at higher

¹⁴⁰ Questionnaire Q4 to customers of rolled products, question 6.

¹⁴¹ Questionnaire Q4 to customers of rolled products, question 8.1.

prices the required pre-rolled strip.¹⁴² The Commission will therefore assess the vertical relationship arising from the Transaction which combines the activities of MKM in the upstream pre-rolled strip merchant market and the Parties' downstream activities on the rolled products market, although these markets are not vertically affected markets (since the Parties' market shares are below the 30% threshold. The Commission will determine in Sections 7.3.2-7.3.3 that the Merged Entity will not have the ability and the incentive to engage in the input foreclosure strategy and therefore the Transaction would not result in a significant impediment of effective competition because of vertical non-coordinated effects.

7.3.2. *Pre-rolled strip and rolled products*

- (253) Pre-rolled strip is an important input for companies active on the rolled products market, which do not have casting and hot-rolling capabilities in-house. These companies acquire pre-rolled strip on the merchant market and further process it into rolled products. Some companies, however, may buy pre-rolled strip only in specific quality or copper grade, which they cannot cast in-house (e.g. pure copper), while they use their in-house capabilities to produce pre-rolled strip in some other qualities (e.g. brass or bronze).
- (254) Both KME and MKM manufacture pre-rolled strip, however, only MKM is active in the pre-rolled strip merchant market. According to the Notifying Party, KME produces pre-rolled strip for captive use and also supplies its joint venture KMD. The results of the market investigation have confirmed that KME is not present on the merchant market for pre-rolled strip as only one respondent indicated having sporadically purchased small quantities of pre-rolled strip from KME, whereas other respondents did not even mention KME as an actual or potential supplier of pre-rolled strip.¹⁴³
- (255) MKM produces pre-rolled strip on the Conti-M manufacturing line in Hettstedt (Germany). As further explained in Section 7.3.2.2, MKM has pre-rolled strip manufacturing capacity which exceeds its downstream manufacturing capacity for rolled products. MKM partly utilises this spare capacity for manufacturing pre-rolled strip for the merchant market.

7.3.2.1. The Merged Entity will not have the ability to foreclose competitors

- (256) For the reasons set out below the Commission considers that the Merged Entity will not have the ability to engage in an input foreclosure strategy because (a) the merged entity will not have the sufficient market power and (b) its customers will continue to have viable alternative suppliers of pre-rolled strip, (c) despite being vertically integrated, there is no evidence that MKM attempted to foreclose in the past.
- (257) The market investigation indicated that, in addition to MKM, there are two other market participants active in the market for pre-rolled strip: Schwermetall, the market leader, and Sofia Med, a growing manufacturer from Bulgaria.¹⁴⁴ EGM has also been mentioned by the respondents to the market investigation as having sporadically provided small quantities of pre-rolled strip to the merchant market.¹⁴⁵

¹⁴² Agreed non-confidential minutes of a call with a Competitor on 21 June, paragraph 9.

¹⁴³ Questionnaires to competitors Q2, question 6, Parties' response to the Commission's request for information RFI 11, question 6, where the Parties submit that KME had only sporadic sales of pre-rolled strip to third parties.

¹⁴⁴ Questionnaires to competitors Q2, question 6.

¹⁴⁵ Questionnaire to competitors Q2, question 7.

- (258) The results of the Commission's market reconstruction for pre-rolled strip (Table 3) show that in each of the years 2015, 2016, and 2017, MKM's market share was below 20%, and in 2017 it was [10-20]%.

Table 3 EEA sales and market shares in volume of pre-rolled strip for the period 2015-2017

| | 2015 | | 2016 | | 2017 | |
|--------------|----------------|------------------|----------------|------------------|----------------|------------------|
| | Sales (tonnes) | Market share (%) | Sales (tonnes) | Market share (%) | Sales (tonnes) | Market share (%) |
| MKM | [...] | [10-20]% | [...] | [10-20]% | [...] | [10-20]% |
| Schwermetall | [...] | [70-80]% | [...] | [80-90]% | [...] | [70-80]% |
| Sofia Med | [...] | [0-5]% | [...] | [0-5]% | [...] | [5-10]% |
| Total | 66 992 | 100% | 63 837 | 100% | 71 328 | 100% |

Source: European Commission based on market reconstruction data. Data of MKM are based on the Parties' response to the Commission's request for information RFI 10, Annex 2, updated on 17 July 2018.

- (259) The Commission observes that MKM's market share in the overall pre-rolled strip market is four times lower than the market share of Schwermetall, which is in the range of [70-80]%.
- (260) As regards Sofia Med, even if its market share in 2017 was [5-10]%, there is evidence showing that it is pursuing an expansion strategy in the EEA and intends to keep increasing its sales of pre-rolled strip in the coming years.¹⁴⁶ Therefore, Sofia Med is a credible competitive constraint to MKM on the pre-rolled strip market.
- (261) Within the relevant market of pre-rolled strip, MKM focuses on the supply of pure copper and bronze.

Table 4 EEA sales and market shares in volume of pre-rolled strip for the year 2017

| | MKM | | Schwermetall | | Sofia Med | | Total (tonnes) |
|--------------|----------------|------------------|----------------|------------------|----------------|------------------|----------------|
| | Sales (tonnes) | Market share (%) | Sales (tonnes) | Market share (%) | Sales (tonnes) | Market share (%) | |
| Brass | [...] | [0-5]% | [...] | [90-100]% | [...] | [5-10]% | [...]* |
| Bronze | [...] | [30-40]%* | [...] | [60-70]% | [...] | [0-5]% | [...]* |
| HPA | [...] | 0% | [...] | [80-90]% | [...] | [10-20]% | [...]* |
| Pure copper | [...] | [50-60]%* | [...] | [40-50]% | [...] | [0-5]% | [...]* |
| Other | [...] | 0% | [...] | [90-100]% | [...] | [0-5]% | [...]* |
| Total | [...] | [10-20]% | [...] | [70-80]% | [...] | [5-10]% | 71 328 |

* due to the high concentration on the market, and for appropriately protecting the confidentiality of competitors' data, the Commission finds appropriate to maintain the size of each market segment confidential and to provide the Parties' market shares in the form of ranges.

Source: European Commission based on market reconstruction data. Data of MKM are based on the Parties' response to the Commission's request for information RFI 10, Annex 2, updated on 17 July 2018.

- (262) As shown in Table 4, MKM's shares of the sales of pure copper and bronze pre-rolled strip are higher than its share of the relevant market. Nonetheless, already today Schwermetall and Sofia Med are offering pre-rolled strip of pure copper and

¹⁴⁶ Agreed non-confidential minutes of a call with a Competitor, 18 September 2018, paragraphs 3 and 5.

bronze. Moreover, they have capabilities to increase their offering to counteract any price increase by the Merged Entity.

- (263) Furthermore, MKM is already vertically integrated and the Commission did not find any evidence that MKM engaged in a foreclosure strategy or have attempted to do so in the past.
- (264) In light of the above, the Commission considers that the Merged Entity would not have ability to foreclose competitors downstream because there are sufficient alternative viable pre-rolled strip suppliers that would constrain the Merged Entity.

7.3.2.2. The Merged Entity would not have the incentive to foreclose competitors

- (265) A competitor of the Parties suggested that it sees KME as a closer competitor than MKM. Hence, the competitor argued, while MKM might not have incentives to raise its input costs, KME could have such incentives.
- (266) This Section demonstrates that the Transaction would not change the incentives of the Merged Entity to sell pre-rolled strip to the merchant market because, post-Transaction, the Merged Entity would continue to have (a) large spare capacity in pre-rolled strip and (b) limited possibilities to recoup downstream (that is, in the rolled products market) the loss of sales upstream (that is, in pre-rolled strip), that a potential input foreclosure strategy could cause.
- (267) According to the data provided by the Notifying Party, MKM has manufacturing capacity of more than [...].¹⁴⁷ In 2017, MKM produced in total [...] of pre-rolled strip for both captive use and merchant market.¹⁴⁸ Therefore, pre-Transaction, MKM has unutilised capacity in pre-rolled strip exceeding [...].
- (268) The Parties submit that the production of pre-rolled strip is characterised by large fixed costs, thus increasing the utilisation of the manufacturing facilities is one important way for reducing the specific costs of manufacturing (that is, the costs per each single tonne manufactured).¹⁴⁹ Therefore, a company is highly incentivised in maximising the utilisation of the production line, including by selling pre-rolled strip to the merchant market (see also recital (271)).
- (269) Post-Transaction, it is likely that this spare capacity would be reduced because the Merged Entity would be likely to manufacture in Hettstedt a large part of the pre-rolled strip required for its captive use. This can be explained by the reduced manufacturing costs of the Conti-M manufacturing line, compared to other traditional slab casting lines used by KME pre-Transaction.¹⁵⁰ Internal documents of KME show that post-Transaction, Hettstedt is planned to cast between [...] to [...] of additional pre-rolled strip, which are currently manufactured in KME's plant in Osnabruck.¹⁵¹ The same internal documents also show that KME is considering to move the production of [...] of DHP copper ('Cu-DHP') pre-rolled strip from Hettstedt to KME's site in Fornaci di Barga (Italy).

¹⁴⁷ Parties' response to the Commission's request for information RFI 16, Annex 2, updated on 25 August 2018.

¹⁴⁸ Parties' response to the Commission's request for information RFI 16, Annex 2 updated on 25 August 2018.

¹⁴⁹ Memorandum submitted by the Notifying Party on 2 July 2018, Section 2.2., page 12.

¹⁵⁰ Parties' response to the Commission's request for information RFI 15, Annexes 4.1-4.4; and Langner E. L. (2011) "Understanding copper. Technologies, markets, business", section 8.1.3.3, page 239.

¹⁵¹ See for example the Parties' response to the Commission's request for information RFI 16, Annex 11.1, slide 17; or the Parties' response to the Commission's request for information RFI 16, Annex 11.4, pages 11-12.

- (270) Under the conservative assumption that, post-Transaction, the production of Cu-DHP will not be relocated to Fornaci di Barga, the Hettstedt's manufacturing site would have to satisfy additional [...] of pure copper pre-rolled strip and the resulting spare capacity of the Conti-M line in Hettstedt will be reduced from the current [...] to about [...].
- (271) The resulting spare capacity in Hettstedt post-Transaction, although lower than MKM's spare capacity pre-Transaction, would be more than sufficient to meet the Merged Entity's needs for pre-rolled strip, including any expansion plans it may have on the rolled products market. Therefore the Merged Entity will continue to have incentive to sell pre-rolled strip to the merchant market in order to reduce manufacturing costs.
- (272) In addition, post-Transaction, the combined market share of the Parties in the rolled products market is [20-30]%, if market shares in volume are considered (Table 1) and [20-30]% in the case of market shares in value (Table 2). Therefore, in case the merged entity decided to reduce or stop selling pre-rolled strip to the merchant market, the related loss of revenues could be only partially recouped by an increase in rolled product sales. Even for pure copper commoditised grades where the combined market share of the Merged Entity is higher downstream, such as roofing copper/DHP or electrical copper/ETP, it has been established in Sections 7.2.8 that the Merged Entity is constrained in these segments by the market presence of several suppliers.
- (273) For the reasons set out in recitals (265)-(272), the Commission therefore concludes that the Merged Entity not only does not have the incentive to engage in an input foreclosure strategy, but also that it has an incentive to continue supplying pre-rolled strip on the merchant market.
- 7.3.2.3. An input foreclosure strategy by the Merged Entity would not have a significant impact on effective competition
- (274) In addition to the assessment above showing that the Merged Entity would not have ability and incentive to engage in the foreclosure strategy, the Commission also finds that any foreclosure strategy of the Merged Entity would not have a significant effect on competition in the rolled products market for the following reasons.
- (275) First, based on the data submitted by the Parties,¹⁵² the customers of MKM for the pre-rolled strip represent only a fraction of the competitors on the rolled products market and there would remain sufficient credible downstream competitors whose costs are not likely to be raised.
- (276) In particular, the Merged Entity could not raise the costs of its close competitors downstream, such as Wieland, Aurubis, Sofia Med, and EGM because they are already vertically integrated, as well as those who to a certain extent have in-house production capabilities necessary for competing on the downstream market, or buy pre-rolled strip from other suppliers.
- (277) Accordingly, if taken together, those competitors of the Merged Entity would make up a significant proportion of the downstream market, and would constitute a sufficient constraint on the Merged Entity, thereby preventing price increase in the downstream market.

¹⁵² Parties' response to the Commission's request for information RFI 16, Annex 3.

- (278) Furthermore, the Commission does not have evidence that any of the smaller competitors who buy pre-rolled strip from MKM would play a sufficiently important role in an overall rolled products market, including the more commoditised segments of roofing copper/ DHP and electrical copper/ ETP, to consider that any foreclosure by the Merged Entity would likely lead to a significant price increase downstream.
- (279) For the reasons set out in this Section, the Commission concludes that any input foreclosure strategy of the Merged Entity would not impact effective competition in the rolled products market.

7.3.3. *Conclusion*

- (280) For the reasons set out in recitals (252) -(279), the Commission concludes that the vertical relationship arising from the Transaction on the pre-rolled strip and on the rolled products downstream would not lead to the creation of a significant impediment of effective competition.

7.4. Sanitary Copper Tubes: assessment of horizontal non-coordinated effects

- (281) For the reasons set out in this Section, the Commission takes the view that the concentration Transaction would not significantly impede effective competition in markets for sanitary copper tubes in the EEA as a result of horizontal non-coordinated effects.
- (282) The evidence collected by the Commission during the second phase investigation strongly suggests that competitive harm would be unlikely to arise from horizontal overlaps in sanitary copper tubes. In sum and as further explained in Sections 7.4.2 to 7.4.4:
- (283) Despite the high level of market shares at national level in some Member States in the EEA, there remain at EEA level and in each national market a large number of credible competitors which should be in a position to exert competitive constraints on the Merged Entity. Competitors which are active in sanitary tubes made of other materials such as aluminium, plastics and PEX also exert a more indirect constraint on the Merged Entity and should be taken into account in the competitive assessment.
- (284) Rival suppliers of the Merged Entity have significant available capacity in sanitary copper tubes which should enable them to increase supply in order to defeat a price rise. Rival suppliers also have the incentives to increase supply because, as the evidence suggests, they should not incur significant costs by doing so.
- (285) Barriers to entry or to expansion into a national market are not particularly significant. Therefore rival suppliers with the free capacity could increase supply in national markets where they are already present or enter national markets where they are not yet active
- (286) In addition to the country-specific factors discussed in Sections 7.4.6.1 to 7.4.6.8, some of the conclusions reached at the EEA level apply *mutatis mutandis* at the national level in each of the EEA countries discussed in Section 7.4.6.

7.4.1. *Market shares in the affected national markets*

- (287) KME sells sanitary copper tubes under the brands Sanco, Wicu and Cuprotherm which are manufactured in KME's tubes factory in Menden (Germany). KME is also active in the sanitary copper tubes markets through Trefimetaux. Trefimetaux is a production and marketing joint-venture jointly controlled by KME, in which KME holds 51% of the shares and the Finnish tube manufacturer Cupori 49%. Trefimetaux

operates two plants in France (Givet and Niederbruck) and one plant in Italy (Serravalle Scrivia). Trefimetaux manufactures a wide range of products, adapted to the requirements of the electrical, electronics, connector and IT industries, as well as the automobile, air conditioning and refrigeration sectors. Trefimetaux's activity mainly focuses on the sanitary tubes markets.

- (288) MKM manufactures and sells sanitary copper tubes under the HETCU brands, that is HECTU and HECTU Plus. All its sanitary tubes are produced in its factory in Hettstedt (Germany).
- (289) Table 5 shows the market shares of the Parties and their nearest competitor in all affected national markets and at the EEA level.^{153,154}

Table 5 Sanitary copper tubes - Value Market shares in 2017

| Country | KME | MKM | Combined | Nearest competitor |
|-----------------------|-----------------|----------------|-----------------|---------------------------|
| Austria | [40-50]% | [5-10]% | [50-60]% | Wieland ([40-50]%) |
| Belgium | [30-40]% | [0-5]% | [30-40]% | Halcor ([20-30]%) |
| Czech Republic | [30-40]% | [5-10]% | [40-50]% | Wieland ([30-40]%) |
| Denmark | [40-50]% | [0-5]% | [40-50]% | Mueller ([30-40]%) |
| France | [30-40]% | [10-20]% | [50-60]% | Wieland ([10-20]%) |
| Germany | [40-50]% | [10-20]% | [50-60]% | Wieland ([20-30]%) |
| Hungary | [30-40]% | [5-10]% | [40-50]% | Wieland ([30-40]%) |
| Netherlands | [40-50]% | [20-30]% | [60-70]% | Halcor ([10-20]%) |
| EEA | [20-30]% | [5-10]% | [20-30]% | Wieland ([10-20]%) |

Source: Parties' reply to RFI 7, annex 1.

- (290) As explained in recital (107), the Commission has also estimated the combined market shares as regards non-Sanco sanitary copper tubes (the activities of the parties do not overlap in Sanco tubes). The Commission's estimates show that the combined market shares of KME and MKM would systematically be lower in non-Sanco tubes than in the overall market for sanitary copper tubes at the EEA and national level and would only reach [50-60]% in just two Member States (Germany and the Netherlands). Moreover, the elements developed in Section 7.4.3 and 7.4.4 apply as well for non-Sanco sanitary copper tubes. Alternative players with available capacity sell in general only non-Sanco tubes (with the exception of Wieland, which has a Sanco licence). The fact that they not have a Sanco licence reduces the addressable market for them (to customers requiring or accepting non-Sanco tubes) but this was also the case for MKM. As a result, the Commission takes the view that the Transaction would not significantly impede effective competition in markets for non-Sanco sanitary copper tubes.

¹⁵³ In Italy, KME has a share of [40-50]% but the increment brought by MKM is insignificant ([0-5]%) and the Italian market will not be further discussed.

¹⁵⁴ The combined market share is below 10% in Bulgaria and Poland. In Sweden, Finland, Croatia, Latvia, Lithuania, Romania, Slovenia, Spain and the UK, there is no overlap (only one Party present). None of the Parties are active in all other Member States.

7.4.2. *Despite the high market shares at national level in some member States in the EEA, a large number of credible competitors remains at the EEA level and in each national market*

- (291) At the EEA level, KME including Trefimetaux is the leading sanitary copper tubes producer with a market share of [20-30]% in value. MKM is the sixth supplier in the EEA with an overall production share in value of [5-10]%. The Merged Entity therefore accounts for a combined share of [20-30]% in value at the EEA level.
- (292) As regards volume share at the EEA level, KME accounts for [20-30]% of the market and MKM for [5-10]%. The Merged Entity therefore holds a combined share of [20-30]% in volume at the EEA level, just at the threshold below which concentrations are not considered liable to impede effective competition and may be presumed to be compatible with the internal market, pursuant to paragraph 18 of the Horizontal Merger Guidelines.
- (293) The Merged Entity would continue to face a number of major competitors active all over the EEA. Mueller is based in the UK and is the n°2 EEA supplier with a share of [20-30]% in value and [10-20]% in volume. Wieland (Germany) follows with a share of [10-20]% in value and [10-20]% in volume. Halcor from Greece is the n°4 supplier ([10-20]% in value and [10-20]% in volume) followed by Finland-based supplier Cupori ([5-10]% in value and [5-10]% in volume). Other manufacturers present in the market with slightly lower shares include Italian producers Silmet, Foma and Feinrohren, Hutmen from Poland and La Farga from Spain.
- (294) In this competitive environment where a number of players are present, KME has not been performing well in terms of sales in the last three years. Whilst the EEA market has modestly grown in the last three years in value (+1.7%), KME's sales have declined in value ([...]) as in volume ([...]) between 2015 and 2017. This drop is particularly noteworthy as regards KME's joint-venture Trefimetaux ([...] in value and [...] in volume). Among sanitary copper tubes suppliers, only Mueller has experienced a minor decrease in value sales [...]) in this period between 2015 and 2017. All the others (including MKM, Wieland, Cupori and Halcor) have slightly increased their sales or remained stable.
- (295) These difficulties faced by KME and the increasing competition from other players are mentioned in an internal document from Trefimetaux regarding in particular sales in Italy.¹⁵⁵

[...]

- (296) Looking at market shares at a national level, the Commission notes that most of these competitors have strong national or regional footprints with more limited market positions in other national markets. Even though most producers sell across Europe, the market shares of the main players differ considerably from one country to another. For example, Cupori is the market leader in Finland but its share of supply is below 10% in other countries. Wieland has a 20-30% share in Central and Eastern Europe, Germany and France, but it is not active in Italy. Mueller is the market leader in the UK and Sweden but it is not active in Austria, Belgium or the Netherlands. The ability of these players to redirect their sales to other national markets should the price in these national markets increase is assessed further in Section 7.4.4.

¹⁵⁵ See the Parties' response to the Commission's request for information RFI 13, Question 2.

(297) As explained above in recital (95), on the basis of the qualitative and quantitative evidence available, the Commission considers that sanitary copper tubes and tubes made of other materials belong to different relevant product markets. However, some respondents to the market investigation, especially large wholesalers, have considered producers of aluminium or plastic tubes as potential alternative suppliers, in particular for applications where copper is not required or preferred, which significantly widens the scope of potential suppliers. For example, as explained by a German customer "Yes, there exist alternative suppliers for sanitary tubes (stainless steel, steel, plastic, Aluminium, ...) e.g. VIEGA, Geberit, Wavin, SANHA, Uponor, We sell them to our clients, too. (...). As wholesaler we sell all kind of materials to our clients, not only copper".¹⁵⁶ This has been confirmed by a Belgian customer "we have as tube supplier Comap, corus, geberit, viega, buysmetal, Eupen, Gastite, koechner."¹⁵⁷ Therefore, as explained in recital (104), in order to fully appraise the impact of the Transaction on the market of sanitary copper tubes and in particular whether price increases on sanitary copper tubes are likely in national markets following the Transaction, the Commission will assess if and to which extent potential substitution from suppliers of tubes of other materials could play a role in its assessment.

7.4.3. *Despite large combined market shares, there is significant free capacity*

(298) When market conditions are such that rival firms have sufficient capacity and find it profitable to expand output sufficiently, the Commission is unlikely to find that the merger would significantly impede effective competition.¹⁵⁸ Conversely, when market conditions are such that the competitors of the merged entity are unlikely to increase their supply significantly should prices increase, the merged entity may have an incentive to reduce output below the combined pre-merger levels thereby raising market prices.¹⁵⁹ The Commission has thus assessed whether alternative suppliers of sanitary copper tubes a) would have sufficient spare capacity to meet the customers' additional demand in case of a price increase and b) whether the competitors would have the incentives to substantially increase their output and supply to defeat a price rise.

(299) The Notifying Party has argued that market developments (and notably the dramatic decline of demand over the last two decades created by the introduction of new materials and joining techniques and accelerated by substantial increases in the raw material price of copper) have led to important industry-wide over-capacity. With respect to sanitary tubes, the Notifying Party submitted that the market size has been reduced by approximately 60% in the EEA (in particular in France, Italy and Germany), leading to over-capacity in the size of approximately 150 000 tons in Europe, a share of 70% of total capacity. The parties themselves would have combined over-capacity in sanitary copper tubes of around [...] ([...] for MKM and [...] for KME).

(300) The Notifying Party estimated that their EEA-based competitors of sanitary copper tubes together have spare capacity of about 91 500 tons, exceeding the Parties' sales of sanitary copper tubes into the EEA, [...].¹⁶⁰

¹⁵⁶ Questionnaire Q5 to customers of sanitary copper tubes, question 26.

¹⁵⁷ Questionnaire Q5 to customers of sanitary copper tubes, question 26.

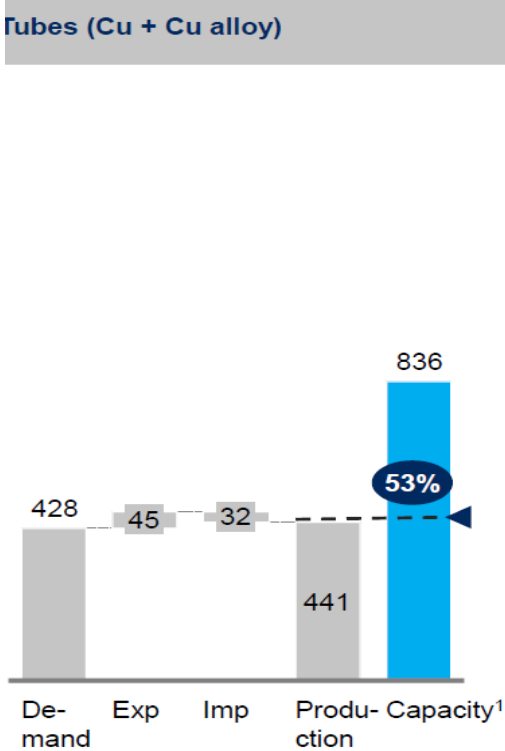
¹⁵⁸ Horizontal Merger Guidelines, paragraph 33.

¹⁵⁹ Horizontal Merger Guidelines, paragraph 32.

¹⁶⁰ See memorandum from economic consultancy NERA dated 20 September 2018, page 8.

- (301) The Commission has collected capacity and production data from all relevant competitors in the course of the second phase market investigation. For that purpose, the Commission has asked sanitary tubes suppliers to estimate their total capacity for copper sanitary and industrial tubes production in tonnes as well as the estimated capacity share which is exclusively dedicated to sanitary copper tubes. The Commission has then compared these numbers to the total production volume of sanitary copper tubes of these players for the years 2015, 2016 and 2017.
- (302) Generally, the Commission has been able to confirm the existence of over-capacity as regards production of sanitary copper tubes of the Parties' rivals, though not of the same magnitude as estimated by the Notifying Party.¹⁶¹ On an aggregated basis, the combined overcapacity in sanitary copper tubes of the Parties' competitors would reach 44 800 tonnes in 2017, which is higher than the Parties total sales in 2017 in volume (ca. [...]).
- (303) This significant overcapacity in tubes overall has also been highlighted in industry reports. The chart below, taken from the market review report prepared by [Notifying party's external consultant] for KME in October 2016, shows how capacity for tubes substantially exceeds production in Europe (Figure 10).

Figure 10 Tubes capacity versus tubes production in Europe



Source: Parties' response to the Commission's request for information RFI 1, Annex 3, slide 26.

- (304) In order to assess whether these rivals would have the incentives to increase supply to defeat a price rise, the Commission has sought to estimate how much the Parties' rivals could expand their capacity without incurring significant higher costs, for example through the addition of a working shift or the definition of a new production process. On a conservative and aggregated basis, sanitary tubes rivals have explained that they could grow output by roughly 25 000 tonnes to a total of 44 800 tonnes (see

¹⁶¹ See memorandum from economic consultancy NERA dated 20 September 2018, page 8.

recital (302)) without being exposed to additional costs. This available free capacity, if brought to the market, would be sufficient to offset a price increase.

- (305) On the basis of the above elements, the Commission considers that alternative suppliers have sufficient capacity and the incentives to expand output should the parties increase prices in sanitary copper tubes.

7.4.4. *Low barriers to enter or to expand across the national markets*

- (306) In some markets it may be relatively easy and not too costly for the active firms to reposition their products or extend their product portfolio. The Commission has therefore examined whether the possibility of repositioning or product line extension by competitors or the Merged Entity may influence the incentive of the Merged Entity to raise prices.¹⁶² In particular, the Commission has sought to verify whether some of the competitors identified in Section 7.4.2 would be in a position to reposition or extend their product offering so as to prevent the Merged Entity from raising prices.

- (307) Sanitary copper tubes are rather homogenous products and there are no major differences in quality between different copper tubes, even taking into account the branded differentiation linked to the Sanco label. The main differentiation factor, however, is geographic. As explained in Section 6.4.3, competition conditions differ in the EEA from one EEA Contracting Party to another, which explains why the Parties' rivals have varying market shares in different countries.

- (308) The Commission has assessed whether it would be possible for alternative suppliers of sanitary copper tubes to enter national markets where they are not active or to expand supply in some national markets where they are not present, or if such repositioning of the offering would entail risks and large sunk costs that would act as a disincentive against such entry or expansion.

- (309) Country-specific norms and certification processes have to be complied with in order to bring sanitary copper tubes on to the market. In order to market sanitary copper tubes in the EEA, every producer needs to follow an EN 1057 standard and, in addition to that, to undertake a national certification process. Once the sanitary copper tube is certified, it bears a mark of the certification organisation (e.g. KIWI for the Netherlands, DVGW for Germany, and AFNOR for France).

- (310) Respondents to the market investigation confirmed that EN 1057 is a single standard applicable across the whole of the EEA. The existence of national certification standards has also been confirmed by a majority of market participants¹⁶³ and by the Notifying Party.¹⁶⁴ Some market participants have also submitted that, in order to obtain national certification, some countries require the sanitary copper tubes to have a specific wall thickness or temper.

- (311) It appears, however, that even if quality marks/certificates exist in certain countries, the requirements are not very stringent and obtaining a quality mark is an administrative process that comes at little cost. One competitor explained that: "*the national certification labels are appraised (...) as "smaller details"*".¹⁶⁵ Another

¹⁶² Horizontal merger Guidelines, paragraph 30.

¹⁶³ Questionnaire Q2 to competitors of rolled copper products and sanitary copper tubes, question 31.1.

¹⁶⁴ Response to the Commission's decision of 23 July 2018 pursuant to Article 6(1)(c) of Regulation 139/2004, 22 August 2018.

¹⁶⁵ Non-confidential minutes of a call with a competitor on 4 September 2018.

supplier submitted that it is not difficult to obtain national certificates, which are usually issued in return for an annual fee.¹⁶⁶

- (312) In order to be active on a national market, suppliers also have to sell their products through a network of subsidiaries, agents or local distributors.¹⁶⁷ The majority of customers submitted that they source from companies with a local presence, although some of them responded that they source at a wider than national level.¹⁶⁸
- (313) KME itself has established local subsidiaries selling their products (including sanitary copper tubes) or it uses independent agents. KME has sales subsidiaries in Germany, Benelux, Poland and Spain and agents in Austria, Croatia, Czechia, the Baltics, Greece, Hungary and Romania (the French and Italian markets are served by Trefimetaux which has established sales teams in France and Italy).
- (314) On the other hand, MKM has local sales teams in France and Germany whereas sales activities regarding all other countries are centrally organised and handled by the sales team in Hettstedt. Despite the fact that sales activities are managed from Germany, MKM has significant market shares in countries such as Austria ([5-10]%), the Czech Republic ([5-10]%) and the Netherlands ([10-20]%) where it has no direct or indirect presence on the ground.
- (315) A similar sales structure appears to be adopted by other players too. For example, one competitor has a network of subsidiaries in the most important markets (UK, Germany, France and Romania). The tubes are stocked there and sold directly to the market. In some countries, that competitor supplies its customers on a commission basis, in others it has agent agreements in place. In other cases, for example the Netherlands, it deals with customers directly.¹⁶⁹ One customer in Hungary has also indicated that it deals directly with MKM from Germany and with Halcor from Greece.¹⁷⁰
- (316) In summary, although the establishment of a local sales team to sell sanitary copper tubes is a common feature of the industry, it does not appear to be absolutely necessary in order to be active in a national market. It is possible for competitors to enter or expand their offering in a given country by recruiting an external agent or by drawing on the expertise of a local distributor, at limited cost. Furthermore, in some cases and as shown by the example of MKM, suppliers can deal directly with large customers and increase their market presence through individual sizable orders or contracts.
- (317) The Commission therefore takes the view that rivals in the sanitary copper tubes market should be in a position, taking into account their available capacity, to acquire the quality mark and to channel their products through a local distributor (or deal directly with large customers) in order to enter or expand in a national market. Such a potential threat is likely to act as a strong disincentive for the Merged Entity to increase prices in a given national market.

7.4.5. *Intermediate conclusion at EEA level*

- (318) Based on the evidence set out in Sections 7.4.1 to 7.4.4, the Commission concludes that the concentration would not significantly impede effective competition in

¹⁶⁶ Non-confidential minutes of a call with a competitor on 11 September 2018.

¹⁶⁷ Questionnaire Q2 to competitors of rolled copper products and sanitary copper tubes, question 28.

¹⁶⁸ Questionnaire Q3 to customers of sanitary copper tubes, question 17.1

¹⁶⁹ Non-confidential minutes of a call with a competitor on 4 September 2018.

¹⁷⁰ Non-confidential minutes of a call with a competitor on 28 August 2018.

markets for sanitary copper tubes in the internal market, or the territory covered by the EEA Agreement, as a result of horizontal non-coordinated effects.

7.4.6. *Assessment at national level*

- (319) The Commission concludes that the notified concentration would not significantly impede effective competition in markets for sanitary copper tubes in the territory of any Contracting Party to the EEA Agreement as a result of horizontal non-coordinated effects.
- (320) For the reasons set out in Sections 7.4.6.1 to 7.4.6.8, the Commission considers that there remain in each national market a large number of credible competitors which should be in a position to exert competitive constraints on the Merged Entity. Competitors active in sanitary tubes made of other materials, such as aluminium, plastics and PEX, would also exert a more indirect constraint on the Merged Entity and should be taken into account in the competitive assessment. In addition to the country-specific factors discussed in Sections 7.4.6.1 to 7.4.6.8, some of the conclusions reached at EEA level apply at national level in each of the EEA countries discussed in this Section.
- (321) As regards capacity, the conclusions reached at EEA level also apply at national level. In particular, for the reasons explained in Section 7.4.3., the Commission considers that rivals to the Merged Entity would have sufficient capacity to enter national markets since production is done at the European level in general and available production capacity is higher than the Merged Entity's sales in any Member State or EEA Contracting Party.
- (322) Similarly, with regard to barriers to entry and to expansion, the arguments outlined in Section 7.4.4 also apply for the assessment of horizontal effects at the national level. In particular, the arguments outlined in recitals (309) to (311) regarding acquisition of quality marks also apply to the assessment at national level since quality marks exist in almost all countries and their acquisition does not entail significant costs. Similarly, the establishment or strengthening of local sales teams does not appear to be a significant barrier to entry or to expansion in any national market.

7.4.6.1. *Austria*

- (323) The Commission takes the view that the notified concentration would not significantly impede effective competition as a result of horizontal effects in Austria.
- (324) The combined market share of the Merged Entity in Austria in value terms is [50-60]% (KME: [40-50]%; MKM: [5-10]%) and [50-60]% in volume terms (KME: [40-50]%; MKM: [5-10]%). The main competitor of the Merged Entity in Austria is Wieland with a share in value terms of [40-50]% and Feinrohren from Italy with a share of [0-5]%.
- (325) In Austria, KME has not been performing well in terms of sales in the last three years. Whilst the Austrian market has remained stable in the last three years in value terms, KME's sales have declined considerably in value ([...]) as well as in volume ([...]). Its market share has dropped from [60-70]% to [40-50]%. At the same time, Wieland's market share has increased from [20-30]% to [40-50]%.
- (326) Moreover, as explained above in recital (297), manufacturers of aluminium or plastic tubes are also considered by some customers, especially large wholesalers, as potential alternative suppliers, at least for some applications where copper is not required or preferred. As a result, the range of potential suppliers from which to source sanitary tubes is significantly wider.

- (327) The majority of Austrian customers who responded to the market investigation did not express any concerns about the impact of the Transaction on the sanitary copper tubes market in Austria.¹⁷¹
- (328) As regards available capacity from rival suppliers, as explained in recital (321), production is done at the European level in general and available production capacity is higher than the Merged Entity's sales in Austria. The Commission therefore considers that alternative suppliers have sufficient capacity and incentives to expand output, should the Merged Entity increase prices in sanitary copper tubes in Austria.
- (329) As explained in recital (322), the Commission also takes the view that rivals in the sanitary copper tubes market should be in a position, taking into account their available capacity, to acquire the quality mark and to channel their products through a local distributor (or deal directly with large customers) in order to enter the market or expand in Austria. Such a potential threat is likely to act as a strong disincentive for the Merged Entity to increase prices in Austria.

7.4.6.2. Belgium

- (330) The Commission takes the view that the notified concentration would not significantly impede effective competition as a result of horizontal effects in Belgium.
- (331) The combined market share of the Merged Entity in Belgium in value terms is [30-40]% (KME: [30-40]%; MKM: [0-5]%) and [30-40]% in volume terms (KME: [30-40]%; MKM: [0-5]%). The increment in market share brought by MKM is therefore not significant. The main competitors of the Merged Entity in Belgium are Halcor (Greece) with a share in value terms of [20-30]%, Wieland with a share of [20-30]%, Feinrohren with a share of [5-10]% and La Farga (Spain) with a share of [5-10]%. The Belgian market therefore includes a significant number of competitors which would exert competitive constraints on the Merged Entity. One Belgian customer submitted that: "*(KME) can be replaced by min 3 other companies*".¹⁷²
- (332) KME's sales and market share have remained stable in the last three years.
- (333) Moreover, as explained in recital (297), manufacturers of aluminium or plastic tubes are also considered by some customers, especially large wholesalers, as potential alternative suppliers, at least for some applications where copper is not required or preferred. As a result, the range of potential suppliers from which to source sanitary tubes is significantly wider. As one Belgian distributor buying from the Parties explained, "*We sell various types of tubes. copper is one of them*".¹⁷³
- (334) The majority of Belgian customers having responded to the market investigation have not expressed any concerns as regards the impact of the Transaction on the sanitary copper tubes market in Belgium.¹⁷⁴
- (335) As regards available capacity from rival suppliers, as explained in recital (321), production is done at the European level in general and available production capacity is higher than the Merged Entity's sales in Belgium. The Commission therefore considers that alternative suppliers have sufficient capacity and incentives to expand output, should the Merged Entity increase prices in sanitary copper tubes in Belgium.

¹⁷¹ Questionnaire Q5 to customers of sanitary copper tubes, question 28.

¹⁷² Questionnaire Q5 to customers of sanitary copper tubes, question 19.

¹⁷³ Questionnaire Q5 to customers of sanitary copper tubes, question 26.

¹⁷⁴ Questionnaire Q5 to customers of sanitary copper tubes, question 28.

(336) As explained in recital (322), the Commission also takes the view that rivals in the sanitary copper tubes market should be in a position, taking into account their available capacity, to acquire the quality mark and to channel their products through a local distributor (or deal directly with large customers) in order to enter the market or expand in Belgium. Such a potential threat is likely to act as a strong disincentive for the Merged Entity to increase prices in Belgium. As regards potential expansion by competitors, one Belgian customer explained that: "*because of changing stakeholders some producers are changing their interest and taking markets in other countries.*"¹⁷⁵

7.4.6.3. Czechia

(337) The Commission takes the view that the notified concentration would not significantly impede effective competition as a result of horizontal effects in the Czech Republic.

(338) The combined market share of the Merged Entity in the Czech Republic in value terms is [40-50]% (KME: [30-40]%; MKM: [5-10]%) and [40-50]% in volume terms (KME: [30-40]%; MKM : [10-20]%). The main competitors of the Merged Entity in the Czech Republic are Wieland with a share in value terms of [30-40]%, Silmet (Italy) with a share of [5-10]%, Feinrohren (Italy) with a share of [0-5]% and Hutmen (Poland) with a share of [0-5]%. The Czech market therefore includes a significant number of competitors who would exert competitive constraints on the Merged Entity.

(339) KME has significantly increased its sales in the last three years ([...]) in the sanitary copper tubes market in the Czech Republic, which is also growing (+12%).

(340) Moreover, as explained in recital (297), manufacturers of aluminium or plastic tubes are also considered by some customers, especially large wholesalers, as potential alternative suppliers, at least for some applications where copper is not required or preferred. As a result, the range of potential suppliers from which to source sanitary tubes is significantly wider.

(341) The majority of Czech customers did not express concerns about the impact of the Transaction on the sanitary copper tubes market in the Czech Republic.¹⁷⁶

(342) As regards available capacity from rival suppliers, as explained in recital (321), production is done at the European level in general and available production capacity is higher than the Merged Entity's sales in the Czech Republic. The Commission therefore considers that alternative suppliers have sufficient capacity and incentives to expand output, should the Merged Entity increase prices in sanitary copper tubes in the Czech Republic.

(343) As explained in recital (322), the Commission also takes the view that rivals in the sanitary copper tubes market should be in a position, taking into account their available capacity, to acquire the quality mark and to channel their products through a local distributor (or deal directly with large customers) in order to enter the market or expand in the Czech Republic. Such a potential threat is likely to act as a strong disincentive for the Merged Entity to increase prices in the Czech Republic.

¹⁷⁵ Questionnaire Q3 to customers of sanitary copper tubes, question 40.1.

¹⁷⁶ Questionnaire Q5 to customers of sanitary copper tubes, question 28.

7.4.6.4. Denmark

- (344) The Commission takes the view that the notified concentration would not significantly impede effective competition as a result of horizontal effects in Denmark
- (345) The combined market share of the Merged Entity in Denmark in value terms is [40-50]% (KME: [40-50]%; MKM: [0-5]%) and [40-50]% in volume terms (KME: [40-50]%; MKM: [0-5]%). The increment in market share brought by MKM is therefore relatively modest. The main competitors of the Merged Entity in Denmark are Mueller (UK) with a share in value terms of [30-40]%, Wieland with a share of [10-20]% and Cupori with a share of [10-20]%. The Danish market therefore includes a significant number of competitors who would exert competitive constraints on the Merged Entity. As one Danish customer explained: "*Main supply KME alternative from other suppliers in EU. There are many to choose from*"¹⁷⁷ and as regards to KME "*Important, but they can always be substituted by another supplier within EU. There are many alternatives Halcor, Feinrohren, Ebrille, Cupori, Wieland and others*".¹⁷⁸
- (346) KME's sales and market share have slightly declined ([...]) in the last three years in a generally stable market ([...]).
- (347) Moreover, as explained in recital (297), manufacturers of aluminium or plastic tubes are also considered by some customers, especially large wholesalers, as potential alternative suppliers, at least for some applications where copper is not required or preferred. As a result, the range of potential suppliers from which to source sanitary tubes is significantly wider.
- (348) The majority of Danish customers did not express concerns about the impact of the Transaction on the sanitary copper tubes market in Denmark.¹⁷⁹
- (349) As regards available capacity from rival suppliers, as explained in recital (321), production is done at the European level in general and available production capacity is higher than the Merged Entity's sales in Denmark. The Commission therefore considers that alternative suppliers have sufficient capacity and incentives to expand output, should the Merged Entity increase prices on sanitary copper tubes in Denmark.
- (350) As explained in recital (322), the Commission also takes the view that rivals in the sanitary copper tubes market should be in a position, taking into account their available capacity, to acquire the quality mark and to channel their products through a local distributor (or deal directly with large customers) in order to enter the market or expand in Denmark. Such a potential threat is likely to act as a strong disincentive for the Merged Entity to increase prices in Denmark.

7.4.6.5. France

- (351) The Commission takes the view that the notified concentration would not significantly impede effective competition as a result of horizontal effects in France.
- (352) The combined market share of the Merged Entity in France in value terms is [50-60]% (KME: [30-40]%; MKM: [10-20]%) and [50-60]% in volume terms (KME: [30-40]%; MKM: [10-20]%). The main competitors of the Merged Entity in France

¹⁷⁷ Questionnaire Q5 to customers of sanitary copper tubes, question 4.1.

¹⁷⁸ Questionnaire Q5 to customers of sanitary copper tubes, question 19.

¹⁷⁹ Questionnaire Q5 to customers of sanitary copper tubes, question 28.

are Wieland with a share in value terms of [10-20]%, Halcor with a share of [10-20]%, Feinrohren with a share of [10-20]% and Silmet with a share of [0-5]%. The French market therefore includes a significant number of competitors who would exert competitive constraints on the Merged Entity.

- (353) In France, KME has not been performing well in terms of sales in the last three years. Whilst the French market has dropped in value in the last three years by 9.4%, KME's decline has been much more pronounced ([...] in value terms and [...] in volume terms). Its market share has fell from [40-50]% to [30-40]%. Over the same period, the market shares of all its competitors (including MKM) have increased. Despite its leading position, KME's competitive significance in France is less pronounced now that it was some years ago, reflecting the difficulties encountered by the Trefimetaux joint venture (see recital (294)).
- (354) Moreover, as explained in recital (297), manufacturers of aluminium or plastic tubes are also considered by some customers, especially large wholesalers, as potential alternative suppliers, at least for some applications where copper is not required or preferred. As a result, the range of potential suppliers from which to source sanitary tubes is significantly wider. As a French distributor buying from the Parties explained: "*more and more customers are switching from copper tubes to PEX or Multilayer tubes as the prices are more competitive*".¹⁸⁰
- (355) The majority of French customers who responded to the market investigation did not express any concerns about the impact of the Transaction on the sanitary copper tubes market in France.¹⁸¹
- (356) As regards available capacity from rival suppliers, as explained in recital (321), production is done at the European level in general and available production capacity is higher than the Merged Entity's sales in France. The Commission therefore considers that alternative suppliers have sufficient capacity and incentives to expand output, should the Merged Entity increase prices on sanitary copper tubes in France.
- (357) As explained in recital (322), the Commission also takes the view that rivals in the sanitary copper tubes market should be in a position, taking into account their available capacity, to acquire the quality mark and to channel their products through a local distributor (or deal directly with large customers such as Saint-Gobain or Cedeo) in order to enter the market or expand in France. Such a potential threat is likely to act as a strong disincentive for the Merged Entity to increase prices in France. As regards potential expansion by competitors, Halcor has acquired Reynolds Cuivre SAS (a French distributor), La Farga has invested in Technotubes (a French company specialising in the trading of tubes) and Feinrohren has acquired Sogetub, one the leading tubes distributors.¹⁸²

7.4.6.6. Germany

- (358) The Commission takes the view that the notified concentration would not significantly impede effective competition as a result of horizontal effects in Germany.
- (359) The combined market share of the Merged Entity in Germany in value terms is [50-60]% (KME: [40-50]%; MKM: [10-20]%) and [50-60]% in volume terms (KME:

¹⁸⁰ Questionnaire Q5 to customers of sanitary copper tubes, question 26.

¹⁸¹ Questionnaire Q5 to customers of sanitary copper tubes, question 28.

¹⁸² Memorandums of 12 September 2018, paragraph 68. See also <http://viohalco.com/Company/53/>, www.sogetub.fr, and <https://www.ainvestir.fr/actualites/les-societes-technotubes-et-la-farga-tub/>.

[40-50]%, MKM: [10-20]%). The main competitors of the Merged Entity in Germany are Wieland with a share in value terms of [20-30]% and Halcor with a share of [10-20]%.

- (360) Sales and market share of KME and MKM have remained stable in the last three years.
- (361) Moreover, as explained in recital (297), manufacturers of aluminium or plastic tubes are also considered by some customers, especially large wholesalers, as potential alternative suppliers, at least for some applications where copper is not required or preferred. As a result, the range of potential suppliers from which to source sanitary tubes is significantly wider. One German distributor who was asked to name the Parties' main competitors responded: "*e.g. MKC, Wieland and suppliers with substitutional (sic) products (e.g. Rehau, Wavin - composite tubes, floor heating (sic) pipes), in addition may be foreign suppliers*".¹⁸³ Another German customer submitted that: "*Yes, there exist alternative suppliers for sanitary tubes (stainless steel, steel, plastic, Aluminium, ...) e.g. VIEGA, Geberit, Wavin, SANHA, Uponor, We sell them to our clients, too. But we don't consider to change our range of Sortiment (sic). As wholesaler we sell all kind of materials to our clients, not only copper*".¹⁸⁴
- (362) Roughly half of the German customers who responded to the market investigation expressed some concerns about the impact of the Transaction on the sanitary copper tubes market in Germany, related in particular to the elimination of one German alternative to KME and the additional strength in production capacity.¹⁸⁵
- (363) These concerns have, however, to be balanced against the characteristics of the markets. In particular, even if KME would acquire additional capacity through the Transaction, rival suppliers already have available capacity, as explained in recital (321). Moreover, production is done at the European level in general and the production capacity available to competitors is higher than the Merged Entity's sales in Germany. The Commission therefore considers that alternative suppliers have sufficient capacity and incentives to expand output, should the Merged Entity increase prices on sanitary copper tubes in Germany.
- (364) As explained in recital (322), the Commission also takes the view that rivals in the sanitary copper tubes market should be in a position, taking into account their available capacity, to acquire the quality mark and to channel their products through a local distributor (or deal directly with large customers such as Cordes & Graefe) in order to enter the market or expand in Germany. Such a potential threat is likely to act as a strong disincentive for the Merged Entity to increase prices in Germany.
- (365) As regards potential expansion by competitors, some customers have identified Foma and Hutmen as recent entrants on the German market.¹⁸⁶ One German customer observed in that regard that: "*Direct price consequences are difficult to estimate, optionally wholesaler/trader are able to source from foreign european countries*".¹⁸⁷ Although competitors such as Feinrohren, Foma or Silmet are not active, or are barely active, in Germany today, these fringe players have already obtained the necessary permissions in Germany to be able to compete effectively

¹⁸³ Questionnaire Q5 to customers of sanitary copper tubes, question 23-3.

¹⁸⁴ Questionnaire Q5 to customers of sanitary copper tubes, question 26.

¹⁸⁵ Questionnaire Q5 to customers of sanitary copper tubes, question 28.

¹⁸⁶ Questionnaire Q3 to customers of sanitary copper tubes, question 40.1.

¹⁸⁷ Questionnaire Q5 to customers of sanitary copper tubes, question 28.

against the Merged Entity.¹⁸⁸ Another potential rival, Hutmen, already holds the required DVGW certification.¹⁸⁹

- (366) As regards the elimination of a German alternative, the Commission notes that the Parties only compete for the demand of non-Sanco tubes (since MKM sells only non-Sanco tubes whereas KME distributes both Sanco and non-Sanco). The demand of non-Sanco tubes accounts for 51% of the overall demand of sanitary copper tubes in Germany which means that, for half of the market (Sanco tubes), the merger would have no impact since MKM is not present on that part of the market. As regards non-Sanco tubes, the only certification mark that is required is the DVGW label which, as explained in the previous recital, is already held by some other suppliers.

7.4.6.7. Hungary

- (367) The Commission takes the view that the notified concentration would not significantly impede effective competition as a result of horizontal effects in Hungary.
- (368) The combined market share of the Merged Entity in Hungary in value terms is [40-50]% (KME: [30-40]%; MKM: [5-10]%) and [40-50]% in volume terms (KME: [30-40]%; MKM: [5-10]%). The increment in market share brought by MKM is therefore relatively modest. The main competitors of the Merged Entity in Hungary are Wieland with a share in value terms of [30-40]%, Halcor with a share of [10-20]%, Silmet (Italy) with a share of [5-10]%, Feinrohren with a share of [0-5]% and Foma with a share of [0-5]%. The Hungarian market therefore includes a significant number of competitors who would exert competitive constraints on the Merged Entity.
- (369) In a growing market (+8.2%), KME slightly increased its sales and market share between 2015 and 2017.
- (370) As explained in recital (297), manufacturers of aluminium or plastic tubes are also considered by some customers, especially large wholesalers, as potential alternative suppliers, at least for some applications where copper is not required or preferred. As a result, the range of potential suppliers from which to source sanitary tubes is significantly wider.¹⁹⁰
- (371) The majority of Hungarian customers have not expressed concerns as regards the impact of the Transaction on the sanitary copper tubes market in Hungary.¹⁹¹
- (372) As regards available capacity from rival suppliers, as explained in recital (321), production is done at the European level in general and available production capacity is higher than the Merged Entity's sales in Hungary. The Commission therefore considers that alternative suppliers have sufficient capacity and incentives to expand output, should the Merged Entity increase prices on sanitary copper tubes in Hungary.
- (373) As explained in recital (322), the Commission also takes the view that rivals in the sanitary copper tubes market should be in a position, taking into account their available capacity, to acquire the quality mark and to channel their products through a local distributor (or deal directly with large customers) in order to enter the market

¹⁸⁸ Memorandum on sanitary copper tubes in Germany of 20 September 2018, paragraph 16.

¹⁸⁹ Memorandum on sanitary copper tubes in Germany of 20 September 2018, paragraph 35.

¹⁹⁰ Questionnaire Q5 to customers of sanitary copper tubes, question 26.

¹⁹¹ Questionnaire Q5 to customers of sanitary copper tubes, question 28.

or expand in Hungary. Such a potential threat is likely to act as a strong disincentive for the Merged Entity to increase prices in Hungary. One Hungarian customer, for example, indicated that if a copper tube is certified in Germany as being in compliance with national German standards, that it is also recognised and valued in Hungary.¹⁹²

7.4.6.8. The Netherlands

- (374) The combined market share of the Merged Entity in the Netherlands in value terms is [60-70]% (KME: [40-50]%; MKM: [20-30]%) and [60-70]% in volume terms (KME: [40-50]%; MKM: [20-30]%). The main competitors of the Merged Entity in the Netherlands are Halcor with a share in value terms of [10-20]%, Wieland with a share of [10-20]% and Silmet with a share of [5-10]%. The Dutch market therefore includes a significant number of competitors who would exert competitive constraints on the Merged Entity.
- (375) In a declining market (-9.3%), KME and MKM maintained their sales and market share between 2015 and 2017.
- (376) The Commission notes, moreover, that [...] of KME's sales of sanitary copper tubes in the Netherlands is made up of Sanco tubes, for which KME is not in competition with MKM. For non-Sanco tubes, MKM has a share of [40-50]% and KME (like Wieland) a share of [5-10]%. The strongest competitor of MKM in non-Sanco tubes is Halcor, with a share of [30-40]% in non-Sanco tubes. This shows that, for the vast majority of their sales, KME is not in competition with MKM and the Transaction has no impact on this part of the market.
- (377) As explained in recital (297), manufacturers of aluminium or plastic tubes are also considered by some customers, especially large wholesalers, as potential alternative suppliers, at least for some applications where copper is not required or preferred. As a result, the range of potential suppliers from which to source sanitary tubes is significantly wider.
- (378) The majority of Dutch customers did not express concerns about the impact of the Transaction on the sanitary copper tubes market in the Netherlands.¹⁹³
- (379) As regards available capacity from rival suppliers, as explained in recital (321), production is done at the European level in general and available production capacity is higher than the Merged Entity's sales in the Netherlands. The Commission therefore considers that alternative suppliers have sufficient capacity and incentives to expand output, should the Merged Entity increase prices on sanitary copper tubes in the Netherlands.
- (380) As explained in recital (322), the Commission also takes the view that rivals in the sanitary copper tubes market should be in a position, taking into account their available capacity, to acquire the quality mark and to channel their products through a local distributor (or deal directly with large customers) in order to enter the market or expand in the Netherlands. Such a potential threat is likely to act as a strong disincentive for the Merged Entity to increase prices in the Netherlands. One Dutch customer in particular indicated that: "*Market has still overcapacity so if less*

¹⁹² Non-confidential minutes of a call with a customer on 28 August 2018.

¹⁹³ Questionnaire Q5 to customers of sanitary copper tubes, question 28.

*production sanitary tube, it may help to improve price. No innovation (end of product life cycle). Choice: enough for the time being".*¹⁹⁴

7.4.6.9. Conclusion on the assessment at national level

(381) Based on the evidence set out in Sections 7.4.6.1 to 7.4.6.8, the Commission concludes that the concentration would not significantly impede effective competition in markets for sanitary copper tubes, whether in the internal market or the territory covered by the EEA Agreement, as a result of horizontal non-coordinated effects.

7.5. Sanitary copper tubes: horizontal coordinated effects

(382) In the Article 6(1)(c) Decision, the Commission noted that there were two factors that could make tacit coordination in the sanitary copper tubes market easier or more sustainable, namely (a) the reduced number of competitors in the direct overlap countries (Germany, France, Austria, Belgium, the Czech Republic, Denmark, Hungary, the Netherlands) and (b) the increased links between MKM and current licensees of the Sanco brand (KME, Wieland and Trefimetaux) as a result of the grant of a licence of the Sanco brand to MKM, depending on the scope of that licence. Today, KME licenses the Sanco brand to Wieland and to Trefimetaux (limited to France, Italy and Spain). These commercial links through brand licensing agreements between the major sanitary copper tube manufacturers (KME, Wieland and Cupori through Trefimetaux) increase transparency and the number of exchanges between competitors and could make therefore coordination easier or more sustainable.

(383) As regards the first factor, given the characteristics of the markets outlined in Section 7.4, namely the large number of competitors, the existence of available capacity and the low barriers to entry and expansion, the Commission takes the view that the reduction in the number of rivals that would be triggered by the Transaction is unlikely to make coordination between companies in the sanitary copper tubes market easier or more sustainable.

(384) As for the second factor, KME indicated that it has not made any plans regarding the use of the Sanco brand by MKM (as part of the Merged Entity) post-merger.¹⁹⁵ Former MKM customers would continue to be supplied with the copper tubes they want, potentially Sanco tubes manufactured by KME or HETCU branded tubes or any other unbranded tube offered by the Merged Entity. Since, post-merger, MKM would be part of KME, KME submits that no licence agreement between the two companies would be required.

(385) The Commission has not found any indication in the internal documents of the Parties of a potential licence of the Sanco brand being granted to MKM post-merger. Nor has it found in KME's integration plans anything to show that MKM would sell Sanco tubes post-merger and thereby increase the number of competitive interactions with other players such as Wieland and Cupori.

(386) Based on the evidence set out in this Section, the Commission concludes that the notified concentration would not significantly impede effective competition in markets for sanitary copper tubes, whether in the internal market or the territory covered by the EEA Agreement, as a result of horizontal coordinated effects.

¹⁹⁴ Questionnaire Q5 to customers of sanitary copper tubes, question 28.

¹⁹⁵ See the Parties' response to the Commission's request for information RFI 16, Question 20.

8. FINAL CONCLUSION

(387) The Commission therefore concludes that the notified concentration would not significantly impede effective competition in the internal market or the territory covered by the EEA Agreement, or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position, whether due to horizontal or vertical effects in the various different markets for pre-rolled strip, rolled copper products or sanitary copper tubes.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration resulting from the transaction, whereby KME AG acquires control, within the meaning of Article 3(1)(b) of Regulation (EC) No 139/2004, of the whole of MKM Mansfelder Kupfer and Messing GmbH is declared compatible with the internal market and the Agreement on the European Economic Area.

Article 2

This Decision is addressed to:

KME AG
Klosterstrasse 29
49074 Osnabrück
Germany
Done at Brussels, 11.12.2018

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

CASE M.8909 – KME/MKM

Annex to the Article 8(1) decision

1. Market reconstruction exercise

A market reconstruction exercise was carried out by the Commission in order to calculate the market shares of the Parties and their competitors.

This exercise was undertaken based on the data provided by the Parties and by their most relevant EEA competitors.¹⁹⁶ The most relevant competitors were identified by the Parties in the Form CO and in their reply to the 6(1)(c) decision. The number of data providers into the market reconstruction exercise, including the Parties, is 19. Due to confidentiality reasons, the names of six small competitors were anonymized. Hence, these latter competitors are referred to as "Competitor 1", "Competitor 2", ..., "Competitor 6".

The market reconstruction exercises for pre-rolled and rolled products of copper and copper alloys are described in Section 2, and Section 3, respectively. Section 4 discusses the assumptions undertaken for the construction of the Herfindahl-Hirschman Index.

2. Pre-rolled products market reconstruction

The Commission contacted the market players active in the merchant market of pre-rolled copper and copper alloy strip in the EEA. These companies reported their pre-rolled strip sales for the period 2015 - 2017. Based on the data received, the Commission performed a market reconstruction exercise for the pre-rolled strip market.

The decision rule on whether a product is to be considered pre-rolled (upstream) or rolled (downstream) was specific to each single case. Rolled copper might have to be further rolled at reduced temperature (cold rolling), as some products require lower thickness than others. In light of this, the Commission considered the nature of the product according to the intended use by the purchaser. That is, if the customer is a re-roller, the product is considered a pre-rolled strip; otherwise, it is considered a rolled product and included in the rolled products market reconstruction exercise, as further described in Section 3.

The Commission reconstructed market shares according to the main classes of alloys, namely brass, bronze, high performance alloys ('HPAs') and pure copper. The classification of alloys is provided in the Appendix to this Annex. With respect to pure copper, market shares have also been reconstructed according to the different grades, i.e. DHP, ETP, PHC, HCP, OF and OFE, and a general class of grades, including all the remaining grades, called 'other'.

¹⁹⁶ Parties' Response to the Commission's requests for information RFI 10, RFI 11, RFI 16, RFI 29, RFI 30; Response to the Commission's request for information to Competitors on June 27 and 28, August 9, September 11, September 12, September 20, October 12, October 26.

During the reconstruction concerning the rolled strip market, the Commission became aware of some small quantities, sold by KME and another competitor active in rolled products, that had not been previously included as active in the merchant market for pre-rolled products. The Commission underlines, however, that the impact on the overall figures is approximately 2%. In particular, in addition to the fact that the impact of KME's sales would be about 1%, this situation is sporadic, according to KME. Indeed, it reported sales in this market in 2017 only (without alloy composition). The other competitor mainly sold pre-rolled strips of Copper DHP and ETP, segments in which MKM is also active. The Commission concluded that the results of the market reconstruction exercise did not substantially change and, as far as MKM is concerned, the estimates proved to be conservative.

3. Rolled products market reconstruction

The market reconstruction exercise for rolled products was conducted in two steps: 1) collecting sales volume (tonnes) and value (EUR)¹⁹⁷ by different alloy groups¹⁹⁸ and for some specific alloys of these groups¹⁹⁹ for the years 2015 - 2017, and 2) collecting conversion revenues (EUR) across the total sales volume of all rolled products for years 2015 - 2017. All data refer exclusively to the EEA market.

The Commission decided to exclude the sales volumes and conversion values related to the stamped products for KME (including KMD) and another competitor. Given that stamped products require further processing and machinery, and are positioned further downstream in the copper value chain, in comparison to rolled products, the Commission considers that they belong to a different product market. The Commission acknowledged that no other competitor than the mentioned above sell stamped products in the EEA.

Based on the data received, the Commission performed a market reconstruction exercise for the rolled products for both volume and conversion value. The detailed methodology and assumptions undertaken by the Commission are described below.

3.1. Volume market reconstruction per alloy

The Commission reconstructed market shares according to the main classes of alloys, namely brass, bronze, HPA and pure copper. The classification of alloys is provided in the Appendix to this Annex. With respect to pure copper, market shares have also been reconstructed according to the different grades, i.e. DHP, ETP, PHC, HCP, OF and OFE, and a general class of grades, including all the remaining grades, called 'other'.

¹⁹⁷ Sales values (EUR) have not been used for estimating market shares.

¹⁹⁸ Pure copper, High performance alloys, Brass, Bronze, Copper NI, Copper Al, Other High alloyed, Other.

¹⁹⁹ He original template for or pure copper: Cu-DHP, Cu-ETP, Cu-OFE, Cu-OF, Cu-PHC, Cu-HCP, Cu-PHCE, Cu-DLP, CuAg0,035(OF), CuAg0,045(OF), CuAg0,10(OF), CuAg0,10P, CuAg0,07P, Other; for high performance alloys: CuFe0.1, CuFe0.1P, CuFe2P, CuNiSi, CuNi2Si, CuNi3Si, CuNi3Si1Mg, CuNiSiSnZn, Other high performance alloys; for Brass: CuZn5, CuZn10, CuZn15, CuZn20, CuZn25, CuZn28, CuZn30, CuZn33, CuZn36, CuZn37, CuZn30As, CuZn40, CuZn40Pb2, CuZn39Pb2, CuZn39Pb0,5, CuZn37Pb2, CuZn38Pb2, CuZn9Sn3, CuZn23Al3Co, Other brass; for bronze:, CuSn4, CuSn5, CuSn6, CuSn8, Other bronze. The data also included: Other high alloyed copper TOTAL, CuNi2Si, CuFe0.1P, CuFe2P, CuNi3Si1Mg, CuNi1Sn0,5, CuNi1Sn0,9, CuZr, CuSn0,15, CuSn3Zn9, CuSn6Zn6, CuZn23Al3Co, CuZn24Sn1, CuSn9, CuSn10, Copper iron alloys, Copper Nickel Silicon alloys, Other, Brass lead free, CuZn9Sn3.

The Commission acknowledged that the Parties and other competitors included quantities of unspecified alloys in the "Other" category. The Commission contacted the market participants and collected a more granular break-down for the volumes listed as "Other". In order to be consistent across all market participants, the Commission changed the alloy group assigned by the market participant whenever it was not consistent with the list provided in the Appendix to this Annex. The Commission concluded that the estimates of the segment shares of the Parties are robust as only two competitors with small quantities listed as 'Other' were unable to specify the precise alloy classification.

In the course of conducting the volume and conversion value market reconstruction exercises, the Commission noticed some inconsistencies in sales volume and value as submitted by the Parties. This resulted in further clarifications and amendments to the original per alloy dataset, which was received in Phase I.²⁰⁰

Furthermore, one competitor could not specify the sales volume per specific alloy and provided aggregate values in tonnes and respective estimated shares per alloy.²⁰¹ The Commission distributed the sales volumes based uniformly across all alloys within one alloy group where a more granular estimate was not available. For example, following this assumption, the Commission would apply a share of 5% to three different alloys if the total share of the three alloys was noted as 15% of the sales volume.

The sales data of another market player for 2015 and 2016 have not been considered by the Commission since the accurate information was not available.

3.2. Value market reconstruction

The Commission defines the conversion revenue, used for calculating the value market shares, as the transformation fee or fabrication fee. This fee excludes metal cost and metal premium. Hence, the metal value is subtracted from turnover and any other potential metal revenue is not taken into account. This definition of conversion revenue taken by the Commission is based on invoiced charges, that is, invoiced fabrication fees to customers. This information is relevant as, generally, the cost of the metal is passed on to the customers.²⁰²

The Commission communicated this definition of conversion revenue to all market participants, which were involved in the market reconstruction exercise. All participants confirmed that the final data used for the value market reconstruction was in accordance with the Commission's definition. Nevertheless, the Commission does not reject the possibility that some companies may have provided conversion revenues based on their internal reporting. This is, for example, the case for MKM and KME/KMD, to which the Commission requested clarifications.²⁰³ In this scenario, on one hand, the Commission would overestimate the shares of the companies that incorrectly reported conversion revenues, and on the other hand, would underestimate the value shares of the companies that correctly reported them. As further explained below, the Parties' conversion revenues might be overestimated, thus falling in

²⁰⁰ As per Parties' Response to the Commission's request for information RFI 30.

²⁰¹ Response to the Commission's request for information to Competitors on September 12, 2018.

²⁰² See Decision, recital 172.

²⁰³ Parties' response to the Commission's request for information RFI 30.

the first case: therefore, the Commission notes that the current market reconstruction exercise is conservative.

In fact, after written and oral discussions with the Parties, the Commission acknowledged that they were unable to provide the conversion revenues as defined by the Commission because they do not track them in the requested definition in their accounting systems.²⁰⁴

Consequently, the Commission decided to use an internal measure for the sales of the Parties, which is defined as total turnover minus LME Metal value and some metal premium. Hence, this measure might include (part of) the metal premium charged to the customers (a metal revenue), thus resulting in a higher value than the one under Commission's definition. This leads to a potential overestimate of the Parties' value shares.

More specifically, for MKM the Commission decided to use Gross Value Added ('GVA') for the sales of rolled products, which is defined as total turnover minus LME Metal value and Standard Metal Premium. Hence, GVA might include (part of) the metal premium charged to the customers (a metal revenue), thus resulting in a higher value than the one under Commission's definition. This leads to a potential overestimate of MKM's value share. The Commission decided not to use Net Value Added ('NVA') as it excludes outbound freight and packaging, consistently with the Parties' account of conversion revenues.

Furthermore, written and oral discussions with KME also revealed that invoiced fabrication revenues were not tracked internally at KME. It was explained to the Commission that a part of their business is sold on tolling basis. That is, the metal is provided by the customer and only the fabrication service is performed by the supplier. The Commission considers that tolling fee is the preferred proxy for KME's agreed conversion fee as by definition tolled products do not include any metal revenue or cost components. Hence, the Commission used conversion revenue figures based on the tolled price for the products which are sold on tolling basis (no metal involved). For the remaining volumes, which are sold at full price, the conversion revenue was calculated as full price less internally constructed metal value.²⁰⁵ Similarly to MKM, it is likely that some metal revenue is still included in the conversion revenue values, hence potentially leading to overestimated KME's value share. As a result, this would lead to the overestimation of the Parties' value share; therefore, the approach taken by the Commission is conservative.

Another competitor provided rounded conversion revenues in a pdf format. The Commission used these figures as given. Furthermore, reliable estimates for 2016 and 2015 were not provided to the Commission.

Moreover, the Commission did not receive a response to the requests for information sent to another competitor on its conversion revenues in the EEA.²⁰⁶ Consequently, the Commission assumed that its shares of the conversion revenues in EEA were equal to its shares of the sold volume in EEA and

²⁰⁴ Parties' Response to the Commission's request for information RFI 30

²⁰⁵ Internally constructed metal value is calculated by KME as the sum of (i) the LME metal value, (ii) producers' premium, (iii) unloading, clearance and transport fees, (iv) hedging/financing fees and (v) melting losses.

²⁰⁶ Commission's request for information to Competitors on September 26, 2018.

included this estimate in the value market reconstruction.²⁰⁷ This assumption, even if could potentially lead to an underestimation of the Parties' value shares, has a minor impact on the results, due to the very limited presence of this company, which accounts for less than 1% in the market.

3.3. The role of imports in rolled products market

3.3.1. Determination of the imports

According to the Parties, there are imports into the EEA from companies based outside the EEA.²⁰⁸ However, the Parties did not quantify the magnitude of the imports.²⁰⁹ The Commission, as already explained in the Article 6(1)(c) decision,²¹⁰ and consistently with market investigation and evidence provided by other sources, including CU2²¹¹ and [Notifying party's external consultant],²¹² dedicated a 5% market share to imports to the EEA in both volume and value market reconstruction exercises for rolled products. Therefore, the result of the market reconstruction is consistent with external sources.

The 5% import share assumption could potentially lead to an underestimation of the market shares of the Parties. Consequently, the Commission performed a simple sensitivity analysis to assess the market shares under different assumptions regarding imports. The results shown below indicate that the main conclusions of this Decision would be unchanged even under the assumption of a 0% import share (see section 3.3.2 below).

As far as the imports in the reconstruction per products and segments are concerned, the Commission allocated to each alloy the data received from two (importer) companies, whereas the remaining imports were allocated to each alloy group, according to the distribution in the market.

This import allocation rule is likely to be conservative. The reason for this is that, based on the breakdown of products and segments provided by some importers, imports into the EEA are primarily made of commoditised alloys, such as Cu-DHP, used in segments in which the Parties are relevant players. The applied import allocation rule, however, sets import shares uniformly across the different alloy segments. Consequently, the estimates concerning the market shares of the Parties in the commoditised alloys are conservative, that is, overestimated.

One of the competitors outside of the EEA provided data that do not match the required specification.²¹³ As they do not belong to the internal market and figures are negligible, the Commission decided not to include them. Nevertheless, the Commission notes that this has no impact on the resulting rolled products market shares as imports are included based on a conservative 5% share in both volume and volume reconstructions. A potential impact would only be on the breakdown by alloys.

²⁰⁷ The volume sales data were provided in the responses to volume market reconstruction requests for information to competitors on September 11 and September 17, 2018.

²⁰⁸ Form CO, paragraphs 131 and 262.

²⁰⁹ Form CO, paragraphs 131 and 262, Parties' response to the Article 6(1)(c) Decision, paragraphs 73-82.

²¹⁰ Article 6(1)(c) decision, recital 40.

²¹¹ Parties' submission on July 20, 2018.

²¹² Parties' response to the Commission's request for information RFI 1, Annex 3, slide 23.

²¹³ Response to the Commission's request for information to Competitors on September 11, 2018.

3.3.2. Sensitivity analysis

As explained above, the Commission performed a sensitivity analysis exercise in order to assess whether the market shares of the Parties change substantially under the assumption of 0% imports and under the assumption of 5% imports.

The results are displayed below. In particular, Table 6 reports the market shares (in volume) of the Parties and the overall market volume under the assumption of imports to account for 0%. In this extreme scenario, the combined market shares of the Parties are [20-30]%, [20-30]% and [20-30]% in 2015, 2016 and 2017, respectively. On the other hand, the same results are shown in Table 7, under the assumption of imports to represent 5% of the overall market. In particular, the combined market shares of the Parties are [20-30]%, [20-30]% and [20-30]% in 2015, 2016 and 2017, respectively. The differences in the two scenario account for no more than 1.5%, that is, the difference in 2017.

Table 6 EEA sales and market shares in volume of rolled products for the years 2015 to 2017 (imports 0%)

| | 2015 | | 2016 | | 2017 | |
|---------------------|----------------|-----------------|----------------|-----------------|----------------|-----------------|
| | Sales (tonnes) | Market share | Sales (tonnes) | Market share | Sales (tonnes) | Market share |
| KME/KMD | [...] | [20-30]% | [...] | [10-20]% | [...] | [10-20]% |
| MKM | [...] | [5-10]% | [...] | [5-10]% | [...] | [10-20]% |
| Combined | [...] | [20-30]% | [...] | [20-30]% | [...] | [20-30]% |
| Total market | 447 791 | 100.00% | 472 053 | 100.00% | 508 779 | 100.00% |

Table 7 EEA sales and market shares in volume of rolled products for the years 2015 to 2017 (imports 5%)

| | 2015 | | 2016 | | 2017 | |
|---------------------|----------------|-----------------|----------------|-----------------|----------------|-----------------|
| | Sales (tonnes) | Market share | Sales (tonnes) | Market share | Sales (tonnes) | Market share |
| KME/KMD | [...] | [10-20]% | [...] | [10-20]% | [...] | [10-20]% |
| MKM | [...] | [5-10]% | [...] | [5-10]% | [...] | [5-10]% |
| Combined | [...] | [20-30]% | [...] | [20-30]% | [...] | [20-30]% |
| Total market | 471 359 | 100.00% | 496 898 | 100.00% | 535 557 | 100.00% |

Source: European Commission, based on market participants' data

As far as shares in value are concerned, the Commission performed a similar exercise. If imports accounted for 0%, then the market shares of the Parties would be [20-30]%, [20-30]% and [20-30]% in 2015, 2016 and 2017, respectively, as Table 8 shows. On the other hand, the assumption of imports to represent 5% of the market would diminish the market shares of the Parties to [20-30]%, [20-30]% and [20-30]% in 2015, 2016 and 2017, respectively (see Table 9). In this case, the maximum observed difference is 1.5% as well, in 2015. The difference in 2017 is less than 1.4%.

Table 8 EEA Conversion revenues and market shares in value of rolled products for the years 2015 to 2017 (imports 0%)

| | 2015 | | 2016 | | 2017 | |
|---------------------|-------------------------------|-----------------|-------------------------------|-----------------|-------------------------------|-----------------|
| | Convers. revenues ('000 EU R) | Market share | Convers. revenues ('000 EU R) | Market share | Convers. revenues ('000 EUR) | Market share |
| KME/KMD | [...] | [20-30]% | [...] | [20-30]% | [...] | [10-20]% |
| MKM | [...] | [5-10]% | [...] | [5-10]% | [...] | [5-10]% |
| Combined | [...] | [20-30]% | [...] | [20-30]% | [...] | [20-30]% |
| Total market | 553 348 | 100.00% | 573 760 | 100.00% | 638 515 | 100.00% |

Table 9 EEA Conversion revenues and market shares in value of rolled products for the years 2015 to 2017 (imports 5%)

| | 2015 | | 2016 | | 2017 | |
|---------------------|-------------------------------|-----------------|-------------------------------|-----------------|-------------------------------|-----------------|
| | Convers. revenues ('000 EU R) | Market share | Convers. revenues ('000 EU R) | Market share | Convers. revenues ('000 EU R) | Market share |
| KME/KMD | [...] | [20-30]% | [...] | [10-20]% | [...] | [10-20]% |
| MKM | [...] | [5-10]% | [...] | [5-10]% | [...] | [5-10]% |
| Combined | [...] | [20-30]% | [...] | [20-30]% | [...] | [20-30]% |
| Total market | 582 472 | 100.00% | 603 958 | 100.00% | 672 122 | 100.00% |

Source: European Commission, based on market participants' data

In conclusion, based on the sensitivity analysis conducted above and due to the relatively small influence that imports have on the market shares, the Commission considers that the main conclusions of the present Decision would not change if imports into the EEA were lower than that assumed 5%.

4. The construction of Herfindahl-Hirschman Index

The available data on imports were also taken into account when computing the Herfindahl-Hirschman Index ('HHI'). The Commission could not determine the market shares of all the importers, except for two companies who complied with the Commission's market reconstruction data request. Therefore, the Commission took into account the market shares of these two market players and did not include any other market participants. This assumption does not alter the value of the HHI delta between pre- and post-Transaction, but only levels of the pre- and post-Transaction HHI values taken singularly. The effect is a slight underestimation of the HHI indices.

Appendix

The Commission's alloy classification used for market reconstruction is provided in Table 10.

Table 10 Alloy classification

| Alloy name | Alloy group |
|-------------------|--------------------|
| CuSn3Zn9 | Brass |
| CuSn6Zn6 | Brass |
| CuZn10 | Brass |
| CuZn12 | Brass |
| CuZn15 | Brass |
| CuZn15Fe0.8 | Brass |
| CuZn20 | Brass |
| CuZn20Al2 | Brass |
| CuZn23Al3Co | Brass |
| CuZn24Sn1 | Brass |
| CuZn25 | Brass |
| CuZn28 | Brass |
| CuZn28Sn1 | Brass |
| CuZn28Sn1As | Brass |
| CuZn30 | Brass |
| CuZn30 Eco | Brass |
| CuZn30As | Brass |
| CuZn30Sn1Ni1Si | Brass |
| CuZn31Si1 | Brass |
| CuZn33 | Brass |
| CuZn35 | Brass |
| CuZn35Ni | Brass |
| CuZn35P | Brass |
| CuZn36 | Brass |
| CuZn36Mn2 | Brass |
| CuZn37 | Brass |
| CuZn37 Eco | Brass |
| CuZn38 | Brass |
| CuZn38SnAl | Brass |

| Alloy name | Alloy group |
|-------------------|--------------------|
| CuZn38AlFeNiPb | Brass |
| CuZn38AlFeNiPbSn | Brass |
| CuZn38Pb2 | Brass |
| CuZn38Sn1 | Brass |
| CuZn38Sn1As | Brass |
| CuZn39Pb0.5 | Brass |
| CuZn39Pb2 | Brass |
| CuZn39Pb3 | Brass |
| CuZn39Sn1 | Brass |
| CuZn40 | Brass |
| CuZn40Pb2 | Brass |
| CuZn42 BlueBrass® | Brass |
| CuZn4Sn1 | Brass |
| CuZn5 | Brass |
| CuZn7 | Brass |
| CuZn9Sn3 | Brass |
| CuZnPb | Brass |
| CuSn10 | Bronze |
| CuSn12 | Bronze |
| CuSn15 | Bronze |
| CuSn0.5 | Bronze |
| CuSn2 | Bronze |
| CuSn20 | Bronze |
| CuSn21 | Bronze |
| CuSn2Fe0.1P0.03 | Bronze |
| CuSn4 | Bronze |
| CuSn5 | Bronze |
| CuSn5Zn1 | Bronze |
| CuSn6 | Bronze |
| CuSn6Zn6 | Bronze |
| CuSn8 | Bronze |
| CuSn9 | Bronze |
| CuSnMg | Bronze |
| CuAl10Ni5Fe4 | Copper Al |
| CuAl11Fe3 | Copper Al |
| CuAl11Ni6Fe5 | Copper Al |

| Alloy name | Alloy group |
|-------------------|------------------------|
| CuAl5Zn5Sn1* | Copper Al |
| CuAl5ZnSn1Fe | Copper Al |
| CuAl6Ni2 | Copper Al |
| CuAl8Fe3 | Copper Al |
| CuAl9Mn2 | Copper Al |
| CuAl9Ni3Fe2 | Copper Al |
| CuNi2SiSn | Copper NI |
| CuNi2.7Si | Copper NI |
| CuNi6Sn6Zn2 | Copper NI |
| CuNi10Fe | Copper NI |
| CuNi10Fe1,6Mn | Copper NI |
| CuNi10Fe1Mn* | Copper NI |
| CuNi10Zn27 | Copper NI |
| CuNi10Zx | Copper NI |
| CuNi12Zn24 | Copper NI |
| CuNi12Zn25Pb1 | Copper NI |
| CuNi15 | Copper NI |
| CuNi18Zn10 | Copper NI |
| CuNi18Zn20* | Copper NI |
| CuNi18Zn27 | Copper NI |
| CuNi23Mn | Copper NI |
| CuNi30Mn | Copper NI |
| CuNi30Mn1Fe* | Copper NI |
| CuNi6 | Copper NI |
| CuNi7Zn38Pb1 | Copper NI |
| CuNi9Sn2 | Copper NI |
| CuNi9Sn6 | Copper NI |
| RM4 | Copper NI |
| CuNi18Zn17 | Copper NI |
| CuNi5Zn20 | Copper NI |
| CuNi5.5Zn24 | Copper NI |
| CuNi7Zn36Pb1 | Copper NI |
| CuNi8Zn25Pb2 | Copper NI |
| CuNi13Zn24Pb(1) | Copper NI |
| CuAg | High Performance Alloy |
| CuCr1Zr | High Performance Alloy |

| Alloy name | Alloy group |
|-------------------|------------------------|
| CuCrAgFe-TiSi | High Performance Alloy |
| CuCrSiTi | High Performance Alloy |
| CuCrZr | High Performance Alloy |
| CuFe0.1 | High Performance Alloy |
| CuFe0.1P | High Performance Alloy |
| CuFe0.7MgP | High Performance Alloy |
| CuFe2P | High Performance Alloy |
| CuMg | High Performance Alloy |
| CuMg0.1AgP | High Performance Alloy |
| CuMg0.1 | High Performance Alloy |
| CuMg0.6 | High Performance Alloy |
| CuNi0.2 | High Performance Alloy |
| CuNi1.5Si | High Performance Alloy |
| CuNi1Co1Si | High Performance Alloy |
| CuNi1Sn0.5 | High Performance Alloy |
| CuNi1Sn0.9 | High Performance Alloy |
| CuNi1ZnSi | High Performance Alloy |
| CuNi2Si | High Performance Alloy |
| CuNi3Si | High Performance Alloy |
| CuNi3Si1Mg | High Performance Alloy |
| CuNiS2.5CoSi | High Performance Alloy |
| CuNiSi | High Performance Alloy |
| CuSn0.09 | High Performance Alloy |
| CuSn0.15 | High Performance Alloy |
| CuSn0.2 | High Performance Alloy |
| CuSn1CrNiTi | High Performance Alloy |
| CuSn2Fe0.1 | High Performance Alloy |
| CuSnMgAg | High Performance Alloy |
| CuZr | High Performance Alloy |
| CuZr0.1 | High Performance Alloy |
| CuAg0.07 | Pure copper |
| CuAg0.1P | Pure copper |
| CuAg0.035(OF) | Pure copper |
| CuAg0.10(OF) | Pure copper |
| CuAg0.10P | Pure copper |
| CuCr0.2 | Pure copper |

| Alloy name | Alloy group |
|-------------------|--------------------|
| Cu-DHP | Pure copper |
| Cu-DLP | Pure copper |
| Cu-ETP | Pure copper |
| Cu-HCP | Pure copper |
| Cu-OF | Pure copper |
| Cu-OFE | Pure copper |
| Cu-PHC | Pure copper |
| CuSn0.04 | Pure copper |
| CuTe0.02Sn0.02 | Pure copper |
| CuZn0.5 | Pure copper |
| CuSn2Zn9 | Other |
| CuNi10* | Other |
| CuNi18Zn17* | Other |
| CuNi25* | Other |
| CuNi5Fe* | Other |
| CuSi3Mn* | Other |
| CuZn20Ni5* | Other |
| CuZn27Ni10* | Other |
| Ag935** | Other |
| Cu64ZnNi3** | Other |
| CuAsP** | Other |
| CuCoNiBe** | Other |
| CuMn12Ni** | Other |
| CuMn15** | Other |
| CuMn7Sn2** | Other |
| CuP** | Other |
| Zn99.975** | Other |

* These alloys were allocated to 'Other' in the market reconstruction for pre-rolled strip sold in the merchant market.

** These alloys were included in the rolled market reconstruction as "Other".