



EUROPEAN COMMISSION
DG Competition

Case M.9934 - KINGSPAN / TERASTEEL-WETTERBEST

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 12/01/2021

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EUROPEAN COMMISSION

Brussels, 12.01.2021
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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

Kingspan Holding Netherlands B.V.
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4004 LL Tiel
The Netherlands

**Subject: Case M.9934 – Kingspan/TeraSteel-Wetterbest
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ ² and Article 57 of the Agreement on the European
Economic Area³**

Dear Sir or Madam,

- (1) On 27 November 2020, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Kingspan Holding Netherlands B.V. ('Kingspan Netherlands' or the 'Notifying Party', the Netherlands), a company ultimately controlled by Kingspan Group plc

¹ OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has 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 For the purposes of this Decision, although the United Kingdom withdrew from the European Union as of 1 February 2020, according to Article 92 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7), the Commission continues to be competent to apply Union law as regards the United Kingdom for administrative procedures which were initiated before the end of the transition period.

³ OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

(‘Kingspan’, Ireland) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of TeraSteel SA (Romania), TeraSteel d.o.o. Leskovac (Serbia), TeraSteel Slovakia s.r.o. (Slovakia) (jointly ‘TeraSteel’) and Wetterbest SA (‘Wetterbest’, Romania) from TeraPlast SA (the ‘Seller’) by way of purchase of shares (the ‘Transaction’).⁴ TeraSteel and Wetterbest are jointly referred to as the ‘Target’. Kingspan Netherlands and the Target are jointly referred to as the ‘Parties’.

1. THE PARTIES

- (2) **Kingspan** is active worldwide in the manufacturing and distribution of a range of construction products, including insulated panels, insulation boards, light and air solutions, water and energy solutions, and data and flooring technology. In 2019, Kingspan had revenues of EUR 4.9 billion, 65% of which derived from insulated panels. Kingspan Group plc lists on the Dublin Stock Exchange and had a market capitalization of around EUR 12 billion in November 2020.
- (3) **TeraSteel** is active regionally in the manufacturing and distribution of construction products, including insulated panels, single skin construction sheets, purlins, and turnkey halls.
- (4) **Wetterbest** is active regionally in the manufacture and supply of single skin construction sheets and drainage systems.
- (5) **TeraSteel** and **Wetterbest** are both under the sole control of **TeraPlast SA**, which lists on the Bucharest Stock Exchange and whose shares are owned by Dorel Goia (46.8 %) and other investors.

2. THE OPERATION

- (6) The Transaction will be implemented pursuant to a Share Purchase Agreement entered into on 24 July 2020 according to which TeraPlast will sell all of its shares in the Target to Kingspan Netherlands, a subsidiary of Kingspan Group plc. Following the Transaction, Kingspan Netherlands will own close to⁵ 100% of the shares in, and will thus have sole control of, TeraSteel Romania, TeraSteel Serbia, TeraSteel Slovakia and Wetterbest.
- (7) As a result, the Transaction consists of the acquisition of sole control by Kingspan Netherlands over the Target and qualifies as a concentration within the meaning of Article 3(1)(b) of the Merger Regulation

3. EU DIMENSION

- (8) Based on the information provided by the Notifying Party, Kingspan’s turnover in 2019 amounted to EUR 4.9 billion worldwide and EUR [...] in the Union. The Target’s turnover in 2019 amounted to EUR [...] worldwide and EUR [...] in the Union. As a result, the Transaction does not have a Union dimension within the

⁴ Publication in the Official Journal of the European Union No C 428, 11.12.2020, p. 29.

⁵ [Target’s corporate structure].

meaning of Article 1(2) of the Merger Regulation. Moreover, the Transaction also does not have a Union dimension within the meaning of Article 1(3) of the Merger Regulation because the Target does not achieve more than EUR 25 million turnover in at least three Member States.

- (9) On 30 September 2020, by way of a reasoned submission under Article 4(5) of the Merger Regulation, the Parties requested that the Commission examine the Transaction on the ground that it was capable of being reviewed under the national competition laws of at least three Member States.⁶ The Commission transmitted the submission to all Member States on the same date. The Member States competent to examine the concentration did not express their disagreement to the request for referral within 15 working days.
- (10) As a result, the proposed Transaction has been referred to the Commission pursuant to Article 4(5) of the Merger Regulation and is deemed to have a Union dimension.

4. MARKET DEFINITION

- (11) The Parties' activities overlap horizontally mainly in relation to foam sandwich panels and to a lesser extent in mineral fibre sandwich panels, single skin construction sheets, and purlins. The Transaction does not give rise to non-horizontal relationships.
- (12) However, as explained in Section 5.2, given the insignificant nature of the overlaps in mineral fibre sandwich panels, single skin construction sheets, and purlins, the Commission's assessment of the Transaction focuses on foam sandwich panels.

4.1. Product market definition

4.1.1. Sandwich panels

- (13) Sandwich panels are used in the construction industry mostly as cladding or roofing for the external envelope of certain buildings. Sandwich panels are used, for example, in industrial and commercial buildings. Sandwich panels have an insulating core sandwiched between two steel facings, which is typically (i) foam (polyurethane ('PUR'), polyisocyanurate ('PIR') or polystyrene ('EPS'), also referred to as PS or Styrofoam) or (ii) mineral fibre (also known as mineral wool, or rockwool).
- (14) The two steel sheets composing the sandwich panel make sandwich panels suitable for use on the building's facade, while the core provides insulation. Sandwich panels thus combine the properties of insulation materials with traditional cladding materials to offer exterior protection (for example, water drainage capacity, corrosion resistance) and aesthetics (colour, shape) with enhanced insulation for the building. They are a structural element of the roof or the wall. Sandwich panels can also be used for specialty applications, such as cold stores and clean rooms.

⁶ Austria, Hungary, and Romania.

- (15) Sandwich panels vary in particular according to:
- (a) End use: e.g. roofing, walls, cold store;
 - (b) Thermal insulation properties: these are in particular determined by the type of insulation core (foam core has much better thermal performance than mineral fibre) and the panel's thickness;
 - (c) Acoustic insulation properties: mineral fibre sandwich panels have superior acoustic insulation properties compared to foam sandwich panels;
 - (d) Fire resistance: mineral fibre sandwich panels are non-combustible and are able to meet the highest fire safety standards. Foam sandwich panels' fire resistance is significantly inferior.
- (16) Sandwich panels can be sold based on a specification in a construction project. While Kingspan is active in this "specified" segment, the Target is not active in this segment. Consequently, due to the lack of overlap, this narrower specified sales segment will not be discussed further for purposes of this decision.

4.1.1.1. The Notifying Party's arguments

- (17) The Notifying Party argues that foam sandwich panels compete with a wide range of other building envelope solutions, including mineral fibre, cork, wood fibre, pinus wood and concrete.⁷ Nonetheless, the Notifying Party submits that foam sandwich panels and mineral fibre sandwich panels are distinct product markets, chiefly due to limited demand-side substitutability.⁸
- (18) Regarding foam sandwich panels, the Notifying Party claims that no distinction should be made between standard foam sandwich panels and refrigerating foam sandwich panels⁹ from a supply-side perspective or a demand-side perspective for the purpose of defining the relevant product market. The Notifying Party argues that (i) there is no commonly agreed definition of refrigerating foam sandwich panels, (ii) there is demand-side substitution at least for inside wall applications, (iii) there is ample supply-side substitution, because apart from the thickness and the presence of visible or non-visible screws, standard foam sandwich panels and refrigerating foam sandwich panels are identical, use the same materials and are produced on the same production line.
- (19) The Notifying Party argues that the distinction between standard and refrigerating foam sandwich panels is even less relevant in the Central and Eastern Europe (CEE) region (where the Target is active). First, the Notifying Party submits that, contrary to Western and Northern Europe, there is currently no supplier active in the 700 km radius surrounding the Target's production plants that operates a dedicated refrigerating foam sandwich panel production line. Second, according to the Notifying Party, each supplier active in this radius is capable of producing both standard and refrigerating foam sandwiches on the same production line. Third, in

⁷ Form CO, paragraph 121.

⁸ Form CO, paragraph 133.

⁹ Refrigerating sandwich panels are used for cold store applications and, therefore, require superior insulation properties. Their thickness may be more than double to that of standard sandwich panels.

relation to demand-side substitutability, the Notifying Party submits that in Western Europe through fixed (i.e. having visible screws) foam sandwich panels are typically used only for cold store applications. Standard foam sandwich panels would have a hidden fixation system for aesthetic reasons. Therefore, in Western Europe, there is limited demand-side substitutability between standard and refrigerating foam sandwich panels. According to the Notifying Party, however, in the CEE region through fixed foam sandwich panels are much more common and are used interchangeably for both standard walls and cold store applications.

- (20) The Notifying Party claims that foam sandwich panels used for wall and roof applications are practically identical. The only material differences are (i) the profile used on the steel sheet, (ii) the fixation and (iii) the installation method. According to the Notifying Party, wall and roof foam sandwich panels require exactly the same input and can be produced on the same production line without incurring any significant costs of switching production. Therefore, the Notifying Party submits that foam sandwich panels for wall and roof applications belong to the same product market.¹⁰

4.1.1.2. The Commission's past decisional practice

- (21) In its past decisional practice,¹¹ the Commission found that sandwich panels constituted a separate relevant product market. The Commission also suggested that a distinction could be made according to (i) the type of insulation core (foam versus mineral fibre),¹² and according to (ii) the end-use of foam panels (standard foam panels for walls and roofing versus cold store (refrigerating) panels),¹³ but ultimately left the market definition open. The Commission found that there is only a limited degree of demand substitutability between foam core sandwich panels and those with a mineral fibre core in particular due to significant differences in thermal performance, fire resistance and price. In addition, the Commission noted that production of sandwich panels cannot be easily switched from foam core to mineral fibre core, or vice versa.¹⁴ The Commission found that standard foam panels and refrigerating panels (used in cold stores) are substitutable to a certain degree.¹⁵

4.1.1.3. The Commission's assessment

- (22) The Commission's investigation confirmed that, for the purposes of defining a relevant product market, sandwich panels are to be distinguished from other building materials. A predominant number of respondents to the market investigation confirmed that other construction materials do not compete directly with sandwich panels.¹⁶

¹⁰ Form CO, paragraph 139.

¹¹ Case M.1329 – *Usinor/Cockerill*, paragraph 15.

¹² Case M.7479 – *Kingspan/Steel Partners*, paragraph 21.

¹³ Case M.7479 – *Kingspan/Steel Partners*, paragraph 23.

¹⁴ Case M.7479 – *Kingspan/Steel Partners*, paragraph 21.

¹⁵ Case M.7479 – *Kingspan/Steel Partners*, paragraph 23.

¹⁶ Q1 Questionnaire to competitors, question B.A.1, Q2 Questionnaire to customers, question B.A.1.

- (23) The investigation examined whether sandwich panels should be subdivided according to (i) the type of insulation core (foam versus mineral fibre) or (ii) their application (standard foam sandwich panels versus refrigerating foam sandwich panels on the one hand and wall foam sandwich panels versus roof foam sandwich panels on the other hand).
- (24) As noted above (see paragraph (16)), due to the lack of overlap in sales that are based on specific specifications in construction projects (an area in which the Target is not active), a segmentation into this narrower specified sales segment is not relevant for the purposes of this Decision. Similarly, there appears to be a possible sub-segment for high-end or premium sandwich panels in which only a small number of competitors are active. Considering that only one of the Parties (Kingspan) is active in this area, a segmentation into this narrower high-end/premium segment is also not meaningful for the purposes of this Decision.
- (A) Foam sandwich panels versus mineral fibre sandwich panels
- (25) The investigation confirmed that there is limited substitutability between foam and mineral fibre sandwich panels, mainly due to their different product characteristics (notably the largely diverging fire resistance, thermal and acoustic insulation properties and price). The investigation suggests that within foam and mineral fibre sandwich panels there is significant differentiation amongst other factors for example between different thicknesses of the sandwich panels.
- (26) The majority of market participants indicated that foam sandwich panels and mineral fibre sandwich panels are substitutable only to a limited extent from a demand-side viewpoint.¹⁷ For various applications, either foam or mineral fibre sandwich panels could be used. In many cases there are however specific applications, for which one is particularly more appropriate than the other. *“Rockwool panels are usually used where specific fire or acoustic performance is required as they outperform foam. Foam is generally cheaper, lighter and easier to install as they perform better thermally at like for like thicknesses and the foam is significantly lighter.”*¹⁸ Respondents confirmed that for certain applications mineral fibre sandwich panels are more suitable than foam sandwich panels, including notably for *“projects requiring panels with a fire resistance of more than 30 minutes”*. For other applications, particularly when high thermal performance is required (e.g. cold storage) and for buildings with higher humidity foam sandwich panels are more suitable than mineral fibre sandwich panels.¹⁹ Therefore, the investigation confirmed limited demand-side substitutability between foam and mineral sandwich panels.
- (27) A predominant number of respondents produce mineral fibre sandwich panels and foam sandwich panels on distinct production lines.²⁰ The majority of the competitors that expressed their opinion and who currently do not produce both products on the same line would rather not consider manufacturing foam and mineral fibre sandwich panels on the same production line for productivity and logistics reasons.²¹

¹⁷ Q1 Questionnaire to competitors, question B.A.2, Q2 Questionnaire to customers, question B.A.2.

¹⁸ Q1 Questionnaire to competitors, question B.A.3.1.

¹⁹ Q1 Questionnaire to competitors, question B.A.4, Q2 Questionnaire to customers, question B.A.4.

²⁰ Q1 Questionnaire to competitors, question B.A.6 (including competitors that only produce one of the products).

²¹ Q1 Questionnaire to competitors, question B.A.8.

According to some respondents, switching production between mineral fibre and foam core on the same line can take “*about 6 hours*” or “*1/2 shift [...] depending on age of technology*”.²² Other respondents indicated that switching production takes less time.²³ Therefore, the investigation suggests that substitution from the supply-side may be limited.

- (28) In light of the above, based on the results of the market investigation carried out in the present case, the Commission considers that mineral fibre sandwich panels and foam sandwich panels belong to separate product markets.

(B) Standard foam sandwich panels versus refrigerating foam sandwich panels

- (29) Within the foam core sandwich panels segment, the investigation considered a potential sub-segmentation based on the end-use application: standard application and refrigerating application.
- (30) The investigation showed that there are differences between standard foam sandwich panels and foam sandwich panels used for refrigeration/cold store applications. According to the majority of customers that expressed their opinion, refrigerating panels are distinct products from standard foam panels since they fulfil different needs.²⁴ The most significant differences are according to both customers and competitors the thermal insulation performance, the price per square meter, and the panel thickness, followed by the joint geometry and other joint features, the foam composition and specialised sales channels.²⁵
- (31) The overwhelming majority of competitors manufactures both standard foam sandwich panels and refrigerating foam sandwich panels on the same production line.²⁶ According to a competitor “*for efficiency reasons, it is better to have one dedicated line for each product group*”.²⁷ However, the investigation showed that all competitors that are based in the CEE region (where the Target is active), and which produce both standard and refrigerating foam sandwich panels, produce both types on the same production line. The respondents indicated that switching production between standard and refrigerating sandwich panels requires only between 30 minutes and 2 hours, if the line is able to produce both type of foam sandwiches.²⁸
- (32) Therefore, the investigation suggests that at least in the CEE region there is ample supply-side substitution between standard and refrigerating foam sandwich panels. For purposes of this Decision, foam sandwich panels, including standard and refrigerating foam sandwich panels, constitute one product market.

²² Q1 Questionnaire to competitors, question B.A.7.

²³ Q1 Questionnaire to competitors, question B.A.7.

²⁴ Q2 Questionnaire to customers, question B.A.5.

²⁵ Q1 Questionnaire to competitors, question B.A.9.2, Q2 Questionnaire to customers, question B.A.5.1.

²⁶ Q1 Questionnaire to competitors, question B.A.10.

²⁷ Q1 Questionnaire to competitors, question B.A.12.1.

²⁸ Q1 Questionnaire to competitors, question B.A.11.

(C) Wall versus roof application

- (33) The Commission's investigation considered within the foam core sandwich panels segment a potential sub-segmentation based on the end-use application: wall application and roof application.
- (34) The overwhelming majority of customers that expressed an opinion indicated that foam sandwich panels for wall and roof applications are distinct products that fulfil different needs.²⁹ According to customers, the main differences by descending importance are the price per square meter, the steel profile, the panel thickness, and the joint geometry or other joint features.³⁰ Competitors indicated that the main differences by descending importance are joint geometry or other joint features, steel profile, price, and certifications (both on national and EEA-wide levels).³¹
- (35) The overwhelming majority of competitors manufacture foam sandwich panels for wall and roof application on the same production line.³² The investigation has shown that switching production on those multi-purpose lines is relatively easy and requires a lead-time of 1.5 to 4 hours.³³
- (36) In conclusion, the investigation suggests significant supply-side substitution between wall and roof foam sandwich panels. For purposes of this Decision, foam sandwich panels, including roof and wall foam sandwich panels, constitute one product market.

4.1.1.4. Conclusion on product market definition

- (37) The Commission concludes based on its investigation that foam sandwich panels and mineral fibre sandwich panels constitute separate product markets. For purposes of this Decision, foam sandwich panels, including all potential sub-segments by end-use application, constitute one product market.

4.1.2. *Single skin construction sheets*

- (38) Single skin construction sheets are used in the construction industry for cladding, roofing and decking. Contrary to sandwich panels, these products do not have thermal insulation properties. Single skin construction sheets are made from cold rolled galvanised or colour-coated flat carbon steel and come in a variety of types and shapes.

4.1.2.1. The Notifying Party's arguments

- (39) The Notifying Party submits in relation to the separate product market for single skin construction sheets, no further distinction should be made, as there is ample demand and supply-side substitution.³⁴

²⁹ Q2 Questionnaire to customers, question B.A.6.

³⁰ Q2 Questionnaire to customers, question B.A.6.1.

³¹ Q1 Questionnaire to competitors, question B.A.13.2.

³² Q1 Questionnaire to competitors, question B.A.14.

³³ Q1 Questionnaire to competitors, question B.A.15.

³⁴ Form CO, paras. 159-160.

4.1.2.2. The Commission's past decisional practice

- (40) In previous decisions, the Commission found that there may be separate markets for construction sheets by end-use application, but ultimately left the market definition open.³⁵ The Commission found that (i) there is no great difference in price between different applications and (ii) that there is at least a high level of supply-side substitutability between (single skin) construction sheets.³⁶

4.1.2.3. The Commission's assessment

- (41) The Notifying Party markets the exact same single skin construction sheet for roofing as for wall cladding purposes.³⁷ Moreover, the Notifying Party submits that single skin construction sheets for different end-use applications can and are being produced on the same production lines and that a change of production from one end-use application to another only requires changing the roll forming sets on the production lines, which is something that can be done easily and quickly.³⁸ Based on the Notifying Party's submissions, there appears to be a high degree of demand and supply substitution between single skin construction sheets for their different end-use applications. In the present case, there was no evidence, which would point to material differences of single skin construction sheets depending on their various end-use applications. Considering that the Notifying Party sells the same single skin construction sheet for roofing and wall cladding applications, at least single skin construction sheets for cladding and roofing applications would belong to the same market.³⁹

4.1.2.4. Conclusion on product market definition

- (42) For purposes of this Decision, it can be left open whether the market for single skin construction sheets includes all potential sub-segments by end-use application, as the competitive assessment remains the same even on the basis of the narrowest possible product markets, which are single skin construction sheets separately for (i) decking and (ii) roofing and wall cladding applications.

4.1.3. Purlins

- (43) Purlins are a type of longitudinal finished steel product used for structural support in buildings, notably for roof support. Purlins are made from cold rolled galvanised or flat carbon steel and come in a variety of types and shapes.

³⁵ Case M.7479, *Kingspan/Steel Partners*, paragraph 28, Case M.7155, *SSAB/Rautaruukki*, paragraph 54.

³⁶ Case M.7155, *SSAB/Rautaruukki*, paragraphs 54-56, Case M.7479, *Kingspan/Steel Partners*, paragraph 26.

³⁷ Form CO, paragraph 157.

³⁸ Form CO, paragraph 158, Notifying Party's response to RFI 4, paragraph 1.

³⁹ See <http://www.joriside.com/en-gb/product-range/wall-profiles/wall-profiles/33-250-1000> and <http://www.joriside.com/en-gb/product-range/roof-profiles/roof-profiles/ji-33-250-1000>.

4.1.3.1. The Notifying Party's arguments

- (44) The Notifying Party submits that the market definition in respect of purlins can be left open, while no further segmentation of the narrowest plausible market for purlins should be made.⁴⁰

4.1.3.2. The Commission's past decisional practice

- (45) In past decisions, the Commission found that there are separate markets for various finished flat carbon steel products.⁴¹ However, the Commission has not yet had the opportunity to assess whether there was a separate market for purlins.

4.1.3.3. The Commission's assessment

- (46) With the exception of single skin construction sheets, the Parties do not supply other finished flat carbon steel products than purlins. The market investigation suggests that competitors recognize purlins are a separate product category of finished flat carbon steel products.⁴²
- (47) The market investigation, moreover, did not show any reason to doubt the Notifying Party's characterization of purlins as "highly commoditized products" with "very little scope for product differentiation".⁴³ As a result, the Commission also does not find support for a further segmentation in relation to purlins.
- (48) Therefore, the Commission assessed the horizontal overlap in purlins based on the narrowest plausible product market, i.e. purlins (see below Section 5.2.4).

4.1.3.4. Conclusion on product market definition

- (49) For purposes of this Decision, it can be left open whether purlins belong to a hypothetical wider market for finished flat carbon steel products or whether purlins constitute a separate product market, as the competitive assessment remains the same even on the basis of the narrowest plausible product market, which would be the market for purlins.

4.2. Geographic market definition

4.2.1. *Foam sandwich panels*

4.2.1.1. The Notifying Party's arguments

- (50) The Notifying Party submits that the geographic market for foam sandwich panels is wider than national and cross-border regional in scope. Specifically, the Notifying Party argues that (i) the transport costs for foam sandwich panels are insignificant within the CEE region, (ii) the breakdown of sales of the Target's plants by destination shows that sales are made on a regional basis, (iii) there are substantial trade flows between the countries in the CEE region, and (iv) there are no significant import barriers.

⁴⁰ Form CO, paragraphs 165 and 168.

⁴¹ E.g. Case M.8444 – *ArcelorMittal/Ilva*, recitals 198-200.

⁴² Q1 Questionnaire to competitors, questions A.3 and D.6.

⁴³ Form CO, paragraph 165.

4.2.1.2. The Commission's past decisional practice

- (51) In a past decision,⁴⁴ the Commission considered that the market for foam sandwich panels was very likely cross-border regional in scope, but ultimately left the exact geographic market definition open.

4.2.1.3. The Commission's assessment

- (52) The market investigation demonstrated that national and sub-national differences on a variety of dimensions affect the production and sale of foam sandwich panels, sometimes significantly.⁴⁵ As one competitor noted, the market for foam sandwich panels is “*rather regional, and mainly national for several reasons: language, transport, domestic standards and requirements.*”⁴⁶ Another customer succinctly characterized the foam sandwich panel market as “*fundamentally national*”.⁴⁷

(A) Significant cross-border differences shape the foam sandwich panel business

- (53) Among the significant cross-border differences revealed by the market investigation, a majority of competitors stressed national certification requirements (both fire performance-related and other), customer language preferences, and historical traditions in building construction methods.⁴⁸ Several competitors emphasized the role of cross-border differences concerning customer habits, insurance-related factors, energy efficiency and sustainability-related customer preferences, national-level contractual warranty or liability factors, and municipal-level certification requirements.⁴⁹ Prompted to identify specific technical standards,⁵⁰ several competitors and customers identified national technical standards in Czechia, France, Germany, Hungary, Ireland, Romania, Slovakia, and the UK.⁵¹

(B) Sales occur largely nationally

- (54) Sales of foam sandwich panels occur largely in a national context. The market investigation revealed that a majority of competitors sell foam sandwich panels nationally or sub-nationally, a smaller majority regionally, and a minority across the EEA.⁵² A majority of customers purchase foam sandwich panels mainly nationally or sub-nationally, while a minority purchase them mainly regionally or across the EEA.⁵³

⁴⁴ Case M.7479 – *Kingspan/Steel Partners*, paragraph 59.

⁴⁵ Q1 Questionnaire to competitors, question B.B.1.

⁴⁶ Q1 Questionnaire to competitors, question B.B.9.1.

⁴⁷ Q1 Questionnaire to competitors, question B.B.9.1.

⁴⁸ Q1 Questionnaire to competitors, question B.B.1.2.

⁴⁹ Q1 Questionnaire to competitors, question B.B.1.2.

⁵⁰ In the Questionnaires to competitors and customers, technical standards were defined broadly to include any product or product use-related technical standards, tests (e.g. for fire performance), or certificates (e.g. for particular uses).

⁵¹ Q1 Questionnaire to competitors, question B.B.10.1, Q2 Questionnaire to customers, question B.B.7.1.

⁵² Q1 Questionnaire to competitors, question B.B.2.

⁵³ Q2 Questionnaire to customers, question B.B.2.

(C) The competitive landscape even across CEE countries is fragmented

- (55) The competitive landscape across various CEE countries reflects national markets, with different pools of suppliers active even in geographically proximate countries. For example, adjacent countries like Slovenia or Croatia, or Hungary and Romania, feature a distinct set of suppliers for foam sandwich panels. This is true both for large suppliers with an EEA-wide presence, who have widely different market shares in neighbouring markets,⁵⁴ and smaller suppliers, who tend to focus on only one or a few export markets.⁵⁵ In addition, the Parties' respective market shares vary widely across countries of the CEE region. The internal documents submitted by the Parties' show that [information regarding the Parties' internal documents].⁵⁶ Thus, the Parties' own assessment of the relevant markets would also support a finding of separate national markets for foam sandwich panels.

(D) Exports do not negate a finding of national markets

- (56) The fact that foam sandwich panels regularly cross national borders does not by itself exclude the role of national-level factors for the present geographic market definition, for two main reasons. First, other than on an opportunistic basis for specific high-end types of sandwich panels and specific isolated projects of a certain size,⁵⁷ most suppliers with a significant export share supply foam sandwich panels to particular markets in which they are likely to have an established sales presence.⁵⁸ Second, the market investigation revealed that even in close proximity, national borders can make cross-border sales unprofitable for several competitors due to price differences, local market power of existing players, and the absence of relationships to customers or distributors.⁵⁹

(E) Technical standards and requirements play a significant role

- (57) The market investigation demonstrated that technical standards on the national or sub-national levels play a significant role in the market for foam sandwich panels.⁶⁰ An overwhelming majority of competitors indicated that the foam sandwich panel business in the EEA is affected by technical standards, and of these, a majority considered them "*very important*".⁶¹ Similarly, a majority of customers stated that the technical standards affecting the foam sandwich panel business in the EEA were "*important*" or "*very important*".⁶² A majority of competitors specified that the geographic level at which such technical standards exist was national or sub-national.⁶³ A predominant number of competitors and customers indicated specific

⁵⁴ Form CO, Annex 26 (by reference, e.g., to ArcelorMittal).

⁵⁵ Form CO, Annex 26 (by reference, e.g., to Alternativa).

⁵⁶ E.g. Form CO, Annex 22(m) [information regarding the Parties' internal documents]; Form CO Annex 3 [information regarding the Parties' internal documents]; Form CO Annex 18, slide 22 [information regarding the Parties' internal documents].

⁵⁷ Q2 Questionnaire to competitors, question B.B.4.

⁵⁸ Q2 Questionnaire to competitors, questions B.B.9.1, B.B.10.1, B.B.4.

⁵⁹ Confirmed non-confidential minutes of a call with a competitor on 16.11.2020, Q2 Questionnaire to competitors, question B.B.4.

⁶⁰ Q1 Questionnaire to competitors, question B.B.10.

⁶¹ Q1 Questionnaire to competitors, question B.B.12.

⁶² Q2 Questionnaire to customers, question B.B.9.

⁶³ Q1 Questionnaire to competitors, question B.B.11.

technical standards, several of which were national, for example distinctive to Czechia, Hungary, Slovakia, and Romania.⁶⁴

(F) National technical standards and requirements further entrench national markets

(58) National technical standards and requirements shape the design of suppliers' sales processes, further entrenching a national-level competitive landscape. The market investigation suggested that national differences relating to the sale of foam sandwich panels require manufacturers to have and develop dedicated sales teams for every Member State in which they are active.⁶⁵ This allows them to communicate with customers and distributors in their respective languages, to maintain contacts with installers and contractors, and to ensure that products meet specific technical and regulatory requirements in place on the national or sub-national levels. The importance of national and sub-national technical standards for the construction materials business is also a factor explaining price differences for foam sandwich panels across EEA countries.⁶⁶ This is because compliance with national standards and requirements requires national sales structures and differences in labour costs and other input factors vary across countries, even within the CEE region.⁶⁷

(G) National price differences are pervasive

(59) The market investigation revealed significant price differences for foam sandwich panels across national markets, including between geographically proximate countries in the CEE region. Average prices for foam sandwich panels across four countries in the CEE region (Hungary, Slovakia, Czechia and Romania) vary by up to 13 %, according to a significant number of competitors.⁶⁸ Furthermore, a majority of competitors set list prices for foam sandwich panels on the national or sub-national levels.⁶⁹ High transport costs do not explain these price differences, since they also arise among geographically adjacent countries (e.g. Hungary and Romania).

(H) Transport costs are an additional barrier to cross-border transport

(60) The market investigation revealed that transport costs for foam sandwich panels make up a significant share of an average order.⁷⁰ A majority of competitors indicate a transport cost price average or range for foam sandwich panels between EUR 1 and EUR 4 per square meter,⁷¹ compared to an average price for foam sandwich panels estimated by the Notifying Party in, for example, Romania of EUR [...].⁷² At the same time, several competitors explain that transport costs exceeding 15% of an order value are uneconomical.⁷³ This is another explanation for why the vast bulk of

⁶⁴ Q1 Questionnaire to competitors, question B.B.13; Q2 Questionnaire to customers, question B.B.10.

⁶⁵ Q1 Questionnaire to competitors, question B.B.1.

⁶⁶ Q1 Questionnaire to competitors, question B.B.10.1.

⁶⁷ Q1 Questionnaire to competitors, question B.B.7.1.

⁶⁸ Q1 Questionnaire to competitors, question B.B.8.

⁶⁹ Q1 Questionnaire to competitors, question B.B.9

⁷⁰ Q1 Questionnaire to competitors, question B.B.6.

⁷¹ Q1 Questionnaire to competitors, question B.B.6.

⁷² Form CO, Table 16.

⁷³ Q1 Questionnaire to competitors, question B.B.6.

foam sandwich panels in the EEA are shipped at most cross-border regionally, and very often nationally or sub-nationally.

4.2.1.4. Conclusion on geographic market definition

- (61) As can be seen from the above a significant number of factual and evidentiary elements in the present case point to national markets. In the present case the question as to whether the market for foam sandwich panels is national or cross-border regional in scope can however be left open as the Transaction would not raise serious doubts as to its compatibility with the internal market regardless of the geographic market definition.

4.2.2. *Mineral fibre sandwich panels*

4.2.2.1. The Notifying Party's arguments

- (62) The Notifying Party submits that the exact scope of the geographic market for mineral fibre sandwich panels can be left open in this case, but refers to the Commission's past decisional practice, in which it defined the geographic market for that product as EEA-wide.⁷⁴

4.2.2.2. The Commission's past decisional practice

- (63) In a past decision,⁷⁵ the Commission considered that the market for mineral fibre sandwich panels was EEA-wide in scope. This conclusion drew on the Commission's finding that the relative transport costs for mineral fibre sandwich panels were lower than for foam sandwich panels, and that a small number of suppliers sold mineral fibre sandwich panels across the EEA.

4.2.2.3. The Commission's assessment

- (64) While the market investigation focused on the market for foam sandwich panels, the Commission also obtained certain insights into the various factors affecting the geographic scope of the market for mineral fibre sandwich panels. As such, the market investigation offers support for the Commission's reassessment of the geographic market definition in respect of mineral fibre sandwich panels.

(A) Relative transport costs for foam vs. mineral fibre sandwich panels do not seem to differ

- (65) Feedback from some market participants suggests that the relative shipping costs for foam and mineral fibre sandwich panels are similar if not identical.⁷⁶ Mineral fibre sandwich panels are more expensive than foam sandwich panels, but they are also thicker (and heavier) given the same thermal performance (measured by U-value⁷⁷). While higher product prices can sometimes justify higher transport costs, this is true both for certain specific high-end foam and mineral fibre sandwich panels. However,

⁷⁴ Form CO, paragraph 152.

⁷⁵ Case M.7479 – *Kingspan/Steel Partners*, paragraph 59.

⁷⁶ Q1 Questionnaire to competitors, question B.B.4.1.

⁷⁷ The International Organization for Standardization ('ISO') defines "[t]he thermal transmittance of a building element (U-value) ... in ISO 7345 as the '[h]eat flow rate in the steady state divided by area and by the temperature difference between the surroundings on each side of a system'."

on balance and in most cases, the greater thickness and weight of mineral fibre sandwich panels means that the relative transport costs of mineral and foam sandwich panels are indistinguishable.⁷⁸

(B) Factors pointing to wider-than national markets are not decisive

- (66) Some characteristics of the market of mineral fibre sandwich panels suggest a wider-than-national geographic market. In particular, fewer production lines across the EEA manufacture mineral fibre than foam sandwich panels. Moreover, the number of suppliers of mineral fibre sandwich panels seems to be smaller than of foam sandwich panels across the EEA.⁷⁹ Moreover, cross-country trade flows in mineral fibre sandwich panels are common,⁸⁰ even more so than in the case of foam sandwich panels.⁸¹ However, none of these factors necessarily excludes a national geographic market for mineral fibre sandwich panels. Moreover, the market investigation revealed several additional factors that point towards an at least similarly fragmented set of geographic markets in relation to mineral fibre sandwich panels as in the case of foam sandwich panels.

(C) Markets for foam and mineral fibre sandwich panels seem to be geographically similar

- (67) Finally, all factors that point towards a national-level geographic market definition in relation to foam sandwich panels (above at 4.2.1.3) also seem to apply to mineral fibre sandwich panels. In fact, they may apply even more forcefully here. Because mineral fibre sandwich panels are non-combustible and thus used in buildings with the highest fire safety requirements, they are subject to more stringent fire-safety related technical standards than foam sandwich panels. Since these standards tend overwhelmingly to be national, sales processes also seem to follow a national organization. On this basis alone, a national geographic market definition may apply to mineral fibre sandwich panels even more strongly than to foam sandwich panels.

(D) The evidence for a national-level mineral fibre sandwich panel market appears to be strong

- (68) On balance, the market investigation likely calls for a reassessment of the Commission's conclusions in an earlier case as to the geographic market definition for mineral fibre sandwich panels. Already the stark differences in the Parties' respective market share across EEA countries suggest a geographic market that is not EEA-wide.⁸² Importantly, the market investigation refuted a key basis for the Commission's conclusion in an earlier case, namely the difference in the relative transport costs for mineral fibre sandwich panels and foam sandwich panels. Moreover, there are ample indications that the relevant geographic market is national, or at most cross-border regional, in scope. At the same time, mineral fibre sandwich panels were not a central focus of the market investigation in this case. As a result, the question of the precise market definition for mineral fibre sandwich panels can remain open.

⁷⁸ Confirmed non-confidential minutes of a call with a competitor on 16.11.2020.

⁷⁹ See e.g. a comment by a competitor in Q1 Questionnaire to competitors, question B.B.4.1.

⁸⁰ Confirmed non-confidential minutes of a call with a competitor on 18.11.2020.

⁸¹ Q1 Questionnaire to competitors, question B.B.4.

⁸² Form CO, Annex 32.

4.2.2.4. Conclusion on geographic market definition

- (69) As can be seen from the above, a significant number of factual and evidentiary elements in the present case point to national markets. The question as to whether the market for mineral fibre sandwich panels is EEA-wide, cross-border regional, or national in scope can however be left open as the Transaction would not raise serious doubts as to its compatibility with the internal market regardless of the geographic market definition.

4.2.3. *Single skin construction sheets*

4.2.3.1. The Notifying Party's arguments

- (70) The Notifying Party submits that the supply of single skin construction sheets has strong local features with many suppliers having a local or regional production presence, as inter alia transport costs and speed of service are strong selling points.⁸³ The Notifying Party submits that it can be left open whether the geographic market is national or sub-national in scope.⁸⁴

4.2.3.2. The Commission's past decisional practice

- (71) In its recent *Kingspan/Steel Partners* decision,⁸⁵ the Commission concluded that the market for single skin construction sheets was national in scope.

4.2.3.3. The Commission's assessment

- (72) Single skin construction sheets were not a central focus of the market investigation in this case. The market investigation did not provide any reason to depart from the Commission's earlier finding that the relevant geographic market for single skin construction sheets is national in scope.

4.2.3.4. Conclusion on geographic market definition

- (73) The Commission considers for the purpose of the assessment of this case that the relevant market for the production and supply of single skin construction sheets is national in scope.

4.2.4. *Purlins*

4.2.4.1. The Notifying Party's arguments

- (74) The Notifying Party submits that the exact scope of the geographic market for purlins can be left open, while referring to the Commission's past decisional practice in respect of finished flat carbon steel products.⁸⁶

⁸³ Form CO, paragraphs 161 and 162.

⁸⁴ Form CO, paragraphs 161-163.

⁸⁵ Case M.7479 – *Kingspan/Steel Partners*, paragraph 65.

⁸⁶ Form CO, paragraphs 169-170.

4.2.4.2. The Commission's past decisional practice

(75) In a past decision,⁸⁷ the Commission examined the geographic market definition for finished flat carbon steel products extensively, without mentioning purlins. The Commission's investigation in *ArcelorMittal/Ilva* found an EEA-wide market with strong indications of geographic differentiation for certain finished flat carbon steel products, namely hot rolled, cold rolled and galvanised (hot dip galvanised and electro galvanised) steel products.⁸⁸ However, purlins were not specifically considered in that case.

4.2.4.3. The Commission's assessment

(76) Purlins were not a central focus of the market investigation in this case as no competition concerns would arise under any plausible geographic market definition. The market investigation did not provide any indications to define the geographic market for purlins differently from the market for other finished flat carbon steel products in past Commission decisions.

4.2.4.4. Conclusion on geographic market definition

(77) The question as to whether the market for purlins is EEA-wide or narrower can be left open as the Transaction would not raise serious doubts as to its compatibility with the internal market regardless of the geographic market definition.

5. COMPETITIVE ASSESSMENT

(78) The competitive assessment of the Transaction is structured as follows:

- (a) Section 5.1 outlines the legal framework for the assessment;
- (b) Section 5.2 outlines the market structure, the horizontal overlaps between the Parties' activities, and the affected markets arising from the Transaction. It also provides a reasoning for why the plausible affected markets in relation to mineral fibre sandwich panels, single skin construction sheets and purlins do not need to be discussed further in this Decision;
- (c) Section 5.3 assesses horizontal non-coordinated effects with respect to foam sandwich panels.

5.1. Legal framework

(79) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. In this respect, a merger can entail horizontal and/or non-horizontal effects. A merger can also create or strengthen an existing dominant position.

⁸⁷ Case M.8444 – *ArcelorMittal/Ilva*.

⁸⁸ Case M.8444 – *ArcelorMittal/Ilva*, recital 385.

- (80) Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the Horizontal Merger Guidelines.⁸⁹
- (81) As regards horizontal non-coordinated effects, according to paragraph 26 of the Horizontal Merger Guidelines, a number of factors (the list of which is non-exhaustive) may be taken into account in order to determine whether significant horizontal non-coordinated effects are likely to result from a concentration.

5.2. Horizontal overlaps and affected markets

- (82) The Parties' activities overlap horizontally mainly in relation to foam sandwich panels and to a lesser extent in mineral fibre sandwich panels, single skin construction sheets, and purlins.

5.2.1. Horizontal overlaps and affected markets in relation to foam sandwich panels

- (83) In *Kingspan/Steel Partners*, the Notifying Party provided capacity shares for the Parties and their competitors for Belgium and the surrounding area based on a radius of 700 km.⁹⁰ The Commission in that case used the Parties' 700 km radius for its market reconstruction of capacity shares in the region.⁹¹ Referring to the Commission's decision in case M.7479 *Kingspan/Steel Partners*, the Notifying Party argues that the correct approach is to assess the market based on capacity shares within a 700 km road distance radius from TeraSteel's production facilities.⁹²
- (84) Nevertheless, the Notifying Party provided the Parties' market shares according to alternative metrics as well.
- (85) Based on the information provided by the Notifying Party, the Transaction gives rise to a number of horizontal overlaps in the supply of foam sandwich panels within the EEA in several geographic markets.
- (86) First, the Notifying Party provided the Parties' and the competitors' production capacity shares based on average annual production capacity volumes within a 400 km and 700 km road distance radius from the Target's production facilities in Romania and Serbia. These road distance radiuses include plants located in the CEE region and cover parts of the territory of different countries within the CEE region,^{93,94} reflecting the potential cross-border regional geographic market definition discussed in Section 4.2.1.3.

⁸⁹ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ('Horizontal Merger Guidelines'), OJ C 31, 5.2.2014.

⁹⁰ Case M.7479 *Kingspan/Steel Partners*, paragraph 81.

⁹¹ Case M.7479 *Kingspan/Steel Partners*, paragraph 82.

⁹² Form CO, paragraph 171.

⁹³ Plants of the Parties and their competitors located within a 700 km radius from TeraSteel's Romania plant are located in the following countries: Romania, Hungary, Poland, Ukraine, Bulgaria.

⁹⁴ Plants of the Parties and their competitors located within a 400 km radius from TeraSteel's Romania plant are located in the following countries: Romania and Hungary.

(87) Table 1 shows the Parties' combined capacity shares based on a 400 km and 700 km road distance radius from the Target's production facilities in Romania and Serbia⁹⁵ for year 2019. As noted in paragraph (83), capacity shares based on a radius of 700 km were also used for market reconstruction in *Kingspan/Steel Partners*. In the current market investigation, the majority of competitors indicated that they sell foam sandwich panels on (i) national or sub-national level, or (ii) nationally and to neighbouring countries.⁹⁶ Moreover, a majority of customers indicated that the maximum distance from which they purchase foam sandwich panels is 400 km – 700 km.⁹⁷ Therefore, the radiuses of 400 km and 700 km represent a conservative proxy for the road distance radius around the Target's foam sandwich panel production plants, which it is appropriate to use for the calculation of capacity shares in the region.

Table 1 – Parties' capacity shares for foam sandwich panels within a 400 km and 700 km radius of TeraSteel's plants in Romania and Serbia

| Foam Sandwich Panels 2019 | | | |
|--|---------------------------------|------------------|-----------------|
| | Capacity (m²) | | |
| | Kingspan | TeraSteel | Combined |
| 400 km road distance from TeraSteel's Romania plant | [10-20]% | [10-20]% | [30-40]% |
| 700 km road distance from TeraSteel's Romania plant | [10-20]% | [5-10]% | [20-30]% |
| 400 km road distance from TeraSteel's Serbia plant ⁹⁸ | [10-20]% | [10-20]% | [20-30]% |
| 700 km road distance from TeraSteel's Serbia plant | [5-10]% | [0-5]% | [10-20]% |

Source: Form CO, Table 10, Table 11, Table 12 and Table 13

(88) Second, the Notifying Party provided the Parties' and the competitors' market shares based on volume and value on a national basis.

(89) Table 2 shows the horizontal overlaps on a national basis⁹⁹ based on the Parties' volume market shares.

⁹⁵ The Target currently only operates two production plants for foam sandwich panels in Saratel (Romania) and Leskovac (Serbia).

⁹⁶ Q1 Questionnaire to competitors, question B.B.2.

⁹⁷ Q2 Questionnaire to customers, question B.B.3.

⁹⁸ This radius includes plants of the Parties and their competitors inside (Romania, Bulgaria, Greece) and outside (Serbia, Macedonia, Kosovo) the EEA territory.

⁹⁹ In addition, for illustrative purposes, the Parties' EEA-wide volume shares are [20-30]% (Kingspan) and [0-5]% (TeraSteel).

Table 2 – Horizontal overlaps in foam sandwich panels based on the Parties’ national volume market shares for 2019 in the EEA

| Foam Sandwich Panels 2019 | | | |
|----------------------------------|-------------------------------|------------------|-----------------|
| | Volume (m²) | | |
| | Kingspan | TeraSteel | Combined |
| Austria | [10-20]% | [0-5]% | [10-20]% |
| Bulgaria | [0-5]% | [5-10]% | [5-10]% |
| Croatia | [10-20]% | [0-5]% | [10-20]% |
| Czechia | [30-40]% | [0-5]% | [30-40]% |
| Hungary | [20-30]% | [10-20]% | [30-40]% |
| Romania | [5-10]% | [20-30]% | [30-40]% |
| Slovakia | [20-30]% | [0-5]% | [20-30]% |

Source: Form CO, Annex 26

- (90) For market share estimates, the Notifying Party relied in part on data supplied by Neomar Consulting SRL (‘Neomar’), a market research consultancy based in Romania. One Romanian competitor described it as a “*reliable source of market data in the sandwich panel industry.*”¹⁰⁰ At the same time, Neomar provides market research relating only to a limited set of countries in the CEE region. As a result, the Notifying Party supplemented its internal market share estimates using Neomar data only for the following three EEA countries: Bulgaria, Hungary, and Romania.¹⁰¹ The Notifying Party submitted the underlying Neomar reports.¹⁰² The Notifying Party adjusted the Neomar data by using the Parties’ actual sales volumes and values.
- (91) Table 3 shows the horizontal overlaps on a national basis based on the Parties’ value market shares, to the extent they were submitted by the Notifying Party.

Table 3 – Horizontal overlaps in foam sandwich panels based on the Parties’ national value market shares for 2019 in the EEA

| Foam Sandwich Panels 2019 | | | |
|----------------------------------|--------------------|------------------|-----------------|
| | Value (EUR) | | |
| | Kingspan | TeraSteel | Combined |
| Austria | N/A | N/A | N/A |
| Bulgaria | [0-5]% | [5-10]% | [5-10]% |
| Croatia | N/A | N/A | N/A |
| Czechia | N/A | N/A | N/A |
| Hungary | [30-40]% | [10-20]% | [40-50]% |
| Romania | [10-20]% | [20-30]% | [30-40]% |
| Slovakia | N/A | N/A | N/A |

Source: Form CO, Annex 32

¹⁰⁰ Confirmed non-confidential minutes of a call with a competitor on 16.11.2020.

¹⁰¹ Form CO, paragraph 178 and footnote 111.

¹⁰² Form CO, Annex 33.

- (92) As can be seen from Table 1, Table 2, and Table 3, in the EEA, the Transaction gives rise to the following plausible horizontally affected markets in relation to foam sandwich panels:
- (a) Romania – based on volume and value market shares;
 - (b) Hungary – based on volume and value market shares;
 - (c) Czechia – based on volume market shares;
 - (d) Slovakia – based on volume market shares;
 - (e) 400 km and 700 km road distance radius from TeraSteel’s plant in Romania – based on capacity shares;
 - (f) 400 km road distance radius from TeraSteel’s plant in Serbia – based on capacity shares.
- (93) The competitive assessment of the plausible affected markets in foam sandwich panels is set out in Section 5.3.2.

5.2.2. *Horizontal overlaps and affected markets in relation to mineral fibre sandwich panels*

- (94) Based on the information provided by the Notifying Party, the Transaction gives rise to a number of horizontal overlaps in the supply of mineral fibre sandwich panels within the EEA. Table 4 shows the horizontal overlaps in relation to mineral fibre sandwich panels based on the Parties’ volume market shares.¹⁰³

Table 4 – Horizontal overlaps in relation to mineral fibre sandwich panels in the EEA for 2019 in the EEA

| | Mineral Fibre Sandwich Panels 2019 (volume in m²) | | |
|-------------------------|---|------------------|-----------------|
| | Kingspan | TeraSteel | Combined |
| EEA | [20-30]% | [0-5]% | [20-30]% |
| Regional ¹⁰⁴ | [20-30]% | [0-5]% | [20-30]% |
| Bulgaria | [0-5]% | [0-5]% | [5-10]% |
| Romania | [20-30]% | [0-5]% | [20-30]% |
| Hungary | [20-30]% | [0-5]% | [30-40]% |
| Slovakia | [20-30]% | [0-5]% | [20-30]% |

Source: Form CO, Table 7 and Annex 26

- (95) Within the EEA, the Target only generated sales of mineral fibre sandwich panels in Bulgaria, Hungary, Romania and Slovakia in 2019.¹⁰⁵ As can be seen from Table 4,

¹⁰³ The Notifying Party was unable to provide value shares for mineral fibre sandwich panels due to lack of value shares for this segment in third party market reports and given that the Parties do not have access to competitor pricing (see Form CO, footnotes 124, 130).

¹⁰⁴ In the EEA, the Target only generated sales of mineral fibre sandwich panels in Bulgaria, Hungary, Romania and Slovakia in 2019. The regional share represents the weighted average market share of the Parties in these jurisdictions (see Form CO, footnote 60).

TeraSteel's presence in the EEA is very limited, amounting to [0-5]% of the EEA market based on volume shares.

- (96) Moreover, in the region where TeraSteel is active, the Parties' combined market shares amount to [20-30]% with an increment of [0-5]% brought about by the Transaction. The region consists of the countries where TeraSteel is active, namely Bulgaria, Hungary, Romania and Slovakia. As can be seen from Table 4, the increment brought about by the Transaction is [0-5]% or less in the region as well as on a national basis, except for Bulgaria, where, however, the Transaction does not give rise to an affected market.
- (97) Therefore, the combined market shares of the Parties in all plausible affected markets in mineral fibre sandwich panels are below or around 30% and the increment brought about by the Transaction in any affected market is very limited, namely [0-5%].
- (98) Post-Transaction a number of competitors will continue to exercise competitive constraints on the Parties. The largest competitors in Hungary are Trimo ([20-30]%) and ArcelorMittal ([10-20]%). The largest competitors in Romania are Topanel ([10-20]%), Isopan ([10-20]%) and Proinvest ([10-20]%). The largest competitors in Slovakia are Trimo ([30-40]%), ArcelorMittal ([20-30]%) and Ruukki ([5-10]%). Considering the marginal change to the competitive landscape brought by the Transaction, the Commission's market investigation confirmed that market participants are not concerned about any negative effects of the Transaction in relation to mineral fibre sandwich panels in the EEA.
- (99) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects in the market for mineral fibre sandwich panels. Therefore, mineral fibre sandwich panels are not discussed further in this Decision.

5.2.3. *Horizontal overlaps in relation to single skin construction sheets*

- (100) Based on the information provided by the Notifying Party, the Transaction gives rise to horizontal overlaps in the supply of single skin construction sheets in Romania and Hungary. However, the Transaction does not give rise to any affected markets in relation to single skin construction sheets, as the Parties' combined market shares remain below 20% both in Romania and in Hungary under any plausible product market definition.¹⁰⁶
- (101) While single skin construction sheets represented [30-40]% of the Target's 2019 revenues,¹⁰⁷ the vast majority (more than [90-100]%) of the Target's sales of single skin construction sheets took place in Romania, where the Target's production plant is located, but where [information on Kingspan Group's sales in Romania]. In addition to Romania, in 2019 the Target had [...] sales of single skin construction

¹⁰⁵ The Target has minimal production of mineral fibre sandwich panels in Serbia and its sales of mineral fibre sandwich panels in 2019 represent [0-5]% of the Target's 2019 revenues (see Form CO, Table 5 and Annex 26).

¹⁰⁶ Form CO, Table 7.

¹⁰⁷ Form CO, Table 5.

sheets in Bulgaria and Hungary of less than EUR [...].¹⁰⁸ [Information on Kingspan Group’s presence in Bulgaria].

- (102) The main overlap in single skin construction sheets is in Romania, where, for single skin construction sheets overall, the Parties’ combined market share amounts to [10-20]%. Kingspan’s sales in Romania [information on Kingspan Group’s sales in Romania], resulting in Kingspan’s share of [0-5]%.¹⁰⁹ In relation to end-use applications, the parties’ activities are rather complementary, leading to moderate combined shares with small increments: (i) in decking single skin construction sheets the combined share is [5-10]% with an increment (by the Target) of [0-5]%, (ii) in roofing and cladding single skin construction sheets the combined share is [10-20]% with an increment (by Kingspan) of [0-5]%.¹¹⁰
- (103) For completeness, the Parties’ combined market share in Hungary amounts to [5-10]% with an increment of [0-5]% by the Target.¹¹¹ In relation to end-use applications, the Notifying Party estimates that the Parties’ activities likely do not overlap in Hungary. [Information on the Parties’ sales of single skin construction sheets in Hungary].
- (104) Thus, given the lack of affected markets and the limited increment brought about by the Transaction, the Transaction is unlikely to lead to significant horizontal effects in relation to single skin construction sheets under any plausible market definition. Moreover, the market investigation did not reveal any concerns concerning the market for single skin construction sheets.¹¹²
- (105) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects in the market for single skin construction sheets. Therefore, single skin construction sheets are not discussed further in this Decision.

5.2.4. Horizontal overlaps and affected markets in relation to purlins

- (106) Based on the information provided by the Notifying Party, the Transaction gives rise to horizontal overlaps in the supply of purlins in the EEA. According to the Notifying Party, in Czechia, Germany, Hungary, Slovakia and Sweden, the Parties’ combined shares are below 20% with insignificant increments. Table 5 shows the plausible horizontally affected markets in relation to purlins.

Table 5 – Plausible horizontally affected markets in relation to purlins in the EEA

| | Purlins 2019 (volume in m²) | | |
|---------|---|------------------|-----------------|
| | Kingspan | TeraSteel | Combined |
| Romania | [0-5]% | [20-30]% | [20-30]% |
| France | [20-30]% | [0-5]% | [20-30]% |

Source: Form CO, Table 7

¹⁰⁸ Form CO, footnote 64.

¹⁰⁹ Form CO, Annex 27.

¹¹⁰ The Notifying Party’s response to RFI 4, Tables 2 and 3.

¹¹¹ The Notifying Party’s response to RFI 3, Table 1.

¹¹² Q1 Questionnaire to competitors, question D.6.

- (107) The Target's sales of purlins represented [5-10]% of its 2019 revenues.
- (108) While the Target is mainly active in Romania and Hungary, Kingspan's sales of purlins in these countries are negligible, namely less than EUR [...] in 2019. On the other hand, Kingspan generated about [30-40]% of its purlin sales in France, but the increment is insignificant because the [information on the Target's sales of purlins in France], namely less than EUR [...] in 2019.¹¹³
- (109) TeraSteel's market share in Romania and Kingspan's market share in France are each below 30% and the increment arising from the Transaction in both countries is [0-5%].
- (110) Moreover, the Notifying Party confirmed that the combined market shares of the Parties in a potential market for finished flat carbon steel products or any plausible sub-segment therein is below 20% at the EEA-wide level and on any narrower plausible geographic market, including on national level.¹¹⁴
- (111) Therefore, the Transaction would not give rise to affected market even if a wider definition of the product and geographic market were to be adopted for purlins.
- (112) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects in the market for purlins. Therefore, purlins are not discussed further in this Decision.

5.3. Horizontal non-coordinated effects in the foam sandwich panel market

- (113) In view of Section 5.2 and the *de minimis* nature of the other overlaps, this Section 5.3 focuses on the horizontal non-coordinated effects of the Transaction in the foam sandwich panel market.

5.3.1. The Notifying Party's arguments

- (114) The Notifying Party submits that the primary rationale of the Transaction is geographic expansion. The Target is a significant player in the CEE region and [information on Kingspan Group's projections in the CEE]. With this Transaction, [information on Kingspan Group's strategy].¹¹⁵
- (115) The Notifying Party submits that the Transaction will not give rise to any competitive concerns regardless of market definition. In particular, it argues that the Transaction will not lead to any horizontal non-coordinated effects with respect to foam sandwich panels due to the following reasons:
- (a) The Parties' combined regional capacity shares within a 400 km or 700 km road distance radius from the Target's production facilities in Romania and Serbia remain below [30-40]% and are not indicative of concerns. Moreover,

¹¹³ Form CO, Table 5, footnote 47.

¹¹⁴ The Notifying Party's response to RFI 5 dated 11 January 2021.

¹¹⁵ Form CO, paragraphs 37-39.

the Transaction would not raise concerns at the national level based on volume market shares;¹¹⁶

- (b) The Parties are not ‘particularly’ close competitors;¹¹⁷
- (c) There is ample spare capacity and customers can easily switch between suppliers;¹¹⁸
- (d) There are no substantial barriers to entry.¹¹⁹

5.3.2. *The Commission’s assessment*

(116) Section 5.3.2 assesses market shares, closeness of competition between the Parties, important dynamics of the markets where the Parties’ activities overlap, the alternatives to the Parties, barriers to entry, evidence of new entrants and the constraint by competitors, as well as the potential effects of the Transaction. Based on all these factors considered together, conclusions on horizontal non-coordinated effects are drawn in Section 5.3.3.

5.3.2.1. Assessment of market shares

(117) Market participants view Kingspan as a market leader¹²⁰ and in some EEA countries Kingspan’s high market shares reach the level indicative of dominance,¹²¹ as noted by market participants.¹²² Kingspan’s high market shares in several EEA countries seem to result, in part, from the company’s expansion and acquisition strategy of recent years.¹²³ Given the high market shares of Kingspan in some EEA countries, in particular in Western Europe and Scandinavia, it cannot be excluded that Kingspan is a dominant player in certain parts of the EEA.

(118) Nevertheless, the current Transaction does not lead to any increment in the EEA countries where Kingspan’s market shares are indicative of dominance because TeraSteel is not active in those countries. However, the market investigation suggests that the situation may be different in countries of the CEE region outside the EEA, notably in Serbia.¹²⁴ Nothing in this Decision should be construed as a factual or legal assessment of the competitive effects of this Transaction in Serbia¹²⁵ or any other non-EEA country.

¹¹⁶ Form CO, paragraphs 172 and 173.

¹¹⁷ Form CO, paragraphs 189-191.

¹¹⁸ Form CO, paragraphs 192 and 193.

¹¹⁹ Form CO, paragraphs 194 and 195.

¹²⁰ Q1 Questionnaire to competitors, questions D.1.1, D.7.

¹²¹ [Information on Kingspan Group’s market shares in certain national markets in the EEA].

¹²² Q1 Questionnaire to competitors, question D.7.

¹²³ In the past decade, Kingspan has acquired several competitors active in the foam and mineral fibre sandwich panel business. Since 2014, Kingspan has increased its revenues by more than [...]% (from [...] to [...]). During the last three years, Kingspan has acquired two sandwich panel players – Synthesia Group (Spain, 2018) and Balex Metal (Poland, 2018). Moreover, Kingspan acquired Joris Ide (Belgium) in 2015, Eurobond/Euroclad (UK) in 2016, and Paroc (Finland) in 2016, among others.

¹²⁴ Confirmed non-confidential minutes of a call with a competitor on 16.11.2020.

¹²⁵ The Commission is aware that the Serbian Commission for Protection of Competition is currently investigating the present Transaction in relation to its effects on the Serbian market.

- (119) In the EEA countries where TeraSteel is present, Kingspan's market shares are moderate. As can be seen from Table 2, the only countries in the CEE region where the Parties' combined market shares exceed [20-30]% and, at the same time, the increment brought about by the Transaction is higher than [5-10]% are Hungary and Romania.
- (120) In Hungary, the combined volume market share of the Parties amounts to [30-40]% with an increment of [10-20]% represented by the Target. Contrary to Kingspan, the Target has no production plant in Hungary. Instead, it is only active [information on Target's imports in Hungary].
- (121) Based on the information provided by the Notifying Party, two competitors have similar or higher market shares than the Target in Hungary. These competitors are the Hungary-based manufacturer Metal-sheet (volume share of [10-20]% in 2019) and the Romanian importer Isopan (volume share of [10-20]% in 2019).¹²⁶ Other competitors with a market share of more than [5-10]% include ArcelorMittal ([5-10]%) and Topanel ([5-10]%).
- (122) In Romania, the combined volume market share of the Parties amounts to [30-40]% with an increment of [5-10]% represented by Kingspan. There are several Romania-based competitors that have similar or higher shares than the increment presented by Kingspan, notably Topanel (volume share of [10-20]% in 2019), Isopan (volume share of [10-20]% in 2019), Romconstruct (volume share of [10-20]% in 2019) and Marcegaglia/Impro (volume share of [5-10]% in 2019).¹²⁷
- (123) Thus, while the Transaction will increase Kingspan's presence in a number of countries in the CEE region where the Target is active, the merged entity's market shares in the EEA countries in the region are moderate and only exceed [20-30]% with an increment of more than [5-10]% in Hungary and Romania, where the merged entity will face competition from a number of other players. Even if a wider geographic market definition were to be adopted based on a regional cross-border market (within a 400 km and 700 km road distance radius from the Target's plants), the merged entity's capacity shares would exceed [20-30]% with an increment of more than [5-10]% on the basis of a radius of 400 km and 700 km from the Target's plant in Romania. However, several competitors operate plants within those radiuses¹²⁸ and thus the merged entity will face competition from these players, as well as other competitors that deliver their products from plants located outside of these radiuses.

5.3.2.2. Closeness of competition

- (124) While Kingspan is a recognised market leader present across the EEA, TeraSteel is a regional player active in the CEE and Southern Europe.
- (125) As regards the Parties' presence in the CEE, both Kingspan and TeraSteel operate foam sandwich panel production facilities in the region. TeraSteel's plant is located

¹²⁶ Form CO, paragraph 179.

¹²⁷ Form CO, Table 15.

¹²⁸ These competitors include Metal-Steel, Topanel, Romconstruct, Impro, Romatermit, Isopan, TPK, Gorstal, Metecno and TechnoPanel (700 km radius) and Metal-Sheet, Topanel, Romconstruct and Impro (400 km radius) – Form CO, Table 10 and Table 11.

in Saratel (Romania), while Kingspan operates three plants in Timisoara (Romania), Újhartyán (Hungary), and Lipsko (Poland).¹²⁹ Therefore, both Parties have a local presence in the region, which offers benefits such as proximity to customers and shorter transport distances.

- (126) The majority of competitors in the market investigation considered Kingspan and TeraSteel as close competitors in relation to foam sandwich panels.¹³⁰ For instance, one competitor noted: *“Both producers have [the] same range of thicknesses and produce PIR and polyurethane.”* Another competitor explained: *“Similar to Kingspan, Terasteel can supply [...] a full range of thermal insulating panels for wall, roof, in PUR, PIR, PIR XV LEAD, Mineral Wool with hidden or visible fixings, also with bituminous and other membranes (IsoBit RO and RS) for industrial, commercial, agrozootechnical, hygiene and coldstore applications.”*¹³¹
- (127) However, only a minority of customers considered Kingspan and TeraSteel as close competitors in relation to foam sandwich panels. An overwhelming majority of customers that expressed their opinion did not consider the Parties to be close competitors.¹³²
- (128) In addition, both competitors and customers indicated other companies as closer competitors of each Party. Isopan, ArcelorMittal and Brucha are viewed as the top competitors of Kingspan.¹³³ Isopan, Topanel and ArcelorMittal are viewed as the top competitors of TeraSteel.¹³⁴
- (129) Moreover, market participants recognised that the European market leader Kingspan has certain advantages, such as economies of scale, technical expertise, a more complete portfolio of products, the ability to provide additional services, as well as its reputation and brand(s).¹³⁵ While TeraSteel offers similar products, their quality is deemed relatively inferior.¹³⁶ One competitor noted: *“Both companies have their roles in different market segments. Their offer are more supplementary than competing. Kingspan is focused on high standard products whereas Terasteel-W in commodity products.”*¹³⁷
- (130) Furthermore, the Notifying Party submits and the market investigation confirms that TeraSteel is largely not active in the specification segment, in which Kingspan is a leading player.¹³⁸
- (131) In light of the above, the Commission considers that Kingspan and TeraSteel are not close competitors. Moreover, there are other competitors that are viewed as closer, or equally close, to each Party.

¹²⁹ Form CO, Table 20.

¹³⁰ Q1 Questionnaire to competitors, question C.4.1.

¹³¹ Q1 Questionnaire to competitors, question C.4.1.

¹³² Q2 Questionnaire to customers, question C.6.1

¹³³ Q1 Questionnaire to competitors, question C.2, Q2 Questionnaire to customers, question C.4.

¹³⁴ Q1 Questionnaire to competitors, question C.3, Q2 Questionnaire to customers, question C.5.

¹³⁵ Q1 Questionnaire to competitors, question C.5, Q2 Questionnaire to customers, question C.7.

¹³⁶ Confirmed non-confidential minutes of a call with a competitor on 1.12.2020.

¹³⁷ Q1 Questionnaire to competitors, question C.4.

¹³⁸ Form CO, paragraph 139, Confirmed non-confidential minutes of a call with a competitor on 1.12.2020.

5.3.2.3. Competitive constraints by the Parties' competitors post-Transaction

- (132) The market investigation confirmed that Kingspan's leading position in some markets is very strong, with a very limited number of remaining competitors capable of exercising competitive constraint on Kingspan in those markets. For instance, competitors noted that Kingspan has a dominant position in the UK and Ireland, where prices are considerably higher than in mainland Europe.¹³⁹ As one competitor noted, referring to Kingspan's position in the UK: "*Kingspan's strategy is to step by step gain a dominant position within the European market in order to achieve a kind of monopol[y], as already done in the UK, where panel prices are considerably higher than in mainland Europe, exactly for that reason.*"¹⁴⁰ In addition, Kingspan can leverage its size in many ways, for instance by achieving economies of scale, having low production costs and logistics advantage, as well as in negotiating better prices with raw materials suppliers.¹⁴¹ Thus, it may be difficult for smaller players to be able to compete with Kingspan. However, the feedback from market participants obtained during the Commission's market investigation and referring to Kingspan's strong market position in certain EEA countries that are not affected by the current transaction is not relevant for the assessment of this Transaction as it is not Transaction-specific.
- (133) Nevertheless, the competitive landscape in relation to foam sandwich panels in the CEE region seems to differ from that in Western Europe or countries like the UK. A majority of competitors considered the CEE market to be very competitive and a majority of customers considered it moderately competitive.¹⁴² As regards the countries where plausible affected markets arise based on volume market shares, customers and competitors view the Romanian market as very competitive. The Hungarian market is viewed as moderately competitive by a significant number of competitors and as very competitive also by a significant number of competitors. A majority of customers consider the Hungarian market as moderately or very competitive. The Czech market is viewed as very or moderately competitive by a majority of competitors as well as customers. Finally, a majority of competitors consider the Slovak market to be very competitive, while a majority of customers view it as moderately or very competitive.¹⁴³
- (134) Thus, in the CEE region, post-Transaction the merged entity will face competition from a number of established players with significant presence in the market for foam sandwich panels. The main competitors, also viewed as close competitors of the Parties by market participants, are Isopan, Topanel, ArcelorMittal, as well as others, such as Brucha.¹⁴⁴
- (135) Isopan, both Parties' closest competitor, is a particularly strong player in the countries in which the Parties' activities overlap. Isopan's 2019 volume shares in those countries are listed hereinafter: Austria [10-20]%, Bulgaria [5-10]%,

¹³⁹ Q1 Questionnaire to competitors, question D.7.

¹⁴⁰ Q1 Questionnaire to competitors, question D.7.

¹⁴¹ Q1 Questionnaire to competitors, question C.5.1.

¹⁴² Q1 Questionnaire to competitors, question C.1, Q2 Questionnaire to customers, question C.3.

¹⁴³ Q1 Questionnaire to competitors, question C.1, Q2 Questionnaire to customers, question C.3.

¹⁴⁴ Q1 Questionnaire to competitors, question C.2 and C.4, Q2 Questionnaire to customers, questions C.3 and C.5.

Croatia [10-20]%, Czechia [5-10]%, Hungary [10-20]%, Romania [10-20]%, and Slovakia [10-20]%.¹⁴⁵

- (136) Topanel, viewed as the Target's second closest competitor, has also a significant presence in the region with 2019 volumes shares of [10-20]% in Bulgaria, [5-10]% in Hungary, [10-20]% in Romania and [10-20]% in Slovakia.¹⁴⁶
- (137) ArcelorMittal is a vertically integrated player active in most countries in the EEA. In the CEE region ArcelorMittal is a particularly strong competitor to the Parties in Czechia ([20-30]% volume share in 2019), Hungary ([5-10]% volume share 2019), and Slovakia ([10-20]% volume share in 2019).
- (138) Brucha is an Austrian privately held company offering high quality, premium sandwich panel products. In the CEE region, Brucha has strong presence in Austria ([40-50]% volume share 2019), and competes with the Parties also in Croatia ([0-5]% volume share 2019), Czechia ([0-5]% volume share 2019), Hungary ([0-5]% volume share 2019), Slovakia ([0-5]% volume share 2019).¹⁴⁷
- (139) Post-Transaction, the merged entity will only own [...] production lines within 700 km road distance from the Target's Romanian production facility.¹⁴⁸
- (140) Therefore, the Commission considers that a number of competitors, such as Isopan, Topanel, ArcelorMittal and others will be capable of exercising a competitive constraint on the merged entity post-Transaction.

5.3.2.4. Spare capacity

- (141) While one competitor considered that the spare capacity in the CEE region is owned by Kingspan, the majority of competitors indicated that they have spare capacity as regards the production of foam sandwich panels, ranging from 10 to 50% (relative to their size).¹⁴⁹ In addition, half of the competitors indicated that they would also be able to expand their capacity in the EEA.¹⁵⁰
- (142) [Information on Target's business strategy]. The Notifying Party submits that within the coming years, other competitors will also increase capacity in the CEE region, [information on Target's capacity in the CEE].¹⁵¹ The Commission's market investigation confirmed that a number of competitors would indeed be able to expand capacity or output for the supply of foam sandwich panels at least in/into Romania, Hungary, Slovakia and Czechia.¹⁵² Moreover, a majority of competitors indicated that they were planning to expand their production of foam sandwich panels in the next two years, including in the CEE region.¹⁵³

¹⁴⁵ Form CO, Annex 26.

¹⁴⁶ Form CO, Annex 26.

¹⁴⁷ Form CO, Annex 26.

¹⁴⁸ Form CO, paragraph 173.

¹⁴⁹ Q1 Questionnaire to competitors, question C.11.

¹⁵⁰ Q1 Questionnaire to competitors, question C.12.

¹⁵¹ Form CO, paragraph 196.

¹⁵² Q1 Questionnaire to competitors, questions C.12.2.1-12.2.4.

¹⁵³ Q1 Questionnaire to competitors, question C.20.

(143) Thus, based on the market investigation, the Commission considers that there is currently existing spare capacity in the market and potential capacity expansion by competitors, which will be capable of constraining the merged entity's conduct post-Transaction.

5.3.2.5. Barriers to entry

(144) The majority of competitors responding to the Commission's market investigation considered that it was difficult or moderately difficult for a producer of mineral fibre sandwich panels to start producing foam sandwich panels.¹⁵⁴ Market participants indicated that starting production of foam sandwich panels takes 12 months to 2 years and involves an investment of around EUR 1.5 – 3 million.¹⁵⁵

(145) Nevertheless, despite identifying the above-mentioned difficulties for starting production of foam sandwich panels, a significant number of market participants confirmed that there has been market entry during the last 3 years, including in the CEE region.¹⁵⁶ According to market participants, recent entrants in the CEE region include Romconstruct, Bilka, Impro, Polar, MBS, Buzau Romania, Kamaridis Global Wire, Pro Invest Group Romania and Evropan Bulgaria.¹⁵⁷

(146) In addition, market participants indicated that for already existing suppliers of foam sandwich panels the most relevant obstacles in order to start selling foam sandwich panels, notably in Romania, Hungary, Slovakia or Czechia are mainly having a sales team and established commercial relationships. Investment in machinery/technology, compliance with technical standards and regulatory rules are also perceived as obstacles, but by a smaller number of market participants than those that considered sales team as an obstacle.¹⁵⁸

(147) Moreover, several market participants, including one competitor, noted that EU-supported funding to expand insulating panel production in the CEE is likely to expand production capacity for foam sandwich panels in the region.¹⁵⁹ As a result, further entry in the CEE region can likely be expected, also due to EU-supported funding opportunities.

(148) In conclusion, the market investigation confirmed that entry, especially in the CEE region, is not subject to high barriers and further entry is likely to take place.

5.3.2.6. Effects of the Transaction

(149) The market investigation confirmed that already pre-Transaction Kingspan is a market leader in relation to foam sandwich panels in the EEA. In particular, competitors seem to be wary of Kingspan's increasing market power gained through acquisitions of competitors in the industry.

¹⁵⁴ Q1 Questionnaire to competitors, question C.16.

¹⁵⁵ Q1 Questionnaire to competitors, question C.15.

¹⁵⁶ Q1 Questionnaire to competitors, question C.19.

¹⁵⁷ Q1 Questionnaire to competitors, question C.19, Q2 Questionnaire to customers, question C.12.

¹⁵⁸ Q1 Questionnaire to competitors, question C.15.

¹⁵⁹ Confirmed non-confidential minutes of a call with a competitor on 16.11.2020.

- (150) The majority of competitors expect the transaction to have a negative effect on their company.¹⁶⁰ A competitor expressed their opinion about the impact on their company in the CEE region as follows: *“Kingspan's market power is once again severely restricting expansion plans for us in the EU market by occupying the small market in Romania. If the new acquisition pushes its way to Central Europe with its cheap products, this will damage the acceptance of the product in general, since products of undemanding quality are reputation-damaging. A service that is usually offered by regional companies is not to be expected, so that the price pressure will intensify, which, due to the unequal competitive conditions between Central and Eastern Europe, can lead to the abandonment of some companies, which is a high quality loss for our construction industry would. [translated text]”*¹⁶¹
- (151) Nevertheless, in the first place, while competitors expressed concerns notably in relation to Kingspan’s further increasing size and market position in Europe, the concerns were not necessarily specific to the countries in which the Transaction leads to affected markets. One competitor indicated, for example, that *“[t]his acquisition will create an effect to narrow the market in terms of players and Kingspan Group will [obtain] higher market power.”*¹⁶² Another competitor indicated that *“KINGSPAN Group will be stronger. Competition is clearly affected.”*¹⁶³ In addition, in several other instances concerns expressed by competitors and customers were also not Transaction-specific, but specific to the Notifying Party’s numerous acquisitions of the preceding decade and to a market dynamics in geographic markets not affected by the current Transaction. For instance, competitors based in Western Europe noted that *“Kingspan has been monopolizing this business for many years [...] They have used their monopoly in the UK-Ireland market (80% of the market there) to make excess cash flows and use this to buy all competitors around the world without any objection from Europe.”*¹⁶⁴; *“Further helping the monopolization of our sector by not blocking any acquisition of Kingspan. Incredible that this is still allowed. We cannot understand how Europe anti compete laws do not intervene.”*¹⁶⁵; *“All transaction that increase even more the size and power of Kingspan in the foam sandwich panel is negative for competition.”*¹⁶⁶
- (152) In the second place, more competitors expect the Transaction to lead to price decreases than price increases.¹⁶⁷ A number of competitors anticipate *“more aggressive sales/prices”* from the merged entity.
- (153) In the third place, a majority of competitors that expressed an opinion expects the quality of the products offered by the merged entity to remain the same post-Transaction.¹⁶⁸

¹⁶⁰ Q1 Questionnaire to competitors, question D.1.

¹⁶¹ Q1 Questionnaire to competitors, question D.1.

¹⁶² Q1 Questionnaire to competitors, question D.1.

¹⁶³ Q1 Questionnaire to competitors, question D.1.

¹⁶⁴ Q1 Questionnaire to competitors, question D.7.

¹⁶⁵ Q1 Questionnaire to competitors, question D.1.

¹⁶⁶ Q1 Questionnaire to competitors, question D.1.

¹⁶⁷ Q1 Questionnaire to competitors, question D.2.

¹⁶⁸ Q1 Questionnaire to competitors, question D.2.

- (154) In the fourth place, more than half of the competitors who expressed an opinion expect the choice of products offered by the merged entity to remain the same or to increase post-Transaction. ¹⁶⁹
- (155) In the fifth place, the majority of competitors expect innovation by the merged entity to remain the same or to increase post-Transaction. ¹⁷⁰
- (156) Moreover and most importantly, the majority of customers expect the Transaction (i) to have a neutral or positive effect on their company, (ii) to have a neutral effect on prices and choice, and (iii) to increase quality and innovation in relation to foam sandwich panels. ¹⁷¹
- (157) Thus, the Commission notes that the feedback as regards the potential effects of the Transaction has been mixed. On the one hand, some market participants (mainly competitors) expressed some concerns regarding Kingspan's size and increasing market position. On the other hand, more competitors expect a price decrease than a price increase post-Transaction and even aggressive sales or prices. Moreover, the majority of customers expect the Transaction to have a neutral effect on prices and choice and even an increase in quality and innovation.
- (158) Therefore, on balance, the Commission considers that the Transaction would be unlikely to lead to the creation or strengthening of a dominant position or to other significant horizontal non-coordinated effects in foam sandwich panels at a national or cross-border regional level.

5.3.3. *Conclusion on horizontal non-coordinated effects*

- (159) Based on the considerations presented in paragraphs (113) - (158) and in view of the results of the market investigation and all evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal non-coordinated effects in the market for foam sandwich panels at a national or cross-border regional level.

6. CONCLUSION

- (160) For the above reasons, considering that the Transaction does not raise serious doubts as to its compatibility with the internal market, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

¹⁶⁹ Q1 Questionnaire to competitors, question D.2.

¹⁷⁰ Q1 Questionnaire to competitors, question D.2.

¹⁷¹ Q2 Questionnaire to customers, questions D.1 and D2.