

# Anticipated acquisition by Ever 2479 Limited of Eurobond Laminates Limited

## Decision on relevant merger situation and substantial lessening of competition

**ME/6618/16**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 12 August 2016. Full text of the decision published on 12 September 2016.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

### SUMMARY

1. Ever 2479 Limited (**Ever**) has agreed to acquire Eurobond Laminates Limited (**Eurobond**) (the **Merger**). Ever and Eurobond are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of panels, made of an insulated core covered by two steel facings (**sandwich panels**). The core of the panels are made either of polyurethane or polyisocyanurate foam, or of mineral wool. The panels are used in the construction industry in cladding or roofing applications.
4. Ever is part of the Kingspan group of companies, which focuses predominantly on the manufacture of sandwich panels incorporating a foam core (**foam panels**) (which account for more than [X]% of its EEA-wide sales),<sup>i</sup> whereas Eurobond is only active in the supply of sandwich panels that

incorporate a non-combustible stone wool insulation core (**mineral wool panels**).

5. The CMA did not find evidence to suggest that foam panels should be considered within the same product frame of reference as mineral wool panels on the basis of demand- or supply-side substitution. The CMA therefore defined the supply of foam panels and the supply of mineral wool panels as two separate product frames of reference.
6. In relation to the geographic frame of reference, the CMA found that UK customers import a significant proportion of mineral wool panels from suppliers located outside the UK and have either already purchased mineral wool panels from the EEA or regional suppliers, or would be willing to switch to non-UK suppliers in response to a 5 to 10% increase in price. The CMA therefore assessed the impact of the Merger in the EEA.
7. The CMA examined whether the Merger may give rise to horizontal unilateral effects through the loss of competition in the supply of mineral wool panels in the EEA. The CMA found that the Parties are not competing closely against each other, and that the constraint from at least 12 remaining suppliers of mineral wool panels will be sufficient enough to constrain the merged entity. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition in the supply of mineral wool panels in the EEA.
8. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

9. Ever is a holding company of Joris Ide, a Belgium headquartered supplier of sandwich panels and construction sheets. Joris Ide has manufacturing facilities in Belgium, France, Germany, Hungary, Romania and Russia. Ever is part of the Kingspan group of companies (**Kingspan**), which manufactures and sells sandwich panels. Kingspan focuses predominantly on the manufacture of foam panels. The turnover of Kingspan in 2015 was around £2 billion worldwide and around £592.9 million in the UK.
10. Eurobond manufactures composite wall and ceiling panels used in both internal and external steel cladding systems that incorporate a non-combustible stone wool insulation core – mineral wool panels. Eurobond has supplied products to building projects both in the UK and overseas. Eurobond

only manufactures mineral wool panels and achieves more than [X]% of its mineral wool panel sales in the UK where it has its production facilities. The turnover of Eurobond in 2015 was around £23.1 million worldwide and around £[X] million in the UK.

## Transaction

11. On 30 April 2016, Ever entered into a sale and purchase agreement to purchase 100% of the share capital of Eurobond. Completion of the transaction is conditional upon the CMA issuing a decision not to refer the transaction for a Phase 2 investigation.

## Jurisdiction

12. As a result of the Merger, the enterprises of Ever and Eurobond will cease to be distinct.
13. The UK turnover of Eurobond does not exceed £70 million, so the turnover test in section 23(1)(b) of the Act is not satisfied.
14. The Parties overlap in the supply of sandwich panels, with a combined share of supply of all sandwich panels (ie both foam and mineral wool panels)<sup>1</sup> of [70-80]% (with an increment of [0-5]%) in the UK, based on volume. The CMA therefore considers that the share of supply test in section 23 of the Act is met.
15. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 30 June 2016 and the statutory 40 working day deadline for a decision is therefore 24 August 2016.

## Counterfactual

17. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where,

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<sup>1</sup> Eurobond does not produce foam panels.

based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>2</sup>

18. In this case, there is no evidence supporting a different counterfactual, and the Parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## Frame of reference

19. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>3</sup>
20. The Parties overlap in the supply of sandwich panels. The Parties submitted that sandwich panels are made of an insulating core covered by two steel facings. They are mostly used in the construction industry as cladding or roofing, and can be load-bearing or non-load-bearing. Sandwich panels are produced in a variety of sizes and thicknesses, and may be made to order, according to specifications determined by the architect in respect of a particular construction project.
21. The Parties explained that the insulating core within sandwich panels is typically made either of polyurethane or polyisocyanurate foam, or of mineral wool. Kingspan predominantly produces foam panels (which account for more than [X]% of its EEA-wide sales),<sup>ii</sup> whereas Eurobond is only active in the supply of mineral wool panels.

## Product scope

22. The European Commission (the **Commission**) has previously considered the distinction between foam and mineral wool panels in its *Kingspan/Steel*

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<sup>2</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

<sup>3</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

*Partners*<sup>4</sup> decision. The Commission found that sandwich panels can be distinguished from other building materials, such as concrete and build up solutions, which only pose a limited constraint. The Commission also considered whether the market for sandwich panels could be further segmented according to the type of insulation core. It found a limited degree of demand-side substitutability between foam panels and mineral wool panels, as they meet different customer needs. The Commission found that foam panels have better insulation features and are cheaper than mineral wool panels. Foam panels are easier to mount, serve the needs of most customers, but have inferior fire resistance and acoustic insulation characteristics. Hence, customers would not switch from foam panels to mineral wool panels and vice versa in response to an increase in price of one relative to the other. Additionally, the Commission found that the production of sandwich panels cannot easily be switched from foam core to mineral wool core or vice versa.<sup>5</sup> The Commission ultimately left the exact product market definition open, as no competition concerns arose on any basis.

23. The Parties submitted that they support the Commission's reasoning in its *Kingspan/Steel Partners* decision in relation to the product frame of reference and consider foam and mineral wool panels to constitute separate product markets.
24. The CMA assessed whether there is demand- and/or supply-side substitutability between foam and mineral wool panels. As set out below, the majority of Parties' customers and competitors that responded to the CMA have largely confirmed the Commission's findings and the Parties' views with regard to product segmentation.

#### *Demand-side substitution*

25. Customer testing supported limited demand-side substitution between foam panels and mineral wool panels. Customer responses indicated that foam panels and mineral wool panels differ in their characteristics and price levels. In particular, all customers confirmed that foam panels have better insulation features, whereas mineral wool panels are more fire resistant and significantly more expensive. In addition, customers unanimously indicated that a 5 to 10%

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<sup>4</sup> COMP/M.7479, *Kingspan/Steel Partners*, 16 March 2015.

<sup>5</sup> Given the very different manufacturing processes (foam panel production lines need to be able to cope with high temperatures caused by chemical reactions that occur in the production process, whereas mineral wool panel production lines do not), production lines almost invariably only produce either foam or mineral wool panels. The Commission's investigation revealed that installing a new line would cost €5 to 10 million and take two to three years (although retrofitting foam machines to produce mineral wool panels – and vice versa – is possible, albeit costly with significant lead times of up to 12 months and machine downtime of up to one month).

price increase would not cause them to switch between these two types of sandwich panels.

26. The majority of competitors that responded to the CMA have also confirmed that demand-side substitution between foam and mineral wool panels is extremely limited and acknowledged that the characteristics of the two products are different. In addition, the majority of competitors responded that customers would not switch from mineral wool panels to foam panels or vice versa in response to a 5 to 10% price increase.
27. The CMA therefore considers that the evidence obtained indicates that foam panels and mineral wool panels are not substitutable from a demand-side perspective.

#### *Supply-side substitution*

28. Evidence from competitors generally indicated that there is limited supply-side substitution between foam and mineral wool panels. Competitors explained that the production processes for foam panels and for mineral wool panels are different. When producing mineral wool panels, manufacturers purchase ready-made rock wool and press it between panels. In contrast, during the production of foam panels, manufacturers compose the relevant chemicals on site, subsequently pass them through a mixing head, and adhere them as a final step between panels, which requires technical know-how.
29. Competitors that responded to the CMA's enquiries indicated that it would take between 6 and 12 months (9.3 months on average) and require an investment of between £1 million and £6 million to convert a foam panel production facility into a mineral wool panel production facility. Similarly, it would take between 6 and 12 months (11 months on average) and require an investment of between £1.5 million and £6 million to convert a mineral wool panel production facility into a foam panel production facility.
30. In addition, several competitors noted that it would only be possible to switch production if the production equipment was originally designed to produce both foam and mineral wool panels. One competitor responded that it would make more commercial sense to construct a new manufacturing facility rather than converting the existing production. Another competitor explained that for high volume production, as used by Eurobond and Kingspan, foam or mineral wool equipment was specialised and manufacturers would need to purchase new production equipment to switch panel production.
31. On the basis of the above, the CMA considers that foam panels and mineral wool panels are not substitutable from a supply-side perspective.

### *Conclusion on product scope*

32. For the reasons set out above, the CMA's market testing is consistent with the Commission's findings that there is limited demand- and supply-side substitution between foam and mineral wool panels. The CMA therefore defined the supply of foam panels and the supply of mineral wool panels as two separate product frames of reference.
33. The CMA's market testing is also consistent with the Commission's findings that sandwich panels are distinguishable from other building materials. However, the CMA considers that there is no need to conclude on whether there is a wider market with respect to other building materials, given the CMA's conclusions on the effect of the Merger in the narrower frames of reference of mineral wool panels and foam panels.

### **Geographic scope**

34. In its *Kingspan/Steel Partners*<sup>6</sup> decision the Commission considered the appropriate geographic frame of reference for the supply of mineral wool panels to be EEA-wide in scope. In relation to foam panels, the Commission found that the relevant geographic market was likely to be neither EEA-wide, nor national in scope. Rather, the relevant geographic market was likely to be cross-border regions narrower than the whole of the EEA. The Commission ultimately left the exact geographic market definition open, as no competition concerns arose on any basis.
35. The Parties submitted that they support the Commission's reasoning in its *Kingspan/Steel Partners* decision in relation to the geographic frame of reference for the supply of mineral wool panels. The Parties explained that there are no import duties or trade barriers within the EEA and that the products throughout this area are largely homogenous. The Parties also submitted that relative transport costs are low at around 5% for distances up to 1500 km. Existing trade patterns of mineral wool panels indicate that sales are often made over long distances across the entire EEA. Finally, the Parties submitted that in most EEA countries, including the UK, imports account for a substantial proportion of sales of mineral wool panels, whereas suppliers do not require a local production presence to exercise a competitive constraint.

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<sup>6</sup> COMP/M.7479, *Kingspan/Steel Partners*, 16 March 2015.

36. Since the CMA found mineral wool and foam panels to be two distinct product markets and the Parties only overlap in mineral wool panels,<sup>7</sup> the following assesses the geographic scope of the supply of mineral wool panels only.
37. The CMA found that imports of mineral wool panels into the UK accounted for 35% of all mineral wool panels purchased by UK customers in 2015, based on value. Furthermore, the majority of customers that responded to the CMA's enquiries indicated that they have either already purchased mineral wool panels from the EEA or regional suppliers, or would be willing to switch to non-UK suppliers in response to a 5 to 10% increase in price.
38. Competitors also considered the appropriate geographic frame of reference for the supply of mineral wool panels to be EEA-wide. Competitors submitted that they either (i) have exported, (ii) currently export, and/or (iii) would consider exporting mineral wool panels to the EEA markets. In addition, one competitor perceived a substantial amount of customers as readily willing to switch to products from abroad, if they were cheaper producers.
39. Based on the above, the CMA considers that the Parties' customers and competitors have confirmed the Commission's findings and the Parties' views in relation to the geographic frame of reference for the supply of mineral wool panels. The CMA therefore considers that there is sufficient evidence to believe the appropriate frame of reference for the supply of mineral wool panels to be EEA-wide.

#### *Conclusion on geographic scope*

40. For the reasons set out above, the CMA has considered the impact of the Merger in the EEA.

#### ***Conclusion on frame of reference***

41. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of mineral wool panels in the EEA.

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<sup>7</sup> The CMA understands that Eurobond has previously considered entering the foam panel market. The CMA therefore considered whether the Merger would give rise to horizontal unilateral effects through the loss of potential competition – both actual future entry and the perceived threat of entry – in the supply of foam panels. See paragraphs 43-44 below.



## Competitive assessment

### *Horizontal unilateral effects*

42. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.<sup>8</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition in relation to horizontal unilateral effects through the loss of actual competition in the supply of mineral wool panels in the EEA.
43. The CMA also considered horizontal unilateral effects through the loss of potential (actual or perceived) competition in the supply of foam panels, because Eurobond had considered entry into the foam panels market in the past.
44. However, the CMA dismissed this theory of harm based on the following:
  - (a) Eurobond did not find it attractive to actually enter the foam panels market and, therefore, had no concrete plans in place that would have made entry likely; and
  - (b) entry into the foam panels market would incur substantial sunk costs and would take longer than a year.
45. Hence, the CMA only assessed the loss of actual competition in the supply of mineral wool panels in its competitive assessment.

### *Loss of actual competition in the supply of mineral wool panels*

46. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA has considered:
  - (a) shares of supply;
  - (b) the closeness of competition between the Parties; and
  - (c) competitive constraints from alternative suppliers.

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<sup>8</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

## Shares of supply

47. Ever is the largest supplier of mineral wool panels in the EEA with a share of supply of [20-30]%. Eurobond's share is significantly lower, as shown in Table 1 below. The combined share of supply of the merged entity is therefore [20-30]% (with an increment of [0-5]%) in the EEA.

**Table 1: Shares of supply of mineral wool panels in the EEA by volume, 2015**

<b>Firm</b>	<b>Volume (m<sup>2</sup>)</b>	<b>Share of supply (%)</b>
Ever	[2,600,000-4,000,000]	[20-30]
Eurobond	[0-650,000]	[0-5]
<b>Merged entity</b>	<b>[2,600,000-4,000,000]</b>	<b>[20-30]</b>
Trimo	[1,300,000-2,600,000]	[10-20]
Ruukki	[1,300,000-2,600,000]	[10-20]
Isopan	[650,000-1,300,000]	[5-10]
Paroc	[650,000-1,300,000]	[5-10]
Arcelor Mittal	[650,000-1,300,000]	[5-10]
Brucha	[650,000-1,300,000]	[5-10]
Metecno	[650,000-1,300,000]	[5-10]
Marcegaglia	[0-650,000]	[0-5]
Romakowski	[0-650,000]	[0-5]
Tata Steel	[0-650,000]	[0-5]
Poliuretanos/Hurre	[0-650,000]	[0-5]
Isoclad	[0-650,000]	[0-5]
<b>Total market</b>	<b>13,335,300</b>	<b>100</b>

Source: Merger Notice and third party responses.

48. The CMA therefore considers that the Parties' combined share of supply does not raise *prima facie* competition concerns.

## Closeness of competition

49. The Parties told the CMA that, although mineral wool panels tend to be custom-made according to customer requirements, and vary according to their end-use (whether roofing, walls, cold-store etc.) and physical properties (eg their thickness), they are relatively commoditised products.
50. Third Parties confirmed this view, yet also indicated a certain degree of product differentiation given order specification and need for certain fire resistance certification in the UK.<sup>9</sup>
51. The CMA therefore assesses the closeness of competition between the Parties in the following paragraphs.

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<sup>9</sup> UK specific fire resistance product accreditation (LPCB approval) is required for insurance reasons in the UK.

52. Although Ever is the largest supplier of mineral wool panels in the EEA, it has a very small presence in the supply of such panels in the UK, suggesting that the Parties mainly supply customers in different locations.
53. Table 2 below shows Ever's small sales volume of mineral wool panels in previous years that was generated by its subsidiary, Hoesch, which Ever acquired in August 2012.<sup>iii</sup> At the end of 2013, Ever closed Hoesch's UK sales office as it was loss-making. Following this closure, Ever's low level of sales in the UK comprised only of reactive sales (ie when Ever was approached by customers looking to purchase mineral wool panels for a specific construction project in the UK) – [REDACTED] (see Table 2). Eurobond, on the other hand, mainly sells mineral wool panels in the UK, which accounts for [REDACTED]% of Eurobond's total sales.

**Table 2: Ever's sales volume of mineral wool panels in the UK, 2012-2015**

Year	Sales (m <sup>2</sup> )	Estimated share (%)
2015	[0-50,000]	[0-5]
2014	[0-50,000]	[0-5]
2013	[0-50,000]	[0-5]
2012	[0-50,000]	[0-5]

Source: Merger Notice.

54. The fact that Ever mainly supplies customers outside the UK, whilst Eurobond mainly supplies customers in the UK suggests that the Parties do not compete closely for the same customers.
55. Furthermore, although the CMA does not consider the UK to be the appropriate frame of reference for the supply of mineral wool panels, it is clear from Table 2 that, if the Merger were to be assessed on the basis of a UK-only frame of reference, the increment accounted for by the Merger would be very low and, [REDACTED].
56. Internal documents submitted by Ever indicate that [REDACTED]. In Kingspan's strategy plan the CMA has found [REDACTED].
57. Eurobond submitted that in the past 20 years, it has never been aware of or come across Kingspan selling mineral wool panels in the UK market, and hence it has never considered Ever to be a credible competitor in the supply of mineral wool panels. According to Eurobond, in that same period of time, credible competition in the UK has come from the three main importers: Trimo, Ruukki and Paroc.
58. The majority of customers that responded to the CMA indicated that the Parties are not close competitors and do not compete in the supply of mineral

wool panels. A few customers indicated that Ever and Eurobond have participated in direct bids to supply mineral wool panels, reflecting the small scale presence of Ever in the UK mineral wool panel market in the past.

59. The majority of competitors that are active in the supply of mineral wool panels indicated Eurobond as their closest competitor. Various other competitors, notably Ruukki, were considered to be competing more closely to Eurobond than Ever/Kingspan in the supply of mineral wool panels.
60. For the reasons set out above, the CMA believes that Ever and Eurobond are not competing closely for UK customers of mineral wool panels.
61. Given that Ever supplies mainly customers outside the UK and Eurobond mainly supplies customers in the UK, the CMA also believes that Ever and Eurobond are not competing closely in the supply of mineral wool panels in the EEA.

#### *Competitive constraints from alternative suppliers*

62. Unilateral effects are more likely where customers have little choice of alternative supplier. The CMA has considered whether there are alternative suppliers of mineral wool panels which would provide a competitive constraint on the merged entity post-Merger.
63. The Parties named 12 competitors that are currently active in the supply of mineral wool panels in the EEA (see Table 1 above).
64. Customers that responded to the CMA named Ruukki and Trimo as alternative suppliers of mineral wool panels and mentioned them more or as frequently as Kingspan or Joris Ide,<sup>10</sup> which is consistent with the fact that Ruukki and Trimo are the second and third largest suppliers (after the combined entity) in the supply of mineral wool panels in the EEA. Furthermore, third parties indicated a number of other mineral wool panel suppliers, such as Isoclad, Dagard, Paroc, Arcelor Mittal, Trimo, and other unnamed specialist/project suppliers.
65. The evidence collected by the CMA therefore shows that there are a number of alternative suppliers currently supplying mineral wool panels in the EEA and having strong positions in the market (see Table 1 above). The CMA

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<sup>10</sup> The CMA notes that the sample of customers is likely to be biased towards naming Kingspan or Joris Ide as alternative suppliers to Eurobond for mineral wool panels, as all but one customer purchased foam panels from Kingspan.

therefore believes that there will remain a sufficient number of competitors post-Merger to effectively constrain the merged entity.

### *Conclusion*

66. For the reasons set out above, the CMA believes that the Parties are not competing closely with each other in the supply of mineral wool panels in the EEA, and that there will remain a sufficient number of competitors post-Merger to effectively constrain the merged entity. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects through the loss of actual competition in the supply of mineral wool panels in the EEA.

### **Third party views**

67. The CMA contacted customers and competitors of the Parties. None of the Parties' customers raised concerns in relation to the Merger. Some competitors raised concerns in relation to the Merger.
68. Third party comments have been taken into account where appropriate in the competitive assessment above.

### **Decision**

69. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.
70. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Stephanie Canet**  
**Director, Mergers**  
**Competition and Markets Authority**  
**12 August 2016**

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<sup>i</sup> This statement relates only to Kingspan's sandwich panel sales.

<sup>ii</sup> See endnote (i).

<sup>iii</sup> Some of the sales indicated in Table 2 were generated by Joris Ide.