

Anticipated acquisition by Kingspan Holdings (Panels) Limited of Building Solutions (National) Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6861/19

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 7 April 2020. Full text of the decision published on 6 May 2020.

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SUMMARY

1. On 7 October 2019, Kingspan Holdings (Panels) Limited agreed to acquire Building Solutions (National) Limited (**Building Solutions**) (the **Merger**). Kingspan Holdings (Panels) Limited is a wholly-owned subsidiary of Kingspan Group plc. Kingspan Group plc and its subsidiaries are together referred to as **Kingspan**. Kingspan and Building Solutions are together referred to as the **Parties** (and for statements referring to the future, as the **Merged Entity**).
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Kingspan Holdings (Panels) Limited and Building Solutions is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. 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 standard foam sandwich panels (**FSPs**) and single skin construction sheets in the United Kingdom (**UK**). FSPs are a type of insulated cladding that can be applied to the walls and roofs of commercial and industrial buildings. Single skin construction sheets refer to

single pieces of profiled steel sheets that are used as non-insulated cladding for walls and roofs and for decking. The CMA considers the geographic frame of reference to be UK-wide for both standard FSPs and single skin construction sheets.

4. The CMA has, therefore, assessed whether the Merger gives rise to horizontal unilateral effects in the supply of standard FSPs in the UK and separately, in the supply of single skin construction sheets in the UK.

Standard FSPs

5. For the supply of standard FSPs in the UK, the Parties have a very high combined share of supply, of [70-80]% in the UK, with a material increment in share of supply, of [5-10]%, being brought about by the Merger. Kingspan is by far the largest supplier in the market at present, with Building Solutions being one of only two other sizeable (but much smaller) suppliers in this market (the other being Tata Steel).
6. The CMA found that the Parties' product offerings are similar and that there is a material degree of competitive interaction between the Parties at present. The CMA therefore considers that the Merger would eliminate a significant competitive force in Building Solutions, removing one of the few remaining constraints on Kingspan in an already highly concentrated market.
7. As noted above, the CMA found that the Merged Entity would face only one other sizeable supplier (Tata Steel) post-Merger. While Tata Steel would be an important competitor to the Merged Entity, its share of supply, at [20-30]%, highlights its significantly more limited position than the Merged Entity. The CMA found that other suppliers of standard FSPs (which are all importers of products from outside the UK and face additional barriers in supplying UK-based customers), such as ArcelorMittal, impose only a very limited constraint on the Parties.
8. While the Parties submitted that twin skin construction sheets are essentially identical to standard FSPs and can be used for the same end-use applications, the CMA found that the constraint exercised by these products is also limited, in particular because they are a realistic alternative for only a limited proportion of projects. The CMA considers, in any case, that the Merger would give rise to significant competition concerns in a combined market for standard FSPs and twin skin construction sheets, given the Merged Entity would still remain by far the largest supplier, and the Merger would still eliminate one of the few competing suppliers with a material presence within a concentrated market.

9. The CMA believes that entry and/or expansion would not be sufficiently timely, likely or sufficient to offset the effect of the Merger on competition. The Parties were unable to identify any examples of entrants into the market in the last five years.
10. On this basis, the CMA believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of standard FSPs in the UK.

Single skin construction sheets

11. The CMA also assessed the impact of the Merger in the supply of single skin construction sheets in the UK. The CMA found that the Parties would have a moderate combined share of supply, of [20-30]%, with an increment of [5-10]% brought about by the Merger. The CMA found that there would remain at least four strong alternative options to the Parties (namely Thomas Panels, Coverworld, Firth Steels and Tata Steel) post-Merger. In light of the Parties' moderate market position and the competitive constraints that they will continue to face post-Merger, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC in the supply of single skin construction sheets in the UK.

Decision

12. The CMA believes that it is or may be the case that: (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
13. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 16 April 2020 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

14. Kingspan is a global supplier of high-performance insulation and building envelope solutions and is listed on the Irish stock exchange. Amongst other products, it supplies FSPs and construction sheets in the UK. Kingspan supplies these through various subsidiaries, including Kingspan Ltd and Joris

Ide Limited (**Joris Ide**). The turnover of Kingspan in 2019 was approximately £4.1 billion worldwide, of which approximately £[REDACTED] million was generated in the UK.

15. Building Solutions is a subsidiary of SIG Plc (**SIG**), a supplier of insulation, roofing, commercial interiors and specialist construction products, which is listed on the London Stock Exchange. Building Solutions also supplies FSPs and construction sheets in the UK under four different trading names; Steadmans, Trimform Products, Advanced Cladding & Insulation and United Roofing Products. Building Solutions' turnover in 2018 was approximately £60 million, all of which was generated in the UK.

Transaction

16. On 7 October 2019, the Parties entered into a share purchase agreement for Kingspan Holdings (Panels) Limited to purchase the entire issued share capital of Building Solutions from SIG for £37.5 million. The purchase is subject to regulatory approval from the CMA.¹ The Merger is not being reviewed by any competition authorities other than the CMA.
17. Kingspan initially submitted that its rationale for the Merger was to benefit from Building Solutions' complementary customer and product focus: while Kingspan focuses on large industrial, retail, commercial and logistics sector customers for FSPs, it submitted that Building Solutions' customer base for FSPs lay in the agricultural and light industrial sectors. In addition, Kingspan submitted that the Merger would allow Kingspan to benefit from Building Solutions' [REDACTED] in single skin construction sheets.² At the Issues Meeting, Kingspan further submitted that it had entered into the Merger to [REDACTED], which Kingspan does not supply.³
18. Kingspan also noted that, more generally, the Merger formed part of its M&A strategy to acquire [REDACTED].⁴ In this regard, the CMA notes that Merger is one of several recent acquisitions by Kingspan of suppliers of sandwich panels and construction sheets, including the acquisitions of Steel Partners/Joris Ide (a supplier of FSPs) in 2015 and the acquisitions of Euroclad and Eurobond (a

¹ Clause 4.1 of the SPA, Annex 1 to Final Merger Notice submitted by the Parties on 7 February 2020 (**FMN**).

² Building Solutions has three single skin construction sheet manufacturing facilities in the UK, whereas Kingspan has only one in Cardiff (FMN, para 54).

³ Oral submission made at Issues Meeting video conference attended by the Parties and the CMA on 18 March 2020 (**Issues Meeting**) by [REDACTED]. [REDACTED].

⁴ FMN, para 88.

mineral fibre sandwich panel business and a twin skin construction sheet business) in 2016.

19. The CMA found Kingspan's internal documents were consistent with some aspects of its stated rationale. For example, several internal documents referred to the complementary nature of Building Solutions' FSPs offering.⁵ (The significance of the extent of complementarity between the Parties' FSP offerings is considered in detail within the CMA's competitive assessment at paragraphs 80 to 99.) Kingspan's documents did not, however, support Kingspan's later submission that [✂].

Procedure

20. The Merger was considered at a Case Review Meeting.⁶

Jurisdiction

21. Each of Kingspan Holdings (Panels) Limited and Building Solutions is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
22. The Parties overlap in the supply of standard FSPs in the UK, with a combined share of supply of [70-80]% (by volume), with an increment of [5-10]% brought about by the Merger.⁷ The Parties also overlap in the supply of single skin construction sheets in the UK with a combined share of supply of [20-30]% (by volume), and an increment of [5-10]% brought about by the Merger.⁸ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
23. The CMA 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.
24. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 12 February 2020 and the statutory 40 working day deadline for a decision is therefore 7 April 2020.

⁵ See for example FMN, Annexes 3 and 9.

⁶ See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34.

⁷ See Table 1.

⁸ See Table 2.

Counterfactual

25. 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, 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.⁹
26. In this case, the CMA believes that the evidence does not support a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual. The CMA has considered each of the Parties' current strategies to target other product segments within standard FSPs that have historically been the strategic focus of the other Party below in its competitive assessment of the impact of the Merger on the supply of standard FSPs in the UK.

Frame of reference

27. 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 merging 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.¹⁰
28. The Parties overlap in the supply of standard FSPs and single skin construction sheets in the UK.¹¹ The scope of the frame of reference for each product is discussed separately in further detail below.

⁹ *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).

¹⁰ *Merger Assessment Guidelines*, paragraph 5.2.2.

¹¹ The Parties also overlap in the UK in the supply of purlins, flashings and steel gutters used for the purposes of building construction. However, given that the Parties' overlap in these activities is limited and the CMA believes that no competition concerns arise in relation to these activities, this is not addressed further in this decision.

Standard FSPs

Product scope

29. FSPs (also known as composite panels) are a type of insulated cladding that can be applied to walls and roofing of commercial and industrial buildings.¹² The foam is sandwiched between two facings made of steel and is typically made of polyurethane, polyisocyanurate or polystyrene. FSPs can be standard or refrigerating, the main difference being that refrigerating FSPs have a thicker insulation layer and are typically used on the interior rather than exterior of a building envelope.
30. In some cases, suppliers seek to persuade architects to include their specific product in the plans for a construction project (known as a **closed specification** project) before a contractor is appointed. In contrast, **open specification** projects refer to projects where no specific product is specified in the architectural plans and thus the contractor decides which product to purchase. The Parties' customers comprise both construction contractors (typically specialised cladding contractors that are more likely to buy directly from the supplier) and distributors (which tend to be used by smaller contractors to purchase indirectly).
31. The Parties submitted that the definition of the appropriate product frame of reference in relation to standard FSPs could be left open, but that in particular:¹³
- (a) no distinction should be made between standard and refrigerating FSPs, based on demand and supply-side substitutability considerations. In particular, the Parties submitted that whilst refrigerating FSPs are thicker in principle, standard FSPs may also be used for refrigeration purposes and that the production processes for both are identical, with no additional capital or labour being required;¹⁴ and
 - (b) twin skin construction sheets (profiled steel sheets that can be used as insulated cladding for walls and roofs, and for decking) pose a significant competitive constraint on FSPs,¹⁵ and that, while supply-side substitution between FSPs and twin skin construction sheets is very limited, the two product types are nearly identical from a demand-side perspective,

¹² Other types of insulated cladding include mineral wool sandwich panels and twin skin construction sheets.

¹³ FMN, para 130.

¹⁴ FMN, para 120.

¹⁵ FMN, para 111.

notwithstanding certain differences in thermal performance,¹⁶ and are substitutable across various end-use applications with one not necessarily being more suitable over the other in any particular category of construction projects.¹⁷

32. The Parties' overlapping activities in the supply of standard FSPs is the starting point for the CMA's assessment of the product frame of reference. The CMA has considered whether the product frame of reference should be widened to include (i) refrigerating FSPs; and (ii) twin skin construction sheets. The CMA has also considered whether the product frame of reference should be further segmented within standard FSPs by project type (between closed and open specification projects) or by end-use (between walls and roofs).

Refrigerating FSPs

33. The CMA believes that the product frame of reference for standard FSPs should not be widened to include refrigerating FSPs.
34. There is limited demand-side substitutability between standard FSPs and refrigerating FSPs. The CMA understands that refrigerating FSPs require extra insulation and are often aesthetically unsuitable as substitutes for standard FSPs as they tend to have a through fixed system, leaving the screws exposed. Consequently, they are used mainly in the interior rather than exterior of buildings.¹⁸ Evidence submitted by the Parties also indicates that less than 2% of FSPs placed on roofs are refrigerating FSPs.¹⁹ A large majority of customers that responded to the CMA's Merger investigation indicated that they would be unlikely to switch to refrigerating FSPs following a 5% price increase in standard FSPs, which is consistent with the customer feedback received by the European Commission (the **Commission**) in *Kingspan/Steel Partners*.²⁰
35. There is also limited supply-side substitutability between standard FSPs and refrigerating FSPs.²¹ In *Kingspan/Steel Partners*, competitor feedback

¹⁶ FMN, paras 111-112, 114.

¹⁷ Parties' presentation to CMA at Issues Meeting of 18 March (**Issues Meeting Presentation**).

¹⁸ FMN para 120.

¹⁹ FMN para 120. The remaining 98% are standard FSPs.

²⁰ Case COMP/M.7479, *Kingspan/Steel Partners (Kingspan/Steel Partners)*, para 23. The Commission left the exact product market definition open for FSPs as the transaction did not raise concerns even under the narrowest product market definition.

²¹ While the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone, the CMA may widen the scope of the market where there is evidence of supply-side substitution. Supply-side factors can expand the market where: (i) firms outside the market can quickly (generally

received by the Commission indicated that the production of refrigerating panels entailed higher costs for suppliers and typically used a different route to market to standard foam panels.²² Competitor responses received by the CMA in its Merger investigation indicated that, while it is technically possible to adapt a production line of standard FSPs to manufacture refrigerating FSPs, this would require material additional cost and time. The CMA notes that the competitor set varies between each of the two categories of product, indicating that competitive conditions differ between the two categories. The CMA notes, for example, that certain suppliers (eg Tata Steel and Building Solutions) supply standard but not refrigerating FSPs, while others (eg Hemsec) supply refrigerating but not standard FSPs.

36. The CMA therefore does not believe that the product frame of reference should be widened to include refrigerating FSPs.

Twin skin construction sheets

37. Twin skin construction sheets (also known as built-up systems) comprise, like FSPs, a layer of material sandwiched between two steel facings and can also be used for both roofing and walls.
38. In *Kingspan/Steel Partners*, the Commission considered that sandwich panels could be distinguished from other building materials such as concrete and built-up solutions (construction sheets and insulated material on site), which pose only a limited constraint.²³ Similarly, in *Ever/Eurobond*, the CMA distinguished sandwich panels from other building materials and, in addition, found limited demand side substitutability between different types of sandwich panels (in particular, between foam and mineral wool sandwich panels due to the latter's considerably higher fire resistance properties).²⁴ As mineral wool insulation is used in the majority of twin skin construction sheets supplied in the UK (which, as a result, have lower thermal insulation capability but higher fire resistance properties),²⁵ the CMA believes that this previous analysis is

within a year) shift production to products within the market; and (ii) the same firms compete to supply these different products, and the conditions of competition are the same. *Merger Assessment Guidelines*, para 5.2.17.

²² *Kingspan/Steel Partners*, para 23(i).

²³ *Kingspan/Steel Partners*, para 19.

²⁴ *Ever 2479 Limited/ Eurobond Laminates Limited ME.6618/16* (12 September 2016), para 25.

²⁵ FMN, para 112. The Parties submitted that approximately 95% of all twin skin construction sheets available in the market are made from mineral fibre.

broadly consistent with the existence of a distinction between standard FSPs and twin skin construction sheets in this case.²⁶

39. The CMA believes that the product frame of reference for standard FSPs should not be widened to include twin skin construction sheets on the basis of demand-side substitutability. A significant proportion of customers that responded to the CMA's Merger investigation stated that they would be unlikely to switch to twin skin construction sheets following a 5% price increase in standard FSPs. As discussed further below in the competitive assessment at paragraph 148, the Parties' internal documents also indicate that demand for twin skin construction sheets may be declining in favour of FSPs.
40. The CMA believes that there is also limited scope for supply-side substitution between standard FSPs and twin skin construction sheets. The production processes for standard FSPs and twin skin construction sheets are different (ie the products cannot be produced on the same production line).²⁷ Furthermore, the competitive landscapes for the two product types differ: for example, in the UK, Building Solutions has a significant position in standard FSPs but minimal activities in twin skin construction sheets; conversely CA, Thomas Panels, and Firth Steels supply twin skin construction sheets but have no or only marginal presence in standard FSPs.
41. The CMA therefore does not believe that the product frame of reference should be widened to include twin skin construction sheets. However, there is evidence of a degree of competitive interaction between standard FSPs and twin skin construction sheets. The CMA has therefore considered the constraint exerted by twin skin construction sheets on standard FSPs in its competitive assessment below in paragraphs 143-154.

Segmentations within standard FSPs

42. The supply of standard FSPs may be differentiated by type of sale (closed versus open specification) and end-use (roof versus wall).

²⁶ The Parties submitted that in *Kingspan/Steel Partners*, the Commission had confined the market to FSPs because they had never considered alternative market definitions in detail and had tended to define markets very narrowly based on product features or differences, and that complete and fully guaranteed twin skin/built-up systems were, to the best of the Parties' knowledge, unique to the UK market (FMN, para 111). The CMA has not placed weight on the Parties' arguments in this respect, noting that the Commission explicitly stated in *Kingspan/Steel Partners* that its market investigation, which included the UK, had confirmed that for the purposes of defining a relevant product market, sandwich panels can be distinguished from other building materials. The Commission's decision also specifically referred to distinguishing sandwich panels from the alternative of combining construction sheets and insulation material on site to form built-up solutions (FMN, para 111).

²⁷ The Parties acknowledged that the production process for twin skin construction sheets is different to that for FSPs (FMN, para 113).

43. The Parties did not make any submissions on whether these differences should give rise to separate product markets, and the CMA did not receive evidence to suggest that standard FSPs should be distinguished on either of these bases. The CMA has therefore considered any differences between these categories, where relevant, in its competitive assessment.

Geographic scope

44. The Parties submitted that the geographic scope of standard FSPs should be at least national, but that it was not necessary to reach a definitive conclusion on whether the relevant geographic market should be defined more widely than the UK.²⁸
45. In *Kingspan/Steel Partners*, the Commission considered (but did not definitively conclude) that the market for FSPs was most likely (cross-border) regional in scope and looked at hypothetical regional markets comprising production facilities in a 400 km radius.²⁹ Within the context of this case a 400 km radius would, as noted by the Parties, broadly correspond to the entirety of the UK.
46. Customers that responded to the CMA's Merger investigation indicated that they are unlikely to consider most suppliers outside of the UK to be viable alternatives to domestic suppliers due to higher transport costs and longer delivery times.³⁰
47. The CMA did not receive any evidence to suggest that the market might be narrower than UK-wide. The CMA notes in this regard that Kingspan serves the entire UK territory from its production facilities in Holywell and in Sherburn, and Building Solutions serves the entire UK territory from its production facility in Carlisle.³¹
48. Accordingly, the CMA has considered the impact of the Merger within the supply of standard FSPs in the UK.

²⁸ FMN, paras. 12-13.

²⁹ *Kingspan/Steel Partners*, para 59.

³⁰ Only a small proportion of customers ([REDACTED]) that responded to the CMA's Merger investigation purchased FSPs from overseas suppliers; several customers ([REDACTED]) stated that delivery times are the main disadvantage when importing FSPs. The CMA notes that approximately one third of customers ([REDACTED]) stated that delivery time was the most important, or joint most important, factor they consider when selecting a supplier of FSPs.

³¹ FMN, para 133.

Construction sheets

Product scope

49. Construction sheets are profiled steel sheets that can be used as either non-insulated or insulated cladding for walls and roofs, and for decking. These can take the form of: (i) twin skin construction sheets (a layer of material sandwiched between two steel facings); or (ii) single skin construction sheets (single pieces of profiled steel that do not contain insulation).
50. The Parties submitted that:
- (a) While the exact product market definition can be left open, they consider there to be a market for the supply of construction sheets in the UK, with different segments for single skin and twin skin construction sheets respectively;³² and
 - (b) There is little scope for product differentiation, and construction sheets should not be segmented by end-use application (ie roofing, cladding or decking), given scope for supply-side substitutability.³³
51. The CMA has taken the Parties' overlapping activities in single skin construction sheets as the starting point for its assessment of the product frame of reference in construction sheets and considered whether the product frame of reference should be widened to include twin skin construction sheets.³⁴

Single skin vs twin skin construction sheets

52. The CMA believes there is limited substitutability between single skin and twin skin construction sheets, in particular because:
- (a) There is limited demand-side substitutability between the two product types, which have different uses: in contrast to twin skin construction sheets, single skin construction sheets are used when insulation is *not* required. Twin skin construction sheets are usually supplied as part of a built-up system, where components are assembled on site.

³² FMN, paras 142-146.

³³ FMN, paras 138-139.

³⁴ The Parties have only a minimal overlap in twin skin construction sheets. The CMA has therefore not considered this overlap further in this assessment.

(b) As regards supply-side substitutability, although the CMA has received evidence that single skin construction sheets and twin skin construction sheets can be produced on the same production line,³⁵ the CMA also notes that the firms that supply single skin construction sheets differ to those that produce twin skin construction sheets and that the conditions of competition for each product also differ to a material extent. For example:

- (i) Building Solutions has a negligible share of the supply of twin skin construction sheets but is the largest supplier of single skin construction sheets.
- (ii) CA is one of the largest suppliers of twin skin construction sheets but does not supply single skin construction sheets.
- (iii) Kingspan is one of the largest suppliers of twin skin construction sheets but has a smaller share of the supply of single skin construction sheets.

53. For the reasons set out above, the CMA does not believe that the product frame of reference for single skin construction sheets should be widened to include twin skin construction sheets.

Geographic scope

54. The Parties submitted that the exact geographic market definition can be left open. However, they also made the following observations:

- (a) In relation to single skin construction sheets, the Parties stated initially that competition takes place regionally (eg within a radius of [250-350]km), on the basis that delivery costs make it hard for suppliers to effectively compete outside of a certain radius.³⁶ In their response to the Issues Paper, the Parties clarified that there was a national market for single skin construction sheets in the UK.³⁷
- (b) In relation to twin skin construction sheets, the Parties stated that competition takes place nationally.³⁸

³⁵ The majority of competitors ([§<]) said that it was possible to produce single and twin skin construction sheets on the same production line.

³⁶ The Parties submitted that a [250-350]km ([155-217]mile) radius is appropriate, which represents the average transport distance for single skin construction sheets, FMN, paras 147-148.

³⁷ Issues Meeting Presentation, slide 16.

³⁸ FMN, para 157.

55. In *Kingspan/Steel Partners*, the Commission concluded that the geographic market for construction sheets was national in scope. The Commission noted that in previous cases, the importance of delivery times and the need for the provision of technical assistance and after sales services had supported the view that the relevant market was national.³⁹ The CMA found that the Parties are competing for customers nationally; specifically, that Kingspan is competing nationally from its Cardiff production facility and that Building Solutions is also competing nationally from its three plants.⁴⁰ This is consistent with evidence received from the Parties' competitors, who indicated that they can compete effectively nationally from a single production facility.⁴¹
56. The CMA has also received evidence from customers of the Parties which indicates that distance is not an important criterion when selecting a supplier.⁴² The CMA notes that price and delivery time are considered to be important by customers and therefore distance, to the extent it affects pricing and delivery times, may be relevant.⁴³ Although most customers did not identify distance as an important factor when selecting a supplier, some customers expressed a preference for local suppliers.⁴⁴
57. Based on the evidence discussed above, the CMA considers that suppliers of single skin construction sheets can effectively compete for customers nationwide, and that the geographic frame of reference for single skin construction sheets is UK-wide. Accordingly, the CMA has considered the impact of the Merger on the supply of single skin construction sheets in the UK.

Conclusion on frames of reference

58. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) The supply of standard FSPs in the UK; and

³⁹ *Kingspan/Steel Partners*, paras 62-65.

⁴⁰ These plants are located in Carlisle, Cullompton and St. Ives.

⁴¹ Nearly all ([REDACTED]) competitors that responded to the CMA's investigation confirmed that they were able to compete effectively nationwide from a single production facility.

⁴² The majority of customers ([REDACTED]) stated that the distance to the supplier was not one of their top three criteria when choosing a supplier.

⁴³ The majority of customers ([REDACTED]) identified price as the most important factor, and most ([REDACTED]) identified delivery times as one of their top three criteria. One customer stated that they have a preference for local suppliers due to delivery costs. The CMA notes [REDACTED] that Trimform Products' delivery charges [REDACTED] (FMN, para 155).

⁴⁴ For example, one customer stated that that they have a preference for local suppliers due to delivery cost. One customer said that they prefer [REDACTED].

(b) The supply of single skin construction sheets in the UK.

Competitive assessment

Horizontal unilateral effects

59. 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 to degrade quality on its own and without needing to coordinate with its rivals.⁴⁵ Horizontal unilateral effects are more likely when the merging parties are close competitors.
60. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in each of the frames of reference set out above.

Horizontal unilateral effects – standard FSPs

61. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects with respect to the supply of standard FSPs in the UK the CMA considered evidence on:
- (a) Shares of supply;
 - (b) Closeness of competition between the Parties; and
 - (c) Competitive constraints from alternative suppliers.

Shares of supply

62. The Parties submitted that they have a combined share of [60-70]% (by volume) of the overall standard FSP market with an increment of [5-10]%,⁴⁶ based on market size estimates from industry reports and adjustments made by the Parties.⁴⁷ The Parties further submitted that Building Solutions mainly produces roof FSPs, whereas Kingspan Group offers both roof and wall FSPs, and that in this context:⁴⁸

⁴⁵ *Merger Assessment Guidelines*, from paragraph 5.4.1.

⁴⁶ FMN, para 181 and Tables 10 and 11.

⁴⁷ The MCRMA Claddings Summary 2018 report estimated a market size for all standard FSPs, excluding sales to the agricultural sector. The Parties adjusted this estimate by removing the estimated size of the mineral fibre FSP market and by adding in the estimated volume of sales to the agricultural sector.

⁴⁸ FMN, para 24.

- (a) Within the walls segment, the Parties have a combined share of [60-70]% (by volume) with an increment of less than [0-5%];⁴⁹ and
- (b) Within the roof segment, the Parties have a combined share of [60-70]% (by volume) with an increment of [10-20]%.⁵⁰

63. The CMA compiled its own shares of supply estimates based on data from the Parties on their own volumes and revenues, together with equivalent data from the Parties' competitors. As set out in Table 1 below, the CMA's analysis indicates that the Parties' estimates understate their shares of supply (both in the overall market for standard FSPs, and in the segments therein on an individual and aggregate basis). As the CMA's analysis is based on actual supply data, the CMA considers that its estimates are more accurate than those provided by the Parties (and has therefore given them more weight in its assessment).

Table 1: Standard FSPs / share of supply estimates (UK, 2019)

Company	Standard FSPs		Standard FSPs for roofing		Standard FSPs for walls	
	Volume share	Revenue share	Volume share	Revenue share	Volume share	Revenue share
Kingspan Group	[60-70]%	[70-80]%]	[60-70]%	[60-70]%	[80-90]%	[80-90]%
Building Solutions	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%
Combined	[70-80]%	[70-80]%	[70-80]%	[70-80]%	[80-90]%	[80-90]%
Tata Steel	[20-30]%	[20-30]%	[20-30]%	[20-30]%	10-20]%	[10-20]%
ArcelorMittal	[0-5]%	[0-5]%]	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	100%	100%	100%	100%	100%	100%

Source: CMA analysis based on data from Parties and their competitors.⁵¹

64. The CMA's estimates in Table 1 indicate that the Merged Entity will have extremely high shares of supply for standard FSPs of approximately [70-80]%

⁴⁹ FMN, Table 12.

⁵⁰ FMN, Table 12.

⁵¹ The Parties identified one competitor, Brucha, that the CMA was not able to obtain volumes or revenue data from and therefore is not included in these estimates. However, evidence from third parties indicates that Brucha has a very limited presence in the UK; the CMA therefore believes the inclusion of Brucha's revenue and volume estimates would not materially affect the share of supply estimates or the CMA's current considerations based on these estimates.

by both volume and value, with an increment of [5-10]% being brought about by the Merger on either measure.

65. The Parties submitted that the increment brought about by the Merger demonstrates that Building Solutions is an 'insignificant' player with a minor share of supply in standard FSPs that has been stable [REDACTED].⁵² The Parties further submitted that, as a matter of law, competition concerns could only arise in such circumstance if the evidence establishes that the 'minor' market share held by Building Solutions understates the competitive constraint that it exerts because: (i) either Building Solutions is a particularly close competitor; and/or (ii) competitors have insufficient capacity to replace Building Solutions.⁵³
66. The CMA disagrees with the Parties' characterisation of Building Solutions' share of supply and their interpretation of the applicable legal test for assessing whether a merger gives rise to a realistic prospect of an SLC.
67. First, the shares of supply held by Building Solutions do not support the position that it is not a significant competitive constraint. By contrast, an analysis of shares of supply shows that Building Solutions is one of only two other sizeable (while still much smaller) suppliers in this market besides Kingspan (the other being Tata Steel). The position is the same (with Building Solutions' share of supply being larger) in the segment for roofs. The CMA therefore considers that the share data indicate that Building Solutions is one of only three key players in the supply of standard FSPs in the UK.
68. The CMA notes that the Parties' internal documents also indicate that Building Solutions is a significant supplier in the supply of standard FSPs in the UK. One document, prepared by consultants for the purposes of due diligence, refers to the market for FSPs as '[REDACTED]' and to Building Solutions as '[REDACTED]'.⁵⁴
69. The CMA further notes that the available evidence does not support the Parties' position noted at paragraph 65 above that Building Solutions is a

⁵² FMN, para 4.

⁵³ Issues Meeting Presentation, slide 4; Parties' Supplemental Response to the Issues Paper of 13 March dated 19 March (**Parties' Supplemental Response**). The CMA's response to the Parties' argument on the existence of competitors' spare capacity is addressed below in the section on competitive constraints, and in particular on Tata Steel.

⁵⁴ FMN, Annex 7 [REDACTED]. Kingspan is referred to as having [REDACTED] brand dominance in the FSP market [REDACTED]. While the document was prepared by external consultants, it was prepared based on input from Building Solutions' management team (as acknowledged at slide 5).

supplier that [REDACTED]. The CMA notes, for example, that some internal documents indicate that the recent revenue growth of Building Solutions [REDACTED].⁵⁵

70. Building Solutions also submitted that it had been [REDACTED]. Building Solutions stated that the business had [REDACTED], and also that SIG had been undergoing significant difficulties, suffering significant losses in market capitalisation between May 2019 and March 2020, and experiencing significant turnover in senior management.⁵⁶ The CMA notes that, to the extent that the performance of Building Solutions could have been affected by the difficulties encountered by its parent company, its recent performance might not fully reflect the competitive capabilities of the business.
71. Second, the CMA considers that the Parties' interpretation of the applicable statutory test is not correct.
72. The CMA notes that its statutory duty to refer a merger for an in-depth Phase 2 investigation will be met if the CMA has a reasonable belief, objectively justified by relevant facts, that there is a realistic prospect that the merger will lessen competition substantially.⁵⁷ The meaning of 'substantial' in this context is broad-ranging. It can fall within a spectrum from 'not trifling' to 'nearly complete' and may be summarised as 'worthy of consideration for the purposes of the [Enterprise] Act.'⁵⁸ A substantial lessening of competition can therefore arise in a variety of circumstances, including where a large supplier seeks to remove one of the few remaining (albeit much smaller) competing suppliers from the market. There is no basis to suggest that the removal of a supplier that is a material player in the market, albeit with a market share under 10%, can only be considered as a significant competitive constraint where its market share can be shown to somehow understate the competitive constraint that it exerts.
73. The CMA therefore believes, consistent with its decisional practice,⁵⁹ that the addition of Building Solutions' [5-10]% share of supply significantly

⁵⁵ One deal document (Annex 7 [REDACTED]) indicates that Building Solutions has [REDACTED].

⁵⁶ Issues Paper: SIG PLC/Building Solutions Response to certain issues (**Building Solutions Response to Issue Paper**), 19 March 2020, paras 6.1 to 6.4.

⁵⁷ Section 35(2) of the Act; *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, para 3.7.

⁵⁸ Noted by the Competition Appeal Tribunal in the context of its consideration of a previous interpretation by the House of Lords in *Judgment in Global Radio Holdings Limited v Competition Commission* [2013] CAT 26, 15 November 2013 (**Global Radio v CC**), para 21. The Tribunal has also confirmed that in an SLC assessment, the CMA is not required to show that the SLC is 'large', 'considerable' or 'weighty': *Global Radio v CC*, paras 24-25 and *Tobii AB v Competition and Markets Authority* [2020] CAT 1, 10 January 2020, para 392.

⁵⁹ See ME/6972/17 *Completed acquisition by Vanilla Group Limited (JLA) of Washstation Limited* (2018), in which the CMA found that the Parties had an extremely high combined share of supply of [90-100]%, with an increment of [5-10]%, and that this raised prima facie competition concerns. Similarly in ME/6867/19 *Completed*

strengthens Kingspan's already very high [60-70]% share of supply, and raises *prima facie* competition concerns.

74. Table 1 further shows that the next largest supplier, Tata Steel, will have a much smaller share of supply than the Merged Entity; approximately [20-30]% by both volume and value. The shares of supply of other competitors, including the largest importer ArcelorMittal,⁶⁰ are significantly lower than that of Tata Steel. Even ArcelorMittal, as the largest importer, has a minimal market presence, with a share of supply of [0-5]% by both volume and value.
75. The minimal market presence of other competitors is consistent with the Parties' internal documents (which make very limited reference to constraints from competitors other than the other Party or Tata Steel) and feedback from customers (in which very few customers stated that they had purchased from or considered purchasing from suppliers other than the Parties and Tata Steel).
76. The Parties also submitted that their standard FSPs face competition from suppliers of twin skin construction sheets and that the CMA's share of supply estimates for standard FSPs therefore overstate the strength of the competitive position the Merged Entity would have (as it excludes twin skin suppliers not active in standard FSPs).
77. The CMA has considered the competitive constraints presented by suppliers of twin skin construction sheets from paragraph 143 below. With respect to shares of supply, the CMA notes that the Merged Entity would remain by far the largest supplier in a combined market for twin skin construction sheets and standard FSPs, with a combined share of supply of over 50% (as estimated by the Parties) and that the Merger would still eliminate one of the few other suppliers with a material presence of [0-5]% within a concentrated market.⁶¹ The CMA therefore considers that the Parties' shares of supply would also raise *prima facie* competition concerns within this combined market.

acquisition by Hunter Douglas N.V. of convertible loan notes and certain rights in 247 Home Furnishings Ltd. in 2013 and the completed acquisition by Hunter Douglas N.V. of a controlling interest in 247 Home Furnishings Ltd. in 2019 (2020) the CMA found an SLC based in part on the fact that the parties had very high combined shares of supply of [60-70]% in the online retail supply of M2M blinds in the UK, with an increment of [5-10]% brought about by the transactions in question.

⁶⁰ Evidence received from third parties indicate that ArcelorMittal is the largest importer of standard FSPs into the UK, excluding Joris Ide which is a subsidiary of Kingspan.

⁶¹ Email from Allen & Overy LLP to the CMA on 6 April 2020; in the FMN, Table 9, the Parties also submitted that, if sales of twin skin construction sheets were included in the shares of supply for FSPs, the Merged Entity would have a combined share 49.8%-54.9% by volume.

78. Accordingly, the CMA believes that the Parties' combined share of supply raises *prima facie* competition concerns.

Closeness of competition

79. The CMA has examined the closeness of competition between the Parties by considering in particular:
- (a) The Parties' product offerings;
 - (b) Analysis of Kingspan's lost opportunities data;
 - (c) Analysis of the overlap between the Parties' customers;
 - (d) Third party views; and
 - (e) The Parties' internal documents.

The Parties' product offerings

80. The Parties submitted that they do not compete closely in the supply of FSPs because Building Solutions focuses on open specification projects for customers in the agricultural and light industrial sectors, whereas Kingspan focuses on closed specification projects for large industrial, retail, commercial and logistics sector customers.⁶² Kingspan submitted that closed specification projects, in particular, required a significant level of technical personnel, knowhow and close working relationships with customers and architects to establish the necessary brand recognition.⁶³ The Parties further submitted that the Commission had previously recognised, in *Kingspan/Steel Partners*, that FSP suppliers are not close competitors where they focus on different types of specification projects.⁶⁴
81. The Parties also submitted that while Building Solutions offers only standard FSPs for roofs, Kingspan offers standard FSPs for both roofs and walls, and within the roof segment, analysis of Kingspan's opportunities data shows that Building Solutions accounts for only 3% of opportunities lost by Kingspan

⁶² FMN, paras 9 and 25-26.

⁶³ FMN, paras 9 and 127.

⁶⁴ Issues Meeting Presentation, slide 7.

(which is materially lower than the value of losses to twin skin construction sheets and to Tata Steel).⁶⁵

Open v closed specification

82. The available evidence broadly supports the Parties' position that Kingspan has a more established market presence than Building Solutions in closed specification projects. The evidence also shows, however, that both Parties can and do compete, particularly in open specification projects. While Kingspan estimates that the majority of its sales in standard FSPs come from closed specification projects,⁶⁶ the UK sales of its Joris Ide division were [X] generated from open specification projects.⁶⁷ The Parties also acknowledged that a supplier of closed specification projects such as the Kingspan business unit can also easily make sales into the open specification segment.⁶⁸ This is particularly true in open specification projects for roofs, which comprise nearly all of Building Solutions' standard FSP sales, although Building Solutions is increasingly targeting the walls segment (as described further in paragraphs 89 to 93 below).
83. Furthermore, evidence from third parties indicates that the Parties have overstated the extent to which suppliers of open specification projects face difficulties when expanding into closed specification projects. Competitors responding to the CMA's Merger investigation indicated that they are still able to compete for closed specification projects even if another supplier's product has been specified, as long as they are able to offer a product of the equivalent standard. The vast majority of customers that responded to the CMA's Merger investigation stated that they considered the Parties' FSPs to be close substitutes and many customers stated that, in the context of a closed specification project, they would still consider alternative suppliers that, for example, offered a competitive price.
84. The CMA also believes in this regard that the Parties' reference to *Kingspan/Steel Partners* has limited applicability to this case, given the significant difference in competitive conditions. In *Kingspan/Steel Partners*, the Commission noted the difference in the parties' focuses on closed and

⁶⁵ FMN, para 207. The Parties also submitted that their offerings were complementary in the sense that Kingspan produces both standard and refrigerating FSPs, whereas Building Solutions only supplies standard FSPs. As the CMA does not consider refrigerating FSPs to be a close substitute for standard FSPs; as discussed in paragraphs 33-36, the CMA does not consider this argument relevant to its assessment of the competitive effects of the Merger on standard FSPs.

⁶⁶ FMN, para 185 and Table 11.

⁶⁷ Email from Allen & Overy LLP to CMA, 27 March 2020.

⁶⁸ FMN, para 127.

open specification segments in conjunction with other factors suggesting a difference in positioning: the target had a very small market share and generated most of its sales from caravan manufacturers, a segment in which Kingspan had never been active. These points were supported by the parties' internal documents.⁶⁹ In this case, however, Building Solutions is, as described above, one of only two other sizeable players in the market besides Kingspan by virtue of its [5-10]% market share, and there is, as discussed above and below, a degree of overlap both in the specification of projects and the customers the Parties focus on.

85. Moreover, the CMA notes that certain of Building Solutions' internal documents support the position that it is increasingly targeting the closed specification segment. The [Building Solutions document] [REDACTED] refers to Building Solutions [REDACTED] dedicated to closed specification sales. A vendor due diligence document [REDACTED] by consultants for SIG/Building Solutions also refers to [REDACTED] for this purpose, which it explicitly links to an increased targeting by Building Solutions on the closed specification segment.⁷⁰
86. Building Solutions submitted that these documents did not accurately reflect its strategy, [REDACTED], and the statement in question was based on aspirational benchmarks [REDACTED].⁷¹
87. The CMA notes, however, that both documents in question were prepared for the SIG board or senior management.⁷² The CMA notes, in this regard, that positions expressed in a contemporaneous report to the board of a business involved in merger proceedings will typically be given more weight over unevicenced assertions made in the course of CMA proceedings. Building Solutions has not provided the CMA with any documents of similar probative value (eg board documents) evidencing [REDACTED] regarding closed specification sales. In addition, the lack of any contemporaneous documents evidencing [REDACTED] prior to the Merger could indicate that such a decision is linked to the Merger, rather than being an independent decision taken prior to the Merger.

⁶⁹ *Kingspan/Steel Partners*, paras 115 and 116.

⁷⁰ Annex 22 to FMN [REDACTED]. This document also states that Building Solutions is developing its proposition for closed specification projects [REDACTED].

⁷¹ Building Solutions Response to Issue Paper, 19 March 2020, paras 2.2 and 2.4.

⁷² Building Solutions submitted Annex 22 of the FMN (Document 1 [REDACTED]) to the CMA in response to Question 10 of the CMA's merger notice template, which requests copies of documents prepared by or received by any member of the board of directors (or equivalent body) or senior management or the shareholders' meeting of either merger party (whether prepared internally or by external consultants) (**Senior Management Documents**), and which set out the competitive conditions, market conditions, market shares, competitors, or the merging parties' business plans in relation to the product(s) or service(s) where the merger parties have a horizontal overlap. Building Solutions submitted Annex 7 ([REDACTED]) to the FMN to the CMA in response to Question 9 of the merger notice template, which requests merger-related Senior Management Documents.

88. Accordingly, the CMA has not given weight to Building Solutions' submissions in this regard and considers that the available evidence indicates that, absent the Merger, Building Solutions would likely have continued its plan to further target closed specification sales.

Walls vs roofs

89. Both Kingspan and Building Solutions are longstanding providers of standard FSPs for roofs. Kingspan and Building Solutions therefore compete against each other in standard FSPs for roofs, with shares of [60-70]% and [10-20]% respectively (see Table 1). Kingspan is also a longstanding provider of standard FSPs for walls (with a share of [80-90]% in 2019), and Building Solutions started providing standard FSPs for walls in 2019,⁷³ achieving a share in that year of about [0-5]%, see Table 1.
90. The CMA believes that Building Solutions is increasingly targeting the walls segment. A [REDACTED] Building Solutions planning document refers to its ability to produce higher-margin wall-panel in addition to roofing, and states that it will [REDACTED] production of the wall panel product [REDACTED].⁷⁴ Building Solutions' increased focus on wall panels is further evidenced by Building Solutions' internal documents, in which issues relating to FSPs for walls regularly feature (such as in Building Solutions' board minutes⁷⁵ and board review meeting presentations).⁷⁶
91. Building Solutions submitted that it had not invested in any new production capacity to produce wall FSPs.⁷⁷ However, the CMA notes that Building Solutions can change its production line relatively easily from producing roofing to wall FSPs, and that it currently does this once or twice per month.⁷⁸ Building Solutions also stated that there was no evidence that Building Solutions had been successful in increasing its share of supply in wall FSPs.⁷⁹ The CMA notes, however, that Building Solutions' plans to develop its position in walls were at an early stage at the time the Merger was entered into and were considered to be on track. A document on Building Solutions' business

⁷³ FMN, para 23.

⁷⁴ FMN, Annex 22.

⁷⁵ FMN, Annex 31 [REDACTED]; see for example, pages 3, 11, 16, 25, 32, 33, 36, 45, 58.

⁷⁶ See for example, [REDACTED]. Building Solutions' board meeting minutes [REDACTED] refer to wall panel trials [REDACTED]; board meeting minutes [REDACTED] states, in relation to wall FSPs, that [REDACTED].

⁷⁷ FMN, para 23.

⁷⁸ Building Solutions Response to Issues Paper, para 4.3. This also states that the line changeover takes up to 4-6 hours and the same amount of time to change back.

⁷⁹ Building Solutions Response to Issues Paper, para 4.2.

prepared by external consultants for the purposes of due diligence notes, in this regard, that [REDACTED]. The document further noted that [REDACTED].⁸⁰

92. The CMA therefore believes that, in the absence of the Merger, based on evidence from Building Solutions' internal documents outlined above, Building Solutions would have continued to compete for wall FSPs.
93. Accordingly, on the basis of the evidence summarised above, the CMA believes that the Parties compete in standard FSPs for both roofs and walls.

Customer groups

94. The CMA notes that the Parties have historically had strengths in different customer groups, with Building Solutions in particular having focused on smaller customers in agricultural and light industrial sectors.
95. However, the CMA believes that the Parties' submissions overstate the degree of differentiation between the Parties' targeted customer groups. Several of the Parties' internal documents indicate that each Party is increasingly targeting the customer groups of the other Party. For example, a recent strategic plan [REDACTED] shows that it plans to [REDACTED]⁸¹ and a Building Solutions' [REDACTED] Board review meeting presentation notes that [REDACTED]. A [REDACTED] board review meeting presentation of Building Solutions also shows Building Solutions monitoring [REDACTED],⁸² consistent with its description, in a due diligence document, as being [REDACTED].⁸³
96. The expansion of both Parties into other non-core segments is also corroborated by third parties. One third party told the CMA that Kingspan is targeting cheaper, agricultural segments through Joris Ide; another noted that Building Solutions had made 'Significant investment in 2016/17 in new production capacity under SIG to enter the industrial and commercial markets.'

Product differentiation

97. The CMA also considered evidence on the extent, if any, of product differentiation between the Parties. Customer responses to the CMA's Merger

⁸⁰ FMN, Annex 7 [REDACTED], slide 57.

⁸¹ FMN, Annex 7 [REDACTED], slide 18.

⁸² FMN, Annex 36 [REDACTED].

⁸³ FMN, Annex 7 [REDACTED].

investigation indicate that customers select a supplier primarily on price and quality and that, in this regard, the Parties' offerings are very similar.

98. This is consistent with the CMA's analysis of 2019 sales data submitted by the Parties,⁸⁴ which indicates that they offer very similar prices for both roof and walls FSPs. In addition, with regard to product quality, a large majority of customers that responded to the CMA's Merger investigation indicated that they consider the Parties' FSPs to be similar or very similar.

Conclusion on the Parties' product offerings

99. The CMA believes that the Parties offer a relatively similar product offering. The Parties compete, in particular, in relation to open specification projects for roofs, with the available evidence also indicating that each Party is increasingly targeting certain segments in which the other Party has historically been more active.

Analysis of Kingspan's lost opportunity data

100. To further support their submission that the Parties do not compete closely, the Parties submitted data from Kingspan Ltd covering the FSP opportunities where it supplied a quotation to a customer but did not secure an order (the **Kingspan FSP Quotation Data**), in an analysis prepared by RBB Economics (the **RBB Analysis**).⁸⁵ The data provides partial coverage of business lost to rival suppliers. More specifically, of the [X] lost FSP opportunities covered in the dataset, information on the rival supplier that won the order is recorded in [X] instances (amounting to only [5-10]% of all opportunities recorded, and only [10-20]% of all opportunities by value).
101. Based on this dataset, the Parties submitted that:
- (a) Twin skin construction sheets are a significant aggregate constraint upon FSPs, accounting for almost [X] of FSP opportunity value lost by Kingspan Ltd;
 - (b) Tata Steel is the leading named rival supplier of FSP to Kingspan Ltd;
and

⁸⁴ FMN, para 188.

⁸⁵ FMN, Annex 38 (Analysis of Kingspan foam sandwich panel quotation data, RBB Economics, 2 December 2019), Table 2.

- (c) Building Solutions is not a material competitive constraint on Kingspan Ltd, and accounts for only [X] of opportunities lost by Kingspan Ltd (and [X] of opportunity value).
102. The CMA notes that the sample is a relatively small subset of all lost opportunities. The Parties submitted that the sample of lost opportunities for which the winning supplier is recorded by Kingspan Ltd is likely to be representative of all lost opportunities (and, in any case, that the CMA has no grounds to believe that this sample reflects any selection bias).⁸⁶
103. The CMA disagrees with this position. The CMA notes, for example, that the sample appears to be weighted towards larger projects,⁸⁷ notwithstanding that Building Solutions is focussed on smaller projects. This implies that the analysis is liable to understate Building Solutions' share of opportunities lost by Kingspan. The CMA considers that this is a significant *prima facie* limitation to the dataset (and the CMA has not, in the time available in an initial Phase 1 investigation, been able to fully consider whether such a limited dataset could be unrepresentative of customer demand in other ways).
104. The CMA notes, however, that there are a number of limitations with this analysis that affect the insight that the analysis can be considered to provide on competitive conditions and/or the weight that can be placed on it. In particular:
- (a) The analysis only reports who won (for some of the opportunities) when Kingspan lost, but not which other competitors were in competition with Kingspan (the CMA has addressed this point through an analysis of customer overlaps at paragraphs 109 to 114 below);
 - (b) The analysis only covers lost opportunities, and not the larger number of opportunities that were won by Kingspan. Therefore, the analysis does not cover which competitor was the next best alternative for opportunities that Kingspan won, which the CMA believes would be a more direct measure of the constraints on Kingspan.
 - (c) The analysis also does not cover which competitors Building Solutions lost opportunities to - it therefore provides no information on the constraints on Building Solutions.

⁸⁶ Competitive constraints on foam panel supply prepared by RBB Economics dated 19 March 2020 (**RBB Competitive Constraints Paper**), section 2.1

⁸⁷ The CMA notes that the average value of the lost opportunities for which the winning supplier was named is greater than the average value of all lost opportunities.

105. For all these reasons, the CMA has placed only limited weight on the RBB Analysis as a source of evidence.
106. Notwithstanding the limitations of the RBB Analysis, the CMA notes that it indicates that Building Solutions is the second most important FSP competitor to Kingspan (after Tata Steel). The CMA notes that this is consistent with the position in the other evidence available to the CMA, including the share of supply data (which show Tata Steel is the second largest player after Kingspan, with [20-30]% share and that Building Solutions is the third largest, with [5-10]% share). On this basis, the CMA believes that the RBB Analysis (notwithstanding the Parties' submissions) is consistent with Building Solutions being a significant competitive force in the supply of standard FSPs and a material competitive constraint on Kingspan.⁸⁸
107. The RBB Analysis also shows Kingspan losing a [X] number of opportunities to twin skin construction sheets [X]. The CMA notes, however, that, as described further below at paragraph 108, the RBB Analysis is broadly consistent with other evidence which indicates that twin skin construction sheets are a realistic alternative to standard FSPs for only a limited proportion of projects (rather than providing evidence of competitive interaction between standard FSPs and twin skin construction sheets).
108. Overall, the CMA believes that only limited weight should be placed on the RBB Analysis (for the reasons set out above). The CMA notes, in any case, that, to the extent that any weight can be placed on the analysis, it implies that: (i) there is a material degree of competitive interaction between the Parties, with Building Solutions being the second most important FSP competitor to Kingspan; and (ii) twin skin construction sheets are a realistic alternative to standard FSPs for only a limited proportion of projects (and are therefore not a material constraint on the Parties).

Analysis of the overlap between the Parties' customers

109. The CMA carried out analysis of the Parties' respective quotations to customers for FSPs. The CMA considers that this analysis demonstrates a material degree of customer overlap between the Parties.⁸⁹ In particular:

⁸⁸ See *Merger Assessment Guidelines*, paragraphs 5.4.5 and 5.4.12 which state that unilateral effects are more likely where the merger eliminates a significant competitive force in the market.

⁸⁹ The Parties provided all the quotation data held in their CRM software up to Nov/Dec 2019 for all types of FSPs (ie including both standard and refrigerating FSPs). Since each of the Parties' divisions started recording quotations in their CRM systems at different times, the period that the quotation data covers ranges from nine months for United Roofing Products to three years for Steadmans.

- (a) Based on the quotations provided by all of the Parties' divisions that offer FSPs, there were [X] overlapping customers. This represents [5-10]% by number and [10-20]% by quotation value of Kingspan customers and [20-30]% by number and [30-40]% by quotation value of Building Solutions customers; and
- (b) Limiting the analysis to quotations that the Parties confirmed related solely to FSPs, there were [X] overlapping customers. This represents [5-10]% by number and [10-20]% by quotation value of Kingspan customers and [20-30]% by number and [30-40]% by quotation value of Building Solutions customers.
110. The Parties submitted that this analysis was subject to some limitations in comparison with the lost opportunity analysis. In particular:⁹⁰
- (a) First, the CMA's assessment of customer overlaps could not distinguish between cases of substitutability and complementarity (and could therefore wrongly suggest that an overlap arose when customers were in fact enquiring about entirely separate projects); and
- (b) Second, the CMA's overlap analysis provides no insight on the relative importance of different competitors because it is limited to the overlap between Kingspan and Building Solutions customers.
111. The CMA notes that these factors do affect the weight that should be placed on the customer overlap analysis. The CMA also notes, however, that the impact of these factors is likely to be limited in practice for the CMA's assessment. In particular:
- (a) The Parties' products are similar and therefore, as a matter of fact, are more likely to be considered as substitutes rather than complements. None of the evidence available to the CMA indicates that the Parties' customers, within the scope of the overlap analysis, did not consider the Parties' products to be substitutable for the same project. In particular, the examples provided by the Parties' to support their submissions in this regard were entirely hypothetical (rather than relating to any of the approximately [X] customers that fell within the scope of the analysis);⁹¹

⁹⁰ RBB Competitive Constraints Paper, para 2.2.

⁹¹ The Parties did not provide actual examples of quotations being included when they were on entirely separate projects; only a hypothetical example of a customer requesting a quotation from Kingspan for an industrial project and separately requesting a quotation from Building Solutions for an agricultural project (RBB Competitive Constraints Paper, para 2.2).

- (b) In assessing whether a merger gives rise to competition concerns, the CMA considers all of the available evidence in the round. While the overlap analysis does not provide insight on the relative importance of different competitors, it does inform an analysis of the extent of the competitive interaction between the Parties (which the Parties have disputed). The CMA's assessment of the relative importance of other competitors is informed by other evidence set out in detail in this decision.
112. The Parties also submitted that the extent of overlap with Kingspan among Building Solutions' customers ([30-40]% on the basis of quotation value) was less than a simple diversion ratio implied by market shares ([60-70]%), and that the CMA's overlap analysis therefore indicated that Kingspan was a particularly distant competitor from Building Solutions.⁹²
113. The CMA notes that an overlap of [30-40]% is, in principle, substantial and indicates that Kingspan is an important constraint on Building Solutions. The CMA notes, in addition, that there are a number of reasons (that would not by themselves imply that Kingspan is not an important competitive constraint on Building Solutions) to explain why the percentage of overlapping customers may be lower than implied by market shares. For example, some customers do not always obtain quotes from more than one company, even when they have substitute products. Aspects of the analysis, such as the reliance on both Parties to record customer names in the same way, would also tend to understate the extent of overlap in practice.⁹³ The CMA therefore does not believe that the customer overlap analysis indicates that Kingspan is a distant competitor from Building Solutions.
114. Overall, the CMA believes the existence of material overlap between the Parties' customers is consistent with there being a significant degree of competition between Kingspan and Building Solutions.

⁹² RBB Competitive Constraints Paper, para 2.2. The Parties estimated a simple diversion ratio from Building Solutions to Kingspan of [60-70]% based on their estimate of Kingspan's market share divided by {100% less Building Solutions' market share}. Based on the CMA's estimated shares for standard FSPs in Table 1, the simple diversion ratio would be at least [60-70]%, though the customer overlap analysis includes all FSPs which would reduce the extent of overlap.

⁹³ The CMA used a matching algorithm to attempt to capture instances of names being recorded differently, but this may not have captured all such instances.

Third party views

115. Feedback from third parties received during the CMA's Merger investigation indicated that there is a material level of competitive interaction between the Parties. Specifically:
- (a) A large majority of customers responding to the CMA's Merger investigation considered that the Parties' FSPs were either similar or very similar, with one customer describing Steadmans (Building Solutions) as 'the major true alternative to Kingspan [FSPs]'. Another explained that, despite Kingspan's attempts to differentiate its products, the core aspects of the products are similar and both Parties broadly source raw materials from the same suppliers.
 - (b) Of the customers that had purchased or had considered purchasing FSPs from Kingspan in the past two years, a material proportion indicated that they had also purchased or considered purchasing FSPs from Building Solutions. Building Solutions was the second most mentioned alternative supplier for these customers behind Tata Steel.
 - (c) Of the customers that had purchased or had considered purchasing FSPs from Building Solutions in the past two years, the majority of customers had also purchased or considered purchasing FSPs from Kingspan. Kingspan was the most mentioned alternative supplier for these customers.
116. A significant and material proportion of third parties (both customers and competitors) expressed reasoned and competition-specific concerns in relation to the Merger. In particular, there were concerns that:
- (a) The Merger would consolidate Kingspan's existing strength and further reduce remaining competition in an already concentrated market; for example:
 - (i) One customer referred to Kingspan 'tightening their already strong, over strong, position in the market', with another commenting that 'the acquisition of Building Solutions, will give Kingspan unrestricted access to the growing UK composite panel [FSP] marketplace' and that 'As composite panel [FSP] sales continue to increase (largely at the expense of [construction sheets], King[s]pan's market share will only increase further. If Tata [Steel] panels ceased trading, Kingspan would have complete monopoly of the UK [FSPs] market.'

- (ii) A number of third parties referred to Kingspan's acquisitive strategy to date; one specifically referred to this strategy and the implications this would have on competition going forward, stating, in particular, that 'The Kingspan acquisition of Joris Ide shortly after Joris Ide had purchased Euroclad, Eurobond and Category Cladding in the UK leaves very little competition.'
 - (iii) Another third party referred to the fact that if the Merger went ahead, there would, in their view, be 'ZERO competition in [FSP] market'; another, to the fact the Merger would lead to Kingspan being a 'domineering force' and that this would likely 'lead to a reduction in product innovation which, given the ongoing investigations into Grenfell, is likely to have further negative impact on our already troubled industry [for FSPs].'
- (b) The Merger could result in higher prices. Customers repeatedly expressed concerns that the Merger would lead to price increases; for example:
- (i) One customer commented that 'the acquisition of Steadmans will allow Kingspan to take better 'control' of the more price sensitive end the [FSP] market, which currently forces their own 'core' product range to be more competitively priced' and that 'Products where Kingspan have little / no competition, are considerably more expensive, despite the steel / foam / production facilities, all remaining the same.'
 - (ii) Another commented that 'We feel that this will take the competitive rates we get from Steadmans up'.

117. Overall, considered in the round, the evidence received by the CMA from third parties is consistent with other sources of evidence and indicates that this is a highly concentrated market and that there is a material degree of competition between the Parties that would be lost post-Merger.

Evidence from the Parties' internal documents

118. The Parties submitted that, broadly speaking, their internal documents show that Building Solutions is not a particularly close or aggressive competitor to Kingspan in any of the relevant markets (ie, including standard FSPs) and that both Parties' documents show Tata Steel to be a closer competitor to each of the Parties individually than they are to each other.⁹⁴ In relation to Building

⁹⁴ FMN, para 28; Issues Meeting Presentation, slide 8.

Solutions' documents, the Parties submitted that it was unsurprising that these referred to Kingspan as both Kingspan and Tata Steel had become more aggressive in targeting open specification projects.⁹⁵

119. The CMA notes that in any given merger, the fact that a merging party competes more closely with a competitor other than the other merging party does not prevent a finding that the merging parties in question also compete closely and/or that the Merger will eliminate a significant competitive force.
120. The CMA considers that Kingspan's internal documents indicate that Kingspan views Building Solutions as a significant competitive force.⁹⁶ In the round, Kingspan's internal documents contain very few references to other market players; indeed, Kingspan submitted that it does not view its exact market position or that of its competitors to be strategically relevant information (a position the CMA notes is consistent with Kingspan having a high degree of confidence in the fact that it holds a very strong market position in standard FSPs).⁹⁷ Kingspan's arguments that its internal documents do not indicate that it views Building Solutions as a significant competitor are therefore not well supported by this evidence (given Kingspan's internal documents generally do not refer to any competitors).
121. On the occasions that Kingspan does consider competitors in documents created in the ordinary course of business, the CMA notes that it refers mainly to Building Solutions and Tata Steel.⁹⁸ For example, the [Kingspan] document [REDACTED] shows Joris Ide (Kingspan) monitoring Building Solutions and noting that Joris Ide would become an alternative to [REDACTED].⁹⁹ The same [document] [REDACTED] maps out [REDACTED]¹⁰⁰ competitors mentioning Steadmans, Trimform Products and United Roofing Products (all of which are Building Solutions businesses) along with only a limited number of other players.¹⁰¹
122. The CMA has not placed significant weight on the fact that several of the Parties' documents created in contemplation of the Merger refer to the

⁹⁵ Issues Meeting Presentation, slide 8.

⁹⁶ The majority of the Parties' internal documents do not clearly specify the particular products they relate to. The CMA therefore considers that many of its observations may apply to both FSPs and other products (including single skin construction sheets) but has specified where information relates only to FSPs.

⁹⁷ FMN, para 84.

⁹⁸ FMN, para 28.

⁹⁹ FMN, Annex 15 [REDACTED], slide 66. It is not specified whether these statements are made specifically in relation to FSPs or construction sheets; as the same slide refers to sales of both products, the CMA has assumed that they are applicable to both.

¹⁰⁰ These refer to suppliers who are able to provide customers with a wide product range, including accessories.

¹⁰¹ FMN, Annex 15 [REDACTED], slide 16.

Parties' businesses as being complementary.¹⁰² In general, the CMA considers that internal documents prepared in the ordinary course of business, before a given merger is agreed, are liable to have higher probative value than internal documents prepared when that transaction is already in contemplation (given that merging parties will be well aware that competition authorities are likely to request many of the documents generated for this purpose).¹⁰³ In any case, the CMA notes, as set out above at paragraph 68, one such document relating to the Merger still refers to the fact that [REDACTED].

123. The CMA believes that Building Solutions' internal documents indicate that Building Solutions views Kingspan as a strong competitor. In addition to the documents considered previously above, a number of other internal documents, created in the ordinary course of business, support this position, including:

- (a) Building Solutions' [REDACTED] board review meeting presentation, which considers only Kingspan and Tata Steel in assessing [REDACTED].¹⁰⁴
- (b) Building Solutions' [REDACTED] board review meeting presentation, which again refers solely to Kingspan and Tata Steel, [REDACTED].¹⁰⁵ Consistent with the position set out in paragraph 95 above, the same document also notes that [REDACTED], which the CMA, for the reasons set out above, considers indicates that Kingspan is increasingly targeting smaller customer segments on which Building Solutions has historically focused.¹⁰⁶
- (c) Building Solutions' [REDACTED], which refers to increasing customer overlaps between the Parties, [REDACTED].¹⁰⁷

124. The CMA believes that Building Solutions' internal documents also show that Building Solutions views Kingspan as a strong competitor specifically in relation to FSPs. For example, Building Solutions' [REDACTED] compares itself with

¹⁰² See documents referenced in FMN, para 28, third bullet.

¹⁰³ The Parties submitted that as the information memorandum on Building Solutions' business (Annexes 7 and 8 to the FMN) prepared by Alvarez & Marsal were not prepared for Kingspan specifically, the CMA should give weight to descriptions within that document which suggest Building Solutions has strengths in areas complementary to Kingspan (Issues Meeting Presentation, slide 8). The CMA notes that these documents were nevertheless prepared for Building Solutions / SIG in anticipation of a merger, and that, as discussed above, while the CMA notes there is a degree of differentiation between the Parties' current service offerings, the Parties' respective documents created in the ordinary course of businesses indicate that each is increasingly targeting the segments the other has historically focused on.

¹⁰⁴ FMN, Annex 36 [REDACTED], slide 110 onwards.

¹⁰⁵ FMN, Annex 35 [REDACTED], page 37.

¹⁰⁶ Building Solutions' [REDACTED] also states that [REDACTED]. The same document also states that Tata Steel and Kingspan are [REDACTED].

¹⁰⁷ FMN, Annex 22 (Building Solutions medium term plans, May 2019), p52. Building Solutions' review meeting [REDACTED] also notes [REDACTED]. Building Solutions' board meeting minutes from an earlier period [REDACTED] also indicates that [REDACTED].

Kingspan in relation to the approach to FSPs.¹⁰⁸ Building Solutions' [redacted] also shows concerns about [redacted].¹⁰⁹ In addition, as referenced above at paragraph 85, a number of Building Solutions' internal documents refer to it increasingly targeting closed specification sales, large customer segments and standard FSPs for walls, further indicating that it competes closely with Kingspan within standard FSPs.

125. The CMA therefore believes that, overall, the Parties' internal documents indicate that Kingspan views Building Solutions as a significant competitive force and that Building Solutions also views Kingspan as a strong competitor, including in relation to standard FSPs.

Conclusion on closeness of competition

126. On the basis of the available evidence, as summarised above, the CMA believes that there is a material degree of competitive interaction between the Parties. The CMA therefore believes that the Merger will remove one of the few remaining constraints on Kingspan in an already highly concentrated market and eliminate a significant competitive force in Building Solutions.

Competitive constraints

127. The Parties submitted that the Merged Entity would face competition from the following suppliers:
- (a) Tata Steel, which the Parties describe as the largest alternative supplier (to Kingspan) of standard FSPs in the UK. The Parties also submitted that Tata Steel competes more closely with Kingspan than Building Solutions does, and that Building Solutions views Tata Steel as an equally close (if not closer) competitor than Kingspan;¹¹⁰
 - (b) Overseas suppliers of standard FSPs that import into the UK, such as ArcelorMittal and Brucha; and
 - (c) Suppliers of twin skin construction sheets.

128. The CMA has considered each of these categories of suppliers in turn below.

¹⁰⁸ FMN, Annex 30 [redacted], p3.

¹⁰⁹ FMN, Annex 36 [redacted].

¹¹⁰ Issues Meeting Presentation, slide 13.

Tata Steel

129. As the CMA's shares of supply estimates illustrate, Tata Steel is the second largest supplier of standard FSPs in the UK, with a share of supply of approximately [20-30]% by volume and [20-30]% by value. Post-Merger, Tata Steel will be the only remaining competitor to the Merged Entity with a share of supply of over [0-5]% and is particularly strong in roofs (the primary area of overlap between the Parties, in which it has a share of [20-30]% by both value and volume).
130. The Parties submitted that Tata Steel has a significant level of spare capacity that could replace Building Solutions' entire output, and that this made it a particularly significant competitive constraint on Kingspan.¹¹¹
131. The CMA does not believe that the existence of spare capacity, held by one of the players in a market, is liable to be sufficient to mitigate the loss of competition brought about by the combination of the only two other significant suppliers in that market. The CMA notes that the existence of spare capacity in the market at present has not prevented Kingspan from achieving a high market share and high net margins.¹¹² The CMA therefore considers that there is no reason to believe that the existence of spare capacity would, by itself, prevent Kingspan raising prices or decreasing quality post-Merger.
132. The Parties submitted that the Kingspan FSP Quotation Data and the RBB Analysis show that Kingspan lost [X] FSP opportunities to Tata Steel as to Building Solutions (representing [X]).¹¹³ For the reasons noted in paragraph 104 above, the CMA has placed limited weight on this evidence. Notwithstanding these limitations, the CMA notes that it is not in dispute that Tata Steel is likely to be the competitor to which Kingspan loses most opportunities, as this is consistent with the market position indicated by Tata Steel's shares of supply (which show it to be the second largest supplier after Kingspan).

¹¹¹ FMN, para 32; Issues Meeting Presentation, slide 13; Parties' Supplemental Response. Tata Steel [X] that [X] theoretical spare capacity [X].

¹¹² The CMA notes that Kingspan seeks to differentiate its offering, for example through use of its Quadcore brand [X] (FMN, Annex 15, page 23). Kingspan Ltd UK (the main provider of standard FSPs in the UK) earned [X] margin on sales [X]. The CMA considers this is a high level for a business where raw materials comprise a substantial part of costs and where capital employed (fixed assets plus working capital excluding intercompany balances) represents only about [X] of sales (based on year ended October 2019).

¹¹³ FMN, Annex 38 (RBB Analysis). These figures exclude opportunities lost to Tata Steel's twin skin construction sheet business. Losses to twin skin construction sheets are considered below, but if losses to Tata Steel's twin skin construction sheet business are included, the ratio of Tata Steel to Building Solutions losses increases to [X] times by number and [X] times by value.

133. This is also consistent with the other evidence available to the CMA. In particular:

(a) Third parties indicated that Tata Steel is a strong competitive constraint on both Parties, in particular for standard FSPs for roofs. A number of customers had considered or used Tata Steel as an alternative supplier to one of the Parties and overall, competitors listed it as a strong market player alongside the Parties.

(b) The Parties' internal documents demonstrate that the Parties both consider Tata Steel as a strong player in the standard FSP segment. For example:

(i) Kingspan submitted [redacted] monthly customer survey results [redacted].¹¹⁴ Tata Steel is mentioned [redacted] as a competitor [redacted]; and

(ii) As discussed in paragraph 123 above, some of Building Solutions' internal documents refer to Tata Steel alongside Kingspan; in addition, a Building Solutions [redacted] presentation [redacted] notes [redacted]¹¹⁵ and board meeting minutes [redacted] state that [redacted].¹¹⁶

134. Based on the available evidence, the CMA therefore believes that Tata Steel is a strong competitor to the Parties in the supply of standard FSPs in the UK.

Importers of standard FSPs

135. The Parties submitted that there are significant imports of FSPs into the UK, which pose a competitive constraint to the Parties, and identified ArcelorMittal and Brucha as key importers that produce FSPs outside of the UK and serve UK-based customers.¹¹⁷ The Parties further submitted that the combined share of imports into the open specification segment is a more relevant indicator of competitive strength than the shares of individual importers in the supply of standard FSPs.¹¹⁸

136. The available evidence indicates that importers (other than Joris Ide, which is part of Kingspan Group) currently provide, both individually and in aggregate, only a very limited constraint on the Parties. In particular:

¹¹⁴ FMN, Annex 29.

¹¹⁵ FMN, Annex 36, page 20.

¹¹⁶ FMN, Annex 31, page 52.

¹¹⁷ FMN, paras 12 and 133

¹¹⁸ Parties' Supplemental Response.

- (a) The importers' shares of supply in standard FSPs are minimal, whether considered individually or in aggregate. The importers' market position is therefore many times smaller than those held by the Parties and Tata Steel (with none of these suppliers having a share of more than [0-5]%). The largest importer, ArcelorMittal, has a share of supply in standard FSPs of only [0-5]% on both a volume and value basis.¹¹⁹ While the Parties submitted that importers have a higher share of open specification projects than closed specification projects,¹²⁰ the CMA did not receive any evidence to suggest that imports are, in practice, a significant competitive constraint for open specification projects.¹²¹
- (b) Overall, the responses of customers to the CMA's Merger investigation indicated that suppliers other than the Parties and Tata Steel have only a minimal presence. Very few customers indicated that they had purchased or considered purchasing standard FSPs from ArcelorMittal, and none had purchased or considered purchasing from Brucha in the past year. A small number of customers had, on occasion, considered other importers, such as Trimo, but no customers purchased from these suppliers in the past year.
- (c) Similarly, there are very limited references to any of these importers, (including ArcelorMittal and Brucha) in the Parties' internal documents.

137. The Parties submitted that there were no significant barriers to importing FSPs into the UK, as demonstrated by the fact that Kingspan Ltd exports [X]% of the FSPs it produces in the UK and Joris Ide's imports into the UK account for [X]% of total UK supply.¹²² The Parties also submitted that the Commission had noted in *Kingspan/Steel Partners* that there were low barriers to entry for importers in the UK market.¹²³

138. While Joris Ide is exporting/importing FSPs, the CMA considers that its position is materially different to that of the other importers, as Joris Ide is owned by Kingspan, a UK-based operator. In contrast to the position of Joris Ide, independent importers have currently achieved only minimal sales in the UK.

¹¹⁹ See Table 1 / the CMA's share of supply analysis.

¹²⁰ Parties' Supplemental Response and FMN, Tables 10 and 11.

¹²¹ The CMA's calculations indicate that even if all of the importers' sales were allocated to open specification projects, their share of open specification projects would be extremely small, with ArcelorMittal's share estimated to be [0-5]%.
¹²² Issues Meeting Presentation, slide 14.

¹²³ Issues Meeting Presentation, slide 13.

139. The available evidence also indicates that independent importers face additional barriers to supplying customers in the UK, which may weaken their ability to compete effectively, in particular in relation to:
- (a) Delivery times: Some customers said that delivery times for importers are considerably longer, with imports taking up to an additional one to two weeks.¹²⁴ The Parties submitted that supply is typically not time-critical; however, around one third of customers considered delivery time to be the most important (or joint most important) criteria when selecting a supplier;
 - (b) Transport costs: The Parties accepted that importers faced additional transport costs of about 5%,¹²⁵ though they considered this was low. The CMA notes that such additional transport costs make importing less profitable than supplying from the UK.
 - (c) Some customers considered imported standard FSPs to be of lower quality.
140. Several third parties also stated that while the forthcoming impact of the UK's exit from the European Union remains unclear, this may have some impact on the ability of importers to compete for UK-based customers. In particular, if tariffs were imposed after the end of the transition period, it was possible that imports would become less appealing for customers.
141. While the Parties submitted that the Commission had previously noted in *Kingspan/Steel Partners* that there were 'low' barriers to entry for importers in the UK market, the CMA considers that this is not an accurate characterisation of the Commission's decision. The CMA notes that EU suppliers indicated to the Commission, in that case, that barriers to enter the UK market were very high and that the Commission expressed that UK entry barriers were 'not prohibitive' rather than low.¹²⁶
142. Accordingly, for the reasons set out above, the CMA believes that importers represent, both individually and in aggregate, only a very limited competitive constraint on the Parties.

124 [REDACTED] where it was estimated that an FSP delivered from an EU based supplier will typically take 4-5 weeks to be delivered, compared to 2-3 weeks from a UK based supplier.

125 FMN, paragraph 133 states the incremental transport costs of imports from the Benelux region relative to shipping within the UK are only about [REDACTED] %.

126 *Kingspan/Steel Partners*, paras 48 and 119.

Suppliers of twin skin construction sheets

143. Kingspan submitted that it views twin skin construction sheets as a much greater threat than the FSPs supplied by Building Solutions, and that twin skin construction sheets are essentially identical to standard FSPs and can be used for exactly the same end-use applications.¹²⁷
144. Kingspan initially submitted that it competed with twin skin construction sheets on approximately [X]% of all foam sandwich panel projects.¹²⁸ At a later stage in the CMA's investigation, Kingspan stated that this did not reflect an identifiable set of projects to which twin skin construction sheets were limited, but was a more general estimate of the proportion of Kingspan's customers that would also seek twin skin quotes in parallel with FSP quotes. Kingspan submitted that there was no identifiable set of opportunities, either by type of project or application, for which Kingspan did not face competition from twin skin sheets.¹²⁹
145. To corroborate these arguments, Kingspan submitted:
- (a) Three examples of building specifications which, in each case, stated that either standard FSPs or twin skin construction sheets would be suitable for the project.¹³⁰
 - (b) Three examples of Kingspan cutting the price of its FSPs in order to win an opportunity against twin skin construction sheets;¹³¹ and
 - (c) The RBB Analysis, which the Parties consider demonstrated that Kingspan had lost a significant number ([X]) of opportunities to twin skin construction sheets, representing [X]% of the lost opportunities ([X]% by value) where Kingspan had recorded data on the reason for the loss.¹³²
146. Overall, the Parties' submissions were not consistent with the third-party feedback the CMA received in its merger investigation, which indicated that twin skin construction sheets are a competitive constraint to standard FSPs for only a limited proportion of projects. In particular:

¹²⁷ Issues Meeting Presentation, slide 5.

¹²⁸ FMN, para 115.

¹²⁹ RBB Competitive Constraints Paper.

¹³⁰ Email from Allen & Overy LLP to CMA, 20 March 2020.

¹³¹ FMN, para 115. The CMA notes that the documents provided by the Parties at FMN, Annex 42 (Insulated Roof & Wall Panels Kingspan Quotation data) appear only to show the prices being quoted (rather than the prices being reduced to compete with twin skin construction sheets).

¹³² FMN, para 218 and Table 2 of the RBB Analysis.

- (a) As noted at paragraph 39 above, a significant proportion of customers indicated that they would be unlikely to switch from FSPs to twin skin construction sheets following a 5% price increase. Several customers also identified the greater ease of installation of standard FSPs as a reason for preferring them over twin skin construction sheets. Similarly, one competing supplier of twin skin construction sheets also indicated that twin skin construction sheets are not suitable for projects that require quick on-site installation.
- (b) The CMA also notes that there are significant differences in the technical properties of the two products. As noted at paragraph 38 above, twin skin construction sheets typically have a lower thermal insulation capability and greater fire resistance properties. In practice, this means that the two products are often better suited to use in different applications.
147. Third parties also indicated that, for the limited proportion of projects where both standard FSPs and twin skin construction sheets are realistic alternatives, customers increasingly prefer to use standard FSPs. Kingspan submitted that there was no evidence that demand was shifting permanently to FSPs from twin skin construction sheets and that twin skin construction sheets were, following the Grenfell Tower fire, growing in usage due to their superior fire resistance performance.¹³³ However, the CMA understands that fire resistance is not an important requirement for the majority of the projects that Kingspan and Building Solutions' standard FSPs compete for and, therefore, that this factor would not be liable to affect the preferences of many standard FSP customers.¹³⁴
148. The CMA also notes that the Parties' current business strategies do not reflect a shift in market demand towards twin skin construction sheets. Kingspan is [REDACTED].¹³⁵ Building Solutions is [REDACTED].¹³⁶ One of the Parties' internal documents ([REDACTED]) also makes the repeated statement that demand is shifting towards standard FSPs and away from twin skin construction sheets.¹³⁷
149. Kingspan has, as noted above, cited three specific examples of building specifications which, in each case, stated that either standard FSPs or twin skin construction sheets would be suitable for the project. The CMA notes that this is a very small proportion of all standard FSP projects and therefore

¹³³ Issues Meeting Presentation; RBB Competitive Constraints Paper, page 2.

¹³⁴ FMN, footnote 45.

¹³⁵ FMN, para 8.

¹³⁶ FMN, para 140.

¹³⁷ FMN, Annex 7 [REDACTED].

cannot be considered as evidence that is necessarily representative of broader market trends.

150. The same is the case with regard to Kingspan's cited examples of cutting its FSP price in reaction to twin skin construction sheets, of which only three examples were provided. This dataset represents a very small proportion (less than [REDACTED]%) of Kingspan's total business during the period between April 2018 and mid-November 2019 when compared against the full set of the Kingspan FSP Quotation Data.¹³⁸
151. The Parties' internal documents contain very limited reference to twin skin construction sheets competing with FSPs. More specifically there is no evidence in the Parties' internal documents showing that either of the Parties is actively monitoring twin skin construction sheets in the context of FSPs, for example when setting prices.
152. Finally, the CMA notes that prices for standard FSPs are negotiated on a project-by-project basis and Kingspan would only need to set prices to reflect competition from twin skin construction sheets on those projects where the latter were an alternative (around [REDACTED] according to Kingspan).¹³⁹
153. The CMA therefore considers that, overall, suppliers of twin skin construction sheets act as a competitive constraint on the Parties' standard FSP sales for only a limited proportion of projects, and that there remains a significant portion of customers for whom twin skin construction sheets will not be an alternative.

Conclusion on competitive constraints

154. Overall, the CMA believes that:
 - (a) Tata Steel is a strong competitive constraint on the Parties and is the only material constraint on Kingspan (other than Building Solutions) in standard FSPs (particularly in the roof segment);
 - (b) Importers represent only a very limited constraint on the Parties; and

¹³⁸ FMN, para 293. Kingspan won [REDACTED] FSP opportunities during the period April 2018 to mid-November 2019, with a value of approximately £[REDACTED] million.

¹³⁹ One competitor ([REDACTED]) indicated that twin skin construction sheets are substitutable with FSPs in about one-third of building projects. Similarly, a significant proportion of customers that responded to the CMA's Merger investigation indicated that they would be unlikely to switch to twin skin construction sheets following a 5% price increase in standard FSPs (see para 39).

- (c) Twin skin construction sheet suppliers exert a degree of competitive constraint on the Parties for only a limited proportion of projects.

Conclusion on horizontal unilateral effects

155. For the reasons set out above, the CMA believes that:

- (a) In standard FSPs in the UK, the Parties have an extremely high combined market share in what is a highly concentrated market, and that the Merger will bring about a material increment in the share of supply;
- (b) There is a material degree of competitive interaction between the Parties and that the Merger would eliminate a significant competitive force in Building Solutions; and
- (c) There is only one player – Tata Steel – that imposes a significant constraint on the Parties. Importers and suppliers of twin skin construction sheet provide only a limited competitive constraint.

156. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of standard foam sandwich panels in the UK.

Horizontal unilateral effects – single skin construction sheets

157. The CMA has also considered whether the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of single skin construction sheets in the UK, again by reference to evidence on:

- (a) Shares of supply;
- (b) Closeness of competition between the Parties; and
- (c) Competitive constraints from alternative suppliers.

Shares of supply

158. The Parties submitted that Building Solutions is the largest supplier of single skin construction sheets in the UK and that the Merger would result in a combined share of supply of [35-40]% – [40-45]% by volume, with an increment of [10-15]%, based on market size estimates from industry reports and adjustments made by the Parties.

159. The CMA has produced its own share of supply estimates using data from the Parties and responses from third parties.

Table 2: Single skin construction sheets / share of supply estimates (UK, 2019)

	Volume (000' m ²) – CMA estimate	Revenues (£m) – CMA estimate
Kingspan	[5-10]%	[5-10]%
Building Solutions	[10-20]%	[10-20]%
Combined	[20-30]%	[20-30]%
Tata Steel	[5-10]%	[5-10]%
Firth Steels	[10-20]%	[10-20]%
Coverworld	[10-20]%	[10-20]%
Thomas Panels	[10-20]%	[10-20]%
Other	[10-20]%	[10-20]%

Source: CMA analysis based on data from Parties and their competitors.

160. The CMA's share of supply estimates indicate that the Parties would have a lower combined share than that submitted by the Parties, of [20-30]% with a material increment of [5-10]%. The Merged Entity would become the leading supplier of single skin construction sheets in the UK post-Merger. However, the Merged Entity will face a number of competitive constraints with moderate shares of supply (Tata Steel, Firth Steels, Coverworld and Thomas Panels), as well as a number of smaller players. The CMA therefore considers that, overall, these shares indicate that the Merged Entity will remain subject to meaningful competitive constraints post-Merger.

Closeness of competition

161. The Parties submitted that they do not closely compete for single skin construction sheets because:
- (a) The Parties have different geographical focuses. In particular, the vast majority of Kingspan Group's single skin construction sheets are sold in the southern parts of the UK (c.[X]% below the Manchester - Hull 'line') whereas Building Solutions achieves the majority of its sales (c.[X]%) in the northern parts of the UK.¹⁴⁰
 - (b) Building Solutions has a greater focus on customers in the agricultural sectors¹⁴¹

¹⁴⁰ FMN, para. 235

¹⁴¹ Parties Issues Meeting slides

162. The CMA considers that there is a material degree of competition between the Parties in the supply of single skin construction sheets. In particular the CMA found that:

- (a) There was some overlap in customers seeking quotes. An analysis of customer quotations similar to that for FSPs (see paragraphs 109-114 above) indicated that [redacted]% of customers seeking quotations from Kingspan also sought quotations from Building Solutions (accounting for [redacted]% of quotation value); and [redacted]% of customers seeking quotations from Building Solutions also sought quotations from Kingspan (accounting for [redacted]% of quotation value).¹⁴²
- (b) Almost half of Building Solutions' customers that provided evidence to the CMA also purchased or considered purchasing single skin construction sheets from Kingspan. Kingspan was the alternative supplier named most frequently by Building Solutions customers.
- (c) Several Kingspan customers that provided evidence to the CMA also purchased or considered purchasing single skin construction sheets from Building Solutions. Building Solutions was the second most mentioned alternative supplier behind Tata Steel and level with Thomas Panels.
- (d) Several of the Parties' internal documents also indicate that they compete in the supply of single skin construction sheets specifically. One Kingspan strategy document states that [redacted].¹⁴³ Another document identified both Kingspan and Building Solutions as [redacted] suppliers of single skin construction sheets in the UK, in addition to monitoring other competitors ([redacted]).¹⁴⁴

163. A small minority of third parties raised concerns specifically in relation to single skin construction sheets as a result of the Merger, including that the Merged Entity would be at an advantage due to greater purchasing power. Overall, however, third parties broadly recognised that there were many alternative suppliers.

¹⁴² The lower figures are based only on the set of quotations that the Parties confirmed are related to single skin construction sheets ([redacted] customers). The higher figures are based on the quotations provided by all of the Parties' divisions that offer single skin construction sheets ([redacted] customers).

¹⁴³ Slide 66, Annex 15 [redacted].

¹⁴⁴ Slides 38 and 39 of FMN, Annex 7 [redacted].

Competitive constraints

164. The Parties submitted that there are four large alternative suppliers of single skin construction sheets in the UK and 32 smaller suppliers that together comprise at least [10]% of the market by volume.¹⁴⁵
165. The evidence provided to the CMA by third parties broadly supports the Parties' submissions that there will remain four strong competitors post-Merger in Thomas Panels, Coverworld, Tata Steel and Firth Steels. In particular:¹⁴⁶
- (a) Thomas Panels, Coverworld and Firth Steel all have material estimated shares of [10-20]% by volume, with Tata Steel following with an estimated [5-10]% share by volume.
 - (b) These suppliers were all named as strong competitors by other suppliers in the market.
 - (c) Customers of the Parties purchased, or considered purchasing, single skin construction sheets from these suppliers to a significantly greater extent than any other suppliers.
 - (d) As noted at paragraph 162, the Parties' internal documents consistently refer to the presence of alternative suppliers.
166. The CMA did not receive evidence that suppliers other than Thomas Panels, Coverworld, Tata Steel and Firth Steel pose a significant competitive constraint. Only four smaller competitors (ArcelorMittal, Ash and Lacey, Cladco and Befab) had been used or considered by at least two of the Parties' customers.

Conclusion on horizontal unilateral effects – Single skin construction sheets

167. For the reasons set out above, the CMA believes that while the Parties compete to a material extent in the supply of single skin construction sheets in the UK, there will be a sufficient number of strong competitors remaining in the market post-Merger to ensure effective competition. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of single skin construction sheets in the UK.

¹⁴⁵ FMN, Figure 12.

¹⁴⁶ FMN, para 41.

Barriers to entry and expansion

168. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹⁴⁷

Standard FSPs

169. In relation to standard FSPs, the Parties submitted that:

- (a) There are no significant barriers to entry or expansion in relation to the production and supply of FSPs or single skin construction sheets.¹⁴⁸
- (b) Suppliers of twin skin construction sheets are among the most likely potential entrants with regards to the supply of standard FSPs.
- (c) The production process for FSPs is very flexible, straightforward and does not require high levels of investment; the investment required is about EUR 6 million.¹⁴⁹

170. The evidence received by the CMA from the Parties and third parties does not support the Parties' submissions with regards to entry. In particular:

- (a) The Parties were unable to identify any new entrants into the market for standard FSPs in the last five years (since 1 January 2015).¹⁵⁰ Third parties were also unable to identify any examples of recent entry.
- (b) Responses from suppliers of twin skin construction sheets indicate that they are unlikely to enter the market for standard FSPs in the next two years.¹⁵¹ The CMA has also not received evidence indicating that any other firms are considering entering the market for standard FSPs.
- (c) Responses from third parties indicate that the costs of entry for standard FSPs are greater than estimated by the Parties. The cost of an FSP

¹⁴⁷ *Merger Assessment Guidelines*, from paragraph 5.8.1.

¹⁴⁸ FMN, paras 313, 316.

¹⁴⁹ FMN, para 314.

¹⁵⁰ FMN, paras 315, 318.

¹⁵¹ [X] and [X] (suppliers of construction sheets) responded to our questionnaire. [X] and [X] stated that they are not considering supplying FSPs and [X] stated they would consider supplying FSPs, but would not enter in the next two years,.

production line was estimated by third parties to be £6m-£10m and would require a minimum of 5-10 staff per shift.¹⁵²

171. The CMA did receive evidence that one competitor to the Parties has plans to significantly expand their sales to UK customers. If successful, this expansion would create another supplier of standard FSPs with a share of at least [5-10]%. This competitor is, however, at an early stage of developing its expansion plans, and there remains considerable uncertainty around the scope of any intended expansion, the likelihood of successful expansion and the timing of expansion.
172. For the reasons set out above the CMA believes that entry or expansion would not be sufficient, timely or likely to prevent a realistic prospect of an SLC as a result of the Merger.

Single skin construction sheets

173. The CMA has not had to conclude on barriers to entry or expansion with regards to single skin construction sheets as the Merger does not give rise to competition concerns in the supply of single skin construction sheets on any basis.

Countervailing buyer power

174. The Parties submitted that their customers possess countervailing buyer power for both FSPs and single skin construction sheets as they engage in multi-sourcing from several suppliers and will therefore be able to achieve competitive prices.¹⁵³ The Parties did not refer to any specific evidence or internal documents in support of this submission.
175. The CMA does not consider that customers possess countervailing buyer power for standard FSPs or single skin construction sheets, in particular for the following reasons:
- (a) Neither of the Parties have referred to any particularly large customers they rely on for revenues [REDACTED].¹⁵⁴ [REDACTED].¹⁵⁵

¹⁵² [REDACTED] estimated that this would cost £10m, [REDACTED] stated £6m and the third estimated a cost of EUR 5-7.5 million with an additional EUR 3-4 million for a building to house the panel line. [REDACTED] estimated minimum staffing of 10 people per shift; another estimated 5-7 staff per shift.

¹⁵³ FMN, paras 319-320.

¹⁵⁴ FMN, Annex 75 (List of Kingspan's top 40 customers for FSPs, November 2019).

¹⁵⁵ FMN, Annex 76 (List of Kingspan's top 40 customers for single skin construction sheets, November 2019).

- (b) The Parties have a considerable number of small customers and the CMA does not consider that any of these customers can exercise sufficient countervailing buyer power.¹⁵⁶
- (c) Although responses from third parties indicate that many customers do multi-source, the CMA considers that multi-sourcing is part of the normal competitive process and does not constitute evidence of purchasing power. The CMA also notes that a significant proportion of customers only purchase from one supplier and have not requested quotations from alternative suppliers.¹⁵⁷

Conclusion on substantial lessening of competition

176. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of standard FSPs in the UK.

Decision

177. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
178. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.¹⁵⁸ The Parties have until 16 April 2020¹⁵⁹ to offer an undertaking to the CMA.¹⁶⁰ The CMA will refer the Merger for a phase 2 investigation¹⁶¹ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides¹⁶² by 23 April 2020 that there are no

¹⁵⁶ For example, [X].

¹⁵⁷ 21 out of 66 customers only used or considered one supplier of single skin construction sheets in 2019

¹⁵⁸ Section 33(3)(b) of the Act.

¹⁵⁹ Section 73A(1) of the Act.

¹⁶⁰ Section 73(2) of the Act.

¹⁶¹ Sections 33(1) and 34ZA(2) of the Act.

¹⁶² Section 73A(2) of the Act.

reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

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7 April 2020