

Completed acquisition by Energystore Limited of Warmfill Ltd, Warmwall Limited and related assets

Decision on relevant merger situation and substantial lessening of competition

ME/51118/21

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 5 April 2022. Full text of the decision published on 22 April 2022.

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

SUMMARY

Introduction

1. On 4 August 2021, companies within the Bacar Group – Bacar Group Limited (**Bacar**) and Energystore Limited (**Energystore**) (together, the **Buyer**) – acquired the whole of the issued share capital of Warmfill Ltd (**Warmfill**), Warmwall Limited (**Warmwall**) and related assets (together, the **Acquired Business**) (the **Merger**). Together, post-completion of the Merger, the Buyer and the Acquired Business are referred to as the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Bacar, Energystore, Warmfill and Warmwall is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

Frame of reference

3. The Parties overlap in the manufacture and supply of expanded polystyrene (**EPS**) bead in Northern Ireland. EPS bead is principally used as an input for insulation products, most notably cavity wall insulation (**CWI**). The CMA's investigation has found that EPS bead is not readily substitutable with other insulation materials in Northern Ireland. The CMA therefore does not consider it appropriate to widen the product frame of reference to include the supply of other insulation materials. The evidence available to the CMA, including on factory/manufacturing locations, transportation costs and existing supply patterns, indicates that the appropriate geographic frame of reference is Northern Ireland.
4. The Parties also overlap in the installation of EPS bead CWI in Northern Ireland, in both newbuild and existing (retrofit) properties. EPS bead CWI is installed by combining EPS bead with an adhesive and then injecting the combined mixture into a wall cavity, where it bonds to create CWI. The results of the CMA's investigation suggest that there is little substitutability between EPS bead CWI and other types of CWI (or insulation types more broadly, such as floor insulation). The CMA therefore does not consider it appropriate to widen the product frame of reference to include the installation of insulation other than EPS bead CWI. The evidence available to the CMA, including on regulations specific to Northern Ireland, funding arrangements through the Northern Ireland Sustainable Energy Programme

(**NISEP**) and existing supply patterns, indicates that the appropriate geographic frame of reference is Northern Ireland.

5. The CMA has therefore assessed the impact of the Merger in the following frames of reference:
 - (a) the manufacture and supply of EPS bead in Northern Ireland; and
 - (b) the installation of EPS bead CWI in Northern Ireland.

Competitive assessment

6. The CMA has assessed whether the Merger gives rise to horizontal unilateral effects in (i) the manufacture and supply of EPS bead in Northern Ireland and (ii) the installation of EPS bead CWI in Northern Ireland. The CMA has also assessed whether the Merger gives rise to vertical effects arising from input foreclosure of competing installers of EPS bead CWI in Northern Ireland.
7. The CMA has found that the Merged Entity has a very high combined share of supply (>80%) in the manufacture and supply of EPS bead in Northern Ireland. The available evidence indicates that the Parties compete closely with each other and the remaining competitors will exercise only a limited constraint post-Merger.
8. The CMA has also found that the Merged Entity has a strong market position (>40%) in the installation of EPS bead CWI in Northern Ireland. The available evidence indicates that the Parties compete closely with each other. Although there are a number of competitors that will remain post-Merger, none of these alternative suppliers are vertically integrated and they are dependent on the Parties for their key input, EPS bead, which weakens their competitive constraint.
9. The CMA has also found that the Merged Entity has the ability and the incentive to foreclose its downstream rivals in the EPS bead CWI installation market. The CMA believes that such a foreclosure strategy may harm competition in the downstream installation market.
10. On the basis of the available evidence, the CMA does not consider that entry or expansion would be timely, likely or sufficient to prevent a realistic prospect of a substantial lessening of competition (**SLC**) as a result of the Merger.
11. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the (i) manufacture and supply of EPS bead into Northern Ireland and (ii) installation of EPS bead CWI in

Northern Ireland; and vertical effects arising from input foreclosure of competing installers of EPS bead CWI.

De minimis exception

12. The CMA has considered whether an exception to the duty to refer the Merger for a Phase 2 investigation may apply, in particular whether the markets concerned are not of sufficient importance to justify the making of a reference (the *de minimis* exception).
13. The total size in aggregate of all the markets concerned in the UK is between £5 million and £15 million. For markets of this size, the CMA undertakes a cost/benefit analysis in deciding whether to exercise its discretion to apply the *de minimis* exception.
14. In assessing whether to apply the *de minimis* exception the CMA notes, first that there are no clear-cut undertakings in lieu of a reference (**UILs**) in principle available. Second, the CMA considers that the customer harm expected to arise from the Merger is not likely to materially exceed the public costs of a reference. In particular, the CMA has found that the Northern Ireland Utility Regulator (**NIUR**) may be expected to exert some constraint on the Parties through its control of the NISEP funding. The operation of this scheme should help protect vulnerable customers from the adverse effects of the Merger. In addition, the presence of large multinational suppliers in the broader insulation sector may also be expected to limit the customer harm arising from the Merger. As such, the CMA has decided to exercise its discretion to apply the *de minimis* exception.
15. The Merger will therefore **not be referred** under section 22(1) of the Act.

ASSESSMENT

PARTIES

16. Energystore manufactures and supplies expanded polystyrene (**EPS**) bead in the UK and the Republic of Ireland. Energystore also installs EPS bead insulation products in the UK and the Republic of Ireland.¹ Energystore is wholly-owned by Bacar. Energystore generated £[X] million in revenue for the 2020 financial year.²
17. Warmfill manufactures and supplies EPS bead in Northern Ireland and the Republic of Ireland and installs EPS bead insulation products in Northern Ireland.³ The UK turnover for Warmfill for the 2020 financial year was £[X] million.⁴
18. Warmwall holds certain intellectual property and assets related to the manufacture of certain innovative EPS bead products (some of which are supplied by Warmfill).⁵

TRANSACTION

19. On 4 August 2021, the following transactions occurred:
 - (a) Bacar acquired from one of the sellers of Warmfill and Warmwall ([X]) a freehold site in Larne, which is used by Warmfill as its manufacturing site (the **Freehold Purchase**);⁶ and
 - (b) Energystore acquired from the sellers of Warmfill and Warmwall ([X]), the whole of the issued share capital of Warmfill and Warmwall (the **Share Purchase**).⁷

¹ Completed enquiry letter response, which comprised submissions from the Parties dated 16 December 2021, 22 December 2021, 5 January 2022, 10 January 2022 and 20 January 2022 (together, **Enquiry Letter Response**), question 12.

² Enquiry Letter Response, question 14.

³ Enquiry Letter Response, question 12.

⁴ Enquiry Letter Response, question 10.

⁵ Warmfill told the CMA that Warmwall is not revenue generating, email from director of Warmfill on 28 January 2022.

⁶ The freehold purchase agreement, dated 3 August 2021, produced by Energystore in its response to question 1 of the CMA's notice under section 109 (**s109**), dated 16 February 2022.

⁷ Share purchase agreement, dated 4 August 2021, Enquiry Letter Response, question 4.

PROCEDURE

20. The CMA's mergers intelligence function identified this transaction as warranting an investigation on 8 December 2021.⁸
21. The Merger was considered at a Case Review Meeting on 22 March 2022.⁹

RATIONALE FOR THE MERGER

22. Energystore submitted that the rationale for the Merger was:
 - (a) For the acquisition of Warmfill (including its manufacturing site in Larne), to replace Energystore's existing EPS bead manufacturing site in Northern Ireland. Energystore submitted that Energystore had been searching for a replacement facility without success in recent years, with estimated costs for establishing such a site exceeding £[<]m and an estimated lead time of more than [<] months.¹⁰
 - (b) For the acquisition of Warmwall, [<]; Energystore intends to develop certain innovative EPS bead insulation products which Warmwall holds the rights to manufacture.¹¹

JURISDICTION

23. Each of Bacar, Energystore, Warmfill and Warmwall is an enterprise. These enterprises have ceased to be distinct as a result of: i) the Freehold Purchase; and ii) the Share Purchase.¹²
24. The CMA has treated the Merger as a single relevant merger situation, under which Bacar, Energystore, Warmfill and Warmwall (together with the freehold site in Larne) have ceased to be distinct.
25. Under section 23 of the Act, the share of supply test is satisfied if the merged enterprises both either supply or acquire goods or services of a particular

⁸ See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), December 2020, paragraphs 6.4-6.6.

⁹ See [CMA2](#), from page 46.

¹⁰ Enquiry Letter Response, question 22.

¹¹ Email from director of Energystore to the CMA on 3 March 2021.

¹² The CMA notes that completion of the Freehold Purchase was conditional upon the completion of the Share Purchase.

description in the UK, and will, after the merger, supply or acquire 25% or more of those goods or services in the UK as a whole or in a substantial part of it.¹³

26. Energystore submitted that the share of supply test is not satisfied unless the CMA adopts a very narrow approach to the group of goods and/or services to which this jurisdictional test is applied.¹⁴
27. The CMA has a wide discretion to identify a specific category of goods or services supplied or procured by the merging parties for the purposes of the share of supply test.¹⁵ The CMA's Guidance on Jurisdiction and Procedure (**CMA2**) identifies a number of considerations to which the CMA will have regard when describing the relevant category of goods or services.¹⁶ In particular, it notes that:
 - (a) The CMA will have regard to any reasonable description of goods or services; and
 - (b) The share of supply test is not an economic assessment of the type used in the CMA's substantive assessment and therefore the group of goods or services to which the test is applied need not amount to a relevant economic market. Therefore, it is not necessary that the description of services for the purposes of the share of supply test aligns with the market definition analysis for the purposes of the substantive assessment.
28. The Parties overlap in the manufacturing and supply of EPS bead in Northern Ireland with a combined share of supply of [80-90]% by value and an increment of [20-30]% brought about by the Merger.¹⁷ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
29. The Merger completed on 4 August 2021 and the CMA was informed about completion on 26 October 2021. Following the extension of the four-month period under section 24 of the Act, the deadline for a decision is 6 April 2022.¹⁸
30. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

¹³ [CMA2](#), paragraph 4.62.

¹⁴ Issues Letter Response, paragraph 7.

¹⁵ Section 23(8) of the Act.

¹⁶ [CMA2](#), paragraph 4.59.

¹⁷ CMA's estimates of the Parties' shares of supply, Table 1, below. Energystore estimated that the Parties have a combined share of supply of [70-80]% with an increment brought about by the Merger of [20-30]%; Enquiry Letter Response, question 31.

¹⁸ Energystore failed to comply with the requirements of the s109 Notice of 8 December 2021, resulting in the extension of the four month clock by 40 days.

31. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 9 February 2022 and the statutory 40 working day deadline for a decision is therefore 6 April 2022.

COUNTERFACTUAL

32. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger 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.¹⁹
33. Energystore submitted that Warmfill had been in recent financial decline and anticipated a continuation of that decline absent the Merger, for reasons including:
- (a) declining year-on-year turnover;²⁰
 - (b) ongoing investigations into Warmfill's historic operation ([redacted]);²¹
 - (c) [redacted];²²ⁱ
 - (d) [redacted];¹² and
 - (e) ongoing price increases in the EPS bead supply chain.²³
34. However, the CMA has not seen any evidence to indicate that Warmfill would have exited the market absent the Merger. As such, the CMA considers the pre-Merger conditions of competition to be the relevant counterfactual.

¹⁹ See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 3.12.

²⁰ Warmfill's filed Annual Reports for financial years 2013/14, 2015/16. Provided to the CMA by Energystore alongside its response to the Issues Letter, dated 21 March 2022 (the **Issues Letter Response**).

²¹ Issues Letter Response Annexes, including: Email from director of Energystore to [redacted]; Email chain between [redacted] and director of Energystore, [redacted]; Email between [redacted] and director of Energystore, [redacted].

²² Issues Letter Response Annexure: Letter from [redacted].

²³ Issues Letter Response Annexures: Email from the Commercial Director of Thermabead to Smart Insulation, dated 8 October 2021; Letter from BASF, dated 14 October 2021; Heads of Agreement between Energystore Ltd and Dungarvan Insulation Ltd, dated 2 March 2022.

FRAME OF REFERENCE

35. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’. The CMA is therefore required to identify the market or markets within which an SLC exists. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.²⁴
36. Market definition involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.²⁵
37. While market definition can sometimes be a useful tool, it is not an end in itself. The outcome of any market definition exercise does not determine the outcome of the CMA’s analysis of the competitive effects of the merger in any mechanistic way.²⁶ There may be no need for the CMA’s assessment of competitive effects to be based on a highly specific description of any particular market (including, for example, descriptions of the precise boundaries of the relevant markets and bright-line determinations of whether particular products or services fall within it).²⁷ The approach taken by the CMA will reflect the circumstances of the case.

Product scope

38. The CMA’s starting point for the product frame of reference is the overlapping products of the Parties. In identifying what other significant competitive alternatives should be included in the relevant market, the CMA will pay particular regard to demand-side factors (the behaviour of customers). The CMA may also consider supply-side factors.²⁸

Product scope for the manufacture and supply of EPS bead

39. The Parties overlap in the manufacture and supply of EPS bead. The CMA has therefore taken this overlap as the starting point for the product frame of reference.

²⁴ [CMA129](#), March 2021, paragraph 9.1.

²⁵ [CMA129](#), March 2021, paragraph 9.2.

²⁶ [CMA129](#), March 2021, paragraph 9.4.

²⁷ [CMA129](#), March 2021, paragraph 9.5.

²⁸ [CMA129](#), March 2021, paragraph 9.6.

40. Energystore submitted that whilst the Parties overlap in the manufacture and supply of EPS bead, the 'product market or scope should include other types of insulation material including mineral wool, polyurethane (**PU**) foam, expanded polystyrene (**XPS**) and polyisocyanurate (**PIR**) board'.²⁹ In support, Energystore submitted that:
- (a) 'EPS bead represents a low share of insulation sales' in both the UK and Northern Ireland, with Energystore estimating that EPS bead represented approximately 1% of the UK market and 11% of the Northern Ireland market;³⁰
 - (b) '[National] Building Regulations set output performance criteria rather than prescribing specific materials and products that must be used'. As a result, consumers have the choice of 'at least 10 insulation technologies for consideration' which achieve the 'same goal for the customer';³¹
 - (c) the most 'commonly used insulation products in Northern Ireland are PIR board and fibre wool insulation';³²
 - (d) customers decide which insulation material to use based on a range of factors, including thermal and acoustic performance, moisture absorption and speed of installation;³³ and
 - (e) architectural plans, produced for 200 newly built homes and a school, show that 'Mineral Wool and PIR are present and active within the market'.³⁴

CMA assessment

41. From a demand-side perspective:
- (a) The CMA received evidence that EPS bead has a number of advantages over other insulation materials for cavity wall insulation (**CWI**) in Northern Ireland, including:

²⁹ Issues Paper, paragraph 11.

³⁰ Enquiry Letter Response, question 11 response on the UK insulation market size, page 3.

³¹ Enquiry Letter Response, question 11 response on the UK insulation market size, page 3.

³² Enquiry Letter Response, question 11 response on the UK insulation market size, page 3.

³³ Enquiry Letter Response, question 11 response on the UK insulation market size, page 11; Issues Letter Response, paragraph 22.

³⁴ Energystore provided to the CMA 11 architectural plans, which were prepared between 2010 and 2021. Issues Letter Response, paragraph 12.

- (i) EPS bead has excellent thermal performance and performs better than, for example, mineral wool or PIR board;^{35,36}
 - (ii) EPS bead is generally cheaper than other materials for CWI;³⁷
 - (iii) EPS bead can be quicker and cheaper to install than other materials (including PIR board, mineral wool and PU foam CWI);³⁸
 - (iv) EPS bead is often more appropriate for use in the Northern Ireland climate, where certain insulation products are not suitable due to higher moisture absorption properties (eg mineral wool, which can suffer from damp issues when used as CWI in Northern Ireland);^{39,40} and
 - (v) EPS bead can be installed in both retrofit and newbuild properties (whereas PIR board CWI can only be used in newbuild environments).⁴¹
- (b) No customers purchasing EPS bead (ie insulation installers) told the CMA that, in response to the Parties ceasing supply of EPS bead, they would change insulation material type (eg from EPS bead to PIR board). These customers would instead try to locate an alternative EPS bead supplier or be forced to cease operation of their business.^{42,43}
- (c) All of the Parties' installation customers (ie end-users of EPS bead) that responded to the CMA's questionnaire indicated that they viewed PIR board as the only alternative to EPS bead CWI for newbuild properties. All indicated that they would select the most cost-effective insulation, which is presently EPS bead.⁴⁴

³⁵ Note of a call with a Third Party [redacted] of 17/1/22, paragraph 23 and 26; Note of a call with a Third Party [redacted] of 20/1/22, paragraph 32 33.

³⁶ The National Blown Bead Association, an industry trade body, also sets out the superior thermal benefits of EPS bead insulation over other materials on their website, www.nbba.org.uk/epsblownbead.html.

³⁷ Note of a call with a Third Party [redacted] of 18/1/22, paragraph 25; Note of a call with a Third Party [redacted] of 17/1/22 paragraph 9; Note of a call with a Third Party [redacted] of 20/1/22, paragraph 7, 31, 33; Note of a call with a Third Party [redacted] of 28/1/22, paragraph 7; Third Party responses [redacted], [redacted], [redacted] to the CMA's questionnaire.

³⁸ Note of a call with a Third Party [redacted] of 17/1/22, paragraph 9; Note of a call with a Third Party [redacted] of 20/1/22, paragraph 31; Note of a call with a Third Party [redacted] of 28/1/22, paragraph 7; Note of a call with a Third Party [redacted] of 18/1/22, paragraph 25; Note of a call with a Third Party [redacted] of 17/1/22 paragraph 23.

³⁹ Note of a call with a Third Party [redacted] of 27/10/22.

⁴⁰ A competitor [redacted] noted that EPS would not be used in types of brick-finished houses in exposed areas. Note of a call with a Third Party [redacted] of 18/1/22, paragraph 26.

⁴¹ Enquiry Letter Response, question 11 response on the UK insulation market size, pages 11-12.

⁴² For example, note of a call with a Third Party [redacted] of 17/1/22, paragraphs 34 and 35.

⁴³ Third Party responses [redacted] [redacted] [redacted] to the CMA's questionnaire.

⁴⁴ Third Party responses [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] to the CMA's questionnaire.

- (d) Third parties told the CMA that there were no alternatives to EPS bead CWI available in Northern Ireland for retrofit properties, and whilst there were a few alternatives to EPS bead CWI for newbuild properties (in particular PIR board), all respondents indicated that EPS bead was the most prevalent type of CWI within Northern Ireland.⁴⁵ For example:
- (i) All of the competitors that responded to the CMA's questionnaire indicated that there was no alternative to EPS bead CWI for retrofit properties in Northern Ireland. An additional respondent, a building development company that also provided services in retrofitting insulation, also submitted that there was no alternative product to EPS bead for retrofit CWI.⁴⁶
 - (ii) One competitor submitted that there are no mineral wool installers operating in Northern Ireland at present.⁴⁷ Energystore also told the CMA that they are unaware of any mineral wool CWI installers in Northern Ireland.⁴⁸ Another competitor submitted that in the island of Ireland mineral wool was not widely used and even a significant increase in price of EPS bead would be unlikely to be sufficient to encourage fibre wool companies to invest in capacity to operate in the island of Ireland.^{49,50}
 - (iii) Another competitor told the CMA that EPS bead was 'dominant' due to its pricing. They noted that PIR board was an alternative in the newbuild market but that the price of the product, combined with the amount charged by block-layers, made it much more expensive.⁵¹ One customer estimated that PIR board was 50-60% more expensive than EPS bead.⁵²

42. From a supply-side perspective:

- (a) The Parties specialise in the manufacture of EPS bead and do not produce other insulation materials.

⁴⁵ Third Party responses [redacted] [redacted] [redacted] [redacted] [redacted] to the CMA's questionnaire.

⁴⁶ Third Party response [redacted] to the CMA's questionnaire.

⁴⁷ Third Party response [redacted] to the CMA's questionnaire.

⁴⁸ Energystore response to question 17 of the CMA's s109, dated 31 January 2022.

⁴⁹ Third Party response [redacted] to the CMA's questionnaire.

⁵⁰ The CMA also notes that, when asked by the CMA, Energystore were not able to provide the details of any mineral wool CWI installers based in Northern Ireland. Energystore response to question 17 of the CMA's s109, dated 31 January 2022.

⁵¹ Third Party response [redacted] to the CMA's questionnaire.

⁵² Third Party response [redacted] to the CMA's questionnaire.

(b) The manufacturing process for the production of mineral wool and PIR board is different from that of EPS bead. Most UK EPS bead manufacturers identified by Energystore only produce EPS bead (and no other insulation material, such as PIR board or mineral wool).⁵³

43. Based on the evidence above, the CMA does not believe that it is appropriate to widen the product scope to include other types of insulation material. On this basis, the CMA has assessed the impact of the Merger on the manufacture and supply of EPS bead.

Product scope for the installation of EPS bead for cavity wall insulation

44. The Parties overlap in the installation of EPS bead CWI. The CMA has thus taken this overlap as the starting point for the product frame of reference.

45. Energystore submitted that:

(a) for newbuild properties needing CWI, 'installation companies have very limited influence over the choices made by builders or designers... it is unusual for product choices to be altered once the installer has been contacted';⁵⁴

(b) 'A number of large main [newbuild] contractors... will also employ many people on site to do install services';⁵⁵

(c) for retrofit (ie existing) properties, insulation installation activity is 'primarily driven by the Northern Ireland Sustainable Energy Programme (**NISEP**) overseen by the [Northern Ireland] Utility Regulator (**NIUR**)'.⁵⁶ Energystore submitted that, under NISEP, EPS bead was one of 'a huge range of energy saving solutions which can qualify for funding';⁵⁷

(d) many installers 'provide a range of install services including heating, plumbing and other construction work. They typically offer insulation as part of their package rather than focussing solely on installing insulation';⁵⁸ and

⁵³ Enquiry Letter Response, question 11 response on the UK insulation market size, Annex 2.

⁵⁴ Enquiry Letter Response, question 11 response on installation, page 8.

⁵⁵ Enquiry Letter Response, question 11 response on installation, page 9.

⁵⁶ Enquiry Letter Response, question 11 response on installation, page 5.

⁵⁷ Issues Letter Response, paragraph 27(i).

⁵⁸ Energystore told the CMA that the NISEP is tendered by the Northern Ireland Utility Regulator on an annual basis and aims to provide grant funding for energy efficiency upgrades to domestic and commercial buildings, with approximately £3.3m of funding allocated on insulation installation projects in the previous year. Energystore explained to the CMA that there is a very limited amount of private retrofit work undertaken without NISEP funding in Northern Ireland, which they estimate to be in the region of £500k activity annually. Enquiry Letter Response, question 11 response on installation, page 9.

(e) 'if an installer wished to move from one type of insulation material (for example from EPS bead installation to mineral wool installation), they could do so relatively easily'.⁵⁹

46. The CMA has therefore considered whether it is appropriate to include in the product frame of reference:

(a) installation of other types of material (eg mineral wool, PU foam and PIR board) for CWI; and

(b) installation of insulation other than CWI (eg roof and floor insulation).

Installation of other types of CWI material

47. As discussed above, the evidence available to the CMA indicates that customers would not switch to installation services that use other types of insulation products because other CWI materials are not a good substitute for EPS bead for CWI in Northern Ireland. Specifically:

(a) **PIR board:**⁶⁰ The CMA was informed that PIR board was not commonly used as CWI in Northern Ireland as it was more expensive and more time-consuming to install when compared to EPS bead.^{61,62} Energystore submitted that PIR board is not suitable for retrofit CWI.⁶³

(b) **PU foam:**⁶⁴ The CMA was informed that this is a specialist product used for particular projects and there are only two installers in Northern Ireland that offer this service.⁶⁵

(c) **Mineral wool:** The CMA understands that there are no mineral wool CWI installers operating in Northern Ireland.⁶⁶

⁵⁹ Enquiry Letter Response, question 11 response on the UK insulation market size, page 9.

⁶⁰ Identified as a possible alternative by all of the Parties' installation customers who responded to the CMA's questionnaire ([redacted]).

⁶¹ One customer advised the CMA that in a standard project, PIR board was approximately £700 more than EPS bead, Third Party response [redacted] to the CMA's questionnaire. Another customer estimated that PIR boards were 50-60% more expensive, Third Party response [redacted] to the CMA's questionnaire.

⁶² Note of a call with a Third Party [redacted] of 28/1/22, paragraph 7.

⁶³ Enquiry Letter Response, question 11 response on the UK insulation market size, page 11.

⁶⁴ Identified as an alternative by some competitors ([redacted]) and a customer ([redacted]).

⁶⁵ Note of a call with a Third Party [redacted] of 17/1/22, paragraph 24.

⁶⁶ Third Party response [redacted] to the CMA's questionnaire; Energystore response to question 17 of the CMA's RFI, dated 31 January 2022.

48. The evidence available to the CMA does not suggest that installers could readily switch to an alternative material for CWI:
- (a) For newbuild CWI, the evidence seen by the CMA indicates that the decision over the insulation material will be taken by the architect, designer or builder.^{67,68} As such, an installer is unlikely to be able to switch to the installation of a different insulation material for any given project.
 - (b) For retrofit CWI, the evidence seen by the CMA indicates that there are limited alternative materials suitable for CWI and EPS bead is the most commonly used material in Northern Ireland.⁶⁹ Suppliers of other materials for CWI do not tend to participate in the NISEP,⁷⁰ which Energystore submitted is the primary driver of retrofit CWI work in Northern Ireland.⁷¹
 - (c) The majority of installers identified by the Parties for which information was available to the CMA only appear to install a single type of CWI material. Of the competing installers of CWI who responded to the CMA's request for information, only one stated that they installed two types of CWI.⁷²
 - (d) Another competing installer told the CMA that it did not offer non-EPS bead CWI and would not consider switching from the installation of EPS bead CWI to an alternative type of insulation material, as the market in Northern Ireland was predominantly for EPS bead CWI.⁷³
49. From a supply-side perspective, Energystore submitted that the process, training and equipment needed for the installation of the various insulation materials differs for each (eg an installer of EPS bead CWI would require specific training to use a compressor and injection equipment but would require different equipment and training to install mineral wool CWI or PIR board CWI).⁷⁴

⁶⁷ Enquiry Letter Response, question 11 response on installation, page 1; Note of call with a Third Party [redacted] of 18/1/22, paragraph 24.

⁶⁸ See also Issues Letter Response Annexes: [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; [redacted]; and [redacted].

⁶⁹ Note of a call with a Third Party [redacted] of 17/1/22, paragraph 22; Note of a call with a Third Party [redacted] of 18/1/22, paragraphs 20-22; Third Party response [redacted] to the CMA's questionnaire.

⁷⁰ Note of a call with a Third Party [redacted] of 27/10/21.

⁷¹ Enquiry Letter Response, question 11 response on installation, page 5

⁷² Note of a call with a Third Party [redacted] of 17/1/22, paragraph 24.

⁷³ Note of a call with a Third Party [redacted] of 20/1/22, paragraphs 23 and 34.

⁷⁴ Enquiry Letter Response, question 11 response on the UK insulation market size, Annex 1; Energystore response to CMA's s109, dated 31 January 2022.

50. Based on the evidence above, the CMA does not believe that it is appropriate to widen the product scope to include the installation of other types of CWI materials.

Installation of other types of insulation

51. From a demand-side perspective, installation of CWI is not substitutable with installation of other types of insulation (such as installation of roof or floor insulation).
- (a) Whilst all forms of insulation aim to improve the thermal efficiency of buildings, the different types of insulation are complementary and can be used in combination.⁷⁵
 - (b) Energystore submitted that the relevant national building regulations for Northern Ireland set separate standards of thermal performance for wall, floor and roof elements of new buildings.⁷⁶
 - (c) Different insulation materials may be suitable for different applications. Third parties that spoke with the CMA indicated that EPS bead was primarily used for CWI.⁷⁷
52. From a supply-side perspective, Energystore submitted that many installation ‘contractors provide a range of install services including heating, plumbing and other construction work’, setting out that insulation installation is a part of the package they offered.⁷⁸
53. The evidence available to the CMA indicates that only some ([redacted]) of the Parties’ installation competitors install both CWI and other types of insulation.⁷⁹ Suggesting that installers do not readily switch from the installation of one insulation type to another.
54. The NIUR told the CMA that when bidding for funding under NISEP, a primary bidder submits a bid for funding within a particular category. The NIUR will then assess the bid’s comparative cost and energy efficiencies within the category that they bid for.⁸⁰ Example categories include insulation packages, which must include

⁷⁵ Department for Business, Energy and Industrial Strategy (2021), [Heat and Buildings Strategy](#), page 61.

⁷⁶ Enquiry Letter Response, question 11 response on the UK insulation market size, pages 8-9.

⁷⁷ Note of a call with a Third Party [redacted] of 17/1/22, paragraph 5; Note of a call with a Third Party [redacted] of 20/1/22, paragraph 4; Note of a call with a Third Party [redacted] of 18/1/22, paragraph 3.

⁷⁸ Enquiry Letter Response, question 11 response on installation, page 10.

⁷⁹ Third Party response [redacted] to the CMA’s questionnaire; Third Party response [redacted] to the CMA’s questionnaire; Note of a call with a Third Party [redacted] of 17/1/22, paragraph 1; Note of a call with a Third Party [redacted] of 20/1/22, paragraph 1.

⁸⁰ Note of call with Northern Ireland Utility Regulator of 22/3/22, paragraphs 9 and 19.

both CWI and loft insulation measures, or whole house solutions which also include other measures, such as heating solutions. As such, the CMA notes that there is limited scope for these installers to switch away from the installation of CWI to the installation of other types of installation.

55. Based on the evidence above, the CMA does not believe that it is appropriate to widen the product scope to include the installation of non-CWI (ie roof and floor insulation).

Conclusion on product scope

56. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
- (a) the manufacture and supply of EPS bead; and
 - (b) the installation of EPS bead CWI.

Geographic scope

57. As with product markets, the CMA's focus in defining geographic markets is on demand-side factors and identifying the most important competitive alternatives to the merger firms.⁸¹

Geographic scope for manufacture and supply of EPS bead

58. The Parties overlap in the manufacture and supply of EPS bead in Northern Ireland. Both of the Parties have manufacturing sites in Northern Ireland and supply their customers in Northern Ireland from these sites. This is therefore the starting point for the geographic frame of reference.
59. Energystore submitted that the 'geographic market is UK & Ireland'.⁸² In support of this submission, Energystore submitted that:
- (a) insulation available for purchase and installation in Northern Ireland is manufactured by plants based in Northern Ireland, the Republic of Ireland and the UK;⁸³

⁸¹ [CMA129](#), paragraph 9.13.

⁸² Issues Letter Reponse, paragraph 9(v).

⁸³ Enquiry Letter Response, question 11 response on the UK insulation market size, page 12; Issues Paper, paragraph 13.

- (b) 'freedom to trade between countries and no geographic proximity barriers' has led to a situation in which manufacturers can enter new markets with 'relative ease';⁸⁴ and
- (c) as manufacturers deliver their products direct to the customer, there is no competitive advantage in geographic proximity.⁸⁵

CMA assessment

60. Both Kingspan and KORE, two competitors of the Parties, supply customers in Northern Ireland from their manufacturing sites in the Republic of Ireland. However, as discussed in the competitive assessment below, they have a much smaller presence in Northern Ireland [redacted].
61. Transportation costs appear to be a barrier to supplying EPS bead in Northern Ireland from the Republic of Ireland or Great Britain. In particular:
- (a) Two third parties (a customer and a competitor) indicated that EPS bead needs to be transported in specialised trailers and, if EPS bead needs to be transported over long distances, delivery costs can become a barrier.^{86,87}
 - (b) One customer who responded to the CMA's investigation noted that, in response to a price increase, they would have to continue to purchase from the Parties as any increase in transport costs of other, more distant, suppliers would outweigh any savings.⁸⁸
 - (c) The CMA understands that there are currently no EPS bead manufacturers/suppliers from the southern part of the Republic of Ireland or outside of the island of Ireland who sell into Northern Ireland.⁸⁹
62. Some third parties also suggested that there are regulatory barriers to supplying EPS bead in Northern Ireland from the Republic of Ireland.

⁸⁴ To support this submission, Energystore provided a map to the CMA, illustrating that some of Warmfill's customers were closer to an Energystore plant but nevertheless did not purchase from them. Enquiry Letter Response, question 11 response on the UK insulation market size, page 1, 13, 14.

⁸⁵ Enquiry Letter Response, question 11 response on the UK insulation market size, page 13.

⁸⁶ This customer noted that, at present, delivery costs represented approximately [0-5]% of the total purchase price of their EPS bead shipments. This customer told the CMA that any increase on that percentage could render its business unviable. Note of a call with a Third Party [redacted] of 17/1/22, paragraph 15 and 18.

⁸⁷ Third Party response [redacted] to the CMA's questionnaire.

⁸⁸ Third Party response [redacted] to the CMA's questionnaire.

⁸⁹ Note of a call with a Third Party [redacted] of 18/1/22, paragraph 12.

- (a) One competitor considered the EU Exit to be a barrier to supplying into Northern Ireland from the Republic of Ireland. This competitor was aware of customs applications being rejected and preventing imports into Northern Ireland.⁹⁰
- (b) Another competitor also noted the need for regulatory certifications in Northern Ireland, and the importance of obtaining funding under the NISEP scheme.⁹¹
- (c) Regulatory barriers were also mentioned by a further competitor, who noted that regulatory certification was required to retain Northern Ireland based customers.⁹²

63. Based on the evidence set out above, the CMA believes that the appropriate geographic frame of reference for the manufacture and supply of EPS bead is Northern Ireland. However, the CMA has taken into the account the constraint from manufacturers based in the Republic of Ireland who supply EPS bead into Northern Ireland in its competitive assessment.

Geographic scope for the installation of EPS bead CWI

- 64. As the Parties overlap in the installation of EPS bead CWI in Northern Ireland, this is the starting point for the geographic frame of reference.
- 65. Energystore made no specific submissions to the CMA on the geographic scope for the installation of EPS bead CWI but noted that the Parties overlap in Northern Ireland only.⁹³

CMA assessment

- 66. The insulation sector in Northern Ireland is governed by specific building regulations, set by the Northern Ireland Department of Finance. These regulations cover (among other things) the ‘conservation of fuel and power in dwellings’ within Northern Ireland, setting minimum acceptable standards for thermal and acoustic insulation requirements in properties.⁹⁴ Separate building regulations are in force for other parts of the UK and the Republic of Ireland.

⁹⁰ Third Party response [redacted] to the CMA’s questionnaire.

⁹¹ Third Party response [redacted] to the CMA’s questionnaire.

⁹² Note of a call with a Third Party [redacted] of 18/1/22, paragraph 9.

⁹³ Enquiry Letter Response, question 18.

⁹⁴ Department of Finance and Personnel (2012), Building regulations (Northern Ireland), Technical Booklets [F1](#) and [G](#).

67. There is a specific funding scheme for retrofit property insulation in Northern Ireland: NISEP. NISEP is used to fund energy efficiency schemes for existing homes in Northern Ireland including heating system upgrades, draught proofing and insulation. NISEP consists of an approximately £8 million annual fund, which is overseen by the NIUR.⁹⁵ NISEP is only available to property owners in Northern Ireland. Energystore told the CMA that for retrofit properties, insulation installation activity in Northern Ireland is 'primarily driven' by NISEP funding.⁹⁶
68. The evidence received by the CMA indicates that there is little supply of EPS bead CWI installation services in Northern Ireland from the Republic of Ireland or Great Britain.
- (a) One installation competitor of the Parties submitted that, due to the higher prices charged by installers in the Republic of Ireland, there was little competition from installers across the border. This competitor also noted that they were contracted for [redacted] jobs per year in the Republic of Ireland, despite their business being situated close to the border.⁹⁷
 - (b) One installation customer indicated that they would consider using installers from the Republic of Ireland, so long as they submitted a competitive tender, but they did not currently contract with any installers from outside of Northern Ireland.⁹⁸
69. Based on the evidence set out above, the CMA believes that the appropriate geographic frame of reference for the installation of EPS bead CWI is Northern Ireland.

Conclusion on frame of reference

70. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) the manufacture and supply of EPS bead in Northern Ireland; and
 - (b) the installation of EPS bead CWI in Northern Ireland.

⁹⁵ Energy Saving Trust, 'Northern Ireland Sustainable Energy Programme' available at <https://www.energysavingtrust.org.uk/programme/nisep/>.

⁹⁶ Enquiry Letter Response, question 11 response on installation, page 5.

⁹⁷ Note of a call with a Third Party [redacted] of 17/1/22, paragraph 33.

⁹⁸ Note of a call with a Third Party [redacted] of 28/1/22, paragraph 12.

COMPETITIVE ASSESSMENT

Horizontal unilateral effects

71. 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.⁹⁹ Horizontal unilateral effects are more likely when the merging parties are close competitors.
72. 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:
- (a) horizontal unilateral effects in the manufacture and supply of EPS bead in Northern Ireland; and
 - (b) horizontal unilateral effects in the installation of EPS bead CWI in Northern Ireland.

Horizontal unilateral effects in the manufacture and supply of EPS bead in Northern Ireland

73. In order to assess the likelihood of the Merger resulting in Horizontal unilateral effects in the manufacture and supply of EPS bead in Northern Ireland, the CMA has considered:
- (a) shares of supply;
 - (b) the closeness of competition between the Parties; and
 - (c) competitive constraints from other suppliers of EPS bead and alternatives to EPS bead.

Shares of supply

74. The CMA's main consideration when assessing horizontal unilateral effects is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a

⁹⁹ [CMA129](#), March 2021, paragraph 4.1.

strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely.¹⁰⁰

75. One way in which the CMA may assess whether there are sufficient remaining alternatives is through a consideration of measures of concentration, which may include shares of supply.¹⁰¹ The CMA may attach greater weight to concentration measures that include firms whose products are more substitutable.¹⁰²
76. Energystore estimated that the Parties have a combined share of supply of [70-80]%, with an increment brought about by the Merger of [20-30]%.
77. The CMA has estimated the Parties' shares of supply in the manufacturing and sale of EPS bead in Northern Ireland on the basis of Energystore's submissions and evidence received from third parties. Table 1 below shows the shares of supply on the basis of revenues generated in the previous financial year.

Table 1: Shares of supply in the manufacturing and sale of EPS bead in Northern Ireland¹⁰³

| Firm | Revenues £('000) | Share |
|-----------------|-------------------------|-----------------|
| Energystore | [>] | [50-60]% |
| Warmfill | [>] | [20-30]% |
| Combined | [>] | [80-90]% |
| Kingspan | [>] | [10-20]% |
| KORE | [>] | [0-5]% |
| Total | [>] | 100% |

Source: CMA analysis of Energystore's data provided at Question 31, Response to Enquiry Letter and submissions received from third parties in response to the CMA's questionnaire.

78. Table 1 shows that the Parties have a very high combined share of supply [80-90]%, with an increment brought about by the Merger of [20-30]%. The Merger combines the two largest suppliers of EPS bead in Northern Ireland and reduces the number of competitors from 4 to 3. The Merged Entity is by far the largest supplier of EPS bead in Northern Ireland.
79. The CMA considers that the degree of market concentration and the limited number of alternative manufacturers to the Parties is also supported by third party feedback.
- (a) One customer submitted that there is no effective alternative to the Parties in Northern Ireland.¹⁰⁴

¹⁰⁰ [CMA129](#), March 2021, paragraph 4.3.

¹⁰¹ [CMA129](#), March 2021, paragraph 4.4.

¹⁰² [CMA129](#), paragraph 9.3.

¹⁰³ Table 1 sets out information for the EPS bead manufacturers/suppliers that the CMA is aware of who have a material share of supply in Northern Ireland.

¹⁰⁴ Third Party response [>] to the CMA's questionnaire.

- (b) Another customer submitted that it had no choice in relation to which supplier to buy EPS bead from.¹⁰⁵
- (c) Another customer submitted that the Parties were the only competitors in Northern Ireland and that there were no practicable alternatives.¹⁰⁶
- (d) Two competitors held negative views on the Merger, both noting that the Merger results in a single large producer of EPS bead within Northern Ireland.¹⁰⁷
- (e) A further customer estimated that [90-100]% of installers within Northern Ireland were supplied by the Parties, with the remaining [0-10]% made up through the supply from KORE.¹⁰⁸
- (f) A competitor estimated that the Parties held approximately [60-70]% of the market.¹⁰⁹

80. The CMA therefore believes that the shares of supply set out in Table 1 provide a reliable indication of the current market position of the different providers in the manufacturing and sale of EPS bead in Northern Ireland, including the very strong position of the Parties within this market.

Closeness of competition

- 81. Horizontal unilateral effects are more likely where the merger firms are close competitors or where their products are close substitutes. The more closely the merger firms compete the greater the likelihood of unilateral effects because the merged entity will recapture a more significant share of the sales lost in response to a price increase (or another worsening in the offering), making the price rise more profitable.¹¹⁰
- 82. Closeness of competition is a relative concept. Where there is a degree of differentiation between the merger firms' products, they may nevertheless still be close competitors if rivals' products are more differentiated, or if there are few rivals.¹¹¹

¹⁰⁵ Third Party response [§<] to the CMA's questionnaire.

¹⁰⁶ Note of a call with a Third Party [§<] of 17/1/22, paragraphs 10 and 36.

¹⁰⁷ Third Party response [§<] [§<] to the CMA's questionnaire.

¹⁰⁸ Note of a call with a Third Party [§<] of 20/1/22.

¹⁰⁹ Note of a call with a Third Party [§<] of 18/1/22.

¹¹⁰ [CMA129](#), March 2021, paragraph 4.8.

¹¹¹ [CMA129](#), March 2021, paragraph 4.10.

83. The CMA has examined the closeness of competition between the Parties, taking into account:
- (a) the Parties' submissions;
 - (b) the similarity in the Parties' product and service offerings; and
 - (c) third party views on closeness of competition.

The Parties' submissions

84. Energystore submitted that both Parties manufacture and supply EPS bead to customers in Northern Ireland for use in new and retrofit domestic and non-domestic construction.¹¹²
85. Energystore submitted that the key competitive variables are those dictated by the Northern Ireland Department of Finance, which sets the minimum performance criteria for insulation products, and which each Party's products comply with.¹¹³

The Parties' products and service offerings

86. On the basis of the available evidence, the CMA believes that the Parties have very similar product and service offerings:
- (a) Information provided by each of the Parties indicates that their method of processing raw EPS into EPS bead is broadly the same.¹¹⁴
 - (b) Energystore stated that: 'Both companies would market the speed and ease of use advantages of eps bead over other materials such as mineral wool and PIR board when selling their products to builders / architects'.¹¹⁵ In discussing the marketing potential of the Merger, Energystore noted that Warmfill's Super Silver product had a slightly better thermal performance than Energystore's product.¹¹⁶

¹¹² Enquiry letter response, questions 12 and 18.

¹¹³ Enquiry Letter Response, question 29.

¹¹⁴ Energystore's response to question 2 of the CMA's s109, dated 16 February 2022; Warmfill's response to question 2 of the CMA's s109, dated 16 February 2022.

¹¹⁵ Enquiry Letter Response, question 29.

¹¹⁶ Enquiry Letter Response, question 28.

- (c) The CMA further understands that both Energystore and the Acquired Business have developed innovative EPS bead products, including a similar EPS bead floor insulation product.¹¹⁷

Third party views

87. The CMA has not received any evidence from third parties to suggest that there is any material differentiation in the EPS bead sold by each of the Parties that would influence customers' choice of supplier. Third party evidence suggests that the Parties' service proposition is similar. For instance, one customer submitted that there is very little to differentiate the EPS bead produced by each of the Parties, or between the Parties and their competitors.¹¹⁸
88. The CMA asked third parties about closeness of competition between the Parties in the manufacturing and supply of EPS bead. Third parties' responses indicate that the Parties compete closely. In particular:
- (a) All competitors ([redacted]) who responded to the CMA's investigation considered Energystore and Warmfill as close competitors and considered that the Parties have very similar businesses and supply the same product into the same geographic market.¹¹⁹ One competitor noted that the Parties had been strong competitors with one another for 20 years; they offered similar products, had their own in-house installers and were each developing a similar EPS bead floor insulation product (which they were not aware of any other manufacturer developing).¹²⁰
 - (b) Most ([redacted]) of the Parties' customers who responded to the CMA's investigation indicated that Energystore and Warmfill are close competitors. In addition, one customer submitted that, prior to the Merger, the Parties competed very aggressively¹²¹ and another customer submitted that the Parties were in direct competition.¹²²

Conclusion on closeness of competition between the Parties

89. Based on the evidence set out above, the CMA believes that that the Parties have a similar product and service proposition and compete closely with one another.

¹¹⁷ Enquiry Letter Response, question 11 on the UK insulation market size, page 12 and question 12.

¹¹⁸ Note of a call with a Third Party [redacted] of 17/1/22, paragraph 13.

¹¹⁹ Third Party response [redacted] [redacted] [redacted] to the CMA's questionnaire.

¹²⁰ Note of a call with a Third Party [redacted] of 18/1/22, paragraph 13.

¹²¹ Third Party response [redacted] to the CMA's questionnaire.

¹²² Third Party response [redacted] to the CMA's questionnaire.

Alternative suppliers of EPS bead and suppliers of alternatives to EPS bead

90. As noted at paragraph 74 above, the CMA's main consideration when assessing horizontal unilateral effects is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Unilateral effects are more likely where customers have little choice of alternative supplier.¹²³
91. The CMA has assessed the constraint from alternative suppliers, taking into consideration:
- (a) the Parties' submissions;
 - (b) evidence on the constraint from other suppliers of EPS bead; and
 - (c) evidence on the constraint from suppliers of other insulation materials.

The Parties' submissions

92. Energystore acknowledged that it has 'a strong share of the supply of eps bead in the UK'. However, it submitted that it is not appropriate to consider the market in this way, as there are many competing material types and manufacturers that provide different options to achieve the same goal for the customer (ie building insulation).¹²⁴
93. Energystore submitted that it operates in a 'highly competitive sector' with a wide range of suppliers of different insulation materials, including multinational players such as Kingspan, Knauf, SIG, Saint Gobain, Rockwool and TechnoNICOL, who each have annual global revenues in the billions. On this basis, Energystore submitted that there is a high degree of choice for customers and the Parties would have 'limited opportunities to unfairly influence competition'.¹²⁵
94. Specifically in relation to the supply of EPS bead in Northern Ireland, Energystore submitted that there were 11 known manufacturing plants producing EPS bead on the island of Ireland, three of which belonged to the Parties.¹²⁶ Energystore also submitted that manufacturers from Great Britain were able to import their products into Northern Ireland.¹²⁷

¹²³ [CMA129](#), paragraph 4.3.

¹²⁴ Enquiry Letter Response, question 11 response on the UK insulation market size, page 3.

¹²⁵ Enquiry Letter Response, question 11 response on the UK insulation market size, page 1.

¹²⁶ Enquiry Letter Response, question 11 response on the UK insulation market size, page 12.

¹²⁷ Enquiry Letter Response, question 11 response on the UK insulation market size, page 12.

95. The Parties provided the CMA with a list of their top 10 competitors within the market; these competitors were located within the island of Ireland and in Great Britain.

Alternative suppliers of EPS bead

96. As noted in Table 1 above, the CMA has identified only two alternative suppliers of EPS bead with a material share of supply in Northern Ireland: Kingspan and KORE. In addition, some respondents to the CMA's questionnaire mentioned Surefill as a small Northern Ireland based EPS bead manufacturer.

Kingspan

97. Kingspan is a global supplier of high-performance insulation and building envelope solutions. The turnover of Kingspan in 2021 was approximately €6.5 billion worldwide.¹²⁸ Amongst other products, Kingspan produces an EPS bead product called "EcoBead". It has two manufacturing plants for EPS bead in the Republic of Ireland, one of which is located in Castleblayney, near the border with Northern Ireland. It previously also operated a plant in Northern Ireland, but this was closed in May 2021.
98. Energystore submitted that Kingspan 'has a huge presence in Northern Ireland' and 'clearly has size/scale to increase its presence in [Northern Ireland] market further'.¹²⁹ Energystore further submitted that Kingspan's 'competitive restraint on the Parties can be evidenced by the recent switch of Warmfill's [X] customer, [X], to Kingspan'.¹³⁰
99. As noted in Table 1 above, Kingspan has a share of [10-20]% of the supply of EPS bead in Northern Ireland. This is significantly smaller than the Merged Entity. [X].¹³¹
100. [X].¹³²

KORE

101. KORE is an Irish EPS bead manufacturer with nationwide coverage. KORE EPS insulation products are suitable for new and existing builds. KORE produces an EPS

¹²⁸ Kingspan, Annual Report 2021, available at: [kingspan-2021-annual-report-ie-en.pdf](https://www.kingspan.com/~/media/Kingspan/Annual-Report-2021/Kingspan-2021-annual-report-ie-en.pdf).

¹²⁹ Issues Letter Response, paragraph 16.

¹³⁰ Issues Letter Response, paragraph 17.

¹³¹ Third Party response [X] to the CMA's questionnaire.

¹³² Note of a call with a Third Party [X] of 18/1/22, paragraph 9.

bead product called “KORE Fill”. Its manufacturing plant is in Kilnaleck (Republic of Ireland).¹³³

102. Energystore submitted that KORE only entered the Northern Ireland EPS bead market in the last two years, within which time it had won ‘a customer from Warmfill as well as becom[e] a primary bidder on the NISEP scheme’.¹³⁴
103. As noted in Table 1 above, KORE has a share of [0-5]% of the supply of EPS bead in Northern Ireland. This is significantly smaller than the Merged Entity. [redacted].¹³⁵

Other suppliers

104. Energystore submitted that other manufacturers of EPS bead include Xtratherm, Mannock, Thermabead, Polypearl, Surefill, Lightherm, Annalea, Dungarvan, Mardoc, Envirobead, InstaGroup, SCIS, Provincial Seals, Moulded Foams and Evobead.¹³⁶
105. Thermabead, Mardoc and Envirobead submitted that they do not supply EPS bead in Northern Ireland [redacted].¹³⁷
106. Some respondents to the CMA’s questionnaire mentioned Surefill as a small Northern Ireland based EPS bead manufacturer. However, the CMA received no evidence indicating that Surefill has a material presence in the manufacture and supply of EPS bead in Northern Ireland.¹³⁸
107. The CMA has seen no evidence that any of the other suppliers identified by the Parties supplies EPS bead in Northern Ireland.

Alternative suppliers of EPS bead - third party views

108. The CMA asked the Parties’ competitors to identify and rank the top 5 competitors in the manufacturing and sale of EPS bead in Northern Ireland. All competitors which responded to the CMA’s questionnaire told the CMA that Energystore and Warmfill were, respectively, the number one and two top competitors in the manufacturing and sale of EPS bead in Northern Ireland, and considered KORE, Kingspan and Surefill to be less significant competitors.

¹³³ Kore, Kore EPS insulation Solutions available at: <https://www.kore-system.com/products/>.

¹³⁴ Issues Letter Response, paragraph 18.

¹³⁵ Third Party response [redacted] to the CMA’s questionnaire.

¹³⁶ Enquiry Letter Response, question 11 response on the UK insulation market size, Annex.

¹³⁷ Thermabead’s response to the CMA’s questionnaire; Mardoc Holding’s response to the CMA’s questionnaire; and Envirobead’s response to the CMA’s questionnaire.

¹³⁸ Third Party responses [redacted] to the CMA’s questionnaire.

109. The CMA asked the Parties' customers to list suppliers which they consider compete with Energystore and/or Warmfill:
- (a) a few ([REDACTED]) identified KORE as a competitor to the Parties;¹³⁹
 - (b) a few ([REDACTED]) identified Kingspan as a competitor to the Parties;¹⁴⁰
 - (c) one identified Surefill as a competitor to the Parties;¹⁴¹ and
 - (d) a few ([REDACTED]) submitted that the Parties have no competitors in Northern Ireland.¹⁴²
110. Almost all ([REDACTED]) of the Parties' EPS bead customers who responded to the CMA's investigation said they would not move to other suppliers of EPS bead in response to a price increase.¹⁴³

Suppliers of other insulation materials

111. Energystore submitted that the following manufacturers of other insulation types compete with EPS bead: Kingspan, Xtratherm, Ecotherm, Saint-Gobain, Mannock, Knauf, Rockwool, Superglass (TechnoNICOL), KORE, InstaGroup, Provincial Seals, Warmcell, Isothane, BASF and Foamglas.¹⁴⁴
112. As discussed in the Frame of Reference section above, the evidence available to the CMA indicates that other insulation materials are not a good substitute for EPS bead for CWI in Northern Ireland. Additionally, the evidence available to the CMA does not suggest that installers could readily switch to an alternative material for CWI.
113. The CMA has not seen any evidence of suppliers of other insulation materials exerting a competitive constraint on the Parties. None of these suppliers (with the exception of Kingspan, KORE and Surefill with their EPS bead products) were identified by third parties as competing with the Parties.

Conclusion on alternative suppliers of EPS bead and suppliers of alternatives to EPS bead

114. On the basis of the evidence set out above, the CMA believes that the Parties face limited constraints from alternative suppliers in the supply of EPS bead in Northern

¹³⁹ Third Party responses [REDACTED] [REDACTED] to the CMA's questionnaire.

¹⁴⁰ Third Party responses [REDACTED] [REDACTED] to the CMA's questionnaire.

¹⁴¹ Third Party response [REDACTED] to the CMA's questionnaire.

¹⁴² Third Party responses [REDACTED] [REDACTED] to the CMA's questionnaire.

¹⁴³ Third Party responses [REDACTED] [REDACTED] [REDACTED] [REDACTED] to the CMA's questionnaire.

¹⁴⁴ Enquiry Letter Response, question 11 response on the UK insulation market size, Annex 2.

Ireland. In particular, Kingspan is a large, multinational supplier of insulation products [§]. KORE is also a large insulation supplier in the Republic of Ireland, which supplies a competing EPS bead product in Northern Ireland. However, both Kingspan and KORE have a much smaller presence than the Parties in Northern Ireland. In addition, the CMA has not seen any evidence of suppliers of alternatives to EPS bead exerting a material competitive constraint on the Parties.

Third party views on the Merger

115. The CMA contacted customers and competitors of the Parties. A number of third parties ([§]) expressed concerns in relation to the impact of the Merger on competition for the supply of EPS bead:

- (a) One competitor submitted that the Merger would lead to 'less competition' as there would be only a single large supplier in Northern Ireland.¹⁴⁵
- (b) Another competitor submitted that the Merger will have a negative impact on competition as the merger replaced two large competitors with a single large company.¹⁴⁶
- (c) One customer submitted that the Merged Entity would be the sole manufacturer in the Northern Ireland and will also control the largest proportion of grant funding in the market.¹⁴⁷
- (d) Another customer submitted that the removal of the only other supplier within Northern Ireland may affect prices and the supply of products in the future.¹⁴⁸
- (e) Another customer also submitted that the Merger will have a negative impact on competition.¹⁴⁹

116. On the other hand, one competitor stated that it held no concerns in relation to the Merger, noting that customers would continue to have a choice of supplier.¹⁵⁰

¹⁴⁵ Third Party response [§] to the CMA's questionnaire.

¹⁴⁶ Third Party response [§] to the CMA's questionnaire.

¹⁴⁷ Third Party response [§] to the CMA's questionnaire.

¹⁴⁸ Third Party response [§] to the CMA's questionnaire.

¹⁴⁹ Third Party response [§] to the CMA's questionnaire.

¹⁵⁰ Third Party response [§] to the CMA's questionnaire.

Conclusion on horizontal unilateral effects in the manufacture and supply of EPS bead in Northern Ireland

117. For the reasons set out above, the CMA believes that the Merged Entity will have a strong market position in a concentrated market for the manufacture and supply of EPS bead in Northern Ireland. The CMA believes that the Parties compete closely in this market and there will be insufficient competitive constraints on the Merged Entity from alternative suppliers.
118. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the manufacture and supply of EPS bead in Northern Ireland.

Horizontal unilateral effects in the installation of EPS bead CWI in Northern Ireland

119. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in the installation of EPS bead CWI in Northern Ireland, the CMA has considered:
- (a) shares of supply;
 - (b) the closeness of competition between the Parties; and
 - (c) competitive constraints from other suppliers of installation services for EPS bead CWI and suppliers of installation services for alternatives to EPS bead CWI.

Shares of supply

120. In its Enquiry Letter Response, Energystore estimated the total EPS bead CWI installation revenue for newbuild properties to be £3.8 million.¹⁵¹ Energystore further estimated that insulation installation in existing buildings generated revenue of £3.8 million, with £3.3 million generated under the NISEP (including EPS bead CWI) and a further £0.5 million generated from the installation of insulation without grant funding.¹⁵² This would result in a total market size of £7.6 million.
121. In its Enquiry Letter Response, Energystore submitted that Energystore's revenue is £[<] million for newbuild installation services and £[<] million for retrofit installation services, giving a total of £[<] million. Energystore submitted that Warmfill revenue

¹⁵¹ Enquiry Letter Response, question 11 response on installation, page 5.

¹⁵² Enquiry Letter Response, question 11 response on installation, page 6.

is £[<] million for newbuild installation services and £[<] million for retrofit installation services, giving a total of £[<] million.¹⁵³ This would imply a combined share of [40-50]% of the market for the installation of EPS bead CWI in Northern Ireland, with an increment of [10-20]%.

122. In response to the Issues Letter, Energystore made the following further submissions:

- (a) It is impossible to 'square' the NISEP Scheme within the CMA's market definition as EPS bead is one of a 'huge range' of energy saving solutions that can qualify for funding.¹⁵⁴
- (b) NISEP forms an 'entirely separate market operated by the State under Public Procurement laws/regulations'.¹⁵⁵
- (c) Revenue associated with NISEP should not be included within the CMA's market size calculations as it is no longer an 'overlap market' as a result of Warmfill's withdrawal from NISEP from 31 March 2022.^{156,157}
- (d) The £0.5 million previously estimated as the revenue from the installation of insulation without grant funding 'includes activity such as DIY loft insulation and the installation of more niche materials such as PU Foam'. The more appropriate figure for the installation of EPS bead CWI without grant funding is £0.1 million.¹⁵⁸

123. The CMA acknowledges that Energystore's estimates for the retrofit market size includes revenue from the installation of insulation other than CWI (eg roof insulation and/or floor insulation) and non-EPS bead insulation materials (eg mineral wool and/or PIR board). However, the Parties were unable to provide evidence to demonstrate a more reliable estimation of the retrofit market in Northern Ireland. The CMA therefore believes that the share of supply estimations provided at paragraph 121 above likely overestimate the size of the retrofit EPS bead CWI

¹⁵³ Enquiry Letter Response, question 30.

¹⁵⁴ Issues Letter Response, paragraph 27(i)(a).

¹⁵⁵ Issues Letter Response, paragraph 27(i)(b).

¹⁵⁶ Energystore explained that this 'decision was taken in November as a result of changes to the NISEP Framework document which limits the tender submissions of all companies within a Group structure to £2m' and thus there is no overlap within this market as between the merged entities. Issues Letter Response, paragraph 27(ii).

¹⁵⁷ Energystore further submitted that, should the CMA not accept the above submissions, the CMA 'must take account of the limited duration' of the NISEP Scheme which is only scheduled to run until March 2023. Issues Letter Response, paragraph 27(iii).

¹⁵⁸ Issues Letter Response, paragraph 35.

market in Northern Ireland and, in turn, likely underestimate the Parties' share of supply for these activities.

124. The CMA disagrees with the Parties' submission that the NISEP scheme is no longer an 'overlap market' and should be excluded from the CMA's market size calculations. Absent the Merger, Energystore and Warmfill would have remained separate entities, submitting separate bids for NISEP funding. As such, Warmfill's NISEP-related activities should be taken into account in the competitive assessment.
125. Third party views also indicated that the Parties have a strong combined position in the market for the installation of EPS bead CWI. For example:
 - (a) A competitor estimated there were fewer than 16 EPS bead CWI installers in Northern Ireland (including Energystore and Warmfill), with 80% of the market served by the largest six installers. This competitor listed these six installers in order of size: Belfast Insulation; Energystore, PC Dynes, Alpha Insulation, BlueBuild, and Warmsmart. This competitor estimated that as a result of the Merger, the Merged Entity would be the second largest installer behind Belfast Insulation.¹⁵⁹
 - (b) A customer of the Parties estimated that Energystore was the largest EPS bead CWI installer in Northern Ireland, followed by either Alpha Insulation or Belfast Insulation. The same customer estimated that Warmfill installed approximately half the amount of EPS bead CWI installed by another of the top installers.¹⁶⁰
 - (c) Another customer of the Parties estimated that Energystore was the single largest EPS bead CWI installer in Northern Ireland, followed by Belfast Insulation, Warmfill, Certainfill, Homeseal and then other smaller installers. The same customer estimated that the Parties together supplied 40% of the installation market in Northern Ireland, with Belfast Insulation supplying a further 30%.¹⁶¹
126. Based on the evidence above, the CMA believes that the shares of supply and third-party views provide a reasonable indication of the current market position of the Parties in the installation of EPS bead CWI in Northern Ireland and the extent to which this market is concentrated.

¹⁵⁹ Note of a call with a Third Party [redacted] of 18/1/22, paragraphs 17 and 18.

¹⁶⁰ Note of a call with a Third Party [redacted] of 17/1/22, paragraph 27.

¹⁶¹ Note of a call with a Third Party [redacted] of 20/1/22, paragraph 35.

Closeness of competition

127. Both of the Parties are vertically integrated suppliers, operating in the upstream manufacturing and downstream installation markets for EPS bead CWI.
128. Neither of the Parties maintains a price list for installation services, with both providing quotes on a project-by-project basis.¹⁶²
129. Energystore submitted that it tends to market its installation services based on speed of service and technical expertise. Energystore also tends to offer more flexibility in terms of credit facilities and retentions. Energystore stated that they were not aware of any particular marketing strategy adopted by Warmfill.¹⁶³ However, Warmfill's website similarly highlights speed of installation: 'WarmFill is quick and easy to install', and the technical expertise of its installers: 'The bead and bonding agent are delivered to site and installed by our factory trained technicians who carry out [t]he installation in accordance with our BBA & IAB certificates'.¹⁶⁴
130. Pre-Merger, both Parties were amongst the relatively few scheme managers for NISEP, offering schemes that involved the funded installation of CWI.¹⁶⁵
131. Evidence from third parties also indicates that the Parties are close competitors in the installation of EPS bead CWI in Northern Ireland. All ([§<]) of the Parties' installation customers who responded to the CMA's merger investigation indicated that the parties are close competitors.¹⁶⁶
132. On the basis of this evidence, the CMA believes that the Parties are close competitors in the installation of EPS bead CWI.

Alternative installers of EPS bead CWI and installers of other types of CWI

133. The CMA has assessed the constraint from alternative suppliers, taking into consideration:
 - (a) the Parties' submissions;
 - (b) evidence on the constraint from other installers of EPS bead CWI; and

¹⁶² Enquiry Letter Response, questions 26 and 28.

¹⁶³ Enquiry Letter Response, question 27.

¹⁶⁴ Warmfill, Cavity Wall Bead Insulation, available at: <https://warmfill.com/warmfill/>.

¹⁶⁵ Northern Ireland Sustainable Energy Programme, Schemes running from April 2021 to March 2022, available at <https://energysavingtrust.org.uk/wp-content/uploads/2020/09/NISEP-List-of-Schemes-2021-22.pdf>.

¹⁶⁶ Third Party responses [§<] [§<] [§<] to the CMA's questionnaire.

- (c) evidence on the constraint from installers of CWI made from other insulation materials.

The Parties' submissions

134. Energystore submitted that the insulation installation market is highly competitive, with a diversified set of competitors. It estimated that there are at least 50 installation companies within Northern Ireland, and that these companies ranged from large corporations to individual installers operating on a self-employed basis.¹⁶⁷
135. Energystore submitted that this diversity of competitors was the result of the lack of technical and regulatory barriers in the establishment of insulation installation companies and the low barriers to entry.¹⁶⁸
136. Energystore submitted that other significant competitors to the Parties in the installation of insulation included: Belfast Insulation, Alpha Insulation, PC Dynes Insulation, Surefill Insulation, Homeseal, Bayview Ltd, O'Kane Plumbing and Electric, Certainfil Ltd, NW Insulation, Blue Build, SMD Insulation, and Homewarm Energy.¹⁶⁹

Other installers of EPS bead CWI

137. Third party feedback indicates that there are alternatives to the Parties in the supply of installation of EPS bead CWI in Northern Ireland. One installation customer submitted that for each CWI project they sought tenders from four separate companies. This customer principally contracts with Energystore, but has also contracted with Warmfill, [redacted] and [redacted].¹⁷⁰
138. However, based on customer responses, only one competitor, [redacted], was consistently mentioned as a competitor to the Parties. More specifically, the CMA asked the Parties' installation customers to list suppliers which they consider compete with Energystore and/or Warmfill. Table 2 sets out the alternative suppliers identified by these customers.

¹⁶⁷ Enquiry Letter Response, question 11 response on installation, page 1.

¹⁶⁸ Enquiry Letter Response, question 11 response on installation, page 1 and 8.

¹⁶⁹ Enquiry Letter Response, question 11 response on installation, page 9. It is not clear to the CMA the extent to which these companies are active in the installation of EPS bead CWI in Northern Ireland.

¹⁷⁰ Note of a call with a Third Party [redacted] of 28/1/22, paragraph 3.

Table 2: Alternative suppliers identified by the Parties' installation customers

| <i>Installer</i> | <i>Mentioned by customers</i> |
|--------------------|-------------------------------|
| Belfast Insulation | [REDACTED] |
| Alpha Insulation | [REDACTED] |
| Glenside Acoustics | [REDACTED] |
| Insulation Systems | [REDACTED] |

Source: CMA's analysis of third parties' responses to the CMA's merger investigation

139. None of the third-party installers of EPS bead CWI are vertically integrated and the majority obtain their EPS bead from the Parties. Our assessment of the vertical effects (summarised in paragraphs 147 to 158 below) shows that third-party installers can be foreclosed by the Parties, which would limit their competitive constraint.

Installers of CWI made from other insulation materials

140. As discussed in the Frame of Reference section above, the evidence available to the CMA indicates that other insulation materials are not a good substitute for EPS bead for CWI in Northern Ireland. In particular:

- (a) One customer submitted that EPS bead was the cheapest insulation, had excellent thermal properties and was simple to install.¹⁷¹
- (b) Another customer told the CMA that there were no alternatives to EPS bead CWI in retrofit properties.¹⁷²
- (c) In addition, a competitor submitted that there were few alternatives to EPS bead CWI for retrofit, due to the difficulties in installing mineral wool and the need for cavities to be of a particular width.¹⁷³ This competitor noted that there were no installers of mineral wool CWI active within Northern Ireland.¹⁷⁴ This competitor was also not aware of PU foam being used for retrofit CWI.¹⁷⁵
- (d) Another competitor submitted that there were 'no real competitors within Ireland', as mineral wool CWI was not used in this market.¹⁷⁶
- (e) A customer submitted that while mineral wool CWI was popular in Great Britain, EPS bead was the dominant CWI within Northern Ireland. This

¹⁷¹ Note of a call with a Third Party [REDACTED] of 17/1/22, paragraph 9.

¹⁷² Third Party response [REDACTED] to the CMA's questionnaire.

¹⁷³ Note of a call with a Third Party [REDACTED] of 18/1/22, paragraph 20 to 23.

¹⁷⁴ Third Party response [REDACTED] to the CMA's questionnaire.

¹⁷⁵ Note of a call with a Third Party [REDACTED] of 18/1/22, paragraph 20 to 23.

¹⁷⁶ Third Party response [REDACTED] to the CMA's questionnaire.

customer noted that it was difficult to correctly install mineral wool CWI and also noted its lower thermal properties. This customer explained that PU foam CWI was an alternative but noted there were only two installers within Northern Ireland who were certified to install PU foam and that it was primarily used for specialist jobs.¹⁷⁷

141. Energystore submitted that under the NISEP, EPS bead is only one of many energy saving solutions which can qualify for funding (including other insulation materials).¹⁷⁸ Energystore also added that within ‘the bid model, the value the [NIUR] attaches to each measure type is already set with expected cost and cost effectiveness per measure’.¹⁷⁹
142. The NIUR confirmed that ‘bids are not assessed on a like-for-like basis, rather they are assessed on whether they address a priority category. As such, cavity wall insulation, boiler replacement and other proposed measures can compete for the same pool of funding’.¹⁸⁰ The CMA acknowledges that the Parties are in competition with a wider range of insulation materials and energy savings solutions when they compete for NISEP funding. However, as mentioned in the Frame of Reference section above, from an end-user and supply-side perspective, CWI is not substitutable with other types of energy saving solutions.
143. The available evidence suggests that for new build properties, PIR board is an alternative for CWI, but is a more expensive option.
 - (a) All installation customers of the Parties who responded to the CMA’s requests for information noted that PIR board was significantly more expensive than EPS bead, estimating that it was 50-60% more expensive than EPS bead on a like-for-like basis.¹⁸¹
 - (b) A competitor noted that there was more choice in the insulation for new builds. That competitor noted that, whilst less PIR board CWI was needed to meet the required thermal property when compared to EPS bead CWI, the need for a bricklayer to install the board meant that EPS bead was the cheaper option.¹⁸²

¹⁷⁷ Note of a call with a Third Party [redacted] of 17/1/22, paragraphs 22 to 24.

¹⁷⁸ Issues Letter Response, paragraph 27(i).

¹⁷⁹ Issues Letter Response, paragraph 34.

¹⁸⁰ Note of call with Northern Ireland Utility Regulator of 22/3/22, paragraphs 9 and 19.

¹⁸¹ One customer estimated 50-60%, while another estimated that for a standard attached house EPS bead was £1,300 and PIR board was £2,000 (a difference of 54%). Third Party responses [redacted] [redacted] [redacted] to the CMA’s questionnaire.

¹⁸² Note of a call with a Third Party [redacted] of 18/1/22, paragraphs 24 to 26.

- (c) A customer of the Parties submitted that approximately 70% of the newbuild CWI market is captured by EPS bead CWI. This customer submitted that PIR board CWI was an alternative, but that EPS bead CWI was both cheaper and had better thermal properties.¹⁸³
- (d) An installation customer of the Parties considered that PIR and polyurethane (**PUR**) boards were effective alternatives to EPS bead CWI, but were more expensive and took longer to install. It noted that if PIR or PUR board became the cheaper alternative it would switch to that method of CWI.¹⁸⁴

Conclusion on alternative installers of EPS bead CWI and installers of CWI made from other insulation materials

144. For the reasons set out above, the CMA believes that there are a number of alternative suppliers of installation services for EPS bead CWI. However, as set out in paragraph 158, these suppliers are not vertically integrated and can be foreclosed by the Merged Entity, which weakens their competitive constraint. The available evidence also indicates that installers of CWI made from other insulation materials would only exercise a limited constraint on the Parties.

Conclusion on horizontal unilateral effects in the installation of EPS bead CWI in Northern Ireland

145. For the reasons set out above, the CMA believes that the Merged Entity will have a strong market position and that the Parties currently compete closely in the installation of EPS bead CWI. The CMA believes that, although there are a number of competitors that will remain post-Merger, these suppliers can be foreclosed by the Merged Entity which weakens their competitive constraint. In addition, the CMA believes that installers of CWI made from other insulation materials would only exercise a weak constraint on the Parties.

146. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the installation of EPS bead CWI in Northern Ireland.

¹⁸³ Note of a call with a Third Party [redacted] of 17/1/22, paragraph 25.

¹⁸⁴ Note of a call with a Third Party [redacted] of 28/1/22, paragraphs 4 to 11.

Vertical effects

147. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitor of the supplier's customers.
148. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.¹⁸⁵ In the present case, the CMA has considered whether the Merged Entity may use its control of an important input to harm its downstream rivals' competitiveness, for example by refusing to supply the input (total foreclosure) or by increasing the price or worsening the quality of the input supplied to them (partial foreclosure). This might then harm overall competition in the downstream market, to the detriment of customers. This may occur irrespective of whether the merger firms have a pre-existing commercial relationship.
149. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition. This is discussed below.

Ability

150. As noted above, the Merged Entity will have a strong market position in the upstream EPS bead manufacturing market. The combined share of the Parties is [80-90]%. As a result, downstream installers of EPS bead CWI will have limited options for the supply of the EPS bead.
151. Most of the Parties' installation customers source their EPS bead exclusively from the Parties. Energystore submitted that "[<]".¹⁸⁶ There is therefore no contractual impediment to the Parties ceasing supply or changing the terms of supply (recognising, in any case, that the CMA would not typically place material weight on the ability of contractual protections to preclude foreclosure).¹⁸⁷

¹⁸⁵ In relation to this theory of harm, 'foreclosure' means either foreclosure of a rival or substantially competitively weakening a rival.

¹⁸⁶ Enquiry Letter Response, question 11 response on the UK insulation market size, page 17.

¹⁸⁷ [CMA129](#), paragraph 7.15.

152. One customer noted that there had been price increases prior to and since the Merger and that they had little ability to push back on these.¹⁸⁸ Another customer also noted that Energystore had increased its prices both prior to and following the Merger.¹⁸⁹
153. Another customer submitted that the Merged Entity now had the most powerful position in the market as it was now the largest installer within Northern Ireland, whilst also controlling the supply of EPS bead and the largest portion of government grant funding (which is important for installers to win retrofit CWI work on existing properties).¹⁹⁰
154. On the basis of the evidence set out above, the CMA believes that the Merged Entity has the ability to foreclose its downstream rivals in the EPS bead CWI installation market.

Incentive

155. The Merged Entity's incentives to foreclose downstream rivals in the EPS bead CWI installation market depend on the potential impact on its profits. For example, the Merged Entity would have the incentive to foreclose downstream rivals if the potential to increase profits in the supply of the installation of EPS bead CWI in Northern Ireland outweighs the potential reduction in profits from the sale of EPS bead.
156. The main benefits of foreclosure are the increased profits for the Merged Entity from recapturing the sales of foreclosed rivals, which depend on the rivals' ability to switch to alternatives thereby making the Merged Entity lose profits on the sale of EPS bead without capturing the profits on installation downstream. On the basis of the evidence set out below, the CMA believes that the Merged Entity has the incentive to foreclose its downstream rivals in the EPS bead CWI installation market. Specifically:
 - (a) The evidence available to the CMA indicates that switching away from the Parties' EPS bead is difficult as there are limited alternatives to the Parties in the manufacture and supply of EPS bead in Northern Ireland.

¹⁸⁸ Note of a call with a Third Party [redacted] of 17/1/22, paragraph 4.

¹⁸⁹ Note of a call with a Third Party [redacted] of 20/1/22, paragraph 13.

¹⁹⁰ Third Party response [redacted] to the CMA's questionnaire.

- (b) Given the importance of EPS bead as an insulation material for CWI, downstream rivals would find it difficult to switch to other types of insulation products.
- (c) Moreover, any foreclosure could be targeted at particular customers, reducing the potential costs of a foreclosure strategy. The Parties' price lists show that customers are charged different prices.¹⁹¹ The Merged Entity would therefore be able to price discriminate, allowing it to hinder specific rivals in competing for customers that its downstream installation business is best placed to win.

Effect

157. Given the strength of the Parties' position in the supply of EPS bead in Northern Ireland, the CMA believes that the effect of a foreclosure strategy would likely harm competition in the downstream installation market to the detriment of end-users.

Conclusion on vertical effects

158. Based on the evidence set out above, the CMA found that the Merger raises significant competition concerns as a result of vertical effects in relation to foreclosure by the Merged Entity of competing downstream rivals through refusal to supply, or increasing the price or worsening the quality of EPS bead.

BARRIERS TO ENTRY AND EXPANSION

159. 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.¹⁹²

Manufacture and supply of EPS bead in Northern Ireland

The Parties' submissions

160. Energystore submitted that there were low barriers to entry for new entrants into EPS manufacturing within Northern Ireland. In support, it submitted that the 'cost of establishing EPS bead manufacture is very low' and listed the essential equipment for start-up as: a boiler, piping, storage silos and an expansion chamber. They estimated that each of these items could be purchased new or second-hand for less

¹⁹¹ Enquiry Letter Response, question 26 and 28.

¹⁹² [CMA129](#), March 2021, from paragraph 8.40.

than £100,000.¹⁹³ Energystore also submitted that any company that manufactures EPS or extruded polystyrene boards could easily pivot to the production of EPS bead.¹⁹⁴

161. In terms of expansion, Energystore estimated that all EPS bead manufacturing facilities on the island of Ireland, save for Energystore's site in Northern Ireland, had excess capacity available. Energystore submitted that each of these facilities could increase their production and capture a greater market share.¹⁹⁵

CMA assessment

162. As discussed at paragraph 22 above, one of the drivers for the Merger was the acquisition of Warmfill's manufacturing site. In its submissions to the CMA, Energystore indicated that it had been searching for an alternative site for some time, with estimated costs in excess of £[redacted]m and lead times of more than [redacted] months.¹⁹⁶ Energystore provided internal documents showing that there were a number of suitable sites available with annual rents of less than £[redacted].^{197,198} However, the CMA has not been able to verify whether these sites are suitable for setting up a manufacturing site for the production of EPS bead.

163. Third party evidence indicates that there are some barriers to entry into the manufacturing and sale of EPS bead, including certification, brand familiarity and access to NISEP funding. For example:

- (a) A competitor submitted there was a low financial barrier to entry, with the majority of the setup cost going to the certification process. However, it noted that most competition in Northern Ireland was based on relationships, rather than prices, and it would be difficult to persuade customers to switch from their existing EPS bead supplier.¹⁹⁹
- (b) A customer of the Parties, [redacted], considered that the certification process would be the most difficult part of entering the market, noting the difficulty faced in obtaining raw material as an uncertified plant. Once that material was

¹⁹³ Enquiry Letter Response, question 11 response on the UK insulation market size, page 9.

¹⁹⁴ Enquiry Letter Response, question 11 response on the UK insulation market size, page 12.

¹⁹⁵ Enquiry Letter Response, question 11 response on the UK insulation market size, page 15.

¹⁹⁶ Enquiry Letter Response, question 22.

¹⁹⁷ See also Issues Letter Response Annexures: '[redacted]', '[redacted]', '[redacted]', '[redacted]', '[redacted]' and '[redacted]'.

¹⁹⁸ See Issues Letter Response Annex '[redacted]'.

¹⁹⁹ Note of a call with a Third Party [redacted] of 18/1/22 paragraphs 14 and 15; Third Party response [redacted] to the CMA's questionnaire.

obtained, it estimated that the certification process would take 6-12 months following the initial testing.²⁰⁰

- (c) Another customer of the Parties indicated that the principal barrier to entry would be the expense of obtaining premises, raw material, and equipment. This customer indicated that another significant barrier was the need to have a plant accredited, which would involve an inevitable period where the plant had no income.²⁰¹
- (d) Another competitor indicated that the greatest barrier was obtaining the appropriate certification. It also noted that it would take between 2 and 3 years to obtain work through the NISEP, which would prevent the entrant from partnering with installers.²⁰² In considering this evidence, the CMA notes that the NISEP scheme can fund schemes up to £500,000 in their first two years, a potential £1,000,000 in the third year and up to £2,000,000 per year thereafter.²⁰³

164. The CMA also asked the Parties' competitors whether they have any plans to expand their manufacturing capacity and whether this might affect their sales into Northern Ireland. Third party responses did not support the view that expansion would be timely, likely or sufficient. None of the Parties' competitors [redacted]. Of the EPS bead suppliers identified by the Parties [redacted].

165. For the reasons set out above, in particular the evidence from competitors and the preferences of customers of the Parties, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger in the manufacture and supply of EPS bead in Northern Ireland.

Installation of EPS bead CWI in Northern Ireland

The Parties' submissions

166. Energystore submitted that there are no technical or regulatory barriers to establishing an insulation installation company in Northern Ireland. Combined with very low financial investment levels (less than £20k), this has led to many small companies and self-employed individuals working in this market.²⁰⁴

²⁰⁰ Note of a call with a Third Party [redacted] of 17/1/22, paragraph 21.

²⁰¹ Note of a call with a Third Party [redacted] of 20/1/22, paragraphs 20 to 21.

²⁰² Third Party response [redacted] to the CMA's questionnaire.

²⁰³ NIUR's '[Framework Document for the Northern Ireland Sustainable Energy Programme 2022-23](#)', page 11, dated October 2021.

²⁰⁴ Enquiry Letter Response, question 11 response on the UK insulation market size, page 1.

CMA assessment

167. As set out above, the CMA believes that the Parties have a very high share of upstream EPS bead manufacturing. As such, the Parties control a key input for the entry or expansion of any downstream installers of EPS bead.
168. Third party evidence indicates certain other barriers to entry into the installation of EPS bead insulation, which relate to certification, brand familiarity and access to government grants. For instance:
- (a) One competitor noted that the set-up for an EPS bead installer required the purchase of a vehicle, installation equipment and the cost of certification.²⁰⁵
 - (b) Another competitor noted that the retrofit market was heavily dependent on grants provided by the Northern Ireland government. This competitor noted that to apply for these grants, an installer would need to employ an additional, dedicated staff member, meaning many installers were reliant upon larger companies re-allocating their own funding to other installers.²⁰⁶
 - (c) Another competitor noted that the need for adequate and appropriate training was a barrier to entry.²⁰⁷
169. For the reasons set out above, in particular the evidence from competitors and the preferences of customers of the Parties, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger in the installation of EPS bead CWI in Northern Ireland.

CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION

170. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects and vertical effects in relation to:
- (a) the manufacture and supply of EPS bead in Northern Ireland; and
 - (b) the installation of EPS bead CWI in Northern Ireland.

²⁰⁵ Note of a call with a Third Party [redacted] of 18/1/22, paragraph 28.

²⁰⁶ Note of a call with a Third Party [redacted] of 17/1/22, paragraph 21.

²⁰⁷ Note of a call with a Third Party [redacted] of 20/1/22, paragraph 38.

EXCEPTIONS TO THE DUTY TO REFER

171. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 22(2)(a) of the Act, decide not to refer the merger under investigation for a Phase 2 investigation on the basis that the markets concerned are not of sufficient importance to justify the making of a reference (the *de minimis* exception).
172. As set out above, the CMA believes that its duty to refer is engaged in relation to (i) the manufacture and supply of EPS bead in Northern Ireland; and (ii) the installation of EPS bead CWI in Northern Ireland.
173. The CMA has considered whether it is appropriate to apply the *de minimis* exception in the present case.

Markets of insufficient importance

174. In considering whether to apply the *de minimis* exception, the CMA will consider, in broad terms, whether the costs involved in a reference would be disproportionate to the size of the market(s) concerned, also taking into account the likelihood that harm will arise, the magnitude of competition potentially lost and the duration of such effects.²⁰⁸

'In principle' availability of undertakings in lieu

175. The CMA's general policy, regardless of the size of the affected market, is not to apply the *de minimis* exception where clear-cut undertakings in lieu of a reference could, in principle, be offered by the parties to resolve the concerns identified.²⁰⁹ In most cases, a clear-cut undertaking in lieu will involve a structural divestment.²¹⁰
176. In the context of a *de minimis* assessment, the CMA takes a conservative approach in assessing whether UILs are 'in principle' available.²¹¹ To the extent that there is any doubt as to whether UILs would meet the 'clear-cut' standard, they will not be included in the 'in principle' assessment.²¹²
177. The CMA will not consider that UILs are in principle available where the CMA's competition concerns relate to such an integral part of a transaction that to remedy them via a structural divestment would be tantamount to prohibiting the merger

²⁰⁸ [Mergers: Exceptions to the duty to refer \(CMA64\)](#), 13 December 2018.

²⁰⁹ [CMA64](#), paragraph 28.

²¹⁰ [CMA64](#), paragraph 31.

²¹¹ [CMA64](#), paragraph 34.

²¹² [CMA64](#), paragraph 34.

altogether.²¹³ Nor will the CMA consider UILs to be in principle available where the minimum structural divestment that would be required to ensure the remedy was effective would be wholly disproportionate in relation to the concerns identified.²¹⁴

178. The CMA considered whether a clear-cut UIL would be available in principle in the present case.
179. Divestment of the Acquired Business or the Energystore business would be tantamount to prohibiting the Merger. Accordingly, consistent with the position set out in its guidance, the CMA does not consider this to be a clear-cut UIL that is available 'in principle' for the purposes of the *de minimis* exception.
180. The CMA considered whether a divestiture package other than a full divestiture of the Acquired Business or the Energystore business could provide a clear-cut UIL to resolve the competition concerns identified, for example the divestment of the Parties' activities in Northern Ireland only. The CMA found that the Parties' activities in Northern Ireland are highly integrated with their activities outside of Northern Ireland, and therefore none of Bacar, Energystore, Warmfill or Warmwall has a readily-separable business, encompassing their manufacturing and supply of EPS bead or installation of EPS bead CWI activities in Northern Ireland, which could address the CMA's competition concerns in a clear-cut way. In particular, the CMA found that significant difficulties existed in relation to the design, implementation and monitoring of a remedy involving a package of assets falling short of a full divestiture of the Acquired Business or the Energystore business. The CMA found that, for this reason, there was no clear-cut package of assets which could 'in principle' be sold to a third party purchaser to resolve the identified competition concerns.
181. Accordingly, the CMA does not consider that an 'in principle' clear-cut undertaking in lieu is available in this case for the purposes of the *de minimis* exception.

Relevant factors

182. Where the CMA concludes that clear-cut UILs are not in principle available, the CMA will then consider the likely level of consumer harm arising from the merger when deciding whether or not to apply the *de minimis* exception. The CMA will consider several factors in this assessment: the size of the market, the strength of the CMA's concerns that harm will occur as a result of the merger, the magnitude of competition that would be lost by the merger, and the likely durability of the merger's

²¹³ [CMA64](#), paragraph 32.

²¹⁴ [CMA64](#), paragraph 33.

impact.²¹⁵ The CMA will also consider the wider implications of a *de minimis* decision.²¹⁶ Each of these factors is considered in turn below.

183. Consistent with the approach set out in the CMA’s guidance, the fact that one of these factors may point towards or against exercise of the discretion should not be regarded as decisive in any individual case. The CMA considers these factors in the round as part of its overall assessment of whether the expected impact of the merger in terms of customer harm is likely to materially exceed the public costs of a reference.²¹⁷

Market size

184. Based on the data provided by the Parties and third parties, the CMA estimated the following market sizes for the markets concerned in the UK:

| <i>Markets concerned</i> | <i>CMA’s estimate of market size (£)</i> |
|--|--|
| The manufacture and supply of EPS bead in Northern Ireland | Approximately £[0-5] million |
| The installation of EPS bead CWI in Northern Ireland | Approximately £[5-10] million |

185. The CMA therefore estimates that the total size in aggregate of all the markets concerned in the UK is approximately £[10-15] million. The CMA notes that the available evidence does not suggest that the market size may significantly expand (or contract) in the foreseeable future. The CMA further notes that, as set out at paragraph 123, the CMA’s estimated size of the market for the downstream installation market likely overestimates the size of that market because the inclusion of NISEP means certain additional energy saving measures are likely included in the market size estimation for retrofit EPS bead CWI installation.
186. The CMA notes that, on this basis, the total size in aggregate of all the markets concerned in the UK is between £5 million and £15 million. For market sizes within this range, the CMA typically undertakes a cost/benefit analysis in deciding whether to exercise its discretion to apply the *de minimis* exception.²¹⁸

²¹⁵ [CMA64](#), paragraph 35.

²¹⁶ [CMA64](#), paragraphs 47-51.

²¹⁷ [CMA64](#), paragraph 36.

²¹⁸ [CMA64](#), paragraphs 9-10. Below this range the CMA would generally not consider a reference justified, unless a clear-cut UIL is available.

CMA's belief regarding the likelihood of an SLC

187. The CMA considers it appropriate to attach weight to the belief it holds regarding the likelihood of an SLC (ie whether its level of belief is on the 'may be the case' standard) rather than on the 'is the case' (more likely than not) standard.²¹⁹ In this case, the CMA's level of belief in relation to the markets concerned is higher than the minimum required to make a reference.
188. With respect to the manufacture and supply of EPS bead in Northern Ireland, the Parties' combined share of supply will be very high post-Merger (with the Merged Entity being the largest supplier). The Parties compete closely with each other and there are limited alternative suppliers in this market. However, the CMA notes that there are two alternative competitors who will continue to impose a degree of competitive constraint on the Merged Entity, one of which is a multinational player with significant annual revenues.
189. With respect to the installation of EPS bead CWI in Northern Ireland, the Merged Entity will have a strong market position. The Parties compete closely with each other (as the only vertically-integrated competitors in Northern Ireland). However, there are a number of alternative suppliers in this market and larger competitors (such as Belfast Insulation and Alpha Insulation) that will continue to impose some competitive constraint on the Merged Entity.
190. In addition, for both the manufacture and supply of EPS bead and the installation of EPS bead CWI, the threat of entry by competitors based in Great Britain and the Republic of Ireland may provide some additional constraint on the Parties.

Magnitude of competition lost

191. In accordance with its guidance, when considering the magnitude of competition lost by the Merger, the CMA has taken into account the conditions of competition discussed at paragraphs 188 and 189 above, and has also had regard to whether a substantial proportion of the likely detriment would be suffered by vulnerable customers.²²⁰ Energy price increases in the UK are leading a number of homeowners to consider methods of reducing costs, including through improved energy efficiency of homes. The CMA therefore considered the potential impact of the Merger on property owners seeking EPS bead CWI.

²¹⁹ [CMA64](#), paragraph 38.

²²⁰ [CMA64](#), paragraph 44.

192. The CMA understands that the majority of EPS bead CWI installed in Northern Ireland is funded by the NISEP. The NISEP plays an important role in ensuring that vulnerable homeowners are able to benefit from improved energy efficiency solutions, with reduced or no cost burden.²²¹ The CMA understands that due to the applicable framework for access to NISEP funds, whilst the CMA's analysis suggests that the Merger may lead to an SLC, the NISEP scheme may reduce the incentive of the Merged Entity to increase the price, or reduce the quality or service, of the supply of EPS bead and the installation of EPS bead CWI in Northern Ireland.²²²

Durability

193. As discussed at paragraphs 159 to 169, the CMA did not identify evidence of entry or expansion in the relevant markets that would be timely, likely and sufficient to prevent an SLC. However, it is possible that entry and/or expansion may occur in the longer term, depending on a number of factors including costs of entry and market growth. In this respect, the CMA notes that:

- (a) for the manufacture and supply of EPS bead, there are a number of significant manufacturers and suppliers of EPS bead in the Republic of Ireland, including large multinational competitors, that could enter/expand activities in Northern Ireland if market conditions were to vary as a result of the Merger; and
- (b) for the installation of EPS bead CWI, there are a range of installers active in Northern Ireland who already constrain the Parties and, with relatively low barriers to entry/expand in these activities, it is possible that these competitors could increase activities to further challenge the Merged Entity.

Wider implications of a 'de minimis' decision

194. The CMA is less likely to apply the *de minimis* exception where it believes that the merger is one of a potentially large number of similar mergers that could be replicated across the sector in question.

195. Given the nature of the markets at issue, the CMA considers it unlikely that a potentially large number of similar mergers could be replicated across the sector.

²²¹ The NIUR ensures that 80% of NISEP funding is allocated to vulnerable customers (defined according to income criteria and certain 'intensifying characteristics' of a recipient, including age, disability or chronic illness, rural location or the energy efficiency rating of the property); the NIUR's ['Framework Document for the Northern Ireland Sustainable Energy Programme 2022-23'](#), page 29, dated October 2021.

²²² Note of call with a Third Party [§<] of 22/3/22, paragraph 6.

196. As regards the economic rationale for the Merger, the CMA has not seen any evidence to suggest that the Merger is solely or primarily motivated by the acquisition of market power in UK markets. By contrast, the available evidence indicates that Energystore's primary rationale for the Merger is to increase the supply of EPS bead in Northern Ireland by replacing its existing manufacturing site.²²³

197. The CMA therefore considers that the wider implications do not point against the application of the *de minimis* exception in this case.

Conclusion on the application of the de minimis exception

198. Taking all the above factors into consideration, the CMA believes that the markets concerned in this case are not of sufficient importance to justify the making of a reference. As such, the CMA believes that it is appropriate for it to exercise its discretion to apply the *de minimis* exception in accordance with section 22(2)(a) of the Act.

²²³ See paragraph 22 above.

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199. Consequently, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (ii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom. However, pursuant to section 22(2)(a) of the Act, the CMA believes that the markets concerned are not of sufficient importance to justify the making of a reference.

200. The Merger will therefore **not be referred** under section 22 of the Act.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
05 April 2022

ⁱ The following text in footnote 22 '*Issues Letter Response Annex: Letter from [redacted]*.' should read '*Issues Letter Response Annexure: Letter from [redacted]*'.