



Republic of Serbia  
**COMMISSION FOR PROTECTION  
OF COMPETITION**

25 Savska St., 4<sup>th</sup> Floor, Belgrade  
No.: 6/0-03-658/2020-1  
Ref. No: 6/0-02-542/2020  
Date: October 13, 2020

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Pursuant to Article 35(2) and Article 62(2) of the Law on Protection of Competition (Official Gazette of the RS 51/09 and 95/13), and Article 2(1/7) of the Tariff on the level of compensations for activities within the competence of the Commission for Protection of Competition (Official Gazette of the RS 49/11), in proceedings instituted on receipt of the Merger notification No. 6/0-02-542/2020-1 of August 10, 2020 filed by company Kingspan Holding Netherlands B.V., the Netherlands, with registered office at Lingewei 8, 4004 LL Tiel, the Netherlands, via procuration holder Maja S. Stanković and other attorneys at law from the Law Office WOLF THEISS, BC Ušće, 6 Mihajla Pupina Blvd., Belgrade, on October 13, 2020, the President of the Commission for Protection of Competition enacts the following

## CONCLUSION

**I** Proceedings initiated on the receipt of a merger notification of undertakings **SHALL BE RESUMED EX OFFICIO**, created by acquisition of individual control on the part of company Kingspan Holding Netherlands B.V., the Netherlands, with registered office at Lingewei 8, 4004 LL Tiel, the Netherlands, company registration number 11023475, over companies: 1) TeraSteel S.A., with registered office at Sat Sărățel, Comuna Șieu-Măgheruș, DN 15A, km 45+500, Județul Bistrița-Năsăud, Romania, company registration number J06/1009/1994; 2) TeraSteel d.o.o Leskovac, with registered office at 5 Sime Pogarčevića St., Leskovac, Serbia, company number 21259748; 3) TeraSteel Slovakia SRO, with registered office at Aupark Tower, Einsteinova 24, 851 01 Bratislava, Slovakia, company registration number 52206050; 4) Wetterbest SA, with registered office at Strada Înfrățirii 113, Băicoi 105200, Romania, company registration number J29/843/1999, including its subsidiary company Cortina WTB SRL, Str. Dunarii 187 C, Podari, Romania, company registration number J16/1660/2013, by purchasing shares, to investigate whether the notified merger meets the conditions of permissibility referred to in Article 19 of the Law on Protection of Competition, that is, if the implementation of said merger would significantly restrict, distort, or prevent competition on the market of the Republic of Serbia or its part, and especially if that restriction, distortion, or prevention would be the result of creating or strengthening of a dominant position.

**II ALL PERSONS ARE INVITED** that are in possession of data, documents or other relevant information that could contribute to the accurate fact-finding in this proceedings to forthwith present said evidence to the Commission for Protection of Competition at 25 Savska St., 4th Floor, Belgrade.

**III COMMITMENT SHALL BE ESTABLISHED** with respect of the notifying party, company Kingspan Holding Netherlands B.V., the Netherlands, with registered office at Lingewei 8, 4004 LL Tiel, the Netherlands, to make payment of compensation for the issuance of a merger clearance

decision in investigation procedure in the amount of XXX in the dinar equivalent value calculated at the middle-exchange rate of the National Bank of Serbia on the day of payment, whereas the dinar equivalent value of XXX paid upon submission of the merger notification shall count towards the total amount mentioned, and **IT SHALL BE ORDERED** to the notifying party, company Kingspan Holding Netherlands B.V., the Netherlands, to make payment of the remaining amount of compensation of XXX in the dinar equivalent value calculated at the middle-exchange rate of the National Bank of Serbia on the day of payment, into the account of the Commission for Protection of Competition maintained with the Treasury Administration of the Ministry of Finance of the Republic of Serbia, No. 840-880668-16, Ref. No. 6/0-03-658/2020, no later than 15 (fifteen) days from the date of receipt of this conclusion.

**IV** This conclusion shall be published in the Official Gazette of the Republic of Serbia and on the website of the Commission for Protection of Competition.

### *Exposition*

Company Kingspan Holding Netherlands B.V., the Netherlands, with registered office at Lingewei 8, 4004 LL Tiel, the Netherlands, company registration number 11023475 (hereinafter, Kingspan or the notifying party) has submitted a merger notification to the Commission for Protection of Competition (hereinafter, the Commission), via procurator holder Maja S. Stanković and other attorneys at law from the Law Office WOLF THEISS, BC Ušće, 6 Mihajla Pupina Blvd., Belgrade, field under No. 6/0-02-542/2020-1 of August 10, 2020 (hereinafter, the merger notification), to acquire individual control over the following companies: 1) TeraSteel S.A., with registered office at Sat Sărățel, Comuna Șieu-Măgheruș, DN 15A, km 45+500, Județul Bistrița-Năsăud, Romania, company registration number J06/1009/1994 (hereinafter, TeraSteel Romania); 2) TeraSteel d.o.o Leskovac, with registered office at 5 Sime Pogarčevića St., Leskovac, Republic of Serbia, company number 21259748 (hereinafter, TeraSteel Serbia); 3) TeraSteel Slovakia SRO, with registered office at Aupark Tower, Einsteinova 24, 851 01 Bratislava, Slovakia, company registration number 52206050 (hereinafter, TeraSteel Slovakia); 4) Wetterbest SA, with registered office at Strada Înfrățirii 113, Băicoi 105200, Romania, company registration number J29/843/1999, including its subsidiary company Cortina WTB SRL, Str. Dunarii 187 C, Podari, Romania, company registration number J16/1660/2013 (hereinafter, Wetterbest), by purchasing shares. The Commission has also received addenda to the merger notification on August 19 and September 14, 2020.

Kingspan is a company incorporated under the laws of the Netherlands and is a wholly owned subsidiary of Kingspan Group plc (hereinafter, Kingspan Group).

The Kingspan Group performs manufacturing and distributive activities throughout Europe, the Far East, and the United States of America, and currently trades in over 70 countries. This group is predominately engaged in the manufacturing of sandwich panel solutions, insulation, light and air solutions, water and energy solutions, and data and flooring technology. The Kingspan Group is active on the markets in the SEE region via various subsidiary companies/brands, including Kingspan (Central and Eastern Europe) and Joris Ide, a Romanian group present on the market for steel building sections and panels in a total of 15, mostly European countries.

The Kingspan Group was established in 1960 in Ireland. Its founder is a natural person, Eugene Murtagh, who still, together with his family, owns the majority of shares. Since 1989, the company floats on the Irish Stock Exchange. Besides the founding family, according to the publicly available information, the largest individual shareholders in the Kingspan Group are US group, Blackrock, German insurance company Allianz, and a natural person from the Great Britain, Baillie Gifford. However, all except the owner's family with about 15% of shares, own less than 10% of shares of the Kingspan Group stock.

The Kingspan Group, via its subsidiary company Kingspan Holdings Ltd. from Ireland, with registered office at Dublin Road, Kingscourt, company number 43462 IRELAND, is the sole owner of company

Kingspan d.o.o. Beograd, with registered office at 18 Partizanske avijacije St., Belgrade, Serbia, company number 20048140, predominately active in the wholesale of foam sandwich panels and mineral wool sandwich panels (standard industrial classification code 4673 - Wholesale of wood, construction materials, and sanitary equipment) in Serbia.

Companies TeraSteel Romania, TeraSteel Serbia, TeraSteel Slovakia, and Wetterbest (hereinafter, Target companies) are a part of the so-called “Steel Division” of joint stock company TeraPlast S.A (hereinafter, the Seller or TeraPlast Group), incorporated and operative under the laws of Romania, with registered seat in Romania, Bistrita-Nasaud District. The TeraPlast Group is considered to be one of the largest manufacturers of construction materials with Romania capital. The group offers complete solutions in the field of construction through its six business lines: installations and design, joinery profiles, PVC granules, thermal insulation panels, windows and doors, and metal roofing tiles.

TeraSteel Romania owns two manufacturing facilities. One is intended for the production of foam sandwich panels, while the other manufactures galvanized steel purlins. The TeraPlast Group owns 98% of shares in company TeraSteel Romania. Based on the information presented in the merger notification, it is expected that the group will acquire the remaining 2% by the conclusion of the transaction concerned.

TeraSteel Serbia was established in 2017 and is working under the TeraPlast Group that owns 100% of shares in this company. This manufacturing facility serves for the production of foam sandwich panels, mineral wool sandwich panels, and construction sheets (single skin profiles).

TeraSteel Slovakia is a limited liability company whose sole shareholder is TeraSteel Romania, a company solely controlled by the TeraPlast Group, Romania. Based on the information presented in the merger notification, the Slovakian company was not active in the previous period.

Wetterbest is a company active in the production and sale of construction sheets (single skin profiles) and rainwater drainage systems/gutters. The TeraPlast Group owns 99% of shares in company Wetterbest. An integral part of the transaction is company Cortina WTB SRL, wholly owned by company Wetterbest.

As a legal basis for the merger concerned, the Commission has received the Agreement for Sale and Purchase of shares in the Target companies, concluded between Kingspan, as the Buyer, and TeraPlast Group, as the Seller, signed on July 24, 2020.

[...]

Based on the information presented on the combined aggregate annual worldwide and domestic turnover of all participating undertakings, the Commission has established the existence of obligations under the national merger control regime, given that the combined aggregate turnover of all participating undertakings exceeded the threshold referred to in Article 61 of the Law on Protection of Competition (Official Gazette of the RS 51/09 and 95/13 – hereinafter, the Law), set as an eligibility condition for merger notification.

The notifying party and Target companies are active in the Republic of Serbia in the manufacture and wholesale of foam sandwich panels and mineral wool sandwich panels. The merger parties also manufacture and sell sheet boards, or flat sheet boards and curved roof sheets/gutter feeders as fittings in the Republic of Serbia, and are engaged in sales of insulated panels as well as other roof accessories.

For the purpose of the merger control procedure, the notifying party proposed to define the following relevant product markets: for the production and wholesale of foam sandwich panels, and for the production and wholesale of mineral wool sandwich panels.

Kingspan states, referring to the European Commission’s practice, that the geographic market for foam sandwich panels should be defined as regional in scope, although the European Commission has stated that the definition of the relevant geographic market can be left open in the Kingspan&Steel Partners

case. However, when analyzing the effects of the merger concerned, the Commission has observed both proposed relevant product markets as national in scope, while the effects are observed within the territory of the Republic of Serbia.

Based on the information and data contained in the merger notification and addenda to the merger notification that relate to the merger parties and other undertakings active on the markets which can be viewed as relevant in this case, it derives that the implementation of the said merger would cause a significant degree of horizontal overlap in the merger parties' activities on the market for production and wholesale of foam sandwich panels, with significant market shares.

The market share of the notifying party on this market, according to the sales value data from 2019, was /20-30/%, while the market share of the Target companies was /20-30/%. Following the merger implementation, the combined market share, according to the data from 2019, would be /30-40/%, i.e. the market share of the notifying party would increase by /20-30/ percentage points. Given the sales value on the relevant market, the HH Index was about 1,771 points prior to the implementation of said merger, only to reach the level of about 2,943 points following the merger implementation, thus making the HHI change on this market by about 1,173 points. Based on the Commission and EU practices, the Commission has assessed that the market structure will change following the implementation of the said merger, by changing the market from a moderately concentrated marketplace to a highly concentrated marketplace, as well that the merger could significantly increase the degree of concentration on the said relevant market, i.e., that it does not represent the case without risks to competition and when no in-depth analysis of the merger effects is needed.

Under Article 62 of the Law, the Commission may resume merger control proceedings *ex officio* if it finds that the combined market share of merger participants on the market of the Republic of Serbia is at least 40%, i.e., reasonably assumes that the concentration fails to fulfill the conditions of permissibility referred to in Article 19 of the Law, pursuant to a conclusion enacted by the Commission President. In order to enact a decision under the Law, it is necessary to establish further facts in relation to which the Commission will define the relevant market(s) and evaluate the effects of the merger concerned. It is found that the data and information submitted by the notifying party are insufficient to establish the permissibility of said merger in summary procedure and it is, therefore, necessary to conduct an investigation procedure. In the investigation procedure, the Commission will conduct all necessary actions, and establish all facts and present evidence necessary for: definition of the relevant markets, their aggregate values and essential characteristics and tendencies (growth, stagnation, decline), in particular, but not limited to, data against which will establish the possibility of substitution on the supply and demand side, analysis of the structure of the relevant market(s), degree of concentration of the relevant market(s), identification of real and potential competitors, market position of the merger parties and their competitors, legal and other barriers to entry into the relevant market, level of competitive intensity of the merger parties, consumer interests and other circumstances within the meaning of Article 19 of the Law.

A particular aspect of the analysis in this proceedings will be based on data and assessments of direct or delayed effects of the merger concerned, obtained from the major competitors, buyers and suppliers of the merger participants, active on each of the markets to be defined as relevant in the proceedings concerned. To obtain data, information and opinions, the Commission will, where appropriate, contact individual public authorities, business entities and trade associations of undertakings.

Taking into account all the facts that derive from the content of the merger notification and addenda to the merger notification, as well as for the reasons individually elaborated and substantiated herein, it is therefore determined that the conditions for instituting an investigation procedure *ex officio* are fulfilled with regard to the merger concerned, within the meaning of Article 62(2) read in conjunction with Article 19 of the Law.

The decision set out in Paragraph I of enacting terms herein is adopted under Article 62 of the Law.

The decision set out in Paragraph **II** of enacting terms herein is adopted under Article 35(2) of the Law.

The decision set out in Paragraph **III** of enacting terms herein is adopted under Article 65(5) of the Law and Article 2(7) of the Tariff on the level of compensations for activities within the competence of the Commission for Protection of Competition.

The decision set out in Paragraph **IV** of enacting terms herein is adopted under Article 40 of the Law.

**Instruction on legal remedy:**

This conclusion is not susceptible to separate appeal, but is permitted to institute an administrative dispute against the final decision of the Commission.

**PRESIDENT OF THE COMMISSION**

Nebojša Perić