



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

25 Savska St., 4<sup>th</sup> Floor, Belgrade

Number: 6/0-03-716/2020-1

Reference: 6/0-02-555/2020

Date: November 23, 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. 6/0-02-555/2020-1 of August 19, 2020, filed by company Kingspan Holding Netherlands B.V., with registered office at Lingewei 8, 4004 LL Tiel, the Netherlands, via procurator holder Maja S. Stanković, an attorney at law from the Law Office WOLF THEISS, BC Ušće, 6 Mihajla Pupina Blvd., Belgrade, Serbia, on November 23, 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 the acquisition of individual control on the part of company Kingspan Holding Netherlands B.V., with registered office at Lingewei 8, 4004 LL Tiel, the Netherlands, company registration number 11023475, over company Trimo, arhitekturne rešitve, d.o.o., with registered office at 12 Prijateljstva cesta St., Trebnje, Slovenia, company registration number 5033411000, and its subsidiary companies, 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., 4<sup>th</sup> Floor, Belgrade.

**III COMMITMENT SHALL BE ESTABLISHED** with respect of the Notifying party, company Kingspan Holding Netherlands B.V., 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 euro or dinar equivalent value calculated at the middle-exchange rate of the National Bank of Serbia applicable on the day of payment, whereas the amount of XXX euro paid upon the 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 euro or dinar equivalent value calculated at the middle-exchange rate of the National Bank of Serbia applicable on the day of payment, into the account of the Commission for Protection of Competition, Ref. No. 6/0-03-716/2020-1, 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., with registered office at Lingewei 8, 4004 LL Tiel, the Netherlands, company registration number 11023475 (hereinafter, Kingspan or the Notifying party) has filed a merger notification, via a procurator holder, with the Commission for Protection of Competition (hereinafter, the Commission) on August 19, 2020, recorded under No. 6/0-02-555/2020-1 (hereinafter, Merger notification), to acquire individual control over company Trimo, arhitekturne rešitve, d.o.o., with registered office at 12 Prijateljeva cesta St., Trebnje, Slovenia, company registration number 5033411000 (hereinafter, Target company) and its subsidiary companies, by purchasing shares. The Commission has also received addenda to the Merger notification on September 29, October 23, and October 26, 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 trade activities throughout Europe, the Far East, and the United States of America, and currently trades in over 70 countries. This group is predominantly 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 active 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 in the group. 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, is the sole owner of company Kingspan d.o.o. Beograd, with registered office at 18 Partizanske avijacije St., Belgrade, Serbia, company number 20048140, predominantly engaged in the sale of foam sandwich panels and mineral wool sandwich panels (Standard industrial classification code 4673 - Wholesale of wood, construction materials, and sanitary equipment) in Serbia.

The Target company is currently under the sole control of European Architectural Systems S.à (hereinafter, EAS) and is predominantly engaged in the manufacturing and sale of mineral wool sandwich panels, with the manufacturing plants in Slovenia and Serbia. The Target company's subsidiary in Serbia is company Trimo Inženjering d.o.o. (hereinafter: Trimo Srbija), with registered office at 9 Novo Naselje St., Šimanovci. This company is predominantly engaged in the manufacturing and sale of mineral wool sandwich panels (Standard industrial classification code 2433 - Cold forming or folding).

As a legal basis for the merger concerned, the Commission has received the Agreement for Sale and Purchase of Shares, signed on August 4, 2020. According to the agreement, EAS will sell all of its shares (100%) in the Target company to the Notifying party. In accordance with the elements of said agreement, Kingspan will acquire the individual control over the Target company.

The Commission is currently carrying out an *ex officio* proceedings to investigate the permissibility of concentration, created by the acquisition of individual control on the part of company Kingspan Holding Netherlands B.V. 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 Înfrațirii 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. The proceedings is resumed *ex officio*, pursuant to the Conclusion No. 6/0-03-658/2020-1 of October 13, 2020, enacted by the President of the Commission.

Based on the information provided on the combined aggregate annual worldwide and domestic turnover of all participating undertakings, the Commission has established the existence of a pre-merger notification obligation 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.

Given that the Target company is only active in the manufacturing and sale of mineral wool sandwich panels in the Republic of Serbia, the Notifying party has proposed to define the market for mineral wool sandwich panels as the relevant product market for the purpose of the merger control procedure, referring to the to the European Commission's practice that distinguishes the mineral wool sandwich panels from the foam sandwich panels.

Kingspan states, further referring to the European Commission's practice, that the geographic market for sandwich panels should be defined within a potential 1,000 km radius (based on the driving distance) of the Target company's manufacturing plant in Serbia.

However, when analyzing the effects of the merger concerned, the Commission has observed the relevant geographic market 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 market 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 mineral wool 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 /10-20/%, while the market share of the Target company was /30-40/%. Following the merger implementation, the combined market share, according to the data from 2019, would reach /50-60/%, i.e., the market share of the Notifying party would increase by /30-40/ percentage points. Given the value of sales on the relevant market, based on the data presented in the Merger notification regarding the competitors and their respective market shares (according to the "Analysis of the Serbian Sandwich Panels Market" for 2019, prepared by company Neomar Consulting), the HH Index was about 3,348 points prior to the implementation of said merger, only to potentially reach the level of about 4,834 points following the merger implementation, thus making the change in the HHI on this market brought about by the merger at about 1,485 points. The Commission assesses that the market structure of this highly concentrated market will change following the implementation of said merger, as well as that the merger could significantly increase the degree of concentration on the relevant market, i.e., that it does not represent the case without risks to competition and where 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 President of the Commission. 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 that 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 the following: definition of the relevant market(s), 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(s), 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 brought about by the merger, 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, m.p.