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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: Case M.10645 – ETEX / XI (INSMAT) HOLDINGS
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 11 April 2022, the European Commission (hereinafter “Commission”) received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Etex NV (‘Etex’ or the Notifying Party) incorporated in Belgium, acquires sole control over URSA Insulation, S.A. and URSA Deutschland GmbH (together with their subsidiaries ‘Ursa’),³ by way of a purchase

¹ OJ L 24, 29.1.2004, p. 1 (the ‘Merger Regulation’). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (‘TFEU’) has introduced certain changes, such as the replacement of ‘Community’ by ‘Union’ and ‘common market’ by ‘internal market’. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p. 3 (the ‘EEA Agreement’).

³ Publication in the Official Journal of the European Union No C 167, 21.4.2022, p. 36.

of shares ('the Transaction'). In this Decision, Etex and Ursa are referred to as 'the Parties'.

1. THE PARTIES

- (2) Etex is an international building materials company with a diverse product portfolio, including insulated plasterboards and prefabricated insulated plasterboards.⁴
- (3) Ursa is an insulation materials provider; its main products include glass wool ('GW') and extruded polystyrene ('XPS') used for the insulation of residential and non-residential buildings.

2. THE CONCENTRATION

- (4) Pursuant to a share sale and purchase agreement signed on 11 January 2022, at the closing of the transaction Etex will hold 100% of Ursa's shares and solely control Ursa.
- (5) Therefore, the Transaction would result in a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (6) In 2020, the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2 500 million (Etex EUR [...] million; Ursa EUR [...] million) and a combined aggregate turnover in excess of EUR 100 million (Belgium EUR [...] million; France EUR [...] million; Germany EUR [...] million; Italy EUR [...] million and Spain EUR [...] million) in three Member States.⁵ At least two of the undertakings concerned have a turnover in excess of EUR 25 million in these three Member States (in France: Etex EUR [...] million and Ursa EUR [...] million; in Germany: Etex EUR [...] million and Ursa EUR [...] million; in Italy: Etex EUR [...] million and Ursa EUR [...] million; and in Spain: Etex EUR [...] million and Ursa EUR [...] million).
- (7) The Transaction therefore has a Union dimension pursuant to Article 1(3) of the Merger Regulation.

4. MARKET DEFINITION

4.1. Upstream market: Production and supply of insulation materials

4.1.1. Product market

- (8) Insulation products reduce the thermal and acoustic exchange through a wall, roof or duct on which they are placed. They are usually produced either from mineral

⁴ Plasterboards to which an insulation material is glued to provide the board with additional thermal insulation properties.

⁵ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

wools (glass wools ('GW') or stone wools ('SW')) or foams (expanded polystyrene ('EPS'), extruded polystyrene ('XPS') and polyurethane) and may take many forms such as rigid panels for walls or elastic mats for the insulation of pipes. These materials vary in terms of thermal and acoustic performance, filling properties, moisture and fire resistance, structural stability, and cost.⁶

- (9) The Commission has previously found that insulation products constitute a separate market from other building products.⁷ Further, the Commission has considered the possible sub-segmentation of insulation products by insulation material, distinguishing between a product market for mineral wools and a product market for foams⁸, but left the market open.
- (10) The Notifying Party agrees that insulation products constitute a separate product market from other building products. The Notifying Party further agrees that a distinction should be made between mineral wools on the one hand and foams on the other hand since: (i) from a supply side perspective, production processes are very different; (ii) while mineral wools have better fire protection qualities, foams are better at handling moisture; and (iii) from a demand side perspective, such differing technical characteristics lead to differing use cases.⁹ Based on technical specifications and prices, the Notifying Party indicate that an even further sub-segmentation for both mineral wools and foams is conceivable.¹⁰
- (11) The Commission considers that, consistently with its past practice and absent indications to the contrary from the market investigation, plausible relevant product markets for the production and supply of insulation materials can be defined distinguishing between a product market for mineral wools and a product market for foams.¹¹
- (12) In any event, it can be left open whether the market for the production and supply of insulation materials should be segmented into separate potential markets for mineral wools and foams, as the assessment of the Transaction's compatibility with the internal market or the functioning of the EEA Agreement would not change under any plausible product market definition. Under a conservative approach, the Transaction will be assessed under the sub-categories of (i) mineral wools (GW and SW); and (ii) foams (EPS and XPS).¹²

4.1.2. Geographic market

- (13) In its previous decisions, the Commission has considered that the market for the production and supply of insulation materials is at least national in scope.¹³ In some

⁶ Form CO, paragraph 48.

⁷ Case M.7457, *CVC/PAROC (2015)*, paragraph 14; Case M.6871 – *Mohawk Industries/Spino Invest*, paragraphs 28 and 29.

⁸ Case M.7457, *CVC/PAROC (2015)*, para 16 and 18; Case M.3943, *Saint Gobain/BPB (2005)*, paragraph 28.

⁹ Form CO, paragraph 50.

¹⁰ Form CO, paragraph 51.

¹¹ Minutes of the call from 24 March 2022, paragraph 7; Minutes of the call from 28 March 2022, paragraph 6; Minutes of the call from 29 March 2022, paragraph 5.

¹² Since Ursa is active only in the production and supply of GW and XPS, the Commission will not further assess the possible markets for SW and EPS.

¹³ Case M.7457, *CVC/PAROC (2015)*, paragraph 19. Case M.3943, *Saint Gobain/BPB (2005)*, paragraph 30.

decisions, the Commission has also indicated that the market could be wider, e.g. the Nordic region or European-wide but has ultimately left the exact market definition open.¹⁴

- (14) The Notifying Party submits that the relevant geographic market for both mineral wools and foams could be assessed at any level, from local to EEA-wide.¹⁵
- (15) The results of the market investigation support the fact that the relevant geographic market for the production and supply of both mineral wools and foams is national in scope as the market participants stated that the vast majority of the customers are wholesale distributors, such as general builders' merchants, which usually have their own network of stores at national level.¹⁶
- (16) In any event, for the purposes of this Decision, it can be left open whether the markets for the production and supply of both mineral wools and foams are national or wider in scope as the assessment of the Transaction's compatibility with the internal market or the functioning of the EEA Agreement would not change under any plausible product market definition. Under a conservative approach, the Transaction will be assessed at a national level.

4.2. Downstream markets: production and supply of prefabricated insulated plasterboards

4.2.1. Product market

- (17) Prefabricated insulated plasterboards consist of normal plasterboard sheets that are fitted by the manufacturer with insulation material, to provide a product with thermal insulation properties. The advantage of this technique is that it provides customers with a readymade product that requires little work to be installed. Its main disadvantage is its lack of flexibility with respect to the assembly of plasterboard and insulation on site: in the latter case, indeed, wire, cables and pipes can be fitted prior to the final assembly of the insulation layer.¹⁷
- (18) In its previous decisions, the Commission has considered the existence of a separate product market for prefabricated insulated plasterboards¹⁸, but left the market definition open.
- (19) The Notifying Party indicates that prefabricated insulated plasterboards can be manufactured with any insulation material, but it would not make sense economically to change EPS (the material they are currently using for the majority of their products) for the more expensive materials like XPS.¹⁹

¹⁴ Case M.7457, *CVC/PAROC (2015)*, para 19. Regarding a potential Nordic region market, see Case M.3407, *Saint Gobain/Dahl (2004)*, paragraphs 18. Regarding a potential European-wide market, see Case M.3142 – *CVC/Danske Traelast*, paragraphs 14-16.

¹⁵ Form CO, paragraph 61.

¹⁶ Minutes of the call from 24 March 2022, paragraph 9.

¹⁷ Form CO, paragraph 54.

¹⁸ Case M.3943, *Saint Gobain/BPB (2005)*, paragraph 32; Case M.6395, *Etex/Lafarge Gypsum Assets (2011)*, paragraph 11 footnote 7.

¹⁹ Form CO, paragraph 56.

- (20) The market investigation indicates that the producers of plasterboards consider prefabricated insulated plasterboards as a distinct product, also referred to as a ‘system’.²⁰
- (21) In any event, for the purposes of this Decision, it can be left open whether prefabricated insulated plasterboards are distinct from plasterboard as the assessment of the Transaction’s compatibility with the internal market or the functioning of the EEA Agreement would not change under any plausible product market definition. Under a conservative approach, the Transaction will be assessed for the possible market of prefabricated insulated plasterboards.

4.2.2. *Geographic market*

- (22) In its previous decisions, the Commission has considered that the market for prefabricated insulated plasterboards is national in scope and possibly broader in some areas such as Benelux and the Nordic Countries.²¹
- (23) The Notifying Party agrees with previous Commission’s decisions and indicates that the relevant geographic market should be national.²²
- (24) The market investigation indicates that the relevant geographic market is national in scope because the majority of customers are general builders’ merchants and are active at the national level.²³
- (25) In any event, for the purposes of this Decision, it can be left open whether the markets for the production and supply of prefabricated insulated plasterboards is national or wider in scope as the assessment of the Transaction’s compatibility with the internal market or the functioning of the EEA Agreement would not change under any plausible product market definition. Under a conservative approach, the Transaction will be assessed at a national level.

5. **COMPETITIVE ASSESSMENT**

- (26) When considering the narrowest plausible markets based on precedents (i.e. foams and mineral wool), the Parties’ combined market shares remain less than 20% (for horizontal relationships), and their combined or individual market shares less than 30% (for vertical relationships).
- (27) However, under a conservative approach considering narrower segments in the insulation materials market, the Transaction results in: (i) a horizontally affected market for the supply of GW in Romania; and (ii) vertically affected markets in Belgium and Poland between Ursa’s upstream activity in the production and supply of XPS and GW and Etex’s downstream activity in the production and supply of prefabricated insulated plasterboards.

²⁰ Minutes of the call from 24 March 2022, paragraph 6.

²¹ Case M.3943, *Saint Gobain /BPB* (2005), paragraph 34.

²² Form CO, paragraph 62.

²³ Minutes of the call from 24 March 2022, paragraph 19.

5.1. Analytical Framework

- (28) Under Article 2(2) and (3) of the Merger Regulation,²⁴ the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position. Depending on the position of the parties in the supply chain, a concentration may entail horizontal and/or non-horizontal effects.
- (29) Horizontal effects arise when the parties to a concentration are actual or potential competitors in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the guidance set out in the Horizontal Merger Guidelines.²⁵
- (30) Non-horizontal effects arise when the parties to a concentration operate on different levels of the supply chain (vertical effects) or in neighbouring markets (conglomerate effects). The Commission appraises non-horizontal effects in accordance with the guidance set out in the Non-Horizontal Merger Guidelines.²⁶
- (31) Both the Horizontal and Non-Horizontal Merger Guidelines distinguish between two main ways in which mergers may significantly impede effective competition, namely non-coordinated and coordinated effects.
- (32) In horizontal mergers, non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by each party to the merger on the other, as a result of which the merged entity would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.²⁷
- (33) The Horizontal Merger Guidelines list a number of factors, which may influence whether or not significant non-coordinated effects are likely to result from a merger. In particular, the Horizontal Merger Guidelines refer to the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers or the fact that the merger would eliminate an important competitive force.²⁸ Not all these factors need to be present for significant non-coordinated effects to be likely. The list of factors is also not exhaustive.
- (34) Concentrations which, by reason of the limited market share of the undertakings concerned, are not liable to impede effective competition may be presumed to be compatible with the internal market. An indication to this effect exists, in particular,

²⁴ As regards the assessment in relation to the EEA, see also Annex XIV to the EEA Agreement.

²⁵ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2014, p. 5).

²⁶ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 265, 18.10.2008, p. 6).

²⁷ Horizontal Merger Guidelines, paragraph 24.

²⁸ Horizontal Merger Guidelines, paragraph 26.

where the market share of the undertakings concerned does not exceed 25% either in the internal market or in a substantial part of it.²⁹

- (35) In non-horizontal mergers, non-coordinated effects may arise when the concentration gives rise to foreclosure. In vertical mergers, foreclosure can take the form of input foreclosure, where the merger is likely to raise costs of downstream rivals by restricting their access to an important input; and/or the form of customer foreclosure, where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.³⁰
- (36) In assessing the likelihood of an anticompetitive foreclosure scenario, the Commission examines whether the merged entity would have post-transaction the ability to foreclose access to either inputs or customers, whether the merged entity would have the incentives to do so and whether such foreclosure strategy would have a detrimental effect on competition.³¹
- (37) This Decision will examine whether the Transaction gives rise to serious doubts as to its compatibility with the internal market in relation to (i) the horizontal overlap arising in the market for the production and supply of GW; and (ii) the vertical relationships arising between the upstream production and supply of XPS and GW and the downstream production and supply of prefabricated insulated plasterboards.

5.2. Horizontal relationships in the market for the production and supply of glass wool

- (38) Based on the market shares communicated by the Notifying Party, the Transaction would give rise to a horizontally affected market for the production and supply of GW in Romania.
- (39) While the Parties' combined market shares in the GW sub-segment in Romania is [20-30]% with a [0-5]% increment by value and [10-20]% by volume in 2021; the HHI delta resulting from the concentration is below 150. Therefore, the production and supply of GW in Romania satisfies the conditions set out in point 6 of the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004, and is unlikely to raise competition concerns in relation to this market.
- (40) In any event, the merger specific increment is minimal and unlikely to significantly affect the structure of the market. Several other competitors would remain active on the market including Isover with [40-50]% and Knauf with [20-30]% market shares in volume.³²
- (41) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal non-coordinated effects in the production and supply of GW in Romania.

²⁹ Horizontal Merger Guidelines, paragraph 18.

³⁰ Non-Horizontal Merger Guidelines, paragraph 30.

³¹ Non-Horizontal Merger Guidelines, paragraph 30.

³² Form CO, Table 7.1.

5.3. Vertical relationships between the upstream production and supply of XPS and GW and the downstream production and supply of prefabricated insulated plasterboards

- (42) Based on the market shares communicated by the Notifying Party, the Transaction would give rise to a vertical relationship between Ursa's activities upstream, in the production and supply of GW and XPS, and Etex's activities downstream in the production and supply of prefabricated insulated plasterboards.
- (43) As per Table 1 below, the Parties' activities give rise to vertically affected markets for XPS in Belgium and GW in Poland.

Table 1

Upstream (URSA)			Downstream (ETEX)	
Country	Product	Market share (value)	Product	Market share (value)
Belgium	XPS	[30-40]%	Prefabricated insulated plasterboards	[0-5]%
Poland	GW	[30-40]%	Prefabricated insulated plasterboards	[5-10]%

5.3.1. Input foreclosure

- (44) The Transaction is not likely to lead to input foreclosure as, post-Transaction, the Parties would likely have neither the ability nor the incentive to foreclose the Merged Entity's downstream competitors for the following reasons.

5.3.1.1. Ability

- (45) First, Ursa's upstream market shares are moderate and strong competitors like Isover and Knauf would remain in the market. Market participants that responded in the market investigation pointed out that Isover and Knauf are Ursa's main competitors across the Member States.³³ In Belgium, a sufficient number of alternative suppliers of XPS would remain post-Transaction: BASF ([5-10]% in volume and [5-10]% in value), Ravago ([10-20]% in volume and [10-20]% in value), Austrotherm ([0-5]% in volume and [0-5]% in value), Soprema ([30-40]% in volume and [30-40]% in value), and others ([10-20]% in volume and [10-20]% in value).³⁴ In Poland, a sufficient number of alternative suppliers of GW would remain post-Transaction: Isover ([40-50]% in volume and [30-40]% in value); Knauf ([20-30]% in volume and [20-30]% in value) and others ([0-5]% in volume and [0-5]% in value).³⁵ Moreover, the market participants contacted in the investigation also indicated that the insulation materials market is growing and smaller players are present in a number of countries.³⁶

³³ Minutes of the call from 29 March 2022, paragraph 9; Minutes of the call from 24 March 2022, paragraph 12.

³⁴ Form CO, Table 7.5 and Table 7.6.

³⁵ Form CO, Table 7.1 and Table 7.2.

³⁶ Minutes of the call from 29 March 2022, paragraphs 9 and 10; Minutes of the call from 24 March 2022, paragraph 12.

- (46) Second, the market investigation confirmed that there are alternatives to XPS and GW for the insulation of walls (e.g. wood wool, stone wool, EPS³⁷) and the market participants point to a larger insulation market than GW and XPS taken individually.³⁸ Moreover, Etex uses GW and XPS for the production of insulated plasterboards only in Italy, where [...].³⁹ For the rest of the countries, including Belgium and Poland, Etex uses EPS to produce its prefabricated insulated plasterboards. Moreover, Etex argues that to replace EPS by XPS would economically not make sense, given that XPS is much more expensive than EPS while the special qualities of XPS are not needed for the use cases of such prefabricated insulated plasterboards.⁴⁰
- (47) Third, the market investigation pointed to the fact that builders usually prefer to buy the insulation material and the plasterboard separately and install them on the spot.⁴¹ Depending on the insulating properties of the final application and the price, builders prefer to mix and match the chosen insulation material with the plasterboard themselves at the construction site.

5.3.1.2. Incentive

- (48) As regards the incentive, the very limited presence of the merged entity on the downstream market would make it unlikely that it could profitably recoup lost sales from a foreclosing conduct on the upstream markets.

5.3.1.3. Impact

- (49) The market participants contacted in the market investigation indicated no negative impact of the Transaction for their business or markets.⁴²

5.3.1.4. Conclusion

- (50) In conclusion, in light of the above, the Commission considers that the Merged Entity would have neither the ability nor the incentive to engage in a foreclosure strategy and that; in any event, a foreclosure strategy would not have a significant impact on effective competition.
- (51) In light of the above, the Commission considers that the new entity would have neither the ability nor the incentive to engage in an input foreclosure strategy against its downstream competitors in the production and supply of prefabricated insulated plasterboards in Belgium and Poland.

³⁷ EPS is the most used material because of its low cost (Minutes of the call from 24 March 2022, paragraph 15).

³⁸ Minutes of the call from 24 March 2022, paragraph 7; Minutes of the call from 29 March 2022, paragraph 5; Minutes of the call from 28 March 2022, paragraph 6.

³⁹ Form CO, paragraphs 87 and 95.

⁴⁰ Form CO, paragraph 95.

⁴¹ Minutes of the call from 24 March 2022, paragraph 16; Minutes of the call from 28 March 2022, paragraph 10.

⁴² Minutes of the call from 24 March 2022, paragraph 24; Minutes of the call from 29 March 2022, paragraph 15; Minutes of the call from 28 March 2022, paragraph 12.

5.3.2. *Customer foreclosure*

- (52) The Transaction is not likely to lead to customer foreclosure as, post-Transaction, the Parties would likely not have the ability to foreclose the Merged Entity's upstream competitors for the following reasons.

5.3.2.1. *Ability*

- (53) First, considering Etex's low market shares for the supply of insulated plasterboards in Belgium and Poland, there will remain a sufficiently large customer base in the downstream market for Ursa's competitors to provide their products post-Transaction. In Belgium, Etex faces competition from Saint-Gobain (around [10-20]%), Knauf ([10-20]%), Recticel ([20-30]%), Gorstal and others. In Poland, Etex faces competition from Saint-Gobain, Knauf, Recticel ([50-60]%), Gorstal ([30-40]%) and others.⁴³
- (54) Second, the market investigation pointed to the fact that the builders usually purchase the insulation materials separately and install them on the plasterboards themselves. In any event, even if prefabricated insulated plasterboards were a separate market, builders could switch to the components of competitors separately, if the merged entity would increase prices.⁴⁴

5.3.2.2. *Incentive*

- (55) As regards the incentive, the very limited presence of the merged entity on the downstream market would make it unlikely that it could profitably recoup lost sales from a foreclosing conduct on the downstream markets.

5.3.2.3. *Impact*

- (56) Third, the market participants contacted in the market investigation indicated no negative impact for their business or the markets.⁴⁵

5.3.2.4. *Conclusion*

- (57) In light of the above, the Commission considers that the new entity would have neither the ability nor the incentive to engage in a customer foreclosure strategy against its upstream competitors in the markets for the production and supply of XPS and GW in Belgium and Poland.
- (58) Based on the considerations above, and in light of the results of the market investigation and of the evidence available to it, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement because of vertical non-coordinated effects in the upstream markets of the production and supply of XPS and GW and the downstream markets of the production and supply of prefabricated insulated plasterboards in Belgium and Poland.

⁴³ Form CO, Table 7.12.

⁴⁴ Idem footnote 41.

⁴⁵ Minutes of the call from 24 March 2022, paragraph 24; Minutes of the call from 29 March 2022, paragraph 15; Minutes of the call from 28 March 2022, paragraph 12.

5.3.3. *Conclusion on the competitive assessment*

- (59) In light of the above considerations and of all evidence available to it, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement due to potential vertical non-coordinated effects or horizontal non-coordinated effects under any plausible market definition.

6. CONCLUSION

- (60) For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President