EUROPEAN COMMISSION

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: **Case M.9592 –FREUDENBERG / LOW & BONAR**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 10 March 2020, the European Commission received notification of a proposed concentration (the "Transaction") pursuant to Article 4 and following a referral request pursuant to Article 4(5) of the Merger Regulation, by which Freudenberg & Co. KG, ("Freudenberg", Germany; the "Notifying Party") intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Low & Bonar PLC, ("Low & Bonar", United Kingdom). Freudenberg and Low & Bonar are designated hereinafter as the "Parties".

1. THE PARTIES

(2) Freudenberg is a family-owned company headquartered in Germany and the parent company of a group active globally in four primary business areas: (i) seals and

[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").

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vibration control technology, (ii) nonwovens and filtration, (iii) household products, and (iv) specialties and other products.

(3) Low & Bonar is a UK company listed on the London Stock Exchange, active as global manufacturer and supplier of advanced, high-performance materials created from polymer-based yarns and fibres which are used in a wide range of applications.

2. THE CONCENTRATION

(4) The Transaction consists of the indirect acquisition by Freudenberg of the entire ordinary share capital of Low & Bonar.

(5) The directly acquiring company will be FV Beteiligungs-GmbH ("FV", Germany), an entity indirectly fully owned and controlled by Freudenberg. Following a sale process, on 19 July 2019 FV issued an indicative offer for Low & Bonar. The Parties, subsequently, agreed to implement a scheme of arrangement under which Low & Bonar will be acquired by FV and under which a cancellation of the listing of Low & Bonar shares on the London Stock Exchange shall be implemented. On 20 September 2019, FV and Low & Bonar announced the recommended offer from FV, thereby commencing a public bid process for the entire issued ordinary share capital of Low & Bonar. Following completion of the Transaction, Low & Bonar will be solely controlled by Freudenberg.

(6) The Transaction, therefore, constitutes a concentration pursuant to Articles 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(7) The Transaction does not have a Union dimension as it does not meet the thresholds set under Article 1(2) of the Merger Regulation, since Low & Bonar's EU turnover amounted to EUR […]. The Transaction also does not meet the turnover thresholds of Article 1(3) of the Merger Regulation.

(8) On 30 October 2019, the Commission received, by means of a reasoned submission, a referral request pursuant to Article 4(5) of the Merger Regulation with respect to the Transaction based on the consideration that the Transaction would otherwise be subject to review under the national merger control regimes of Germany, Austria, Poland and the United Kingdom. A copy of this submission was transmitted to the Member States on 30 October 2019.

(9) The case fulfils the two conditions set out in Article 4(5) of the Merger Regulation, since (i) the Transaction is a concentration within the meaning of Article 3 of the Merger Regulation, and (ii) the Transaction is capable of being reviewed under the national competition laws of at least three Member States.

(10) As none of the Member States competent to review the Transaction or the United Kingdom expressed its disagreement as regards the request to refer the case to the Commission, the Transaction falls within the jurisdiction of the Commission pursuant to the Article 4(5) referral request filed by the Parties.

4. RELEVANT MARKETS

(11) The Parties are active in several product areas and overlap in the production and supply of nonwoven fabrics. Moreover, the products that they manufacture are used as inputs for the manufacture of throw-in-mats, where only Freudenberg is also active. This section will discuss the relevant product and geographic market definitions for the nonwovens sector (and for each possible sub-segments where the Parties have relevant activities for the purposes of the present decision) (section 4.1) and for throw-in-mats (section 4.2).

4.1. Nonwoven and other fabrics

4.1.1. Introduction

(12) Nonwoven fabrics are a specific type of technical textile, broadly defined as sheet or web structures bonded together by entangling fibres or filaments mechanically, thermally or chemically. Nonwovens are generally manufactured as "roll goods", i.e., as a roll of nonwoven material. These roll goods are primarily sold by the producers of nonwovens downstream to "converters", who convert the nonwoven fabric rolls into an end-product with further industrial applications.

(13) Converters make modifications to the nonwoven materials, such as cutting, slitting, coating, embossing, laminating, printing and winding. Such end-products are usually made for the downstream manufacturers of semi-finished, prefabricated and finished parts which are then typically further processed, assembled or combined to produce end-user (industrial) or consumer products. For each different end-use applications, other materials can also be used to manufacture the end-product, alternatively to nonwoven fabrics. These materials include woven and knit fabrics, paper products, fiberglass, plastic sheet and foam. The scope for substitution with nonwoven fabrics should therefore be assessed within each relevant application.

(14) The Parties' activities overlap in two applications, namely: (i) floor coverings and (ii) building/roofing applications.

Floor coverings applications

(15) Floor coverings products include underlays and backings, for household, industrial and car applications.

(16) A carpet backing is the material which holds the yarns together of which the tufted carpet is made. Tufted carpet manufacturers can choose between a range of different materials when deciding on the carpet backing for a particular carpet, in particular PET[3] nonwoven, PET woven and woven polypropylene ("PP")[4].

(17) Carpet backings are thus made out of nonwovens or, depending on the application, out of woven, composite materials using natural (jute) or man-made materials. The carpet maker chooses the material to use as a carpet backing on the basis of a number of different considerations that include the backing's price, weight,

[3] Polyethylene Terephthalate.

[4] A woven fabric is made by weaving or knitting yarns.

thickness, processability (i.e., how the material performs during the tufting process), tuftability and dimensional stability.

(18) In this respect, PET woven fabrics are deemed to have superior technical properties compared to PET nonwovens that are relevant for carpet tile manufacturers. The Notifying Party considers that PET woven is currently approximately […]% more expensive than PET nonwoven. PET woven fabrics have also a greater pile hold performance and a greater dimensional stability. Carpet backings may also be made out of PP woven. PP woven backings have the advantage of quickly repairing themselves after the needle threads yarn through the material and departs, which allows for higher machine speed during the tufting process, providing a cost advantage to carpet manufacturers. This material however also presents a lower dimensional stability with respect to PET nonwovens. By comparison, PET nonwoven backings have a lower ability to repair themselves after each needle puncture during the tufting process. y.

(19) The Parties produce tuft PET nonwovens primary carpet backing,[5] a product that can be found in carpet backings for (i) construction and (ii) automotive applications.

(20) Tuft PET nonwovens primary carpet backings in construction applications can mainly be found in carpet tiles in which the carpet backings need to have different properties compared to standard broadloom carpets (in particular with respect to the dimensional stability). Within primary carpet backings for construction applications, both Parties predominantly sell their carpet backings to manufacturers of carpet tiles.

(21) Tuft PET nonwovens primary carpet backings in automotive flooring applications can be found in so-called automotive flooring systems (AFS) and throw-in mats. AFS are carpets that have been formed or "moulded" to the needs of a particular vehicle. Carpets used for AFS are either made out of tufted carpets, for which a (tuft PET) primary carpet backing is necessary, or out of needle-punched nonwoven carpets, which do not require a primary backing. Throw-in mats are products that protect the automotive flooring system of a passenger car and facilitate the cleaning of the interior of the car. They are made out of different materials (including rubber, PVC and tufted carpets).

Building/Roofing applications

(22) Building/Roofing applications include flat roofing bituminous membranes and other types of building insulation, house-wraps, (non-apparent wall covering), etc. This segment also includes nonwovens which serve as carriers for bituminous waterproofing membranes in roofing.

[5] Most carpets have a double backing: the primary backing, where the yarn is tufted into, and the secondary backing which is the outer material. The main purpose of the primary backing is to provide a base to hold the carpet yarn in place. Secondary backing helps hold the carpet yarns in place, as it reinforces the carpet piece and gives it some dimensional stability. To be noted that both Parties have also minor activities in secondary backings for tufted carpets (in particular for automotive applications). The parties' sales in these products are, however, negligible (in the EEA 2018: Freudenberg: € […] million; Low & Bonar: € […] million). Therefore, secondary backing will not be considered further in this decision.

(23) Within building/roofing applications, the Parties overlap in possible narrower market for nonwovens carriers for bitumen membranes. The PET nonwovens produced by the Parties serve as "reinforcing" materials that act as "carriers" for bitumen as it is manufactured into a membrane.

4.1.2. Product market definition

4.1.2.1. The Notifying Party's view

(24) The Notifying Party submits that the relevant market should include all nonwovens, without any further segmentation. It argues that nonwovens can be used for a variety of applications, such as baby diapers, surgical gowns, wound dressing or bituminous roofing membranes. The Notifying Party acknowledges that the industry tends to segment the market for nonwovens based on the end-use application of the products, including hygiene, medical/surgical, wipes for personal care, wipes-other, cotton pads, garments, interlinings, shoe/leather goods, coating substrates, floor coverings (including carpet backings for cars), upholstery/household, wall covering, table linen, air & gas filtration, liquid filtration, building/roofing, underground applications/civil engineering, automotive (excluding fabrics for filtration and floor covering), agriculture, electronic materials, food & beverage and others.

(25) In addition, the Notifying Party submits that, in many of their end-use applications, nonwoven fabrics compete with a variety of other materials, including woven and knit fabrics, paper products, fiberglass, plastic sheet and foam. The Notifying Party explains that nonwovens present certain specific characteristics that make them cost-efficient, high performance alternatives to traditional woven textiles and provide specific functional benefits over competing materials, such as softness, tensile strength, a smaller pore size or lighter weight. Nonetheless, despite these specific features, the Notifying Party submits that there is scope for substitution between nonwoven fabrics and those other materials within different end-use applications.

(26) However, the Notifying Party also submits that the product market should not be segmented on the basis of end-uses due to strong supply-side substitution. It explains that most companies (including the Parties) produce nonwovens for a wide variety of applications and do not sell their products directly to end-users (as nonwovens are typically intermediate products). It also submits that nonwoven manufacturing equipment and technologies can be switched rapidly and inexpensively to produce different types of nonwoven fabrics.

(27) Similarly, the Notifying Party submits that other conceivable segmentations of the relevant market (according to raw materials used or manufacturing processes)[6] would not be relevant because, with few exceptions, fabrics produced with different raw materials or based on different manufacturing process or bonding technology, would be regarded by customers as fully interchangeable since they

[6] Such as (i) by raw material used (Polyethylene Terephthalate ("PET"), Polypropylene ("PP") or other polymers such as Polyamid 6 (also referred to as Nylon) ("PA6")), (ii) by the web-forming process (also described as "formation") in drylaid, spunmelt, wetlaid and airlaid nonwovens, as well as (iii) by the technology used for bonding. Further, another possible approach to distinguish nonwovens is by the type of fibres (staple fibres or continuous filaments) or the thickness of fibres (fine denier or coarse denier fibres).

serve the same function and tend to display similar properties, performances and price.

4.1.2.2. The Commission's assessment

(A) Market segmentation by applications

(28) In a previous decision, the Commission considered the market for nonwovens and contemplated defining a narrower market for nonwovens for hygiene applications.[7] The Commission considered such segmentation because the market investigation suggested that nonwovens for hygiene applications had specific characteristics that differentiated them from nonwovens for other applications. On the other hand, the Commission noted that certain of these characteristics were also relevant for other applications. In addition, many of the respondents to the market investigation considered it possible to switch production. Ultimately, the Commission left the definition of the relevant market open.[8]

(29) In the present case, the results of the market investigation contradicted the Notifying Party's view that the nonwovens market should be considered as a whole, without separating different types of nonwovens. On the contrary, the vast majority of respondents to the market investigation, both customers and competitors, considered that the market should be further segmented.[9] In particular, from a demand-side perspective the majority of respondents confirmed that the market should be segmented by applications, as each application require different characteristics and specifications.[10]

(30) From the supply-side, respondents also indicate that defining separate markets according to applications would be relevant because specific end-uses require different production characteristics that not all suppliers have. Accordingly, the same production line cannot generally be used for different products, except in specific circumstances.[11] The absence of supply-side substitution was further illustrated by the failed attempt by a major global nonwoven manufacturer to enter the construction and automotive segments due to its inability to obtain the technical characteristics required of primary carpet backings for these specific products. In essence, customers and suppliers, in their vast majority, endorsed distinguishing relevant markets by applications, indicating that each application requires different specifications, technical requirements and performances, that not all suppliers are able to meet. For instance, nonwovens used in filtration application would be entirely different from those used for flooring and, therefore, not substitutable from a supply or demand-side perspective.

(31) Some respondents to the market investigation also indicated that other characteristics (raw material used, web forming process, technology) can be relevant to identify distinct relevant markets.[12] However, other respondents

7 Case M.5958 – *Goldman Sachs/TPG/Ontex*, 30 September 2010.

8 Case M.5958 – *Goldman Sachs/TPG/Ontex*, 30 September 2010, paragraphs 34 to 37.

9 Questionnaires Q1, replies to questions 5 and 5.1; Q2, replies to questions 5 and 5.1; Q3, replies to questions 6 and 6.1.

10 Questionnaires Q1, replies to questions 6 and 6.1; Q2, replies to questions 6 and 6.1.

11 Questionnaire Q3, replies to question 7.2. See also reply of Milliken to questionnaire Q1, question 5.1.

12 Questionnaires Q1, replies to questions 7 and 7.1; Q2, replies to questions 7 and 7.1; Q3, replies to questions 8 and 8.1.

submitted that applications should serve as the main defining criterion, as different nonwovens belong to the same market as long as the end-use application is the same (for instance, floor coverings).[13]

(32) Finally, the Notifying Party's internal documents contain reports of each Parties' supply negotiations with customers. These reports show that customers determine the types of fabrics that they use for specific applications, such that any scope for substitution between nonwoven and other types of fabrics (in particular PP or PET woven fabrics) should be assessed within each main application.[14]

(33) Therefore, given the Parties' overlaps, the Commission will examine the Transaction's effects on the markets for (i) fabrics for floor coverings applications and (ii) fabrics for building/roofing applications. In addition, the Commission has investigated whether, within each general application, nonwoven fabrics and other types of fabrics used for specific industrial applications or end-uses were substitutable with other fabrics.

(34) Furthermore, given the Parties' specific areas of overlap, the market investigation considered (i) within floor covering applications, a distinction between primary carpet backings used in construction applications and in automotive applications, and (ii) within building/roofing applications, a possible separate market for bitumen membranes.

(B) Possible further segmentations in fabrics for floor coverings applications

(B.i) Segmentation by industrial applications

(35) From a demand-side perspective, the majority of respondents submitted that, within floor coverings applications, fabrics used for different industrial applications could not be substituted, such that separate markets should be distinguished according to the specific applications concerned. Accordingly, customers cannot substitute primary carpet backings for construction applications with primary carpet backings for automotive applications.[15]

(36) Furthermore, the Commission notes that carpet backings for both constructions and automotive applications can be manufactured out of nonwoven fabrics and other fabrics, in particular woven fabrics.

(37) Although the majority of customers that responded to the market investigation indicated that, in general, technical differences between the nonwoven and woven fabrics limit their substitution, […] provide evidence of effective substitution between nonwoven and woven fabrics.[16] In the course of the market investigation,

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13 Reply of Tarkett to questionnaire Q1, question 5.1.

14 See below sections 5.3.2 and 5.3.3.

15 Questionnaires Q1, replies to questions 8 and 8.1; Q2, replies to questions 7 and 7.1; Q3, replies to questions 8 and 8.1.

16 See the Parties' internal documents listed below, footnotes 63 and 64. In addition, see A […] customer visit report dated […] 2018 indicating that "*[…]*". […] customer visit report dated […] 2018 indicated that, "*[…] […] has offers on the table of a WPP product from Propex […] […] is looking into it and they don't want to move, but the market is crazy and OEM's are embracing lower priced, lower quality option mats so […] may be forced to move. For 2018 there is no threat, maybe for 2019. This is nothing new and we see this at […] as well*" (Form CO, annex 7.4).

it was confirmed that backings materials are chosen in view of the characteristics required of the end-product. In this respect, certain customers recognize that a degree of competition will remain between backings made out of different materials.[17] Accordingly, for the purpose of the competitive assessment, the Commission will take into account the availability of woven fabrics as alternatives to the Parties' nonwoven fabrics. The assessment will also take into account the competitive constraints that these products can exercise on the Parties in light of the scope of substitution that can be expected due to their different technical characteristics.[18]

(38) From the supply-side, the result of market investigation was mixed, with respondents emphasizing both differences and similarities between the technologies and processes used to make primary carpet backings for both automotive flooring and construction applications.[19] However, commonalities in the production of both products appear prevalent, as the Parties use the same machines and processes to produces all types of carpet backings.[20] Similarly, customers that responded to the market investigation indicated that the main difference between carpet backings for construction and automotive applications is their weight,[21] thus further supporting the Parties' argument that there is a degree of supply-side substitutability between primary carpet backings for construction and automotive applications, subject to specific technical adjustments.

(39) In any event, the Commission considers that the question whether the market for floor covering applications should be further segmented on the basis of the industrial applications using specific fabrics, thus distinguishing (i) primary carpet backings for construction applications and (ii) primary carpet backings for automotive applications, can be left open for the purpose of this Decision as the Transaction does not raise serious doubts on any plausible alternative market definition.

(B.ii) Segmentation by end-use

(40) Respondents to the market investigation considered distinguishing separate markets for fabrics for floor coverings applications based on the final end-use. That approach would lead to defining distinct relevant markets (i) within primary carpet backings for construction applications, by distinguishing between backings for carpet tiles and backings for broadlooms, and (ii) within primary carpet backings for automotive, by distinguishing between backings for moulded carpets and backings for throw-in-mats.

(41) Regarding a possible distinction in construction applications between primary backings for carpet tiles and for broadlooms, most respondents explained that different products are used for each end-use and thus do not appear substitutable from the demand-side.[22] The Notifying Party explained that both Parties predominantly sell their carpet backings to manufacturers of carpet tiles as the

17 Minutes of conference call with Balta Group of 19 December 2019; .
18 Questionnaire Q1, replies to questions 9 and 12.
19 Questionnaire Q3, replies to question 9.1.
20 Form CO, paragraphs 116-117 and paragraph 338.
21 Questionnaires Q1, replies to question 8.1.
22 Questionnaires Q1, replies to questions 10 and 10.1.

specific products they manufacture, tuft PET primary backings, are popular backings in the carpet tile industry.[23]

(42) However, a number of broadloom carpet manufacturers also use tuft PET primary carpet backings for certain broadloom carpet products[24] and several manufacturers of carpet tiles use other materials, i.e., woven PP backings, also used for broadlooms to manufacture carpet tiles.[25] The Notifying Party indicates that PET woven is thus increasingly used to manufacture carpet tiles.[26] Furthermore, the supply-side substitution considerations set forth above at paragraph 38 necessarily apply to the manufacture of primary carpet backings for different end-uses within construction applications. Therefore, considering separate relevant markets for primary carpet backings for carpet tiles and for other carpets does not appear warranted.

(43) In automotive, with respect to a possible distinction between primary backings for moulded carpets and primary backings for throw-in-mats, the Notifying Party explained that customers procure carpet backings for moulded carpets and carpet backings for throw-in mats separately. However, at the same time, the Notifying Party does not distinguish internally between sales for these different products.[27]

(44) The market investigation confirmed that primary backings for moulded carpets are technically more sophisticated, because the stress that is being applied to the tufted carpet for automotive during the moulding process[28] requires a particular strength in the carpet backing.[29] However, from a supply-side perspective, the Parties and their main competitors manufacture backings for both end-uses, if necessary with different specifications. Therefore, no further distinction of the market of primary carpet backings for automotive applications appears necessary in this respect.

(C) Possible further segmentations in building/roofing applications

(45) With respect to the market for building/roofing applications, the majority of respondents to the market investigation submitted that a separate market should be identified for nonwovens carriers for bitumen membranes, which require nonwoven fabrics that can withstand high temperature and low shrinkage properties to be processed and certain mechanical properties.[30]

(46) However, from a supply-side perspective, the Parties and their main competitors manufacture other nonwovens for building/roofing with the same machines, which suggests a degree of supply-side substitutability.[31]

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23 Form CO, paragraph 131.
24 Form CO, paragraph 238.
25 Form CO, paragraph 270.
26 Form CO, paragraph 195.
27 Form CO, paragraph 276.
28 "Moulding" is the process during which the tufted carpet is formed to the requirements of the floor of a passenger car by applying heat and pressure.
29 Questionnaires Q1, replies to questions 13 and 13.1.
30 Questionnaires Q2, replies to questions 8 and 8.1.
31 Form CO, paragraph 338.

(47) In any event, the Commission considers that it is not necessary to conclude on the precise product market definition, as the Transaction does not raise serious doubts on any plausible alternative market definition.

4.1.2.3. Conclusion on product market definition

(48) In light of the above, the Commission considers that the relevant markets for the purpose of assessing the present Transaction are:

(a) Nonwoven and other fabrics for floor coverings applications, and possible separate markets for (i) carpet backings for construction applications and (ii) carpet backings for automotive applications;

(b) Nonwoven and other fabrics for building/roofing applications, and a possible separate market for nonwovens carriers for bitumen membranes.

4.1.3. Geographic market definition

4.1.3.1. The Notifying Party's view

(49) The Notifying Party submits that the relevant geographic market should be at least EEA-wide and that several factors support a broader geographic scope:

(a) the Parties compete regularly with both EEA and extra EEA based top-tier global suppliers, including nonwovens manufacturers active in Turkey, Belarus, Russian and Ukraine.[32] According to the Notifying Party, supply and demand for nonwovens in the EEA is influenced by significant imports and exports,[33] with extra-European players serving European customers, either directly via imports from their home countries, or via small logistics assets within Europe (mainly consignation warehouses). The Notifying Party explains that this is the case for the Parties' main Asian competitors in the affected markets;

(b) transportation costs from Asia into Europe are limited, accounting for approximately […]% of the value of the goods. Customs tariffs would also be immaterial;

(c) while there are reportedly still price differences across geographies, prices increasingly tend to track each other around the globe and both Parties set their prices for the EEA in a way that takes into account price levels in Asia and the rest of the world;

(d) the Parties themselves have production facilities in Asia and have significant inter-company sales from one continent to the other.

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[32] The Notifying Party submits that the leading international association serving the nonwovens and related industries (EDANA) only collects and publishes data for the geographical scope of […] (Form CO, paragraph 149, reference to EDANA report '2018 Nonwoven Statistics', submitted as Annex 1.2 to the Form CO).

[33] Overall, in 2018, imports of nonwovens in Europe counted for something in the range of […] (Form CO, paragraph 156, reference to EDANA report '2018 Nonwoven Statistics', submitted as Annex 1.2 to the Form CO).

4.1.3.2. The Commission's assessment

(50) In a prior decision, the Commission considered that the geographic scope of the nonwoven fabrics market was at least EEA-wide, given the absence of barriers to trade. However, the Commission left the exact geographic scope open.[34]

(51) In the present case, the majority of respondents considered that the market for nonwoven and other fabrics and possible sub-segmentations relevant in the present case is worldwide, considering the presence of global suppliers and customers across regions.[35] On the other hand, the majority of respondents still considers important that supplier's production facilities be located close to their own production site, due to lead time, flexibility, support and logistic imperatives.[36]

(52) However, logistical issues associated to distance do not appear to constitute high barriers to entry into the EEA for non-European suppliers. In particular, suppliers based in Asia confirmed that they currently and increasingly supply EEA-based customers, despite longer delivery times and transportation costs.[37] Furthermore, several primary carpet backings customers have indicated sourcing almost entirely from Asia.[38] A respondent thus indicated that logistical and lead time issues were easily mitigated by Asian suppliers with EEA-based storage warehouses.[39]

(53) In light of the above, the Commission considers that the market for nonwoven and other fabrics, as well as relevant sub-markets (fabrics for floor coverings applications, and possible separate markets for (i) carpet backings for construction applications and (ii) carpet backings for automotive applications; nonwovens for building/roofing applications, and possible separate market for nonwovens carriers for bitumen membranes) are at least EEA-wide. In any event, for the purpose of the assessment of the present Transaction, the exact geographic scope of the relevant markets can be left open, as the Transaction does not raise serious doubts on any alternative geographic scope.

4.2. Throw-in-mats

(54) Throw-in mats are products that protect the automotive flooring system of a passenger car and facilitate the cleaning of the interior of the car. Throw-in mats may be made out of a range of different materials (including rubber, PVC, and tufted carpets). Freudenberg, through its subsidiary Hanns Glass, is only active in throw-in mats made out of tufted carpets.[40]

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34 Case M.5958 – *Goldman Sachs/TPG/Ontex*, 30 September 2010, paragraphs 45-46.

35 Questionnaires Q1, replies to questions 18 and 18.1; Q2, replies to questions 11 and 11.1; Q3, replies to questions 21 and 21.1.

36 Questionnaires Q1, replies to questions 20 and 20.1; Q2, replies to questions 12 and 12.1; Q3, replies to questions 23 and 23.1.

37 Questionnaire Q4, replies to questions 5, 5.1, 6.1, 6.2, 8, 8.1, 13, 13.1, 14.1, 14.2, 16 and 16.1.

38 Questionnaire Q1, replies to questions 23, 23.1 and 23.2.

39 Reply of Burmatex to questionnaire Q1, question 20.1.

40 Hanns Glass has also a limited amount of sales of intermediate material tufted roll goods carpets (about EUR […] million in 2019). Intermediate material tufted roll goods carpets are made out of carpet backings and are typical intermediate products for which companies such as Hanns Glass only perform the tufting process. Hanns Glass then sells these carpets to customers that make either automotive flooring systems or throw-in mats out of these carpets. Hanns Glass only perform the tufting process as a service provider for its customers of this product which outsource this service to tufting companies. It is not clear whether this

4.2.1. Product market definition

(55) The Notifying Party submits that throw-in-mats are a distinct product market.

(56) The results of the market investigation confirm that throw-in-mats constitute a different product with respect to other products such as moulded carpets for car interiors. In particular, certain manufacturers specialize in the production of throw-in-mats. Moreover, automotive OEMs source throw-in-mats separately from other products.[41]

(57) Therefore, for the purpose of the present decision, the Commission considers that the relevant product market is that for the manufacturing and supply of throw-in-mats.

4.2.2. Geographic market definition

(58) The Notifying Party submits that the geographic dimension of the market of throw-in-mats is at least EEA-wide.

(59) Respondents to the market investigation confirmed that, in general, car manufacturers source components preferably from suppliers in the same region of their specific production sites (i.e., in the EEA for production sites in the EEA).[42]

(60) The Commission considers that the market for the manufacturing and supply of throw-in-mats is at least EEA-wide. However, for the purposes of the present decision, the exact geographic scope of the market can be left open, given that the Transaction does not raise any competition concerns under any plausible alternative market definition.

5. COMPETITIVE ASSESSMENT

5.1. Analytical Framework

(61) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it.

(62) The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the "Horizontal Merger Guidelines") distinguish two main ways in which mergers between actual or potential competitors on the same

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activity form part of a distinct market or it is just a specific service part of the market for nonwovens (and related sub-segments). In any case, considering the limited relevance of this activity and the very marginal position of Freudenberg (the Notifying Party estimates a market share of about [0-5]% at EEA level), this market will not be explored further. In any case, the observations on vertical effects relating to throw-in-mats in section 5.4 below are applicable to an hypothetical market of intermediate material tufted roll goods carpets.

41 Questionnaire Q1, replies to question 13.1; Questionnaire Q4, replies to question 14.2; Minutes of the call with Betap Tufting B.V. of 22 January 2020.

42 Questionnaire Q5, replies to questions 7.1.

relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.[43]

(63) In particular, non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by one merging party on the other, as a result of which the merged entity would have increased market power without resorting to coordinated behaviour. According to recital (25) of the preamble of the Merger Regulation, a significant impediment to effective competition can result from the anticompetitive effects of a concentration even if the merged entity would not have a dominant position on the market concerned. In this 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.[44]

(64) Indeed, 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, such as 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. Not all of these factors need to be present for significant non-coordinated effects to be likely. The list of factors, each of which is not necessarily decisive in its own right, is also not an exhaustive list.[45]

(65) A merger in a concentrated market may also significantly impede effective competition due to horizontal coordinated effects where, through the creation or the strengthening of a collective dominant position, it increases the likelihood that firms are able to coordinate their behaviour and raise prices, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU. A merger may also make coordination easier, more stable or more effective for firms that were already coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices.[46]

(66) To assess whether a merger gives rise to horizontal coordinated effects, the Commission should examine, first, whether it would be possible to reach terms of coordination and, second, whether the coordination would be likely to be sustainable.[47]

(67) Moreover, in examining the possibility and sustainability of coordination, the Commission should specifically consider the changes that the Transaction brings about.[48] The reduction in the number of firms in a market may in itself be a factor that facilitates coordination.

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43 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004 p.5.

44 Horizontal Merger Guidelines, paragraph 25.

45 Horizontal Merger Guidelines, paragraphs 26-38.

46 Horizontal Merger Guidelines, paragraph 39.

47 Horizontal Merger Guidelines, paragraph 42.

48 Horizontal Merger Guidelines, paragraph 42.

(68) A transaction may also entail vertical effects. In that respect, the Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation (the "Non-Horizontal Merger Guidelines") distinguish between two main ways in which vertical mergers may significantly impede effective competition, namely input foreclosure and customer foreclosure.[49]

(69) For a transaction to raise input foreclosure competition concerns, the merged entity must have a significant degree of market power upstream.[50] In assessing the likelihood of an anticompetitive input foreclosure strategy, the Commission has to examine whether (i) the merged entity would have the ability to substantially foreclose access to inputs; (ii) whether it would have the incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream[51].

(70) For a transaction to raise customer foreclosure competition concerns, the merged entity must be an important customer with a significant degree of market power in the downstream market.[52] In assessing the likelihood of an anticompetitive customer foreclosure strategy, the Commission has to examine whether (i) the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from upstream rivals; (ii) whether it would have the incentive to do so and (iii) whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[53]

5.2. Affected markets

5.2.1. Horizontally affected markets

(71) The Transaction would give rise to affected markets if the relevant markets are defined according to their applications, both at EEA and global level. In particular, the Transaction would give rise to a horizontally affected market in floor coverings applications. Assuming a further market segmentation, the Transaction would give rise to horizontally affected markets in (i) primary carpet backings for construction applications and (ii) primary carpet backings for automotive applications.

(72) Furthermore, within building/roofing applications, the Transaction would give rise to a horizontally affected market in nonwovens carriers for bitumen membranes.

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49 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.

50 Non-horizontal Merger Guidelines, paragraph 35.

51 Non-horizontal Merger Guidelines, paragraph 32.

52 Non-horizontal Merger Guidelines, paragraph 61.

53 Non-horizontal Merger Guidelines, paragraph 59.

Table 1 – Parties' market shares in affected markets (2018, Value and Volume)

		Freudenberg		Low & Bonar		Combined	
		EEA	**World**	**EEA**	**World**	**EEA**	**World**
Floor coverings	**Value**	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%
	Volume	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[30-40]%	[20-30]%
Primary carpet backings for construction applications	**Value**	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[50-60]%	[40-50]%
	Volume	[20-30]%	[30-40]%	[20-30]%	[10-20]%	[40-50]%	[40-50]%
Primary carpet backings for automotive applications	**Value**	[40-50]%	[50-60]%	[30-40]%	[20-30]%	[70-80]%	[70-80]%
	Volume	[40-50]%	[50-60]%	[30-40]%	[20-30]%	[70-80]%	[70-80]%
Nonwovens carriers for bituminous membranes	**Value**	[10-20]%	[20-30]%	[0-5]%	[0-5]%	[10-20]%	[20-30]%
	Volume	[20-30]%	[20-30]%	[0-5]%	[0-5]%	[20-30]%	[20-30]%

Source: Form CO

5.2.2. Vertically affected markets

(73) The Transaction gives also rise to vertically affected markets in connection with the upstream market of primary carpet backings for automotive applications, where both Parties are active with combined market share higher than 30% (see table 1 above), and the downstream market of throw-in-mats, where Freudenberg is active.

5.3. Horizontal non-coordinated effects

5.3.1. Nonwovens and other fabrics for floor covering

5.3.1.1. The Notifying Party's view

(74) The Notifying Party submits that the Transaction would not result in any competition concerns, in light of its limited combined market shares.

(75) In addition, the Notifying Party submits that post Transaction the market will remain competitive, because:

(a) the Parties will compete with a number of global players which have equivalent products in terms of characteristics and processing technologies, run production facilities around the world, including Europe, and serve their customers from whichever plant is in their view ideally placed to serve the particular customer;

(b) the European market is expected to be increasingly exposed to competitive pressure coming from suppliers located outside of the EEA. Certain Chinese and Turkish suppliers are especially active in the low-end of the market while

the more sophisticated Japanese and South Korean players are active in the high-end of the market;

(c) the Parties' products will continue to compete with other types of nonwoven fabrics for floor coverings that the Parties do not supply and with a number of different woven products (made out of PP, PET or PA6)[54] which are also used for floor coverings applications;

(d) the downstream markets for floor covering products would remain highly competitive and characterized by an increasing demand for recycled products, luxury vinyl tiles, and laminates made out of wood powder. These demand-side trends would ensure effective competition post-merger because new product offerings provide new possibilities to substitute floor coverings with other products that do not require a nonwoven fabric based solution.

(76) The Notifying Party also submits that the Parties are not their respective closest competitors because they use different manufacturing processes and different polymers, which in turn result in their products displaying significantly different characteristics:

(a) Freudenberg manufactures "mainstream" products with its standard spunbond[55] technology, and is primarily exposed to direct competition from the Asian suppliers Kolon and Unitika/Tusco, which use the same technology and have very similar products in terms of properties, with the additional advantage of being significantly cheaper;

(b) Low & Bonar employs a unique two-step production process based on its proprietary spinning and spunlaid technology. As result, its products are considered by customers to be superior in terms of dimensional stability and strength/weight ratio. For these reasons they could not easily be substituted by Freudenberg's products in applications where customers believe these properties to be crucial.

(77) Moreover, the Parties consider that they target different customers because of the materials they use in their nonwovens. Accordingly, customers who attach great importance to recycled materials used as raw materials for the products they source, would have a preference for Freudenberg and would not regard Low & Bonar's products as a suitable alternative. Conversely, only Low & Bonar has developed antimony-free products which some customers would consider a must in their products. As a result, the Notifying Party argues that the Parties' core customers do not overlap.

54 PP stands for Polypropylene and PA6, Polyamid 6, also referred as Nylon.

55 The spunbond or "spunlaid" process is a webformation process in which the polymer chips are melted and molten polymer is extruded through spinnerets - the "spinning". The continuous filaments are then cooled and deposited on to a conveyor to form a uniform web - the "laying" - and are then bonded together, usually thermally - the "bonding". The terms "spunlaid" and "spunbond" are regularly used in the industry as equivalents. The term "spunlaid" refers, however, more specifically to the webformation on the conveyer, while the term "spunbond" refers more generally to the semi-finished materials extracted after it has been "laid" and "bonded" (Freudenberg's reply to RFI 4, 2 March 2020, page 1).

5.3.1.2. The Commission's assessment

(78) The Notifying Party provided market share estimates limited to nonwovens for floor coverings. These estimates are reported in the following table.

Table 2 – Market shares in nonwovens for floor coverings - 2018

Company	***EEA-wide***				***Worldwide***			
	Volume		**Value**		**Volume**		**Value**	
	Sales (in mn sqm)	**Market Share (%)**	**Sales (in EUR mn)**	**Market Share (%)**	**Sales (in mn sqm)**	**Market Share (%)**	**Sales (in EUR mn)**	**Market Share (%)**
Freudenberg	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
L&B	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	**[…]**	**[30-40]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
Balta	[…]	[5-10]%	[…]	[10-20]%	[…]	[5-10]%	[…]	[5-10]%
Betap	[…]	[5-10]%	[…]	[10-20]%	[…]	[5-10]%	[…]	[5-10]%
Condor	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[5-10]%
Autoneum	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[5-10]%
Ideal	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[5-10]%
Adler Pelzer	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[40-50]%	[…]	[30-40]%	[…]	[40-50]%	[…]	[30-40]%
Total Market	[…]	100%	[…]	100%	[…]	100%	[…]	100%

Source: Form CO

(79) Post-Transaction, the merged entity will have a combined market share of [30-40]% in the EEA and [20-30]% worldwide, in volume, and of [20-30]% in value, both at EEA and worldwide level. Although the increment brought about by the Transaction is substantial (about [10-20]%), the combined market share would still be relatively limited.

(80) Contrary to the Notifying Party's view, the Parties are close competitors in nonwovens for floor coverings. Although they use different production processes, both use the same raw material (PET nonwovens) and are mainly active in the same product segments (constructions and automotive). Accordingly, the vast majority of respondents to the market investigation submitted that the Parties are close competitors and that the differences in the Parties' production processes are not decisive in order to determine the substitutability of the final products. [56]

[56] Questionnaire Q1, replies to questions 38.1 and 39.1. Minutes of Call with Betap Tufting of 22 January 2020; Minutes of call with AGM Durmont of 17 December 2019.

(81) However, a significant number of alternative suppliers will remain active in the market after the Transaction, including competitors holding important market shares capable of exerting a significant competitive constraint on the merged entity, both at EEA and worldwide level.

(82) On the basis of the foregoing considerations, the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal non-coordinated effects in the market of nonwovens and other fabrics for floor coverings.[57]

(83) The Commission has further assessed the impact of the Transaction assuming a segmentation within products used for floor coverings, in the markets of (i) primary carpet backings for construction applications and (ii) primary carpet backings for automotive applications.

5.3.2. Primary carpet backings for construction applications

5.3.2.1. The Notifying Party's view

(84) In addition to the arguments submitted with respect to the market for nonwovens and other fabrics for floor coverings applications, the Notifying Party submits that the Transaction would not raise competition concerns in primary carpet backings for construction applications for additional reasons.

(85) First, the Notifying Party argues that the Parties are not close competitors because the distinctive features of their respective products would be of particular relevance for carpet manufacturers for construction applications, as customers would attach particular value to the different dimensional strengths and the weight of the products, to the differences in the amount of recycled PET or in the content of antimony in the nonwovens. Therefore, customers would not regard the Parties' respective products as valid alternatives to each other, as demonstrated by a series of internal documents and by the fact that each Party would face difficulties in winning business from the other Party.

(86) Second, effective competition will continue to exist in this market, mainly from the Asian manufacturers Kolon and Unitika/Tusco, which presence in the EEA is established and growing.

(87) Third, the Notifying Party submits that there is a strong demand-side substitution that would act as a significant constraint post-Transaction, because the Parties' customers could also turn to manufacturers of competing products that the Parties do not offer (PP woven or nonwovens, composite materials and PET woven).

(88) Last, the Notifying Party argues that the analysis of the proposed Transaction's effects on competition should take the financial difficulties of Low & Bonar into account, because lack of funding would result in restricting Low & Bonar's investments and marketing, thus reducing Low & Bonar's ability to compete. As a result, the Notifying party argues that there is a significant risk that the competitive

[57] While table 2 only contains data related to nonwovens, the Commission notes that the combined market share of the merging entity would be lower than [20-30]% if data related to wovens would have included since the merging parties are only active in nonwovens for floor coverings.

constraint Low & Bonar can exert on Freudenberg would be substantially reduced absent the merger.

5.3.2.2. The Commission's assessment

(A) The Parties' position post-merger

(89) The Parties' market shares and those of their main competitors in primary carpet backings for construction applications are reported in the following tables.

Table 3 – Market shares in primary carpet backings for construction applications – EEA

Company	2017				2018				2019			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (in m sqm)	**Market share %**	**Sales (in EUR m)**	**Market share %**	**Sales (in m sqm)**	**Market share %**	**Sales (in EUR m)**	**Market share %**	**Sales (in m sqm)**	**Market share %**	**Sales (in EUR m)**	**Market share %**
Freudenberg	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
L&B	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Combined	[…]	[50-60]%	[…]	[50-60]%	[…]	[40-50]%	[…]	[50-60]%	[…]	[40-50]%	[…]	[50-60]%
Kolon	[…]	[10-20]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Unitika/Tusco	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Propex - PET Woven	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Mattex- PET Woven	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Toyobo	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
DuPont	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Propex - PP Woven	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Mattex- PP Woven	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Others PP	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%	[…]	[10-20]%
Total Market	[…]	**100%**	[…]	**100%**	[…]	**100%**	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Form CO

Table 4 – Market shares in primary carpet backings for construction applications - worldwide

Company	2017				2018				2019			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (in m sqm)	Market share %	Sales (in m sqm)	Market share %	Sales (in m sqm)	Market share %	Sales (in EUR m)	Market share %	Sales (in m sqm)	Market share %	Sales (in EUR m)	Market share %
Freudenberg	[…]	[20-30]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
L&B	[…]	[10-20]%	[…]	[20-30]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Combined	[…]	[40-50]%	[…]	[40-50]%	[…]	[40-50]%	[…]	[40-50]%	[…]	[40-50]%	[…]	[40-50]%
Unitika/Tusco	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Kolon	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Propex - PET Woven	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Mattex-PET Woven	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Toyobo	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
DuPont	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Propex - PP Woven	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Mattex-PP Woven	[…]	[10-20]%	[…]	[10-20]%	[…]	[20-30]%	[…]	[10-20]%	[…]	[20-30]%	[…]	[10-20]%
Others PP	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%
Total Market	[…]	**100%**	[…]	**100 %**	[…]	**100 %**	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Form CO

(90) In primary carpet backings for construction applications, the merged entity will hold a combined market share of approximately [40-50]%, with an increment brought about by the Transaction in the range of 15-25%, at both EEA and worldwide level. The Transaction will therefore significantly reinforce the merged entity's market position.

(91) The results of the market investigation have confirmed that the Parties are the two main suppliers of primary carpet backings for construction applications in the EEA and among the top five at worldwide level.[58] Most respondents to the market investigation use one of the Parties as their main supplier for production facilities based in the EEA.[59]

(92) Furthermore, in contradiction to the Notifying Party's claims, the majority of customers consider that the Parties are the closest competitors in the EEA: despite

58 Questionnaire Q1, replies to question 36.1.

59 Questionnaire Q1, replies to question 19.

distinctive features, the Parties' carpet backings are considered as substitutes, providing similar performance.[60]

(93) As a result, the merged entity will hold high market shares and combine close competitors. The Commission has therefore assessed whether competitors remaining on the market would be able to exercise a competitive pressure so as to counterbalance the market position of the merged entity and prevent negative effect on competition arising from the Transaction.

(B) Competitive constraints remaining post-merger

(B.i) Suppliers of primary carpet backings using other raw materials

(94) Several customers indicated in the course of the market investigation that alternative suppliers competing with the Parties, in the EEA and worldwide, using technologies other than PET nonwovens, would remain present after the Transaction. These suppliers include Propex, Beaulieu and Mattex.[61] Propex and Mattex in particular hold material positions in primary carpet backings for construction applications, offering carpet backings made of PET woven and PP woven.

(95) However, as already mentioned above in the market definition section, these suppliers seem to exercise a more distant competitive constraint on the Parties than PET nonwoven suppliers. According to the results of the market investigation, technical differences between PET nonwoven and primary carpet backing made of woven material (PP or PET) may limit the scope of their substitution.[62]

(96) Nevertheless, the Parties' internal documents indicate that there is scope for substitution. Several internal correspondence reporting customer visits by the Parties' respective marketing personnel provide evidence that customers of primary backings for construction applications partly switched from the Parties to suppliers of non-PET nonwoven primary backings[63] or considered the latter to constitute better alternatives.[64]

(97) Despite a degree of substitution with non-PET nonwoven primary backings, demand has not primarily diverted to suppliers like Propex and Mattex. These competitors' market share, although material, has remained relatively stable in the years 2016-2019.[65] This is because, as explained in the following section, customers generally indicated that Asian suppliers, which supply the same PET

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60 Questionnaire Q1, replies to questions 38.1 and 39.1. Minutes of Call with Betap Tufting of 22 January 2020.

61 Questionnaire Q1 – replies to Questions to 19.1, 19.2 and 36.1, Minutes of the Call with Balta of 19 December 2019'.

62 Questionnaire Q1, replies to question 9. Minutes of Call with Betap Tufting of 22 January 2020.

63 See, e.g., […] customer visit report to […] dated […] 2018, indicating that Mattex's products are effective substitutes as "*[…] increased their share more to […] and volumes will remain the same however* […] *lost the main part* […]" (Form CO, annex 7.4).

64 See, e.g., […] customer visit report to […] dated […] 2017, Form CO, paragraph 134, indicating that "[c]*urrent best performing material (as far stitch holding) is 'Artis Tru' from Propex (a combination between woven + non-woven.* […] *[…] expressed that it is unlikely that the new […] 'improved stitch holding' product* […] *will ever be able to meet the stitch holding performance of a product like the 'Artis Tru' non-woven*").

65 See above tables 3-4 and Form CO, annex 7.

nonwovens as the Parties, constitute their closest competitors at the worldwide level.[66]

(B.ii) Suppliers of PET nonwoven primary carpet backings

(98) The results of the market investigation indicate that suppliers of PET nonwoven primary carpet backings are the Parties' closest competitors. Both worldwide and in the EEA, the main remaining suppliers of PET nonwoven primary carpet backings post-merger will be Unitika/Tusco and Kolon. These companies are considered by the majority of respondents to constitute the Parties' closest competitors.[67]

(99) Unitika is a Japanese company that manufactures and supplies all types of PET spunbond nonwoven products used for carpet backings for construction and automotive applications, other construction and agricultural materials. It also offers a broad range of cotton spunlace materials. Tusco is a joint venture between Unitika and Teijin Fibers Company Ltd., Thailand. Tusco uses the same manufacturing technology that Unitika uses and built a new manufacturing plant in Thailand in 2017.[68]

(100) Kolon is a South Korea-based manufacturer. It manufactures and supplies PET spunbond nonwovens for carpet backings for construction and automotive applications, in addition to PET spunbond nonwovens for filter media, geotextiles, building materials and fashion applications. It also offers yarns, tire cords, PET and Nylon films, as well as resins.[69]

(101) Relevant factors for assessing the constraints exercised by these competitors include, as explained in the paragraphs below, (i) the absence of barriers to switching, (ii) closeness of competition, (iii) the growth of Asian competitors' sales worldwide and in the EEA, (iv) the existence of available capacity and (v) the fact that the recent market entry by Asian suppliers does not appear to be merely opportunistic.

(102) First, Kolon and Unitika/Tusco, have achieved their current market position in the EEA by inducing customers to switch suppliers. For carpet manufacturers, switching primary backings suppliers requires: (i) meeting customers' requirements in terms of lead time, flexibility and logistical support (hereinafter, "logistical requirements") and (ii) passing a technical qualification.

(103) In respect of customers' logistical requirements, most customers that responded to the market investigation indicated that they value the geographic proximity of their supplier's production facilities, as geographic proximity minimizes lead time and

66 Questionnaire Q1, replies to questions 38.1 and 39.1

67 Questionnaire Q1, replies to questions 38.1 and 39.1.

68 Freudenberg's reply to RFI 6 10 April 2020, pages 5-6. Unitika/Tusco has been designated as "Itochu" by one respondent to the market investigation (questionnaire Q1), because Unitika has used Itochu as distributor in Europe (Form CO, paragraph 57, footnote 19).

69 Freudenberg's reply to RFI 6, 10 April 2020, page 7. The Notifying Party mentioned also Toyobo, a leading Japanese company offering films, resins and textiles but also PET spunbond nonwoven products for carpet backings for construction applications. Toyobo has already a plant in Obernburg, Germany (active in films, resins and textiles) but in the carpet backings for construction applications, Toyobo has thus far had a focus on the Asian and NAFTA markets.

maximizes flexibility, and logistical support.[70] Nevertheless, despite such preference, the majority of respondents to the market investigation also considered that carpet backings for construction applications supplied by Asian producers currently constitute a credible alternative to the ones supplied by the Parties.[71]

(104) With respect to EEA-based carpet manufacturers, switching to Asian suppliers does not entail prohibitive costs. From the perspective of customers, the main impediments to switch to Asian suppliers relate to doubts over the security of supply, delivery flexibility and lead time.[72] Nevertheless, as the Notifying Party explained and respondents to the market investigation confirmed,[73] Asian suppliers have been able to mitigate such issues by carrying stock within EEA-based warehouses and using logistical support provided by third parties in the EEA.[74] In this regard, the Commission observes that Kolon has recently installed a warehouse in Europe[75] "*to prevent supply chain issues*".[76] As Unitika/Tusco has further observed, "*the size of the European market does not justify setting up a production capacity in Europe*",[77] whereas the market investigation has not identified any particular barriers to suppliers wishing to obtain warehousing capacity in the EEA. A third party study dated 19 February 2020 submitted by the Notifying Party (hereinafter, the "SuP study") thus reports the use of warehouses located in the EEA by Asian suppliers.[78]

(105) In addition, Asian competitors are already present worldwide and do not appear to face any difficulties serving their Europe and US-based customers as carpet backings made out of PET nonwoven can be rolled and cost-effectively shipped in containers.[79]

(106) Moreover, the Notifying Party indicated that transportation costs are estimated to amount to approximately […]% of the value of goods and therefore remain limited.[80] The market investigation confirmed the Parties' assessment as customers having effectively switched to Asian suppliers confirmed having been able to "easily" recoup transportation costs via overall savings allowed by Kolon's and Unitika/Tusco's more competitive pricing.[81].

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70 Questionnaires Q1, replies to questions 20, 20.1, 21 and 21.1; and Q4, replies to questions 8, 8.1. and 8.1.1.

71 Questionnaire Q1, replies to questions 42.1 and 42.1.1.

72 Questionnaire Q1 –replies to questions 21, 21.1 and 43.1.1. It has been submitted that without a production localized in the EEA or at least a significant stock to compensate the delivery lead time from Asia, Asian suppliers are still facing major constraint to deliver EEA (Tarkett's reply to questionnaire Q1, question 43.1.1, see also its reply to question 42.1).

73 Form CO, paragraph 247. Questionnaire Q1, replies to questions 20.1 and 42.1.1.

74 Reply of Kolon to questionnaire Q4, question 8.1.1.

75 Schlegel & Partner, Annex 5.4.1.n to the Form CO, page 16..

76 […] customer visit report dated […] 2018, to […] (Form CO, Annex 7.4).

77 Minutes of the call with Unitika of 30 January 2020.

78 Schlegel und Partner study entitled "Competitor Landscape Carpet Backings", dated 19 February 2020, p. 4, 9, 13, 15 and 16.

79 Freudenberg's reply to RFI 6, 10 April 2020, page 12. See also Form CO, paragraph 157.

80 Form CO, paragraph 152; RBB study entitled Unilateral Effects in the Market for Nonwovens dated 2 March 2020, p. 17.

81 Reply of Burmatex to questionnaire Q1, questions 23.3 and 23.4.

(107) In respect of the qualification process, using a new supplier requires customers to invite certain producers for product qualification processes. The qualification process of a prospective supplier foresees certain product tests relating to the performance, quality and stableness of their products. Several customers have thus qualified Asian suppliers and effectively switched part or almost all of their supplies to Unitika/Tusco and Kolon.[82] Other customers expressed reservations concerning the quality of Asian products and indicated that they would still require testing before being deemed fit for their needs. A few EEA customers explained having tested and failed Asian suppliers in past years.[83]

(108) In this respect, the Commission notes that Asian suppliers are recent entrants in the EEA market and, as the Notifying Party observes, it is typical for a new prospective supplier to initially fail to qualify in the first tests run by new customers, as it is often necessary to optimize the material or to offer a similar material to achieve qualification for certain carpet qualities. Certain adjustments to the tufting process (for instance lowering the speed of the tufting machine)[84] that the customer considers important for the characteristics of its carpet backing can also lead to qualification at a later point in time, once the adjustments have been implemented.[85] Moreover, both Unitika/Tusco and Kolon are already active with increasing market shares at worldwide level. Therefore, qualification requirements and quality considerations have not constituted insurmountable barriers to entry and expansion. Moreover, as will be discussed below (paragraph 114), the Parties' internal documents indicate that, for significant EEA customers, primary carpet backings supplied by Asian manufacturers demonstrated their good performance and overcame the quality issues of their first tests in the EEA.[86]

(109) In addition, all suppliers, regardless of the origin of the product, must obtain qualification in order to serve customers[87]. Accordingly, thorough testing is a necessity for both European and non-European product and therefore does not constitute a specific hurdle to switch from European to Asian suppliers.[88] As the majority of the respondents have confirmed, switching to suppliers qualified outside of the EEA, is relatively easy.[89] A customer in this regard observed that, "[their] *qualification process includes significant product testing, so if they* [suppliers] *had qualified,* [it is] *easy to switch*".[90] As it is evidenced further below, Asian suppliers are already been qualified by a series of EEA carpet manufacturers.

(110) In sum, despite reservations expressed by some respondents to the market investigation,[91] Asian suppliers effectively compete with the Parties both worldwide and at the EEA level, with their product being considered a credible alternative source of primary carpet backing for construction applications.[92]

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82 Questionnaire Q1, replies to question 23.2.

83 Questionnaire Q1, replies to questions 32, 32.1, 32.2.1 and 32.2.1.2.

84 Form CO paragraph 270.

85 Freudenberg's reply to RFI 6, 10 April 2020, page 23.

86 Annex 7.4 to the Form CO.

87 Questionnaire Q1, replies to question 35.

88 Minutes of the call with Burmatex of 10 January 2020.

89 Questionnaire Q1, reply to question 35.2.

90 Burmatex's reply to questionnaire Q1, question 35.2.

91 Questionnaire Q1 –replies to questions 32.1.2.2 and 42.1.

92 Minutes of the Call with Balta, of 19 December 2019

Furthermore, Kolon and Unitika/Tusco employ the same web-formation process as Freudenberg[93] and are perceived by the vast majority of the respondents to the market investigation as the Parties' closest competitors.[94] Accordingly, in the course of the market investigation, Asian suppliers did not indicate specific technical requirements preventing them from expanding in the EEA.

(111) Therefore, neither technical advantages nor the established position of incumbent firms constitute barriers to entry and expansion on the relevant market.[95]

(112) As for the cost of switching, the Notifying Party explained that the overall cost of switching suppliers would amount to no more than approximately EUR 30,000 and take about six months,[96] an estimate broadly confirmed by the market investigation,[97] in the course of which several respondents indicated that switching would be possible in less than six months or one year.[98] As a result, barriers to switching to Asian suppliers are limited and do not entail high costs.

(113) Second, the results of the market investigation indicate that Kolon and Unitika/Tusco are the Parties' closest competitors. From a technical perspective, Asian products compete head-to-head with the Parties' products. Kolon and Unitika/Tusco thus use raw materials (PET nonwovens) and production processes similar to those of Freudenberg. As mentioned above, a large number of respondents designated Kolon and Unitika/Tusco as the Parties' closest competitors at worldwide level.[99] Moreover, Kolon and Unitika/Tusco are already qualified as suppliers of carpet backings for construction applications by a significant number of EEA carpet manufacturers.[100]

(114) Both Parties' internal documents provide further evidence of their head-to-head competitive interactions with Kolon and Unitika/Tusco. In particular, internal correspondence reporting customer visits provide evidence that customers of primary backings for construction applications effectively switched to Asian suppliers due to better pricing[101] and/or product quality,[102] or credibly threatened

93 Form CO, paragraphs 199- 200.

94 Questionnaire Q1, replies to questions 38.1 and 39.1.

95 Horizontal Merger Guidelines, paragraph 71.

96 Form CO, paragraph 240; RBB study, p. 4.

97 Most customers estimated that the cost of switching would range between EUR 10,000 and 50,000. One respondent, however, considered that switching would be more costly (more than EUR 500,000). However, that estimate is inconsistent with both the majority view and the experience of customers that effectively switched to Asian suppliers (Questionnaire Q1, replies to question 29).

98 Questionnaire Q1, replies to question 29.

99 Questionnaire Q1, replies to questions 38.1 and 39.1.

100 Questionnaire Q4, replies to question 7.

101 See, e.g., […] customer visit report to […] dated […] 2019, Form CO, Annex 7.4., indicating that "*The reason for their decision* [to switch to Kolon for the supply of primary backings for carpet tiles] *was due to the much better pricing on the primary* […] *backing that would save […]* […] *per annum. Pricing of the 90gr Kolon is […]% below our price*".

102 See, e.g., […] customer visit report to […] dated […] 2019, Form CO, Annex 7.4.., indicating that the "*Supplier at […] is Kolon (100%) – 1st Quality lost again Kolon Mid of 2016 due to Quality* […] *We submitted a new and extremely aggressive offer to* […] […] *We know price level is changing in EU and is decreasing*". […] customer visit report to […] dated […] 2018: "*In the meantime, Kolon has modified its product- […] is very happy about the actual quality, but also about the speed and responsiveness of the Korean competitor*"; […] customer visit report to […], dated […] 2018, Form OC, Annex 7.4, indicating that using Unitika/Tusco's product "Marix", "[…] *is not only bringing […] improved dim*[ensional]

Freudenberg and Low & Bonar to switch to Asian suppliers in order to negotiate lower prices.[103]

(115) The existence of head-to-head price-based competition between the Parties and Asian suppliers was further confirmed by the market investigation. Customers observed that Kolon's entry in the market was caused by the Parties' pricing policy, indicating that "[t] *he general approach of EEA suppliers –Low & Bonar and Freudenberg for example–, is not be proactively competitive, even when raw materials are reducing and should facilitate price reduction.* […] *As a result, the environment existed for proactive, well priced alternatives to enter into the market, which Kolon did*."[104] A large number of respondents thus indicated being willing to switch to the Asian manufacturers, in case prices were no longer deemed competitive.[105]

(116) Third, Asian suppliers have consistently increased their sales of primary carpet backings for construction applications, both at the worldwide and EEA level.

(117) On the worldwide market:

(a) Unitika/Tusco's sales in volume increase by 32% from […] million sqm in 2017 to […] million sqm in 2019. In value, its sales increased by 45%, from EUR […] million in 2017 to EUR […] million in 2019;

(b) Kolon's expansion has been larger, with sales in volumes having increased by 45%, from […] million sqm in 2017 to […] million sqm in 2019. In value, Kolon's sales also grew by 42%, from EUR […] million in 2017 to EUR […] million in 2019.[106]

(118) During the same period, the Parties' combined worldwide sales of primary carpet backings for construction applications decreased by [0-5]% in volume and [0-5]% in value.

(119) Overall, the worldwide market for primary carpet backings for construction applications remained stable in volume and declined by [5-10]% in value over the 2017-2019 period. The increase in Asian suppliers' sales over this period (EUR […] million) was equivalent to the Parties' combined sales loss (EUR […] million). Although sales of PET woven primary carpet backings also grew (by EUR 4 million), given the closer competitive relationship between PET nonwoven-based primary backings sold by Asian suppliers and the Parties' products, diversions of

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stability, but also a cost saving in face yarn. This making a potential (re-)introduction of […] in […] even more difficult".

103 See, e.g., […] customer visit report to […] dated […] 2019, Form CO, Annex 7.4., indicating that "*Both Kolon and Tusco are going round telling everyone who they are supplying* […] *[…] stated that if they are to keep their market share, they have no option to buy as competitively as their own competitors* […] *Furthermore, it was intimated that if Tusco/Unitika and/or Kolon trials prove successful, both Freudenberg and Bonar's business could be at threat, irrespective of the outcome of the takeover, because of the significant price differential*".

104 Burmatex's reply to Questionnaire Q1, reply to question 23.3.

105 Questionnaire Q1, replies to questions 22 and 22.1.

106 See above at table 4 and Form CO, Annex 7.

demand from the Parties' customers at the worldwide level throughout the 2017-2019 period likely mainly benefitted Unitika/Tusco and Kolon.[107]

(120) Similarly, in the EEA, Kolon's and Unitika/Tusco's sales steadily increased on a year-to-year basis in the 2017-2019 period:

(a) Unitika/Tusco sales in volume increased by 50% from […] million sqm in 2017 to […] million sqm in 2019. In value, the company's sales increased by 33%, from EUR […] million in 2017 to EUR […] million in 2019;

(b) Kolon sales also increased significantly. Its sales in volume increased by 33% from […] million sqm in 2017 to […] million sqm in 2019. In value, the company's sales increased by 33% from EUR […] million in 2016 to EUR […] million in 2019.[108]

(121) During the same period, the Parties' combined sales of primary carpet backings for construction applications in the EEA decreased by [5-10]% both in volume and in value. For their part, suppliers of primary carpet backings for construction applications manufactured with PET wovens increased slightly, while those made out of PP wovens decreased (in value).

(122) Overall, the EEA-wide market for primary carpet backings for construction applications slightly decreased in volume (less than 5%) and remained stable in value over the 2017-2019 period. The increase in Asian suppliers' sales over this period (EUR […] million) approximately matched the Parties' combined loss (EUR […] million). All suppliers of primary carpet backings either had stable or lost sales. Consequently, and given the closer competitive relationship between PET nonwoven-based primary backings sold by Asian suppliers and the Parties' products, diversions of demand from the Parties' customers at the EEA level throughout the 2017-2019 period were to the benefit Unitika/Tusco and Kolon.

(123) According to the results of the market investigation, the trend towards switching to Asian suppliers has been fostered by their price competitiveness.[109] The Parties' internal documents, in particular, tend to show that the entry and subsequent expansion of Asian suppliers has created a downward pricing pressure on the Parties' sales.[110]

(124) The expansion of Asian suppliers in the EEA and in the rest of the world is further driven by price differences existing between Asia and other regions. For example, Freudenberg's average sales prices in the EEA for primary backings for carpet tiles were approximately […]% higher than in Asia in 2019 (and […]% higher in

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[107] To be noted that also Toyobo, a Japanese supplier of PET nonwovens, mentioned in footnote 64 above, had a limited increase in the value of its sales (in the range of EUR […] to […]).

[108] See above at table 3 and Form CO, Annex 7.

[109] Reply of Burmatex to questionnaire Q1, questions 23.3 and 23.4.

[110] See previous paragraphs 114 and 115 and related footnotes. See also, […] customer visit report to […] dated […] 2018, Form CO, annex 7.4 indicating that "*The pricing pressure remains, Kolon is actively trying to get back (part of) their lost position where we now have almost 100% of their business. …*" See also a visit report of […] to the same customer, dated […] 2019 indicating: "*We need to discuss internally, but I think it is better to hit the "reset button" that allows us to change the delivery and (excessive) payment condition, increase the […] price, maintain the […] price as they are already high and to keep one door open"* (Form CO, annex 7.4).

2018).[111] According to the Notifying Party, in general Asian suppliers tend to be cheaper, with prices in the region […]% lower than the Parties' EEA prices.[112] Overall transport costs from Asian plants to customers located outside of Asia are estimated to amount to approximately […]% of the value of the goods.[113] As a result, Asian suppliers will continue to have an incentive to expand their sales in the EEA and worldwide after the Transaction.

(125) Moreover, a significant number of customers that do not currently source primary carpet backings from Asian suppliers have nevertheless already qualified Asian suppliers.[114] As a result, according to information provided by Asian competitors in the course of the market investigation, approximately 40% of the Parties' combined top 10 customers either are already supplied or have qualified Kolon and/or Unitika/Tusco to supply them.[115] The Parties' top 10 customers, in 2018, represent approximately […]% of their total sales in primary carpet backings for construction applications[116]. Accordingly, in the event of an attempt to increase prices, a large number of the Parties' customer base would be able to shift their demand to Asian suppliers without delay.

(126) Fourth, Asian suppliers have significant spare capacity that could be utilized in the short term to serve additional customers in the EEA and worldwide.

(127) The SuP study provides estimates of Unitika/Tusco's and Kolon's current production capacity:[117]

(a) Unitika/Tusco has a PET nonwovens production capacity of 53,000 tons per year, including a recently opened production line with a capacity of 6,000 tons.[118] This approximately corresponds to a 530 million sqm yearly production capacity.[119] That capacity is equivalent to more than half of the total worldwide market for primary carpet backings for construction applications and to more than twice the size of the EEA market;

(b) Kolon's total production capacity amounts to 22,000 tons per year,[120] which corresponds to approximately 220 million sqm per year. That capacity is equivalent to 20% of the total worldwide market for primary carpet backings for construction applications and to the total EEA market.

(128) The Notifying Party submits that spare capacity can be estimated in two ways. First, spare capacity results from idle capacity (i.e., production lines not currently used). According to Low & Bonar's internal estimates, both Unitika/Tusco and

111 RBB study, page 17.
112 Form CO, paragraph 345.
113 In addition, customs tariffs amount to 4.3% in case of shipments from Taiwan to Europe, while there are no customs tariffs for shipments from Korea to the EU (Form CO, paragraph 152).
114 Questionnaire Q4, replies to question 7.
115 Elaboration on the basis of Questionnaire Q4, replies to question 7 and Form CO.
116 Form CO, paragraph 229.
117 SuP Report, Schlegel & Partner, Annex 5.4.1.n), to the Form CO, page 15.
118 https://www nonwovens-industry.com/top-40/unitika/2018/
119 The sqm capacity is calculated based on the weight of a typical primary carpet backing for construction applications manufactured out of PET nonwoven of 100g per sq.
120 SuP Report, Schlegel & Partner, Annex 5.4.1.n), to the Form CO, page 16.

Kolon each have […]% idle capacity as of July 2019.[121] Second, the Notifying Party submits that producers that do not have idle capacity, nevertheless have *de facto* spare capacity, resulting from the possibility to shift production between nonwovens for different applications taking into account profit margins that can be realized by selling the different products[122].

(129) The level of idle capacity currently held by Asian suppliers, as estimated by the Parties, amounts for more than […]% of the Parties' combined worldwide sales of primary backings for construction applications.

(130) With respect to the EEA, Kolon and Unitika/Tusco confirmed having spare capacity and being able to serve additional demand should customers wish to switch suppliers in the event of a price increase. Kolon and Unitika provided estimates of the time and cost required for increasing their supplies up to certain volume amounts in the EEA.[123] One of these suppliers thus indicated being able to use spare capacity without any substantial investments up to […].[124] The other Asian supplier confirmed currently having spare capacity, in amounts up to […].[125] These estimates therefore provide evidence that Asian competitors would be able to achieve a short term increase in production and supplies in amounts exceeding the Parties' pre-merger sales levels to EEA customers.

(131) In this respect, the Commission is unlikely to find that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition when rival firms have available capacity and find it profitable to expand output sufficiently.[126] Given the existence of spare capacity, evidence of Kolon's and Unitika/Tusco's aggressive pricing and expansion in the EEA and the rest of the world over the past 3 years, it is likely that these suppliers would have the incentive to maintain their present strategy by reacting aggressively in the event of a post-merger price increase. This appears all the more likely since significant price differences exist between the EEA and Asia. In particular, the Notifying Party's own average sales prices in the EEA are […] higher than in Asia.[127] Accordingly, given the recent growth of Asian suppliers outside of Asia, further price increases would likely further support the profitability of exporting products.

(132) For Kolon and Unitika /Tusco, the production process, equipment and necessary inputs remain overall the same for the different applications. Apart from investment necessary to handle and transport into the EEA or in other regions in the world – that are not substantial as explained above (paragraphs 106 and 124) – no specific technical barriers would impede Kolon and Unitika/Tusco from

121 RBB Study, page 14. Freudenberg's reply to RFI 6, 10 April 2020, page 9.

122 RBB study, pages 14-15.

123 Unitika's e-mail of 17 February 2020; Kolon's submission of 28 February 2020; Questionnaire Q4, replies to questions 9 and 9.1.

124 Questionnaire Q4, replies to questions 9 and 9.1.

125 […] e-mail of 17 February 2020.

126 Horizontal Merger Guidelines, paragraph 33.

127 Freudenberg provided the average sales price for its primary carpet backings for carpet tiles, which represent the vast majority of its sales of primary carpet backings for construction applications, showing EEA average prices […]% higher than in Asia in 2018 and […]% higher in 2019 (RBB study, page 17).

increasing their production if market opportunities arose due to a post-merger price increase.[128]

(133) Fifth, the expansion of Asian suppliers does not appear to be the result of an opportunistic strategy, whereby their supplies to the EEA or to other regions are a mere function of price fluctuations and demand conditions prevailing in their domestic markets. Demand for primary carpet backings for construction applications in Asia is significant and has not decreased over the past three years and is not expected to decrease in the foreseeable future.[129] In the EEA, the entry and growth of Asian suppliers results from a long term strategy. This is further evidenced by Kolon's investment in warehousing capacity in Europe.[130] For its part, Unitika/Tusco stated that the size of the European market currently would not justify setting up a production capacity in Europe but that opening a warehouse in Europe would not entail significant costs.[131]

(134) Finally, the expansion of Asian suppliers can be facilitated post-Transaction by the fact that customers in this sector are relatively concentrated, with major customers enjoying a degree of buyer power, as they individually represent a significant portion of the Parties' sales. In the EEA, Freudenberg's top 10 customers in 2018 by volume in construction applications accounted for […]% of its sales in value, while Low & Bonar's accounted for […]%.[132] The vast majority of those customers already employ a multisourcing strategy and therefore generally maintains commercial relationships and qualifies more than one supplier.[133] In that respect, customers often have simultaneous agreements with multiple suppliers which grants them the freedom and flexibility to place orders with whichever supplier offers the best terms, at a particular point in time and for their desired quantities.[134] The effective exercise of buyer power by certain customers is thus reflected in the Parties' internal documents reporting on the status of negotiations and showing that customers routinely rely on prices offered from competitors to negotiate better prices from their current suppliers.[135]

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128 Case M.9239, *Evonik /Peroxychem*, 4 June 2019, paragraph 74.

129 Questionnaire Q4, replies to questions 10 and 11.

130 Annex 7.4 to the Form CO, […]'s visit to […], page 51 and […] customer's visit to […], page 53.

131 Minutes of the call with Unitika of 30 January 2020.

132 Form CO, paragraph 229. With specific reference to carpet tiles, in 2019 Freudenberg's three largest customers accounted for […]% of its total sales in this sub-segment and for Low & the three largest customers account for […]% of its total sales (RBB study, page 21).

133 Questionnaire Q1, replies to questions 33 and 33.1.

134 Form CO, paragraph 367.

135 See e.g., A […] customer visit report to […], dated […] 2018, indicating that; "*.. they switched to Kolon due to better pricing. . Pricing of the 90gr Kolon is […]% below our price resulting in Euro ...] per m2.. […] said that they would keep us as second supplier … We need to discuss internally, but I think it is better to hit the "reset button" that allows us to change the delivery and (excessive) payment condition, increase the […] price, maintain the […] price as they are already high and to keep one door open* "; a […] customer visit report to […] dated […] 2019 indicating that "*Supplier at […] is Kolon (100%) … 2nd one lost due in 2018 due to price.. We submitted a new […] offer to* […].. *Feedback to our offer: 1. Having a separate look at the sales prices, the […] price of the quality […] is more interesting compared to Kolon. 2. For […], the price of Kolon is more attractive*. .", A customer visit report of […] to […], dated […] 2018, indicates the pressure exercised "*Feedback customer*: … *Could use Kolon in 120gsm instead of our 110gsm and would nevertheless save money and will have one SKU less The price difference with Kolon is […]*". Telling is also another […] customer visit to […]"*[…] lost appr. 80% of the business against Kolon due to pricing (see below) … Current price situation (net) 100gsm: […]*

(135) As a result, Asian suppliers would be able to continue to expand significantly by gaining only a limited number of new customers. On the other hand, for the same reason, major customers will also retain a significant degree of bargaining power in their negotiation with the merged entity, as they would retain the ability to qualify other alternative suppliers.

(136) In light of the above, the Commission considers that, post-Transaction, the presence of Asian suppliers –Kolon and Unitika/Tusco[136] – will exert a competitive constraint sufficient to eliminate the incentives for the merged entity to raise prices as a result of the elimination of competition between the Parties. The results of the market investigation show that, before the Transaction, Asian suppliers already exercise a downward pricing pressure on the Parties' sales. As a result of significant spare capacity, Asian suppliers will be able to structurally and continuously discipline EEA-based suppliers. That ability is further supported by the fact that Kolon and Unitika/Tusco are already qualified to supply a significant number of large customers, also EEA-based. Accordingly, the pricing pressure exercised by Asian suppliers in current market conditions is likely to be maintained or increase rapidly following the Transaction, at both worldwide and EEA level.

(137) On the basis of the foregoing considerations, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal non-coordinated effects in the market of primary carpet backings for constructions applications.

5.3.3. *Primary carpet backings for automotive applications*

5.3.3.1. The Notifying Party's view

(138) In addition to all the arguments submitted with respect to the market for nonwovens for floor coverings applications, the Notifying Party submits that the Transaction will not have negative effects on competition in the market of carpet backings for automotive applications, for several reasons.

(139) First, the Notifying Party argues that the Parties are not their respective closest competitors. It argues that differences in the dimensional strength and performance during the moulding process of the Parties' respective tuft PET nonwoven carpet backings are of crucial importance for their customers.

(140) Second, the Notifying Party submits that effective competition will continue to exist after the Transaction, mainly from Kolon and Unitika/Tusco, which are already active and are growing their sales to customers in the EEA. [137]

EUR/100m² ([…]) vs. […] EUR/100m² (KOLON) -> appr. […]% difference, 120gsm: […] EUR/100m² ([…]) vs. […] EUR/100m² (KOLON) -> appr. […]% difference." (Form CO, annex 7.4)

136 As mentioned above at footnote 69, Toyobo is another relevant Asian supplier in this sector. According to the Parties, there are at least three Chinese companies active in similar PET spunmelt nonwovens used as carpet backings for construction and automotive applications which could enter the European market in short notice: Jinan Haoxin (China), Yaolong Nonwovens (China) and HuaHao Nonwovens (China) (Form CO, paragraph 395).

137 Schlegel & Partner study "*Competitor Landscape Carpet Backings In molded carpets and throw-in-mats for light vehicles*" of 19 February 2020, submitted as Annex 5.4.1.n, to the Form Co.

(141) Third, the Notifying Party explains that the Parties' customers manufacture both moulded carpets (for which they need a primary carpet backing) and needle-punched carpets (which do not require a primary carpet backing). The Notifying party argue that, because automotive OEMs are free to switch from one solution to the other, such switching behaviour would, in turn, influence the Parties' customers' demand. Accordingly, suppliers of primary carpet backings, which are only used to manufacture tufted carpets, would be constrained from increasing prices as doing so would lead to a diversion of demand by end-customers (automotive OEMs) in favour of needle-punch carpets.

5.3.3.2. The Commission's assessment

(A) The Parties' position post-merger

(142) The Parties' market shares and those of their main competitors in market for the production and supply of primary carpet backings for automotive applications are reported in the following tables.

Table 5 – Market shares in primary carpet backings for automotive applications – EEA

	2017				2018				2019			
	Volume		Value		Volume		Value		Volume		Value	
Company	**Sales (in m sqm)**	**Market share %**	**Sales (in EUR m)**	**Market share %**	**Sales (in m sqm)**	**Market share %**	**Sales (in EUR m)**	**Market share %**	**Sales (in m sqm)**	**Market share %**	**Sales (in EUR m)**	**Market share %**
Freudenberg	[…]	[40-50]%	[…]	[50-60]%	[…]	[40-50]%	[…]	[40-50]%	[…]	[40-50]%	[…]	[40-50]%
L&B	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%	[…]	[30-40]%	[…]	[20-30]%	[…]	[20-30]%
Combined	**[…]**	**[70-80]%**	**[…]**	**[80-90]%**	**[…]**	**[70-80]%**	**[…]**	**[70-80]%**	**[…]**	**[70-80]%**	**[…]**	**[70-80]%**
Unitika/Tusco	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Kolon	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Mattex-PET Woven	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Propex - PP Woven	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Mattex-PP Woven	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Total Market	[…]	**100 %**	[…]	**100%**	[…]	**100%**	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Form CO

Table 6 – Market shares in primary carpet backings for automotive applications – Worldwide

Company	2017				2018				2019 (Expected)			
	Volume		Value		Volume		Value		Volume		Value	
	Sales (in m sqm)	Market share %	Sales (in EUR m)	Market share %	Sales (in m sqm)	Market share %	Sales (in EUR m)	Market share %	Sales (in m sqm)	Market share %	Sales (in EUR m)	Market share %
Freudenberg	[…]	[50-60]%	[…]	[50-60]%	[…]	[50-60]%	[…]	[50-60]%	[…]	[50-60]%	[…]	[50-60]%
L&B	[…]	[10-20]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%	[…]	[10-20]%
Combined	**[…]**	**[70-80]%**	**[…]**	**[70-80]%**	**[…]**	**[70-80]%**	**[…]**	**[70-80]%**	**[…]**	**[70-80]%**	**[…]**	**[70-80]%**
Unitika/Tusco	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
Kolon	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Mattex- PET Woven	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Toyobo	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
DuPont	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Propex - PP Woven	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Mattex- PP Woven	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others PP	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Total Market	[…]	**100 %**	[…]	**100 %**	[…]	**100%**	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Form CO

(143) Post-Transaction, the merged entity will hold a combined market share superior to [70-80]%, with an increment brought about by the Transaction in the range of [20-30]%, at both EEA and worldwide level. Therefore, the Transaction will significantly reinforce the merged entity's market position.

(144) The results of the market investigation have confirmed that the Parties are the two main suppliers of primary carpet backings for automotive applications in the EEA.[138] The majority of the respondents indicated one of the Parties as their main supplier in the EEA.[139]

(145) Furthermore, contrary to the Notifying Party's claims, the majority of the Parties' customers consider them to be the closest competitors in the EEA.[140] Despite distinctive features, the Parties' carpet backings are considered as substitutes, providing similar performance.[141]

138 Questionnaire Q1, replies to question 36.2.

139 Questionnaire Q1, replies to question 19.

140 Questionnaire Q1, replies to questions 38.2 and 39.2.

141 Questionnaire Q1, replies to questions 38.2 and 39.2. Minutes of Call with Betap Tufting of 22 January 2020; Minutes of call with AGM Durmont of 17 December 2019.

(146) As a result, the merged entity will hold high market shares and combine close competitors. The Commission has therefore assessed whether competitors remaining on the market would be able to exercise a competitive pressure so as to counterbalance the market position of the merged entity and prevent negative effect on competition arising from the Transaction.

(B) Competitive constraints remaining post-merger

(B.i) Suppliers of primary carpet backings using other raw materials

(147) The results of the market investigation have indicated that alternative suppliers competing with the Parties, in the EEA and worldwide, using technologies other than PET nonwovens, would remain present after the Transaction. These suppliers include Propex and Mattex. [142]

(148) However, as already mentioned above in the market definition section, these suppliers exercise a more distant competitive constraint on the Parties than PET nonwoven suppliers. The results of market investigation indicated that technical differences between PET nonwoven and a primary carpet backing made of woven material (PP or PET) may limit the scope of their substitution.[143]

(149) Nevertheless, Parties' internal documents indicate that there is scope for substitution. Several internal correspondence reporting customer visits by the Parties' respective marketing personnel provide evidence that customers of primary carpet backings for automotive applications switched from the Parties to suppliers of non-PET nonwoven primary backing or considered the latter to constitute better alternative.[144]

(150) These competitors' market shares however, remain limited (see tables 5 and 6). This is because as explained above, Asian suppliers, which supply the same PET nonwovens as the Parties, constitute their closest competitors at the worldwide level.[145]

(151) As concerns the impact of downstream substitution by automotive OEMs of needle-punched carpets for tufted moulded carpets on the demand for tuft PET carpet backings, the result of the market investigation shows that tufted carpets, for which a primary carpet backing is required, are usually used for high-end car models, whereas needle-punched nonwovens are used for lower-end cars.[146] Although some examples of substitution of tufted moulded by needle-punch carpets in high-end cars exist,[147] the scope of such substitution tends to remain

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142 Annex Questionnaire Q1, replies to questions 24.2, 36.2, Customer visit reports (Form CO, annex 7.4).

143 Questionnaire Q1, replies to question 11.2.1. and 12.

144 A […] customer visit report dated […] 2018 indicated that "[…]". […] customer visit report dated […] 2018 indicated that, "*[…][…] has offers on the table of a WPP product from Propex […][…] is looking into it and they don't want to move, but the market is […] and OEM's are embracing lower priced, lower quality option mats so […] may be forced to move. For 2018 there is no threat, maybe for 2019. This is nothing new and we see this at […] as well*" (Form CO, annex 7.4).

145 Questionnaire Q1, replies to questions 38.2 and 39.2

146 Questionnaires Q1, replies to questions 14 and 14.1; and Q4, replies to questions 4, 4.1 and 5.

147 Questionnaires Q1, replies to questions 16 and 16.1. See e.g. a […] customer visit reports to […], dated […] 2018 and […] 2019 indicating that the Parties' product is affected by needle-punched technology: "*-tuft business is decreasing in favor of needle-punched carpets –main affected product* -> […];

limited as OEMs appear to prefer tufted moulded carpets for high-end cars. However, given the low rate of response to the market investigation in this respect,[148] the Commission cannot reach a conclusive view for the purpose of the present decision.

(B.ii) Suppliers of PET nonwoven primary backings

(152) As already discussed in previous paragraph 150, the market investigation results indicate that suppliers of PET nonwoven primary carpet backings are the Parties' closest competitors. Both worldwide and in the EEA, the remaining suppliers of PET nonwoven primary carpet backings post-merger will be Unitika/Tusco and Kolon. These companies are considered by the majority of respondents to constitute the Parties' closest competitors.

(153) Relevant factors for assessing the constraints exercised by these competitors include (i) the absence of barriers to switching, (ii) closeness of competition, (iii) the growth of Asian competitors' sales worldwide and in the EEA, (iv) the existence of available capacity, (v) the fact that recent market entry by Asian suppliers does not appear to be merely opportunistic and (vi) the fact that customers in this sector are relatively concentrated.

(154) First, as explained above in relation to primary carpet backings for construction applications, customers can switch to new suppliers if the latter can (i) meet customers' requirements in terms of lead time, flexibility and logistical support (hereinafter, "logistical requirements") and (ii) pass a technical qualification. In addition to qualification by their direct customers, primary backing suppliers must also be qualified by automotive OEMs.

(155) As concerns logistical requirements, the market investigation provided mixed results, as respondents did not provide consistent views on the importance of the proximity of suppliers' production facilities. Other factors cited by customers as relevant for the selection of suppliers include product quality and pricing.[149] However, on balance, most respondents confirmed that Asian producers are credible suppliers of carpet backings for automotive applications, despite additional lead time, logistical issues and additional costs.[150]

(156) With respect to EEA-based manufacturers, switching to Asian suppliers does not entail high costs. As indicated above in relation to primary carpet backings for construction applications (Section 5.3.2.2), Asian suppliers have effectively mitigated flexibility and lead time issues by carrying stock in EEA-based warehouses. Furthermore, transportation costs are limited and have been outweighed by the economic advantage of sourcing primary backings from Asian suppliers offering competitive pricing.[151] Accordingly, most respondents to the

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"[c]*urrently very difficult market situation in automotive in general, new models are getting specified with needle punch-carpets in the trunk, side-trims + seat-backs due to price reasons - running models (e.g. […]) are being changed from tuft to needle punch*". (Customer visit report, Freudenberg's reply to RFI 1 of 13 December 2019).

148 Only 2 OEMs replied in the substance to the questionnaire addressed to car OEMs (Questionnaire Q5).

149 Questionnaire Q1, replies to questions 25, 25.1 and 28.

150 Questionnaire Q1, replies to questions 42.2 and 42.2.1.

151 Questionnaires Q1, replies to questions 26.2 and 26.2.1.

market investigation have submitted that they would consider switching to non-EEA suppliers in the event of an attempt by the merged entity to increase prices.[152]

(157) As concerns the qualification process, as in primary backings for construction applications, using a new supplier requires customers to test their product performance. In addition to testing, because automotive applications customers are usually tier-1 suppliers of automotive OEMs, they require the approval of their own customers if they wish to add or change suppliers for manufacturing their own products. Several customers have thus qualified Asian suppliers and effectively switched supplies to Unitika/Tusco and Kolon.

(158) According to information submitted by the Notifying Party, Asian manufacturers supply in Asia several automotive OEMs for the manufacture of carpets for car models that are also present in Europe: Unitika/Tusco supplies carpet backings for various Mercedes, GM, Jaguar Land Rover, Lexus, Toyota and Nissan models, while Kolon supplies carpet backings for moulded carpets to high-end Ford models. It thus appears that the main Asian manufacturers – in particular Kolon and Unitika/Tusco – are able to supply suitable alternatives to the Parties' products.[153] Therefore, no technical or quality-related reasons preclude considering Asian primary carpet backings from being suitable for similar models manufactured in the EEA or elsewhere in the world.

(159) Barriers to switching to Asian suppliers therefore appear limited and do not entail high costs. The Notifying Party explained that the overall cost of switching suppliers would amount to no more than approximately EUR 30,000 and take about six months.[154] Half of the respondents to the market investigation confirmed that switching would be possible within six months to one year, with limited investments. The other half indicated that more than one year would be necessary.[155] On balance, past examples of effective changes of suppliers in favour of Asian competitors show that such switching is possible, within a timeframe and for a cost that would not constitute a barrier to switching.

(160) Second, respondents to the market investigation unanimously designated Kolon as the Parties' closest competitors at the worldwide level.[156] The two main Asian competitors, Kolon and Unitika/Tusco, use raw material (PET nonwovens) and production processes similar to those of Freudenberg. Moreover, Kolon and Unitika/Tusco are already qualified as suppliers of carpet backings for automotive applications by a significant number of EEA carpet manufacturers.[157]

(161) The Parties' internal documents provide further evidence of direct competitive interactions with Kolon and Unitika/Tusco. In particular, internal correspondence reporting customer visits by the Parties' respective marketing personnel provide

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152 Questionnaires Q1, replies to questions 26.2 and 26.2.1.

153 Form CO, paragraph 288; Schlegel & Partner study, pages 15-16; RBB study, p. 12. Minutes of call with Betap Tufting, of 22 January 2020, where it is stated that Unitika/Tusco, "*might be a valid alternative that car OEMs could approve because the quality of their products, is close to the quality of the Parties' products"*.

154 Form CO, paragraph 240; RBB study, p. 4.

155 Questionnaire Q1, replies to question 30.

156 Questionnaire Q1, replies to questions 38.2 and 39.2.

157 Questionnaire Q4, replies to question 15.

evidence that Asian suppliers exercise a pricing pressure in throw-in mats,[158] overcoming logistical issues,[159] and lead customers to divert demand away from the Parties.[160] Similarly, Freudenberg's internal documents provide evidence of recent head-to-head competition with Unitika/Tusco in the supply of tuft PET primary carpet backings for moulded carpets to […], a moulded carpet supplier for […]. According to Freudenberg's internal documents, […].[161]

(162) Third, Asian suppliers have consistently increased their sales of primary carpet backings for automotive applications, both at the worldwide and EEA level.

(163) On the worldwide market:

(a) Unitika/Tusco sales in volume increased by 8% from […] million sqm in 2017 to […] million in 2019. In value, they increased slightly, from EUR […] million to EUR […] million over the same period of time;

(b) Kolon's expansion has been much larger, with sales in volume more almost tripling from […] million sqm in 2017 to […] million sqm in 2019. In value, Kolon's sales also grew very significantly, from EUR […] million in 2017 to EUR […] million in 2019.

(164) During the same period, the Parties' combined worldwide sales of primary carpet backings for automotive applications […] in volume and declined by about […]% in value.

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158 See, e.g., […] customer visit report to […] dated […] 2018, indicating that "[…]*[…] increased their share more to Kolon and Mattex, our volumes will remain the same however* […] *lost the main part. Only a small price increase will be possible.* […] *Competition: Current pricing of Kolon is for 100gr Euro […] per m2, added with small surcharge for the products that come from Germany (1 container safety stock of each product), as they installed a warehousing facility to prevent supply chain issues. […] 100gr is net Euro […]. […] Our […] will be transferred to Kolon due to the much better pricing*"; […] customer visit report to […] dated […] 2018, indicating that, although at that stage there were still doubts about quality and logistic, mainly due to limited knowledge of Kolon's and Unitika's offers, "*the prices offered by them cannot be overlooked"*; […] customer visit report to […] dated […] 2019, indicating that "*Kolon offered 80gr primary for Euro […] per m2 to […], and this explains the reason that […] is looking for general cost price reduction in the […]. Kolon has the stocks at […] transport company, […] which is very convenient and difficult to neglect.* […] *Price mentioned of the 80gr of […]ct is a bit lower than realistic (my view) as in the past […] used the 90gr at Euro […] (included commission of Itochu)* […] *However this is used as reference and put pressure on us to prevent a reason for […] to start qualification as an alternative to the […] 80 which could save […] Euro […] per m2 (Euro […]) and also at […] a significant amount.* […] *On the other hand, when we would allow an entrance of Kolon, we will create a problem for the coming yrs".* (Form CO, annex 7.4).

159 See, e.g., […] customer report to […] dated […] 2018 (Form CO, annex 7.4).

160 See, e.g., […] customer visit report to […] dated […], 2018, indicating that, in throw-in mats, "*[…] business is appr. […] spread between tiles and broadloom) […] potential for […] – in 2017 we delivered appr. […]% of the entire business with appr. […] m2 –[…] lost appr. […]% of the business against Kolon due to pricing […]*". (Form CO, annex 7.4).

161 See […]'s internal email correspondence dated […] 2019, in Form CO, paragraph 292, indicating that "*Today our sales manager* […] *visited […] and got the following news: (1) They said the price gap between […] and Tusco is still big, so […] will accelerate the qualification progress with Tusco material on […]. (2) […] think […] has no problem to adopt Tusco material on for molding.* […] *If Tusco can be qualified, […] consider to nominate Tusco as the only one supplier for […] next year for both […].* […] *Yes, our business loss in […] will spread out to […]. It seems […] intend to nominate a sole supplier on […] platform globally and Tusco is in the list of for consideration.*" (Form CO, annex 7.4). Schlegel & Partner study reports that [CUSTOMER], Freudenberg's second largest customer, as per the Form CO, is currently testing a moulded carpet from an Asian supplier (page 4).

(165) Overall, the worldwide market for primary carpet backings for automotive remained stable in volume and declined by 11% in value. In this context, Unitika/Tusco and Kolon's growth had no equivalent on the market. Although the amount of growth attributed to Asian suppliers (EUR […] million) represented about [10-30]% of the Parties' combined loss (EUR […] million), it is likely that part of that loss reflected the overall decline in the total market value and therefore was not absorbed by other competitors. Accordingly, and given the close competitive relationship between primary carpet backings supplied by the Parties and Asian manufacturers, it is likely that any diversion from the Parties' customer base mainly benefited Unitika/Tusco and Kolon.

(166) Similarly, in the EEA Kolon's and Unitika/Tusco's sales steadily increased on a year-to-year basis in the 2017-2019 period: in the market of primary carpet backings for automotive applications, neither Unitika/Tusco nor Kolon had any sales in 2016. Unitika/Tusco and Kolon entered the EEA market in 2017 and their respective sales increased by 300% in volume from […] million sqm in 2017 to […] million sqm in 2019. In value, their respective sales increased by more than 250% from […] million EUR in 2017 to EUR […] million [each] in 2019.

(167) During the same period the Parties' combined EEA sales of primary carpet backings for automotive applications decreased by more than [10-20]% in both volume and value.

(168) Overall, the EEA market for primary carpet backings for automotive applications declined both in volume and in value. No supplier present on the market other than Unitika/Tusco and Kolon had any growth. Furthermore, as the amount of additional sales captured by Kolon and Unitika/Tusco (EUR […] million) matched a large portion of the Parties' combined loss (EUR […] million), diversions of demand from the Parties' customers at the EEA level throughout the 2017-2019 period were to the benefit Unitika/Tusco and Kolon.

(169) With specific respect to the EEA, the growth of Asian suppliers since 2017 has focused on throw-in mats, which constitute the entry point for new suppliers in primary carpet backings for automotive applications according to the SuP study.[162] Nevertheless, Kolon and Unitika/Tusco's expansion in moulded carpets is likely for the following reasons. First, outside of the EEA, Kolon and Unitika/Tusco represented in 2019 approximately [30-40]% of the narrow segment for primary backings for moulded carpets (Unitika/Tusco: [20-30]%, Kolon: [5-10]%). Their position outside of the EEA has increased slightly while the Parties' combined market share has decreased (by approximately [5-10] percentage points) during the 2016-2019 period.[163] Second, Unitika/Tusco's and Kolon's competitive position outside of the EEA results from primary backings sales to automotive OEMs for car models also manufactured and sold in the EEA, currently using moulded carpets using the Parties' primary backings.[164]

(170) In the EEA, a significant number of customers have already qualified Unitika/Tusco and Kolon as suppliers of primary carpet backings for automotive

[162] S&P study, Annex 5.4.1.n, to the Form Co, page 6.

[163] RBB study entitled Unilateral Effects in the Market for Nonwovens dated 2 March 2020, p. 11-12, and Form CO, annex 7.

[164] See above paragraph 158 and relevant reference.

applications.[165] Information provided by Unitika/Tusco and Kolon in response to the market investigation shows that approximately one-third of the Parties' combined top 10 customers have qualified Kolon and/or Unitika/Tusco. The Parties' top 10 customers in 2018 represent approximately […]% of their total sales.[166] In particular, Asian suppliers are already qualified by […] and by […]. Accordingly, Kolon and Unitika/Tusco can potentially supply a material portion of the affected markets without any significant delay.

(171) The expansion of Asian suppliers in the EEA and worldwide is further driven by price differences existing between Asia and other regions. For example, Freudenberg's average sales price for primary carpet backings for automotive applications in the EEA was more than […]% higher than the average price in Asia in both 2018 and 2019.[167] According to the Notifying Party, in general Asian suppliers tend to be cheaper, with prices in the region of […]% lower than the Parties.[168] As a result, as already submitted in section 5.3.2.2 above on construction applications, given the existence of limited transport costs and custom tariffs, Asian suppliers will continue to have incentive to expand their sales in the EEA and worldwide after the Transaction.

(172) As the market investigation has further indicated, price constitutes a driving factor for customers to select their suppliers. Customers who currently procure from Freudenberg and/or Low & Bonar, submit that "[p]*roduct end price is the most important globally*" and that, "[i] *f prices are no more competitive we* [will] *have to find another solution. Costs of warehousing and oversupply have to be considered.*"[169] Several of the Parties' internal documents support the conclusion of the investigation that attempts to increase prices will lead more customers to switching to more competitive Asian suppliers.[170]

(173) Fourth, Asian suppliers have significant spare capacity that could be utilized in the short term to serve customers based in the EEA or the rest of the world. In this respect, capacity estimates outlined above in section 5.3.2.2, show that (i) Unitika/Tusco's total capacity corresponds to more than […] the total market for automotive applications and to more than […] times the size of the EEA market; and (ii) Kolon's total capacity correspond to more than […] and to […] the EEA market size. The level of idle capacity currently held by Asian suppliers, as estimated by the Parties, amounts to […] times of the Parties' combined worldwide sales of primary backings for automotive applications. Accordingly, Asian competitors would be able to achieve a short term increase in production and supplies in amounts exceeding the Parties' pre-merger sales levels to EEA customers. The Parties' estimates in this regard are consistent with Kolon's public

165 Questionnaire Q4, replies to question 15.

166 Elaboration on the basis of Questionnaire Q4, replies to question 15 and Form CO, paragraph 229.

167 RBB Study, page 17.

168 Form CO, paragraph 345.

169 Questionnaire Q1 –replies to question 26.2.1.

170 See for instance, "[…] customer visit report to […] dated […] 2018 and to […] dated […] 2019, referenced in footnote (157) above; […] customer visit report to […] dated […] 2018, referenced in footnote (158) above […] customer visit report to […], dated […] 2019, ".. *However based on a low-price-offer*, […] *might be forced to trial and qualify Unitika*.", […] customer visit report to […], dated […] 2018, "*Growing the business remains a challenge as […] has a decisive role and does not have any other interest (than price) to evaluate alternative backings*".(Customer Visit report, Freudenberg's reply to RFI 1 of 13 December 2019,

announcement that the company has decided to expand its capacity in 2017, "*as it is seeking to use spunbond for automotive carpets*".[171]

(174) For their part, Kolon and Unitika/Tusco confirmed in the course of the market investigation having spare capacity and being able to serve additional demand in primary backings for automotive applications in the EEA should customers wish to switch suppliers in the event of a price increase. Kolon and Unitika/Tusco provided estimates of the time and cost required for increasing their supplies up to certain volume amounts in the EEA.[172] One of these suppliers thus indicated being able to use spare capacity without any substantial investments up to […].[173] The other Asian supplier confirmed currently having spare capacity, in amounts up to […].[174] These estimates therefore provide evidence that Asian competitors would be able to achieve a short term increase in production and supplies to EEA customers in amounts exceeding one of the Parties' pre-merger sales level.

(175) In this respect, the Commission is unlikely to find that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition when rival firms have available capacity and find it profitable to expand output sufficiently.[175] Given the existence of spare capacity, evidence of Kolon's and Unitika/Tusco's aggressive pricing and expansion in the EEA and the rest of the world over the past 3 years, it is likely that these suppliers would have the incentive to maintain their present strategy by reacting aggressively in the event of a post-merger price increase. This appears all the more likely that, as indicated above in paragraph 171, significant price differences exist between the EEA and Asia. The Notifying Party's own average sales prices in the EEA are significantly higher than in Asia.[176] Accordingly, given the recent growth of Asian suppliers outside of Asia, further price increases would likely further support the profitability of exporting products.

(176) For Kolon and Unitika/Tusco, the production process, equipment and necessary inputs remain overall the same for the different applications. Apart from investment necessary to handle and transport into the EEA or in other regions in the world – that are not substantial as explained above (Section 5.3.2.2) – no specific technical barriers would impede Kolon and Unitika/Tusco from increasing their production if market opportunities arose due to a post-merger price increase.[177]

(177) Fifth, as explained above in relation to construction applications, the entry and expansion of Asian suppliers in the European market or in other regional markets for primary carpet backings for automotive applications does not appear to be the result of an opportunistic strategy, whereby their supplies to different regions depend on price fluctuations and demand conditions in their domestic markets.

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171 http://www.businesskorea.co.kr/news/articleView.html?idxno=16079

172 Unitika's e-mail of 17 February 2020; Kolon's submission of 28 February 2020; Questionnaire Q4, replies to questions 9 and 9.1.

173 Questionnaire Q4, replies to questions 9 and 9.1.

174 Unitika's e-mail of 17 February 2020.

175 Horizontal Merger Guidelines, paragraph 33.

176 EEA average prices were about […]% higher than in Asia in both 2018 and 2019 (RBB study, page 17). The Notifying Party submits that in general Asian suppliers tend to be cheaper, with prices in the region of […]% lower than the Parties.

177 Case M.9239, *Evonik /Peroxychem*, 4 June 2019, paragraph 74

Demand for primary carpet backings for automotive applications in Asia is significant and has not decreased over the past three years and is not expected to decrease in the foreseeable future.[178] Accordingly, the entry and growth of Asian suppliers in the EEA or in other markets results from a long term strategy. With specific respect to Europe, this is further evidenced by Kolon's investment in warehousing capacity.[179] Unitika/Tusco stated that the size of the European market currently would not justify setting up a production capacity in Europe but that opening a warehouse in Europe would not entail significant costs.[180]

(178) Finally, the expansion of Asian suppliers can be facilitated by the fact that customers in this sector are relatively concentrated, with major customers enjoying a degree of market power, as they individually represent a significant portion of the Parties' sales. In the EEA, Freudenberg's top 10 customers in 2018 by volume in automotive applications accounted for […]% of its sales in value, while for Low & Bonar they accounted for […]%.[181] The vast majority of those customers already employs a multisource strategy and therefore generally maintains commercial relationships and qualifies more than one supplier [182] In that respect, agreements with customers allow them to exercise pressure on the supplier, even in on-going projects with the threat of awarding new projects to a competitor.[183] The effective exercise of buyer power by certain customers is thus reflected in the Parties' internal documents reporting on the status of negotiations and showing that customers routinely rely on prices offered from competitors to negotiate better prices from their current suppliers.[184] As a result, Asian suppliers would be able to continue to expand significantly by gaining only a limited number of new customers. On the other hand, for the same reason, major customers will also retain a significant degree of bargaining power in their negotiation with the merged entity, as they would retain the ability to qualify other alternative suppliers.

(179) In light of the above, the Commission considers that, post-Transaction, the presence of Asian suppliers – Kolon and Unitika/Tusco – will exert a competitive constraint sufficient to eliminate the incentives for the merged entity to raise prices as a result of the elimination of competition between the Parties. The results of the market investigation show that, before the Transaction, Asian suppliers already exercise a significant pricing pressure on the Parties' sales in primary backings for throw-in mats, also in the EEA, and that no material barriers impede their expansion in primary backings for moulded carpets, where at present Asian

178 Questionnaire Q4, replies to questions 18 and 19.

179 See above paragraphs 104 and 133 and related footnotes.

180 Minutes of the call with Unitika of 30 January 2020.

181 Form CO, paragraph 230.

182 Questionnaire Q1, replies to questions 33 and 33.2.

183 Form CO, paragraph 368.

184 See e.g. […] customer visit report dated […] 2018 to […] indicating that " […] *mentioned the presence of new players like Kolon and Unitika, the prices offered by them cannot be overlooked*"; Similarly, a […] customer visit report to […], dated […] 2018, indicates the flexibility customers enjoy while negotiating "*Our suggestion for option mats to use 90gr instead of 100gr Kolon is not seen as a possibility due to new qualifications. Our […] will be transferred to Kolon due to the much better pricing*. … […] understands the need from our side to increase prices … *[…] has the assignment with every increase to search for an alternative, meaning we will take a risk*" "; a […]' customer visit report to […] dated […] 2019 indicating that "*Kolon offered 80gr primary for Euro […] per m2 to […], and this explains the reason that […] is looking for general cost price reduction in the […] price…However, this is used as a reference to put pressure on us.*." (Form CO, annex 7.4).

suppliers are active at worldwide level but with limited presence in the EEA. As a result of significant spare capacity, Asian suppliers will be able to structurally and continuously discipline EEA-based suppliers.[185] That ability is further supported by the fact that Kolon and Unitika/Tusco are already qualified to supply a significant number of large worldwide and EEA-based customers. Accordingly, the price pressure exercised by Asian suppliers in current market conditions is likely to be maintained or increase rapidly following the Transaction, at both worldwide and EEA level.

(180) On the basis of the foregoing considerations, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal non-coordinated effects in the market for primary carpet backings for automotive applications.

5.3.4. Nonwovens carriers for bitumen membranes

5.3.4.1. The Notifying Party's view

(181) The Notifying Party submits that the Transaction would not give rise to any competitive concerns in nonwovens carriers for bitumen membranes. First, the combined market share of the Parties would be limited and the increment brought about by the Transaction would be small. Second, the Parties argue that they are not close competitors because they use different production processes and different machines to manufacture their products. As a result, their products would differ in prices/properties and would serve different customers' needs. Finally, after the Transaction, effective competition will continue to exist in the market.

5.3.4.2. The Commission's assessment

(182) Both Freudenberg and Low & Bonar are active in the production and supply of nonwovens for building/roofing applications and in particular in the production of nonwovens carriers for bitumen membranes.

(183) In the overall market for nonwovens for building/roofing applications, the Parties will have a combined market share below [10-20]%, both at EEA and worldwide level ([10-20]% combined market share in value and [10-20]% in volume in the EEA; [10-20]% in value and [10-20]% in volume at the worldwide level).

(184) Therefore, the market for nonwovens for building/roofing applications is not an affected market within the purposes of the present decision, irrespective of the geographic market definition.

(185) Assuming a narrower market for nonwovens carriers for bitumen membranes, the market shares of the Parties and of their main competitors are reported in the following table.

[185] Case M.9502, *Synthomer/Omnova Solutions*, 15 January 2020, paragraph 81.

Table 7 – Market shares in nonwovens carriers for bitumen membranes - EEA

	2017				2018				2019			
	Volume		Value		Volume		Value		Volume		Value	
Company	**Sales (in m sqm)**	**Market share %**	**Sales (in EUR m)**	**Market share %**	**Sales (in m sqm)**	**Market share %**	**Sales (in EUR m)**	**Market share %**	**Sales (in m sqm)**	**Market share %**	**Sales (in EUR m)**	**Market share %**
Freudenberg	[…]	[10-20]%	[…]	[10-20]%	[…]	[20-30]%	[…]	[10-20]%	[…]	[20-30]%	[…]	[10-20]%
L&B	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	[…]	[20-30]%	[…]	[10-20]%	[…]	[20-30]%	[…]	[10-20]%	[…]	[20-30]%	[…]	[10-20]%
Johns Manville	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Orbond	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Wattex	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Warmor	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Akinal	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Others	[…]	[50-60]%	[…]	[60-70]%	[…]	[40-50]%	[…]	[50-60]%	[…]	[50-60]%	[…]	[50-60]%
Total Market	[…]	**100%**	[…]	**100%**	[…]	**100%**	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Form CO

Table 8 – Market shares in nonwovens carriers for bitumen membranes - Worldwide

	2017				2018				2019			
	Volume		Value		Volume		Value		Volume		Value	
Company	**Sales (in m sqm)**	**Market share %**	**Sales (in EUR m)**	**Market share %**	**Sales (in m sqm)**	**Market share %**	**Sales (in EUR m)**	**Market share %**	**Sales (in m sqm)**	**Market share %**	**Sales (in EUR m)**	**Market share %**
Freudenberg	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%
L&B	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Combined	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[20-30]%	[…]	[10-20]%
Johns Manville	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Orbond	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Wattex	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Warmor	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Akinal	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Mogilev	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Aquaizol	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Tamko	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Mexichem	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Toyobo	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Unitika	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Mada	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Chinese Suppliers	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
Others	[…]	[20-30]%	[…]	[30-40]%	[…]	[20-30]%	[…]	[30-40]%	[…]	[20-30]%	[…]	[30-40]%
Total Market	[…]	**100%**	[…]	**100%**	[…]	**100%**	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Form CO

(186) In this respect, the Commission observes that the market share of the merged entity would be limited, in the range of [20-30]%. Moreover, the increment brought about by the Transaction would be marginal ([0-5]%). Finally, several competitors would remain active in the market, in particular Johns Manville, with a market share comparable to the merged entity's position, especially at the EEA level.

(187) The market investigation confirmed the absence of competition concerns. Most respondents to the market investigation confirmed that Freudenberg and Low & Bonar are not close competitors.[186] Moreover, respondents unanimously considered that the Transaction would not have any negative competitive impact on the market for nonwovens for building/roofing applications or on the market for nonwovens carriers for bitumen membranes, mainly because Low & Bonar is a minor player

186 Questionnaire Q2, replies to questions 15.1, 15.2, 16.1 and 16.2.

and the Parties are distant competitors: Low & Bonar offers a niche product with different technical specifications and end-uses compared Freudenberg's product.[187]

(188) Based on the foregoing, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to horizontal non-coordinated effects in the market for nonwovens for building/roofing applications and/or in the market for nonwovens carriers for bitumen membranes.

5.4. Horizontal coordinated effects

(189) As explained above in section 5.1, a merger may give rise to horizontal coordinated effects, in particular in concentrated markets.

5.4.1. The Notifying Party's view

(190) The Notifying Party submits that the Transaction would not give rise to anticompetitive coordinated effects either in the market for carpet backings for construction applications, or in the market for carpet backings for automotive applications, since those two markets would lack the conditions for coordination to materialize.

(191) Notably, the different market players have different economic incentives: the parties are incumbent suppliers with high market shares, while Asian suppliers are recent entrants and have limited market shares, although significant cost advantages and spare capacity. As a result, the latter would have an incentive to aggressively compete and undercut the Parties' prices in order to gain market shares, as is already their strategy before the Transaction. Asian suppliers are likely to pursue this strategy further post-merger, thus maintaining strong price competition.

5.4.2. The Commission's assessment

(192) Assuming a market definition limited to general applications, the Commission has already observed that in the market for nonwoven and other fabrics for floor coverings, the market position of the merged entity would still be relatively limited and a significant number of alternative suppliers will remain active in the market after the Transaction (see above section 5.3.1.2.). Therefore, the Commission does not consider that the Transaction would bring about such changes as to increase the likelihood of coordination or to make existing coordination easier, more stable or more effective. The same conclusion can be reached with respect to the market for nonwovens carriers for bitumen membranes, where in addition to the above considerations on market shares and competitors, the increase brought about by the Transaction is marginal (see above section 5.3.4.2).

(193) In light of similar market conditions in primary carpet backing for construction and automotive applications, coordinated effects will be analysed jointly in the paragraphs below.

[187] Questionnaire Q2, replies to questions 17 to 18.1. See also minutes of the call with Soprema of 19 December 2019.

(194) As a preliminary remark, the Commission's market investigation and analysis of the Parties' internal documents has not provided any indication of coordination already in place between the main market players – or some of them – either in market for primary carpet backings for construction applications, or in the market segment for primary carpet backings for automotive applications, at the EEA and worldwide level. This suggests that current market conditions are not conducive to coordination.

(195) Moreover, the markets for primary carpet backings for construction and automotive applications are not characterised by a high degree of transparency, in particular as regards prices, since negotiations are not public and competitors normally do not have access to the prices offered by other operators in the same market. In practice, any pricing indications are provided via customers for the purpose of negotiating better prices from suppliers.

(196) Furthermore, the Transaction will increase the current asymmetry in the markets of carpet backings for construction and automotive applications, since the Transaction will accentuate the difference in market shares between the merged entity and its competitors (see Sections 5.3.2.2 and 5.3.3.2).

(197) In addition, the main suppliers' offerings will remain relatively differentiated: while the merged entity will continue to manufacture and sell PET nonwovens, other European manufacturers use other raw materials and technologies (see above sections 5.3.2.2 and 5.3.3.2), thus making coordination more difficult in markets.[188] As for the main Asian competitors that produce PET nonwovens (Kolon and Unitika/Tusco), they have a different cost structure (lower production costs and higher logistic costs). It can be added that Asian suppliers like Kolon and Unitika/Tusco are relatively new entrants and are pursuing an aggressive expansion strategy, in particular in terms of pricing and quantities (see above sections 5.3.2.2 and 5.3.3.2).

(198) The Commission also considers that changes in demand and supply are an element to be taken into consideration in the assessment of any possible coordinated effects. In particular, according to a third party report, demand in automotive and construction applications is projected to grow as economies ramp up after 2021.[189] Therefore, demand conditions do not look stable and therefore unlikely to be conducive of coordination.

(199) In sum, whereas the Transaction will change the market structure by reducing the number of operators and causing a higher degree of concentration, the main operators would remain differentiated and demand unstable, implying a limited risk of coordination.

(200) On the basis of the foregoing, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to horizontal coordinated effects on the markets for nonwoven and other fabrics for floor coverings, carpet backings for construction applications, and carpet backings for automotive applications) or in the market of nonwovens carriers for bitumen membranes.

188 Horizontal Merger Guidelines, paragraph 45.

189 *The Future of Global Nonwovens to 2014*, Philp Mango, Smithers Pira, 2019, page 99.

5.5. Non-horizontal effects

5.5.1. Upstream market of primary carpet backings for automotive applications and downstream market of throw-in-mats

5.5.1.1. The Notifying Party's view

(201) The Notifying Party submits that the Transaction would not cause any risk of vertical foreclosure because the merged entity would not have the ability or the economic incentive to foreclose its rivals in supplying carpet backings, for the following reasons:

(a) an input foreclosure strategy would not make any economic sense in light of Freudenberg's modest sales and market shares in the downstream market for throw-in mats;

(b) Freudenberg's competitors in the throw-in-mats market would have plenty alternative suppliers for nonwoven carpet backings to choose from, as the technical requirements for throw-in mats are low and the Asian competitors already supply carpet backings for throw-in mats (including to Freudenberg). Accordingly, any attempt by Freudenberg to foreclose supply of nonwoven backings would only result in Freudenberg's competitors expanding their sales in the upstream markets;

(c) Finally, Freudenberg's competitors in the throw-in-mats market could also use other carpet backing material for throw-in mats (as woven PP), as is already the case today.

5.5.1.2. The Commission assessment

(202) The Parties' and their competitors' market shares are reported in table 2 above for the upstream market for floor coverings applications, and in tables 5 and 6 above for the upstream market for primary carpet backings for automotive applications. Considering the moderate position of the Parties in the floor coverings market, the Commission will focus its analysis on the narrower possible market of primary carpet backings for automotive applications, where the market position of the merged entity would be more significant. In any case, the below considerations are applicable also to the market for floor coverings applications.

(203) In the downstream market for throw-in-mats, the Notifying Party estimates that its market share at EEA level in 2019 amounts to approximately [5-15]%.[190] Other competitors are present in the market with comparable shares (Ideal Automotive, Racemark International, Visscher Caravalle, Berco and Autostop).

(204) As a preliminary remark, the Commission observes that any negative effect in terms of customer foreclosure can be dismissed because (i) the market position of Freudenberg in the downstream market is limited and (ii) already before the Transaction Freudenberg was vertically integrated and, given its market position in the upstream market, had the possibility to exclude other carpet backing suppliers from its downstream activity in throw-in mats. Therefore, any hypothetical customer foreclosure effect would not be merger-specific.

[190] Form CO, paragraph 319.

(205) With respect to input foreclosure, the results of the market investigation regarding the ability of the merged entity to foreclose access to the relevant supply were inconclusive. Although, some respondents to the market investigation submitted that, as a result of the Transaction, the merged entity would have the ability to foreclose access to the supply of primary carpet backings to companies that produce throw-in mats,[191] others considered that other options would be available on the market, thus depriving the merged entity of the ability to foreclose.[192]

(206) In this respect, the considerations listed above (Section 5.3.3.2) in relation to the upstream market of carpet backings for automotive applications, are relevant, in particular as regards the expansion of Asian suppliers in the EEA, and the competitive constraints that they pose on the merged entity. Accordingly, the Commission considers that the merged entity would not have the ability to foreclose competitors in the market of carpet backings for automotive applications, with respect to the downstream market of throw-in mats.

(207) As regards incentives to engage in input foreclosure, the majority of respondents to the market investigation submitted that, as a result of the Transaction, the merged entity will not have the incentive to foreclose access to the supply of primary carpet backings to companies that produce throw-in mats.[193] The Commission further notes that Freudenberg's limited position on the downstream market constrains its incentives to engage in input foreclosure.

(208) Furthermore, the Parties' average profit margins are significantly higher on the upstream market for primary carpet backings than on the downstream market for throw-in mats. In primary carpet backings for automotive applications in the EEA Freudenberg's gross margin amounts to […]% and its return on sales to […]% (in 2019). Low & Bonar's figures are comparable, with a gross margin of […]% and a return on sales of […]% (2019). In throw-in mats, by contrast, Freudenberg's gross margin amounts to […]% and its return on sales to […]%.[194] As a result, the merged entity would have no economic incentives to engage in input foreclosure.

(209) In light of the above, the Commission considers that the merged entity would not have the incentive to foreclose competitors in the market of carpet backings for automotive applications.

(210) Finally, the effects of a foreclosure strategy on competition in throw-in mats would be alleviated by the availability of alternative suppliers of inputs in the upstream market, and are therefore unlikely to be significant.

5.5.2. Conclusion on non-horizontal effects

(211) Based on the foregoing, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to non-horizontal effects in the upstream market of primary carpet backings for automotive applications and in the downstream market of throw-in mats.

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191 Questionnaire Q1, replies to questions 45 and 45.1.

192 Reply of Milliken to questionnaire Q1, question 45.1.

193 Questionnaire Q1, replies to questions 46 and 46.1.

194 Freudenberg's e-mail of 11 March 2020.

6. CONCLUSION

(212) For the above reasons, the European Commission has decided not to oppose the notified operation 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