



DETERMINATION OF MERGER NOTIFICATION M/21/033 – XTRATHERM (UNILIN)/BALLYTHERM

Section 21 of the Competition Act 2002

Proposed acquisition by Xtratherm Limited and Xtratherm UK Limited of sole control of Ballytherm Trading and Limited Ballytherm UK Limited

Dated: 13 August 2021

Introduction

1. On 5 July 2021, in accordance with section 18(3) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby Xtratherm Limited and Xtratherm UK Limited (collectively “Xtratherm”) would acquire sole control of Ballytherm Trading Limited and Ballytherm UK Limited (collectively, “Ballytherm”), respectively (the “Proposed Transaction”). Xtratherm is a wholly owned subsidiary of Unilin B.V. (“Unilin”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a Share Purchase Agreement between the current shareholders of Ballytherm¹ (the “Sellers”), Xtratherm Limited, and Xtratherm UK Limited dated 29 June 2021 (the “SPA”).
3. Under the SPA Xtratherm Limited would acquire the entire issued share capital of Ballytherm Trading Limited from Ballytherm Holdings Limited, whilst Xtratherm UK Limited would acquire the entire issued share capital of Ballytherm UK Limited from Brendan Cosgrove and Gerry Reilly.

The Undertakings Involved

The Acquirer – Unilin

4. Unilin is a wholly owned subsidiary of Mohawk Industries, Inc. (“Mohawk”). Mohawk is the largest manufacturer, distributor and marketer of ceramic tile and natural stone

¹ [...].



in the world and one of the largest suppliers of premium carpets, rugs, laminate, sheet vinyl, luxury vinyl tile and wood flooring in North America. Unilin also manufactures insulation products at plants in Belgium, France and the Netherlands.

5. As set out above in paragraph 1, Unilin is the parent company of Xtratherm. Xtratherm produces and supplies insulation products on the island of Ireland and in Great Britain. Xtratherm has insulation manufacturing facilities at Navan, County Meath, Ireland and at Chesterfield, Great Britain.
6. In particular, Xtratherm is active on the island of Ireland and in Great Britain in the production and sale of Polyisocyanurate (“PIR”) insulation products, Expanded Polystyrene (“EPS”) insulation products and phenolic. Xtratherm also imports and sells Extruded Polystyrene (“XPS”), stone wool and glass wool insulation products into the island of Ireland and Great Britain.
7. For the financial year ending 31 December 2020, Xtratherm generated worldwide turnover of €[...] million, of which €[...] million was generated in the State.

The Target – Ballytherm

8. Ballytherm operates a manufacturing plant at Ballyconnell, County Cavan from where its insulation products are [manufactured and] distributed to customers in the Republic of Ireland, Northern Ireland, and Great Britain. Ballytherm is in the process of developing a new insulation manufacturing plant at Ross-on-Wye in Great Britain which is due to come on stream later this year (i.e. 2021).
9. In particular, Ballytherm is active in the production of PIR insulation products in Ireland which are sold on the island of Ireland and in Great Britain.
10. For the financial year ending 30 June 2020, Ballytherm generated worldwide turnover of €[...] million, of which €[...] million was generated in the State.

Rationale for the Proposed Transaction

11. The parties state the following in the notification:

“the Proposed Transaction would:

- [...]”



Contact with the Undertakings Involved

12. The parties included with the merger notification form an economic analysis of the Proposed Transaction carried out by Compecon on behalf of Xtratherm (the “Compecon Report”). The parties referred to the Compecon Report in setting out in detail their views on issues such as product market definition and geographic market definition.
13. As part of its review of the Proposed Transaction, the Commission conducted site visits to both Xtratherm’s insulation production plant at Navan, County Meath and Ballytherm’s insulation production plant at Ballyconnell, County Cavan.

Market Enquiries

14. During its review of the Proposed Transaction, the Commission conducted market enquiries which included contacting several competitors and customers active in the manufacture and supply of insulation products on the island of Ireland.
15. None of the parties contacted by the Commission raised serious concerns with regard to the Proposed Transaction.

Third Party Submissions

16. The Commission received one anonymous third party submission that raised concerns over a disruption to the supply of PIR insulation products in Great Britain following implementation of the Proposed Transaction.
17. The Commission considered the concerns raised in the third party submission, and concluded that, as the concerns relate to the effect of the Proposed Transaction outside of the State, it is outside the scope of the CCPC’s merger review functions under Part 3 of the Act.

Industry Background - Insulation Materials

18. The most common applications for insulation products are for walls, floors and roofs, and the most commonly used insulation products are Polyurethane (“PU”),² PIR,

² PU and PIR products are both Polyurethane foams. However, there are no manufacturers of PU in Ireland.



polystyrene and mineral fibres. The insulation products manufactured by Xtratherm also include EPS and XPS.

19. PIR insulation has very low levels of thermal conductivity (also known as “lambda”) and is supplied as commodity and specialist (roofing) products. PIR can achieve higher levels of insulation standard at a lower level of thickness compared to other insulation products. EPS has a greater level of thermal conductivity than PIR and needs greater thickness to achieve the same insulation standard (“U-value”). XPS has a higher resistance to moisture which allows for use in specialist applications such as flat roofing and high compression floors. Phenolic insulation is a thermoset foam with lower level of thermal conductivity and better fire performance than PIR; however, phenolic insulation remains a more niche product. Finally, mineral fibres consist of products such as glass fibre (also known as glass wool) or stone fibre (also known as rock wool). As with EPS, mineral fibres require greater thickness levels to achieve comparable U-values to PIR. Mineral wool is used predominantly in roof insulation.
20. There are approximately 10 undertakings that manufacture and supply insulation products on the island of Ireland. Table 1 below provides an overview of the different insulation product types manufactured by producers on the island of Ireland. There are four producers of PIR insulation products on the island of Ireland (namely Xtratherm, Kingspan Group Plc (“Kingspan”), Mannok Holdings DAC (“Mannok”) and Ballytherm); eight producers of EPS insulation, with only Ballytherm not active in the production of EPS; and Kingspan is the sole producer of phenolics.³ Other insulation products such as XPS, stone wool and foam glass are imported by Xtratherm and are not included in Table 1 below.

Table 1: Manufacturers of Insulation Materials on the Island of Ireland

Supplier	PIR	EPS	Phenolic
Xtratherm	✓	✓	×
Ballytherm	✓	×	×

³ Xtratherm imports phenolics into Ireland from its production facility in Great Britain.



Kingspan	✓	✓	✓
Mannok	✓	✓	x
Kore	x	✓	x
Springvale ⁴	x	✓	x
Thermotech	x	✓	x
Castleform	x	✓	x
Thermohouse	x	✓	x
Energystore	x	✓	x

Source: Commission based on information provided by the parties

21. Insulation products are typically supplied to customers through the following distribution channels:

- Producers of insulation materials visit construction sites and market their products to end users, for example, builders and architects;
- Distributors or builders' merchants are primarily involved in purchasing insulation products from the producers and re-selling to builders/developers; and
- Original equipment manufacturers that manufacture timber, metal and concrete frame houses, purchase products directly from insulation manufacturers.

22. Large customers, such as roofing contractors, original equipment manufacturers, and large construction firms may have direct accounts with insulation manufacturers.

Competitive Analysis

⁴ Springvale is a subsidiary of Kingspan.



Horizontal Overlap

23. As described above, Xtratherm and Ballytherm are both active in the manufacture and supply of insulation products. In particular, the parties are both active in the manufacture and supply of PIR insulation products. This gives rise to a horizontal overlap between the activities of Xtratherm and Ballytherm in the State.

24. Table 2 below outlines the insulation products supplied by Xtratherm and Ballytherm in the State:

Table 2: Insulation products supplied by the parties in the State

	PIR	EPS	Phenolic
Xtratherm	✓	✓	✓
Ballytherm	✓	×	×

Source: Commission based on information provided by the parties

25. More specifically, as highlighted in Table 3, each of Xtratherm, Kingspan and Mannok manufacture and supply commodity⁵ and specialist⁶ PIR insulation products which are applied to roofing, flooring and walls, whereas Ballytherm [...]. As noted further in paragraph 49 below, Ballytherm offers [...] to customers.

Table 3: PIR Insulation products by Application supplied by the producers in the State

	Roofing		Flooring		Walls	
	Commodity	Specialist	Commodity	Specialist	Commodity	Specialist
Xtratherm	✓	✓	✓	✓	✓	✓

⁵ Commodity products refer to lower priced and standardised products.

⁶ Specialist products refer to non-domestic applications such as industrial flat roofing insulation.



Ballytherm	[...]	[...]	[...]	[...]	[...]	[...]
Kingspan	✓	✓	✓	✓	✓	✓
Mannok	✓	✓	✓	✓	✓	✓

Source: Commission based on information provided by the parties

Relevant Product Market

26. The Competition Authority (the predecessor to the Commission) has considered insulation products in previous determinations. In its determinations in cases M/06/039 *Kingspan/Xtratherm*⁷ and M/10/039 *Kingspan/CRH Insulation Europe*,⁸ the Commission's predecessor, the Competition Authority, assessed the manufacture and supply of insulation products.
27. In M/06/039 *Kingspan/Xtratherm*, the Competition Authority defined a separate product market for PIR insulation products. The Competition Authority found that there are differences in product quality, energy efficiency and physical dimension between different insulation product types. In particular, PIR insulation was found to have very low levels of thermal conductivity and could therefore meet a given insulation standard (or U-value) at a lower level of thickness than other insulation materials. In M/10/039, the Competition Authority saw no reason to deviate from its previous decision on the relevant product markets in M/06/039 *Kingspan/Xtratherm*.

Views of the parties on product market definition

28. The parties state in the notification that:

⁷ Available at: https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/Final-determination-of-the-Competition-Authority_Kingspan_Xtratherm_M06039_0.pdf.

⁸ Available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M10-039-Kingspan-CRH-Insulation-Europe-Public.pdf>.



“The relevant product market in respect of the Proposed Transaction is the market in insulation products.”

29. In the notification form and the Compecon Report, the parties state that regulatory changes since the Commission’s predecessor, the Competition Authority, prohibited the acquisition by Kingspan Group plc of the Leanort Group (t/a Xtratherm and Hytherm) in 2006⁹ allow for an increased degree of substitution between different insulation materials, with a reduced the emphasis on ever better U-values where PIR had an advantage, as:

“lesser U-values can now be met by using insulation products other than PIR in conjunction with renewable technologies thereby giving greater choice to the specifier and the builder, resulting in substitutability between all insulation products.”

30. In particular, the parties argue the 2019 amendment to the Department of Housing, Planning and Local Government’s Technical Guidance Document (the “TGD”), *“allow compliance with U-values by means of airtightness and renewable technologies rather than relying purely on better U-values as was the case in 2006.”* The TGD of 2019 introduced targets including higher mandatory airtightness levels and increased input from renewables allowing for a reduction in the fabric performance of insulation materials.
31. Additionally, the parties note that in 2006 the standard wall cavity width in Ireland was 100mm, but by 2015 this standard had increased to 150mm; therefore, products of a greater thickness than PIR have more potential applications after 2015 than was previously the case. The parties state that this increase in the standard wall cavity size along with the 2019 TGD amendment allow for increased use of insulation materials other than PIR.
32. Nonetheless, despite these regulatory changes since 2006, the Commission found that although in some instances a greater degree of substitutability between different

⁹ Available at: https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/05/Final-determination-of-the-Competition-Authority_Kingspan_Xtratherm_M06039_0.pdf.



insulation product types may be possible, there remains substantial differentiation between PIR in particular and other insulation products.

33. For instance, a third party contacted by the Commission indicated that in flooring, different insulation product types may be interchangeable, however, for walls this is not the case. Similarly, a third party informed the Commission that there is a material difference in pricing between different insulation technologies, with a trade-off between performance and price.
34. Furthermore, between 2014 and 2019 in Ireland and Great Britain, although sales for all insulation products types increased, sales of PIR remain substantially higher than that of other insulation types. During this time, sales of PIR increased by approximately 30%, whereas sales of EPS (for instance) increased by approximately 13%.¹⁰

The Commission's conclusions on product market definition

35. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. It is not necessary for the Commission to define the precise relevant product market or markets in this instance because the product market definition adopted will not alter the Commission's assessment of the competitive impact of the Proposed Transaction. Whether the product market is defined as a broad market (i.e., insulation products) or a narrow market (i.e., PIR insulation products), the Commission has reached the view that there are no horizontal competition concerns arising from the Proposed Transaction for the reasons given in paragraphs 48 to 54 below.
36. However, for the purposes of carrying out its competitive assessment of whether the Proposed Transaction might result in a substantial lessening of competition from a horizontal perspective, taking into consideration the factors referenced in paragraphs 32 to 34 above, the Commission sees no reason to depart from the approach of the Competition Authority with regard to the relevant product market in M/06/039 *Kingspan/Xtratherm*.

¹⁰ Page 55 of IAL Consultants Report, "The European Market for Thermal Insulation Products UK and Ireland, July 2019."



37. Therefore, the Commission has analysed the impact of the Proposed Transaction by reference to the narrowest potential product market for which there is overlap between the parties' activities in the State, that is, the manufacture and supply of PIR in the State.

Relevant Geographic Market

38. In M/06/039 *Kingspan/Xtratherm*, the Competition Authority defined the relevant geographic market as the island of Ireland.

Views of the parties on geographic market definition

39. The parties state in the notification that:

“even if the relevant product market was limited to PIR only, the evidence supports a geographic market definition comprising the island of Ireland and [Great Britain].”

The Commission's conclusions on product market definition

40. It is not necessary for the Commission to conclude on the relevant geographic market in respect of the manufacture and supply of PIR insulation products since, regardless of whether the potential geographic market is narrower (i.e., island of Ireland) or broader (i.e., island of Ireland and Great Britain), the Proposed Transaction is unlikely to raise any competition concerns.
41. However, for the purposes of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to the narrower potential geographic market, i.e., the manufacture and supply of PIR insulation products on the island of Ireland.

Horizontal Competitive Analysis

42. The Commission's findings on the potential market for the manufacture and supply of PIR insulation products on the island of Ireland are set out below. However, for reference, Table 4 sets out the market shares of manufacturers of all insulation types on the island of Ireland.



Table 4: Market Shares of Producers, Insulation products, Island of Ireland, 2019¹¹

Supplier	Market share (%)
Xtratherm	[30-40]
Ballytherm	[0-10]
Combined	[30-40]
Kingspan	[15-25]
Mannok	[15-25]
Kore	[0-10]
Thermotech	[0-10]
Castleform	[0-10]
Thermohouse	[0-10]
Energystore	[0-10]
Stone Wool	[0-10]
Glass Wool	[0-10]
Others	[0-10]
Total	100

Source: estimates provided by the parties in the Compecon Report

43. As illustrated above, following the implementation of the Proposed Transaction, the estimated combined market share of Xtratherm and Ballytherm will be approximately

¹¹ Please note that a breakdown of sales of stone wool and glass wool by suppliers other than Xtratherm was not available to the Commission.



[30-40]% for the manufacture and supply of insulation products on the island of Ireland, with an increment of [0-10]%.

44. The Commission notes that insulation products such as XPS, glass wool and stone wool are not produced on the island of Ireland but they are imported. Both EPS and phenolics are produced on the island of Ireland as well as imported from Great Britain. In relation to PIR insulation products, information provided by the parties and confirmed by the Commission's interactions with third parties indicates that the importation of PIR products into the island of Ireland is minimal. The Commission found that given the presence of several large producers and large capacity in PIR production, Ireland is a net exporter of PIR insulation productions. This is demonstrated by Ballytherm's proportion of output exported to Great Britain, which is estimated at over [...]%.

PIR Insulation products on the island of Ireland

45. Market concentration refers to the degree to which production/supply in a particular market is concentrated in the hands of a few large firms. The most commonly used measure of concentration is the Herfindahl-Hirschman Index ("HHI"), which is defined as the sum of the squares of the market shares of all firms participating in the market. According to the Commission's *Guidelines for Merger Analysis* (31 October 2014) (the "Merger Guidelines"),¹² any market with a post-merger HHI greater than 1,000 may be regarded as concentrated and any market with a post-merger HHI greater than 2,000 may be regarded as highly concentrated. In a concentrated market, a change in the pre-merger HHI compared to the post-merger HHI of less than 250 is "unlikely to cause concern". In a highly concentrated market, a change in the pre-merger HHI compared to the post-merger HHI of less than 150 is "unlikely to cause concern". Therefore, if the post-merger HHI is above 2,000 and the change in the HHI is greater than 150, this indicates that firms in that market may be able to exercise market power.

¹² *Guidelines for Merger Analysis* adopted by the Commission on 31 October 2014, available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Merger-Guidelines.pdf>.



46. With regard to the Proposed Transaction, Table 5 below indicates that following implementation of the Proposed Transaction, the HHI in the potential market for the manufacture and supply of PIR Insulation products on the island of Ireland will increase by [...], from [...] to [...], therefore coming within the Merger Guidelines' definition of a highly concentrated market.

Table 5: Market Shares of Producers, PIR island of Ireland, 2019

Supplier	Market Share (%)
Xtratherm	[40-50]
Ballytherm	[0-10]
Combined	[50-60]
Kingspan	[20-30]
Mannok	[20-30]
Other	[0-10]
Total	100%
HHI Pre-Transaction	[...]
HHI Post-Transaction	[...]
HHI Change	[...]

Source: estimates provided by the parties in the Compecon Report

47. As demonstrated in Table 5 above, following the implementation of the Proposed Transaction, the estimated combined share of Xtratherm and Ballytherm will be approximately [50-60]% for the manufacture and supply of PIR insulation products on the island of Ireland, with an increment of [0-10]%. The two alternative producers of PIR insulation products on the island of Ireland, Kingspan and Mannok, have shares of approximately [20-30]% and [20-30]%, respectively. This suggests that the potential



market for the manufacture and supply of PIR insulation products is highly concentrated and requires a more detailed assessment.

48. The Commission notes that since the Competition Authority's determination in *M/06/039 Kingspan/Xtratherm*, Ballytherm's market share has remained around [0-10]%, substantially smaller than any of the three other producers of PIR insulation products on the island of Ireland. Additionally, the Competition Authority found in *M/06/039 Kingspan/Xtratherm* that Xtratherm and Ballytherm were not considered to be each other's closest competitor.¹³ In the present case, for the reasons set out below, the Commission's review of the Proposed Transaction suggests that this remains an accurate view of the closeness of competition between Xtratherm and Ballytherm.
49. First, the Commission has found that Ballytherm offers a more limited product range of PIR products than that of Xtratherm as highlighted in Table 3 above. Ballytherm's product offering indicates a greater emphasis on [...] PIR products sold to [...] rather than on [...] insulation products supplied to [...], such as those produced by Xtratherm. Furthermore, Ballytherm products are not [...], with more than [...]% of Ballytherm's output exported to customers in Great Britain.
50. Following implementation of the Proposed Transaction, the merged entity will continue to face competition from the two remaining large suppliers of PIR insulation products and closest competitors of the merged entity, namely Kingspan and Mannok. Furthermore, both Kingspan and Mannok offer a more comprehensive range of products to customers than Ballytherm, as they are active in the production and supply of specialist PIR insulation products as well as commodity PIR insulation products. For instance, Xtratherm, Kingspan and Mannok each provide customers with a specialist PIR insulation solution for roofing, whereas [...]. Similarly [...], unlike the other three PIR producers on the island of Ireland.
51. In the Compecon Report, Xtratherm provides examples of instances where Xtratherm lost sales or reduced prices as a consequence of competition from its rivals. According to the Compecon Report, Kingspan accounted for 64% of Xtratherm's incidences of

¹³ Paragraph 6.6



lost sales or reduced prices, with Mannok accounting for 29% of lost sales or reduced prices. The Compecon Report indicates that Ballytherm was responsible for none of Xtratherm's lost sales or reduced prices.¹⁴

52. Additionally, the Commission understands that there is spare capacity available in the manufacture and supply of PIR insulation products on the island of Ireland. Therefore, in the event that the merged entity reduced its level of production to raise prices following the implementation of the Proposed Transaction, other market participants are capable of increasing output in response.
53. As noted in paragraph 44 above, there is currently minimal importation of PIR products into the island of Ireland. Nonetheless, given the importation of other insulation types, the Commission notes the possibility of imports of PIR products acting as a competitive constraint in the market.
54. Following implementation of the Proposed Transaction, the Commission considers that the conditions necessary for coordinated behaviour would not exist. Although the Proposed Transaction reduces the number of market participants from four to three, the remaining competitors are not symmetric. Following implementation of the Proposed Transaction, the merged entity will have a market share of [50-60]%, with competitors' market shares of approximately [20-30]% for Kingspan and [20-30]% for Mannok. Although there is a degree of transparency with regard to list prices, insulation producers regularly grant discounts and rebates to customers which are not publicly disclosed. In the Commission's view, this [...] and therefore limits the possibilities for coordinated behaviour among PIR insulation producers.
55. As acknowledged in paragraphs 29 to 31 above, regulatory changes and in particular the increase in the standard cavity width¹⁵ have provided a degree of opportunity for increased EPS use for certain applications. In recent years, there have been several new entrants to EPS production on the island of Ireland. For example, since 2013, Thermohouse Limited, Castleform Limited and Thermotech Insulation Limited have

¹⁴ The remaining 7% is accounted for by Irish based building suppliers.

¹⁵ Department of Housing, Planning and Local Government *Technical Guidance Documents* for 2019 and 2021 calculate target U-Values using 150mm partial or full-fill cavities. Available [here](#). Similarly, Kore Insulation note the standard cavity width of new builds to be 150mm [here](#).



each commenced operations on the island of Ireland. During the same period, the Commission observed no new entrants into the manufacture and supply of PIR products on the island of Ireland. The key factors for this absence of entry include:

- the potential cost of entry into PIR insulation production is substantially higher than entry into the production of EPS;
- the presence of strong and credible participants manufacturing and supplying PIR insulation products on the island of Ireland; and
- the capacity of producers already present in the market as noted in the previous paragraph and the relatively small size of the market for PIR insulation products on the island of Ireland.¹⁶ As illustrated by Ballytherm's proportion of output between Ireland and Great Britain noted in paragraph 44 as well as its plans to open a new plant in Great Britain, significant demand for the output of PIR producers on the island of Ireland exists in Great Britain, where such producers face competition from a greater number of suppliers than is the case in the island of Ireland.

56. For the reasons set out in paragraphs 48 to 54 above, the Commission considers that even in the absence of entry to the market, the merged entity will face sufficient competitive constraints following implementation of the Proposed Transaction.

57. Finally, as noted in paragraph 15 above, none of the market participants contacted by the Commission expressed concern regarding the competitive effects of the Proposed Transaction, providing reasons including (i) the availability of spare capacity and (ii) the presence of strong competitors to the merged entity in the market, and citing more pressing concerns over the availability of input materials (as pricing is determined by ease of access to raw materials).

58. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

¹⁶ [...].



59. The parties informed the Commission that there is no vertical relationship between Xtratherm and Ballytherm in the State. The Commission has not identified any vertical relationship between the parties in the State. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

60. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

61. The parties state in the notification that Clause 16 of the SPA contains certain post-completion non-compete obligations on the Sellers which the parties believe are directly related and necessary to the implementation of the Proposed Transaction. The Commission notes that the restrictions referred to by the parties appear to be contained in [...] of the SPA. In particular, Clauses [...] and [...] of the SPA impose a number of non-compete and non-solicitation restrictions on the Sellers. The restraints in Clauses [...] and [...] of the SPA do not exceed the maximum scope and duration acceptable to the Commission.¹⁷ The Commission considers that they are directly related to and necessary for the implementation of the Proposed Transaction, in so far as they relate to the State.
62. The Commission notes that Clause [...] of the SPA imposes an obligation on the Sellers not to use certain intellectual property rights [...]. The Commission notes that, unlike the restrictions in Clause [...] inclusive of the SPA, the restriction contained in Clause [...] of the SPA is not limited in time. The Commission is therefore of the view that Clause [...] is not directly related and necessary to the implementation of the Proposed Transaction and will not benefit from the protections offered by sections 4(8) and 5(3) of the Act.

¹⁷ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20, and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005) OJ C56/03. For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN).



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the Proposed Transaction whereby Xtratherm Limited and Xtratherm UK Limited would acquire sole control of Ballytherm Trading Limited and Ballytherm UK Limited, respectively, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection