

Case No COMP/M.6563 - MEXICHEM SIH/ WAVIN

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 04/06/2012

***In electronic form on the EUR-Lex website under
document number 32012M6563***



EUROPEAN COMMISSION

Brussels, 4.6.2012
C(2012) 3749 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.6563 - MEXICHEM SIH/ WAVIN
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

1. On 23 April 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Mexichem Soluciones Integrales Holding S.A. de C.V., ("Mexichem", Mexico), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of the undertaking Wavin N.V. ("Wavin", the Netherlands) by way of a public bid². Mexichem is hereinafter referred to as the "Notifying Party". Mexichem and Wavin are designated hereinafter as "Parties".

I. THE PARTIES

2. Mexichem is a private variable capital corporation, incorporated under the laws of Mexico and listed on the Mexican Stock Exchange. Kaluz S.A. de C.V. ("Kaluz") acts as a holding company to Mexichem. Mexichem is active in the chemical and petrochemical industry primarily in Latin America, mainly specialised in polyvinyl chloride ("PVC"). Mexichem also produces plastic pipes, fittings, joints and plastic accessories for fluid conduction, primarily water, and others like electricity and natural

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 Publication in the Official Journal of the European Union No. C 127, 01.05.2012, p. 4.

gas. Mexichem has operations in 19 countries in Latin America, North America, Europe and Asia.

3. Wavin is a public limited liability company incorporated under the laws of the Netherlands and listed on the NYSE Amsterdam Stock exchange. Wavin is specialised in the manufacture and supply of pipe systems and solutions. Wavin produces and sells pipe systems for gas, water, sewage, drainage, cable ducting and (other) construction purposes, together with the fittings for such systems. Wavin has offices in 26 European countries with manufacturing plants in 18 of those and one in China.

II. CONCENTRATION

4. Mexichem intends to acquire Wavin through a public bid on the entirety of all the issued and outstanding shares (except those ordinary shares already held by the Mexichem Group), hence after the transaction, Mexichem will have sole control over Wavin. The Offer Memorandum was published on 9 March 2012.
5. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (Kaluz Group: EUR [...] million, Wavin: EUR [...] million).
7. The aggregate EU-wide turnover of each of them is more than EUR 250 million (Kaluz Group: EUR [...], Wavin: EUR [...]) but neither of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State.
8. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

IV. RELEVANT MARKETS

IV.1. Introduction

9. Mexichem's main business activities comprise the development, production and global marketing of PVC and plasticisers as well as the production and supply of some intermediates, such as caustic soda. Mexichem also produces plastic pipe systems (pipes and fittings), joints and plastic accessories for fluid conduction (primarily water) and others like electricity and natural gas. In the EEA⁴ Mexichem is only active on the market for the production and supply of PVC.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

⁴ In the EEA Mexichem sells PVC which is produced in Mexico and Colombia.

10. Wavin is active on the market for the production of pipe systems. Wavin mainly produces pipes and fittings of PVC⁵. Mexichem is currently not a supplier of Wavin.
11. The envisaged concentration is thus a vertical merger between Mexichem as a PVC producer and supplier and Wavin as a producer and supplier of pipe systems from various materials, amongst others PVC.

IV.2. Relevant Product Markets

IV.2.1. S-PVC

12. The production of PVC uses vinyl chloride monomer ("VCM") as a feedstock, which is produced from ethylene and chlorine. The chlorine used in the process is produced through the electrolysis of salt and water which also results in the production of a by-product, caustic soda.
13. PVC is used in a wide range of applications, many of which are related to the construction industry. The largest applications for PVC in the construction industry are for pipes, moulded fittings and profiles (i.e. door and window frames).
14. Depending on the production process, two types of PVC can be distinguished: **suspension PVC** ("S-PVC") and **emulsion PVC** ("E-PVC"). Mexichem does not sell E-PVC in the EEA, thus E-PVC is not relevant for the present decision.
15. S-PVC is the most common type of PVC and is produced in the form of a coarse porous white powder. S-PVC is used for both rigid (unplasticised) end-applications (such as pipes, window and door profiles and moulded fittings) and flexible (plasticised) end-applications (such as flexible tubes for crystal clear medical products).
16. In previous decisions⁶, the Commission further segmented the market for the production of S-PVC into three separate product markets: (i) **Commodity S-PVC**; (ii) **Specialty S-PVC**; and (iii) **Extender S-PVC**.
17. **Commodity S-PVC** is the most common use of PVC. This PVC resin is used for the production of pipes, since Commodity S-PVC resin has the right molecular weight and process characteristics. Commodity S-PVC is also used for the production of rigid profiles such as slidings and windows.
18. **Specialty S-PVC** resins are used for both rigid as well as flexible applications. Rigid applications are bottles, sheets, fittings etc. Flexible applications are wire and cable film, flexible profiles and tubes, coating etc.

⁵ As an alternative to PVC, Wavin uses the following materials for the production of pipe systems, pipes and fittings: (i) polyolefines (mainly polypropylene and polyethylene, in different kind of grades), (ii) metalplastics (consisting of thermoplastic in combination with a metallic foil inside the product to enhance certain permeability-aspects (mainly in pipes) or combinations of thermoplastics and metal caps or metal strings to enable system installation with press fittings or welded fittings (mainly in fittings incl. manifolds) or (iii) clay (for sewer systems).

⁶ Case COMP/M.4734 *INEOS/Kerling*, para.20, Case COMP/M.4572 *Vinnolit/INEOS CV Specialty PVC Business*, para.9.

19. **Extender S-PVC** resin is used for dispersion resins to provide specific plastisols and compound characteristics. In addition it is also used to reduce costs and to improve physical properties.
20. The parties explain that for pipe production the Commodity S-PVC is the best option and for fitting production the Specialty S-PVC. Extender S-PVC cannot be used for the production of pipes and fittings and Mexichem does not sell Extender S-PVC in the EEA, thus this type of S-PVC is not relevant for the present decision.
21. The investigation of the Commission has confirmed that it would be appropriate to segment the S-PVC into three separate product markets namely (i) Commodity S-PVC; (ii) Specialty S-PVC; and (iii) Extender S-PVC.
22. As the operation does not raise serious doubts on any reasonable product market, the market definition can however be left open.

IV.2.2. Pipes systems

23. The market for the production of pipe systems can be further segmented into the following markets.

IV.2.2.1. Pipes versus fittings

24. According to earlier Commission decisions, the market investigations of the Commission seem to suggest that, in general, the product market for pipe systems can be further divided into separate markets for the production of pipes on the one hand and a market for the production of fittings on the other hand.⁷ However, the exact market definition has been left open in the relevant cases.
25. The parties argue that in theory, pipes and fittings can be sold and purchased separately and customers are able to combine products from different manufacturers, but in reality pipes and fittings are normally purchased together.
26. For the purposes of the present decision, the precise scope of the relevant product market can ultimately be left open as no concerns would arise under any of the market definitions.

IV.2.2.2. Application

27. On the demand-side, customers, competitors and external market research tend to distinguish the market for the production of pipe systems between pipe systems for separate applications. Similarly, according to the Commission's previous decisions⁸, pipes may be differentiated on the basis of each specific application: (i) water pressure (high pressure pipes used for the transport of water); (ii) gas pressure (high pressure pipes used for the transport of gas); (iii) sewage (non-pressure pipes used for sewerage systems); (iv) drainage; (v) cable-ducting (non-pressure pipes that can be used as protection layers for electricity and telecommunication cables); and (vi) irrigation.

⁷ Case IV/M.565 *Solvay / Wienerberger*, para.20, which is cited by the Commission in Case COMP/M.2294 – *Etexgroup / Glynwed Pipe Systems*, para.8.

⁸ Case IV/M.565 *Solvay / Wienerberger*, para.18.

28. The parties submit that Wavin uses the same distinction; however Wavin does not make a separate distinction between pipe systems for water and gas (pressure) and combines drainage and irrigation systems into a "water management" category.
29. The investigation of the Commission has confirmed that it would be appropriate to differentiate pipes on the basis of each specific application (water, gas, sewage, drainage, cable-ducting, irrigation).
30. However, for the purposes of the present decision, the precise scope of the relevant product market can ultimately be left open as no concerns would arise under any of the market definitions.

IV.2.2.3. Plastic/non-plastics

31. Finally, the Commission has not excluded a potential segmentation within pipes and fittings between plastic and non-plastic material.
32. Although in the parties' view a distinction between plastic and non-plastic pipe systems is not necessary, the parties to the concentration nevertheless provided market shares for possible markets for plastic and non-plastic pipe systems.
33. For the purposes of the present decision, the precise scope of the relevant product market can ultimately be left open as no concerns would arise under any of the market definitions.

IV.3. Relevant Geographic Market

IV.3.1. S-PVC

34. In line with previous Commission decisions, the parties submit that the markets for the production and supply of PVC have an EU-wide or EEA-wide scope.
35. With regard to the geographic market, it is noted that the Commission did not exclude⁹ the possibility of having regional market for Commodity S-PVC (North Western Europe, Western Europe) within the EEA.
36. The investigation of the Commission seems to indicate that price and commercial strategy are decided at EEA level.
37. However, the Commission considers that the geographic market can be ultimately left open in the current case, since no competition issues arise at either the EEA or regional market level.

IV.3.2. Pipe systems

38. In line with previous Commission decisions¹⁰, the parties submit that the relevant geographic market for pipes is national.

⁹ Case COMP/M.4734 *INEOS/Kerling*.

¹⁰ Case IV/M.565 *Solvay / Wienerberger*, para.24, Case COMP/M.2294 – *Etexgroup / Glynwed Pipe Systems*, para.15.

39. As regards fittings, the parties argue that, if viewed separately from the market for pipes, the market for fittings has an EEA-wide dimension.
40. The investigation of the Commission seems to indicate that price and commercial strategy are decided at national level.
41. For the purposes of the present decision, the precise scope of the relevant product market can ultimately be left open as no concerns would arise under any of the market definitions.

V. COMPETITIVE ASSESSMENT

V.1. Horizontally affected markets

42. As there is no horizontal overlap between the merging parties in the EEA, the proposed transaction does not give rise to any horizontally affected market.

V.2. Vertically affected markets

43. The proposed transaction gives rise to a number of theoretically vertically affected markets with regard to the parties' upstream activities in the production and supply of PVC and their downstream activities in the production of pipe systems.
44. In particular, the following **downstream** markets are vertically affected:
- water pressure pipes in Denmark ([40-50]%) and the Netherlands ([20-30]%)
 - gas pressure pipes in the Netherlands ([20-30]%)
 - pipe systems for cable ducting in Norway ([50-60]%)
 - non-pressure systems in Denmark ([20-30]%)
 - pressure systems in Denmark ([30-40]%)
 - plastic pipes in Norway ([20-30]%)
 - drainage plastic pipes in Sweden ([30-40]%), Norway ([20-30]%) and Denmark ([20-30]%)
 - sewage plastic pipes in Denmark ([20-30]%) and in Hungary ([30-40]%)
 - water pressure plastic pipes in the Netherlands ([30-40]%), Denmark ([40-50]%) and Hungary ([20-30]%)
 - gas pressure plastic pipes in Hungary ([20-30]%) and in the Netherlands (30%).¹¹
45. In light of the parties' combined market shares in these downstream markets, the **upstream** markets for Specialty S-PVC at EEA ([0-5]%) and regional level¹² and Commodity S-PVC at EEA ([0-5]%) and at regional level¹³ are also affected.

¹¹ With regard to fittings the parties submit that in the absence of a total market size for these products, it is difficult to estimate the market share. However, they submit that the national market shares for fittings would not extremely differ from its national market shares for pipes for the various applications.

¹² On the basis of this assumption Mexichem estimates its market position as follows: Benelux & Germany [0-5]%, UK [0-5]%, Spain [0-5]%, Portugal [0-5]%, Italy [5-10]%, Greece [0-5]%. Mexichem

46. With regard to **input foreclosure**, the parties submit that Mexichem's market position is very limited on the EEA-wide market for the production of S-PVC and Commodity S-PVC. Moreover, the parties argue that the S-PVC market is a competitive market with many other suppliers with a higher market share¹⁴ and Mexichem does not have production facilities for the production of PVC within the EEA. The parties also point out that there is overcapacity for the production of PVC both on the worldwide and European markets. The parties also note that that PVC as a raw material for pipe systems competes with other forms of plastic (notably polyolifines and thermoplastics) as well as materials like clay, concrete, ductile iron etc. The parties conclude that competitors of Wavin have many alternative sources for the supply of S-PVC and therefore Mexichem will not be able to foreclose the input for Wavin's competitors.
47. During the market investigation market participants confirmed that there were no competitive concerns with regard to input foreclosure. In particular, the majority of pipe system manufacturers confirmed that they usually diversify their S-PVC suppliers and that there are alternative suppliers of S-PVC to Mexichem. Given the fact that S-PVC is a largely homogeneous product, customers are able to switch between suppliers. Finally, it was also confirmed that there is overcapacity in the PVC market, especially in Europe.
48. The parties also argue that the proposed transaction will not lead to **customer foreclosure either**. According to the parties Mexichem's direct customers are mainly located in Italy and Spain, while Wavin has a strong position in the Northern European markets. Moreover, the parties submit that overall, Wavin's turnover in the affected markets is very limited. Most importantly, the parties underline the fact that the S-PVC market is EEA wide (or regional) and that only approximately 39% of global PVC demand was used to manufacture pipe systems, i.e. more than 60% of global PVC production is used to manufacture other products. Against this background, the parties argue that Mexichem's competitors will have a sufficiently large customer base to sell PVC to, hence it is not very likely that customer foreclosure which harms competition could occur.
49. During the market investigation market participants confirmed that there were no competitive concerns with regard to input foreclosure. In addition, out of the current S-PVC suppliers to Wavin, a majority consider they would find alternative customers if the merged entity were to stop purchasing S-PVC from them.

VI. CONCLUSION

50. 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

does not have sales in North Western Europe, a possible region identified by the Commission in COMP/M.4734 INEOS/Kerling.

¹³ On the basis of this assumption Mexichem estimates its market position as follows: Benelux & Germany [0-5]%, UK [0-5]%, Spain [0-5]%, Portugal [0-5]%, Italy [5-10]%, Greece [0-5]%. Mexichem does not have sales in North Western Europe, a possible region identified by the Commission in COMP/M.4734 INEOS/Kerling.

¹⁴ Ineos Chlor Vinyls ([20-30]%), Solvay ([10-20]%), Vinnolit ([10-20]%), Arkema ([10-20]%), LVM ([5-10]%).

EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission
(Signed)
Joaquín ALMUNIA
Vice-President