



Final Report of the Hearing Officer¹
INEOS / Solvay / JV
(M.6905)

I. WRITTEN PROCEDURE

1. On 16 September 2013, the European Commission (the "Commission") received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation² by which INEOS AG ("INEOS") and Solvay SA ("Solvay"), jointly referred to as the "Notifying Parties", acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of a newly established joint venture by way of transfer of assets (the "Transaction").
2. Based on the results of the Phase I market investigation, the Commission raised serious doubts as to the compatibility of the Transaction with the internal market and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation on 5 November 2013. The Notifying Parties submitted their written comments on the Article 6(1)(c) decision on 22 November 2013.

A. Statement of objections

3. On 21 January 2014, the Commission adopted a statement of objections ("SO"), in which it took the preliminary view that the Transaction would significantly impede effective competition in a substantial part of the internal market within the meaning of Article 2 of the Merger Regulation.
4. The Notifying Parties were given until 5 February 2014 to reply to the SO. Their written response was submitted on that date.

B. Access to the file

5. The Notifying Parties received access to the file throughout the procedure, in particular via CD-ROM on 23 January 2014 and 21 March 2014 as well as via e-mail on 10 April 2014.

¹ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 ("Decision 2011/695/EU").

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

6. On 31 January 2014 and 20 March 2014, the Notifying Parties submitted formal requests to the case team for further access to the file pursuant to Article 18(3) of the Merger Regulation, Article 17(1) of the Merger Implementing Regulation³ and Article 3(7) of Decision 2011/695/EU. The case team dealt with these requests and granted the Notifying Parties further access to the file.

C. Letter of facts

7. On 5 February 2014, the Commission sent a letter of facts ("LoF") to the Notifying Parties informing them of further evidence which the Commission intended to rely upon in the proceedings. The Notifying Parties replied to that LoF on 12 February 2014.

D. Interested third persons

8. In accordance with Article 5 of Decision 2011/695/EU, I admitted one competitor of the Notifying Parties⁴ and three associations⁵ representing part of their customer base to the proceedings as interested third persons. I also informed the Notifying Parties of the identities of the interested third persons to be heard.

II. ORAL PROCEDURE

9. On 10 February 2014, a formal oral hearing took place at the request of the Notifying Parties. The oral hearing was attended by: the Notifying Parties and their legal and economic advisors; EuPC in its capacity of an interested third person;⁶ the relevant Commission services; and representatives from the competent authorities of six Member States (Belgium, Germany, France, Hungary, Finland and the United Kingdom).
10. Three closed sessions took place during the oral hearing.⁷ The first resulted from a request from the Notifying Parties based on their legitimate interest in the protection of their business secrets and other confidential information. The other two took place in the context of question and answer sessions.

³ Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 33, 30.4.2004, p. 1 (the "Merger Implementing Regulation").

⁴ KEM ONE SAS.

⁵ The European Plastic Pipes and Fittings Association ("TEPPFA"), EuPC INPA ("EuPC") representing European plastic converters, as well as European PVC Profiles and Related Building Products Association EPPA ivzw ("EPPA").

⁶ The other interested third persons did not request to participate in the oral hearing.

⁷ See Article 13 of Decision 2011/695/EU.

III. PROCEDURE AFTER THE FORMAL ORAL HEARING

A. Remedies

11. On 27 February 2014, the Notifying Parties submitted a first set of commitments pursuant to Article 8(2) of the Merger Regulation which was replaced with a revised set of commitments on 7 March 2014. This new set of commitments was further revised on 10 and 11 March 2014 with the proposal of three alternative packages. On 12 March 2014, the Commission market tested two of the three alternative packages submitted. On 13 April 2014, the Notifying Parties submitted a final set of revised commitments. The Commission concluded that the commitments submitted on 13 April 2014 are suitable to remove the competition concerns identified in relation to the Transaction.

B. Interested third persons

12. Certain trade unions,⁸ in the capacity of representatives of employees based at the Tessenderlo operations of INEOS, requested to be heard in relation to proposed remedies. Pursuant to Article 5 of Decision 2011/695/EU, I admitted those unions – acting in that capacity – to the proceedings as interested third persons. I informed the Notifying Parties accordingly.

C. The draft decision

13. Pursuant to Article 16(1) of Decision 2011/695/EU, I have reviewed the draft decision and conclude that it deals only with objections in respect of which the Notifying Parties have been afforded the opportunity of making known their views.

IV. CONCLUSION

14. I conclude that the effective exercise of the procedural rights of all parties has been respected in this case.

Brussels, 29 April 2014



Joos STRAGIER

⁸ These unions are: (1) ABVV Algemeen Belgisch Vakverbond; (2) ACLVB Liberale Vakbond; (3) ACV bouw – industrie & energie; (4) BBTK Bond van bedienden, technici en kaderleden; and (5) LBC-NVK vakbond voor bedienden en kaderpersoneel.