

***Case No COMP/M.4572 -
VINNOLIT / INEOS CV
SPECIALTY PVC
BUSINESS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/06/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26-VI-2007

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Subject: Case No COMP/M.4572 - Vinnolit/ Ineos CV's Specialty PVC Business Notification of 21/05/2007 pursuant to Article 4 of Council Regulation No 139/2004¹

1. On 21 May 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which Vinnolit GmbH & Co. KG ("Vinnolit", Germany), controlled by Advent International Corp. ("Advent", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of part of INEOS Vinyls Ltd. (INEOS CV Specialty PVC Business) by way of purchase of assets.

I. THE PARTIES AND THE PROPOSED CONCENTRATION

2. **Vinnolit** is active in the manufacture of PVC as well as the production and supply of all intermediates, such as caustic soda, vinyl chloride monomer (VCM) and tin tetrachloride. It is indirectly controlled by Advent, a US private investment company, which does not hold any other controlling interest in the relevant sector.²

¹ OJ L 24, 29.1.2004 p. 1.

² Advent's non-controlling shareholding in Vinnolit's competitor Vestolit GmbH & Co. KG was sold in 2006. Advent also has joint control together with the private equity investment group Carlyle in HT Troplast AG, Germany. HT Troplast is a global diversified plastic converter mainly active in the manufacturing of profiles for windows, doors etc. which are produced from commodity PVC. Commodity PVC is not affected by the envisaged transaction.

3. **Ineos CV** is a leading global manufacturer of petrochemicals, specialty chemicals and oil products. Its specialty PVC business, which Vinnolit intends to acquire consists of:
 - a. Ineos CV's specialty PVC production facilities at Hillhouse (UK) and Schkopau (Germany);
 - b. the conclusion of an exclusive toll manufacturing agreement in relation to Ineos CV's specialty PVC production unit at Porto Torres (Italy), under which Ineos CV will continue to own the production unit but will operate it exclusively for Vinnolit who will take the entire out-put; and
 - c. the related goodwill, IP-rights, customer relationships and other assets related to Ineos CV's specialty PVC business.
4. With respect to the production unit at Porto Torres mentioned in point 3.(b), the toll manufacturing agreement is limited in time with a term of [...] years. However, Vinnolit in any event acquires the site's specialty PVC related commercial business covering the products' marketing, innovation and sale including all existing specialty PVC stock, goodwill, IP rights, customer relationships and other assets. In view of this, Vinnolit is considered to acquire the whole of Ineos CV's specialty PVC business on a lasting basis.
5. The proposed transaction therefore qualifies as a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

II. COMMUNITY DIMENSION

6. This concentration does not have Community dimension within the meaning of Article 1 of the Merger Regulation.³ However, as the operation was reviewable under the national merger control laws of six Member States⁴, the parties made a request under Article 4(5) of the Merger Regulation that the concentration be referred to the Commission. As no Member State opposed the proposed referral within the 15 days deadline the concentration is deemed to have a community dimension.

III. COMPETITIVE ASSESSMENT

A. Relevant product markets

7. The parties agree with the Commission's market definitions in the relevant previous precedents⁵ in this sector insofar as they distinguish between a market for standard PVC and a market for specialty PVC. However, they consider that further differentiation between the standard and specialty PVC markets should be made. The parties consider that these sub-segments are as follows;
 - (i) PVC for thermoplastic applications (TA-PVC) and PVC for plastisol applications (PA-PVC), which belong to separate product markets given

³ In view of the fact that in 2006 Ineos CV's specialty PVC business - which has a worldwide turnover of [...] - did not achieve more than €25 million in three Member States in which the combined turnover of the undertakings concerned is more than €100 million.

⁴ Austria, Bulgaria, Germany, Hungary, Italy and the UK

⁵ Case M.284 Hoechst/Wacker and Case M.1469 – Solvay/BASF.

differences in the way in which the product is further processed by the customer, the production process, the price and the applications in which they are used.

- (ii) PA-PVC should be further subdivided into markets for *paste PVC* and for *extender PVC* due to different product properties, the production process, the product price and the range of possible applications as well as the supplier structure. Paste PVC accounts for approximately 10% of total PVC and for 90% of the PA-PVC consumption.
 - (iii) Concerning TA-PVC the parties believe that the market should be subdivided into (general-purpose) commodity TA-PVC, accounting for 92% of the total TA-PVC production, and (high-performance) specialty TA-PVC accounting for the remaining 8%. The high performance specialty TA-PVC comprises specialty thermoplastic suspension PVC and specialty thermoplastic emulsion PVC.
8. In summary, the parties submit that the PVC sector as a whole should be sub-divided as follows:
- a) PVC for plastisol applications ("PA-PVC");
 - i. Paste PVC
 - ii. Extender PVC and
 - b) PVC for thermoplastic applications ("TA-PVC");
 - iii. Commodity PVC,
 - iv. Specialty thermoplastic suspension PVC,
 - v. Specialty thermoplastic emulsion PVC
9. The Commission's market investigation supports the parties' proposed market definitions. The product characteristics and applications as well as the production processes are different so that separate markets can be assumed to exist. The market investigation did not lead to the conclusion that further sub-segmentation would be appropriate.

B. Relevant geographic markets

10. The parties submit that the market for all relevant types of PVC is EEA-wide since all main suppliers sell their products throughout Europe from few European production sites. There are no significant barriers to inter-state trade and the cost of transport is approximately 5%. The market investigation has confirmed that the market for paste PVC and specialty thermoplastic emulsion PVC is the EEA.

C. Impact on competition

Horizontal Overlaps

11. The parties' activities overlap in the areas of paste PVC and specialty thermoplastic emulsion PVC.⁶ There is no overlap between the parties in relation to extender PVC,

⁶ Ineos CV's specialty business achieves nearly all of its sales [...] with paste PVC. In specialty thermoplastic emulsion PVC external sales of [...] were achieved in 2006. Including internal sales to

commodity PVC or specialty thermoplastic suspension PVC. The analysis hereafter therefore focuses on the markets for paste and specialty thermoplastic emulsion PVC.

Market for Paste PVC

12. The parties estimate the market volume for the EEA-wide market for paste PVC at €533 million by value and 511 KT by volume. On this basis, the parties submit that the transaction would lead to combined EEA-wide market shares of [30-40] %⁷ for paste PVC, with an increment of about [10-20] %. The parties' most important competitors are Vestolit (16.4%), Solvin (14.6%), Arkema (13.2%) and Norsk Hydro (8.3%). In addition, some smaller competitors exist. The pre merger HHI is indicated with 1465, the post merger HHI is 2178 and the delta therefore 713.
13. However, the Commission's market investigation indicates that the EEA-wide market for paste PVC is larger than assumed by the parties. The total of the sales figures provided by competitors in the market investigation together with the parties' sales give a market volume of about €650 million by value and 626 KT by volume. As not all suppliers responded to the Commission's enquiries this total is likely to be lower than the actual figure.
14. Based on a market volume of €650 million / 626 KT, Vinnolit's market share is [10-20]% by value and [10-20]% by volume. Ineos' market share is [10-20%] by value and [10-20%] by volume. The resulting combined market share is therefore [30-40%] by value and [30-40%] by volume. The parties' largest competitors are then Vestolit [20-30%], Arkema [10-20%], Norsk Hydro [10-20%] and Solvin [10-20%]. In addition, there are some competitors with market shares between 1-2%.
15. The market investigation showed that most paste PVC producers in the EEA operate at high capacity utilisation rates. However, substantial parts of their paste PVC production is exported outside the EEA. In addition, some competitors have indicated that they intend increasing capacity for paste PVC.⁸
16. The switching costs for customers are in general relatively low and multi-sourcing appears to be normal in the industry. Customers typically enter into short term supply contracts of a maximum of one year on fixed quantities.

Market for Specialty Emulsion PVC

17. For specialty emulsion PVC the parties submit that the transaction will bring about combined EEA-wide market shares of [40-50%] for specialty emulsion TA-PVC with a small increment of [<5%].⁹ The parties' most important competitors are Solvin [20-30%], Vestolit [20-30%] and Novaky [5-10%]. The pre-merger HHI is estimated at 2704, post-merger HHI at 2969 and the delta therefore at 265.

Ineos CV the revenues achieved amounted to [...]. The internal sales to Ineos CV will become external sales after implementation of the concentration.

⁷ Unless indicated otherwise, all market shares are based on value of sales.

⁸ Three competitors have initiated feasibility studies with a view to implementing capacity increases within a 1 to 2 or 5 year span.

⁹ Or <2%, if the portion of sales that will become external post transaction is excluded.

18. The Commission's market investigation showed that customers can switch suppliers easily and in general customers are multi-sourcing.

Vertical relationships

19. With respect to vertical relationships, the parties submit that the transaction will have minor effects on the upstream market for VCM, which is used for the production of PVC as well as for the input products that are required for the production of VCM - ethylene, chlorine and ethylene dichloride (EDC).
20. Vinnolit sells just 1-2% of its VCM production [...] and uses the remainder of its production captively. The market investigation confirms that most competitors are similarly vertically integrated so that the transaction is unlikely to lead to upstream foreclosure of competitors in VCM.
21. Concerning the further upstream products, Vinnolit purchases ethylene but produces chlorine and EDC for captive use only. The same applies for all major PVC producers

Assessment

Non Co-ordinated Effects

22. The parties' combined market share in the EEA market for paste PVC is in the lower range of [30 – 40 %] and there are a number of viable competitors. Customers seem able to switch quite easily from one supplier to another and multi-sourcing is common practice in the market. Also, in case the merged entity would increase prices, it is plausible, as submitted by the parties, that competitors would be able to redirect sales currently made outside the EEA to the EEA market where prices are higher than in Asia or Russia. In addition, the market investigation has shown that some competitors are in the process of considering increasing capacity for the production of paste PVC specifically with a view to delivering on the EEA market.¹⁰ In view of this, the concentration does not lead to concerns with regard to non-coordinated effects in the EEA market for paste PVC.
23. Concerning specialty emulsion PVC, the transaction will bring about only a marginal increment for specialty emulsion PVC due to Ineos' small market share. Also, a number of viable competitors are active on the market. In consequence, the concentration is unlikely to cause non-coordinated effects that could lead to a substantial lessening of effective competition in the EEA market for specialty emulsion PVC.

Co-ordinated Effects

24. It is noted that paste PVC could be regarded as a homogenous product. However, in fact the various paste products are technically not identical but are differentiated by their chemical properties and purity. There is a multitude of different grades offered by each of the competitors.
25. Concerning transparency of prices, a trade journal (Harriman Chemsult) publishes trade prices for paste PVC, amongst other products, although these do not take into account

¹⁰ See footnote 8 above.

negotiated discounts. Also, prices for different paste PVC grades differ. Prices for paste PVC are therefore heterogeneous.

26. It is further noted that the economic environment within the EEA is very stable with low rates of growth, although the export market to Russia in particular is growing at a rate of 30% per annum. Both the parties and their competitors are running at high rates of capacity utilisation to enable them to meet the increased demand for exports. In addition there are similar levels of vertical integration across the industry.
27. On the other hand, the concentration will lead to increased asymmetries in the market structure¹¹ and increases incentives for competitors to attempt to gain market share at the expense of the new entity. As mentioned above, switching is easy and multi-sourcing is commonplace in this industry and therefore identifying suppliers is relatively difficult.
28. In addition, the Commission did not find any means of potential retaliation of competitors who for instance undercut prices for paste PVC. In particular, the upstream merchant market for VCM seems unsuited for retaliatory actions as the VCM market is very small since almost all competitors in the paste PVC market are vertically integrated. Also, in the neighbouring PVC markets competitors are not identical to the ones in paste PVC so that retaliation via these markets seems unlikely.
29. With regard to the other relevant markets the concentration will not significantly change the competitive situation causing concerns for coordination.
30. The Commission therefore considers that the proposed concentration will not give rise to coordinated effects.

Vertical Relationships

31. With regard to the vertical relationships, the concentration will leave the pre-merger situation concerning VCM, ethylene, chlorine and EDC unchanged.
32. There are no further vertical relationships between the parties, since neither party is engaged in business activities in a product market, which is upstream or downstream of a product market in which any other party to the concentration is engaged, and in which any of their individual or combined market shares at either level is 25% or more.
33. In consequence, the proposed concentration will not lead to a substantial lessening of effective competition in any relevant market.

IV. CONCLUSION

34. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

¹¹ There is a differential of at least 10% between the combined entity's market share and the next best competitor on the market –i.e.; [30-40%], [20-30%], [10-20%], [10-20%] and [10-20%].

For the Commission
(signed)
Neelie KROES
Member of the Commission