

EN

***Case No COMP/M.6093 -  
BASF/ INEOS/ STYRENE/ JV***

Only the English text is available and authentic.

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

---

Article 6(1)(b) in conjunction with Art 6(2)  
Date: 01/06/2011

***In electronic form on the EUR-Lex website under  
document number 32011M6093***



EUROPEAN COMMISSION

Brussels, 01.06.2011

C(2011) 3977 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the notifying parties:**

Dear Sir/Madam,

**Subject: Case No COMP/M.6093 – BASF/ INEOS/ STYRENE/ JV Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004<sup>1</sup>**

1. On 7 April 2011, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings BASF SE ("BASF", Germany) and INEOS Industry Holdings Limited ("INEOS", Switzerland), ultimately controlled by INEOS Group, acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Styrolution (Germany) by way of purchase of shares in a newly created company constituting a joint venture<sup>2</sup>.

---

<sup>1</sup> 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.

<sup>2</sup> Publication in the Official Journal of the European Union No C 119, 16.04.2011, p. 14.

## **I. THE PARTIES**

2. BASF SE ("BASF") is the world's largest chemical company and is headquartered in Ludwigshafen, Germany. Its activities range from chemicals to crude oil and natural gas, including specialty chemicals, plastics, performance products, functional solutions and agricultural solutions, among others. BASF has production sites in 41 countries.
3. INEOS Industries Holdings Limited is part of the INEOS group of companies ("INEOS"), a privately owned conglomerate that produces a range of chemicals including petrochemicals, specialty chemicals and oil products.
4. Styrolution will combine the existing styrene monomer ("SM"), polystyrene ("PS") and acrylonitrile–butadiene-styrene ("ABS") businesses of BASF and INEOS, together with certain minor related products.
5. BASF and INEOS are designated hereinafter as the "notifying Parties" or "Parties to the proposed transaction".

## **II. THE OPERATION AND THE CONCENTRATION**

6. The shares in the JV will be held as to 50% by BASF and 50% by INEOS (together "the Parties"). BASF and INEOS will have joint control over the JV, Styrolution.
7. The proposed joint venture ("JV") will be full-function within the meaning of Article 3(4) of the Merger Regulation. The JV will comprise all business functions including manufacturing, sales and marketing. Furthermore, it will operate in the market independently from its parent companies, performing the full range of activities normally performed by companies in the chemical industry.
8. The operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. EU DIMENSION**

9. BASF's turnover is approximately EUR [...] million in the EEA and 63 873 million worldwide. INEOS' turnover is approximately EUR [...] million in the EEA and 28 421 million worldwide. Therefore, the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>3</sup>, and each of them has an EU-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

---

<sup>3</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

## IV. COMPETITIVE ASSESSMENT

### A. HORIZONTAL OVERLAPS

#### Polystyrene (PS)

10. Both BASF and Ineos produce PS and both will contribute their PS production to the proposed Joint Venture.<sup>4</sup>

#### *Relevant product market*

11. The Commission has considered the market for PS on several occasions, but ultimately left the product market definition open.<sup>5</sup> In particular, a number of different delineations have been considered: (i) a wider market for engineering thermoplastics<sup>6</sup>, (ii) a market for transparent engineering thermoplastics<sup>7</sup> (iii) a market for PS and (iv) separate sub-markets for General Purpose PS (“GPPS”) and High Impact PS (“HIPS”).
12. The Parties consider that the various grades of PS are demand- and/or supply-side substitutable and therefore that the relevant product market should be defined at least as widely as all PS.
13. The Parties argue that, within PS, the principal sub-segmentation which can be identified is between GPPS and HIPS.<sup>8</sup> HIPS is GPPS with around 5-10% rubber incorporated through a grafting process prior to polymerisation. GPPS is transparent and rigid. HIPS is translucent and breakage resistant. Nonetheless, as explained below, it is the Parties’ view that both products should be considered to be in the same market.
14. On the demand-side there is some scope for customers to substitute between HIPS and GPPS – many customers use HIPS and GPPS in a blend and have some flexibility to change the respective proportions in the blend if relative prices change and provided that the mechanical properties of the blend meet their

---

<sup>4</sup> Both INEOS and BASF will contribute their PS businesses to the proposed JV, with four exceptions: (i) BASF will retain sole control of its Ludwigshafen PS plant in Germany. [...]; (ii) INEOS will retain sole control of its PS plant at Marl, [...]; (iii) INEOS will retain sole control of its EPS plant at Breda, which also produces two minor grades of PS (Microgranulate and StyroSun). [...]; and (iv) BASF will retain its interest in the Nanjing plant in China (a full function JV with SINOPEC); [...].

<sup>5</sup> Case No. M.3578 *BP/NOVA Chemicals/JV* (2005), Case No. M.3288 *TNK-BP/Sibneft/Slavneft JV* (2003), Case No. IV/M.591 *Dow/Buna* (1995), Case No. M.1078 *BP/Hüls* (1998), Case No. M.4005 *INEOS/Innovene* (2005), Case M.4682 *Ineos / Lanxess' Engineering Thermoplastic Resins Business* (2007), Case No. M.4885 *INEOS/NOVA/JV* (2007) and Case No. M.5854 *Total/Polimeri* (2010).

<sup>6</sup> Including HIPS, ABS, PP, PVC and PC, *inter alia*.

<sup>7</sup> Including PS, SAN, PMMA and PC.

<sup>8</sup> The Commission considered this alternative segmentation in *Dow/Buna* (see paragraph 26).

requirements. From the supply side, all major producers have both GPPS and HIPS production, with broadly similar shares in each segment. Moreover most plants have both GPPS and HIPS lines and producers can vary the production between the two products depending on relative demand. As HIPS is obtained by incorporating rubber into GPPS, GPPS can therefore be made on any HIPS line (by not adding rubber and tuning the temperature and residence time). There are also some lines which routinely “swing” from GPPS to HIPS (as well as *vice versa*). On swing lines production of the two products is optimised based on contribution margin and demand. Therefore any change in relative prices should result in a further swing.

15. The Parties further argue that there is a trend for direct customers and end users to switch away from PS and to use other polymers, in particular PP and PET (and recycled PET), as well as other materials such as PLA and paper. This inter-polymer substitution has had, and is continuing to have, a major impact on the PS industry.
16. The market investigation was inconclusive as to whether HIPS and GPPS belong to the same product market. While responding customers agreed that GPPS and HIPS are not interchangeable, responding competitors agreed that the production lines for both types are similar and that it is possible to produce GPPS on a HIPS line but not vice-versa.
17. As far as inter-polymer competition is concerned, the market investigation revealed that there appears to be a certain degree of interchangeability between PS and other polymers.
18. For the purposes of the present case, however, it is not necessary to conclude on whether (i) PS, along other polymers or (ii) all PS constitute different product markets, or whether a further segmentation between (iii) GPPS and (iv) HIPS should be considered, as no competition concerns arise with any market definition.

#### ***Relevant geographic market***

19. The Commission has previously considered the relevant geographic market for PS as at least EEA-wide, however the geographic market definition was ultimately left open.<sup>9</sup> The Parties consider that the geographic market for PS is at least EEA+Switzerland, or the EEA.
20. The market investigation in this case has not revealed anything that would suggest a different approach to the geographic market.

---

<sup>9</sup> Dow/Buna, at paragraph 26, BP/Hüls; TNK-BP/Sibneft/Slafneft JV. BP/Nova; and Total/Polimeri (2010). In INEOS/Innovene and INEOS/NOVA/JV the Commission also considered PS but the relevant geographic market was not defined in either decision.

21. For the purposes of the present decision, it is not necessary to further define the geographic market as no competition concerns arise if the market is defined as comprising the EEA and Switzerland and the combined market shares would be lower on wider markets.

***Competitive assessment***

22. The Parties overlap in the production of PS, GPPS and HIPS. The Parties also overlap in the production of other thermoplastic polymers. Nonetheless, if a wider market for transparent engineering thermoplastics (or all engineering thermoplastics) were to be considered, the Parties overlap would be below [10-20]%.  
 23. The Parties submit the following data on market shares of PS:

**EEA + Switzerland Production and Merchant Market Sales of all PS, 2010<sup>10</sup>**

	Production				Merchant market sales			
	2009		2010		2009		2010	
	Vol. (kt)	Share (%)	Vol. (kt)	Share (%)	Vol. (kt)	Share (%)	Vol. (kt)	Share (%)
BASF	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%	[...]	[10-20]%
INEOS	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
<i>Combined</i>	[...]	<i>[40-50]%</i>	[...]	<i>[40-50]%</i>	[...]	<i>[30-40]%</i>	[...]	<i>[30-40]%</i>
Polimeri	[...]	[20-30]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Total	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Styron	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Synthos	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Imports	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%	[...]	[0-5]%
<b>Total</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>

---

<sup>10</sup> The Parties submit that all value figures are very similar to those based on volume for all affected markets assessed in this decision.

24. According to the Parties, PS production and sales market shares in the EEA would be very similar to their market shares in the EEA + Switzerland, with only a *de minimis* difference of not more than 1%<sup>11</sup>. As a result, the competitive assessment would be the same regardless of the geographic scope retained (i.e. EEA or EEA+Switzerland).
25. As shown in the above table, the Parties' combined market shares in the market for PS will be [30-40]% in the EEA+CH merchant market, and much lower on a global market
26. The Parties consider that there is no realistic prospect that the merger would impede effective competition for the following reasons: (i) the JV will continue to face intense competition from the other European suppliers of PS; (ii) importers from outside the EEA could also readily increase their supplies to European customers; and (iii) the JV will also be constrained by the threat by customers of switching to other polymers.
27. As to the first point, the Parties submit that the JV will continue to face intense competition from the three other major European suppliers of PS – Polimeri, Total and Styron - as well as a smaller EEA producer, Synthos. Each of these producers supplies throughout the EEA. These alternative European suppliers could all significantly increase supplies to customers in Europe in response to any hypothetical withholding strategy by the merged firm. Despite recent capacity rationalisation these third Parties are still believed to have spare capacity, and they also currently make substantial exports outside the EEA (i.e. use capacity which could be used instead to supply European customers). Secondly, the Parties submit that importers from outside the EEA could also increase their supplies to European customers.
28. With respect to inter-polymer substitution, the Parties submit that converters are very aware of the options available to them, regularly evaluating the price/performance features of PS against other polymers. This has had, and is continuing to have, a detrimental impact on PS demand. The JV will thus also be constrained by the threat of customers switching to other polymers and other materials.
29. Further, the Parties submit that they are not particularly close competitors and therefore that no unilateral effects concerns should arise on this basis either. The Parties submit the following reasoning: (i) there are only [...] customers in common among each of INEOS and BASF's top 20 customers in the EEA in the period 2008 to 2010; (ii) of INEOS' top 20 customers, only [...] appear in BASF's top 70 customers; (iii) of BASF's top 20 customers only [...] appear in INEOS' top 70 customers. Additionally, there are many examples of the Parties' customers both multi-sourcing from and switching or threatening to switch volumes to other suppliers, including Total, Styron, Polimeri, Synthos and non-European suppliers.

---

<sup>11</sup> The same statement applies for all affected markets assessed in this decision.

30. The respondents to the market investigation did not express major concerns as regards the market for PS. Additionally the market investigation widely confirmed that PS can be substituted by a range of competing polymers in almost all end applications. Moreover, customers usually have from 2 to 5 qualified suppliers and, thus, they can easily switch from one supplier to another. Finally, the majority of the respondents believed that there would be sufficient suppliers in the PS market post-merger.
31. Given the competitive constraint exercised by other polymers, the presence of important players in the EEA and global markets, as well as the lack of competition concerns arising from the market investigation, the Commission considers that the proposed transaction does not raise serious doubts as to the compatibility of the proposed transaction with the internal market as regards the market for PS.

### **GPPS**

#### **EEA + Switzerland Production and Merchant Market Sales of GPPS, 2010**

	Production				Merchant market sales			
	2009		2010		2009		2010	
	Vol. (kt)	Share (%)	Vol. (kt)	Share (%)	Vol. (kt)	Share (%)	Vol. (kt)	Share (%)
BASF	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%	[...]	[10-20]%
INEOS	[...]	[10-20]%	[...]	[10-20]%	[...]	[20-30]%	[...]	[20-30]%
<b>Combined</b>	[...]	<b>[40-50]%</b>	[...]	<b>[40-50]%</b>	[...]	<b>[30-40]%</b>	[...]	<b>[30-40]%</b>
Styron	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Total	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Polimeri	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Synthos	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Imports	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%	[...]	[0-5]%
Total	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>

Source: Form CO

32. If the alternative market for GPPS were to be considered, the Parties' combined market shares would be very similar ([30-40]%), and substantially lower on a global basis. In addition, other strong competitors will remain in the GPPS markets, with substantial market shares such as Styron ([20-30]%, Total ([10-20]%) and Polimeri ([10-20]%), *inter alia*.



33. The Parties argue that no competition concerns could arise from the transaction regarding GPPS, as significant competitors remain in the EEA, importers can easily increase their presence in the EEA and customers can switch to other polymers if the JV attempted to increase GPPS prices.
34. The market investigation confirmed that there are numerous polymers that could substitute GPPS in almost all end applications. Moreover, it appears that GPPS is a commodity product that does not require special equipment. In fact, virtually all manufacturers produce GPPS. Additionally, most of the customers' multi source, and have from 2 to 5 qualified suppliers. Therefore, they can easily switch from one supplier to another. Finally, the respondents did not express major concerns regarding GPPS.
35. It follows from the above that the Commission considers that the proposed transaction does not raise serious doubts as to the compatibility of the proposed transaction with the internal market as regards the market for GPPS.

## HIPS

### EEA + Switzerland Production and Merchant Market Sales of HIPS

	Production						Merchant Market Sales					
	2008		2009		2010		2008		2009		2010	
	Vol. (kt)	Share (%)	Vol. (kt)	Share (%)	Vol. (kt)	Share (%)	Vol. (kt)	Share (%)	Vol. (kt)	Share (%)	Vol. (kt)	Share (%)
BASF	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
INEOS	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
<i>Combined</i>	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Polimeri	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Total	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%	[...]	[20-30]%
Styron	[...]	[10-20]%	[...]	[10-20]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Synthos	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Imports	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
<b>Total</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>

36. As derived from the above table, the Parties' market shares in the market for HIPS are lower than in the market for all PS or GPPS. In turn, on a global basis the Parties' combined market shares are significantly smaller. Moreover, other strong players are active in this market, such as Polimeri ([20-30]%) and Total ([20-30]%).

37. Furthermore, the market investigation revealed that in the case of HIPS there are also a number of polymers that could be used as substitutes. The majority of the customers have from 2 to 5 qualified suppliers, and thus can easily switch from one supplier to another. Finally, the respondents did not express competition concerns regarding HIPS.
38. Given the above, the Commission considers that the proposed transaction does not raise serious doubts as to the compatibility of the proposed transaction with the internal market as regards the market for HIPS.

### **Acrylonitrile – Butadiene - Styrene (ABS)**

39. Both INEOS and BASF produce and sell ABS in the EEA and will contribute their EEA ABS businesses to the JV.<sup>12</sup>

#### ***Product market definition***

40. ABS is a thermoplastic resin produced from three monomers: acrylonitrile, butadiene and styrene. ABS typically contains at least 50% styrene, with varying proportions of acrylonitrile and butadiene. ABS is a tough, scratch-resistant material with high impact resistance, which can be readily processed by most thermoplastic fabrication techniques, including injection moulding and extrusion. The main applications of ABS include:
- i. Electrical appliances, which account for ca. 50% of total demand and include refrigerator door caps, vacuum cleaner components, washing machine panels and control devices.
  - ii. Information technology, including keyboards, computer and printer housings, etc.
  - iii. Automotive applications, such as dashboard components, centre consoles, rear view mirror housings, steering wheel covers, profiles and roof consoles, *inter alia*; and
  - iv. Construction: electrical switch covers, “chrome-plated” shower and bath components.
41. In *INEOS/LANXESS*<sup>13</sup> the Commission considered various delineations of the ABS market: a wider market for ABS, modified PP, HIPS, PVC and PC, an alternative market encompassing ABS and modified PP, and a narrower market for ABS. In *INEOS/BASF Assets*<sup>14</sup>, the Commission noted that ABS could belong to the overall market of thermoplastic resins, although a distinct market for ABS was also considered.

---

<sup>12</sup> Most of the Parties’ ABS plants outside the EEA will also be contributed to the proposed JV.

<sup>13</sup> Case No. M.4682 *INEOS/LANXESS*, 8 August 2007.

<sup>14</sup> Case No. M.5238 *INEOS/BASF Assets*, 31 July 2008.

### *Inter-polymer substitution*

42. The Parties argue that in many of ABS end applications a range of plastic materials can be used.<sup>15</sup> In particular, in many lower-end applications ABS is being replaced by other, cheaper materials (e.g. PP). Similarly, in higher-end applications, ABS may be replaced by more technical – and more expensive – plastics like PC or PA. ABS is regarded as a “bridge” polymer between commodity plastics (such as PS, PP and PET) and higher performing engineering thermoplastics (such as nylon/polyamide (“PA”) or polycarbonate (“PC”) resins).<sup>16</sup>
43. However, from a demand side perspective, the market investigation indicates that there are only limited possibilities for ABS to be substituted by other polymers or materials in most of its end applications. ABS's mechanical and aesthetic characteristics, as well as its price, make substitution especially difficult. As a result, customers do not often switch from ABS to other polymers or materials. From a supply side, there is no substitutability possible, as ABS is produced in dedicated equipment in which other polymers are not manufactured.

### *Pre-coloured ABS*

44. The Parties consider that a distinction should be drawn between natural and pre-coloured (compounded) ABS. During the compounding stage pigments/colours and additives are added to the natural ABS. This colouring step is a straightforward compounding process that can be undertaken either by integrated resin producers, such as BASF or INEOS, by independent compounders or by the customers themselves. The market investigation fully corroborated the parties' views. Virtually all respondents considered that natural and pre-coloured ABS are neither supply nor demand side substitutable. First because compounding facilities are needed to produce pre-coloured ABS. Second because customers that need coloured ABS and have no in-house self-colouring facilities, cannot use natural ABS as a substitute.
45. The Parties estimate that approximately [40-50]% of EEA demand for ABS is from customers which have in-house self-colouring capabilities. For the customers without self-colouring facilities, buying natural ABS is not an option. They therefore have to buy pre-coloured ABS either from integrated ABS manufacturers or from compounders, which buy natural ABS on the market and produce pre-coloured ABS in their compounding facilities by adding pigments and additives to natural ABS. The Parties believe that the market for pre-coloured ABS should include both vertically integrated manufacturers and compounders.

---

<sup>15</sup> In particular, PC/ABS, ASA, HIPS and impact-modified PP resins are alternatives to ABS in many consumer goods (including electrical appliances, IT and “others”); PC/ABS, ASA, PA/ABS and impact-modified PP compounds are the same for automotive applications; and PC/ABS, MABS, HIPS, impact-modified PP resins and PVC for construction.

<sup>16</sup> SRI Consulting – ABS/SAN Resins, January 2009.

46. The market investigation did not clarify this point. On one hand, nearly all competitors and customers indicated compounders do not have production capacity to supply large volumes. They target small/medium customers, supply smaller volumes of ABS, at a higher price (+10-15%), and often specialize in special ABS grades. On the other hand, half of the compounders consider themselves as competing at the same level as producers (i.e. supplying the same volumes at the same prices). As a result, it is inconclusive whether the market for pre-coloured ABS should include both integrated manufacturers and compounders.

#### *ABS grades*

47. The Parties contend that no special grades of ABS could be defined as a separate product market. All manufacturers produce their different ABS grades using the same equipment. Furthermore, minor alterations in particular in the mix of feedstock used, and in the use of additives, allow considerable versatility in the tailoring of ABS properties to meet specific customer requirements. From a demand perspective, customers can use varying ABS grades for most if not all end uses. The Parties underline that there is one possible exception where the scope for demand-side switching by customers may be more limited: medical grade ABS.
48. Medical grade ABS is used in medical applications (e.g. in making inhalers). The ABS used in these applications is functionally indistinguishable from other types of ABS and there are no particular manufacturing requirements as medical ABS is produced on the same lines as other ABS. However, there are regulatory (e.g. FDA) requirements which set out the standards for raw materials and recipes to ensure quality control for medical applications. Additional cleaning, testing and documenting may be required. Customers may also require some time to “qualify” a new supplier.
49. The market investigation confirmed the Parties' approach. A number of special ABS grades were mentioned by some respondents, but they were not considered as distinct product markets by the majority. First, because all grades could be produced in the same equipment, and, second because switching from the production or usage of a particular ABS grade to another does not involve significant switching costs. The only exception was medical grade ABS. Most of the respondents considered it difficult to switch, since a long qualification process is required in this case (from 12 to 18 months).
50. For the purposes of this decision, the exact delineation of the product market can be left open as no competition concerns arise under any conceivable market definition.

### *Geographic market definition*

51. The Commission has previously considered the geographic market for ABS as at least EEA-wide,<sup>17</sup> however the geographic definition was ultimately left open.
52. The Parties argue that the market should be defined as worldwide for the following reasons: (i) ABS is a stable and easily transportable product which is widely traded and shipped across continents; (ii) transport costs do not hinder trade flows. International shipping costs and tariffs represent less than 5% of the EEA product price, and around 10% including duty; and (iii) imports are significant ([20-30]% for natural ABS and [10-20]% for pre-coloured in 2009). In particular, imports from Asia will further increase, since Asian producers have substantial spare capacity and significantly lower costs and prices. Moreover, on 6 October 2010, the European Commission signed a Free Trade Agreement with South Korea which will remove virtually all tariffs between the two economies, as well as many non-tariff barriers. Finally, imports from Middle East will play an important role as new capacity will build up in this region.
53. The market investigation, however, did not fully corroborate the parties' views. As regards natural ABS, it appears that price differences between Asia and EEA do not seem to be as large as in previous years (it is currently estimated by the respondents as between 5 and 15%). As a result, transport costs (which are estimated between 9 and 16%) are often higher than price differences. Furthermore, EEA imports have declined over the last 3 years and most of the customers source on an EEA basis. It is worth noting, nonetheless, that there are a number of elements pointing towards a global market, such as the significant role of ABS imports and exports in the EEA market and the considerable percentage of EEA demand covered by imports. The Parties' estimates include a proportion of imports that is used captively by producers and, thus, not sold into the EEA merchant market.
54. Concerning pre-coloured ABS and medical grade ABS, the majority of the respondents considered the market to be EEA-wide. Most customers source their pre-coloured ABS on an EEA level and imports are low (15% of the EEA demand). In the case of medical grade ABS, some respondents indicated the testing standards in foreign laboratories could not be in line with EU requirements.
55. For the purposes of this decision, the market for ABS and its further delineations can be defined as at least EEA-wide in scope.

---

<sup>17</sup> In INEOS/LANXESS (M.4682), the Commission considered that the product market for ABS might consist of: (a) the market for ABS only (the Narrow Market); (b) the market for ABS and modified PP (the Intermediate Market); or (c) the market for ABS, modified PP, HIPS, PVC and PC (the Wider Market) – but eventually left the product market definition open as no issues were raised even on the narrowest basis. In INEOS/BASF Assets (M.5238), the Commission noted that ABS belongs to the overall group of thermoplastic resins but that, if distinguished by grade, the relevant grade of engineering thermoplastic will be ABS.

### *Competitive Assessment*

56. The proposed transaction gives rise to the following horizontal overlaps: (i) overall market for ABS, (ii) natural ABS, (iii) pre-coloured ABS, and (iv) medical grade ABS. The Parties also overlap in the production of other competing polymers. Nonetheless, if wider markets were to be considered (i.e. ABS and PP, or a broader market encompassing ABS, modified PP, HIPS, PVC and PC) the Parties overlap would be below [10-20]%.

#### Overall ABS market

57. The table below shows the Parties and competitors' market shares in terms of production and production capacity in the EEA+CH in 2010:

**Production and capacity market shares in the EEA+CH, 2010:**

2010	Capacity in the EEA+CH		Production in the EEA+CH	
	Volume (kt)	Share (%)	Volume (kt)	Share (%)
INEOS	[...]	[20-30]%	[...]	[20-30]%
BASF	[...]	[40-50]%	[...]	[40-50]%
<i>Combined</i>	[...]	<i>[70-80]%</i>	[...]	<i>[70-80]%</i>
Styron	[...]	[20-30]%	[...]	[20-30]%
Polimeri	[...]	[5-10]%	[...]	[5-10]%
<b>TOTAL</b>	[...]	<b>100%</b>	[...]	<b>100%</b>

Source: FORM CO

58. Following the transaction, the Parties will control more than 2/3 of the current EEA+CH production and production capacity of ABS, with a combined market share of [70-80]%. Only 3 ABS producers will remain in the EEA+CH, resulting in a very concentrated market at this level. In terms of global production, the Parties' market shares will be much lower ([10-20]% in production capacity and [10-20]% in production). However, the merged entity will continue to be a significant player on a global basis, being the second largest producer in terms of capacity and the third in terms of production.

**Merchant market (at end supplier level) in the EEA+CH, 2010<sup>18</sup>:**

2010	EEA + CH	
	Kt	%
BASF	[...]	[20-30]%
INEOS	[...]	[10-20]%
<b><i>Combined</i></b>	[...]	<b><i>[40-50]%</i></b>
Styron	[...]	[10-20]%
Sabic	[...]	[5-10]%
Schulman	[...]	[5-10]%
Polimeri	[...]	[5-10]%
LG	[...]	[5-10]%
Ravago	[...]	[0-5]%
Chimei	[...]	[0-5]%
Cheil Samsung	[...]	[0-5]%
Nord Color	[...]	[0-5]%
Other compounders	[...]	[10-20]%
Others	[...]	[5-10]%
<b>TOTAL</b>	[...]	<b>100%</b>

*Source: FORM CO*

59. Post transaction the Parties' combined market shares in the EEA+CH merchant market for all ABS at end supplier level (i.e. including compounders) will be [40-50]%, with an increment of [10-20]%. The merged entity will be the clear market leader in the EEA+CH, followed by much smaller competitors ([10-20]% Styron and [5-10]% Sabic, LG and Polimeri, respectively). In turn, in a narrower market excluding compounders, the combined market shares would be even higher ([50-60]%).
60. If a worldwide market were to be considered, the JV presence will be moderate: less than [10-20]% either at producer or at end supplier level, however, it will continue to be one of the market leaders at end supplier level.
61. The Parties consider that the JV will compete with large producers of ABS active in the EEA+CH, including Styron, Polimeri and Samsung/Cheil. The JV will also face competition from importers, including Chi Mei, and LG. These suppliers have significant spare capacity and the ability to produce more ABS for sale in Europe. The Parties also claim that BASF and INEOS focus on different products (BASF focuses on natural ABS whilst INEOS focuses on pre-coloured ABS). Therefore they could not be considered as close competitors.

---

<sup>18</sup> The Parties estimate that value (EUR) market shares are similar to those of volume.

62. The market investigation broadly confirmed the above concerns. The majority of respondents indicated that the transaction will lead to price increases and a dominant position of the merged entity in the EEA market. Moreover, numerous customers expressed concerns about the reduction in the number of suppliers remaining in the market.
63. It follows from above that the merged entity will have a dominant position in the EEA merchant market for ABS, as well as a super dominant position in terms of production and production capacity, with only two other producers remaining in the EEA market. Moreover, respondents from the market investigation raised concerns as regards the ABS market. The Commission considers therefore that the transaction raises serious doubts as to its compatibility with the internal market in relation to ABS in the EEA.

### *Natural ABS*

64. The combined entity's shares of the merchant market for natural ABS in the EEA+CH in 2010 is the following:

#### **Merchant market for natural ABS, 2010:**

	2009								2010							
	Global				EEA+CH				Global				EEA+CH			
	Kt	%	€m	%	Kt	%	€m	%	Kt	%	€m	%	Kt	%	€m	%
BASF	[...]	[10-20]%	[...]	[10-20]%	[...]	[40-50]%	[...]	[40-50]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[40-50]%	[...]	[40-50]%
INEOS	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%
<i>Combined</i>	[...]	<i>[10-20]%</i>	[...]	<i>[10-20]%</i>	[...]	<i>[40-50]%</i>	[...]	<i>[40-50]%</i>	[...]	<i>[10-20]%</i>	[...]	<i>[10-20]%</i>	[...]	<i>[50-60]%</i>	[...]	<i>[50-60]%</i>
Styron	[...]	[0-5]%	[...]	[0-5]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[10-20]%	[...]	[10-20]%
Chi Mei	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%	[...]	[5-10]%
Polimeri	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%
LG	[...]	[10-20]%	[...]	[10-20]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[5-10]%	[...]	[5-10]%
Cheil (Samsung)	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[40-50]%	[...]	[30-40]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[5-10]%	[...]	[5-10]%
<b>TOTAL</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>

Source: FORM CO



65. The combined entity will have large market shares at all levels: [50-60]% in the EEA+CH merchant market, both in terms of volume (kt) and in terms of sales (EUR), and [70-80]% in terms of total capacity and production in the EEA+CH<sup>19</sup>. Although the increment in the merchant market is moderate ([5-10]%), only a limited number of players with considerably lower market shares will remain active in the market. On a global level, however, the Parties' combined market shares would not be significant ([10-20]% in terms of value and [10-20]% in terms of volume). Moreover, other significant suppliers will remain in the market, such as Chi Mei ([20-30]%) or LG ([10-20]%).
66. The Parties consider that the JV will continue to face intense competition from the other producers of ABS with European assets, such as Styron, Polimeri and Samsung/Cheil. The JV will also face intense competition from importers, including Chi Mei, and LG. The Parties also argue that BASF and INEOS have fundamentally different business models and only a few overlapping customers, with BASF focusing on natural ABS whilst INEOS focuses on pre-coloured product and only makes limited sales of natural ABS. Moreover, ABS customers are sophisticated purchasers who can and do source from a variety of suppliers.
67. The market investigation revealed that significant entry barriers exist in this market, resulting not only from the sunk costs involved given the infrastructure needed to start natural ABS production (a facility with polymerization capacity), but also from the know how required to enter this market. Nearly all respondents indicated that no newcomers have entered the market in the last 3 years or are likely to enter in the following 3 years, and none of the EEA producers are expected to add any production capacity. Customers, in turn, argued that the natural ABS produced by both parties is identical or very similar, and considered ABS producers as having more bargaining power than their clients.
68. Finally, most of the customers that responded to the Commission's market investigation considered that the transaction (i) would create a dominant player in the market, (ii) the prices would increase and (iii) there would not be sufficient suppliers remaining in the market for natural ABS.
69. It follows from the above that serious doubts as to the compatibility of the proposed transaction with the internal market cannot be excluded for natural ABS.

### ***Pre-coloured ABS***

70. Market shares in the merchant market for pre-coloured ABS in the EEA+CH in 2010, excluding compounders and including compounders, are the following tables:

---

<sup>19</sup> According to the Parties, production and capacity figures cannot be split between pre-coloured and natural ABS as this will lead to double counting (all pre-coloured ABS is first produced as natural ABS and later compounded in the colouring equipment).

**Merchant market for pre-coloured ABS (at producer level, i.e. excluding compounders), 2010:**

	2009								2010							
	Global				EEA+CH				Global				EEA+CH			
	Kt	%	€m	%	Kt	%	€m	%	Kt	%	€m	%	Kt	%	€m	%
INEOS	[...]	[10-20]%	[...]	[10-20]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[30-40]%	[...]	[30-40]%
BASF	[...]	[0-5]%	[...]	[0-5]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[10-20]%	[...]	[10-20]%
<i>Combined</i>	[...]	<i>[10-20]%</i>	[...]	<i>[10-20]%</i>	[...]	<i>[50-60]%</i>	[...]	<i>[50-60]%</i>	[...]	<i>[10-20]%</i>	[...]	<i>[10-20]%</i>	[...]	<i>[50-60]%</i>	[...]	<i>[50-60]%</i>
Styron	[...]	[0-5]%	[...]	[0-5]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[10-20]%	[...]	[10-20]%
SABIC	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
LG	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[5-10]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[5-10]%	[...]	[5-10]%
Cheil (Samsung)	[...]	[10-20]%	[...]	[10-20]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[40-50]%	[...]	[30-40]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[40-50]%	[...]	[40-50]%	[...]	[5-10]%	[...]	[5-10]%
<b>TOTAL</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>

Source: FORM CO

**Merchant market for pre-coloured ABS (including compounders) in the EEA+CH, 2010:**

End-supplier level (including compounders)	Market shares in value (%)
BASF	[5-10]%
INEOS	[20-30]%
<i>Combined</i>	<i>[30-40]%</i>
Styron	[10-20]%
Sabic	[5-10]%
Schulman	[5-10]%
LG	[5-10]%
Ravago	[0-5]%
Samsung	[0-5]%
Nord Color	[0-5]%

Source: FORM CO

71. After the proposed transaction the Parties' combined market shares will be high: [30-40]% at producer level and [50-60]% excluding compounders. Moreover, the parties' market shares in terms of total capacity and production of ABS in the EEA+CH (both natural and pre-coloured) are large ([70-80]%). Additionally, only a few market players with substantially lower market shares will remain in the market post-merger. On a worldwide basis, the Parties' combined market shares will be much lower ([10-20]% in volume and [10-20]% in value, with an increment of only [0-5]%).
72. The Parties claim that the merged entity will continue to face strong competition from European producers, as well as from importers, such as Chimei, LG or Formosa. The JV will also continue to compete with compounders who produce pre-coloured ABS using either European or imported natural resin. Finally the Parties argue that BASF and INEOS are not close competitors
73. The majority of respondents considered that the proposed transaction will create a dominant player in the market for pre-coloured ABS and raised concerns about the limited number of suppliers remaining in the market. Furthermore, numerous customers fear an impact on prices. This situation may be aggravated by the fact that nearly all respondents indicated that no newcomers have entered the market in the last 3 years or are expected to enter it in the following 3 years.
74. As a consequence, serious doubts as to the compatibility of the proposed transaction with the internal market cannot be excluded for pre-coloured ABS. In order to render the concentration compatible with the internal market, BASF and INEOS have modified the notified concentration by entering into commitments, which are annexed to this decision and form an integral part of it. (See Section V below).

***Medical-grade ABS***

75. Market shares in the merchant market for Medical-grade ABS in the EEA+CH in 2010 are the following:

	Medical Grade
BASF	[5-10]%
Ineos	[70-80]%
<i>Combined</i>	<i>[80-90]%</i>
Sabic	[10-20]%
Others	[0-5]%

*Source: Parties*

76. The combined entity will have a very high market share ([80-90]%) in the market for medical grade. However, the Medical-grade market accounts for only around [...] kT in volume, which is less than [0-5]% of total EEA ABS demand.

77. There is only one other fully certified supplier of Medical-grade ABS currently active in the EEA market: SABIC, which could easily increase its supplies. There are also several compounders with FDA certification; however they cannot produce to the most demanding medical specifications. A re-qualification of such compounders will take from 3 to 12 additional months. Consequently, entering into the medical grade market will take from 12 to 18 months for newcomers and from 3 to 12 months for compounders already certified for lower forms of medical grade.
78. The Parties argue that competitors – in particular SABIC which has a strong global position in plastics for medical applications overall – is already estimated to have larger sales of medical grade ABS (over [...]kt) than BASF (less than [...]kt). Any further growth in SABIC's medical grade sales therefore has the ability to substantially alter the Parties' combined share of the market. Additionally, a number of compounders also supply ABS for use in medical applications globally - they could also start sales in Europe. Finally, the Parties insist on the small dimension of this market segment ([...] kt), as well as on the fact that medical grade is exactly the same in terms of product specification as standard grades of ABS.
79. The market investigation confirmed that no special requirements or equipment is needed to produce medical grade ABS, the only entry barrier is to obtain an FDA approval, which can take from 12 to 18 months. Furthermore, none of the respondents in the market investigation complained about competition issues related to Medical-grade ABS.
80. For the purposes of this case, it is not necessary to conclude as to the compatibility of the proposed transaction with the internal market as regards the market for medical grade ABS, since the proposed commitments will more than remove the existing overlap between the Parties (INEOS' plant at Tarragona accounts for ca. [50-60]% of the medical grade market share in the EEA merchant market).

## **B. VERTICAL RELATIONSHIPS**

### **1. Natural ABS (upstream) – Pre-coloured ABS (downstream)**

81. The transaction gives rise to a vertical link between natural ABS and pre-coloured ABS. As stated above, natural ABS is the main input for the production of pre-coloured ABS.

#### *Product and geographic market definitions*

82. The product and geographic markets for ABS have been discussed in recital 40-55.

### *Competitive Assessment*

83. Following the transaction the Parties will have high market shares in both markets: [50-60]% in the market for natural ABS and [50-60]% in the market for pre-coloured ABS at producer level ([30-40]% if compounders were to be included) on an EEA+CH basis. Moreover, the parties' market shares in terms of total capacity and production of ABS (both natural and pre-coloured) are also large ([70-80]%) in the EEA+CH. In addition, the market investigation confirmed that few players will remain in the EEA+CH merchant market post-merger and no newcomers or expansion plans are foreseen on an EEA+CH level.
84. Given that the merged entity will have substantial market shares at either level, there is a risk of input foreclosure with respect to compounders (or price increase) who compete with the Parties in the downstream pre-coloured ABS market. In this sense, a number of respondents have expressed their concerns regarding the dominant position of the JV in the upstream market for natural ABS and the downstream market for pre-coloured ABS. As well, many respondents indicated a risk of price increase of natural ABS after the transaction. The Parties do not consider that the JV would have either the ability or the incentive to engage in such a vertical foreclosure strategy.
85. In any case, and for the purposes of the present case, there is no need to conclude as to the compatibility of the proposed transaction with the internal market as regards this vertical relationship, as the divestment of Tarragona site would address any vertical concerns arising from the combination of the Parties' upstream natural ABS business with the Parties' downstream pre-coloured ABS business.

### **2. Styrene Monomer catalysts (upstream) – Styrene Monomer (SM) (downstream)**

86. The production of SM via the ethylbenzene dehydrogenation process involves passing a mixture of evaporated ethylbenzene and steam over a solid bed of catalyst material ("SM catalyst"). The basis of most SM catalysts used in the ethylbenzene dehydrogenation process is iron oxide extrudate.
87. BASF produces SM catalysts which can be used by both BASF and INEOS for their SM production.

### *Product and geographic market definitions*

#### Styrene Monomer

88. In previous cases, the Commission has identified SM as the relevant product market, "*as there is no substitute for styrene in the manufacture of polystyrene and expanded polystyrene and other styrene derivatives.*"<sup>20</sup> The Parties agree with this approach.

---

<sup>20</sup> Case No. IV/M.1078 *BP/Hüls* (1998). The *BP/Hüls* product market definition was also referred to in Case No. Comp/M.3578 *BP/Nova Chemicals/JV* (2004). Case No. COMP/M.4682 *INEOS/Lanxess' Engineering Thermoplastic Resins Business* (2007); Case No. COMP/M.4737 *Sabir/GE Plastics* Case

89. In previous cases, the Commission has recognised that the relevant geographic market for SM could be either global or EEA-wide.<sup>21</sup> The Parties consider the market to be global because, in their view, SM is a stable commodity product; transport costs are low (generally less than 10% of delivered price from Asia to Europe, and less from other regions to Europe); the Parties estimate that around half of imports are for merchant market sale, and therefore imports for merchant market sale accounted for around [10-20]% of estimated European merchant demand in 2010, and [10-20]% in 2009.
90. For the purposes of this decision, the exact delineation of the product and geographic market can be left open as no competition concerns arise under any conceivable market definition.

#### SM catalysts

91. There is no previous Commission practice regarding this product. The Parties submit that SM catalyst is generally not demand-side substitutable with catalysts for the production of other chemicals or plastics and that SM catalyst is generally not sold bundled with a technology licence to produce SM. Therefore the Parties consider that SM catalysts should be considered a distinct market from licensing of technology to produce SM.
92. The Parties submit that the relevant geographic market for SM catalyst is global as it is readily transportable (it is actively traded between Europe, Asia and America) and there are no significant barriers to trade.
93. For the purposes of this decision, the exact delineation of the product and geographic market can be left open as no competition concerns arise under any conceivable market definition.

#### *Competitive assessment*

94. The Parties submit the following market shares for SM catalysts:

---

(2007); Case No. COMP/M.5424 *DP/Rohm and Haas* (2009); and most recently in Case No. COMP/M.5854 *Total/Polimeri* (2010). In Case No. COMP/M.4005 *INEOS/Innovene* (2005) and Case No. COMP/M.4885 *INEOS/NOVA/JV* (2007) the Commission considered SM but the relevant product market was not discussed in the Commission's decisions.

<sup>21</sup> *BP/Nova* at paragraph 41; *Ineos/Lanxess*, at paragraphs 19 and 20; and *Total/Polimeri* at paragraph 22. In *INEOS/Innovene* and *INEOS/NOVA/JV* the Commission considered SM but the relevant geographic market was not discussed in the Commission's decisions.

### SM catalyst merchant market shares, global

Producer	2007		2008		2009		2010	
	Sales (kt)	Share (%)	Sales (kt)	Share (%)	Sales (kt)	Share (%)	Sales (kt)	Share (%)
BASF	[...]	40-50%	[...]	[40-50]%	[...]	[40-50]%	[...]	[60-70]%
INEOS	[...]	0%	[...]	0%	[...]	0%	[...]	0%
Süd-Chemie	[...]	45-55%	[...]	[40-50]%	[...]	[50-60]%	[...]	[30-40]%
Sinopec	[...]	0-5%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Yaroslavl	[...]	0-5%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
<b>Total</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>	[...]	<b>100%</b>

Source: Form CO

### SM catalyst production shares, global

Producer	2009		2010	
	Production (kt)	Share (%)	Production (kt)	Share (%)
BASF	[...]	[30-40]%	[...]	[60-70]%
INEOS	[...]	0%	[...]	0%
Süd-Chemie	[...]	[50-60]%	[...]	[30-40]%
Sinopec	[...]	[5-10]%	[...]	[5-10]%
Yaroslavl	[...]	[0-5]%	[...]	[0-5]%
<b>Total</b>	[...]	<b>100%</b>	[...]	<b>100%</b>

Source: Form CO

### Input foreclosure

95. The Parties submit they will have no ability to foreclose other SM producers because BASF's customers can and do purchase SM catalysts from other suppliers, such as Total, Synthos, or Polimeri. These producers of SM catalyst are not capacity constrained and can readily increase supplies. In fact, spare capacity in third party hands in 2010 was at least [...]kt<sup>22</sup> which represents over [70-80]% of BASF's sales in 2010.<sup>23</sup> Moreover, customers can easily switch between different SM catalysts, as different SM catalysts can be used in a given production plant. Finally, SM catalysts account for less than [0-5]% of the costs of production of SM, and therefore do not represent a significant proportion of SM rivals' costs.

<sup>22</sup> Süd-Chemie and Sinopec only (BASF estimates their combined total capacity to be 7kt).

<sup>23</sup> BASF has no basis on which to estimate [...] capacity utilisation. Therefore this calculation likely understates the true spare capacity in third party hands.

### *Customer foreclosure*

96. As regards customer foreclosure, the proposed JV will not materially change the existing position. INEOS already uses a BASF SM catalyst in its Sarnia plant, and has recently agreed to use a BASF SM catalyst in its Bayport plant. Even if the JV were to buy 100% of its requirements from BASF, this would represent only around [5-10]%<sup>24</sup> of total demand for SM catalyst. Other suppliers of SM catalysts would therefore not be foreclosed as numerous other SM producers would remain.
97. Given the above, the Commission considers that the proposed transaction does not raise competition concerns as regards this vertical relationship.

### **3. Styrene Monomer (SM) (upstream) – PS, ABS, SAN, SBC, SMMA, ASA and EPS (downstream)**

98. The proposed JV will give rise to a number of vertical links regarding styrene monomer (SM) (upstream) and a number of vertically related downstream markets:
- (i) SM (upstream) – Polysterene – PS (downstream)
  - (ii) SM (upstream) – Acrylonitrile Budadiene Styrene - ABS (downstream)
  - (iii) SM (upstream) – Styrene Acrylonitrile - SAN(downstream)
  - (iv) SM (upstream) – Styrene butadiene copolymers - SBC (downstream)
  - (v) SM (upstream) – Styrene methylemethacrylate - SMMA (downstream)
  - (vi) SM (upstream) – Acrylonitrile styrene acrylate - ASA (downstream)
  - (vii) SM (upstream) – Expanded Polystyrene - EPS (downstream)

### ***Product and geographic market definitions***

99. The product and geographic market for SM has been discussed in recital 88-93.
100. The product and geographic market for PS has been discussed in recital 11-21.
101. The product and geographic market for ABS has been discussed in recital 40-55.

### **SAN**

102. Styrene-Acrylonitrile ("SAN") is a rigid and transparent polymer made from SM ([70-80]% volume, [...] % value) and ACN ([20-30]% volume, [...] % value). SAN is used principally in the production of ABS, but may also be used for compounding with other plastics ("industrial SAN"). In addition, it has some commercial end uses as translucent polymer in its own right, including

---

<sup>24</sup> [5-10]% if the INEOS plant at Marl (which will toll for the JV) is included.



kitchenware, computer products, packaging material, battery cases and plastic optical fibres ("commercial SAN").

103. The Parties submit that from a demand-side perspective, there is a distinction between industrial and commercial SAN. Industrial SAN is principally used in the ABS production process and for compounding with other plastics, while commercial SAN is used in the products listed above. According to the Parties it is not used in ABS or for compounding, as it is more expensive than industrial SAN and is tinted. Commercial SAN differs from industrial SAN mainly as a result of additives, colorants and a lower residual monomer content. Furthermore according to the Parties, from a supply-side perspective some additional equipment is required to produce commercial SAN, namely a strain degasser to remove the residual monomers and a simple extruder to allow incorporation of additives.
104. The parties further contend that as INEOS does not produce commercial SAN in the EEA and BASF mainly produces commercial SAN, and given that industrial SAN can be produced on any commercial SAN line without investment, it would be more appropriate to consider the overall SAN market.
105. In its previous decisions the Commission left the product market definition open<sup>25</sup>.
106. BASF submits that the potential relevant geographic market for SAN is global in scope for the following reasons: non-captive imports of SAN into the EEA + Switzerland were estimated to be around [...] kt for 2010 and thus accounted for [10-20]% of merchant industrial SAN demand and [10-20]% of merchant commercial SAN demand; SAN may be transported over large distances by barge, rail, truck and ship with transport costs of around 5-10% of delivered price; price levels are comparable across regions globally and there are no differences in prices between individual countries or sub-regions within the EEA.
107. Given that the transaction would not lead to competition concerns under any alternative product or geographic market definition, the question whether industrial and commercial SAN belong to the same product market can be left open.

#### Styrene-butadiene block copolymers (SBC)

108. The BASF SBC business will be contributed to the JV. INEOS does not produce SBCs.
109. SBCs are high transparency, high capability, high surface gloss products which exhibit rigidity and high flexibility, are easy to dye or print and can be compounded with other materials. It is easy to dye or print and is used in a broad range of industries.

---

<sup>25</sup> Case IV/M.942 Veba/Degussa 1997, Case No. M.4885 INEOS/NOVA/JV 2007.

110. The Commission has not previously considered the SBC product market separately, but has held that the relevant product market may comprise all types of engineering thermoplastic resins which are considered substitutable with ABS resins.<sup>26</sup>
111. The Parties do not contest the above delineation, but underline that a range of transparent engineering thermoplastics are generally demand-side substitutable, including GPPS, SAN, SBC, MABS, PC, PET and PMMA.
112. In a recent decision the Commission considered the relevant market for engineering thermoplastic resins as global or EEA-wide, but did not conclude on the geographical scope of the market.<sup>27</sup> The Parties submit that the relevant geographic market is global as transparent thermoplastic resins are actively traded between Europe, Asia and America and there are no significant barriers to trade.
113. However, for the purpose of the present case, it is not necessary to define the ultimate scope of the relevant product and geographic markets, since the transaction will not give rise to competition concerns irrespective of the product market definition retained.

#### Styrene methacrylate (SMMA)

114. SMMA resins are clear, impact-resistant resins, which can be used in homeware, packaging, office, medical and electronic applications.
115. In previous decisions<sup>28</sup> the Commission considered different markets for the different thermoplastic resins, but ultimately left the market definition open. The Commission has also indicated that the relevant market for engineering thermoplastic resins may be EEA-wide or global.<sup>29</sup>
116. For the purpose of the present case, it is not necessary to define the ultimate scope of the relevant product and geographic markets, since the transaction will not give rise to competition concerns irrespective of the product market definition retained.

#### Expanded polystyrene (EPS)

117. EPS is a closed-cell, thermal plastic material produced from styrene monomer and a blowing agent such as pentane. It is supplied by producers to converters in the form of an EPS bead. When the beads are exposed to dry, saturated steam, they expand up to 50 times their original volume, to create a low density foam material.

---

<sup>26</sup> Case COMP/M.4682 *INEOS/Lanxess' engineering thermoplastic resins business*.

<sup>27</sup> Case No. COMP/M.4682 *INEOS/Lanxess' engineering thermoplastic resins business* (2007).

<sup>28</sup> COMP M. 3578 BP/Nova Chemicals/JV, Case No COMP/M.4682 - Ineos / Lanxess' engineering thermoplastic resins business.

<sup>29</sup> Case COMP/M.4682 *INEOS/Lanxess' engineering thermoplastic resins business*

EPS is used mainly for building and insulation applications, and to a lesser extent packaging.

118. In a prior decision<sup>30</sup>, the Commission regarded the market of all EPS as a distinct market. However, more recently the Commission<sup>31</sup> has considered the market for “very low lambda EPS” (grey EPS) as separate from the market from white EPS, but did not conclude on the product market definition. The Parties, in turn, submit that the market should be defined at least as wide as all EPS, but it could also include other insulation materials (polyurethane foam, mineral wool, etc.). As regards the geographic scope, the Commission previously defined the relevant geographic market for EPS as at least EEA-wide.<sup>32</sup> The Parties agree with this approach.
119. For the purpose of the present case, it is not necessary to conclude on the product and geographic market definitions, as the transaction will not give rise to competition concerns under any plausible market delineation.

#### Acrylonitrile styrene acrylate (ASA)

120. ASA is produced by introducing a grafted acrylic ester elastomer during the copolymerization reaction between SM and acrylonitrile. ASA has good toughness and rigidity, chemical resistance and thermal stability, resistance to weather, ageing and yellowing, and high gloss. End uses include automotive components, sports and leisure equipment, sheet applications, telecoms, and appliances.
121. ASA has not been previously defined by the Commission. The Parties consider that ASA is substitutable by a range of other weather-resistant polymers including UV stabilized ABS and weather-resistant PP. Regarding the geographic market, the Parties submit that the market for ASA is at least EEA wide in scope and note that suppliers such as SABIC, LG and Cheil make sales into the EEA from North America and Asia.
122. For the purpose of the present case, the product and geographic market definitions for ASA can be left open, as no competition concerns would arise under any possible market definition following the transaction.

---

<sup>30</sup> Case M.1078 *BP/Hüls* (1998).

<sup>31</sup> Case M.3578 *BP/Nova* (2005).

<sup>32</sup> Case M.3578 *BP/Nova* (2005).

*Competitive assessment*

**Merchant Market Sales of SM in EEA+CH, 2010<sup>33</sup>**

<b>Producer</b>	<b>Merchant sales (kt)</b>	<b>Share of merchant market sales (%)</b>
BASF <sup>[1]</sup>	[...]	[5-10]%
INEOS <sup>[2]</sup>	[...]	[5-10]%
<b>Combined</b>	[...]	<b>[10-20]%</b>
Lyondell/Bayer	[...]	[30-40]%
Shell	[...]	[20-30]%
Repsol	[...]	[10-20]%
Net merchant market imports	[...]	[10-20]%
<b>Total</b>	[...]	<b>100%</b>

*Source: Parties' estimates based on various sources.*

Notes: [1] Includes capacity, production and sales from BASF plants that are out of scope of the JV

[...]

**Merchant sales in the downstream markets in EEA+CH, 2010<sup>34</sup>**

<b>Downstream product</b>	<b>BASF (in %) (kt)</b>	<b>INEOS (in %) (kt)</b>	<b>Combined (in %) (kt)</b>
<i>PS</i>	[10-20]%	[10-20]%	[30-40]%
<i>GPPS</i>	[10-20]%	[20-30]%	[30-40]%
<i>HIPS</i>	[10-20]%	[10-20]%	[30-40]%
<i>EPS<sup>35</sup></i>	[20-30]%	[10-20]%	[40-50]%
<i>White EPS</i>	[10-20]%	[10-20]%	[30-40]%
<i>Grey EPS</i>	[60-70]%	[10-20]%	[70-80]%

<sup>33</sup> The parties estimate that the market share in terms of value (EUR) would be very similar to the volume figures.

<sup>34</sup> The parties estimate that market shares in terms of value closely correlate with those of volume.

<sup>35</sup> EPS will not be contributed to the JV.

<b>ABS</b>	[20-30]%	[10-20]%	[40-50]%
<i>Natural ABS</i>	[40-50]%	[5-10]%	[50-60]%
<i>Pre-coloured ABS</i>	[5-10]%	[20-30]%	[30-40]%
<i>HH ABS</i>	[10-20]%	[10-20]%	[30-40]%
<i>Medical Grade ABS</i>	[70-80]%	[5-10]%	[80-90]%
<b>SAN</b>	[30-40]%	[0-5]%	[40-50]%
<i>Industrial SAN</i>	[30-40]%	[10-20]%	[40-50]%
<i>Commercial SAN</i>	[30-40]%	[-]	[30-40]%
<b>ASA</b>	[70-80]%	[-]	[70-80]%
<b>SBC</b>	[60-70]%	[-]	[60-70]%
<b>SMMA</b>	[-]	[50-60]%	[50-60]%

*Source: the parties' best estimates*

### **SM Consumption by each of the vertically affected downstream markets, 2010**

Downstream product	% of SM capacity
<i>PS</i>	[30-40]%
<i>EPS</i>	[10-20]%
<i>ABS</i>	[10-20]%
<i>SAN</i>	[0-5]%
<i>ASA</i>	[0-5]%
<i>SBC</i>	[0-5]%
<i>SMMA</i>	[0-5]%
<b>TOTAL</b>	[80-90]%

*Source: CMAI and INEOS (SM consumption), Parties' estimates (typical product recipes), ICIS (raw material prices).*

123. On a structural basis, there is no merchant market overlap in the EEA+CH for SM since INEOS is short of SM in Europe and does not have surplus production available in the EEA to supply the merchant market. INEOS is substantially short of SM, with capacity of [...]kt and production of [...]kt in 2010, compared with internal SM use of [...]kt. INEOS is therefore reliant on third party supplies of SM in the EEA. On the other side, BASF is only slightly long in SM, with capacity of [...]kt and production of [...]kt in 2010 compared with internal SM use of [...]kt.

124. The combination of BASF and INEOS will therefore remain dependent on third party SM. SM produced by the JV will therefore primarily be used captively by the JV, with surplus (if any) sold to the merchant market.

*Input foreclosure*

125. As derived from the above tables, input foreclosure could not arise after the transaction as the parties' combined merchant market share in SM would be well below 25% ([10-20]%) in the EEA+CH, and much lower on a worldwide level. Moreover, there are a number of alternative suppliers active in the supply of SM both in the EEA+CH and globally, such as LyondellBasell ([30-40]%), Shell ([20-30]%) and Repsol ([10-20]%) in the EEA+CH, and SABIC, Pars PC, Asahi Kasei Chem, Idemitsu Kosan, Honam PC, TKSC, Secco, Repsol or Tianjin Dagu, on a global basis (with market shares ranging from [0-5]% to [5-10]%). The parties, in addition, underline that there is substantial spare capacity available in the market.

*Customer foreclosure*

126. As shown in the above tables, SM could be used in a range of products. The parties are active in the markets for PS, ABS, SAN, SBC, SMMA, ASA and EPS, which use SM as an input. However, there are other downstream markets where SM is used as an input but in which the parties are not active (such as unsaturated polyester resins, styrene butadiene rubber, thermoplastics elastomers or MBS copolymers). These markets represent [20-30]% of the SM production capacity.
127. Regardless of the high market shares in some of the downstream markets, the proposed JV will not be an important purchaser of SM in the EEA+CH. According to the parties, the JV will require, for all its downstream activities in the EEA+CH only [...] kt, which represents around [20-30]% of 2010 EEA+CH merchant market demand, and a much lower proportion of global demand. Even if the products that are not contributed to the JV (*i.e.* EPS and SBL – styrene butadiene latex) are taken into account, the percentage will still be moderate. Thus, the Parties' competitors in the upstream market for SM will be able to supply ca. [80-90]% of the SM demand in the downstream markets. As a consequence, it appears very unlikely that customer foreclosure could arise after the transaction.
128. Given the low market share in the upstream market for SM, and the moderate consumption of the JV in the related downstream markets, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards this vertical relationship.

**4. PS technology licencing (upstream) – PS (downstream)**

*Product and geographic market definition*

129. The product and geographic market for PS has been discussed in recital 11-21.

## PS technology licencing

130. INEOS licenses PS technology to producers of PS, all outside the EEA+CH. INEOS' PS technology licensing business will be contributed to the JV, but existing licences will remain with INEOS outside the JV. BASF does not actively license its PS technology<sup>36</sup>.
131. PS technology (i.e. the technology to make PS) can be licensed as a package of intellectual property and know how to third parties to allow the development of production facilities. Licensing comprises a bundle of technology and supporting services provided by the licensor or its contractor to the developer of the new facility<sup>37</sup>.
132. The Commission has previously considered PS technology licencing as a separate market and that the relevant geographic market for PS technology licencing is worldwide.<sup>38</sup> The Parties submit that they agree with this view.
133. For the purpose of the present case, it is not necessary to define the ultimate scope of the relevant product and geographic markets, since the transaction will not give rise to competition concerns irrespective of the product market definition retained.

## ***Competitive assessment***

### *Input foreclosure*

134. The parties submit that this vertical relationship does not give rise to foreclosure concerns, as INEOS' licensed PS technology will be used in around [...]kt of PS capacity by the end of 2011,<sup>39</sup> which it estimates corresponds to a market share of around [5-10]% (total global PS capacity in 2009 was [...]kt)<sup>40</sup>.
135. Issues of input foreclosure will not arise as there are a significant number of alternative providers of PS technology licensing, with no capacity limitations. There are at least four other licensors of PS technology: GE, Polimeri, Nippon Steel (Toyo Styrene) and Total Fina. INEOS considers that their technologies are substitutable for its technology at a comparable cost to a customer. INEOS assumes that each of the licensor's prices are in the same range, on the basis that

---

<sup>36</sup> [...]

<sup>37</sup> Case COMP/M.1671 *Dow/Union Carbide*.

<sup>38</sup> Case COMP/M.3578 *BP/Nova Chemicals/JV*.

<sup>39</sup> [...]kt of third party PS capacity and [...]kt of INEOS PS capacity. INEOS considers that it is appropriate to use capacity to estimate market share as data on production and sales from third party plants are not available.

<sup>40</sup> A INEOS has also licensed PS technology in relation to [...]kt of capacity due to start in [...] or currently delayed. Even if this extra capacity were attributed to INEOS, its market share would only be [10-20]% based on total PS capacity in 2009 (i.e. not taking into account other plants that are being built or planned using third party technology).

licence fees are relatively low for PS (i.e. there is little room for discounts) and contracts are awarded by tender.

136. INEOS' PS technology licensing would also therefore fall below 25% on this basis. Existing licenses granted by the Parties will be unaffected, as licensees already have a full licence for the lifetime of the plant at fixed royalty rates (if any).

#### *Customer foreclosure*

137. As regards customer foreclosure, there are many other potential customers globally, including additional new plants which will likely be built in Asia and the Middle East
138. Given the above, the Commission considers that the proposed transaction does not raise competition concerns as regards this vertical relationship.

#### **5. PS (upstream) - Extruded polystyrene (XPS) (downstream)**

139. BASF manufactures XPS in the EEA+CH under the trade name Styrodur. However, BASF's XPS business will not be contributed to the JV and INEOS is not active in XPS.

#### *Product and geographic market definition*

140. The product and geographic market for PS has been discussed in recital 11-21.

#### Extruded polystyrene (XPS)

141. Extruded polystyrene ("XPS") is a thermoplastic material used to produce polystyrene foam board and extruded foam sheet, which are used in thermal insulation, sheathing, roofing and construction applications.
142. The Commission has previously considered XPS as part of a wider market for insulation materials but left open whether this market could be subdivided into further categories of insulation materials produced by foam (XPS, expanded polystyrene and polyurethane foam) or mineral wools (stone wools or glass wools)<sup>41</sup>. In addition to XPS (where only BASF is active), BASF and INEOS are both active in EPS and BASF is active in PU foam.
143. The geographic market for EPS, which is an alternative insulation material, has previously been found to be at least at least EEA-wide<sup>42</sup>. The competitive supply range is estimated to be about 500 km around a plant and given this wide supply radius, there is likely to be a chain of substitution across Europe.

---

<sup>41</sup> Case COMP/M.3943 Saint-Gobain/BPB.

<sup>42</sup> Case COMP/M.3578 BP/Nova Chemicals/JV.



144. However, for the purpose of the present case, it is not necessary to define the ultimate scope of the relevant product and geographic markets, since the transaction will not give rise to competition concerns irrespective of the product market definition retained

***Competitive assessment***

145. There are approximately 30 XPS producers (including Dow, Ursa, CRH, Knauf, Fibran and Decem) in the EEA + Switzerland, and purchasers can and do switch easily between the different suppliers and alternative materials.

146. The Parties estimate that BASF’s share of the XPS market is [10-20]%, therefore it is very unlikely that input or customer foreclosure could arise due to this vertical relationship.

**All insulation materials and foam insulation materials markets,  
EEA + Switzerland, 2009**

	All insulation materials		Foam insulation materials	
	Volume (kt)	Share (%)	Volume (kt)	Share (%)
BASF	[...]	[5-10]%	[...]	[10-20]%
INEOS	[...]	[5-10]%	[...]	[10-20]%
Others	[...]	[80-90]%	[...]	[60-70]%
<b>Total market</b>	[...]	<b>100%</b>	[...]	<b>100%</b>

*Source: Parties*

147. Additionally, where PS is used in the manufacture of XPS for insulation (customers including Decem, Finnfoam, Uralita and Fibran), alternative insulation materials such as mineral wool or polyurethane (“PUR”) are substitutes from the final customer’s perspective. Furthermore, a number of converters are also putting themselves in a position to be able to switch between the manufacture of XPS and other insulating materials.

148. Given the above, the Commission considers that the proposed transaction does not raise competition concerns as regards this vertical relationship.

**6. ACN (upstream) – ABS, SAN, AMSAN and ASA(downstream)**

149. ACN is produced by INEOS and serves as an input for the joint venture’s production of ABS, SAN, AMSAN and ASA.

## ***Product and geographic market definitions***

### ACN

150. Acrylonitrile (“ACN”) is used in the production of SAN, ABS, ASA and AMSAN, as well as acrylic fibre, acrylonitrile butadiene rubber, acrylamide and adiponitrile (a nylon intermediate). The Commission has previously found that ACN is a separate product market.<sup>43</sup> The Parties agree with this approach.
151. The Commission has previously considered that the relevant geographic market for ACN is at least European (with or without Turkey) and may be global.<sup>44</sup> The Parties consider that the relevant market is global because of low transport costs, extensive trading on a global basis, in particular from the USA, and import of ACN to the EEA by both end-customers and traders. The Parties also submit that, should the market be considered narrower than global, Turkey should be included in the European market for the same reasons as noted before.
152. As no competition concerns arise with any market definition, the exact delineation of the product and geographic markets can be left open.

### Alpha-methylstyrene acrylonitrile (AMSAN)

153. AMSAN has not been previously looked at by the Commission. It is one of several additives which may be used for the manufacture of high heat resistant ABS (“HH-ABS”). Other additives include using N-Phenylmaleimide (“NPMI”) or polycarbonate (“PC”). AMSAN is also used to a much lesser extent as an additive in the production of high heat grades of other polymers such as ASA and PVC.
154. The Parties submit that the geographic market for either high heat additives or AMSAN is at least EEA+Switzerland and may be wider as there are no technical reasons as to why it could not be transported over wider distances.
155. For the purpose of the present case, it is not necessary to define the ultimate scope of the relevant product and geographic markets, since the transaction will not give rise to competition concerns irrespective of the product market definition retained.
156. The product and geographic market for ABS has been discussed in recital 40-55.
157. The product and geographic market for SAN has been discussed in recital 102-107.
158. The product and geographic market for ASA has been discussed in recital 120-122.

---

<sup>43</sup> Case No COMP/M.2345 *Deutsche BP/Erdölchemie* (2001). See also M.4682 *NEOS/Lanxess* (2007) and Case No COMP/M.5238 *INEOS/BASF Assets* (2008).

<sup>44</sup> In COMP/M.5238 *INEOS/BASF Assets* (2008) the Commission considered that the relevant geographic market might be European or worldwide, but left the definition open.

## *Competitive assessment*

### *Input foreclosure*

159. The Parties submit that issues of input foreclosure will not arise from the vertical link between ACN and ABS, SAN, AMSAN and ASA, as INEOS' market share in ACN is not significant ([30-40]% in the EEA+CH but much lower at a global level). The Parties estimate that around [10-20]% of ACN demand in the EEA+CH in 2010 was used for the production of ABS and SAN, whereas AMSAN and ASA, together, accounted for less than [0-5]% of ACN demand in the EEA+CH. Therefore, ca. [80-90]% of the EEA+CH demand for ACN came from other related downstream markets. Given the latter, the Parties submit that they will not have the ability to foreclose other producers of ABS, SAN, AMSAN and ASA from access to ACN. In particular, these producers could source ACN from the other European suppliers of ACN - DSM, Petkim and Neftochim - or purchase from non-European suppliers (including from traders). The Parties also expect that imports would increase (in particular from the USA) in response to any hypothetical withholding strategy by INEOS.
160. It should also be observed that the parties committed to sell the Industrial SAN production at the Tarragona plant which amounts to [5-10]% of the EEA+CH and [0-5]% of the worldwide SAN production, thereby limiting the parties' activities in SAN.
161. The Parties moreover submit that ACN is a commodity chemical and that customers could easily switch to alternative sources of supply, thus undermining any foreclosure strategy.

### *Customer foreclosure*

162. As far as customer foreclosure is concerned, the Parties submit that the JV will not be an important customer of ACN on the merchant market. In 2009, the Parties' combined purchases of ACN on the merchant market were [...]kt (ca. [5-10]% of the total EEA+CH merchant market).
163. Given the moderate JV's requirements from the upstream market for ACN, input or customer foreclosure concerns will not arise after the transaction. The Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards this vertical relationship.

## **7. Butadiene (upstream) – ABS and SBC (downstream)**

### *Product and geographic market definitions*

#### Butadiene

164. Butadiene is an input to a number of products<sup>45</sup> and a key component in synthetic rubbers used in car tyres and in synthetic latices used in the paper industry.
165. In line with the Commission's previous decisions<sup>46</sup>, the Parties consider that the supply of butadiene constitutes a relevant product market due to its physical characteristics and the absence of substitutes for its specific uses.
166. The Commission has previously envisaged that the geographic scope for butadiene could be Western Europe+, which includes Western Europe, Poland and the Czech Republic<sup>47</sup>. The Parties consider that there are also strong arguments to support a wider market definition, given that butadiene is a commodity which is widely traded across borders, by barge, rail, pipe, truck and refrigerated ship.
167. For the purpose of the present case, it is not necessary to define the ultimate scope of the relevant product and geographic markets, since the transaction will not give rise to competition concerns irrespective of the product market definition retained.
168. The product market definitions of ABS is discussed in recital 40-55
169. The product market definitions of SBC is discussed in recital 109-113

### *Competitive assessment*

170. BASF and INEOS are active in the production of butadiene but will not be contributing their butadiene businesses to the JV<sup>48</sup>. The JV therefore does not give rise to a horizontal overlap in relation to the production and sale of butadiene.

### *Input foreclosure*

171. Issues of input foreclosure will not arise as the Parties' combined merchant sales market share in butadiene is well below 30%. The Parties estimate their share of the merchant market in the EEA+CH at [10-20]%, and contend that the top 5

---

<sup>45</sup> Such as SBC, polybutadiene, styrene-butadiene latex, adiponitrile, thermoplastic elastomers, ABS, nitrile rubber and polychloroprene rubber.

<sup>46</sup> Case No. COMP/M.2345 *Deutsche BP/Erdölchemie*, Case No. COMP/M. 4041 *Basell/Société du Craqueur de l'Aubette*, Case No. COMP/M.4426 *SABIC/Huntsman Petrochemicals UK*.

<sup>47</sup> Case No. COMP/M.4041 – Basell / Société du Craqueur de l'Aubette.

<sup>48</sup> Supply agreements between INEOS and the JV and BASF and the JV will be put in place for a transitional period.

suppliers globally only account for around [20-30]% of global capacity, suggesting there are multiple alternative suppliers worldwide for butadiene.

#### *Customer foreclosure*

172. Concerning customer foreclosure, the proposed JV will be a small customer of butadiene on the merchant market. In 2010, the Parties' combined purchases of butadiene on the merchant market were just [0-5]% of merchant market demand.
173. In light of the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to this vertical relationship.

#### **8. Additives (upstream) - ABS, SAN, ASA, PS and PA/ABS (downstream)**

174. BASF produces additives which can be used as an input for the joint venture's ABS (both natural and pre-coloured ABS), SAN, ASA, PS and PA/ABS production. BASF supplies in particular light stabilisers, UV absorbers and antioxidants. INEOS is not active in additives.

#### *Product and geographic market definitions*

##### Additives

175. In its most recent decision in the segment<sup>49</sup> the Commission distinguished different types of additives (including hindered amine light stabilisers and primary antioxidants) as separate markets with possible sub-segmentations in certain cases according to their application (plastics/coatings). To be conservative, the parties consider the narrowest definition – i.e. sub-segmented by type of additive and by application (in plastics).
176. In BASF/CIBA<sup>50</sup>, the Commission concluded that the geographic market for light stabilisers and for antioxidants was at least EEA wide. The Parties agree with the Commission precedent.
177. For the purpose of the present case, it is not necessary to define the ultimate scope of the relevant product and geographic markets, since the transaction will not give rise to competition concerns irrespective of the product market definition retained.

##### PA / ABS

178. PA/ABS is a blend of polyamide (PA) and ABS. It is a relatively new product which could potentially be used in applications such as automotives, housings for power tools, garden equipment and sports goods. PA/ABS is tougher and more durable than either PA or ABS separately but also has a high quality finish.

---

<sup>49</sup> Case M.5355 *BASF/CIBA*.

<sup>50</sup> Case M.5355 *BASF/CIBA*.

179. The Commission has not previously considered the product and geographic market for PA/ABS. According to the Parties, from a demand-side PA/ABS may be substituted by a range of other polymers including, PP, HIPS, PVC, PC, PC/ABS and MABS. From a supply-side perspective, the technology required to compound the two together to form PA/ABS is simple and the same equipment is used to compound other polymers. Regarding the geographic scope, the Parties consider that the market for PA/ABS is at least EEA wide, and may be global.
180. For the purpose of the present case, the product and geographic market definitions can be left open, as no competition concerns will arise due to the transaction regardless of the market definition considered.
181. The product and geographic market for ABS has been discussed in recital 40-55.
182. The product and geographic market for SAN has been discussed in recital 102-107.
183. The product and geographic market for ASA has been discussed in recital 120-122.
184. The product and geographic market for PS has been discussed in recital 11-21.

***Competitive assessment***

185. The Parties submit the following market shares for the relevant types of additives:

Additive type	Global		EEA	
	BASF share of plastics applications	Other notable suppliers (% share of plastics applications)	BASF share of plastics applications	Other notable suppliers (% share of plastics applications)
HALS (Hindered Amine Light Stabilisers possibly segmented between Low (LMW) and High (HMW) molecular weight)	LMW HALS: [30-40]% HMW HALS: [40-50]%	LMW HALS: - Sabo (20-30%) - Cytec (10-20%) - Chemtura (10-20%) HMW HALS: - Cytec (10-20%) - Chemtura (<10%) - Sabo (<10%)	LMW HALS: [30-40]% HMW HALS: [40-50]%	LMW HALS: - Sabo (20-30%) - Cytec (10-20%) - Chemtura (10-20%) HMW HALS: - Chemtura (10-20%) - Cytec (10-20%) - Sabo (10-20%)
UV absorbers (sub-segmented to - benzophenones (BPO) - benzotriazoles (BTZ) - other UVA and HPT)	BPO: 10-20% BTZ: 30-40% Other UVA and HPT: 10-20%	BPO: - Cytec (15-25%) - Chemtura (5-15%) - Adeka (<10%) - Clariant (<10%) - 3V Sigma (<10%) - Everlight (<5%) BTZ: - Cytec (5-15%) - Adeka (5-15%) - Chemtura (5-15%) - Everlight (5-15%) Other UVA&HPT: - Cytec (5-15%) - Clariant (5-15%)	BPO: 20-30% BTZ: 30-40% Other UVA and HPT: 10-20%	BPO: - Cytec (10-20%) - Chemtura (5-15%) - Adeka (5-10%) - Clariant (<10%) - 3V Sigma (<10%) - Everlight (<10%) BTZ: - Cytec (5-15%) - Adeka (<10%) - Chemtura (10-20%) - Everlight (5-15%) Other UVA&HPT: - Cytec (5-15%) - Clariant (5-15%)
Antioxidants	30-40%	- Songwon (20-25%) - Chemtura (10-15%) - Everspring (5-10%) - Albemarle (5-10%)	40-50%	- Songwon (20-25%) - Chemtura (10-15%) - Everspring (5-10%)

Source: Form CO

### *Input foreclosure*

186. Despite the significant market shares in the markets for additives shown in the table, the JV's requirements will be negligible. The production of ABS (including PA/ABS) and PS together account for 5-10% of total global and EEA demand for HALS; for 10-20% of total global and EEA demand for UV absorbers; and for 5-15% of total global and EEA demand for antioxidants. Each of SAN and ASA account for under 5% of total additives demand.
187. The parties submit that ABS and PS together account for between 5-20% of total demand for each of the relevant additives. In aggregate, PS, ABS, SAN, PA/ABS and ASA therefore account for 20-35% of total demand for these additives.
188. The Parties further submit that other suppliers of additives are not capacity constrained and are well-placed to increase supplies in the event of a hypothetical price increase/refusal to supply additives by BASF.

189. The Parties further argue that a large proportion of BASF's sales for plastics applications of HALS and UV absorbers and to some extent also its equivalent sales of antioxidants, are to masterbatch producers who act as quasi distributors of additives. They are therefore an alternative source of additives for suppliers of ABS.

#### *Customer foreclosure*

190. The parties submit that INEOS' JV businesses currently purchase up to [90-100]% of its total requirements for particular types of additive from BASF. The SAN sold by INEOS has not been modified by the addition of additives. INEOS therefore makes no purchases of additives from BASF (or any other supplier) for use in the production of SAN. INEOS does not produce ASA and therefore makes no purchases of additives from BASF (or any other supplier) for use in the production of ASA.

191. If INEOS were to buy 100% of its requirements for all additives from BASF, the incremental volume would represent only a de minimis portion of total additives demand.

192. Given the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards this vertical relationship.

#### **9. Dyes and additives (upstream) - ABS, SAN, ASA and PA/ABS (downstream)**

193. BASF produces dyes which can be used as an input for the joint venture's pre-coloured ABS, SAN, ASA and PA/ABS production. INEOS is not active in dyes.

#### *Product and geographic market definitions*

##### Dyes

194. In *BASF/CIBA*<sup>51</sup>, the Commission suggested that dyes could be also segmented by chemical class and by application, but ultimately left the market definition open.<sup>52</sup> The parties underline that majority of BASF dyes are sourced for plastics applications, thus, a market for plastic applications will be considered in this case. As per the geographic market definition, in *BASF/CIBA* the Commission held that the market for each class of dye was at least EEA.

---

<sup>51</sup> Case M.5355 *BASF/CIBA*.

<sup>52</sup> As regards demand-side substitution from products in neighbouring markets, ABS may alternatively be coloured using pigments, but the extent to which pigments/dyes are interchangeable will depend inter alia on the production process used and the desired end product characteristics. Dyes are more soluble than pigments but have lower light and colour fastness. BASF produces a limited range of dyes which may be used in the production of pre-coloured ABS. Plastics account for under 10% of total demand for dyes.



195. For the purpose of the present case, the product and geographic market definitions for dyes can be left open, as no competition concerns will arise post- transaction under any possible market definition.
196. The product and geographic market for SAN has been discussed in recital 102-107.
197. The product and geographic market for ASA has been discussed in recital 120-122.
198. The product and geographic market for PA/ABS has been discussed in recital 178-180.

### ***Competitive assessment***

#### *Input foreclosure*

199. The Parties submit that they will have no ability to foreclose other customers of dyes as they will continue to have a variety of alternative sources of dyes (including Clariant, Huntsman, Dystar, Albion and Kemira) who can and will continue supplying them.
200. Furthermore, they submit that BASF is active in the supply of a limited range of dyes. BASF's share of dyes for plastics is approximately [10-20]% in the EEA<sup>53</sup> and approx. [10-20]% globally<sup>54</sup>. Third party suppliers therefore account, according to the Parties, for at least [80-90]% of supply to plastics applications whichever the geographic market is defined.
201. The Parties also note that plastics (including ABS, SAN, ASA and PA/ABS) account for under [5-10]% of total demand for dyes. It is therefore not plausible that any input foreclosure concerns could arise with respect to dyes.

#### *Customer foreclosure*

202. Regarding customer foreclosure, the Parties submit that even if the JV were to buy 100% of its requirements from BASF, the incremental volumes represent only a de minimis portion of total dye demand. According to the Parties, each of SAN, PA/ABS and ASA account for under [0-5]% of total dyes demand. In aggregate, ABS, SAN, PA/ABS and ASA therefore account for under [0-5]% of total dyes demand. Other suppliers of dyes could therefore not be foreclosed as numerous other outlets both in other plastics applications and more generally would remain.

---

<sup>53</sup> Source: BASF estimates. Other EEA suppliers include Clariant (approx. 10-20%), Lanxess (approx. [40-50]%) and Colorchem (0-10%).

<sup>54</sup> Source: BASF estimates. Other global suppliers include Clariant (approx. [10-20]%), Lanxess (20-30%) and Colorchem (10-20%).

203. The parties also submit that INEOS does not use dyes in the production of PA/ABS and ASA and therefore makes no purchases of dyes from BASF (or any other supplier). Also, INEOS does not sell pre-coloured SAN and therefore makes no purchases of dyes from BASF (or any other supplier) for use in the production of SAN.
204. Given the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards this vertical relationship.

#### **10. Pigments(upstream) – ABS, SAN, ASA and PA/ABS (downstream)**

205. BASF produces pigments which can be used as an input for the joint venture's pre-coloured ABS, SAN, ASA and PA/ABS production. Ineos is not active in pigments.

#### ***Product and geographic market definitions***

##### Pigments

206. In its most recent decision related to pigments<sup>55</sup>, the Commission drew a first distinction between organic and inorganic pigments and further sub-segmented the supply of pigments according to class<sup>56</sup>. The Commission also considered possible product delineations by application<sup>57</sup>, however did not further sub-divided the market as the assessment of the transaction did not change significantly. In the case at hand, and to be conservative, the Parties consider the market by class and by application (i.e. for plastics).<sup>58</sup>
207. In BASF/CIBA<sup>59</sup> the Commission considered the market for pigments as at least EEA wide. The parties agree with this approach.
208. For the purpose of the present case, it is not necessary to conclude on the product and geographic market definitions, as the transaction will not give rise to competition concerns under any plausible market delineation.
209. The product and geographic market for ABS has been discussed in recital 40-55.

---

<sup>55</sup> Case M.5355 *BASF/CIBA*.

<sup>56</sup> Case M.5355 *BASF/CIBA*. Each class (or "family") of pigments possesses a unique combination of colour shades and properties (e.g. light fastness or brightness). More than 20 pigment classes can be distinguished. BASF is active as a seller in all bar black, white and, other than *de minimis* sales, opaque iron oxide.

<sup>57</sup> Case M.5355 *BASF/CIBA*.

<sup>58</sup> Note: plastics account for only about [20-30]% of total demand for pigments in which BASF is active. Data supplied in this section refer only to use of pigments in plastics.

<sup>59</sup> Case M.5355 *BASF/CIBA*.

210. The product and geographic market for SAN has been discussed in recital 102-107.

211. The product and geographic market for ASA has been discussed in recital 120-122.

212. The product and geographic market for PA/ABS has been discussed in recital 178-180.

**Competitive assessment**

**Merchant Market Sales of pigments globally and in EEA, 2010<sup>60</sup>**

Pigment class	Global		EEA	
	BASF share of plastics applications	Other notable suppliers (% share of plastics applications)	BASF share of plastics applications	Other notable suppliers (% share of plastics applications)
Titanate	[30-40]%	- Ferro (25-35%) - Heubach (10-20%) - Tomatech (10-20%)	[40-50]%	- Ferro (15-25%) - Heubach (20-30%) - Tomatech (5-15%)
PCN Green	[20-30]%	- Heubach (20-30%) - Asian suppliers (inc Meghmani and Jeco) (45-55%)	[20-30]%	- Heubach (15-25%) - Asian suppliers (inc Meghmani and Jeco) (35-45%)
PCN Blue	[20-30]%	- Toyo (25-35%) - Clariant (5-15%)	[30-40]%	- Toyo (15-25%) - Clariant (10-20%)
Azo-salts	[30-40]%	- Clariant (20-30%) - DIC (5-15%)	[30-40]%	- Clariant (25-35%) - DIC (0-10%)

Source: FORM CO

**Input foreclosure**

213. BASF produce and sell a number of pigments which are used for plastic applications. In particular, the following pigments are used as an input for the production of pre-coloured ABS: Titanate, PCN Green, PCN Blue, Azo-salts. In these pigments classes, BASF has significant market shares ([40-50]%, [30-40]%, [30-40]% and [30-40]%, respectively).

---

<sup>60</sup> The parties estimate that the market share in terms of value (EUR) would be very similar to the volume figures.

214. Nonetheless, in the classes of pigments in which BASF is active, plastics represent approximately [20-30]% of total pigment demand,<sup>61</sup> of which ABS accounts for only about [5-10]% of that plastics demand (i.e. [0-5]% of total demand). Even considering each of the classes of pigments above mentioned individually, BASF estimates that ABS accounts for approximately [5-10]% of total plastics demand for each of titanate, PCN Blue, PCN Green and Azo-salts, whether globally or in the EEA. The parties submit that ABS accounts for only [0-5]% of total pigments demand. In aggregate, ABS, SAN, PA/ABS and ASA account for under [5-10]% of total pigments demand.

#### *Customer foreclosure*

215. Regardless of the high market shares in some of the downstream markets, the proposed JV will be an insignificant purchaser of pigments in the EEA or worldwide (less than [0-5]% under any potential market segmentation). Even if the JV were to buy 100% of its requirements from BASF, the incremental volumes represent only a *de minimis* portion of total pigment demand. Other suppliers of pigments could therefore not be foreclosed as [90-100]% of the total demand will source from other suppliers.

216. The parties submit that total sales of pigments by BASF to INEOS' ABS business amounted to approx. [...] in 2010. This includes purchases by INEOS for use in pre-coloured ABS and in PA/ABS. INEOS ABS (including PA/ABS) currently purchases under [0-5]% of its total pigment requirements from BASF and between 0% and 10% of any particular pigment class. They further submit that INEOS makes no purchases of pigments from BASF (or any other supplier) for use in the production of SAN or ASA.

217. Given the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market as regards this vertical relationship.

#### **11. SAN (upstream) - ABS and MABS (downstream)**

218. Both BASF and INEOS produce SAN which serves as an input for the joint venture's ABS production as well as BASF's MABS production.

#### ***Relevant product market***

##### **MABS**

219. MABS, a thermoplastic resin, is a tough, transparent plastic, with high surface brilliancy and finish. MABS is produced by compounding SAN with PMMA and polymethacrylate butadiene styrene rubber. It is used in applications in areas including medical technology and diagnostics, cosmetics and hygiene, sports and leisure, *inter alia*.

---

<sup>61</sup> Significant volumes of black, white and opaque iron oxide pigments are also sold within the EEA. BASF is not active in black or white pigments and has only *de minimis* sales of opaque iron oxide.

220. In INEOS/Lanxess the Commission held that the relevant product market may comprise all types of engineering thermoplastic resins<sup>62</sup> which are considered substitutable with ABS resins, but ultimately left the market definition open.<sup>63</sup>
221. The Parties consider that their transparent engineering thermoplastics are generally demand-side substitutable with a wide range of transparent engineering thermoplastics including GPPS, SAN, SBC, MABS, PC, PET and PMMA.
222. In INEOS/Lanxess, the Commission indicated that the relevant market for engineering thermoplastic resins may be global or EEA-wide.<sup>64</sup> The Parties submit that the relevant geographic market is global as transparent thermoplastic resins are readily transportable (they are actively traded between Europe, Asia and America) and there are no significant barriers to trade.
223. Given that the transaction would not lead to competition concerns under any product or geographic market definition, the exact scope of the market can be left open.
224. The product market for SAN has been discussed in recital 102-107.
225. The geographic market for ABS has been discussed in recital 40-55.

### *Competitive assessment*

226. The Parties submit the following market shares for SAN:

---

<sup>62</sup> Engineering thermoplastics resins are tough high impact resins that are used in a broad range of industries.

<sup>63</sup> Case No. COMP/M.4682 *INEOS/Lanxess' engineering thermoplastic resins business* (2007) at paragraph 9. The Commission did not refer to MABS, SBC or SMMA in that case.

<sup>64</sup> Case No. COMP/M.4682 *INEOS/Lanxess' engineering thermoplastic resins business* (2007) at paragraph 21.

**SAN merchant market - industrial and commercial SAN, 2010**

	Industrial				Commercial			
	Global		EEA + Switzerland		Global		EEA + Switzerland	
	Volume (kt)	Share (%)	Volume (kt)	Share (%)	Volume (kt)	Share (%)	Volume (kt)	Share (%)
<b>BASF</b>	[...]	[5-10]%	[...]	[30-40]%	[...]	[10-20]%	[...]	[30-40]%
<b>INEOS</b>	[...]	[5-10]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[0]%
<i>Combined</i>	[...]	[10-20]%	[...]	[40-50]%	[...]	[20-30]%	[...]	[30-40]%
<b>Styron</b>	[...]	[5-10]%	[...]	[20-30]%	[...]	[0-5]%	[...]	[20-30]%
<b>Polimeri</b>	[...]	[5-10]%	[...]	[20-30]%	[...]	[0-5]%	[...]	[20-30]%
<b>Others</b>	[...]	[70-80]%	[...]	[10-20]%	[...]	[60-70]%	[...]	[10-20]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: *Form CO*

**All SAN merchant market, 2010**

	Global		EEA + Switzerland	
	Volume (kt)	Share (%)	Volume (kt)	Share (%)
<b>BASF</b>	[...]	[10-20]%	[...]	[30-40]%
<b>INEOS</b>	[...]	[10-20]%	[...]	[0-5]%
<i>Combined</i>	[...]	[20-30]%	[...]	[40-50]%
<b>Styron</b>	[...]	[0-5]%	[...]	[20-30]%
<b>Polimeri</b>	[...]	[0-5]%	[...]	[20-30]%
<b>Others/imports</b>	[...]	[60-70]%	[...]	[10-20]%
Total	[...]	100%	[...]	100%

Source: Form CO

*Input foreclosure*

227. As regards input foreclosure, the Parties submit that neither BASF nor INEOS, nor the JV post-transaction, would have the ability to foreclose downstream competitors who are also customers for industrial SAN for the following reasons: (i) industrial SAN is a commodity product that is produced by all major ABS producers and can also be produced on all commercial SAN lines. This means that the JV would not have a significant degree of market power since customers can switch easily to competitors, (ii) a significant number of competing producers are active on the worldwide market, including Cheil, LG, Chi Mei, Kumho, Styron, Daicel and Enichem, (iii) there are two alternative SAN suppliers in Europe, namely Styron and Polimeri, (iv) there is considerable spare capacity on the market both in Asia and the EEA. In fact, in recent years numerous suppliers have begun producing SAN, including Asahi Kasei Chemical, Chemtura, Daicel Polymer, Forma Chemicals and Fibre, Ginar Technology and Kumho Petrochemical.

*Customer foreclosure*

228. BASF submits further that no customer foreclosure concerns arise, as BASF and INEOS already source all of their SAN requirements either internally or from each other.

229. It should also be observed that the parties committed to sell the SAN production at the Tarragona plant which amounts to [5-10]% of the EEA+CH and [0-5]% of the worldwide SAN production, thereby limiting the parties' activities in SAN.

230. In light of the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to this vertical relationship.

## **12. ABS (upstream)- Polyamide/ABS (PA/ABS) (downstream)**

### *Product and geographic market definition*

231. The product and geographic market for ABS has been discussed in recital 40-55.

232. The product and geographic market for PA/ABS has been discussed in recital 178-180.

### *Competitive assessment*

233. PA/ABS is a relatively new product, demand for PA/ABS is currently very limited (estimated at around [...]kt in the EEA+CH by the parties). INEOS' presence on this market is solely through a toll manufacturing agreement with the compounder [...] and it does not have any production capacity for PA/ABS. BASF produces PA/ABS at its Schwarzheide and Ulsan plants and produced [...]kt in 2010<sup>65</sup>.

234. The market for PA/ABS is very small when compared with the sizes of the merchant markets for PA for industrial applications ([...]kt in the EEA+CH in 2010) and ABS ([...]kt for the merchant ABS market at the end supplier level). Therefore, given the very small size of this market in the EEA+CH ([...]kt) and the size of the respective upstream markets, it is unlikely that input or customer foreclosure may arise with respect to PA/ABS as a result of the merger.

235. In light of the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to this vertical relationship.

## **13. Polyamide (upstream) - Polyamide/ABS ("PA/ABS") (downstream)**

236. The parties sell small (largely trial) volumes of PA/ABS. [...]. BASF produces PA/ABS in two of its plants.

### *Product and geographic market definition*

#### Polyamide (PA)

237. PA (also known as "nylon") is commonly used in textiles, carpets and a range of industrial applications due to its durability and strength. There are a number of different variants of PA (with differing chemical compositions and properties), including PA 6, PA 6.6, PA 11 and PA 12.

---

<sup>65</sup> This represents around [80-90]% of BASF's capacity for the production of PA/ABS.



238. In a number of previous cases<sup>66</sup>, the Commission considered PA as a relevant market and distinguished between its main applications, namely: carpets, textiles and industrial applications (i.e. for engineering plastics). In addition, in Rhone-Poulenc/Caffaro<sup>67</sup> the Commission suggested that PA 6 and PA 6.6 could be two separate markets due to differences in heat resistance, price and production processes. However, the Commission has never concluded on the product market definition for PA. The Parties also believe the product market definition can be left open
239. The Commission, in a preceding decision<sup>68</sup>, defined the market for PA for industrial applications as EEA-wide. The Parties note that there exist significant trade flows on the market for PA for industrial applications.
240. For the purpose of the present case, it is not necessary to conclude on the product and geographic market definitions, as the transaction will not give rise to competition concerns under any plausible market delineation.
241. The product and geographic market for PA/ABS has been discussed in recital 178-180.

#### *Competitive assessment*

242. See recitals 233 to 235.

#### **14. AMS (upstream) - Alpha-methylstyrene acrylonitrile (AMSAN) (downstream)**

243. INEOS produces AMS in a plant which is not part of the INEOS styrenics businesses which are being contributed to the JV. BASF does not produce AMS. BASF produces AMSAN, most of which it consumes internally but supplies some to third parties. The BASF AMSAN business will be contributed to the JV. INEOS does not produce AMSAN.

#### *Product and geographic market definitions*

##### Alpha-methylstyrene (AMS)

244. AMS is an intermediate chemical used in manufacturing plasticisers and resins and in polymerisation processes. Its commercial applications include floor tiles, adhesives, floor polishers and plastics. AMS is also used in the manufacture of

---

<sup>66</sup> Case No. IV/M.206 *Rhone-Poulenc/SNIA* (1992) and Case No. IV/M.1083 *Rhone-Poulenc/Novalis/Nyltech* (1998).

<sup>67</sup> Case No. IV/M.427 *Rhone-Poulenc/Caffaro*

<sup>68</sup> Case No. IV/M.1083 *Rhone-Poulenc/Novalis/Nyltech* (1998).

AMSAN, which is an additive which may be added to ABS to increase heat resistance.

245. The Commission has not previously considered the product market for AMS. The parties submit that the market for AMS is at least EEA wide but may be wider as AMS can be easily transported.
246. For the purpose of the present case, it is not necessary to define the ultimate scope of the relevant product and geographic markets, since the transaction will not give rise to competition concerns irrespective of the product market definition retained.

***Competitive assessment***

247. INEOS is the largest supplier of AMS in the EEA, with other smaller suppliers including Cepsa, Polimeri, Novapex and Domo. At a global level, INEOS accounts for about [20-30]% of merchant market sales.

**AMS merchant market, 2010**

	EEA + Switzerland		Global		
Supplier	Sales Volume (kt)	Share (%)	Supplier	Sales Volume (kt)	Share (%)
<b>INEOS</b>	[...]	<b>[70-80]%</b>	<b>INEOS</b>	[...]	<b>[20-30]%</b>
<b>Cepsa</b>	[...]	<b>[10-20]%</b>	<b>Others</b>	[...]	<b>[70-80]%</b>
<b>Polimeri</b>	[...]	<b>[5-10]%</b>			
<b>Others (inc. Novapex and Domo)</b>	[...]	<b>[0-5]%</b>			
<b>Imports</b>	[...]	<b>[5-10]%</b>	<b>Imports</b>	[...]	
<b>Total</b>	[...]	100%	<b>Total</b>	[...]	100%

*Source: INEOS estimates*

### *Input foreclosure*

248. BASF is the only producer of AMSAN in the EEA+CH and estimates that imports of AMSAN for merchant market sales are small. On a global basis there are a few other AMSAN producers. However, when considering the wider additives market used in the production of HH-ABS, the parties argue that BASF will face competition from a number of NPMI and PC suppliers.
249. Input foreclosure should not arise as BASF is currently INEOS' only customer for AMS (for the production of AMSAN) and as INEOS' AMS business will not be contributed to the JV. The JV will therefore have no impact on INEOS' ability or incentive to continue to sell to third parties which are active in other sectors.

### *Customer foreclosure*

250. Customer foreclosure concerns should also not arise since BASF already supplies INEOS with [90-100%] of its European AMSAN requirements. As a result, the combination of BASF's AMSAN business in the same JV as INEOS' downstream HH-ABS business simply internalises the current supply arrangements. In addition, even if the JV decided to purchase all of its AMS requirements from INEOS Phenol, AMSAN is only one use of AMS. There are many alternative markets for AMS suppliers such as perfumes, adhesives and coatings, paracumylphenol, antioxidants and oils.
251. In light of the above, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to this vertical relationship.

## **15. AMSAN (upstream) – ABS (downstream)**

252. BASF produces AMSAN which serves as an input for the JV's ABS production. It is one of several additives which may be used for the manufacture of high heat resistant ABS

### *Product and geographic market definitions*

253. The product and geographic markets definition for AMSAN has been discussed in recital 153-155.
254. The product and geographic markets definition for ABS has been discussed in recital 40-55.

### *Competitive Assessment*

#### *Input foreclosure*

255. The parties submit that issues of input foreclosure will not arise as BASF currently only makes very limited supplies of AMSAN to third parties other than INEOS: less than [...]kt or under [20-30]% of its total third party sales in 2010. According to the parties, its ability and incentive to continue to do so will not be affected by the JV, particularly given that INEOS' demands are already being [90-100]% met

by BASF, which is nonetheless able also to supply third parties. They argue that with the exception of small volumes of AMSAN bought from BASF, other suppliers of HH-ABS source their high-heat additive internally or from sources other than BASF.

#### *Customer foreclosure*

256. In the view of the parties, customer foreclosure concerns should also not arise since BASF already supplies INEOS with [90-100%] of its European AMSAN requirements. As a result, the combination of BASF's AMSAN business in the same JV as INEOS' downstream HH-ABS business simply internalises the current supply arrangements.
257. In view of the above, the Commission considers that no competitive concerns will arise from the proposed transaction in respect of this vertical relationship.

### **C. COORDINATED EFFECTS**

258. A merger in a concentrated market may increase the likelihood that firms are able to coordinate their behaviour in the market. In the present case, the proposed transaction may result in a higher level of concentration in some of the relevant markets. However, given the specific market context, the Commission considers that the operation is not likely to increase the incentives for coordination in the markets concerned.
259. First, the proposed transaction will break the symmetry of market shares among the remaining main competitors in almost all the EEA affected markets. Thus, the substantial asymmetries between the shares of the individual players would generate different incentives to coordinate and different incentives and abilities to punish deviations. Moreover, on a global basis market shares are fragmented in most of the cases, with no individual suppliers with shares over [10-20]%.
260. Second, the affected markets are not sufficiently transparent, in particular in terms of prices. More generally, formula-based prices are not the industry-norm. The prevalence of freely negotiated deals would render tacit coordination of prices all the more difficult and make undetected price deviation simple. Third, a number of post-merger markets will also face external competitive constraints in the form of competing polymers.
261. Finally, none of the respondents to the market investigation expressed any concern about increased incentives for coordination in relation to any of the affected market as a result of the transaction.
262. It follows that the proposed transaction does not raise serious doubts as to its compatibility with the common market with respect to coordinated effects in any of the affected markets.

## V. COMMITMENTS

### Procedure

263. On 11 May 2011, BASF and INEOS submitted commitments to remove the serious doubts identified by the Commission in the market for ABS. BASF and INEOS proposed to divest INEOS' entire operation in Tarragona, Spain, which produces natural ABS, pre-coloured ABS, medical grade ABS and SAN. The Commission carried out an extensive market test among the Parties' competitors (both producers and compounders) and customers to assess the effectiveness of the commitments to remove the competition concerns identified. The market test confirmed that the proposed commitments would remove the competition concerns identified and, thus, would render the concentration compatible with the internal market. The Commission therefore concludes that the commitments, which are annexed to this decision and form an integral part of it, are sufficient to remove the competition concerns brought about by the proposed transaction.

### Description of the commitments

264. BASF and INEOS have committed to divest the entire INEOS site in Tarragona (the 'Divestment Business'). The Divestment Business consists of the ABS production facility and associated business owned by INEOS and located at Tarragona, Spain. The Divestment Business includes (subject, where relevant, to appropriate third party consents):

- i. all tangible and intangible assets including intellectual property rights (some of which will be transferred by non-exclusive licence or sub-licence), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
- ii. all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
- iii. all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business;
- iv. the Personnel; and
- v. the benefit, for a transitional period at the Purchaser's request and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which the Parties or Affiliated Undertakings supply products or services to the Divestment Business, unless otherwise agreed with the Purchaser.

265. BASF and INEOS consider that the proposed divestment significantly eliminates the parties' overlap in ABS and thus is suitable to remove any serious doubts as to the compatibility of the operation with the common market.

266. In addition BASF and INEOS have entered into related commitments, inter alia regarding the separation of the divested business from their retained businesses, the preservation of the viability, marketability and competitiveness of the divested business, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.

## **Assessment of the commitments**

### *1. Introduction*

267. As explained in the Commission notice on remedies<sup>69</sup>, under the Merger Regulation, the Commission assesses the compatibility of a notified concentration with the common market. Where a concentration raises competition concerns as it could lead to a significant impediment to effective competition, the parties may seek to modify the concentration in order to resolve the competition concerns raised by the Commission and thereby gain clearance of the merger. In assessing whether or not the commitment will restore effective competition, the Commission considers the type, scale and scope of the commitments by reference to the structure of and particular characteristics of the market in which competition concerns arise.

268. Where a proposed concentration threatens to significantly impede effective competition, creating the conditions for the emergence of a new competitive entity or the strengthening of existing competitors via divestiture may be an effective way to restore effective competition. The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete with BASF and INEOS on a lasting basis.

269. Whenever the notifying parties submit commitments, the Commission has thus to assess whether the commitments will lead to the restoration of effective competition on the relevant markets. In so doing, the Commission has to assess both (i) the independence, the viability and the competitiveness of the divested business on the long term and (ii) the effectiveness of the proposed commitment in removing the competition concerns. In order to carry out this assessment, the Commission may seek the views of competitors and customers on the relevant markets.

270. The Commission's assessment concluded that the proposed commitments address all concerns identified during the course of the procedure. Therefore, the Commission has concluded that the proposed commitments would be effective in removing all competition concerns brought about by the proposed transaction.

---

<sup>69</sup> Commission Notice on remedies acceptable under Council Regulation (EEC<sup>o</sup> No 4064/89 and under Commission Regulation (EC) No 447/98.

## 2. *Independence, viability and competitiveness*

271. The Commission's investigation has confirmed that the Divestment Business would constitute an independent and viable business. In this sense, the majority of the respondents considered that the proposed divestiture would constitute a viable business. Moreover, most of the respondents believed that there would be sufficient interest in the market to purchase the Divestment Business.

## 3. *Effectiveness of the commitments in removing the competition concerns*

272. The Tarragona site is equivalent in terms of overall production of ABS to the combined 2010 EEA + CH sales overlaps in both natural and pre-coloured ABS (including medical grade ABS).<sup>70</sup> The Parties also point out that Tarragona's plant is the largest and the newest of the two INEOS plants in Europe and that it has substantial spare capacity available.

273. In addition to removing more than the entire overlap in the area of pre-coloured ABS and medical grade ABS, Tarragona's plant also substantially reduces the Parties overlap in natural ABS. Furthermore, Tarragona site has a current manned production capacity of natural ABS of [...]kt ([20-30]% of the EEA+CH merchant market of natural ABS), and a nameplate maximum polymerisation capacity of [...]kt (ca. [30-40]% of the EEA+CH merchant market for natural ABS). Consequently, the potential purchaser will have sufficient capacity to expand its output substantially. In fact, Tarragona's natural ABS nameplate capacity would be more than 5 times the Parties' overlap in natural ABS. Furthermore, to re-man further capacity is feasible within a short period of time and at limited cost.

274. The Commission market tested the proposed commitment with competitors, compounders and customers in order to evaluate its ability to restore effective competition in the markets for ABS. The majority of the respondents considered that the proposed divestiture would eliminate the serious doubts as regard the markets for ABS.

275. Based on the information provided by BASF and INEOS and the results of the remedies market test, the proposed divestment business appears to be viable and attractive to prospective purchasers.

276. For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the transaction with the internal market.

---

<sup>70</sup> The divestment business also includes two mass SAN lines with capacity of [...]kt and [...]kt. SAN is used as an input for the production of ABS.

#### *4. Conclusion on the commitments*

277. The assessment of the proposed commitments carried out by the Commission shows that the Divestment Business constitutes a stand-alone and viable business capable of competing with the new entity Styrolution on the markets where serious concerns were found, e.g. overall ABS market, natural ABS and pre-coloured ABS.
278. The Commission therefore considers the commitments suitable for remedying the serious doubts on the compatibility of the concentration with the common market and the EEA, which have been established in the previous sections of this Decision.

#### **Conditions and obligations**

279. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.
280. The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's Decision declaring the concentration compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance Decision in accordance with Article 8(5) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation. In accordance with the basic distinction described above, the Decision in this case is conditioned on the full compliance with Sections B and D of the Commitments submitted by the notifying party on 11 May 2011.
281. The remaining requirements set out in the other Sections of the Commitments submitted by the notifying party on 11 May 2011 are considered to constitute obligations.



## VI. CONCLUSION

282. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B and D and the corresponding Schedule of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004.

*For the Commission*  
*(signed)*  
*Joaquín ALMUNIA*  
*Vice-President*

*By hand and by email  
European Commission  
DG Competition  
Rue Joseph II 70 Jozef-II straat  
B-1000 BRUSSELS*

**Case M. 6093 – BASF/INEOS JV**

**COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89 as amended (the “**Merger Regulation**”), INEOS AG (“**INEOS**”) and BASF SE (“**BASF**”) (together the “**Parties**”) hereby provide the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the creation of a full-function joint venture between the Parties (the “**JV**”) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “**Decision**”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

**Section A. Definitions**

For the purpose of the Commitments, the following terms shall have the following meaning:

**ABS:** acrylonitrile butadiene styrene.

**Affiliated Undertakings:** undertakings controlled by the Parties and/or by the ultimate parents of the Parties, including the JV, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission’s Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004.

**BASF:** BASF SE, incorporated under the laws of the European Union, with its registered office at Carl-Bosch Str. 38, 67056 Ludwigshafen, Germany.

**Closing:** the transfer of the legal title of the Divestment Business to the Purchaser.

**Completion of the JV:** the date on which the Parties transfer assets to the JV.

**Divestment Business:** the business as defined in Section B and the Schedule that the Parties commit to divest.

**Divestiture Trustee:** one or more natural or legal person(s), independent from the Parties, who is/are approved by the Commission and appointed by the Parties and who

has/have received from the Parties the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

**Effective Date:** the date of adoption of the Decision.

**First Divestiture Period:** the period of [\*\*] from the Effective Date (subject to any extensions granted in accordance with paragraph 35 of these Commitments).

**Hold Separate Manager:** the person appointed by the Parties in accordance with paragraph 8 to manage the day-to-day business of the Divestment Business under the supervision of the Monitoring Trustee.

**INEOS:** INEOS AG, incorporated under the laws of Switzerland, with its registered office at Avenue des Uttins 3, CH-1180, Rolle, Vaud, Switzerland and registered under number CH-550-1066387-4.

**Key Personnel:** all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

**Monitoring Trustee:** one or more natural or legal person(s), independent from the Parties, who is/are approved by the Commission and appointed by the Parties, and who has/have the duty to monitor the Parties' compliance with the conditions and obligations attached to the Decision.

**Personnel:** all personnel, including Key Personnel, forming part of the Divestment Business, as listed in the Schedule.

**Purchaser:** the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

**SAN:** styrene acrylonitrile.

**Trustee(s):** the Monitoring Trustee and the Divestiture Trustee.

**Trustee Divestiture Period:** the period of [\*\*] from the end of the First Divestiture Period (subject to any extensions granted in accordance with paragraph 35 of these Commitments).

## **Section B. The Divestment Business**

### Commitment to divest

1. In order to restore effective competition, the Parties commit to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 16. To carry out the divestiture, the Parties commit to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Parties have not entered into such an agreement at the end of the First Divestiture Period, the Parties shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment

Business in the Trustee Divestiture Period in accordance with the procedure described in paragraph 25.

2. The Parties shall be deemed to have complied with this Commitment if, by the end of the Trustee Divestiture Period, the Parties have entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 16 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the Purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

#### Structure and definition of the Divestment Business

4. The Divestment Business consists of the ABS production facility and associated business owned by INEOS and located at Poligono Industrial, Crta. de Vilaseca a la Pineda, s/n 43006 Tarragona, Spain. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes (subject, where relevant, to appropriate third party consents):
  - (a) all tangible and intangible assets including intellectual property rights (some of which will be transferred by non-exclusive licence or sub-licence), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business (see further paragraphs 4(a)-(d) of the Schedule);
  - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business (see further paragraph 4(e) of the Schedule);
  - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (see further paragraphs 4(f)-(h) of the Schedule);  
  
(items referred to under (a)-(c) hereinafter collectively referred to as “Assets”);
  - (d) the Personnel (see further paragraph 4(i) of the Schedule); and
  - (e) the benefit, for a transitional period at the Purchaser’s request of up to [\*\*] after Closing (or such period as specified in current contractual

arrangements) and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which the Parties or Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser (see further paragraph 4(j) of the Schedule).

5. The Divestment Business will not include:
- (a) any right to use the INEOS name or logo in any form, unless such usage is required for an intermediate period of up to [\*\*] after Closing (at the request of the Purchaser), in order to maintain the viability and competitiveness of the Divestment Business;
  - (b) any right to use the brand names Novodur or Lustran unless such usage is required for an intermediate period of up to [\*\*] after Closing (at the request of the Purchaser), in order to maintain the viability and competitiveness of the Divestment Business.
  - (c) any right to use the brand name Triax and any other INEOS intellectual property which relates solely to products sold under that brand name.

### **Section C. Related commitments**

#### Preservation of Viability, Marketability and Competitiveness

6. From the Effective Date until Closing, the Parties shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular the Parties undertake:
- (a) not to carry out any act upon their own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
  - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans; and
  - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

#### Hold-separate obligations of Parties

7. The Parties commit, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses they are retaining and to

ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. The Parties shall also ensure that the Personnel do not report to any individual outside the Divestment Business.

8. Until Closing, the Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. The Parties shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interests of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.
9. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise any rights of the Parties as shareholder(s) in the Divestment Business (except for any rights for dividends that are due before Closing), with the aim of acting in the best interest of the business, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the Parties' obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of the Parties. Upon request of the Monitoring Trustee, the Parties shall resign as member of the boards or shall cause such members of the boards to resign.

#### Ring-fencing

10. The Parties shall implement all necessary measures to ensure that they do not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Parties may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to the Parties is required by law.

#### Non-solicitation clause

11. The Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [\*\*] after Closing.

#### Due Diligence

12. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
  - (a) provide to potential purchasers sufficient information as regards the Divestment Business; and
  - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

#### Reporting

13. The Parties shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
14. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending any such memorandum out to potential purchasers.

#### **Section D. The Purchaser**

15. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
  - (a) be independent of and unconnected to the Parties;
  - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors; and
  - (c) neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the "**Purchaser Requirements**").
16. The final binding sale and purchase agreement shall be conditional on the Commission's approval (and, if relevant, Completion of the JV). When the Parties have reached an agreement with a purchaser, they shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. The Parties must be able to demonstrate to the Commission that the purchaser meets the Purchaser

Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

## **Section E. Trustee**

### I. Appointment Procedure

17. The Parties shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If the Parties have not entered into a binding sale and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Parties at that time or thereafter, the Parties shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
18. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

### *Proposal by the Parties*

19. No later than one week after the Effective Date, the Parties shall submit a list of one or more persons whom the Parties propose to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, the Parties shall submit a list of one or more persons whom the Parties propose to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 18 and shall include:
  - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
  - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and



- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

*Approval or rejection by the Commission*

- 20. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Parties shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Parties shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by the Parties*

- 21. If all the proposed Trustees are rejected, the Parties shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 18 and 19 respectively.

*Trustee nominated by the Commission*

- 22. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

- 23. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Parties, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

*Duties and obligations of the Monitoring Trustee*

- 24. The Monitoring Trustee shall:
  - (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
  - (b) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Parties with the

conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

- (i) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 6 and 7 of the Commitments;
  - (ii) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 8 of the Commitments;
  - (iii) (I) in consultation with the Parties, determine all necessary measures to ensure that the Parties do not after the Effective Date obtain any business secrets, know how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (II) decide whether such information may be disclosed to the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the divestiture or as the disclosure is required by law; and
  - (iv) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Parties or Affiliated Undertakings;
- (c) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (d) propose to the Parties such measures as the Monitoring Trustee considers necessary to ensure the Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (e) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
  - (i) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process; and

- (ii) potential purchasers are granted reasonable access to the Personnel;
- (f) provide to the Commission, sending the Parties non-confidential copies at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending the Parties non-confidential copies at the same time, if it concludes on reasonable grounds that the Parties are failing to comply with these Commitments; and
- (g) within one week after receipt of the documented proposal referred to in paragraph 16, submit to the Commission a reasoned opinion as to:
  - (i) the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale; and
  - (ii) whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

*Duties and obligations of the Divestiture Trustee*

25. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 16. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
26. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and non-confidential copies to the Parties.

### III. Duties and obligations of the Parties

27. The Parties shall provide and shall cause their advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Parties' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
28. The Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Parties shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
29. The Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.
30. The Parties shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agree that an Indemnified Party shall have no liability to the Parties for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
31. At the expense of the Parties, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the Parties' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Parties refuse to approve the advisors proposed by the Trustee the Commission may approve the

appointment of such advisors instead, after having heard the Parties. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 30 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Parties during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

- 32. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
  - (a) the Commission may, after hearing the Trustee, require the Parties to replace the Trustee; or
  - (b) the Parties, with the prior approval of the Commission, may replace the Trustee.
  
- 33. If the Trustee is removed according to paragraph 32, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 17-22.
  
- 34. Beside the removal according to paragraph 32, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

**Section F. The Review Clause**

- 35. The Commission may, where appropriate, in response to a request from the Parties showing good cause and accompanied by a report from the Monitoring Trustee:
  - (a) Grant an extension of the time periods foreseen in the Commitments; or
  - (b) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where the Parties seek an extension of a time period, they shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall the Parties be entitled to request an extension within the last month of any period.

.....

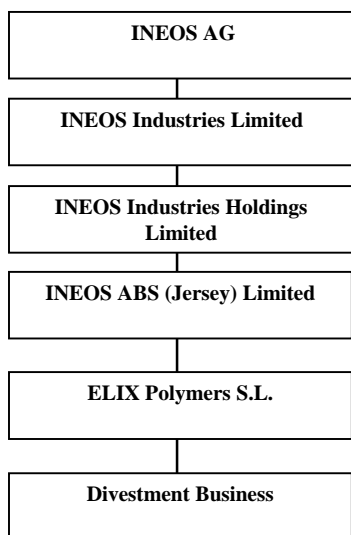
duly authorised for and on behalf of  
INEOS

.....

duly authorised for and on behalf of  
BASF

## SCHEDULE

1. The Divestment Business as operated to date consists of the ABS production facility and associated business owned by INEOS and located at Poligono Industrial, Crta. de Vilaseca a la Pineda, s/n 43006 Tarragona, Spain.
2. The current ownership structure of the Divestment Business is shown below (in all cases 100% holdings).



3. Aerial and profile pictures of the manufacturing plant owned and operated by the Divestment Business are shown below:

[\*\*]



4. Following paragraph 264 of these Commitments, subject to third party consent where relevant, the Divestment Business includes, but is not limited to:
  - (a) The production facility owned and operated by ELIX Polymers S.L. at Poligono Industrial, Crta. de Vilaseca a la Pineda, s/n 43006 Tarragona, Spain (“**Tarragona**”), together with the lease of the land on which the facility is located and all the manufacturing equipment installed at the facility which contributes to the current operation or is necessary to ensure the viability and competitiveness of the Divestment Business. Such installed manufacturing

equipment includes the following together with associated on-site silos and warehousing:<sup>71</sup>

[\*\*]

- (b) All raw materials, stocks, semi-finished and finished goods held at Tarragona at the time of the transfer to the purchaser of the Divestment Business.
- (c) All the non-manufacturing facilities and buildings owned by the Divestment Business including offices and mechanical workshops located at Tarragona.
- (d) All the intangible assets which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business. In particular these include:
  - All the intellectual property which is owned by the Divestment Business at the Effective Date including in particular:

[\*\*]

- Insofar as requested by the Purchaser, and with the exception of the intellectual property described at paragraph 5 below, a perpetual, irrevocable, non-exclusive, royalty-free licence or sub-licence for use for production at Tarragona up to the current maximum nameplate capacity of the Tarragona plant by the Divestment Business of the intellectual property that is used in connection with the manufacture and/or sale of ABS or SAN by the Divestment Business. This includes in particular:

[\*\*]

- (e) The licences, permits and authorisations which are held by the Divestment Business and which constitute all the licences, permits and authorisations needed to operate the Divestment Business including in particular site operation permits.
- (f) Contracts, agreements, leases, commitments and understandings with the Divestment Business' current customers and suppliers held by the Divestment Business including:

[\*\*]

- (g) INEOS will use all reasonable endeavours to assign, novate or transfer that portion of all other contracts, agreements, leases, commitments and understandings which are held by a retained INEOS business but which were supplied by or to the Divestment Business. These include:

---

<sup>71</sup> All capacity figures quoted are maximum nameplate capacity.



- [\*\*]
  - Rights to use an SAP database system and associated IT systems, including a Wide Area Network (“WAN”) (for email etc.). (See further paragraph (j) re: transitional services.)
  - Customer sales agreements. (See further Annex 4 which provides a sample of the customer sales agreements which will be carved out to the Divestment Business in the manner described above.)
- (h) Customer, credit and other records which are held by the Divestment Business including in particular the records contained in the SAP database which relate to the Divestment Business.
- (i) In line with applicable employment laws and other relevant legislation, the Personnel shown in Annex 5 (the majority of whom are currently employed by the Divestment Business), together with the Key Personnel shown in Annex 5 whose services are necessary to maintain the viability and competitiveness of the Divestment Business; and
- (j) Arrangements for the supply of products or services by the Parties or Affiliated Undertakings for a transitional period at the Purchaser’s request of up to [\*\*] after Closing on substantially the same terms as those products or services are supplied to the Divestment Business at the Effective Date, including:
- IT service agreement to maintain current IT systems used by the Divestment Business;
  - Right to use the brand names Novodur and Lustran for an intermediate period of up to [\*\*] after Closing in order to maintain the viability and competitiveness of the Divestment Business; and
  - Supply of [\*\*] from the JV to maintain current supply from BASF to INEOS; and
  - Supply of [\*\*] from BASF.

5. The Divestment Business shall not include:

- (a) Any right to use the INEOS name or logo in any form, unless such usage is required for an intermediate period of up to [\*\*] after Closing (at the request of the Purchaser), in order to maintain the viability and competitiveness of the Divestment Business;
- (b) Any right to use the brand names Novodur or Lustran, unless such usage is required for an intermediate period of up to [\*\*] after Closing (at the request of the Purchaser), in order to maintain the viability and competitiveness of the Divestment Business; and

- (c) Any right to use the brand name Triax and any other INEOS intellectual property which relates solely to products sold under that brand name.

## Annex 1 – Product certifications held by the Divestment Business <sup>[1]</sup>

Product	2000/53/EC (ELV)-content of heavy metals	67/548/EEC 1999/45/EEC 76/769/EEC (Classification & Labelling)	94/62/EC (CONEG - heavy metals on packaging)	2002/95/EC RoHS) and 2002/96/EC (WEEE)	2003/11/EC PBDE)	1005/2009/EC (Montreal Protocol)	SVHC Candidate List	2002/72/EC FC <sup>[2]</sup>	FDA-21 CFR <sup>[3]</sup>	BSE/TSE	EN-71-3-Toys	ACS Drinking Water	PAH free	Latex free	Phthalates free
[**]															

- Note:
- [1] “x” indicates certificate as at 1 February 2011.
  - [2] Product is in chemical compliance, SML has been not tested.
  - [3] Product is FDA-compliant, limit on acrylonitrile has been not tested.

**Annex 2 – ABS product certifications held by the retained INEOS Business**

**Underwriters Laboratories Product Certifications**

Material Designation	Report Date	Thk, mm	Color	Flame	IR Ref	TGA Ref	DSC Ref	GC Ref	Additional Info	Test Program Code
[**]										

## Other Product Certifications <sup>[1]</sup>

Products	2000/53/EC (ELV)-content of heavy metals	67/548/EEC 1999/45/EEC 76/769/EEC (Classification & Labelling)	94/62/EC (CONEG- heavy metals on packaging)	2002/95/EC RoHS) and 2002/96/EC (WEEE)	2003/11/EC PBDE)	1005/2009/E C (Montreal Protocol)	SVHC Candidate List	Regulation (EC) No 2023/2006 (GMP)	2002/72/EC (FC)	FDA- 21 CFR	BSE/ TSE	USP Class VI	Drug Master File	EP Chapter 3.1	EN- 71-3- Toys	WRAS Drinking Water	PAH free	Latex free	Phthalates free
----------	--	--	---	---	---------------------	--	---------------------------	---	--------------------	-------------------	-------------	-----------------	------------------------	----------------------	----------------------	---------------------------	-------------	---------------	--------------------

[\*\*]

---

Note: [1] "x" indicates certificate as at 1 February 2011.

**Annex 3 – ABS and SAN patents held by the retained INEOS ABS business**

Patent number	Description	Short description	Expiry Date
[**]			

## Annex 4 – Sample customer sales carve out arrangements<sup>72</sup>

### Summary of INEOS' contract position with top 10 customers of natural ABS produced at Tarragona

Ranking by 2010 natural ABS sales ex-Tarragona	Customer	Nature of current agreement	Treatment for divestment
1.	[**]	[**]	[**]
2.	[**]	[**]	[**]
3.	[**]	[**]	[**]
4.	[**]	[**]	[**]
5.	[**]	[**]	[**]
6.	[**]	[**]	[**]
7.	[**]	[**]	[**]
8.	[**]	[**]	[**]
9.	[**]	[**]	[**]
10.	[**]	[**]	[**]

---

<sup>72</sup> Sample covers top 10 natural ABS and top 10 pre-coloured ABS customers of Tarragona business in 2010.

**Summary of INEOS' contract position with top 10 customers of pre-coloured ABS produced at Tarragona**

Ranking by 2010 pre-coloured ABS sales ex-Tarragona	Customer	Nature of current agreement	Treatment for divestment
1.	[**]	[**]	[**]
2.	[**]	[**]	[**]
3.	[**]	[**]	[**]
4.	[**]	[**]	[**]
5.	[**]	[**]	[**]
6.	[**]	[**]	[**]
7.	[**]	[**]	[**]
8.	[**]	[**]	[**]
9.	[**]	[**]	[**]
10.	[**]	[**]	[**]



## Annex 5 – Personnel

<b>Department</b>	<b>Personnel</b>	<b>Of whom Key Personnel</b>
Accounting and Controller	[**]	[**]
Site Services	[**]	[**]
Compounding	[**]	[**]
Maintenance/Engineering	[**]	[**]
Marketing and Sales	[**]	[**]
Polymerisation	[**]	[**]
Procurement	[**]	[**]
Quality Management	[**]	[**]
Supply Chain	[**]	[**]
Research & Development	[**]	[**]
<b>TOTAL</b>	[**]	[**]
<i>Partial retirees</i>	[**]	[**]
<i>GRAND TOTAL</i>	[**]	[**]

Minor adjustments to existing arrangements (Figures in table above are net of these)

Note:           [\*\*]