

***Case No COMP/M.6681 - STRATEGIC VALUE
PARTNERS/ KLOECKNER HOLDINGS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/01/2013

***In electronic form on the EUR-Lex website under
document number 32013M6681***



EUROPEAN COMMISSION

Brussels, 11.1.2013
C(2013) 89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6681 – STRATEGIC VALUE PARTNERS/
KLOECKNER HOLDINGS**

**Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 30 November 2012, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Strategic Value Partners, LLC ("SVP", USA) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control of the whole of Kloeckner Holdings GP S.A. ("KH", Luxembourg), the ultimate parent company of the Klöckner Pentaplast

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

Group ("KPG", Germany) by way of purchase of shares.² SVP is referred to hereinafter as the "Notifying Party".

I. THE PARTIES

2. SVP is a privately owned investment firm that manages hedge funds and private equity funds and invests in public and private equity markets, debt markets and other alternative investment markets world-wide. One of SVP's portfolio companies is Vestolit, a manufacturer of polyvinyl chloride (PVC) which is an input for rigid plastic films.
3. KH is a private limited company and is active, through KPG, in the production of rigid plastic films used for (i) flexible packaging films for several end-use applications including pharmaceuticals, medical supplies, food, and other non-food packaging, as well as (ii) technical and speciality films used for non-packaging applications.

II. THE TRANSACTION AND CONCENTRATION

4. The proposed transaction involves the indirect acquisition by various funds managed by SVP of sole control of KH through the exercise of share warrants³, which will result in SVP increasing its current shareholding of approximately [...] to [...]. The exercise of the warrants by the SVP entities will also result in a corresponding dilution of the shareholdings of other investors. As a result, SVP's shareholding will give it the right to appoint the majority of the directors on the board of KH, and the co-investors will not have any special voting or veto rights that would enable them to block strategic and commercial decisions of KH and therefore, KPG.⁴
5. In light of the above, it follows that the Proposed Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. UNION DIMENSION

6. The transaction will have a Community dimension under Article 1(3) of the Merger Regulation. The undertakings concerned have a combined aggregate turnover of more than EUR 100 million in France [SVP: EUR [...], KH: EUR [...]], Germany [SVP: EUR [...], KH: EUR [...]] and the UK [SVP: EUR [...], KH: [...]]. Each of them has an aggregate turnover in excess of EUR 25 million in France, Germany, Italy and the UK, 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.

IV. COMPETITIVE ASSESSMENT

Introduction

7. KH, through KPG, is active in the manufacture of rigid plastic films which are used to produce **flexible packaging**, as well as **technical and speciality films for non-packaging applications**.

² Publication in the Official Journal of the European Union No C 378, 08.12.2012, p.43.

³ These were issues at the time of the recapitalisation of KPG which was concluded on 21 June 2012.

⁴ Pages 24, 25, 28 and 29 of Security holders Deed.

8. Vestolit, an SVP portfolio business, is active in the manufacture of PVC, which is an input for the production of rigid plastic films.⁵ In particular, it manufactures (i) suspension PVC ("**S-PVC**"), including specialty S-PVC and commodity S-PVC, and (ii) emulsion PVC ("**E-PVC**"), including speciality E-PVC and Paste E-PVC.
9. The proposed transaction therefore leads to a vertical relationship between Vestolit's production of PVC and KPG's manufacture of rigid plastic films.⁶

A. Relevant Markets

(I) DOWNSTREAM MARKETS

Flexible packaging films

10. In previous decisions, the Commission considered that the production of flexible packaging involves the manufacture, supply and conversion of plastic and cellulose films, aluminium foils and papers into reels of packaging to be used for primary retail food packaging and labelling and certain other non-food sectors.⁷
11. Within plastic flexible packaging, the Commission has not made a distinction between rigid and flexible plastic films, but has considered it appropriate to segment the supply of flexible packaging by end-use application into: (i) food, (ii) medical supplies, (iii) pharmaceuticals, (iv) household products, and (v) other non-food.⁸
12. Within **flexible packaging for food**, the Commission has considered a possible narrower segmentation in respect of various categorisations of food, including: a) dairy, b) beverages, c) confectionery d) fresh e) dried f) frozen g) pet food.⁹ In a more recent decision¹⁰, the Commission considered a possible alternative sub-segmentation by type of food.¹¹ However, the Commission ultimately left open the question of further sub-segmentation of flexible packaging for food.

⁵ The Parties submit that there is currently no actual vertical relationship between Vestolit and KPG since Vestolit [sales information].

⁶ There is no horizontal overlap between the Parties' activities since neither SVP nor any of its portfolio businesses are active in the manufacture of rigid plastic films (or sheets).

⁷ Case COMP/M.2441-*Amcors/Danisco/Ahlstrom*, decision of 16 June 2001, paragraph 8.

⁸ Case COMP/M.2441-*Amcors/Danisco/Ahlstrom*, paragraph 12; Case COMP/M.2840-*Danapak /Teich/JV*, paragraphs 13; Case COMP/M.3049-*Alcan/FlexPack*, paragraph 11-12; Case COMP/M.3225-*Alcan/Pechiney*, paragraphs 128 and 131; Case COMP/M.5599-*Amcors/Alcan*, paragraph 15.

⁹ Case COMP/M.2441-*Amcors/Danisco/Ahlstrom*; Case COMP/M.2840-*Danapak/Teich/JV*; Case COMP/M.3049-*Alcan/FlexPack*.

¹⁰ Case COMP/M.5599-*Amcors/Alcan*.

¹¹ Namely (i) confectionary; (ii) fresh and processed meat, fish and poultry; (iii) cheese and dairy; (iv) tea, ground coffee and beans; (v) frozen food and ice cream; (vi) crisps, snacks and nuts; (vii) dried and dehydrated foods and cereals; (viii) bread, biscuits and cakes; and (ix) fresh fruits and vegetables) and (ii) certain niche food segments where switching was considered demanding from a technical perspective (namely (i) in-line cold seal type packaging; (ii) PVdC coated materials; (iii) banderols used to increase

13. Within **flexible packaging for pharmaceuticals**, the Commission considered a sub-division between blister packaging¹² (used primarily for solid tablets) and laminated sachets (used for medicines in powder form).¹³ The Commission also considered that blister materials can potentially be further split into (i) blister lidding¹⁴ and (ii) blister base, with a further sub-division of the latter into (a) cold-form and (b) plastic-based blister bases. However, the question of whether or not the flexible pharmaceutical packaging segment should be further sub-divided was ultimately left open.
14. In previous cases, the Commission has consistently considered the geographic scope of the flexible packaging market to be at least EEA-wide.¹⁵ The Notifying Party agrees with this approach.
15. The Notifying Party submits that the Commission has not drawn a distinction between the different types of materials used to manufacture flexible packaging (e.g. plastics, cellulose films, aluminium and paper). Therefore the Notifying Party argues that a sub-segmentation of flexible packaging by material is inappropriate.
16. The Notifying Party has submitted market shares on the basis of a sub-division of a hypothetical market for the supply of **other non-food packaging** according to its own internal segmentation as follows: (i) box films; (ii) thermoforming films; (iii) shrink films; (iv) static control films; and (v) adhesive tape films. However, previous Commission's decisions do not prescribe any appropriate sub-segmentation and therefore do not provide any basis for such distinct markets.
17. The Notifying Party considers that the question of whether the flexible food packaging market should be further segmented can also be left open in this case since the transaction does not give rise to any affected market, even under the narrowest possible market definition.
18. Since KPG is active in the production of PVC plastic films for use in flexible packaging, as well as non-packaging applications, only these two markets are relevant for the analysis of the proposed transaction.
19. The vast majority of respondents to the market investigation confirmed the Commission's previous product market definition which distinguishes, within flexible packaging, five separate markets divided by end-application: food, medical, supplies, pharmaceuticals, household products and other non-food packaging. Within flexible packaging, the majority of respondents indicated that plastic films include both flexible

the strength of yoghurt cups; (iv) non-sliced white moulded soft cheese packaging; and (v) retort food packaging.

¹² KPG is only active in the supply of blister packaging; therefore, we will not discuss the laminated sachets sub-segment further.

¹³ Case COMP/M.5599-*Amcor/Alcan*, paragraph 30.

¹⁴ KPG is not active in the manufacture of blister lidding; therefore, we will not discuss this sub-segment any further.

¹⁵ Case COMP/M.2441-*Amcor/Danisco/Ahlstrom*, paragraph 14-17; Case COMP/M.2840-*Danapak/Teich/JV*, paragraph 19; Case COMP/M.3049-*Alcan/FlexPack*, paragraph 15.

and rigid films.¹⁶ The majority of respondents also agree with the Commission's previous sub-segmentation of pharmaceutical flexible packaging (i.e. laminated sachets, cold-form blister bases, plastic-based blister bases and blister lidding).¹⁷

20. With respect to other non-food packaging, the market investigation was not conclusive regarding the division proposed by the parties. However, the majority of respondents indicated that adhesive tape films should not be included in other non-food packaging since they can be used for further applications other than packaging. One respondent suggested that shrink films and adhesive tapes should be included in the "technical and specialty applications" segment, which is discussed below.¹⁸
21. As far as the geographic scope is concerned, the market investigation did not indicate any reasons to deviate from Commission's precedents which indicate that the geographic market for flexible packaging, including pharmaceuticals and other-non-food packaging is at least EEA wide.¹⁹
22. For the purpose of this decision, the exact product and geographic market definition can be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product and geographic market definition.

Technical and specialty films for non-packaging applications

23. The Commission has not yet defined a market for **technical and specialty films**. However, the Commission considered a segmentation of the market for industrial foils for non-packaging applications, which are a type of technical and specialty films made from rigid plastic films.²⁰ The Commission noted that the market should be segmented on the basis of groups of end-applications and considered the internal segmentation used by the target which distinguishes between different types of foils.
24. Accordingly, the Notifying Party suggests that KPG's internal segmentation should be applied for the purpose of this case. KPG manufactures technical and specialty films for the following end-use applications: (i) printing; (ii) cards; (iii) cooling towers (iv) pipe insulation; (v) decorative films²¹ and (vi) stationery.²²

¹⁶ Replies to questions 5 and 6 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Customers dated 3 December 2012.

¹⁷ Replies to question 8 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Customers dated 3 December 2012.

¹⁸ Replies to questions 7, 8 and 10 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Customers dated 3 December 2012.

¹⁹ Replies to question 18 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Customers dated 3 December 2012.

²⁰ Case COMP/M.3946-*Renolit/Solvay*, paragraph 15.

²¹ The Commission considered, but left open the market definition for the supply of decorative films in *Renolit/Solvay* (referred to as decorative laminate foils) at paragraphs 19 to 23.

²² According to the Notifying Party, **print films** are used to create a variety of products including, inter alia, posters, maps, banners, city lights, calendars and signs. **Card films** consist of a core film and an overlay

25. In previous Commission's decisions²³, the geographic scope of the overall market for rigid plastic films was considered to be at least EEA-wide and, for certain end-use applications, even global. However, the exact geographic market definition was ultimately left open.
26. The Notifying Party agrees with the above mentioned definition and accordingly submits that the geographic market for technical and specialty films made of rigid plastic films should be at least EEA-wide. However, the Notifying Party submits that the precise scope of the geographic market can be left open since the transaction would not lead to any competition concerns, under any plausible geographic market definition.
27. The majority of respondents to the market investigation agree with the sub-segmentation of technical and specialty films proposed by the Notifying Party. Nevertheless, as noted above, there were some indications that shrink films and adhesive tape films should also be included in this segmentation. Additionally, one respondent suggested a broader market definition should be considered as some of the end-applications such as printing films, cards and some stationary products are commonly produced on the same machine and represent rather different qualities of films needed for different uses.²⁴
28. In any event, for the purpose of this decision, the exact product and geographic market definition can be left open as the Proposed Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product or geographic market definition.

(II) UPSTREAM MARKET

Polyvinyl chloride (PVC)

29. According to the Notifying Party, two types of PVC can be distinguished, namely suspension PVC (“**S-PVC**”) and emulsion PVC (“**E-PVC**”). S-PVC is the most common type of PVC resin and is used for both rigid (un-plasticised) and flexible (plasticised) end-use applications. E-PVC takes the form of a very fine and smooth powder which can be sprayed rather than moulded or extruded.

film and are mainly used for unsecure cards (e.g. retailer loyalty cards) and secure cards (e.g. credit cards and identity cards). **Cooling towers** are heat removal devices used to transfer process waste heat to the atmosphere. To achieve better performance (i.e., more cooling), a medium called fill is used to increase the surface area and the time of contact between the air and water flows. One of the two types of fill, film fill, can be manufactured using PVC film. **Pipe insulation films** protect insulated pipes against environmental degradation in building equipment used in housing, supermarkets and office buildings. **Stationery films** are used to protect stationery products such as binding systems, page protectors, files, folders and index cards. Decorative films are used for various applications, including furniture surfaces, doors and windows.

²³ Case COMP/M.4734-*Ineos/Kerling*, paragraph 166; Case COMP/M.3946-*Renolit/Solvay*, paragraph 33.

²⁴ Replies to question 10 of the Commission’s request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Customers dated 3 December 2012.

30. In previous decisions, the Commission has held that S-PVC and E-PVC constitute separate product markets.²⁵ The Commission found that from a demand-side perspective, S-PVC and E-PVC are used for different applications; from a supply-side perspective, the equipment used to produce the two types of PVC is different and it is not economically feasible to convert an S-PVC facility to produce E-PVC, and vice versa.
31. The Commission further segmented the market for the production of S-PVC into three separate product markets: (i) **commodity S-PVC**; (ii) **specialty S-PVC**; and (iii) **extender S-PVC**.²⁶ The Notifying Party agrees with the Commission's approach.
32. The Commission has not yet defined the precise scope of an E-PVC market. Although the Commission considered a possible further segmentation into (i) **Paste E-PVC** and (ii) **specialty emulsion thermoplastic application E-PVC ("specialty E-PVC")**²⁷, it ultimately left the exact product market definition open. In line with previous decisions, the Notifying Party submits that it is not necessary to delineate the precise scope of the product market.
33. In previous cases, the Commission stated that the geographic scope for **S-PVC** (more specifically **commodity S-PVC**) was wider than national and covered at least North West Europe.²⁸ It also considered whether the market could be considered to cover Western Europe²⁹ or even the EEA, but ultimately left the precise scope of the geographic market open.³⁰ With regard to **E-PVC** (paste E-PVC and specialty E-PVC), the Commission concluded that the geographic market was EEA-wide.³¹
34. The Notifying Party submits that the same geographic market definition applies to all types of PVC, but that it can be left open for this case since the notified concentration would not give rise to any competition concerns under any market definition.
35. From a demand side perspective, the majority of respondents to the market investigation agree with the Commission's previous segmentation of S-PVC into three separate markets, but was not conclusive on the further segmentation of E-PVC into Paste E-PVC and Specialty E-PVC.³²

²⁵ Case COMP/M.6563-*Mexichem SIH/Wavin*, paragraph 14; Case COMP/M.6218-*Ineos/Tessenderlo Group S-PVC Assets*, paragraph 15; Case COMP/M.4734-*INEOS / Kerling*, paragraph 19.

²⁶ Case COMP/M.4734-*INEOS/Kerling*, paragraph.20, Case COMP/M.4572-*Vinnolit / INEOS CV Specialty PVC Business*, paragraph 9.

²⁷ Case COMP/M.4734-*INEOS/Kerling*; Case COMP/M.4572-*Vinnolit/INEOS CV Specialty PVC Business*.

²⁸ Belgium, Luxembourg, Netherlands, Denmark, France, Germany, Ireland, Sweden, Norway and the United Kingdom.

²⁹ North West Europe plus Austria, Finland, Italy, Portugal, Spain and Switzerland.

³⁰ Case COMP/M.4734-*INEOS/Kerling*, paragraphs 64 and 153.

³¹ Case COMP/M.4572-*Vinnolit/INEOS CV Specialty PVC Business*.

³² Replies to questions 11 and 12 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Customers dated 3 December 2012.

36. From a supply side perspective, the majority of respondents do not agree with the Commission's previous segmentation of S-PVC into Commodity, Specialty and Extender S-PVC as the latter is used for different applications and is therefore part of a separate market.³³ As for E-PVC, the market investigation was again not conclusive on whether it can be further segmented into Paste and Specialty E-PVC. One respondent has actually indicated that the E-PVC market should be considered as one market since both products are substitutable from a supply side perspective.³⁴
37. The market investigation seems to indicate that the geographic scope of both S-PVC and E-PVC is EEA wide, possibly global for E-PVC.³⁵
38. For the purpose of this decision, the exact geographic market definition can be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market under any alternative geographic market definition.

B. Competitive Assessment

39. KPG uses only commodity S-PVC and limited volumes of specialty E-PVC for a number of end-applications, in particular adhesive tape films. Therefore, in line with what the the Notifying Party argues, only these two types of PVC are relevant for the analysis of the proposed transaction.
40. As a result, a number of theoretically vertically affected markets arise in relation to: (i) Vestolit's production and supply of commodity S-PVC and specialty E-PVC and (ii) KPG's activities in the following downstream markets in the EEA:
- KPG's supply of plastic-based blister bases with a market share of [20-30]%;
 - on the basis of a hypothetical sub-segmentation of "other non-food packaging" market: KPG's supply of box films (with a share of [20-30]%), KPG's supply of shrink films (with a share of [30-40]%), KPG's supply of static control films (with a share of [30-40]%) and KPG's supply of adhesive tape films (with a share of [30-40]%). In the overall market for the supply of other non-food packaging, KPG's market share is [20-30]%³⁶;
 - on the basis of a hypothetical sub-segmentation of the market for the supply of "technical and specialty films": KPG's supply of print films (with a share of [30-40]%), KPG's supply of card films (with a share of [30-40]%), KPG's supply of cooling tower films (with a share of [30-40]%), KPG's supply of pipe insulation

³³ Replies to question 7 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Suppliers dated 3 December 2012.

³⁴ Replies to question 5 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Suppliers dated 3 December 2012.

³⁵ Replies to questions 11 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Suppliers dated 3 December 2012 and replies to questions 16 and 17 addressed to PVC Customers dated 3 December 2012.

³⁶ Due to lack of competitive intelligence as a result of limited (or non-existent) visibility of other applications in which they are active, the Notifying Party provided a market share estimate for the overall technical and specialty films that only covers the applications in which KPG is present.

films (with a share of [50-60]%) and KPG's supply of stationery films (with a share of [30-40]%). In the overall market for the supply of technical and specialty films, KPG's market share is [20-30]%.

41. Vestolit's share of **commodity S-PVC** at EEA level, as well as in Western Europe and North West Europe (which is the narrowest possible geographic market) is below 1%, while for the overall S-PVC it is [0- 5]%.
42. For **E-PVC specialty applications**, Vestolit's market shares amount, according to the parties, to [5-10]% at EEA level,[10-20]% in Western Europe, and [5-10]% in North West Europe. In the overall market for E-PVC, its market shares are [10-20]% at EEA level and in Western Europe, and [10-20]% in North West Europe.
43. With respect to **input foreclosure**, the Notifying Party submits that Vestolit's shares in the upstream commodity S-PVC market are minimal and KPG does not purchase commodity S-PVC from Vestolit since Vestolit's products do not meet the quality requirement of KPG for its rigid films production. Accordingly, the Notifying Party submits that, in view of the multiple alternative suppliers of S-PVC present in the market, including Ineos, Solvin, Vinnolit and Shin Etsu Chemical³⁷, and the fact that Vestolit is not an essential supplier in the market for commodity S-PVC, there is no ability to engage in input foreclosure.
44. In relation to E-PVC, KPG used to purchase specialty E-PVC from Vestolit in the past only as (i) an input material in the production of adhesive tape films and (ii) as a production additive for a limited number of end-use applications. However, in relation to the use of specialty E-PVC as a production additive, KPG has almost entirely switched to [...], a substitute for specialty E-PVC since, according to the Notifying Party, it is significantly cheaper. In view of Vestolit's low market shares and the presence of alternative suppliers for specialty E-PVC, such as Vinnolit and Solvin³⁸, the Notifying Party submits that there is no risk of input foreclosure.
45. The market investigation confirmed that the proposed transaction is unlikely to give rise to input foreclosure with respect to S-PVC market for the following reasons: (i) there are enough alternative suppliers, such as Ineos, Vinolit, Solvin, KemOne, Shin-Etsu or Bordsodchem³⁹; (ii) the PVC market is characterised by overcapacity⁴⁰; and (iii) switching between suppliers is relatively easy since S-PVC is considered a commodity product and the market is highly competitive.⁴¹

³⁷ Due to Vestolit's limited activities in the S-PVC market, it has a very limited overview of the market and is unable to provide reliable market share estimates. However, the Notifying Party estimates that the market position of these competitors represents close to 90% of S-PVC production in Europe.

³⁸ Vestolit believes that Vinnolit is by far the largest supplier of both paste E-PVC and specialty E-PVC followed by Solvin in the EEA.

³⁹ Replies to question 15 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Customers dated 3 December 2012.

⁴⁰ Non-confidential minutes of the conference call with PVC customer and PVC supplier dated 13 December 2012.

⁴¹ Replies to question 17 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Suppliers dated 3 December 2012.

46. Similarly, the market investigation indicated that there is no risk of input foreclosure with respect to E-PVC market for the following reasons: (i) customers multisource from different suppliers to obtain competitive prices and to ensure security of supply (demand for E-PVC is declining and suppliers are reducing production);⁴² (ii) customers have at least four other alternative suppliers of E-PVC and two other alternative suppliers of speciality E-PVC (of which one is the market leader in the EEA and worldwide)⁴³; and (iii) existing suppliers have sufficient spare capacity of E-PVC and specialty E-PVC if Vestolit decides to sell its entire E-PVC production to KPG only. There are also indications that it is possible to convert S-PVC capacity into E-PVC capacity or switch production of Paste PVC into Specialty E-PVC considering adequate investment and timing.⁴⁴
47. With respect to **customer foreclosure**, the Notifying Party submits that although KPG accounts for [20-30]% of purchases of specialty E-PVC in North West Europe, this figure goes down substantially in the wider Western European and EEA markets to [10-20]% in respect of both geographic markets. In addition, as noted above, KPG's consumption of specialty E-PVC has reduced significantly as a result of switching to [a substitute for specialty E-PVC]⁴⁵. Similarly, KPG's share of purchases for commodity S-PVC is only [0-5]% in North West Europe and [0-5]% in Western Europe and the EEA. Even if KPG were to, hypothetically, purchase Vestolit's entire output of commodity S-PVC, this would only account for [10-20]% of the overall requirements of KPG. Therefore, KPG will continue to have to purchase commodity S-PVC in the merchant market. The proposed transaction is therefore unlikely to give rise to customer foreclosure.
48. The majority of respondents to the market investigation consider they would find alternative customers if KPG were to stop purchasing S-PVC and E-PVC from them.⁴⁶ As there is a sufficient customer base to sell PVC to, it is unlikely that the proposed transaction will lead to customer foreclosure.
49. In light of the above, it can be concluded that the proposed transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationship between Vestolit and KPG.

⁴² Replies to question 21 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC customers, questions 14 and 16 addressed to PVC Suppliers dated 3 December 2012, and non-confidential minutes of the conference call with PVC supplier dated 13 December 2012.

⁴³ Replies to question 14 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Customers dated 3 December 2012 and non-confidential minutes of the conference call with PVC customer.

⁴⁴ Non-confidential minutes of the conference call with PVC supplier, dated 13 December 2012.

⁴⁵ KPG's purchases of specialty E-PVC in 2011 amounted to over EUR [...], while for 2012 it only reached EUR [...].

⁴⁶ Replies to questions 9 and 20 of the Commission's request for information pursuant to Article 11 of Council Regulation (EC) No 139/2004 addressed to PVC Suppliers dated 3 December 2012.

V. CONCLUSION

50. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission
(signed)*

*Siim KALLAS
Vice-President*