

EN

***Case No COMP/M.7132 - INEOS / DOEFLEX***

Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION

Date: 30/07/2014

***In electronic form on the EUR-Lex website under document  
number 32014M7132***



Brussels, 30.7.2014  
C(2014) 5563 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 Where possible the information omitted has been replaced by ranges of figures or a general description.

*COMP Operations*

PUBLIC VERSION

MERGER PROCEDURE

**To the notifying party:**

Dear Sir/Madam,

**Subject: Case M.7132 – INEOS / Doeflex  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 24 June 2014, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which INEOS AG ("INEOS", Switzerland), hereinafter the Notifying Party, acquires sole control of Doeflex Compounding Limited ("Doeflex", the United Kingdom) by way of purchase of shares,<sup>2</sup> hereinafter the "Transaction".

**1. THE PARTIES**

- (2) INEOS is a global manufacturer of petrochemicals, speciality chemicals and oil products headquartered in Switzerland. Among other activities, INEOS produces and sells commodity Suspension Polyvinyl Chloride ("S-PVC") and S-PVC compounds. INEOS is a private group of companies controlled by Mr James Ratcliffe.

---

<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 207, 3.07.2014, p. 47.

- (3) Doeflex is a PVC compounder headquartered in the United Kingdom with a single manufacturing facility located in Swindon, United Kingdom. Doeflex is a privately owned company controlled by Mr William Trendell and Mr Glynn Berry.

## **2. THE CONCENTRATION**

- (4) The Transaction consists of INEOS acquiring sole control of Doeflex. INEOS has incorporated a new wholly-owned company ("Newco") to which it has transferred its entire S-PVC compounding business. The two current owners of Doeflex have incorporated a wholly-owned company ("SwindonCo"), which will be granted an option to acquire the business and assets of Doeflex. Upon completion, Newco will acquire the entire issued share capital of SwindonCo in exchange for less than 20% of the shares in NewCo. Concurrently, SwindonCo will assign the option to acquire the business and assets of Doeflex to a wholly-owned subsidiary of NewCo, which will then exercise this option.
- (5) As a result of the Transaction, INEOS will hold the majority of the voting rights (80%) at Newco's shareholder meetings and will be able to adopt alone any ordinary or special resolution, except for a limited number of reserved matters meant to protect minority shareholders. Similarly, INEOS will appoint the majority of the members of the Board of Directors and will be able to pass board resolutions concerning the supervision and management of Newco (including the business plan and budget).
- (6) Therefore, the Transaction constitutes an acquisition of sole control by INEOS of Doeflex within the meaning of Article 3(1)(b) of the Merger Regulation.

## **3. EU DIMENSION**

- (7) The Transaction does not meet either of the alternative jurisdictional thresholds under Article 1 of the Merger Regulation, because Doeflex's EU-wide turnover is less than EUR 100 million.<sup>3</sup> The Transaction therefore has no EU dimension, but was referred to the Commission pursuant to a referral request under Article 4(5) of the Merger Regulation.

## **4. MARKET DEFINITION**

### **4.1. Horizontally related markets**

#### *4.1.1. S-PVC compounds*

- (8) The Parties activities overlap in the manufacture and supply of S-PVC compounds.

##### **4.1.1.1. Product market definition**

- (9) S-PVC needs to be compounded (blended with other ingredients such as pigments and other substances in order to confer the desired characteristics on the final product) before it can be directly used in any end application. Depending on the additives used in the compounding process, S-PVC compounds can be used in a

---

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

wide range of end applications such as plumbing and drainage, window frames and sills, door frames, fascia siding, flooring, cables, etc.

- (10) In past decisions,<sup>4</sup> the Commission considered PVC compounds to constitute a distinct product market separate from commodity S-PVC. It also considered whether the market may be further divided into two distinct segments, that is to say dry blend and gelled compounds, but ultimately left the issue open.
- (11) From a demand-side perspective, the Commission found limited substitutability between dry blend and gelled compounds in the past. In particular, these two types of S-PVC compounds share only some end applications. Customers could not adapt their production process to use both types of compounds, without investing in new equipment.<sup>5</sup> From a supply-side perspective, the Commission also noted that suppliers of S-PVC compounds use different equipment for manufacturing dry blend and gelled compounds, as the latter type of compounds requires special and more expensive equipment.<sup>6</sup>
- (12) The Notifying Party argues that, from a supply-side perspective, a supplier can switch from one type of compound to the other without incurring significant costs. This is because the production of gelled compounds only adds one additional, final step to the production process of dry blend compounds. Suppliers of dry blend compounds should simply invest in an extruder to start producing gelled compounds, and some gelled production lines allow the dry blend compounds to be extracted before the production moves to the final gelled stage (otherwise modifications can be made to the production line to allow this extraction). Nevertheless, the Notifying Party considers that the question can be left open for the purpose of this case, as no competition concerns would arise under any of these alternative market definitions.
- (13) During the market investigation, customers explained that they cannot use dry blend and gelled compounds interchangeably and that it would not be possible for them to adjust their production process to accommodate both types of S-PVC compounds. Customers also indicated that even in the event of a permanent 5-10% price increase (“SNNIP”), they would not switch from gelled compounds to dry blend compounds or vice-versa.
- (14) Suppliers of S-PVC compounds acknowledged that the production process of dry blend and gelled compounds is essentially the same although each type of S-PVC compounds requires different equipment. Generally, manufactures' production patterns are bound to the requirements of their customer base, which makes switching between the two types of S-PVC compounds unlikely, even in the event of a SNNIP.
- (15) For the purpose of this merger decision, the question of whether dry blend and gelled compounds belong in the same product market can ultimately be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the precise product market definition.

---

<sup>4</sup> Case M.6218 *INEOS / Tessenderlo Group S-PVC Assets*, para. 73; and Case M.4734 *INEOS / Kerling* para. 41.

<sup>5</sup> Case COMP/M.4734 *INEOS/Kerling*, para. 40.

<sup>6</sup> Case COMP/M.4734 *INEOS/Kerling*, para. 40.

#### 4.1.1.2. Geographic market definition

- (16) The Commission has previously found that the geographic scope of the market for S-PVC compounds is wider than national, while leaving open the question of whether the market encompasses North Western Europe (“NWE”),<sup>7</sup> Western Europe (“WE”) or the entire EEA.<sup>8</sup>
- (17) The Notifying Party contends that the market is EEA-wide and makes several points to substantiate its argument.
- a. First, S-PVC compounds are non-hazardous products which are not subject to special handling requirements and are simple to transport over large distances, with transport costs averaging around 4-5% of the sales price.
  - b. [...]
  - c. Third, the Notifying Party estimates that there are large trade flows between Member States, with every Member State analysed by the Notifying Party importing at least [20-30]% of its S-PVC compounds requirements.<sup>9</sup>
  - d. Fourth, suppliers of S-PVC compounds are accustomed to providing post-sale technical support to customers in a range of locations. Support is generally delivered through regular visits to the customer, whether the customer is in another country or more local.
- (18) A majority of the customers having participated in the market investigation believed that the market was wider than national, although some emphasized the importance of local presence to ensure that certain services are provided in a timely manner. Within this group of customers, the NWE dimension is the most prevalent one. Moreover, Western European customers seem unwilling to purchase from Eastern Europe and vice-versa, which suggests that the market may be narrower than the whole EEA.
- (19) Regarding a hypothetical narrower segmentation comprising the United Kingdom and Ireland (as opposed to continental Europe), a majority of customers confirmed that the market conditions in this area, such as prices, availability of supply and competitive environment, are comparable to those prevailing in continental Europe. While a majority of customers in this area purchase locally, they explain that in principle there seem to be no particular hurdle preventing them from sourcing elsewhere, if required.
- (20) Suppliers of S-PVC compounds unanimously considered the market for S-PVC compounds to be wider than national, with the EEA being the most prevalent dimension. Moreover, suppliers of S-PVC compounds consistently stated that a

---

<sup>7</sup> NWE consists of Belgium, Denmark, France, Germany, Ireland, Luxemburg, Netherlands, Norway, Sweden and the United Kingdom.

<sup>8</sup> Case M.6218 *INEOS / Tessenderlo Group S-PVC Assets*, para. 73; and Case M.4734 *INEOS / Kerling*, paras. 163-165.

<sup>9</sup> On a regional basis, in NWE the Notifying Party estimates the import from other NWE countries account for [30-40]% of total NWE sales, with further [10-20]% consisting of imports from elsewhere in the EEA. In the EEA as a whole around [40-50]% of all sales comes from import from other Member States.

SNNIP localized in a given area of the EEA would be enough to redirect sales to that area (including the United Kingdom and Ireland).

- (21) Based on the results of the market investigation and in line with its precedents, the Commission considers that, for the purpose of this merger decision, the geographic scope of the market for S-PVC compounds is wider than national. The question of whether this market encompasses NWE, WE or the entire EEA can ultimately be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the precise market definition.

## **4.2. Vertically related markets**

### *4.2.1. S-PVC and E-PVC*

- (22) INEOS, through its joint venture (the “PVC Joint Venture”) with Solvay SA (“Solvay”), will be active upstream from S-PVC compounds in the production and supply of S-PVC and Emulsion Polyvinyl Chloride (“E-PVC”),<sup>10</sup> both inputs for producing S-PVC compounds.

#### 4.2.1.1. Product market definition

- (23) In previous decisions,<sup>11</sup> the Commission has concluded that S-PVC and E-PVC belong in separate product markets. The market for S-PVC resins was further segmented into three separate product markets: extender, speciality and commodity S-PVC. This segmentation was due to the products having different properties, production processes, pricing, ranges of possible applications and supply structure.<sup>12</sup> Recently, the Commission reiterated that the market for commodity S-PVC constitutes a separate product market from specialty and extender S-PVC.<sup>13</sup> The market for E-PVC resin was also further segmented into two separate product markets, that is to say paste and speciality E-PVC, due to limited demand and supply-side substitutability.<sup>14</sup>

- (24) The Notifying Party does not contest the Commission’s practice in this regard.

- (25) For the purpose of this merger decision, any outstanding market definition can ultimately be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the precise market definition.

#### 4.2.1.2. Geographic market definition

- (26) In previous cases,<sup>15</sup> the Commission has considered that the geographic market for S-PVC could be as wide as the EEA. However, the Commission has recently

---

<sup>10</sup> The Notifying Party explains that extender S-PVC and E-PVC are only occasionally used as an additive in S-PVC compounds.

<sup>11</sup> Case M.6905 *INEOS / Solvay / JV*, para. 190; Case M.6681 *SVP / Kloeckner Holdings*, para. 37; Case M.6563 *Mexichem SIH / Wavin*, para 14; M.6218 *INEOS/Tessenderlo Group S-PVC*, para 15; and Case M.4734 *INEOS / Kerling*, para 19.

<sup>12</sup> Case M.6563 *Mexichem SIH / Wavin* para. 21; Case M.6218 *INEOS / Tessenderlo Group S-PVC Assets*, paras. 16-19; and Case M.4734 *INEOS / Kerling*, para. 20.

<sup>13</sup> Case M.6905 *INEOS / Solvay / JV*, para. 196 and ff.

<sup>14</sup> Case M.6905 *INEOS / Solvay / JV*, paras. 526-531; and Case M.4734 *INEOS / Kerling*, para. 19.

<sup>15</sup> Case M.6681 *SVP / Kloeckner Holdings*, para. 37; and Case M.6563 *Mexichem SIH / Wavin*, para 37.

concluded that the market for commodity S-PVC is narrower than the whole EEA and as wide as NWE or, at best, NWE+.<sup>16</sup> With regard to E-PVC, the Commission considered that the geographic market could be EEA-wide or even global.<sup>17</sup>

- (27) The Notifying Party submits that the market for S-PVC (and its sub-segments) is EEA-wide, whereas the market for E-PVC (and its sub-segments) is global.
- (28) For the purpose of this merger decision, any outstanding market definition can ultimately be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the precise market definition.

#### 4.2.2. *Plasticizers*

- (29) INEOS is active upstream from S-PVC compounds in the production and supply of plasticisers and secondary plasticisers, both of which are inputs for producing S-PVC compounds. In particular, INEOS produces three types of plasticizers, i.e. terephthalates, trimellitates and aliphatics.

##### 4.2.2.1. Product market definition

- (30) In previous decisions,<sup>18</sup> the Commission has considered the market for plasticisers, but did not focus on the types of plasticisers produced by INEOS. In those decisions, the Commission defined a separate market for di-benzoate plasticisers, which is a subset of benzoate plasticisers.
- (31) The Notifying Party submits that there is a high degree of demand-side substitutability between different classes of plasticisers. While it acknowledges that, as a general matter, substitutability may be more likely within a particular plasticizer class (e.g. aliphatics), there is also significant substitutability across classes.
- (32) For the purpose of this merger decision, the question of whether each plasticiser class constitutes a separate product market can ultimately be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the precise market definition.

##### 4.2.2.2. Geographic market definition

- (33) In previous cases,<sup>19</sup> the Commission has found that the market for plasticisers is EEA-wide.
- (34) The Notifying Party does not contest the Commission's practice in this regard.
- (35) For the purpose of this merger decision, the precise geographic scope of the market for plasticizers can ultimately be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the precise market definition.

---

<sup>16</sup> Case M.6905 *INEOS / Solvay / JV*, para. 405. NWE+ consists of NWE plus Austria, Finland, Italy, Switzerland.

<sup>17</sup> Case M.6905 *INEOS / Solvay / JV*, paras. 540-544; Case M.6681 *SVP / Kloeckner Holdings*, para 33.

<sup>18</sup> Case M.5153 *Arsenal / DSP*, para. 134 and ff.; and Case M.5785 *Sun Capital / DSM*, paras. 48 and ff.

<sup>19</sup> Case M.5153 *Arsenal / DSP*, para. 164-170; and Case M.5785 *Sun Capital / DSM*, paras. 89-91.

#### 4.2.3. *Secondary plasticizers*

- (36) INEOS is also active in the production and supply of chlorinated paraffins, which are used as secondary plasticizers in S-PVC compounds. INEOS is currently in the process of contributing these activities to the PVC Joint Venture.

##### 4.2.3.1. Product market definition

- (37) The Commission has never analysed the market for secondary plasticizers in the context of merger proceedings. The Notifying Party submits that there is a high degree of demand-side substitutability between different secondary plasticizers. As a consequence, it argues that the market should include chlorinated paraffins, ESBO and ELO.

- (38) For the purpose of this merger decision, the question of whether each secondary plasticiser class constitutes a separate product market can ultimately be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the precise market definition.

##### 4.2.3.2. Geographic market definition

- (39) The Notifying Party submits that the market for secondary plasticisers is global, because (i) they are readily transportable and there are no significant barriers to trade; (ii) there are substantial global trade flows; and (iii) INEOS faces substantial competition from producers of secondary plasticisers located outside of the EEA (that is to say in India, the Middle East, USA and SE Asia).

- (40) For the purpose of this merger decision, the precise geographic scope of the market for secondary plasticisers can ultimately be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market irrespective of the precise market definition.

## 5. **COMPETITIVE ASSESSMENT**

### 5.1. **The framework of the assessment**

- (41) The Commission has recently examined another concentration affecting related markets, namely the establishment of the PVC Joint Venture between INEOS and Solvay.<sup>20</sup> The PVC Joint Venture was approved by the Commission decision of 8 May 2014 subject to commitments. However, that concentration has not yet been implemented as the parties' commitments in that case included an upfront buyer clause which provides that the completion of that concentration is conditional upon divestment of certain production assets. The divestment of those production assets has not yet taken place.

- (42) In line with previous Commission decisions,<sup>21</sup> in the present case the Notifying Party submitted its notification based on the working assumption that the PVC Joint Venture has already been implemented.<sup>22</sup>

---

<sup>20</sup> Case M.6905 *INEOS / Solvay / JV*.

<sup>21</sup> Case M.6203 *Western Digital Ireland / Viviti Technologies*, paras. 18 and ff.



- (43) Therefore, the Transaction is assessed taking into account the PVC Joint Venture. Consequently, the starting point of the Commission's assessment is a market structure where the PVC Joint Venture is active upstream of S-PVC compounds.
- (44) Against this background, the Transaction gives rise to one horizontally affected market, i.e. dry blend compounds, and also to a number of vertically affected markets: commodity and extender S-PVC as inputs for S-PVC compounds (and its sub-segments); speciality S-PVC as an input for dry blend compounds; E-PVC and speciality E-PVC as inputs for dry blend compounds; and paste E-PVC as an input for S-PVC compounds (and its sub-segments).
- (45) The Transaction also gives rise to vertically affected markets in relation to plasticisers and secondary plasticisers: plasticisers as input for dry blend compounds; and, if a very conservative market definition is retained,<sup>23</sup> chlorinated paraffins as an input for S-PVC compounds (and its sub-segments).

## 5.2. Horizontally affected markets

### 5.2.1. Dry blend compounds

- (46) As noted above, the Transaction only gives rise to one horizontally affected market, namely dry blend compounds, regardless of the geographic market definition ultimately retained (that is to say NWE, WE or EEA). In this market, the merged entity's market share by volume in 2013 would amount to [20-30]% with an increment of [0-5]% in the EEA, [20-30]% with an increment of [0-5]% in WE and [30-40]% with an increment of [0-5]% in NWE. INEOS is already the market leader pre-transaction and the structural change brought about by the Transaction in this market is not significant.
- (47) From a historical perspective, INEOS's production and market share has increased in the 2010-2012 period, despite a notable fall in the total size of the market since 2010. However, INEOS lost between [0-5] and [5-10] percentage points by volume in 2013. Doeflex's market data shows that, over the 2010-2013 period, it has reduced its production of dry blend compounds [...], continuously losing market share since 2011. This suggests that Doeflex's ability to pose a competitive constraint over INEOS has been limited, at least since 2011.
- (48) Post-transaction, the merged entity will continue to face competitive constraints from a number of market players including Solvay<sup>24</sup> ([10-20]% in the EEA, [5-10]% in WE and [10-20]% at NWE-level), Begra ([0-5]% in the EEA, [0-5]% in WE and [0-5]% in NWE), Kem One ([0-5]% in the EEA and WE [0-5]% in NWE), Polymer Chemie ([0-5]% in the EEA and WE and [0-5]% in NWE) and TPV ([0-5]% in the EEA and WE). The market for dry blend compounds is also fragmented with more than [50-60]% of EEA, WE and NWE sales volumes accounted for by

---

<sup>22</sup> Therefore, where relevant, market conditions are those that are expected to exist post-implementation of the proposed PVC Joint Venture (including the related divestments) rather than those that currently exist.

<sup>23</sup> As noted above, the Notifying Party argues that the relevant product market should include all secondary plasticizers, while the geographic relevant market should be global.

<sup>24</sup> In June 2014, Solvay divested its compounding activities to OpenGate Capital, i.e. Kem One's current owner. As a consequence, in the next future Kem One's and Solvay's compounding business will be operated by the same group.

small suppliers in 2013. Those players have increased their market share relative to 2012, particularly in NWE, where they gained approximately [20-30] percentage points by volume on an aggregate basis.

- (49) The Notifying Party argues that the Transaction does not give rise to competition concerns for a number of reasons.
- (50) First, INEOS estimates that there is significant spare capacity in the market, which can be quickly and cheaply deployed.<sup>25</sup> It further adds that there is also scope for expanding capacity by running plants at weekends (instead of only five days a week).<sup>26</sup> INEOS also stresses that suppliers would also have incentives to expand capacity, because historically they have shown interest in responding to new opportunities and have increased their production at periods, when demand and order size increased.
- (51) Second, customers pursue multi-sourcing strategies and can switch easily between suppliers of S-PVC compounds.<sup>27</sup> Long term contracts are uncommon in this industry and orders tend to be won on a month-by-month basis. Switching costs are low for commoditised end applications. However, the Notifying Party acknowledges that some customers (e.g. manufacturers of medical devices) need regulatory approvals before any such switching can take place. In those cases, switching can take 6-12 months or longer and the costs associated with any such switching are arguably higher than those faced by other customer groups.
- (52) Third, this market is characterised by low entry barriers and entry can take place on a small scale.<sup>28</sup> According to INEOS, many small suppliers have been successful in entering this market within the past 15 years, which would be confirmed by the high degree of fragmentation reflected in the market share data still today. Moreover, the Notifying Party argues that even customers do not face technical barriers and can start in-house production, once they acquire the necessary - potentially second-hand - equipment. Based on INEOS' estimates, most S-PVC compounding (around 81%) is carried out by S-PVC converters.
- (53) Fourth, INEOS and Doeflex are not close competitors.<sup>29</sup> INEOS does not compete with Doeflex more closely than it competes with other compounds suppliers. INEOS and Doeflex are also not particularly close competitors for any product type or customer group. Moreover, there is limited competition between the Parties with respect to customers who purchase medical grade S-PVC compounds, that is to say the customer group facing greater hurdles for switching to another supplier of S-PVC compounds.
- (54) A majority of the participants in the market investigation confirmed the Notifying Party's claim that the market is characterised by short-term contracts with generally no volume commitments and that multi-sourcing strategies are also common in the

---

<sup>25</sup> Form CO, Paragraphs 6.38 *et seq.*

<sup>26</sup> INEOS conservatively estimates that the current level of spare capacity - excluding INEOS and Doeflex amounts - to at least [200 000-300 000] tonnes, i.e. over [10-20]% of the total S-PVC compounds market by volume.

<sup>27</sup> Form CO, Paragraphs 6.41 *et seq.*

<sup>28</sup> Form CO, Paragraph 6.44 *et seq.*

<sup>29</sup> Form CO, Paragraph 6.51 *et seq.*

sector. On balance, market participants considered switching to be achievable in a relatively short time frame and with limited investment for most applications. In a case of a price increase, a majority of customers would simply switch volumes to another supplier of dry blend compounds. This is also corroborated by the suppliers, which responded to the market investigation.

- (55) The Notifying Party's claim regarding the existence of overcapacity has also been supported by the replies to the market investigation. The substantial overcapacity in the market for S-PVC compounds is explained by the overall level of demand, which has fallen since the financial crisis, while production levels have not.
- (56) Conversely, the replies to the market investigation did not entirely support the Notifying Party's argument that a price increase would trigger switching to in-house production. On the one hand, customers generally pointed to too high investment costs or to the lack of know-how to produce S-PVC compounds of the required quality as barriers to this type of switching. On the other, some larger customers may indeed be able to move a certain proportion of their needs to in-house productions and appear to have done so recently. In particular, INEOS identified a number of customers which have recently made this switch, such as AEI, DHM, GAP/Homeline, Selecta, Kalsi, Eurocell, Extruflex, Kestrel, HL Plastics, and BT Bau.<sup>30</sup>
- (57) Finally, market participants did not single out INEOS and Doeflex as each other's close competitor. While INEOS, Doeflex and Dugdale seem to be important supply options for customers located in the United Kingdom and Ireland due to their proximity to customers in that area, many other players such as Vinyl Compounds, Colorite, Kem One and Benvic are regarded as close competitors. The market investigation also indicated that, INEOS tends to focus on big production campaigns for large customers, whereas Doeflex essentially supplies smaller customers, making Doeflex much closer to Dugdale rather than INEOS from this perspective.
- (58) In view of the Notifying Party' submissions and the replies to the market investigation, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market with regard to the market for dry blend compounds.

### **5.3. Vertically affected markets**

- (59) As noted in Paragraph (43), the starting point of the Commission's assessment is a market structure where the PVC Joint Venture is active upstream of S-PVC compounds. Therefore, where relevant, the PVC Joint Venture's market shares will be taken into account instead of INEOS' ones.

#### *5.3.1. S-PVC / S-PVC compounds*

- (60) The PVC Joint Venture will have a market share of [30-40]% in NWE and [30-40]% in NWE+ in the market for commodity S-PVC and a market share of [30-40]% in NWE and WE and [30-40]% in the EEA in the market for extender S-

---

<sup>30</sup> Form CO, Paragraph 8.18.

PVC.<sup>31</sup> For specialty S-PVC, the PVC Joint Venture's market share will be relatively small, with [10-20]% in NWE, [10-20]% in WE and [10-20]% in the EEA. However, a vertically affected market could arise by virtue of the merged entity's market share in the market for dry blend compounds in NWE, which amounts to [30-40]%.

- (61) Therefore, the Transaction would give rise to a number of vertically affected markets as between commodity and extender S-PVC and S-PVC compounds (and its sub-segments), as well as specialty S-PVC and dry blend compounds.
- (62) However, the Commission considers that the Transaction does not give rise to any input or customer foreclosure concerns.
- (63) In terms of input foreclosure, the Transaction does not affect the upstream structure of supply and, therefore, is unlikely to affect the ability of rival compounders to find alternative sources of commodity S-PVC. There are alternative suppliers accounting for around [60-70]% of the market for commodity S-PVC in NWE and NWE+, almost [60-70]% of the market for extender S-PVC in NWE and the EEA and almost [90-100]% in the market for specialty S-PVC in NWE and the EEA.
- (64) Moreover, even assuming that INEOS would have incentives to engage in input foreclosure, it would lack the ability to do so. This is because the PVC Joint Venture - jointly controlled by INEOS and Solvay on a 50-50 basis - will have the incentive to maximise its sales in pursuit of its own profitability. Thus, under such a scenario INEOS's and Solvay's incentives would not be aligned. In other words, it appears unlikely that Solvay would agree to foreclose third party compounders in favour of supplying only INEOS's downstream activities.
- (65) In terms of customer foreclosure, as pointed out by the Notifying Party, Doeflex is only a modest purchaser of commodity and specialty S-PVC, with less than [0-5]% of the demand in NWE and NWE+ for commodity S-PVC and less than [0-5]% of the demand in NWE, WE and in the EEA for specialty S-PVC. [Extender S-PVC is only occasionally used as an additive in S-PVC compounds].. Therefore, a hypothetical customer foreclosure by INEOS would not deprive other suppliers of commodity, extender and specialty S-PVC of sufficient economic alternatives in the downstream market to sell their output.<sup>32</sup>
- (66) Finally, INEOS was already active in the markets at issue pre-Transaction and, to the best of the Commission's knowledge, it did not engage in input or customer foreclosure. The magnitude of the Transaction does not appear to be sufficiently material to justify a change in INEOS's strategy.
- (67) In light of the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market with regard to the markets for S-PVC and S-PVC compounds.

---

<sup>31</sup> These market shares take into the on-going divestments in relation to the PVC Joint Venture.

<sup>32</sup> Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, Paragraph 61.

### 5.3.2. *E-PVC / S-PVC compounds*

- (68) The PVC Joint Venture will have a market share of [20-30]% in the EEA in the overall market for E-PVC and a market share of [10-20]% in the EEA in the market for speciality S-PVC. However, a vertically affected market could arise by virtue of the merged entity's market share in the market for dry blend compounds in NWE, which amounts to [30-40]%. As regards paste E-PVC, the PVC Joint Venture's market share will be [30-40]% in NWE and, consequently, this would give rise to other affected markets in relation S-PVC compounds (and its sub-segments).
- (69) Therefore, the Transaction would give rise to a number of vertically affected markets as between overall E-PVC and speciality E-PVC and dry blend compounds, as well as paste E-PVC and S-PVC compounds (and its sub-segments).
- (70) However, the Commission considers that the Transaction does not give rise to any input or customer foreclosure concerns.
- (71) In terms of input foreclosure, the Transaction does not affect the upstream structure of supply and, therefore, is unlikely to affect the ability of rival compounders to find alternative sources of commodity S-PVC. There are alternative suppliers accounting for around [70-80]% of the market for E-PVC in the EEA, more than [60-70]% of the market for paste E-PVC in the EEA and around [80-90]% in the market for speciality E-PVC in the EEA.
- (72) Moreover, even assuming that INEOS would have incentives to engage in input foreclosure, it would lack the ability to do so. This is because the PVC Joint Venture - jointly controlled by INEOS and Solvay on a 50-50 basis - will have the incentive to maximise its sales in pursuit of its own profitability. Thus, under such a scenario INEOS's and Solvay's incentives would not be aligned. In other words, it appears unlikely that Solvay would agree to foreclose third party compounders in favour of supplying only INEOS's downstream activities.
- (73) In terms of customer foreclosure, as pointed out by the Notifying Party, E-PVC is only very occasionally used as an additive in S-PVC compounds. Therefore, a hypothetical customer foreclosure by INEOS would not deprive other suppliers of commodity, extender and speciality S-PVC of sufficient economic alternatives in the downstream market to sell their output.
- (74) Finally, INEOS was already active in the markets at issue pre-Transaction and, to the best of the Commission's knowledge, it did not engage in input or customer foreclosure. The magnitude of the Transaction does not appear to be sufficiently material to justify a change in INEOS's strategy.
- (75) In light of the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market with regard to the markets for E-PVC and S-PVC compounds.

### 5.3.3. *Plasticisers and secondary plasticisers / S-PVC compounds*

- (76) At EEA level, INEOS has a market share of [10-20]% by volume in the market for aliphatics, [20-30]% in the market for trimellitates and [0-5]% in the market for

terephthalates. However, vertically affected markets could arise by virtue of the merged entity's market share in the market for dry blend compounds in NWE, which amounts to [30-40]%. As regards secondary plasticisers, if a very conservative market definition is retained, INEOS' market share would amount to [50-60]% in the EEA market for chlorinated paraffins.

- (77) Therefore, the Transaction would give rise to a number of vertically affected markets as between plasticisers (aliphatics, terephthalates and trimellitates) and dry blend compound, as well as chlorinated paraffins and S-PVC compounds (and its sub-segments).
- (78) However, the Commission considers that the Transaction does not give rise to any input or customer foreclosure concerns.
- (79) In terms of input foreclosure, the Transaction does not affect the upstream structure of supply and, therefore, is unlikely to affect the ability of rival compounders to find alternative sources of plasticisers and secondary plasticisers. There are alternative suppliers accounting for at least [70-80]% of the EEA market for plasticisers (aliphatics, terephthalates and trimellitates) and around [40-50]% of the EEA market for chlorinated paraffins.
- (80) Regarding chlorinated paraffins, INEOS stresses that its market share overestimates its position, because chlorinated paraffins have multiple uses.<sup>33</sup> If other uses were excluded, INEOS's market position would decrease significantly down to [5-10]% of a hypothetical EEA-wide market. Moreover, there are multiple alternative suppliers of chlorinated paraffins such as Caffaro, Leuna Tenside, Altair Chimica and Fortischem, as well as multiple suppliers of other secondary plasticizers like Arkema, Akcros Chemicals and Emery Oleochemicals. According to INEOS's estimates, these players are more than able to satisfy merchant market demand.
- (81) In terms of customer foreclosure, as pointed out by the Notifying Party, Doeflex is only a small purchaser of plasticisers and secondary plasticisers. With regard to plasticisers, Doeflex accounts for less than [0-5]% of the merchant market demand in the EEA.<sup>34</sup> With regard to secondary plasticisers, its purchases of chlorinated paraffins and ESBO account for less than [0-5]% of the merchant market demand for secondary plasticisers in the EEA and only around [0-5]% of the merchant market demand for chlorinated paraffins in the EEA. Therefore, a hypothetical customer foreclosure by INEOS would not deprive other suppliers of commodity, extender and speciality S-PVC of sufficient economic alternatives in the downstream market to sell their output.
- (82) Finally, INEOS was already active in the markets at issue pre-Transaction and, to the best of the Commission's knowledge, it did not engage in input or customer foreclosure. The magnitude of the Transaction does not appear to be sufficiently material to justify a change in INEOS's strategy.

---

<sup>33</sup> Form CO, Paragraph 6.89(ii)(a).

<sup>34</sup> More in detail, Doeflex's purchases in 2013 amounted to around [0-5]% of terephthalate demand in the EEA and 0.06% of trimellitate demand in the EEA. [...].

- (83) In light of the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market with regard to the markets for plasticisers and secondary plasticisers and S-PVC compounds.

**6. CONCLUSION**

- (84) 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)*

*Ferdinando NELLI FEROCI*

*Member of the Commission*