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***Case No COMP/M.7162 - INEOS / SSG SOLVENTS  
BUSINESS***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 05/05/2014

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## EUROPEAN COMMISSION

Brussels, 05.5.2014  
C(2014) 3052 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 M.7162 – INEOS / SSG Solvents Business  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 25 March 2014, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking INEOS Investments S.A. (Switzerland), controlled by INEOS Group ("INEOS", Switzerland), hereinafter "the Notifying Party", acquires the solvents business (the 'SSG Solvents Business') of Sasol Solvents Germany GmbH ('SSG', Germany), by way of purchase of assets<sup>2</sup> (hereinafter "the Transaction"). INEOS and SSG are collectively referred to as "the Parties".

#### **1. THE PARTIES**

- (2) INEOS is active in the production of a wide range of chemicals, including synthetic ethanol used for industrial purposes, which is produced at its plant in Grangemouth, UK. INEOS is a global manufacturer of petrochemicals, speciality chemicals and oil products, operating 51 manufacturing facilities in 11 countries throughout the world.

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<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 97/07 2.4.2014, p. 12.

- (3) SSG Solvents Business is active in the production of a variety of oxygenated solvents, including isopropanol ('IPA'), methyl ethyl ketone ('MEK') and synthetic ethanol, as well as certain fine chemicals. SSG Solvents Business consists of two manufacturing facilities, Herne and Moers, both located in Germany. Synthetic ethanol is produced only in Herne.

## **2. THE OPERATION**

- (4) On 17 December 2013, the Parties signed an Asset Purchase Agreement pursuant to which INEOS Investments S.A. accepted to acquire the SSG Solvents Business, namely the manufacturing plants Herne and Moers, tangible assets, traded receivables, raw materials and supplies, IP rights and know-how qualified as business with market presence. Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1) (b) of the Merger Regulation.

## **3. EU DIMENSION**

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR [...] million<sup>3</sup> (INEOS: EUR [...] billion; SSG Solvent Business: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR [...] million (INEOS: EUR [...] billion; SSG Solvent Business: EUR [...] million), and 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.

## **4. COMPETITIVE ASSESSMENT**

- (6) The Transaction creates a horizontal overlap on the market for industrial ethanol, which is an affected market within the meaning of the Merger Regulation. The Transaction also creates several vertical links, in particular between propylene and IPA, IPA and isopropyl acetate ('IPAC'), ethylene and ethanol, ethanol and e-series glycol ethers, as well as raffinate 2 and MEK. Vertically affected markets concern propylene upstream and IPA downstream as well as IPA upstream and IPAC downstream.

### **4.1. ETHANOL**

- (7) Ethanol (ethyl alcohol) is a colourless, flammable liquid with a characteristic odour. Ethanol can either be produced synthetically from ethylene, a feedstock which is extracted from crude oil or natural gas, or through fermentation from sugars derived from plants or other agricultural or non-agricultural products.
- (8) Ethanol produced synthetically from ethylene is chemically identical to ethanol produced by fermentation. Both processes result in an ethanol-water based product. However, ethanol produced through the fermentation process contains various impurities which have to be additionally removed in order to achieve the same grades and the same purity as with synthetic ethanol.
- (9) There are three main types of ethanol according to its commercial application: fuel ethanol, potable ethanol and industrial ethanol. Industrial ethanol can be both synthetic and fermentation ethanol, with the latter accounting for 60-70% of the industrial ethanol

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<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p 1).

produced in the EEA. The remainder of industrial ethanol demand is met by synthetic ethanol, which is not used as potable or fuel ethanol.

- (10) Industrial ethanol is produced in two main grades: hydrous ethanol (96% purity) and anhydrous ethanol (99% purity). Typically, hydrous ethanol contains not less than 95.1% and not more than 96.9% ethanol. Anhydrous ethanol contains not less than 99.5% ethanol, and up to 99.9%.
- (11) Within the industrial ethanol category there is a range of different end uses: anhydrous ethanol is a higher quality grade and once it has been "finished", it contains fewer impurities. It can thus be used in applications such as pharmaceuticals, cosmetics and inks. The lower "unfinished" 96% ethanol is used for applications, where the content of ethanol and/or impurities is less stringent: automotive screen wash, paints, inks, dyes and cosmetics.

#### *4.1.1. Product market definition*

- (12) In previous decisions the Commission did not conclude on the market definition for industrial ethanol. However, the Commission considered the market for fermentation ethanol as a distinct product market which could be further subdivided, based on its different grades and specific uses, into (i) bio-ethanol for motor fuels, (ii) beverages and (iii) chemicals.<sup>4</sup>
- (13) In the case at hand, the market investigation confirmed that from the demand side, industrial ethanol cannot be substituted with other solvents or chemical products (for example: isopropanol), due to technical specificities and regulatory obstacles.<sup>5</sup>
- (14) Therefore, for the purpose of the present case, the Commission will analyse the market for industrial ethanol as a separate product market and will assess the relevance of further subdividing this market based on the following criteria: (i) the feedstock used for the production of industrial ethanol, and (ii) the various grades used in different applications by end customers.

##### *i. Possible segmentation between fermentation ethanol and synthetic ethanol*

- (15) The Notifying Party submits that the relevant product market should be defined as comprising all industrial ethanol, whether produced synthetically or by fermentation. In particular, the Notifying Party asserts that both fermentation and synthetic ethanol are highly substitutable and that there is a clear trend since the year 2000 to switch from synthetic to fermentation ethanol for industrial uses, which has also been encouraged, for environmental reasons, by the public authorities in Europe. In this regard the Notifying Party points out that in recent years both the quality and consistency of ethanol produced from agricultural feedstock has improved leading to increased substitutability with synthetic ethanol. A number of major fermentation ethanol producers such as Tereos, France Alcools, Silcompa and Hungrana, and Kraul & Wilkening u. Stelling produce industrial ethanol, including anhydrous ethanol with 99% purity.

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<sup>4</sup> Case No COMP/M.5846 *Shell/Cosan/JV*, para. 10. See also Case No COMP/M.4798 *BP/Associated British Foods/JV*, para 12, where the Commission distinguished fermentation ethanol from synthetic ethanol. In these decisions, the Commission has used the term "bio-ethanol" for fermentation ethanol.

<sup>5</sup> Replies to question 9 of questionnaire M.7162 - Q2 – customers.

- (16) In addition, the Notifying Party submits that customers of industrial ethanol for all industrial applications are in principle able to switch between synthetic and fermentation ethanol. A strong indicator for this substitutability is the fact that customers do not specify in their tenders' specifications the production method of the ethanol demanded, but instead focus on the required ethanol's technical characteristics such as maximum water content, colour and odour, impurity level, etc.
- (17) As regards pharmaceuticals applications, the Notifying Party submits that historically pharmaceuticals companies predominantly used synthetic ethanol. However, it is submitted that this has significantly changed and currently a number of fermentation ethanol producers supply ethanol that meet the standards established in the pharmaceutical industry, e.g. the European Pharmacopoeia.
- (18) Finally, the Notifying Party points out that the substitutability of synthetic and fermentation ethanol can be demonstrated by the fact that during periods when, as a result of force majeure, outages occurred of synthetically-produced ethanol, customers did not switch between INEOS and SSG Solvents Business (the only two producers of synthetic ethanol in Europe). According to the Notifying Party, the lack of switching between producers of synthetic ethanol indicates that customers found it possible to switch from synthetically-produced to fermentation-produced ethanol during force majeure events.
- (19) The Commission notes that, on the basis of the results of the market investigation, Parties' arguments are confirmed. In particular, customers confirmed the very large degree of substitutability between synthetic and fermentation ethanol of the same grade.<sup>6</sup> Some customers indicated that the choice between synthetic and fermentation ethanol is mainly price driven. More than half of the customers also explained that they store synthetic and fermentation ethanol of the same grade in the same storage tanks.<sup>7</sup>
- (20) Some respondents to the market investigation mentioned that a substitution of synthetic ethanol by fermentation ethanol is either limited or even impossible given that fermentation ethanol contains a level of impurities making it unsuitable for their manufacturing process (certain pharmaceutical products). Nevertheless, some respondents stated their willingness to switch to fermentation ethanol if the price of synthetic ethanol would increase permanently by 5-10%. In addition, those respondents which stated that they would not be able to switch either represent only a small portion of the overall demand for industrial ethanol or are distributors (including distributors specialised in synthetic ethanol) whose customers would have the ability to switch to fermentation ethanol.
- (21) Switching from synthetic to fermentation ethanol may in some cases also require the registration of a new formulation of the pharmaceutical product manufactured and to apply for new approvals from the competent authorities. In addition, some pharmaceutical companies emphasised the need to go through a complex internal process in order to assess the suitability of the fermentation ethanol for a given application.

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<sup>6</sup> Replies to question 11 of questionnaire M.7162 - Q2 – customers.

<sup>7</sup> Replies to question 12 of questionnaire M.7162 - Q2 – customers.

- (22) The Commission observes, following the results of the market investigation, that distributors play an important role in the market for industrial ethanol, including anhydrous ethanol.<sup>8</sup> SSG Solvents Business sells [...] % of its production of anhydrous ethanol via distributors and INEOS [...]. As the producers of ethanol have little visibility regarding the customers served by distributors, it would be very difficult for INEOS to enforce a hypothetical price discrimination targeted at those customers for whom switching is more difficult. At the same time, INEOS would not have an incentive to increase prices of anhydrous ethanol to all customers, as the loss of volumes for the application where a switch to fermentation ethanol is easy would largely outweigh possible gains for the applications where the switch is more difficult.
- (23) It is important to note that the customers reporting limited or no substitutability are not representative of a specific market niche, but rather reflect individual production processes and/or preferences. Indeed, the vast majority of respondents from the pharmaceutical industry confirmed to use synthetic ethanol and fermentation ethanol interchangeably.<sup>9</sup> Some reported that they have successfully switched, in part or fully, from synthetic to fermentation ethanol in recent years, to profit from the lower cost of fermentation ethanol or to maintain a suitable number of available suppliers (typically two or three). According to these respondents, the switch did not prove problematic. In any event, the pharmaceutical industry represents around [10-20] % of the total demand for industrial ethanol.<sup>10</sup>
- (24) While the Commission acknowledges that certain pharmaceutical companies are still strongly linked to synthetic ethanol, the Commission considers that there is a well-established substitutability between fermentation and synthetic ethanol with the same grade for the vast majority of customers and for a significant number of applications in which industrial ethanol is used, such as the ink industry, cosmetics and to a certain extent also the pharmaceutical industry. Taking all these elements into account, synthetic and fermentation ethanol should be considered as part of the same product market.

*ii. Possible segmentation between hydrous ethanol and anhydrous ethanol*

- (25) The Commission has assessed the possibility to subdivide the market for industrial ethanol market based on the various grades, namely hydrous (minimum 95% of purity) and anhydrous (minimum 99.5% of purity) since each of them is used in specific applications.
- (26) To produce hydrous ethanol, the ethanol base (produced synthetically or by fermentation) is distilled. In order to produce anhydrous ethanol, the hydrous ethanol must be dehydrated which requires an additional step in the production process. The dehydration is done by way of molecular sieve drying; a generally available technology which is used widely by ethanol producers.
- (27) On the basis of the market investigation, the Commission notes that customers distinguish between hydrous and anhydrous ethanol. A large majority of industrial ethanol customers cannot substitute hydrous and anhydrous ethanol in their

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<sup>8</sup> Replies to question 34 and 34.1 of questionnaire M.7162 – Q1 –competitors.

<sup>9</sup> Replies to question 11 of questionnaire M.7162 – Q2 –customers.

<sup>10</sup> "The Global Market for Industrial Ethanol", Report by LMC International, 2013, p.17.

applications.<sup>11</sup> Respondents clarified that applications using anhydrous ethanol require minimisation of the water in the manufacturing process of a given product; therefore, substitution with hydrous ethanol containing even more water is inappropriate. While applications using hydrous ethanol could in most instances use anhydrous ethanol instead, very little switching actually takes place because of the higher cost of anhydrous ethanol.

- (28) As to the supply side, the Commission, taking into account the results of the market investigation, observes a high degree of substitutability. As mentioned in (26) above, the production of anhydrous ethanol requires an additional production step (molecular sieve drying). Producers which have invested into this technology are able to switch from producing hydrous ethanol to anhydrous ethanol and vice versa in a reasonable time and without incurring significant costs. For other producers, such a switch is not easily possible in the short term, as it requires additional capital investments.<sup>12</sup> The market investigation indicated that a significant number of producers of fermentation ethanol have indeed invested in the molecular sieve drying technology and are therefore able to switch between hydrous and anhydrous ethanol, subject only to production capacity constraints.
- (29) Based on these elements, the Commission considers that the market for industrial ethanol can be further subdivided into hydrous ethanol and anhydrous ethanol due to limited substitutability from the demand side. Nevertheless, the precise scope of the product market definition can be left open for the purpose of the present case since the proposed transaction does not raise serious doubts under either market definition as to its compatibility with the internal market.

#### 4.1.2. *Geographic market definition*

- (30) In previous decisions, the Commission has considered the possible geographic market for ethanol as either Western Europe<sup>13</sup> or the EEA.<sup>14</sup>
- (31) The Notifying Party submits that the geographic market for industrial ethanol should be defined as EEA-wide given that the major industrial ethanol producers supply customers across the EEA and that the transport costs for industrial ethanol typically account for only [...] % of the average sale price in Europe.
- (32) Considering the results of the market investigation, the Commission notes that the vast majority of suppliers deliver industrial ethanol to customers at regional level, e.g. North Western Europe ("NWE") comprising Belgium, Denmark, France, Germany, Ireland, Luxembourg, Netherlands, Norway, Sweden and the UK. The market investigation also revealed that customers purchase anhydrous ethanol in a perimeter of a certain radius from their manufacturing plant or of a warehouse.
- (33) Moreover, on the basis of the market investigation, the Commission observes different purchasing pattern regarding hydrous and anhydrous industrial ethanol. Customers

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<sup>11</sup> Replies to questions 5 – 8, and 10 of questionnaire M.7162 - Q2 – customers.

<sup>12</sup> Replies to question 8 of questionnaire M.7162 – Q1 – competitors.

<sup>13</sup> Case No COMP/M.2533 *BP/E.ON*, para.87.

<sup>14</sup> Case No COMP/M.4005 *INEOS/Innovene*, para. 63. See also Case No COMP/M.4798 *BP/Associated British Foods.JV*, 32, where however in the context of bio-ethanol for fuel the Commission considered also a possible national market.

buying anhydrous ethanol source the necessary volumes within a certain radius from the production plant. On average, anhydrous ethanol is typically transported between 400 km and 1000 km, mainly by truck.<sup>15</sup> The radius is higher for larger orders supplied either to big customers or to distributors; in this case ethanol is generally transported by vessel due to lower transport cost.<sup>16</sup> In contrast, customers purchasing hydrous ethanol often source from producers located anywhere in the EEA, or even globally, albeit via a trader located in the EEA.<sup>17</sup>

- (34) In addition, some customers mentioned certain barriers limiting the direct import of industrial ethanol from third countries, such as import duties and the need to comply with certain national regulations, e.g. licences requirements since ethanol is a flammable good.<sup>18</sup> One ethanol customer pointed out that the reliance on vessel deliveries from outside the EU would render the purchaser more vulnerable to disruption.<sup>19</sup>
- (35) Based on the result of the market investigation, the Commission considers that the market for anhydrous industrial ethanol should be regarded as regional, e.g. North Western Europe, whereas the market for hydrous ethanol could be considered as EEA-wide.
- (36) Ultimately, the precise scope of the geographic market definition of industrial ethanol (which comprises both hydrous and anhydrous ethanol) can be left open since the transaction does not raise serious doubts under either geographic market definition as to its compatibility with the internal market.

#### 4.1.3. *Competitive Assessment*

- (37) INEOS and SSG Solvents Business are the only EEA producers of synthetic ethanol. INEOS' facility is located in Grangemouth, UK and SSG Solvents Business' ethanol plant is in Herne, Germany.
- (38) The Notifying Party estimates the total size of the market for industrial ethanol in the EEA at [...]kt. According to the Parties' best estimates, their combined market shares on the market for industrial ethanol in 2013 are approximately [20-30]% in volume and [20-30]% in value (with an increment of [5-10]%) in the EEA. The Notifying Party estimates, furthermore, that both Parties' market shares have steadily declined since 2010 both in relative and absolute terms. Their submission shows that the Parties' combined market shares have decreased from [30-40]% in 2010 to [20-30]% in 2013.
- (39) The Notifying Party explains that the steady decline of INEOS' and SSG Solvents Business' market shares is part of an overall trend towards reduced consumption of synthetic and increased use of fermentation ethanol. They further explain that this trend is due to (i) the escalation of the oil prices over the last ten years which also drove the price of the ethylene feedstock up, which in turn forced the customers to seek alternatives

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<sup>15</sup> Replies to questions 11-12 and 14 of questionnaire M.7162 – Q1 – competitors.

<sup>16</sup> Replies to question 12 of questionnaire M.7162- Q1-competitors.

<sup>17</sup> Replies to questions 16-17 of questionnaire M.7162 – Q2 – customers, Non-confidential minutes of conference call with Brenntag.

<sup>18</sup> Replies to question 19 of questionnaire M.7162 – Q2 –customers.

<sup>19</sup> Reply of Novo Nordisk A/S to question 19 of questionnaire M.7162 – Q2 – customers.



and (ii) the introduction of renewable fuels legislation in the EU and US in the early 2000s which lead to a significant increase in the production of new capacity for fermentation ethanol. This capacity allowed the fermentation ethanol producers to increase their presence also in the industrial ethanol sector. In addition, as a result of the technical progress during the recent years (molecular sieving), the fermentation ethanol producers are capable to produce anhydrous ethanol in a more cost-effective way than in the past.

- (40) The Notifying Party submits that the Parties face competition from a large number of strong competitors such as Tereos (with an EEA market share of [10-20]% in value), Alcogroup ([10-20]%), France Alcools ([5-10]%) and Cargill ([0-5]%), which all produce a full range of hydrous and anhydrous ethanol grades for use across all industrial segments. The Notifying Party also points out that ethanol rectifiers,<sup>20</sup> such as KWST, Rysen Alcools and Silcompa are increasing their competitive pressure on the Parties.
- (41) On a narrower segmentation for anhydrous ethanol, the Parties' combined market shares in value are [20-30]% in the EEA and [20-30]% on a Western Europe<sup>21</sup> market facing strong competition from essentially the same companies as on the wider EEA market for industrial ethanol. Even assuming a narrower geographic market definition, namely North Western Europe<sup>22</sup>, the Parties' combined market shares will not exceed [20-30]%.
- (42) The Parties predominantly produce anhydrous ethanol: in 2012, Ineos sold [...] kt of anhydrous ethanol and only [...] kt of hydrous ethanol; SSG Solvents Business had sales in 2012 of [...] kt of anhydrous ethanol and [...] kt of hydrous ethanol. Accordingly, their presence on the market for hydrous ethanol is very limited and this market is dominated by producers of fermentation ethanol. Furthermore, the Notifying Party points out that distributors of industrial ethanol exert significant competitive pressure on synthetic ethanol producers as they usually supply also fermentation ethanol. In addition, some distributors are also producing their own industrial ethanol. Distribution agreements are not exclusive and distributors often undercut industrial ethanol producers' direct sales.
- (43) The Notifying Party submits that industrial ethanol customers are highly price-sensitive. In view of the substitutability for both hydrous and anhydrous ethanol grades, customers can and do easily switch suppliers putting pressure on the prices. The supply agreements are predominantly short to medium term; therefore the customers can put suppliers under pressure with each other on a regular basis. The Notifying Party further states that the industrial ethanol market is characterised by a significant overcapacity, estimated at [...] % EEA-wide. Despite this fact, Cargill has announced to open a [...] kt production plant for industrial ethanol (fermentation ethanol) in Germany in 2015. The new plant will produce hydrous and anhydrous ethanol destined for the German and European beverage, cosmetic and pharmaceutical industries.

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<sup>20</sup> Rectifiers process low-grade ethanol (usually sourced from third party suppliers, such as importers) into higher-grade ethanol (typically for industrial applications) using additional temperature-controlled distillation.

<sup>21</sup> For the purposes of this decision Western Europe comprises Belgium, Denmark, France, Germany, Ireland, Luxembourg, Netherlands, Norway, Sweden, UK, Austria, Finland, Italy, Portugal and Spain.

<sup>22</sup> For a definition of NWE, see (32).

- (44) Finally, the Parties submit that in November 2013, given the challenging market conditions in Europe for the producers of synthetic ethanol, SSG announced that it would close down its ethanol facility in Europe. SSG's decision was based on a thorough assessment of its strategic options regarding its underperforming solvents business. [...] Still according to the Parties, the rationale for INEOS to buy SSG Solvents Business is that INEOS can extend its benefit of backward integration into ethylene, the most significant input for the production of ethanol, to the SSG Solvents Business which is currently dependent on third party suppliers of ethylene. It is further submitted that INEOS buys the SSG Solvents Business in order to complement its existing portfolio of solvent products and benefit from backward integration also in the other products currently produced by SSG (for which INEOS produces feedstock).
- (45) The market investigation confirmed that, whilst INEOS and Sasol are close competitors, customers can source at least a substantial part of their demand for industrial ethanol, including anhydrous one, from other suppliers which have sufficient spare capacity.<sup>23</sup> In fact, the vast majority of industrial ethanol customers are multi-sourcing mainly due to security of supply reasons in order to be able to mitigate the risk in case of shortage or to negotiate better contractual conditions.<sup>24</sup>
- (46) Overall, since Sasol publicly announced its plan to close the Herne production plant, customers do not consider that the transaction would have a major impact on competition, since the market structure will not deteriorate compared to the situation in which that plan for closure would be implemented.<sup>25</sup> Some customers using synthetic ethanol have started considering an alternative supply source of fermentation ethanol.<sup>26</sup> Some customers also indicated that, provided the Herne plant will continue operating, the Transaction will ensure two production points for synthetic ethanol in the EEA and therefore will be positive from the point of view of security of supply. The market investigation confirmed that there is currently an overcapacity on the market for both hydrous and anhydrous industrial ethanol.<sup>27</sup> In addition, one competitor, Cargill Deutschland GmbH, is currently building up a new production plant for industrial ethanol in Germany for hydrous and anhydrous ethanol (see (43)).
- (47) Furthermore, the majority of the industrial ethanol customers (including the customers from the pharmaceutical sector that had stated not to be able to switch between synthetic and fermentation ethanol) do not consider that the proposed transaction would lead to a price increase for anhydrous ethanol. They emphasised the competitive pressure exercised by the fermentation ethanol producers which will lead to stable prices or to price decreases for anhydrous ethanol. This opinion is shared by the majority of competitors. While some competitors did not exclude possible price increases, they did not provide concrete elements that could support such price movement.<sup>28</sup>
- (48) The Commission considers that INEOS will face strong competition from fermentation ethanol producers active across the EEA, and would not be able to raise

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23 Replies to question 29 of questionnaire M.7162 – Q2 –customers.

24 Replies to question 34 and 34.1 of questionnaire M.7162 – Q2 –customers.

25 Replies to question 37 of questionnaire M.7162 – Q2 –customers.

26 Non-confidential minutes of conference calls with BASF and Bayer.

27 Replies to question 17 of questionnaire M.7162 – Q1 –competitors.

28 Replies to question 31 of questionnaire M.7162 – Q1 –competitors.

prices unilaterally for its customers. As regards certain pharmaceutical companies which are unable to substitute synthetic with fermentation ethanol, the Commission considers that INEOS would not have the ability or incentive to enter into a price discrimination strategy towards them. In fact, the market investigation revealed that distributors play an important role in the market for industrial ethanol, including anhydrous ethanol.<sup>29</sup> Therefore, it would be very difficult for INEOS to enforce hypothetical price discrimination for the volumes sold through distributors. At the same time, INEOS would not have an incentive to increase prices of anhydrous ethanol to all customers, as the loss of volumes for the application where a switch to fermentation ethanol is easy would largely outweigh possible gains for the applications where the switch is more difficult.

- (49) In the light of the above, the Transaction does not lead to serious doubts as to its compatibility with the internal market concerning the market for industrial ethanol and its respective sub-segments in North Western Europe and the EEA respectively.

## **4.2. Vertical links**

### *4.2.1. Product and geographic market definition*

#### ***IPA***

- (50) IPA is a colourless flammable compound manufactured from the combination of water and propylene. IPA is used in a variety of commercial applications as a solvent or chemical intermediate, disinfectant, cleaner and as a fuel additive for gasoline.
- (51) In a previous decision,<sup>30</sup> the Commission has considered that IPA constitutes a distinct product market as it cannot generally be substituted with other solvents. The Notifying Party does not object to this product market definition.
- (52) In a previous decision, the Commission has considered that the relevant geographic market for IPA is at least EEA-wide or possibly world-wide.<sup>31</sup> The Notifying Party agrees with this geographic market definition.
- (53) For the purpose of the present case, it is not necessary to decide upon the exact geographic market definition since the transaction does not give rise to serious doubts as to its compatibility with the internal market even on the narrowest level, which in the case at hand is EEA-wide market.

#### ***Propylene***

- (54) Propylene is a gaseous olefin used as raw material for the production of a number of important basic petrochemical products including polypropylene.
- (55) In previous decisions, the Commission has considered that propylene constitutes a separate products market from other olefins.<sup>32</sup> The Notifying Party does not object to this product market definition.

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<sup>29</sup> Replies to question 34 and 34.1 of questionnaire M.7162 – Q1 –competitors

<sup>30</sup> Case No COMP/M.2269 *Sasol/Condea*, para. 9.

<sup>31</sup> Case No COMP/M.2269 *Sasol/Condea*, para. 14.

- (56) In previous decisions, the Commission has considered that the relevant geographic market is at least Western European and possibly EEA-wide.<sup>33</sup> The Notifying Party agrees with this geographic market definition.
- (57) For the purpose of the present case, it is not necessary to decide upon the exact geographic market definition since the transaction does not give rise to serious doubts as to its compatibility with the internal market even on the narrowest definition.

### ***IPAC***

- (58) Isopropyl acetate also called "IPAC" is the product of esterification of acetic acid and IPA. IPAC is a clear, colourless liquid used as a solvent in chemical processes for wide range of industries including coating, cosmetics, food flavourings and inks.
- (59) The Commission has previously examined other forms of acetate esters than IPAC.<sup>34</sup> When defining the product market, the Commission took into account the type of application in which a given ester is used as well as the feedstock for its production. The Notifying Party submits that IPAC constitutes a distinct product market. Due to its specific characteristics and uses, the Commission considers that IPAC should be considered as a distinct product market; however the precise scope of the product market definition can be left open for the purpose of the present case.
- (60) As regards the geographic market definition, the Notifying Party submits that it is at least EEA-wide; since there is substantial cross-border trade and transport costs are not significant. In previous decisions the Commission considered the geographic market for other forms of acetate esters to be EEA-wide.<sup>35</sup>
- (61) For the purpose of the present case, it is not necessary to decide upon the exact geographic market definition since the transaction does not give rise to serious doubts as to its compatibility with the internal market even on the narrowest definition, which in the case at hand is an EEA-wide market.

#### *4.2.2. Competitive assessment*

### ***Propylene and IPA***

- (62) Propylene is an input in the production of IPA and therefore the two products are vertically linked. INEOS produces propylene, while SSG Solvents Business produces IPA.
- (63) The proposed Transaction gives rise to an affected vertical relationship as SSG Solvents Business has an estimated [30-40]% market share on the downstream market for IPA on an EEA basis. INEOS' estimated market share for the upstream propylene is [0-5]% in Western Europe. Furthermore, the Notifying Party submits that SSG Solvents Business'

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<sup>32</sup> Case No COMP/M.5424 *Dow/Rohm and Haas*, para. 90; Case No COMP/M.4926 *Basell/Berre L'Etang Refinery*, para. 14; Case no COMP/M.4848 *Basell/Lyondell*, para. 14.

<sup>33</sup> Case No COMP/M.5424 *Dow/Rohm and Haas*, para. 90; Case No COMP/M.4848 *Basell/Lyondell*, para. 14.

<sup>34</sup> Case No COMP/M.6778 *Advent International Corporation / Cytec's resin Business*, Case No COMP/M.4005 *INEOS/Innovene* paras 19 and 21.

<sup>35</sup> Case No COMP/M.6778 *Advent International Corporation / Cytec's resin Business*, Case No COMP/M.4005-*INEOS/Innovene*.

demand for propylene accounts for less than [0-5]% of propylene demand in the EEA. Given the minimal market share in the upstream market and the minimal amount of propylene purchased by the SSG Solvents Business, the Transaction would not give rise to either input or customer foreclosure concerns.

### ***IPA and IPAC***

- (64) IPA is an input for the production of IPAC and therefore these product markets are vertically related. SSG Solvents Business produces IPA, whereas INEOS produces IPAC.
- (65) This vertical link is an affected market as SSG Solvents Business has an estimated [30-40]% market share on the upstream market for IPA on an EEA-wide market. If the market is considered as worldwide, SSG Solvents Business' market share will be [5-10]%.
- (66) The Notifying Party submits that SSG Solvents Business' faces strong competition from other IPA producers such as Shell (with an EEA market share of [30-40]%), Exxon ([20-30]%) and Novapex ([10-20]%). The last entered the market in 2010 and announced its plans to double its production capacity in 2012.
- (67) Therefore the IPAC producers will continue to have broad access to IPA and their input will not be foreclosed post transaction.
- (68) INEOS' market share on the downstream IPAC market is [10-20]%. INEOS's demand for IPA accounts for less than [0-5]% of the IPA demand in the EEA and thus also no risk of customer foreclosure arises.
- (69) Therefore, the proposed transaction does not give rise to serious doubts regarding its compatibility with the internal market as regards the vertical links created on the market for IPA and IPAC.

## **5. CONCLUSION**

- (70) 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)*

*Joaquin ALMUNIA*

*Vice-President*