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Case No COMP/M.7395 - MEXICHEM/ VESTOLIT

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/11/2014

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EUROPEAN COMMISSION

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Brussels, 13.11.2014

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PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

Subject: Case M.7395 - MEXICHEM/ VESTOLIT
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

(1) On 10 October 2014, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Mexichem S.A.B. de C.V. ("Mexichem", Mexico) will acquire sole control within the meaning of Article 3(1)(b) of the Merger Regulation of Vesto PVC Holding GmbH ("Vestolit", Germany), by way of purchase of shares.³ Mexichem is referred to as the "Notifying Party," whilst Mexichem and Vestolit are collectively referred to as the "Parties."

1. THE PARTIES

(2) **Mexichem** is active in the production and supply of PVC resins and intermediates, such as caustic soda, ethyl chloride, methyl chloride, hydrochloric acid and sodium sulphate. Mexichem also produces PVC compounds through its wholly owned

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 (the "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.

² OJ L 1, 3.1.1994, p.3 (the "EEA Agreement").

³ Publication in the Official Journal of the European Union No C 368, 17.10.2014, p. 15.

subsidiary AlphaGary ("AlphaGary", USA). Its production facilities are located in Mexico, Colombia and the USA. In the EEA, Mexichem produces joints, plastic accessories and PVC piping systems through its subsidiary Wavin NV ("Wavin", the Netherlands).

- (3) **Vestolit** is active in the production and supply of PVC resins and intermediates as well as PVC compounds. Its production facilities are located in Marl, Germany.

2. THE CONCENTRATION

- (4) Under the terms of a Sale and Purchase Agreement, signed on 4/5 August 2014 Mexichem will acquire all the shares in Vestolit through its subsidiary AlphaGary (the "Transaction"). As a result, Mexichem will acquire sole control over Vestolit.
- (5) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ [Mexichem : [...] million, Vestolit: EUR [...] million]. Each of them has an EU-wide turnover in excess of EUR 250 million [Mexichem : EUR [...] million, Vestolit: EUR [...] million], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension.

4. MARKET DEFINITIONS

- (7) Both Mexichem and Vestolit are active in the production and supply of PVC resins and PVC compounds. Therefore, the Transaction gives rise to horizontal overlaps. In addition, Mexichem is also active on the market for piping systems. Therefore, a vertical relationship exists between Mexichem's activities on the market for piping systems and Vestolit's upstream production and supply of PVC resins and compounds.

4.1. Horizontally related markets

4.1.1. PVC Resins

4.1.1.1. Product market definition

- (8) In previous decisions,⁵ 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.⁶

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁵ 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.

⁶ 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.

Recently, the Commission reiterated that the market for commodity SPVC constitutes a separate product market from specialty and extender S-PVC.⁷ 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.⁸

- (9) The Notifying Party does not contest the validity of the above considerations for the competitive assessment in this case.
- (10) Vestolit's production is currently focused on High Impact S-PVC ("HIS-PVC"), a co-polymer of vinyl chloride and polybutyl acrylate with a certain percentage of impact modifiers. This PVC resin has higher margins compared to commodity S-PVC and it is mainly used for the production of light and weather resistant window sections.
- (11) In *INEOS / Solvay / JV*, the Commission considered that, in view of the poor demand side substitutability and the limited economic incentives for its producers to switch from HIS-PVC to commodity S-PVC, those two products are not part of the same product market.⁹
- (12) The Notifying Party does not contest the validity of this consideration for the competitive assessment in this case. Indeed, it submits that HIS-PVC should be considered as part of the product market for speciality S-PVC, and not as separate market segment.
- (13) For the purpose of this decision, the 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 delineation.

4.1.1.2. Geographic market definition

- (14) The Commission has recently concluded that the geographic market for commodity S-PVC is as wide as North Western Europe ("NWE"), and in any event not wider than North Western Europe+ ("NWE+").¹⁰ Conversely, the market for extender and speciality S-PVC is regarded as NWE, Western Europe ("WE") or EEA-wide in scope. With regard to E-PVC, the Commission considered that the geographic market could be EEA-wide or even global.¹¹
- (15) The Notifying Party do not contest the validity of the above considerations for the competitive assessment in this case.
- (16) For the purpose of this decision, the exact geographic scope of the market for PVC resins 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.

⁷ Case M.6905 *INEOS / Solvay / JV*, para. 196 and ff.

⁸ Case M.6905 *INEOS / Solvay / JV*, paras. 526-531; and Case M.4734 *INEOS / Kerling*, para. 19.

⁹ Nonetheless Vestolit's capacity used to produce HIS-PVC was taken into account in the calculation of capacity shares for the commodity S-PVC market, in order to reflect the technical capability to redeploy capacity. Case M.6905 *INEOS / Solvay / JV*, para. 250.

¹⁰ Case M.6905 - *INEOS / Solvay / JV*; Case M.7132 - *INEOS / Doeflex*.

¹¹ Case M.6905 *INEOS / Solvay / JV*, paras. 540-544; Case M.6681 *SVP / Kloeckner Holdings*, para 33.

4.1.2. *PVC Compounds*

4.1.2.1. Product market definition

- (17) 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 wide range of end applications such as plumbing and drainage, window frames and sills, door frames, fascia siding, flooring, cables, etc.
- (18) In past decisions,¹² 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.
- (19) The Notifying Party does not propose a different approach.
- (20) For the purpose of this 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.

4.1.2.2. Geographic market definition

- (21) In previous decisions,¹³ 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 NWE, WE or the entire EEA.
- (22) The Notifying Party does not propose a different approach.
- (23) For the purpose of this decision, the exact geographic scope of the market for PVC compounds 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. *Piping systems*

4.2.1.1. Product market definition

- (24) In previous decisions,¹⁴ the Commission left open the question of whether pipes and fittings constitute a single product market. It has also considered further

¹² Case M.6218 *INEOS / Tessenderlo Group S-PVC Assets*, para. 73; and Case M.4734 *INEOS / Kerling* para. 41.

¹³ Case M.6218 *INEOS / Tessenderlo Group S-PVC Assets*, para. 73; and Case M.4734 *INEOS / Kerling*, paras. 163-165.

¹⁴ Case M.565 *Solvay / Wienerberger*; and Case M.2294 *Etexgroup / Glynwed Pipe Systems*.

segmentations, for example, by (i) application (water pressure, gas pressure, sewage, drainage, cable ducting and irrigation) and (ii) material (plastic vs non plastic).¹⁵

- (25) The Notifying Party argues that pipes and fittings belong to the same product market because competitive conditions are similar across the two segments. Moreover, there would be no substantial differences in terms of production processes and costs and no supplier is specialised in either of the two segments. By the same token, the Notifying Party also considers that any further segmentation is not appropriate. This is because in general there is supply-side substitutability inside the different segments as far as application and material used are concerned.
- (26) For the purpose of this decision, the 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 delineation.

4.2.1.2. Geographic market definition

- (27) In previous decisions,¹⁶ the Commission has considered that the relevant geographic market for pipes could be national or even regional, while the market for fittings - if they were to be viewed as a distinct product market - would likely have an EEA-wide dimension.
- (28) The Notifying Party submitted that the geographic market definitions should be wider than national.
- (29) For the purpose of this decision, the exact geographic scope of the market for piping systems 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. Framework of the assessment

- (30) The Commission has recently examined another concentration affecting related markets, namely the establishment of the PVC Joint Venture between INEOS and Solvay.¹⁷ 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 completion of that concentration is conditional upon divestment of certain production assets. The divestment of those production assets is still on-going.
- (31) In line with the Commission decisional practice,¹⁸ in the present case the Notifying Party based its notification on the working assumption that the PVC Joint Venture has already been implemented.¹⁹

¹⁵ Case M.565 *Solvay / Wienerberger*; and Case M.2294 *Etexgroup / Glynwed Pipe Systems*.

¹⁶ Case M.565 - *Solvay / Wienerberger*; Case M.2294 - *Etexgroup / Glynwed Pipe Systems*.

¹⁷ Case M.6905 *INEOS / Solvay / JV*.

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

5.2. Horizontally affected markets

- (32) Both Vestolit and Mexichem supply PVC resins and PVC compounds in the EEA. Therefore, the Transaction leads to a horizontal overlap. However, horizontally affected markets would arise only in PVC resins.
- (33) Indeed, the merged entity's market share would exceed 20% only in the market for speciality S-PVC in NWE ([20-30]%) and in WE ([20-30]%). Under both geographical market definitions, the market share increment brought about by the Transaction would be below 1% and in any event below the 25% threshold set out in the Horizontal Merger Guidelines.²⁰
- (34) In this light, the Commission considers that, as far as PVC resins are concerned, the Transaction does not give rise to any serious doubts as to its compatibility with the internal market.

5.3. Vertically affected markets

- (35) Mexichem, through its subsidiary Wavin, produces and supplies piping systems. To produce piping systems Wavin does not produce but purchases and uses commodity S-PVC as an input. Vestolit supplies commodity S-PVC in NWE. Therefore, the Transaction gives rise to a vertical relationship. The Notifying Party argues that such a vertical relationship is only "hypothetical", because Vestolit does not focus its production on the S-PVC grades that Wavin uses in its production processes.²¹
- (36) Nevertheless, should the relevant markets for piping systems be defined as national and narrower product segmentations applied, Wavin's market share could exceed 30% in certain markets.²² Therefore, the Transaction would lead to several vertically affected markets. For this reason, the Commission assessed whether the merged entity would have the ability and incentives to engage in input or customer foreclosure strategies.
- (37) The Commission considers that *input foreclosure* to the detriment of Wavin's competitors is unlikely to arise. This is because (i) the merged entity's market share in commodity S-PVC would not exceed 5% under all plausible market definitions; (ii) the increment brought about by the Transaction is very small, approximately 0.5%; and (iii) several other players with much higher market positions supply commodity S-PVC (in particular, INEOS and Solvay separately or jointly in the PVC Joint

¹⁹ 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.

²⁰ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 5.2.2004, p. 5–18, paragraph 18.

²¹ In Case M.6905 - *INEOS / Solvay / JV* the Commission has in any event excluded the appropriateness of a segmentation by grades given the high degree of supply side substitutability.

²² In particular, Wavin would have market shares above 30%: (i) in Denmark for the market for plastic water pressure pipes (40%), (ii) the Netherlands for plastic drainage pipes (65%), Norway, for (iii) plastic drainage pipes (51%), (iv) cable ducting pipes (39%) and (v) soil and waste pipes (31%) and (vi) Sweden for plastic water pressure pipes (33%). The Notifying Party does not exclude that Wavin would have market shares above 30% also in certain national markets for fittings.

- Venture). Therefore, it is highly unlikely that, post-merger, Mexichem would have the ability and incentives to foreclose Wavin's rivals from inputs.
- (38) The Commission also considers that *customer foreclosure* is unlikely to arise. Wavin's demand for commodity S-PVC under all plausible market definitions (that is to say, EEA, WE, NWE+ and NWE) does not exceed 4% of the relevant market demand. Moreover, Wavin is already vertically integrated into a non-European supplier of commodity S-PVC, and has chosen to source its needs from third parties in particular geographical locations.
- (39) The addition of Vestolit's European capacity is not likely to change this strategy. This is because (i) Wavin has [*confidential information with regard to sourcing strategy*]; and (ii) Vestolit's capacity is currently focused on HIS-PVC - which has higher margins than commodity S-PVC - and therefore it is unlikely that Vestolit, post-merger, would forego sales in this segment to the benefit of Wavin. The combination of these factors, that is to say, [*confidential information with regard to sourcing strategy*] and Vestolit's production strategy, would likely translate in higher costs and lower margins.
- (40) Moreover, according to the Notifying Party, the ultimate impact of such a hypothetical foreclosure strategy would be limited. If Wavin were to source its needs exclusively from Vestolit in certain countries, S-PVC suppliers would still have a wide variety of outlets in NWE or NWE+.
- (41) Finally, no concerns were raised in this regard by S-PVC suppliers (that is to say, Vestolit's competitors) in the context of the market investigation.
- (42) Therefore, it is unlikely that, post-merger, Mexichem would have the ability and incentives to engage in customer foreclosure.
- (43) 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 vertical effects.

6. CONCLUSION

- (44) 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 and Article 57 of the EEA Agreement.

*For the Commission
(signed)*

*Margrethe VESTAGER
Member of the Commission*