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***Case No COMP/M.7572 -
OG CAPITAL / KEM
ONE INNOVATIVE
VINYLS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/07/2015

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EUROPEAN COMMISSION

Brussels, 6.7.2015
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.7572 - OG CAPITAL / KEM ONE INNOVATIVE VINYL
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 3 June 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of the Merger Regulation by which the undertaking OpenGate Capital Group Europe SARL ("OGCGE", Luxembourg) belonging to the OpenGate Capital Group ("OGC", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Kem One Innovative Vinyls SAS ("KOIV", France) by way of purchase of shares ("the Transaction"). OGCGE is hereinafter referred to as the "Notifying Party" and together with KOIV as "Parties".

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

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

1. THE PARTIES AND THE OPERATION

- (2) OGCGE is a Luxemburg based private-equity investment company, ultimately controlled by OGC. OGC is specialised in carve-out transactions, i.e. acquiring divisions or subsidiaries of groups which are not at the core of their business and which are sold in the context of an economic rationalisation process.
- (3) Through its subsidiaries Benvic Europe SAS (France), Benvic Europe SPA (Italy) and Benvic Europe IBE S.A (Spain) OGC is active in the S-PVC compounds market. Through its subsidiaries Profialis SAS (France), Profialis NV (Belgium) and Profialis KFT (Hungary), OGC is active in the PVC profiles market and in the PVC building systems market.
- (4) KOIV is a France-based holding company, focusing on the downstream activities of the PVC chain with the production and marketing of products such as ready-for-use specialty vinyl compounds (combining PVC and various types of additives: stabilizers, pigments, plasticizers, modifiers, etc.). KOIV is also active in the extrusion of PVC profiles and the manufacturing of building systems, tubes and fittings in PVC.
- (5) The Transaction concerns the acquisition in several steps of sole control by OGCGE of KOIV by way of purchase of shares and reorganisation.
- (6) A first step is the acquisition of KOIV by K1 Group SAS, which is a holding company, created on December 18, 2013 for the acquisition, by OGC and Mr. Alain de Krassny³ of Kem One SAS.⁴ This is a company active in the production of PVC, a business upstream of the businesses where KOIV is active.
- (7) Then, within a period of less than 6 months, pursuant to a reorganization of the shareholdings of K1 Group SAS and KOIV between OGC and Mr. de Krassny, OGCGE (and ultimately OGC) would acquire the sole control of KOIV, [...]
- (8) Consequently, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

³ Mr Alain de Krassny, a French citizen, is entrepreneur and private investor in the chemical industry. He is the personal principal shareholder and chairman of the Supervisory Board of DONAU CHEMIE AG, an Austrian chemical business group.

⁴ Kem One SAS was subject to a recovery proceeding initiated by the Commercial court of Lyon in France on March 27th 2013. Namely, the Court has decided to initiate a “procédure de redressement judiciaire” which is a specific method applied by French laws briefly aiming at saving the debtor company and securing its creditors in respect of Kem One SAS. On 20 December 2013 the Court ordered the transfer of 100% of the shares of Kem One SAS to the joint venture to be established between OGC and Mr. Alain de Krassny. The acquisition of Kem One SAS by K1 Group SAS was respectively cleared on 17 March 2014 in France (further to a derogation granted on 23 December 2013), on 9 January 2014 in Spain, on 20 December 2013 in Germany and on 20 January 2014 in Austria. The restructuring plan of Kem One SAS entails financing in various forms by the French State. A State Aid procedure is on-going in DG COMP, Case State Aid – France – 38544 Dispositif exceptionnel et temporaire d'accompagnement des restructurations – Kem One.

2. EU DIMENSION

- (9) The Transaction does not meet either of the alternative jurisdictional thresholds under Article 1 of the Merger Regulation, because the combined aggregate worldwide turnover of all the undertakings concerned in [...] (EUR [...] million for OGC, EUR [...] million for KOIV) is below the threshold of EUR 2,500 million⁵. Therefore, the proposed concentration does not have an EU dimension within the meaning of Article 1 of the Merger Regulation.
- (10) Due to the fact that the case fulfils the criteria for being notified in [...]** different Member States ([...]***), on 13 March 2015 the Notifying Party submitted to the Commission by means of a reasoned submission, a referral request pursuant to Article 4(5) of the Merger Regulation with respect to the proposed concentration.
- (11) On 15 April 2015, the Commission sent to the Member States a Note on the proposed submission, asking them to express their opinion on the proposed referral within 15 working days. As none of the Member States expressed their disagreement, the concentration was referred to the Commission.
- (12) The notified concentration was therefore deemed to have an EU dimension in accordance with Article 4(5) of the Merger Regulation.

3. MARKET DEFINITION

- (13) The Parties' activities overlap in the following markets: (i) S-PVC compounds, (ii) formulation of one pack additives and (iii) extrusion of profiles and building systems for doors and windows, shutters, fencing and cladding. As regards one-pack additives, the Parties submit that their production is very limited, namely less than [0-5]% of the EEA wide production volume. In view of this limited overlap, this market will not be further analysed.

3.1. Product and geographic market definitions

3.1.1. S-PVC compounds

- (14) Suspension PVC compounds ("S-PVC compounds") are intermediate products between commodity suspension PVC ("S-PVC") and S-PVC end-products. They are obtained by blending additives (such as pigments, stabilizers or plasticisers) with S-PVC and are further processed to produce PVC end-products.
- a. Product market definition
- (15) The Commission has assessed the markets for S-PVC compounds in several previous decisions and considered that S-PVC compounds form a separate market,

* Should read *2013*.

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

** Should read *four*.

*** Should read *France, Germany, Poland, and Spain*.

different from S-PVC.⁶ In addition, the Commission has considered in a previous decision⁷ a possible segmentation of the S-PVC compounds market into dry blend and gelled compounds. The Notifying Party considers that the relevant market is the market for S-PVC compounds, without further segmentation. The Notifying Party submits that suppliers can switch from one type to the other without significant costs. In addition, there is supply side substitutability between gelled and dry blend compounds.

(16) The market investigation did not fully support the arguments of the Notifying Party. While producers⁸ mostly have the know how and the technical capacity to produce both types of S-PVC compounds (with different machines though), they did not appear ready to alter their current production balance between dry blend and gelled compounds in the event of a permanent price increase between 5% - 10% for one of the two products. Turning to customers⁹, they clearly use dry blend and gelled compounds in different applications.

(17) In any event, the exact product market definition of S-PVC compounds can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

b. Geographic market definition

(18) As regards the geographic market definition, in its past decisions the Commission has considered the market to be wider than national, but has so far left open the question of whether the market encompasses North-Western Europe¹⁰ ("NWE"), Western Europe¹¹ ("WE") or the entire EEA.¹²

(19) The Notifying Party submits that the market for S-PVC compounds is EEA-wide, in view of low transport costs, the fact that these are non-hazardous products and that procurement is global. The Commission in its market investigation also considered the possibility of a market encompassing only the countries of Continental North Western Europe ("Continental NWE").¹³

(20) The market investigation in this case was inconclusive in relation to the exact geographic delineation of the market for S-PVC compounds.

⁶ See Cases M.4734, INEOS / Kerling, M.6218, INEOS / Tessenderlo Group S-PVC Assets, M.7132 Ineos/Doeflex.

⁷ See Case M.7132, INEOS / Doeflex, paragraphs 10-15.

⁸ Replies to questionnaire to customers "Q2 - Questionnaire to competitors PVC Compounds", questions 4 to 8.

⁹ Replies to questionnaire to customers "Q1 - Questionnaire to customers PVC Compounds", questions 4 to 8.

¹⁰ Belgium, Denmark, Finland, France, Germany, Ireland, Luxembourg, the Netherlands, Norway, Sweden and the UK.

¹¹ NWE, Italy, Portugal and Spain.

¹² See Case M.7132, INEOS / Doeflex, paragraph 21.

¹³ Belgium, France, Germany, Luxembourg and the Netherlands.

- (21) Both competitors'¹⁴ and customers'¹⁵ replies indicate that the entire EEA is the widest possible delineation and NWE the narrowest. However, all respondents clearly believe that the shorter the distance between supplier and customer the better. There are no strong indications of price differences between countries, or areas of the EEA and the few that appear are attributed rather to transport costs than to different pricing policies of producers. Finally, the pressure from imports from non-EEA producers is not high.
- (22) In the present case, the geographic market for S-PVC compounds can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

3.1.2. *PVC Building systems*

a. Product market definition

- (23) Building systems comprise profiles which are specifically designed to be used in the building industry. Building systems can be made of different materials like soft-alloy extrusions, steel, wood or PVC. The building system suppliers add value to the basic profiles as their final product is considered a "system", which includes, apart from the profiles, other elements such as the design and conceptualisation of the system, the purpose-specific fabrication of the profiles (surface treatment of the profiles, cutting, drilling, punching, bending or the installation of a thermal brake), a variety of articles needed to install the products (all accessories and fittings) and service and logistics. Building systems suppliers do not offer the assembled products, such as windows or door frames, only the components needed to produce those.
- (24) According to the Notifying Party, PVC profiles are sold to intermediaries, generally carpenters/Original Equipment Manufacturers ("OEM"), who assemble the profiles to the other components of the final product and then sell them either directly to end-users (i.e. they handle the installation of the product themselves), or to third party installation specialists. The Notifying Party also submits that, contrary to the aluminium sector, almost all PVC building systems suppliers have their own range of profile systems. In other words, the research and development work is vested with building systems suppliers, which is often not the case as regards aluminium extruders.
- (25) In a previous case, dealing mainly with aluminium building systems¹⁶, the Commission left open the precise definition of the building systems market, while examining whether it would be possible to further sub-divide this market into different segments depending on the one hand on (i) the material used (PVC,

¹⁴ Replies to questionnaire to customers "Q2 - Questionnaire to competitors PVC Compounds", questions 9 to 12.

¹⁵ Replies to questionnaire to customers "Q1 - Questionnaire to customers PVC Compounds", questions 9 to 15.

¹⁶ It should be noted that, in Case COMP/M.6756 - Norsk Hydro/ Orkla/ JV regarding aluminium extrusion, the Commission retained a market of building systems comprising, but not limited to, the extrusion activity *stricto sensu*.

timber, aluminium) and, on the other hand, on (ii) the final application of the profile, i.e. into windows and doors, curtain walls and other products.¹⁷

(i) *Different materials used*

(26) As regards the material used, in view of the previous decisions of the Commission, the Notifying Party considers that profiles in PVC are part of a larger market for profiles manufactured from various materials and that from a demand side, these materials are substitutable irrespective of the material used.

(27) Respondents to the market investigation in this case pointed rather to a separate market for PVC building systems, indicating that the production of PVC building systems differs from the production of building systems from other materials due to differences in the machines used, legal requirements, accessories and especially prices.¹⁸ The majority of customers also mentioned that in case of a 5-10% increase in the price for PVC building systems they would not switch to building systems consisting of other materials.¹⁹

(28) In addition, the suppliers mentioned that they only produce PVC building systems and that they use other materials like aluminium or wood just as an accessory to their PVC products or as reinforcement, but not as main material.²⁰ Moreover, they indicated that the manufacturing process and qualities of PVC are different than those of aluminium or other materials.²¹

(ii) *Different end applications*

(29) As regards the different end applications of the profiles, apart from windows and doors, building systems suppliers also sell shutters, fencing and gates, and claddings.

(30) Shutters are of two types: rolling and swinging/louvered. According to the Notifying Party, rolling shutters are complex building systems which comprise not only PVC profiles (cases and lames), but also specific components such as injected nozzles, metallic components or automatic mechanisms (not manufactured by the Parties). On the contrary, swinging/louvered shutters are simpler building systems since they require fewer components. Unlike rolling shutters, they do not require cases or automatic mechanisms.

(31) Claddings are also of two types, i.e. for roof finishes and for wall coverings.

¹⁷ Curtain walls are in general made only of aluminium, due to the technical characteristics that these products must have from a resistance point of view.

¹⁸ Replies to questionnaire to customers "Q3 - Questionnaire to customers PVC Profiles", questions 11 and 13.

¹⁹ Replies to questionnaire to customers "Q3 - Questionnaire to customers PVC Profiles", question 19.

²⁰ Replies to questionnaire to customers "Q4 - Questionnaire to competitors PVC Profiles", question 21 and 24.

²¹ Replies to questionnaire to customers "Q4 - Questionnaire to competitors PVC Profiles", question 22.

- (32) The Notifying Party submits that the relevant market for building systems on which there is an overlap between the Parties' activities encompasses all different end applications, including windows and doors, shutters, gates and fencing, and cladding mainly because of the easiness for suppliers to switch from one end application to another, without significant constraints in terms of costs or know-how and because suppliers that manufacture profiles for windows and doors usually also manufacture other types of profiles.
- (33) All respondents to the market investigation indicated, without providing specific arguments, that the PVC building systems market should be further divided by end applications, except for the doors and windows segment. Some suppliers indicated that they can easily switch production from one to another. Others indicated that whilst switching production from windows to doors is easy, the switch from doors to windows is complex.²² Suppliers mentioned that indeed there are some differences between doors and windows manufacturing as regards the certification process, the complexity of the design and of the fittings/accessories.
- (34) In the present case, the Commission considers that the precise product market definition for building systems can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of the exact product market definition.

b. Geographic market definition

- (35) As regards the geographic scope, in its past decisions²³, the Commission considered the market for building systems to be national or EEA-wide, leaving the geographic market open. However, in a more recent decision²⁴ dealing with aluminium building systems, the Commission considered the market national or regional for some countries (i.e., the Baltic countries).
- (36) The Notifying Party submits that it should be considered as being EEA-wide, given the ever increasing trade flows between EEA Member States, but also an increasing part of extra-EEA imports, mainly from Turkey. However, it submits data, both at the EEA and at the national level.
- (37) Respondents to the market investigation in this case have pointed towards a national market, indicating differences in prices, customers preferences and national habits, combined with different national regulatory requirements as reasons.²⁵ Both customers and competitors have mentioned that transport costs can reach up to 15% of the final price of the building systems for distances involving more than 1000 km.²⁶

²² Replies to questionnaire to customers "Q4 - Questionnaire to competitors PVC Profiles", question 12.

²³ See Case M.2094 - HT-Troplast/Kömmerling.

²⁴ See Case M.6756 - Norsk Hydro/ Orkla/ JV.

²⁵ Replies to questionnaire to customers "Q3 - Questionnaire to customers PVC Profiles", question 15 and to questionnaire to customers "Q4 - Questionnaire to competitors PVC Profiles", question 27.

²⁶ Replies to questionnaire to customers "Q3 - Questionnaire to customers PVC Profiles", question 16.

- (38) Customers also mentioned that national/local presence of their suppliers is very important, and in practice they only buy from national based suppliers.²⁷
- (39) In the present case however, the geographic market for building systems can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

4. COMPETITIVE ASSESSMENT

4.1. S-PVC compounds

- (40) The Notifying Party has submitted market share data²⁸ for S-PVC compounds overall, gelled and dry blend compounds, for the EEA, WE and NWE. At the Commission's request they have also submitted data for Continental NWE.
- (41) On the basis of this data, the Parties' combined market shares are of less than [20-30]% on the hypothetical EEA-wide market for overall compounds, dry blend and gelled compounds. Concerning dry blend compounds the Parties' combined market shares remain below [20-30]% also as regards NWE, WE and Continental NWE.
- (42) The only affected markets²⁹ would be the (i) overall S-PVC compounds and (ii) gelled S-PVC compounds in different alternative geographic markets, i.e. NWE, WE and Continental NWE.

Table 1 – Market shares for S-PVC compounds overall (2013)

	KOIV	OGC (Benvic)	Combined	Ineos/ Doeflex	Begra	Polymer Chemie
NWE	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%
WE	[5-10]%	[10-20]%	[20-30]%	[20-30]%	[5-10]%	[5-10]%
Continental NWE	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%

Source: Form CO

Table 2 – Market shares for S-PVC gelled compounds (2013)

	KOIV	Benvic	Combined	Ineos/ Doeflex	Begra	Polymer Chemie

²⁷ Replies to questionnaire to customers "Q3 - Questionnaire to customers PVC Profiles", questions 17 and 18.

²⁸ The Notifying Party was able to provide data only for 2013, but submitted that to its understanding market shares did not materially change in 2014. Moreover, data was provided in the form of ranges because since there is no publicly available recent information on the S-PVC compounds market, the Notifying Party provided its best estimates, by compiling its market knowledge.

²⁹ For the definition of affected markets, see Annex 1 point 6.3 of Commission Implementing Regulation (EC) No 802/2004, as last amended by Commission Implementing Regulation (EU) No 1269/2013 (OJ L 336, 14.12.2013, p. 1-36).

NWE	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[5-10]%
WE	[5-10]%	[10-20]%	[20-30]%	[10-20]%	[5-10]%	[5-10]%
Continental NWE	[5-10]%	[15-25]%	[20-30]%	[5-10]%	[15-25]%	[15-25]%

Source: Form CO

- (43) The Notifying Party submits that the Parties' combined market shares are always below [30-40]%, regardless of the geographic market definition. It also argues that post-transaction, the merged entity will face competition from a number of well-known and well established competitors such as Ineos/Doeflex, Begra, Polymer Chemie, and TPV.
- (44) The market investigation does not suggest otherwise. For both product markets, S-PVC compounds overall and S-PVC gelled compounds, all of the responding customers indicated that they would be fully able to switch part of their volumes to another supplier in case of a post-merger price increase by the merged entity. Moreover, all of the responding customers actively pursue a multi-sourcing strategy.³⁰
- (45) The majority of the responding competitors believe that there is an overcapacity in the market, which has not yet recovered its pre-crisis levels.³¹
- (46) In view of the Parties' relatively low combined market shares, the presence of alternative suppliers and the existing overcapacity on the market, the Commission concludes that the Transaction does not raise serious doubts as regards its compatibility with the internal market in relation to the PVC compounds market under any plausible market definition.

4.2. PVC Building systems

- (47) According to the data³² provided by the Notifying Party, the Parties' activities in the PVC building systems only overlap in France in the following segments: (i) windows and doors, (ii) gates and fencing, (iii) shutters and (iv) cladding. However, affected markets only arise as regards the windows and doors segment.
- (48) In France, on the overall segment for windows and doors, the combined market share of the Parties would be around [20-30] in 2014. The other suppliers on this market, Rehau, Veka-Gealan and Deceuninck-Inoutic, hold similar market shares between 15% and 20%. As regards doors only (5% of the segment) and windows only (95% of the segment), the combined market share of the Parties would be

³⁰ Replies to questionnaire to customers "Q1 - Questionnaire to customers PVC Compounds", questions 17 & 22.

³¹ Replies to questionnaire to customers "Q2 - Questionnaire to competitors PVC Compounds", question 14.

³² The Notifying Party was able to provide data only for 2013, but submitted that to its understanding market shares did not materially change in 2014. Moreover, data was provided in the form of ranges because since there is no publicly available recent information on the S-PVC building systems market, the Notifying Party provided its best estimates, by compiling its market knowledge.

between [10-20]% and between [15-25]%, respectively, with the abovementioned competitors holding similar market shares.

- (49) The Notifying Party submits that the Parties have been facing stronger competition over the past few years from imports from Germany, the Benelux countries and also from Eastern Europe. Furthermore, they indicated that the market segment of PVC building systems for windows and doors is characterized by a continuous decrease of demand, both at an EEA level and at a national level. As a consequence, the Parties and their competitors have significant spare capacity, which can be quickly and cheaply deployed.
- (50) In the Commission's market investigation, the large majority of responding customers, have indicated that all of above-mentioned competitors represent a credible alternative for them in case they would wish to switch to alternative suppliers. Moreover, the data gathered through their replies in the questionnaires confirmed the positioning of both Parties as well as of their competitors.³³ In addition, suppliers have indicated that they do not have capacity issues and moreover that, due to the economic situation, there is overcapacity on the market. They have also pointed at threats of imports from other countries, reporting about lost volumes due to "*aggressive imports*" from Eastern countries.³⁴
- (51) Customers indicated that they felt reassured that as long as there is overcapacity, the prices will not increase, even in case they would have to change their suppliers.³⁵
- (52) In view of the relatively low market shares of the Parties, the presence of alternative suppliers, the overcapacity on the market and the competitive pressure from imports, the Commission concludes that the Transaction does not raise serious doubts as regards its compatibility with the internal market in respect of PVC building systems for windows and doors in France.

³³ Replies to questionnaire to customers "Q4 - Questionnaire to competitors PVC Profiles", question 5.

³⁴ Replies to questionnaire to customers "Q4 - Questionnaire to competitors PVC Profiles", question 40.

³⁵ Replies to questionnaire to customers "Q1 - Questionnaire to customers PVC Compounds", questions 27-30.

5. CONCLUSION

- (53) 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)
Margrethe VESTAGER
Member of the Commission