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***Case No COMP/M.7614 - CVC CAPITAL PARTNERS/  
ROYAL DSM (FIBRE INTERMEDIATES AND  
COMPOSITE RESINS)***

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: 22/07/2015

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## EUROPEAN COMMISSION

Brussels, 22.7.2015  
C(2015) 5189 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.7614 - CVC CAPITAL PARTNERS/ ROYAL DSM (fibre intermediates and composite resins)  
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

- (1) On 17 June 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which CVC Capital Partners SICAV-FIS SA ("CVC" or "Notifying Party", Luxembourg) through certain CVC controlled funds acquires within the meaning of Article 3(1)(b) of the Merger Regulation control over Royal DSM NV's fibre intermediates and composite resins business ("DSM", the Netherlands), namely DSM Fibre Intermediates International B.V. ("DFI International"), DSM Composite Resins Holding International B.V. ("DCR Holding") and DSM Fibre Intermediates China B.V. ("DFI China"), collectively referred to as "the Target", by

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

way of purchase of shares.<sup>3</sup> CVC and DSM are hereinafter designated as the "Parties".

## **1. THE PARTIES**

- (2) CVC (i.e. CVC and its subsidiaries and affiliates) is a private equity investor which provides investment advice to and/or manages investments on behalf of a number of investment funds ("CVC Funds"). CVC holds interests in a number of companies in various industries including chemicals, utilities, manufacturing, retailing and distribution, primarily in Europe, the US and the Asia-Pacific region.
- (3) CVC portfolio companies include among others the following companies:
  - Univar: a company active in the distribution of commodity and specialty chemicals,
  - Paroc: a company active in the manufacture of mineral wool insulation products,
  - Parexgroup: a company active in the production and commercialisation of industrial specialty dry-mix solutions, which are a form of mortar products used in the construction industry, and
  - Van Gansewinkel Groep ("VGG"): a company active in waste management in the Netherlands.
- (4) DSM, the seller, is a global science-based company active in health, nutrition and materials.
- (5) The Target comprises part of the material science business of DSM, specifically its composite resin business and its fibre intermediates division (mainly comprising the production of caprolactam, acrylonitrile and certain by-products), together with the provision of site services (that is, activities related to fire services, site security, waste water treatment, management of the infrastructure). The Target is active in the provision of site services via Sitech, which is a joint venture between companies located in the Chemelot industrial area, in Geleen (the Netherlands), where two of the Target's plants are located. Sitech provides site services mainly at the Chemelot industrial park in Geleen, to all users of the Chemelot site.

## **2. THE OPERATION AND THE CONCENTRATION**

- (6) Based on the Sale and Purchase Agreement that the Parties irrevocably agreed to sign on 15 March 2015, CVC will indirectly own 65% of Newco 1's share capital, a special purpose vehicle which will ultimately control the Target. DSM will retain 35% of the Target's share capital. Newco 1 will indirectly control 100% of Newco 4 and Newco 5 which will directly acquire the different businesses of the Target.
- (7) Decisions of the general meetings of the shareholders of Newco 1 are to be taken by simple majority of votes (one vote for each share), including appointment and removal of members of the supervisory board and the management board. The

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<sup>3</sup> Publication in the Official Journal of the European Union No C 210, 26.6.2015, p. 11.

supervisory board of Newco 1 will consist of 6 members (three nominated by CVC, two by DSM and one (independent) nominated by CVC after consultation with DSM). These provisions apply mutatis mutandis to Newco 4 and Newco 5.

- (8) Certain strategic business decisions taken by Newco 4, Newco 5 or their respective management boards will require simple majority approval of their respective supervisory board, e.g. adoption or changes to the budget and business plan, the appointment or removal of any board member or member of management, and major disposals and acquisitions.<sup>4</sup>
- (9) In light of the structure and the decision process of the supervisory and management boards, DSM will not be able to block decisions of the supervisory boards of Newco 1, Newco 4 and Newco 5.
- (10) Consequently, the proposed transaction constitutes an acquisition of sole control by CVC over the Target, and therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### **3. EU DIMENSION**

- (11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>5</sup> [CVC: [...], Target: [...]]<sup>6</sup>. Each of them has a EU-wide turnover in excess of EUR 250 million [CVC: [...], Target: [...]], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (12) The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

### **4. RELEVANT MARKETS AND COMPETITIVE ASSESSMENT**

- (13) The proposed transaction does not give rise to any horizontal overlaps. However, it leads to several vertical links between the Parties' activities giving rise to affected markets. Specifically, the following links will be assessed in this decision:
  - distribution of speciality and/or commodity chemicals (Univar) which are used for the production of some specialty and/or commodity chemicals: acrylonitrile and sodium cyanide (the Target);
  - production of various specialty and commodity chemicals (caprolactam, cyclohexanone, acrylonitrile, sodium cyanide) (the Target) and distribution of speciality and/or commodity of chemicals (Univar);

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<sup>4</sup> [Redacted text relates to confidential governance arrangements of the Target].

<sup>5</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

<sup>6</sup> This figure includes 100% of the turnover generated by DNCC, since DSM is obliged to consolidate 100% of the turnover of DNCC according to the IFRS accounting rules. In the context of the EU Merger Regulation DNCC may technically be considered to be jointly controlled by Target and two third parties (rather than solely controlled by Target), in which case the worldwide turnover of Target would be reduced to [...]. In any event, this point does not affect the Commission's jurisdiction over the Proposed Transaction.

- production of ammonium sulphate (the Target) and the production of mineral wool technical and building insulations (Paroc);
  - waste management services (VGG) on one hand and the site services by Sitech (the Target) and the production of various specialty and/or commodity chemicals (the Target) on the other hand;<sup>7</sup>
- (14) Some markets involved in vertical links are not affected markets irrespective of the plausible market definition considered: distribution of chemicals (Univar) and production of acetonitrile, hydrogen cyanide, unsaturated polyester resins ("UPR"), and sizing and binders (Target); production of ammonium sulphate and of acetonitrile (Target) and distribution of chemicals (Univar); production of UPR (by Univar) and production of mortars (Parexgroup).

#### **4.1. Market definition**

##### *4.1.1. Distribution of chemicals*

##### 4.1.1.1. Product market definition

- (15) In previous decisions relating to the distribution of chemicals, the Commission has distinguished between three categories (excluding direct sales by manufacturers): (i) the distribution of commodity chemicals; (ii) the distribution of specialty chemicals; and (iii) the chemical bulk business (i.e. trading).<sup>8</sup>
- (16) The Notifying Party does not contest the previous assessment of the Commission. In any event the exact product market segmentation for distribution of chemicals can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

##### 4.1.1.2. Geographic market definition

- (17) The Commission has previously considered that the chemical distribution markets are at least national in scope or even larger.<sup>9</sup>
- (18) The Notifying Party does not contest the previous assessment of the Commission. In any event the exact geographic market definition for distribution of chemicals can be left open in this case as the transaction does not give rise to serious doubts

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<sup>7</sup> The current owners of Target, i.e. DSM, currently also purchase loss adjustment services from Cunningham Lindsay (controlled by CVC) in respect of a number of DSM business divisions, including the Target. However, loss adjustment services can hardly be considered as an input for the production of chemicals, the value of sales made by Cunningham Lindsay in the EU that can be attributed to the Target business are very low: approximately [...] in 2014, EUR [...] in 2013 and EUR [...] in 2012. Finally, DSM has not purchased loss adjustment services from any provider other than Cunningham Lindsay. This link will therefore not be further considered

<sup>8</sup> Case No. M.2244 – *ROYAL VOPAK / ELLIS & EVERARD*, Case No. COMP/M.4836 – *CVC / UNIVAR*.

<sup>9</sup> Case No. M.2244 – *ROYAL VOPAK / ELLIS & EVERARD*, Case No. COMP/M.4836 – *CVC / UNIVAR*.

as to its compatibility with the internal market under any plausible market definition.

#### 4.1.2. *Caprolactam*

##### 4.1.2.1. Product market definition

- (19) Caprolactam is a colourless, solid organic compound at room temperature. It is a global commodity that is used for the production of nylon 6 (polyamide 6 or PA6) fibres, resins and films. It is widely used in fibre and plastic applications, such as engineering plastics (e.g. in electrical or automotive applications), carpet filament, packaging film, textile filament and industrial filament.
- (20) Caprolactam can be produced by different methods: (i) HSO (reaction of cyclohexanone with hydroxylamine sulphate), (ii) HPO (reaction of cyclohexanone with hydroxylamine phosphate; this process is proprietary to the Target), (iii) HSNO (via oxidation and hydrogenation of ammonia, then oximation with cyclohexanone), (iv) ammoximation, (v) others (counting for approx. 3% of the overall production). Caprolactam is always produced in liquid form, however, it may be transformed into solid (flaked) form in order to transport it over longer distances (subsequently melted by the customers).
- (21) The Commission has not previously considered the market for caprolactam. The Notifying Party submits that the relevant market is the market for caprolactam overall, as there is no meaningful difference between caprolactam sold for different applications. It is also submitted that every producer of caprolactam has facilities to flake caprolactam.
- (22) In any event the exact product market segmentation for caprolactam can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

##### 4.1.2.2. Geographic market definition

- (23) As regards geographic market delineation of the market for caprolactam, the Notifying Party submits that the market should be defined as worldwide as: customers generally source from a range of producers globally, caprolactam is priced globally, there are substantial trade flows (many hundreds of kilotons ("kt") between different regions).
- (24) Third party market reports provided by the Parties however track prices in the different world regions (Asia, Europe, United States), as well as separately for liquid form and for flaked form (for export).<sup>10</sup>
- (25) In any event the exact geographic market definition for caprolactam can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

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<sup>10</sup> *Nylon Intermediates & Fibres, monthly report, N°306*, PCI Research GmBH, May 2015.

#### 4.1.3. *Ammonium sulphate*

##### 4.1.3.1. Product market definition

- (26) Ammonium sulphate is a by-product of caprolactam and an inorganic salt with a number of commercial applications, the most common of which is a nitrogen fertiliser for alkaline soils. It is categorised as straight nitrogen fertiliser (N-straight fertilizer).
- (27) The Commission has previously analysed the substitutability between the different types of N-straight fertilisers (such as calcium ammonium nitrate, ammonium sulphate, ammonium sulphate nitrate) either from the demand or supply side. However, the Commission left the potential subsegmentation of the product market regarding N-straight fertilisers open.<sup>11</sup>
- (28) In any event the exact product market segmentation for ammonium sulphate can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

##### 4.1.3.2. Geographic market definition

- (29) As regards the geographic scope of the market for the supply of N-straight fertilizers (including ammonium sulphate), the Commission has previously defined the market as at least EEA-wide in scope.<sup>12</sup>
- (30) In any event the exact geographic market definition for ammonium sulphate can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 4.1.4. *Cyclohexanone*

##### 4.1.4.1. Product market definition

- (31) Cyclohexanone is the organic compound - colorless oil used primarily for producing caprolactam. It is produced by either (i) an oxidation of cyclohexane to cyclohexanone, (ii) a hydrogenation of phenol to cyclohexanone, or (iii) transforming benzene to cyclohexene to cyclohexanol to cyclohexanone (production process used in China).
- (32) The Commission has not previously analysed the market for cyclohexanone. The Notifying Party considers that the relevant market is the market for cyclohexanone as the different processes would be fully substitutable from a demand-side perspective, i.e. is identical from a molecular perspective.
- (33) In any event the exact product market segmentation for cyclohexanone can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 4.1.4.2. Geographic market definition

- (34) As regards the geographic scope of the market for selling the Notifying Party submits that the market should be defined as worldwide as it can be shipped between continents, as shown by the Target generally shipping its excess cyclohexanone produced in the EU to its operations in China.
- (35) Third party market reports provided by the Parties however track prices in the different world regions (Europe, North America, China, etc.) and European imports appear limited compared to the market size provided by the Notifying Party.<sup>13</sup>
- (36) In any event the exact geographic market definition for cyclohexanone can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 4.1.5. *Acrylonitrile*

##### 4.1.5.1. Product market definition

- (37) Acrylonitrile is a colourless toxic and inflammable liquid that is a key ingredient in the manufacture of acrylic textile and carpet fibre and it is also used for automobile components, electronic devices, toys and sports equipment.
- (38) In previous decisions the Commission has held that acrylonitrile constitutes a distinct product market.<sup>14</sup>
- (39) In any event the exact product market segmentation for acrylonitrile can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

##### 4.1.5.2. Geographic market definition

- (40) As regards the geographic scope of the market for acrylonitrile, the Commission has considered worldwide, EEA wide and EEA wide + Turkey dimensions.<sup>15</sup>
- (41) Third party market reports provided by the Parties track prices in the different world regions (Europe+Turkey, Asia/Far East, United States+Mexico+Brazil, etc.). European imports appear to come primarily from the United States, Brazil, Korea and India (depending on the years), but not from other producing countries such as China or Taiwan. However, imports appear relatively limited compared to the market size provided by the Notifying Party.<sup>16</sup>
- (42) In any event the exact geographic market definition for acrylonitrile can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

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<sup>13</sup> *Chemical business focus, A monthly roundup and analysis of the key factors shaping world chemical markets, N°421, Tecnon OrbiChem, 28th May 2015.*

<sup>14</sup> Case No. M.5238 – *INEOS / BASF Assets*, Case No. COMP/M.2345 – *Deutsche BP / Erdolchemie*.

<sup>15</sup> Case No. M.5238 – *INEOS / BASF Assets*, Case No. COMP/M.2345 – *Deutsche BP / Erdolchemie*.

<sup>16</sup> *Acrylonitrile and Derivatives, monthly report, N°309, IHS Chemical, 26th May 2015.*



#### 4.1.6. *Sodium cyanide*

##### 4.1.6.1. Product market definition

- (43) Sodium cyanide is a white water-soluble cubic crystalline solid mainly used in the extraction of precious metals in mining and the production of chelates. It is also used for the production of vitamin B5, dyes and pigments, pharmaceutical, chemical intermediates and agrochemicals.
- (44) Sodium cyanide is always first produced in liquid form (cyanide is a "30% solution", i.e. 70% water) and then it can be transformed into solid form (by water evaporation) in order to be transported over longer distances. Additional facilities to transform the forms (on the supply and demand side) are required.
- (45) The Commission has not previously analysed the market for sodium cyanide. The Notifying Party considers liquid sodium cyanide and solid sodium cyanide as part of the same product market. Nevertheless, the Notifying Party estimates that 30% of acrylonitrile producers have these facilities (or outsource the evaporation of water to a third party).
- (46) In any event the exact product market segmentation for sodium cyanide can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

##### 4.1.6.2. Geographic market definition

- (47) As regards the geographic scope of the market the Notifying Party estimates that liquid sodium cyanide can be shipped economically for distances of around 500-700 km, while it can be shipped worldwide in solid form. The Notifying Party considers the market to be worldwide.
- (48) In any event the exact geographic market definition for sodium cyanide can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 4.1.7. *Mineral wool technical and building insulations*

##### 4.1.7.1. Product market definition

- (49) Insulation products reduce the thermal and acoustic exchange through a wall, roof or duct on which they are placed.
- (50) The Commission has previously considered it to be likely that each of mineral wool building insulation and mineral wool technical insulation constitute distinct product markets.<sup>17</sup>
- (51) In any event the product market segmentation for mineral wool technical and building insulations can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

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<sup>17</sup> Case No. M.7457 – CVC / Paroc.

#### 4.1.7.2. Geographic market definition

- (52) As regards the relevant geographic market definition the Commission has previously considered that the production and supply of insulation materials is at least national in scope, possibly regional (e.g. Nordic countries) or EEA-wide.<sup>18</sup>
- (53) In any event the exact geographic market definition for mineral wool technical and building insulations can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 4.1.8. *Waste management*

##### 4.1.8.1. Product market definition

- (54) In previous decisions, the Commission has distinguished between the collection and disposal of waste, between municipal and industrial waste and between hazardous and non-hazardous waste.<sup>19</sup> In addition, the Commission has previously considered that the market for the disposal of waste may be further segmented by the method of disposal (such as incineration, landfill or detoxification).<sup>20</sup>
- (55) The Notifying Party does not contest the previous assessment of the Commission. In any event the exact product market segmentation for waste management can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

##### 4.1.8.2. Geographic market definition

- (56) As regards geographic delineation of the market, the Commission has considered that the market for collection of waste is at most national and possibly regional in scope (with a radius of 200 km from each facility, in particular for hazardous waste) and for disposal of waste is national in scope.<sup>21</sup>
- (57) In any event the exact geographic market definition for waste management can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 4.1.9. *Site services*

##### 4.1.9.1. Product market definition

- (58) In previous decisions, the Commission identified a separate market for facility management services, which it held to comprise property management services including technical building management, commercial management and general building management, but left open the question of whether distinctions could be

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<sup>18</sup> Case No. M.7457 – *CVC / Paroc*.

<sup>19</sup> Case No. M.4318 – *Veolia / Cleanaway*, Case No. M.2897 – *SITA Sverige AB / Skdkraft Ecoplus*.

<sup>20</sup> Case No. M.4318 – *Veolia / Cleanaway*.

<sup>21</sup> Case No. M.4318 – *Veolia / Cleanaway*; Case No. M.2897 - *SITA Sverige AB / Sydkraft Ecoplus*.

drawn in relation to the type of client (industrial, tertiary) and the type of building.<sup>22</sup>

- (59) In any event the exact product market segmentation for site services can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

#### 4.1.9.2. Geographic market definition

- (60) As regards geographic delineation of the market, the Commission considered the market for site services as national.<sup>23</sup>
- (61) In any event the exact geographic market definition for site services can be left open in this case as the transaction does not give rise to serious doubts as to its compatibility with the internal market under any plausible market definition.

## 4.2. **Competitive assessment**

- (62) On the basis of the market definitions presented above, the proposed transaction gives rise to the following affected markets:
- distribution of speciality and/or commodity chemicals by Univar (a CVC portfolio company) which are used for the production of some speciality and/or commodity chemicals of the Target (acrylonitrile, sodium cyanide);
  - production of various specialty and commodity chemicals (caprolactam, cyclohexanone, acrylonitrile, sodium cyanide) by the Target and distribution of speciality and/or commodity of chemicals by Univar (a CVC portfolio company);
  - production of ammonium sulphate of the Target and the production of mineral wool technical and building insulations of Paroc (a CVC portfolio company);
  - waste management services of VGG (a CVC portfolio company) on one hand and the site services by Sitech (Target) and the production of various specialty and/or commodity chemicals by the Target on the other hand.

#### 4.2.1. *Distribution of specialty and/or commodity chemicals (CVC) and production of various chemicals (Target)*

- (63) Univar (a CVC portfolio company) is active in the markets for the distribution of commodity chemicals and for the distribution of specialty chemicals (upstream market), while the Target purchases chemical distribution services in France, Italy and the Netherlands for its production of acrylonitrile, acetonitrile, sodium cyanide, hydrogen cyanide, UPR, sizing and binders (downstream markets).
- (64) Univar's market shares for 2014 in the markets for the distribution of commodity chemicals and of specialty chemicals were below [0-5]% in the EEA and below

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<sup>22</sup> Case No. M.7137 – EDF / Dalkia En France.

<sup>23</sup> Case No. M.7137 – EDF / Dalkia En France.

[10-20]% in each EEA country in which a vertical link could occur (i.e. in France, Italy, the Netherlands, where the Target is active as a purchaser downstream).

- (65) The Target's market shares giving rise to affected markets concern the following products:
- acrylonitrile ([5-10]% worldwide, [30-40]% in the EEA, [20-30]% in the EEA and Turkey),
  - sodium cyanide ([0-5]% regarding the overall market worldwide, [20-30]% regarding the overall market in the EEA, [50-60]% regarding the liquid form in the EEA, 0% regarding the solid form in the EEA).
- (66) Given that the Target is not an important customer in the market for distribution of commodity and specialty chemicals, as its purchases represent less than [0-5]% of the market demand in France, Italy, the Netherlands and the EEA overall, CVC (via Univar) would therefore not have the incentive to engage into customer foreclosure by internalising the demand. Indeed, such a strategy would not seem to be profitable.

**Table 1 - Target's share of purchase for the distribution of chemicals (2014)**

Relevant EEA State	Distribution of commodity chemicals			Distribution of specialty chemicals		
	Estimated size of market segment	Target's maximum value of purchase	Target's maximum share of purchase	Estimated size of market segment	Target's maximum value of purchase	Target's maximum share of purchase
France	[<2500]	[...]	[0-5]%	[<2000]	[...]	[0-5]%
Italy	[<3500]	[...]	[0-5]%	[<2000]	[...]	[0-5]%
Netherlands	[<1000]	[...]	[0-5]%	[<1000]	[...]	[0-5]%
EEA total	[<25000]	[...]	[0-5]%	[<25000]	[...]	[0-5]%

Source: Form CO.

- (67) In addition, Univar estimates that sales to material science businesses (Target's business) comprise well under [5-10]% of its chemical sales in the EEA, therefore the market on which the Target is active does not represent a significant customer base for Univar.
- (68) In light of the above, the Commission concludes that the transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the distribution of specialty and/or commodity chemicals (CVC, upstream market) which are used for the production of various chemicals (Target, downstream market).
- 4.2.2. *Production of various chemicals (Target) and distribution of speciality and/or commodity of chemicals (CVC)*
- (69) The Target produces a number of chemicals, i.e. caprolactam, cyclohexanone, ammonium sulphate, acrylonitrile, acetonitrile, sodium cyanide (upstream markets)

that it sells to distributors. Univar (a CVC portfolio company) is active on the downstream market for distribution of specialty and of commodity chemicals.

- (70) Univar's market shares for 2014 in the markets for distribution of commodity chemicals and of specialty chemicals were below [0-5]% in the EEA and mostly well below [10-20]% in each EEA country in which Univar has been active as a purchaser of products produced by Target in any of the last three years (i.e. France, the Netherlands, Belgium, Germany, Poland, Spain, Sweden and the UK). Univar potentially has more material presence in Nordic countries (market share of [10-20]%) and Sweden (market share well below [30-40]%).
- (71) The Target's market shares lead to the following affected markets:
- caprolactam ([10-20]% on the overall market worldwide, [20-30]% on the overall market in the EEA, 100% - produced by HPO method in the EEA24, [20-30]% - produced by HSO method in the EEA),
  - cyclohexanone (in terms of capacity: [5-10]% on the overall market worldwide, [20-30]% on the overall market in the EEA, [40-50]% in the EEA - produced by hydrogenation production method; in terms of sales: [10-20]% on the overall market in the EEA, [10-20]% in the EEA - produced by hydrogenation production method),
  - acrylonitrile ([5-10]% worldwide, [30-40]% in the EEA, [20-30]% in the EEA and Turkey),
  - sodium cyanide ([0-5]% on the overall market worldwide, [20-30]% on the overall market in the EEA, [50-60]% on the liquid form in the EEA, 0% on the solid form in the EEA).
- (72) In 2014 Univar's EEA demand of the above products amounted to [...] out of the total value of distributed products of EUR 1 636 million. The Notifying Party therefore submits that these products are not important inputs for Univar.
- (73) In addition, the Target has a limited number of distributors among its customers: [...] for caprolactam and cyclohexanone and [...] for acrylonitrile, [...] for sodium cyanide (i.e. direct sales). As a result, any input foreclosure would concern only these companies who could find alternative sources of these products elsewhere. Indeed, other suppliers of these products in the EEA are BASF, Lanxess, DOMO Chemicals and Grupa Azoty for caprolactam, Versalis and DOMO Chemicals for cyclohexanone, INEOS Europe and Mitsubishi International GmbH for acrylonitrile, and BASF, Lučební závody Draslovka a.s. Kolín and CyPlus GmbH for sodium cyanide.
- (74) In addition, among the top competitors of Univar (i.e. distributors of specialty and/or commodity chemicals) who responded to the market investigation, only around half of them buy caprolactam, cyclohexanone, ammonium sulphate, acrylonitrile, acetonitrile and/or sodium cyanide. Among those distributors who buy these chemicals, most respondents indicated that the products concerned are not important inputs for their business. Even among the few distributors who

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Caprolactam purchased by Univar is manufactured under the HSNO method.

consider one or several products as must-have products for their business, none expressed concerns as to a potential negative impact of the transaction on their business or on the market for distribution of chemicals.

(75) In light of the above, the Commission concludes that the transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the vertical link between production of various chemicals (Target) and distribution of speciality and/or commodity of chemicals (CVC).

4.2.3. *Production of ammonium sulphate (Target) and production of mineral wool technical and building insulations (CVC)*

(76) The Target produces ammonium sulphate, a chemical product which Paroc (a CVC portfolio company) purchases for use in its production of mineral wool technical and building insulations. This product is only purchased in Sweden due to environmental restrictions which do not apply across the EEA or even across Sweden, but only to the Hässleholm municipality where Paroc's plant is located.

(77) The Target has [5-10]% and [20-30]% market share in the upstream market for ammonium sulphate worldwide and EEA-wide respectively. On the downstream market, CVC's market shares for the production of mineral wool technical insulations are [20-30]% in the EEA, [50-60]% in the Nordics, [50-60]% in Sweden, [70-80]% in Finland, [40-50]% in Lithuania and [30-40]% in Poland, and for mineral wool building insulations are below [5-10]% in the EEA, [20-30]% in the Nordics and [30-40]% in Sweden.

(78) CVC purchased less than [...] of ammonium sulphate per year in the last 3 years. Its purchases therefore represent a very small part of the EEA demand (less than [0-5]%). CVC is therefore not an important customer of ammonium sulphate and thus the merged entity would not have the ability to carry out customer foreclosure.

(79) Furthermore, most of the top producers of ammonium sulphate who responded to the market investigation indicated that they do not sell ammonium sulphate for use in the production of mineral wool technical and building insulations. Among those for which mineral wool technical and building insulations constitute one of the outlets for their production of ammonium sulphate, none indicated that Paroc is a significant customer nor expressed concerns as regards a potential negative impact of the transaction on their ability to sell ammonium sulphate.

(80) In light of the above, the Commission concludes that the transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the vertical link between production of ammonium sulphate (Target) and production of mineral wool technical and building insulations.(CVC).

4.2.4. *Waste management (CVC), and site services and production of chemicals (Target)*

(81) VGG (controlled by CVC) is a waste management company in the Netherlands which supplies waste management services to the Target (via the Target's joint venture Sitech). Sitech provides commercial management and general building management services mainly at the Chemelot industrial park in Geleen (Netherlands). The Notifying Party notes that the Sitech structure has been established such that the shareholders/partners in the Sitech entities (DSM, OCI Nitrogen and Lanxess which will change to four customers following the proposed

transaction: Target, other entities of DSM, OCI Nitrogen and Lanxess) are also its main customers.

- (82) Sitech purchases waste management services from VGG for around [...] and recently contracted with a third party company (Indaver) for collection of hazardous waste.
- (83) The transaction gives rise to a vertical link between waste management (CVC via VGG, upstream) and site services (Target via Sitech, downstream) on the one hand and a potential vertical link between waste management (CVC via VGG, upstream) and production of chemicals (Target, downstream) on the other hand.
- (84) As regards the link between waste management and site services, VGG's market shares for waste management (for each collection and disposal of non-industrial waste and of industrial hazardous waste) do not exceed 30% neither at EEA, national or regional level.<sup>25</sup> In addition, the Notifying Party submits that Sitech's market share for facilities management services in the Netherlands is below [5-10]%.
- (85) As regards the potential link between waste management and production of chemicals, VGG's market shares for waste management (for each collection and disposal of non-industrial waste and of industrial hazardous waste) do not exceed 30% neither at EEA, national or regional level. Downstream, the only potentially vertically affected markets therefore occur in relation to the production of chemicals in Geleen, the Netherlands, where the Target produces caprolactam (together with cyclohexanone and ammonium sulphate) and acrylonitrile (together with acetonitrile, hydrogen cyanide and sodium cyanide). Indeed, the market shares of the composite resins business of the Target (i.e. production of UPR, sizings and binders) are below 30% on any plausible market.
- (86) However, the Target already purchases non-hazardous waste collection services from VGG (therefore no merger-specific effect). As regards collection of hazardous waste, the Target entered on 1 January 2015 into a contract with the third party Indaver for [...] / year. The Target can therefore not be considered as a significant customer for the collection of industrial waste and no customer foreclosure could likely arise.
- (87) In light of the above, the Commission concludes that the transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the vertical link between waste management services (CVC) and site services and production of chemicals (Target).

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<sup>25</sup> In addition, CVC [Redacted text relates to the manner of CVC's exit from VGG] no longer holds a controlling interest in VGG.

**5. CONCLUSION**

- (88) 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*