



EUROPEAN COMMISSION
DG Competition

***Case M.8015 - SYNTHOS
/ INEOS STYRENICS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/08/2016

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EUROPEAN COMMISSION

Brussels, 26.8.2016
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PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

Subject: Case M.8015 – SYNTHOS / INEOS STYRENICS
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 21 April 2016, the European Commission (the "Commission") received a notification of a proposed concentration pursuant to Article 4(5) of Council Regulation (EC) No 139/2004³ by which Synthos S.A. ("Synthos" or the "Notifying Party") acquires sole control within the meaning of Article 3(1)(b) of the Merger Regulation over the EPS-related business of INEOS Styrenics Industries Holdings Limited ("INEOS Styrenics" or the "Target") by way of purchase of shares ("the Transaction"). Synthos and INEOS Styrenics are collectively referred to as the "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').

³ 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.

1. THE PARTIES AND THE OPERATION

- (2) **Synthos** is a Polish manufacturer of chemical products, such as emulsion rubber and solution styrene butadiene, polybutadiene rubber, polystyrene (both expanded and extruded), adhesives, etc. Synthos belongs to the capital group ultimately controlled by Mr Michal Solowow (the "Mr Solowow's Group"). Synthos has its main production plants in Poland and the Czech Republic, and is active in more than 65 countries.
- (3) **INEOS Styrenics** is a worldwide manufacturer of chemical raw materials, whose production focuses mainly on expanded/expandable polystyrene beads ("EPS beads"). INEOS Styrenics is the parent of a group of companies constituting the INEOS Styrenics' EPS beads business (INEOS Styrenics' ultimate parent is INEOS, a worldwide chemical group with headquarters in Switzerland). INEOS Styrenics has two production plants in France and one in the Netherlands, and is active in over 50 countries worldwide.
- (4) Pursuant to the Share Sale Agreement signed by the Parties on 6 May 2016, the transaction will consist in the purchase of (i) 100% shares of INEOS Styrenics European Holding B.V. from INEOS and (ii) the EPS beads-related assets from INEOS Styrenics International S.A., a Swiss subsidiary of INEOS by Synthos (the "Transaction").
- (5) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

2. EU DIMENSION

- (6) The Transaction does not have EU dimension within the meaning of Article 1(2) or 1(3) of the Merger Regulation given that the turnover thresholds are not met. Indeed, the undertakings concerned have a combined aggregate world-wide turnover of [...] (INEOS Styrenics: [...]; Mr Sołowow's Group: [...]) and EU-wide turnover of [...] (INEOS Styrenics: [...]; Mr Sołowow's Group: [...]).
- (7) However, on 21 April 2016 the Commission received, by means of a reasoned submission, a referral request pursuant to Article 4(5) of the Merger Regulation with respect to the Transaction. The referral request met the legal criteria set out in article 4(5) of the Merger Regulation in that the Transaction is capable of being reviewed under the national merger control laws of at least three Member States, namely [...]. In addition, no competent authority expressed its disagreement with the Transaction being referred to the Commission within 15 working days of receiving a copy of the submission.
- (8) Therefore, according to Article 4(5) of the Merger Regulation, the Transaction is deemed to have EU dimension.

3. COMPETITIVE ASSESSMENT

3.1. Market definition

- (9) The Parties overlap horizontally in the production of EPS beads. Synthos is also active in the production of styrene monomer and polystyrene, which are used as input in the manufacturing process of EPS beads (and therefore are vertically related to the production of EPS beads).

3.1.1. *EPS beads*

Product market

- (10) EPS bead is a cellular plastic material based on polystyrene which is produced on the basis of two technologies: (i) suspension polymerisation and (ii) extrusion. EPS is supplied in the form of beads to converters who transform EPS beads into end products. End-products based on EPS beads are mainly used in the construction sector as insulating material or lightweight/lightening aggregate, and to a lesser extent in the packaging industry.⁴ The Parties are manufacturers of EPS beads, but they are not active in the downstream market of EPS beads conversion.
- (11) In previous decisions, the Commission has defined EPS beads as a market distinct from other insulation materials (such as, extruded polystyrene or mineral wool and polyurethane foam).⁵
- a. Distinction between white EPS and grey EPS beads*
- (12) The Commission has in the past considered that the EPS beads market can be further segmented between ‘white’ and ‘grey’ according to its relative thermal conductivity (‘lambda value’)⁶, but it ultimately left the product market definition open.⁷
- (13) The Notifying Party submitted that grey EPS beads are approx. 12-19% more expensive than white EPS beads but it considers nonetheless that there exists a high degree of demand-side and supply-side substitutability between the two types of EPS beads, which in turn points against identifying two separate relevant markets.
- (14) From a demand-side perspective, the Notifying Party argued that white EPS and grey EPS beads are, to some extent, substitutable as all relevant physical and chemical features, except for the thermal productivity, are largely the same for both products.⁸ From a supply-side perspective, the Notifying Party submitted that the production technology for all EPS beads varieties, classes and grades is very similar, and the costs of shifting production from white EPS beads to grey EPS beads (and vice versa) are limited.
- (15) The outcome of the market investigation does not support the Notifying Party's view. First, a large majority of customers do not consider white and grey EPS beads as substitutable in terms of intended use, prices and product characteristics.
- (16) The extent of supply-side substitutability between grey and white EPS beads also appears to be limited. Suppliers who responded to the Commission's market

⁴ End-applications for the construction sector account for 75% of EPS demand.

⁵ Case No. COMP/M.6093 - BASF / INEOS / Styrene / JV, Case No. COMP/M.3578 - BP / Nova Chemicals / JV, Case No. M.1078 - BP / Hüls.

⁶ Due to its lower lambda value, grey EPS beads provides increased thermal resistance which results in better insulating properties than white EPS beads.

⁷ Case No. COMP/M.6093 - BASF / INEOS / Styrene / JV, Case No. COMP/M.3578 - BP / Nova Chemicals / JV.

⁸ Form CO, paragraphs from 100 to 111.

investigation indicated that the manufacturing of grey EPS beads requires non-negligible investments in specific equipment and facilities. For example, a supplier noted that *"switching from white EPS to grey EPS and vice-versa would imply technical difficulties and expensive R&D and that it would result in a high amount of intermediate and contaminated product being released."*⁹ This seems to be in line with Notifying Party submission that manufacturing grey EPS beads requires additional equipment and facilities compared to white EPS beads production,¹⁰ and that the total expenditure to open a grey EPS beads' production line would amount to several million euros.¹¹ In addition, the lack of prompt supply-side substitutability between white and grey EPS beads is well illustrated by [...]. Finally, the Commission notes that not all EPS beads' suppliers are active in the market for grey EPS beads. For example, Ravago, Bewi-Styrochem and Unipol produce white EPS beads but they are not present in the market for grey EPS beads.¹² This suggest that switching of the production processes of white and grey EPS beads may not be as immediate as suggested by the Notifying Party.

- (17) In view of the above, due to the lack of significant demand-side and supply-side substitutability, the Commission considers for the purpose of this decision that white EPS and grey EPS beads constitute distinct relevant markets.

b. Further market segmentations

- (18) The Commission has also considered whether the white and/or grey EPS beads' market should be further segmented on the basis of other properties/characteristics, such as the bead size, hygiene requirements, fire resistance, etc.
- (19) The Notifying Party submitted that different varieties of EPS beads are largely seen by customers as interchangeable and in any case they are highly substitutable from a supply-side perspective as they can easily be obtained by adding specific additives.¹³ Whilst the investigation has not confirmed that different varieties of EPS are substitutable from a demand perspective, the Parties' competitors largely pointed to the lack of significant obstacles and costs in shifting production from one EPS beads variety to another, within white and grey EPS beads production processes
- (20) On the basis of the significant supply-side substitution the Commission considers that a further segmentation of the white and grey EPS beads would not be appropriate.

⁹ Replies to questions 6 and 8 of Questionnaire Q 1 Competitors.

¹⁰ Grey EPS beads production requires equipment to prepare special, carbon-type additives, dosing systems to ensure the proper application of these additives in the production process as well as the storage facilities for these additional ingredients.

¹¹ Form CO, paragraph 300.

¹² Replies to question 5 of Questionnaire Q 1 Competitors.

¹³ Form CO, paragraphs 143 to 145.

Geographic market

- (21) The Commission has previously defined the EPS beads market as at least EEA-wide¹⁴.
- (22) The results of the market investigation in this case support the previous decisional practice of the Commission as regards the geographic market delineation of the market for EPS beads. Indeed, the market investigation provided indications that producers serve customers located across the EEA from a few manufacturing plants and that EPS is shipped, on average, over several hundred kilometres.¹⁵¹⁶ This is the case for both white and grey EPS beads,
- (23) The Notifying Party agrees with this approach.
- (24) Therefore, the Commission considers for the purpose of this decision that white and grey EPS beads markets are EEA-wide in scope.

3.1.2. Styrene monomer

- (25) Styrene is an intermediate chemical product and has no end-use in itself. It is used as a base material for the production of polystyrene and EPS beads and as a co-monomer in the production of a number of plastic and synthetic rubbers.
- (26) The Commission has previously considered styrene monomer as a separate relevant product market. The market investigation in this case did not provide any indications that this market should be further segmented. Therefore, the Commission considers that styrene monomer constitutes as a separate relevant product market.
- (27) In the past decisions, the geographic market for styrene was considered either global or EEA-wide in scope.¹⁷ The market investigation did not provide any indication suggesting that the geographic dimension of the market should be narrower than the EEA. For the purposes of this decision, the Commission considers that it can be left open whether the geographic market is the EEA or global as the proposed transaction would raise no competition concerns even under the narrowest plausible market definition (ie. EEA-wide).

3.1.3. Polystyrene (PS)

- (28) Polystyrene (PS) is a thermoplastic resin produced by the polymerisation of styrene. PS may then be further processed into specific grades, by different process

¹⁴ Case No. COMP/M.3578 - BP / Nova Chemicals / JV.

¹⁵ Replies to questions 8 and 9 of Questionnaire Q 2 Customers and replies to questions 12 and 13 of Questionnaire Q 1 Competitors.

¹⁶ In 2015 the Parties transported EPS beads for, on average, [500-1000] km, and the radius around their plants capturing 80% of their supply is above [500-1500] km.

¹⁷ Case COMP/M.6093 - BASF / INEOS / Styrene / JV; Case COMP/M.3578 - BP / Nova Chemicals / JV.

conditions (temperature, pressure) and/or the use of other chemicals (initiators, additives, synthetic rubber).¹⁸

- (29) In previous decisions the Commission has considered whether the market for PS should include other polymers (eg. PP and PET), and whether PS should be segmented in separate sub-markets for GPPS¹⁹ and HIPS²⁰. However, the Commission ultimately left the product market definition open.²¹ For the purposes of this decision, the Commission considers that the market definition can be left open as the proposed transaction would raise no competition concerns under any plausible market delineation
- (30) As regards the geographic dimension, the Parties submitted that the market for PS should include the EEA and the Switzerland.²² The Commission has previously considered the market for PS to be at least EEA-wide, but it ultimately left the definition open.²³ The market investigation did not provide any indication suggesting that the geographic dimension of the market should be narrower than the EEA. The Commission considers that it can be left open whether the geographic market is the EEA or it is wider as the proposed transaction would raise no competition concerns even under the narrowest plausible market definition (ie. EEA-wide).

3.2. Competitive assessment

3.2.1. *Horizontal relationships*

- (31) The Transaction leads to (i) a horizontally affected market in relation to the production of white EPS beads and (ii) a potential horizontal overlap in relation to the production of grey EPS beads.
- (32) Both Synthos and INEOS Styrenics are active in white EPS beads' production. Only INEOS Styrenics currently produces grey EPS beads [...].

¹⁸ Case COMP/M.6093 - BASF / INEOS / Styrene / JV, Case COMP/M.5854 - Total Group / HIPS & GPPS business of Polimeri.

¹⁹ General purpose polystyrene.

²⁰ High impact polystyrene.

²¹ Case COMP/M.6093 - BASF / INEOS / Styrene / JV, Case M.4885 INEOS/NOVA/JV (2007), Case M.5854 Total/Polimeri (2010).

²² Form CO, paragraph 163.

²³ Case COMP/M.6093 - BASF / INEOS / Styrene / JV.

3.2.1.1. Non-coordinated effects

a) *White EPS beads*

- (33) The Notifying Party submitted that the Transaction would not lead to non-coordinated effects because:²⁴ (i) market concentration is limited²⁵, (ii) a number of credible suppliers will continue to exert an effective competitive constraint on the Parties post-merger, (iii) white EPS beads are largely a homogeneous product and therefore the Parties are not uniquely close competitors, (iv) there is significant excess capacity in the market, and (v) several customers are large, sophisticated companies with the ability to exercise strong countervailing buyer power.
- (34) INEOS Styrenics and Synthos have a market share of [10-20]% and [10-20]% respectively and post-Transaction the Parties would be the largest supplier in the market with a share of [30-40]% in the EEA. BASF is the second-largest supplier with a share of [10-20]%, followed by Sunpor ([5-10]%), Versalis ([5-10]%), Ravago ([5-10]%), Bewi Syrochem ([5-10]%) in the EEA. The remaining share of the market is split between a number of smaller/regional suppliers.

Table 1: White EPS beads – Market shares (EEA) in 2015 - volume

Supplier <i>White EPS beads</i>	Market share in the EEA
Synthos	[10-20]%
INEOS Styrenics	[10-20]%
Combined	[30-40]%
BASF	[10-20]%
Sunpor	[5-10]%
Versalis	[5-10]%
Ravago	[5-10]%
Bewi Syrochem	[5-10]%
Other	[20-30]%

Source: Form CO.

- (35) The findings of the market investigation support the view that the merger is unlikely to give rise to non-coordinated effects.
- (36) First, according to the market respondents, BASF has generally been seen as the closest competitor to each of the Parties.^{26,27} In addition, customers explained that other suppliers such as Sunpor, Versalis and Ravago also compete closely and are valid alternatives to the merging parties.²⁸ This suggests that the merged entity would unlikely have the incentives to increase the price post-merger as the remaining suppliers all having spare capacity²⁹ could defeat such price increase by

²⁴ Form CO, paragraphs 322 to 335.

²⁵ HHI post-merger would be approx. 1500.

²⁶ The majority of the Parties' customers indicated that they would most likely switch to BASF if their current supplier (either of the Parties) was no longer offering EPS beads.

²⁷ Replies to question 21 of Questionnaire Q 2 Customers; Form CO, paragraph 187.

²⁸ Replies to questions 17 and 18 of Questionnaire Q 2 Customers.

²⁹ See paragraph 37 of this Decision.

capturing a significant share of the customers who would switch away from the Parties in response to the price increase.³⁰

- (37) Second, the market investigation indicated that switching between suppliers is relatively common as white EPS beads are seen as a relatively homogenous product, and many customers switched suppliers in the last five years. Moreover, customers tend to source their EPS beads requirements from multiple suppliers³¹ and they can (threaten to) move volumes to other existing suppliers as a disciplining strategy. The market investigation has revealed that prices are typically renegotiated on a monthly basis and customers move volume among their suppliers depending on relative price levels. The Commission notes that only a limited number of customers have the Parties as their only white EPS beads suppliers.
- (38) Third, the investigation confirmed that other EPS beads suppliers have currently spare capacity. Only one competitor experienced capacity constraint in the past 5 years and since then it has invested in additional capacity.³² Some competitors who replied to the market investigation also indicated that they plan to expand their capacity in the next 3 to 5 years.³³ This suggests that the Parties' competitors would be able to expand their production in order to accommodate the demand of new customers who would switch away from the merger entity in response to a hypothetical price increase post-merger.
- (39) In light of the above, the Commission considers that the Transaction is unlikely to result in a significant impediment to effective competition in the market for white EPS beads.

b) Grey EPS beads

- (40) Sunpor and BASF are by distance the main suppliers in the grey EPS beads' market, each with a share of approx. [40-50]%. INEOS Styrenics is the third supplier in the market but its share ([5-10]%) is substantially smaller than Sunpor and BASF.

³⁰ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03), paragraphs 28 to 29.

³¹ For security-of-supply reasons as well as a means to continuously play suppliers off against each other.

³² Replies to question 31 of Questionnaire Q 1 Competitors.

³³ Replies to question 32 of Questionnaire Q 1 Competitors.

Table 2: Grey EPS beads – Market shares (EEA) in 2015 - volume

Supplier Grey EPS beads	Market share in the EEA
Synthos ³⁴	[0-5]
INEOS Styrenics	[5-10]%
Combined	[5-10]%
BASF	[40-50]%
Sunpor	[40-50]%
Versalis	[0-5]%
Other	[5-10]%

Source: Form CO

- (41) As set out above (see paragraph (32)), Synthos is not currently active in the grey EPS beads market [...]. The Notifying Party submitted that [...].³⁵ In light of this, the Commission considers that Synthos' entry into the grey EPS beads' market would be very likely absent the merger. The Commission has therefore assessed whether the merger would remove a (future) effective competitive force from the market.³⁶
- (42) The findings of the market investigation indicate that BASF and Sunpor are the leaders in the grey EPS beads' market. INEOS Styrenics is generally perceived as a relatively weak constraint as the quality of its grey product is lower than that of other suppliers (including BASF and Sunpor)³⁷. The Notifying Party's internal documents³⁸ suggest that, [...]. This is because [...]. By contrast, INEOS Styrenics' grey production relies on the suspension technology [...]. In light of the above, the Commission considers that, if and when Synthos were to enter this market absent the merger, it would likely compete more closely with BASF and Sunpor than with INEOS Styrenics.³⁹
- (43) In the light of the above, the Commission considers that the Transaction is unlikely to result in a significant impediment to effective competition in the market for grey EPS beads.

3.2.1.2. Coordinated effects

White EPS / Grey EPS beads

- (44) The Commission has considered whether the Transaction may increase the likelihood of coordinated conducts (or may make coordination easier, more stable or more effective) but it has ultimately concluded that coordinated effects are unlikely to arise following the Transaction.

³⁴ [...].

³⁵ Form CO, paragraphs 298 to 300.

³⁶ European Commission, *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03)*, paragraphs 58 to 60.

³⁷ Replies to question 31 of Questionnaire Q 1 Competitors.

³⁸ Form CO, Annex 19.

³⁹ Form CO, Annex 19.

- (45) First, the Transaction would increase the asymmetry between suppliers in the white EPS beads' market. The Parties' combined market share ([30-40]%) is approximately twice as large as the market share of the second biggest supplier in the market (BASF, [10-20]%). The increased asymmetry may generate different incentives to coordinate which in turn would make it less likely that EPS beads' suppliers could reach a common understanding on the terms of coordination.
- (46) Second, monitoring deviations would be difficult in both the white EPS beads and the grey EPS beads' market as there is limited price transparency. Prices are negotiated bilaterally between suppliers and customers on a monthly basis, and bespoke discounts or volume rebates are relatively common practice in the industry.
- (47) Third, the respondents to the market investigation did not express concerns about the Transaction increasing the likelihood of coordinated behaviours to emerge (neither in the white EPS nor in the grey EPS beads' market).

3.2.2. Vertical links

- (48) The Transaction would not create a new vertical link as Synthos is already vertically integrated in the production of styrene monomer and polystyrene. However, the Commission has considered whether the Transaction may affect the ability and/or the incentives of the Parties to conduct a foreclosure strategy (in the form of either input or customer foreclosure).

3.2.2.1. Input foreclosure

Styrene monomer

- (49) Currently Synthos produces styrene monomer only for captive use and does not sell to third parties.⁴⁰ In addition, Synthos' share of styrene monomer production capacity in the EEA is limited ([5-10]%) and a number of suppliers (Trinseo, LyondellBasell, Total, Versalis and BASF) have a larger capacity than Synthos.
- (50) As the Transaction would not increase the Parties' production capacity of styrene monomer, the Commission considers that the merged entity would not have the ability to engage into an input foreclosure strategy.

Polystyrene

- (51) Synthos' share of polystyrene sales in the EEA is limited ([5-10]% in 2015) and it faces competition from a number of established suppliers, such as INEOS Styrolution, BASF, TOTAL and Trinseo, each with a market share in excess of 10%.
- (52) As INEOS Styrenics does not produce polystyrene the Parties' position in the upstream market would not be affected by the merger. Therefore, the Commission considers that the transaction does not increase the Parties' ability to engage into an input foreclosure strategy. Neither does the transaction materially change the

⁴⁰ Synthos is a net buyer of styrene monomer as its own production does not entirely satisfy its demand (Synthos sources more than [...] % of its own styrene monomer's demand from third parties).

incentives to conduct such a strategy (irrespective of any possible further sub-segmentation of the polystyrene product market) as the Parties are not particularly close competitors in the EPS markets (see paragraphs 36 and 42) and therefore they would unlikely capture the largest share of the demand diverted away from foreclosed rivals (who would in any event be able to source their input from other producers).⁴¹

3.2.2.2. Customer foreclosure

Styrene monomer

- (53) As a result of the Transaction, the Parties would account for approx. [30-40]% of white and [5-10]% of grey EPS beads' market (and consequently of the related demand for styrene monomer).
- (54) The Commission notes, however, that EPS beads are just one of the many end-uses of styrene monomer such as polystyrene (PS), acrylonite butadiene styrene (ABS), styrene acrylonite (SAN), etc. In 2015 EPS beads end-use amounted to 27% of the total styrene monomer demand. Even if the Parties were not to purchase any styrene monomer from upstream competitors post-Transaction, styrene monomer producers would still have downstream outlets for their production.
- (55) As a result, the Commission considers that the merged entity would not have the ability to engage into a customer foreclosure strategy post-Transaction.

Polystyrene

- (56) Polystyrene is only used as input in the extrusion technology and neither of the Parties currently adopts this technology to produce EPS beads [...].
- (57) Moreover, polystyrene is not solely used for the production of EPS beads. Other applications of polystyrene include: consumer electrical appliances, thermoformed sheet for refrigerator door linings, toys, furniture, etc. These alternative applications account together for a significant share (30-40%) of the polystyrene demand, irrespective of any possible further sub-segmentation of the market. Therefore, the Commission considers it unlikely that, as a consequence of the merger, the Parties' competitors in the polystyrene market would not have access to a sufficient customer base.
- (58) In light of the above, the Commission considers that the merged entity would not have the ability to engage into a customer foreclosure strategy post-Transaction.

3.2.3. **Conclusion**

- (59) Considering the evidence discussed in Sections III.2.1 and III.2.2 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 markets for white and grey EPS beads in the EEA, or to any of the vertically related markets (styrene monomer and polystyrene) where the Parties are active.

⁴¹ European Commission, *Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2008/C 265/07)*, paragraph 42.

4. CONCLUSION

- (60) 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