



EUROPEAN COMMISSION
DG Competition

***Case M.8059 - INVESTINDUSTRIAL / BLACK DIAMOND /
POLYNT / REICHHOLD***

Only the English text is available and authentic.

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 12/05/2017

***In electronic form on the EUR-Lex website under document
number 32017M8059***



EUROPEAN COMMISSION

Brussels, 12.5.2017
C(2017) 3367 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Subject: Case M.8059 - INVESTINDUSTRIAL / BLACK DIAMOND / POLYNT / REICHHOLD
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 17 March 2017, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which funds affiliated with Investindustrial, through Global Chemicals SARL ("Investindustrial", Luxembourg), and funds affiliated with Black Diamond Capital Management L.L.C. ("Black Diamond", USA) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the Polynt Group ("Polynt", Italy) and the Reichhold Group ("Reichhold", USA) by way of purchase of shares. Black Diamond and Investindustrial are collectively designated hereinafter as the "Notifying Parties" or "Parties to the proposed transaction"). The same concentration was notified to the Commission on 26 October 2016, but subsequently withdrawn on 24 November 2016.

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

- (2) Investindustrial is a legal entity incorporated under the laws of Grand Duchy of Luxembourg, having its registered office in Luxembourg, Grand Duchy of Luxembourg. Investindustrial is a holding company acquiring and managing shareholdings in other companies. Investindustrial exercises sole control over Polynt
- (3) Black Diamond is a SEC registered investment advisory firm founded in 1995, with a focus on four investment areas: (i) control distressed/private equity funds; (ii) hedge funds; (iii) mezzanine funds and collateralized loan obligations; and (iv) other structured vehicles. Black Diamond exercises sole control over Reichhold.
- (4) Polynt is active in the development, production and distribution of specialty chemicals and performance chemicals. Polynt is also active in the production of Unsaturated Polyester Resin ("UPR"), chemical intermediates (anhydrides), related commodities (plasticizers), and specialties (thermoset compounds).
- (5) Reichhold is a manufacturer and supplier of resins used in composites and coatings, including UPR.

2. THE OPERATION AND THE CONCENTRATION

- (6) On May 2, 2016 Investindustrial III LP and Black Diamond agreed to transfer their respective interests in Polynt and Reichhold respectively to a new structure "NewCo" ("the merged entity"). Upon closing of the Proposed Transaction, Investindustrial on the one hand and Black Diamond on the other will each hold equal equity interests in the merged entity (the combined Polynt-Reichhold entity), subject to any economic interests in the combined entity held by minority participants in Reichhold.³
- (7) According to a Shareholders Agreement to be concluded between the Notifying Parties at the closing of the Transaction, Investindustrial and Black Diamond will each directly or indirectly nominate 3 of the 7 members of NewCo's Board of Directors. The nomination and dismissal of the 7th member of the board, who is also the CEO of the merged entity, and the approval of NewCo's annual budget and business plans would require the consent of both Investindustrial and Black Diamond, for as long as they each hold at least 33% of the shares of the merged entity.
- (8) As a result of the Proposed Transaction, Investindustrial and Black Diamond will jointly control the merged entity (the combination of Reichhold and Polynt).
- (9) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

³ These may be in the range from [...]%, depending on to what extent such minority participants agree to invest additional cash amounts in the combined Polynt-Reichhold entity.

3. EU DIMENSION

- (10) Two of the undertakings concerned, Investindustrial and Black Diamond, have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴. Each of them has an EU-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.
- (11) The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction

4.1.1. Horizontal overlaps

- (12) The Transaction leads to horizontal overlaps in the areas of (i) the production and sale of Unsaturated Polyester Resins (UPRs), (ii) the production and sale of Vinyl Ester Resins (VE) and (iii) the production and sale of Gel Coats.
- (13) UPRs are produced by the poly-condensation of saturated and unsaturated dicarboxylic acids (like Maleic Anhydride or MA, and Phthalic Anhydride or PA) with glycols. On their own, UPRs have only limited structural integrity. However, they form highly durable structures and coatings when they are cross-linked with a vinylic reactive monomer, most commonly styrene. This product is called "*pure UPR*".
- (14) Pure UPRs are often combined with fiberglass or mineral fillers to enhance their mechanical strength, resulting in "*reinforced*" UPR. Reinforced UPRs are mostly used in the construction, marine and land transportation industries, because they are resistant to corrosion, fire, etc. "*Non-reinforced*" UPRs are used to make cultured marble and solid surface counter tops, gel coats, automotive repair putty and filler and other products such as bowling balls and buttons.
- (15) VEs are produced by the esterification of an epoxy resin with an unsaturated monocarboxylic acid, which is subsequently dissolved in a vinylic reactive solvent such as styrene. VEs typically share characteristics with UPRs, including their high durability and increased corrosion resistance, but are a tougher, more resilient resin. As with UPRs, VEs can be mixed with peroxides to produce a resin with greater strength and mechanical properties than polyester and epoxy resins. VEs are frequently used in pipelines and chemical storage tanks.⁵
- (16) Gel coats are products derived from pure UPR, and are used to provide a high-quality finish on the visible surface of composite materials. Gel coats are

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

⁵ The overlaps between the Notifying Parties do not lead to an affected market for VE under any plausible market definition. In view of this and the information provided by the Notifying Party, the Commission concludes that the operation does not raise any competition concern as regards VEs and will not discuss them any further.

generally applied to the moulds in a liquid state and form an integral part of the final composite material, in contrast with generic coatings which are added or applied to the finished product.

- (17) The transaction leads to two horizontally affected markets: the market for UPR and the market for gel coats.

4.1.2. Vertical relationships

- (18) Polynt is vertically integrated upstream and downstream of UPR. Upstream, Polynt manufactures and sells maleic anhydride ("MA"), phthalic anhydride ("PA") and tetrahydrophthalic anhydride ("THPA") which are inputs to UPR. Downstream, Polynt manufactures and sells thermoset compounds (BMC and SMC), which use UPR as an input. Reichhold is not vertically integrated.
- (19) MA is a key raw material, used primarily in the production of UPR. MA is an unsaturated di-basic acid used as a chemical intermediate. In the manufacture of UPR, MA is esterified (ester groups are added to the molecule) with a glycol to produce a three dimensional macromolecule that is rigid, durable, insoluble, and mechanically strong.
- (20) PA, like MA, is one of the main raw materials used in the production of UPR.
- (21) THPA is mainly used as a hardener for epoxy resins, and as a chemical intermediate for light coloured alkyd polyesters and unsaturated resins, plasticizers, adhesives, pesticides, agrochemicals, pesticides, sulphide regulators, surfactant, alkyd resin modifiers, and the raw materials for certain pharmaceuticals. In the production of unsaturated polyester resins, THPA improves the air-drying performance of the resin, especially in high-grade resin putty and air-drying coatings.
- (22) Sheet moulding compounds (SMC) and bulk moulding compounds (BMC) are thermoset compounds; they are both fibre reinforced materials, typically utilizing glass strand fibres of varying lengths. Thermoset compounds produced by Polynt are derived from UPR.
- (23) The Transaction gives rise to vertically affected markets between (i) Polynt's production and sale of MA, PA and THPA on the upstream and the merged entity's manufacturing of UPR on the downstream; as well as (ii) the merged entity's manufacturing of UPR on the upstream and Polynt's manufacturing and sale of thermoset compounds (BMC and SMC) on the downstream.

4.2. Market definitions

Horizontal Overlaps

4.2.1. UPR

4.2.1.1. Product market definition

- (24) In a previous decision the Commission found that UPR could constitute a relevant product market as it is not substitutable with other resins or chemical compounds for the same intended use. The Commission also found that although for each end-use application (industry) it is necessary to have a special formulation of

UPR; suppliers that are focused on customers from certain industries could easily adapt their production to start supplying UPR for other industries as well. Ultimately the Commission left the product market definition for UPR open⁶.

The Notifying Parties' view

- (25) The Notifying Parties agree with the Commission's precedents that UPR constitutes a relevant product market. In this regard they argue that UPR is a homogenous product which while sold for various end-use applications, is formulated with the same manufacturing process and using the same raw materials, albeit in different ratios when formulated in different products.
- (26) The Notifying Parties add that customers all purchase the same pure UPR and that the price of UPR does not vary according to the end-use applications.

The Commission's assessment

- (27) The market investigation has confirmed that UPR should be considered as one single product market without further segmentation for the reasons set out below.
- (28) UPR customers explained that UPR cannot be substituted by different resins given that they do not have the same specifications⁷. Also, different resins require different production processes and equipment and customers generally have facilities and equipment adapted to produce their product according to a specific resin and do not have the equipment to handle an alternative resin.⁸ Similarly, suppliers mostly dedicate their production lines to UPR and do not switch production between different products.⁹ Therefore, UPR cannot be substituted by other resins and should be considered as a separate market from other resins such as epoxy.
- (29) The production of UPR is a commodity technology and its basic formulation and production process are widely spread across the market. It can be supplied in two forms: pure UPR or specialty UPR. As opposed to pure UPR which consists on a standard formulation, specialty UPR combines UPR with different additives in certain quantities in order to match the specific requirements of each customer.
- (30) As explained by the European Composites Industry Association (EuCIA) during the market investigation: *"The chemical reaction is widely known and the basic polyester resins are commodity and not specialty products. There are no patents and IP rights involved and there is no special equipment required for the polyester resin production."*¹⁰

6 Case M.7359 - PCCR USA/TOTAL'S CCP COMPOSITE BUSINESS, paragraphs 16 to 19.

7 Replies to question 9 of Questionnaire 2 - Customers.

8 Minutes of a conference call with a competitor on 20 September 2016.

9 Replies to question 4 of Questionnaire 1 - Competitors.

10 Minutes of a conference call with the European Composites Industry Association on 6 September 2016.

- (31) The same reasoning applies to UPR grades. For instance, a competitor stated that "*[t]he same production process applies for all types of UPR, regardless of the grade and application. In a nutshell, manufacturing polyesters is technically not difficult. The production process for high end and low end UPR grades is the same.*"¹¹ Therefore, supply-side substitutability is well spread across the industry and suppliers are able to produce different grades of UPR for different industries without any major technical hurdle other than the time necessary to replicate a specific product.
- (32) On the demand side customers are spread across different types of industries. For each different end-use application it is necessary to have a special formulation of UPR that is tailor-made for each individual customer, thereby limiting demand-side substitutability. However, the market investigation also indicated that customers can switch between the different UPR suppliers they have approved for a specific use. The approval process consists of technical tests to ensure the required quality. As explained above, in general there is no technical challenge for suppliers to produce specific grades of UPR. It is mostly a matter of time and testing for UPR suppliers to find the adequate recipe to start supplying UPR. In fact, UPR suppliers are not specialised in producing UPR for use in one single industry but cover a range of sectors from marine to transport, construction etc.¹²
- (33) The market investigation indicated at the same time that UPR is not a homogeneous product. As UPR is often tailor-made to accommodate the needs of each individual customer, the ability and will of UPR suppliers to support product development with and for customers is an important factor of differentiation. While there is in general no technical challenge to replicate a specific formulation other than the time to develop through testing and tweaking the correct final product to match customers' requirements, customers also indicated that not all suppliers are capable to do so equally well.
- (34) In view of the above, the market for UPR can be considered as a single, differentiated product market due to the extensive supply-side substitutability with regard to the manufacturing of UPR for different end-uses.

4.2.1.2. Geographic market definition

- (35) In a previous decision, the Commission found that, despite moderate transport costs, there are some product characteristics that impede UPR from being transported over long distances, in particular product stability and temperature conditions. On the other hand the Commission found that supplies for the European customers' plants are mainly sourced within Europe.¹³ The Commission ultimately left the exact geographic scope of this market open.¹⁴

11 Minutes of a conference call with a competitor on 19 September 2016.

12 Replies to question 5 of Questionnaire 1 -Competitors.

13 Case M.7359 - PCCR USA/TOTAL'S CCP COMPOSITE BUSINESS, paragraphs 21 and 23.

14 Case M.7359 - PCCR USA/TOTAL'S CCP COMPOSITE BUSINESS, paragraph 24.

The Notifying Parties' view

- (36) The Notifying Parties argue that the relevant market is EEA-wide. In this regard they notably point to the relatively low transportation costs of UPR. They argue that each manufacturing site has a delivery range in the region of 2,000 kilometres and that consequently these products can be shipped across the EEA from various locations within the EEA. The Notifying Parties also argue that pure UPR is a commodity, and prices are relatively uniform throughout the EEA.

The Commission's assessment

- (37) According to the market investigation, the market for UPR is EEA-wide.
- (38) Customers and competitors consider it very important that UPR suppliers are in proximity to their customers' plants.¹⁵ Results of the market investigation show that customers generally require deliveries on a just-in-time basis, with several deliveries per week.¹⁶ This is notably due to their limited storage capacity¹⁷ and the fact that the shelf life of UPR is limited.¹⁸ Similarly, customers also stated that lead time is an important aspect of UPR procurement. In general, they expect suppliers to be able to deliver the product within two weeks of ordering at most.¹⁹
- (39) Accordingly, competitors explained that supply from outside the EEA is not a credible alternative in view of transport costs and shelf life of the product. A competitor stated that supply from outside of the EEA is not viable "*not only due to transport costs but also in view of the shelf life of the products, which lies between 3 to 6 months. Given that a delivery from overseas takes on average 6 weeks, this means that the shelf life is also significantly reduced, when the UPR finally arrives at the customer.*"²⁰ Competitors responding to the market investigation indicated they mainly supply their EEA customers within a radius of up to 1000km from their plants.²¹ In turn, customers in the EEA stated they do not import UPR from the US, Asia or other regions outside Europe.²²
- (40) Customers and competitors alike explained that transport costs play an important role in the competitiveness of suppliers. These costs increase with distance and because the UPR industry is characterised by low margins and price competition, high transport costs will heavily impact suppliers located further away from

15 Minutes of a conference call with a customer on 13 July 2016; minutes of conference calls with competitors on 13 July 2016, 19 September 2016. See also replies to question 20 of Questionnaire 1 – Competitors.

16 Replies to questions 15 and 16 of Questionnaire 2 – Customers. See also minutes of a conference with a customer on 4 July 2016.

17 Replies to questions 15 and 16 of Questionnaire 2 – Customers.

18 Minutes of a conference call with a customer on 13 July 2016; replies to question 19 of Questionnaire 2 – Customers.

19 Replies to question 17 of Questionnaire 2 – Customers.

20 Minutes of a conference call with a competitor on 19 September 2016.

21 Replies to question 19 of Questionnaire 1 – Competitors.

22 Replies to question 18 of Questionnaire 2 – Customers.

customers.²³ Moreover, UPR needs specific means of transport given it is UV sensitive and exposure to light and heat will damage the product, which renders transportation expensive as well as risky.²⁴

- (41) The Parties themselves sell [80-90]% of their EEA UPR production within 1000km from their plants.²⁵
- (42) There are some volumes of UPR manufactured in the EEA which are exported further away, mainly to the Middle East region, primarily because there are no locally established UPR manufacturing plants in that region. As a result, UPR producers in the EEA, such as the Parties and their competitors, may supply certain UPR volumes to customers outside the EEA, mainly because these customers do not have another alternative in their respective regions and thus necessarily have to face the additional burden of transport costs and delivery times. Conversely, as evidenced in the market investigation, the EEA customers are not served from outside sources but procure UPR exclusively within the region. Consequently the geographic scope of the UPR market is not wider than the EEA.
- (43) At the same time, most of the respondents to the market investigation stated that there are no specific logistic barriers that impede transport of UPR within the EEA.²⁶ Indeed, customers explained that while they procure UPR only from plants located in the EEA, these plants are not necessarily in the close proximity but in a radius that can reach up to 1000 km.²⁷ The main barrier to shipping UPR for longer distances is the increase in transport cost, which is normally included in the final price paid by customers (prices to customers are quoted including transport costs). This pattern is consistent with the fact that one customer's plant may be served from different plants of the same supplier located in different countries.²⁸ Also, multi-plant competitors indicated that they regularly ship at relatively long distances of even 800 km to optimise production runs in their network of plants, although this might entail a reduction in the margin due to higher transport costs. Therefore, the geographic scope of the UPR market is not narrower than the EEA.
- (44) In view of the above, the Commission concludes that due to the importance of transport costs and lead delivery times, the geographic scope of the market for UPR is EEA wide.

23 Replies to questions 20 and 21 of Questionnaire 1 – Competitors; replies to question 14 of Questionnaire 2 – Customers.

24 Replies to questions 20 and 22.1 of Questionnaire 1 – Competitors.

25 Internal calculation based on the Parties' submission on 22 September 2016.

26 Replies to question 21 of Questionnaire 1 – Competitors.

27 Replies to question 13 of Questionnaire 2 – Customers.

28 Minutes of conference calls with customers on 4 and 13 July, 5 August 2016.

4.2.2. Gelcoats

4.2.2.1. Product market definition

- (45) The Commission has not previously defined a market for gelcoats.

The Notifying Parties' view

- (46) The Notifying Parties argue that there is a distinct product market for gelcoats. In this respect the Notifying Parties indicate that gelcoat is a commodity product, even though there is some degree of product adjustment or specification.
- (47) First, the Notifying Parties explain that the same input raw materials are used, in different formulations or ratios, by all suppliers, excluding product differentiation. Second, the same equipment is used to produce gelcoats for different applications or customers, with no material time or cost required to adjust or switch production. Third, the Notifying Parties argue that product characteristics are the same for all suppliers for a particular application or formulation. Fourth, the Notifying Parties further argue that all suppliers of gelcoats can produce product for all types of specifications and product formulas are readily available or known, with competition occurring mainly on the basis of price, as with all commodity products.
- (48) On the other hand the Notifying Parties argue that there are alternatives to gelcoats. For example, a client requiring gelcoats could purchase more generic coatings (*e.g.*, polyurethane paintings) and process/enrich them internally.

The Commission's assessment

- (49) The market investigation showed that most customers purchase gelcoat which is tailor-made to their needs.²⁹ For instance a competitor explains that "*if you want to sell, you need to have a customized product.*"³⁰
- (50) In general customers and competitors considered all producers cannot produce gelcoats for all end-use applications.³¹
- (51) In view of the fact that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to gelcoats under any plausible market definition, the exact scope of the product market can be left open.

4.2.2.2. Geographic market definition

The Notifying Parties' view

- (52) The Notifying Parties argue that the geographic scope of the gelcoat market should be EEA-wide for the following reasons. First, gelcoat manufacturers use a

²⁹ Replies to question 60 of Questionnaire 1 – Customers; Replies to question 113 of Questionnaire 2 – Competitors.

³⁰ A competitor's reply to question 113 of Questionnaire 2 – Competitors.

³¹ Replies to question 62 of Questionnaire 2 – Customers; Replies to question 114 of Questionnaire 1 – Competitors.

limited number of plants within the EEA to produce and distribute gelcoat across the EEA. Second, the distribution of gelcoat in the EEA is not affected by particular trade tariffs and has relatively low transportation costs. Finally, gelcoat is a commodity, and prices are relatively uniform throughout the EEA.

The Commission's assessment

- (53) The market investigation confirmed that a majority of suppliers deliver most of their gelcoats to their EEA customers within distances of up to 1000 km away from their plants and sometimes further.³² In general respondents confirmed the lower transport costs for gelcoats (less than 10%) with respect of UPR, reflecting the fact that gelcoats have a higher value per unit of weight.³³
- (54) The market investigation also showed that since gelcoats are more tailor-made as a product than UPR, customers are ready to source further away than they would do for UPR, in order to find the gelcoats supplier that best fits their needs. Therefore the geographic market for gelcoats is not narrower than the EEA
- (55) However, customers indicated that above approximately 1000 km, prices can become uncompetitive due to increased transport costs.³⁴ As is the case for UPR, there are no gelcoats producers in the neighboring countries of the EEA (Middle East), which explains that while there are gelcoats volumes exported from the EEA, there are no imports. Therefore, the geographic market for gelcoats is not wider than the EEA.
- (56) In view of the above, the Commission concludes that the geographic scope of the market for gelcoats is EEA wide.

³² Replies to Question 57 of Questionnaire 2 - Customers; Replies to question 110 of Questionnaire 1 – Competitors.

³³ Replies to question 110 of Questionnaire 1 – Competitors.

³⁴ Replies to Question 57 of Questionnaire 2 – Customers.

Vertical relationships

(57) In view of the Notifying Parties combined market shares on the UPR market, the Transaction leads to vertically affected markets for MA, PA, THPA upstream and thermoset compounds (BMC and SMC) downstream.

4.2.3. *Maleic Anhydride (MA)*

(58) MA is a key raw material of UPR, and is primarily used for its production.

4.2.3.1. Product market definition

(59) The Commission has not previously defined a market for MA. In a recent case, the Notifying Party submitted the existence of a separate market for MA monomers³⁵ and MA copolymers³⁶. The Commission noted that MA monomers are used primarily in the production of polyester resins, but did not formally conclude on the existence of such a market.³⁷

The Notifying Parties' view

(60) The Notifying Parties argue that MA monomers is a commodity product and propose that it is considered to be a separate product market.

The Commission's assessment

(61) The market investigation confirmed that MA monomers is mostly a commodity product as a majority of customers indicated that they do not purchase different grades of MA.³⁸

(62) The market investigation showed signs of a separate market for MA monomers and that MA monomers cannot be substituted by other raw materials to produce UPR.³⁹

(63) In view of the fact that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to MA monomers under any plausible market definition, the exact scope of the product market can be left open.

4.2.3.2. Geographic market

(64) The Commission has not previously defined the relevant geographic market for MA monomers. In a previous case the Parties argued that the market is EEA-wide

³⁵ A monomer is a molecule that can be bonded to other identical molecules to form a polymer.

³⁶ When two or more different monomers unite together to polymerize, the result is called a copolymer.

³⁷ Case COMP/M.6313, Ashland / International Specialty Products.

³⁸ Replies to question 78 of Questionnaire 1 – Competitors.

³⁹ Replies to question 90 of Questionnaire 1 – Competitors.

due to its shipment costs from overseas.⁴⁰ Ultimately, the Commission left open the precise scope of the market definition.

The Notifying Parties' view

- (65) The Notifying Parties submit that the relevant geographic market for MA monomers is worldwide. The Notifying Parties argue that even with excess production capacity in the EEA, and EEA utilization levels at around [70-80]%, imports of MA monomers account for at least 10% of sales of MA monomers in the EEA. The Parties claim that if prices for MA monomers in the EEA were to significantly increase, customers would import additional volumes from the US and Asia.

The Commission's assessment

- (66) The market investigation indicated that MA monomers are delivered to the final customer mostly by truck⁴¹. MA monomers are transported in two forms.⁴² The first one is in melted form, which requires heated trucks or rail wagons. The logistics of the transport chain are important, because temperature has to be kept constant at around 70 degrees Celsius for the product to be usable afterwards. Therefore transport distance (and time in transit) play an important role for this type of transport, for reasons of cost. Also, customers have to trust that the transport chain of the MA monomer they procure respected the stipulation of being kept at a constant temperature of 70 degrees Celsius.
- (67) The second way to transport MA is in solid form. There are no transport-related constraints, but customers will need to have their own installations to melt the MA they receive in solid form to be able to use it.⁴³ MA in solid form can be transported by ship from outside the EEA.
- (68) The market investigation showed that customers can use both methods to take delivery of their MA. Although the majority of them prefer liquid MA, some of them source solid MA.⁴⁴ The choice of whether to use liquid or solid MA, however, is typically taken by customers when they design their own production facilities, given that dedicated equipment is necessary to liquefy solid MA.⁴⁵
- (69) Distance does not seem to play an important role in the customers' choice of supplier, as a limited number of customers take their supplies from plants further than 1000 km and most of them do not believe that geographic proximity between customers and suppliers of MA plays an important role.⁴⁶ Moreover around 27%

40 Case COMP/M.6313, *Ashland / International Specialty Products*.

41 Replies to question 86 of Questionnaire 1 – Competitors.

42 Replies to questions 87 and 88 of Questionnaire 1 – Competitors.

43 Replies to questions 87 and 88 of Questionnaire 1 – Competitors.

44 Replies to question 87 of Questionnaire 1 – Competitors.

45 Replies to question 88 of Questionnaire 1 – Competitors.

46 Replies to questions 91 and 92 of Questionnaire 1 – Competitors.

of customers import MA from overseas.⁴⁷ Finally, transport costs are estimated to be at 10%, or lower.⁴⁸

- (70) In view of the fact that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to MA monomer under either an EEA or worldwide market definition, the exact scope of the geographic market can be left open.

4.2.4. *Phthalic Anhydride (PA)*

- (71) PA is also one of the main raw materials used in the production of UPR.

4.2.4.1. Product market

- (72) In the past the Commission has examined the market for PA and indicated that it is a raw material mainly used for the production of phthalates as well as alkyd resins and UPR, although it left the precise market definition open⁴⁹.

The Notifying Parties' view

- (73) The Notifying Parties argue that PA is a commodity product. They argue that PA is a distinct product market and submit that regardless of the definition of the relevant product market for PA, the Proposed Transaction does not raise concerns.

The Commission's assessment

- (74) The market investigation broadly confirmed that there is a separate market for PA, which is mostly a commodity product and that a majority of UPR customers do not purchase different grades of PA.⁵⁰ The results of the market investigation did not show indications that the market for PA would be narrower.

Therefore, for the purpose of assessing the vertical relationship between Polynt's activities in PA and the Parties' activities in UPR, and in view of Polynt's marginal position in the supply of PA, it is not necessary to conclude on whether the relevant product market should be defined at a narrower level than PA.

4.2.4.2. Geographic market

- (75) In a previous case the Commission found evidence that the market for PA was at least EEA wide but ultimately left its precise geographic scope open.⁵¹

The Notifying Parties' view

⁴⁷ Replies to questions 95 of Questionnaire 1 – Competitors.

⁴⁸ Replies to questions 93 of Questionnaire 1 – Competitors.

⁴⁹ Case COMP/M.2314, BASF/Eurodiol/Pantochim.

⁵⁰ Replies to question 79 of Questionnaire 1 – Competitors.

⁵¹ Case COMP/M.2314, BASF/Eurodiol/Pantochim.

- (76) The Notifying Parties submit that the relevant geographic market for PA is worldwide, pointing to the fact that Polynt manufactures PA solely in its European plants and sells it globally. The Notifying Parties argue that even with excess production capacity in the EEA, imports of PA account for a non-negligible amount of sales of PA in the EEA. The Notifying Parties claim that if prices for PA in the EEA were to significantly increase, customers would import additional volumes from the US and Asia.

The Commission's assessment

- (77) In view of the fact that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to PA under either an EEA or worldwide market definition, the exact scope of the geographic market can be left open.

4.2.5. *Tetrahydrophthalic Anhydride (THPA)*

4.2.5.1. Product market

- (78) The Commission has not previously defined a market for THPA.

The Notifying Parties' view

- (79) The Notifying Parties discuss THPA as a separate product market, while submitting that regardless of the definition of the relevant product market, the Proposed Transaction would not raise concern.

The Commission's assessment

- (80) The market investigation did not contradict the Notifying Parties' view.
- (81) For the purpose of assessing the vertical relationship between the Parties' activities in UPR and Polynt's activities in THPA, the exact scope of this product market can be left open

4.2.5.2. Geographic market

The Notifying Parties' view

- (82) The Notifying Parties submit that the relevant geographic market for THPA is worldwide. In this regard they point to the fact that Polynt manufactures THPA solely in its European plants and sells it globally and argue that THPA has a long shelf life (up to six months) and that transport costs are very low. The Notifying Parties add that more than half of the EEA consumption of THPA is imported from China, Taiwan, South Korea, and the U.S.

The Commission's assessment

- (83) In view of the fact that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to THPA under either an EEA or worldwide market definition, the exact scope of the geographic market can be left open.

4.2.6. *Thermoset Compounds (BMC and SMC)*

4.2.6.1. Product market

- (84) Thermoset compounds produced by Polynt are derived from UPR. The Commission has not previously defined a market for Thermoset Compounds.

The Notifying Parties' view

- (85) The Notifying Parties argue that BMC and SMC should be viewed as part of the same relevant product market in view of their supply-side and demand-side substitutability. In this regard the Parties make reference to previous cases which concerned related products.

The Commission's assessment

- (86) The market investigation did not contradict the Notifying Parties' position.
- (87) The notifying Parties have explained that the manufacturing process between BMC and SMC may differ slightly depending on the technical specifications of the customer, although the end uses of thermoset compounds appear to relate typically to the industries of transportation, electrical or construction sectors. Nevertheless, the Notifying Parties note that those differences are not relevant from a supplier's point of view.
- (88) In view of the fact that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to thermoset compounds under any plausible market definition, the exact scope of the product market can be left open. For the purposes of this case, taking into account that UPR is an input for both SMC and BMC, the Commission considers that the vertical relationship between UPR and thermoset compounds can be analysed looking at SMC and BMC together, irrespective of whether the two types of thermoset compounds should be distinguished looking at the demand for these products.

4.2.6.2. Geographic market

The Notifying Parties' view

- (89) The Notifying Parties submit that the relevant geographic market for thermoset compounds is EEA-wide, notably based on product supplies taking place across the EEA and relatively low transport costs. Moreover, product markets linked to thermoset compounds (such as UPR) are considered to be EEA-wide.

The Commission's assessment

- (90) In accordance with the Parties arguments, the market investigation provided indications that the market is EEA-wide in scope. Customers have explained that sourcing outside the EEA is not considered as a suitable option.⁵²

⁵² Replies to question 55 of Questionnaire 2 - Customers.

- (91) In view of the fact that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to thermoset compounds under any plausible market definition, the exact scope of the geographic market can be left open. Indeed, the analysis of the vertical relationship between UPR and thermoset compounds would be equally valid if the market for the latter were to be found narrower than EEA-wide from the demand point of view.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

- (92) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.
- (93) In this respect, a merger may entail horizontal and/or non-horizontal effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets.
- (94) As regards, non-horizontal mergers, two broad types of such mergers can be distinguished: vertical mergers and conglomerate mergers.⁵³ Vertical mergers involve companies operating at different levels of the supply chain.⁵⁴ Conglomerate mergers are mergers between firms that are in a relationship which is neither horizontal (as competitors in the same relevant market) nor vertical (as suppliers or customers).⁵⁵
- (95) The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.⁵⁶ Additionally, the Commission appraises non-horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Non-Horizontal Merger Guidelines.⁵⁷

5.2. Horizontal unilateral effects

5.2.1. Introduction

- (96) The Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may

⁵³ Non-Horizontal Merger Guidelines, paragraph 3.

⁵⁴ Non-Horizontal Merger Guidelines, paragraph 4.

⁵⁵ Non-Horizontal Merger Guidelines, paragraph 5.

⁵⁶ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

⁵⁷ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C 265, 18.10.2008.

significantly impede effective competition, namely non-coordinated and coordinated effects.⁵⁸

- (97) Under the substantive test set out in Article 2(2) and (3) of the Merger Regulation, also mergers that do not lead to the creation or the strengthening of the dominant position of a single firm may be incompatible with the internal market. Indeed, the Merger Regulation recognises that in oligopolistic markets, it is all the more necessary to maintain effective competition. This is in view of the more significant consequences that mergers may have on such markets. For this reason, the Merger Regulation provides that "*under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of a likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition*".⁵⁹
- (98) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.⁶⁰
- (99) Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, entry and efficiencies.

5.2.2. UPR

- (100) The tables below show the market shares for UPR in the EEA by sales, capacity and production.

⁵⁸ In the present case, the Commission has not found evidence that the Transaction would raise serious doubts as regards its compatibility with the internal market with respect to coordinated effects in any of the horizontally affected markets indicated in paragraph 12 above. During the market investigation, the Commission received no concerns about possible anti-competitive coordinated effects arising from the Transaction.

⁵⁹ Merger Regulation, recital 25. Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines. See also Commission decision of 2 July 2014 in case No M.7018 – *Telefónica Deutschland/E-Plus*, recital 113; Commission decision of 28 May 2014 in case No M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 179; Commission decision of 12 December 2012 in case No M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 88.

⁶⁰ Horizontal Merger Guidelines, paragraph 26.

Table 1 – UPR by Capacity (EEA)

UPR	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Reichhold	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Polynt	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Combined	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Aliancys (ex DSM)	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Ashland	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
AOC	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Scott Bader	[...]	[0-5]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Others	[...]	[30-40]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates (Form CO)

Table 2 – UPR by Production (EEA)

UPR	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Reichhold	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Polynt	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Combined	[...]	[40-50]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Aliancys (ex DSM)	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Ashland	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Scott Bader	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
AOC	[...]	[5-10]%	[...]	[5-10]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates (Form CO)

Table 3 – UPR by Sales (EEA)

UPR	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Reichhold	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Polynt	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Combined	[...]	[40-50]%	[...]	[40-50]%	[...]	[30-40]%	[...]	[30-40]%
Aliancys (ex DSM)	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	74.5	[10-20]%
Ashland	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Scott Bader	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
AOC	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[0-5]%
Others	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates (Form CO)

The Notifying Parties' view

(101) The Notifying Parties argue that the Transaction will not raise competition concerns on the UPR market in the EEA. First, the Notifying Parties explain that there is a large number suppliers present in the EEA that will still exert competitive constraint on the merged entity. Second, the spare capacity available in the industry would allow competitors to increase production at any time if there was a price increase of UPR by the merged entity. Third, the Notifying Parties also submit that despite spare capacity, entry is possible due to the wide availability of the technology and the raw materials on the market as well as the relatively low investments needed. Fourth and finally, the Notifying Parties also claim that customers have extensive buyer power in view of low switching costs between suppliers and the fact that they are not constrained by long-term contacts.

The Commission's assessment

(102) The proposed Transaction would combine the two largest UPR suppliers in the EEA in terms of sales, capacity, production and production plant footprint. The merged entity would be the clear market leader post-Transaction and hold market shares between [40-50]% in terms of production and sales and [30-40]% of total capacity. The merged entity would be almost 4 times as large as its stronger competitors, namely Aliancys and Ashland, which hold between [10-20]% to [10-20]% of the market in terms of sales, capacity and production respectively. There are two other players with market shares of around [0-5]% to [5-10]% (AOC and Scott Bader). The remaining [30-40]% of the market is split among a considerable number (25 or more) of smaller producers.

(103) The Parties will also have a significantly broader network of plants than any of their competitors. Indeed, Polynt and Reichhold have five and four

production plants respectively, both having plants in Italy, France and UK, which are important countries with respect to demand for UPR. By comparison Aliancys, Ashland and Scott Bader each have only two or three plants. AOC does not have any plant in Europe, but has toll-manufacturing arrangements. The remaining competitors are local single-plant suppliers.

- (104) According to the market investigation,⁶¹ these smaller suppliers cannot and do not effectively compete with the five multi-plant manufacturers (Polynt, Reichhold, Ashland, Aliancys and Scott Bader) which have the capabilities to supply larger customers and benefit from economies of scale and scope that allow them to offset transportation costs, serve customers over longer distances and ensure higher levels of security of supply. Moreover, as confirmed by the market investigation, these large producers have a broader portfolio of grades and are the leaders when it comes to R&D in terms of innovation, but also concerning customer support and development of their products and in terms of technical support offered to customers.⁶² Some customers have highlighted that smaller suppliers lack the necessary experience and resources to support their constant technical product development.⁶³ There are also indications that some smaller suppliers tend to focus on more specialised or niche UPR products.⁶⁴
- (105) AOC, with its toll-manufacturing arrangements also does not effectively compete with the five multi-plant manufacturers. Indeed, AOC considers itself to be "[...] *a niche player, which targets specific customers.*"⁶⁵ AOC explains this is because when entering the EEA market it tried to compete on the wider market but this proved to be unsuccessful.⁶⁶ AOC further explains that it "[...] *is successful because it has a number of global customers operating in Europe. [...] AOC weighs its overall profitability for global customers when meeting competitive prices in a specific region like Europe.*"⁶⁷ Therefore AOC is not specifically focused on the EEA market.
- (106) Multi-plant manufacturers can also leverage their network of plants across Europe to optimise supplies and manage downtimes. In addition, larger customers place high importance on having suppliers with a multi-plant network as it is more convenient for them to have a "one-stop shop" for their EEA supplies than to rely on several smaller suppliers. At the same time smaller single plant competitors do not target customers with high volume requirements either because they do not have the scale to serve them, because they are not cost competitive with larger suppliers or because large customers are not attractive from the commercial point of view (as large customers demanding high volumes of standard UPR command

⁶¹ Replies to question 20 of Questionnaire 2 – Customers.

⁶² Minutes of conference calls with customers on 13 July and 5 August 2016.

⁶³ Minutes of conference calls with a customer on 5 August 2016.

⁶⁴ Minutes of conference calls with a competitor on 21 October 2016.

⁶⁵ Minutes of a conference call with AOC on 13 July 2016.

⁶⁶ Minutes of a conference call with AOC on 13 July 2016.

⁶⁷ Minutes of a conference call with AOC on 13 July 2016.

low margins).⁶⁸ From a demand side, it results that for logistic reasons, mono-plant suppliers are not substitutes to the multi-plant ones.⁶⁹ In the market investigation, many large customers stated that they favour suppliers with a network of plants. For instance a customer stated that "*we only work with resin suppliers who have enough UPR plants to cover our demands from a geographical point. [...]*"⁷⁰ The same customer added that "*we only work with large suppliers. The smaller ones have too low capacity, not enough plants, no back-up, too high prices*".⁷¹

- (107) The importance of having a network of plants in the EEA is also recognised by the Parties themselves, as stated in an internal document; "[...]"⁷²
- (108) Consequently, in view of their geographic footprint and wide portfolio of UPR grades, customers very often see Polynt and Reichhold as each other's closest competitors.⁷³ Closeness of competition between the Parties is also reflected in internal documents reporting the strong pricing pressure exercised by Reichhold on Polynt, for instance, a 2015 Polynt internal document mentions "[...]"⁷⁴ Another 2015 Polynt internal document describes the situation at "[...]"⁷⁵
- (109) Polynt's internal documents show that Reichhold's aggressive approach is a strong constraint on Polynt's efforts to increase its prices. For example, a 2015 Polynt internal document describes its pricing strategy as follows; "[...]"⁷⁶ Similarly, another 2015 Polynt internal document mentions that "[...]"⁷⁷
- (110) The argument of the Notifying Parties regarding the possibility of new entrants for the UPR market has been comprehensively rejected both by customers and by competitors. Given the spare capacity in the market and the relatively low margins in UPR, building new capacity cannot be considered as likely in this market.⁷⁸

⁶⁸ Minutes of conference calls with competitors on 3 October 2016, 6 September 2016 and 21 October 2016.

⁶⁹ Minutes of conference calls with customers on 13 July and 5 August 2016.

⁷⁰ Replies to question 13 of Questionnaire 2 – Customers.

⁷¹ Replies to question 20 of Questionnaire 2 – Customers.

⁷² [...]

⁷³ Replies to questions 23 and 24 to Questionnaire 2 – Customers.

⁷⁴ [...]

⁷⁵ [...]

⁷⁶ [...]

⁷⁷ [...]

⁷⁸ Replies to questions 66, 67 and 68 of Questionnaire 1 – Competitors and to questions 48 and 49 of Questionnaire 2 – Customers.

- (111) This is further confirmed in some of the Parties internal documents. For instance, a Polynt internal document states that "[...]" and that there are "[...]"⁷⁹. In this regard the same document notably lists the following elements; [...].⁸⁰
- (112) Moreover a majority of customers indicated they cannot easily switch UPR suppliers.⁸¹ As is common for intermediate chemical products, multi-sourcing from at least two suppliers is the general practice for many UPR customers. In practical terms, for a customer to source from any given supplier, they first need to go through an approval (qualification) process, which has been estimated by large customers to take six to twelve months. Some customers however reported longer periods for qualifying some products, with associated higher costs.⁸²
- (113) These customers produce end products, such as water pipes and components for the automotive industries, for which the quality standards for UPR are very high. In these cases they are required to report and possibly have validated by their own customers any changes in the raw materials used, including UPR. For instance, as set out by a customer: *"switching suppliers or even increasing the volume supplied by one and the same supplier is not a straightforward, but a rather cumbersome and expensive process until the requirements of all stakeholders along the supply chain are satisfied"*.⁸³
- (114) Customers currently sourcing from both Parties, either exclusively or with a heavy reliance on them reported that they would have significant difficulties to find an alternative supplier.⁸⁴ According to a report prepared for Reichhold, [...].⁸⁵
- (115) Additionally, customers currently supplied by only one of the two merging Parties reported they would lose one potential source of supply to which they could switch, or a credible threat to their existing suppliers.⁸⁶
- (116) Post-transaction, mainly large customers, for which smaller suppliers are not a viable option, would have to qualify one of the four remaining multi-plant suppliers to cover their UPR needs should the merged entity decide to increase prices. In this regard, during the market investigation, a majority of customers expressed concerns about price increases by the merged entity post-merger and indicated they would not have a sufficient choice of UPR suppliers.⁸⁷

79 [...]

80 [...]

81 Minutes of conference calls with customers on 4, 13 July, 5 August and 16 November 2016.

82 Minutes of conference calls with customers on 13 July and 5 August 2016.

83 Minutes of a conference call with a customer on 5 August 2016.

84 Replies to questions 7 and 50 to 55 of Questionnaire 2 – Customers; Minutes of a conference call with a customer on 4 July 2016.

85 [...]

86 Replies to questions 50 to 55 of Questionnaire 2 – Customers.

87 Replies to questions 50 to 55 to Questionnaire 2 – Customers; minutes of a conference call with a customer on 5 August 2016.

- (117) In terms of available spare capacity, the market investigation indicates that the competitors of the merged entity have available spare capacity, albeit to a lower degree than implied by the parties' capacity and production estimates. However, for the reasons outlined above, the available spare capacity of the smaller single-plant players is not considered to exert a significant competitive pressure on the merged entity as the smaller players are not considered viable alternatives by the largest customers served by the merging Parties. The other multi-plant UPR suppliers which are competing more closely with the Parties, have also significant spare capacity. Nevertheless, the merged entity would be an unavoidable supplier of UPR for a significant part of demand in the EEA UPR market as it brings together the first and second UPR producers accounting for about [40-50]% of the EEA UPR market. The Commission therefore considers that the available spare capacity of these suppliers would not be sufficient to counter possible price increases of the merged entity post transaction.
- (118) In view of the above and of all the evidence available to it by the market investigation, the Commission, considers that the Transaction raises serious doubts, in relation to UPR in the EEA, as to its compatibility with the internal market, in that it could significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, resulting from the elimination of the competitive constraint of Reichhold on Polynt, in such a way that it could allow the merged entity to increase its market power.⁸⁸

5.2.3. *Gelcoats*

- (119) The Notifying Parties have provided their best internal estimates as to the overall size of the gelcoats market, in terms of sales volume and production volume as well as market shares.
- (120) The Notifying Parties submit that to their knowledge, no third party reports provide market shares for gel coats based on the different end-use applications. They however confirm that their shares under any different sub-segments would not change substantially as compared to their market shares on the overall market for gel coats. As a consequence, the same market dynamics apply in all possible different end-use applications, and the combination between Reichhold and Polynt would not impede effective competition even if such narrower market segmentations were to be considered.

⁸⁸ Horizontal Merger Guidelines, recital 22 (a).

Table 4 – Gelcoat by Capacity (EEA)

Gelcoats	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Reichhold	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Polynt	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Büfa	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Ashland	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Scott Bader	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Nord composites	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Polyprocess	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Euromere	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (~25)	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

Table 5 – Gelcoat by Production (EEA)

Gelcoats	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Reichhold	[...]	[10-20]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Polynt	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%	[...]	[10-20]%
Büfa	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Ashland	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Scott Bader	[...]	[5-10]%	[...]	[5-10]%	[...]	[10-20]%	[...]	[10-20]%
Others (~25)	[...]	[40-50]%	[...]	[40-50]%	[...]	[40-50]%	[...]	[40-50]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

Table 6 – Gelcoat by Sales (EEA)

Gelcoats	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Reichhold	[...]	[10-20]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Polynt	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Büfa	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Ashland	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Scott Bader	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Others (~25)	[...]	[40-50]%	[...]	[40-50]%	[...]	[40-50]%	[...]	[40-50]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

The Notifying Parties' view

(121) First, the Notifying Parties note the relatively limited market share of the merged entity. Moreover, the Notifying Parties indicate that Reichhold presents only a very limited increment to Polynt's existing market position. Additionally, the Notifying Parties explain that the merged entity will continue to face competition from a number of strong competitors, including large integrated chemical groups, such as Ashland, Büfa, and Scott Bader and many other suppliers which represent more than 40% of the market. The Notifying Parties add that all gel coat suppliers, including smaller suppliers, serve all industries and applications.

The Commission's assessment

(122) First, the Commission notes that the merged entity would have market shares of [20-30]% for capacity, production and sales. The gelcoats market appears to be a rather fragmented one. There are three significant competitors (Büfa, Ashland and Scott Bader each with market shares of around 10%. There is also a considerable number of smaller competitors.

(123) Second, a majority of the customers who responded to the market investigation did not express any concerns about the effects of the Transaction for gelcoats.⁸⁹ In this regard, customers largely confirmed that a sufficient number of suppliers will remain on the market post-Transaction.⁹⁰

⁸⁹ Replies to question 77 of Questionnaire 2 – Customers .

⁹⁰ Replies to question 73 of Questionnaire 2 - Customers.

- (124) Third, a majority of respondents indicated that they did not expect as a result of the merger, either a price increase, or a reduction of capacity for gelcoats.⁹¹
- (125) Fourth, as explained above gelcoats are seen to a considerable degree as a product where customisation for each specific end use is high, for example regarding finish or colour, and where customers tend to buy a variety of gelcoat specifications, each in relatively small quantities. Compared to UPR, the volumes produced are considerably lower and the margins are considerably higher. This allows smaller suppliers (also with a single manufacturing plant) to be competitive also with smaller production capacity. Accordingly competition is much more intense and smaller producers can and do compete with larger ones. It is also recalled that transport costs are not that high and therefore smaller producers can compete for customers further afield. Consequently, in case of a price increase by the merged entity post-transaction, customers would have the possibility to switch suppliers with no considerable consequences on their production costs and patterns.⁹²

In view of the above and of all the evidence available to it by the market investigation, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to gel coats.

5.3. Vertical non-coordinated effects: foreclosure

5.3.1. MA monomer

- (126) The following tables show the market share in the EEA for MA monomer by sales, capacity and production. Of the Notifying Parties only Polynt is active in the production of MA monomer.

⁹¹ Replies to questions 78 and 79 of Questionnaire 2 - Customers. and questions 126 and 127 of Questionnaire 1 competitors.

⁹² Replies to question 73 of Questionnaire 2 - Customers.

Table 7 – MA monomer by Capacity (EEA)

MA	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Polynt	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Sasol-Huntsman	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
ESIM (ex DSM)	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
MOL	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
CEPSA	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (incl. GIKIL, and ZAK)	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

Table 8 – MA monomer by Production (EEA)

MA	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Polynt	[...]	[30-40]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Sasol-Huntsman	[...]	[30-40]%	[...]	[40-50]%	[...]	[30-40]%	[...]	[40-50]%
ESIM (ex DSM)	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
MOL	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
CEPSA	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others (incl. GIKIL, and ZAK)	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

Table 9 - MA monomer by Sales (EEA)

MA	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Polynt	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Sasol-Huntsman	[...]	[40-50]%	[...]	[40-50]%	[...]	[40-50]%	[...]	[40-50]%
ESIM	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
MOL	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
GIKIL	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
CEPSA	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

The Notifying Parties' view

- (127) The Notifying Parties submit that the merged entity would have neither the ability, nor the incentive to foreclosure its upstream, or downstream competitors, given that Polynt already has spare capacity of [...] (out of a total of 70 MT of the entire market's spare capacity) and that Reichhold's demand for MA monomer only amounts to around [...] KT.

The Commission's assessment

- (128) The vertical link between Polynt's production of UPR and MA monomer is pre-existing to the Transaction, therefore only the addition of Reichhold's UPR production is specifically derived from the Transaction.
- (129) Polynt has a market share of [30-40] % of the production of MA monomer ([...] KT). The market leader is Sasol-Huntsman with [30-40]% ([...] KT). However, Polynt allocates almost two thirds ([...] KT) of its MA monomer production for internal uses (UPR production). Therefore, its merchant market share is of [10-20]%, far behind the market leader Sasol-Huntsman, who commercializes its entire production.
- (130) The market investigation pointed to some concerns amongst UPR producers concerning the behaviour of the merged entity post transaction in the MA monomer merchant market and more specifically the possibility of input foreclosure.⁹³ This would mean that the merged entity would either raise prices of the MA it sells to its UPR competitors, or stop selling it altogether, aiming to increase the merged entity's benefits in the UPR market. It is worth noting that

⁹³ Replies to questions 104 - 108 of Questionnaire 1 – Competitors.

only 50% of the commercially available MA monomer volumes serve for the production of UPR. The remaining volumes are affected to other uses.

- (131) However, the MA monomers' volumes currently supplied by Polynt in the commercial market ([...] KT) are around half of the spare capacity of its competitors (around [...] KT) on an EEA basis. Therefore, customers of MA could start procuring from other Polynt's MA competitors should Polynt stop supplying the merchant market altogether. Thus the merged entity would not have the ability to foreclose MA customers.
- (132) They will also not have the incentive to foreclose given it should also be taken into account that Polynt would have to incur losses from lost sales of MA monomer to its non-UPR producing customers for MA monomers.
- (133) Moreover, the market investigation has indicated that some UPR producers already import MA volumes from outside the EEA.⁹⁴ The reason this trend is not more marked is that the prices of MA monomers coming from outside the EEA are currently higher than EEA MA.⁹⁵ If prices in the EEA were to rise, MA monomer volumes coming from outside the EEA would increase, contributing to defeat any attempt by the merged entity to increase prices. .
- (134) It is also noteworthy that post-Transaction, to the extent that Reichhold's MA needs will be in-sourced through Polynt, Reichhold's current MA supplier(s) would be in the position to increase their supply of MA monomer to other market players. Finally, more than two thirds of the Parties' competitors in UPR who currently procure their MA from Polynt do not consider Polynt to be an unavoidable supplier of MA.⁹⁶
- (135) In case the geographic market definition for MA monomers were to be worldwide, Polynt's market share would be [0-5]% for MA monomers' production capacity; [0-5]% for production and [0-5]% for sales. These very low market shares cannot lead to any input foreclosure for the downstream UPR market which is EEA wide.
- (136) In view of the above and of all the evidence available to it by the market investigation, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to MA.

5.3.2. PA

- (137) In case the geographic market definition for PA were to be worldwide, Polynt's market share would be [0-5]% for production capacity; [0-5]% for production and [0-5]% for sales.⁹⁷

⁹⁴ Replies to questions 95 and 95.1 of Questionnaire 1 – Competitors.

⁹⁵ Replies to question 96 of Questionnaire 1 – Competitors.

⁹⁶ Replies to question 81 of Questionnaire 1 – Competitors.

⁹⁷ The Notifying Parties submitted a complete set for Polynt's PA market shares only on a worldwide basis. The Notifying Parties declared that according to their own internal calculations the market shares of Polynt remain below 10% on an EEA basis for PA.

(138) The following table shows the market shares for PA on a worldwide basis.

Table 10 – PA by Capacity (Worldwide)

PA	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Polynt	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
BASF	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
LanXess	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Proviron	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
ExxonMobil	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Atmosa	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Ruetgers	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
CEPSA	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Deza	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[80-90]%	[...]	[80-90]%	[...]	[80-90]%	[...]	[80-90]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

Table 11 – PA by Production (Worldwide)

PA	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Polynt	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
BASF	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
LanXess	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Proviron	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
ExxonMobil	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Atmosa	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Ruetgers	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
CEPSA	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Deza	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[80-90]%	[...]	[80-90]%	[...]	[80-90]%	[...]	[80-90]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

Table 12 – PA by Sales (Worldwide)

PA	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Polynt	[...]	[0-5] % ⁹⁸	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %
LanXess	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %
Proviron	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %
Atmosa	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %
Ruetgers	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %
CEPSA	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %
Deza	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %	[...]	[0-5] %
Others	[...]	[90-100] %	[...]	[90-100] %	[...]	[90-100] %	[...]	[90-100] %
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

The Notifying Parties' view

- (139) The Notifying Parties argue that the Transaction will not foreclose competitors of Reichhold or Polynt in the upstream market for PA or in the downstream market for UPR. The Notifying Parties claim that the merged entity would have neither the ability, nor the incentive, to foreclose its upstream or downstream competitors.

The Commission's assessment

- (140) Polynt's market shares for PA are low and there is a large number of PA suppliers of similar size in this fragmented market. Polynt only sells approximately 50% of its PA on the merchant market but its market shares for sales do not exceed [0-5] % [...]Kt) on a worldwide basis and [5-10] % on an EEA basis ([...] Kt).
- (141) It therefore appears highly unlikely that the merged entity would have any success in any attempt of input foreclosure for PA to its UPR producing customers, because of the considerable number of alternative PA suppliers and the income loss of PA sales to non-UPR producing customers.

⁹⁸ According to internal calculations of the Notifying Parties, Polynt's market share for PA merchant sales in the EEA is [5-10] %.

(142) In view of the above and of all the evidence available by the market investigation, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to PA.

5.3.3. THPA

(143) The following table⁹⁹ provides an overview of the market shares for THPA on a worldwide basis, for sales and for capacity. Only Polynt is active in the production of THPA.

Table 13 – THPA by Capacity (Worldwide)

THPA	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Polynt	[...]	[40-50]%	[...]	[40-50]%	[...]	[40-50]%	[...]	[40-50]%
Yongsan	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
New Japan Chemical	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Nan Ya	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Others (Dixie, Puyang, and Yaxing)	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

⁹⁹ The Notifying Parties submitted a complete set for Polynt's THPA market shares only on a worldwide basis. However, following a request by the Commission, the Notifying Parties declared that according to their own internal calculations the market shares of Polynt do not differ substantially on an EEA basis for THPA.

Table 14 – THPA by Production (Worldwide)

THPA	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Polynt	[...]	[30-40]%	[...]	[30-40]%	[...]	[40-50]%	[...]	[30-40]%
Yongsan	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
New Japan Chemical	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Nan Ya	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Others (Dixie, Puyang, and Yaxing)	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

Table 15 – THPA by Sales (Worldwide)

THPA	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Polynt	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Yongsan	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Nan Ya	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
New Japan Chemical	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Others (Dixie, Puyang, and Yaxing)	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[10-20]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

The Notifying Parties' view

- (144) The Notifying Parties emphasise that Polynt is already a vertically integrated supplier and therefore the Transaction does not create a new vertical relationship. The Notifying Parties also indicate that the vast majority of Polynt's production of THPA is for captive use and that its market share in the merchant market is limited.
- (145) The Notifying Parties argue that there are a number of alternative suppliers of THPA. The Notifying Parties also submit that the merged entity would have neither the ability, nor the incentive to foreclose its upstream or downstream competitors.

The Commission's assessment

- (146) On a worldwide basis, Polynt has a market share of [30-40]% of the production of THPA ([...] KT). However, it only sells [...] KT and uses the rest internally. For merchant sales, Polynt has a market share of [10-20]%¹⁰⁰, which is significantly less than Yongsam and Nam Ya ([30-40]% and [20-30]% respectively).
- (147) Moreover, the total spare capacity in the market is around [...] MT ([...]MT of Polynt, the rest for other producers) and Reichhold's use of THPA is only around [...] MT. Consequently, the merged entity would have neither the ability, nor the incentive to foreclose its upstream, or downstream competitors.

¹⁰⁰ The Notifying Parties submit that this market share is roughly the same for the EEA merchant sales of THPA.

(148) In view of the above and of all the evidence available to the Commission, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to THPA.

5.3.4. *Thermoset Compounds (SMC/BMC)*

(149) The following tables provide market shares for thermoset compounds in the EEA by sales, capacity and production.

Table 16 – Thermoset Compounds (SMC/BMC) by Capacity (EEA)

SMC/BMC	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Polynt	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
IDI	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Menzolit	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Polytec	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Inoplast	[...]	[10-20]%	[...]	[10-20]%	[...]	[5-10]%	[...]	[5-10]%
Tetra-DUR	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Astar	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

**Table 17 – Thermoset Compounds (SMC/BMC) by Production
(EEA)**

SMC/BMC	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Polynt	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
IDI	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Menzolit	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Polytec	[...]	[5-10]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Inoplast	[...]	[10-20]%	[...]	[10-20]%	[...]	[5-10]%	[...]	[5-10]%
Tetra-DUR	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Astar	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[30-40]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

**Table 18 – Thermoset Compounds (SMC/BMC) by Sales
(EEA)**

SMC/BMC	2016		2015		2014		2013	
	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)	Volume (KT)	Market Share (%)
Polynt	[...]	[30-40]%	[...]	[20-30]%	[...]	[30-40]%	[...]	[30-40]%
IDI	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%	[...]	[20-30]%
Menzolit	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Tetra-DUR	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Astar	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%	[...]	[5-10]%
Polytec	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Inoplast	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%	[...]	[0-5]%
Others	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

Source: The Parties' internal estimates

The Notifying Parties' view

(150) The Notifying Parties argue that the Transaction will not foreclose competitors of the merged entity in the downstream market for thermoset compounds (SMC/BMC). The Notifying Parties claim that the merged entity would have neither the ability, nor the incentive, to foreclose its downstream competitors.

The Commission's assessment

(151) Both Reichhold and Polynt supply UPR in the upstream merchant market, which is potentially used for the manufacturing of SMC or BMC. Polynt also manufactures thermoset compounds (SMC/BMC) and has a market share in this downstream market of [10-20]% in terms of capacity and production and [30-40]% in terms of sales. Reichhold is not active in the manufacturing of SMC or BMC. As Polynt is already vertically integrated pre-Transaction, the only merger specific change to the vertical structure is the horizontal increment brought by Reichhold in the upstream UPR market.

(152) First, the Commission finds that there is no risk that the Transaction would lead to customer foreclosure, given that Polynt does not procure UPR in the merchant market for its production of BMC or SMC pre-transaction.

- (153) Second, the Commission considers that the Transaction, might affect the merged entities' ability and incentive to affect input prices paid by competing downstream producers of thermoset compounds (by either no longer supplying UPR to downstream competitors or by doing so at higher prices). Nevertheless, such changes would be the result of increased market power of the merged entity in the upstream UPR market brought about by the Transaction. These concerns are already described in section 5.2.2. The Commission concludes that the Transaction does not raise serious doubts about input foreclosure beyond the serious doubts already raised in relation to horizontal overlap in the upstream UPR market.
- (154) In view of the above and of all the evidence available to the Commission, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to thermoset compounds (SMC and BMC).

5.4. Conclusion

- (155) In view of the above, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with respect to UPR in the EEA.

6. COMMITMENTS

- (156) In order to remove the serious doubts resulting from the Transaction, the Notifying Parties formally submitted Commitments to the Commission on 17 March 2017 (referred to as "Commitments" in this Decision), together with the formal notification of the case itself. The Commitments are annexed to this Decision and form an integral part thereof.

6.1. Framework for the assessment of the Commitments

- (157) As background, the following principles, as referred to in Commission Regulation (EC) No 802/2004, and in the Commission Notice on remedies acceptable under the Merger Regulation ("the Remedies Notice")¹⁰¹, notably apply where the parties to a merger choose to offer commitments with a view to rendering the concentration compatible with the internal market.
- (158) Where the Commission finds that a concentration raises competition concerns in that it could significantly impede effective competition, in particular as a result of the creation or strengthening of a dominant position, the Parties may seek to modify the concentration in order to resolve the competition concerns and thereby gain clearance of their merger.¹⁰²

¹⁰¹ Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "Remedies Notice"), OJ 2008/C 267/01.

¹⁰² Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "Remedies Notice"), OJ 2008/C 267/01, recital 5.

- (159) Under the Merger Regulation, it is the responsibility of the Commission to show that a concentration would significantly impede effective competition. The Commission then communicates its competition concerns to the parties to allow them to formulate appropriate and corresponding remedies proposals. It is then the option of the Parties to the concentration to put forward commitments.¹⁰³ The Commission only has power to accept commitments that are deemed capable of rendering the concentration compatible with the internal market so that they will prevent a significant impediment of effective competition in all relevant markets where competition concerns were identified.¹⁰⁴ To this aim, the commitments have to eliminate the competition concerns entirely¹⁰⁵ and have to be comprehensive and effective from all points of view.¹⁰⁶
- (160) In assessing whether the proposed commitments will likely eliminate the competition concerns identified, the Commission considers all relevant factors including *inter alia* the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the Notifying Parties and other participants on the market.¹⁰⁷
- (161) In order for the commitments to comply with these principles, commitments must be capable of being implemented effectively within a short period of time.¹⁰⁸ Where, however, the Notifying Parties submit remedies proposals that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market, an authorisation decision cannot be granted.¹⁰⁹ The requisite degree of certainty concerning the implementation of the proposed commitments may in particular be affected by risks in relation to the transfer of a business to be divested.
- (162) Commitments in Phase I can only be accepted where the competition concerns are readily identifiable and can be easily remedied. The remedies need to be so clear-cut that it is not necessary to enter into an in-depth investigation as to whether they are sufficient to rule out 'serious doubts' within the meaning of Article 6(1)(c) of the Merger Regulation.¹¹⁰

103 Remedies Notice, recital 6.

104 Remedies Notice, recital 9.

105 See also Case C-202/06 P *Cementbouw Handel & Industrie v Commission* [2007] ECR 2007 I-12129, recital 54.

106 Remedies Notice, recitals 9 and 61.

107 Remedies Notice, recital 12.

108 Remedies Notice, recital 9.

109 Remedies Notice, recitals 13, 14 and 61.

110 Remedies Notice, recital 81.

- (163) As concerns the form of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite standard.¹¹¹ In general, structural commitments are the best way to eliminate competition concerns resulting from horizontal overlaps.
- (164) In this regard divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern.¹¹² Normally, a viable business is a business that can operate on a stand-alone-basis, which means independently of the merging parties as regards the supply of input materials or other forms of cooperation other than during a transitory period.¹¹³ The Commission has a clear preference for an existing stand-alone business. In proposing a viable business for divestiture, it is necessary to take into account the uncertainties and risks related to the transfer of a business to a new owner. These risks may limit the competitive impact of the divested business, and, therefore, may lead to a market situation where the competition concerns at stake will not necessarily be eliminated.¹¹⁴
- (165) While divested businesses should in principle contain all tangible assets including manufacturing assets which contribute to its current operation¹¹⁵, the carve out of manufacturing assets may be acceptable only exceptionally in very specific circumstances if their workability is fully ensured by effective implementation and monitoring.¹¹⁶ A divestiture consisting of a combination of certain assets which did not form a uniform and viable business in the past creates risks as to the viability and competitiveness of the resulting business. In such circumstances, the package must be sufficient to allow the Commission to conclude that the resulting business will be immediately viable in the hands of a suitable purchaser.¹¹⁷
- (166) It is against this background that the Commission assessed the viability, the workability, the effectiveness and the ability of the proposed commitments to entirely eliminate the competition concerns identified.

111 Case T-177/04, *EasyJet v Commission* [2006] ECR II-1913, recital 197: "*Article 6(2) of Regulation No 4064/89 provides that the Commission may authorise a merger if the commitments proposed by the parties dispel the serious doubts as to the compatibility of the merger with the common market. Regulation No 4064/89 thus lays down the objective to be achieved by the Commission, but leaves it a wide discretion as to the form which the commitments in question may take.*"

112 Remedies Notice, recital 23.

113 Remedies Notice, recital 32.

114 Remedies Notice, recital 24.

115 Remedies Notice, recitals 25 to 27.

116 Remedies Notice, recital 17.

117 Remedies Notice, recital 37.

6.2. Procedure

- (167) To remedy the serious doubts identified following the phase I market investigation, on 17 March 2017 the Notifying Parties proposed a set of Commitments. The Commitments were market tested by the Commission on 23 March 2017.
- (168) Overall, the results of the market test were positive in that most respondents agreed that the Commitments would remedy the Commission's serious doubts. At the same time some respondents suggested some amendments to the Commitments, to further ensure their effectiveness.
- (169) The Commission informed the Parties of the outcome of the market test during a conference call on 4 April 2017.
- (170) Following this feedback the text of the commitments was amended and finally filed on 28 April 2017.

6.3. Description of the Commitments

- (171) The Commitments consist in the divestiture of Reichhold's largest UPR plant, in Etain (the "Etain Divestment Business"), situated in the north-east of France, near Metz.
- (172) The Etain Divestment Business includes all fixed assets (the main factory, warehouses, offices, and laboratories) and moveable assets (e.g. machinery and equipment) of Reichhold relating to the Etain manufacturing plant.
- (173) It also includes the main following assets:
- all customer information of the Etain Divestment Business as it relates to the UPR business;
 - a royalty-free, non-exclusive EEA-wide license covering the intellectual property of the Etain Divestment Business, [...]. At the option of the purchaser of the Etain Divestment Business ("the Purchaser"), this license shall be extended to address the Etain Divestment Business' customer base in the EMEA region. At the option of the Purchaser, in order to enable the Purchaser to describe products as being identical to the Reichhold products previously supplied and to prove equivalence, the license will include trademarks, product numbers, statements of equivalence, and domain names for a period up to two years;
 - all licenses, permits and authorizations issued by any governmental organization for the benefit of the Etain Divestment Business;
 - all contracts, leases, commitments and customer orders of the Etain Divestment Business; all customer, credit and other records of the Etain Divestment Business;
 - at the option of the Purchaser, all customer information of the Etain Divestment Business as it relates to the UPR business, including but not

limited to customer records, customer reports, transactional data, and customer qualification of the plant or product;

- regarding personnel, in principle all full-time personnel currently employed by the Etain Divestment Business are to be transferred to the Purchaser. A number of key personnel is included in the business to be divested. [...]

(174) The Commitments provide for the Etain Divestment Business to be sold to a purchaser already active in UPR production and sales in the EEA.

(175) The Commitments also provide that the proposed concentration shall not be implemented before the Notifying Parties have or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Etain Divestment Business and the Commission has approved the purchaser and the terms of sale; a so-called upfront buyer remedy.

6.4. Assessment of the Commitments

6.4.1. The Etain plant

(176) The Etain Divestment Business has a nameplate capacity of [...]KT per year and had an output of around [...]KT in 2016, which represents around [5-10]% of the overall UPR volumes produced in the EEA in 2016 and [40-50]% of Reichhold's total production. It is Reichhold's largest UPR plant in terms of production and spare capacity.¹¹⁸

(177) Following the divestment, the combined market shares of the Notifying Parties would be reduced by around [5-10] percentage points on the basis of capacity (from [30-40]% to [30-40]%), production (from around [40-50]% to around [30-40]%) and sales (from around [40-50]% to around [30-40]%). The increment from the transaction would be reduced from [10-20]% to [5-10] % on the basis of UPR capacity; from [10-20]% to [5-10]% on the basis of UPR production, and from [10-20]% to [5-10]% on the basis of sales.

(178) In addition, the Etain Divestment Business is geographically well located, with easy access to German and central European customers, as well as Spain and the UK. It serves several of Reichhold's larger UPR customers. It does not have any production of gel coats or vinyl esters, for which the Commission has not found serious doubts. Therefore no carve-outs would be necessary.

6.4.2. Results of the market test of the Commitments

(179) Overall, the results of the market test indicated that the divestment of the Etain Divestment Business to a suitable Purchaser is sufficient to remove the competition concerns raised by the Transaction.

¹¹⁸ Form RM, paragraph 33.

- (180) In general responding competitors indicated that they considered the Etain Divestment Business as an attractive business opportunity for a well-established UPR player with an equivalent product portfolio.¹¹⁹
- (181) Respondents to the Commission's market test also raised a number of issues regarding the implementation of the proposed divestment.
- (182) First, large customers, who currently source products (standard and specialised UPR) from multiple Reichhold plants, indicated that they may find sourcing these products only from the Etain Divestment Business quite challenging. This is due to logistical reasons and also because these customers may not have qualified the Purchaser before, at least for some products, and that doing so would take time.
- (183) The terms of the Commitments address this concern. Indeed, under the Commitments the purchaser will be able to supply Etain products, from Etain immediately or at least at short notice and eventually from its other EEA plants. As explained above, the license granted to the Purchaser will include trademarks, product numbers, statements of equivalence and domain names the purchaser will be able to use for a period of two years in order to describe these products as identical to Reichhold/ Etain products.
- (184) Therefore, at most, only a limited re-qualification of the Etain plant would be required in order to verify the conformity of products from the Purchaser, the latter could then eventually supply the Etain products from its other plants.
- (185) In addition, customers sourcing from multiple Reichhold plants before the proposed Transaction will be able to keep sourcing from them for the volumes they purchased from them in 2016.
- (186) Second, customers and competitors mentioned that the Etain Divestment Business' current customers can source the same product from different Reichhold plants. It was explained that orders are placed at the Reichhold customer service, not at the plant itself and therefore post-divestment Reichhold could simply shift the production of the volumes for these customers to its other plants. Some customers and competitors indicated that this would threaten the viability of the Etain Divestment Business.
- (187) Some competitors indicated the need for a non-competitive agreement to be put in place for customers which were served by more than one Reichhold site in order to guarantee the Purchaser the continuity of the business.¹²⁰ In this regard a competitor stated that "[...] a customer protection for a period of time is necessary".¹²¹
- (188) In order to alleviate these concerns the Commitments provide that, at the option of the Purchaser, the Notifying Parties shall agree to a non-compete provision of a duration sufficient to ensure the viability of the Divestment Business. The scope and duration of the non-compete provision shall be limited to what is directly

119 Replies to question 13 of Questionnaire R2 – Competitors .

120 Replies to question 3 of Questionnaire R2 – Competitors .

121 A competitor's reply to Questions 9, 12 and 14 of Questionnaire R2 – Competitors.

related and necessary to ensure the viability of the Divestment Business. The non-compete provision will ensure that the Purchaser can gain the loyalty of the Etain Divestment Business' current customers.

- (189) At the same time, concerns were expressed by customers who currently could be dual sourcing functionally equivalent products from (i) Reichhold at the Etain plant only and from (ii) the Purchaser. These customers are concerned that if this supplier were to take over the Etain Divestment Business, this Purchaser would become a monopolist supplier for them. This would put an end to their dual sourcing strategy and make them entirely dependent on the Purchaser.
- (190) In view of these concerns, the non-compete provision will not apply to these situations by way of an exemption *i.e.* Reichhold will be able to keep supplying these customers and retain the specific formulations developed for them (where applicable).
- (191) Third, some respondents indicated the need to have some additional elements in the Commitments package, such as additional key personnel in the area of technical support, which the buyer could hire as well as a statement of conformity of the plant with all environmental licenses and permits. These elements have been included in the Commitments text.
- (192) Fourth, the results of the market test also indicated the concerns of some customers regarding the potential Purchaser of the plant. These customers indicated that in order for the Etain Divestment Business to retain customers it would have to be acquired by a large supplier with an established presence in the EEA.
- (193) For instance a customer stated that the Purchaser "*[...] would only be an alternative supplier if the purchaser has several plants in Europe in order to serve the European part of [customer's name]. If it will be a single plant at the purchaser [customer's name] will not buy there according to our purchasing strategy.*"¹²²
- (194) In that regard, the purchaser criteria included in the Commitments have been strengthened to emphasise the need for the Purchaser to have a pre-existing network of plants in the EEA, and possessing the necessary manufacturing capabilities to expand it, as well as the necessary commercial and non-commercial personnel to market the products throughout the EEA and provide the necessary technical support to customers.
- (195) The Notifying Parties have designed the Commitments in close cooperation with the intended purchaser of the Etain Divestment Package that is Ashland Global Holdings Inc. ("Ashland", USA). While at the time of the launch of the market test, this information was not public knowledge, Ashland issued a press release on 6 April 2017 announcing that it had made a binding offer to Reichhold for the acquisition of the Etain Divestment Business.
- (196) The Commission has contacted customers who responded to the market test in order to clarify their views on this development. Reactions have been positive.

¹²² A customer's reply to question 8 of Questionnaire R1 – Customers.

Without prejudice to the Commission's assessment of Ashland's suitability as the Purchaser, it appears to be a supplier of the necessary scale to acquire the Etain Divestment Business. Indeed Ashland is one of the largest competitors of the Parties, with [10-20]% market share in terms of sales and capacity and [10-20]% in production. Also, Ashland has extensive experience in the UPR market and already runs two plants in the EEA.

6.5. Conclusion on Commitments

- (197) For the reasons outlined above, and in view of the results of the market test and the ensuing improvements to the Commitments, the Commission considers the Commitments are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market, in relation to the manufacture and supply of UPR in the EEA.
- (198) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its Decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering a notified concentration compatible with the internal market.
- (199) The achievement of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Notifying Party. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(6) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
- (200) The commitments in sections 5 and 6 of the Commitments constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Commitments constitute obligations, as they concern the implementing steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

7. CONCLUSION

- (201) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in sections 5 and 6 of the commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER
Member of the Commission

Case M.8059 – INVESTINDUSTRIAL / BLACK DIAMOND / POLYNT / REICHHOLD

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), InvestIndustrial, Black Diamond, Polynt and Reichhold (the “*Notifying Parties*”) hereby enter into the following Commitments (the “*Commitments*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering the combination of the Polynt Group and the Reichhold Group (the “*Concentration*”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “*Decision*”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “*Remedies Notice*”).

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “*Consolidated Jurisdictional Notice*”).

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 6 (a), (b) and (c) and described more in detail in the Schedule.

Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

Closing Period: the period of [...] from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business as defined in Section B and in the Schedule which the Notifying Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Parties and who has/have received from the Notifying Parties the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the Effective Date.

Hold Separate Manager: the person appointed by the Notifying Parties for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by the Notifying Parties, and who has/have the duty to monitor the Notifying Parties' compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Parties to the concentration.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 17 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

Reichhold: Coöperatie Reichhold Holdings Netherlands U.A., a cooperative entity with excluded liability (*coöperatie uitsluiting van aansprakelijkheid*) domiciled in the Netherlands with registered offices at Lichtenauerlan 102-120, 3062 ME Rotterdam, 99% owned by Reichhold Cayman, LP and 1% owned by Reichhold Cayman, Ltd., registered with the Registry of Companies (KvK number 62745409).

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, the Notifying Parties commit to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18 of these Commitments. To carry out the divestiture, the Notifying Parties commit to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Notifying Parties have not entered into such an agreement at the end of the First Divestiture Period, the Notifying Parties shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 30 in the Trustee Divestiture Period.
3. The proposed concentration shall not be implemented before the Notifying Parties have or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the purchaser and the terms of sale in accordance with paragraph 18.
4. The Notifying Parties shall be deemed to have complied with this commitment if:
 - (a) by the end of the Trustee Divestiture Period, the Notifying Parties have or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 18;
 - (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period; and
 - (c) all transitional arrangements and agreements foreseen in paragraph 7 of the Commitments and paragraphs 12, 22, 23 and 24 of the Schedule have been complied with.
5. In order to maintain the structural effect of the Commitments, the Notifying Parties shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Parties showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 44 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

6. The Divestment Business consists of Reichhold's assets located in Étain, France used to manufacture unsaturated polyester resin ("UPR"). The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
 - (a) all tangible and intangible assets currently used to manufacture and sell UPR products by the Étain plant;
 - (b) all licenses, permits and authorizations issued by any governmental organization for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and
 - (d) the Personnel (but for certain Retained Personnel).
7. [Confidential information]. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone other than for the purpose of implementing the Commitments.
8. At the option of the Purchaser, the Notifying Parties shall enter into a royalty-free, non-exclusive EEA-wide license covering the intellectual property ("IP") of the Divestment Business, to the extent that [confidential information]. At the option of the Purchaser, this license shall be extended to address the Divestment Business's customer base in the EMEA region. Under this license agreement, the Purchaser also has the right to describe products it manufactures with the Divestment Business as being identical to the Reichhold products previously supplied under the same product numbers.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

9. From the Effective Date until Closing, the Notifying Parties shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimize as far as possible any risk of loss of competitive potential of the Divestment Business. In particular the Notifying Parties undertake:
 - (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might

alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

- (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
- (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to the Notifying Parties' remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, the Notifying Parties shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. The Notifying Parties must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

10. The Notifying Parties commit, from the Effective Date until Closing, to procure that the Divestment Business is kept separate from the business(es) that the Notifying Parties will be retaining and, after closing of the notified transaction to keep the Divestment Business separate from the business that the Notifying Parties are retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business(es) retained by the Notifying Parties have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by the Notifying Parties and do not report to any individual outside the Divestment Business.
11. Until Closing, the Notifying Parties shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which the Notifying Parties are retaining. Immediately after the adoption of the Decision, the Notifying Parties shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Notifying Parties. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8(c) of these Commitments. The Commission may, after having heard the Notifying Parties, require the Notifying Parties to replace the Hold Separate Manager.

Ring-fencing

12. The Notifying Parties shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating

to the Divestment Business and that any such Confidential Information obtained by the Notifying Parties before the Effective Date will be eliminated and not be used by the Notifying Parties. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. The Notifying Parties may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to the Notifying Parties is required by law.

Non-solicitation clause

13. The Notifying Parties undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of three 3 years after Closing.

Due diligence

14. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, the Notifying Parties shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers sufficient information as regards the Divestment Business;
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

15. The Notifying Parties shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). The Notifying Parties shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
16. The Notifying Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

17. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

(a) The Purchaser shall be independent of and unconnected to the Notifying Parties and their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).

(b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Notifying Parties and other competitors;

(c) The Purchaser shall be a well-established UPR supplier with activities in the EEA, capable of sourcing the necessary inputs at competitive terms, with a pre-existing network of plants in the EEA, and possessing the necessary manufacturing capabilities to expand it, as well as the necessary commercial and non-commercial personnel to market the products throughout the EEA and provide the necessary technical support to customers;

(d) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

18. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When Reichhold has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. The Notifying Parties must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

19. The Notifying Parties shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. Notifying Parties commit not to close the Concentration before the appointment of a Monitoring Trustee.

20. If the Notifying Parties have not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by the Notifying Parties at that time or thereafter, the Notifying Parties shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
21. The Trustee shall:
- (i) at the time of appointment, be independent of the Notifying Party/Notifying Parties and its/their Affiliated Undertakings;
 - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - (iii) neither have nor become exposed to a Conflict of Interest.
22. The Trustee shall be remunerated by the Notifying Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by the Notifying Parties

23. No later than two weeks after the Effective Date, the Notifying Parties shall submit the name or names of one or more natural or legal persons whom the Notifying Parties proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one (1) month before the end of the First Divestiture Period or on request by the Commission, the Notifying Parties shall submit a list of one or more persons whom the Notifying Parties proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 21 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

24. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, the Notifying Parties shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, the Notifying Parties shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Notifying Parties

25. If all the proposed Trustees are rejected, the Notifying Parties shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 19 and 24 of these Commitments.

Trustee nominated by the Commission

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom the Notifying Parties shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

27. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or the Notifying Parties, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

28. The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by the Notifying Parties with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 9 and 10 of these Commitments;

- (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 11 of these Commitments;
- (c) with respect to Confidential Information:
 - determine all necessary measures to ensure that the Notifying Parties do not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
 - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
 - make sure that any Confidential Information relating to the Divestment Business obtained by the Notifying Parties before the Effective Date is eliminated and will not be used by the Notifying Parties, and
 - decide whether such information may be disclosed to or kept by the Notifying Parties as the disclosure is reasonably necessary to allow the Notifying Parties to carry out the divestiture or as the disclosure is required by law;
- (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and the Notifying Parties or Affiliated Undertakings;
- (iii) propose to the Notifying Parties such measures as the Monitoring Trustee considers necessary to ensure the Notifying Parties' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
 - (a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
 - (b) potential purchasers are granted reasonable access to the Personnel;
- (v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- (vi) provide to the Commission, sending the Notifying Parties a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess

whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

- (vii) promptly report in writing to the Commission, sending the Notifying Parties a non-confidential copy at the same time, if it concludes on reasonable grounds that the Notifying Parties are failing to comply with these Commitments;
 - (viii) within one (1) week after receipt of the documented proposal referred to in paragraph 18 of these Commitments, submit to the Commission, sending the Notifying Parties a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
 - (ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.
29. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

30. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 17 and 18 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of the Notifying Parties, subject to the Notifying Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
31. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Parties.

III. Duties and obligations of the Parties

32. The Notifying Parties shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of the Notifying Parties' or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and the Notifying Parties and the Divestment Business shall provide the Trustee upon request with copies of any document. The Notifying Parties shall provide to the Monitoring Trustee all information necessary for monitoring their compliance with the non-compete provisions foreseen in paragraphs 12 and 24 of the Schedule. The Notifying Parties and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
33. The Notifying Parties shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. The Notifying Parties shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Notifying Parties shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.
34. The Notifying Parties shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, the Notifying Parties shall cause the documents required for effecting the sale and the Closing to be duly executed.
35. The Notifying Parties shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to the Notifying Parties for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
36. At the expense of the Notifying Parties, the Trustee may appoint advisors (in particular for corporate finance, legal, technical and industry related advice), subject to the Notifying Parties' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should the Notifying Parties refuse to approve the

advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard the Notifying Parties. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 35 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served the Notifying Parties during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

37. The Notifying Parties agree that the Commission may share Confidential Information proprietary to the Notifying Parties with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
38. The Notifying Parties agree that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
39. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

40. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
 - (a) the Commission may, after hearing the Trustee and the Notifying Parties, require the Notifying Parties to replace the Trustee; or
 - (b) the Notifying Parties may, with the prior approval of the Commission, replace the Trustee.
41. If the Trustee is removed according to paragraph 40 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19-26 of these Commitments.
42. Unless removed according to paragraph 40 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

43. The Commission may extend the time periods foreseen in the Commitments in response to a request from the Notifying Parties or, in appropriate cases, on its own initiative. Where the

Notifying Parties request an extension of a time period, it shall submit a reasoned request to the Commission no later than one (1) month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Parties. Only in exceptional circumstances shall the Notifying Parties be entitled to request an extension within the last month of any period.

44. The Commission may further, in response to a reasoned request from the Notifying Parties showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Parties. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

45. The Commitments shall take effect upon the date of adoption of the Decision.

SCHEDULE

1. The Divestment Business comprises the tangible and intangible assets it currently owns and controls at the Étain (France) production facility, and used to manufacture unsaturated polyester resin ("UPR") products. For the avoidance of doubt, the Divestment Business shall not include the Retained Personnel, as defined below.

Elements included in the scope of the Divestment Business

2. In accordance with paragraph 6 of these Commitments, the Divestment Business includes, but is not limited to:
 - (a) the following main tangible assets:
3. The Divestment Business shall include all fixed and moveable assets (e.g., machinery and equipment) of Reichhold relating to the Étain manufacturing plant.
4. The Divestment Business shall comprise of the Étain production plant which is located near the city of Metz, in the North of France, and covers a surface of 14 hectares. The Divestment Business includes *inter alia* the main factory, warehouses, offices, and laboratories also used by the technical service function. The Divestment Business is capable of producing the following chemistries of UPR, including Ortho-phthalic UPR, Iso-phthalic UPR, Tere-phthalic UPR, recycled Polyethylene Tere-phthalate ("r-PET") UPR and Dicyclopentadiene ("DCPD") UPR.
5. The Divestment Business is equipped with five reactors ([confidential information]), five thin tanks ([confidential information]), and five columns ([confidential information]). Reactors are equipped with an agitator to efficiently mix the reactants, as well as with an emergency vent connected to a catch tank and an overhead system comprising a packed column and a secondary condenser. The reactors (including their overhead systems) are equipped with vacuum pumps to further facilitate manufacturing in-specification of production batches.
6. The Étain Divested Business contains [raw material storage tanks for the main liquid bulk raw materials it purchases. It also contains a regenerative thermal oxidizer, a steam boiler, a hot oil heating unit, a cooling tower, a back-up electrical power generator, a separate office building, and a tech service lab. Below is a list of the raw material storage tanks present at the Divestment Business:

[confidential information]
7. The Divestment Business shall also include all existing inventory relating to UPR at the time of Closing of the divestiture sale. This shall include, but is not limited to, all raw materials, finished products and work in progress or intermediates to be further processed to make finished product currently stored at the plant. A majority of the raw materials are ordered in bulk (approx. 90%): these are styrene, PA, MA, DCPD, and glycols. A limited portion of raw materials is delivered in packages/drums: this concerns powders such as iso-phthalic acid and liquids, as well as other raw materials purchased in minor quantities.

(b) the following main intangible assets:

8. The Divestment Business shall include all customer information of the Divestment Business as it relates to the UPR business, including but not limited to records, customer reports, transactional data and records of customer qualification of the plant or product.
9. Reichhold shall grant the Purchaser a royalty-free, non-exclusive EEA-wide license covering the intellectual property of the Étain Divestment Business, to the extent [confidential information]. At the option of the Purchaser, this license shall be extended to address the Divestment Business' customer base in the EMEA region. At the option of the Purchaser, in order to enable the Purchaser to describe products as being identical to the Reichhold products previously supplied [confidential information]. The license will not extend to developments or modifications to intellectual property made by Reichhold following the Effective Date, although the Purchaser will be permitted to make its own developments and modifications.

(c) the following main licenses, permits and authorizations:

10. Reichhold shall transfer all licenses and permits related to the production and sale activities of the Divestment Business.
11. The Étain manufacturing plant is certified ISO 9001-2008. This certification, together with all applicable permits to lawfully operate the Divestment Business, shall be transferred to the Purchaser. In addition, Reichhold shall transfer to the Purchaser all permits, approvals, licenses, registrations, exemptions or other authorizations required under any applicable environmental law related to the Étain manufacturing plant.

(d) the following main contracts, agreements, leases, commitments and understandings

12. At the option of the Purchaser, Reichhold shall transfer all assignable contracts—including customer, distributor, and supplier contracts which relate solely to the Divestment Business—and shall use its best efforts to facilitate the transfer to the Purchaser of all other non-assignable customer, distributor, and supplier agreements which relate solely to the Divestment Business.¹ At the option of the Purchaser, for customer, distributor, and supplier agreements which relate to both the Divestment Business and other businesses of Reichhold, Reichhold shall use its best efforts to transfer to the Purchaser the benefit of such agreements with respect to the Divestment Business. In order to ensure effective transfer of a

¹ Best effort obligations shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement, the Merger Regulation and the general principles of EU law. Any interpretation that may be given to this term under the law of other jurisdictions is not relevant solely for the purpose of interpreting and/or implementing the Commitments.

commercially feasible customer base for the Divestment Business, Reichhold at the option of the Purchaser shall also agree to an appropriate transitional non-compete arrangement.

13. In addition, Reichhold will transfer or will use its best efforts to facilitate the transfer to the Purchaser of items that are currently rented at the Étain manufacturing plant. [list of rented assets].
14. Reichhold shall also transfer, at the option of the Purchaser, ongoing on-site services contracts such as a cleaning services contract for office buildings and sanitary devices or ongoing employment contracts for the [number of employees] temporary employees currently employed by the Divestment Business (which all expire and are extendable on a monthly basis).

(e) the following customer, credit and other records:

15. At the option of the Purchaser, all customer information of the Divestment Business as it relates to the UPR business, including but not limited to customer records, customer reports, transactional data, and customer qualification of the plant or product shall be transferred to the Purchaser.
16. For the avoidance of doubt, in the event a given customer is served by both the Étain manufacturing facility and another manufacturing facility of the Notifying Parties, only that customer information pertaining to the service by the Étain manufacturing facility will be provided. Reichhold shall have the right to retain copies of the customer information being transferred, other than those pertaining solely to sales from the Etain manufacturing facility.

(f) the following Personnel and Key Personnel:

17. Reichhold shall transfer the Key Personnel of the Divestment Business as they relate to the UPR business, subject to applicable local employment legislation. Please see an organizational chart of the management of the Divestment Business below:

[confidential information]

18. For the avoidance of doubt, Personnel shall include but not be limited to the following key functions of the Divestment Business: (i) operations, (ii) technical service, and (iii) sales.² For the avoidance of doubt, Key Personnel shall encompass the following positions: managing director (currently the plant manager), technical service representative, sales representative, materials manager, production manager, process engineer, EHS manager, and administrative assistant to the plant manager.
19. There are currently [number of employees] employees working in sales and technical services, and [number of employees] full-time employees working in operations ([employee functions]). All of these employees shall be part of the Divestment Business, subject to

² The sales position includes developing and implementing plans for sales performance, identification and conversion of new business opportunities, and directs and manages customers.

negotiation with the Purchaser. At the option of the Purchaser, the Reichhold Group shall transfer additional technical support employees with the Divestment Business.

20. The Personnel shall include all full-time personnel currently employed by the Divestment Business, with the exception of [number of employees] individuals (the "Retained Personnel"). Whilst the Retained Personnel are formally employed by Reichhold SAS, their daily duties and activities cover all Reichhold Group entities and their costs are covered by the Reichhold Group. These employees spend the vast majority of their time primarily in support of activities for Reichhold entities other than the Divestment Business.

21. The Hold Separate Manager shall be appointed by Reichhold to manage the day-to-day business of the Divestment Business. The Hold Separate Manager shall be [confidential information].

(g) the arrangements for the supply with the following products or services by Reichhold or Affiliated Undertakings for a transitional period of [confidential information] after Closing:

22. Certain IT systems are shared within the Reichhold Group and are provided on a global scale; this is the case for functions such as email, enterprise resource planning (ERP), GHS labeling solutions for product packaging, safety datasheet management and IT infrastructure and support. ERP is used by several business functions, including finance, sales & distribution, production planning, logistics, procurement and formula management. To the extent that the IT systems used by the Divestment Business are shared with other Reichhold entities, the Purchaser will have the option to receive a royalty-free and non-exclusive license to use such IT systems during the transitional period as a local network that is disconnected from the rest of the Reichhold organization. If necessary, firewall systems shall be implemented to isolate the Divestment Business from information at other Newco sites.

23. Similarly, additional general functions such as finance, accounting, human resources, customer service and payroll can be provided at the option of the Purchaser.

(h) the non-compete provision:

24. At the option of the Purchaser, the Notifying Parties shall agree to a non-compete provision of duration sufficient to ensure the viability of the Divestment Business. The scope and duration of the non-compete provision shall be limited to what is directly related and necessary to ensure the viability of the Divestment Business. The non-compete provision will ensure the full value of the assets transferred, and will ensure that the Purchaser gain the loyalty of customers.

Elements outside the scope of the Divestment Business

25. The Divestment Business shall not include any assets, licenses, permits and authorizations, contracts, customer orders, customer lists, credit records, or Personnel of the Reichhold Group which are not used in connection with the Divestment Business or in connection with the production, manufacture, marketing, distribution or sale of UPR products within the scope of the Divestment Business.

26. In addition, the Étain Divestment Business shall not include Reichhold's cash-in-hand or at banks or at any other financial institution; the Book Debts; the Licensed Intellectual Property; the accounts and accounting records of any member of the Reichhold Group; copies of Records which are required to be retained by the Reichhold Group as a matter of law or as are reasonably necessary for the Reichhold Group for claim administration, audit and tax purposes; and any inventory that is older than 180 days.
27. **Retained Personnel.** Reichhold has identified the following [number of employees] employees who shall not be included in the Divestment Business. Whilst the Retained Personnel are formally employed by Reichhold SAS, their daily duties and activities cover all Reichhold Group entities and their costs are covered by the Reichhold Group. These employees spend the vast majority of their time primarily in support of activities for Reichhold entities other than the Divestment Business.
[confidential information]
28. If there is any asset or personnel which is not covered by the paragraph titled "Elements included in the scope of the Divestment Business" and following of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be offered to potential purchasers.