



EUROPEAN COMMISSION
DG Competition

Case M.8196 - INEOS / ARKEMA ASSETS

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 27/02/2017

***In electronic form on the EUR-Lex website under document
number 32017M8196***



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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 27.2.2017
C(2017) 1459 final

PUBLIC VERSION

To the notifying party:

Subject: Case M.8196 - INEOS / ARKEMA ASSETS
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

Dear Sir or Madam,

- (1) On 26 January 2017, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation and following a referral pursuant to Article 4(5) of the Merger Regulation by which INEOS Chemical Holdings Luxembourg SA, controlled by INEOS Group AG ('INEOS', Switzerland), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Oxochimie SA and certain other assets, currently owned by Arkema (together referred to as 'Arkema Assets', France) by way of purchase of shares and purchase of assets ('the Transaction').³ INEOS and Arkema Assets are hereinafter referred to as the 'Parties'. INEOS is hereinafter referred to as the 'Notifying Party'.

1. THE PARTIES AND THE OPERATION

- (2) INEOS, headquartered in Switzerland, is a global manufacturer of petrochemicals, specialty chemicals and oil products. INEOS produces a wide variety of chemicals including oxo-alcohols (such as butanol and 2-

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

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

³ Publication in the Official Journal of the European Union No C 35, 3.2.2017, p. 5.

Ethylhexanol ('2-EH')) and their derivative solvents (such as butyl acetate and butyl glycol ethers).

- (3) Arkema Assets comprise:
- a. all of the shares Arkema owns in Oxochimie SA (France, 'Oxochimie'), a production joint venture currently equally owned by INEOS and Arkema, active in the production of oxo-alcohols, namely butanol, 2-EH and aldehydes; and
 - b. the customer lists and contracts of Arkema relating to the sale to third parties of the products manufactured by Oxochimie that Arkema does not use internally.
- (4) Currently Oxochimie operates on the basis of tolling agreements with its parent companies, Arkema and INEOS. It receives from them the raw material necessary to manufacture oxo-alcohols and supplies to each of them the oxo-alcohols requested in exchange of a tolling fee. Oxochimie does not sell products to third parties. Arkema sells part of the products manufactured by Oxochimie to third parties; the relevant customer lists will be acquired by INEOS through the Transaction.
- (5) The Transaction consists in INEOS acquiring sole control over Arkema Assets by way of purchase of shares and purchase of assets. The Transaction therefore constitutes an acquisition of control within the meaning of Article 3(1)(b) of the Merger Regulation.

2. EU DIMENSION

- (6) The Transaction does not have an EU dimension within the meaning of Article 1 of the Merger Regulation. The Parties' combined worldwide turnover exceeds EUR 5 billion (EUR [...]), but not EUR 250 million at EU level for at least two undertakings concerned, as Arkema Assets turnover in the EEA amounts to EUR [...]. Furthermore, Arkema Assets do not achieve turnover of EUR 25 million in at least three Member States.
- (7) The Commission acquired jurisdiction on 18 October 2016, following an Article 4(5) referral addressed by the Notifying Party. No Member State expressed disagreement with the referral of the case to the Commission.

3. COMPETITIVE ASSESSMENT

3.1. Horizontal relationship

- (8) The Transaction leads to horizontal overlaps on the markets for butanol and its sub-segments n-butanol and iso-butanol, the market for 2-EH and aldehydes. None of these horizontal links leads to an affected market.

3.2. Vertical link

- (9) The Transaction also creates the following vertical links:

- a. between the supply of propylene (produced by INEOS) and the production of butanol (produced by INEOS and Arkema Assets);
 - b. between the production of butanol (produced by INEOS and Arkema Assets) and the production of butyl acetates (produced by INEOS);
 - c. between the production of butanol (produced by INEOS and Arkema Assets) and the production of butyl glycol ethers (produced by INEOS);
 - d. between the production of 2-EH (produced by INEOS and Arkema Assets) and the production of dioctyl terephthalate ('DOTP' produced by INEOS).
- (10) Only the link between the production of butanol and the production of butyl acetates is affected by the Transaction and, thus, will be analysed below.

3.2.1. *Butanol (upstream)*

- (11) Butanol is a clear, mobile, neutral liquid, used in the production of intermediate chemical products such as butyl acetate, butylamine, glycol ethers and as a solvent.
- (12) In a recent decision the Commission considered that the market for butanol can be subdivided into the market for n-butanol and the market for iso-butanol, but left the product market definition open.⁴ In the present case, the exact market definition can be left open, as the position of the Parties does not differ significantly under the alternative plausible definitions.
- (13) Commission precedents indicate EEA or wider scope for the butanol market.⁵ In the most recent precedent, the Commission found that the geographic market for butanol is most likely not broader than EEA-wide in scope, but ultimately left the exact geographic market definition open.⁶
- (14) The Notifying Party submits that the geographic dimension of the market for butanol should be at least EEA-wide in scope. It also submits that the market could in fact be global since there are no significant transport or import barriers in Europe and imports (mainly originating in South-Africa and the USA) represent a significant share of butanol sales in the EEA (approximately 13%).
- (15) The market investigation in the present case did not provide any elements that the market could be narrower in scope than EEA-wide.
- (16) For the purpose of this decision it can be left open whether the geographic market for butanol is EEA-wide or broader in scope as the Transaction does not raise competition concerns in any event.

⁴ Case M.7858 – INEOS / CELANESE ASSETS, para 31.

⁵ Case M.7858 – INEOS / CELANESE ASSETS, para 38-42; Case M.6778 – ADVENT INTERNATIONAL CORPORATION/ CYTEC'S RESIN BUSINESS, para 109-111; Case M. 5712 – MITSUBISHI CHEMICAL HOLDINGS / MITSUBISHI RAYON CO, para 42-43; Case M. 3056 – Celanese / Degussa / JV (European Oxo Chemicals), para 87.

⁶ Case M.7858 – INEOS / CELANESE ASSETS, para 40-42.

3.2.2. *Butyl acetate (downstream)*

- (17) Butyl acetate is a medium-volatile, colourless solvent with solvent power for cellulose nitrate, polymers, resins and oils. In previous decisions the Commission considered distinguishing the market for n-butyl acetate and iso-butyl acetate. Furthermore the Commission considered a further distinction based on the purity of grades of n-butyl acetate (high purity PU-grade butyl acetate and normal grade butyl acetate), but left the product market definition open.⁷ In the present case, this question can be left open, as the position of the Parties does not differ significantly irrespective of the exact product market definition.
- (18) Commission precedents indicate EEA-wide or wider scope for the butyl acetate market.⁸ In the most recent precedent, the Commission found that the geographic market for butyl acetate is most likely not broader than EEA-wide in scope, but ultimately left the exact geographic market definition open.⁹
- (19) The Notifying Party submits that the market for butyl acetate is EEA-wide in scope.
- (20) The market investigation in the present case did not provide any elements that could change the past findings of the Commission.
- (21) For the purpose of this decision it can be left open whether the geographic market for butyl acetate is EEA-wide or broader in scope as the Transaction does not raise competition concerns in any event.

3.3. **Competitive assessment**

- (22) The vertical relationship between the production of butanol (the upstream market) and of butyl acetate (the downstream market) leads to an affected market, because the INEOS' market share on the downstream market for butyl acetate and its segments exceeds 30% at EEA level. The Transaction will however not change anything on the downstream market and effectively it will only increase INEOS' availability of butanol (although it should be noted that pre-Transaction INEOS already had joint control over the Oxochimie assets).
- (23) On the upstream market for butanol the combined market share in the EEA amounts to [10-20]% with the increment of [5-10]% brought by Arkema's assets and on its segments: [10-20]% on the market for n-butanol (increment of [5-10]%) and [10-20]% on the market for iso-butanol (increment of [0-5]%). If the captive use is excluded, on the merchant market the combined market share amounts to [10-20]% for butanol, [5-10]% for n-butanol and [10-20]% for iso-butanol.

⁷ Case M.7858 – INEOS / CELANESE ASSETS, para 25.

⁸ Case M.7858 – INEOS / CELANESE ASSETS, para 32-37; Case M.6778 – ADVENT INTERNATIONAL CORPORATION/ CYTEC'S RESIN BUSINESS, para 109-11; Case M.6411 – ADVENT / MAXAM, para 63-65; Case M.3056 – Celanese / Degussa / JV (European Oxo Chemicals), para 149.

⁹ Case M.7858 - INEOS / CELANESE ASSETS, para 35-37.

- (24) As regards the downstream market for butyl acetate, where INEOS is present and which is mainly sold on the merchant market, the market shares in the EEA are the following: butyl acetate [30-40]%, n-butyl acetate [30-40]% and iso-butyl acetate [20-30]%. The Parties confirmed that the market shares would be similar, i.e. around [30-40]%, even if a distinction was made between a hypothetical market for PU-grade butyl acetate and normal grade butyl acetate. The Notifying Party submits that post-Transaction important competitors will remain present on the market for butyl acetate, such as Oxea, BASF and Solvent Wistol.
- (25) In view of the above information, the Commission considers that post-Transaction INEOS will not be able to pursue an input foreclosure strategy regarding butanol, since on the upstream market for butanol supply INEOS' market share does not exceed [10-20]% (including captive use) irrespective of the exact product market definition. This means that more than [80-90]% of butanol is sold by suppliers other than INEOS. Indeed, the respondents to the market investigation submitted that there is no concern about the availability of butanol on the market as there are many alternative suppliers and that, in general, the capacity of butanol on the market is higher than the demand.
- (26) Furthermore, the Commission notes that the customers which could in theory be affected by an input foreclosure strategy by INEOS in result of the Transaction are only the current customers of Arkema. However, INEOS would have no incentive to foreclose these customers, as they are not INEOS' competitors on the downstream market for butyl acetate (they purchase butanol for different purposes). Thus, even if INEOS was able to foreclose access to butanol to these customers, which is not the case, INEOS could not benefit from such a strategy.
- (27) The Transaction will neither lead to customer foreclosure on the butyl acetate market for the suppliers of butanol. Pre-Transaction INEOS produces internally the butanol it uses to manufacture butyl acetate products, and thus does not acquire butanol on the merchant market. In any event, INEOS' market share on the butyl acetate market will remain around [30-40]%; thus the competing suppliers of butanol will still be able to serve butyl acetate producers representing about [70-80]% of the market. Indeed, the respondents to the market investigation submitted that the Transaction would not impact their ability to reach customers with their butanol production.
- (28) Finally, the respondents to the market investigation submitted they do not expect the Transaction to have any impact on any other product or geographic market, considering in particular oxo-alcohols or their derivative solvents.
- (29) As a result, the Commission considers that the Transaction does not lead to any competition concerns.

4. CONCLUSION

- (30) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)

*Margrethe VESTAGER
Member of the Commission*