



EUROPEAN COMMISSION
DG Competition

Case M.9502 - SYNTHOMER / OMNOVA SOLUTIONS

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: 15/01/2020

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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

**Subject: Case M.9502 – SYNTHOMER/OMNOVA SOLUTIONS
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 15 November 2019, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 and following a referral pursuant to Article 4(5) of the Merger Regulation by which Synthomer plc (“Synthomer”, UK) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Omnova Solutions, Inc. (“Omnova”, US) (the “Transaction”).³ Synthomer is referred to as the “Notifying Party” and, together with Omnova, the “Parties”.

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

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

³ Publication in the Official Journal of the European Union No C 398, 25.11.2019, p.3.

1. THE PARTIES

- (2) **Synthomer** develops and manufactures specialty chemicals for use in a variety of applications. Its activities are mainly concentrated in Europe, with [60-70]% of Synthomer's 2018 worldwide turnover generated in the EEA and sixteen of its production facilities located in the EEA (with one in the United States, two in Middle East/Africa and six in Asia).
- (3) **Omnova** develops and manufactures specialty chemicals and thermoplastic films for a variety of applications. Omnova's activities are predominantly based in North America, with eight of its thirteen production facilities located in the United States. In contrast, its EEA business is smaller, with [10-20]% of its 2018 worldwide turnover generated in the EEA and two plants in the EEA (at Le Havre (France) and Lisbon (Portugal)).

2. THE CONCENTRATION

- (4) On 3 July 2019, Synthomer and Omnova entered into an agreement pursuant to which Synthomer agreed to acquire sole control of Omnova by purchase of its entire issued and to be issued share capital.
- (5) The Transaction is therefore a concentration within the meaning of Article 3(1)(b) of the EU Merger Regulation.

3. SCOPE OF COMMISSION REVIEW

- (6) The Transaction does not have a Union dimension within the meaning of Article 1 of the Merger Regulation as it does not meet the thresholds of Article 1(2) or Article 1(3).
- (7) However, on 6 September 2019, the Notifying Party informed the Commission by means of a reasoned submission that the concentration would be notifiable in five Member States and would fulfill a number of further criteria for its referral to the Commission.⁴ In particular, the affected markets have a geographic scope that is wider than national (EEA-wide or worldwide) and a referral to the Commission would avoid multiple national filings, thereby increasing administrative efficiency. On that basis, under Article 4(5) of the Merger Regulation, the Notifying Party requested the Commission to examine the Transaction.
- (8) The Commission agrees that the referral request meets the legal criteria set out in Article 4(5) of the Merger Regulation in that the Transaction is capable of being reviewed under the national merger control laws of at least three Member States, namely Austria, Germany, Portugal, Spain and the United Kingdom. In addition, none of the Member States competent to examine the Transaction under the respective national laws expressed their disagreement within 15 working days of receiving the reasoned submission.

⁴ As set out in the Commission Notice on Case Referral in respect of Concentrations (OJ C56, 05.03.2005 p.2, paragraphs 8-14 and 24-32).

- (9) Therefore, the concentration falls under the scope of review of the Commission pursuant to Article 4(5) of the Merger Regulation.

4. COMPETITIVE ASSESSMENT

4.1. Analytical framework

- (10) Under Articles 2(2) and 2(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.
- (11) A merger can entail vertical effects. As illustrated below, in the present case the vertical links arising from the Transaction are negligible and accordingly are unlikely to give rise to possible impediments of effective competition in the internal market or in a substantial part of it. More frequently, a merger can entail horizontal effects. In this respect, in addition to the creation or strengthening of a dominant position, the Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (“the Horizontal Merger Guidelines”)⁵ distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely (a) by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour (non-coordinated effects); and (b) by changing the nature of competition in such a way that firms that previously were not coordinating their behaviour are now significantly more likely to coordinate and raise prices or otherwise harm effective competition. A merger may also make coordination easier, more stable or more effective for firms which were coordinating prior to the merger (coordinated effects).⁶
- (12) As illustrated below, the horizontal overlaps created by the Transaction with respect to certain affected markets are significant and may give rise to concerns as to a possible creation or strengthening of a dominant position so that effective competition in the internal market or in a substantial part of it may be significantly impeded because of the Transaction. Accordingly, this decision will analyse whether the Transaction is likely to raise serious doubts as to its compatibility with the internal market by the creation of non-coordinated effects in those markets on which the Parties’ activities lead to horizontal overlaps.

4.2. Overview of affected markets

- (13) Synthomer and Omnova manufacture and supply speciality chemicals. Specialty chemicals are value-added products manufactured using polymerisation and other reactive processes to transform commodity raw materials into polymers and other complex chemical outputs that are used as an ingredient by customers who formulate finished products for the healthcare, consumer goods, construction and other sectors.

⁵ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 5.2.2004 p.5.

⁶ Horizontal Merger Guidelines, paragraph 22.

- (14) The Parties' activities horizontally overlap with respect to certain types of synthetic latex polymers (also referred to as "latex dispersions"). Latex dispersions are produced through the polymerization of one or more monomers and are mainly used as binders in the production of materials such as paper, carpets, adhesives, textiles and paints. More specifically, the Transaction leads to horizontally affected markets in:
- (a) Vinyl pyridine latex ("VP Latex");
 - (b) Carboxylated nitrile butadiene latex ("XNBR");
 - (c) Carboxylated styrene butadiene latex ("XSBR");
 - (d) Styrene acrylic ("SA"); and
 - (e) High solids styrene butadiene ("HS-SB").
- (15) Each of these horizontally affected markets will be addressed in turn. There are only very limited vertical links arising from the Transaction, which are not analysed in detail as they do not give rise to competition concerns.⁷

4.3. Vinyl pyridine latex (VP Latex)

4.3.1. Market definition

- (16) VP Latex is an aqueous polymer used in heavy duty rubber goods, primarily tyres, to promote the adhesion between reinforcing cords or fabric and rubber compounds. The most common use of VP Latex is in the tyre cord application, whereby nylon or polyester yarns are dipped or coated in VP Latex before being embedded in a tyre to reinforce it against high pressure and temperatures. Both Parties are active in the production and sale of VP Latex, primarily for the tyre cord application.

⁷ For completeness, the upstream markets for styrene and/or butadiene are vertically affected in light of the Parties' combined downstream market shares for certain synthetic latex markets, namely: VP Latex, XSBR, XNBR and HS-SB (or relevant plausible segmentations of these products, see Sections 4.3, 4.4, 4.5 and 4.7). However, input or customer foreclosure concerns are implausible. Only Synthomer is active upstream and it does not manufacture these products. Rather, Synthomer procures styrene and butadiene from third parties for its own internal use and only has some very limited re-sales of styrene and butadiene [*business secret regarding sales strategy of Notifying Party*] – it estimates its market share is around [0-5]% or less worldwide and in the EEA. In addition, there are technically vertically affected markets between the Parties' supply of XSBR and HS-SB (upstream) and Synthomer's supply of certain XSBR compounds and HS-SB compounds (downstream) primarily sold to the carpet industry. However, the Transaction will not bring about any change in the market given that (i) Synthomer is already vertically integrated pre-Transaction; it does not procure XSBR from third parties for use in compound production and [*business secret regarding business and procurement strategy of Notifying Party*], (ii) Omnova is barely active in XSBR and HS-SB in the EEA and already pre-Transaction does not pose any competitive constraint on Synthomer for these products in the EEA (see Sections 4.5 and 4.7 below), (iii) Omnova does not supply XSBR or HS-SB to compound producers in the carpet industry in the EEA, and (iv) post-Transaction there will remain several large producers of the relevant inputs (e.g. BASF, Trinseo, Synthos, Versalis, EOC Group, etc.), which will continue to constitute an alternative source of supply for independent compounders. In light of the above, the Commission considers that the Transaction does not raise serious doubts as regards any of these vertically affected markets.

4.3.1.1. Product market definition

Commission's precedents

- (17) In *Bayer/Hüls*, the Commission identified a separate product market for VP Latex.⁸ Since then, the Commission has consistently defined product markets for synthetic latex products according to the type of latex dispersion (i.e. chemical composition) and also by application.⁹ The Commission has previously also found that synthetic latex products should not be further divided into submarkets according to the grade qualities of the latex dispersions.¹⁰

The Notifying Party's view

- (18) The Notifying Party argues that VP Latex forms a separate product market and that it is not necessary to segment the market for VP Latex by application or by grade (i.e. VP Latex with high and low vinyl pyridine content).¹¹
- (19) First, the Notifying Party notes that VP Latex is used primarily for the tyre cord application, but it is also used in the production of mechanical rubber goods. These applications should in its view not be considered distinct markets. From a demand perspective, the same grades of VP Latex are used across tyre cord and mechanical rubber goods. From a supply perspective, the same producers sell, or can sell, into all applications. Moreover, the Notifying Party argues that the competitive dynamics for VP Latex are driven by the tyre cord application given that the vast majority (around 85%) of VP Latex sales in the EEA and worldwide are for tyre cords.
- (20) Second, the Notifying Party argues that there is substitution between VP Latexes with a high (typically ~15%) and low (typically ~10%) vinyl pyridine content. The Notifying Party acknowledges that demand-side substitution may be limited given that customers typically require a specific vinyl pyridine content to provide the adhesive performance required. However, it argues that there is a high degree of supply-side substitutability, as the only difference between high and low content VP Latex is the proportion of vinyl pyridine used in the formulation. Accordingly, both Parties produce both high and low content VP Latex [*business secret regarding the production processes of the Parties*]. No time or special steps are required to switch from producing one to the other; it is a change in recipe rather than process.

The Commission's assessment

- (21) The majority of respondents to the Commission's market investigation confirmed that VP Latex should be considered a separate product market from other synthetic latexes. Customers generally did not consider that VP Latex could be substituted with other latexes, with some noting that other latex products do not have the same adhesion qualities as VP Latex. Even some of those customers that thought switching between VP Latex and other latex products might be possible highlighted

⁸ See case IV/M.751 - *Bayer/Hüls*, decision of 03.07.1996.

⁹ See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; M.5355 - *BASF/CIBA*, decision of 12.03.2009; M.5424 - *Dow/Rohm and Haas*, decision of 08.01.2009; and M.1993 - *Rhodia/Raisio/JV*, decision of 20.07.2000.

¹⁰ See cases M.5355 - *BASF/CIBA*, decision of 12.03.2009; M.5424 - *Dow/Rohm and Haas*, decision of 08.01.2009; and M.1993 - *Rhodia/Raisio/JV*, decision of 20.07.2000.

¹¹ Form CO, paragraph 6.72

that switching between them would require a material and time-consuming change in the formulation that customers use to manufacture the end-products.¹² Competitors' responses were inconclusive as to the degree of supply-side substitution between VP Latex and other synthetic latex products.¹³

- (22) While the market investigation did not provide evidence that a segmentation by application was necessary, it nonetheless revealed that customers typically purchase a specific grade of VP Latex to be incorporated in the finished products they manufacture.¹⁴ Most customers that responded to the market investigation considered that switching between grades of VP Latex was challenging. In particular, customers noted that switching would require a change in the formulation used, may impact the adhesion performance of the end product, and would require testing and approvals by end-customers.¹⁵
- (23) On the other hand, the market investigation clearly confirmed that there is supply-side substitution between VP Latex grades. All suppliers that responded indicated that they can and do switch production between VP Latex with high and low vinyl pyridine content on the same production line with limited effort.¹⁶
- (24) For the reasons set out above, the Commission considers that, for the purposes of this decision, VP Latex constitutes a distinct product market from other synthetic latex products, without the need for further segmentation.

4.3.1.2. Geographic market definition

Commission's precedents

- (25) The Commission has previously considered the relevant geographic market for all types of synthetic latex products (including VP Latex specifically) to be EEA-wide.¹⁷ In particular, the Commission pointed to differences in price levels between continents and the fact that the flow of supply between continents was not significant.

The Notifying Party's view

- (26) The Notifying Party argues that the competitive conditions have changed since the Commission's decision in *Bayer/Hüls* and that the relevant market for VP Latex is worldwide.¹⁸
- (27) First, the Notifying Party argues that the costs of shipping VP Latex overseas are low and that there are no regulatory barriers to selling in the EEA. For example, the Notifying Party estimates that the cost of shipping from a plant in India to a customer in the EEA is around [0-5]% of the average final sales price in the EEA

¹² Replies to question 8 of Q1 - Questionnaire to VP Latex customers.

¹³ Replies to question 9 of Q4 - Questionnaire to VP Latex competitors.

¹⁴ Replies to question 10 of Q1 - Questionnaire to VP Latex customers and replies to question 7 of Q4 - Questionnaire to VP Latex competitors.

¹⁵ Replies to question 10 of Q1 - Questionnaire to VP Latex customers.

¹⁶ Replies to question 7 of Q4 - Questionnaire to VP Latex competitors.

¹⁷ See case M.5355 - *BASF/CIBA*, decision of 12.03.2009 and case IV/M.751 - *Bayer/Hüls*, decision of 03.07.1996.

¹⁸ Form CO, paragraph 6.73 *et seq.*

and that the cost of shipping from France to Shanghai is around [0-5]% of the average final sales price in the EEA.

- (28) Second, the Notifying Party considers that trade flows have increased since the Commission's decision in *Bayer/Hüls*. It points out that Omnova and Synthomer ship a significant proportion of their EEA VP Latex production to customers outside of the EEA ([70-80]% and [30-40]% respectively), while some Asian manufacturers (e.g. Jubilant of India) have begun selling into the EEA. The Notifying Party also explains that all sales to the US are imports given that there are no VP Latex plants in the US; [*business secret regarding Omnova's sales and production strategies*].
- (29) Third, the Notifying Party submits that many VP Latex customers (such as tyre cord dippers or tyre manufacturers) are multinational companies with factories worldwide. It argues that these customers negotiate supply agreements comparing terms and conditions on a worldwide basis, frequently adjust pricing, and can and do arbitrage across the globe as they can gradually shift their purchases and production across regions.
- (30) Finally, it argues that VP Latex is also imported into the EEA indirectly in the form of finished (already-dipped) tyre cord. The Notifying Party estimates that [*confidential information regarding the Notifying Party's internal analysis/estimate regarding the percentage of the total VP Latex demand in the EEA that VP Latex imported through finished tyre cord represents*].

The Commission's assessment

- (31) The results of the market investigation did not confirm the view of the Notifying Party, but rather pointed to the existence of an EEA-wide market for VP Latex.
- (32) First, while the Parties may export VP Latex outside the EEA, their sales into the EEA are very limited. Moreover, imports of VP Latex in the EEA are limited. Very few EEA end-customers responding to the market investigation indicated that they source VP Latex from suppliers outside the EEA, in line with the Notifying Party's estimate that imports account for a small proportion of sales in the EEA (around or less than 10% in 2018, see Table 1 below).¹⁹ Moreover, those respondents who do procure VP Latex from outside the EEA confirmed that they do not rely on non-EEA suppliers as their primary supplier, procuring only a small part of their needs from them (typically 10-15%).²⁰
- (33) Second, the majority of EEA end-customers indicated that it was important for their supplier's factory to be close to their production plants to manage costs, lead time and business continuity.²¹ This is supported by the fact that respondents typically require just-in-time delivery or hold stock to cover their short-term needs.²²

¹⁹ Replies to questions 12 and 22 of Q1 - Questionnaire to VP Latex customers. In addition, the non-EEA based suppliers who responded confirmed that their sales to the EEA are negligible – see replies to question 5 of Q4 - Questionnaire to VP Latex competitors.

²⁰ Replies to question 12 of Q1 - Questionnaire to VP Latex customers.

²¹ Replies to question 15 of Q1 - Questionnaire to VP Latex customers, as well as the non-confidential minutes of three separate calls with VP Latex customers, two on 5 November 2019 and the third on 7 November 2019.

²² Replies to question 21 of Q1 - Questionnaire to VP Latex customers.

- (34) Third, a clear majority of EEA end-customers indicated that there were barriers to procuring VP Latex from other regions, in particular long delivery periods, sizeable transport costs, concerns around ensuring the security of supply, as well as the risk that the product may be damaged in transit.²³ Suppliers responding to the market investigation agreed and identified similar barriers. In particular, transport costs were identified as a key barrier to shipping across regions.²⁴
- (35) Fourth, customers were generally sceptical or unsure about the credibility of Asian suppliers as an alternative in the EEA, with a number of customers raising substantial concerns around security of supply, lead time, transport costs and quality.²⁵
- (36) Finally, there is no strong evidence that a hypothetical small but significant and non-transitory increase in price in the EEA would be unprofitable due to the constraint from suppliers outside Europe. EEA end-customers responding to the market investigation were split on whether they would consider importing from outside the EEA in the event of such an increase.²⁶ In practice, for the reasons set out in the previous recitals, only limited switching seems likely. Moreover, certain suppliers who responded noted that a hypothetical 5-10% increase in price in the EEA may not be sufficient to offset the high cost of transporting VP Latex from Asia to Europe.²⁷
- (37) In light of the above, the Commission considers that, for the case at hand, the relevant geographic market for VP Latex is EEA-wide. Nevertheless, the Commission considers that the assessment of the Transaction would not change even if the relevant geographic market were considered to be worldwide.

4.3.2. *Competitive assessment*

- (38) Both Parties supply VP Latex in the EEA and worldwide. Synthomer produces VP Latex at its plant in Marl (Germany) and Omnova is active through its plants in Le Havre (France) and Caojing (China). The Parties are the only VP Latex manufacturers with production plants in the EEA.

The Notifying Party's view

- (39) The Notifying Party's estimates of the Parties' and their largest competitors' market shares worldwide and in the EEA are as follows.

²³ Replies to question 16 of Q1 - Questionnaire to VP Latex customers, as well as the non-confidential minutes of three separate calls with VP Latex customers, two on 5 November 2019 and the third on 7 November 2019.

²⁴ Replies to questions 12 and 13 of Q4 - Questionnaire to VP Latex competitors.

²⁵ Replies to question 35 of Q1 - Questionnaire to VP Latex customers, as well as the non-confidential minutes of three separate calls with VP Latex customers, two on 5 November 2019 and the third on 7 November 2019 respectively.

²⁶ Replies to question 17 of Q1 - Questionnaire to VP Latex customers.

²⁷ Replies to question 14 of Q4 - Questionnaire to VP Latex competitors.

Table 1: Market share estimates for VP Latex, 2018 (by volume)²⁸

Supplier	Worldwide		EEA	
	Volume (wet tonnes)	Share	Volume (wet tonnes)	Share
Synthomer	[redacted]	[5-10]%	[redacted]	[30-40]%
Omnova	[redacted]	[30-40]%	[redacted]	[60-70]%
Combined	[redacted]	[40-50]%	[redacted]	[90-100]%
Yatai (China)	[redacted]	[10-20]%	-	-
Croslene (Taiwan)	[redacted]	[10-20]%	-	-
Jubilant (India)	[redacted]	[5-10]%	[redacted]	[5-10]%
Shandong Aogood (China)	[redacted]	[5-10]%	-	-
Apcotex (India)	[redacted]	[0-5]%	-	-
<i>Others</i>	[redacted]	[5-10]%	-	-
<i>Total market size</i>	[redacted]		[redacted]	

Source: Notifying Party's estimates

- (40) The Notifying Party submits that, regardless of whether the market is considered worldwide or EEA-wide, the Parties are significantly constrained by large competitors based in Asia.²⁹ The Notifying Party considers these competitors have significant spare capacity, produce VP Latex at a lower cost than the Parties' EEA plants and can transport it across the globe at a competitive rate. Moreover, it claims that major customers have plants worldwide and can reallocate their purchases between regions.
- (41) As regards the EEA specifically, the Notifying Party points out that Jubilant has been increasing its market share in recent years ([0-5]% in 2016, [0-5]% in 2017, [5-10]% in 2018 and estimated at around [10-15]% for 2019) and that the threat of imports by other Asian players constrains the Parties. It argues the Parties are not close competitors as in 2018 they only had [redacted] (of [redacted]) EEA customers in common. The Notifying Party also submits that the Parties' largest European customers [*business secret concerning the Parties' customers*] and can respond to a price increase in the EEA by purchasing ready-dipped cord from suppliers in Asia.

The Commission's assessment

- (42) For the reasons set out in this section, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market in respect of VP Latex in the EEA. The Commission considers that serious doubts would also arise if the market were instead considered to be worldwide, as set out below.
- (43) First, the merged entity would have very high market shares in the EEA ([90-100]%) and would hold a strong position worldwide ([40-50]%). According to the Notifying Party's estimates, Omnova is already the largest player in the EEA and worldwide, holding a position more than twice the size of the second-largest competitor. Post-Transaction, such combined market shares would amount to a quasi-monopoly of the

²⁸ According to the Notifying Party's estimates, the combined market shares in the EEA of the Parties remained above [90-100]% in the past three years and market shares in value would not substantially differ from market shares in volume in the EEA. Market shares in value are not available at worldwide level.

²⁹ The Notifying Party explains that the Parties' worldwide sales have declined over the last three years due to Asian suppliers' aggressive pricing. Omnova's VP Latex business in its Le Havre plant (France) has [*business secret regarding the financial situation of Omnova*].

Parties in the market for the supply of VP Latex in the EEA, corresponding to the creation or strengthening of a dominant position. The market investigation confirmed these estimates – virtually all customers identified either Omnova or Synthomer as the largest supplier in the EEA and most identified one of the Parties as the largest player worldwide.³⁰

- (44) Second, the Transaction would eliminate an important competitive force as the Parties are close competitors. Other than Omnova, Synthomer is the only supplier of VP Latex with manufacturing capability in the EEA. The market investigation showed that customers and competitors consistently identify Synthomer and Omnova as each other’s closest competitor in the EEA and worldwide. Respondents cited the grades offered, quality of products, pricing and their location as reasons why the Parties are close competitors.³¹
- (45) Third, other than Synthomer, there is only a limited constraint on Omnova in the EEA. As outlined above in recital 35, while Asian suppliers do sell to some customers in the EEA, the market investigation did not support the Notifying Party’s arguments that they pose a strong constraint on the Parties. Indeed, Asian suppliers responding to the market investigation consider that they are only “rarely” or “sometimes” able to win business from or against the Parties in the EEA.³² Most EEA end-customers confirmed that they did not have suppliers other than Synthomer or Omnova qualified and that in the last three years they had not considered sourcing VP Latex from any suppliers other than Synthomer or Omnova to meet their EEA demand.³³ Moreover, there was limited evidence in customers’ responses that dipped cord could act as a constraint on the merged entity, and few customers were aware of VP Latex suppliers who had recently entered or were intending to enter the market for VP Latex in the EEA.³⁴
- (46) Finally, and consistent with all of the above, the results of the market investigation showed that customers were concerned about the impact of the Transaction, in particular in the EEA. The vast majority of EEA end-customers confirmed that it is important to be able to source VP Latex from more than one production plant (and supplier), to ensure the security of supply and competitiveness of suppliers’ offers.³⁵ Accordingly, the majority of EEA end-customers were concerned that there would not be sufficient choice of suppliers in the EEA post-Transaction and expected the Transaction to result in price increases in the EEA.³⁶ Worldwide, while customers considered that there would be a sufficient number of suppliers, most respondents that expressed a view considered that price increases were likely.³⁷ Moreover, a

³⁰ Replies to question 28 of Q1 - Questionnaire to VP Latex customers.

³¹ Replies to questions 30, 31 and 32 of Q1 - Questionnaire to VP Latex customers and to questions 17 and 18 of Q4 - Questionnaire to VP Latex competitors.

³² Replies to question 19 of Q4 - Questionnaire to VP Latex competitors.

³³ Replies to questions 22 and 33 of Q1 - Questionnaire to VP Latex customers as well as the non-confidential minutes of two separate calls with VP Latex customers, dated 5 November 2019 and 5 November 2019.

³⁴ Replies to questions 26, 27, 36 and 37 of Q1 - Questionnaire to VP Latex customers.

³⁵ Replies to questions 23 and 24 of Q1 - Questionnaire to VP Latex customers.

³⁶ Replies to questions 38 and 40 of Q1 - Questionnaire to VP Latex customers. In this regard, end customers explained that the sourcing of VP Latex generally represents an important part of their costs, replies to question 28 of Q1 - Questionnaire to VP Latex customers.

³⁷ Replies to questions 39 and 41 of Q1 - Questionnaire to VP Latex customers.

number of EEA end-customers were concerned that the Transaction would endanger their security of supply, as there would not be any EEA-based alternative to the merged entity and few (if any) credible alternatives for customers requiring VP Latex for their plants in the EEA.³⁸

- (47) In light of the above, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market as regards the market for VP Latex in the EEA (and would also do so if the relevant geographic market were instead considered to be worldwide).

4.4. Carboxylated nitrile butadiene latex (XNBR)

4.4.1. Market definition

- (48) XNBR is an aqueous emulsion polymer of acrylonitrile-butadiene, stabilized with antioxidants. It is mainly used in the production of rubber gloves, but also in other applications such as the binding of nonwoven fabrics and the production of textile and rubber goods. Its good resistance to other chemicals (such as water, oils, fats, greases, alcohols as well as various solvents), and high abrasion and tear resistance make it commonly used in applications requiring the material to perform its elastomeric function in the presence of chemical agents.
- (49) Glove dipping³⁹ represents 96% of all XNBR consumption worldwide, with customers mainly located in South-East Asia. However, the glove-dipping application only represents 25% of the XNBR consumption in the EEA.
- (50) XNBR's chemical composition is distinct from non-carboxylated nitrile butadiene latex ("NBR Latex") as well as nitrile butadiene rubber ("NBR Solid"), because the manufacturing processes of these two products do not involve a carboxylation step.

4.4.1.1. Product market definition

Commission's precedents

- (51) In *Bayer/Hüls*, the Commission referred specifically to nitrile butadiene latex but did not consider the product market definition in any depth and did not set out whether it was referring to NBR (non-carboxylated) latex or XNBR (carboxylated) latex.⁴⁰ However, in the context of XSBR (discussed in section 4.5) the Commission has drawn a distinction between carboxylated and non-carboxylated products.⁴¹
- (52) Moreover, in previous cases, the Commission has consistently defined product markets according to the type of latex dispersion (i.e. chemical composition) and

³⁸ Replies to question 42 of Q1 - Questionnaire to VP Latex customers as well as the non-confidential minutes of three separate calls with VP Latex customers, two on 5 November 2019 and the third on 7 November 2019.

³⁹ The manufacturing process for latex gloves involves the dipping of hand-shaped forms into latex. The subsequent drying of these dipped forms gives shape to the glove. XNBR is used for this purpose to manufacture medical examination gloves with strong resistance to chemicals and a low weight.

⁴⁰ See case IV/M.751 - *Bayer/Hüls*, decision of 03.07.1996.

⁴¹ See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; and M.5355 - *BASF/CIBA*, decision of 12.03.2009.

also by application.⁴² The Commission found that there was no need to further divide the markets according to the grade qualities of the latex dispersions.⁴³

The Notifying Party's view

- (53) The Notifying Party submits that XNBR is distinct from NBR Latex, because as specialty products with different chemical properties they address different specific customer needs with no demand-side substitutability between them.⁴⁴
- (54) In addition, the Notifying Party argues that there is very little supply-side substitutability between these two products, because the production of NBR Latex requires specific know-how that not all XNBR manufacturers possess. Illustratively, [*business secret regarding production process and business strategy of Notifying Party*].
- (55) For the same reason, the Notifying Party also submits that XNBR is distinct from NBR Solid (which consists of coagulated, dried and ground NBR Latex).
- (56) In addition, the Notifying Party considers that there is only limited substitutability between the different applications of XNBR (glove-dipping, rubber goods, nonwovens, textile and others). It claims that demand-side substitutability is limited as each customer/application requires specific properties. It explains that there is some supply-side substitutability (as all XNBR grades are made on technically similar equipment and are produced by tweaking the inputs and process),⁴⁵ but that this supply-side substitutability can only be effective to the extent that a supplier has developed the grades that are needed to fit the specific requirements of customers for different applications.⁴⁶

The Commission's assessment

- (57) The results of the market investigation confirmed that the vast majority of customers do not consider XNBR to be substitutable with any other types of latex dispersion.⁴⁷ In particular, none of the customers that considered potential substitutability between XNBR and other types of latex dispersions identified NBR as a substitute for XNBR.
- (58) The market investigation also brought some indication that a segmentation by application could be relevant in the case of XNBR. In particular, the majority of

⁴² See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; M.5355 - *BASF/CIBA*, decision of 12.03.2009; M.5424 - *Dow/Rohm and Haas*, decision of 08.01.2009; and M.1993 - *Rhodia/Raisio/JV*, decision of 20.07.2000.

⁴³ See case M.5355 - *BASF/CIBA*, decision of 12.03.2009.

⁴⁴ Form CO, paragraph 6.136 *et seq.*

⁴⁵ However, the Notifying Party submits that not all XNBR suppliers can produce XNBR for the glove-dipping industry due to the scale and capacity required to compete for glove-dipping customers and very high industry standards set by these customers. Accordingly, the Notifying Party notes that Omnova [*business secret regarding production process and business strategy of Omnova*].

⁴⁶ The Notifying Party submits, by way of example, that it would take [*business secret regarding Notifying Party's expected production cost and time required to produce a grade of XNBR*].

⁴⁷ Replies to questions 6 and 7 of Q2 - Questionnaire to XNBR customers.

customers do not consider that any type of XNBR can be used for the production of the end-products they manufacture.⁴⁸

- (59) Finally, as regards a potential segmentation of the market by grade, the market investigation did not bring to light any indication that would contradict the Commission's earlier practice not to further segment the market for XNBR according to the grade qualities.
- (60) In view of the above, the distinction between XNBR for different applications appears relevant. However, for assessing the Transaction, the exact scope of the product market definition can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any of the two above-mentioned alternative market definitions (XNBR as a single product or sub-segmented by applications, namely: glove dipping, textile, non-woven, rubber goods and others).

4.4.1.2. Geographic market definition

Commission's precedents

- (61) The Commission has previously considered the relevant geographic market for all types of synthetic latex products (and more specifically for nitrile butadiene latex) to be EEA-wide.⁴⁹

The Notifying Party's view

- (62) The Notifying Party argues that the relevant market for XNBR is worldwide since the costs of shipping XNBR Latex overseas are low, the shelf life of XNBR (6-12 months according to the Notifying Party) makes it suitable for worldwide shipment, there are no regulatory barriers to selling in the EEA, and the market addresses global customers, mainly in the glove-dipping segment, with sophisticated buying processes, who have the ability to source worldwide.⁵⁰
- (63) Moreover, Omnova and Synthomer ship significant volumes of XNBR produced at their EEA plants to customers based outside the EEA ([10-20]% and more than [60-70]%, respectively). They are also aware that EEA customers purchase (or have purchased) imported XNBR for niche applications from various Asian (Japanese, Korean and Indian) suppliers.
- (64) The Notifying Party also emphasises that the EEA market for XNBR is very small (EUR 14 million, representing around 1% of worldwide sales). It argues that this is because major customers (and the glove-dipping industry generally, which accounts for the vast majority of XNBR sales) are mainly located in Asia and that these customers source globally. This explains the low level of imports of XNBR into the EEA. The Notifying Party further argues that the apparent low interest of non-EEA suppliers for selling into the EEA might also be a result of the moderate price levels

⁴⁸ Replies to question 8 of Q2 - Questionnaire to XNBR customers.

⁴⁹ See case M.5355 - *BASF/CIBA*, decision of 12.03.2009 and case IV/M.751 - *Bayer/Hüls*, decision of 03.07.1996.

⁵⁰ Form CO, paragraph 6.156 *et seq.* For example, the cost of shipping from a plant in India to a customer in the EEA or vice versa is estimated to be around [0-5]-[5-10]% of the average final sales price.

for XNBR in the EEA, as the threat of imports acts as a disciplining factor within the EEA.

The Commission's assessment

- (65) The market investigation confirmed that the geographic market is likely to be EEA-wide, but also provided indications that the market could be wider in scope. While EEA customers currently procure limited quantities of XNBR from outside the EEA,⁵¹ the majority of them indicated they would consider procuring XNBR from outside the EEA in the event of a hypothetical small but significant and non-transitory increase in price in the EEA.⁵² Some customers explained that they are price sensitive, so they might instead turn to suppliers in China, Japan, India, Russia, Brazil or the US.⁵³
- (66) However, other aspects of the market investigation pointed towards a narrower, EEA-wide relevant geographic market.
- (67) First, most XNBR customers that responded to the market investigation consider it important to be supplied by a production plant close to their plants, because transportation costs, lead-time, security of supply and the shelf-life of XNBR (estimated by customers to be 6 months) typically dictate where they procure from.⁵⁴
- (68) Second, most customers indicated that there are barriers to procuring XNBR across regions. Transport costs, long delivery periods, import/export tariffs and security of supply were mentioned among such barriers. Regulatory barriers (REACH compliance) as well as the product's technical characteristics (temperature variations can affect the quality of XNBR) were also listed among the reasons why EEA customers cannot easily procure from outside the EEA.⁵⁵
- (69) Moreover, most customers that responded to the market investigation were sceptical or unsure about whether Asian suppliers are a credible alternative for the supply of XNBR in the EEA.⁵⁶
- (70) In any event, for the purposes of assessing the Transaction, the exact scope of the geographic market definition can be left open since under all above-mentioned plausible alternative geographic market definitions, (worldwide or EEA-wide), the conclusion of the Commission as to the compatibility of the Transaction with the internal market will remain unchanged.

4.4.2. Competitive assessment

- (71) Both Parties supply XNBR in the EEA and worldwide. Synthomer produces XNBR at its plants in Langelsheim (Germany), Filago (Italy), Pasir Gudang (Malaysia) and

⁵¹ Replies to question 11 of Q2 - Questionnaire to XNBR customers.

⁵² Replies to question 16 of Q2 - Questionnaire to XNBR customers as well as the non-confidential minutes of a call with a XNBR customer, dated 12 December 2019.

⁵³ Replies to question 16 of Q2 - Questionnaire to XNBR customers as well as the non-confidential minutes of a call with a XNBR customer, dated 12 December 2019.

⁵⁴ Replies to question 14 of Q2 - Questionnaire to XNBR customers.

⁵⁵ Replies to question 15 of Q2 - Questionnaire to XNBR customers.

⁵⁶ Replies to question 34 of Q2 - Questionnaire to XNBR customers.

Kluand (Malaysia). Omnova is only active through its plant in Le Havre (France). The Parties are the only XNBR manufacturers with production plants in the EEA. The Notifying Party's estimates of the Parties' market shares in the EEA and worldwide are set out in Table 2.

Table 2: Market share estimates for XNBR and applications, 2018 (by volume)⁵⁷

Applications	Worldwide				EEA			
	Size of the market (kT)	Synthomer	Omnova	Combined	Size of the market (kT)	Synthomer	Omnova	Combined
All applications	[redacted]	[20-30]%	[0-5]%	[20-30]%	[redacted]	[80-90]%	[10-20]%	[90-100]%
Glove dipping	[redacted]	[20-30]%	[0-5]%	[20-30]%	[redacted]	[90-100%]	-	[90-100%]
Nonwoven	[redacted]	<[10-15]%	[0-5]%	<[10-15]%	[redacted]	[90-100%]	[0-5]%	[90-100%]
Textile	[redacted]	<[10-15]%	[0-5]%	<[10-15]%	[redacted]	[90-100%]	[0-5]%	[90-100%]
Rubber goods	[redacted]	-	<[10-15]%	<[10-15]%	[redacted]	-	[90-100%]	[90-100%]
Others	[redacted]	<[10-15]%	[0-5]%	<[10-15]%	[redacted]	[40-50]%	[0-5]%	[40-50]%

Source: Notifying Party's estimates

The Notifying Party's view

- (72) At worldwide level, the Notifying Party argues that the combined market shares of the Parties are limited and that the increment from the Transaction is negligible ([0-5]%) under all plausible market definitions. It argues that the Parties are constrained in the supply of XNBR for all applications by significant global competitors such as Kumho ([30-40]% market share by volume), Nantex ([10-20]%), LG ([5-10]%), Nippon Zeon ([5-10]%), Shin Foonq ([5-10]%), amongst others.
- (73) At EEA level, the Notifying Party notes that the market shares are higher, but considers these figures to be artificially inflated because the Kline data, on which they are based, overstates the Parties' market shares. In particular, it argues the EEA Kline data may not include or may underestimate the sales of other competitors such as Kumho and Nippon Zeon, who the Parties understand are supplying XNBR into the EEA.
- (74) The Notifying Party argues that the Parties do not compete closely in the EEA because they focus on different segments of the market (i.e. applications). While Synthomer is mainly active in the glove-dipping segment, Omnova is not active and cannot compete in this segment as *[business secret regarding Omnova's production capabilities]*. Instead, Omnova focuses its activities on the rubber goods application. Synthomer does not have sales of XNBR for the rubber goods application, neither at EEA nor at worldwide level. The Parties only overlap in the EEA to a minor degree in the nonwoven and textile applications, with an increment from Omnova of just [0-5]% in volume terms (representing EUR *[turnover]*) in nonwoven and [0-5]% in volume terms (representing EUR *[turnover]*) in textiles (compared with Synthomer's much larger sales of EUR *[turnover]* and *[turnover]* respectively). Therefore, they are not close competitors in the supply of XNBR.

⁵⁷ According to the Notifying Party's estimates, the market shares of the Parties did not substantially differ in the past three years and market shares in value would not substantially differ from market shares in volume.

- (75) Accordingly, the Notifying Party submits that Omnova only exerts a very limited competitive constraint on Synthomer for XNBR in the EEA. It explains that the Parties have next to no XNBR customers in common in the EEA – only [redacted] customers in 2018 out of the Parties’ combined total of more than [redacted] customers in the EEA.⁵⁸ Indeed, the Notifying Party explains that [*business secret regarding Omnova's business strategy*]. The Notifying Party adds that Omnova’s capacity for the manufacture of XNBR at its Le Havre plant is much smaller than Synthomer’s capacity and therefore Omnova cannot exert a meaningful constraint on Synthomer at EEA level.⁵⁹ The Notifying Party claims that the fact that Omnova is not mentioned among Synthomer’s competitors for XNBR in Synthomer’s internal documents supports this view.
- (76) Finally, the Notifying Party claims that, for these applications, Synthomer is constrained in the EEA by significant non-EEA XNBR manufacturers. In particular, in the textiles application, Synthomer has lost a customer to the South Korean chemical manufacturer Kumho in 2019 – the volumes lost to Kumho are twice as big as Omnova’s total sales in the textile segment in the EEA in 2018. The Notifying Party argues that other major global players such as Nantex, LG Chem, Shin Foong, Bangkok Synthetics, Apcotex, Jubilant and Emerald are currently selling or are well-placed to sell to customers in the EEA, taking advantage of low production costs and low transportation costs and use local distributors to sell their products into the EEA.

The Commission’s assessment

- (77) As can be seen from Table 2, under all plausible product market definitions at worldwide level, the Parties’ market shares would remain limited (<[20-30]%) with a negligible increment of [0-5]% and a HHI increment of <[redacted]. The market investigation supported the Notifying Party’s argument that a number of competitors will remain at worldwide level post-Transaction.⁶⁰ Therefore, the Commission considers that the Transaction does not raise competition concerns in relation to XNBR (whether or not segmented by application) at worldwide level.
- (78) At EEA level, the market investigation confirmed the Notifying Party’s claim that Synthomer and Omnova only exert a limited competitive constraint on each other, for the following reasons.
- (79) First, the market investigation revealed that multi-sourcing is not an important factor for XNBR customers. Most customers do not consider it important to source XNBR from more than one supplier, and hardly any respondents have more than one supplier qualified for the supply of this product.⁶¹ The very few respondents who do procure from more than one supplier source over 90% of their needs from one single

⁵⁸ For completeness, one further customer discontinued its purchases from Synthomer during the course of 2018.

⁵⁹ Omnova’s Le Havre plant has XNBR capacity of [redacted] kt, of which [redacted] kt is used to supply customers in the rubber goods segment in which Synthomer is not active in the EEA. Omnova has no other XNBR production facilities worldwide. In contrast, Synthomer’s XNBR capacity is almost 20 times larger in the EEA ([redacted] kt), and more than 200 times larger worldwide ([redacted] kt).

⁶⁰ Replies to questions 25 and 26 of Q2 - Questionnaire to XNBR customers.

⁶¹ Replies to questions 21, 22 and 23 of Q2 - Questionnaire to XNBR customers.

supplier, only using the other supplier as a back-up.⁶² A number of EEA customers indicated that the volumes they procure are too low to justify multi-sourcing.⁶³

- (80) Second, the results of the market investigation confirmed that the Parties are not close competitors and that they only pose a limited constraint on each other in the EEA. When asked to identify the closest alternatives to Synthomer's products in the EEA, the majority of customers that responded explained that there were no close alternatives or that they were not aware of any, and that the same is true in relation to Omnova's products.⁶⁴ This is in line with the Notifying Party's submissions regarding the very different focus of the Parties' XNBR activities in the EEA (i.e. only a minimal overlap by application) and the lack of substitutability across XNBR for different applications. Accordingly, customers generally did not express strong views regarding the impact of the Transaction on the availability of a sufficient number of suppliers or on prices in the EEA.⁶⁵ Only two customers considered that the Transaction may lead to a lack of choice of suppliers for XNBR customers in the EEA. However, both of these customers confirmed that they could turn to several suppliers based outside the EEA as an alternative to the merged entity.⁶⁶
- (81) Third, it appears that non-EEA XNBR manufacturers do constrain the Parties to some extent. The majority of EEA end-customers stated that they would consider procuring XNBR from outside the EEA in the event of a hypothetical small but significant and non-transitory increase in price in the EEA.⁶⁷ A number of global competitors have sufficient capacity and are well-placed to supply XNBR to the EEA. In particular, Kumho, the largest player worldwide, is already selling in the EEA via a European distributor and has won significant business from Synthomer in the EEA.⁶⁸ Moreover, Nippon Zeon until recently (2016) produced XNBR in the UK and now supplies EEA customers from Japan,⁶⁹ as well as having offices, warehouses and distributors in Europe.
- (82) In light of the limited increment, the evidence of scarce actual competition between the Parties, as well as the lack of concerns expressed in the course of the market investigation, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the market for XNBR or any of its potential sub-segments at either EEA or worldwide level.

⁶² Replies to questions 11 and 22 of Q2 - Questionnaire to XNBR customers.

⁶³ Replies to question 22 of Q2 - Questionnaire to XNBR customers.

⁶⁴ Replies to questions 27.1 and 28.1 of Q2 - Questionnaire to XNBR customers as well as the non-confidential minutes of a call with a XNBR customer, dated 12 December 2019.

⁶⁵ Replies to questions 38 and 40 of Q2 - Questionnaire to XNBR customers.

⁶⁶ Replies to questions 16 and 16.1 of Q2 - Questionnaire to XNBR customers as well as the non-confidential minutes of a call with a XNBR customer, dated 12 December 2019.

⁶⁷ Replies to question 16 of Q2 - Questionnaire to XNBR customers as well as the non-confidential minutes of a call with a XNBR customer, dated 12 December 2019.

⁶⁸ The Notifying Party explains that Synthomer lost a textiles customer to Kumho in 2019, representing c. [redacted] wet metric tonnes, i.e. twice the size of all of Omnova's sales of XNBR in the textile application in the EEA in 2018.

⁶⁹ According to the Notifying Party's market intelligence.

4.5. Carboxylated styrene butadiene latex (XSBR)

4.5.1. Market definition

- (83) XSBR is an aqueous emulsion polymer of styrene and butadiene used predominantly in the paper and carpet-backing industries.

4.5.1.1. Product market

Commission's precedents

- (84) In previous cases, the Commission identified a separate product market for XSBR,⁷⁰ and considered narrower segments by application.⁷¹ In these previous cases, the Commission based its assessment on XSBR used for paper applications as the narrowest plausible market definition, but did not specifically define separate XSBR product markets by application as those concentrations did not give rise to serious doubts with regards to XSBR regardless of the product market definition used.⁷² The Commission also considered a further sub-segmentation within applications by grade qualities, but has in the past concluded against doing so.⁷³ Finally, the Commission has previously considered whether SA and XSBR should be considered to form one market, but has concluded against it.⁷⁴

The Notifying Party's view

- (85) The Notifying Party considers that XSBR should not be sub-segmented by application, because the product is the same across many applications and there is strong supply-side substitutability between XSBR products for different applications.⁷⁵
- (86) The Notifying Party further argues that XSBR can be substitutable or face constraints from other products with different chemical compositions (such as SA) or even other non-chemical technologies (such as thermal or mechanical bonding for XSBR in the non-woven application). It therefore submits that XSBR and SA, on the one hand, and XSBR and non-chemical bonding technologies for nonwovens, on the other, may comprise plausible product markets, while noting that, in any event, the precise definition of the relevant product market can be left open.

The Commission's assessment

- (87) The market investigation provided indications that an overall market for XSBR would be appropriate, without the need for further segmentation.⁷⁶ As regards

⁷⁰ See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; and M.5355 - *BASF/CIBA*, decision of 12.03.2009.

⁷¹ See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; and M.5355 - *BASF/CIBA*, decision of 12.03.2009.

⁷² See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; and M.5355 - *BASF/CIBA*, decision of 12.03.2009.

⁷³ See case M.5355 - *BASF/CIBA*, decision of 12.03.2009.

⁷⁴ See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; and M.5355 - *BASF/CIBA*, decision of 12.03.2009.

⁷⁵ Form CO, paragraph 6.26 *et seq.*

⁷⁶ Replies to questions 7- 10 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

segmentation by application, the market investigation supported the claim that there is a strong supply-side substitutability between different grades and applications of XSBR. XSBR of different grades and applications are produced using the same manufacturing process, technology, equipment and production lines, with limited time required to switch.⁷⁷ The market investigation was overall inconclusive on demand-side substitutability for XSBR across different applications.⁷⁸

- (88) However, the market investigation did not support the Notifying Party's claim that XSBR faces constraints from other products with different chemical compositions (such as SA) or even other non-chemical technologies. The majority of customers that responded to the market investigation consider that other latex dispersions (including SA) could not be used as a substitute for XSBR.⁷⁹ Similarly, the market investigation did not reveal strong supply-side substitutability between XSBR and SA.⁸⁰
- (89) In any event, for the purposes of assessing the Transaction the exact scope of the product market definition can be left open since the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any of the two above-mentioned alternative market definitions (XSBR as a single product or sub-segmented by applications).

4.5.1.2. Geographic market

Commission's precedents

- (90) The Commission has previously considered the relevant geographic market for all types of synthetic latex products to be EEA-wide.⁸¹

The Notifying Party's view

- (91) The Notifying Party submits that there have not been any significant changes in the geographic market for XSBR since the Commission's decision in *BASF/CIBA* and that the relevant geographic market for XSBR is EEA-wide.⁸²

The Commission's assessment

- (92) The market investigation did not provide the Commission with strong reasons to depart from its previous practice.⁸³ Therefore, the Commission considers that, for the case at hand, the relevant geographic market for XSBR is EEA-wide. Nevertheless, the appropriate geographic market definition can be left open, given that the Transaction would not raise serious doubts regarding the market for XSBR regardless of whether the market is considered EEA-wide or worldwide.

⁷⁷ Replies to question 6 of Q6 - Questionnaire to XSBR, SA and HS-SB competitors.

⁷⁸ Replies to question 9 of Q3 - Questionnaire to XSBR, SA and HS-SB customers

⁷⁹ Replies to questions 7 and 8 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

⁸⁰ Replies to question 9 of Q6 - Questionnaire to XSBR, SA and HS-SB competitors.

⁸¹ See M.5355 - *BASF/CIBA*, decision of 12.03.2009.

⁸² Form CO, paragraph 6.36 *et seq.*

⁸³ Replies to question 12 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

4.5.2. Competitive assessment

- (93) Both Parties supply XSBR worldwide and in the EEA. At a worldwide level, the Transaction only gives rise to an affected market in the nonwoven application. In the EEA, the Parties' activities only overlap in the supply of XSBR overall and in the nonwoven application. The Notifying Party's estimates of the Parties' and their largest competitors' market shares in the EEA are as follows.⁸⁴

Table 3: Market share estimates for XSBR, 2018 (by volume)⁸⁵

Supplier	XSBR overall - EEA	XSBR for nonwoven products - EEA	XSBR for nonwoven products - worldwide ⁸⁶
Synthomer	[30-40]%	[20-30]%	[5-10]%
Omnova	[0-5]%	[30-40]%	[20-30]%
Combined	[30-40]%	[60-70]%	[20-30]%
Trinseo	[20-30]%	[5-10]%	[0-5]%
BASF	[20-30]%	[20-30]%	[20-30]%
EOC Group	[5-10]%	-	-
<i>Others</i>	[5-10%]	[5-10%]	[40-50]%
<i>Total market size (wet tonnes)</i>	[redacted]	[redacted]	[redacted]

Source: Notifying Party's estimates

The Notifying Party's view

- (94) The Notifying Party submits that the Parties do not exert a competitive constraint on each other in the EEA. The Parties significantly overlap in the EEA only with respect to nonwoven application. In this segment, Omnova's market share ([30-40]%) can entirely be attributed to its sales to one customer ([*Omnova's only XSBR customer*]) as a result of a long-term global supply agreement centred on the US.⁸⁷ [*Business secret regarding Omnova's business strategy and quantities produced*]. Thus, the Notifying Party argues that Omnova is not an effective competitor to Synthomer. Conversely, Synthomer supplied [*Omnova's only XSBR customer*] in the past on a trial basis, however, its contract was terminated as [*business secret regarding reason for termination of Notifying Party's contract*] and [*Omnova's only XSBR customer*] now sources exclusively from Omnova. On this basis, the Notifying Party claims that the Parties do not exert any competitive constraint on each other for the supply of XSBR.

The Commission's assessment

- (95) If the XSBR market were to be considered worldwide, the combined market share of the Parties would remain below 20% under any plausible product market definition, except for a market for XSBR used in the nonwoven applications. Even on this

⁸⁴ To the extent that the market for XSBR were to include SA or non-chemical binding processes, the Parties' combined market shares would be significantly lower under any plausible segmentation, so this is not considered further.

⁸⁵ According to the Notifying Party's estimates, the market shares of the Parties did not substantially differ in the past three years and market shares in value would not substantially differ from market shares in volume, except that in 2016 Synthomer's market share by value (only) was somewhat lower, at around [20-30]%.

⁸⁶ The Notifying Party estimates that the Parties' combined worldwide market shares would remain below 20% for XSBR overall as well as for each application, except for the XSBR nonwoven application.

⁸⁷ Omnova has also made some sales of XSBR to another customer pursuant to a global supply arrangement, but these are *de minimis* and have been declining over the last few years.

narrow segmentation the Parties market shares would be less than [30-40]% (Synthomer: [5-10]%, Omnova [20-30]%). The HHI post-Transaction will remain below [redacted], with a HHI increment below [redacted]. A number of competitors will compete with the merged entity, including BASF, Mallard Creek and Trinseo. Therefore, under a worldwide geographic market definition, the Transaction would not be likely to raise competition concerns irrespective of the product market definition considered.

- (96) On the overall market for the supply of XSBR (all applications) in the EEA, the Parties would continue to face competition from a number of strong XSBR suppliers. Moreover, the increment from the Transaction would remain marginal ([0-5]%) with a HHI increment of <[redacted]. Therefore, the Commission considers that the Transaction does not raise competition concerns in relation to the overall XSBR market in the EEA.
- (97) If the market is segmented by application, the Parties significantly overlap only in the market for XSBR for nonwoven applications in the EEA. The market investigation confirmed the Notifying Party's claim that Synthomer and Omnova are not close competitors. Most notably, it confirmed that Omnova is considered to be of limited importance in the EEA with [*business secret regarding Omnova's production facilities*], and it only supplies one customer, as a result of [*business secret regarding Omnova's business strategy*]. In any event, it is likely that post-Transaction a sufficient number of competitors will exercise competitive constraints on the merged entity in the market for XSBR for nonwoven applications in the EEA.⁸⁸ The market investigation also confirmed that Synthomer is not a credible competitor to Omnova for the sole customer that Omnova supplies in the EEA.⁸⁹
- (98) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market on the market for XSBR or any of its potential sub-segments at either EEA or worldwide level.

4.6. Styrene acrylic (SA)

4.6.1. Market definition

- (99) SA is a copolymer of styrene monomers with acrylic acid esters. It is mainly used in paints and coatings, as well as paper, and is also used in printing inks, floor polishes, adhesives (for ceramic tile, laminating, and cold sealing), sealants and caulks, cement additives, mortar mixes, self-levelling floor screeds, concrete roof tile and fibrocement coatings, flexible roofing membranes, elastomeric crack-bridging wall coatings, and nonwoven fabric applications.

⁸⁸ Replies to questions 15, 17 to 23, 25 and 26 of Q3 - Questionnaire to XSBR, SA and HS-SB customers and replies to questions 5, 12-14 of Q6 - Questionnaire to XSBR, SA and HS-SB competitors.

⁸⁹ Non-confidential minutes of a call with a XSBR customer, dated 7 November 2019.

4.6.1.1. Product market

Commission's precedents

- (100) The Commission has previously identified a separate product market for SA,⁹⁰ and considered narrower segments by application, notably the paper application.⁹¹ In these previous cases, the Commission based its assessment on SA used for paper applications as the narrowest plausible market definition, but did not specifically define separate product markets by application.⁹² The Commission also considered a further sub-segmentation within applications by grade qualities, but concluded against doing so.⁹³ Finally, the Commission previously considered whether SA and XSBR are part of the same market, but concluded against it.⁹⁴

The Notifying Party's view

- (101) The Notifying Party agrees with the previous assessment of the Commission and provided market share data on the basis of all plausible market definitions (on the basis of an overall market for SA, a segmentation by application and a market encompassing both XSBR and SA).⁹⁵

The Commission's assessment

- (102) The results of the market investigation clearly indicate that SA is not substitutable with other types of latex dispersion (including XSBR).⁹⁶ As regards a segmentation by application, while the majority of customers consider that such segmentation is not necessary,⁹⁷ some of them indicate that they could not use another type of SA for the manufacture of their end-products. On the supply-side, all competitors that expressed a view use the same manufacturing equipment to produce different grades of SA, thus suggesting strong supply-side substitutability across different applications.⁹⁸
- (103) In any event, the Commission considers that, for the purpose of the present case, the exact scope of the product market definition for SA can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market, regardless of the product market definition (i.e. an overall market for SA or a segmentation by application).

⁹⁰ See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; and M.5355 - *BASF/CIBA*, decision of 12.03.2009.

⁹¹ See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; and M.5355 - *BASF/CIBA*, decision of 12.03.2009.

⁹² See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; and M.5355 - *BASF/CIBA*, decision of 12.03.2009.

⁹³ See cases M.5355 - *BASF/CIBA*, decision of 12.03.2009; and M.5424 - *Dow/Rohm and Haas*, decision of 08.01.2009.

⁹⁴ See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; and M.5355 - *BASF/CIBA*, decision of 12.03.2009.

⁹⁵ Form CO, paragraph 6.181 *et seq.*

⁹⁶ Replies to questions 28 and 29 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

⁹⁷ Replies to question 31 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

⁹⁸ Replies to question 20 of Q6 - Questionnaire to XSBR, SA and HS-SB competitors.

4.6.1.2. Geographic market

Commission's precedents

(104) The Commission has previously considered the relevant geographic market for SA to be EEA-wide.⁹⁹

Notifying Party's view

(105) The Notifying Party agrees with the previous assessment of the Commission.¹⁰⁰

The Commission's assessment

(106) The market investigation did not provide any indications suggesting that the Commission should depart from its past decisional practice.¹⁰¹

(107) In any event, the Commission considers that, for the purpose of the present case, the exact scope of the geographic market definition for SA and its sub-segments can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market, regardless of the geographic market definition (i.e. EEA or worldwide).

4.6.2. Competitive assessment

(108) Both Parties are active in the production of SA and sell it into the paints and coatings, nonwoven and construction applications, amongst others.

(109) The Transaction does not give rise to any affected SA market at worldwide level under any plausible product market definition. At EEA level, the Transaction does not give rise to an affected market if the relevant product market is considered to be SA for all applications, and only gives rise to one horizontally affected market, namely the market for the supply of SA for paints and coatings in the EEA, when considering SA by applications.

(110) According to the Notifying Party's estimates, in this market the Parties had a combined market share of [20-30]% in volume in 2018, with a limited increment of [0-5]% from Omnova and a HHI increment of <[redacted].¹⁰² On this market, the merged entity would continue to face competition from a number of strong competitors, such as BASF ([20-30]%) and Dow Chemical ([10-20]%), as well as other smaller players.

(111) More generally, the results of the market investigation confirmed that the Parties are not particularly close competitors for the supply of SA,¹⁰³ both in terms of

⁹⁹ See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; and M.5355 - *BASF/CIBA*, decision of 12.03.2009; and M.1467 - *Rohm&Haas/Morton*, decision of 19.04.1999; and M.1097 - *Wacker/Air Products*, decision of 04.08.1998; and M.751 - *Bayer/Hüls*, decision of 03.07.1996.

¹⁰⁰ Form CO, paragraph 6.188 *et seq.*

¹⁰¹ Replies to questions 33 and 33.1 of Q3 - Questionnaire to XSBR, SA and HS-SB customers and replies to questions 18, 24 and 24.1 of Q6 - Questionnaire to XSBR, SA and HS-SB competitors.

¹⁰² According to the Notifying Party's estimates, the market shares of the Parties did not substantially differ in the past three years and market shares in value would not substantially differ from market shares in volume.

¹⁰³ Replies to question 38.1 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

geographic coverage and in terms of product offering,¹⁰⁴ even within the paints and coatings application. The majority of market participants responding to the market investigation did not identify Omnova within the top five suppliers of SA for paints and coatings in the EEA.¹⁰⁵

- (112) Finally, the vast majority of customers who responded to the market investigation confirmed that they will continue to have a number of alternative suppliers from which to procure SA post-Transaction.¹⁰⁶
- (113) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the supply of SA under any plausible definition, including in the supply of SA for paints and coatings in the EEA.

4.7. High solids styrene butadiene (HS-SB)

4.7.1. Market definition

- (114) HS-SB is a type of emulsion-polymerised latex. It is primarily used for carpet backing and moulded foam products (such as mattresses and pillows), but it can also be used in other applications, including footwear (insoles), adhesives and sealants, construction, tyres, glove dipping, and other rubber goods (e.g. conveyor belts).

4.7.1.1. Product market

Commission's precedents

- (115) The Commission has not previously analysed the market for HS-SB. However, in previous cases involving synthetic latexes, the Commission has consistently defined product markets according to the type of latex dispersion (i.e. chemical composition) and also by application.¹⁰⁷ The Commission also found that synthetic latexes should not be further segmented according to the grade qualities of the latex dispersions.¹⁰⁸

The Notifying Party's view

- (116) The Notifying Party claims that the relevant product market is the overall market for HS-SB, without the need for any further segmentation.¹⁰⁹

The Commission's assessment

- (117) The market investigation generally confirmed the Party's view. Most customers consider that HS-SB is not substitutable with other types of latex dispersions, and that no further segmentation (e.g. by application or grades) is needed.¹¹⁰ On the

¹⁰⁴ Replies to question 38.1.1 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

¹⁰⁵ Replies to question 35 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

¹⁰⁶ Replies to question 39 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

¹⁰⁷ See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; M.5355 - *BASF/CIBA*, decision of 12.03.2009; M.5424 - *Dow/Rohm and Haas*, decision of 08.01.2009; and M.1993 - *Rhodia/Raisio/JV*, decision of 20.07.2000.

¹⁰⁸ See case M.5355 - *BASF/CIBA*, decision of 12.03.2009.

¹⁰⁹ Form CO, paragraph 6.204 *et seq.*

¹¹⁰ Replies to questions 42 and 43 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

supply-side, competitors that responded to the market investigation generally use the same manufacturing equipment to produce different grades of HS-SB, thus suggesting strong supply-side substitutability across different HS-SB grades and applications.¹¹¹

- (118) In any event, the Commission considers that, for the purpose of the present case, the exact scope of the product market definition for HS-SB can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market, regardless of the product market definition (i.e. overall market for HS-SB or segmentation by application or grade).

4.7.1.2. Geographic market

Commission's precedents

- (119) The Commission has not previously analysed the market for HS-SB. However, the Commission has previously considered the relevant geographic market for all types of synthetic latex products to be EEA-wide.¹¹²

The Notifying Party's view

- (120) In accordance with the general approach of the Commission with respect to synthetic latex products, the Notifying Party submits that the market for HS-SB should be defined as EEA-wide.¹¹³

The Commission's assessment

- (121) The market investigation confirmed that the geographic market is likely to be EEA-wide, but also provided indications that the market could be wider in scope. While the majority of EEA customers that responded to the market investigation indicated that they do not consider suppliers based outside the EEA to be a credible alternative source of supply of HS-SB for their EEA-facilities,¹¹⁴ a number of EEA customers do purchase HS-SB from suppliers with production plants outside the EEA for their European needs.¹¹⁵
- (122) In any event, the Commission considers that, for the purpose of the present case, the exact scope of the geographic market definition for HS-SB can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market, regardless of the geographic market definition (i.e. EEA or worldwide).

4.7.2. Competitive assessment

- (123) The Transaction gives rise to horizontally affected markets at EEA-level and worldwide. The Notifying Party estimates that the Parties' combined market share in the supply of HS-SB in the EEA is [40-50]%, with an increment from Omnova of

¹¹¹ Replies to question 34 and 36 of Q6 - Questionnaire to XSBR, SA and HS-SB competitors.

¹¹² See cases M.5927 - *BASF/Cognis*, decision of 30.11.2010; and M.5355 - *BASF/CIBA*, decision of 12.03.2009; and M.1467 - *Rohm&Haas/Morton*, decision of 19.04.1999; and M.1097 - *Wacker/Air Products*, decision of 04.08.1998; and M.751 - *Bayer/Hüls*, decision of 03.07.1996.

¹¹³ Form CO, paragraph 6.208 *et seq.*

¹¹⁴ Replies to questions 44 and 45 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

¹¹⁵ Replies to question 46 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

less than [0-5]%. At worldwide level, their combined market share is [20-30]%, with an increment from Omnova of less than [0-5]%. At both worldwide and EEA level, the HHI increment from the Transaction remains below [redacted].

- (124) Omnova’s activities are negligible and do not appear to constrain Synthomer. While Synthomer produces and sells HS-SB for various applications, Omnova [*business secret regarding Omnova's supply sources, quantities produced and sales and business strategy*]. In 2018, Omnova had limited sales of EUR [turnover] to [number of HS-SB customers Omnova sold to] EEA customers and only had sales of EUR [turnover] worldwide (out of total worldwide sales of HS-SB of EUR [redacted] million).¹¹⁶
- (125) The results of the market investigation confirmed that the Parties are not close competitors, that Omnova is a minor player and that other suppliers will remain active in the EEA and worldwide (such as Versalis, Synthos and Goodyear).¹¹⁷
- (126) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for HS-SB, regardless of whether the market is considered EEA-wide or worldwide or segmented by application.

5. COMMITMENTS

5.1. Framework for the assessment of the Commitments

- (127) Where a concentration raises serious doubts as regards its compatibility with the internal market, the parties may undertake to modify the concentration to remove the grounds for the serious doubts identified by the Commission. Pursuant to Article 6(2) of the Merger Regulation, where the Commission finds that, following modification by the undertakings concerned, a notified concentration no longer raises serious doubts, it shall declare the concentration compatible with the internal market pursuant to Article 6(1)(b) of the Merger Regulation.
- (128) As set out in the Commission’s Remedies Notice,¹¹⁸ the commitments have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view.¹¹⁹
- (129) In assessing whether commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale and scope of the proposed commitments, with reference to the structure and particular characteristics of the market in which the transaction is likely to significantly impede effective competition, including the position of the parties and other participants on the market.¹²⁰

¹¹⁶ Form CO, paragraph 6.214

¹¹⁷ Replies to questions 46 to 50 of Q3 - Questionnaire to XSBR, SA and HS-SB customers.

¹¹⁸ Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, the “Remedies Notice” (OJ C 267, 22.10.2008, p. 1-27).

¹¹⁹ Remedies Notice, paragraph 9.

¹²⁰ Remedies Notice, paragraph 12.

(130) In order for the commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time. Concerning the form of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the requisite standard. Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty, at the time of its decision, that it will be possible to implement them, and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that serious doubts are removed.¹²¹ Divestiture commitments are normally the best way to eliminate competition concerns resulting from horizontal overlaps.

5.2. Proposed Commitments

(131) In order to render the concentration compatible with the internal market, the Notifying Party submitted a set of commitments under Article 6(2) of the Merger Regulation on 13 December 2019 (the “Initial Commitments”), described below.

(132) The Commission market tested the Initial Commitments to assess whether they are sufficient and suitable to remedy the serious doubts identified in Section 4.3 of this Decision. The feedback received during the market test confirmed that the Initial Commitments could in principle remedy the serious doubts identified by the Commission, but subject to modifications so as to address a number of specific issues described below in recitals 143 - 156. In order to address these issues, the Notifying Party submitted revised commitments under Article 6(2) of the Merger Regulation on 14 January 2020 (the “Final Commitments”).

5.2.1. Description of the Initial Commitments

(133) In order to render the Transaction compatible with the internal market, the Notifying Party submitted commitments consisting of the divestiture of Synthomer’s global VP Latex business, which is currently operated from its plant in Marl (Germany) and sold under the Pyratex brand (the “Divestment Business”) to a suitable purchaser (the “Purchaser”).

(134) The Initial Commitments would be implemented through a carve-out of the Divestment Business from Synthomer's plant in Marl (Germany).

(135) The Divestment Business includes assets necessary to manufacture and sell VP Latex. In particular, the Divestment Business includes the following main intangible and tangible assets:

- (a) all tangible manufacturing assets that are exclusively or primarily used by the Divestment Business;
- (b) all intangible assets (including intellectual property rights, know-how, recipes and other information) which are exclusively or primarily used by the Divestment Business (including the Pyratex brand), and the benefit of licenses to other relevant intangible assets currently used by Synthomer (or

¹²¹ Remedies Notice, paragraph 10.

necessary) to manufacture, sell and use VP Latex but which are otherwise not exclusively or primarily used by the Divestment Business;

- (c) all raw materials, stocks, works in progress, and semi-finished and finished goods relating exclusively to the Divestment Business (and agreed levels of other raw materials needed to operate the business when the sale of the Divestment Business is closed in line with the Purchaser's requirements);
 - (d) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (e) all contracts, commitments and customer orders of the Divestment Business;
 - (f) all customer, credit and other records of the Divestment Business;
 - (g) any other tangible or intangible assets which the purchaser may reasonably require to successfully complete the transfer of the Divestment Business to an alternative production location; and
 - (h) the personnel needed to run the Divestment Business, namely (i) an employee with product/applications knowledge and customer technical service knowledge for VP Latex, (ii) an employee with manufacturing/operations know-how for VP Latex, and (iii) a sales and marketing/commercial product manager for VP Latex, including the Hold Separate Manager.
- (136) Furthermore, with the aim of ensuring a smooth transfer of the Divestment Business, the Notifying Party committed to offer a number of transitional supply arrangements to the Purchaser during the integration process to enable the Divestment Business to maintain and grow its sales of VP Latex as well as to facilitate this integration. To this end, the Notifying Party will enter into two transitional agreements (together, the "Transitional Agreements"):
- (a) a "Transitional Toll Manufacturing Agreement", under which the Notifying Party will continue to manufacture VP Latex at its Marl plant for the Purchaser on a tolling basis [*cost basis of Transitional Toll Manufacturing Agreement*], for a period of up to up to [*duration of Transitional Toll Manufacturing Agreement*] after the sale of the Divestment Business,
 - (b) a "Transitional Services Agreement", under which the Notifying Party will provide sales and marketing, technical, logistical, procurement and product/manufacturing support to the purchaser ([*cost basis of Transitional Services Agreement*]) for a period of up to [*duration of Transitional Services Agreement*] (depending on the service) from the sale of the Divestment Business.
- (137) Each of the Transitional Agreements may be extended for up to [*extended duration of Transitional Agreements*] if needed (depending on the service). The Purchaser will be required to use best efforts to complete the transition to its own manufacturing as soon as possible.
- (138) In addition to the standard purchaser requirements contained in the Commission's template for divestiture remedies, the Initial Commitments provide that the Purchaser must (i) have the proven capability and incentive to sell VP Latex directly

or indirectly, (ii) have the proven knowledge of the relevant chemistry, and (iii) demonstrate on the basis of its technical and business plan its ability and incentive to establish manufacturing lines for VP Latex (or to integrate it into an existing production line) in the EEA in a timely and economic way and continue the production of VP Latex in the long run.

- (139) The Initial Commitments also provide that the Notifying Party should enter into related commitments, *inter alia* regarding the separation of the Divestment Business from its retained businesses, the preservation of the viability, marketability and competitiveness of the Divestment Business, including the appointment of a monitoring trustee and, if necessary, a divestiture trustee.
- (140) Finally, the Initial Commitments provide for a so-called “upfront buyer provision” pursuant to which the Transaction cannot be implemented before the Notifying Party 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.
- (141) The Notifying Party argues that the Initial Commitments would eliminate the Commission’s serious doubts in relation to the supply of VP Latex in the EEA (and indeed worldwide). In particular, the Notifying Party is of the view that:
- (a) the Initial Commitments would remove the overlap between the Parties in VP Latex as Synthomer would divest its worldwide VP Latex business;
 - (b) the Divestment Business is a distinct business that includes the necessary assets and personnel to ensure its viability and competitiveness on a lasting basis in the hands of a suitable purchaser, where it will provide effective competition in the supply of VP Latex in the EEA and worldwide; and
 - (c) the Transitional Agreements will ensure customers’ continued access to VP Latex and the efficient transfer of the Divestment Business to the Purchaser.

5.2.2. *Assessment of the Initial Commitments*

- (142) The Commission launched its market test of the Initial Commitments and sought to assess the scope and effectiveness of the Commitments, the viability and attractiveness of the Divestment Business, and the appropriateness of the purchaser suitability criteria.

5.2.2.1. *Suitability of the Initial Commitments to remove serious doubts*

- (143) As explained in Section 4.3 above, the Commission considers the Transaction raises serious doubts as to its compatibility with the internal market as regards the overlap between the Parties’ activities in the market for VP Latex.
- (144) The Initial Commitments would remove the entire overlap between the Parties in the EEA ([*volume*]kt, EUR [*value*]) and worldwide ([*volume*]kt, EUR [*value*]), thus rendering the combined entity’s market share equal to Omnova’s market share pre-Transaction, at both EEA ([60-70]%) and worldwide level ([30-40]%).
- (145) In addition, by requiring a sale to a purchaser with the ability and incentive to establish manufacturing lines for VP Latex (or integrate them) and sell the product in

the EEA, the Initial Commitments would address the concern expressed by customers that post-Transaction there would only remain one supplier of VP Latex in the EEA. The divestment would ensure that there is a credible alternative supplier close to customers' European production facilities.

- (146) The market test of the Initial Commitments confirmed their suitability. The majority of competitors consider that the Initial Commitments would create a credible player in the market for VP Latex in the EEA and worldwide and that a suitable purchaser should be able to recover the investment in setting up a manufacturing line for VP Latex (via the Divestment Business) from the supply of VP Latex in a timely manner.¹²² Respondents expect customers to have the incentive to procure VP Latex from the Divestment Business.¹²³
- (147) The suitability of the Initial Commitments was also supported by customers' responses, in particular as the majority of customers that responded indicated that they would consider qualifying the Purchaser of the Divestment Business as a supplier of VP Latex, and expected this qualification to be significantly easier than qualifying another new supplier they had not used in the past.¹²⁴
- (148) In light of the above, the Commission considers that the Initial Commitments proposed by the Notifying Party are suitable to address the serious doubts that the Transaction would otherwise give rise to.

5.2.2.2. Viability and competitiveness of the Divestment Business

- (149) The Commission considers that the Divestment Business is viable and competitive. The Divestment Business achieved sales of EUR [*turnover*] worldwide in 2018, from more than [*number of customers*] customers located in 21 countries. The Notifying Party submits that the Divestment Business is profitable with a profit margin of [*redacted*]% in 2017 and [*redacted*]% in 2018.
- (150) The market investigation confirmed that it is feasible to transfer a VP Latex production line as envisaged in the Initial Commitments and that the opportunity would be attractive for a suitable purchaser.¹²⁵ The majority of respondents also consider that the Divestment Business contains the necessary assets, personnel and contracts for a suitable purchaser to effectively set up a VP Latex production line and compete effectively with the merged entity in the long run.¹²⁶
- (151) In addition, most respondents confirmed that the Transitional Agreements proposed by the Notifying Party are adequate to ensure a smooth transfer of the Divestment Business.¹²⁷ However, the results of the market test also indicated that, depending on the need for and length of customers' requalification processes, the duration of

¹²² Replies to questions 2 and 17 of R1 - VP Latex Market Test of the Commitments - Competitors.

¹²³ Replies to question 5 of R1 - VP Latex Market Test of the Commitments - Competitors.

¹²⁴ Replies to questions 9 and 10 of R2 - VP Latex Market Test of the Commitments - Customers.

¹²⁵ Replies to questions 2, 18 and 19 of R1 - VP Latex Market Test of the Commitments - Competitors.

¹²⁶ Replies to questions 1, 3 and 4 of R1 - VP Latex Market Test of the Commitments - Competitors and replies to questions 1 and 2 of R2 - VP Latex Market Test of the Commitments - Customers.

¹²⁷ Replies to questions 11 to 14 and 16 of R1 - VP Latex Market Test of the Commitments - Competitors and replies to questions 4, 7 and 8 of R2 - VP Latex Market Test of the Commitments - Customers.

the Transitional Agreements envisaged in the Initial Commitments may not be sufficient to ensure the viability of the Divestment Business.

- (152) In light of the above, the Commission considers that the Initial Commitments are adequate to ensure the viability and competitiveness of the Divestment Business if it is acquired by a suitable purchaser, but that the Initial Commitments should be amended to provide for the possibility of an additional extension of the Transitional Agreements.

5.2.2.3. Marketability, purchaser criteria and buyers

- (153) As outlined in recital 138 above, the Initial Commitments proposed by the Notifying Party required that the Purchaser have knowledge of the relevant chemistry and prove its ability and incentive to establish manufacturing lines for VP Latex in the EEA and to sell VP Latex directly or via distributors, as well as to have the expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force.
- (154) The majority of respondents to the market investigation confirmed that these criteria were appropriate and that no further requirements are needed.¹²⁸ There was one exception – the majority of customers considered that it is important for the Purchaser to have an integrated sales network in the EEA. This is necessary to ensure the reliability of the supply chain, facilitate an efficient transition to the new Purchaser, and to reflect the current practice of the largest customers for a technical product such as VP Latex.
- (155) The majority of competitors that responded to the market test considered the Divestment Business to be an attractive asset, likely to appeal to suitable purchasers. Indeed, a few respondents expressed interest in acquiring the Divestment Business.¹²⁹
- (156) In light of the above, the Commission considers that the Divestment Business is perceived as a marketable business, but that the purchaser criteria in the Initial Commitments should be amended to require that the Purchaser have an integrated sales network in the EEA.

5.2.3. *Description and assessment of the Final Commitments*

- (157) In response to the Commission's feedback regarding the outcome of the market test and its preliminary assessment, the Notifying Party submitted the Final Commitments on 14 January 2020.
- (158) The Final Commitments remove the possibility of a buyer having only an indirect capability to sell VP Latex in the EEA (i.e. via distributors), while preserving the remainder of the elements constituting the Initial Commitments. In the Final Commitments, the Purchaser must have the proven capability and incentive to sell VP Latex via an efficient and integrated sales network in the EEA, which may be demonstrated by having such an existing capability for products similar to VP Latex.

¹²⁸ Replies to questions 7 to 10 of R1 - VP Latex Market Test of the Commitments - Competitors and replies to questions 3 to 6 of R2 - VP Latex Market Test of the Commitments - Customers.

¹²⁹ Replies to questions 18 to 19 of R1 - VP Latex Market Test of the Commitments - Competitors.

(159) In addition, the Final Commitments provide for a possibility for the Purchaser to require an additional [*duration of extended Transitional Agreements*] extension of the Transitional Agreements [*cost basis of extended Transitional Agreements*].¹³⁰

(160) The Commission deems the Final Commitments are sufficient to eliminate the serious doubts as to the compatibility of the concentration with the internal market.

5.2.4. *Conclusion on the Final Commitments*

(161) For the reasons outlined above, and in view of the results of the market test, the Commission considers the Final Commitments to be sufficient in scope and suitable to eliminate the serious doubts as to the compatibility of the Transaction with the internal market in relation to VP Latex.

6. CONDITIONS AND OBLIGATIONS

(162) 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.

(163) 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 Parties. 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.

(164) In accordance with the distinction described above, the decision in this case is conditioned on the full compliance with the requirements set out in Section B of the Final Commitments (including the Schedule), which constitute conditions. The remaining requirements set out in the other Sections of the Final Commitments constitute obligations on the Parties.

(165) The full text of the Final Commitments is annexed to this decision and forms an integral part thereof.

7. CONCLUSION

(166) For the above reasons, the Commission has decided not to oppose the notified operation as modified by the Final 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 section B (including the Schedule) of the

¹³⁰ The Final Commitments also included certain clarificatory modifications that were not of major significance and so are not discussed in this decision.

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
Executive Vice-President

CASE No. COMP/M. 9502

SYNTHOMER / OMNOVA SOLUTIONS

COMMITMENTS TO THE EUROPEAN COMMISSION

14 January 2020

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “**Merger Regulation**”), Synthomer plc (“**Synthomer**” or the “**Notifying Party**”) hereby enters into the following Commitments (the “**Commitments**”) vis-à-vis the European Commission (the “**Commission**”) with a view to rendering the acquisition by Synthomer of Omnova Solutions, Inc. (“**Omnova**”) (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 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**”).

Agreements: the Transitional Toll Manufacturing Agreement and the Transitional Services Agreement.

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 8 and described more in detail in the Schedule at paragraph 3.

Best Efforts: 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.

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 or businesses as defined in Section B and in the Schedule which the Notifying Party commits to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Synthomer and who has/have received from Synthomer 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.

Fast-Track Dispute Resolution Procedure: shall have the meaning given to that term in paragraph 49.

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

Hold Separate Manager: the person appointed by Synthomer 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 Synthomer, and who has/have the duty to monitor Synthomer's compliance with the conditions and obligations attached to the Decision.

Omnova: Omnova Solutions, Inc., an Ohio corporation.

Parties: the Notifying Party/Notifying Parties and the undertaking that is the target of the concentration.

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 22 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Retained Business: The businesses of Synthomer and Omnova other than the Divestment Business.

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

Synthomer: Synthomer plc, a public limited company incorporated under the laws of England and Wales, with its registered office at Temple Fields, Harlow, Essex, CM20 2BH and registered with the Company Register at Companies House under number 00098381.

Transitional Services Agreement: shall have the meaning given to that term in paragraph 9.

Transitional Toll Manufacturing Agreement: shall have the meaning given to that term in paragraph 10.

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.

VP Latex: vinyl pyridine latex.

VP Latex Business: Synthomer's VP Latex business as defined in Section B and the Schedule, which Synthomer commits to divest.

VP Latex Products: all of Synthomer's VP Latex products, including Pyratex 221, Pyratex 240, Pyratex 241.

SECTION B: THE COMMITMENT TO DIVEST AND THE DIVESTMENT BUSINESS

Commitment to divest

2. In order to maintain effective competition, Synthomer commits 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 23 of these Commitments.
3. To carry out the divestiture, Synthomer commits 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 Synthomer has not entered into such an agreement at the end of the First Divestiture Period, Synthomer shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 36 in the Trustee Divestiture Period.
4. The proposed Concentration shall not be implemented before Synthomer 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 23.
5. Synthomer shall be deemed to have complied with this commitment if:
 - 5.1 by the end of the Trustee Divestiture Period, Synthomer 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 23; and
 - 5.2 the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.

6. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of [...] 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 Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 64 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

7. The Divestment Business consists of the VP Latex Business that is operated by Synthomer. 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 that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business and all staff that are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
 - 7.1 all tangible manufacturing assets that are exclusively or primarily used by the VP Latex Business, including reactors [...] and [...] at Synthomer's [...] plant;
 - 7.2 all intangible assets (including intellectual property rights, know-how, recipes and other information) which are exclusively or primarily used by the Divestment Business (including the "Pyratex" brand), and the benefit of licences to other relevant intangible assets currently used by Synthomer (or necessary) to manufacture, sell and use the VP Latex Products but which are otherwise not exclusively or primarily used by the Divestment Business;
 - 7.3 all raw materials, stocks, works in progress, and semi-finished and finished goods relating exclusively to the Divestment Business; and agreed levels of other raw materials needed to operate the business on Closing in line with the Purchaser's requirements;
 - 7.4 all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - 7.5 all contracts, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business;
 - 7.6 any other tangible or intangible assets which the Purchaser may reasonably require to successfully complete the transfer of the Divestment Business to an alternative production location; and
 - 7.7 the Key Personnel.
8. To assist the transfer of the Divestment Business to the Purchaser, in addition the Divestment Business includes the benefit, for a transitional period of [...] (extendable at the option of the Purchaser with agreement of the Commission), of a transitional toll manufacturing agreement and a transitional services agreement. These Agreements are summarised below. Strict firewall procedures will be adopted

so as to ensure that any competitively sensitive information related to, or arising from the operation of these Agreements will not be shared with, or passed on to, anyone not involved with these Agreements.

9. Synthomer commits to provide toll manufacturing services in relation to the VP Latex Products for the Purchaser at Synthomer's [...] manufacturing facility at Marl, Germany (the "**Transitional Toll Manufacturing Agreement**", or "**TTMA**"). The TTMA will be [...], for a transitional period of up to [...] after Closing, and can be extended at the option of the Purchaser with agreement of the Commission for a period not exceeding [...]. At the option of the Purchaser it can be extended for a further period not exceeding [...], on a [...]. The Purchaser shall use best efforts to complete the transition to its own manufacturing as quickly as possible. Synthomer commits that it will continue to operate VP Latex production at [...] in the way in which it is operated at the date of these Commitments for the duration of the TTMA, to ensure the continued supply of the VP Latex Products to the Purchaser under the same costs structure and of the same quality and consistency as at the date of these Commitments.
10. To facilitate the efficient transfer of the Divestment Business to the Purchaser, Synthomer commits to provide to the Purchaser, the following transitional services relating to the Divestment Business [...] (the "**Transitional Services Agreement**" or "**TSA**"). This shall be for a period of up to [...] after Closing, and can be extended at the option of the Purchaser with agreement of the Commission for a period not exceeding [...]. At the option of the Purchaser it can be extended for a further period not exceeding [...], on a [...]. The Purchaser shall use best efforts to complete the transition as quickly as possible.
 - 10.1 Sales and marketing. Synthomer commits to provide training and technical assistance to the Purchaser, to the extent necessary to ensure the viability and/or competitiveness of the Divestment Business, to enable the Purchaser to assume responsibility for the sale (including distribution) and marketing of the VP Latex Products at a level similar to that currently provided by Synthomer in relation to the VP Latex Products for a period of up to [...] from the date of Closing (which can be extended at the option of the Purchaser with agreement of the Commission for a period not exceeding [...]);
 - 10.2 Technical customer service. Synthomer commits to provide training and assistance with customer qualification proceedings and troubleshooting, to the extent necessary to ensure the viability and/or competitiveness of the Divestment Business, for the duration of the TSA. This shall include the provision of data or information which a customer may require to compare the VP Latex product(s) manufactured and sold by the Divestment Business after Closing with the VP Latex product(s) previously manufactured and sold by Synthomer to that customer (or that the customer has qualified from Synthomer, even if it has not been sold the product);
 - 10.3 Logistics. Synthomer commits to provide for the continuation of current customer service and logistics services to the Purchaser, covering all aspects of processing a customer's orders and ensuring delivery of the VP Latex Products to customers, for a period of up to [...] from the date of Closing (which can be extended at the option of the Purchaser with agreement of the

Commission for a period not exceeding [...]). For the avoidance of doubt, [...];

- 10.4 Procurement. To the extent necessary to ensure the viability and/or competitiveness of the Divestment Business, Synthomer commits to provide support (including technical assistance) to the Purchaser on the transfer of procurement arrangements (including to facilitate the procurement of raw materials necessary for the manufacture of the VP Latex Products and to transition supplier relationships during the TSA period), for a period of up to [...] from Closing. If the Purchaser is not able to source such raw materials in a cost-effective manner, Synthomer commits to enter, at the option of the Purchaser and with agreement of the Commission, into back-to-back supply agreements with raw materials suppliers and to make such raw materials available to the Purchaser [...];
 - 10.5 Product and manufacturing transfer. Synthomer commits to provide training and reasonable technical assistance to support the Purchaser with scale-up and production trials at the Purchaser's facilities for the duration of the TSA, *i.e.* to put the know-how into practice, both in terms of following the recipe (product know-how) and understanding and applying the manufacturing techniques (process and manufacturing know-how). Synthomer will also provide reasonable technical assistance for the design and the commissioning of a new production facility for the production of the VP Latex Products or the adjustment of an existing production facility at the Purchaser's premises, on the basis of the know-how and technical documentation included in the Divestment Business. Synthomer will provide reasonable technical assistance to the Purchaser to obtain all licences, permits or authorisations issued by any governmental organisation that are required to produce and market VP Latex and are necessary for the viability or competitiveness of the Divestment Business.
11. For the avoidance of doubt, the Divestment Business shall, *inter alia*, not include:
 - 11.1 any manufacturing facilities or physical production assets of the Parties or Affiliated Undertakings, other than Synthomer's assets exclusively or primarily used for VP Latex production;
 - 11.2 intellectual property, know-how or other confidential information which does not contribute to the current operations and/or is not necessary to ensure the viability and competitiveness of the Divestment Business;
 - 11.3 transfer of any brand other than "Pyratex";
 - 11.4 the Synthomer and Omnova names or logos in any form, save for the right to use Synthomer's or Omnova's names or logos to the extent strictly necessary to ensure the smooth transition of the Divestment Business;
 - 11.5 any personnel currently involved in Synthomer's VP Latex business other than the Key Personnel;
 - 11.6 books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that a Purchaser shall obtain a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours;

- 11.7 general books of account and books of original entry that comprise Synthomer's or an Affiliated Undertaking's permanent accounting or tax records; and
- 11.8 monies owed to Synthomer or Affiliated Undertakings by customers, or monies owed by Synthomer or Affiliated Undertakings to suppliers.

SECTION C: RELATED COMMITMENTS

Preservation of viability, marketability and competitiveness

12. From the Effective Date until Closing, the Notifying Party 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 minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, Synthomer undertakes:
 - 12.1 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;
 - 12.2 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 and maintain the marketing and sales efforts devoted to the Divestment Business at their current level; and
 - 12.3 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 Key Personnel to the Retained Business prior to Closing. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Synthomer 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;
13. In addition, from the Effective Date until the expiry of the Transitional Toll Manufacturing Agreement and the Transitional Services Agreement, the Notifying Party shall take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all personnel providing support to the Divestment Business pursuant to the Transitional Toll Manufacturing Agreement and Transitional Services Agreement to remain in their role with the Retained Business. Where, nevertheless, such personnel leave the Retained Business or their roles are modified, Synthomer shall ensure that sufficient personnel are allocated to providing the support required under the Transitional Toll Manufacturing Agreement and Transitional Services Agreement to the Divestment Business, and that any replacement is well suited to

carry out the required functions. Such changes shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

14. The Notifying Party commits, from the Effective Date until Closing, to keep the Divestment Business separate from the Retained Business, and to ensure that unless explicitly permitted under these Commitments (i) management and staff of the Retained Business have no involvement in the Divestment Business; and (ii) the Key Personnel have no involvement in any part of the Retained Business and do not report to any individual outside the Key Personnel for any matters related to the Divestment Business.
15. Until Closing, Synthomer shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable business separate from the Retained Business. Immediately after the adoption of the Decision, Synthomer shall appoint a Hold Separate Manager. The Hold Separate Manager 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 Retained Business. The Hold Separate Manager shall be entitled to request from Synthomer all the operational support, also in terms of involvement of Key Personnel, that he deems necessary for the preservation of the viability of the Divestment Business. Key Personnel shall prioritise the Divestment Business over the Retained Business and Synthomer shall not refuse any request from the Hold Separate Manager, unless it is considered unreasonable under the supervision of the Monitoring Trustee and the Commission. During this period, the Hold Separate Manager will not have any responsibilities with respect to the Retained Business and will be bound by appropriate non-disclosure obligations to prevent the flow of commercially sensitive information with respect to the Divestment Business.
16. 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 12.3 of these Commitments. The Commission may, after having heard Synthomer, require Synthomer to replace the Hold Separate Manager.

Ring-fencing

17. Synthomer 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 Synthomer before the Effective Date will be eliminated and not be used by Synthomer. 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. Synthomer may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business and/or the disclosure of which to Synthomer is required by law.
18. Synthomer shall ensure that the Synthomer personnel involved in the transfer of the Divestment Business shall not use any confidential information from the Purchaser other than information strictly required to assist in the transfer of the Divestment

Business concerned, and they shall disclose such information to other Synthomer personnel only to the extent strictly required to assist in the transfer of the Divestment Business concerned.

Non-solicitation clause

19. The Notifying Party undertakes, 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 [...] after Closing.

Due diligence

- 19.1 In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Synthomer shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - 19.1.1 provide to potential purchasers sufficient information as regards the Divestment Business;
 - 19.1.2 provide to potential purchasers after the Effective Date, a version of the Commitments (including the Schedule and its Annexes) without undue delay and no later than at the signing of a Non-Disclosure Agreement by the potential purchaser, or at the opening of a data-room, whichever is earlier. Any redaction to the Commitments should be agreed in advance with the Commission; and
 - 19.1.3 provide to potential purchasers sufficient information relating to the Key Personnel and allow them reasonable access to the Key Personnel.

Reporting

20. Synthomer 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). Synthomer 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.
21. Synthomer 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

22. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:
 - 22.1 The Purchaser shall be independent of and unconnected to the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

- 22.2 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 Parties and other competitors;
- 22.3 The Purchaser shall have the proven capability and incentive to sell VP Latex via an efficient and integrated sales network in the EEA (this capability may be proven by having the existing capability to sell products similar to VP Latex in the EEA);
- 22.4 The Purchaser shall have the proven knowledge regarding the relevant chemistry (either based on pre-existing production activities of similar chemicals or otherwise);
- 22.5 The Purchaser shall demonstrate on the basis of its technical and business plan its ability and incentive to establish manufacturing lines for VP Latex (or integrate this product into an existing production line) in the EEA in a timely and economical way and to continue the production of VP Latex in the long run; and
- 22.6 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.
23. 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 Synthomer 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. Synthomer 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 Key Personnel, or by substituting one or more Assets or parts of the Key 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

24. Synthomer shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.

25. If Synthomer has 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 Synthomer at that time or thereafter, Synthomer shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
26. The Trustee shall:
 - 26.1 at the time of appointment, be independent of the Notifying Party and its Affiliated Undertakings;
 - 26.2 possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - 26.3 neither have nor become exposed to a Conflict of Interest.
27. The Trustee shall be remunerated by the Notifying Party 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 Synthomer

28. No later than two weeks after the Effective Date, Synthomer shall submit the name or names of one or more natural or legal persons whom Synthomer proposes to appoint as the Monitoring Trustee to the Commission for approval.
29. No later than one month before the end of the First Divestiture Period or on request by the Commission, Synthomer shall submit a list of one or more persons whom Synthomer 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 26 and shall include:
 - 29.1 the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - 29.2 the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - 29.3 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

30. 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, Synthomer 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, Synthomer 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 Synthomer

31. If all the proposed Trustees are rejected, Synthomer 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 24 and 30 of these Commitments.

Trustee nominated by the Commission

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

II. Functions of the Trustee

33. 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 Synthomer, 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

34. The Monitoring Trustee shall:
 - 34.1 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.
 - 34.2 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 Synthomer 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 12, 13 and 14 of these Commitments;
 - (B) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 15 of these Commitments;
 - (C) with respect to Confidential Information:
 - (1) determine all necessary measures to ensure that Synthomer does not after the Effective Date obtain any Confidential Information relating to the Divestment Business;

- (2) 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;
 - (3) make sure that any Confidential Information relating to the Divestment Business obtained by Synthomer before the Effective Date is eliminated and will not be used by Synthomer;
 - (4) make sure that any confidential information of the Purchaser received by Synthomer is used in accordance with paragraphs 17 and 18; and
 - (5) decide whether such information may be disclosed to or kept by Synthomer as the disclosure is reasonably necessary to allow Synthomer to carry out the divestiture and/or as the disclosure is required by law;
- 34.3 monitor the splitting of assets and, where applicable, the allocation of personnel between the Divestment Business and Synthomer or Affiliated Undertakings;
- 34.4 propose to Synthomer such measures as the Monitoring Trustee considers necessary to ensure Synthomer's 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;
- 34.5 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 Key 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 Key Personnel;
- 34.6 act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- 34.7 provide to the Commission, sending Synthomer 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 Key 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;

- 34.8 promptly report in writing to the Commission, sending Synthomer a non-confidential copy at the same time, if it concludes on reasonable grounds that Synthomer is failing to comply with these Commitments;
 - 34.9 within one week after receipt of the documented proposal referred to in paragraph 23 of these Commitments, submit to the Commission, sending Synthomer 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 Key Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
 - 34.10 assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision; and
 - 34.11 in the event of a disagreement between Synthomer and the Purchaser, assess the reasonableness of any request made by the Purchaser for the inclusion of any tangible or intangible assets in the Divestment Business in accordance with the requirements of the Commitments, where necessary consulting with a relevant industry expert.
35. 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

36. 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 22 and 23 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 Synthomer, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
37. 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 Party.

III. Duties and obligations of the Parties

38. Synthomer 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 Synthomer's 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 Synthomer and the Divestment Business shall provide the Trustee upon request with copies of any document. Synthomer 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.
39. Synthomer 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. Synthomer 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. Synthomer 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.
40. Synthomer 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, Synthomer shall cause the documents required for effecting the sale and the Closing to be duly executed.
41. Synthomer 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 Synthomer 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 wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
42. At the expense of Synthomer, the Trustee may appoint advisors (in particular for corporate finance, cost analysis or legal advice) as well as industry experts, subject to Synthomer's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors and/or experts 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 Synthomer refuse to approve the advisors and/or experts proposed by the Trustee the Commission may approve the appointment of such advisors and/or experts instead, after having heard Synthomer. Only the Trustee shall be entitled to issue instructions to the advisors and/or experts. Paragraph 41 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture

Trustee may use advisors and/or experts who served Synthomer during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

43. Synthomer agrees that the Commission may share Confidential Information proprietary to Synthomer 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*.
44. The Notifying Party agrees 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.
45. 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

46. 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:
 - 46.1 the Commission may, after hearing the Trustee and Synthomer, require Synthomer to replace the Trustee; or
 - 46.2 Synthomer may, with the prior approval of the Commission, replace the Trustee.
47. If the Trustee is removed according to paragraph 46 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 24 to 32 of these Commitments.
48. Unless removed according to paragraph 46 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: FAST-TRACK DISPUTE RESOLUTION MECHANISM

49. In the event that the Purchaser claims that Synthomer is failing to comply with its obligations arising from the Commitments, the Purchaser may invoke the "**Fast-Track Dispute Resolution Procedure**" described in this Section F.
50. If the Purchaser wishes to avail itself of the Fast-Track Dispute Resolution Procedure, it must notify Synthomer in writing (with a copy to the Monitoring Trustee) setting out in detail the reasons leading that the Purchaser to believe that Synthomer is failing to comply with the requirements of the Commitments (the "**Notice**"). The Purchaser and Synthomer (the "**Dispute Parties**") will use their best

efforts to resolve all differences of opinion and settle all disputes that may arise through cooperation and consultation within a reasonable period of time which shall not exceed fifteen (15) business days after receipt of the Notice, which may be extended by mutual consent.

51. The Monitoring Trustee shall present its own proposal for resolving the dispute within eight (8) business days, specifying in writing the action, if any, to be taken by Synthomer and/or the Purchaser to ensure compliance with the Commitments and be prepared, if requested, to facilitate the settlement of the dispute.
52. Should the Dispute Parties fail to resolve their differences of opinion through cooperation and consultation as provided for in the previous paragraph, the Purchaser shall nominate an arbitrator.
53. Synthomer shall, within two (2) weeks of receiving notification in writing of the appointment of the Purchaser's arbitrator, nominate its arbitrator and provide to the Purchaser in writing detailed reasons for their challenged conduct.
54. The arbitrators nominated by the Dispute Parties shall, within one (1) week of the nomination of the former, agree to appoint a third arbitrator. If the arbitrators nominated by the Dispute Parties cannot agree on the nomination of a third arbitrator, they shall ask the President of the International Chamber of Commerce (ICC) to appoint the third arbitrator.
55. The arbitrators shall be instructed to establish an arbitration tribunal and to make a preliminary ruling on the contested issues within one (1) month of the appointment of the third arbitrator, which may be extended, if necessary, by the unanimous agreement of all three arbitrators. The preliminary ruling shall be applicable immediately and until the final decision is issued. The final decision shall be taken by the arbitrators within six (6) months of the appointment of the third arbitrator, which may be extended, if necessary, by the unanimous agreement of all three arbitrators.
56. Any of the arbitrators shall be entitled to request any relevant information from the Dispute Parties in order to enable them to reach a decision.
57. The burden of proof in any dispute under the Fast-Track Dispute Resolution Procedure shall be borne as follows: (i) the Purchaser must produce evidence of a prima facie case, and (ii) if the Purchaser produces evidence of a prima facie case, the arbitrator must find in favour of the Purchaser unless Synthomer can produce evidence to the contrary.
58. The arbitrators shall be instructed not to disclose confidential information and to apply the standards attributable to confidential information and business secrets by European Union competition law.
59. The arbitration shall be in English and conducted pursuant to ICC rules. The arbitration award shall, in addition to dealing with the merits of the claim, impose the fees and costs of the prevailing Dispute Party upon the Dispute Party that is unsuccessful.
60. In the event of disagreement between the Dispute Parties regarding the interpretation of the Commitments, the arbitrators shall inform the Commission, and may seek the Commission's interpretation of the Commitments before finding in favour of any

Dispute Party and shall be bound by the Commission's interpretation. The Monitoring Trustee and the Commission may, at any time, submit a proposal during the arbitration procedure.

61. The arbitrators shall decide the dispute on the basis of the Commitments and the Decision. The Commitments shall be construed in accordance with the Merger Regulation, EU law and general principles of law common to the legal orders of the Member States without a requirement to apply a particular national system. The Arbitral Tribunal shall take all decisions by majority vote.
62. Nothing in the arbitration procedure shall affect the powers of the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation and the EC Treaty.

SECTION G: THE REVIEW CLAUSE

63. The Commission may extend the time periods foreseen in the Commitments in response to a request from Synthomer or, in appropriate cases, on its own initiative. Where Synthomer requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one 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 Party. Only in exceptional circumstances shall Synthomer be entitled to request an extension within the last month of any period.
64. The Commission may further, in response to a reasoned request from the Notifying Party 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 Party. 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 H: ENTRY INTO FORCE

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

Duly authorised for and on behalf of Synthomer plc

Name:

Title:

Date:

SCHEDULE

THE DIVESTMENT BUSINESS

1. The Divestment Business consists of the VP Latex Business. The Divestment Business as operated to date has the following legal and functional structure: The VP Latex Business:
 - 1.1.1 is currently owned and operated by Synthomer and its Affiliated Undertakings; and
 - 1.1.2 is not currently operated as a stand-alone business held by distinct legal entities within the Synthomer group of companies, and does not have dedicated management, production, sales and marketing personnel. In particular,
 - (A) Synthomer produces all its VP Latex Products at its [...] plant in Marl, Germany, which [...]. Two reactors at [...] are dedicated to the production of VP Latex;
 - (B) the "Pyratex" brand is dedicated to VP Latex;
 - (C) VP Latex is part of Synthomer's "Functional Solutions" business unit; and
 - (D) no management, production, technical, or sales and marketing personnel are dedicated to VP Latex.
2. The VP Latex Business is currently a distinct business line of Synthomer and will be carved-out from Synthomer's XSBR and other businesses on divestment.
3. In accordance with paragraph 7 of these Commitments, the Divestment Business includes, but is not limited to:
 - 3.1 all tangible manufacturing assets that are exclusively or primarily used for manufacture of the VP Latex Products, including reactors [...] and [...] at Synthomer's [...] plant. Reactors [...] and [...] each have the following specifications: [...];
 - 3.2 all intangible assets (including intellectual property rights, know-how, recipes and other information) which are exclusively or primarily used by the Divestment Business, and the benefit of licences to other relevant intangible assets currently used by Synthomer (or necessary) to manufacture, sell and use the VP Latex Products but which are otherwise not exclusively or primarily used by the Divestment Business, including either a full transfer or an exclusive, irrevocable, assignable, royalty-free, perpetual licence of all trade mark rights for the "Pyratex" brands owned by Synthomer (as further described in Annex 1);
 - 3.3 the assignment of all of Synthomer's VP Latex know-how that is used by Synthomer and its Affiliated Undertakings exclusively to develop, manufacture, sell and use the VP Latex Products and any intellectual property

rights in such know-how (the "**Exclusively Used Technology**" as detailed in Annex 1;

- 3.4 the assignment of all of Synthomer's VP Latex know-how that is used by Synthomer and its Affiliated Undertakings primarily to develop, manufacture, sell and use the VP Latex Products and any intellectual property rights, recipes and other information in such know-how (the "**Primarily Used Technology**" as detailed in Annex 1). The Divestment Business will grant back to Synthomer a royalty-free, irrevocable, non-exclusive, global licence for the Primarily Used Technology solely for use in products other than VP Latex;
- 3.5 a royalty-free, irrevocable, non-exclusive, global licence under Synthomer's other intellectual property rights to use all know-how currently used by Synthomer to manufacture, sell and use the VP Latex Products but which is also used on other products or is otherwise not exclusively used for production of the VP Latex Products, in each case solely for the manufacture, sale, development and use of VP Latex (the "**Licensed Technology**" as detailed in Annex 1);
- 3.6 the transfer of all technical commercial materials exclusively or primarily used to develop, manufacture, sell and use the VP Latex Products and any intellectual property rights in such materials;
- 3.7 all raw materials, stocks, work in progress, and semi-finished and finished goods relating exclusively to the VP Latex Products held by Synthomer at the date of Closing, and agreed levels of other raw materials needed to operate the business on Closing in line with the Purchaser's requirements, would be held separate and sold over time to the Purchaser under the terms of the TTMA;
- 3.8 to the extent applicable and transferable, the transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business (including those listed in Annex 2);
- 3.9 a list of all customers for the VP Latex Products for 2017, 2018, 2019 and 2020 until Closing (as set out up to Q3 2019 in Annex 3) as well as, where applicable, the assignment of any supply arrangements, contracts, contract rights, customer records, customer reports, transactional data, and other customer documentation for such customers which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business provided however, that Synthomer shall not be required to transfer any such supply arrangements, contracts, contract rights, customer records, customer reports, transactional data or other customer documentation that do not form part of the Divestment Business;
- 3.10 to the extent applicable, the transfer of: (i) all records of customers and suppliers, price lists, catalogues and mailing lists related to the Divestment Business; and (ii) all advertising, marketing, sales, publicity and presentational materials related to the Divestment Business, or copies thereof,

where any items covered by (i) and (ii) of this paragraph 3.10 also relate to a product retained by Synthomer;

- 3.11 the goodwill relating to the VP Latex Business at the time of the divestment together with the exclusive right for the Purchaser to represent itself as carrying on the VP Latex Business in succession to Synthomer;
 - 3.12 any other tangible or intangible assets which the Purchaser may reasonably require to successfully complete the transfer of the Divestment Business to an alternative production location; and
 - 3.13 the following Key Personnel: the named personnel and/or personnel fulfilling the functions listed in Annex 4, namely, for each of the VP Latex Business, at least (i) an employee with product/applications knowledge and customer technical service knowledge; (ii) an employee with manufacturing/operations know-how; and (iii) a sales and marketing/ commercial product manager; including the Hold Separate Manager. The Key Personnel shall be transferred to the Purchaser, provided that Synthomer and Affiliated Undertakings will use their best efforts, including implementing appropriate incentive schemes (based on industry practice) to encourage such employees to move to a Purchaser. The Key Personnel fulfilling these functions shall be identified by the Hold Separate Manager upon appointment.
4. The Divestment Business shall not include:
- 4.1 any right to any manufacturing equipment, facilities, warehouses, or other facilities owned or controlled by Synthomer or Affiliated Undertakings including, for the avoidance of doubt, Synthomer's [...] equipment and production facilities other than the reactors currently dedicated to VP Latex and any other tangible manufacturing assets that are exclusively or primarily used for manufacture of the VP Latex Products;
 - 4.2 intellectual property, know-how or other confidential information which does not contribute to the current operations and/or is not necessary to ensure the viability and competitiveness of the Divestment Business, including in relation to the manufacture of raw materials;
 - 4.3 transfer of any brand other than "Pyratex";
 - 4.4 the Synthomer and Omnova names or logos in any form, save for the right to use Synthomer's and Omnova's names or logos to the extent strictly necessary to ensure the smooth transition of the Divestment Business;
 - 4.5 any names or logos in any form used by Synthomer for products other than the VP Latex Products;
 - 4.6 any personnel currently involved in the Synthomer's VP Latex business other than the Key Personnel;
 - 4.7 books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that a Purchaser shall obtain a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours;

- 4.8 general books of account and books of original entry that comprise Synthomer's permanent accounting or tax records;
 - 4.9 monies owed to Synthomer by customers for the purchase of the VP Latex Products, and monies owed by Synthomer to suppliers for materials used in the production of the VP Latex Products.
5. If there is any asset or personnel which is not covered by paragraph 4 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 by transfer or licence as appropriate, as overseen by the Monitoring Trustee, and subject to the Commission's approval.

TRANSITIONAL TOLL MANUFACTURING AGREEMENT

6. The Divestment Business will be divested together with a transitional toll manufacturing arrangement (the TTMA), on the basis of which Synthomer will provide toll manufacturing services of the VP Latex Products for the Purchaser at Synthomer's [...] manufacturing facility at Marl, Germany for supply to the Purchaser in sufficient volumes to allow the Purchaser to maintain and expand the Divestment Business' existing market position in the VP Latex Products. The TTMA will have the following characteristics:
- 6.1 Synthomer will continue to operate VP Latex production at [...] in the way in which it is operated at the date of these Commitments for the duration of the TTMA, to ensure the continued supply of the VP Latex Products to the Purchaser under the same costs structure and of the same quality and consistency during that period as at the date of these Commitments (it being understood that the production volumes of the VP Latex Products produced at [...] may fluctuate as long as it does not affect the cost structure as agreed with the Purchaser);
 - 6.2 the Purchaser will grant Synthomer a royalty-free licence for the use of the relevant intellectual property, know-how and technical documentation required for the production of the VP Latex Products at its plant in [...], Germany, allowing Synthomer to use the same to the extent necessary to transfer and/or supply the Divestment Business;
 - 6.3 Synthomer will produce and supply the VP Latex Products at quantity levels to be agreed with the Purchaser, which for the avoidance of doubt shall not in total exceed Synthomer's actual manufacturing capability at the Effective Date of VP Latex at [...];
 - 6.4 the VP Latex Products shall be produced in accordance with the product specifications that will be determined in the TTMA and will reflect the specifications currently used and quality currently supplied by Synthomer for the production of the VP Latex Products;
 - 6.5 for safety and quality control, raw materials procured by the Purchaser for use by Synthomer under the TTMA must be compatible with the raw materials used by Synthomer at the relevant manufacturing facility;

- 6.6 Synthomer will supply the Purchaser with the above-mentioned volumes of the VP Latex Products [...] in return for a tolling cost (the "**Tolling Cost**") for each tonne of the VP Latex Products off-taken by the Purchaser under the TTMA. [...] Synthomer shall provide an estimate of the monthly Tolling Cost to the Purchaser prior to the time of signing of the TTMA for the Purchaser's approval (not to be unreasonably withheld). Unless otherwise agreed with the Purchaser, this estimate shall reflect the Tolling Cost for each of the first six months of the TTMA, and the Tolling Cost charged shall not vary by more than [...] % from the estimate without the approval of the Commission. Synthomer will provide an estimate for each subsequent six-monthly period of the TTMA under the same conditions. For volumes of VP Latex in excess of [...] kt per annum (which is around [...] % more than current production), the Tolling Cost shall be renegotiated (and approved by the Commission) to reflect additional costs and long term liabilities which may be required;
- 6.7 any variable costs such as raw materials, packaging, utilities and direct labour incurred by Synthomer will be compensated for by the Purchaser [...]; and
- 6.8 the term of the TTMA shall be for a transitional period of up to [...] after Closing. The Purchaser shall use best efforts to complete the transition to its own manufacturing as quickly as possible. The Purchaser shall have the option to extend the term for a period not exceeding [...], with agreement of the Commission. The Purchaser shall have the option to extend the term for a further period not exceeding [...], on a [...].
7. For the avoidance of doubt, Synthomer may obtain, keep or use information related to the Divestment Business which is reasonably necessary for the sole purpose of providing toll manufacturing or other transitional services to the Purchaser and shall adopt strict firewall procedures to ensure that such information is not available to its Retained Business. Synthomer shall implement all necessary measures not to retain nor use any such information after the termination of the TTMA or TSA.

TRANSITIONAL SERVICES AGREEMENT

8. To facilitate the efficient transfer of the Divestment Business to the Purchaser, Synthomer commits to provide to the Purchaser the following transitional services relating to the Divestment Business, [...]. This shall be for a period of up to [...] after Closing, and can be extended at the option of the Purchaser with agreement of the Commission for a period not exceeding [...]. At the option of the Purchaser it can be extended for a further period not exceeding [...], on a [...]. The TSA shall provide that the Purchaser shall use best efforts to complete the transition as quickly as possible.
- 8.1 Sales and marketing. Synthomer shall provide training and technical assistance to the Purchaser, to the extent necessary to ensure the viability and/or competitiveness of the Divestment Business, to enable the Purchaser to assume responsibility for the sale (including distribution) and marketing of the VP Latex Products at a level similar to that currently provided by Synthomer in relation to the VP Latex Products for a period not to exceed [...] from the date of Closing, which can be extended at the option of the Purchaser with agreement of the Commission for a period not exceeding [...].

- 8.2 Technical customer service. Synthomer shall provide training and technical assistance in relation to customer qualification proceedings and troubleshooting, to the extent necessary to ensure the viability and/or competitiveness of the Divestment Business, for the duration of the Transitional Services Agreement. This shall include the provision of data or information which a customer may require to compare the VP Latex product(s) manufactured and sold by the Divestment Business after Closing with the VP Latex Product(s) previously manufactured and sold by Synthomer to that customer (or that the customer has qualified from Synthomer, even if it has not been sold the product).
- 8.3 Logistics. Synthomer shall enter into transitional arrangements for the continuation of current customer service and logistics services, covering all aspects of processing a customer's orders and ensuring delivery of the VP Latex Products to customers, for a period not to exceed [...] from the date of Closing, which can be extended at the option of the Purchaser with agreement of the Commission for a period not exceeding [...]. For the avoidance of doubt, [...].
- 8.4 Procurement. To the extent necessary to ensure the viability and/or competitiveness of the Divestment Business, Synthomer shall provide support (including technical assistance) to the Purchaser on the transfer of procurement arrangements (including to facilitate the procurement of raw materials necessary for the manufacture of the VP Latex Products and to transition supplier relationships during the TSA period), for a period not to exceed [...] from Closing. If the Purchaser is not able to source such raw materials in a cost-effective manner, Synthomer commits to enter, at the option of the Purchaser and with agreement of the Commission, into back-to-back supply agreements with raw material suppliers and to make such raw materials available [...], [...].
- 8.5 Product and manufacturing transfer. Synthomer shall provide training and reasonable technical assistance to support the Purchaser with scale-up and production trials at the Purchaser's facilities for the duration of the Transitional Services Agreement, *i.e.* to put the know-how into practice, both in terms of following the recipe (product know-how) and understanding and applying the manufacturing techniques (process and manufacturing know-how). Synthomer shall also provide reasonable technical assistance for the design and the commissioning of a new production facility for the production of the VP Latex Products or the adjustment of an existing production facility at the Purchaser's premises, on the basis of the know-how and technical documentation included in the Divestment Business. Synthomer will provide reasonable technical assistance to the Purchaser to obtain all licences, permits or authorisations issued by any governmental organisation that are required to produce and market VP Latex and are necessary for the viability or competitiveness of the Divestment Business.
9. Without limitation of the above-mentioned TSA commitments, the scope and elements of the technical assistance referred to at paragraph 8 of this Schedule will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. Synthomer envisages that technical assistance could include one or more of the following elements: advising on technical knowledge documentation, supporting the Purchaser in acquiring specific equipment, providing

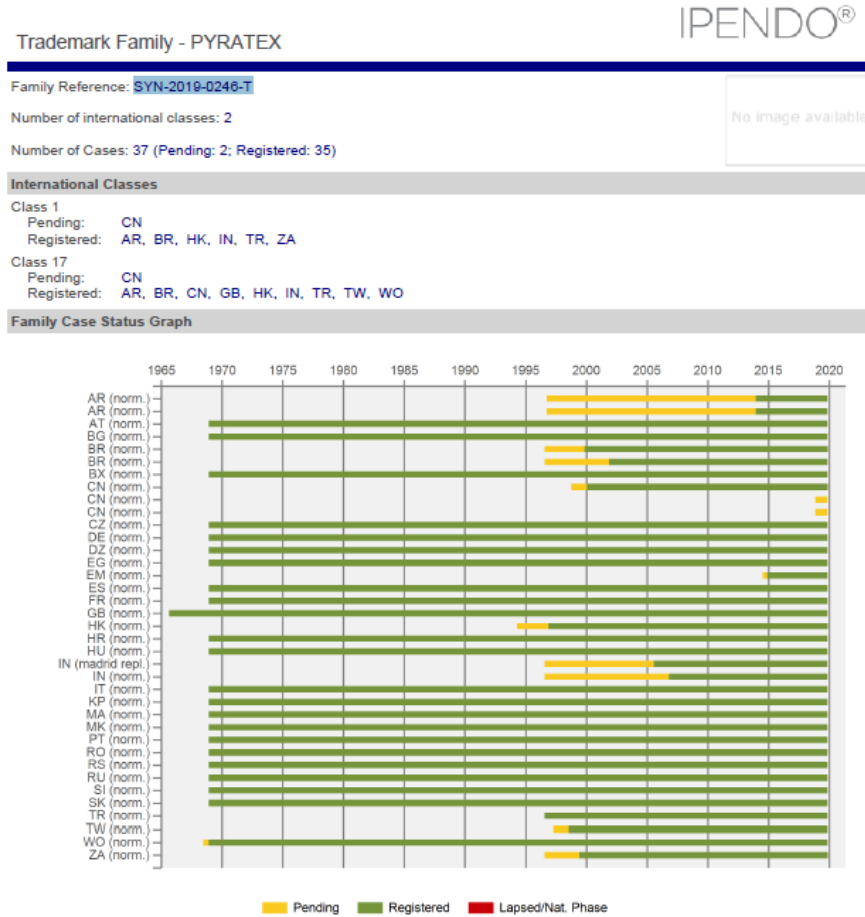
access to staff with suitable experience and skills to assist and/or advise on technical issues, assisting in trainings for the Purchaser's staff; and a service back-up for the duration of the TSA for frequently asked questions and one defined "go-to" person (who will be the person in charge of managing delivery of the TSA). The TSA shall include appropriate provisions to ensure that Synthomer provides the technical assistance to the Purchaser in accordance with good industry practice including in relation to the timing and responsiveness with which this assistance is provided through the different stages of the transition.

ANNEX 1

Detailed description of the trademarks; Exclusively Used Technology; Primarily Used Technology; and Licensed technology

Trademarks

Figure 1: Pyratex Trademark Family Report



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Manual Search

Created Date: 12 Nov 2019

Categorizations	Related Parties	Use Status
Product area:	Owners:	
Other categorizations:	Other related parties on family:	

Table 1: Pyratex trademarks

Title	Reference	Country Name	Case Status	Case Type	Filing Date
PYRATEX/WO	SYN-2019-0246-T-WO	International Trademark-Madrid	Registered	Normal	1968-06-19
PYRATEX/DZ	SYN-2019-0246-T-DZ	Algeria	Registered	Normal	
PYRATEX/AT	SYN-2019-0246-T-AT	Austria	Registered	Normal	
PYRATEX/BX	SYN-2019-0246-T-BX	Benelux	Registered	Normal	
PYRATEX/BG	SYN-2019-0246-T-BG	Bulgaria	Registered	Normal	
PYRATEX/HR	SYN-2019-0246-T-HR	Croatia	Registered	Normal	
PYRATEX/CZ	SYN-2019-0246-T-CZ	Czech Republic	Registered	Normal	
PYRATEX/KP	SYN-2019-0246-T-KP	Korea (North)	Registered	Normal	
PYRATEX/EG	SYN-2019-0246-T-EG	Egypt	Registered	Normal	
PYRATEX/FR	SYN-2019-0246-T-FR	France	Registered	Normal	
PYRATEX/DE	SYN-2019-0246-T-DE	Germany	Registered	Normal	
PYRATEX/HU	SYN-2019-0246-T-HU	Hungary	Registered	Normal	
PYRATEX/IT	SYN-2019-0246-T-IT	Italy	Registered	Normal	
PYRATEX/MK	SYN-2019-0246-T-MK	Macedonia	Registered	Normal	
PYRATEX/MA	SYN-2019-0246-T-MA	Morocco	Registered	Normal	
PYRATEX/PT	SYN-2019-0246-T-PT	Portugal	Registered	Normal	
PYRATEX/RO	SYN-2019-0246-T-RO	Romania	Registered	Normal	
PYRATEX/RU	SYN-2019-0246-T-RU	Russian Federation	Registered	Normal	
PYRATEX/RS	SYN-2019-0246-T-RS	Serbia	Registered	Normal	
PYRATEX/SK	SYN-2019-0246-T-SK	Slovakia	Registered	Normal	
PYRATEX/SI	SYN-2019-0246-T-SI	Slovenia	Registered	Normal	
PYRATEX/ES	SYN-2019-0246-T-ES	Spain	Registered	Normal	
PYRATEX/EM	SYN-2019-0246-T-EM	European Trademark-CTM	Registered	Normal	2014-07-08
PYRATEX/HK	SYN-2019-0246-T-HK	Hong Kong	Registered	Normal	1994-04-07
PYRATEX/TR	SYN-2019-0246-T-TR	Turkey	Registered	Normal	1996-07-26
PYRATEX/AR	SYN-2019-0246-T-AR	Argentina	Registered	Normal	1996-09-26
PYRATEX/AR	SYN-2019-0246-T-AR(2)	Argentina	Registered	Normal	1996-09-26
PYRATEX/IN	SYN-2019-0246-T-IN	India	Registered	Normal	1996-07-18
PYRATEX/IN	SYN-2019-0246-T-IN(2)	India	Registered	Madrid Replacement	1996-07-18
PYRATEX/TW	SYN-2019-0246-T-TW	Taiwan	Registered	Normal	1997-04-21
PYRATEX/BR	SYN-2019-0246-T-BR	Brazil	Registered	Normal	1996-07-17
PYRATEX/BR	SYN-2019-0246-T-BR(2)	Brazil	Registered	Normal	1996-07-17
PYRATEX/GB	SYN-2019-0246-T-GB	United Kingdom	Registered	Normal	1965-08-17
PYRATEX/ZA	SYN-2019-0246-T-ZA	South Africa	Registered	Normal	1996-07-24
PYRATEX/CN	SYN-2019-0246-T-CN	China	Registered	Normal	1998-10-05
PYRATEX/CN	SYN-2019-0246-T-CN(2)	China	Pending	Normal	2018-11-06
PYRATEX/CN	SYN-2019-0246-T-CN(3)	China	Pending	Normal	2018-11-11

Exclusively Used Technology

- Recipes (including manufacturing process, temperature details and procedures)
- Manufacturing procedures

- Reactor to storage design (P&IDs)
- Manufacturing records to include cycle times, batch size – SAP download
- Manufacturing quality statistics
- Raw material approvals and specifications

Primarily Used Technology

Synthomer has not currently identified any Primarily Used Technology.

Licensed technology

- Regulatory assessment – inventory status (includes the countries that Synthomer can export the VP Latex Products to currently)
- Hazards from SHE
- Reactor to storage design (P&IDs)
- Storage and handling procedures
- Filtration procedures
- Biocide protection systems
- Test methods for final products (Non ISO standards)
- Raw material approvals and specifications

ANNEX 2

Licences, Permits and Authorisations

Synthomer has not identified any transferable licences, permits and authorisations relating to the VP Latex Business.

ANNEX 3
Customers, 2017 to Q3 2019

[...]

ANNEX 4
Key Personnel

Hold Separate Manager

- an employee with degree level education, managerial level experience of 3 – 5 years, general chemical industry knowledge and understanding of VP Latex, commercial skill set including product management, and good communication and inter-personal skills

Personnel, identified by the Hold Separate Manager upon appointment:

- an employee with product/applications knowledge and customer technical service knowledge for VP Latex
- an employee with manufacturing/operations know-how for VP Latex
- a sales and marketing/ commercial product manager for VP Latex

For the avoidance of doubt, the Hold Separate Manager may be one of the three employees listed above.