



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**

Decision on the implementation of the commitments -
Purchaser approval
Date: 26.03.2020



EUROPEAN COMMISSION

Brussels, 26.03.2020
C(2020) 1990

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case M.9502 – SYNTHOMER/OMNOVA SOLUTIONS
Approval of Trinseo S.A. as purchaser of Synthomer’s Marl Vinyl Pyridine
Latex business following your letter of 6 March 2020 and the Trustee’s
opinion of 11 March 2020**

1. FACTS AND PROCEDURE

- (1) By decision of 15 January 2020 (“the Decision”) based on Article 6(1)(b) in connection with Article 6(2) of the Merger Regulation, the Commission declared the operation by which Synthomer plc (the “Notifying Party” or “Synthomer”, UK) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Omnova Solutions, Inc. (“Omnova”, USA) (the “Transaction”) compatible with the internal market following modification by Synthomer and Omnova (together, the “Parties”), subject to conditions and obligations (the “Commitments”).
- (2) The Commitments consist of the divestiture of Synthomer’s global vinyl pyridine latex (“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”). This is to be implemented through a carve-out of the Divestment Business from Synthomer’s operations at its [name of plant] plant. Synthomer has also committed to provide a number of transitional supply arrangements during the integration process to the Purchaser to enable the Divestment Business to maintain and grow its sales of VP Latex as well as to

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facilitate this integration. These arrangements include continuing (for a given period) to manufacture VP Latex for the Purchaser on a tolling basis [cost basis of the transitional tolling arrangement], as well as providing sales and marketing, technical, logistical, procurement and product/manufacturing support.

- (3) By letter of 6 March 2020, Synthomer proposed Trinseo S.A. (“Trinseo”, USA) for approval by the Commission as Purchaser of the Divestment Business and submitted the proposed Asset Purchase Agreement (“APA”) and related agreements (namely, the Contract Manufacturing and Supply Agreement (“CMSA”), the Transitional Services Agreement (“TSA”) and the Intellectual Property Assignment (“IPA”)) (the four agreements together are hereinafter referred to as the “Proposed Agreements”).
- (4) On 11 March 2020, Smith & Williamson LLP, the appointed Monitoring Trustee (the “Trustee”), submitted an assessment (the “Reasoned Opinion”) of Trinseo’s suitability as a purchaser and, in particular, indicated that it considers that Trinseo fulfils the Purchaser requirements in section D of the Commitments attached to the Decision. In this assessment, the Trustee also indicated that, on the basis of the Proposed Agreements, it considers that the Divestment Business would be sold in a manner consistent with the Commitments.

2. ASSESSMENT OF THE PROPOSAL

The Purchaser requirements

- (5) Under paragraph 22 of the Commitments, in order to be approved by the Commission, the Purchaser must fulfil the following criteria (the “Purchaser Requirements”):
 - (a) 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);
 - (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) 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);
 - (d) The Purchaser shall have the proven knowledge regarding the relevant chemistry (either based on pre-existing production activities of similar chemicals or otherwise);
 - (e) 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

- (f) 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 relevant regulatory authorities for the acquisition of the Divestment Business.

The proposed Purchaser

- (6) Trinseo is a global materials solutions provider and a manufacturer of plastics, latex binders and synthetic rubber listed on the New York Stock Exchange. It has 16 manufacturing sites and 11 research and development facilities globally. Its global operating centre is located in Pennsylvania, USA, and it has regional operating centres for North America in Michigan, USA; for Europe in Horgen, Switzerland; and for Asia-Pacific in Hong Kong. In 2019, Trinseo's revenue was approximately EUR 3.4 billion and it had approximately 2,700 employees worldwide.

2.1. Independence from the Parties

- (7) The Notifying Party submits that Trinseo is independent of and unconnected to both Synthomer and Omnova. More specifically, the Notifying Party submits that:
- (a) Trinseo, Synthomer and Omnova are listed companies, with dispersed shareholder bases such that they are not controlled by any shareholder;
 - (b) Neither Synthomer nor Omnova have any shareholding in Trinseo or its affiliates, and Trinseo does not have any shareholding in Synthomer or Omnova, or their affiliates;
 - (c) Synthomer and/or Omnova do not participate in any joint venture with Trinseo or any of its affiliates;
 - (d) The Parties have not identified any interlocking directors or officers between Trinseo and Synthomer and/or Omnova or any of their affiliates; and
 - (e) Trinseo [business secrets regarding the commercial relationships between Trinseo on the one hand and Synthomer and Omnova on the other hand]. However, these relationships are in the ordinary course of business, on an arm's length basis and are not material commercial links.
- (8) In its Reasoned Opinion, the Trustee agrees that Trinseo satisfies the first of the Purchaser Requirements for the reasons outlined in the preceding paragraph above.¹
- (9) In light of all of the above, the Commission concludes that Trinseo is independent of and unconnected to the Parties and their Affiliated Undertakings and, therefore, meets this Purchaser Requirement set out in paragraph 22.1 of the Commitments.

¹ Reasoned Opinion, recitals 2.2.1 to 2.2.5 and 4.4.1 to 4.7.5.

2.2. Financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitor

Financial resources

- (10) The Notifying Party submits that in 2019, Trinseo generated worldwide revenues of EUR 3 372.8 million and had EUR 407.5 million cash on its balance sheet.² In contrast, the sale price of the Divestment Business is USD [sale price] and its worldwide turnover was EUR [turnover] in 2018.³ Therefore, it submits that Trinseo has sufficient financial resources to purchase, maintain and develop the Divestment Business as a viable and active competitor.
- (11) In its Reasoned Opinion, the Trustee agrees with the Notifying Party's assessment of Trinseo's past financial performance. The Trustee further notes that Trinseo has held a positive cash balance for the past six years, concluding that it therefore appears to have sufficient means to carry out the operation.⁴

Proven experience to maintain and develop the Divestment Business as a viable and active competitor

- (12) The Notifying Party submits that Trinseo has the proven experience to maintain and develop the Divestment Business as a viable and active competitor, as it is a global manufacturer of various products, including latex binders and synthetic rubbers. In particular, Trinseo is already a manufacturer of carboxylated styrene butadiene latex ("XSBR"), which is an aqueous polymer with a composition similar to the one of VP Latex.⁵ The Notifying Party explains that Trinseo has several latex production facilities and R&D centres within Europe, and is familiar with the procurement and use of the raw materials necessary to manufacture aqueous polymers and latexes. Moreover, the Notifying Party argues that Trinseo has recent past experience in integrating a new external business within its own activities.⁶
- (13) In its Reasoned Opinion, the Trustee agrees with the Notifying Party's assessment and highlights that Trinseo is already familiar with the vast majority of chemicals that are used to manufacture VP Latex, that Trinseo has a long experience in latexes, synthetic rubbers as well as plastic units, and that it has a positive track record of successful acquisitions and business integrations in Europe.⁷

Incentive to maintain and develop the Divestment Business as a viable and active competitor

- (14) The Notifying Party submits that Trinseo has the incentive to maintain and develop the Divestment Business, noting that Trinseo has explained that it considers the Divestment Business to be a good strategic fit with its existing business and in line

² The Notifying Party refers to Trinseo's Form 10-K, 28 February 2020. 'Cash' for these purposes includes cash equivalents on Trinseo's balance sheet.

³ See the Decision, recital (149).

⁴ Reasoned Opinion, recitals 2.3.1 to 2.3.3 and 5.2.2 to 5.2.8.

⁵ VP Latex is also an aqueous emulsion polymer. The manufacture process for VP Latex is broadly the same as for XSBR, save that vinyl pyridine is added as an additional raw material at the start of the production process for VP Latex.

⁶ In 2019, Trinseo acquired latex production facilities in Rheinmünster from Dow Chemical.

⁷ Reasoned Opinion, recitals 2.3.4 to 2.3.10 and 5.3.1 to 5.3.19.

with its long-term strategy. The Notifying Party further submits that the Divestment Business is an attractive one, given its long-term partnerships with leading global key suppliers and broad portfolio of key industry customers (including large tyre manufacturers and large cord dippers).

- (15) In its Reasoned Opinion, the Trustee agrees with the Notifying Party's assessment. The Trustee notes that Trinseo considers that VP Latex is complementary to its existing business and supportive of its long term business strategy, including as the Divestment Business [business secret regarding Trinseo's business strategy]. The Trustee considers that Trinseo has a clear vision of how the Divestment Business can grow and how this can be achieved.⁸

Conclusion on second Purchaser Requirement

- (16) In light of all of the above, the Commission concludes that Trinseo meets the Purchaser Requirement of having the financial resources, proven expertise and incentive to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors, as set out in paragraph 22.2 of the Commitments.

2.3. Proven capability and incentive to sell VP Latex via an efficient and integrated sales network in the EEA

- (17) The Notifying Party submits that Trinseo has an integrated sales network in the EEA, which already sells synthetic latex polymers (*i.e.* products similar to VP Latex). The Notifying Party adds that, through its existing activities, this sales network already has contacts with many tyre producers in the EEA and worldwide. The Notifying Party points out that Trinseo has expressed its intention to [business secret regarding Trinseo's marketing plans and sales strategy].
- (18) In its Reasoned Opinion, the Trustee agrees with the Notifying Party's assessment. The Trustee explains that Trinseo intends to develop relationships with the customers of the Divestment Business during the transitional integration period and [business secret regarding Trinseo's business and sales strategy] to better serve these customers. The Trustee further notes that Trinseo has the experience to address any complexities that may arise in setting up the assets. The Trustee also considers that VP Latex will be [business secret regarding Trinseo's business and sales strategy].⁹
- (19) In light of all of the above, the Commission concludes that Trinseo meets the Purchaser Requirement of having the proven capability and incentive to sell VP Latex via an efficient and integrated sales network in the EEA, as set out in paragraph 22.3 of the Commitments.

2.4. Proven knowledge regarding the relevant chemistry

- (20) The Notifying Party submits that Trinseo has proven knowledge regarding the relevant chemistry for the production of VP Latex, through its pre-existing production of other synthetic latexes. The Notifying Party submits that Trinseo is a global player in the production and sale of styrene-butadiene based synthetic latexes

⁸ Reasoned Opinion, recitals 2.3.11 to 2.3.13, 5.4.1 to 5.4.9 and 5.5.11.

⁹ Reasoned Opinion, recitals 2.3.15 to 2.3.20 and 5.5.1 to 5.5.14.

such as XSBR, styrene acrylic (“SA”), and starch containing emulsion latex binders (“SCE”). Trinseo has personnel experienced in, and the infrastructure to support, the R&D, manufacture and sale of latexes.

- (21) In its Reasoned Opinion, the Trustee agrees with the Notifying Party’s assessment. The Trustee notes that Trinseo produces synthetic latexes in the EEA and worldwide, and has experience of using styrene monomer and butadiene, two of the key inputs for VP Latex, to manufacture other latex products. The Trustee explains that Trinseo has arrangements in place to ensure its supply of these two products, and that Trinseo does not foresee any barriers to it procuring 2-vinyl pyridine, which is the other key raw material required for VP Latex production.¹⁰ The Trustee’s appointed technical expert considers that Trinseo has a good appreciation of the processes involved in the manufacture of VP Latex.¹¹
- (22) The Commission notes that its market investigation in Case M.9502 – *Synthomer/Omnova Solutions* confirmed that Trinseo is considered a major supplier of XSBR worldwide and in the EEA.¹² This indicates that it has knowledge of the relevant chemistry for VP Latex through the pre-existing production of other synthetic latexes, given that XSBR is an aqueous polymer with a composition similar to that of VP Latex.
- (23) In light of all of the above, the Commission concludes that Trinseo has a proven knowledge regarding the relevant chemistry and, therefore, meets the Purchaser Requirement set out in paragraph 22.4 of the Commitments.

2.5. Ability and incentive to establish manufacturing lines for VP Latex in the EEA in a timely and economical way and to continue production in the long run

- (24) The Notifying Party submits that Trinseo has the requisite ability and incentive to establish manufacturing lines for VP Latex in the EEA. The Notifying Party submits that Trinseo is an established manufacturer in the latex sector with the experience that is required to address any complexities that may arise in setting up the assets. It has experienced personnel with R&D, technical, sales and manufacturing knowledge and Trinseo has developed and commercialised a large number of products in its history, as well as designing and building latex production facilities worldwide. Moreover, as outlined above, the Notifying Party claims that Trinseo has past experience in integrating a newly acquired business within its own activities in the EEA and it has the incentive to integrate the Divestment Business in a timely and economical way and to continue production in the long run.
- (25) In its Reasoned Opinion, the Trustee agrees with the Notifying Party’s assessment. It notes that Trinseo has provided to the Commission and the Trustee a detailed timeline for its proposed integration of the Divestment Business, which the Trustee and its appointed technical expert consider overall to be reasonable and achievable. The Trustee notes that Trinseo considers that VP Latex is complementary to its existing business and supportive of its long term business strategy; the Trustee considers that Trinseo has a clear vision of how the Divestment Business can grow

¹⁰ Reasoned Opinion, recitals 5.6.1 – 5.6.3.

¹¹ Reasoned Opinion, Appendix 5.1, Section 4.3.

¹² The Decision, Table 3 and paragraph 95; Replies to question 17 of Q3 - *Questionnaire to XSBR, SA and HS-SB customers* and question 12 of Q6 – *Questionnaire to XSBR, SA and HS-SB competitors*.

in this regard.¹³ Trinseo has confirmed that it intends to integrate the Divestment Business by establishing (or integrating) VP Latex production in a facility within the EEA.¹⁴

- (26) In light of all of the above, the Commission concludes that Trinseo has demonstrated 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, therefore, Trinseo meets the Purchaser Requirement set out in paragraph 22.5 of the Commitments.

2.6. Absence of *prima facie* competition problems

- (27) The Notifying Party indicates that the acquisition of the Divestment Business by Trinseo is subject to review by the Spanish and Portuguese competition authorities (and does not fall within the jurisdiction of any other national competition authority or of the Commission). The Notifying Party submits that the acquisition of the Divestment Business by Trinseo does not give rise to *prima facie* competition concerns, for the following reasons.
- (28) Firstly, the Notifying Party submits that there are no horizontal overlaps between Trinseo and the Divestment Business as Trinseo does not produce or sell VP Latex in the EEA (or indeed worldwide).
- (29) Secondly, Trinseo is active in the production and sale of styrene monomer, an input for VP Latex. Therefore, the acquisition of the Divestment Business creates a vertical link between the production and sale of styrene monomer (upstream) and the production and sale of VP Latex in the EEA (downstream). In this regard:
- (a) *Regarding input foreclosure:* The Notifying Party submits that there is no risk of input foreclosure arising from this link as the only other manufacturer of VP Latex in the EEA is Omnova, [business secret regarding Omnova's supply sources]. Moreover, there are a number of other producers of styrene monomer in the EEA, such as LyondellBasell, Total, Versalis, BASF, INEOS, Styrolution and Repsol. Trinseo will therefore not have the ability or incentive to foreclose competing manufacturers of VP Latex in the EEA (i.e. Omnova) through an input foreclosure strategy relating to styrene monomer.
- (b) *Regarding customer foreclosure:* The Notifying Party further submits that there is no risk of customer foreclosure arising from this link, as the Divestment Business accounts for a negligible share of purchases of styrene monomer in the EEA – less than [business secret regarding the Divestment Business' share of purchases of styrene monomer in the EEA]%. Accordingly, it submits that Trinseo will not have any ability or incentive to foreclose competing suppliers of styrene monomer through a customer foreclosure strategy.

¹³ Reasoned Opinion, recitals 5.4.8 to 5.4.9, 5.7.1 to 5.7.8 and Appendix 5.1, Section 4.4

¹⁴ Submission by Trinseo on 18 March 2020.

- (30) Thirdly, the Notifying Party confirms that there are no other horizontal overlaps or vertical links between the activities of Trinseo and the Divestment Business.¹⁵
- (31) In its Reasoned Opinion, the Trustee agrees with the Notifying Party's assessment. The Trustee points out that there is no horizontal overlap between Trinseo's existing products and the VP Latex products. Moreover, having considered the Notifying Party's arguments, the Trustee has not identified any *prima facie* competition concerns in relation to the divestment.¹⁶
- (32) In light of all of the above, the Commission concludes that no *prima facie* competition concerns arise in the EEA. This *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by Trinseo by a competent competition authority under applicable merger control rules.
- (33) Trinseo submits that, to the extent any other regulatory approvals such as licences or permits are required, it can reasonably expect to obtain them and there is no risk that the implementation of the Commitments will be delayed.¹⁷ The Trustee agrees and, together with its appointed technical expert, considers the timeframes envisaged, including the overall timeline identified by Trinseo (which accounts for the receipt of necessary approvals), to be reasonable and achievable.¹⁸
- (34) In light of all of the above, the Commission concludes that no *prima facie* competition concerns arise in the EEA and that Trinseo can reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business without giving rise to a risk that the implementation of the Commitments would be delayed. Therefore, Trinseo meets the Purchaser Requirement set out in paragraph 22.6 of the Commitments.

2.7. Conclusion on the Purchaser Requirements

- (35) In light of the above considerations, taking into account the Trustee's Reasoned Opinion and the other information available to it, the Commission concludes that Trinseo meets the Purchaser Requirements set out in paragraph 22 of the Commitments.

3. ASSESSMENT OF THE PROPOSED AGREEMENTS

- (36) The Proposed Agreements were signed between Synthomer and Trinseo on 6 March 2020. The Notifying Party has indicated that there are certain deviations from the requirements set out in the Commitments, but submits that the sale is nonetheless consistent with the Commitments. The Trustee has reviewed and provided an

¹⁵ For completeness, Trinseo [business secrets regarding Trinseo's production and sales strategy for butadiene]. [Business secret regarding Trinseo's sales strategy for butadiene]. Given [business secret regarding Trinseo's sales strategy for butadiene] and that the Divestment Business accounts for less than [business secret regarding the Divestment Business' share of the total butadiene demand in the EEA]% of total butadiene demand in the EEA, the Notifying Party submits that Trinseo will not have the ability or incentive to engage in input or customer foreclosure post-acquisition.

¹⁶ Reasoned Opinion, recital 5.8.6.

¹⁷ Trinseo's submission dated 24 March 2020.

¹⁸ Trustee's submission dated 24 March 2020. Reasoned Opinion, Appendix 5.1, Section 4.4.

assessment of the Proposed Agreements, including these deviations, and concluded that they fulfil the requirements of the Commitments and the condition of the Commitments to transfer the Divestment Business to a suitable purchaser. This section assesses whether the Proposed Agreements result in a divestment in a manner that is consistent with the Commitments and whether the deviations affect the viability and competitiveness of the Divestment Business, taking account of Trinseo as the proposed Purchaser.

3.1. Manufacturing Assets

- (37) The Commitments provide that the Divestment Business shall include all tangible manufacturing assets that are exclusively or primarily used for the manufacture of VP Latex, including the reactors that are currently used by Synthomer for this purpose (together, the “Manufacturing Assets”).¹⁹ However, the Proposed Agreements do not provide for the transfer of any Manufacturing Assets.
- (38) The Notifying Party submits that the proposed Purchaser has requested this exclusion. It explains that Trinseo, as an experienced operator of plants manufacturing styrene-butadiene products, does not require the Manufacturing Assets as it intends to integrate the production of VP Latex in one of its existing plants in the EEA. Accordingly, the Notifying Party submits that excluding the transfer of Manufacturing Assets from the Proposed Agreements does not affect the viability and competitiveness of the Divestment Business.
- (39) The Trustee explains that Trinseo either already possesses suitable equipment or will procure necessary equipment [business secrets regarding Trinseo’s production processes]. The Trustee also notes Trinseo’s view is that the Manufacturing Assets [business secrets regarding Trinseo’s production processes/needs]. Finally, the Trustee considers that given that Trinseo is an established manufacturer of plastics, rubbers and latexes, it has the experience to address any complexities that may arise in setting up the assets.²⁰
- (40) In light of all of the above, the Commission concludes that the sale of the Divestment Business without the Manufacturing Assets does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of Trinseo’s existing assets, plans and overall experience of establishing production lines.

3.2. Key personnel

- (41) The Commitments provide for the transfer of personnel fulfilling certain key functions within the Divestment Business, including the Hold Separate Manager (together, the “Key Personnel”).²¹ However, the Proposed Agreements do not provide for the transfer of any personnel, although the Proposed Agreements expressly state that nothing shall prevent Trinseo from requesting continued services from the Hold Separate Manager (who holds a consultant role with Synthomer, but is no longer a Synthomer employee) in connection with the Divestment Business.

¹⁹ Paragraph 3 of the Schedule to the Commitments.

²⁰ Reasoned Opinion, recitals 6.6.11 – 6.6.16.

²¹ Annex 4 of the Commitments.

- (42) The Notifying Party submits that the proposed Purchaser has requested the exclusion of the transfer of Key Personnel. Given that Trinseo already has personnel with the requisite experience in the manufacturing and sale of similar products, the Notifying Party submits that excluding the transfer of Key Personnel from the Proposed Agreements does not affect the viability and competitiveness of the Divestment Business.
- (43) In its Reasoned Opinion, the Trustee observes that Trinseo [business secrets regarding Trinseo’s production and sales strategy/needs]. Trinseo has explained that it employs more than 300 people in Europe alone, many of whom have over 20 years of experience, and considers that it can better staff the Divestment Business [business secret regarding Trinseo’s business plans and strategic decisions in relation to the Divestment Business].²² Having regard to the experience within Trinseo’s existing personnel, as well as [business secret regarding Trinseo’s business plans and strategic decisions in relation to the Divestment Business], the Trustee agrees that the sale of the Divestment Business without the Key Personnel would not affect the viability and competitiveness of the Divestment Business.²³
- (44) In view of the above, the Commission concludes that the sale of the Divestment Business without the Key Personnel does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of Trinseo’s existing personnel, plans and overall synthetic latex manufacturing and sale capability.

3.3. Non-Solicitation Requirement

- (45) The Proposed Agreements include a temporary ([duration of non-solicitation requirement]) requirement on Synthomer not to actively solicit existing customers of the Divestment Business after the divestment, while enabling Synthomer to respond to requests or orders by new or its existing customers (the “Non-Solicitation Requirement”). The Commitments do not provide for any such requirement.
- (46) The Notifying Party submits that Trinseo has requested the inclusion of the Non-Solicitation Requirement to enable it to establish relationships with existing customers of the Divestment Business.²⁴
- (47) As the Trustee indicated in the Reasoned Opinion, Trinseo considers that the Non-Solicitation Requirement is necessary to maintain the competitiveness and viability of the Divestment Business. Trinseo submits that this is because, after the divestment, Trinseo and Synthomer would be the only suppliers of VP Latex based in the EEA and, while Trinseo is experienced in the manufacture and sale of other styrene-butadiene latexes, it has to date not been active in the market for VP Latex. Trinseo also points to the fact that the transitional services agreed as part of the Proposed Agreements envisage that it will require some time to integrate VP Latex production and sale into its business.²⁵

²² Reasoned Opinion, Appendixes 1.5, 1.6 and 6.3.

²³ Reasoned Opinion, recitals 6.6.17 – 6.6.23.

²⁴ Notifying Party’s submission dated 5 February 2020.

²⁵ Reasoned Opinion, recitals 6.6.66 to 6.6.71.

- (48) The Commission considers that, for the reasons outlined above, the temporary Non-Solicitation Requirement will enable Trinseo to focus on the transfer and integration of the Divestment Business and on establishing customer relationships during the transitional period foreseen in the Proposed Agreements. Therefore, the Commission concludes that the inclusion of the Non-Solicitation Requirement in the Proposed Agreements is necessary to maintain the competitiveness and viability of the Divestment Business.

3.4. Transitional services: Relocation of production

- (49) The Commitments provide that, during a transitional period within which Synthomer provides transitional toll manufacturing services to the Divestment Business under the CMSA, it will continue to operate VP Latex production in its [name of plant] facility (solely for the purpose of manufacturing VP Latex for the Divestment Business) in the way it was operated at the date of the Commitments.²⁶ However, the Proposed Agreements allow Synthomer to relocate this VP Latex production to another facility, under two specific circumstances (the “Relocation Provision”):
- (a) where, subject to Trinseo’s agreement and approval of the Commission, Synthomer takes a strategic decision [business secrets regarding Synthomer’s strategic decisions and production facilities];²⁷ or
 - (b) where a *force majeure* event means that VP Latex production in Synthomer’s [name of plant] facility must cease or be suspended for a period of time.
- (50) The Notifying Party submits that the Relocation Provision is necessary and commercially sensible as a contingency plan in the event that VP Latex can no longer be produced in Synthomer’s [name of the plant] facility.
- (51) The Trustee explained that Trinseo also considers the Relocation Provision to be necessary to ensure the ongoing supply of VP Latex by Synthomer to Trinseo as part of the transitional arrangements. Trinseo considers this necessary for the viability and competitiveness of the Divestment Business and the Trustee considers that the Relocation Provision is justified.²⁸
- (52) In light of all of the above, the Commission concludes that the inclusion within the Proposed Agreements of the Relocation Provision contributes to the viability and competitiveness of the Divestment Business after the sale, taking account of the identity and needs of the Purchaser.

3.5. Transitional services: duration of the CMSA and TSA

- (53) The Commitments require that Synthomer shall provide transitional support to the Purchaser after the divestment pursuant to a transitional toll manufacturing agreement (which Synthomer and Trinseo agreed would take the form of a CMSA

²⁶ Paragraph 9 of the Commitments and paragraph 6 of the Schedule.

²⁷ If such a strategic decision is taken, the Proposed Agreements permit the relocation of production to another facility, [business secret regarding Synthomer’s strategic decisions and production facilities], so as to ensure that there will remain at least two facilities manufacturing VP Latex in the EEA during this transitional period.

²⁸ Reasoned Opinion, recitals 6.6.24 – 6.6.40.

and a TSA).²⁹ The Commitments specify the required duration of these agreements, as well as of the relevant services provided pursuant to them. Synthomer and Trinseo have agreed certain deviations from the time periods foreseen in the Commitments, as follows:

- (a) *Initial term:* the Commitments specify that the CMSA and TSA will each have an initial term of [duration of CMSA and TSA], which may be extended for [duration of extended CMSA and TSA], and then extended again for up to a further [duration of further extended CMSA and TSA] (provided the services under the CMSA and TSA are then provided on a [cost basis of extended CMSA and TSA]). In each case, these extensions are at the option of the Purchaser and with the approval of the Commission.

However, the Proposed Agreements require that the CMSA and TSA will each have an initial term of [duration of CMSA and TSA], rather than the [duration of CMSA and TSA and extended duration of CMSA and TSA under the Commitments] term envisaged in the Commitments. This term may subsequently be extended for up to a further [duration of further extended CMSA and TSA under the Proposed Agreements] (on the conditions as envisaged in the Commitments for the [duration of further extended CMSA and TSA under the Commitments] extension).

- (b) *Sales and marketing:* the Commitments specify that Synthomer will provide sales and marketing assistance to the Purchaser under the TSA for a duration of [duration of assistance], with the possibility of a [duration of extended assistance] extension at the Purchaser's request and subject to the Commission's approval.

Under the TSA agreed as part of the Proposed Agreements, Synthomer will provide sales and marketing assistance to the Purchaser for a duration of [duration of assistance].

- (c) *Technical customer service:* the Commitments specify that Synthomer will provide technical customer service assistance to the Purchaser for the duration of the TSA.

Under the TSA agreed as part of the Proposed Agreements, Synthomer will provide technical customer service assistance to the Purchaser for [duration of assistance], but Synthomer will remain a 'point of contact', providing reasonable assistance with technical queries from Trinseo for [duration of reasonable assistance with technical queries].

- (d) *Logistics services:* the Commitments specify that Synthomer will provide logistics assistance to the Purchaser under the TSA for a duration of [duration of assistance], with possibility of a [duration of extended assistance] extension at the Purchaser's request and subject to the Commission's approval.

Under the TSA, Synthomer will provide logistics assistance to the Purchaser for a duration of [duration of assistance], with the possibility of an extension

²⁹ Paragraphs 6-7 and 8-9, respectively, of the Schedule to the Commitments.

subject to the Commission's approval [duration of extended assistance] on a [cost basis of extended assistance].

- (54) The Notifying Party submits that Trinseo has requested these deviations in order to ensure simplicity and minimise uncertainty. Trinseo has provided to the Commission and the Trustee a detailed timeline for its proposed integration of the Divestment Business, which it submits justifies the above diversions. The Trustee and its appointed technical expert consider the timeframes envisaged, including the overall timeline identified by Trinseo, to be reasonable and achievable.
- (55) The Commission also notes that Trinseo's proposed plan for and timeline to integrate the Divestment Business indicate that these amendments to the time periods of the transitional services required by the Commitments are appropriate, and do not cast doubt on Trinseo's ability or incentive to establish manufacturing lines for VP Latex in a timely and economic way and to continue production of VP Latex in the long run.
- (56) In light of all of the above, the Commission concludes that the revised timeframes for the CMSA, the TSA and the corresponding services within them as described above do not affect the viability and competitiveness of the Divestment Business, in view of the identity and plans of the Purchaser.

3.6. Other deviations

- (57) The Notifying Party submits that, as a result of the negotiations with Trinseo, the Proposed Agreements also contain certain other – minor – deviations from the Commitments, but that these do not affect the viability or competitiveness of the Divestment Business. The Trustee has carefully assessed each of these other deviations and has concluded that none of them affect the viability or competitiveness of the Divestment Business.³⁰ The Commission considers that these other deviations are not of major significance and do not call into question the fact that the Divestment Business is being sold in a manner that is consistent with the Commitments.

3.7. Conclusion on consistency with the Commitments

- (58) On the basis of the Proposed Agreements, taking into account the Trustee's Reasoned Opinion and the other information available to it, the Commission concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

4. CONCLUSION

- (59) On the basis of the above assessment, the Commission approves Trinseo as a suitable Purchaser.
- (60) On the basis of the Proposed Agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.

³⁰ Reasoned Opinion, recital 6.6.9 and Appendix 6.1.

- (61) This decision only constitutes approval of the proposed Purchaser identified herein and of the Proposed Agreements. This decision does not constitute a confirmation that Synthomer has complied with the Commitments.
- (62) This decision is based on paragraphs 22 and 23 of Section D of the Commitments attached to the Commission Decision of 15 January 2020.

For the Commission

(Signed)
Olivier GUERSENT
Director-General