



EUROPEAN COMMISSION
DG Competition

Case M.10503 - SK CAPITAL PARTNERS / SEQENS

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

Article 6(1)(b) NON-OPPOSITION
Date: 09/12/2021

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EUROPEAN COMMISSION

Brussels, 09.12.2021
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.

SK Capital Partners
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New York, NY 10022
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**Subject: Case M.10503 – SK CAPITAL PARTNERS / SEQENS
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

Dear Sir or Madam,

- (1) On 8 November 2021, the European Commission received notification of a proposed concentration, pursuant to Article 4 of the Merger Regulation, by which SK Capital Partners, LP (“SKCP”, US) acquires control of the whole of Seqens Group Holding SAS (“Seqens”, France) by way of purchase of shares (the “Transaction”),³ within the meaning of Article 3(1)(b) of the Merger Regulation. SKCP is designated hereinafter as the “Notifying Party” and together with Seqens as the “Parties”.

¹ OJ L 24, 29.1.2004, p. 1 (the ‘Merger Regulation’). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (the ‘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 463, 16.11.2021, p. 22.

1. THE PARTIES

- (2) SKCP is a private investment firm focused on the specialty materials, chemicals and pharmaceutical sectors. SKCP is active globally, through its portfolio companies, with a specific focus on North America, the EEA, the Middle East and Australia.
- (3) Seqens engages, through its subsidiaries, in the business of the international manufacturing and sales of diversified essential chemicals, pharmaceutical solutions and specialty ingredients that are used in everyday products. Seqens is mainly active in the EEA, Asia Pacific and North America.

2. THE CONCENTRATION

- (4) Pursuant to a put option agreement dated 25 August 2021, to which an agreed share and purchase agreement is attached, SKCP is acquiring indirect sole control over the Target. SKCP has committed to acquire [...] of the shares of Seqens. The acquisition will be carried out through one of SKCP's affiliates, [...],⁴ and through the special purpose vehicles indirectly controlled by [...], notably [...], which are ultimately controlled by funds managed by SKCP (the "SK Funds"). At present, [...] controls [...], which is the indirect purchaser of the entire share capital of the Target through the abovementioned special purpose vehicles.⁵
- (5) At closing of the Transaction, the SK Funds will hold [...] of the shares of Seqens among which [...] (holding approximately [...] of the shares of [...]), which is ultimately controlled by [...]. The remaining shares in Seqens will be held by BPI France ([...]), Seqens Rolling Shareholders (incl. affiliates of Eurazeo Nov Santé ([...]), LH Seqens ([...]), Ardian ([...]) Mérieux Participations 2 ([...]), Mérieux Développement ([...]), MxCA ([...]) and Crusader/Eximium ([...]), Wavelength management ([...]) and Seqens management (up to [...] depending on the final amount of each manager's reinvestment). None of those indirect shareholders will hold any veto rights or other rights enabling them to exercise control over Seqens.⁶
- (6) Pursuant to clause 4.1 of the share purchase agreement, SKCP will acquire the entire issued share capital and voting rights of Seqens for an aggregate consideration of EUR [...] subject to certain adjustments mechanisms. [...].
- (7) SKCP will therefore solely control Seqens within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (SKCP: EUR 8,194 million, Seqens: EUR 794 million)⁷. Each of them has a Union-wide turnover in excess of EUR 250 million (SKCP: EUR [...], Seqens: EUR [...]), but they do not achieve more than two-thirds

⁴ [...].

⁵ [...].

⁶ Notifying Party's response to RFI 3, question 8.

⁷ Turnover calculated in accordance with Article 5 of the Merger Regulation.

of their aggregate Union-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension.

4. OVERVIEW OF AFFECTED MARKETS

(9) The Transaction relates to the following markets: (i) the supply of Active Pharmaceutical Ingredient (API) Contract Development and Manufacturing Organisation (CDMO)⁸ services; (ii) API manufacturing on a proprietary basis; (iii) the supply of phenol; (iv) the supply of acetone; (v) the supply of lubricant additives; (vi) the supply of cosmetic ingredients; and (vii) the supply of alkylphenols.

(10) Of those markets, the Transaction leads to the following vertically affected markets:

Supply of phenol (upstream) and the following alkylphenol markets downstream:

- a. Paranonylphenol (“PNP”)
- b. Para-ter-butylphenol (“PTBP”)
- c. 2,4-di-ter-Butylphenol (“2,4-DTBP”)
- d. 2,6-di-ter-Butylphenol (“2,6-DTBP”)
- e. Di-sec-butylphenol (“DSBP”)
- f. Ortho-sec-Butylphenol (“OSBP”)

(11) The activities of the Parties have so far not been horizontally overlapping. Hence, the Transaction does not relate to markets that are currently horizontally affected.⁹

5. MARKET DEFINITIONS

5.1. Phenol

(12) In terms of product market, phenol is a white, crystalline solid that is often transported in a molten state. Phenol is a commodity raw material which is used to produce bisphenol-A (BPA, which accounts for ca. 50% of phenol demand in the EU in 2020), phenolic resin, caprolactam (which is used to make 6-nylon fibres,

⁸ API CDMO services consist in the outsourcing of the manufacturing process of a given drug to a third party or parties.

⁹ SKCP is active as a supplier of propofol through its portfolio company SI Group. Seqens is currently not active in supplying propofol, but has plans to enter the market. As a result, there is a potential future horizontal overlap due to pipeline competition. However, SI Group currently has market shares in the narrowest plausible market (propofol in the EEA) of at most [20-30]% (by volume), i.e. below the 35% threshold that the Commission has applied in previous cases of pipeline-to-marketed competition (e.g. COMP/M.7975 – Mylan/Meda, paragraph 581), and Seqens’ market entry is currently foreseen in 2024, i.e. more than two years away (two years being the threshold applied in previous cases). In any case, the following competitors of propofol will remain active post-Transaction in the EEA: Bachem with a market share of 50-60% and AMRI Euticals with a market share of 20-30%. Apart from that, Porton is currently not active in the EEA but has a market share of 0-10% globally.

engineering resins and film) and as a slimicide, disinfectant and an anasthetic in medicinal preparations.¹⁰

- (13) The Commission has considered different product market definitions comprising phenol in the past: i) a wider product market consisting of phenol, acetone, alphanethylstyrol and acetophenol¹¹ and ii) a narrower product market consisting only of phenol.¹²
- (14) The Commission notes that acetone is a by-product of producing phenol using the cumene-phenol method, which would point to a broader market from a supply side perspective. However, acetone can also be produced from isopropyl alcohol, and from a demand side perspective, there is only very limited substitutability between some of the above-mentioned chemicals. In particular for phenol, there is no substitute, except in the production of nylon.¹³ This would therefore rather point to a distinct market for phenol.
- (15) For the present case, the definition of the exact product market can be left open, as even under the narrower product market definition (i.e. phenol), no competition concerns would arise.
- (16) In terms of geographic market, the Commission has left the geographic market definition for phenol open, but considered in past decisions that the scope could be wider than Western Europe.¹⁴ Responses to the market investigation suggested that the market is at most EEA-wide and could potentially be more limited while no respondent indicates that the phenol market may be national.¹⁵
- (17) For the present case, the definition of the exact geographic market can be left open, as even under the narrower market definition (i.e. Western Europe), no competition concerns would arise.

5.2. Alkylphenols

- (18) In terms of product market, alkylphenols are phenol derivatives that are mainly used as raw materials in the production of several industrial products such as surfactants, detergents, emulsifiers, solubilizers and polymer additives. The category of alkylphenols comprises 30 different products.
- (19) The Commission has previously considered the broad market of alkylphenols as potentially a distinct market.¹⁶ The Notifying Party submits that on a conservative basis, the market can be defined at the product level for each of SI Group's products belonging to the category of alkylphenols (further defined in sections 5.3 – 5.7), where SI Group has a market share of above 30%.

¹⁰ See e.g. COMP/M.6171 IPIC/CEPSA, paragraph 10.

¹¹ COMP/M.439 - Hüls/Phenolchemie, paragraph 8.

¹² COMP/M.3024 – BAIN Capital/Rhodia, paragraph 12.

¹³ COMP/M.3024 – BAIN Capital/Rhodia, paragraph 12.

¹⁴ COMP/M.6171 IPIC/CEPSA, paragraph 18.

¹⁵ Responses to question 5 from phenol suppliers received on 12 November 2021.

¹⁶ COMP/M.9017 - SK Capital Partners/Schenectady International Group, paragraph 47.

- (20) Given that in this case the Commission assesses the relationship between alkylphenol markets and the phenol market upstream, and that phenol is a commodity which is supplied in the same quality for all applications (including alkylphenols)¹⁷, it does not seem to be relevant to conclude on whether the market of alkylphenols is broad comprising all alkylphenols or narrow, consisting of distinct products.
- (21) For the present case, the definition of the exact product market can be left open, as even under the narrower product market definition (i.e. individual alkylphenols), no competition concerns would arise.
- (22) In terms of geographic market, the Commission has not previously considered a geographic market for all alkylphenols. However, the Commission has considered geographic markets for several individual alkylphenols (see references in sections 5.3-5.7 below).
- (23) The Notifying Party submits that in line with the geographic market being at least EEA-wide for individual alkylphenols (see sections 5.3-5.7 below), the geographic market for the broader category of all alkylphenols should be considered at least EEA-wide too.
- (24) The Commission notes that individual alkylphenols further defined below are used as input in the production of different end-products or intermediate products and it is unclear to what extent different alkylphenols are substitutable for different use cases. However, for the purpose of assessing the affected markets of phenol as an input upstream and several alkylphenols downstream, the exact market definition of i) all alkylphenols or ii) individual alkylphenols has no impact on the Commission's assessment and can therefore be left open.

5.3. Paranonylphenol (“PNP”)

- (25) In terms of product market, PNP is a chemical intermediate for the production of antioxidants, additives and other downstream chemical products. All commercially used PNP is produced from nonene based on the trimerization of propylene. The Commission has not previously explicitly considered a market for PNP, but the Notifying Party submits that, in previous decisions involving chemical intermediate products, the Commission found separate markets for chemical intermediates that exhibit distinct chemical compositions or product characteristics.¹⁸ In addition, according to the Notifying Party there is no plausible distinction by use cases for PNP on the basis of which there could be different markets. Indeed, although PNP is sold into several applications (namely (i) oilfields resins, (ii) mining, (iii) ink resins and (iv) surfactants) and the same quality of PNP is used in all applications.¹⁹ The Commission received no feedback from the market contradicting this view and therefore considers that for the purpose of this case the market of PNP is a separate market without further distinctions.

¹⁷ Responses to questions 3 and 4 from phenol suppliers received on 12 November 2021.

¹⁸ COMP/M.7858, Ineos/Celanese Assets, paragraph 30.

¹⁹ Notifying Party's response to RFI 3, question 2.

- (26) In terms of geographic market, the Commission has not considered the market for PNP specifically in previous decisions. However, the Notifying Party submits that, in previous decisions involving chemical intermediates, the Commission concluded that the market was not broader than the EEA due to transport costs.²⁰ In that particular case, the majority of competitors and customers agreed on the geographic market being EEA-wide in scope. The Notifying Party submits that PNP is easily transportable.²¹ The Commission received no feedback from the market contradicting this view and therefore considers that, for the purpose of this case, the scope of the geographic market for PNP is EEA-wide, but considers that the definition can be left open, as no competition concerns would arise regardless of the geographic market definition (EEA-wide or narrower).²²

5.4. Para-ter-butylphenol (“PTBP”)

- (27) In terms of product market, PTBP is a chemical intermediate belonging to the group of alkylphenols, which is created by reacting phenol with high purity isobutylene. PTBP is used in the production of surfactants, tackifier resins, ink resins and as polycarbonate chain terminator. In a previous case, the Commission’s market investigation provided evidence that neither supply nor demand side substitutability exists regarding PTBP, as it cannot be easily replaced by other products and suppliers use dedicated equipment for the manufacturing of this chemical.²³ However, the Commission did not conclude on the product market definition of PTBP in that case. According to the Notifying Party there are two grades of PTBP (polymer grade and resin grade) which are however both produced and marketed by all competitors, and would hence not lead to a plausible narrower market definition.²⁴ The Commission received no market feedback that would contradict this claim. For the purpose of the present case, the Commission therefore considers the market to consist of PTBP without further distinctions, but the product market definition can be left open, as no concerns arise regardless of the exact product market ((i) PTBP or (ii) PTBP polymer grade and PTBP resin grade).
- (28) In terms of geographic market, the market investigation in a previous case provided evidence that the geographic scope of the market for PTBP is at least EEA-wide and possibly global.²⁵
- (29) However, the Commission did not conclude on geographic market definition in that case. The Commission considered in that case that PTBP is easily transportable and transport costs and import duties are low.²⁶ The Commission received no feedback from the market contradicting this view in this case and, therefore, for the purpose of this case, it considers that the geographic scope for the plausible markets of PTBP, PTBP polymer grade and PTBP resin grade could be EEA-wide. However, the definition can be left open, as no competition concerns would arise regardless of the

²⁰ COMP/M.7858, Ineos/Celanese Assets, paragraph 42.

²¹ Notifying Party’s response to RFI 3, question 2.

²² Notifying Party’s response to RFI 5, question 1. Specifically, the Notifying Party confirmed that the Parties’ market shares would not significantly change should the market for PNP be considered as national in scope.

²³ COMP/M.9017 - SK Capital Partners/Schenectady International Group, paragraph 168.

²⁴ Notifying Party’s response to RFI 3, question 3.

²⁵ COMP/M.9017 - SK Capital Partners/Schenectady International Group, paragraph 170.

²⁶ COMP/M.9017 - SK Capital Partners/Schenectady International Group, paragraph 171.

exact product (PTBP or narrower) or geographic market definitions (EEA-wide or global).²⁷

5.5. 2,4-di-tert-Butylphenol (“2,4-DTBP”) and 2,6-di-tert-Butylphenol (“2,6-DTBP”)

- (30) In terms of product market, 2,4-DTBP and 2,6-DTBP are organic compounds that belong to the group of alkylphenols. 2,6 DTBP is used in different concentrations either as intermediate raw material (with 99% 2,6 DTBP content) in the production of antioxidants or as a standalone antioxidant (with 75% 2,6-DTBP content). 2,4 DTBP is used in the synthesis of a range of different secondary antioxidants or other chemical products.
- (31) The Commission previously considered whether 2,4 and 2,6 DTBP belong to the same or different product markets, finding some evidence for limited substitutability both on the supply and demand side, but left the definition open.²⁸ The Commission received no market feedback indicating that the markets for 2,4 and 2,6 DTBP are separate or belong to the same market, or an even wider market of alkylphenols. Conservatively, the Commission considers the market in the present case at the level of the individual alkylphenols separately, i.e. i) 2,4 DTBP and ii) 2,6 DTBP. However, a conclusion on the exact product market definition of i) 2,4-DTBP, ii) 2,6-DTBP or iii) 2,4 DTBP and 2,6 DTBP is not necessary as no concerns arise regardless of the definition.
- (32) In terms of geographic market, the Commission has not previously concluded on the scope for the market of 2,4-DTBP or 2,6-DTBP. However, the Commission found evidence supporting an at least EEA-wide market, and potentially a global market.²⁹ For the purpose of the present case, the Commission considers the market to be EEA-wide in scope. However, there is no need to conclude on the geographic market definition for the plausible markets of i) 2,4-DTBP, ii) 2,6-DTBP or iii) 2,4 and 2,6 DTBP, as no concerns arise regardless of a wider (global) or narrower (EEA-wide) market definition.

5.6. Di-sec-butylphenol (“DSBP”)

- (33) In terms of product market, DSBP also belongs to the group of alkylphenols and is manufactured by reacting Butene-1 with phenol. DSBP is mainly used as a bespoke wetting agent for various herbicides. In a previous case, the Commission left the product market definition for DSBP open. The Notifying Party submits that no segmentation based on grade or other criteria is relevant in the case of DSBP. The Commission received no market feedback indicating the contrary.
- (34) Given that SI Group is the only supplier globally of DSBP and no concerns arise with respect to the specific relationship in this case regardless of this market position, the Commission considers for the purpose of this decision the market of DSBP.

²⁷ Notifying Party’s response to RFI 5, question 2. Specifically, the Notifying Party confirmed that the Parties’ market shares for the plausible markets of PTBP, PTBP polymer grade and PTBP resin grade would not significantly change considering either an EEA-wide or global-wide scope of the market.

²⁸ COMP/M.9017 - SK Capital Partners/Schenectady International Group, paragraph 46f.

²⁹ COMP/M.9017 - SK Capital Partners/Schenectady International Group, paragraph 49f.

- (35) In terms of geographic market, the Commission has not previously concluded on a geographic market for DSBP.³⁰ The Notifying Party submits that the market for DSBP is likely global, as DSBP is easily transportable and transport costs are low.³¹ The Notifying Party submits that in any case the market definition can be left open, as no concerns arise in any case. SI Group is the only supplier of DSBP globally, and supplies the vast majority of its volumes in the EEA to [...] for the production of a pesticide product.
- (36) Given that no concerns arise regardless of the geographic market definition, the Commission considers it conservatively as EEA-wide for the purpose of this case, but considers that it can be left open.

5.7. Ortho-sec-Butylphenol (“OSBP”)

- (37) In terms of product market, OSBP is an industrial chemical raw material belonging to the group of alkyphenols, which is created by reacting Butene-1 with phenol. OSBP is used in dyeing and as a chemical intermediate for the production of polymer inhibitors (such as DNBP³²), pesticides, fuel additives and stabiliser intermediates. In a past decision, the Commission found evidence that OSBP cannot be replaced by other chemicals in the production of downstream applications, and inconclusive evidence on whether a further segmentation could be relevant.³³
- (38) The Notifying Party submits that OSBP cannot be further sub-segmented based on grade or other criteria. The Commission did not receive any market feedback contradicting this view. Given that the Transaction does not raise any concerns regardless of whether the market of OSBP is considered to be limited to OSBP or broader (all alkyphenols), the exact product market definition can be left open. For the purpose of the assessment, the Commission considers the market for OSBP.
- (39) In terms of geographic market, the Commission considered in a past decision that the scope of the geographic market for OSBP was likely EEA-wide,³⁴ due to the need for a REACH³⁵-registration for this chemical, but ultimately left the market definition open. For the purpose of the present case, the Commission considers the market for OSBP to be EEA-wide in scope due to the regulatory constraints for marketing OSBP in the EEA. However, there is no need to conclude on the geographic market definition for OSBP, as no concerns arise regardless of a wider (global) or narrower (EEA-wide) market definition.

³⁰ COMP/M.9017 - SK Capital Partners/Schenectady International Group, paragraph 151.

³¹ Notifying Party's response to RFI 3, question 4.

³² DNBP stands for 2,4-dinitro-6-sec butyl phenol, see Notifying Party's response to RFI 3, question 6.

³³ COMP/M.9017 - SK Capital Partners/Schenectady International Group, paragraph 96.

³⁴ COMP/M.9017 - SK Capital Partners/Schenectady International Group, paragraph 100.

³⁵ See Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

6. COMPETITIVE ASSESSMENT

6.1. Phenol (upstream) – Alkylphenols (downstream)

- (40) Both Parties are active upstream in the supply of phenol. Two of SKCP's portfolio companies (SI Group and Tilley Chemical) are active in phenol markets. However, both companies' supply of phenol is marginal: SI Group only supplies phenol in India and Tilley Chemical sold [...] of phenol in 2020 with a revenue of USD [...] to very few clients based in the US. Any market shares of SI Group and Tilley would be below [0-5]% in the EEA or worldwide, according to the Notifying Party.
- (41) Seqens produces phenol, a small part ([...]) of which is targeted at captive use for the production of salicylic acid and parts of which it sells on the merchant market. Under the narrowest market definition (phenol sold in Western Europe (EU-14 and the UK), Seqens would have a market share of [5-10]% in terms of volume and value in 2020.
- (42) Downstream, SKCP's portfolio company SI Group purchased [...] of phenol from Seqens in the EEA in 2020.³⁶ SI Group used the phenol to produce PNP, PTBP, 2,4 DTBP, 2,6 DTBP, DSBP and OSBP. SKCP's market shares in those downstream markets are presented below in Table 1.

Table 1: SKCP's market shares in six alkylphenol markets in the EEA, 2020

Product	Market share in the EEA in 2020
Alkylphenols overall	[40-50]%
PNP	[50-60]% ³⁷
PTBP	[50-60]% ³⁸
2,4-DTBP	[60-70]%
2,6-DTBP	[60-70]%
DSBP	[90-100]%
OSBP	[90-100]%

Source: Form CO, paragraphs 225, 230, 234, 237, 241.

³⁶ SI Group's total demand of phenol in the EEA in 2020 was [...] and globally [...].

³⁷ The Notifying Party confirmed that their market share in the market for PNP at EEA-wide level is not substantially different from their market shares at a plausible narrower geographic market level (e.g. national).

³⁸ The Notifying Party confirms that the market share of SI Group for each unique application/grade of PTBP does not deviate significantly from the market share for PTBP overall, see Notifying Party's response to RFI 3, question 3.

6.2. The Notifying Party's view

- (43) The Notifying Party submits that the Transaction will not raise any concerns regarding the vertical relationship between the Parties with respect to phenol (upstream) and the six alkylphenols downstream markets. Seqens has no market power upstream with a market share of at most [5-10]% and a number of phenol suppliers remaining active, such as Ineos, CEPESA Quimica, Versalis and Borealis. The Notifying Party therefore considers that the merged entity would have no ability to foreclose downstream rivals, and, as a result, also no incentives, since a foreclosure would only backfire and lead customers to doubt on its reliability as a supplier, resulting in customers changing supplier away from Seqens. Furthermore, the Notifying Party highlights that Seqens' phenol production capacity is [...], whereas the total demand for phenol in the EEA amounted to ca. 2 million tons in 2020. If the merged entity were to foreclose rivals downstream, that demand could be easily satisfied by Seqens' rivals.
- (44) In terms of customer foreclosure, the Notifying Party submits that no concerns arise because phenol is used in the production of a very large number of chemical products and therefore, SI Group's purchases for six alkylphenols are not an important route to market for phenol suppliers. SI Group's purchases represent [0-5]% of the total EEA volume and value of demand in the upstream market. In terms of incentives, according to the Notifying Party, customer foreclosure would not be profitable, as foreclosure would not have any impact on costs and prices of competitors given the significant share of demand from different companies downstream (not only alkylphenol suppliers) that would still be available post-Transaction.

6.3. The Commission's assessment

6.3.1. Input foreclosure

- (45) Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied, absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may lead the merged entity to profitably increase the price charged to consumers, resulting in a significant impediment to effective competition.³⁹ In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.⁴⁰
- (46) Firstly, for input foreclosure to be a concern, the vertically integrated firm resulting from the Transaction must have a significant degree of market power in the upstream market. In this respect, the Commission notes that Seqens' market share upstream is below 10%, which would normally suggest the absence of market power⁴¹, and hence no ability to foreclose access to phenol as an input. The Commission has no

³⁹ Non-Horizontal Merger Guidelines, recital 31.

⁴⁰ Non-Horizontal Merger Guidelines, recital 32.

⁴¹ Non-Horizontal Merger Guidelines, recital 35.

indication that the market share in this case does not reflect the competitive strength of Seqens in the market of phenol. None of the respondents to the market investigation questioned the fact that Seqens does not hold a significant degree of market power in the upstream market for phenol. The market investigation, additionally, confirmed the Notifying Party's view with respect to phenol not representing a significant source of product differentiation for the downstream market, since there is no specific phenol quality required as input for alkylphenols or other applications⁴², with the exception of when the intended end-use is for contact with food.

- (47) Secondly, given that the merged entity would have no ability to foreclose, the Commission considers it unnecessary to assess whether the merged entity would have incentives to foreclose. Nevertheless, the Commission notes that the incentive to foreclose would depend on the degree to which the trade-off between the profit lost in the upstream market due to a reduction of input sales to rivals and the profit gain from expanding sales downstream would be profitable.⁴³ In this respect, the Commission observes that there are several suppliers of phenol in the market and phenol is a commoditized product, which does not require a specific level of quality or purity; phenol sold by Seqens in the downstream market does not differentiate itself from phenol sold by its competitors. The Commission considers that, should the Parties restrict access to phenol, it is highly likely that the downstream demand for phenol would be diverted to competitors. Moreover, none of the responding competitors raised any concerns in this regard.
- (48) Thirdly, in terms of impact, the competitors responding to the market investigation unanimously confirmed that they expect no impact on the market for phenol in the EEA⁴⁴ and expect the market for the supply of phenol to remain competitive post-Transaction.⁴⁵
- (49) Based on the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationship between the supply of phenol (upstream) and the supply of alkylphenols (or even plausible individual alkylphenol markets, namely PNP, PTBP, PTBP polymer grade, PTBP resin grade, 2,4 DTBP, 2,6 DTBP, DSBP and OSBP) (downstream) as a result of input foreclosure.

6.3.2. *Customer foreclosure*

- (50) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete. In turn, this may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may allow the merged entity profitably to establish higher

⁴² Responses to questions 3 and 4 from phenol suppliers received on 12 November 2021.

⁴³ Non-Horizontal Merger Guidelines, recitals 40-41.

⁴⁴ Responses to question 9 from phenol suppliers received on 12 November 2021.

⁴⁵ Responses to question 6 from phenol suppliers received on 12 November 2021.

prices on the downstream market.⁴⁶ In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.⁴⁷

- (51) Firstly, in relation to the merged entity's ability to foreclose access to downstream market, a merger may affect upstream competitors by increasing their cost to access downstream customers or by restricting access to a significant customer base.⁴⁸ Given that the market shares of SKCP in the narrower plausible markets of individual alkylphenols is between 50 and 100%, the Commission conducted a market investigation to verify the Notifying Party's claims in respect of the absence of customer foreclosure from the perspective of Seqens' rivals upstream.
- (52) The market investigation confirmed the Notifying Party's views. First, all responding competitors replied that no specific quality or purity of phenol is required for the production of alkylphenols, or any other application for which phenol is used⁴⁹, confirming that the demand for phenol is indeed much broader than just limited to manufacturers and suppliers of alkylphenols. The Commission notes, in that respect, that the phenol demand attributable to alkylphenols (where SI Group is active in six specific alkylphenols downstream with high market shares between 50 and 100% in the EEA in 2020) is just 5.7% of overall phenol demand⁵⁰. Given this very limited share of phenol demand, it is apparent that there would remain sufficient economic alternatives in the downstream market for the upstream rivals to sell their phenol to. The customer base for phenol in the EEA does not comprise only customers who manufacture and supply alkylphenols but it encompasses different applications, such as phenolic resins (19.7% of demand of phenol), BPA (Bisphenol A, representing 48.9% of demand of phenol), cyclohexane (23.2% of demand of phenol) and a number of other applications together representing 23% of demand of phenol. Therefore, the customer base is sufficiently large to exclude competition concerns on the ground of lack of ability to foreclose customers.
- (53) Secondly, given that the merged entity would have no ability to foreclose, the Commission considers it unnecessary to assess whether the merged entity would have incentives to foreclose. Nevertheless, the Commission notes that the incentive to foreclose access to downstream markets would depend on the degree to which the trade-off between the possible costs associated with not procuring products from upstream rivals and the possible gains from doing so is profitable. Given the significant share of demand for phenol that would still be available on the market, the Commission considers that it is very unlikely that a strategy of customer foreclosure could be profitable, as this strategy would not have any impact on costs and prices of competitors. Additionally, none of the market respondents to the market investigation raised any concerns in relation to a potential strategy of

⁴⁶ Non-Horizontal Merger Guidelines, recital 58.

⁴⁷ Non-Horizontal Merger Guidelines, recital 59.

⁴⁸ Non-Horizontal Merger Guidelines, recital 60.

⁴⁹ Responses to questions 3 and 4 from phenol suppliers received on 12 November 2021.

⁵⁰ Form CO, paragraph 223.

customer foreclosure, arguing that a sufficient level of demand for phenol would remain on the market.

- (54) Thirdly, in terms of impact, the competitors responding to the market investigation unanimously confirmed that post-Transaction there would still be sufficient demand for phenol in the EEA and that, should the merged entity stop sourcing phenol from rivals and source this product only from Seqens, this strategy would have no impact on competitors' access to the market.⁵¹ Competitors expect the Transaction will have no impact in the EEA.⁵²
- (55) Based on the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the vertical relationship between the supply of phenol (upstream) and the supply of alkylphenols (or even plausible individual alkylphenol markets, namely PNP, PTBP, PTBP polymer grade, PTBP resin grade, 2,4 DTBP, 2,6 DTBP, DSBP and OSBP) (downstream) as a result of customer foreclosure.

7. CONCLUSION

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

For the Commission

(Signed)

Margrethe VESTAGER
Executive Vice-President

⁵¹ Responses to question 8 from phenol suppliers received on 12 November 2021.

⁵² Responses to question 9 from phenol suppliers received on 12 November 2021.