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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 LP
430, Park Ave
New York, NY 10022
United States of America

Subject: **Case M.10725 – SK CAPITAL PARTNERS / POLYMER ADDITIVES HOLDINGS**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 10 June 2022, the Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which SK Capital Partners LP ("SK Capital", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Polymer Additives Holdings Inc. (together with its subsidiaries, "Valtris" or the "Target", USA) (the "Transaction").[3] The Transaction is accomplished by way of purchase of shares. In

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 236, 20.06.2022, p. 109.

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

the remainder of this decision, SK Capital is referred to as the "Notifying Party" and, together with Valtris, as the "Parties".

1. THE PARTIES

(2) **SK Capital** is a US-based private investment firm focused on the specialty materials, chemicals and pharmaceutical sectors. It was founded in 2007 and is based in New York, USA, with an additional office in Miami, Florida. It manages SK Capital Investment VI, Ltd., which, in turn, manages SK Capital Fund VI, whose wholly owned indirect subsidiary – Valor Acquisition Buyer Inc. – is the entity carrying out the transaction in the present case ("Valor"). SK Capital is active globally, through its portfolio companies, with a specific focus on North America, the EEA, the Middle East and Australia.

(3) **Valtris** is a US-based company, headquartered in Independence, Ohio, active in the supply of specialty chemicals, primarily used as additives in the production and processing of plastics, and chemical precursors used in coatings, flavour and fragrance, personal care and pharmaceutical applications. Valtris operates nine manufacturing facilities globally, four in the United States, four in Europe, and one in India.

2. THE CONCENTRATION

(4) On 7 March 2022, the Parties entered into an agreement and plan of merger (the "Merger Agreement"), pursuant to which Valor Acquisition Merger Sub Inc. ("Merger Sub"), a wholly owned direct subsidiary of Valor, will merge with and into Valtris, with Valtris surviving the merger as a wholly owned direct subsidiary of Valor.

(5) SK Capital will therefore solely control Valtris within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (SK Capital: EUR […] million, Valtris: EUR […] million)[4]. Each of them has a Union-wide turnover in excess of EUR 250 million (SK Capital: EUR […] million, Valtris: EUR […] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified concentration therefore has a Union dimension.

4. OVERVIEW OF AFFECTED MARKETS

(7) The Transaction gives rise to horizontal overlaps[5] and vertical links globally and in the EEA in relation to chemicals. As a result of the Parties' overlapping activities

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

[5] The Transaction gives rise to five horizontal overlaps in the markets for (i) liquid organophosphites, (ii) non-hindered amine light stabilisers, (iii) phthalate plasticisers, (iv) aliphatic plasticisers, and (v) trimellitate plasticisers. None of these horizontal overlaps give rise to affected markets.

and considering all plausible product and geographic markets (as assessed in Section 5 below), the Transaction leads to the following vertically affected markets, as detailed in Table 1 below:

(a) Supply of benzaldehyde ("BALD") (upstream), where Valtris is active globally, and cationic dyes (downstream), where SK Capital is active globally through its portfolio company Archroma;

(b) Supply of BALD (upstream), where Valtris is active globally, and optical brightening agents ("OBA") (downstream), where SK Capital is active globally through its portfolio company Archroma;

(c) Supply of BALD (upstream), where Valtris is active globally, and photoresist polymers (downstream), where SK Capital is active globally through its portfolio company Seqens[6];

(d) Supply of benzyl chloride (upstream), where Valtris is active globally, and dyeing auxiliaries (downstream), where SK Capital is active globally through its portfolio company Archroma;

(e) Supply of benzyl chloride (upstream), where Valtris is active globally, and the manufacturing of active pharmaceutical ingredients ("API") on a proprietary basis (downstream), where SK Capital is active globally through its portfolio company Seqens;

(f) Supply of benzyl chloride (upstream), where Valtris is active globally, and the provision of contract development and manufacturing services ("CDMO") for the production of API (downstream), where SK Capital is active globally through its portfolio company Seqens.

Table 1: Overview of vertically affected markets

Upstream Valtris product	Valtris market share in the EEA	Valtris market share globally	Downstream SK Capital product	SK Capital market share in the EEA	SK Capital market share globally
BALD	[30-40]%	[5-10]%	Cationic dyes	[0-5]%	[0-5]%
BALD	[30-40]%	[5-10]%	OBA	[0-5]%	[0-5]%
BALD	[30-40]%	[5-10]%	Photoresist polymers	[0-5]%	[0-5]%
Benzyl chloride	[60-70]%	[20-30]%	Dyeing auxiliaries	[0-5]%	[0-5]%
Benzyl chloride	[60-70]%	[20-30]%	API	[0-5]%	[0-5]%
Benzyl chloride	[60-70]%	[20-30]%	API CDMO	[0-5]%	[5-10]%

Source: Form CO, para. 7.

(8) In light of the above, and as better detailed below, it is apparent that the Transaction gives rise to vertically affected markets, if the upstream markets for BALD and benzyl chloride were to be defined EEA-wide in scope, but not if they were to be defined global in scope.

6 The Notifying Party submits that Seqens made sales of approximately USD […] globally and […] in the EEA in 2021.

(9) The affected markets identified above will be the focus of theremaining sections of the present decision.

5. MARKET DEFINITIONS

5.1. Market for the production and supply of BALD

(10) BALD is a colourless liquid, which has an almond-like odour. It is an organic compound consisting of a benzene ring with a formyl substituent and can be obtained by many processes. BALD can be formed by partial oxidation of benzoic alcohol and regularly oxidized BALD and then converted to additional products by hydrocyanic acid or sodium bisulfide. It can also be prepared by oxidation of toluene or benzyl chloride or by treating benzyl chloride with an alkali (*e.g.*, sodium hydroxide).

(11) BALD is commonly employed as a food-flavouring agent, as well as in the synthesis of other organic compounds, including pharmaceuticals, agrochemicals and plastic additives. BALD is also used as an intermediate for the processing of perfume and flavouring compounds and in the preparation of certain aniline dyes.

(12) In terms of product market definition, the Commission has concluded in the past that BALD constitutes a separate relevant product market, as it is almost impossible to find a suitable substitute given its specific chemical structural characteristics and its specific organoleptic characteristics.[7]

(13) The Notifying Party agrees with the previous practice of the Commission and submits that the market should not be further segmented, e.g., by application or based on BALD's production process (i.e., produced via oxidisation or chlorination).[8]

(14) The Commission's file and the market investigation results do not contain any indication that would suggest departing from the Commission's previous practice and the views of the Notifying Party. For instance, one competitor responding to the Commission's market investigation indicated that "[t]*he different specifications (or rather quality levels) of BALD that are available on the market do not differ too much from one another. This is why most customers are able to use similar qualities of BALD*".[9]

(15) For the purpose of the present case, the Commission therefore considers the market to consist of BALD without any further segmentation. However, the Commission considers that the exact scope of the product market definition for BALD can be left open, since no competition concerns would arise from the Transaction regardless of the exact product scope of the market.[10]

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7 See Case COMP/M.5785 - *Sun Capital/DSM Special Products*, decision of 02.12.2010, paras 28-33.

8 Form CO, paras 134-135.

9 Response to questions 4.1 and 4.2 of questionnaire to competitors.

10 Additionally, the Notifying Party confirmed that market shares would not be materially different considering different plausible segmentations.

(16) Regarding geographic market definition, in the past the Commission has left the geographic market definition for BALD open but considered the market to be at least EEA-wide.[11]

(17) The Notifying Party considers that the market is global as (i) all major manufacturers ship BALD worldwide, (ii) tariffs for imports and transport costs are low, and (ii) customers order BALD from suppliers irrespective of their geographic location.[12]

(18) The Commission's market investigation indicates that the relevant geographic scope for BALD is likely EEA-wide but with global elements. Specifically, suppliers of BALD are generally active on a global basis and costs for import and transport are not particularly high. For instance, while the majority of customers that responded to the market investigation sources BALD within Europe, they also indicate that they could easily source BALD outside of Europe.[13]

(19) In any event, the Commission considers that, for the purposes of the present decision, the exact scope of the geographic market definition for BALD can be left open, since no competition concerns would arise from the Transaction regardless of the exact geographic scope of the market, *i.e.*, EEA-wide or global.

5.2. Market for the production and supply of benzyl chloride

(20) Benzyl chloride is an organic chemical manufactured by the chlorination of toluene. It is known for its strong, unpleasant odor and is a colorless liquid at room temperature. It is moderately flammable, and gives off explosive fumes when heated. Chemically, benzyl chloride is considered to be structurally the simplest supply-chain chlorinated derivative of toluene.

(21) Benzyl chloride has a number of applications in industrial chemical syntheses. Its main uses are as a feedstock in the production of benzyl alcohol (accounting for about 52% of total benzyl chloride consumption), benzyl cyanide (14%), benzyl quaternary ammonium compounds (17%), and benzyl phthalates (4%), with the remainder consumed for benzyl esters and other products. These products are in turn used in the production of a diverse range of products, such as plasticisers, sanitizing agents, oil extraction materials, pharmaceuticals, agrochemicals, biocides, dyes and pigments, heat exchanging fluids, flavours and fragrances, and specialty chemicals.[14]

(22) In relation to the product market definition for benzyl chloride, the Commission has not previously considered a market for benzyl chloride but the Notifying Party submits that, in a previous decision,[15] the Commission has defined separate product markets for certain products that can be produced using benzyl chloride, namely benzyl alcohol and BALD.[16]

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11 See Case COMP/M.5785 - *Sun Capital/DSM Special Products*, decision of 02.12.2010, paras 76-79.
12 Form CO, para. 136.
13 Response to questions 6 and 7 of questionnaire to customers.
14 Form CO, paras 152 and 154.
15 See Case COMP/M.5785 - *Sun Capital/DSM Special Products*, decision of 02.12.2010, paras 28-38.
16 Form CO, para. 156 and footnote 64.

(23) The Notifying Party submits that no further plausible segmentation can be considered for benzyl chloride, *e.g.*, by application. According to the Notifying Party, suppliers offer only one grade of benzyl chloride and there is very little technical differentiation between their offering. The Notifying Party further states that, from the demand-side, while benzyl chloride has a number of applications in industrial chemical syntheses, it is used as feedstock in all cases.[17]

(24) The Commission has obtained no evidence from the market investigation indicating that the market for benzyl chloride should be further segmented. For instance, one competitor responding to the Commission's market investigation indicated that "[t]*he different specifications (or rather quality levels) of benzyl chloride that are available on the market do not differ too much from one another. This is why most customers are able to use similar qualities of benzyl chloride*".[18]

(25) For the purpose of the present case, the Commission therefore considers the market to consist of benzyl chloride without any further segmentation. However, the Commission considers that the exact scope of the product market definition for benzyl chloride can be left open, since no competition concerns would arise from the Transaction regardless of the exact product scope of the market.[19]

(26) In terms of geographic market, the Commission has not in the past looked into a geographic market for benzyl chloride.

(27) Notifying Party considers that the market is global as (i) suppliers of benzyl chloride can easily serve customers worldwide from a number of manufacturing sites, (ii) there are currently no material barriers to the import of benzyl chloride into the EEA, and (iii) customers order benzyl chloride from suppliers irrespective of their geographic location.[20]

(28) The Commission's market investigation indicates that the relevant geographic scope for benzyl chloride is likely EEA-wide. In particular, the majority of customers sources benzyl chloride within Europe and –as a customer indicated– "[s]*hipping costs and product availability are challenges to sourcing Benzyl Chloride from other regions outside EU for production within EU*".[21] At the same time, a number of customers indicated that they would not see any obstacles to source this product from outside of the EEA and, similarly, one competitor confirmed that it could supply this product from outside the EEA into the EEA.

(29) In any event, the Commission considers that, for the purposes of the present decision, the exact scope of the geographic market for benzyl chloride can be left open, since no competition concerns would arise from the Transaction regardless of the exact geographic scope of the market, *i.e.*, EEA-wide or global.

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17 Form CO, para. 155.

18 Response to questions 7.1 and 7.2 of questionnaire to competitors.

19 Additionally, the Notifying Party confirmed that market shares would not be materially different considering different plausible segmentations.

20 orm CO, para. 136.

21 Response to questions 6 and 10 of questionnaire to customers.

5.3. Market for the production and supply of cationic dyes

(30) Textile dyestuffs are water soluble or dispersible substances for staining or colouring textiles. Different types of dyestuffs can be distinguished depending, *inter alia*, on the types of substrates to which dyes are applied, the physical and chemical nature of the dye and the application method used. Cationic dyes are one of these product types, used primarily in textiles for application to acrylics.

(31) The Commission has in the past considered the overall market for textile dyestuffs, distinguishing between the various application classes as separate product markets.[22] Among these markets, there is the market for cationic dyes, where SK Capital's portfolio company (Archroma) is active.

(32) The Commission's file in the present case does not contain any indication that would suggest departing from the Commission's previous practice that identifies within the overall market for textile dyestuffs separate markets depending on the application classes and, among them, the market for cationic dyes.

(33) For the purpose of the present case, the Commission therefore considers the market to consist of cationic dyes.

(34) In terms of geographic market, the Commission has previously considered the market for other types of textile dyestuffs as likely global in scope, although ultimately leaving the geographic market definition open.[23]

(35) The Notifying Party submits that the market for cationic dyes is global.[24]

(36) In any event, the Commission considers that, for the purposes of the present decision, the exact scope of the geographic market definition for cationic dyes can be left open, since no competition concerns would arise from the Transaction regardless of the exact geographic scope of the market, *i.e.*, global or smaller (EEA-wide).

5.4. Market for the production and supply of OBA

(37) Textile chemicals are used in yarn production and preparation, fabric formation, fabric finishing and other miscellaneous manufacturing operations. Different types of textile chemicals can be distinguished depending on the types of substrates to which chemicals are applied, the timing of application and the effect of the textile chemical. OBA are one of these product types.

(38) OBA are additives that enhance the white appearance of fabrics and paper. They are water-soluble organic compounds with a high affinity for cellulosic material. The main types of optical brighteners are stilbene-based OBA and Dinatrium-4,4-bis-(2-sulfostyryl)-biphenyl (DSBP)-based OBA. Stilbene-based OBA are used for

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22 See Case COMP/M.4179 - *Huntsman/CIBA TE Business*, decision of 30.06.2006, paras 25-28 and 37. See in the same vein Case COMP /IV M.534 - *Bayer/Hoechst*, decision of 21.12.1994; Case COMP/M.1987 - *BASF/Bayer /Hoechst /Dystar*, decision of 05.09.2000.

23 See Case COMP/M.4179 - *Huntsman/CIBA TE Business*, decision of 30.06.2006, paras 41 and 44.

24 Form CO, para. 141.

detergent, textile and paper applications. DSBP-based OBA are mainly used for detergent and textile applications.

(39) In relation to product market definition, the Commission has previously considered OBA as a distinct separate product market,[25] with a further distinction between stilbene-based OBA and DSBP-based OBA.[26]

(40) The Notifying Party submits that the scope of the relevant product market can be left open due to the lack of impact on competition regardless of the exact market definition.[27]

(41) The Commission's file does not contain any indication that would suggest departing from the Commission's previous practice.

(42) For the purpose of the present case, the Commission therefore considers the market to consist of OBA, with a further distinction between stilbene-based OBA and DSBP-based OBA.[28] However, the Commission believes that the product market definition can be left open, as no concerns arise regardless of the exact product scope of the market.

(43) In terms of geographic market, the Commission has previously considered OBA as a likely global market, although ultimately leaving the geographic market definition open.[29]

(44) The Notifying Party submits that the market for OBA is global.[30]

(45) The Commission's file does not contain any indication that would suggest departing from the Commission's previous practice.

(46) In any event, the Commission considers that, for the purposes of the present decision, the exact scope of the geographic market for OBA can be left open, since no competition concerns would arise from the Transaction regardless of the exact geographic scope of the market, *i.e.*, global or smaller (EEA-wide).

5.5. Market for the production and supply of photoresist polymers

(47) Photoresists are used in photolithography in which electromagnetic radiation is applied to burn a desired pattern onto a flat surface. Photolithography uses ultraviolet or deep ultraviolet radiation from lasers to be used at specific spectral wavelengths (such as 193 nm, 248 nm, 365 nm). The photoresist to be used must be responsive to the laser to be used. Therefore, these products are categorised by the wavelength of the radiation used in the photolithography process. Photoresist polymers are used as an input in the manufacture of photoresists and are custom-

25 See Case COMP/M.4179 - *Huntsman/CIBA TE Business*, decision of 30.06.2006, paras 30-37.
26 See Case COMP/M.5355 - *BASF/CIBA*, decision of 12.03.2009, paras 395-397.
27 Form CO, para. 140.
28 The Notifying Party specifies that Archroma does not produce DSBP-based OBA and is only active in the segment for stilbene-based OBA, therefore its market share would not significantly change considering the overall market for OBA and the segment for stilbene-based OBA as a separate market.
29 See Case COMP/M.4179 - *Huntsman/CIBA TE Business*, decision of 30.06.2006, paras 41 and 44.
30 Form CO, para. 141.

designed for the specific photoresist product. Therefore, 248 photoresist polymers are designed for use in formulating 248 nm photoresists.

(48) Regarding product market definition, although ultimately leaving it open, the Commission has considered narrower plausible market definitions for each type of photoresist polymers (*e.g.*, 248 photoresist polymers or 193 photoresist polymers).[31]

(49) The Notifying Party submits that the scope of the relevant product market can be left open due to the lack of impact on competition regardless of the exact market definition.

(50) The Commission's file does not contain any indication that would suggest departing from the Commission's previous practice.

(51) Nevertheless, the product market definition can be left open, as no concerns arise regardless of the exact product scope of the market, i.e. even in the narrower plausible markets for each type of photoresist polymers.[32]

(52) In terms of geographic market, the Commission has previously considered 248 photoresist polymers as a likely global market, although ultimately leaving the geographic market definition open.[33]

(53) The Notifying Party submits that the market for photoresist polymers is global, given that (i) transport prices are negligible in relation to sales prices, (ii) there are no regional market specificities or any other barriers to entry, (iii) suppliers are active globally from a limited number of production facilities, and (iv) customers in the EEA are supplied from facilities located in other world regions.[34]

(54) The Commission considers that, for the purposes of the present decision, the exact scope of the geographic market for photoresist polymers can be left open, since no competition concerns would arise from the Transaction regardless of the exact geographic scope of the market, *i.e.*, global or smaller (EEA-wide).

5.6. Market for the production and supply of dyeing auxiliaries

(55) As analysed under section 5.4 above, textile chemicals are used in yarn production and preparation, fabric formation, fabric finishing and other miscellaneous manufacturing operations. Different types of textile chemicals can be distinguished depending on the types of substrates to which chemicals are applied, the timing of application and the effect of the textile chemical. Dyeing auxiliaries are one of these product types.

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31 See Case M.7932 - *Dow/DuPont*, decision of 27.03.2017, paras 3788-3797.

32 The Notifying Party confirmed that SK Capital's market share would not materially differ considering the overall market for photoresist polymers as well as any potential sub-segmentation.

33 See Case M.7932 - *Dow/DuPont*, decision of 27.03.2017, paras 3798-3800.

34 Form CO, para. 174.

(56) Regarding product market definition, the Commission has previously considered the market for dyeing auxiliaries as a separate product market, although ultimately leaving the exact product market definition open.[35]

(57) The Notifying Party submits that the scope of the relevant product market can be left open due to the lack of impact on competition regardless of the exact market definition.[36]

(58) The Commission's file does not contain any indication that would suggest departing from the Commission's previous practice.

(59) For the purpose of the present case, the Commission therefore considers the market to consist of dyeing auxiliaries.

(60) In terms of geographic market, the Commission has found the geographic scope for the markets relating to other types of textile chemicals as at least EEA-wide and possibly global, although ultimately leaving the geographic market definition open.[37]

(61) In any event, the Commission considers that, for the purposes of the present decision, the exact scope of the geographic market definition for dyeing auxiliaries can be left open, since no competition concerns would arise from the Transaction regardless of the geographic scope of the market, *i.e.*, global or smaller (EEA-wide).

5.7. Market for the manufacturing and supply of API

(62) An API is the substance in a finished dose pharmaceutical ("FDP") that is pharmaceutically active and is suspended in excipients (that is, inert substances taking the form, for instance, of a tablet or a solution), for the purposes of administration.

(63) In terms of product market definition, the Commission has previously considered that the manufacturing of APIs forms a distinct relevant product market, which is upstream to the market for FDP. Additionally, the Commission considered that each individual API for each individual molecule may potentially constitute a relevant product market, although certain APIs may be substitutable with each other for all or for a range of applications. The Commission ultimately left the exact product market definition open.[38]

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35 See Case COMP/M.4179 - *Huntsman/CIBA TE Business*, decision of 30.06.2006, paras 30-37.

36 Form CO, para. 159.

37 See Case COMP/M.4179 - *Huntsman/CIBA TE Business*, decision of 30.06.2006, paras 40 and 44.

38 See Case M.9517 – *Mylan/Upjohn*, decision of 22.04.2020, paras 559-562; Case M.8362 – *Lonza Group/Capsugel*, decision of 21.04.2017, paras 23-25; Case COMP/M.7645 – *Mylan/Perrigo*, decision of 29.07.2015, paras 125-127; Case COMP/M.6278 – *Takeda/Nycomed*, decision of 29.07.2011, paras 17-18; Case COMP/M.5865 – *Teva/Ratiopharm*, decision of 03.08.2010, paras 393-395; Case COMP/M.5555 – *Novartis/Ebewe*, decision of 22.09.2009, para. 16; Case COMP/M.5253 – *Sanofi-Aventis/Zentiva*, decision of 04.02.2009, paras 179-181. Case COMP/M.5295 – *Teva/Barr*, decision of 19.12.2008, para. 189.

(64) The Notifying Party submits that the scope of the relevant product market can be left open due to the lack of impact on competition regardless of the exact market definition.[39]

(65) The Commission's file does not contain any indication that would suggest departing from the Commission's previous practice.

(66) In any event, in the present case, the product market definition can be left open as no concerns arise even on the narrowest possible market definition, *i.e.*, considering each individual API for each individual molecule as the relevant product market.

(67) In terms of geographic market, the Commission has previously considered that API markets are wider than the markets for FDPs, at least EEA-wide and possibly worldwide, ultimately leaving the geographic market definition open.[40]

(68) The Notifying Party advocates for a global definition of the market.[41]

(69) In view of the fact that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the API markets under any plausible geographic market definition, the exact scope of the geographic market (*i.e.*, whether it is global or smaller (at least EEA-wide) can be left open.

5.8. Market for the supply of CDMO services to pharmaceutical companies at the API level

(70) Regarding product market definition, the Commission has previously considered the existence of a market for the supply of CDMO services for API distinct from the market for the supply of contract manufacturing for FDP.[42] Within the market for the supply of CDMO services at the API level, the Commission has previously considered a separate product market for biopharmaceutical CDMO services (as opposed to CDMO services in relation to chemically-synthesised drugs). The Commission also envisaged, but ultimately left open, the question of whether the product market for biopharmaceutical CDMO services should be further segmented (i) based on the host system used in the manufacturing process (*i.e.*, mammalian cell cultures or microbial fermentation processes) and (ii) between process development and large-scale manufacturing of biopharmaceuticals.[43]

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39 Form CO, para. 182.

40 See Case M.9517 – *Mylan/Upjohn*, decision of 22.04.2020, paras 563-566; Case M.8362 – *Lonza Group/Capsugel*, decision of 21.04.2017, paras 26-28; Case COMP/M.7645 – *Mylan/Perrigo*, decision of 29.07.2015, para. 126; Case COMP/M.6278 – *Takeda/Nycomed*, decision of 29.07.2011, para. 19; Case COMP/M.5865 – *Teva/Ratiopharm*, decision of 03.08.2010, para. 396; Case COMP/M.5555 – *Novartis/Ebewe*, decision of 22.09.2009, para. 20; Case COMP/M.5253 – *Sanofi-Aventis/Zentiva*, decision of 04.02.2009, para. 186. Case COMP/M.5295 – *Teva/Barr*, decision of 19.12.2008, para. 190.

41 Form CO, para. 183.

42 See Case M.9315 – *Chr. Hansen/Lonza/JV*, decision of 16.07.2019, para. 17; Case COMP/M. 8362 – *Lonza Group/Capsugel*, decision of 21.04.2017, paras 15-19; Case COMP/M.8541 – *Thermo Fisher Scientific/Patheon*, decision of 23.08.2017, para. 46.

43 See Case M.9315 – *Chr. Hansen/Lonza/JV*, decision of 16.07.2019, paras 18-19. Case COMP/M.5479 – *Lonza/Teva/JV*, decision of 14.05.2009, paras 28-36.

(71) The Notifying Party submits that the scope of the relevant product market can be left open due to the lack of impact on competition regardless of the exact product market definition.[44]

(72) The Commission's file does not contain any indication that would suggest departing from the Commission's previous practice.

(73) In any event, in the present case, the product market definition can be left open as no concerns arise even on the narrowest possible market definition, *i.e.*, (i) considering separate product markets for biopharmaceutical CDMO services, on the one hand and CDMO services for chemically-synthesised drugs, on the other hand; or (ii) considering separate segments under the biopharmaceutical CDMO services market, as described above.

(74) In terms of geographic market, the Commission has previously considered the respective markets for CDMO services at the API level to be at least EEA-wide in scope and possibly worldwide, although ultimately leaving the geographic market definition open.[45]

(75) The Notifying Party submits that the question of whether the market for CDMO services to pharmaceutical companies and its potential segments is at least EEA-wide or global in scope can be left open.[46]

(76) In view of the fact that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to CDMO services under any plausible geographic market definition, the exact scope of the geographic market (*i.e.*, whether it is global or smaller (at least EEA-wide) can be left open.

6. COMPETITIVE ASSESSMENT

6.1. BALD (upstream) - Cationic dyes / OBA / Photoresist polymers (downstream)

(77) Valtris is active upstream in the supply of BALD in the EEA and globally, whereas two of SK Capital's portfolio companies are active in the downstream markets, namely Archroma is active in cationic dyes and OBA in the EEA and globally, and Seqens is active in photoresist polymers globally but with no sales in the EEA.

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44 Form CO, para. 185.

45 See Case M.9315 – *Chr. Hansen/Lonza/JV*, decision of 16.07.2019, paras 24-27; Case COMP/M. 8362 – *Lonza Group/Capsugel*, decision of 21.04.2017, paras 20-22; Case COMP/M.8541 – *Thermo Fisher Scientific/Patheon*, decision of 23.08.2017, paras 49-50.

46 Form CO, para. 186.

(78) Valtris' market share of BALD in 2021 in both volume and value is presented in Table 2 below.[47]

Table 2: 2021 market shares for BALD in the EEA and globally[48]

BALD Supplier	EEA				Worldwide			
	Volume (MT)	Volume (%)	Sales (EUR million)	Sales (%)	Volume (MT)	Volume (%)	Sales (EUR million)	Sales (%)
Valtris	**[…]**	**[30-40]%**	**[…]**	**[30-40]%**	**[…]**	**[5-10]%**	**[…]**	**[5-10]%**
Lanxess	[…]	[50-60]%	[…]	[60-70]%	[…]	[30-40]%	[…]	[30-40]%
KLJ Organic	[…]	[0-5]%	[…]	[0-5]%	[…]	[10-20]%	[…]	[10-20]%
Hubei Greenhome	[…]	[0-5]%	[…]	[0-5]%	[…]	[5-10]%	[…]	[5-10]%
Kelin Bolun	[…]	[0-5]%	[…]	[0-5]%	[…]	[30-40]%	[…]	[30-40]%
Others	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total	**[…]**	**100.0%**	**[…]**	**100.0%**	**[…]**	**100.0%**	**[…]**	**100.0%**

Source: Form CO, Tables 13 and Annex 18.

(79) Archroma uses BALD in the downstream production of cationic dyes (under the brand Cartasol) and OBA (under the brands Ultraphor and Telalux). Archroma's market share is [0-5]% on both an EEA-wide and global basis in cationic dyes, and [0-5]% on both an EEA-wide and global basis under any plausible segmentation of OBA. Archroma purchases small quantities of BALD from suppliers other than Valtris (approx. EUR […] in 2019, EUR […] in 2020, and EUR […] in 2021), representing [0-5]% of the total EEA demand in the upstream market for the supply of BALD.[49]

(80) Seqens uses BALD in the downstream production of photoresist polymers. Seqens' market share is [0-5]% on both an EEA-wide and global basis under any plausible segmentation of photoresist polymers. Seqens purchased a small quantity of BALD from a supplier other than Valtris in 2021 (approx. EUR […]), representing [0-5]% of total demand in the upstream market.[50]

(81) Taking into account that Valtris' market share at the upstream level only surpasses 30%, if the market for BALD were to be defined EEA-wide, and market shares in the downstream markets for cationic dyes, OBA and photoresist polymers remain below 30% in all possible segmentations at EEA and global level, the Commission notes that the proposed Transaction only gives rise to vertically affected markets in so far as the geographic market for BALD is considered to be EEA-wide.

6.1.1. The Notifying Party's view

(82) The Notifying Party submits that the vertical link between Valtris' upstream supply of BALD and Archroma's downstream supply of cationic dyes and OBA does not give rise to any competition concerns, notably on the grounds that (i) Valtris has a

47 The Notifying Party confirms that to the best of Valtris' knowledge, its market share would not be materially higher in further segmentations of the BALD market on the basis of (i) chlorine level, or (ii) production process (Form CO, footnote 53).

48 Form CO, Annex 18.

49 Form CO, para. 147.

50 Form CO, para. 177.

low global market share, (ii) the market is global, (iii) there is a large number of alternative suppliers, and (iv) Archroma only purchases minor amounts of BALD.[51]

(83) The Notifying Party also submits that the vertical link between Valtris' upstream supply of BALD and Seqens' downstream supply of photoresist polymers does not give rise to any competition concerns, for the following reasons: (i) Valtris has a low global market share, (ii) the market is global, (iii) there is a large number of alternative suppliers, and (iv) Seqens only purchases negligible amounts of BALD.[52]

6.1.2. The Commission's assessment

(84) Given the negligible market share of SK Capital's portfolio companies in the downstream markets, the following section will not focus on risks of customer foreclosure but rather on assessing whether the Transaction may give rise to risks of input foreclosure.

(85) 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.[53] 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.[54]

(86) *Firstly*, for input foreclosure to be a concern, the merged entity resulting from the Transaction must have a significant degree of market power in the upstream market. In this respect, the Commission notes that Valtris' market share in the upstream market for BALD in the EEA was just above 30% in 2021[55] and that, where a merged entity would have a market share just above the 30% threshold on one market but substantially below on other related markets, competition concerns will be less likely.[56] The Commission also notes that Valtris' market share in BALD was higher in 2019 and 2020 (between [40-50]% and [40-50]%, depending on value or volume) and […].[57] It is therefore apparent that in a plausible EEA-wide market for BALD, there remains sufficient competition and a sufficient number of alternative competitors that would be able to restrain the behaviour of the merged entity.

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51 Form CO, paras 142-151.
52 Form CO, paras 175-180.
53 Non-Horizontal Merger Guidelines, para. 31.
54 Non-Horizontal Merger Guidelines, para. 32.
55 The Notifying Party submits that, to the best of Valtris' knowledge, Valtris' market share would not be materially higher when considering separate BALD markets by (i) chlorine level or (ii) production process.
56 Non-Horizontal Merger Guidelines, para. 25 and footnote 3.
57 Form CO, footnote 62.

(87) The Commission's market investigation confirmed that the market for the supply of BALD in the EEA would remain sufficiently competitive post-Transaction.[58] Therefore, the market would remain sufficiently competitive to exclude competition concerns on the ground of lack of ability to carry out an input foreclosure strategy, as should the merged entity engage in such strategy, customers would switch to alternative suppliers active in the market.

(88) *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 the incentive to foreclose.

(89) 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.[59] In this respect, the Commission observes that (i) Archroma's market share is [0-5]% on both an EEA-wide and global basis in cationic dyes, and [0-5]% on both an EEA-wide and global basis under any plausible segmentation of OBA, and (ii) Seqens' market share is [0-5]% on both an EEA-wide and global basis under any plausible segmentation of photoresist polymers. In addition, Archroma's purchases of BALD represent [0-5]% of the total purchases of BALD in the EEA, whereas Seqens' purchases of BALD represent [0-5]% of the total purchases of BALD in the EEA. Finally, BALD is used in a variety of industries, such as agrochemicals, pharmaceuticals, aroma chemicals, cosmetics, personal care, and others. Therefore, given that Archroma's and Seqens' BALD purchases only represent a small portion of the market demand for BALD, the Commission considers that the trade-off between the profit lost in the upstream market due to a reduction of input sales to rivals and the profit gained from expanding sales downstream would not be profitable.

(90) The Commission's market investigation also confirmed that the merged entity would not have an incentive to carry out an input foreclosure strategy, and that in any event, even if an input foreclosure strategy was put in place, there would be sufficient competition to switch to.[60]

(91) *Thirdly*, in terms of impact on competition, the majority of the respondents to the Commission's market investigation confirmed that they expect no impact on the market.[61] In any event, the Commission's market investigation confirmed that the market for the supply of BALD in the EEA would remain sufficiently competitive post-Transaction.[62]

(92) On the basis of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal

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58 Responses to question 13 of questionnaire to customers and question 10 of questionnaire to competitors.

59 Non-Horizontal Merger Guidelines, paras 40-41.

60 Responses to question 17 of questionnaire to customers and question 12 of questionnaire to competitors.

61 Responses to question 19 of questionnaire to customers and question 17 of questionnaire to competitors.

62 Responses to question 13 of questionnaire to customers and question 10 of questionnaire to competitors.

market with regard to the vertical relationship between BALD (upstream) and cationic dyes, OBA or photoresist polymers (downstream) under any market definition that the Commission considers plausible.

6.2. Benzyl chloride (upstream) - Dyeing auxiliaries / API / CDMO services to pharmaceutical companies at the API level (downstream)

(93) Valtris is active upstream in the supply of benzyl chloride in the EEA and globally, whereas two of SK Capital's portfolio companies are active in the downstream markets, namely Archroma is active in dyeing auxiliaries, and Seqens is active in API and CDMO services to pharmaceutical companies at the API level.

(94) Valtris' market share of benzyl chloride in 2021 in both volume and value is presented in Table 3 below.

Table 3: 2021 market shares for benzyl chloride in the EEA and globally[63]

Benzyl chloride Supplier	EEA				Globally			
	Volume (MT)	Volume (%)	Sales (EUR million)	Sales (%)	Volume (MT)	Volume (%)	Sales (EUR million)	Sales (%)
Valtris	**[…]**	**[60-70]%**	**[…]**	**[60-70]%**	**[…]**	**[20-30]%**	**[…]**	**[20-30]%**
Lanxess	[…]	[30-40]%	[…]	[30-40]%	[…]	[10-20]%	[…]	[10-20]%
Lihai	0	0,0%	0,0	0,0%	[…]	[20-30]%	[…]	[20-30]%
Luxi	0	0,0%	0,0	0,0%	[…]	[10-20]%	[…]	[10-20]%
Wuhan Youji	0	0,0%	0,0	0,0%	[…]	[10-20]%	[…]	[10-20]%
Hubei Greenhome	0	0,0%	0,0	0,0%	[…]	[10-20]%	[…]	[10-20]%
KLJ Organic	0	0,0%	0,0	0,0%	[…]	[5-10]%	[…]	[5-10]%
Others	[…]	[0-5]%	0,0	0,0%	[…]	[0-5]%	[…]	[0-5]%
Total	**[…]**	**100.0%**	**[…]**	**100.0%**	**[…]**	**100.0%**	**[…]**	**100.0%**

Source: Form CO, Tables 14 and Annex 18.

(95) Archroma uses benzyl chloride in the downstream production of dyeing auxiliaries (under the brands Lanalbin – wool care agent that prevents yellowing and photo-bleaching of the wool – and Rematard – retarding agent for cationic dyes). Archroma's market share is [0-5]% on both an EEA-wide and global basis in dyeing auxiliaries.Archroma purchases small quantities of benzyl chloride from suppliers other than Valtris (approx. EUR […] in 2019, EUR […] in 2020, and EUR […] in 2021), representing [0-5]% of the total EEA demand in the upstream market for the supply of benzyl chloride.[64]

(96) Seqens uses benzyl chloride in the downstream manufacturing of API on a proprietary basis, as well as in the downstream supply of CDMO services to pharmaceutical companies at the API level. Seqens' market share is [0-5]% both in the EEA and globally in the manufacturing of API,[65] and [0-5]% in the EEA and [5-10]% globally in the downstream supply of CDMO services to pharmaceutical

63 Form CO, Annex 18.

64 Form CO, para. 167.

65 The Notifying Party confirmed that Seqens' market share for API manufacturing of individual molecules using benzyl chloride, namely pharmaceutical intermediates for the production of esters and clomiphene citrate, is [5-10]% both in the EEA and worldwide.

companies at the API level.[66] Seqens purchased a small quantity of benzyl chloride in 2021 (approx. EUR […]), representing [0-5]% of total EEA demand in the upstream market for the supply of benzyl chloride.[67]

(97) Valtris' market share at the upstream level only surpasses 30% if the market for benzyl chloride were to be defined EEA-wide, and market shares in the downstream markets for dyeing auxiliaries, API, and API CDMO remain below 30% in all possible segmentations at EEA and global level; thus, the Commission notes that the proposed Transaction only gives rise to vertically affected markets in so far as the geographic market for benzyl chloride is considered to be EEA-wide.

6.2.1. The Notifying Party's view

(98) The Notifying Party submits that the vertical link between Valtris' upstream supply of benzyl chloride and Archroma's downstream supply of dyeing auxiliaries does not give rise to any competition concerns, notably on the grounds that (i) Valtris has a low global market share, (ii) the market is global, (iii) there is a large number of alternative suppliers, and (iv) Archroma only purchases minor amounts of benzyl chloride. [68]

(99) The Notifying Party also submits that the vertical link between Valtris' upstream supply of benzyl chloride and Seqens' downstream manufacturing of API on a proprietary basis, and downstream supply of CDMO services to pharmaceutical companies at the API level does not give rise to any competition concerns, for the following reasons: (i) Valtris has a low global market share, (ii) the market is global, (iii) there is a large number of alternative suppliers, and (iv) Seqens only purchases negligible amounts of benzyl chloride.[69]

6.2.2. The Commission's assessment

(100) In line with the above assessment for BALD, given the limited market share of SK Capital's portfolio companies in the downstream markets, the following section will not focus on risks of customer foreclosure but rather on assessing whether the Transaction may give rise to risks of input foreclosure.

(101) Input foreclosure may raise competition problems only if it concerns an important input for the downstream product. This is the case, for example, when the input concerned represents a significant cost factor relative to the price of the downstream product.[70] In this respect, the Commission *firstly* notes that the input cost of benzyl chloride represents approx. [5-10]% of the final sale price of Archroma's dyeing auxiliaries products in the downstream market, representing only a minor factor relative to their pricing. Similarly, the input cost of benzyl chloride is [0-5]% of the final sale price of Seqens' pharmaceutical products in the downstream markets. Benzyl chloride has a number of applications in industrial

66 The Notifying Party confirmed that Seqens' market share for API CDMO is [0-5]% in the EEA and [5-10]% globally, under any plausible market definition. For completeness, the Notifying Party notes that Seqens only provides CDMO services for chemically-synthesized drugs.

67 Form CO, para. 190.

68 Form CO, paras 161-169.

69 Form CO, paras 187-191.

70 Non-Horizontal Merger Guidelines, para. 34.

chemical syntheses. From a supply side perspective, suppliers offer only one grade of benzyl chloride, and there is very limited technical differentiation among competitors' products.[71]

(102) *Secondly*, while the Commission notes Valtris' high market share in an EEA-wide market for benzyl chloride ([60-70]% in both value and volume), it also observes that Valtris' competitor, Lanxess, appears to be a strong close competitor being able to restrain Valtris' behaviour in the upstream market for benzyl chloride. In particular, the majority of customers responding to the Commission's market investigation has ranked both Valtris and Lanxess as the most credible suppliers of benzyl chloride for EEA customers. Hubei Greenhome and Luxi have also been identified as following closely.[72]

(103) *Thirdly*, even in an EEA-wide market of benzyl chloride, there appear to be out-of-market constraints from global suppliers. For example, the Notifying Party submits that Archroma itself multi-sources its benzyl chloride needs from different global suppliers to manufacture its downstream products in its production plants in Spain and in India. Archroma purchases benzyl chloride from suppliers other than Valtris and only one of them is based in Spain, within the EEA.[73]

(104) *Fourthly*, even if the merged entity had the ability to foreclose downstream competitors, the Commission notes that there would not appear to be an incentive to do so. First, Archroma's market share is [0-5]% in the downstream market for dyeing auxiliaries in the EEA and Seqens' market share is [0-5]% in API and [0-5]% in the downstream supply of CDMO services to pharmaceutical companies at the API level in the EEA. Second, benzyl chloride has a number of applications in a variety of industries including oilfield chemicals, disinfectants, consumer products and others. According to the Notifying Party, in 2021, only [0-5]% of Valtris' customers of benzyl chloride in the EEA were active in the pharmaceutical industry, whereas [0-5]% of global customers were active in the textile industry and thus might use benzyl chloride for dyeing auxiliaries.[74] Therefore, following an input foreclosure strategy, any profit lost in the upstream market of benzyl chloride in the EEA would hardly be compensated by any profit gains in the downstream markets. Lastly, a significant part of the benzyl chloride production is used captively as an intermediate product,[75] with the rest being sold on the merchant market. In light of this, there are likely no incentives to foreclose downstream competitors, many of which could simply then increase their own in-house supply.

(105) *Fifthly*, in terms of impact on competition, the majority of the respondents to the Commission's market investigation confirmed that they expect no impact on the market.[76] In any event, the Commission's market investigation also confirmed that

71 Form CO, paras 154-155.
72 Response to question 11 of questionnaire to customers.
73 Form CO, para. 167.
74 Form CO, paras 165 and 188.
75 Form CO, para. 153.
76 Responses to question 20 of questionnaire to customers and question 18 of questionnaire to competitors.

the market for the supply of benzyl chloride in the EEA would remain sufficiently competitive post-Transaction.[77]

(106) On the basis of the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the vertical relationship between benzyl chloride (upstream) and dyeing auxiliaries, API or the supply of CDMO services to pharmaceutical companies at the API level (downstream), under any market definition that the Commission considers plausible.

7. CONCLUSION

(107) For the above reasons, the 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

[77] Responses to question 15 of questionnaire to customers and question 14 of questionnaire to competitors.