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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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Subject: **Case M.10862 – OLIN / MITSUI / BWA JV**
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 17 November 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Olin Corporation ("Olin", USA) and Mitsui & Co Ltd. ("Mitsui", Japan) will acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation

[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").

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joint control of a newly created joint venture ("BWA JV", UK) (the "Transaction").[3] Olin and Mitsui are referred to as the "Notifying Parties" and Olin, Mitsui and BWA JV are referred to as the "Parties".

1. THE PARTIES

(2) **Olin** is a global manufacturer and distributor of chemical products and a U.S. manufacturer of ammunition. The chemical products produced by Olin include chlorine, ethylene dichloride and caustic soda, vinyls, epoxies, chlorinated organics, bleach, and hydrochloric acid.

(3) **Mitsui** is a trading, business management and project development company which operates worldwide via the following operating segments: (i) mineral & metal resources; (ii) energy; (iii) machinery & infrastructure; (iv) chemicals; (v) iron & steel products; (vi) lifestyle; (vii) innovation & corporate development.

(4) **BWA JV** is a greenfield joint venture that will be active as a trader in the procurement, sale, and marketing of globally traded caustic soda and ethylene dichloride worldwide.

2. THE CONCENTRATION

(5) On 16 September 2022, Olin and Mitsui entered into a joint venture agreement whereby Olin will acquire 51% and Mitsui will acquire 49% of the partnership interests in BWA JV. Each party may appoint up to three directors to the board, which will have at most six directors. Strategic matters such as the adoption of the business plan, budget and material acquisitions must be approved by the board of directors by unanimity. Olin may appoint and remove the General Manager and Mitsui may appoint and remove the Chief Financial Officer of BWA JV, which have complementary roles and competences that require them to cooperate for the business to function effectively.[4] BWA JV will therefore be jointly controlled by Olin and Mitsui.

(6) BWA JV will have an initial start-up period of […], during which it will benefit from […]. Thereafter, BWA JV will have sufficient own staff (around […] full time employees that BWA JV will hire itself), financial resources and dedicated management for its operation and for the management of its business. BWA JV will acquire some caustic soda and ethylene dichloride from Olin (on arm's length commercial terms). This will constitute the majority of BWA JV's sourcing at the beginning, but after the initial start-up period it will source more than half of its needs from third parties. Mitsui will act as a sales agent for BWA JV, but this will be on an arm's length basis (for an agency fee) and the terms of all purchasing/sales transactions will be determined by BWA JV and its third party suppliers/customers in all cases (i.e. whether the customer opportunities are found directly by BWA JV's commercial team or via Mitsui on an agency basis). Moreover, after the initial start-up period, the large majority of BWA JV's sales

[3] Publication in the Official Journal of the European Union No C 448, 25.11.2022, p. 37

[4] For instance, the General Manager has responsibility for customer contracts and sales, whereas the finance manager has responsibility for procurement and logistics – as BWA JV operates as a trader, the procurement and sales operations are closely related.

will be to third party customers found by its own marketing team (as opposed to being found by Mitsui as sales agent). As such, BWA JV will have its own market presence and will not have significant sale or purchase relationships with its parents. It is intended to operate indefinitely. Therefore, BWA JV would be a full functional joint venture.

(7) The Transaction thus constitutes a concentration within the meaning of Article 3(1)(b) and (4) of the Merger Regulation.

3. UNION DIMENSION

(8) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million (Olin: EUR 7 534 million; Mitsui: EUR 96 365 million).[5] Each of them has a Union-wide turnover in excess of EUR 250 million (Olin: EUR […] million; Mitsui: 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 operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Activities of the Parties

(9) Olin manufactures and sells caustic soda ("CS") and ethylene dichloride ("EDC") (both described in more detail below) on the merchant market. CS and EDC are produced through the chloralkali process. Chloralkali processing consists of the electrolysis of sodium chloride, creating CS (which is also referred to as sodium hydroxide) and chlorine. Chlorine is then reacted with ethylene to produce EDC. All of the CS and EDC sold by Olin is produced by Olin in North America and then sold to third parties, including directly to end-customers (who would use these products as an input to manufacture other chemical products) or to traders.

(10) Mitsui does not manufacture CS or EDC but trades them, meaning that it procures these products from producers and sells them to end-customers. For this purpose, already pre-Transaction, Mitsui procures CS and EDC from Olin, and Mitsui will contribute these activities to BWA JV (only its activities regarding CS and EDC will be transferred; Mitsui will continue to trade various other chemicals itself outside the BWA JV).

(11) BWA JV will trade both CS and EDC. It will source the products both from Olin and third parties.

4.2. Market definitions

4.2.1. CS

(12) CS is a white and odourless compound that absorbs moisture. It is a by-product derived from the production of chlorine. CS can be supplied in a liquid or solid form. CS has a wide range of applications and is used for the production of sodium

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

hypochlorite, the treatment of bauxite (from which alumina is produced), for the production of epichlorohydrin (an intermediate in the production of epoxy resins), as a pH balancer in a number of chemical processes, for the treatment of sewage and for washing and cleansing food storage containers.

4.2.1.1. Product market

4.2.1.1.1. The Commission's decisional practice

(13) The Commission has previously considered CS to constitute a separate product market. The Commission has considered separate markets for liquid CS and solid CS, but ultimately left the appropriate product market definition open.[6]

4.2.1.1.2. The Notifying Parties' view

(14) The Notifying Parties submit that the relevant product market is the supply of CS without the need to segment between liquid and solid CS, given that most producers can easily produce different concentrations.[7]

(15) The Notifying Parties consider that there is no separate market for the trading of CS, as there are only a very limited number of traders selling CS, and they compete directly with a far greater number of CS producers selling CS to customers directly. While the Notifying Parties consider that traders can offer some services, such as logistics support, timing support (e.g. storage of excess product) and financial support (e.g. advanced cash), customers normally do not rely on traders alone and traders only constitute a small proportion of the total global CS supply (less than 2%).[8]

4.2.1.1.3. The Commission's assessment

(16) As concerns the potential distinction between solid CS and liquid CS that the Commission considered in previous cases, the exact market definition can be left open in this case. The supply of solid CS constitutes only minimal part of the overall market (c. 1%). Furthermore, Olin does not produce solid CS, and BWA JV is not expected to be active in the trading of solid CS. Thus, the competitive assessment will remain the same regardless of whether the relevant market comprises both forms of CS or whether it is limited to liquid CS only.

(17) As for the trading of CS, the Commission's market investigation suggested that it may be appropriate to define a separate market from direct supply of CS. In the Commission's market investigation, producers identified several services provided by traders that they would not be able to replicate internally. Likewise, industrial customers who procure CS from traders confirmed that these services are attractive to them. For instance, traders have global logistic networks, giving producers access to customers that they cannot reach by themselves. For sales in far-away regions, traders may also have better knowledge of demand, supply and pricing and

6 See case M.6218 – *Ineos / Tessenderlo Group S-PVC Assets*, decision of 26 July 2011, paragraphs 38-42, case M.4734 – *Ineos / Kerling*, decision of 30 January 2008, paragraphs 32-35 and case M.9756 – *Nouryon / CP Kelco*, decision of 23 June 2020, paragraphs 35-36.

7 Form CO, paragraph 91.

8 Form CO, paragraphs 93-106.

be better placed to communicate with local customers. Traders can eliminate suppliers' payment risks with respect to certain customers and regions by acting as an intermediary. Some producers also indicate that traders are useful to serve customers in their own region; in case a producer has so many customers of a smaller size that it is inefficient or unfeasible for its sales team to directly maintain relationships with all of its customers, a trader can support the supplier in this respect. Finally, traders can offer storage capacity in case producers are unable to store excess product themselves.[9]

(18) In light of the above, the Commission considers that it may be appropriate to define separate product markets for the direct supply of CS and for the trading of CS. However, in this case the appropriate product market definition can be left open as the Transaction does not give rise to competitive concerns under either definition.

4.2.1.2. Geographic market

4.2.1.2.1. The Commission's decisional practice

(19) In the past, the Commission considered that the geographic market for CS was at least North West Europe (Belgium, Luxembourg, Netherlands, Denmark, France, Ireland, Sweden, Norway and the United Kingdom) and might be broader, i.e. EEA-wide or global in scope.[10]

4.2.1.2.2. The Notifying Parties' view

(20) The Notifying Parties submit that the relevant geographic market for the supply of CS is at least EEA-wide in scope.[11]

(21) While the Notifying Parties consider that it is not appropriate to consider a separate market for the trading of CS, they submit that if such market were to be considered, it would be global in scope.[12] The Notifying Parties indicate that Mitsui and its competitors have customers globally and that there are no regulatory or logistical elements that require traders to have local presence in Europe.

4.2.1.2.3. The Commission's assessment

(22) As concerns the market for the overall supply of CS, the market investigation did not give any reason to depart from the Commission's decisional practice. The Transaction does not give rise to competition concerns under any plausible geographic market definition (global, EEA-wide, or North West Europe) and can therefore be left open.

(23) As for the potential market for trading CS, the Commission considers on the basis of the market investigation that the appropriate geographic market definition would be global. This is supported by the fact that one of the key reasons to use traders

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9 Replies to questions 6 and 7 of eQuestionnaire 1 to suppliers and question 4 of eQuestionnaire 2 to traders. Replies of customers to the Commission's request for information dated 18 November 2022.

10 See case M.9756 – *Nouryon / CP Kelco*, decision of 23 June 2020, paragraphs 39-40, case M.6218 – *Ineos / Tessenderlo Group S-PVC Assets*, decision of 26 July 2011, paragraphs 43-46 and case M.4734 – *Ineos / Kerling*, decision of 30 January 2008, paragraphs 157-162.

11 Form CO, paragraph 91.

12 Form CO, paragraph 105.

put forward by CS producers and traders in the Commission's market investigation is the broader reach that traders offer. The majority of CS producers responding to the market investigation confirmed that they are able to turn to traders located anywhere worldwide, explaining for instance that "[t]*raders are normally equipped to market products in every country or region*".[13] Moreover, the market investigation confirmed that traders can ship CS to customers located anywhere worldwide.[14] While a majority of producers indicate that, when selling directly, they are only able to sell to customers within the EEA or only to customers within certain other regions, a large majority considers that they are able to sell to customers worldwide with the help of traders. In this respect, one producer explains that "*traders are normally capable to market those products to regions where we are not active ourselves*."[15]

(24) Therefore, for the purposes of this decision, the Commission considers that the appropriate geographic scope for a potential separate market for the trading of CS is global.

4.2.2. EDC

(25) EDC is produced by reacting chlorine or hydrogen chloride gas with ethylene. The vast majority of EDC produced in the world is used to make vinyl chloride monomer ("VCM"), which in turn is used to make the polymer polyvinyl chloride ("PVC"). EDC is also used to make ethylene amines and some solvents.

4.2.2.1. Product market

4.2.2.1.1. The Commission's decisional practice

(26) In its previous decisions, the Commission has not reached a conclusion on whether EDC constitutes a distinct product market, observing only that the merchant market in EDC is limited in size, as most EDC producers are vertically integrated into the production of PVC and the majority of their EDC production is for captive consumption.[16]

4.2.2.1.2. The Notifying Parties' view

(27) The Notifying Parties consider that the appropriate product market definition is the supply of EDC.[17]

(28) The Notifying Parties submit that there is no separate market for the trading of EDC. The Notifying Parties indicate that the large majority of EDC is produced to meet internal demand of producers that are vertically integrated into the production of PVC. The merchant market as a whole is therefore primarily an *ad hoc*

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13 Replies to questions 7 and 7.1 of eQuestionnaire 1 to suppliers.

14 Replies to question 6 and 7 of eQuestionnaire 1 to suppliers, replies to question 6.2.1 of eQuestionnaire 2 to traders and replies to the Commission's request for information dated 18 November 2022.

15 Replies to questions 7 and 7.1 of eQuestionnaire 1 to suppliers.

16 See case M.4734 – *INEOS / Kerling*, decision of 30 January 2008, paragraph 30, case M.6218 – *INEOS / Tessenderlo Group S-PVC Assets*, decision of 26 July 2011, paragraph 66 and case M.6905 – *INEOS / Solvay / JV*, decision of 8 May 2014, paragraphs 482-484.

17 Form CO, paragraph 110.

mechanism to smooth out temporary production disruptions, and approximately half of this supply takes place via traders. The Notifying Parties indicate that therefore, only very few traders sell EDC, and those that do compete directly with producers.[18]

4.2.2.1.3. The Commission's assessment

(29) For the purpose of this decision, the Commission considers that supply of EDC is a relevant market. While the majority of EDC is used captively to produce PVC, several producers and traders supply EDC on the merchant market to customers who use it to produce VCM, PVC, chlorinated organics intermediates or solvents. For BWA JV, trading of EDC is one of its primary activities.

(30) For the same reasons as set out above for CS (see paragraph (17)), the Commission considers that it may be appropriate to define a separate product market for the trading of EDC. Traders provide services that allow producers to sell to customers they could not otherwise access, and may therefore be distinct from direct supply. In particular, traders have global logistic networks, giving producers access to customers around the globe. Traders have in-depth knowledge of demand, supply and pricing globally, are equipped to communicate with local customers, and can eliminate suppliers' payment risks. Traders can also maintain relationship with a fragmented customer base in case a producer's sales team is not able, and traders can offer storage capacity in case producers are unable to store excess product themselves.

(31) In light of the above, the Commission considers that it may be appropriate to define separate product markets for the direct supply of EDC and for the trading of EDC. However, in this case it can be left open whether direct supply by producers and the trading of EDC form separate product markets, as the Transaction does not give rise to competition concerns under either market definition.

4.2.2.2. Geographic market

4.2.2.2.1. The Commission's decisional practice

(32) In its previous decisions, the Commission has not concluded on the precise geographic scope of the market for EDC.[19]

4.2.2.2.2. The Notifying Parties' view

(33) The Notifying Parties submit that the relevant geographic market for the supply of EDC is at least EEA-wide in scope.[20]

(34) While the Notifying Parties consider that it is not appropriate to consider a separate market for the trading of EDC, they submit that if such market were to be considered, it would be global in scope.[21] The Notifying Parties indicate that Mitsui

[18] Form CO, paragraphs 112-122.
[19] See case M.6905 – *INEOS / Solvay / JV*, decision of 8 May 2014, paragraphs 485-487.
[20] Form CO, paragraph 110.
[21] Form CO , paragraph 121.

and its competitors have customers globally and that there are no regulatory or logistical elements that require traders to have local presence in Europe.

4.2.2.2.3. The Commission's assessment

(35) As concerns the market for the overall supply of EDC, the exact geographic market definition can be left open. The Transaction does not give rise to an affected market for the supply of EDC under any plausible geographic market definition (global, EEA-wide, or North West Europe).

(36) As for the potential market for trading EDC, the Commission considers on the basis of the market investigation that the appropriate geographic market definition would be global for the same reasons as for CS, set out in paragraph (23). In particular, producers are able to sell EDC to traders located worldwide and industrial customers can procure EDC from traders located anywhere.[22] Therefore, for the purposes of this decision, the appropriate geographic scope for a potential separate market for the trading of EDC is global.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

(37) Under Articles 2(2) and 2(3) of the Merger Regulation,[23] the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(38) A concentration can entail horizontal effects. When the Commission analyses such cases it does so in line with the Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation.[24]

(39) Furthermore, a concentration can entail vertical effects. With respect to vertical effects, the Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation[25] (the "Non-Horizontal Merger Guidelines") distinguish two types of foreclosure: (a) where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure) and (b) where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).[26]

(40) In assessing both types of foreclosure, the Commission applies the ability, incentive, effects framework. This framework concerns the assessment of three cumulative conditions, namely whether (i) the merged entity would have the ability to engage in foreclosure, (ii) it would have the incentive to do so, and (iii) what

22 Replies to questions 6 and 7 of eQuestionnaire 1 to suppliers.

23 As regards the application of the Merger Regulation in the EEA, see also Annex XIV to the EEA Agreement.

24 Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (OJ C 31, 5.2.2004, p. 5).

25 Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation (OJ C 265, 18.10.2008, p. 6).

26 *Ibid*, paragraph 30.

would be the overall impact on effective competition in the affected markets.[27]* According to the Non-Horizontal Merger Guidelines, the Commission is unlikely to find concern in non-horizontal mergers, where the market share post-merger of the new entity in each of the markets concerned is below 30%.[28]

5.2. Horizontal overlaps

(41) The Transaction gives rise to horizontal overlaps in the supply of CS worldwide and the supply of EDC worldwide, in the EEA and North West Europe, to the extent that sales by producers on the merchant market and sales by traders are considered to be within the same product market. However, even if this were the case, the Transaction does not give rise to any horizontally affected markets as the Parties' combined market shares are less than 20% under all plausible definitions.[29] Therefore, a potential overall market (encompassing sales by producers and traders) for the supply CS or EDC will not be further considered in this decision.

5.3. Vertical links

(42) If the trading of CS and the trading of EDC are considered separate relevant product markets from the manufacture and direct supply of CS and EDC, respectively, the Transaction gives rise to vertically affected markets due to BWA JV's post-Transaction market share in these two potential trading markets.

(43) The following markets are vertically affected:

(a) The supply of CS worldwide, in the EEA and in North West Europe (upstream) and the trading of CS worldwide (downstream);

(b) The supply of EDC worldwide, in the EEA and in North West Europe (upstream) and the trading of EDC worldwide (downstream);

(c) The trading of CS worldwide (upstream) and epichlorohydrin in the EEA and worldwide (downstream)[30,31];

(d) The trading of EDC worldwide (upstream) and supply of VCM worldwide[32] (downstream).

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[27]* Left blank.

[28] *Ibid*, paragraph 25.

[29] Namely, [5-10]% globally and [0-5]% in the EEA for CS and [10-20]% globally and [0-5]% in the EEA for EDC (2021).

[30] The Commission has not reviewed epichlorohydrin in past decisions. The Parties submit that the market for epichlorohydrin is global as they regularly ship it intercontinentally. For the purpose of this decision, the exact geographic market definition can be left open as the Transaction does not give rise to competition concerns under any plausible market definition.

[31] For completeness, (i) Olin is active downstream in the supply of bleach. The Commission's precedents define the supply of breach as a local market with a radius of 300km (case M.6905 – *Ineos / Solvay / JV*, European Commission decision of 8 May 2014, paragraph 418). Olin only produces and sells bleach in North America, meaning that no producers in the EEA are at risk of input foreclosure. Bleach is therefore not discussed further in this decision, and (ii) Olin is also active downstream in liquid epoxy resin. CS is used as processing agent in the liquid epoxy resin production process, but not as an input, liquid epoxy resin is therefore not discussed further in this decision.

5.3.1. The supply of CS (upstream) and the trading of CS (downstream)

(44) The Transaction gives rise to a vertically affected relationship between the supply of CS[33] (upstream) and the trading of CS (downstream), to the extent that trading is considered to be a separate product market. This link arises as Olin is active in the supply of CS to industrial customers and traders, while Mitsui trades CS and will contribute these activities to BWA JV.[34] As set out in section 5.3.1.1, the vertical relationship is affected by virtue of BWA JV's post-Transaction market share in the downstream market for trading of CS worldwide. Section 5.3.1.2 below assesses the risk that the Parties would rely on BWA JV's market position to engage in a customer foreclosure strategy to harm rival suppliers of CS.[35]

5.3.1.1. Market structure

(45) Upstream, Olin is the largest producer and supplier of CS globally, with a [0-5]% market share in the supply of CS worldwide.[36] It is constrained by a number of well-established global players, including Formosa, Oxy, Westlake, Dow and Xinjian Zhongtai, which each have market shares of [0-5]%. The remaining vast majority of the market is highly fragmented between a large number of smaller producers.

(46) The focus of Olin's CS sales is outside of the EEA. Therefore, its market shares in the supply of CS under an EEA-wide and North Western European geographic market definition are significantly lower than their global market shares – in each case its shares are less than [0-5]%. In contrast there are a number of significantly larger suppliers in the EEA (such as Dow [10-20]%, Inovyn [10-20]%, Covestro [10-20]%, Nouryon [10-20]%) and in North Western Europe (Inovyn [20-30]%, Nouryon [10-20]%, Kem One [10-20]%, Vynova [5-10]%).

(47) Downstream, BWA JV would be the global market leader in the trading of CS by a distance with a market share of [70-80]% worldwide. It faces competition from Mitsubishi [10-20]%, Tricon [0-5]% Marubeni [0-5]% and Komar [0-5]%.

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32 The Commission has in the past left open whether VCM constitutes a product market (case M.6905 – *Ineos / Solvay / JV*, European Commission decision of 8 May 2014, paragraph 489). Olin only produces VCM in North America, meaning that a relevant vertical link could only arise under a hypothetical global geographic market definition.

33 In view of the fact that liquid CS represents 99% of all CS, the competitive dynamics for an overall market encompassing both liquid and solid CS are effectively the same as for a market comprising liquid CS only. As Olin is only active in the supply of liquid CS, the Commission's assessment focuses on the supply of (all types) of CS for the purposes of this decision without distinguishing between liquid and solid CS.

34 For simplicity, the remainder of this decision will refer to BWA JV when discussing those activities currently performed by Mitsui but which will be contributed to BWA JV through the Transaction.

35 In the upstream market, Olin's market share is only [0-5]% and it is constrained by a number of credible suppliers. It is therefore unlikely that the Transaction would result in the Parties having the ability or incentive to engage in a an input foreclosure strategy to harm rival traders of CS. Accordingly, the risk of input foreclosure from the supply of CS is not assessed further in this decision.

36 Except where otherwise stated, all market share estimates referred to in this decision relate to 2021 and are on the basis of volumes sold. The Parties' market shares would not vary significantly if the frame of reference was instead 2019 or 2020 or if they were estimated on the basis of the value of sales (Form CO, Tables 2-7 and 10-15).

5.3.1.2. Customer foreclosure

5.3.1.2.1. The Notifying Parties' view

(48) The Notifying Parties submit that the Transaction does not create a risk of customer foreclosure with respect to CS. The Parties submit that BWA JV will in fact increase its purchases of CS overall, meaning that rather than reducing purchases from third parties, BWA JV is projected to purchase [BUSINESS SECRETS-information relating to BWA JV's level of third party supply] more CS from third parties than Mitsui does pre-Transaction. Therefore, the Notifying Parties consider that the Transaction will increase sourcing from third parties and that it does not give rise to a risk of customer foreclosure.[37]

5.3.1.2.2. The Commission's assessment

(49) The results of the Commission's investigation indicate that the combined entity is unlikely to be able to successfully engage in a customer foreclosure strategy in relation to the purchase of CS for trading for the following main reasons.

(50) The Commission considers that the combined entity will lack the **ability** to engage in a successful customer foreclosure strategy, despite BWA JV's high market share in the downstream market for the trading of CS worldwide [70-80]%, for the following reasons.

(a) First, the majority of suppliers responding to the market investigation confirmed that the ability to rely on traders is not essential for their competitiveness as a supplier of CS.[38] They explained that sales of CS are 'opportunistic' in that traders are used to sell any remaining CS after captive consumption and direct sales are exhausted.[39] The fact that trading is not essential to suppliers' competitiveness is shown by the fact that only a very small proportion of sales by suppliers are made via traders. Less than 2% of CS sold on the merchant market worldwide or in the EEA is traded while the rest is directly sold from suppliers to their customers.[40] Accordingly, suppliers will continue to have a large base of customers to which they can sell CS post-Transaction.

(b) Second, in the same vein, BWA JV will not be an important customer for suppliers of CS. In 2021, Mitsui's trading of CS accounted for less than [0-5]% of purchases of CS on the merchant market worldwide, and it did not procure any CS in the EEA.[41]

(c) Third, the market investigation confirmed that there are alternative traders to whom suppliers can turn, including Mitsubishi, Tricon, Marubeni and Komar as well as Univar and Brenntag. The vast majority of CS suppliers responding to the market investigation confirmed that there will remain

37 Notifying Parties' response to question 7 of RFI 5.

38 Responses to questions 5 and 9.3 of eQuestionnaire Q1 to suppliers and replies to questions 4 and 5 of the Commission's request for information to suppliers dated 18 November 2022.

39 Responses to question 6.1 of eQuestionnaire Q1 to suppliers.

40 Notifying Parties' response to RFI 5, Annex 1 and responses to question 8 of eQuestionnaire Q1 to suppliers.

41 Notifying Parties' response to RFI 5, Annex 1 and RFI 5 footnote 2.

sufficient alternative traders to whom they can turn post-Transaction.[42] The market investigation further confirmed that already pre-Transaction suppliers often rely on multiple traders for their needs, and that they can and do switch between them. For instance, one trader noted: "[a]*fter JV gets operational European companies will simply continue with the existing traders as most customers/producers work with 2-3 traders all the time*".[43]

(51) As regards the **incentive** of the combined entity to engage in customer foreclosure, Olin is a small supplier of CS upstream ([0-5]% or less under any plausible definition), and it faces competition from a broad range of rival CS producers in a fragmented market, many of whom would be unaffected by a decision by BWA JV only to procure from Olin (see paragraph (52)). This would tend to suggest that the benefits of a customer foreclosure strategy for Olin would be limited as, even if the strategy would successfully increase the costs base of the few suppliers who currently trade CS with Mitsui (and so would be likely to use BWA JV post-Transaction), any resulting increase in Olin's market share or ability to raise prices would likely be limited. Moreover, while a successful customer foreclosure strategy might benefit Olin, BWA JV would not directly benefit and may in fact face higher costs if it must replace volumes sourced from third parties with those of Olin, which is not necessarily the most efficient source in all cases. This means that Mitsui, which jointly controls BWA JV, may not approve any such strategy, as it would not benefit from it and would potentially face lower profits from the strategy. In addition, the Parties' internal documents regarding the Transaction support their submission that rather than reducing sourcing of CS from third parties, BWA JV is expected to procure more CS from third parties than Mitsui does pre-Transaction.[44] Accordingly, it appears unlikely that the Parties would have the incentive to engage in a customer foreclosure strategy relating to CS.

(52) As regards the **likely impact** of a customer foreclosure strategy, the Commission's investigation indicates that upstream suppliers of CS are unlikely to face any significant impact even if the combined entity were to internalise all of its purchases. First, as explained above, access to traders is not essential for the competitiveness of upstream CS suppliers (as sales to traders represent only a small proportion of their overall sales and output) and BWA JV specifically will represent a small proportion of demand.[45] The CS suppliers relying on Mitsui (and thus which may rely on BWA JV in future) are established international players and sales to Mitsui represent only 15% or less of their overall sales of CS.[46] Second, in any event, even if the suppliers that rely on Mitsui were to face a cost increase as a result of an attempted foreclosure strategy, they together hold a small market share in the supply of CS ([5-10]% worldwide).[47] Therefore, a number of major suppliers on the upstream market (who do not sell to Mitsui) will continue to operate post-Transaction, including major players such as Formosa, Oxy, Westlake, Dow, Inovyn, Covestro and Nouryon. Finally, the vast majority of upstream competitors responding to the market investigation considered that the Transaction

42 Responses to questions 9.1 and 9.1.1 of eQuestionnaire Q1 to suppliers.

43 Responses to question 9.1 of eQuestionnaire Q1 to suppliers and to question 8.1.1 of eQuestionnaire Q2 to traders; Notifying Parties' response to RFI 9, question 9.

44 Form CO, Annexes 4-6.

45 See paragraphs (50)(a) and (50)(b).

46 Notifying Parties' response to RFI 5, Annex 2.

47 Notifying Parties' response to RFI 6, question 5.

would have a neutral impact on the supply of CS.[48] Any attempted customer foreclosure strategy is therefore unlikely to have such an impact on upstream suppliers that competitive conditions in the market for the supply of CS would deteriorate

(53) In light of the above, taking into account the results of the market investigation and all of the evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to whether it would lead to customer foreclosure from the vertical link between the supply of CS worldwide, in the EEA or in North West Europe (upstream) and the trading of CS worldwide (downstream).

5.3.2. The supply of EDC (upstream) and the trading of EDC (downstream)

(54) The Transaction gives rise to a vertically affected relationship between the supply of EDC (upstream) and the trading of EDC (downstream), to the extent that trading is considered to be a separate product market. This link arises as Olin is active in the supply of EDC to industrial customers and traders, while Mitsui trades EDC and will contribute these activities to BWA JV. As set out in section 5.3.2.1, the vertical relationship is affected by virtue of BWA JV's post-Transaction market share in the downstream market for trading of EDC worldwide. Section 5.3.2.2 below assesses the risk that the Parties would rely on BWA JV's market position to engage in a customer foreclosure strategy to harm rival suppliers of EDC.[49]

5.3.2.1. Market structure

(55) Upstream, Olin produces and supplies EDC globally, with a [5-10]% market share in the supply of EDC worldwide.[50] It is constrained by a number of well-established global players, including market leader Dow [10-20]%, as well as Tosoh, Vynova, Formosa (each with market shares over 10%), and Hanwha [5-10]%. The remainder of the market is highly fragmented between a large number of smaller producers.

(56) In the EEA, Olin is a small player with a market share of [0-5]%, while a number of players are significantly larger, such as Dow [30-40]%, Inovyn [20-30]% and BASF [10-20]%. Likewise, in North West Europe, Olin's market share is [5-10]%, while the market leaders are Vynova [40-50]% and Inovyn [40-50]%.

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48 Responses to question 18 of eQuestionnaire Q1 to suppliers.

49 In the upstream market, Olin's market share is only [5-10]% and it is constrained by a number of credible suppliers. It is therefore unlikely that the Transaction would result in the Parties having the ability or incentive to engage in a an input foreclosure strategy to harm rival traders of CS. Accordingly, the risk of input foreclosure from the supply of CS is not assessed further in this decision.

50 For the purposes of the estimates in this and the following paragraph, the Commission took as a base the Notifying Parties' estimates of Olin's and its competitors sales volumes and the total market size in an overall market for the supply and trading of EDC and recalculated the estimates by subtracting from the total market size the volumes that are sold by traders. These estimates do not subtract for each supplier the volumes that they sell to traders, as the Parties are not able to estimate the proportion of each supplier's sales that are sold directly to end-customers versus those sold to traders. As such, given that Olin sells more to traders than other suppliers do, these estimates may somewhat overestimate Olin's market share (by including volumes sold by Olin to traders), but are nonetheless useful as a frame of reference.

(57) Downstream, BWA JV (due to the activities contributed to it by Mitsui) would have a market share of [30-40]% in the trading of EDC worldwide. It faces competition from market leader Tricon [40-50]%, as well as Marubeni [10-20]%, Mitsubishi [10-20]% and Komar [0-5]%.

5.3.2.2. Customer foreclosure

5.3.2.2.1. The Notifying Parties' view

(58) The Notifying Parties submit that the Transaction does not create a risk of customer foreclosure with respect to EDC. They explain that this is because the business plan for BWA JV foresees that it would procure the same volume of EDC from third parties as Mitsui does currently.[51]

5.3.2.2.2. The Commission's assessment

(59) The results of the Commission's investigation indicate that the combined entity is unlikely to be able to successfully engage in a customer foreclosure strategy in relation to the purchase of EDC for trading for the following main reasons.

(60) The Commission considers that the combined entity will lack the **ability** to engage in a successful customer foreclosure strategy, despite BWA JV's [30-40]% market share in the downstream market for the trading of EDC worldwide, for the following reasons.

(a) First, the majority of suppliers responding to the market investigation confirmed that the ability to rely on traders is not essential for their competitiveness as a supplier of EDC of suppliers.[52] Producers of EDC are typically vertically integrated and so use up the vast majority of their EDC production to produce VCM and polyvinyl chloride (PVC). Accordingly, 86% of total worldwide production of EDC is consumed internally, and the merchant market primarily exists to support ad hoc sales or purchases of EDC.[53]

(b) Second, BWA JV will not be an important customer for suppliers of EDC. In 2021, Mitsui's trading of EDC accounted for [10-20]% of all purchases of EDC worldwide, and less than [0-5]% of the total production of EDC worldwide. It did not procure any EDC in the EEA.[54] Accordingly, suppliers will continue to have a large base of customers to which they can sell CS post-Transaction.

(c) Third, the market investigation confirmed that there are alternative traders to whom suppliers can turn, including Tricon [40-50]%, as well as Marubeni [10-20]%, Mitsubishi [10-20]% and Komar [0-5]%. The vast majority of EDC suppliers responding to the market investigation confirmed that there will remain sufficient alternative traders to whom they can turn post-Transaction. Some respondents also noted that direct sales could be a

51 Notifying Parties' response to question 7 of RFI 5.

52 Responses to questions 5 and 12.3 of eQuestionnaire Q1 to suppliers and replies to questions 4 and 5 of the Commission's request for information to suppliers dated 18 November 2022.

53 Notifying Parties' response to RFI 7, Annex 1.

54 Notifying Parties' response to RFI 5, Annex 1 and responses to question 8 of eQuestionnaire Q1 to suppliers.

constraint on the Parties' ability to engage in customer foreclosure. For example, one supplier noted that "*there are plenty of traders in the market that we can turn to, or directly sell to customers ourselves*". The market investigation did not give rise to any suggestion that suppliers (or end customers) would have any difficulty in switching between the traders they rely on.[55]

(61) As regards the **incentive** of the combined entity to engage in customer foreclosure, Olin is a small supplier of EDC upstream ([5-10]% or less under any plausible definition), and it faces competition from a broad range of rival EDC producers in a fragmented market, many of whom would be unaffected by a decision by BWA JV only to procure from Olin (see paragraph (62)). This would tend to suggest that the benefits of a customer foreclosure strategy for Olin would be limited as, even if the strategy would successfully increase the costs base of the few suppliers who currently trade EDC with Mitsui (and so would be likely to use BWA JV post-Transaction), any resulting increase in Olin's market share or ability to raise prices would likely be limited. In this regard, while a successful customer foreclosure strategy might benefit Olin, BWA JV would not directly benefit and may in fact face higher costs if it must replace volumes sourced from third parties with those of Olin, which is not necessarily the most efficient source in all cases. This means that Mitsui, which jointly controls BWA JV, may not approve any such strategy, as it would not benefit from it and would potentially face lower profits from the strategy. In addition, the Parties' internal documents regarding the Transaction support their submission that rather than reducing sourcing of EDC from third parties, BWA JV is expected to at least maintain procurement of EDC from third parties at the same level as Mitsui does pre-Transaction.[56] Accordingly, it appears unlikely that the Parties would have the incentive to engage in a customer foreclosure strategy relating to EDC.

(62) As regards the **likely impact** of a customer foreclosure strategy, the Commission's investigation indicates that upstream suppliers of EDC are unlikely to face any significant impact even if the combined entity were to internalise all of its purchases. First, as explained above, access to traders is not essential for the competitiveness of upstream EDC suppliers (as sales to traders represent only a small proportion of their overall sales and output) and BWA JV specifically will represent a small proportion of demand.[57] The EDC suppliers relying on Mitsui (and thus which may rely on BWA JV in future) are established international players who consume the vast majority of EDC that they produce.[58] Second, in any event, even if the suppliers that rely on Mitsui were to face a cost increase as a result of an attempted foreclosure strategy, they together hold a [10-20]% market share in the supply of EDC, meaning that the vast majority of the upstream market of EDC supply would be unaffected, including major players such as Dow, Tosoh, Vynova, Oxy and Inovyn.[59] While some suppliers expressed a concern that the Transaction may lead to them being unable to rely on BWA JV to sell EDC, in practice, already pre-Transaction only a limited proportion of these suppliers' sales

55 Responses to questions 12.1, 12.1.1 and 12.2 of eQuestionnaire Q1 to suppliers.
56 Form CO, Annexes 4-6.
57 See paragraphs (60)(a) and (60)(b).
58 Notifying Parties' response to RFI 5, Annex 2.
59 Notifying Parties' response to RFI 6, question 5.

of EDC are made to BWA JV.[60] Finally, the vast majority of upstream competitors responding to the market investigation considered that the Transaction would have a neutral impact on the supply of EDC.[61] Any attempted customer foreclosure strategy is therefore unlikely to have such an impact on upstream suppliers that competitive conditions in the supply of EDC would deteriorate.

(63) In light of the above, taking into account the results of the market investigation and all of the evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to whether it would lead to customer foreclosure from the vertical link between the supply of EDC worldwide, in the EEA or in North West Europe (upstream) and the trading of EDC worldwide (downstream).

5.3.3. The trading of CS (upstream) and the supply of epichlorohydrin (downstream)

(64) The Transaction gives rise to a vertically affected relationship between the trading of CS (upstream) and the supply of epichlorohydrin (downstream), to the extent that trading is considered to be a separate product market. This link arises as Mitsui trades CS and will contribute these activities to BWA JV, and Olin is active in the supply of epichlorohydrin. As set out in section 5.3.3.1, the vertical relationship is affected by virtue of BWA JV's post-Transaction market share in the upstream market for trading of CS worldwide. Section 5.3.3.2 below assesses the risk that the Parties would rely on BWA JV's market position to engage in an input foreclosure strategy to harm rival suppliers of epichlorohydrin.[62]

5.3.3.1. Market structure

(65) Upstream, BWA JV (due to the activities contributed to it by Mitsui) would be the global market leader in the trading of CS by a distance with a market share of [70-80]% worldwide. It faces competition from Mitsubishi [10-20]%, Tricon [0-5]% Marubeni [0-5]% and Komar [0-5]%.

(66) Downstream, Olin estimates its global market share in epichlorohydrin to be well under 25%. Competitors to Olin include Yangnong (approximately [5-10]%), Lotte (approximately [5-10]%), and Jiangsu Haixing (approximately [5-10]%). Within the EEA, Olin estimates that its market share is approximately [10-20]% and competitors active in the EEA include Inovyn, Leuna-Harze and Westlake.

5.3.3.2. Input foreclosure

5.3.3.2.1. The Notifying Parties' view

(67) The Notifying Parties submit that the Transaction does not create a risk of input foreclosure with respect to epichlorohydrin. They explain that a significant number

60 Reply of a supplier to the Commission's requests for information dated 31 October 2022 and 18 November 2022

61 Responses to question 19 of eQuestionnaire Q1 to suppliers.

62 In the downstream markets, Olin's market share is well under 25% globally and in the EEA for epichlorohydrin. Accordingly, the risk of customer foreclosure from the supply of epichlorohydrin is not assessed further in this decision.

of suppliers active globally with strong resources, such as Dow, Westlake and European producer are available as suitable alternatives for sourcing CS.[63]

5.3.3.2.2. The Commission's assessment

(68) The results of the Commission's investigation indicate that the combined entity is unlikely to be able to engage successfully in an input foreclosure strategy in relation to traded CS vis-à-vis epichlorohydrin producers for the following main reasons.

(69) The Commission considers that the combined entity will lack the **ability** to engage in a successful input foreclosure strategy, despite BWA JV's high market share [70-80]% in the upstream market for the trading of CS worldwide, for the following reasons.

(a) First, as set out above in Section 5.3.1.2, trading is not an important sales channel for CS. Less than 2% of CS sold on the merchant market worldwide or in the EEA is traded while the rest is directly sold from suppliers to their customers.[64] Accordingly, suppliers of epichlorohydrin will continue to have a large base of CS suppliers post-Transaction.

(b) Second, epichlorohydrin suppliers can turn to other traders for the supply of CS, including Mitsubishi, Tricon, Marubeni and Komar as well as Univar and Brenntag.

(70) As regards the **incentive** of the combined entity to engage in customer foreclosure, Olin faces competition from a broad range of rival epichlorohydrin producers who can turn to other sellers, which would tend to suggest that the benefits of an input foreclosure strategy for Olin would be limited. Additionally, even if a successful input foreclosure strategy might benefit Olin, BWA JV would lose significant third party CS sales. This means that Mitsui, which jointly controls BWA JV, may not approve any such strategy.

(71) As regards the **likely impact** of an input foreclosure strategy, the Commission's investigation indicates that downstream suppliers of epichlorohydrin are unlikely to face any significant impact even if BWA JV were to stop supplying them with CS. As explained above, access to traders is not essential for the competitiveness of epichlorohydrin producers and BWA JV will represent a small proportion of total CS supply. Any attempted input foreclosure strategy is therefore unlikely to have such an impact on downstream suppliers that competitive conditions in the market for the supply of epichlorohydrin would deteriorate.

(72) In light of the above, taking into account the results of the market investigation and all of the evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to whether it would lead to input foreclosure from the vertical link between the trading of CS worldwide (upstream) and the supply of epichlorohydrin in the EEA and worldwide (downstream).

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63 Notifying Parties' response to question 1 of RFI 7.

64 Notifying Parties' response to RFI 7, Annex 1 and responses to question 8 of eQuestionnaire Q1 to suppliers.

5.3.4. The trading of EDC (upstream) and the supply of VCM (downstream)

(73) The Transaction gives rise to a vertically affected relationship between the trading of EDC (upstream) and the supply of VCM (downstream), to the extent that trading is considered to be a separate product market. This link arises as Mitsui trades EDC and will contribute these activities to BWA JV, and Olin is active in the supply of VCM. As set out in section 5.3.4.1, the vertical relationship is affected by virtue of BWA JV's post-Transaction market share in the upstream market for trading of EDC worldwide. Section 5.3.4.2 below assesses the risk that the Parties would rely on BWA JV's market position to engage in an input foreclosure strategy to harm rival producers of VCM.[65]

5.3.4.1. Market structure

(74) Upstream, BWA JV (due to the activities contributed to it by Mitsui) would have a market share of [30-40]% in the trading of EDC worldwide. It faces competition from market leader Tricon [40-50]%, as well as Marubeni [10-20]%, Mitsubishi [10-20]% and Komar [0-5]%.

(75) Downstream, Olin produces VCM in North America, with a [0-5]% market share in the production of VCM worldwide. It is constrained by a number of well-established global players, including Formosa Plastics [5-10]%, Westlake [5-10]%, Inovyn [0-5]% as well as Borsodchem, Kem One, Shin-Etsu and Vinnolit.

5.3.4.2. Input foreclosure

5.3.4.2.1. The Notifying Parties' view

(76) The Notifying Parties submit that the Transaction does not create a risk of input foreclosure with respect to VCM. They explain that this is because Olin is not an important producer of VCM and there are many alternative VCM producers active in the market with significant capacity and resources.[66]

5.3.4.2.2. The Commission's assessment

(77) The results of the Commission's investigation indicate that the combined entity is unlikely to be able to engage successfully in an input foreclosure strategy in relation to traded EDC vis-à-vis VCM producers for the following main reasons.

(78) The Commission considers that the combined entity will lack the **ability** to engage in a successful input foreclosure strategy, despite BWA JV's [30-40]% market share in the upstream market for the trading of EDC worldwide, for the following reasons.

(a) First, many of the major VCM producers, *e.g.* Formosa Plastics, Shin-Etsu, Inovyn and Vinnolit, are vertically integrated into the production of EDC. This means that, at least to a significant extent, they can meet their own needs for EDC and are not dependent on EDC supplied by BWA JV. In this regard, 86% of total worldwide production of EDC is consumed internally, and the

[65] In the downstream market, Olin's market share is approximately [0-5]% globally. Accordingly, the risk of customer foreclosure from the supply of VCM is not assessed further in this decision.

[66] Notifying Parties' response to question 1 of RFI 7.

merchant market primarily exists to support ad hoc sales or purchases of EDC.[67]

(b) Second, VCM producers can turn to other traders, such as Tricon [40-50]%, as well as Marubeni [10-20]%, Mitsubishi [10-20]% and Komar [0-5]%. Alternatively, they can buy EDC from producers directly.

(79) As regards the **incentive** of the combined entity to engage in input foreclosure, Olin faces competition from a broad range of rival VCM producers, many of whom would be unaffected by a decision by BWA JV only to supply to Olin as they are vertically integrated or can turn to other sellers, which would tend to suggest that the benefits of an input foreclosure strategy for Olin would be limited. Additionally, even if a successful input foreclosure strategy might benefit Olin, BWA JV would lose significant third party EDC sales. This means that Mitsui, which jointly controls BWA JV, may not approve any such strategy.

(80) As regards the **likely impact** of an input foreclosure strategy, the Commission's investigation indicates that downstream producers of VCM are unlikely to face any significant impact even if BWA JV were to stop supplying them with EDC. As explained above, access to traders is not essential for the competitiveness of VCM producers and BWA JV will represent a small proportion of supply. VCM producers include established international players who internally produce the vast majority of EDC that they require for the production of VCM. Any attempted input foreclosure strategy is therefore unlikely to have such an impact on downstream suppliers that competitive conditions in the market for the supply of VCM would deteriorate.

(81) In light of the above, taking into account the results of the market investigation and all of the evidence available to it, the Commission considers that the Transaction does not raise serious doubts as to whether it would lead to input foreclosure from the vertical link between the trading of EDC worldwide (upstream) and the supply of VCM worldwide (downstream).

6. CONCLUSION

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

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

[67] Notifying Parties' response to RFI 7, Annex 1.