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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.10234 – Bain Capital/Cinven/Lonza Specialty Ingredients 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]**

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

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

Dear Sir or Madam,

(1) On 11 May 2021, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which Bain Capital Investors L.L.C. ('Bain Capital', US) and Cinven Capital Management (VII) General Partner Limited ('Cinven', UK) acquire joint control of Lonza Group AG's specialty ingredients business ('Lonza Specialty Ingredients', Switzerland).[3] Together, Bain Capital, Cinven and Lonza Specialty Ingredients are referred to as the 'Parties' and the acquisition of joint control is referred to as the 'Transaction'.

1. THE PARTIES

(2) Bain Capital is a private equity investment firm that invests in companies across a number of industries, including information technology, healthcare, retail and consumer products, communications, financial services and industrial/manufacturing.

(3) Cinven is a private equity business engaged in the provision of investment management and investment advisory services to a number of investment funds.

(4) Lonza Specialty Ingredients comprises the business of Lonza Group AG that focuses on microbial control solutions and specialty chemical services. It is divided into two business units:

- The Microbial Control Solutions ("MCS") business unit provides microbial control solutions and chemical technologies for the protection of homes, schools, food processing and healthcare sites, workplaces and other institutional environments from bacteria, viruses, mould and other potential pathogens, as well as personal care products and ingredients for wood protection, oil and gas, plastics, metals, and paints and coatings applications. In the financial year 2019, the MCS business unit accounted for around […] of Lonza Specialty Ingredients' total net sales.

- The Specialty Chemical Services ("SCS") provides composite materials, performance intermediates and chemicals, and custom development and manufacturing services, for the agrochemical, food and feed ingredients, personal care and cosmetics, non-cGMP intermediates electronics, transportation and aerospace applications and industries. In the financial year 2019, the SCS business unit accounted for around […] of Lonza Specialty Ingredients' total net sales.

- Prior to the Transaction, Lonza Specialty Ingredients is owned by Lonza Group AG (Switzerland). It consists of 17 manufacturing sites, 11 research and development centres, and has around 2 800 employees worldwide.

[3] Publication in the Official Journal of the European Union No C 197, 26.5.2021, p. 6.

2. THE CONCENTRATION

(5) On 8 February 2021, Bain Capital, Cinven and Lonza Group AG entered into a sale and purchase agreement whereby Bain Capital and Cinven would acquire the entire issued share capital of the companies that compose the Lonza Specialty Ingredients business, as well as certain ancillary employees, assets and liabilities necessary for the operation of Lonza Specialty Ingredients.[4]

(6) Post-Transaction, Bain Capital and Cinven will each indirectly hold around 50% of the share capital of Herens HoldCo AG ("Herens HoldCo"), a Swiss entity established solely for the purpose of the Transaction, that will wholly own Lonza Specialty Ingredients. Bain Capital and Cinven will each have the right to appoint 50% of the directors on the board of this holding entity. The board will take decisions by […]. All material matters, such as the approval of the budget and business plan as well as the appointment and removal of the management of Lonza Specialty Ingredients, are planned to be reserved matters requiring the approval of both Bain Capital and Cinven. Bain Capital and Cinven will thus have joint control over Lonza Specialty Ingredients.

(7) The Transaction is therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(8) The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 000 million[5]. Each of them has a Union-wide turnover in excess of EUR 250 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 within the meaning of Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Activities of the Parties

(9) Lonza Specialty Ingredients manufactures and distributes microbial control solutions and chemical technologies for the protection of homes, workplaces and other environments from bacteria, viruses, mould and other potential pathogens. In particular, Lonza Specialty Ingredients offers a range of biocidal products for hygiene end-uses.

(10) Bain Capital, through its controlled investment Diversey, Inc. ('Diversey', US) produces cleaning and hygiene products and systems. It therefore purchases biocidal products for hygiene end-uses from Lonza Specialty Ingredients (amongst others) as an input for its cleaning and hygiene products and systems. This vertical relationship will be discussed in paragraphs (13) to (65) below.

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4 Form CO, paragraphs 152-160.

5 Turnovers calculated in accordance with Article 5 of the Merger Regulation.

(11) In addition, the Notifying Parties submit that both Lonza Specialty Ingredients and Bain Capital, through its controlled investment Italmatch Chemicals S.p.A ('Italmatch', Italy), produce specialty chemicals. Specialty chemicals are value-added products manufactured using polymerisation and other reactive processes to transform commodity raw materials into polymers and other complex chemical outputs that are used as ingredients by customers to formulate finished products for a range of industries including healthcare, consumer goods, construction and others.

(12) In specialty chemicals, the Parties' activities overlap (a) in the market for polymer additives and (b) in the market for cosmetic ingredients, however their combined market shares are [0-10]% under any market definition that the Commission considers plausible, be it in the EEA and on a worldwide level.[6] Therefore, these overlaps are not further considered in this Decision.[7] Moreover, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to potential conglomerate effects involving products sold by Lonza Special Ingredients on the one hand and either of the Notifying Parties on the other hand.

4.2. Market Definitions

4.2.1. Biocidal products for hygiene end-uses

(13) Biocidal products consist of a large variety of chemicals that are used in a range of applications to kill or control the growth of organisms that might otherwise have a negative effect on processes, products, machinery, and end-users. In the EEA, biocidal products are subject to registration requirements in accordance with European Biocidal Products Regulation ("BPR").[8]

4.2.1.1. Product market definition

(14) In previous cases, the Commission found that it would not be appropriate to assess an overall market for 'all biocides' or 'all specialty biocides'.[9] Rather, the Commission considered it appropriate to assess the relevant markets for biocidal products segmented on the basis of application/end-use or by active ingredient chemistry.[10]

(15) In the case at hand, the vertical link would be present in the hygiene end-use. Concerning active ingredients, the Notifying Parties submit[11] that Lonza Specialty Industries supplies the following biocidal products for hygiene end-uses: quaternary ammonium compounds ("quats"), didecyldimethylammonium chlorides

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6 Form CO, paragraphs 152-160.

7 For completeness, Lonza Specialty Ingredients and Italmatch also minimally overlap in the supply of corrosion inhibitors in the EEA. However, their combined market shares are [0-10]% under any market definition that the Commission considers plausible (Form CO, footnote 19). This overlap is therefore not further assessed in this Decision.

8 Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use placing of biocidal products (OJ L 167, 27.6.2012, p. 1).

9 Case COMP/M.5424 – *Dow/Rohm and Haas*, Commission decision of 8 January 2009, recital 209.

10 Case COMP/M.5424 – *Dow/Rohm and Haas*, Commission decision of 8 January 2009, recital 209; Case COMP/M.5327 – *Ashland/Hercules*, Commission decision of 6 October 2008, recital 26.

11 Response to RFI 8 of 10.06.2021.

("diamines"), polyhexamethylene biguanide hydrochloride ("PHMB") and pyrithione zinc and sodium pyrithione. According to the Notifying Parties, these active ingredients are largely interchangeable for hygiene end-use purposes, therefore the BPR identifies them under the same product types.

(16) The Notifying Parties consider that biocidal products for hygiene end-uses have properties and characteristics that make them suitable for one end-use (for example, disinfectant properties suitable for cleaning hard surfaces) and are not typically suitable for other end-uses (for example personal care products for human application). Therefore, downstream customers would not switch and demand-side substitutability is limited. Likewise, supply-side substitution is limited given that biocidal products for different end-uses typically involve different technologies, know-how, mix of ingredients and manufacturing processes, as well as the existence of different registration requirements under the BPR.[12]

(17) The market investigation confirmed the Notifying Parties' arguments. In particular, the market investigation confirmed that manufacturers of biocidal products for hygiene end-uses can and do develop and register biocidal products for hygiene end-uses under the BPR. This is necessary in order to stay competitive with their peers and gain market shares in applications that are attractive to downstream customers.[13]

(18) The market investigation further indicated that active ingredients for biocidal products for hygiene end-uses are to a considerable extent interchangeable for customers, such that "*[i]n case an active ingredient is no longer available, it should be possible to make a new formulation using an alternate active substance*".[14]

(19) In light of the above, and in particular the level of supply-side substitutability between different active ingredients, the Commission considers that a segmentation based on active ingredient might not be fully appropriate in the present case, whereas a segmentation based on end-use continues to be appropriate in light of the above demand and supply-side considerations.

(20) In any event, the Commission considers that, for the purposes of the present Decision, the exact scope of the product market definition for the supply of biocidal products can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement under any product market definition that the Commission considers plausible (i.e. biocidal products for hygiene end-uses overall or biocidal products segmented by the active ingredients produced by Lonza Specialty Chemicals for hygiene end-uses, see paragraph (15)).

4.2.1.2. Geographic market definition

(21) The Commission has previously considered the relevant geographic market for biocidal products for hygiene end-uses to be at least EEA-wide, while leaving open whether the relevant market should be EEA-wide or worldwide.[15]

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12 Form CO, paragraphs 116-120.
13 Reply by competitor of 04/06/2021.
14 Reply by competitor of 04/06/2021.
15 Case COMP/M.5424 – *Dow/Rohm and Haas*, recital 210.

(22) The Notifying Parties argue that that there are reasons to consider the relevant geographic product market has become broader and so a worldwide market definition is appropriate. In particular, they point to the fact that manufacturers typically transport biocidal products for hygiene end-uses from centralised production facilities to customers around the world with insignificant costs. They argue that a non-EU manufacturer can sell biocidal products for hygiene end-uses in the EU if it can prove that its products are equivalent to biocidal products for hygiene end-uses that are approved in the EU.

(23) The Notifying Parties argue that in any event, the relevant geographic market definition can be left open for the purposes of this case.[16] In particular, they submit that a substantial part of the biocidal products for hygiene end-uses they supply in the EEA is imported from the US.[17]

(24) The market investigation did not provide sufficient indications to determine which of the plausible alternative potential geographic market definitions (i.e. EEA-wide or worldwide) is appropriate for biocidal products for hygiene end-uses.

(25) The Commission takes note of the […] sales of Lonza Specialty Ingredients into Europe from the US. However, on the basis of the inconclusive market investigation and the fact that the outcome of the competitive assessment of the Transaction as to its compatibility with the internal market or the functioning of the EEA Agreement is not affected under either of the two plausible alternative geographic market definitions (EEA-wide or worldwide), the Commission considers that for the purpose of assessing the Transaction, the exact scope of the geographic market definition for biocidal products for hygiene end-uses can be left open.

4.2.2. Cleaning and hygiene products and systems

(26) Cleaning and hygiene products and systems comprise cleaning products intended for routine cleaning of offices, institutions, warehouses, and industrial facilities, including the removal of visible dirt, soil and grease from a surface. They are available in various forms such as sanitation and janitorial cleaners, industrial/technical cleaners, kitchen and catering cleaning agents, food and dairy processing cleaners, laundry agents and others.

4.2.2.1. Product market definition

(27) In previous cases, the Commission has considered a segmentation for the supply of hygiene and cleaning products between the industrial sector (customers such as commercial laundries and food and beverage producers) and the institutional sector (customers such as hotels, restaurants, hospitals and schools), but ultimately left open the scope of the relevant product market.[18] The Commission also considered further sub-segmentations by end-use, namely for the industrial sector between (i) food and beverage hygiene, and (ii) professional laundry detergent, and for the

16 Form CO, paragraphs 123-125.

17 Form CO, paragraphs 124 and 144 and responses to RFI 4, paragraph 12 and to RFI 5, paragraph 1.

18 Case COMP/M.2665 – *Johnson Professional Holdings/DiverseyLever*, Commission decision of 4 March 2002, recitals 8-16; Case COMP/M.704 – Unilever / Diversey, Commission decision of 20 March 1996, recitals 7-12; Case COMP/M.6012 – *CD&R / CVC / Univar*, Commission decision of 25 November 2010, recitals 17-20.

institutional sector between (i) kitchen hygiene, (ii) on-premises laundry, and (iii) housekeeping hygiene), without concluding whether such sub-segmentations were appropriate.[19]

(28) The Notifying Parties consider that the relevant product market is the supply of cleaning and hygiene products and systems (overall), without any further segmentation. They submit that from a demand-side perspective customers can and do use the same cleaning and hygiene products regardless of sector and from a supply-side perspective suppliers tend to offer the full range of products. In any event, the Notifying Parties submit market data for all plausible product market definitions.[20]

(29) The market investigation did not provide indications that would allow the Commission to determine which of the plausible alternative potential product market definitions (i.e. overall, industrial, or institutional, or further segmentations by end-use) would be appropriate for the market for the supply of cleaning and hygiene products and systems.

(30) In any event, the Commission considers that for the purpose of this Decision, the question of whether there is an overall relevant product market for the supply of cleaning and hygiene products and systems, or whether it should be segmented by sector and/or end use can be left open. Neither of these alternative product market definitions affects the outcome of the competitive assessment of the Transaction as to its compatibility with the internal market or the functioning of the EEA Agreement.

4.2.2.2. Geographic market definition

(31) The Commission has previously found that competition for the supply of cleaning and hygiene products and systems (in the institutional sector) takes place at the national level. However, it has left open the relevant geographic market definition and assessed the supply of cleaning and hygiene products to the institutional and industrial sectors at national and EEA level.[21]

(32) The Notifying Parties submit that the market dynamics have evolved since the Commission's last decision in relation to these product markets (in 2010). They submit that cleaning and hygiene products are increasingly sold at European, if not at worldwide, level. While the majority of customers still source cleaning and hygiene products and systems locally, cross-border trade flows have increased and national disparities in prices, transport costs and legislative requirements have decreased. The Notifying Parties accordingly submit that the relevant geographic market should be at least EEA-wide.[22]

(33) The market investigation did not provide sufficient indications to determine which of the plausible alternative potential geographic market definitions (i.e. EEA-wide or

19 Case COMP/M.6012 – *CD&R/CVC/Univar*, recitals 18-20.

20 Form CO, paragraph 129-132.

21 Case COMP/M.6012 – *CD&R/CVC/Univar*, recital 25; Case COMP/M.2665 – *Johnson Professional Holdings/DiverseyLever*, recital 24.

22 Form CO, paragraphs 134-135.

national) would be appropriate for the supply of cleaning and hygiene products and systems.

(34) In any event, the Commission considers that for the purpose of assessing the Transaction, the exact scope of the geographic market definition for cleaning and hygiene products and systems can be left open. Neither of the plausible alternative geographic market definitions (EEA-wide or national) affects the outcome of the competitive assessment of the Transaction as to its compatibility with the internal market or the functioning of the EEA Agreement.

5. ASSESSMENT

5.1. Analytical framework

(35) 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.

(36) 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]

(37) Furthermore, a concentration can entail vertical and/or conglomerate effects. The Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation[25] (the "Non-Horizontal Merger Guidelines") also distinguish between two main ways in which non-horizontal mergers may significantly impede effective competition: (a) when they give rise to input and/or customer foreclosure (non-coordinated effects); and (b) when the merger changes the nature of competition in such a way that firms that previously were not coordinating their behaviour, are now more likely to coordinate to raise prices or otherwise harm effective competition (coordinated effects).[26] 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)[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] The Non-Horizontal Merger Guidelines define conglomerate mergers as mergers between firms that are

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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, paragraphs 17-19.

27 Ibid, paragraph 30.

28 Ibid, paragraph 25.

in a relationship which is neither horizontal (as competitors in the same relevant market) nor vertical (as suppliers or customers).[29]

5.2. Vertical Relationships

5.2.1. Overview of affected markets

(38) Upstream, Lonza Specialty Industries' market share in the supply of biocidal products for hygiene end-uses is moderate both at worldwide level ([10-20]%) and in the EEA ([20-30]%).[30] It faces competition from a number of sizeable competitors across the EEA and globally. Specifically for the EEA these are Stepan ([10-20]%), Thor ([10-20]%), Solvay ([10-20]%), and others ([30-40]%) including Kao, Evonik, Nouryon, Pilot, Lanxess and BASF.

(39) Downstream, Diversey's market share in the overall market for the supply of cleaning and hygiene products and systems is [10-20]% at EEA level and does not exceed 30% in any EEA Member State.[31] Likewise, its market share would not exceed 30% based on a segmentation between the industrial and institutional sector on an EEA-wide or national basis.[32] Diversey's main competitors in relation to cleaning and hygiene products and systems across the EEA include: Ecolab ([10-20]%), P&G ([0-5]%), Hako ([0-5]%), and others ([60-70]%) including Nilfisk and Deb.

(40) If the relevant market were to be further sub-segmented by end-use, Diversey's market share would be less than 30% for most end-uses in most Member States and at EEA level.[33]

(41) However, Diversey's market share in the supply of cleaning and hygiene products to the institutional sector would be 30% or more for certain end-uses in some Member States, namely (a) in Finland: Kitchen hygiene ([30-40]%), (b) in Greece: Housekeeping hygiene ([40-50]%) and (c) in Portugal: (i) Food and beverage end-use ([30-40]%), (ii) on-premises laundry ([40-50]%).

(42) Therefore, the Transaction gives rise to vertically affected markets in the supply of biocidal products for hygiene end-uses in the EEA (upstream) and the supply of cleaning and hygiene products and systems in the institutional sector for particular end uses in Finland, Greece and Portugal (downstream). The risk of customer foreclosure in each of these Member States is assessed below. The Commission will discuss the Notifying Parties' ability and incentives to run a customer foreclosure strategy as well as the possible effects of such a strategy in paragraphs (44) to (53) below.

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29 Ibid, paragraph 5

30 Form CO, Tables 3-4, paragraphs 162-164. Market share estimates presented in this Decision are on a value basis and for 2020. For completeness, its market shares would not exceed 30% in the EEA or worldwide if the relevant market for biocidal products for hygiene end-uses were segmented by active ingredient chemistry (Form CO, paragraph 165).

31 Form CO, paragraph 168 (a).

32 Form CO, paragraph 168 (b).

33 Form CO, paragraph 168 (c) – (e).

(43) The Commission notes that in its response to the market investigation, a market participant raised concerns about the Parties trying to implement an input foreclosure strategy relating to biocidal products in the EEA post-Transaction. The Commission also notes that no other market participant raised any similar concerns. For the sake of completeness, although the merged entity's market shares would be less than 30% in the upstream market for the supply of biocidal products under any plausible market definition, the Commission assesses below the risk of input foreclosure. The Commission will discuss the Notifying Parties' ability and incentives to run an input foreclosure strategy as well as the possible effects of such a strategy in paragraphs 5.2.3.1 to (65) below.

5.2.2. Customer foreclosure

5.2.2.1. Notifying Parties' submissions

(44) Despite the merged entity's high market shares downstream (in certain end-uses), the Notifying Parties argue that it is unlikely that the Transaction would give rise to any anti-competitive effects as a result of a customer foreclosure strategy in Finland, Greece or Portugal, for the following reasons.

(45) Firstly, the Notifying Parties submit that the merged entity would have no ability to engage in customer foreclosure, since Diversey accounts for a low proportion of demand for biocidal products for hygiene end-uses across the EEA ([5-10]%) and so upstream suppliers of biocidal products for hygiene end-uses have a number of sizeable downstream customers to which they can sell their products.[34]

(46) Secondly, the Notifying Parties consider that the merged entity would not have any incentive to engage in customer foreclosure. Since Diversey represents only a low proportion of demand the strategy is unlikely to lead to material gains for Lonza Specialty Ingredients.[35]

(47) Thirdly, the Notifying Parties submit that upstream rivals will continue to be able to sell to a number of major international manufacturers of cleaning and hygiene systems, so any attempted customer foreclosure strategy would not have a detrimental effect on competition.[36]

5.2.2.2. The Commission's assessment

(48) The results of the Commission's investigation indicate that the merged entity is unlikely to be able to successfully engage in a customer foreclosure strategy in relation to the purchase of biocidal products for cleaning hygiene end-uses for the following main reasons.

(49) The Commission considers that the merged entity will lack the **ability** to engage in a successful customer foreclosure strategy:

(a) First, the market investigation confirms that the upstream market is at least EEA-wide, given that suppliers of biocidal products are active at EEA-wide

34 Form CO, paragraphs 177-182.
35 Form CO, paragraphs 183-184.
36 Form CO, paragraphs 185-188.

level and sell their products to customers across the EEA (in addition, customers procure products from across the EEA).[37] Suppliers of biocidal products for hygiene applications can therefore turn to customers in the EEA as a whole, where Diversey represents a small share of purchases of only [5-10]%.[38]

(b) Second, a narrow product market segmentation at the downstream level (i.e. segmenting between industrial and institutional customers, and then further sub-segmenting by type of institutional customer) does not reflect the reality that upstream suppliers can and do sell biocidal products for hygiene end-uses to all types of institutional customers.[39] A number of institutional purchasers of cleaning and hygiene products will remain available to suppliers. This is illustrated by the fact that, while Diversey's market share exceeds 30% for particular end-uses in Finland, Greece and Portugal, in the institutional sector overall its market share remains less than 30% in all of these three Member States.[40]

(c) Third, Diversey only accounts for a modest proportion of purchases in each of these Member States.[41] At national level, Diversey represents approximately [10-20]% of purchases of biocidal products destined to be processed and then sold to the institutional sector in Finland, [10-20]% in Greece and [20-30]% in Portugal. It is noteworthy that Diversey does not have any manufacturing plants in Finland, Greece or Portugal and supplies its own customers from its plants located elsewhere.

(d) Fourth, in each of the affected Member States, a number of major customers will remain post-Transaction, including Ecolab and P&G (all three Member States), Unilever (Portugal and Finland), 3M (Finland and Greece) and others.

(50) Therefore, Diversey as a producer of cleaning and hygiene products and systems is not an important customer in Finland, Greece, Portugal or the EEA as a whole, despite its high market shares for the narrower market segments discussed in paragraph (41). Consequently, post-Transaction, suppliers of biocidal products for hygiene end-uses, will continue to have a sufficient customer base (of producers of cleaning and hygiene products and systems) for whom they will continue to compete fiercely. Thus, the combined entity would not have the ability to engage in a customer foreclosure strategy.

(51) As regards the **incentive** of the merged entity to engage in a customer foreclosure strategy, upstream, Lonza Speciality Ingredients has a modest base of sales of biocidal products for hygiene end uses on which to recoup profits from a foreclosure strategy ([20-30]% market share in the EEA). However, even if a national-level customer foreclosure strategy were to be attempted in Finland, Greece or Portugal, upstream suppliers are major international manufacturers capable of supplying biocidal products for hygiene end-uses to customers downstream (producers of

37 Responses of upstream competitors dated 27 May 2021.
38 Form CO, table 6.
39 Reply of an upstream competitor dated 28 May 2021.
40 Form CO, table 6.
41 Form CO, table 6

cleaning and hygiene products and systems) across the EEA. So, any attempt of customer foreclosure at national level would fail. Further, the market investigation suggested that Lonza Specialty Ingredients may not produce all products required by Diversey for its production, implying that a foreclosure strategy may take some time to implement.[42] The Commission therefore concludes that the merged entity would have no incentive to engage in a customer foreclosure strategy.

(52) As regards the **likely impact** of a customer foreclosure strategy, the Commission's investigation indicates that upstream suppliers are unlikely to face any significant impact even if the merged entity were to internalise all of its purchases. On the one hand, already pre-Transaction, Diversey spreads its purchases of biocidal products for hygiene end-uses across a number of suppliers other than Lonza Specialty Ingredients, namely […]. These suppliers are large, international players active across the EEA, with a combined market share that is substantially higher than that of Lonza Specialty Ingredients (whose market share upstream at the EEA level is only [20-30]%). On the other hand, a number of other major suppliers (who do not sell to Diversey) will continue to operate in the EEA post-Transaction, such as […]. Finally, none of the competitors who replied to the market investigation indicated any concerns regarding the possibility of customer foreclosure.[43] Any attempted customer foreclosure strategy is therefore unlikely to have such an impact on upstream suppliers that competitive conditions in the supply of biocidal products for the hygiene end-use would deteriorate.

(53) In light of the above, taking into account the results of the market investigation and of all 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 risks in the EEA or any Member State from the vertical link between biocidal products for hygiene end-uses (upstream) and cleaning and hygiene products (downstream).

5.2.3. Input foreclosure

5.2.3.1. Notifying Parties' submissions

(54) The Notifying Parties argue that the Transaction is unlikely to give rise to any anti-competitive effects from input foreclosure in the EEA.

(55) Firstly, the Notifying Parties consider the merged entity would have no ability for such a strategy, given that Lonza Specialty Ingredients' market share in the supply of biocidal products for hygiene end uses is less than 20% worldwide and only [20-30]% in the EEA. They submit that Lonza Specialty Ingredients' market share would remain less than 30% even if the relevant product market were segmented by active ingredient. In addition, a number of strong competitors remain in the EEA and customers are sophisticated, price sensitive purchasers who typically multisource and can switch.[44]

42 Reply of a competitor to Q1 dated 28 May 2021.
43 Replies of competitors to Q1.
44 Form CO, paragraph 174.

(56) Secondly, the Notifying Parties submit that Diversey's competitors represent an important source of income for Lonza Specialty Ingredients, which would have a continued incentive to supply to downstream competitors. Further, Diversey's market share is small downstream at EEA level ([10-20]%), meaning that an upstream foreclosure strategy would, at best, only translate into limited additional sales downstream.[45]

(57) Thirdly, given that Lonza Specialty Ingredients does not have a significant degree of market power in the supply of biocidal products for hygiene end-uses, any input foreclosure strategy would be unlikely to have a significant detrimental effect on competition in the market for cleaning and hygiene solutions.[46]

5.2.3.2. The Commission's assessment

(58) The Commission notes that on the basis of market shares data, which represent the Notifying Parties' best estimates, Lonza Specialty Ingredients market shares in the upstream market for the supply of biocidal products for hygiene end-uses are [20-30]% in the EEA (and [10-20]% worldwide). These estimates are based on the Parties own sales data and knowledge of the market, while relying on third party market intelligence reports from IHS Markit, Biocides International and Reports and Data, as well as publicly available announcements from competitors.[47] The Commission reviewed the robustness of the Parties' estimates, which are further supported by market factbooks prepared for Lonza Specialty Ingredients by […] and internal documents and estimates prepared by the Parties in the ordinary course of business.[48] Finally, the market investigation did not give rise to any reason to doubt the Parties' estimates. In light of the above, the Commission is satisfied that the Parties' estimates of their market shares are reasonably accurate.

(59) The results of the Commission's investigation indicated that the merged entity is unlikely to be able to successfully engage in an input foreclosure strategy in relation to the supply of biocidal products for cleaning hygiene end-uses for the following main reasons.

(60) The Commission considers that the merged entity will lack the **ability** to engage in a successful input foreclosure strategy:

(a) First, the Commission notes that the Parties' market shares in the upstream market for the supply of biocidal products are [20-30]% in the EEA and [10-20]% worldwide. In both cases, on the assumption that none of the smaller "other" competitors identified by the Notifying Parties has a market share greater than that of the smallest of the identified major competitors the post-Transaction HHI is […] for the EEA and […] worldwide.[49] The

45 Form CO, paragraph 175.

46 Form CO, paragraph 176.

47 Response to RFI 4, question 3, of 28/05/2021. See […].

48 Annex 4.2 to RFI 4, pages 21 onwards; Annex 4.8 to RFI 4, page 8; Annex 4.5 to RFI 4, pages 10, 14, 23, 28, 35, 50.

49 Calculated on the basis of the market shares presented in Form CO, Tables 3-4, paragraphs 162-164.

Commission considers that it is unlikely to find non-horizontal concerns in such a market structure.[50]

(b) Second, there are several credible competitors active in the EEA, who will continue to meet customers' needs, including Stepan, Thor, Solvay, Nouryon, Kao, Evonik, Pilot and Lanxess. The Notifying Parties' internal documents in the ordinary course of business confirm that these are active competitors that constrain the Lonza Specialty Ingredients in the supply of biocidal products for hygiene end uses and that this market is fragmented.[51] Likewise, shipments from outside the EEA appear to be a credible constraint for any foreclosure strategy at EEA level; for example, shipments of biocidal products for hygiene uses from its facilities in the US represent at least […] of Lonza Specialty Ingredients' sales in the EEA.[52]

(c) Third, the Commission considers that there is some spare capacity in the production of biocidal products at the upstream level. Estimates submitted by the Notifying Parties indicate that competing suppliers of biocidal products have likely sufficient spare capacity to meet all of the downstream demand even if LSI were to stop supplying to any customers in the EEA.[53] The market investigation supports the finding that competing producers of biocidal products have some spare capacity.[54] Rival suppliers will also be able to turn to toll manufacturers to ensure sufficient production to meet downstream demand.[55] In the event that Lonza Specialty Ingredients' input foreclosure strategy were to divert its sales away from Diversey's downstream rivals in order to vertically integrate with Diversey, Lonza Specialty Ingredients' rival suppliers who were previously supplying Diversey would have spare capacity to sell to the (former) customers of Lonza Specialty Ingredients.[56]

(d) Third, the Commission investigated to what extent customers can switch between rival suppliers of biocidal products. The Commission considers that switching is a credible threat by customers to render an input foreclosure strategy unlikely:

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50 Non-Horizontal Merger Guidelines, paragraph 25.

51 Annex 4.5 to RFI 4, page 10; Annex 4.6 to RFI 4, page 4.

52 Case Team calculations based on Notifying Party's response to question 1 of RFI 5 and question 1 of RFI 6.

53 Case Team calculations based on Notifying Party's response to question 1 of RFI 5 and Table 3 of the Form CO; also response to question 5 of RFI 4.

54 Upstream competitor's response to Q2 dated 28 May 2021.

55 Indeed, […] – response to question 5 of RFI 4 and question 2 of RFI 5 and RFI 6. […].

56 For completeness, the COVID-19 pandemic led to a substantial increase in demand for certain cleaning and hygiene products during 2020. However, following the peak in demand, the level of demand appears to be decreasing: IHS Markit estimates the "*biocide market to reach their 2019 levels again in the second half of 2021*" and notes that "*[i]ndustry sources anticipate that the biocides used in disinfection will normalize at a level about 5% to 15% above the pre-coronavirus consumption*". (https://ihsmarkit.com/research-analysis/the-biocides-market-in-the-times-of-coronavirus.html). This is also supported by Lonza Specialty Ingredients' year-on-year sales performance comparing 2020 and 2021 (response to question 6 of RFI 4). This indicates that there should be spare capacity currently and in the near future.

– *Substitution of active ingredients.* Downstream manufacturers rely on particular biocidal active ingredients in their formulas to produce different cleaning and hygiene products. As explained in section 4.2.1.1 above, the biocidal active ingredient must be authorised under the BPR. Generally, there are multiple suppliers who have obtained BPR authorisations for a given active ingredient. The Notifying Parties demonstrated that for the active ingredients for cleaning and hygiene end-uses supplied by Lonza Specialty Ingredients, other suppliers already have active ingredient authorisations.[57] Moreover, the Notifying Parties confirmed that there is nothing to prevent other producers from applying for and obtaining a BPR authorisation for the same active ingredients of biocidal products for cleaning and hygiene end-uses, which are supplied by Lonza Specialty Ingredients and for which the latter holds an authorisation under the BPR.[58] Finally, even if the specific active ingredient is unavailable, the market investigation indicates that generally customers are able to find alternatives: "[*i*]*n case a specific active ingredient is no longer available, it should be possible [for customers] to make a new formulation using an alternate active substance*".[59]

– *Regulatory barriers, time and cost of switching.* The market investigation confirmed that for a customer to be able to use a particular active ingredient in its cleaning and hygiene product, the biocidal active ingredient must be authorised under the BPR and the downstream product must also be authorised. The Notifying Party estimates that a customer seeking to switch to another authorised active ingredient for its end-product would incur costs of [below 500 000 EUR] for authorisations in all Member States at the national level, and that this could take up to two years (though in some Member States, such as France and Germany the process is substantially faster and would take approximately one month).[60] The results of the market investigation indicated that these estimates were broadly accurate.[61] This time frame and level of cost appears moderate, in particular in light of the substantial margins generated by downstream manufacturers of cleaning and hygiene products.[62]

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57 With the exception of one product, for which there is nothing to prevent rival suppliers applying for a BPR authorisation and which the Notifying Party explains is "very similar" to and substitutable for the hygiene end-use with another active ingredient for which several other suppliers have received authorisation. Response to RFI8 of 10.06.21, annex RFI8.1

58 Response to RFI 7 of 9.6.2021.

59 Upstream competitor's response dated 4 June 2021.

60 Response to question 3 of RFI 5.

61 Upstream competitor's response dated 4 June 2021.

62 The Commission notes that Diversey's gross profit margin in the downstream supply of cleaning and hygiene products in Europe was approximately […] in 2020, implying gross profits of circa EUR […] (RFI 5 question 2). This suggests that the level of gross profits of manufacturers of cleaning and hygiene products in the downstream market would be more than sufficient to absorb the necessary level of investment to switch suppliers, without any impact on the competitiveness of manufacturers cleaning and hygiene products.

– *Evidence of switching.* In practice, already pre-Transaction, manufacturers of cleaning and hygiene products and systems pursue a multi-sourcing strategy for biocidal products for hygiene uses. For example, Diversey spreads its EEA purchases of these products across a number of different suppliers, with its […] largest suppliers each accounting for […] of its needs.[63] Moreover, the market investigation confirmed that downstream customers can and do apply a multi-sourcing strategy.[64] The Notifying Parties have also provided details of Lonza Specialty Ingredients' customers successfully switching considerable parts of their procurement needs to rival suppliers.[65] Competitors confirm that customers can switch in practice subject to the BPR elements described above.[66]

(61) Therefore, Lonza Specialty Ingredients is unlikely to have significant market power in the supply of biocidal products for hygiene end-uses in the EEA or worldwide and the merged entity would not have the ability to engage in an input foreclosure strategy, in particular as its market shares are limited, a number of credible rival sources of supply will remain and have spare capacity, and customer switching is a credible threat.

(62) As regards the **incentive** of the merged entity to engage in an input foreclosure strategy, downstream, Diversey only has a relatively small base of sales of cleaning and hygiene products ([10-20]% in the EEA) from which to capture any customer diversion from an input foreclosure strategy. Moreover, Lonza Specialty Ingredients' internal documents suggest that […].[67]

(63) Finally, an input foreclosure strategy would require a change of business strategy for Lonza Specialty Ingredients, and pursuant to the joint venture, Cinven's consent is required for the approval of the business plan and budget of Lonza Specialty Ingredients. While a successful input foreclosure strategy might benefit Bain Capital (which controls Diversey), it is unlikely that Cinven would benefit from such a strategy since it would lose profits from foregone upstream sales by Lonza Specialty Ingredients, but without a corresponding increase in downstream profits (given that it is not active in the downstream market). So it is unlikely that Cinven will approve any such strategy. Accordingly, it appears unlikely that the merged entity would have the incentive to engage in an input foreclosure strategy relating to biocidal products.

(64) As regards the **likely impact** of an input foreclosure strategy, the Commission notes the modest market share of the merged entity ([20-30]% in the EEA, [10-20]% worldwide) and the fact that downstream customers can, if necessary with time and manageable investment, turn to rival suppliers. Moreover, other than one customer, the market investigation did not give rise to any concerns regarding the risk of input foreclosure. The Commission therefore concludes that any customer foreclosure strategy of the merged entity would have no impact on downstream customers.

63 Table 4.4 of the reply to RFI 4.

64 Response of an upstream competitor dated 9 June 2021.

65 Response to RFI 5, paragraph 11. In particular, this indicates that one customer was able to move […].

66 Response of an upstream competitor dated 4 June 2021.

67 Annex 4.5, pages 8, 22, 23 of reply to RFI 4.

(65) In light of the above, taking into account the results of the market investigation and of all 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 risks in the EEA or worldwide from the vertical link between the supply of biocidal products for hygiene end-uses (upstream) and cleaning and hygiene products (downstream).

6. CONCLUSION

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

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President