

ANTICIPATED ACQUISITION BY LINDE AG, THROUGH ITS SUBSIDIARY BOC LIMITED, OF THE PACKAGED CHLORINE BUSINESS AND ASSETS CARRIED ON BY INEOS CHLOR LIMITED

Statement of issues

The reference

1. Our terms of reference require the Competition Commission to consider the anticipated acquisition of the packaged chlorine business and assets of Ineos Chlor Limited (Ineos) by BOC Limited (BOC), an enterprise carried on by or under the control of Linde AG. The inquiry group (the Group) must decide:
 - (a) whether a relevant merger situation will be created; and
 - (b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK.
2. To enable it to do this, the Group will consider the following issues.

Market definition

3. The packaged chlorine supply chain has three levels: production of chlorine; packaging chlorine (ie wholesale supply); and distribution of packaged chlorine (ie retail supply). The Group will consider at which level(s) of the supply chain it is necessary to define economic market(s) affected by the merger (the relevant markets). In defining the relevant markets, the Group will take into account the feasibility of both supply- and demand-side substitution.
4. The Group will consider whether the product market is wider than chlorine alone (at the production level), or packaged chlorine alone (at the packaging and distribution levels). In relation to distribution, the Group will also examine whether the different chlorine packaging formats (ie drums, cylinders and bulk chlorine) are in the same or different product markets, and whether it is appropriate to segment the product market by type of customer and end use (for instance, water companies and other types of end-user).
5. It will consider the extent of the geographic market at each level. In relation to packaging and distribution, the Group will also examine the extent to which Northern Ireland may be in a separate geographic market.

Assessment of the competitive effects of the merger

6. The Group will consider the possible competitive effects of the merger within each of the relevant markets it identifies, compared with the counterfactual situation (ie the situation that would have arisen in the short to medium term, had the merger not been proposed).

Counterfactual

7. To determine the appropriate counterfactual against which to assess the proposed merger, the Group will consider what is likely to have happened in the relevant market(s) absent the merger, including whether the Ineos chlorine packaging and distribution business would:
 - (a) remain an independent and viable business, whether owned by Ineos or another company not already active in the relevant market(s);
 - (b) have been purchased by a party already active in the relevant market(s) other than BOC; or
 - (c) cease trading, and, if so, what would happen to its assets and customer relationships.

Theories of harm

8. To focus analysis of the competitive effects of the merger, the Group has so far identified four possible ways in which the merger might result in an SLC, which it will investigate further. These theories of harm are not mutually exclusive, and their identification does not mean that the Group has reached any conclusions.
9. The four theories of harm identified by the Group to date are:
 - (a) *Unilateral horizontal effects*. The Group will consider whether the reduction in the number of packaged chlorine distributors in the UK as a result of the merger might be expected to create or increase market power at the distribution level of the supply chain, leading to higher prices, or lower levels of service or innovation than would otherwise be the case.
 - (b) *Unilateral vertical effects*. The Group will consider whether the merger might lead to the exit of any competing business, thereby creating or increasing market power in any relevant market with implications for competition further down the supply chain, ultimately leading to higher prices, or lower levels of service or innovation than would otherwise be the case.
 - (c) *Coordinated effects*. Following the merger, BOC and the Albion Chemicals group (Albion) will be the only two chlorine packagers in the UK, and their chlorine packaging businesses will both be vertically integrated with distribution businesses. The Group will consider whether the merger may be expected to increase the likelihood of coordination between BOC and Albion (for example, in relation to prices or customer allocations), leading to higher prices, lower levels of service, or less innovation than would otherwise be the case.
 - (d) *Coordinated foreclosure of independent distributors*. The Group will consider whether the merger will increase the ability and incentive for BOC and Albion jointly to foreclose the supply of packaged chlorine to other packaged chlorine distributors, resulting in fewer distributors being active in any relevant market and higher prices, lower levels of service, or less innovation than would otherwise be the case.
10. The identification of these theories of harm does not preclude an SLC being identified on another basis following further work by us or the receipt of additional evidence.

Related competition issues

11. Among the issues the Group will consider when deciding whether any of the theories of harm set out above are likely to be realized (and whether the merger may therefore be expected to result in an SLC in any relevant market compared with the counterfactual situation) are:
- (a) the extent of competition between Ineos and BOC before the merger;
 - (b) the ability and incentive of other existing or potential competitors to undermine any price increases or reductions in service levels by BOC following the merger;
 - (c) the extent of barriers to entry or expansion in the relevant market(s);
 - (d) customer-related matters such as:
 - (i) the ease with which customers can switch between suppliers of bulk chlorine (where such customers are packagers of chlorine) or between suppliers of packaged chlorine (where such customers are distributors or end-users of packaged chlorine);
 - (ii) how prices paid by customers are determined;
 - (iii) the relative importance to customers of price and non-price factors (such as product specification, reliability and speed of supply and equipment compatibility); and
 - (iv) the extent of buyer power in the relevant market(s);
 - (e) the effect of any capacity constraints in chlorine production, packaging and distribution;
 - (f) factors relating to the likelihood of coordination post-merger such as:
 - (i) the degree of concentration in the relevant market(s) and the firms' awareness of their competitors' behaviour;
 - (ii) the costs to firms of deviating from any prevailing coordinated behaviour; and
 - (iii) the strength of competitive constraints in the market; and
 - (g) whether the merger is likely to give rise to efficiency gains, and if so, whether these will offset any potential lessening of competition in the relevant market(s) or have other benefits (see paragraph 13).

Possible remedies and relevant customer benefits

12. Should the Group conclude that the anticipated merger may be expected to result in an SLC, it will consider whether and, if so, what remedies might be appropriate, and will issue a further statement.
13. In any consideration of possible remedies, the Group will take into account whether any relevant customer benefits might be expected to arise as a result of the merger and, if so, what these benefits are likely to be and which customers would benefit. Customer benefits are benefits to customers at any point in the chain of production and distribution and are therefore not limited to final consumers.