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Case No COMP/M.6171 - IPIC / CEPSA

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 05/07/2011

In electronic form on the EUR-Lex website under document number 32011M6171

Office for Publications of the European Union
L-2985 Luxembourg

EUROPEAN COMMISSION

Brussels, 5.7.2011
C(2011) 4979 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.6171 – IPIC / CEPSA
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1. On 26/05/2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which International Petroleum Investment Company ("IPIC", United Arab Emirates), controlled by the Government of the Emirate of Abu Dhabi, acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Compañía Española de Petróleos, S.A. ("CEPSA", Spain), by way of purchase of shares. Currently, IPIC is a minority shareholder of CEPSA (both IPIC and CEPSA are referred as "Parties").

I. THE PARTIES AND THE OPERATION

2. **IPIC** is an investment company with a mandate to invest globally in energy and energy related assets.[2]

3. **CEPSA** is an integrated oil and energy company active in the upstream and downstream oil and gas sectors. Its downstream business focuses on the refining and marketing of petroleum products, such as motor fuels and petrochemical products.[3]

4. On 15 February, IPIC, the owner of 47.062% of shares in CEPSA, entered into an agreement with a subsidiary of TOTAL, at present the largest shareholder in CEPSA (48.834%), in which said subsidiary has irrevocably agreed to accept the offer in respect

[1] OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

[2] IPIC's website: www.ipic.ae

[3] CEPSA's website: www.cepsa.com

of all its shares in CEPSA. Accordingly, IPIC will have 95.896% of the shares in CEPSA. The notified Transaction, therefore, involves the acquisition of sole control by IPIC over CEPSA.

5. The proposed transaction constitutes thus a concentration under the provisions of Article 3(1)(b) of the Merger Regulation and as such it must be notified to the European Commission in accordance with Article 4 of the Merger Regulation.

II. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5000 million in 2009 (IPIC: EUR 8,477 million, CEPSA: EUR 22,084,484 million). Moreover, the aggregate Union-wide turnover of both undertakings is more than EUR 250 million (IPIC: EUR […] million, CEPSA: EUR […] million). IPIC and CEPSA do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. Thus, the proposed transaction has an EU dimension in the meaning of article 1(2) of the Merger Regulation, and falls into its scope.

III. COMPETITIVE ASSESSMENT

7. The proposed transaction gives rise to horizontal overlaps in the markets for (i) phenol and (ii) acetone. There are no vertical links arising from the transaction.

Relevant product markets

Phenol

8. The proposed Transaction will result in a horizontal overlap in phenol. In particular, between BOREALIS's[4], which is ultimately controlled by IPIC, and CEPSA's manufacturing and selling activities in the European merchant market for phenol.

9. Phenol is a white, crystalline solid, although it is often transported heated in a molten semi-solid state. It is the simplest form of the phenols category of chemicals. The principal phenol production process uses cumene as feedstock and produces phenol and acetone in fixed quantities: 0.62mt of acetone per 1mt of phenol. Phenol is a pure commodity and there are no different grades or qualities of phenol.

10. The main uses for phenol are: (i) to produce bisphenol-A ("BPA"), which in turn is used to produce polycarbonate (polycarbonate is used for different applications in optical media, electrical and electronics and in construction); (ii) to manufacture phenolic resin, which can be used, among other things, as a wood-binding adhesive in the construction sector, as a bonding agent for foundry, and as sand moulds in the industrial sector; (iii) to produce caprolactam, which is used to make 6-nylon fibres, engineering resins and film; and (iv) as a slimicide, a disinfectant, and an anaesthetic in medicinal preparations.

11. In a past decision, the Commission has discussed whether phenol, acetone and AMS and acetophenone comprise a wider relevant product market.[5] In a more recent decision, the

[4] BOREALIS is an Austrian group engaged in the production of polyolefins, which IPIC controls and owns 64% of its stake.

[5] M.439 – HÜLS / PHENOLCHEMIE. Paragraph 8

Commission considered phenol as a distinct market[6], but ultimately left the product market definition open. The Parties consider that the market in any event cannot be narrower than all phenol sales, since it is a commodity sold to large industrial customers.

12. For the case at hand, the definition of the exact product market can be left open, as even under the narrower product market definition (i.e. phenol) no competition concern would raise.

Acetone

13. Both BOREALIS and CEPSA manufacture and sell acetone on the European merchant market.

14. Acetone (or "propanone") is a colourless liquid that belongs to the ketons category. It is often recognised by its characteristic smell. The principal manufacturing method is the cumene-phenol method that produces acetone as a by-product of phenol. Acetone can also be produced from isopropyl alcohol, which is a propane derivative. Acetone is a commodity sold under identical specifications to industrial purchasers.

15. The Commission has previously determined that it constitutes a distinct relevant market.[7] The Parties agree with this product market definition.

Relevant geographical markets

Phenol

16. The Commission has previously considered that the geographic market is at least Western Europe, but left the geographic market definition open.[8]

17. The notifying Party considers that the geographic market is at least EU-wide, since there is active cross-border trade of phenol in Europe, and probably world-wide. CEPSA's only production site is located in Huelva, Spain, and BOREALIS only site is located in Porvoo, Finland, while most of their respective customers are located in other Member States. In some Member States, such as UK, Netherlands, Sweden and Denmark, no manufacturing facilities exist and the local customers are supplied entirely by manufacturers in other Member States. EU manufacturers also export phenol to non-EU countries such as Turkey and China. Moreover, customers with several sites across Europe tend to negotiate uniform base prices, while shipping costs will differ depending on site of delivery.

18. The average intra-EU cross-border transport cost is about 5-10% of the selling price and intercontinental shipment costs represent about 6-8%.[9] Accordingly, intercontinental transport is not considerably more expensive than intra-EU transport and there is significant inter-continental trade in phenol.

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6 M.3024 – BAIN CAPITAL / RHODIA paragraphs 12 and 15.

7 M.5712 – MITSUBISHI CHEMICAL HOLDINGS / MITSUBISHI RAYON CO, paragraph 64;

8 M.3024 – BAIN CAPITAL / RHODIA paragraphs 18 and 21.

9 of an average phenol selling price of €1,100 per ton

19. The Parties have also estimated that most sales ([80-90]%[10]) into East Europe come from West Europe. In the other direction, the estimated sales from East to West Europe represent about [10-20]% of the estimated phenol output in East Europe[11]. Therefore, the market appears to be wider that Western Europe.

20. For the purpose of this transaction, the geographic market definition can be left open, as no competition concerns would arise under any potential market delimitation.

Acetone

21. The Commission has considered the geographic scope of the acetone segment as EU-wide, taking into account, among other things, the existence of swap agreements, but left the geographic market definition open.[12]

22. According to the Parties, acetone is actively traded across borders within the EU and most of the Parties' customers are located in a different Member State from the country where the acetone is produced. As with phenol, customers with several facilities will expect to pay the same price for acetone across the EU, less shipment costs. The Parties also claim that transport costs are low (for intra-EU truck transport [0-5]% of the average selling price, for intra-continental shipment [5-10]%).

23. In addition, the sales from East to West Europe represent almost [20-30]% of the estimated East European output. There is also an active international trade. EU exports of acetone in 2010 were estimated at about [10-20]% of EU output and imports at about [0-5]% of EU demand. Imports into the EU in 2009 were estimated at about [0-5]% of total demand. Exports from the EU to third countries in 2009 were estimated at [10-20]% of EU output. Therefore, as in the case for phenol, the market appears to be wider than Western Europe.

24. For the purpose of this transaction, the geographic market definition can be left open, as no competition concerns would arise under any potential market delimitation.

Competitive Assessment

a. *Market for phenol*

25. The Parties argue that the most reliable manner to estimate market shares in phenol is to use information on the firms' production capacity. In this sense, market share measured in terms of capacity is viewed as a suitable proxy for market power in homogenous goods where capacity is expensive.

[10] about […] kt of […]kt in 2008-2010

[11] about […]kt in 2010, […]kt in 2009 and […]kt in 2008

[12] M.5712 – MITSUBISHI CHEMICAL HOLDINGS / MITSUBISHI RAYON CO, paragraph 67;

EU PHENOL MARKET (Capacity)						
	2010		2009		2008	
Firm	Capacity (kt)	Share (%)	Capacity (kt)	Share (%)	Capacity (kt)	Share (%)
INEOS	[…]	[40-50]%	[…]	[40-50]%	[…]	[30-40]%
CEPSA	[…]	[10-20]%	[…]	[10-20]1%	[…]	[10-20]%
CEPSA + BOREALIS	*[…]*	*[20-30]%*	*[…]*	*[20-30]%*	*[…]*	*[20-30]%*
POLIMERI	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
BOREALIS	[…]	[5-10]%	[…]	[5-10]%	[[…]	[5-10]%
NOVAPEX	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%
DOMO	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%
SLOVNAFT	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
PKN ORLEN	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
LUKOIL	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
CAROM	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
DEZA	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total EU market	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100%**

Source: Parties' internal market intelligence and plant capacity estimates according to industry consultants (ICIS)

26. As shown on the above table, in terms of capacity the Parties will have moderate market shares post transaction in the EU, with a combined market share of [20-30]% ([10-20]% CEPSA and [5-10]% Borealis. Moreover, strong competitors will remain in the market; in particular Ineos ([40-50]%) and Polimeri ([10-20]%), along with a number of competitors, such as Novapex, Domo, Slovnaft, PKN Orlen, Lukoil, Carom or Deza. Also, and according to the Parties, important spare capacity is available in the market for phenol (about [10-20]%, without including the spare capacities of the parties).

27. Additionally, if a narrower market for Western Europe (i.e. EU-15) were to be considered, the Parties' combined market shares will remain very similar:

[…] – EU-15 phenol market (Capacity)						
	2010		2009		2008	
CEPSA + BOREALIS	*[…]*	*[20-30]%*	*[…]*	*[20-30]%*	*[…]*	*[20-30]%*
EU-15	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**	**[…]**	**[90-100]%**

Source: Parties' internal market intelligence and plant capacity estimates according to industry consultants (ICIS)

28. Moreover, under other alternative market delineations the proposed Transaction would not give raise to horizontally affected markets. In particular: (i) on a worldwide level the phenol market would not be affected, given that the Parties' combined market shares will

be well below 15% ([5-10]%), (ii) in a wider market encompassing AMS and acetophenone the Parties' combined market shares would also be below 15%.

29. Although the Parties' claimed that (i) capacity shares are the best proxy for market power in the case of phenol market, and (ii) data on merchant sales are not available in the market, the Commission also requested data on two alternative market delineations: (a) EU merchant market and (b) the market in terms of production (output). The below tables show the Parties' market shares under these alternative product market delineations:

EU merchant market (Sales to third parties)						
	2010		**2009**		**2008**	
	Sales (kt)	**Share (%)**	**Sales (kt)**	**Share (%)**	**Sales (kt)**	**Share (%)**
CEPSA	[…]	[10-20]%	[…]	[20-30]%	[…]	[10-20]
BOREALIS	[…]	[5-10]%	[…]	[10-20]%	[…]	[5-10]%
CEPSA + BOREALIS	*[…]*	*[20-30]%*	*[…]*	*[30-40]%*	*[…]*	*[20-30]*
Total market	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100%**

Source: Parties' internal market intelligence and plant capacity estimates according to industry consultants (ICIS)

EU phenol market (Output)						
	2010		**2009**		**2008**	
Firm	**Output (kt)**	**Share (%)**	**Output (kt)**	**Share (%)**	**Output (kt)**	**Share (%)**
CEPSA	[…]	[10-20]	[…]	[10-20]%	[…]	[10-20]%
BOREALIS	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
CEPSA + BOREALIS	*[…]*	[20-30]%	*[…]*	[20-30]%	*[…]*	[20-30]%
Total	**[…]**	**100%**	**[…]**	**100%**	**[…]**	**100%**

Source: Parties' internal market intelligence and plant capacity estimates according to industry consultants (ICIS)

30. As derived from the above tables, the Parties' combined market shares in terms of production and merchant sales closely follow those based on capacity, remaining moderate and below [30-40]% under any potential market definition. Even in the event that a market for Western Europe were to be considered, the Parties' market shares will not vary significantly.

31. As regards competitors in the merchant market, the Parties argue that no reliable and useful merchant market shares can be estimated. However, the capacity market shares shown above should give a sufficient idea about the relative importance of the firms on such a merchant market. Thus, the notifying Party refers to this data for the merchant market as a proxy of the manufacturers' presence on this market. In this respect, and as stated above, significant players will be active in the market.

32. Given the moderate Parties' combined market shares and the presence of a number of credible competitors active in the market, the Commission considers that the proposed

transaction does not raise serious doubts as to the compatibility of the proposed transaction with the internal market as regards the market for phenol.

b. Market for acetone

33. Given that acetone is a by-product of phenol, the Parties submit that the most reliable manner to estimate market shares in acetone is to use production capacity. In addition, the Parties' underline that acetone market shares will be largely the same for both chemicals.

34. As in the case of phenol, on a worldwide level the acetone market would not be affected (the Parties' combined market shares would be [5-10]%).

EU ACETONE MARKET (Capacity)						
	2010		**2009**		**2008**	
Firm	**Capacity (kt)**	**Share (%)**	**Capacity (kt)**	**Share (%)**	**Capacity (kt)**	**Share (%)**
INEOS	[…]	[40-50]%	[…]	[40-50]%	[…]	[40-50]%
CEPSA	[…]	[10-20]%	[…]	[10-20]%	[…]	]10-20]%
CEPSA + BOREALIS	*[…]*	*[20-30]%*	[…]	*[20-30]%*	[…]	*[20-30]%*
POLIMERI	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
BOREALIS	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
NOVAPEX	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
DOMO	[…]	[5-10]%	[…]	[5-10]%	[…]	[0-5]%
PKN ORLEN	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
SLOVNAFT	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
LUKOIL	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
CAROM	[…]	[0-5]%	[…]	[0-5]%	[…]	[0-5]%
Total EU market	**[…]**	**100%**	[…]	**100%**	[…]	**100%**

Source: Parties' internal market intelligence and plant capacity estimates according to industry consultants (ICIS)

35. In terms of capacity the Parties will have moderate market shares in the EU after the transaction ([20-30]% of which [10-20]% from CEPSA and [5-10]% from Borealis). Moreover, the Parties will face competition from significant players in the market, such as Ineos ([40-50]%) and Polimeri ([10-20]%), as well as from Novapex, Domo, PKN Orlen, Slovnaft, Lukoil and Carom. In addition, and according to the Parties, important spare capacity is available in the market for acetone (about [10-20]%, without including the spare capacities of the parties).

36. As in the case of phenol, if a narrower market for Western Europe (i.e. EU-15) were to be considered, the Parties' combined market shares will continue to be very similar:

[…] – EU-15 acetone market shares (Capacity)						
	2010		2009		2008	
CEPSA + BOREALIS	*[…]*	*[20-30]%*	*[…]*	*[20-30]%*	*[…]*	*[20-30]%*
EU-15	*[…]*	**100%**	*[…]*	**100%**	*[…]*	**100%**

Source: Parties' internal market intelligence and plant capacity estimates according to industry consultants (ICIS)

37. Similarly, the Parties' combined market shares in terms of merchant sales and total production will be closely related to the market shares based on capacity. In particular, and according to the Parties' knowledge, merchant market shares should by and large coincide with the capacity market share, as no firm is known to have internal acetone sales.

[…]– EU acetone market (Output)						
	2010		2009		2008	
Firm	**Output (kt)**	**Share (%)**	**Output (kt)**	**Share (%)**	**Output (kt)**	**Share (%)**
CEPSA	[…]	[10-20]%	[…]	[10-20]%	[…]	[10-20]%
BOREALIS	[…]	[5-10]%	[…]	[5-10]%	[…]	[5-10]%
CEPSA + BOREALIS	[…]	*[20-30]%*	[…]	*[20-30]1%*	[…]	*[20-30]%*
Total	[…]	**100%**	[…]	**100%**	[…]	**100%**

Source: Parties' internal market intelligence and plant capacity estimates according to industry consultants (ICIS)

38. In terms of production, the Parties' combined market shares will also be moderate and will remain below [20-30]%. Even in the event that a market for Western Europe were to be considered in this case, the Parties' market shares will not vary significantly.

39. Given the moderate Parties' combined market shares and the presence of a number of strong competitors in the market, the Commission considers that proposed transaction does not raise serious doubts as to the compatibility of the proposed transaction with the internal market as regards the market for acetone.

IV. COORDINATED EFFECTS

40. Coordination is likely to be sustainable if (i) the market is transparent enough to allow the coordinating firms to monitor whether terms of their agreements are respected, (ii) there should be sufficient and credible deterrent mechanisms that can be activated when departures from the agreement are detected and (iii) reactions from third parties, including competitors, customers and potential entrants, should not be able to jeopardize the results expected from the coordination (i.e. eliminate the profits of the coordination)[13].

13 Horizontal Guidelines, paragraph 41, and Vertical Guidelines, paragraph 81.

41. As for the first two criteria, the Parties submit that they do not have access to information on prices and discounts offered by individual competitors nor, as a general rule, the identity of the customers they serve. Prices are subject to private negotiations between suppliers and purchasers, typically on an annual basis and the result of these negotiations is confidential and not observable to the other firms. No manufacturer publishes price lists. Under such conditions the markets are not sufficiently transparent to monitor to a sufficient degree whether other firms are deviating (for ex. offering lowering price, secret discounts etc.) and to apply deterrent mechanism. In addition, the estimated market shares measured in terms of capacity of the five leading manufacturers at EEA and world-wide level vary greatly and the transaction will not reduce this asymmetry.[14] This asymmetric market structure would not increase the incentives to coordinate after the proposed Transaction, as the interests of the suppliers may be different on the same market.

42. Concerning the third condition, according to the Parties it is not fulfilled either as the demand is highly concentrated on the markets. Phenol and acetone are commodities sold exclusively to professional industrial purchasers. The identity of the supplier is in itself immaterial to the customers as there are no switching costs or other "lock-in" effects. Reaction of large customers would destabilise any attempted coordination. In fact, CEPSA's top five customers represent more than [60-70]% and [70-80]% respectively of the firm's total phenol and acetone sales. The corresponding figures for BOREALIS are [60-70]% and [70-80]%. Such proportions imply that suppliers are, to a very high degree, dependent on individual customers. The loss of any single customer would result in a serious impact to the revenue of the relevant supplier, thereby providing customers for these products with very strong countervailing purchasing power. Moreover, both phenol and acetone are commodity products that can be transported across regions given their low transport costs. Therefore, customers could easily change from their current supplier/s of phenol and acetone to a new one. In fact, and according to the Parties, large customers tend to pursue multiple sourcing strategies and purchase phenol from two or even three or more manufacturers at a time.

43. Based on the above, the Commission considers that the proposed transaction will not increase the incentives to coordinate in the markets of phenol and acetone.

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14 For the phenol capacity, the combined entity will have over [20-30] percentage units less market shares than INEOS in the EEA, and the differential between the combined entity and the third largest player (POLIMERI) is also over [10-20] percentage units. The market shares on the global market are quite different, even if INEOS is still the leader (around [10-20]%), however, the merged entity and SUNOCO will be the second largest player (around [5-10]%) and Mitsui the third (around [5-10]%). For the acetone market, the market shares are similar.

V. CONCLUSION

44. 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.

For the Commission

(signed)
László ANDOR
Member of the Commission