

***Case No COMP/M.6184 -
INDORAMA /
SINTERAMA /
TREVIRA***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 09/06/2011

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EUROPEAN COMMISSION

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M. 6184 – Indorama / Sinterama / Trevira
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 2 May 2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings Indorama Ventures Public Company Limited ("Indorama", Thailand), ultimately controlled by Canopus International Ltd (Mauritius) and Sinterama S.p.A ("Sinterama", Italy), ultimately controlled by Compagnie de l'Ours Sarl (Luxemburg) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Trevira GmbH ("Trevira", Germany) by way of purchase of shares.² Indorama and Sinterama are designated hereinafter as the "notifying parties" or "parties to the proposed transaction".

I. THE PARTIES

2. Indorama produces and supplies polyethylene terephthalate ("PET") resin, PET preforms and PET bottles. PET resin and PET preforms are used to manufacture packaging materials for carbonated soft drinks, water, energy drinks, iced tea, juices and other beverages and liquids. Furthermore, Indorama is active in the field of the production and supply of purified terephthalic acid ("PTA"), a raw material used in the production

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 Publication in the Official Journal of the European Union No C 140, 11.5.2011, p.21

of other polyester and PET products. Finally, Indorama manufactures and supplies polyester textile chips, staple fibres, filament yarns and worsted wools.

3. Sinterama produces and supplies polyester filament yarns, which are for example used in home textiles, apparel, the automotive industries and industrial applications.
4. Trevira produces and supplies polyester textile chips, staple fibres and filament yarns.

II. THE OPERATION AND CONCENTRATION

5. The proposed transaction consists in Indorama and Sinterama acquiring joint control of Trevira. To this end, Indorama and Sinterama have jointly established Blitz 10-637 GmbH (renamed to Trevira Holdings GmbH), a special purpose vehicle ("SPC") for the proposed concentration. Indorama currently indirectly holds 75% of the shares of the SPC, whereas Sinterama holds 25% of the shares of the SPC. The SPC will acquire the whole share capital of Trevira.
6. Indorama and Sinterama have joint control over the SPC, and as thus over Trevira: the Joint Venture Agreement (JVA) between Indorama and Sinterama attributes veto rights to Sinterama regarding important strategic and commercial behaviour of the SPC. These veto rights concern the [...]. Furthermore, extensive deadlock provisions have been provided for in the JVA.
7. The operation therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

8. The undertakings concerned do not meet the threshold defined in Article 1(2) of the Merger Regulation as they do not have a combined aggregate worldwide turnover of more than EUR 5 000 million and only one of them has an EU-wide turnover of more than EUR 250 million. However, the proposed concentration meets the threshold set out in Article 1(3) of the Merger Regulation.³ The undertakings concerned have a combined aggregate turnover of more than EUR 2 500 million worldwide⁴ and of more than EUR 100 million in more than three Member States.⁵ The turnover of at least two of the undertakings concerned is more than EUR 25 million in [...].⁶ Finally, the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million.⁷ None of the undertakings achieves more than two-thirds of its aggregate EU-wide turnover within one Member State. The proposed transaction therefore has an EU dimension.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.04.2008, p. 1).

⁴ Indorama: EUR 2 695 million, Sinterama: EUR 117 million, Trevira: EUR 210 million

⁵ [...]

⁶ [...]

⁷ Indorama: EUR [...]million; Sinterama: EUR [...]million; Trevira: EUR [...]million.

IV. COMPETITIVE ASSESSMENT

1. Market definition

1.1. Product market definition

9. Indorama, Sinterama and Trevira are all active in the production and supply of polyester and derived products.

1.1.1. Polyester resins and polyester textile chips

10. The main input for producing various polyester products is "polyester resins". The notifying parties submit that the general category of polyester resins can be divided into three relevant product markets according to production process as well as product qualities and end use: (i) packaging resin (bottle grade), used for packaging materials such as PET bottles⁸; (ii) polyester textile chips (fibre grade), a semi-manufactured product manufactured from PTA used for the production of polyester staple fibre and polyester filament yarn, which are finally used for the production of textile applications⁹; and (iii) film polymer (film grade), used for the production of PET film.¹⁰
11. In its previous decisions, the Commission considered that the relevant product market for polyester resins could be further subdivided into the above segmentation, but ultimately left open the market definition.¹¹ In a recent decision, the Commission considered PET resin (packaging resin) as a separate relevant product market but ultimately left open the exact product market definition.¹²

1.1.2. Polyester staple fibre and polyester filament yarn

12. Downstream, polyester textile chips are used in the production of polyester staple fibre and polyester filament yarn. Polyester staple fibres are bundles of strands cut into short lengths, which are primarily used in apparel and home textiles and often blended with cotton or other natural and synthetic fibres. Polyester filament yarns are continuous strands of fibre, which are used for apparel, home textiles and industrial end use.
13. In the decision *Dupont/Sabancı*, the Commission has considered a possible segmentation of the market between the production and supply of polyester staple fibre and the

⁸ Packaging resin is a clear and brilliant product, not blended with titanium dioxide, high intrinsic viscosity (IV) value, blended with isophthalic acid as integrated step in production process.

⁹ Polyester textile chips is a bright, dull or semi dull product, mostly blended with titanium dioxide as an integrated step in production process, low IV value, not blended with isophthalic acid.

¹⁰ Film polymer is a clear and brilliant product, not blended with titanium dioxide, low IV value, not blended with isophthalic acid.

¹¹ Commission decision of 24 November 1999 in Case COMP/M.1538 - *Dupont/Sabancı*; Commission decision of 12 November 2001 in Case COMP/M.2628 - *Koch/Kosa*.

¹² Commission decision of 19 March 2010 in Case COMP/M.5760 - *Lotte Group/Artenius UK Ltd*, paragraph 9.

production and supply of polyester filament yarn but ultimately left open the exact product market definition.¹³

1.1.3. PTA

14. Upstream of the production of polyester resins, PTA and di-methyl terephthalate (DMT) are two pre-products that both can be used to create polyester resins. PTA can – depending on the method of production of the end product – also directly be used in the production of polyester staple fibre and polyester filament yarn. Only Indorama is active in the production of PTA. In previous decisions, the Commission left open the exact product market definition for PTA.¹⁴

Conclusion on product market definition

15. In the present case, the definition of the exact scope of the different product markets can be left open as under all possible product market definitions competition concerns are unlikely to arise.

1.2. Geographic market definition

16. The notifying parties submit that the geographic scope of the above-mentioned markets is the EEA including Turkey, if not worldwide. The notifying parties point out that (i) there are many producers of polyester staple fibre, polyester filament yarn and polyester textile chips located in Turkey, (ii) the transport costs are low, and (iii) there are no technical and regulatory barriers for trade between Turkey and the EEA. According to the notifying parties, this means that the market conditions and prices in the EEA and Turkey are similar.
17. In previous decisions, the Commission held that the geographic scope of the markets for the production and supply of polyester products (such as polyester staple fibre, polyester filament yarn and polyester textile chips) was at least Western European but ultimately left open the exact geographic market definition.¹⁵
18. In the present case, the definition of the geographic market can be left open as under all possible geographic market definitions competition concerns are unlikely to arise.

2. Competitive Assessment

2.1. Horizontal assessment

2.1.1. Polyester resins

19. If the three segments of polyester resins are considered as separate product markets, the notifying parties only overlap in the production of polyester textile chips, with Indorama

¹³ Commission decision of 24 November 1999 in Case COMP/M.1538 - *Dupont/Sabancı*.

¹⁴ Commission decision of 11 December 1998 in Case IV.M.1293 - *BP/Amoco*, paragraph 10 and Commission decision of 19 March 2010 in Case COMP/M.5760 - *Lotte Group/Artenius UK Ltd*, paragraph 8.

¹⁵ Commission decision of 24 November 1999 in Case COMP/M.1538 - *Dupont/Sabancı*; Commission decision of 12 November 2001 in Case COMP/M.2628 - *Koch/Kosa*.

and Trevira producing such chips. The notifying parties estimate Indorama's and Trevira's combined share in this market to be [5-10]% in the EEA in 2009 and [5-10]% in the EEA and Turkey in 2009.

20. If the broader market for polyester resins were to be considered as the relevant product market, there would again be an overlap between Indorama and Trevira's activities, where the proposed transaction gives rise to an affected market. In that market the notifying parties' combined market shares in 2009 would amount to [20-30]% in the EEA and [20-30]% in the EEA and Turkey. However, the increment of Indorama's existing market share by Trevira's market share would only amount to [0-5]%. Other players on this market are Artenius PET Packaging Europe with [20-30]% and [20-30]%, Neo Group with [5-10]% and [5-10]% and Equipolymers Global with [5-10]% and [5-10]% respectively in the EEA and in the EEA and Turkey.
21. In any event, the merger would only change the market situation with respect to the smaller segment/market of polyester textile chips, as only Indorama has activities in the other two segments, bottle grade and film grade polyesters.
22. Therefore, any effect of the proposed transaction on the possible market of polyester resins would be minimal.

2.1.2. Polyester staple fibre and polyester filament yarn

23. As regards the production and supply of polyester staple fibre downstream, both Indorama and Trevira are active in the field. The notifying parties estimate their combined market share in the possible market of staple fibres to be [5-10]% in the EEA and [5-10]% in the EEA and Turkey in 2009. This market would therefore not be affected.
24. As for the production and supply of polyester filament yarn, Indorama, Sinterama and Trevira are all active in this field. In 2010, the notifying parties estimate their combined market share in the possible market of polyester filament yarn to amount to [10-20]% in the EEA and [5-10]% in the EEA and Turkey. This market would therefore not be affected.

Conclusion horizontal assessment

25. In view of the above, the proposed transaction does not give rise to any horizontal competition concerns.

2.2. Vertical assessment

26. There are vertical links between Indorama's activities in PTA and the activities of Indorama and Trevira in the field of polyester textile chips (or the broader market on polyester resins) and, further downstream, the activities of Indorama and Trevira in the field of polyester staple fibre and the activities of all three parties in the field of polyester filament yarn.
27. The transaction does not give rise to any vertically affected markets, as the notifying parties' combined market share remains in all cases below 25%.
28. The notifying parties estimate Indorama's share in the possible market for the production and supply of PTA to be [0-5]% in the EEA in 2009.

29. The notifying parties estimate Indorama's and Trevira's 2009 combined share in the market for the production and supply of polyester textile chips to be [5-10]% in the EEA ([5-10]% in the EEA and Turkey). If the production and supply of polyester resins were considered to be the relevant product market, the 2009 combined market share would be [20-30]% in the EEA ([20-30]% in the EEA and Turkey).
30. The 2009 combined market share of Indorama and Trevira in the market of staple fibres is estimated to be [5-10]% in the EEA ([5-10]% in the EEA and Turkey). The 2010 combined market share of Indorama, Sinterama and Trevira in the market for polyester filament yarn is estimated to amount to [10-20]% in the EEA ([5-10]% in the EEA and Turkey).

Conclusion vertical assessment

31. In view of the above, the proposed transaction does not give rise to any vertical competition concerns.

V. CONCLUSION

32. 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)
Joaquín ALMUNIA
Vice-President