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***Case No COMP/M.6782 - HIG CAPITAL/ PETROCHEM
CARLESS HOLDINGS***

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/03/2013

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EUROPEAN COMMISSION

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Brussels, 26.3.2013
C(2013)1930

PUBLIC VERSION

MERGER PROCEDURE

To the Notifying Party:

Dear Sir/Madam,

Subject: Case No COMP/M.6782 – HIG CAPITAL/ PETROCHEM CARLESS HOLDINGS
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

- (1) On 19 February 2013 the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which H.I.G. Europe Capital Partners L.P. (United Kingdom) via its portfolio company Haltermann Holding GmbH (Germany) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of Petrochem Carless Holdings Ltd. (United Kingdom) by way of purchase of shares.
- (2) The transaction was initially notified on 28 November 2012. The market investigation ("the initial market investigation") brought to light concerns expressed by a number of customers and competitors in relation to the markets for the production and supply of (i) performance fuels and in particular the segment of automotive reference fuels, and (ii) the production and supply of hydrocarbon oil based printing ink distillates. As a result, following the State of Play meeting held on 18 December 2012, the Notifying Party withdrew the notification on 19 December 2012.

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

² OJ L 24, 29.1.2004, p. 1.

1. THE PARTIES

- (3) H.I.G. Europe Capital Partners L.P., ("H.I.G." or the Notifying Party") is a global private equity firm. It forms part of the H.I.G. Capital group of funds. One of the H.I.G.'s portfolio companies, **Haltermann Holding GmbH** ("Haltermann"), is a producer of hydrocarbon based chemicals, including printing ink distillates, high-purity hydrocarbons and fuels.
- (4) Petrochem Carless Holdings Ltd. ("PCHL") is the holding company of **Petrochem Carless Ltd** ("PCL") which is active in the refining and distribution of selected hydrocarbon product streams and the manufacturing and distribution of fuels and other refined products and petrochemicals.
- (5) For the purpose of this decision, HIG and PCHL are together referred to as ("the Parties").

2. THE OPERATION

- (6) The operation consists in the acquisition of sole control by H.I.G. of PCHL through a purchase of 100% of PCHL's shares. The proposed transaction therefore constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

3. EU DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (H.I.G.: EUR [...] million, PCHL: EUR million [...]). In 2011, they each had an aggregate EU-wide turnover of more than EUR 250 million (H.I.G.: EUR [...] million; PCHL: EUR [...] million), and they did not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation, therefore, has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. ASSESSMENT

- (8) The Parties' activities overlap in a number of markets in the wider area of production and supply of chemicals, namely in the markets for the production and supply of performance fuels, printing ink distillates, naphtha and solvents.
- (9) However, only performance fuels and printing ink distillates markets constitute affected markets within the meaning of the Merger Regulation³.

³ For the definition of affected markets see section 6 of Annex I (Form CO) of Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

4.1. PERFORMANCE FUELS

4.1.1. *Relevant product market*

4.1.1.1. *Introduction*

- (10) Performance fuels are engine fuels blended to pre-defined specifications in order to provide a more predictable performance or enhance certain aspects of the performance of the fuel. They are used in specialist applications on the basis of customers' own requirements, or according to industry legislation. They are used for performance, certification and testing in the automotive and related industries. On this basis, performance fuels can be subdivided into four main categories: (i) automotive reference fuels, (ii) racing fuels, (iii) first-fill fuels and (iv) aerospace reference fuels.
- (a) Automotive reference fuels are used in the automotive and supporting industries in engine development and for engine testing. They are produced through blending of various components and designed for use in different engine and lubricants tests. The tests can cover a wide range of tests from sludge formation test, surface treatment tests to measuring emission limits under EU law. Automotive reference fuels are typically purchased by car manufacturers and testing laboratories⁴. The specifications for automotive reference fuels may be driven by: (a) the customers' own requirements (i.e., the customer will define certain properties that the fuel should have); (b) requirements imposed by legislation, if the fuel is used for certain purposes that are legislated (e.g., emissions testing); or (c) third party specifications (other than legislation), for example a reference fuel that is specified by an industry body such as the Coordination European Council for the Development of Performance Tests (CEC).
 - (b) First-fill fuels are high-quality car fuels used in new vehicle assembly plants to ensure that new vehicles can be started easily under extreme conditions (i.e., heat, humidity, etc.), especially after a long period of time between the manufacturing of the vehicle and its purchase. Typical customers of first-fill fuels are car manufacturers.
 - (c) Racing fuels are supplied to car, motorbike, powerboats and any other type of motor racing team, such as Formula 1. The customers define the specifications for the type of fuel to yield an optimal engine performance and also, in some cases, to standardize the fuel amongst all race participants for a certain timeframe (e.g. single race, sequences of races, even an entire season).
 - (d) Aerospace reference fuels are fuels supplied to aerospace industry, for similar purposes as the automotive reference fuels, which is for testing and engine development.

⁴ Performance fuels are distinct products from standard road fuels as they are specifically designed for specialist applications as further explained in the decision.

- (11) Given that the proposed transaction does not lead to any overlap in relation to aerospace reference fuels, these will not be considered any further in this decision.

4.1.1.2. Product market definition

4.1.1.2.1. The market for the production and supply of performance fuels

- (12) The Commission has not previously considered the market for the production and supply of performance fuels.
- (13) The Notifying Party submits that performance fuels are part of the wider market for non-retail sales of refined fuel products that was previously identified and examined by the Commission⁵. Non-retail sales of fuels consist of sales of smaller volumes of motor and other fuels (compared to ex-refineries/cargo sales) usually directed from the supplier's inland storage facilities, which are delivered by secondary transport (generally by truck) to the clients premises. In the past, the Commission has segmented this market further along the individual types of products, namely, (i) leaded and unleaded gasoline, (ii) diesel, (iii) domestic heating oil, and (iv) fuel oil⁶.
- (14) According to the Notifying Party this is because, from the supply-side perspective, performance fuels share common characteristics with other types of refined fuels. Firstly, blending of performance fuels involves a process largely similar to the process used by any producer of road fuels, in the exactly the same way. Secondly, there is no need for special effort or knowledge for the production of performance fuels as the mixed raw materials are standard components used in the production of any refined fuel, with precise specifications provided by the customers. Lastly, the storage requirements are no different from other petroleum or chemical products.
- (15) To verify the Notifying Party's claims, the Commission analysed both supply-side and demand-side aspects of the performance fuels market. Contrary to the Notifying Party's claims, the initial market investigation revealed that, as regards the scope of the product market, performance fuels are likely to represent a separate market from the other refined fuels. This is because performance fuels are generally produced based on different production processes from standard fuels due to the fact that they have much tighter specifications, which is necessary so that the reproducibility of the tests for which they are used is ensured; they are not delivered through the traditional pipeline system as regular fuels; they have to fulfil requirements specific to their end-purpose; they are produced using different pool of components than the normal retail fuels (sometime they contain experimentation components or chemicals not normally found in retail fuels) and the know-how used to produce performance fuels requires specific blending knowledge.

⁵ See Commission Decision in Case COMP/M. 5781 - *Total Holdings Europe / ERG SPA/JV*, OJ. C 178, 03.08.2010.

⁶ See Commission Decision in Cases COMP/M.1383 – *Exxon/Mobil*, OJ L103, 07.04.2004; case COMP/M.3516 – *Repsol YPF / Shell Portugal*, OJ C 272, 06.11.2004; Case COMP/M.3291 – *Preem/Skandinaviska Raffinaderi*, OJ C 317, 30.12.2003.

- (16) Similarly, from the demand-side, the customers of performance fuels use these fuels for different end-purposes as other refined fuels, in particular engine testing. In addition, within the performance fuels the various types of fuels have different applications and customer bases. Thus, automotive reference fuels are used for engine or lubricants testing, engine performance measurements or emission testing purposes. On the other hand, first-fill fuels are used for filling the tank of the autos that exit for the first time the factory, but also for prototypes before production is launched⁷ and racing fuels are used for special cars that participate in special racing (for example Formula 1 or motorsports activities) that require special fuels with high performances. Finally, aerospace fuels are used for testing and engine development test in the aerospace industry.
- (17) On the basis of the above, it is concluded for the purpose of the present decision that performance fuels are likely to constitute a distinct market from the market for non-retail sales of refined fuels.

4.1.1.2.2. Subdivision between various types of performance fuels

- (18) According to the Notifying Party, should the Commission define a narrower market, the Notifying Party submits that performance fuels could be considered as a separate market, covering all different types of performance fuels, that is automotive reference fuels, first-fill fuels, racing fuels and aerospace reference fuels. However, the Notifying Party disagrees with any further segmentation of performance fuels according to their application. In its view, such narrower market definition would not be adequate for several reasons.
- (19) First, the same production process is used to produce all types of performance fuels. All performance fuels are blended using the same equipment, process and personnel. Switching production from one type of fuel to another is simple and only requires cleaning of the mixing tank. In the Notifying Party's view the cleaning process is simple and straightforward; and commonly undertaken in the chemical industry. The internal costs estimated by the Parties to undertake such cleaning are minimal and it could be done relatively quickly. The contamination risks associated with the production of various types of performance fuels are not perceived by the Parties to be significant and can be eliminated through the proper cleaning of the blending tanks.
- (20) Second, the base feedstock (i.e. gasoline, diesel and biodiesel) used to produce all types of performance fuels comprises standard products and components (i.e. standard hydrocarbons, such as butane, pentane, hexane, etc.), which readily available from third party suppliers, although some of them are produced in-house by suppliers that are backward integrated.
- (21) Third, storage of all types of performance fuels requires standard equipment. Storage of fuels generally takes place in standard storage tanks, bulk containers or drums, kept at ambient temperature and pressure.

⁷ Replies to question 11 of Questionnaire to customers - performance fuels.

- (22) On the basis of both the initial market investigation and the market investigation run after notification, it appears that a further sub-segmentation between different types of performance fuels into automotive reference fuels, first-fill fuels, racing fuels and aerospace reference fuels may be appropriate..
- (23) From the demand side, there is a clear distinction between different applications of the various types of performance fuels. Automotive reference fuels and aerospace reference fuels are mainly used for engine experimentation testing (and homologation in case of the first one), whereas first-fill fuels are used for the first start of the cars in car manufacturing plants and racing fuels are specifically used for motor racing competitions. They cannot in any case be substituted with each other, nor can they be replaced by a standard fuel⁸. Indeed, a company testing engines in the aerospace industry cannot use a first-fill fuel, racing fuel or any automotive reference fuel.
- (24) Moreover, performance fuels are very different among themselves in terms of their composition, as they are blended by producers according to customers' own needs (most of them are customer tailor made fuels) and the specifications are very narrow. Little variations may have an influence on the outcome of the tests and jeopardize the possibility to reproduce the results. In this context, several customers of performance fuels explained that for example automotive reference fuels are often *"customer tailor-made [...]thus, the specifications differ."*⁹
- (25) Similarly, from the supply side perspective, it seems, on the basis of the market investigation that different performance fuels are likely to constitute separate markets.
- (26) First, the technical expertise to produce different types of performance fuels is different from one type to another. In this context several suppliers have explained that producing different blending formulations is a *"highly skilled operation requiring experienced chemical formulations"*¹⁰ and that *"special know how is required for the calculation methods and required feedstock"*¹¹. It was also mentioned that while all performance fuels use blending of components as the main production process, the technology and know-how are nevertheless different. For example, some producers think that for producing racing fuels *"the level of know how needed is somewhat greater since blends can involve a relatively high number of pure chemicals"*¹² Similarly, some producers indicated that automotive reference fuels need *"more expert know-how compared to first-fill"*¹³.

8 Replies to question 12 of Questionnaire to customers - performance fuels.

9 Replies to question 4 of Questionnaire to customers - performance fuels.

10 Replies to question 8 of Questionnaire to competitors.

11 Replies to question 8 of Questionnaire to competitors.

12 Replies to question 1 of Questionnaire to competitors.

13 Replies to question 1 of Questionnaire to competitors.

- (27) This is also acknowledged by a study, *Development of Reference Fuels and their Importance for Lubricant and Additive Development* (“The Spangenberg study”), where it is explained *“each component itself consists of a mixture of different components. The selection of suitable components is a principal issue which represents a large part of the know how in fuel development.”*¹⁴
- (28) Second, from the point of view of the production equipment and the production and storage facilities, there are special requirements for the plants to be able to produce different types of performance fuels. The initial market investigation revealed that contamination is an important factor that suppliers need to manage in the production and storage of different types of performance fuels. For example, some suppliers have segregated gasoline and diesel systems to be able to prevent any contamination from one product to another. Contamination is indeed an issue as many of the performance fuels are produced in small quantities and therefore any foreign element may alter the characteristics of the whole batch. In this context the market investigation provided clear indications that production from one type of performance fuel to another cannot be easily and economically switched; as additional blending and different storage capacities are required¹⁵. Although some suppliers tend to supply several types of performance fuels, they also tend to specialize in different sub-segments, typically producing just one or maximum two types of performance fuels. Also according to the Spangenberg study, referring to automotive reference fuels, the *“production of such fuels presents special challenges for a company. Not only is a large number of storage tanks required for the very many different components and fuel grades, but these tanks have to be of very different sizes.”* It is also mentioned that *“With the production of such tightly specified fuels the requirements regarding the entire piping system differ from those of a large oil refinery. In this case it is not possible to use “mixed product piping” because the quantity of product required for flushing the system could exceed the actual batch size. Separate and dedicated piping of every single storage tank has to be provided right up to the point of blending. Since product volumes are usually quite small the quality can be affected already by traces of contaminants, for example by rust particles.”*¹⁶
- (29) Third, the pool of feedstock/components used is different from one type of fuel to another and even different from one customer to another, as performance fuels are not commodity products and most of them require a bespoke formulation.¹⁷ Also according to the Spangenberg Study, *“fuels are extremely complex multi-component*

14 Spangenberg, Reichenbacher, *Development of Reference Fuels and their Importance for Lubricant and Additive Development*, available at:http://msdssearch.dow.com/PublishedLiteratureDOWCOM/dh_0039/0901b803800397b3.pdf?filepath=haltermann/pdfs/noreg/743-10002.pdf&fromPage=GetDoc, (accessed on 20 March 2013).

15 Replies to question 5 of Questionnaire to competitors.

16 Spangenberg, Reichenbacher, *Development of Reference Fuels and their Importance for Lubricant and Additive Development*, available at:http://msdssearch.dow.com/PublishedLiteratureDOWCOM/dh_0039/0901b803800397b3.pdf?filepath=haltermann/pdfs/noreg/743-10002.pdf&fromPage=GetDoc, (accessed on 20 March 2013).

17 Replies to question 17 of Questionnaire to customers - performance fuels.

*mixtures. Each component itself consists of a mixture of different components. The selection of suitable components is a principal issue which represents a large part of the “know how” in fuel development”.*¹⁸ For this reason, they are blended products, sometimes even manually blended in dedicated blending facilities. Therefore, some suppliers consider that for them it is not economically feasible to produce all types of performance fuels or even more, to produce for example more types of automotive reference fuels, as components cannot be sourced at each of their sites.

- (30) Concerning the ability of producers to switch production from one type of fuel to another, some of the suppliers indicated that production cannot easily be switched from one type of performance fuels to another type since special feedstock, dedicated piping system, investment in storage etc. are required to produce each type and therefore they would not do it even in a case of a 5-10% price increase as that would not be sufficient to justify the additional investment in the equipment, etc.¹⁹
- (31) On the basis of the above, it seems that various types of performance fuels may constitute separate markets. However, it is not necessary for the purpose of the present decision to conclude on this question as the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to performance fuels under any alternative market definition.

4.1.1.2.2.1. Potential further segmentation of automotive reference fuels and its sub-segments

4.1.1.2.2.1.1. Introduction

- (32) The initial market investigation indicated that the market for automotive reference fuels may be further segmented according to the end-use of the fuel and its specifications. In particular, automotive reference fuels can be subdivided into fuels produced according to EU legislation (“legislative fuels”) and fuels produced for the automotive industry for engine development and engine testing (“Experimentation fuels”).
- (33) For legislative fuels, the EU legislation sets the standards (i.e. set out the components specifications for the automotive reference fuels), which have to be used by car manufactures at least in the context of CO₂ emissions tests. For experimentation fuels, the standards are either set by each particular customer (customer tailor made experimentation fuels) or by an industry based organisation, The Coordinating European Council for the Development of Performance Tests for Fuels, Lubricants and other Fluids. (“CEC”), in particular in relation to the CEC reference fuels. (“CEC reference fuels”), which will be further explained below.

¹⁸ Spangenberg, Reichenbacher, *Development of Reference Fuels and their Importance for Lubricant and Additive Development*, available at:http://msdssearch.dow.com/PublishedLiteratureDOWCOM/dh_0039/0901b803800397b3.pdf?filepath=haltermann/pdfs/noreg/743-10002.pdf&fromPage=GetDoc, (accessed on 20 March 2013).

¹⁹ Replies to question 5 of Questionnaire to competitors.

4.1.1.2.2.1.2. The role of CEC

- (34) CEC is an industry-based organisation comprising members from the automotive, oil, petroleum, additive and allied industries. CEC's objectives are of a scientific nature and comprise the development, publication and maintenance of performance tests for the evaluation of transportation fuels, lubricants and other fluids in the use of the engine manufacturing companies, petroleum, chemical, automotive and related industries primarily within Europe.
- (35) CEC is composed of numerous technical groups, including a Reference Fuels Group (RFG), whose main functions are, inter alia, to design new engine and lubricant testing methods for car industry. Within this framework, CEC may also be called to determine specifications of experimentation fuels used in the testing methods developed by it. The RFG consists of representatives from European petroleum companies, fuel suppliers, motor manufacturers, equipment and additive suppliers as well as engine testing laboratories.
- (36) One of the main objectives of the RFG within CEC is to design new experimentation fuel specifications as requested by CEC Management Board and CEC Test Development and Surveillance Groups. As part of their development activities, CEC organises tenders aimed at identifying fuel producers who can develop reference fuels to certain detailed specifications. These are called CEC experimentation fuels. CEC experimentation fuels are used typically to address specific problems raised within the automotive industry. In such cases, a Test Development Group is then organised within CEC, who defines the terms of reference and invites sponsors to the test. In the next phase, depending on the test, CEC can decide to use a standard reference fuel or, if the fuel is of critical importance to the test, to organise a tender procedure to choose a supplier. The tenders for the development of fuels are opened only to CEC approved suppliers.
- (37) According to Section 2.2.8 from the CEC Reference fuels manual, to become a CEC approved supplier, the suppliers must fulfil the following conditions: be members of the RFG and participate in its meetings; demonstrate technical competence via documented evidence to the RFG that they can supply reference fuels to CEC specifications on a consistent and long-term basis; proper procedures regarding storage and transportation of reference fuels must be established; to have an international quality accreditation system (i.e., ISO 9000) and laboratory test procedures should be accredited to ISO 17025; be able to demonstrate robust traceability from fuel production to supply and provide a unique batch reference number for each fuel blend. According to CEC, "*attaining the CEC approved status is open to any fuels supplier that can satisfy the requirements stipulated by CEC in its Reference Fuels Manual. These requirements are in place to ensure that CEC tests maintain high standards of accuracy and precision.*"²⁰ There are currently six approved suppliers, i.e. PCL, Haltermann, Total SA, Coryton, ENI (Agip) and Chevron Philips.

²⁰ Reply to question 12 of Questionnaire to CEC.

- (38) As regards experimentation fuels used to perform CEC tests, only CEC approved suppliers are allowed to supply them. This is to ensure that test accuracy and precision are tightly controlled.²¹

4.1.1.2.2.1.3. Automotive reference fuels sub-segments: Legislative fuels, Experimentation fuels (customer tailor-made fuels and CEC experimentation fuels)

- (39) The initial market investigation indicated that the market for automotive reference fuels may be further segmented into the following sub-segments:

- i. Legislative fuels and
- ii. Experimentation fuels, comprising:
 - Customer tailor-made fuels, and
 - CEC type experimentation fuels.

- (40) Legislative fuels are fuels used for emission testing in the EEA. They are currently regulated by Commission Regulation (EC) 692/2008, which stipulates that in order for a vehicle to receive a EC type-approval (and thus be lawful sold and used in the EU) with regard to emissions, the car manufacturer has to demonstrate that the vehicle complies with the limits set out in this Regulation and that this has been certified using test procedures set forth in the Regulation.

- (41) Customer tailor-made experimentation fuels are fuels blended on demand, according to the technic specifications required by the customers. Customer tailor-made fuels are used by car manufacturers for testing engines during the entire engine development process, for general engine calibrations or to perform endurance testing for extreme conditions. Unlike CEC type experimentation fuels which are used throughout the entire car industry to test a common problem that they might have, these fuels are customers specific, meaning that each customer has its own requirements, asking suppliers for different formulations.

- (42) As explained in paragraph (36), CEC experimentation fuels are specially developed fuels used typically to address specific problems raised within the automotive industry, used for testing purposes.

- (43) During the initial market investigation, several respondents expressed concerns in the segment of automotive reference fuels²², in particular in the CEC experimentation fuels segment. Indeed, as regards the legislative fuels or customer tailor-made experimentation fuels it seems that any fuel producer having the adequate equipment can produce and supply these fuels. However, as regards the CEC experimentation fuels, the market investigation indicated that they can be

²¹ Reply to question 11 of Questionnaire to CEC.

²² Reply of Shell to question 44 of Questionnaire to competitors.

produced only by CEC approved suppliers²³. Suppliers also must have a specific knowledge to be able to produce such fuels and the ability to store large unique batches for a period of time²⁴.

- (44) The Notifying Party contests any such segmentation on the basis that automotive reference fuels are blended in the same way as any other reference fuels, are produced from the same or similar components, are used for similar purposes and can be produced by any fuel supplier, not only the CEC approved suppliers²⁵. According to the Notifying Party, the only difference in the production of a CEC fuel is that it must conform to certain specifications defined by CEC, whereas a non-CEC reference fuel will have the specifications defined by the customer. Furthermore, the CEC specifications would be no more complex or different from the other automotive reference fuels.
- (45) On the basis of the market investigation after the re-notification, it appears that legislative fuels and experimentation fuels (both customer tailor made and CEC experimentation fuels) are used for different purposes by their customers, who for their specific use cannot substitute between the two types. For instance, one cannot use any type of experimentation fuels for emission testing as the latter requires specific legislative fuels conform to the specifications set out in the relevant regulations. However, from the point of view supply-side substitutability most producers seem to be able to produce all types of automotive reference fuels. Indeed, although they seem to be produced according to different specifications for different end-purposes (legislative fuels are produced according to legislative specifications, customer tailor made fuels are produced according to customers' own specifications and the CEC experimentation fuels are produced according to CEC specifications) and therefore the components can differ for each type, the majority of competitors seem to agree that there is no real difference in the production, as "*they are produced from the same component portfolio using the same tank and blending equipment*"²⁶. In addition, although the majority of suppliers indicated that for certain fuels there may be a need for special blending facilities, like small tanks, it seems that this requirement is the same for legislative fuels, as well as for experimentation fuels (both customer tailor made and CEC type).²⁷
- (46) On the basis of the market investigation after the re-notification, the Commission has also confirmed that there are no intellectual property rights attached to any type of fuels, although some suppliers associate the refinery intellectual property rights with the production of automotive reference fuels.

23 CEC Reference fuels manual published in July 2010, p.3.

24 Minutes of the conference call with Coryton of 11.12.2012.

25 Moreover, according to the Notifying Party these requirements are easily met and they do not represent a real barrier to entry for a fuel producer to become an "approved" CEC reference fuel supplier.

26 Coryton's answer to question 10 of Questionnaire to competitors.

27 Replies to question 11 of Questionnaire to competitors.

- (47) It follows that there are some indications that the market for automotive reference fuels may be further segmented, the exact product market definition can be left open for the purpose of the present decision since the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to automotive reference fuels or any further sub-segments under any alternative market definition.

4.1.1.3. Relevant geographic markets

- (48) As concerns the geographic scope of the for performance fuels market overall and any further possible sub-segments, the Notifying Party submits that the relevant geographic market is at least EEA-wide, as customers are located throughout all Europe, all performance fuels are stable and sold in small quantities and can therefore be transported over long distances, there are no special transport precautions (apart from the usual ones for regular fuels) and transport costs do not represent a barrier to sales throughout the entire EEA area.
- (49) Although during the initial market investigation some respondents indicated that that due to the trading patterns the market could be narrower than EEA²⁸, possibly confined to two regions within the EEA, namely Western and Eastern Europe, the market investigation overall was inconclusive on this point.
- (50) According to the respondents, transport costs can vary a lot (from 5% to 35% of the sale price) depending on the size of the order, packaging requirements and distance from the plant. Moreover, timing of deliveries is an important issue for customers, in addition to quality and specifications. Nevertheless, some competitors indicated, in relation to the distance range from the production facility that an average distance of 500 km should be taken into consideration.²⁹
- (51) As regards special conditions for transport, market respondents indicated that these products could be transported at high distances without problems. Also, as regards the level of the distribution of performance fuels, the respondents tend to distinguish between the different types of performance fuels, however the replies were inconclusive on this point.
- (52) Excluding some producers who supply mainly at national level (i.e. Magigas, Preem, Panta), the other producers supply performance fuels at either regional/EEA-wide level (i.e. Coryton, Total for automotive reference fuels, Shell for first fill fuels, OMV for automotive reference fuels) sometimes relying upon third parties distributors (such as [...] for PCL). Some producers also supply very small quantities of performance fuels beyond the EEA borders (e.g. Shell for automotive reference fuels and racing fuels).³⁰ However, while there are some supplies at larger distances, as a general rule suppliers tend to supply most of their quantities as close to the plants as possible. This is valid for all segments of performance fuels

²⁸ Coryton and Shell's replies to question 17 of Questionnaire to competitors.

²⁹ Replies to question 20 of Questionnaire to competitors.

³⁰ Replies to questions 16 and 17 of Questionnaire to competitors.

(automotive reference fuels, racing fuels and first fill fuels), as well as for any further potential sub-segments of the automotive reference fuels.

- (53) In any event, for the purpose of the present decision, the precise geographic market definition can be left open, since the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to performance fuels and any further sub segments under any alternative geographic market definition.

4.1.1.4. Overall conclusion on market definition

- (54) On the basis of the above, it is concluded for the purpose of the present decision that performance fuels are likely to constitute a distinct market from the market for non-retail sales of refined fuels. As concerns the further sub-segmentation of performance fuels or its segments, the exact product and geographic market definition can be left open as the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the further sub-segmentation of performance fuels or its segments irrespective of the precise market definition.

4.1.2. COMPETITIVE ASSESSMENT

4.1.2.1. Overall market for the production and supply of performance fuels

4.1.2.1.1. Notifying Party's submission

- (55) According to the Notifying Party, the proposed transaction would not significantly impede effective competition in the market for the supply of performance fuels in general and in any potential sub-segments for a number of reasons.
- (56) First, the Parties are not close competitors and the combined entity will continue facing competition from a number of well-established suppliers of performance fuels. Competitors encompass not only specialized blenders but also vertically integrated refineries, which, unlike the Parties, have direct access to raw materials.
- (57) Second, customers are sensitive to price and quality and would switch away from the merged entity should it attempt to exercise market power. In addition, customers enjoy a substantial degree of bargaining power, dictating prices through the employment of tenders and by engaging in switching and multi-sourcing strategies.
- (58) Third, barriers to entry are low, making possible for any fuel or petrochemical manufacturer to readily start production in a timely manner. In this context the Notifying Party refers to Coryton Advanced Fuels ("Coryton") who recently entered the market for the production and supply of performance fuels, rapidly gaining a competitive position in the market.

4.1.2.1.2. Commission's analysis

- (59) In 2011, the Notifying Party estimated the size of the EEA performance fuels market to be 161 tonnes or 190³¹ million EUR. On this basis, their combined market share would be [10-20]% in terms of volumes and [20-30]% in terms of revenues. The table below shows the position of other market players:

Table 1: Performance fuels market shares in 2011

Performance fuels 2011 – EEA*		
Competitors	Volume	Value
Haltermann	[10-20]%	[10-20]%
PCL	[0-5]%	[5-10]%
Combined	[10-20]%	[20-30]%
Total SA	[30-40]%	[30-40]%
Preem	[5-10]%	[5-10]%
Shell	[5-10]%	[5-10]%
Aral	[5-10]%	[5-10]%
Coryton	[5-10]%	[0-5]%
OMV	[5-10]%	[0-5]%
ChevronPhillips	[0-5]%	[0-5]%
Panta	[0-5]%	[0-5]%
Others	[10-20]%	[10-20]%

***Source: The Notifying Party, Form CO.**

- (60) As shown in the table above, post-transaction the combined entity will continue to face competition from a number of suppliers, including the market leader Total, and a number of petroleum refiners, petrochemicals manufacturers and specialist producers, such as Preem, Shell, Aral, Coryton, OMV, and others.
- (61) Should the geographic scope of the market be narrower, and confined to Western and Eastern Europe the competitive situation would not change. This is due to the fact that essentially customers using performance fuels are located in Western Europe. As a consequence, the estimated shares of the Parties and their competitors in Western Europe would be essentially the same as at the EEA level. As far as Eastern Europe is concerned, [summary of confidential content: the parties do not have significant sales in Eastern Europe.]
- (62) While the initial market investigation was inconclusive as to whether the Parties are close competitors, in terms of the profile of suppliers, respondents to the market investigation indicated that Haltermann is a quality-leader while PCL is competitive on price³². In addition, the market investigation further indicated that the Parties generally serve different geographic regions³³. A number of customers further submitted that they find Haltermann and PCL complementary in terms of their product portfolio and therefore address themselves to the Parties for the supply of

³¹ According to the best estimate of the Notifying Party, FORM CO p.78.

³² Replies to question 25 of Questionnaire to customers - performance fuels.

³³ Replies to question 26 of Questionnaire to customers - performance fuels.

different types of performance fuels³⁴. As a result, customers do not perceive them as particularly close suppliers.

- (63) The market investigation also indicated that customers are generally price-sensitive and select their suppliers on the basis of requests for quotations (RFQs)³⁵ and the majority of respondents to the market investigation pointed out the possibility to switch supplier of performance fuels³⁶.
- (64) In terms of barriers to entry, contrary to the Notifying Party's submission regarding barriers to entry and/or expansion, the market investigation revealed that the market for the production and supply of performance fuels represents a highly capital intensive business, requiring large investments particularly in terms of acquisition of a production facility, sufficient blending and storage capacity, as well as the know-how related to the blending of fuels³⁷.
- (65) However, on the basis of the market investigation after re-notification, it appears that manufactures of performance fuels can rent storage capacity off-production-site to overcome possible storage shortages³⁸.

4.1.2.1.3. Conclusion

- (66) In light of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the overall market for the production and supply of performance fuels, and this irrespective of the geographic market definition.

4.1.2.2. Performance fuels sub-segments

4.1.2.2.1. Automotive reference fuels

4.1.2.2.1.1. Overall market for the production and supply of automotive reference fuels

4.1.2.2.1.1.1. Market structure

- (67) In 2011, the Notifying Party estimated the size of the EEA automotive reference fuels market to be 44.3 tonnes 79.7 million EUR. On this basis their combined

³⁴ Replies to question 26 of Questionnaire to customers - performance fuels.

³⁵ Replies to questions 28, 29, 30, and 31 of Questionnaire to customers - performance fuels.

³⁶ 9 out of 7 respondents to question 32 of Questionnaire to customers - performance fuels.

³⁷ Replies to question 40 of Questionnaire to competitors. See also minutes of the conference call with Total of 08.01.13. See also minutes of the conference call with Coryton of 11.12.12.

³⁸ Replies to question 34 of Questionnaire to competitors.

market share would be [20-30]% in terms of volumes and [30-40]% in terms of revenues. The table below shows the position of other market players:

Table 2 Automotive reference fuels market shares in 2011

Automotive reference fuels 2011 – EEA *		
Competitors	Volume	Value
Haltermann	[10-20]%	[20-30]%
PCL	[5-10]%	[5-10]%
Combined	[20-30]%	[30-40]%
Total SA	[40-50]%	[30-40]%
Preem	[10-20]%	[5-10]%
Shell	[5-10]%	[5-10]%
Coryton	[0-5]%	[0-5]%
ChevronPhillips	[0-5]%	[0-5]%
Panta	[0-5]%	[0-5]%
OMV	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%

* Source: Notifying Party, Form CO.

- (68) The table above shows that, post-transaction, the combined entity would continue to face competition from a number of suppliers, including the market leader Total, and a number of petroleum refiners, petrochemicals manufacturers and specialist producers, such as Preem, Shell, Coryton, Chevron Phillips, Panta, OMV, and others.
- (69) Should the geographic scope of the market be narrower, and confined to Western and Eastern Europe the competitive situation would not change. This is due to the fact that essentially customers using automotive reference fuels are located in Western Europe. As a consequence, the estimated shares of the Parties and their competitors in Western Europe would be essentially the same as at the EEA level. As far as Eastern Europe is concerned, [summary of confidential content: the parties do not have significant sales in Eastern Europe].
- (70) Contrary to the results of the initial market investigation, which revealed that a number of players have local³⁹ and/or product focus⁴⁰, while others are either not focused in the production of automotive reference fuels, or have recently exited the market (ENI/AGIP and BP)⁴¹, the market investigation after re-notification revealed that Shell, OMV, and Preem would represent an alternative source of supply

³⁹ See minutes of the conference call with Panta of 13.12.2012; minutes of the conference call with Preem of 13.12.2012.

⁴⁰ See minutes of the conference call with OMV of 28.01.2013; minutes of the conference call with Panta from 13.12.2012.

⁴¹ See minutes of the conference call with ENI of 23.01.201; Correspondence with BP, e-mail 19.12.12.

comparable to the combined entity. In addition a number of competitors would be able to increase their production following a price increase. In particular, Preem stated that "*higher profitability makes opportunity to expand business if we have the ability to make this sorts of fuel*".⁴² In addition, Coryton who recently entered the market reported that it has managed to gain a market share between [0-5] % in two years.

4.1.2.2.1.1.2. *Closeness of competition*

- (71) According to the information provided by the Notifying Party, out of the 10 biggest customers of Haltermann and PCL, [...] sourced from both Parties, but when they did [...].⁴³ In addition, in the last five years, Haltermann and PCL mainly lost business to [...].⁴⁴ The market investigation indicated that while for some customers Haltermann and PCL are the only suppliers, the majority of customers indeed use several suppliers which do not necessarily include both Parties.

4.1.2.2.1.1.3. *Buyer Power*

- (72) While the initial market investigation was inconclusive as to whether customers enjoy a degree of buyer power⁴⁵ on the basis of the market investigation conducted after the re-notification, the Commission has confirmed that customers of automotive reference fuels, especially large car manufacturers, enjoy a degree of buyer power, being able to influence price formation through different negotiations tactics⁴⁶ Customers use RFQs on every order and select suppliers based on a competitive bidding process⁴⁷. In particular, large car manufacturers issue more than a dozen of RFQs per year, inviting 5 suppliers on average to submit a quotation⁴⁸, ultimately confirming the possibility to switch supplier. The selection of the supplier of automotive reference fuels is driven by price, quality and time-lead considerations⁴⁹, price being the main factor⁵⁰. It follows that customers are in a

42 Preem's reply to question 3 of Questionnaire to competitors.

43 Annex 4 and Annex 5 Form CO.

44 [...].

45 6 out of 8 respondents to question 43 of Questionnaire to customers - performance fuels; 2 out of 2 respondents to question 40 of Questionnaire to competitors.

46 Replies to questions 35 and 36 of Questionnaire to customers - performance fuels.

47 Replies to question 31 of Questionnaire to customers - performance fuels.

48 Replies to questions 28 and 29 of Questionnaire to customers - performance fuels.

49 Replies to question 31 of Questionnaire to customers - performance fuels.

50 Replies to questions 35 and 36 of Questionnaire to customers - performance fuels.

position to put pricing pressure on the suppliers. As way of example the Parties yearly margins [...] ⁵¹.

4.1.2.2.1.1.4. *Barriers to Entry*

- (73) The initial market investigation indicated that barriers to entry and expansion are rather high due to the need to acquire a production facility, to have a specific know-how related to the blending of fuels, and to secure sufficient storage capacity⁵². The only example of recent entry into the market has been Coryton who entered the market through the acquisition of BP's existing blending facility in the UK⁵³. In addition, during the initial market investigation competitors have highlighted the difficulty to increase production following a price increase, due to constraints in relation to their blending or component storage capacity⁵⁴.
- (74) However, the market investigation conducted after the re-notification revealed that there is significant excess capacity among existing competitors, which could expand production if necessary⁵⁵. In particular, as far as production capacity is concerned, Panta confirmed that it does not report limitation of production capacity⁵⁶. In addition, storage capacity can be rented from warehouse operated by a third party⁵⁷. Furthermore, customers generally have storage capacity at their own premises⁵⁸. Finally, a main competitor of the Parties confirmed that it would increase its production of automotive reference fuels in case of price increase⁵⁹.

4.1.2.2.1.1.5. *Conclusion*

- (75) In light of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the overall market for the production and supply of automotive reference fuels, and this irrespective of the geographic market definition.

⁵¹ Net margins expressed in percentage. Table 15 A and 15 B, p.66 Form CO.

⁵² Replies to question 31 of Questionnaire to customers - performance fuels.

⁵³ Minutes of the conference calls with Coryton Advanced Fuels of 11.12.2012 and 06.02.2013

⁵⁴ Minutes of the conference call with Total SA of 08.01.2013; minutes of the conference call with Preem from 13.12.2012; minutes of the conference call with Coryton Advanced Fuels of 11.12.2012; minutes of the conference call with OMV of 28.01.2013.

⁵⁵ Replies to question 25 of Questionnaire to competitors.

⁵⁶ Minutes of the conference call with Panta of 13.12.2012.

⁵⁷ Replies to question 34 of Questionnaire to competitors.

⁵⁸ Replies to question 24 of Questionnaire to customers – performance fuels.

⁵⁹ Replies to question 51 of Questionnaire to competitors.

4.1.2.2.1.2. Automotive reference fuels sub-segments: Legislative fuels, Experimentation fuels (customer tailor-made fuels and CEC experimentation fuels)

4.1.2.2.1.2.1.1. *Legislative Fuels*

- (76) As regards legislative fuels, the specifications for these fuels, used for emissions testing, are disciplined by EU legislation⁶⁰. Being the specifications in the public domain, any manufacturer of fuels can produce and supply legislative fuels, the only requirement being that the fuel meets the specifications set forth in the Regulation. As a consequence, there are no restrictions whatsoever on a fuel manufacturer to produce and supply legislative fuels⁶¹.
- (77) The Notifying Party was not able to provide market shares on the sub-segment for the production and supply of legislative fuels in the EEA or in Western/Eastern Europe. However, the Notifying Party provided their sales data in volume which amount to [...] for Haltermann and [...] Ktones for PCL in 2011⁶². On the basis of the market reconstruction, the Commission estimates the combined entity's market shares would amount to [10-20%] by volume (Haltermann [5-10%], PCL [0-5%]).
- (78) The competitive situation would not change if the market were to be subdivided between Western and Eastern Europe. In particular, the estimated shares of the Parties and their competitors in Western Europe would be essentially the same as in the EEA or slightly lower. On the contrary, [summary of confidential content: the parties do not have significant sales in Eastern Europe].
- (79) On the basis of the market investigation, it appears that there exist sufficient suppliers of legislative fuels which would be a credible alternative to the combined entity, including Preem, Total and Coryton⁶³. In particular, large car manufacturers issues RFQs to 5 suppliers on average for the supply of legislative fuels⁶⁴ which indicates the possibility for customers to switch supplier.
- (80) In light of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the overall market for the production and supply of legislative fuels, and this irrespective of the geographic market definition.

⁶⁰ Commission Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, OJ L 199, 28.7.2008, p. 1-136.

⁶¹ Replies to question 31 of Questionnaire to competitors and replies to question 38.1 of Questionnaire to customers - performance fuels.

⁶² Reply to RFI of 18.02.2013.

⁶³ Replies to question 15 of Questionnaire to competitors.

⁶⁴ Replies to questions 28 and 29 of Questionnaire to customers - performance fuels.

4.1.2.2.1.2.1.2. *Customer tailor-made fuels*

- (81) The Notifying Party was not able to provide market shares on the sub-segment for the production and supply of customer tailor-made fuels in the EEA or in Western/Eastern Europe. However, the Notifying Party provided their sales data in volume which amount to [...] for Haltermann and [...] for PCL in 2011⁶⁵. On the basis of the market reconstruction, the Commission estimates the combined entity's market shares would amount to [10-20%] % by volume (Haltermann [10-20%], PCL [5-10%]).
- (82) The competitive situation would not change if the market were to be subdivided between Western and Eastern Europe. In particular, the estimated shares of the Parties and their competitors in Western Europe would be essentially the same as in the EEA or slightly lower. On the contrary, [summary of confidential content: the parties do not have significant sales in Eastern Europe].
- (83) On the basis of the market investigation, it appears that there exist sufficient suppliers of customer-tailor made fuels alternative to the combined entity, with Total being the market leader, followed by Preem, OMV, the combined entity, Shell, and other smaller players⁶⁶. The specifications for these fuels are determined by end-customers, which use competitive tendering procedures to select the supplier. In particular, the majority of respondents to the market investigation issues RFQs to 4 suppliers on average, ultimately confirming the possibility to switch supplier.⁶⁷
- (84) In light of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the overall market for the production and supply of customer tailor-made fuels, and this irrespective of the geographic market definition.

4.1.2.2.1.2.1.3. *CEC experimentation fuels*

- (85) The Notifying Party was not able to provide market shares on the sub-segment for the production and supply of CEC experimentation fuels in the EEA or in Western/Eastern Europe⁶⁸. However, the Notifying Party provided their sales data in volume which amount to [...] for Haltermann and [...] for PCL in 2011⁶⁹. On the

⁶⁵ Reply to RFI of 18.02.2013.

⁶⁶ Replies to question 15 of Questionnaire to competitors.

⁶⁷ Replies to questions 28 and 29 of Questionnaire to customers - performance fuels.

⁶⁸ The Notifying party was able to provide an estimate of market shares for CEC reference fuels, comprising both legislative fuels and experimentation fuels based on CEC approval. On a potential narrower market for the supply of CEC reference fuels at EEA level, the combined entity's market share in 2011 would amount to [50-60] % by value (Haltermann [40-50]%, PCL [0-10]%). However, in the view of the Notifying Party, post-transaction, the combined entity would still face competition from a number of suppliers, such as Total ([20-30]%), Shell ([5-10]%), Chevron Phillips ([5-10]%), Coryton ([5-10]%) and other smaller competitors.

⁶⁹ Reply to RFI of 18.02.2013.

basis of the market reconstruction, the Commission estimates that the combined entity's position would be very strong which is mainly due to the Haltermann's historical position in this market. The market shares could reach up to [80-90%] in 2011 however the increment would be *de minimis*, not exceeding [0-5%].

- (86) The initial market investigation revealed that CEC experimentation fuels could be supplied by CEC approved suppliers only, and that a number of CEC approved suppliers, like Chevron Phillips and AGIP are not active in the market⁷⁰. However, on the basis of the market investigation after the re-notification, it appears that any fuel producer can become CEC approved supplier, starting operating in a timely manner, without incurring in significant costs⁷¹. Furthermore, Panta confirmed that, provided that fuels specifications, it can easily produce CEC experimentation fuels without being a CEC approved supplier⁷².
- (87) The competitive situation would not change if the market were to be subdivided between Western and Eastern Europe. In particular, the estimated shares of the Parties and their competitors in Western Europe would be essentially the same as in the EEA or slightly lower. On the contrary, [summary of confidential content: the parties do not have significant sales in Eastern Europe].
- (88) In addition, on the basis of the market investigation after the re-notification, it appears that there exist sufficient alternative suppliers of CEC experimentation fuels, namely Total and Coryton⁷³. Moreover, with particular regard to participation to tenders for the development of new CEC experimentation fuels, any strength in this market is due to Haltermann's historically strong position in CEC tenders where PCL [...]. As a result, no merger specific effect would arise in this segment as a result of the proposed transaction. Indeed, PCL explained that [...]. This is mainly because participation in CEC tenders requires substantial investment [...]. It follows that even if CEC experimentation fuels were to be considered as a separate market, there would be no merger specific effect arising in this segment as a result of the present transaction.

4.1.2.2.1.3. Conclusion on automotive reference fuels and its sub-segments

- (89) In light of the above and in particular in view of the presence of a number of other players in this segment and the possibility of customers to switch suppliers, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the production and supply of automotive reference fuels or any of its sub-segments, and this irrespective of the geographic market definition.

⁷⁰ See correspondence with ChemPoint, representing Chevron Phillips Emission Certification Fuels, e-mail 18.12.12; minutes of the conference call with ENI of 23.01.2013.

⁷¹ Replies to question 18 of Questionnaire 5 to customers – performance fuels.

⁷² Panta's reply to question 20 of Questionnaire to competitors. Note: Panta's statement does not refer to CEC reference fuels which are tendered as explained in paragraph (36).

⁷³ Replies to question 34 of Questionnaire 7 to customers - performance fuels.

4.1.2.2.2. *Racing Fuels*

- (90) In 2011, the Notifying Party estimated the size of the EEA racing fuels market to be 4,8 tonnes or 14.8 million EUR. On this basis their combined market share would be [20-30]% in terms of volumes and [20-30]% in terms of revenues. The table below shows the position of other market players.

Table 3: Racing fuels market shares in 2011

Racing fuels 2011 – EEA*		
Competitors	Volume	Value
Haltermann	[5-10]%	[5-10]%
PCL	[20-30]%	[20-30]%
Combined	[20-30]%	[20-30]%
Total SA	[30-40]%	[30-40]%
BP/Aral	[20-30]%	[20-30]%
Shell	[10-20]%	[10-20]%
Petroscience	[5-10]%	[5-10]%
Others	[0-5]%	[0-5]%

***Source: Notifying Party's estimate, Form CO.**

- (91) The initial market investigation did not reveal any concerns in relation to the racing fuels. This is mainly due to the fact that this market is governed by customers including large world racing organisations such as Formula 1, defining the products and having big bargaining power by making large orders, through the use of tendering procedures. In this context, the Notifying Party argues that the combined entity market shares do not represent the market reality, as PCL's market share correspond to [...]. Given that the tenders are regularly renewed, and customers switch between the suppliers, the market shares are unlikely to reflect the actual position of the merged entity.
- (92) On the basis of the market investigation, it appears that, post-transaction, the combined entity would face competition from the market leader Total, a number of well-established suppliers, such as BP/Aral, Shell and smaller suppliers such as Coryton and Panta.
- (93) The vast majority of respondents to the market investigation also indicated that the selection of the supplier of racing fuels is driven by price and brand recognition, price being the main factor.⁷⁴
- (94) In light of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for the production and supply of racing fuels.

4.1.2.2.3. *First-fill fuels*

⁷⁴ Replies to Question 31 of Questionnaire to customers - performance fuels.

- (95) In 2011, the Notifying Party estimated the size of the EEA First Fill fuels market to be 131 tonnes 145 million EUR. On this basis their combined market share would be [20-30]% in terms of volumes and [30-40]% in terms of revenues. The table below shows the position of other market players.

Table 4: First Fill market shares in 2011

First Fill 2011 – EEA *		
Competitors	Volume	Value
Haltermann	[5-10]%	[10-20]%
PCL	[5-10]%	[5-10]%
Combined	[5-10]%	[10-20]%
Total SA	[30-40]%	[20-30]%
Preem	[5-10]%	[5-10]%
BP/Aral	[5-10]%	[5-10]%
Shell	[5-10]%	[5-10]%
Chevron Phillips	[5-10]%	[5-10]%
Coryton	[0-5]%	[5-10]%
Others	[30-40]%	[30-40]%

*Source: Notifying Party's estimate, Form CO

- (96) The table above shows that as concerns the market for first-fill fuels the increment in market shares would be limited as PCL' s presence in the market is small [0-5]%. In addition, according to the Notifying Party, post-transaction, the combined entity would face competition from the market leader Total, and a number of well-established suppliers such as Preem, BP/Aral, Shell and others.
- (97) In light of the above and in particular due to the limited increment in market shares, as indicated in the market investigation⁷⁵, the presence of a number of other players in this segment, the possibility to switch suppliers, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the production and supply of first fill fuels.

4.2. PRINTING INK DISTILLATES

4.2.1. *Relevant product market*

4.2.1.1. *Introduction*

- (98) Hydrocarbon oil based printing ink distillates (PIDs) are one of the components used in the production of printing inks.
- (99) Printing inks are mainly made of four basic components:
- (a) pigments, used to colour the ink and make it opaque;

⁷⁵ Replies to Question 46.5 of Questionnaire to customers - performance fuels.

- (b) resins, which bind the ink together into a film and bind it to the printed surface;
 - (c) solvents, to make the ink flow so that it can be transferred to the printing surface; and
 - (d) additives, which alter the physical properties of the ink to suit different situations.
- (100) PIDs are solvents falling in category (c) above, representing in terms of weight, the main component of printing inks.
- (101) The European Printing Ink Association ("EuPIA") distinguishes between the following categories of printing inks based on the solvent used: "water borne liquid inks", "solvent borne liquid inks", "oil based inks" and "other inks". PIDs produced by the parties are used for the production of "oil based inks" only.
- (102) PIDs are referred to as "distillates" due to technical method used in their manufacturing process, namely distillation. PIDs are produced from a middle distillate fraction of gas oil or diesel in a standard one-step distillation process. In practice, the feedstock (i.e., gas oil or diesel) is put in a distillation unit and heated. With the application of the heat, the feedstock, which comprises numerous different hydrocarbon products, is roughly separated into its constituent parts (or "fractions") with different boiling points. The fractions are collected as liquids at different trays of the distillation unit.
- (103) The fractions collected (with a specific boiling point range) will be then stored in a separate tank. Subsequently, the fractions (distillates) may be blended with each other to create PIDs with required specifications.⁷⁶
- (104) PIDs are defined by a restricted set of parameters, the most important one being the boiling point range. PIDs boil in general in the range of 240-320°C and during the production the PIDs are cut into grades with various boiling point ranges, e.g., 240-270°C; 260-290°C; 250-290°C; and 280-320°C. The actual products that are offered by PIDs producers are defined by these narrower PIDs "grades" or "cuts" among other characteristics, like the aniline point and viscosity.
- (105) PIDs produced by the Parties are components for use in inks used designed for offset printing, which is one of the key techniques of lithographic printing.
- (106) Offset printing itself comprises three distinct techniques:
- (a) Heatset printing involves the usage of paper rolls and the ink on the paper is dried at the end of the process. It requires the use of an oven and a chill roll section in the web offset presses. The heat of the "oven" evaporates the solvents in the ink and the "chill roll section" (series of cold rolls) solidifies the remaining pigment-in-resin component. Heatset printing is used to obtain
-

a medium to high quality product. Typical applications include magazines and catalogues.

- (b) Coldset printing involves the usage of paper rolls and the ink is absorbed by the paper. No additional drying process is needed. However, sometimes ultraviolet (UV) curing (using UV lamps) is used at the end of the process. Coldset printing is used for lower quality products, for example, newspapers.
 - (c) Sheet fed printing involves feeding single sheets of paper in the press. Typical applications include magazines, brochures and packaging.
- (107) Each technique (i.e., heatset, coldset and sheet fed) is used by a printer for different product applications, depending on the quality required for the final printed product. A combination of techniques may also be used.
- (108) The PIDs manufactured by the Parties are used in all (heatset, sheet fed and coldset) offset applications. However, for the cold set and sheet fed technology the printing ink producers need to mix PIDs with heavy mineral process oils to reach the required characteristics.
- (109) The PIDs that are used for heatset inks boil in general in the range between 250 and 295°C, PIDs for sheet fed inks boil in the range of 260-310°C, while PIDs used in cold-set inks boil in the range between 280 and 320°C. However, there are PIDs products, or "grades" that can be used in all three applications.

4.2.1.2. Product market definition

- (110) The Commission has not examined the market for printing ink distillates before.
- (111) According to the Notifying Party the relevant product market comprises of all oil based distillates and equivalents (including water and other substances used as "solvents") used in printing inks. This is because: (i) hydrocarbon oil based printing ink distillates are commodity products and customers can easily switch to other producers; (ii) customers may easily substitute the hydrocarbon oil based distillates by other oil based distillates or by non-oil based solvents; (iii) there is a trend in the printing ink industry to replace the use of solvent based inks by water based ones, confirming substitutability.
- (112) The Commission tested these claims during the initial market investigation. The initial market investigation indicated that the relevant product market is narrower, comprising hydrocarbon oil based printing ink distillates only. This view is supported on the supply side by statements of competitors specifying that producers of various types of ink solvents cannot produce all other solvent types in the same equipment⁷⁷. The production of different solvent types requires different production process, different feedstock, sourcing, logistics and storage considerations⁷⁸.

⁷⁷ Replies to question 51 of Questionnaire to competitors.

⁷⁸ Minutes of the conference call with Total of 08.01.2013; Minutes Conference call with H&R AG mother company of ChemPharm (UK) Ltd of 12.12.2013.

- (113) On the demand side, customers claimed that they cannot change the type of solvent they use for the production of printing inks without significant financial and time investments. This is due to the significant difference in technical characteristics, like viscosity, boiling range and solvency amongst different solvents. Furthermore, the price of vegetable oil based alternatives is significantly higher⁷⁹.
- (114) In addition, solvents have a significant impact on the production process of printing ink. Printing inks are specifically formulated to the printing process, press and application where their use is intended. For different applications different solvents are required. According to Siegwirk, for the offset printing technology there are no viable alternatives to PIDs⁸⁰. Flint Group specified that the development of new ink formulations in which hydrocarbon oil based printing ink distillates are substituted with other solvents would cost between EUR 250,000 – 500,000 and would take at least 18-24 months⁸¹.
- (115) The hydrocarbon oil based printing ink distillate market is a declining market characterised by sufficient supply or even overcapacity according to some respondents.⁸² The margin in the downstream market for printing ink production is very low, therefore, price constitutes a significant factor in economically viable substitutability.
- (116) The Commission has also investigated whether a further segmentation of the market into hydrocarbon oil based printing ink distillates used in cold set, sheet fed and in heat set application is possible. There have been indications that the solvents used in inks for cold set applications are produced in different production lines and from different feedstock than PIDs used in heat set inks. The initial market investigation revealed that the term "solvent" is used inconsistently within the industry which has led to the confusion concerning PIDs and heavy process oils⁸³. In fact, as explained above, the solvents used in coldset inks also contain heavy process oils (not produced by the Parties) that are mixed with PIDs produced by the Parties.
- (117) Following the distinction made between PIDs and heavy process oils, a further segmentation of PIDs into heatset, coldset and sheet fed technology is not

⁷⁹ Replies to question 17 and 20 of Questionnaire 1 to Q3-Questionnaire to customers - Hydrocarbon Oil Based Printing Ink Distillates.

⁸⁰ Replies to question 13 of Questionnaire to customers - Hydrocarbon Oil Based Printing Ink Distillates.

⁸¹ Replies to question 15 of Questionnaire to customers - Hydrocarbon Oil Based Printing Ink Distillates.

⁸² Replies to question 44 of Questionnaire to customers - Hydrocarbon Oil Based Printing Ink Distillates; See minutes of the conference call with Flint of 08.01.2013.

⁸³ There is no common understanding in the industry of the definition of process oils. See for instance question 46 of Questionnaire to competitors: Shell defines process oils (see above under oil based inks) as mineral oil products, which have an initial boiling point above approximately 180 Degrees Centigrade and this typically distinguishes them from Chemical Solvents. However, in the case of printing inks, process oils can be used as a solvent but the key requirement is that the oil must be polar.

appropriate as all types of PIDs are produced from the same feedstock, in the same processing units and some of the printing ink distillates can be used for cold set, sheet fed and heat set technology as well⁸⁴.

- (118) The Commission therefore considers that hydrocarbon oil based printing ink distillates are likely to constitute a separate market from other solvents used for the production of printing inks. In any event, for the purpose of the present decision, the precise product market definition for printing ink distillates can be left open, since the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the production and supply of PIDs, under any alternative market definition.

4.2.1.3. Relevant geographic market

- (119) The Notifying Party submits that the relevant geographic market is at least EEA-wide in scope. To support its view, the Notifying Party argues that printing ink distillates are sold across the EEA and abroad; there are no special requirements for transportation across the EEA and there are no tariffs or other non-tariff barriers to import; the product's characteristics do not impede long distance transportation and all the main manufacturers of printing ink distillates in the EEA have a single production site from where they supply customers throughout the EEA and abroad.
- (120) The market investigation revealed that based on sourcing and supply strategies of the market players and due to transport cost constraints the relevant market is at most EEA-wide.⁸⁵
- (121) There have been some indications, which could potentially lead to a possible narrower geographic market. In fact, most suppliers sell PIDs primarily in Western Europe⁸⁶. However, this geographic limitation is linked to the fact that the major ink producers that are the major PIDs customers are located in Western Europe. There is no commercial or technical constraint to sell PIDs anywhere in the EEA. In fact, the printing ink production industry has undergone a consolidation from 50-60 significant producers in the 1960's to 5-6 significant producers today that are primarily located in Western Europe.
- (122) Another factor that could indicate a narrower geographic market is the fact that the PID market is declining and profit margins are limited. Therefore, the transport costs could limit the range from the productions sites within which a supplier is most competitive, which is around 400-500 km on average. However, the only limitation to sales on a longer distance is transport cost that is not prohibitive and producers are selling PID throughout the EEA to distances even beyond 1000 km. Furthermore, the

⁸⁴ See minutes of the conference call with Total of 08.01.2013; minutes of the conference call with H&R AG mother company of ChemPharm (UK) Ltd of 12.12.2013.

⁸⁵ Replies to question 25 of Questionnaire to customers - Hydrocarbon Oil Based Printing Ink Distillates;

⁸⁶ Replies to question 28 of Questionnaire to customers - Hydrocarbon Oil Based Printing Ink Distillates;

500 km circles from the production facilities of PID producers are largely overlapping which creates a competitive pressure on producers throughout the EEA.

- (123) Finally, PIDs customers are generally multi-sourcing for reasons of security of supply and most of them have an EEA wide sourcing strategy.⁸⁷
- (124) In any event, for the purpose of the present decision, the precise geographic market definition for printing ink distillates can be left open, since the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the overall market for PIDs under any alternative market definition.

4.2.2. COMPETITIVE ASSESSMENT

4.2.2.1. Notifying Party's submission

- (125) The Notifying Party claims that the transaction will not have a significant effect on competition in the market for PIDs for a number of reasons.
- (126) Although there is no reliable public source of information on the overall size of the market for printing ink distillates, the Parties estimate that their combined market share in printing ink distillates in the EEA is at most [20-30]% (PCL [5-10]% and Haltermann [10-20]%).
- (127) The Notifying Party argues that the merged entity will continue to face strong competition on a worldwide and on an EEA-wide basis from major petroleum refiners and specialist producers including Shell, ExxonMobil, Total, Hansen and Rosenthal (H&R), DHC, Cölner Benzin Raffinerie (CBR) and CEPSA.
- (128) The Notifying Party submits that their customers are large ink producers (such as Flint Group⁸⁸, Sun Chemical⁸⁹, Huber Group⁹⁰ and Siegwerk⁹¹) who exert significant

⁸⁷ Replies to question 41 of Questionnaire to customers - Hydrocarbon Oil Based Printing Ink Distillates.

⁸⁸ Flint Group is active in global printing, converting and colourant industries. Its product portfolio includes inks, blankets, pressroom chemistry, flexographic plates and sleeves, consumables and colourants. It serves customers worldwide. Further information is available at <http://www.flintgrp.com>.

⁸⁹ Sun Chemical is a member of the DIC Group. It is a large producer of printing inks and pigments, and is a leading provider of materials to packaging, publication, coatings, plastics, cosmetics, and other industrial markets including electronic materials, functional and specialty coatings, brand protection and product authentication technologies. With annual sales over USD3.5 billion, Sun Chemical has over 8,000 employees worldwide, with a network of more than 250 locations in 56 countries. DIC is a Japanese printing ink manufacturer listed on the Tokyo Stock Exchange. Further information is available at <http://www.sunchemical.com>.

⁹⁰ The Huber group is a leading printing ink manufacturer. It delivers printing ink solutions to customers through more than 150 branch offices, sales offices, distributing warehouses and representatives worldwide. It has more than 3,600 employees and a production capacity of over 340,000 tons of products per year. Further information is available at <http://www.hubergroup.com>.

buyer power through switching and multisourcing strategies. Smaller customers also multi-source. Pricing is negotiated (generally on a monthly basis) with customers. Hydrocarbon oil based printing ink distillates are homogenous products, and as a result, switching between suppliers is easy.

- (129) The Notifying Party argues that there is excess capacity in the industry which is likely to further increase as the market is declining, therefore competitors could easily expand production. In addition, barriers to entry are low, any refiners or petrochemicals producers could enter the market using their existing production facilities. Printing ink distillates are produced in distillation units that also produce other products. The Parties themselves are using less than [...] of the capacity of the relevant distillation units to produce PIDs. Therefore, other petrochemical producers could enter the PIDs market by simply allocating a part of their existing capacity to PID production.
- (130) Finally, the Notifying Party argues that customers are able to substitute hydrocarbon oil based printing ink distillates with other products. For most customers, a change of recipe for their inks is relatively easily made, posing a further threat to suppliers of printing ink distillates by switching easily to other products.

4.2.2.2. *Commission's analysis*

4.2.2.2.1. *Overall market characteristics*

- (131) The Notifying Party submitted⁹² that 85% of the PIDs market is concentrated in Western Europe. The parties do not have significant sales in Eastern Europe. The Notifying Party estimates that the combined entity's market shares in a possible geographical market limited to Western Europe would amount to [20-30]% (Haltermann [10-20]%, PCL [5-10] %) and in Eastern Europe it is [0-5]% for both Parties.
- (132) Taking into consideration the concentration of both PIDs producers and PIDs customers in Western Europe within the EEA, the findings of the Commission concerning the competitive environment are equally valid for an EEA wide market and for a possible market limited to Western Europe only. Since the Parties' market share in Eastern Europe is [0-5]% the transaction would not give rise to serious doubts in a potential market limited to Eastern Europe.
- (133) The market investigation revealed that currently there are six producers that are active in the PIDs market in the EEA, namely Haltermann, PCL, ExxonMobil, Total, Shell and H&R. The market investigation indicated that the market shares of the Parties are likely to be somewhat higher than their estimates but not to a proportion that could affect the conclusions on the effect of the transaction. The market shares are described in the following table:

⁹¹ Siegwirk is a Germany-based international leading ink manufacturer. It has 4,400 employees at its locations in EMEA, North and Latin America, and Asia. In 2011, it generated revenues of €69 million. Further information is available at <http://www.siegwerk.com>.

⁹² Reply to the RFI of 10.12.2012, point 2.4.

Table 5: PID market shares in 2011

PIDs in 2011- EEA	
Competitors	Value
Haltermann	[10-20]%
PCL	[5-10]%
Combined	[20-30]%
Exxon	[30-40]%
Total SA	[10-20]%
H&R	[10-20]%
Shell	[5-10]%
Others	[10-20]%
Overall	100%

Source: Notifying Party's estimate, Form CO

- (134) On the basis of the market investigation, the Commission has confirmed that it is unlikely that the combined entity would be in a position to exert market power post-transaction as it would continue to face competitive pressure from the market leader, ExxonMobil ([30-40]%), as well as Total ([10-20]%), Shell ([0-5]%) and H&R ([10-20]%).
- (135) ExxonMobil is currently the largest PIDs producer in the EEA and has PIDs product range that covers all grades of boiling points, therefore offering products for all types of offset printing techniques (heatset, coldset and sheet fed). Similarly to the parties, ExxonMobil does not produce heavy process oils that are mixed with PIDs in inks for coldset applications. Total and H&R also offer PIDs that are suitable for inks for all types of offset printing techniques. In addition, they also produce heavy process oils for coldset applications. Shell currently offers only one PID grade that is primarily suitable for coldset or sheet fed applications.
- (136) The customers of PIDs are mainly producers of printing inks. The downstream market for printing inks is highly concentrated and dominated by a small number of large producers that account for around 85% of the market⁹³. The turnover of ink producers is significantly larger than the turnover of the Parties in PIDs. The market investigation indicated that there are also independent smaller customers for PIDs that are mainly specialised in niche products or other ingredients for printing inks, like resins.

4.2.2.2.2. *Closeness of competition*

- (137) Most customers consider Haltermann to be a major player on the market that offers high quality products, while PCL is mostly considered to be a mid-size player that can offer competitive prices and especially strong in the UK⁹⁴. However, some

⁹³ Best estimate of the Parties, see Form CO, page 82.

⁹⁴ Replies to question 33 of Questionnaire to customers - Hydrocarbon Oil Based Printing Ink Distillates.

customers, who have already internally tested and approved the products of the Parties, consider Haltermann and PCL as the closest competitors. Therefore, on the basis of the market investigation it can be concluded that the Parties are close competitors but other competitors exert competitive pressure on them.

4.2.2.2.3. *Customers multisource and can switch suppliers*

- (138) Customers of PIDs apply an approval procedure to all new PIDs products before they use it in their production. All customers can multisource but larger customers have more bargaining power due to the larger quantities they purchase. In addition, customers can generally easily switch between their approved suppliers to get the best prices available.
- (139) Some customers raised concerns about the combined entity's ability to increase prices post-transaction. Such concerns are linked to the fact that these customers primarily rely on PCL and Haltermann in their sourcing of PIDs and are reluctant to switch as the purchased quantities are small. However, the market investigation revealed that the cost and the time required to switch suppliers of printing ink distillates cannot be considered prohibitive. Therefore, it is unlikely that the combined entity could impose a significant price increase even on these customers.
- (140) In addition, the most significant customers are large ink producers and the downstream market of printing inks is highly concentrated. Customers enjoy a substantial degree of buyer power due to the possibility to multi-source and ability to switch to other producers or alternative products.
- (141) As regards price negotiations, customers confirmed that the prices are in general negotiated monthly⁹⁵, even if in some cases there is a framework agreement for the quantities supplied. The prices are, in most cases, negotiated bilaterally between the customer and the supplier based on the announced price lists of the suppliers. Some customers request quotations from their approved suppliers and place the orders on the basis of the prices offered. Binding long term agreements with take or pay clauses are not used in the industry, therefore, customers are not bound to the suppliers by contracts.
- (142) Therefore, on the basis of the market investigation, it appears that customers have the possibility to exert a significant buyer power vis-à-vis the PIDS producers.

4.2.2.2.4. *Barriers to entry*

- (143) On the basis of the market investigation, the Commission has confirmed that there are no special barriers to entry to the production of printing ink distillates concerning access to feedstock, IP rights, technical constraints or brand recognition by customers⁹⁶. However, new entrants that do not have adequate distillation capacity

⁹⁵ Replies to question 39 of Questionnaire to customers - Hydrocarbon Oil Based Printing Ink Distillates.

⁹⁶ Replies to question 47 of Questionnaire to customers - Hydrocarbon Oil Based Printing Ink Distillates.

need to make significant investment to build such capacity. Therefore, the barriers to entry are low for producers of chemical products similar to PIDs with existing capacity but the barriers for a green field entry are high.

4.2.2.2.5. *Conclusion*

- (144) In light of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the production and supply of hydrocarbon oil based printing ink distillates.

4.3. OTHER MARKETS

- (145) The proposed transaction leads to a number of non-affected markets in particular the market for the supply of naphtha, where the Parties overlap horizontally, and the markets for the production and distribution of cyclopentane, in respect of which the Parties are vertically linked.

4.3.1. *Naphtha*

- (146) Naphtha is a generic term for hydrocarbon product mixtures that distil at a boiling range between 70°C and 190°C. Naphtha is primarily used as a feedstock for the production of petrochemicals and as a gasoline blending component. It is also used in the bitumen mining industry as a diluent, in the petrochemical industry for producing olefins in steam crackers, and in the chemical industry for solvent (cleaning) applications.
- (147) Haltermann purchases naphtha to produce other products, mainly pentanes and other solvents. It then sells the resulting residue of naphtha and naphtha fractions. PCL also produces naphtha.
- (148) As regards the horizontal overlap, the Notifying Party estimates in the market for the supply of naphtha, Haltermann's market shares would be [0-5]% and PCL [0-5]%.in the EEA or Western Europe. The other producer of naphtha are major refining companies such as Total, ExxonMobil, INEOS, Lyondell, Basell, OMV, BP, Phillips 66, Shell, Agip and a few others. Furthermore, the first market investigation did not raise any concerns on the market for the production of naphtha.
- (149) In light of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for the production and supply of naphtha, irrespective of the market definition.

4.3.2. *Solvents*

- (150) Haltermann is active in the production of cyclopentane, an alicyclic hydrocarbon (solvent). PCL sources cyclopentane from [...] and distributes it only in the United Kingdom. There is, therefore, a vertical link between, on the one hand,

Haltermann's activities in the production of cyclopentane⁹⁷, and on the other hand, PCL's activities in the distribution of cyclopentane in the United Kingdom.

- (151) The annual cyclopentane demand in the UK is estimated by the Notifying Party to be approximately 7,000 tons. In the upstream market for the production of cyclopentane Haltermann's market share would be [0-5]% under all plausible market definitions. Similarly, PCL's market shares in the downstream market for the distribution of cyclopentane in the United Kingdom in 2011 did not exceed [0-5]%. Furthermore, the first market investigation did not raise any competition concerns on the market for the production of cyclopentane.
- (152) In light of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the market for the production and supply of solvents irrespective of the market definition.

5. CONCLUSION

- (153) 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

⁹⁷ Cyclopentane is an alicyclic hydrocarbon used in the manufacture of synthetic resins and rubber adhesives and also as a blowing agent in the manufacture of polyurethane insulating foam.