

EN



EUROPEAN COMMISSION
DG Competition

***Case M.7918 - INDORAMA NETHERLANDS /
GUADARRANQUE POLYESTER***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/03/2016

***In electronic form on the EUR-Lex website under document
number 32016M7918***



EUROPEAN COMMISSION

Brussels, 18.3.2016
C(2016) 1711 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

Subject: Case M.7918 - INDORAMA NETHERLANDS / GUADARRANQUE POLYESTER
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

- (1) On 16 February 2016, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004³ by which Indorama Nederlands B.V. ("Indorama", the Netherlands), ultimately controlled by Canopus International Ltd (Mauritius), acquires sole control of Guadarranque Polyester, S.L.U. ("Guadarranque" or the "Target", Spain), currently owned by CEPSA Química, S.A. (Spain). Indorama is referred to as the "Notifying Party", and – together with Guadarranque – as "the Parties" or "the Combined Entity".

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 1, 3.1.1994, p.3 ("the EEA Agreement").

³ OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

1. THE PARTIES

- (2) **Indorama** is active in i) the production and supply of purified terephthalic acid (PTA), a raw material used in the production of polyester products, ii) the production and supply of PET resin, which is used to manufacture PET bottles for carbonated soft drinks, water and other beverages, and iii) PET preforms and other polyester products. In the EEA, Indorama has production sites in the Netherlands, Poland and Lithuania.⁴
- (3) **Guadarranque** operates one plant in Spain which produces and supplies PTA, purified isophthalic acid (PIA), used as a co-polymer in the production of PET and PET resin, powdered paints and unsaturated polyester resins.

2. THE OPERATION

- (4) The proposed transaction consists of the acquisition of sole control by Indorama of Guadarranque by way of purchase of shares and therefore it qualifies as a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁵ (Indorama: EUR 6 875 million, Guadarranque: EUR 519 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Indorama: EUR 1 621 million, Guadarranque: EUR 366 million), but they do 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.

4. RELEVANT MARKETS

- (6) The proposed transaction gives rise to
- a. vertical relationships involving the manufacturing of
 - i. PIA by Guadarranque (upstream) and PET resin by both Parties (downstream);
 - ii. PTA by both Parties (upstream) and PET resin by both Parties (downstream);
 - iii. PET resin by both Parties (upstream) and PET preforms by Indorama (downstream); and
 - b. horizontal overlaps in relation to the manufacturing of PTA and PET resin.

⁴ Plants in the UK (PET resin) and in Italy (PTA) are currently "mothballed".

⁵ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

- (7) A potentially affected market exists in relation to the vertical relationship involving PIA produced by Guadarranque (upstream) and PET resin produced by both Parties (downstream).⁶
- (8) Moreover, the horizontal overlap with regard to the supply of PET resin qualifies as an affected market.
- (9) Technically, the other two vertical links (between PTA and PET resin and between PET resin and PET preforms) do not qualify as affected markets. But the Parties' combined market share in PET resin is close to 30% and therefore they are analysed in this decision.

4.1. PIA

4.1.1. Relevant Product Market

- (10) PIA is an organic compound used to produce PET resin. It provides shine, transparency, impact resistance, low gas permeability and dimensional stability to PET containers. PIA is used in small quantities (approximately 2%) in the recipe for PET resins, the rest being monoethylene glycol (MEG) and PTA. PIA is also an input for powdered paints and unsaturated polyester resins, which are used to manufacture various items such as boats and storage tanks.
- (11) The Commission did not consider the market for PIA in its past decisions. The Notifying Party submits that the market for the production and supply of PIA constitutes a separate product market. It also considers that no distinction between PIA for different applications should be made, since all PIA producers supply products of similar specifications and customers can use interchangeably PIA from any supplier.
- (12) The market participants contacted in the framework of the Commission's market investigation confirmed the Notifying Party's view that the market for PIA should not be further sub-segmented given that the vast majority of customers purchasing PIA either do not require any specific features of PIA or, if they do, all PIA producers world-wide can deliver the product they need. There are also some customers who have approved several PIA suppliers and on that basis they use the approved PIA interchangeably.⁷
- (13) In view of the above, the Commission considers that PIA constitutes a separate product market. The Commission also finds that within that market, no distinction between PIA for different applications should be made.

⁶ For the definition of horizontally or vertically affected markets in the sense of this Decision, see Annex I point 6.3 of Commission Regulation (EC) No 802/2004, as last amended by Commission Implementing Regulation (EU) No 1269/2013.

⁷ Confidential minutes of telephone conversations with customers of 27, 28 and 29 January 2016 and replies to questions 6 and 7 of the market investigation questionnaire submitted by PIA customers of Guadarranque.

4.1.2. *Relevant geographic Market*

- (14) The Notifying Party argues that the relevant geographic market should be worldwide in light of the facts that PIA is produced at only eight production sites around the world and that the trade flows are global, involving significant imports into and exports out of the EEA. It submits that approximately 37% of the products sold on the EEA market are imported from outside the EEA. Apart from the European plant of the Target, PIA is produced in two plants in the US (by two different producers) and by one producer in each Korea, Singapore, Taiwan, China and Japan.
- (15) The Notifying Party notes that PIA is easy to transport and transport costs are considered to be low. The Notifying Party submits as well that 10% of the Target's merchant sales of PIA are based on global framework agreements, which establish single prices and single terms of supply globally, which would be another indication of the existence of a global PIA market.
- (16) Finally, the Notifying Party submits that prices of PIA do not differ substantially between regions, since PIA is ultimately produced from crude oil which has a global market price.
- (17) The replies and explanations of market participants contacted in the Commission's market investigation indicated that the relevant geographic market should be defined at least as EEA wide in scope, and possibly wider. Competitive conditions are homogenous across European countries, and (except for transport costs) price differences are not linked to the location of the customer, but rather to the size of the orders. Finally, the transport costs are considered insignificant and, thus, PIA can be and is shipped over large distances.
- (18) The market investigation clearly confirmed that imports play an important role in the supply of PIA. The vast majority of European customers double- or multi-source, and, thus, purchase some PIA quantities from suppliers outside the EEA, usually from the US and/or from Asia. The PIA customers note that, due to the free trade agreement with South Korea, which entered into force in 2011 and is valid indefinitely, the Korean suppliers can compete in the EEA without any substantial limitations.
- (19) However, market conditions are not entirely homogeneous at a global level: the market investigation indicated that most non-EEA suppliers are not active in Europe, and that PIA suppliers, from China, Taiwan or Japan, do not compete at all on the EEA market or their presence is marginal. Furthermore, while Korean suppliers benefit from the free trade agreement, the remaining PIA producers need to pay import duties.
- (20) Based on the above considerations, the Commission considers that the geographic market for PIA is at least EEA-wide in scope, and possibly global. The exact scope of the relevant geographic market can be left open in the present case because the proposed transaction does not raise concerns as to its compatibility with the internal market regardless of whether the relevant geographic market is taken to be global or EEA-wide.

4.2. PTA

4.2.1. *Relevant Product Market*

- (21) PTA is an organic compound in the form of fine white powder, principally used as a raw material for the production of polyester products, such as PET-resin. PTA represents approx. 86% of the formulation of PET-resin.
- (22) In previous decisions, the Commission left open whether the relevant product market is the market for the production and supply of PTA, or a broader market including the production and the supply of DMT (di-methyl terephthalate).⁸
- (23) The Notifying Party submits that the supply of PTA does form a distinct product market, but that there is no need to further sub-segment it along the lines of the different production processes, since PTA produced by different processes is the same.
- (24) All the PTA customers contacted during the market investigation submitted that PTA is a homogenous commodity product, with no different grades irrespective of the end-use.⁹ The Commission therefore concludes that the PTA market need not be further sub-segmented.
- (25) The question whether PTA forms one product market with DMT can be left open in the present case because the proposed transaction does not raise concerns as to its compatibility with the internal market regardless of the answer to that question.

4.2.2. *Relevant geographic market*

- (26) In previous decisions, the Commission noted that the geographic scope of the PTA market appeared to be EEA wide, and not broader, due to transportation costs and import duties.¹⁰
- (27) The Notifying Party agrees with the Commission's findings in principle, but submits that the market could be regarded as wider given that it has recently evolved since import duties for many countries have been abolished.
- (28) The exact scope of the relevant geographic market can be left open in the present case because the proposed transaction does not raise concerns as to its compatibility with the internal market regardless of whether it is defined as EEA-wide or broader.

⁸ PTA and DMT are both forms of terephthalic acid. Case IV.M.1293 BP/Amoco, paragraph 10 and COMP/M.5760 Lotte Group/Artenius UK Ltd, paragraph 8; COMP /M.984 - Dupont/ICI, paragraph 8.

⁹ Non-confidential minutes of telephone conversations with PTA customers of 27 and 29 January 2016.

¹⁰ Case IV.M.1293 BP/Amoco, paragraph 11, COMP/M.5760 Lotte Group/Artenius UK Ltd, paragraph 10; COMP/M.984 - Dupont/ICI, paragraph 8.

4.3. PET resin

4.3.1. Relevant product market

- (29) PET resin is produced from three key components: PTA, PIA and MEG and is mainly used to manufacture packaging materials for carbonated soft drinks, water, energy drinks, iced tea, juices and other beverages and liquids.
- (30) The Commission has considered PET-resin to be a separate product market, which could potentially be sub-segmented into bottle grade, fibre grade and film grade, but ultimately left the exact product market definition open.¹¹
- (31) The Notifying Party submits that the PET resin market should not be further subdivided, for example into bottle and film grade, despite some differences between these resin types because these differences are small and generally all producers of PET-resin are able to produce any type of PET resin.
- (32) During the market investigation PET resin producers suggested that there may exist small differences regarding PET resin depending on the end-use, but that they are not significant: "*[a PET resin producer] considers PET resin as being an almost (95%) homogeneous, or mainstream, product. There is only very little differentiation in terms of quality, mostly relating to the viscosity, among the different PET resin "grades" existing on the market, resulting in very small differences in production costs*".¹² Another PET resin producer indicated that PET resin is a "*commodity product*". The same producer explained that "*Although there are several grades with limited differences (viscosity or slight changes in the chemical mix), there is only very little differentiation in terms of price and quality among them.*"¹³
- (33) The question whether the relevant market comprises any type of PET resin or a distinction should be made between bottle grade, fibre grade and film grade can be left open in the present case because the proposed transaction does not raise concerns as to its compatibility with the internal market regardless of the answer to that question.

4.3.2. Relevant geographic market

- (34) In previous decisions, the Commission found that the relevant geographic market for PET resin was EEA wide or wider, but the exact scope was ultimately left open.¹⁴ The Notifying Party supports the existence of wider than EEA relevant geographic market.
- (35) PET resin producers contacted during the market investigation explained that the PET resin market is very competitive, with no special barriers to trade and where the prices are the key factor of competition. They also explained that the European

¹¹ COMP/M.7484 - PLASTIPAK/ APPE, paragraph 12; COMP/M.5760 - Lotte Group/Artenius UK Ltd, paragraph 9.

¹² Non-confidential minutes of the telephone conversation with a PET resin producer of 27 January 2016.

¹³ Non-confidential minutes of the telephone conversation with a PET resin producer of 27 January 2016.

¹⁴ COMP/M.7484 - PLASTIPAK/ APPE, paragraph 52.

market is served by European producers, but that there are also significant imports from Asia, in particular South Korea as well as from neighbouring regions, e.g. Turkey and Egypt.¹⁵ Several PET resin producers emphasised that there is a significant oversupply of PET resin in Asia and a large proportion of the surplus is exported to Europe.

- (36) The exact scope of the relevant geographic market can be left open in the present case because the proposed transaction does not raise concerns as to its compatibility with the internal market regardless of whether it is defined as EEA-wide or wider.

4.4. PET preforms

4.4.1. Relevant product market

- (37) In previous decisions, the Commission found that PET preforms form a separate product market, possibly sub-segmented on the basis of specific (barrier) performance.¹⁶
- (38) The Notifying Party contends that the market for PET preforms should be treated as one single product market, and that no further segmentation should be made between standard preforms and barrier enhanced preforms.
- (39) The question of whether or not such a sub-segmentation is required can be left open in the present case as the proposed transaction does not raise concerns as to its compatibility with the internal market regardless of the answer to that question.

4.4.2. Relevant geographic market

- (40) In previous decisions¹⁷, the Commission considered that the relevant geographic market as regards PET preforms could be national, wider than national or EEA-wide in scope.
- (41) The Notifying Party agrees with this in principle. However, the exact scope of the relevant geographic market can be left open in the present case because the proposed transaction does not raise concerns as to its compatibility with the internal market regardless of whether the relevant geographic market is defined as national or wider.

5. COMPETITIVE ASSESSMENT

5.1. First vertical link: PIA and PET resin

- (42) In the years 2012-2014 Guadarranque's market share in PIA reached between [50-60]% and [60-70]% (both in value and in volume) of the total sales in the EEA. Conversely, at global level Guadarranque's market share in PIA remains below 20%.

¹⁵ Non-confidential minutes of the telephone conversation with a PET producer of 27 January 2016.

¹⁶ COMP/M.7484 - PLASTIPAK/ APPE, paragraphs 20 to 22.

¹⁷ COMP/M.2416 – Tetra Laval / Sidel; COMP/M.7484 - PLASTIPAK/ APPE, para. 42-43.

- (43) As regards the downstream PET resin market, in the years 2012-2014 the Parties had a combined EEA-wide market share of between 28-34% (depending on the year and whether the share is calculated based on value or volume). Even if the market for PET resin is sub-segmented into bottle grade, fibre grade and film grade, the Parties' combined market share in any of these segments remained below 30% in 2014 and would not be similar in the previous two years at the EEA level. Also on a global geographic market, the market share, including all plausible sub-segments of PET resin, would remain below 30%.

5.1.1. *Input foreclosure*

- (44) The Commission assessed whether post-transaction Indorama will have the ability to engage in input foreclosure strategies, in particular by restricting access to PIA for PIA customers who are PET resin producers, and thus competitors of Indorama on the downstream market.
- (45) The results of the market investigation showed that despite the fact that Guadarranque is currently the only PIA supplier with production facilities in the EEA, the Combined Entity will not be able to significantly restrict access to PIA. This is in particular due to the fact that non-EEA suppliers, in particular the South-Korean company Lotte and the US company Flint Hills Resources, are already present on this highly commoditised market with EEA market shares of around [20-30]% and [5-10]% respectively (2014, both volume and value). They are recognised in the market as reliable suppliers.¹⁸ Market participants contacted in the framework of the market investigation confirmed that strong alternative suppliers are present in the EEA.
- (46) The results of the market investigation demonstrated that almost all PIA customers already purchase some PIA quantities from suppliers other than the Target, usually from Lotte and / or Flint Hills Resources. Many of them indicated that in case of a price increase by the Combined Entity, they could switch to alternative PIA suppliers: *"It is possible to import from other regions and it can be economical. (...) Already a small price increase of 5-10% would trigger a switch of imports into Europe"*.¹⁹ In general the PIA customers indicated that if need be they would have sourcing options other than Guadarranque to obtain the quantities of PIA they need.
- (47) It also seems unlikely that Indorama will have an incentive to restrict access of customers to PIA. It is noted that Guadarranque had a total production of PIA of c. [...] kt in 2014 (of which it used [...] kt captively for downstream PET resin production. Approximately 50% of this total production (approx. [...] kt) was bought by PET resin producers. At the same time, Indorama had a total world-wide consumption of PIA of approx. [...] kt, of which pre-transaction it purchased [...] kt from Guadarranque. In theory Indorama could internalise additional [...] kt of PIA produced by Guadarranque and in that way reduce the Target's PIA sales on

¹⁸ Based on data submitted by the Parties, the total world-wide merchant PIA market volume was approximately [850-900] kt in 2014, with Guadarranque contributing [150-200] kt, Lotte (South Korea) [200-250] kt, Formosa Chemicals and Fibre Corporation ("FCFC", Taiwan) [100-200] kt and Flint Hills Resources ("FHR", USA) [100-150] kt. In the EEA, the total PIA demand is estimated at [100-150] kt, with Guadarranque covering [50-100] kt, Lotte [0-50] kt and FHR [0-50] kt.

¹⁹ Replies to questions 10 and 15a of the market investigation questionnaire submitted by a PIA customer of Guadarranque.

the merchant market. This would mean, however, that Indorama would release the PIA volumes elsewhere as it would have to stop purchasing PIA from its current suppliers. Furthermore, even if this would mean that the European PIA customers would have additional costs and difficulties related to importing the PIA from outside Europe, Indorama would have to bear similar costs of transporting the PIA from Guadarranque to its production sites world-wide.

- (48) The market investigation confirmed that this is indeed not considered to be a likely scenario. As explained by one of the PET resin competitors of Indorama: *"it would not make economic sense for Indorama to buy PIA only from Cepsa [Guadarranque] and distribute it to all its PET resin plants all over the world. Furthermore, Cepsa's [Guadarranque's] PIA production capacity (approximatively 120,000 tonnes of PIA) exceeds significantly Indorama's total PIA demand (less than 60,000 tonnes), which makes such a strategy even less likely."*²⁰
- (49) Furthermore, the effect of any such strategy by the Combined Entity on prices and cost on the downstream PET resin market would be limited. As explained by one of the PET resin producers contacted in the framework of the market investigation: (captive use of all the PIA produced by Guadarranque) *"could not have a significant impact on Indorama's competitiveness in PET resin, since PIA constitutes only 2% of the PET resin, while the main cost components are two other inputs: PTA and MEG [monoethylene glycol]."*²¹ Similarly another PET resin producer explained that *"although PIA is a necessary raw material for PET producers, it is not the main cost driver for the industry (MEG and PTA would be the main drivers) we therefore do not think this will be a game changing competitive advantage for Indorama in the PET industry."*²²
- (50) Finally, there is no economic incentive for Indorama to engage in input foreclosure strategies taking into account in addition that the average margin achieved on PIA sales amounts to EUR [...] per ton while the average margin achieved on PET resin sales amounts to approximately EUR [...] per ton. More importantly, PIA accounts for approximately 2-3% of PET resin value; therefore, the effect of a hypothetical foreclosure with the aim to achieve a price increase for PIA and a corresponding effect on prices for PET resin would be very limited, if appreciable at all. In other words, it is unlikely that Indorama could gain any meaningful competitive advantage at the downstream market for PET resin through potential attempts to restrict access to PIA upstream. It can be expected that the losses occurred at the PIA from foregone sales to PET customers would by far not be compensated by a hypothetical price increase at the PET resin level.

5.1.2. Conclusion

- (51) On this basis, the Commission concludes that the transaction does not raise concerns as to its compatibility with the internal market in relation to the vertical

²⁰ Non-confidential minutes of a telephone conversation with a PET resin producer, PIA customer of Guadarranque of 27 January 2016.

²¹ See non-confidential minutes of a telephone conversation with a PET resin producer, PIA customer of Guadarranque of 29 January 2016.

²² Reply by a PET resin producer to question 16 of the market investigation questionnaire sent to PIA customers.

link between the upstream production of PIA by Guadarranque and the downstream production of PET resin by the Combined Entity.

5.2. Second vertical link: PTA and PET resin

- (52) Both Parties produce and supply PTA. Their combined market share on an EEA-wide market based on merchant sales was however below 5% (by volume and value) in 2014, while the share of the total production (including captive supplies) was just over 20% (by volume and value). If the relevant product market included DMT or if the relevant geographic scope of the market was global, the combined market share of the Parties would be even lower. In terms of the downstream PET resin market, the Parties had a combined volume or value based EEA-wide market share of approximately 30%. This picture does not change if the PET resin market is sub-segmented by end use, namely into bottle grade, fibre grade or film grade or if the PET resin market is considered to be wider than EEA-wide in scope.
- (53) Consequently, the Commission concludes that the transaction does not raise concerns as to its compatibility with the internal market in relation to the vertical link between the upstream market for PTA and the downstream market for PET resin, where only the Combined Entity's market share in the downstream PET resin market is very close to the 30% threshold. The Combined Entity will not have the ability to engage in customer foreclosure strategies, in particular given the moderate combined market share in the PET resin market and the number of strong suppliers in this commoditised market.

5.3. Third vertical link: PET resin and PET preforms

- (54) As indicated above, in terms of the upstream (in this relationship) PET resin market, the Parties had a combined EEA-wide market share of approximately 30%. Regarding the downstream market, only Indorama is active in the production of PET preforms and its market share in any possible relevant product or geographic market is far below 30%. Moreover, Indorama's total PET resin consumption for the PET preform production represents only approximately 1% of the total PET resin supply in the EEA.
- (55) Therefore, the Commission concludes that the transaction does not raise concerns as to its compatibility with the internal market in relation to the vertical link between the upstream market for PET resin and the downstream market for PET preforms.

5.4. Horizontal overlap: PET resin

- (56) As indicated above the Parties have a maximum combined market share of around 30% on the PET resin market in the EEA and lower if the market is considered to be global, even considering possible sub-segmentations (into bottle grade, fibre grade and film grade), with a small increment deriving from the transaction based on Guadarranque's market share of around 5%.
- (57) There are no concerns as to the compatibility of this horizontal overlap with the internal market. First, the Parties' combined market shares are moderate. Second, there is strong competitive pressure in this market, from established players such as Artenius ([10-20]% by volume, [10-20]% by value in 2014), NEO Group (part of Retal Group) ([5-10]% by volume, [5-10]% by value in 2014), Lotte ([5-10]% in

volume, [5-10]% by value in 2014), NovaPET ([5-10]% by volume, [5-10]% by value in 2014) and Equipolymer ([5-10]% by volume, [5-10]% by value in 2014).

- (58) On this basis, the Commission concludes that the transaction does not raise concerns as to its compatibility with the internal market in relation to PET resin market and its potential sub-segments.

6. CONCLUSION

- (59) 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 and Article 57 of the EEA Agreement.

For the Commission
(Signed)
Margrethe VESTAGER
Member of the Commission