



EUROPEAN COMMISSION
DG Competition

***Case M.10721 - CELANESE / DUPONT (MOBILITY &
MATERIALS BUSINESS)***

Only the English text is available and authentic.

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 11/10/2022

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EUROPEAN COMMISSION

Brussels, 11.10.2022
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PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

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**Subject: Case M.10721 – CELANESE / DUPONT (MOBILITY & MATERIALS BUSINESS)
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²**

Dear Sir or Madam,

- (1) On 23 August 2022, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Celanese Corporation ('Celanese', USA) will acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of DuPont's Mobility & Materials Business (the 'Target') (the 'Transaction'), currently controlled by DuPont de Nemours, Inc ('DuPont', USA).³ The Transaction will be carried out by

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 Publication in the Official Journal of the European Union No C 333, 1.9.2022, p. 11.

way of purchase of shares. Celanese and the Target are designated hereinafter as the ‘Parties’.

1. THE PARTIES

- (2) **Celanese** is a global chemical and specialty materials company, headquartered in Irving, Texas, U.S. Celanese produces high-performance engineered polymers that are used in a variety of applications, as well as acetyl products, which are intermediate chemicals for nearly all major industries. Celanese’s product portfolio serves a diverse set of end-use applications including automotive, chemical additives, construction, consumer and industrial adhesives, consumer and medical, energy storage, filtration, food and beverage, paints and coatings, paper and packaging, performance industrial and textiles.
- (3) **The Target** provides high-performance engineering thermoplastics, elastomers, pastes, filaments and advanced films to engineers and designers in the transportation, electronics, renewable energy, industrial and consumer end-markets to enable systems solutions for demanding applications and environments. The business’ technology is contributing to, for example, the transition to hybrid-electric-connected vehicles and high-speed high-frequency connectivity.

2. THE TRANSACTION

- (4) Celanese and DuPont entered into a transaction agreement on 17 February 2022 (the ‘Agreement’). Under the terms of this Agreement, prior to closing, DuPont will contribute into a package of entities the Mobility & Materials Business (M&M Business).⁴ Celanese will then acquire this package of entities via a stock purchase.⁵ It follows that the Transaction is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (5) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (2021: EUR 7,222 million for Celanese, EUR [...] million for the Target) . Each of them has a Union-wide turnover in excess of EUR 250 million (2021: EUR [...] million for Celanese, EUR [...] million for the Target, but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension.

⁴ This package includes the 50% DuPont stake in a joint-venture with Japanese company Toray industries, that manufactures TPC, and the DuPont stake in a joint-venture with German company Lanxess, which manufactures PBT.

⁵ In particular, the Agreement consists of the acquisition by Celanese of the M&M Business through: (i) the purchase of all of DuPont E&I Holding, Inc.’s right, title and interest in and to 100% of all of the issued and outstanding capital stock of Dupont China Limited; and (ii) the purchase of DuPont’s 5% equity interest in DuPont Deutschland Real Estate Holding GmbH.

4. COMPETITIVE ASSESSMENT

- (6) Engineering plastics ('EPs') are produced in a polymerisation process by mixing molten base polymer ('BP') with additives (e.g. flame retardants), stabilisers (e.g. to improve resistance against heat or UV light) and various fillers from minerals to fibres. These additional ingredients are, depending on the intended field of application, included for stiffness, strength, impact or other performance features such as thermal or electrical conductivity. After this compounding step, EPs are sold to customers in form of granules. Customers process the granules into the final product form by using processes like injection moulding, blow moulding or extrusion. Their qualities make them suitable for diverse industry segments, i.e., transportation/automotive, industrial and consumer products, etc.
- (7) The Parties' activities horizontally overlap in the production and supply of EPs, in the following six products: Polyamide ('PA') 6 EP, PA6.6 EP, High Temperature Nylons ('HTN'), Polybutylene Terephthalate EP, Polyethylene Terephthalate EP and Thermoplastic Copolyester ('TPC'). Based on sales volume, affected markets arise only in TPC.⁶ Based on capacity and production shares, an additional affected market would arise in PA6.6 EP in the EEA.⁷
- (8) There are no vertically affected markets arising from the Transaction.

4.1. PA6.6 EP

4.1.1. Product market definition

4.1.1.1. The Commission's past practice

- (9) The Commission has assessed in previous decisions PA6.6 EP and PA6.6 BP as separate relevant product markets.⁸ The Commission has also previously assessed the markets for EPs, and concluded that polyamide EPs are to be distinguished from other EPs by their technical characteristics and demand inelasticity.⁹ The Commission also previously found that PA6 EP and PA 6.6 EP constitute separate relevant product markets.¹⁰
- (10) The Commission also investigated whether the market for PA6.6 EP could be further sub-segmented according to the various types or applications of PA6.6 EP.¹¹ The Commission considered that there was some degree of demand- and supply-side substitution, and therefore that a further sub-segmentation according to the various grades or applications of PA6.6 EP may not be warranted.¹²

⁶ The Parties combined market shares in the remaining four markets are: PA6: [0-5]% (EEA) and [0-5]% (global); HTN: [10-20]% (EEA) and [10-20]% (global); PBT: [10-20]% (EEA) and [5-10]% (global); PET: [10-20]% (EEA) and [10-20]% (global).

⁷ Capacity shares, EEA: Celanese – [5-10]% M&M Business – [10-20]% Combined – [20-30]%. Production shares, EEA: Celanese – [5-10]% M&M Business – [10-20]% Combined – [20-30]%.

⁸ See M.8674 BASF/Solvay's Polyamide Business.

⁹ M.8674 BASF/Solvay's Polyamide Business, para 293.

¹⁰ M.8674 BASF/Solvay's Polyamide Business, para 260.

¹¹ Types: e.g. flame retardant, stabilised grades, water resistant etc. Applications: e.g. automotive, consumer electronics, industry applications, etc.

¹² M.8674 BASF/Solvay's Polyamide Business, para 308.

4.1.1.2. The Notifying Party's view

- (11) The Notifying Party considers that PA6.6 EP constitutes a separate relevant product market from PA6.6 BP. The Notifying Party further submits that, in line with the Commission's precedents, PA6.6 EP constitutes a separate relevant product market from other EPs, including from PA6 EP, noting different technical characteristics, as well as a price differential between the two, and limited amounts of demand-side substitutability.¹³ The Notifying Party submits that the market for PA6.6 EP should not be further sub-segmented according to grades and/or end use.¹⁴

4.1.1.3. The Commission's assessment

- (12) The market investigation has shown that, in line with previous decisional practice, PA6.6 BP and PA6.6 EP constitute separate product markets. Indeed, there is limited evidence of demand and supply-side substitutability between these two products. Rather, PA6.6 BP serves as an input into the production of PA6.6 EP. Indeed, the customer base for these two products is not the same: customers of PA6.6 BP are typically compounders producing PA6.6 EP, whereas customers of PA6.6 EP are typically producing PA6.6 EP-based parts for various downstream applications such as for example automotive.¹⁵ This shows that these two products are not really substitutable, and indeed, on the demand side, a majority of customers consider that they cannot be used interchangeably.¹⁶ One customer explains that *"PA66 EP is formulated accordingly the different application needs, PA66 BP is used to produce PA66 EP"*.¹⁷ Furthermore, on the supply side, a majority of competitors outlined that they would not be able to switch their production of PA6.6 BP to that of PA6.6 EP, and vice versa.¹⁸ Indeed, these are vastly different production processes: the production of PA6.6 BP is more capital intensive than that of PA6.6 EP, and the production of PA6.6 EP is technically less complicated. According to the Parties, setting up a new compounding line would typically cost \$3.5 to \$6.5 million and take 10 to 18 months. Setting up a polymerization line, on the other hand, would typically cost \$70 to \$150 million, depending on the technology chosen and would take 30 to 50 months.¹⁹ Furthermore, polymerisation is a chemical reaction, whereas compounding is a mixing process. Therefore, considerations such as health and safety procedures, process control, supply chain management, are more stringent for polymerisation than for compounding, as it is a higher hazard process.²⁰
- (13) Therefore, and in line with previous decisional practice, the Commission considers for the purpose of assessing the Transaction, a market for PA6.6 EP distinct from that of PA6.6 BP.

¹³ Form CO, paragraphs 244-246.

¹⁴ Form CO, para 253.

¹⁵ Form CO, paras 218-220 & para 271.

¹⁶ Responses to questionnaire Q2 sent to customers of PA6.6, question 8.

¹⁷ Responses to questionnaire Q2 sent to customers of PA6.6, question 8.1. [ZF]

¹⁸ Responses to questionnaire Q1 sent to competitors, question 12.

¹⁹ Responses to RFI 1, Question 20.

²⁰ Form CO, footnote 37.

- (14) The market investigation has also shown that, in line with previous decisional practice, PA6 EP and PA6.6 EP constitute separate product markets. Indeed, a majority of customers consider that they are not substitutable.²¹ Furthermore, customers explain that they do not have the same properties: for example, PA6.6 EP is more heat resistant than PA6 EP.²² Other customers point out that a change in tooling would be necessary to accommodate a change from PA6.6 EP to PA6 EP, due to different material properties.²³ Finally, a majority of customers consider that if prices of PA6.6 EP were to increase by 5-10%, they would either not switch their purchases of PA6.6 EP to PA6 EP, or would only do so for a limited number of applications.²⁴
- (15) Therefore, and in line with previous decisional practice, the Commission considers for the purpose of assessing the Transaction, the market for PA6.6 EP is distinct from that for PA6 EP.
- (16) The Commission has also investigated whether PA6.6 EP should be further sub-segmented into types of PA6.6 EP, such as flame retardant or heat stabilised. On the supply side, a majority of competitors declare that they produce all or most types of PA6.6 EP.²⁵ Furthermore, for those types of PA6.6 EP that they do not currently produce, they could rapidly and without incurring significant costs switch their production from one type of PA6.6 EP to another.²⁶ This is confirmed by customers, who indicate that, apart from niche/specialty types of PA6.6 EP, most types of PA6.6 EP can be readily produced by most credible suppliers of PA6.6 EP.²⁷ Finally, both customers and competitors confirm that the same types of PA6.6 EP can be used for the manufacturing of different products.²⁸
- (17) Therefore, and in line with previous decisional practice, the Commission considers for the purpose of assessing the Transaction, one single product market for PA6.6 EP, without further sub-segmenting by types of PA6.6 EP.

4.1.2. *Geographic market definition*

4.1.2.1. The Commission's past practice

- (18) The Commission has previously found that the market for PA6.6 EP is EEA-wide in scope, citing limited PA6.6 EP imports into the EEA, and a clear customer preference for procuring PA6.6 EP within the EEA.²⁹

²¹ Responses to questionnaire Q2 sent to customers of PA6.6, question 6.

²² Responses to questionnaire Q2 sent to customers of PA6.6, question 6.1.

²³ Responses to questionnaire Q2 sent to customers of PA6.6, question 6.1.

²⁴ Responses to questionnaire Q2 sent to customers of PA6.6, question 7.

²⁵ Responses to questionnaire Q1 sent to competitors, question 13.

²⁶ Responses to questionnaire Q1 sent to competitors, question 14.

²⁷ Responses to questionnaire Q2 sent to customers of PA6.6, question 14.

²⁸ Responses to questionnaire Q1 sent to competitors, question 9; responses to questionnaire Q2 sent to customers of PA6.6, question 13.

²⁹ M.8674 BASF/Solvay's Polyamide Business, paras 316-319.

4.1.2.2. The Notifying Party's view

- (19) The Notifying Party submits that the market for PA6.6 EP is at least EEA-wide in scope and potentially broader, but that the exact market definition can be left open, as it will not have a material impact on the assessment of the Transaction.³⁰

4.1.2.3. The Commission's assessment

- (20) The market investigation has indicated that, in line with the Commission's precedents, the relevant geographic market is EEA-wide. Indeed, the majority of competitors have indicated that, for their production centres located in the EEA, around 81-100% of their PA6.6 EP output is sold to customers located in the EEA.³¹ Furthermore, a majority of competitors have indicated that there is a price difference between PA6.6 EP sold in the EEA and PA6.6 EP sold in other regions of the world.³² Customers have similarly indicated that prices of PA6.6 vary significantly between regions (i.e. North America, China, EEA).³³ Finally, a majority of customers reported they purchase between 81% and 100% of their PA6.6 EP supply from suppliers based in the EEA.³⁴
- (21) Therefore, in line with previous decisional practice, and for the purposes of this Transaction, the Commission considers that the relevant geographic market is EEA-wide.

4.1.3. *Competitive assessment*

4.1.3.1. The Parties' activities in PA6.6

- (22) Celanese is a relatively recent entrant in the nylon market and became materially active in this space in the EEA in 2016, following its acquisition of the SO-F-TER Group. Celanese manufactures PA6.6 EP through compounding in the EEA in Forli, Italy, Utzenfeld and Wehr, both Germany. It sells PA6.6 EP mainly under its brands Celanyl, Frianyl and Ecomid. However, Celanese is not active in the production of PA6.6 BP, *i.e.* the polymerisation step of the PA6.6 value chain. Celanese sources PA6.6 BP from different suppliers, including [...].³⁵
- (23) The Target manufactures PA6.6 EP through compounding in [...]. It sells its PA6.6 EP under the brands Zytel, Minlon and Nylind.³⁶ The Target is also active in the production of PA6.6 BP in [...] as well as in [...] and [...]. However, the Target's PA6.6 BP production is almost entirely captive, with only a small amount of BP sold on the merchant market.³⁷ [...].³⁸

³⁰ Form CO, para 256.

³¹ Responses to questionnaire Q1 sent to competitors, question 16.

³² Responses to questionnaire Q1 sent to competitors, question 21.

³³ Responses to questionnaire Q2 sent to customers of PA6.6, question 15, question 19.1.

³⁴ Responses to questionnaire Q2 sent to customers of PA6.6, question 17.

³⁵ Form CO, paragraphs 233 et seqq., and Tables 8 and 9.

³⁶ Nylind being a legacy brand [description of commercial strategy].

³⁷ In 2021, the Target sold only [...] % of its total global PA6.6 BP production on the merchant market. In the EEA, it accounted only for negligible merchant market sales [...] kt of PA6.6 BP in 2021.

³⁸ Form CO, paragraphs 237 et seqq.

- (24) The business activities of the Parties overlap horizontally in the manufacture and sale of PA6.6 EP, but not in PA6.6 BP. Therefore, only the market for PA6.6 EP will be further discussed in this Decision.³⁹

4.1.3.2. The Notifying Party's view

- (25) The Notifying Party provides⁴⁰ that, *firstly*, the Merged Entity would have only modest combined market shares in PA6.6 EP at EEA-wide level, and a number of strong competitors would remain in the market. A number of competitors would be backward integrated into PA6.6 BP or further up the value chain,⁴¹ which would be a significant competitive advantage. The presence of these competitors as well as independent compounders would compensate for any limited loss of competition between the Parties.
- (26) *Secondly*, customers of PA6.6 EP include large customers, such as OEMs in the automotive sector, which would have strong bargaining power *vis-à-vis* their suppliers. Many customers would also multisource from several PA6.6 EP manufacturers.
- (27) *Thirdly*, barriers to entry into the PA6.6 EP market are low compared to those in other levels of the PA6.6 value chain. One recent entrant into the PA6.6 EP market would be Ascend, and Celanese itself would be a relatively new company in the market following its acquisition of SO.F.TER Group in 2016.⁴²

4.1.3.3. The Commission's assessment

- (28) The Parties have moderate combined market shares that would not lead to an affected market for PA6.6 EP based on sales volumes, as market shares of the Merged Entity would remain below 20% at EEA-wide level (see Table 1 below). The Commission provides nevertheless a detailed assessment of the market for PA6.6 EP, because (i) the combined market shares of the Parties are [...] close to the 20% threshold; (ii) the market for PA6.6 EP may be affected based on capacity and production shares for a plausible EEA-wide market, based on estimates provided by the Notifying Party;⁴³ and (iii) some market participants indicated a certain degree of concentration in the market for PA6.6 EP, as detailed further below.
- (29) The market shares of the Parties and their main competitors for PA6.6 EP in an EEA-wide market are presented in Table 1 below.

³⁹ No affected markets arise due to the Target's limited merchant market sales of PA6.6 BP (upstream) and Celanese's and the Target's PA6.6 EP business downstream under any plausible market definition; Form CO, paragraphs 15, 23 and Tables 12 and 13.

⁴⁰ Form CO, paragraphs 273 et seq.

⁴¹ Notably BASF, Domo and Radici.

⁴² Along with its acquisition of the compounding division of Nilit Plastics in 2017.

⁴³ See response to RFI 1, annex "M.10721 - RFI n°1 - Q.2 - Confidential - Contains Business Secrets.xlsx". The Commission notes the Notifying Party's view that compounding capacity and production shares are less reliable compared to sales shares, as compounding capacities can be used for several products other than PA6.6, such as PA6, PBT or PET; response to RFI 1, question 2.

Table 1: Market shares in PA6.6 EP at EEA-wide level, based on sales volumes, 2021

Competitor	Volume in kt	Market share
Celanese	[...]	[5-10]%
The Target	[...]	[10-20]%
Combined	[...]	[10-20]%
BASF	[...]	[10-20]%
Domo	[...]	[10-20]%
Radici	[...]	[5-10]%
Lanxess	[...]	[5-10]%
Ascend	[...]	[0-5]%
EMS	[...]	[0-5]%
Ravago	[...]	[0-5]%
Other	[...]	[20-30]%
Total	515.44	100%

Source: The Notifying Party; Form CO, Table 12.

- (30) The Transaction would make the Merged Entity the new leader in an EEA-wide market with a market share of [10-20]% based on sales volumes, at a comparable level with BASF ([10-20]%). The increment brought by Celanese would be moderate, but not insignificant with [5-10]% market share. At EEA-level, Domo would constitute a significant third alternative with market shares of [10-20]%, and Radici would remain as a fourth significant player ([5-10]%), along with a number of smaller, but non-negligible players Lanxess ([5-10]%), Ascend ([0-5]%), EMS ([0-5]%) and Ravago ([0-5]%). The market structure as presented above was widely confirmed by competitors in the market investigation.⁴⁴
- (31) Based on estimates provided by the Notifying Party, the Parties combined market shares would [...] exceed 20% if calculated based on capacity (Celanese: [5-10]%, the Target [10-20]%, combined [20-30]%) and based on production (Celanese [5-10]%, the Target [10-20]%, combined [20-30]%) at EEA-wide level, therefore constituting an affected market for PA6.6 EP. However, the market structure would not materially differ based on capacity or production market shares.⁴⁵ Therefore, the competitive assessment would remain the same, regardless if considering sales, capacity or production market shares.
- (32) In any event, the Parties' combined market shares would remain well below 25% post-Transaction, which gives rise to the presumption of compatibility of the Transaction with the common market.⁴⁶ Furthermore, the market for PA6.6 EP is not particularly concentrated, as the HHI-index based on volumes sales shares [1000-1500] with a delta of around [100-200], while the Commission is unlikely to identify horizontal competition concerns in mergers with a post-transaction HHI

⁴⁴ Responses to questionnaire Q1 sent to PA6.6 competitors, question 5.

⁴⁵ Competitors' EEA-wide market shares based on capacity would be as follows: BASF ([10-20]%), Domo ([10-20]%), Radici ([0-5]%), Lanxess ([5-10]%), Ascend ([5-10]%), EMS ([5-10]%), Ravago ([0-5]%). Competitors' EEA-wide market shares based on production would be as follows: BASF ([10-20]%), Domo ([10-20]%), Radici ([0-5]%), Lanxess ([5-10]%), Ascend ([5-10]%), EMS ([5-10]%), Ravago ([0-5]%), see response to RFI 1, annex "M.10721 - RFI n°1 - Q.2 - Confidential - Contains Business Secrets.xlsx".

⁴⁶ Horizontal Merger Guidelines, paragraph 18.

between 1000 and 2000 and a delta below 250.⁴⁷ Therefore, the Commission considers that the market structure, as described above, indicates the absence of serious doubts as to the compatibility of the Transaction with the internal market and the functioning of the EEA Agreement due to horizontal competition concerns.

4.1.3.3.1. Assessment of closeness of competition between the Parties

- (33) Feedback obtained in the market investigation suggests that the Parties are not close competitors in the market for PA6.6 EP. Competitors attribute a significantly higher competitive strength to DuPont than to Celanese, and consider a number of other manufacturers as having higher competitive strengths than Celanese (including BASF, DOMO, Ascend, Radici, EMS and Lanxess).⁴⁸ DuPont is further considered as stronger in a number of competitive factors, such as R&D, know-how, portfolio, global reach and – to a lesser extent – price levels.⁴⁹ Consequently, the clear majority of competitors provide that the Parties are no close competitors, or do not compete closer with each other than with other competitors.⁵⁰ ⁵¹ The Commission notes that this view is consistent with the different market share levels of the Parties, as detailed in Table 1 above.
- (34) Customers of the Parties responding to the market investigation have confirmed the lack of closeness of competition between the Parties pre-Transaction, though in a less pronounced manner than competitors. Responding customers attribute comparable competitive strengths to a number of suppliers, including the Parties, BASF, Ascend, Domo, Radici, Lanxess, and EMS.⁵² In line with that, responding customers consider Celanese and DuPont at similar level in a number of competitive factors, namely R&D, know-how, portfolio, global reach and price levels.⁵³ However, the clear majority of responding customers provide that Celanese and DuPont do not compete closer with each other than with other competitors, or do not compete closely at all.⁵⁴ One customer explained: “*We don’t consider them as close competitors on PA66 EP, DuPont have a long history on nylon market with decades of developments and innovations, Celanese on the other hand is quite new in this market, they gained relevance only after making the acquisitions of some companies like Nilit and SOFTER.*”⁵⁵ ⁵⁶

⁴⁷ Horizontal Merger Guidelines, paragraph 20; none of the special circumstances as described in this paragraph applies in to the present case.

⁴⁸ Responses to questionnaire Q1 sent to PA6.6 competitors, question 26.

⁴⁹ Responses to questionnaire Q1 sent to PA6.6 competitors, question 27.

⁵⁰ Responses to questionnaire Q1 sent to PA6.6 competitors, question 28.

⁵¹ The market investigation further confirmed that a certain degree of competitive advantage may exist for suppliers that are backward-integrated, which is not the case for Celanese; see responses to questionnaire Q2 sent to PA6.6 customers, question 30.

⁵² Responses to questionnaire Q2 sent to PA6.6 customers, question 26.

⁵³ Responses to questionnaire Q2 sent to PA6.6 customers, question 27.

⁵⁴ Responses to questionnaire Q2 sent to PA6.6 customers, question 28.

⁵⁵ Response to questionnaire Q2 sent to PA6.6 customers, question 28.1.

⁵⁶ Some market participants indicated that both Celanese and DuPont would be strong in some types of PA6.6 EP, *inter alia* in flame retardant PA6.6 EP grades. The Commission notes that (i) the product market definition comprises all types of PA6.6 EP, *inter alia* due to a degree of supply side substitutability, as explained in section 4.1.1 above; and (ii) customers and competitors confirmed that a sufficient number of alternative suppliers would be available for all grades, as explained in more detail in paragraphs (36) to (38) below.

- (35) Based on the above, the Commission considers that the Parties are not close competitors in the manufacture and sale of PA6.6 EP.

4.1.3.3.2. *Customers will continue to have sufficient alternatives to source from*

- (36) Consistent with the market structure, as presented in Table 1 above, as well as the assessment on closeness of competition between Celanese and the Target in PA6.6 EP, as described in paragraphs (33) to (35), market feedback indicated that customers will continue to have sufficient alternatives post-Transaction to source from. A clear majority of customers responding to the market investigation confirm that post-Transaction, there would continue to be a sufficient number of suitable suppliers to source from in the EEA.⁵⁷ One customer explained: *“There will be enough suppliers available post-transaction to continue to play suppliers off each other to achieve the lowest price.”*^{58 59}
- (37) In this context, a large share of customers who responded to the market investigation consider that the consolidation in the market may have a negative impact on the market and on their company⁶⁰. Customers point at an increasingly concentrated market with a limited number of suitable suppliers. One customer explained: *“In a market that is dominated by only a few suppliers, any kind of concentration contributes to reducing competition. In the medium to long run, this is likely to result in higher prices.”* However, such negative impact is likely not specific to this Transaction, given that customers clearly indicate that a sufficient number of alternatives would remain available. Therefore, the Commission considers that price increases are unlikely to materialise as a direct result of the present Transaction, even if there is a general trend towards consolidation in the PA6.6 EP market as described by customers.⁶¹
- (38) This view is further confirmed by the competitors who responded to the market investigation, of which a clear majority provides that a sufficient number of suppliers of PA6.6 EP would remain present in the EEA.⁶² Consequently, a majority of competitors expect the Transaction to have a neutral impact on the EEA-wide market for PA6.6 EP as well as on their own company.⁶³

⁵⁷ Response to questionnaire Q2 sent to PA6.6 customers, question 35.

⁵⁸ Response to questionnaire Q2 sent to PA6.6 customers, question 35.1.

⁵⁹ Furthermore, as explained in paragraph 35 above, customers attribute significant competitive strengths to alternative suppliers present in the market.

⁶⁰ Response to questionnaire Q2 sent to PA6.6 customers, questions 36, 36.1. and 37.

⁶¹ Furthermore, the existence of a number of suitable alternatives enable customers to source PA6.6 EP, as confirmed by responses to the market investigation. Some customers indicated that a multi-sourcing strategy would provide them with some leverage in price negotiations with suppliers, also depending on other factors, such as the volumes sourced from a given supplier (see questionnaire Q2 sent to PA6.6 customers, questions 22, 22.1 and 22.2). The Commission further notes that there are considerable barriers to switching suppliers for PA6.6 EP, particularly due to the need for customers to qualify the products of new suppliers, *i.e.* confirm quality and suitability of the product for its intended use. The process of switching customers can take between several months to more than a year; (see responses to questionnaire Q2 sent to PA6.6 customers, questions 32 and 33). However, those barriers to switching are partly mitigated by the fact that the availability of a number of suitable competitors enables customers to source PA6.6 EP from a number of different suppliers who are already qualified suppliers with the customer.

⁶² Market feedback from competitors, however, suggest that there are significant barriers to entry in the market for PA6.6 EP; see responses to questionnaire Q1 sent to PA6.6 competitors, question 30.

⁶³ Responses to questionnaire Q1 sent to PA6.6 competitors, question 39 and 40.

4.1.3.3.3. Conclusion

- (39) Based on the above, and in particular in light of (i) the moderate combined market shares of the Parties and a moderate concentration level of the market, (ii) the lack of closeness of competition between the Parties pre-Transaction, and (iii) the fact that a number of credible competitors will remain present in the market, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to an EEA-wide market for PA6.6 EP.

4.2. TPC

- (40) TPC is a high-performance, high-temperature elastomer that offers tear resistance, flexural fatigue and chemical and temperature resistance. TPC is used mainly in the automotive industry, but also in consumer electronics and industrial appliances. It is sold mainly as engineering plastic after compounding (TPC EP), but also as base polymer or reactor grade (TPC BP). In some cases, the TPC BP is put under vacuum and heated to increase the material's molecular weight. This process is known as "solid-state-post-condensation" or "SSPC". Solid-stated TPC grades are generally used in applications involving extrusion or blow moulding as a processing step. Both Parties produce TPC BP and EP.

4.2.1. Product market definition

4.2.1.1. The Commission's past practice

- (41) The Commission has not previously assessed the market for manufacturing and sale of TPC. The Commission has previously defined separate product markets for other thermoplastic elastomers such as polyolefin elastomers ('POE'), styrenic block copolymers ('TPS') and urethane thermoplastic elastomers ('TPU'), based on specific product characteristics.⁶⁴

4.2.1.2. The Notifying Party's view

- (42) The Notifying Party submits that TPC constitutes a separate product market that should not be further segmented into TPC BP and TPC EP. The Notifying Party also submits that TPC should not be further segmented by grades or end-applications.⁶⁵

4.2.1.3. The Commission's assessment

- (43) The market investigation has indicated that TPC could constitute a separate product market from other thermoplastic elastomers such as POE, TPS, or TPU. Indeed, demand-side substitutability seems limited: a majority of customers indicated that they would not consider TPC to be substitutable with other thermoplastic elastomers.⁶⁶ One customer, for example, states that the "[m]echanical and chemical properties of TPC made them unique and non-interchangeable with other

⁶⁴ see M.7932 – Dow/DuPont; M.3733 – Dow/DDE; M.3783 – TPG/British Vita; M.8674 – BASF/Solvay's EP and P&I Business.

⁶⁵ Form CO, paras 566 to 569.

⁶⁶ Responses to questionnaire Q3 sent to customers of TPC, question 6.

thermoplastics, TPE or elastomers”.⁶⁷ This opinion is echoed by competitors, with one outlining that, since the price of TPC is comparatively high, customers select it when “*it is needed to fulfil [the] technical requirements*”.⁶⁸

- (44) In addition, the Commission notes that the Parties’ activities do not overlap in thermoplastic elastomers other than TPC.
- (45) The Commission will therefore carry out its assessment on a specific market for TPC which is distinct from other thermoplastic elastomers.
- (46) The market investigation has indicated that TPC BP and TPC EP could constitute separate relevant product markets. There does not appear to be significant demand-side substitutability: a majority of customers having expressed their opinion do not consider that TPC BP can be used interchangeably with TPC EP.⁶⁹ Indeed, customers generally consider that the specific properties they need are added to TPC at the compounding stage, and therefore they would not be able to substitute them. One customer outlines: “[BP] *does not deliver the processing & mechanical properties needed*”.⁷⁰ Competitors similarly report a lack of demand-side substitutability between TPC BP and TPC EP.⁷¹ Furthermore, and similarly as to the production process for PA6.6 EP and PA6.6 BP described above, the production process of TPC EP and TPC BP are different. The production process for TPC EP is similar to that of PA6.6 EP: setting up a new compounding line typically costs USD 3.5 million to USD 6.5 million and takes 10 to 18 months. Setting up a polymerization line for the production of TPC BP, on the other hand, typically costs USD 70 million to USD 150 million, depending on the technology chosen and takes 30 to 50 months.⁷²
- (47) In any event, the Commission considers that for the purpose of assessing the Transaction the question of a product market for TPC EP distinct to that of TPC BP, can be left open, given that the Commission is raising concerns for TPC overall, and that Celanese has committed to divest its global TPC business.
- (48) The market investigation has shown a limited amount of demand-side substitutability for different types of TPC. Indeed, majority of customers consider that there are differences between types of TPC.⁷³ Customers explain that one type of TPC (e.g. flame retardant) cannot replace for the same function another type of TPC (e.g. heat stabilised). As one customer puts it, “*different recipes deliver different performances*”.⁷⁴ Nevertheless, it would appear that most TPC producers can readily produce most types of TPC.⁷⁵
- (49) In any event, the Commission considers for the purpose of assessing the Transaction, that the question of a further sub-segmentation of TPC according to

⁶⁷ Responses to questionnaire Q3 sent to customers of TPC, question 6.1.

⁶⁸ Responses to questionnaire Q1 sent to competitors, question 48.1.

⁶⁹ Responses to questionnaire Q3 sent to customers of TPC, question 8.

⁷⁰ Responses to questionnaire Q3 sent to customers of TPC, question 8.1.

⁷¹ Responses to questionnaire Q1 sent to competitors, question 49.

⁷² Form CO, para 131.

⁷³ Responses to questionnaire Q3 sent to customers of TPC, question 10.

⁷⁴ Responses to questionnaire Q3 sent to customers of TPC, question 10.1.

⁷⁵ Responses to questionnaire Q1 sent to competitors, questions 54 and 54.1.

type of TPC can be left open, given that the Commission is raising concerns for TPC overall, and that Celanese has committed to divest its global TPC business.

4.2.2. *Geographic market definition*

4.2.2.1. The Commission's past practice

(50) The Commission has not previously assessed the manufacturing and sale of TPC, The Commission has previously found geographic markets for other thermoplastic elastomers to be EEA-wide or global.⁷⁶

4.2.2.2. The Notifying Party's view

(51) The Notifying Party considers that markets for TPC are EEA-wide or global in scope.⁷⁷

4.2.2.3. The Commission's assessment

(52) The market investigation points towards the fact that the geographic market for TPC would be EEA-wide in scope. Indeed, the majority of customers who have replied to the market investigation that market conditions at a global level differ from market conditions in the EEA.⁷⁸ For example, a majority of customers report that prices differ between regions.⁷⁹ Furthermore, a majority of customers report that, for their plants located in the EEA, they source between 81% and 100% of their TPC from suppliers located in the EEA.⁸⁰ As one customer explains, “[d]ifference in feedstock, utility, labor, capital cost [...] influence [the] market prices of respective region[s]”.

(53) In any event, the Commission considers that, for the purpose of assessing the Transaction, the exact geographic scope of the market can be left open, given that the Transaction would raise concerns under both geographic market definitions.

4.2.3. *Competitive assessment*

4.2.3.1. The Parties' activities in TPC

(54) Celanese acquired TPC production and compounding facilities in Ferrara, Italy, as a result of the purchase by Celanese of the SO.F.TER Group in 2016. Now Celanese polymerizes its own TPC in a dedicated polymerization site situated in Ferrara. When required, the TPC BP can be solid-stated in Ferrara. Up until July 2021, the reactor grade and solid-state TPC could also be compounded at Ferrara. Celanese, however, sold the site where its TPC compounding took place to Benvic in 2021 and transferred its TPC compounding capabilities to its compounding site

⁷⁶ See M.7932 – Dow / DuPont; M.3733 – Dow / DDE; M.3783 – TPG / British Vita; M.8674 – BASF / Solvay's EP and P&I Business.

⁷⁷ Form CO, paras 581 and 582.

⁷⁸ Responses to questionnaire Q3 sent to customers of TPC, question 11.

⁷⁹ Responses to questionnaire Q3 sent to customers of TPC, question 15.

⁸⁰ Responses to questionnaire Q3 sent to customers of TPC, question 13.

in Forli (Italy). [Information on TPC production arrangements].⁸¹ Celanese's TPC is sold under the brands Pibiflex and Riteflex.

- (55) In 2021, Celanese's TPC generated revenues of EUR [...]M globally and EUR [...]M on an EEA-wide basis, corresponding to sales volumes of [...] kT at worldwide level and [...] kT at EEA level in 2021.⁸²
- (56) The Target produces its own TPC [description of the Target's internal TPC production arrangements].⁸³ The Target also manufactures and sells TPC through its Toray joint venture. The joint venture was established in 1982 and is incorporated in Japan. DuPont holds a 50% stake in the joint venture, with the remaining 50% pertaining to Japanese company Toray Industries.⁸⁴ The Target's TPC is sold under the brand Hytrel.
- (57) In 2021, the Target's TPC business generated revenues of EUR [...]M globally and EUR [...]M on an EEA-wide basis, corresponding to sales volumes of [...] kT at worldwide level and [...] kT at EEA level in 2021, including the Target's stake in the Toray joint-venture.⁸⁵

4.2.3.2. The Notifying Party's view

- (58) The Notifying Party submits that the Parties' TPC activities are subject to several important constraints, notably strong competition from DSM, which could easily redirect its TPC exports to the EEA if prices were to increase in Europe. Moreover, according to the Notifying Party, customers could easily sponsor entry if required. As there are no technical limitations in transporting TPC and transportation costs are low, directing TPC volumes to the EEA is a credible threat if prices were to increase in the EEA.⁸⁶
- (59) In any event, the Notifying Party provides that Celanese has agreed to divest its entire TPC business, thereby removing the Parties' overlap in the supply of TPC, and that the extent to which the Transaction may raise competition concerns may be left open.⁸⁷

4.2.3.3. The Commission's assessment

4.2.3.3.1. *The Merged Entity would have high market shares in an already concentrated market*

- (60) According to the Horizontal Merger Guidelines, the larger the market share, the more likely a firm is to possess market power; and the larger the addition of market share, the more likely it is that a merger will lead to a significant increase in market power. The larger the increase in the sales base on which to enjoy higher margins after a price increase, the more likely it is that the merging firms will find such a price increase profitable despite the accompanying reduction in output. Although

⁸¹ Form CO, paragraph 512.

⁸² Form CO, paragraph 524.

⁸³ Form CO, paragraphs 549 and 555.

⁸⁴ Form CO, paragraph 560.

⁸⁵ Form CO, paragraph 548.

⁸⁶ Form CO, paragraph 589.

⁸⁷ Form CO, paragraph 580.

market shares and additions of market shares only provide first indications of market power and increases in market power, they are normally important factors in the assessment.⁸⁸

- (61) The market shares of the Merged Entity and its competitors in the TPC market at global level in 2021 are shown in Table 2.⁸⁹

Table 2: Market shares in TPC at worldwide level in 2021

	Volume in kT	Market share
Celanese	[...]	[0-5]%
The Target	[...]	[30-40]%
DuPont Toray JV (DuPont stake)	[...]	[0-5]%
Combined	[...]	[40-50]%
DSM	[...]	[20-30]%
LG Chem	[...]	[5-10]%
Jiangyin Hetron	[...]	[5-10]%
Yizheng Chemical Fiber	[...]	[0-5]%
TUNHE	[...]	[0-5]%
Others	[...]	[10-20]%
Total	137.94	100%

- (62) The Transaction would therefore lead to a combined market share of [40-50]%, with an increment slightly above [0-5]%. The merged entity would hold a share twice as big as its nearest competitor DSM. Competing alternatives would be Korean player LG Chem and Chinese companies Jiangyin Hetron, Yizheng Chemical Fiber and TUNHE. All other players active in the TPC global market have market shares below 3%.
- (63) The existing concentration and the increase in concentration are also reflected in the relevant Herfindahl-Hirschmann index (HHI) values. In 2021, the global market for TPC would have a pre-Transaction HHI value of [2000-2500]. Post-Transaction, this level of concentration would significantly increase. The post-Transaction HHI value for TPC would be [2000-2500] with an increment of [300-400]. These values are above the thresholds for which the Commission is unlikely to find competition concerns.⁹⁰
- (64) The market shares of the Merged Entity and its competitors in the TPC market at EEA level in 2021 are shown in Table 3.

⁸⁸ Horizontal Merger Guidelines, paragraph 27.

⁸⁹ Form CO, Table 36.

⁹⁰ Horizontal Merger Guidelines (“HMG”), paragraphs 19 and 20. « *The Commission is unlikely to identify horizontal competition concerns in a market with a post-merger HHI below 1000. Such markets normally do not require extensive analysis. The Commission is also unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1000 and 2000 and a delta below 250, or a merger with a post-merger HHI above 2000 and a delta below 150, except where special circumstances (...) are present*”.

Table 3: Market shares in TPC at EEA level in 2021

	Volume in kT	Market share
Celanese	[...]	[5-10]%
The Target	[...]	[40-50]%
Combined	[...]	[50-60]%
DSM	[...]	[40-50]%
LG Chem	[...]	[0-5]%
Total	35	100%

- (65) The Transaction would therefore lead to a combined market share above 50%, with an increment of [5-10]%. The Commission notes that, according to well-established case-law,⁹¹ a market share above 50% is in itself indicative of a dominant position. While the EEA TPC was already very concentrated, the number of competing alternatives would be further reduced from three to two following the Transaction, as only the merged entity and DSM would be present. Korean player LG Chem has a residual share in the EEA.
- (66) The strong existing concentration of the market and the significant increase in concentration are also reflected in the relevant Herfindahl-Hirschmann index (HHI) values. In 2021, the EEA market for TPC would have a pre-Transaction HHI value of [4000-4500]. Post-Transaction, this level of concentration would significantly increase. The post-Transaction HHI value for TPC would be [4500-5000] with an increment of [800-900]. These values are significantly above the thresholds for which the Commission is unlikely to find competition concerns.⁹²
- (67) The oligopolistic market structure of the TPC market in the EEA was signalled by respondents to the market investigation, who highlighted the negative impact on competition that a further reduction would create. For example one customer noted that *“The TPC market is already oligopolistic. For competitiveness, one fewer actor would be dramatic”*.⁹³
- (68) For the reasons set out in this Section, the Commission considers that the Transaction results in large or very large combined market shares. The Commission further finds that the Transaction leads to a high or very high degree of concentration in the global or EEA market for TPCs.

4.2.3.3.2. Closeness of competition between the Parties

- (69) According to the HMG, products may be differentiated within a relevant market such that some products are closer substitutes than others. The higher the degree of substitutability between the merging firms' products, the more likely it is that the

⁹¹ Horizontal Merger Guidelines, paragraph 17.

⁹² Horizontal Merger Guidelines, paragraphs 19 and 20. « *The Commission is unlikely to identify horizontal competition concerns in a market with a post-merger HHI below 1000. Such markets normally do not require extensive analysis. The Commission is also unlikely to identify horizontal competition concerns in a merger with a post-merger HHI between 1000 and 2000 and a delta below 250, or a merger with a post-merger HHI above 2000 and a delta below 150, except where special circumstances (...) are present* ».

⁹³ Responses to questionnaire Q3 sent to TPC customers, question 30.1.

merging firms will raise prices significantly. For example, a merger between two producers offering products which a substantial number of customers regard as their first and second choices could generate a significant price increase.⁹⁴

- (70) The market investigation has revealed that Celanese and DuPont are considered by customers as close alternatives in the TPC market. In particular, a majority of customers consider that DuPont and Celanese are particularly close competitors in the supply of TPC.⁹⁵ As explained by one customer “*They are competitors in terms of product applications, markets, and regions of coverage*”. A second customer claims that that they offer “*Perfect substitutable products*”. A third customer submits that “*They offer a lot of comparable products on the market*”.⁹⁶
- (71) In that regard, some customers also noted that there are some types of TPC for which Celanese and DuPont compete closely, notably as regards axle boots/gear shafts for the automotive industry.⁹⁷ When asked whether there are competitors that would also be able to supply that type(s) of TPC, in the EEA and globally, one customer replied “*Maybe in theory DSM but they don't definitely comply with all the needed characteristics. And today, due to the high demand, they don't answer to our requests*”.⁹⁸
- (72) Regarding competitive strengths, DuPont is ranked in general at a higher level than Celanese on R&D, portfolio, know-how as well as on price competitiveness. Nevertheless, Celanese and DuPont are in general considered as providing comparable services and product quality. One customer noted in particular “*Celanese and Dupont in my opinion are at the same level of Know How and service. DuPont for the moment has lower prices than Celanese for the TPC's (anyway both are high)*”.⁹⁹
- (73) On a possible global market, DuPont and Celanese also benefit from their global coverage, which is important for customers when selecting a supplier as they expect timely deliveries in all their factories. DuPont has TPC production plants in Europe, Asia and the US. Although Celanese only produces TPC in Italy, it sells in all world regions. This distinguishes Celanese, DuPont (as well as DSM) from Asian suppliers that are not present in Europe and could not compete on equal footing with the Parties as regards global coverage. As explained by one customer “*In the current market conditions, security of supply and global coverage are most important.*”¹⁰⁰
- (74) Regarding customers’ sourcing, the Commission notes that a majority of suppliers sources TPC from only three suppliers (Celanese, DuPont and DSM) and that Celanese and DuPont are systematically mentioned among the suppliers of the customers having responded to the market investigation.¹⁰¹ Celanese and DuPont are sometimes the only suppliers of some respondents. As explained by one

⁹⁴ Horizontal Merger Guidelines, paragraph 28.

⁹⁵ Responses to questionnaire Q3 sent to TPC customers, question 23.

⁹⁶ Responses to questionnaire Q3 sent to TPC customers, question 23-1.

⁹⁷ Responses to questionnaire Q3 sent to TPC customers, question 24.

⁹⁸ Responses to questionnaire Q3 sent to TPC customers, question 24-2.

⁹⁹ Responses to questionnaire Q3 sent to TPC customers, question 22.3.

¹⁰⁰ Responses to questionnaire Q3 sent to TPC customers, question 21.1

¹⁰¹ Responses to questionnaire Q3 sent to TPC customers, question 17.

customer “We procure this material only from Celanese and DUPONT. Therefore, if they merge both together, we will be fully dependant on only one company. And introducing an alternative provider will be very long and expensive”.¹⁰²

- (75) Based on the high degree of substitutability between the Merging Parties ‘products and the fact that rivalry between the Merging Parties has been an important source of competition on the market, as developed in this Section, the Commission considers that the Parties are close competitors in the TPC market.

4.2.3.3.3. *Customers have very limited possibilities to switch suppliers*

- (76) Customers of the merging parties may have difficulties switching to other suppliers because there are few alternative suppliers or because they face substantial switching costs. Such customers are particularly vulnerable to price increases. The merger may affect these customers' ability to protect themselves against price increases. In particular, this may be the case for customers that have used dual sourcing from the two merging firms as a means of obtaining competitive prices. Evidence of past customer switching patterns and reactions to price changes may provide important information in this respect.¹⁰³
- (77) An overwhelming majority of customers having responded to the market investigation explained that it is either difficult or very difficult to switch suppliers for TPC.¹⁰⁴ This situation is linked to the characteristics of the market where qualification processes of products by customers play a paramount role.
- (78) In the first place, in the TPC market, lengthy testing/qualification processes may limit the ability of the final or intermediate customer (like moulders, as discussed below in this section) to switch to a new supplier. As explained by the Notifying Party, the scope and extent of the qualification process will vary by customer and end-use application. Materials used in safety-critical applications generally undergo more rigorous testing. A material’s safety is a key concern for parts used in sectors such as automotive, aircraft, medical, etc., requiring in-depth testing.¹⁰⁵
- (79) Moreover, a material’s safety review is only one part of the qualification process, and other considerations such as overall performance and attributes of the product are equally important in the qualification of a supplier.¹⁰⁶ Moreover, attributes such as weatherability, UV stability and fatigue life may require additional evaluation. In such cases, the testing and resulting qualification process may last 12 to 24 months, and sometimes longer. In the electrical sector for instance, the process can take up to 24 months for applications requiring rigorous testing (such as terminal blocks). The cost of qualification – i.e., of selecting a new material – typically ranges from USD 70,000 to USD 200,000 in applications involving safety considerations, including certain automotive, medical and electrical applications.¹⁰⁷

¹⁰² Responses to questionnaire Q3 sent to TPC customers, question 29-1.

¹⁰³ Horizontal Merger Guidelines, paragraph 31.

¹⁰⁴ Responses to questionnaire Q3 sent to TPC customers, question 26.

¹⁰⁵ Form CO, paragraph 161.

¹⁰⁶ Form CO, paragraph 162.

¹⁰⁷ Form CO, footnote 54.

- (80) This very stringent qualification process for TPC applications has been widely confirmed by respondents to the market investigation. In particular, qualification processes for new suppliers has been identified by TPC customers as the main barrier to switching suppliers.¹⁰⁸ As explained by one customer “*Automobile homologation for new products is costly, time-consuming, and demanding*”.¹⁰⁹ Another customer notes “*Automotive standards requires full homologation of the product if a raw material or supplier is changed. This procedure is considered as a main change and requires full testing and an approval process flow from all levels of the supply chain, including OEM's and legal entities (if required)*”.¹¹⁰ A third customer submits “*Materials usually need OEM (customer) approval, which is a long lasting process (2 -3 years) with validation and testing which is very cost intensive. Most of our projects have only one material approved (single source), due to above-mentioned reasons. Supplier/material cannot easily be changed/substituted due to technical and customer approval reasons*”.¹¹¹ Finally, according to a fourth customer “*To perform a new development or validation testing plan will consume a lot of resources and cost a lot of money, which are one of the roadblocks that do not allow to replace TPC EP in a short term*”.¹¹²
- (81) One customer also explains that the time-period necessary for a change of supplier due to the process of testing and re-evaluation to be at least 1.5 years. In addition, in the automotive industry, the life cycle of a car model also plays a role - OEMs tend to not change grades and requirements within the seven year-lifetime of a car, and their approval is required in order to change suppliers during this cycle period.¹¹³
- (82) In the second place, intermediate customers such as moulders in the automotive industry would also be impacted by price increases as their possibilities to switch are more limited or even inexistent. Generally, moulders typically act as sub-contractors for Tier 1 suppliers for OEMs in the automotive industry, and in effect are means for Tier 1 suppliers to outsource production (moulding) of relevant parts. Moulders generally choose EP suppliers freely; however, in certain industries – such as automotive – Tier 1 companies /OEMs may be involved the selection of the TPC. Automotive represents 60% of the use of TPC.
- (83) The moulders explained during the market investigation that the choice of the supplier for the TPC material is usually dictated by the final customer (either a Tier 1 customer or an OEM) and that they have no other choice than to comply with this selection. As explained by a Portuguese moulder “*TPC raw material definition is responsibility of our costumer - GKN, as well as OEM's final costumer. This means that (the moulder) is not allowed to procure or produce any alternatives sources, without the acceptance of GKN and the OEM.*” Another moulder claims that “*The use of our TPC is dictated by our customers, brand and type, interchanging is not an option*”.¹¹⁴

¹⁰⁸ Responses to questionnaire Q3 sent to TPC customers, question 26.1.

¹⁰⁹ Responses to questionnaire Q3 sent to TPC customers, question 26.2.

¹¹⁰ Responses to questionnaire Q3 sent to TPC customers, question 27.1.

¹¹¹ Responses to questionnaire Q3 sent to TPC customers, question 6.1.

¹¹² Responses to questionnaire Q3 sent to TPC customers, question 6.1.

¹¹³ Non-confidential minutes of a conference call with a TPC supplier dated 16 May 2022, paragraph 7.

¹¹⁴ Responses to questionnaire Q3 sent to TPC customers, question 6-1.

- (84) Ultimately, in case of a price increase of TPC, moulders have no possibilities to switch. In this situation, the moulder has to wait for the price agreement between Tier 1 customer and TPC supplier. If an agreement is found, the moulders can then try to negotiate with the Tier 1 customer a potential increase of its own price, with a weak leveraging position, as they are dependent of the Tier 1 customer for the definition of the product and the choice of the supplier.¹¹⁵
- (85) The Notifying Party confirmed in the Form CO that switching is quite uncommon in this industry, even if it attributes this lack of switching to other parameters than switching costs or barriers. As explained by the Notifying Party *“In the Parties’ experience, customers prefer not to change suppliers once they have chosen their EP supplier(s) for a given project. While they could always re-start a tendering and qualification process, they generally do not. The Parties believe the absence of switching during the lifetime of a project reflects general customer satisfaction and/or the ability to multi-source, rather than high switching barriers.”*¹¹⁶
- (86) For the reasons set out in this Section, the Commission considers that the TPC market exhibits significant costs and barriers to switching, due to lengthy and expensive qualification processes, or that switching may in some cases not even be possible (for example for moulders)..

4.2.3.3.4. *Entry in the TPC market is unlikely to occur*

- (87) Under the HMG, when entering a market is sufficiently easy, a merger is unlikely to pose any significant anti-competitive risk. Therefore, entry analysis constitutes an important element of the overall competitive assessment. For entry to be considered a sufficient competitive constraint on the merging parties, it must be shown to be likely, timely and sufficient to deter or defeat any potential anti-competitive effects of the merger.¹¹⁷
- (88) A majority of customers having responded to the market investigation submits that there has not been any entries into the market for the supply of TPC in the last five years.¹¹⁸ A competitor based in Asia explains that *“It is difficult to enter into the market due to higher technical barrier and name value of DuPont Hytrel”*.¹¹⁹ Intellectual property rights and know-how, level of investment required to set up a production facility and lack of expertise were among the main barriers to entry mentioned by competitors.¹²⁰
- (89) Notably, even assuming a global market for TPC, entry and expansion of Asian suppliers into Europe does not appear to be a constraint for EEA-based suppliers of TPC. One customer noted in that regard that alternative suppliers from the Asia-Pacific regions have a limited portfolio and are not viewed as competitively comparable in the market. This customer added that in case of a switch to Asian suppliers, these suppliers would not only have to serve plants in Asia, but also in

¹¹⁵ Responses to questionnaire Q3 sent to TPC customers, question 7-1.

¹¹⁶ Form CO, paragraph 166.

¹¹⁷ Horizontal Merger Guidelines, paragraph 68.

¹¹⁸ Responses to questionnaire Q3 sent to TPC customers, question 25.

¹¹⁹ Responses to questionnaire Q1 sent to competitors, question 68-1.

¹²⁰ Responses to questionnaire Q1 sent to competitors, question 69.

other locations, which require to set up a network of distributors/partners with global coverage.¹²¹

- (90) For the set out in this Section, the Commission considers unlikely that market entry would constitute a sufficient competitive constraint on the merged Entity to deter or defeat any potential anti-competitive effects of the Transaction

4.2.3.3.5. *Customers expect a reduction of alternatives and price increases in TPC after the Transaction.*

- (91) A majority of customers having responded to the market investigation expect a reduction of alternatives post Transaction and a risk of price increases of TPC after the Transaction.

- (92) One customer explained in that regard that it expects “*Increase of risk due to the supply of many grades and brand from one and only company*”. Another customer puts forward that “*We will have less negotiation power (fully dependant to Celanese).*” For a third customer, consequences of the Transaction will be “*The lack of competitiveness will drive the prices, lack of available material alternatives*”.¹²² A fourth customer claims “*Celanese would control all major raw materials that are critical to our operations*”.¹²³ For a fifth customer “*Dupont has excellent R&D and technological capabilities. If Celanese takes it, they will have a dominant market position with substantial monopoly risks*”.¹²⁴

- (93) In the mind of customers, this expected price increase is even more likely because Celanese already charges higher prices compared to DuPont and customers expect that TPC prices of DuPont will be aligned on Celanese’s as soon as the Transaction is implemented. One customer explained in that regard that “*As for today Celanese as higher prices than Dupont, this means that depending on the strategy of Celanese a price impact could happen*”.¹²⁵ This is confirmed by a second customer who notes “*Since 2021 Celanese increased the TPC price extremely, which is not in line with other producers*”.¹²⁶ A third customer notes “*Celanese prices are a little higher than DSM, and Hytrel that for the moment have still competitive prices. Celanese and DSM have being heavily increasing prices since mid of 2021.*”¹²⁷

- (94) Customers are particularly worried about the merger because price increases did take place in 2016 when Celanese acquired the TPC business of SO.F.TER. One customer is concerned that “*Celanese would increase the price for the TPC materials as they did it with the Pibiflex material which they bought from Softer*”.¹²⁸ A second customer puts forward that “*(we) used to be supplied by the SO.F.TER Group, but that in 2016 the Group was acquired by Celanese in 2016. Following this acquisition, according to the Company, the whole TPC market*

¹²¹ Non-confidential minutes of a conference call with a TPC supplier dated 16 May 2022, paragraph 11.

¹²² Responses to questionnaire Q3 sent to TPC customers, question 31.1.

¹²³ Responses to questionnaire Q3 sent to TPC customers, question 34.1.

¹²⁴ Responses to questionnaire Q3 sent to TPC customers, question 22.1.

¹²⁵ Responses to questionnaire Q3 sent to TPC customers, question 30.1.

¹²⁶ Responses to questionnaire Q3 sent to TPC customers, question 22.3.

¹²⁷ Responses to questionnaire Q3 sent to TPC customers, question 21.1.

¹²⁸ Responses to questionnaire Q3 sent to TPC customers, question 31.1.

*noticed a significant price increase. (...) this price increase was not due to any technical reasons, but that since SO.F.TER Group's price positioning in comparison to DSM and DuPont was notably low at the time of the acquisition, Celanese increased prices on the product".*¹²⁹ The Commission notes that the Transaction takes place in the context of an ongoing concentration of the engineering plastic markets in general and TPC in particular. As explained by one customer "we see an ongoing concentration to a small number of supplier of technical plasticresins. DSM + Lanxess + Avient, Celanese - Du Pont, Celanese + Exxon (Santoprene) ». "¹³⁰

4.2.3.3.6. Conclusion

- (95) Based on the above, and in particular in the light of (i) high combined market shares of the Parties at EEA and worldwide level and a significant increase of concentration level of the market, (ii) closeness of competition between the Parties pre-Transaction, (iii) the significant costs and barriers to switching that customers are facing and (iii) the limited numbers of alternatives in Europe and globally, notably for customers that require a global coverage, the Commission raises serious doubts as to the compatibility of the Transaction with the internal market and with the functioning of the EEA Agreement for the TPC market.

5. COMMITMENTS

5.1. Framework for the assessment of the commitments

- (96) Where a notified concentration raises serious doubts as to its compatibility with the internal market, the parties may undertake to modify the concentration to remove the grounds for the serious doubts identified by the Commission. Pursuant to Article 6(2) of the Merger Regulation, where the Commission finds that, following modification by the undertakings concerned, a notified concentration no longer raises serious doubts, it shall declare the concentration compatible with the internal market pursuant to Article 6(1)(b) of the Merger Regulation.
- (97) As set out in the Commission's Remedies Notice,¹³¹ the commitments proposed by the parties have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view.¹³² Moreover, commitments in Phase I can only be accepted where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out "serious doubts" within the meaning of Article 6(1)(c) of the Merger Regulation.¹³³
- (98) In assessing whether the proposed commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale and scope of the proposed commitments with reference to the structure and

¹²⁹ Non-confidential minutes of a conference call with a TPC supplier dated 16 May 2022, paragraph 9.

¹³⁰ Responses to questionnaire Q3 sent to TPC customers, question 32.

¹³¹ Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1-27), the "Remedies Notice".

¹³² Remedies Notice, paragraphs 9 and 61.

¹³³ Remedies Notice, paragraph 81.

the particular characteristics of the market in which the competition concerns arise, including the position of the parties and other participants on the market.¹³⁴

- (99) In order for the proposed commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.¹³⁵
- (100) Concerning the type of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the required standards. Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty, at the time of its Decision, that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that effective competition will be maintained.¹³⁶ Divestiture commitments are normally the best way to eliminate competition concerns resulting from horizontal overlaps.
- (101) The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern. The divested business must include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness.¹³⁷
- (102) The intended effect from the divestiture will only be achieved if and once the divested business is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. The potential of a business to attract a suitable purchaser is an important element of the Commission's assessment of the appropriateness of the proposed commitment.¹³⁸
- (103) Even though normally the divestiture of an existing viable stand-alone business is required, the Commission, by observing the principle of proportionality, may also advise the parties to consider the divestiture of businesses which have existing strong links or are partially integrated with businesses retained by the parties and therefore need to be 'carved out' in those respects. Conversely, carving-out a business from the scope of the commitments can only be accepted by the Commission if it can be certain that, at least at the time when the business is transferred to the purchaser, a viable business on a stand-alone basis will be divested and the risks for the viability and competitiveness caused by the carve-out will thereby be reduced to a minimum.¹³⁹

¹³⁴ Remedies Notice, paragraph 12.

¹³⁵ Remedies Notice, paragraph 9.

¹³⁶ Remedies Notice, paragraph 10.

¹³⁷ Remedies Notice, paragraphs 23-25.

¹³⁸ Remedies Notice, paragraph 47.

¹³⁹ Remedies Notice, paragraphs 35-36.

5.2. Procedure

- (104) On 13 September 2022, the Commission informed the Parties of the serious doubts regarding the TPC market arising from the preliminary assessment of the Transaction during a ‘State of Play’ meeting.
- (105) In order to remove the serious doubts raised by the Transaction and render the concentration compatible with the internal market, on 20 September 2022, the Notifying Party formally submitted a first set of commitments under Article 6(2) of the Merger Regulation (the ‘Initial Commitments’).
- (106) On 21 September 2022, the Commission launched a market test of the Initial Commitments in order to assess whether they were sufficient to remedy the serious doubts identified and described under Section 5 above.
- (107) Following the feedback received through the market test, the Notifying Party formally submitted amended commitments on 30 September 2022 (the ‘Final Commitments’). The Final Commitments are annexed to this decision,¹⁴⁰ and form an integral part thereof.

5.3. The proposed Commitments

5.3.1. Description of the Initial Commitments

- (108) The Initial Commitments consist of the divestiture of the entire global TPC business of Celanese, removing the complete overlap between the Parties’ activities in this market. The assets to be divested under the Commitments are collectively referred to as the “Divestment Business”. Specifically, the following elements are included in the Divestment Business:
- (a) Celanese’s TPC manufacturing (polymerization) facility in Ferrara, Italy (the ‘Donegani Site’)¹⁴¹, including all tangible assets and personnel;
 - (b) The compounding line Q3 located at Celanese’s production site in Forli, Italy (the ‘Forli Site’), [confidential logistics arrangements].
 - (c) All intangible rights and property used for the purpose of TPC production, distribution and sale including the Pibiflex and Riteflex brand names and such other trademarks, patents, patent applications, know-how and formulations as used in the TPC business.
 - (d) The grant of a [...] licence to use the Pibiter brand name for the sales of the polyester hotmelt product produced at the Donegani Site.¹⁴²
 - (e) Subject to customary third-party consents where necessary, all current customer lists, contracts and relationships relating to TPC;

¹⁴⁰ See Annex 1.

¹⁴¹ The Donegani Site is a manufacturing plant for TPC BP. Celanese currently transports TPC BP produced at the Donegani Site for compounding to its production facility in Forli, Italy.

¹⁴² Celanese currently produces polyester hotmelt at the Donegani Site, [confidential details about polyester hotmelt sales]. While the Commission did not identify competition concerns for the manufacture and sale of polyester hotmelt, the product is included to preserve the viability of the Divestment Business.

- (f) At the option of the purchaser, all reasonable assistance by Celanese and customers to obtain re-qualification / re-certification of the productions currently supplied by the Divestment Business;
 - (g) Subject to customary third-party consents where necessary all contracts, agreements, commitments, understandings and orders relating to the suppliers that supply or toll-manufacture on behalf of the Divestment Business;
 - (h) at the option of the purchaser, certain additional personnel [...];
 - (i) A time-limited transitional toll-compounding agreement for an initial term of 6 months, [confidential details concerning tolling arrangement];
 - (j) Transitional support by Celanese to the purchaser for warehousing and logistics (6 months, [confidential details concerning warehousing and logistics arrangements]) and IT (3 months).
- (109) The Initial Commitments provide that the purchaser of the Divestment Business will meet the following criteria:
- (a) The purchaser shall be independent and unconnected to the Parties;
 - (b) The purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business;
 - (c) The acquisition of the Divestment Business by the purchaser must neither be likely to create *prima facie* competition concerns nor give rise to the risk that the implementation of the commitments will be delayed;
 - (d) The purchaser shall have the required capabilities in sales and R&D to integrate the assets of the Divestment Business and shall be able to transfer the compounding line Q3 and qualify its output in accordance with customer requirements.
- (110) On 3 August 2022, the Notifying Party entered into a Business and Asset Purchase Agreement with Taro Plast S.P.A., Italy (“Taro Plast”) for the acquisition of the Divestment Business. Taro Plast is a company active in the manufacturing and sale of a portfolio of engineering plastics with pre-existing operations in Europe and proven experience particularly in compounding.¹⁴³
- (111) The Notifying Party provides that the Divestment Business is a viable, profitable and competitive business, which generated a total turnover of EUR [...] million in 2021 and is forecasted to generate a turnover of EUR [...] million in 2022.¹⁴⁴
- 5.3.2. *Results of the market test*
- (112) Overall, the replies obtained following the market test were positive. A majority of respondents to the market test forming an opinion on that question indicated that the Initial Commitments are suitable, i.e. their scope is appropriate to effectively

¹⁴³ Form RM, paragraph 12.

¹⁴⁴ Form RM, Table 1.

eliminate the competitive concerns identified.¹⁴⁵ The majority of respondents indicated to be ready to purchase TPC from the Divestment Business.¹⁴⁶

- (113) Regarding the scope and viability of the Divestment business, a majority of respondents to the market test forming an opinion on that question indicated that the scope of the proposed commitments is sufficient to ensure that Taro Plast can run the Divestment Business immediately as a viable and competitive force.¹⁴⁷ Respondents did overall not point at significant tangible or intangible assets, or personnel, that would be missing from the Divestment Business.¹⁴⁸ Most respondents forming an opinion indicated that the Initial Commitments are sufficient to run a viable business that can exert a competitive constraint on Celanese for the production and supply of TPC.¹⁴⁹
- (114) Regarding Taro Plast as proposed purchaser of the Divestment Business,¹⁵⁰ most respondents to the market test forming an opinion submitted that Taro Plast has the capacity to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.¹⁵¹ However, some market participants pointed at the need for Taro Plast to build up quickly the necessary know-how and R&D capabilities in the area of TPC polymerisation and purchasing of the necessary inputs in order to compete with established competitors.¹⁵²
- (115) Furthermore, customers indicated risks associated with the transfer of the Divestment Business, and specifically with the physical transfer of the compounding line from the Forli Site to the premises of the purchaser. Moreover, a significant share of customers indicate difficulties or risks associated with the process of re-qualification of the products compounded in the purchaser's premises (either with the transferred line or existing assets in Taro Plast's facility), that would affect the Divestment Business' viability and competitiveness.¹⁵³ Customers specifically indicated the need to build a sufficient stock of TPC to allow the Divestment Business to bridge the period in which the compounding line is not operational, and therefore capacities are reduced compared to current levels.¹⁵⁴
- (116) Feedback from respondents suggests that risks associated with the transfer of the Divestment Business, and particularly in relation to the transfer of the compounding line from the Forli Site to the premises of the purchaser, stem *inter*

¹⁴⁵ Questionnaire Q4 sent to customers and competitors for TPC, question 4; most of all customers responding to the question indicated to not be able to form an opinion.

¹⁴⁶ Questionnaire Q4 sent to customers and competitors for TPC, question 27.

¹⁴⁷ Questionnaire Q4 sent to customers and competitors for TPC, question 15; most of all customers responding to the question indicated to not be able to form an opinion.

¹⁴⁸ Questionnaire Q4 sent to customers and competitors for TPC, questions 19 and 23.

¹⁴⁹ Questionnaire Q4 sent to customers and competitors for TPC, question 26 and 26.1; a substantial share of customers responding to the question indicated to not be able to form an opinion.

¹⁵⁰ The Commission notes that any observation of the current capabilities of Taro Plast are without prejudice on the suitability of the purchaser, which will be assessed at a later stage in a separate decision.

¹⁵¹ Questionnaire Q4 sent to customers and competitors for TPC, question 6; most of all customers responding to the question indicated to not be able to form an opinion.

¹⁵² Questionnaire Q4 sent to customers and competitors for TPC, question 6.1.

¹⁵³ Questionnaire Q4 sent to customers and competitors for TPC, question 10.

¹⁵⁴ Questionnaire Q4 sent to customers and competitors for TPC, question 12 and 12.1.

alia from the need for re-qualification of the products with a significant share of customers, which responding customers expect to take mostly 6 to 12 months.¹⁵⁵ Customers also pointed at the need of the purchaser to have some certification in place, particularly an ITAF-16949 certification important for customers from the automotive industry.¹⁵⁶

5.3.3. *The Commission's assessment of the Initial Commitments*

- (117) As explained in Section 5 above, the Commission considers that the Transaction gives rise to serious doubts as to its compatibility with the internal market in relation to the manufacture and sale of TPC at EEA-wide and global level. The Divestment Business specified in the Final Commitments consists of the entire global TPC business of the Notifying Party, and therefore removes the full overlap between the Parties in the markets where the Commission identified serious doubts stemming from the Transaction.
- (118) In the market test, a majority of respondents forming an opinion on that question confirmed the suitability of the commitments, *i.e.* that their scope is appropriate to effectively eliminate the competitive concerns identified by the Commission.¹⁵⁷ The majority of responding customers indicated to be ready to purchase TPC from the Divestment Business.¹⁵⁸
- (119) Furthermore, the Commission considers the Divestment Business is viable and would allow the purchaser to compete effectively for the manufacture and supply of TPC at EEA-wide and global level.
- (120) On the basis of information provided by the Notifying Party, the Commission notes that the Divestment Business is consistently profitable and a strong growth in revenues is forecasted in 2022 and 2023 compared to 2021.¹⁵⁹ The Commission further notes that Celanese acquired the Donegani site only in 2016, which facilitates the carve-out of the Divestment Business as a self-standing production facility. The Divestment Business further has a long-established customer base, as the Notifying Party provides that the largest 10 customers of the Divestment Business has remained stable since Celanese acquired the business in 2016. Lastly, most respondents forming an opinion into the market test indicated that the commitments are sufficient to run a viable business that can exert a competitive constraint on Celanese for the production and supply of TPC.¹⁶⁰
- (121) The Divestment Business is not a self-standing business, since lacks functions such as sales, procurement and other corporate functions. To address these shortcomings, the Notifying Party has entered into an agreement for the sale of the

¹⁵⁵ Questionnaire Q4 sent to customers and competitors for TPC, question 9, 9.1 and 11.

¹⁵⁶ Questionnaire Q4 sent to customers and competitors for TPC, questions 20 and 21.

¹⁵⁷ Questionnaire Q4 sent to customers and competitors for TPC, question 4; most of all customers responding to the question indicated to not be able to form an opinion.

¹⁵⁸ Questionnaire Q4 sent to customers and competitors for TPC, question 27.

¹⁵⁹ Form RM, paragraphs 28 to 30. The Notifying Party further commits to make available to the purchaser the amount equal to the forecasted capex funding that Celanese planned to invest in 2022 and shall, to that end, establish escrow account funded with this amount; see Final Commitments, paragraph 8.

¹⁶⁰ Questionnaire Q4 sent to customers and competitors for TPC, question 26 and 26.1; a substantial share of customers responding to the question indicated to not be able to form an opinion.

Divestment Business with Taro Plast, an established competitor in the field of engineering plastics, with pre-existing functions such as sales, procurement and other corporate functions.¹⁶¹ In the market test, most respondents forming an opinion submitted that Taro Plast has the capacity to maintain and develop the Divestment Business as a viable and active competitive force.^{162 163}

- (122) Based on the feedback on the Initial Commitments received in the market test, as described in section 6.3.2. above, the Commission considers that the Initial Commitments have overall the appropriate scope to address the competition concerns identified. However, respondents to the market test identified the need for some improvements, particularly the need to build sufficient buffer stock of TPC for the Transition period, as well as the need to equip the purchaser with all required know-how and R&D capabilities in TPC production.
- (123) Furthermore, feedback received from the market test stressed some risks associated with the transfer of the Divestment Business, and particularly in relation to the transfer of the compounding line from the Forli Site to the premises of the purchaser. Customers particularly pointed at the need to re-qualify products with respect to their quality and suitability, which may take around 6 to 12 months. [Confidential customer views]. Therefore, the Commission considers that the Initial Commitments need to be amended by [confidential information on the scope of the divestment]. If the sale of the Divestment Business does not enable the purchaser to act as an effective competitive force on the global or EEA-wide market for TPC, for example because the risks associated with the transfer of the Divestment Business and the compounding line materialise, [confidential information on the scope of the divestment].
- (124) Finally, the Commission considers that such additional safeguards should be suitable to cater for any uncertainty stemming from the fact that a substantial share of responding customers indicated not to be sufficiently familiar with Taro Plast as proposed remedy taker.

5.3.4. *Description of the Final Commitments*

- (125) Following the results of the market test of the Initial Commitments, the Commission communicated the summary or the observations made by respondents to the market tests and its assessment to the Parties.

¹⁶¹ Form RM, paragraph 22.

¹⁶² Questionnaire Q4 sent to customers and competitors for TPC, question 6; most of all customers responding to the question indicated to not be able to form an opinion.

¹⁶³ The Commission notes that any observation of the current capabilities of Taro Plast are without prejudice on the suitability of the purchaser, which will be assessed at a later stage in a separate decision. In the event the Commission does not approve Taro Plast as the Purchaser, Celanese commits to find an alternative purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business on terms of sale approved by the Commission within the foreseen divestiture period. If the Notifying Party has not entered into such an agreement with a purchaser and on terms of sale approved by the Commission at the end of the foreseen divestiture period, it shall grant the divestiture trustee an exclusive mandate to sell the Divestment Business [confidential information regarding the scope of the divestment] in accordance to the procedure described in the Final Commitments; see Final Commitments, paragraph 2.

- (126) In order to address those observations, on 30 September 2022, the Notifying Party formally submitted the Final Commitments, which include the following amendments.

Additional R&D capabilities

- (127) The Notifying Party commits that [description of personnel], currently not located at the Donegani Site in Ferrara, Italy, is explicitly included as key personnel to the Divestment Business.¹⁶⁴ Furthermore, [description of personnel and secondment arrangements].¹⁶⁵

Buffer stock

- (128) [Description of inventory building arrangements]¹⁶⁶ [description of inventory building arrangements] to allow the build-up of further TPC inventory during the transition, and such inventory is to be reserved solely for the customers of the Divestment Business. [Description of inventory building arrangements].¹⁶⁷

[Confidential information on Celanese's obligations in the scope of its commitments]

- (129) [Confidential information on Celanese's obligations in the scope of its commitments].

- (130) [Confidential information on Celanese's obligations in the scope of its commitments].

- (131) [Confidential information on Celanese's obligations in the scope of its commitments]:¹⁶⁸

(a) [...]

(b) [...].¹⁶⁹

- (132) [Confidential information on Celanese's obligations in the scope of its commitments].

5.3.5. Commission's assessment of the Final Commitments

- (133) The Commission considers that, for the reasons set out below, the Final Commitments remove the serious doubts previously identified as to the compatibility of the Transaction with the internal market with respect to the manufacture and supply of TPC at EEA-level and global level.

¹⁶⁴ Final Commitments, paragraph 6(d).

¹⁶⁵ Schedule 1, 2(j).

¹⁶⁶ [Information on production lines].

¹⁶⁷ [References].

¹⁶⁸ [References].

¹⁶⁹ [References].

- (134) First, the Commission notes that Taro Plast's current capabilities are further strengthened by the Final Commitments. In the market test, customers specifically indicated that the purchaser would need sufficient product development and R&D capabilities to develop and manufacture TPC in the required quality. As a result of this feedback, the Final Commitments include [description of personnel] explicitly as key personnel, as well as [description of personnel].
- (135) Second, the Final Commitments mitigate the risks associated with the transfer of the Divestment Business and the compounding line flagged by market participants in response to the market test.
- (136) The Commission notes that the commitments include provisions for the transitional period, particularly a toll-manufacturing agreement [duration], by which the Notifying Party commits at commercially reasonable terms.¹⁷⁰ The purchaser therefore will have access to compounding capacities during the time when the compounding line Q3, included in the Divestment Business, is transferred to the premises of the purchaser.
- (137) The Final Commitments further provide for the build-up of additional buffer stock reserved for customers of the Divestment Business, to address respective indications received from customers in the market test.
- (138) [Confidential information on Celanese's obligations in the scope of its commitments].
- (139) [Confidential information on Celanese's obligations in the scope of its commitments].¹⁷¹ [Confidential information on Celanese's obligations in the scope of its commitments].¹⁷²
- (140) [Confidential information on Celanese's obligations in the scope of its commitments].
- (141) [Confidential information on Celanese's obligations in the scope of its commitments].
- (142) [Confidential information on Celanese's obligations in the scope of its commitments].
- (143) [Confidential information on Celanese's obligations in the scope of its commitments].
- (144) [Confidential information on Celanese's obligations in the scope of its commitments].
- (145) [Confidential information on Celanese's obligations in the scope of its commitments].

¹⁷⁰ Schedule 1, paragraph 2(1).

¹⁷¹ [Information on Celanese's production lines].

¹⁷² [Information on Celanese's production organisation].

- (146) For the reasons outlined above, the Commission concludes that the Final Commitments are sufficient in scope and suitable to eliminate the serious doubts as to the compatibility of the Transaction with the internal market and with the functioning of the EEA Agreement with respect to the manufacture and sale of TPC at EEA-wide and global level.

6. CONCLUSION

- (147) For the above reasons, the Commission has decided not to oppose the notified concentration as modified by the commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in sections B of the commitments annexed to the present Decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

**M.10721 CELANESE / DUPONT MOBILITY & MATERIALS
COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 6(2), of Council Regulation (EC) No 139/2004 (the “**Merger Regulation**”), Celanese Corporation (“**Celanese**”) hereby enters into the following Commitments (the “**Commitments**”) *vis-à-vis* the European Commission (the “**Commission**”) with a view to rendering the acquisition of the majority of the Mobility and Materials business of DuPont de Nemours, Inc. (the “**M&M Business**”, together with Celanese, the “**Parties**”) (the “**Concentration**”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 6(1)(b) of the Merger Regulation, to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “**Decision**”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “**Remedies Notice**”).

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

[Confidential information on the scope of the divestment].

Affiliated Undertakings: undertakings controlled by the Parties whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the “**Consolidated Jurisdictional Notice**”).

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of [...] the Divestment Business as indicated in Section B, paragraph 6(a), (b) and (c) and described in more detail in **Schedule 1**; [confidential information on the scope of the divestment].

Business and Asset Purchase Agreement: the business and asset purchase agreement (“**BAPA**”) dated 3 August 2022 between Celanese Production Italy S.R.L. and Celanese Sales Italy S.R.L and the Purchaser and attached as **Schedule 2**, as will be amended to reflect the final commitments.

Celanese: Celanese Corporation, a corporation listed on the New York Stock Exchange and incorporated under the laws of the United States with its registered office at Irving, Texas, USA.

Compounding Line Assets Transfer: the physical transfer of the compounding assets comprising the compounding line Q3 currently located at Celanese's Forli production facility to the Purchaser's compounding facility and all subsequent steps to secure that it becomes fully operational at the Purchaser's compounding facility.

Compounding Line Assets Transfer Completion Date: 31 December 2023.

[Confidential information on Celanese's obligations in the scope of its commitments].

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business as defined in Section B and described in more detail in **Schedule 1** that Celanese commits to divest.

Divestment Business Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

Divestment Business Closing Period: the period of two weeks from the approval of the Purchaser for, and the terms of sale of, the Divestment Business by the Commission, and in any event, not before 1 November 2022.

Divestment Commitments: the commitments set out in Sections B., D., and E.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Celanese and who has/have received from Celanese the exclusive Trustee mandate to sell the Divestment Business [...] to a Purchaser at no minimum price, [...].

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the Effective Date.

Hold Separate Manager: the person appointed by Celanese for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in **Schedule 1**, including the Hold Separate Manager.

M&M Business: the majority of the business division known as Mobility & Materials Business which is currently under the sole control of DuPont de Nemours, Inc. and which is the subject of the Concentration.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Celanese, and who has/have the duty to monitor the compliance of Celanese with the conditions and obligations attached to the Decision.

Parties: Celanese and the M&M Business.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel as well as the additional personnel listed in **Schedule 1**.

Purchaser: Taro Plast or such other purchaser approved by the Commission as acquirer of the Divestment Business [confidential information on the scope of the divestment], in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 24 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule 1: the schedule to the Commitments describing the Divestment Business in more detail.

[Confidential information on the scope of the divestment].

Taro Plast: Taro Plast S.P.A., a joint-stock company limited by shares with registered office at Soragna (PR), via Diolo 57/A, Italy.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of three months from the end of the First Divestiture Period.

Section B. The commitment to divest [...] Divestment Business

Commitment to divest

2. In order to maintain effective competition, Celanese commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 25 of these Commitments. Celanese has entered into a Business and Asset Purchase Agreement with Taro Plast. [Confidential information on the scope of Celanese's obligations]. If Celanese has not entered into such an agreement with a purchaser and on terms of sale approved by the Commission at the end of the First Divestiture Period, Celanese shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business [confidential information on the scope of the divestment] in accordance with the procedure described in paragraph 37 in the Trustee Divestiture Period.
3. Celanese shall be deemed to have complied with this commitment if:
 - (a) by the end of the Trustee Divestiture Period, Celanese or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 25 of these Commitments; and
 - (b) the Divestment Business Closing takes place within the Divestment Business Closing Period; and
 - (c) [confidential information on the scope of Celanese's obligations].
4. In the event that Celanese is required to sell the Divestment Business [confidential information on the scope of the divestment] during the First Divestment Period or the Trustee Divestiture Period, Celanese shall be deemed to have complied with this commitment if:
 - a) by the end of the relevant divestiture period, Celanese or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraphs 24 (a) – (d) and 25 of these Commitments, [confidential information on the scope of the divestment]; and

- b) the closing of the Divestment Business [confidential information on the scope of the divestment] take place within a period of [...] from the approval of the purchaser for, and the terms of sale of, the Divestment Business [confidential information on the scope of the divestment] by the Commission.
5. In order to maintain the structural effect of the Divestment Commitments, Celanese shall, for a period of ten years after the Divestment Business Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from Celanese showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 51 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

6. The Divestment Business, as described in more detail in **Schedule 1**, consists of a single Thermoplastic Co-Polyester Elastomer (“**TPC**”) production facility located at Piazzale Guido Donegani 12, Ferrara (Italy) and a single compounding line located at Forli (Italy) as well as the assets described in **Schedule 1**. The Divestment Business also has some incidental sales of polyester hotmelt and includes all of the production assets used to manufacture this product. The legal and functional structure of the Divestment Business as operated to date is as described in **Schedule 1**. The Divestment Business includes all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:
- (a) all tangible and intangible assets (including intellectual property rights);
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and

(d) the Personnel, which includes the following Key Personnel:

- [description of personnel]

7. In addition, the Divestment Business includes the benefit, for a transitional period [...] after the Divestment Business Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which Celanese supplies products or services to the Divestment Business, as detailed in **Schedule 1**, unless otherwise agreed with the Purchaser. Specifically:

(a) For an initial term of six months from the Divestment Business Closing [...] – the benefit of a toll-compounding agreement with Celanese [information on the cost] and to the same specifications as existed immediately prior to closing and in accordance with Celanese’s ordinary course of business.

(b) For an initial term of six months from the Divestment Business Closing [...] – the benefit of warehousing and logistics support services in North America and Asia to provide business continuity for customers of the Divestment Business that are located in these regions.

(c) For a period of three months from the Divestment Business Closing [...] – the benefit of IT services which are reasonably necessary for the Purchaser to carry out the TPC Divestment Business without interruptions whilst working to migrate the IT systems/applications and/or data (as applicable) to its systems.

8. Celanese commits to make available to the Purchaser the amount equal to the forecast capex funding that Celanese planned to invest in 2022 [confidential information on the scope of the planned investments and the funding mechanism].

9. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such arrangements (for example, confidential customer data, or other Confidential Information) will not be shared with, or passed on to, anyone outside of the Divestment Business’ operations.

[Confidential information on the scope of the divestment]

10. [Confidential information on the scope of the divestment].

11. [Confidential information on the scope of the divestment].
12. [Confidential information on the scope of the divestment];
13. [Confidential information on the scope of the divestment];
14. [Confidential information on the scope of the divestment].
15. [Confidential information on the scope of the divestment].
16. [Confidential information on the scope of the divestment].

Section C. Related commitments

Preservation of viability, marketability and competitiveness

17. From the Effective Date until the Divestment Business Closing, Celanese shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Celanese undertakes:
 - (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to Celanese's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, Celanese shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Celanese must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The

replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission;

Hold-separate obligations

18. Celanese commits, from the Effective Date until the Divestment Business Closing, to keep the Divestment Business separate from the business that Celanese will be retaining and, after closing of the notified transaction to keep the Divestment Business separate from the business that Celanese is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business retained by Celanese have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by Celanese and do not report to any individual outside the Divestment Business.
19. Until the Divestment Business Closing, Celanese shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business which Celanese is retaining. Immediately after the adoption of the Decision, Celanese shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Celanese. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 17(c) of these Commitments. The Commission may, after having heard Celanese, require Celanese to replace the Hold Separate Manager.

Ring-fencing

20. Celanese shall implement, or procure to implement, all necessary measures to ensure that it does not, from the Effective Date, obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by Celanese before the Effective Date will be eliminated and not be used by Celanese. In particular, the participation of the Divestment Business in any central information technology network shall be severed. Celanese may obtain or keep information relating to the Divestment Business which is reasonably necessary

for the divestiture of the Divestment Business or the disclosure of which to Celanese is required by law.

Non-solicitation clause

21. Celanese undertakes, subject to customary limitations, not to solicit, and to procure that its Affiliated Undertakings do not solicit, Personnel transferred with the Divestment Business for a period of [...] after the Divestment Business Closing.

Due diligence

22. [Confidential information on the divestment modalities], in order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Celanese shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
- (a) provide to potential purchasers sufficient information as regards the Divestment Business;
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

23. [Confidential information on the divestment modalities]:
- (a) Celanese shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than ten days after the end of every month [...] (or otherwise at the Commission's request). Celanese shall submit a list of all potential purchasers that express interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.
 - (b) Celanese shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

24. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

- (a) The Purchaser shall be independent of and unconnected to Celanese and DuPont de Nemours, Inc. and their respective Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
- (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Celanese and other competitors;
- (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business; and
- (d) The Purchaser shall have the required capabilities in sales and R&D to integrate the assets of the Divestment Business and, in the case of Taro Plast or otherwise to the extent necessary, shall be able to transfer the compounding line Q3 and qualify its output in accordance with customer requirements.

25. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. Celanese shall submit to the Commission and the Monitoring Trustee a fully documented and reasoned proposal, including a copy of the final agreement(s), regarding its agreement with Taro Plast at the latest within [...] of the Effective Date [confidential information on the scope of Celanese's obligations]. [...], Celanese must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Divestment Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Divestment Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or

different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

26. Celanese shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. Celanese commits not to close the Concentration before the appointment of a Monitoring Trustee.
27. In the event [information on the divestment modalities] Celanese has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period, Celanese shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.
28. The Trustee shall:
 - (i) at the time of appointment, be independent of Celanese and its Affiliated Undertakings;
 - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
 - (iii) neither have nor become exposed to a Conflict of Interest.
29. The Trustee shall be remunerated by Celanese in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by Celanese

30. No later than two weeks after the Effective Date, Celanese shall submit the name or names of one or more natural or legal persons whom Celanese proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Celanese shall submit a list of one or more persons whom

Celanese proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 28 of these Commitments and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

31. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Celanese shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Celanese shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Celanese

32. If all the proposed Trustees are rejected, Celanese shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 26 and 31 of these Commitments.

Trustee nominated by the Commission

33. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Celanese shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

34. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Celanese, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

35. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Celanese with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business and the keeping separate of the Divestment Business from the business retained by Celanese, in accordance with paragraphs 17 and 18 of these Commitments;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 19 of these Commitments;
 - (c) with respect to Confidential Information:
 - determine all necessary measures to ensure that Celanese does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
 - in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,

- make sure that any Confidential Information relating to the Divestment Business obtained by Celanese before the Effective Date is eliminated and will not be used by Celanese, and
 - decide whether such information may be disclosed to or kept by Celanese as the disclosure is reasonably necessary to allow Celanese to carry out the divestiture or as the disclosure is required by law.
- (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Celanese or its Affiliated Undertakings;
- (iii) assume the specific functions assigned to the Monitoring Trustee in relation to the Capex Funding Escrow Account, in accordance with paragraph 8 of these Commitments;
- (iv) [...];
- (v) propose to Celanese such measures as the Monitoring Trustee considers necessary to ensure Celanese's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business [confidential information on the scope of the divestment], the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (vi) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:
- (a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and
 - (b) potential purchasers are granted reasonable access to the Personnel;
- (vii) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;
- (viii) provide to the Commission, sending Celanese a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and

- management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;
- (ix) promptly report in writing to the Commission, sending Celanese a non-confidential copy at the same time, if it concludes on reasonable grounds that Celanese is failing to comply with these Commitments;
- (x) within one week after receipt of the documented proposal referred to in paragraph 25 of these Commitments, submit to the Commission, sending Celanese a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;
- (xi) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.
36. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

37. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business [confidential information on the scope of the divestment] to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 24 and 25 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the

sale. The Divestiture Trustee shall protect the legitimate financial interests of Celanese, subject to Celanese's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

38. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Celanese.

III. Duties and obligations of Celanese

39. Celanese shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Celanese's [...] Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Celanese [...] Divestment Business shall provide the Trustee upon request with copies of any document. Celanese [...] Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

40. Celanese shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business [confidential information on the scope of the divestment]. This shall include all administrative support functions relating to the Divestment Business [confidential information on the scope of the divestment] which are currently carried out at headquarters level. Celanese shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. [Confidential information on the scope of Celanese's obligations].

41. Celanese shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or

appropriate to achieve the sale and the Divestment Business Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Celanese shall cause the documents required for effecting the sale and the Divestment Business Closing to be duly executed.

42. Celanese shall indemnify the Trustee and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Celanese for, any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
43. At the expense of Celanese, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Celanese’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Celanese refuse to approve the advisors proposed by the Trustee, the Commission may approve the appointment of such advisors instead, after having heard Celanese. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 42 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Celanese during the First Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.
44. Celanese agrees that the Commission may share Confidential Information proprietary to Celanese with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.
45. Celanese agrees that the contact details of the Monitoring Trustee are published on the website of the Commission’s Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.
46. For a period of 10 years from the Effective Date, the Commission may request all information from Celanese that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

47. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
- (a) the Commission may, after hearing the Trustee and Celanese, require Celanese to replace the Trustee; or
 - (b) Celanese may, with the prior approval of the Commission, replace the Trustee.
48. If the Trustee is removed according to paragraph 47 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 26-33 of these Commitments.
49. Unless removed according to paragraph 47 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties or after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

50. The Commission may extend the time periods foreseen in the Commitments in response to a request from Celanese or, in appropriate cases, on its own initiative. Where Celanese requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Celanese. Only in exceptional circumstances shall Celanese be entitled to request an extension within the last month of any period.
51. The Commission may further, in response to a reasoned request from Celanese showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Celanese. The request shall

not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

52. The Commitments shall take effect upon the date of adoption of the Decision.

[Signed]

[Signed]

[...]

[...]

duly authorised for and on behalf of Celanese Corporation

SCHEDULE 1

1. The Divestment Business produces and sells TPC and a polyester hotmelt product at the manufacturing facility located at the Donegani site in Ferrara, Italy. The entirety of Celanese's operations at the Donegani site will be transferred as part of the divestment. Celanese does not have any other operations at Donegani aside from the Divestment Business. The organizational chart of the Divestment Business is attached as **Annex 1**.
2. In accordance with paragraph 6 of these Commitments, the Divestment Business includes, but is not limited to:
 - (a) the following main tangible assets:
 - i. All TPC production capabilities and facilities at the Donegani site, Ferrara, Italy, including an R&D analytics lab, warehousing, tooling used in connection with the relevant manufacturing activities and all inventory (*i.e.*, raw materials, work-in-progress and finished goods);
 - ii. The land on which the Donegani Production Facility is located;
 - iii. [Information on the inventory building arrangements] to allow the build-up of further TPC inventory during the transition, such inventory to be reserved solely for customers of the Divestment Business. [...], Celanese shall compensate the Purchaser for any and all necessary repairs or replacement equipment and shall also offer its technical support free of charge to help resolve any mechanical faults. Further, as detailed in paragraph 2(l) of this Schedule, Celanese commits to provide the Purchaser with toll compounding services for a transitional period.
 - iv. The Q3 compounding line is expected to be fully operational and qualified at the Purchaser's compounding facility within six months of its transfer to the Purchaser's compounding site. [Confidential information on Celanese's obligations].
 - (b) the following main intangible assets as further specified in **Annex 2**:
 - i. All intangible rights and property used for the purposes of TPC production, distribution and sale including, full and exclusive ownership of the *Pibiflex*® and *Riteflex*® brand names and such other trademarks, patents, patent applications, know-how and formulations

as are used in the TPC business and which are further specified in the IP Rights Transfer Agreement entered into between Celanese and the Purchaser pursuant to the sale of the Divestment Business; and

- ii. The grant of a [...] licence to use the *Pibiter* brand name for sales of the polyester hotmelt product [information on customers]. Under the terms of the licence, the Purchaser will be permitted to co-brand with its own brands.
- (c) The main licences, permits and authorizations required to operate the Donegani site, including the AIA (integrated environmental authorization) and CPI (fire prevention) permits. Celanese will undertake all required preparation work to ensure post-closing business continuity. Regarding the ISO 9001 certification, the Purchaser will be required only to change the name on the certification, given that the certification will transfer in its entirety with the Donegani facility and thus will remain intact. [Confidential information on services to be provided].
- (d) Subject to customary third-party consents where necessary all current customer lists, contracts and relationships relating to the TPC business will form part of the Divestment Business. A list of the top 10 customers of the Divestment Business is provided at **Annex 3**. Celanese will use its best efforts to obtain the relevant consents to assign the benefit of all such contracts with effect from the Divestment Business Closing. [Confidential information on contract transfer arrangements].
- (e) At the option of the Purchaser, Celanese shall provide all reasonable assistance to the Purchaser and/or customers to obtain re-qualification / re-certification of the products that are currently supplied by the Divestment Business. Further, Celanese shall compensate customers for their reasonable costs incurred in connection with obtaining such re-qualification / re-certification. [Confidential information on requalification arrangements].
- (f) With respect to customer contracts that relate both to the TPC business and the non-TPC business retained by Celanese, Celanese and the Purchaser shall each use their best efforts to enter into a standalone contract with the counterparty to any such contract on terms which allocate the rights and obligations of Celanese as between the TPC and non-TPC business and which are otherwise substantially similar in all material respects to the original shared contract. [Confidential information on the contract transfer arrangements].

- (g) A list of the customer contracts that are shared between the Divestment Business and Celanese’s retained business and that will therefore need to be split in accordance with the principles set out in paragraphs 2(d) and 2(e) above is provided at **Annex 4**.
- (h) Subject to customary third-party consents where necessary all contracts, agreements, commitments, understandings and orders (or portions thereof) relating to the suppliers that supply [...] the Divestment Business at the Divestment Business Closing will form part of the Divestment Business. [...]. Celanese shall use best efforts to ensure that all necessary third-party consents are obtained. With respect to supply contracts that relate both to the TPC business and Celanese’s retained non-TPC business, Celanese and the Purchaser shall each use their best efforts to enter into a standalone contract with the counterparty to any such contract on terms which allocate the rights and obligations of Celanese as between the TPC and non-TPC business and which are otherwise substantially similar in all material respects to the original shared contract. [...]. A list of supplier contracts and arrangements shared with the TPC business and the retained non-TPC business is provided at **Annex 5**.
- (i) Customer, credit and other relevant records (including lists, sales, marketing and promotional information), recognising that Celanese may retain a copy of such records to the extent that these relate to suppliers or customers or customer volumes not transferred to the Divestment Business or are required for legal or regulatory compliance purposes.
- (j) Subject to and in accordance with applicable local employment law requirements, all of the Personnel listed in the table immediately below.

Service Description	Function	No. that will transfer
Production	Process expert ¹	21
	Technology steward	1
	Technology expert	5
	Stewardship Leader	1
	Team captain	5
	Asset optimizer	1

¹ [Description of personnel].

	Technology subject matter	1
	Daily Operator	0.525
	Learning facilitator	1
Maintenance	Maintenance Expert	1
	Maintenance Lead	2
	Asset Leader	1
	Technician Maintenance	1
Site Management	Site Facility Assistant	1
	Site Assistant	1
	Unit Leader	1
T&I	[Description of personnel]	1
	Chemist Product	2
	Lead Testing and Analytics	1
	Technician Testing and Analytics	2
Warehouse	Specialist Shipping and Warehouse	1
	Technician Shipping and Warehouse	2
Total		53.525

In addition to the T&I Personnel included in the table above, Celanese will [seconded arrangements].

To the extent required by the Purchaser, the Personnel listed in the table below, [description of personnel].

Service Description	Function	No. that will transfer
[...]	[...]	4
[...]	-	1
[...]	-	1
[...]	-	1
[...]	-	1
[...]	-	1

[...]	-	1
[...]	-	0.85
[...]	[...]	2
Total		12.85

The [corporate functions] personnel listed in the table above shall remain available, at the Purchaser’s option, for 12 months from the Divestment Business Closing. To the extent that [corporate functions] capabilities are required by the Purchaser, personnel with a proven track record of delivering these services will be offered to the Purchaser. Where such Personnel are required, contractual arrangements will be put in place to enable the Purchaser, in consultation with Celanese, to make the relevant employees an offer in writing to employ them under a new contract of employment. The transfer would be subject to the consent of the relevant employees.

To support the Purchaser with the task of installation and qualification of compounding line Q3, at the Purchaser’s option (at Celanese’s cost) Celanese shall second one or more specialist engineers with expertise of moving and qualifying compounding lines with customers to the Purchaser for a duration of up to six months, with possibility to extend for a further six months at Purchaser’s discretion, with any such seconded engineers being subject to non-disclosure and related confidentiality measures post-secondment.

- (k) Full and exclusive ownership of all business information and records, including all electronic sales records of the TPC business compiled since 2018.
- (l) A time-limited transitional toll-compounding agreement with a right to extend the service provision for a further limited period, at the Purchaser’s option. The toll compounding agreement shall be on terms and conditions equivalent to those at present afforded to the Divestment Business, and shall be based on the terms agreed between Celanese and the Purchaser in a toll compounding term sheet, including a duration of an initial term of six months [...]. Compounding will be done [information on the cost] to the same specifications as existed immediately prior to the Divestment Business Closing and in accordance with Celanese’s ordinary course of business. For the duration of the toll compounding arrangements, Celanese will maintain adequate levels of toll compounding capacity from the Forli site of Celanese to fulfil the demand of the Purchaser of the Divestment Business, based on volumes of

compounded TPC supplied by the Divestment Business in 2021. For this purpose, Celanese commits to make available for the duration of the toll compounding services arrangements the entirety of compounding line Q5 located at its Forli site for the compounding of TPC should that be required by the Purchaser, [confidential information on toll compounding modalities]. [...] capacity adjustments will be made in accordance with the transition plan to be agreed between Celanese and the Purchaser. Celanese commits to engage in the necessary capacity planning to ensure that any potential shortfall in capacity made available to the Purchaser is avoided. [Confidential information on toll compounding modalities]. For the lifetime of the transitional services agreement, Celanese commits to ensure that the Purchaser's compounding requirements are fulfilled in priority to those of the retained Celanese business. Consent to any request for additional compounding services shall not be unreasonably withheld by Celanese.

- (m) [Confidential information on purchase price].
- (n) Any asset or personnel which is not covered by paragraph 2 of this Schedule but which is both used (exclusively or not) in the Divestment Business and is necessary for the continued viability and competitiveness of the Divestment Business, that asset or adequate substitute will be transferred to the Purchaser.
- (o) For the benefit of the Purchaser, for a period of three months from the Divestment Business Closing, Celanese is planning to provide IT services to the Purchaser as indicatively listed in **Annex 6**, which are reasonably necessary for the Purchaser to carry out the TPC Divestment Business without interruptions whilst working to migrate the IT systems/applications and/or data (as applicable) to its systems, with an option to agree in good faith to extend these services at the Purchaser's request and subject to approval by the Monitoring Trustee. Celanese will ensure that the Purchaser receives the IT licences needed to maintain the operations of the Divestment Business either by transferring ownership of the licences to IT applications installed at the Donegani production facility or by providing all necessary support to enable the Purchaser to apply for its own IT licences.
- (p) For the benefit of the Purchaser, for an initial term of six months [details concerning warehousing and logistics arrangements], Celanese will provide at its cost reasonable warehousing and logistics support in North America and Asia to provide business continuity for customers of the Divestment Business that are located in these regions. Celanese shall also

facilitate introductions and provide any other support as may be required to connect the Purchaser to local distributors in North America and Asia.

3. The Divestment Business shall not include any assets or personnel currently situated at any site owned or operated by Celanese other than that set out above, unless such asset or personnel is referenced in this Schedule.

SCHEDULE 2

[BAPA entered into between Celanese and Taro Plast]

[Confidential information on the scope of the divestment]

Annex 1

Organizational chart (personnel)

[...]

Annex 2

List of intangible assets relating to the Divestment Business as per signed BAPA (4 August 2022)

[...]

Annex 3

Top 10 global customers of the Divestment Business (by sales volume), 2021

[...]

Annex 4

**List of customer contracts shared between the Divestment Business
and Celanese's retained non-TPC business**

[...]

Annex 5

**List of supplier contracts shared between the Divestment Business
and Celanese's retained non-TPC business**

[...]

Annex 6

Potential Services to be Provided to the Divestment Business

[...]

Annex A

Divestment Business 2021H2 TPC Confirmed Orders

[...]

Annex B

[...]

[...]

Annex (Schedule B)

Business and Asset Purchase Agreement

[...]