

**ANALYSIS OF AGREEMENT CONTAINING
CONSENT ORDER TO AID PUBLIC COMMENT**

*In the Matter of Corpus Christi Polymers LLC, Alfa, S.A.B. de C.V., Indorama Ventures Plc
Aloke Lohia and Suchitra Lohia, and Far Eastern New Century Corporation
File No. 181-0030, Docket No. C-xxxx*

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) from Corpus Christi Polymers LLC (“CCP”); Alfa, S.A.B. de C.V. (“DAK”); Indorama Ventures Plc (“Indorama”); Aloke Lohia and Suchitra Lohia; and Far Eastern New Century Corporation (“FENC”) (collectively, the “Respondents”). CCP is a joint venture entity owned by corporate subsidiaries of DAK, Indorama, and FENC. The Consent Agreement would remedy the anticompetitive effects that likely would result from CCP’s proposed \$1.1 billion acquisition of a polyethylene terephthalate (“PET”) and purified terephthalic acid (“PTA”) facility, currently under construction in Corpus Christi, Texas (the “Transaction”). Upon completion, the plant will become the largest vertically integrated PTA-PET production facility in North America.

Absent a remedy, the Transaction would threaten to harm competition in the manufacture and sale of PET. In particular, the Commission’s Complaint alleges that the Transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and that the asset purchase agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition in the manufacture and sale of PET in an area no greater than North America.

The Consent Agreement addresses the Commission’s concerns by, among other things, restricting DAK and Indorama’s ability to exercise control over CCP and by implementing mechanisms to prevent the flow of competitively sensitive information between and among the Respondents. Consistent with the Commission and the U.S. Department of Justice’s *Antitrust Guidelines for Collaborations Among Competitors*, the Consent Agreement also ensures that the agreement between DAK, Indorama, and FENC is no broader than reasonably necessary to achieve the procompetitive benefits of the CCP joint venture.

The Commission has placed the proposed Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and any comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

II. The Respondents

Respondent Corpus Christi Polymers LLC is a limited liability company incorporated in Delaware with its principal place of business in Corpus Christi, Texas. CCP is a joint venture entity formed by the corporate subsidiaries of Respondents DAK, Indorama, and FENC. The joint venture members formed CCP to complete the construction of the Corpus Christi plant and

to act as a tolling manufacturer for the joint venture members. Each joint venture member will have the right to one-third of the Corpus Christi plant's PTA and PET capacity, and each joint venture member will independently procure raw materials and independently sell and distribute the corresponding PTA and PET.

Respondent Alfa S.A.B. de C.V. is a holding company with headquarters in Monterrey, Mexico, and it operates in North America through its subsidiaries, Alpek, S.A.B. de C.V. and DAK Americas, LLC. It is the largest PET producer in North America by production capacity and operates four facilities in the United States, one facility in Mexico, and one facility in Canada. DAK also manufactures PTA, the primary input in producing PET, in North America.

Respondent Indorama Ventures Plc is a Thai company. Indorama, through its subsidiaries, owns and operates three PET production facilities in the United States and one facility in Mexico, making Indorama the second-largest North American PET producer by capacity. Indorama also manufactures PTA in North America.

Respondents Alope Lohia and Suchitra Lohia are the ultimate parent entities of Indorama for premerger notification purposes. Respondent Alope Lohia is Executive Director, Vice Chairman of the Board, and Group Chief Executive Officer of Indorama. Respondent Suchitra Lohia is Executive Director and Chairperson of the Corporate Social Responsibility Committee of Indorama.

Respondent Far Eastern New Century Corporation is a corporation with headquarters in Taipei, Taiwan. FENC owns a PET plant in Apple Grove, West Virginia, which it acquired in early 2018. FENC is one of the largest polyester producers in the world.

III. The Proposed Acquisition

M&G Chemicals S.A. ("M&G") is an Italian-based global producer of PET. In July 2011, M&G announced plans to build a new PET and PTA facility in Corpus Christi, Texas, the primary asset included in the Transaction. M&G began construction in April 2013. In the years that followed, cost overruns and construction problems delayed the project. During this time, DAK provided financing to M&G in exchange for a lien on the Corpus Christi plant and future rights to a substantial portion of the plant's capacity.

In October 2017, M&G and eleven affiliates filed for Chapter 11 bankruptcy protection. The bankruptcy court established requirements for the sale of M&G's assets and scheduled a March 2018 auction for the Corpus Christi plant and other assets. M&G received three final bids for the Corpus Christi plant: a bid from CCP, which at the time was a two-firm joint venture between DAK and Indorama, a bid from FENC, and a bid from a subsidiary of Grupo Financiero Inbursa, S.A.B. de C.V., the plant's largest lienholder.

M&G had concerns that the bids from the DAK/Indorama joint venture and FENC did not comply with the bankruptcy court's requirements. As the auction date approached, M&G consented to negotiations among the joint venture members to create a trilateral bid that would comply with the bankruptcy court's requirements. The joint venture members ultimately agreed

to form a trilateral joint venture, and Respondent CCP submitted an approximately \$1.1 billion bid for the Corpus Christi plant and related assets, which the bankruptcy court approved as the winning bid on March 29, 2018.

IV. North American PET Market

The Commission's Complaint alleges that a relevant product market in which to analyze the Transaction is the manufacture and sale of PET. PET is a plastic polymer primarily used to make plastic water and soda bottles and other packaging for consumer goods. Consumer goods manufacturers cannot switch to other products without incurring significant costs, as they have large investments in production lines that can only use PET as an input. Furthermore, in many applications, manufacturers and their customers disfavor potential substitutes such as glass, aluminum, and polypropylene, because these materials can be heavier, bulkier, and more expensive. Consumer goods manufacturing customers thus have no viable or economic substitute for PET.

The Commission's Complaint also alleges that an area no greater than North America is a relevant geographic market in which to analyze the effects of the Transaction. North American manufacturing customers prefer to purchase from North American suppliers due to simplified logistics, reduced supply chain risk, and quicker delivery times. Imported PET, which accounts for approximately 15% of North American sales, primarily serves customers located close to the coasts, and the Commission's Complaint alleges that imports do not constrain prices throughout North America. Duties on imported PET have made many foreign PET sources uncompetitive even for North American customers who might otherwise have competitive freight logistics from coastal ports.

The North American PET market is highly concentrated. The joint venture members are three of only four North American PET producers, and together the three firms control nearly 90 percent of North American PET capacity. The North American PTA market is also highly concentrated, with DAK and Indorama two of only three significant producers. Vertical integration into the PTA markets gives DAK and Indorama an advantage over other, non-integrated PET producers. The market has high barriers to entry, including the significant time and cost of constructing a PET plant.

V. Effects of the Transaction

Without the proposed Consent Agreement, the Transaction would substantially lessen competition in the North American PET market by facilitating or increasing the likelihood of coordination between and among the joint venture members and by increasing the likelihood that the joint venture members, acting alone or in concert, would exercise market power. In addition, absent relief, the CCP joint venture lacks sufficient safeguards to prevent the joint venture members from using relationships occasioned by their joint ownership in CCP, and by the Transaction, to share competitively sensitive information beyond the minimum degree reasonably necessary to accomplish CCP's legitimate objectives.

VI. The Proposed Consent Agreement

The proposed Consent Agreement remedies the Transaction's anticompetitive effects by including a number of safeguards that limit DAK and Indorama's control over CCP and that prevent the flow of competitively sensitive information between and among the joint venture members. More fundamentally, the proposed Consent Agreement preserves the less concentrated market structure that resulted from CCP's transformation from a two-firm to a three-firm joint venture, while also ensuring that CCP operates as an independent toll manufacturing plant. At the same time, the proposed Consent Agreement allows the joint venture members to bring to bear their expertise in building large PET and PTA facilities to efficiently complete construction of the Corpus Christi plant.

The proposed Consent Agreement prohibits each joint venture member from owning more than a one-third equity interest in CCP and from owning tolling rights to more than one-third of the Corpus Christi plant's PET and PTA capacity, without prior approval from the Commission. Pursuant to the terms of the revised CCP joint venture operating agreement, as incorporated by reference into the proposed Consent Agreement, if a joint venture member fails to utilize the entirety of its one-third tolling rights in a given month, the other two joint venture members may use that capacity, without Commission approval. CCP will not share which joint venture member did not use its full capacity allotment. If no joint venture member claims the unused capacity, CCP must then market the capacity to third parties. The proposed Consent Agreement also ensures that any joint venture member can expand its capacity at the Corpus Christi plant without the approval of the other joint venture members. These provisions resolve concerns that Respondents might individually or cooperatively suppress output anticompetitively at the Corpus Christi plant.

The proposed Consent Agreement also includes safeguards against the improper sharing of competitively sensitive information between and among the joint venture members. The proposed Consent Agreement prohibits the joint venture members from receiving, sharing, or using any confidential information regarding CCP, with limited exceptions for reporting obligations and other operational necessities. The joint venture members must periodically provide a log to the Commission that identifies and describes all communications with any other joint venture member relating to the operation and management of Respondent CCP. The proposed Consent Agreement also prohibits the joint venture member from directly or indirectly influencing members of CCP's board of managers, subject to limited exceptions defined in CCP's revised joint venture operating agreement. Finally, the proposed Consent Agreement limits the joint venture members' ability to hire former CCP independent board members and prohibits the joint venture members from soliciting or recruiting CCP employees. The joint venture members cannot hire former CCP employees for positions involving PET or PTA sales, marketing, or production decisions in the relevant market, for a period of one year.

To ensure the effectiveness of this relief, the proposed Consent Agreement requires the Commission's prior approval before the Respondents may make substantive governance or operating changes to CCP's revised joint venture operating agreement. Because a Respondent's future acquisition of any interest in a North American PET or PTA production facility would

likely raise competition concerns, the proposed Consent Agreement requires that the Respondents provide the Commission prior notice of any such acquisition.

Consistent with the anticipated longevity of the Corpus Christi plant and the need for a remedy to continue throughout the CCP undertaking, the term of the proposed Consent Agreement is twenty years. The Commission has appointed Jeffrey Brennan of McDermott Will & Emery as a monitor to oversee the Respondents' compliance with the provisions in the proposed Consent Agreement. The Respondents must also submit detailed compliance reports that, among other things, identify and describe any instances in which a joint venture member used less than one-third of the Corpus Christi plant's PET or PTA capacity, asked for a change in grade of PET produced at the Corpus Christi plant, or requested an expansion of PET, PTA, or other feedstock capacity at the Corpus Christi plant.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.