

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Joseph J. Simons, Chairman**  
                                  **Noah Joshua Phillips**  
                                  **Rohit Chopra**  
                                  **Rebecca Kelly Slaughter**  
                                  **Christine S. Wilson**

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<b>In the Matter of</b>	)	
	)	
<b>Corpus Christi Polymers LLC,</b>	)	
<b>a limited liability company,</b>	)	<b>DECISION AND ORDER</b>
	)	<b>DOCKET NO. C-</b>
<b>Alfa, S.A.B. de C.V.,</b>	)	
<b>a corporation,</b>	)	
	)	
<b>Indorama Ventures Plc,</b>	)	
<b>a corporation,</b>	)	
	)	
<b>Aloke Lohia and Suchitra Lohia,</b>	)	
<b>natural persons,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>Far Eastern New Century Corporation,</b>	)	
<b>a corporation.</b>	)	
	)	

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**DECISION**

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition of M&G Resins USA LLC’s unfinished polyethylene terephthalate resin production facility in Corpus Christi, Texas and related assets, by Alfa S.A.B. de C.V. (“DAK”) and Indorama Ventures Plc (“Indorama”), controlled by Aloke and Suchitra Lohia (“Lohias”), through Corpus Christi Polymers LLC (“CCP”), a planned production joint venture. The Commission continued the investigation after the parties revised the proposed acquisition to include Far Eastern New Century Corporation (“FENC”) as a third equal-part joint venture



their executive offices and principal place of business located at 37<sup>th</sup> Floor, Ocean Tower 2, Soi Sukhumvit 19, Wattana, Bangkok, Thailand.

4. Respondent Indorama Ventures Plc is a corporation organized, existing, and doing business under, and by virtue of, the laws of the Thailand with its executive offices and principal place of business located at 37<sup>th</sup> Floor, Ocean Tower 2, Soi Sukhumvit 19, Wattana, Bangkok, Thailand. Indorama's United States address for service of process in this matter is Indorama Ventures Corpus Christi Holdings LLC, 251 Little Falls Drive, Wilmington, DE 19808.
5. Respondent Corpus Christi Polymers LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its executive offices and principal place of business located at 7001 Joe Fulton International Trade Corridor, Corpus Christi, TX 78409.
6. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

## **ORDER**

**THE PURPOSE OF THIS ORDER** is to ensure that CCP is operated as a toll manufacturing PET and PTA production plant, independently of each Respondent Member, and to remedy the lessening of competition alleged in the Commission's Complaint.

### **I. Definitions**

**IT IS HEREBY ORDERED** that, as used in this Order, the following definitions apply:

- A. "DAK" means Alfa S.A.B. de C.V, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by DAK, including but not limited to DAK Americas LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "FENC" means Far Eastern New Century Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by FENC, including but not limited to APG Polytech USA Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Indorama" means Indorama Ventures Plc and Alope and Suchitra Lohia, their directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Indorama, including but not limited to Indorama Ventures Corpus Christi Holdings LLC,

and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- D. “CCP” means Corpus Christi Polymers LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by CCP, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Base PET Production” means the actual production quantity of PET produced at the Corpus Christi Plant, as defined in the CCP Joint Venture Agreement, *provided, however*, Base PET Production does not include any production quantity from any expansion of PET capacity pursuant to the CCP Joint Venture Agreement.
- F. “Base PTA Production” means the actual production quantity of PTA produced at the Corpus Christi Plant, as defined in the CCP Joint Venture Agreement, *provided, however*, Base PTA Production does not include any production quantity from any expansion of PTA capacity pursuant to the CCP Joint Venture Agreement.
- G. “CCP Joint Venture Agreement” means the Second Amended and Restated Limited Liability Agreement of Corpus Christi Polymers LLC, dated November 29, 2018, and all ancillary agreements, exhibits and schedules thereto, including but not limited to the Form of Tolling Contract between Corpus Christi Polymers LLC and DAK Americas, LLC, APG Polytech USA Holdings, and Indorama Ventures Corpus Christi Holdings LLC, which are attached as Confidential Appendix A.
- H. “CCP Joint Venture Business” means the business conducted by CCP related to the toll manufacture and sale of PET and PTA at the Corpus Christi Plant.
- I. “CCP Joint Venture Agreement Date” means the date Respondent Members sign the CCP Joint Venture Agreement.
- J. “Corpus Christi Assets” means the Corpus Christi Plant, and certain additional assets as defined in the Asset Purchase Agreement between M&G Resins USA LLC and CCP, dated March 28, 2018 and attached as Exhibit 1 to the court’s Order Approving the Sale of Certain Assets, ECF No. 1300, in *In re M&G USA Corp.*, Case No. 17-12307 (Bankr. D. Del. Mar. 29, 2018).
- K. “Corpus Christi Plant” means the PET and PTA facility, located at Joe Fulton International Trade Corridor, Corpus Christi, TX 78409.
- L. “Confidential Information” means all information relating to the operation of the CCP Joint Venture Business that is not in the public domain

- O. “FENC Appointed Manager” means the fifth manager appointed by FENC in accordance with the CCP Joint Venture Agreement.
- P. “Independent Manager” means any person nominated by a Respondent Member and selected by FENC (or nominated by one or more of the Independent Managers in the case of the Fourth Independent Manager) to manage, oversee, or operate CCP in accordance with the CCP Joint Venture Agreement including, but not limited to, the First Independent Manager, the Second Independent Manager, the Third Independent Manager, and the Fourth Independent Manager, as those terms are referred to and defined in the CCP Joint Venture Agreement.
- Q. “Initial Independent Manager” means any person selected by Member Managers to work with Member Managers to manage, oversee, or operate CCP during the Construction Phase, as defined and delineated in the CCP Joint Venture Agreement.
- R. “PET” means polyethylene terephthalate.
- S. “PTA” means purified terephthalic acid.
- T. “PET or PTA Production Asset” means any manufacturing facility that produces, or within the last 10 years has produced, virgin PET or PTA.
- U. “Respondent Member(s)” means DAK, FENC, and Indorama, individually and collectively.
- V. “Respondents” means CCP and Respondent Members.
- W. “Member Managers” means any person appointed by any Respondent Member to manage, oversee, or operate CCP during the Construction Phase.
- X. “Restricted Employee” means any employee of CCP, any former employee of CCP, and any CCP Secondee.
- Y. “Secondee” means any individual that is seconded by a Respondent Member to CCP or that is otherwise made available to CCP (through an employee lease, consulting, or other similar arrangement) by a Respondent Member.
- Z. “Separation

*Provided, however,* if notified by CCP pursuant to the CCP Joint Venture Agreement that a Respondent Member does not claim the entirety of its one-third tolling rights, the other two Respondent Members have a right to the unused capacity, and, if no Respondent Member claims the unused capacity, CCP shall market the available capacity to third parties, in accordance with and as delineated in the CCP Joint Venture Agreement.

- C. Each Respondent Member shall not, without the prior approval of the Commission, increase or decrease, directly or indirectly, its one-third equity interest in CCP, as long as CCP is the owner and operator of the Corpus Christi Plant.

### **III. Confidential Information and**



*Provided, however,* a Respondent Member may place general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at CCP's employees; and may also utilize an independent employment agency or search firm whose efforts are not specifically directed at employees of CCP; *Provided further, however,* a Respondent Member may hire CCP employees who apply for employment with a Respondent Member, as long as such employees were not solicited by the Respondent Member in violation of this Paragraph.

- B. If a Respondent Member hires or engages any Restricted Employee, the Respondent Member shall ensure that the Restricted Employee does not have any sales, marketing, pricing, or production decision-making authority for PET or PTA sales in North America, and is not otherwise involved in any such decisions, prior to the first anniversary of such Restricted Employee's Separation Date from the CCP.

## **VI. Monitor**

**IT IS FURTHER ORDERED** that:

- A. Jeffrey W. Brennan shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents and attached as Appendix B ("Monitor Agreement") and Non-Public Appendix C ("Monitor Compensation"). The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order.
- B. No later than one day after the CCP Joint Venture Agreement Date, Respondents shall transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to the Order and consistent with the purposes of the Order.
- C. Respondents shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:
  - 1. The Monitor shall (i) monitor Respondents' compliance with the obligations set forth in this Order and (ii) act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of any Respondent or of the Commission.
  - 2. Respondents shall (i) ensure that the Monitor has full and complete access to all Respondents' personnel, books, records, documents, and facilities relating to



compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order;

3. The Monitor (i) shall serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
  4. Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and
  5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- D. The Monitor shall report in writing to the Commission (i) every 60 days until the expiration of the Construction Phase, (ii) every 90 days after the expiration of the Construction Phase for a period of 3 years, (iii) annually thereafter until the expiration of this Order, and (iv) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order.
- E. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. The Monitor's power and duties shall terminate 10 business days after the Monitor has completed his final report pursuant to Paragraph VI.D. of this Order, or at such other time as directed by the Commission.
- G. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld:

1.

- b. identifying from whom the assets are purchased;
  - c. a description of the type of ownership interest being acquired; and
  - d. identifying whether the asset is a PET or PTA production asset.
3. Respondent shall provide the Notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material to the parties to the transaction (within the meaning of 16 C.F.R. § 803.20), Respondent shall not consummate the transaction until 30 days after all parties to the transaction submit such additional information or documentary material.
4. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however,* that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

### **VIII. Compliance Reports**

**IT IS FURTHER ORDERED** that:

- A. Respondents shall submit the complete CCP Joint Venture Agreement to the Commission at [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov) and [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) no later than 30 days after the date the Commission issues this Order, and any other agreements 30 days from being finalized and signed by Respondents.
- B. Each Respondent Member and CCP shall submit verified written reports (“compliance reports”) in accordance with the following:
  1. An interim compliance report 30 days after the Order is issued, every 60 days thereafter until the expiration of the Construction Phase, and every 90 days after the expiration of the Construction Phase for a period of 3 years;
  2. Annual compliance reports one year after the date this Order is issued, and annually for the next 19 years on the anniversary of that date; and
  3. Additional compliance reports as the Commission or its staff may request.

*Provided, however,* for purposes of this Paragraph VIII, Respondent Indorama and Respondent Lohias may submit combined compliance reports.

- C. Each compliance report shall set forth in detail the manner and form in which each Respondent intends to comply, is complying, and has complied with this Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether each Respondent is in compliance with



## **X. Access**

**Confidential/Non-Public Appendix A**  
**CCP Joint Venture Agreement**

# **Appendix B**

## **Monitor Agreement**

# **Confidential/ Non-Public Appendix C**

## **Monitor Compensation**