

Complaint

IN THE MATTER OF

**CORPUS CHRISTI POLYMERS LLC,
ALFA S.A.B. DE C.V.,
INDORAMA VENTURES PLC,
FAR EASTERN NEW CENTURY CORPORATION,
ALOKE LOHIA
AND
SUCHITRA LOHIA**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. C-4672; File No. 181 0030

Complaint, February 20, 2019 – Decision, February 20, 2019

This consent order addresses the \$1.1 billion acquisition by Corpus Christi Polymers LLC of certain assets of M&G Chemicals S.A. The complaint alleges that the joint venture of Alfa, S.A.B. de C.V. (DAK), Indorama Ventures Plc (Indorama), and Far Eastern New Century Corporation (FENC) would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by lessening competition in the production of polyethylene terephthalate resin (PET). The consent order 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.

Participants

For the *Commission*: Michael E. Blaisdell, Nicholas Bush, Mary Casale, Keitha Clopper, Clarke Edwards, Eric Olson, Marc Schneider, and Julia Zhang.

For the *Respondents*: Jeff L. White, Weil, Gotshal & Manges LLP; Michael Perry and Stephen Weissman, Baker Botts LLP; Edward Biester, Duane Morris LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Corpus Christi Polymers LLC ("CCP"), a joint venture between corporate entities under the control of Respondents Alfa S.A.B. de C.V. ("DAK"), Indorama Ventures Plc ("Indorama"), controlled by Alope and Suchitra Lohia, and Far Eastern New Century Corporation ("FENC"), intends to acquire certain assets from M&G Resins USA LLC and its affiliates ("M&G") in bankruptcy, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and which, if the acquisition is consummated, may substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15

Complaint

U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I. RESPONDENTS

1. 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. CCP is a joint venture entity formed by the corporate subsidiaries of Respondents DAK, Indorama, and FENC.

2. Respondent Alfa S.A.B. de C.V. is a corporation organized, existing, and doing business under, and by virtue of, the laws of Mexico, with its executive offices and principal place of business located at Ave. Gómez Morin Sur No. 1111, Col. Carrizalejo, San Pedro Garza Garcia, N.L., Mexico C.P. 66250.

3. 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 37th Floor, Ocean Tower 2, Soi Sukhumvit 19, Wattana, Bangkok, Thailand.

4. Respondents Alope Lohia, Executive Director, Vice Chairman of the Board, and Group Chief Executive Officer of Indorama; and Suchitra Lohia, Executive Director and Chairperson of the Corporate Social Responsibility Committee of Indorama, are natural persons and the ultimate parent entities of Indorama, with their executive offices and principal place of business located at 37th Floor, Ocean Tower 2, Soi Sukhumvit 19, Wattana, Bangkok, Thailand.

5. Respondent Far Eastern New Century Corporation is a corporation organized, existing, and doing business under, and by virtue of, the laws of the Taiwan, with its executive offices and principal place of business located at 36F, Taipei Metro Tower 207, Tun Hwa South Road, Sec. 2, Taipei, Taiwan.

II. JURISDICTION

6. Respondents, either directly or through corporate entities under their control, are, and at all relevant times have been, engaged in commerce or in activities affecting “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

III. PROPOSED ACQUISITION

7. Pursuant to an Asset Purchase Agreement dated March 28, 2018, CCP proposes to acquire from M&G an under-construction polyethylene terephthalate resin (“PET”) and purified terephthalic acid (“PTA”) production facility in Corpus Christi, Texas and related assets (the “Corpus Christi Assets”), for \$1.1 billion (the “Acquisition”).

Complaint

8. M&G and its affiliates filed for Chapter 11 bankruptcy in October 2017, pursuant to which M&G endeavored to sell certain assets. Respondents DAK, Indorama, and FENC formed CCP and submitted a joint bid in the bankruptcy proceeding to acquire the Corpus Christi Assets. On March 29, 2018, the bankruptcy court approved the sale of the Corpus Christi Assets to CCP.

9. Through CCP, Respondents DAK, Indorama, and FENC intend to complete construction of the Corpus Christi Assets. Upon completion of the plant, CCP will serve as a toll manufacturing entity. DAK, Indorama, and FENC will each have rights to one-third of the PET capacity at the plant and will pay a tolling fee to CCP for each unit they produce. Each joint venture member will independently procure its own raw materials and will independently sell and distribute the corresponding PET.

10. The Acquisition constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

IV. THE RELEVANT MARKET

11. PET is a plastic polymer used to make packaging for consumer goods, primarily plastic water and soda bottles and packaging for food and other products. Articles made with PET are strong, lightweight, clear, transparent, and sterile. PTA is the primary input in making PET.

12. A relevant market in which to assess the effects of the Acquisition is the manufacture and sale of PET. Customers cannot switch to other products without incurring significant costs, as customers have large investments in production lines that can use only PET as an input. Furthermore, in many applications, end users disfavor potential substitutes such as glass, aluminum, and polypropylene, because these materials can be heavier, bulkier, and more expensive. Customers thus have no viable or economic substitute for PET.

13. A relevant geographic market in which to assess the effects of the Acquisition is no larger than North America. Imported PET, which accounts for approximately 15% of North American sales, primarily serves customers located close to the coasts and does 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.

V. MARKET STRUCTURE

14. The market for the manufacture and sale of PET in North America is highly concentrated.

15. DAK, Indorama, and FENC are three of only four North American PET producers. Together, these three Respondents control nearly 90% of North American PET capacity. Upon completion, the Corpus Christi plant will be the largest PET plant in North America and will account for roughly 20% of North American PET capacity.

Complaint

16. DAK and Indorama are two of only three significant North American PTA producers. Vertical integration into the PTA market gives DAK and Indorama an advantage over other, non-integrated PET producers.

VI. ENTRY CONDITIONS

17. Entry, repositioning, or fringe firm growth would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. Significant barriers to entry or expansion include the time and cost of either constructing a new PET plant or converting an existing plant into PET use. Two-tier entry in both the PET and PTA markets would likely be necessary for an entrant to become truly competitive.

VII. EFFECTS OF THE ACQUISITION

18. Absent relief, the Acquisition may substantially lessen competition or tend to create a monopoly in the relevant market, by:

- a. facilitating or increasing the likelihood of collusive or coordinated interaction between and among any of the Respondents; and
- b. increasing the likelihood that DAK, Indorama, and FENC, acting alone or in concert, will exercise market power in the relevant market.

19. Absent relief, CCP lacks adequate safeguards to prevent DAK, Indorama, and FENC from using the relationships occasioned by their joint ownership of CCP, and by CCP's acquisition of the Corpus Christi Assets, to transmit competitively sensitive information beyond the minimum degree reasonably necessary to accomplish CCP's legitimate purposes.

VIII. VIOLATIONS CHARGED

20. The Acquisition agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. The Acquisition, if consummated, may substantially lessen competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twentieth day of February, 2019, issues its complaint against Respondents.

By the Commission.

Decision and Order

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 partner. The Commission’s Bureau of Competition prepared and furnished to CCP, DAK, Lohias, Indorama, and FENC (collectively “Respondents”) the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an agreement (“Agreement Containing Consent Order” or “Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent Alfa S.A.B. de C.V. is a corporation organized, existing, and doing business under, and by virtue of, the laws of Mexico with its executive offices and principal place of business located at Ave. Gómez Morin Sur No. 1111, Col. Carrizalejo, San Pedro Garza Garcia, N.L., Mexico C.P. 66250. Alfa S.A.B. de C.V.’s United States address for service of process in this matter is DAK Americas LLC, 7621 Little Ave., Charlotte, NC 28226 (attention: Veronica Ramirez, Esq.).
2. Respondent Far Eastern New Century Corporation is a corporation organized, existing, and doing business under, and by virtue of, the laws of the Taiwan with its executive offices and principal place of business located at 36F, Taipei Metro

Decision and Order

Tower 207, Tun Hwa South Road, Sec. 2, Taipei, Taiwan. FENC's United States address for service of process in this matter is APG Polytech USA Holdings, Inc., 27610 Huntington Road, Apple Grove, West Virginia 25502.

3. Respondents Alope Lohia, Executive Director, Vice Chairman of the Board, and Group Chief Executive Officer of Indorama, and Suchitra Lohia, Executive Director, and Chairperson of the Corporate Social Responsibility Committee of Indorama are natural persons and the ultimate parent entities of Indorama with their executive offices and principal place of business located at 37th 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 37th 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

Decision and Order

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

Decision and Order

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, including but not limited to customer lists, customer locations, price lists, plans, contracts, utilization rate, production volumes, production grades, capacity expansions, cost information, marketing methods, and competitively sensitive data or information.
- M. “Construction Phase” means the construction of the Corpus Christi Plant, including the construction of assets related to both PET and PTA, as defined and referred to in the CCP Joint Venture Agreement.
- N. “Commission” means the Federal Trade Commission.
- 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.

Decision and Order

- 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 Seconded.
- Y. “Seconded” 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 Date” means (1) the date of termination of any employee or former employee of CCP, and (2) with respect to any Seconded, the date that such person has both ended its relationship with CCP and has ceased providing any services to CCP.

II. Acquisition and Operation**IT IS FURTHER ORDERED** that:

- A. On and after the CCP Joint Venture Agreement Date, and subject to Paragraph II.C., each Respondent Member shall not acquire, own, or hold more than one-third equity interest in the Corpus Christi Assets owned by CCP.
- B. Each Respondent Member shall not acquire, own, or hold tolling rights to more than one-third of the Base PET Production or the Base PTA Production.

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 Selection of Member Managers**IT IS FURTHER ORDERED** that:

- A. A Respondent Member shall not receive, or attempt to receive, directly or indirectly, Confidential Information from any person, including but not limited to any Independent Manager, Initial Independent Manager, Member Manager, or other Respondent Member, and shall not use or share any Confidential

Decision and Order

Information. Any employee of a Respondent Member who receives Confidential Information shall sign a non-disclosure or equivalent agreement providing written acknowledgement of his/her/their responsibilities regarding the restrictions on the use and dissemination of Confidential Information, and a statement attesting that he or she has received a copy of this Order, will comply with its terms, and will take all reasonable steps to assure that employees that report to him or her will comply with its terms;

Provided, however, Respondent Members may receive summary aged and aggregated information and other information necessary for certain reporting obligations and for certain material decisions affecting CCP, or for the Respondent Members and CCP to implement and perform the Form of Tolling Contract between such Respondent Member and CCP, as delineated and permitted in the CCP Joint Venture Agreement. The receipt of such information shall be overseen by the Monitor, and subject to firewalls designed in consultation with the Monitor protecting any Confidential Information from being shared by CCP or the Respondent Members with persons who manufacture and sell PTA and PET for the Respondent Members.

- B. A Respondent Member shall not influence, or attempt to influence, directly or indirectly, any Initial Independent Manager, Independent Manager, or FENC Appointed Manager regarding the operation of CCP, including, but not limited to, decisions concerning production grades, production quantities, tolling fees, capacity expansions, the marketing of unused capacity to third parties, the licensing or sale of any intellectual property, or employee or manager hiring or retention.

Provided, however, Respondent Members may provide notice or input to Managers as expressly permitted in the CCP Joint Venture Agreement and may make the decisions requiring the approval of Respondent Members as permitted and delineated in the CCP Joint Venture Agreement.

Provided, further, however, nothing in this provision prohibits Respondent FENC from influencing or communicating with any FENC Appointed Manager.

- C. A Respondent Member shall not hire, or enter into negotiations or discussions regarding hiring, an Independent Manager for a period of 12 months after expiration or termination of his or her term as an Independent Manager.
- D. Respondent Members shall retain, and identify and describe in a log, all communications with any other Respondent Member relating to the operation and management of CCP (not including communications discussing the construction of the Corpus Christi Plant), or the production and sale of PET and PTA from CCP.

Decision and Order

IV. CCP Joint Venture Agreement

IT IS FURTHER ORDERED that:

- A. The CCP Joint Venture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of the CCP Joint Venture Agreement shall constitute a violation of this Order; *provided, however*, that the CCP Joint Venture Agreement shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the CCP Joint Venture Agreement varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.
- B. Respondents shall not modify, replace, or extend the terms of the CCP Joint Venture Agreement, or reach any other agreement that would have such an effect, after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

V. Employees

IT IS FURTHER ORDERED that for a period of 20 years from the date this Order becomes final:

- A. Each Respondent Member, so long as it retains ownership interest in CCP and for a period of 12 months from the date that such Respondent Member ceases to be a member of the CCP, shall not:
 - 1. solicit, recruit, or induce any CCP employee to become affiliated with, directly or indirectly, any Respondent Member;
 - 2. assist in the hiring of any such CCP employee by any other Respondent Member; or
 - 3. encourage any CCP employee to terminate his or her employment with CCP.

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.

Decision and Order

- 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;

Decision and Order

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. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within 5 days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and
 2. Respondents shall, no later than 5 days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities

Decision and Order

pursuant to this Order on the same terms and conditions as provided in this Paragraph VI.

- H. The Commission may, on its own initiative or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

VII. Prior Notice

IT IS FURTHER ORDERED that for a period of 20 years from the date this Order becomes final:

- A. Respondents shall not, without providing advance written notification to the Commission in the manner described in this paragraph, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any PET or PTA Production Asset located in North America.
- B. With respect to the Notification:
1. The prior notification required by this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, and the Notification need not be made to the United States Department of Justice, and Notification is required only of the Respondents and not of any other party to the transaction.
 2. Respondent shall include a detailed description of the proposed acquisition, including but not limited to:
 - a. a description of the asset(s) being acquired;
 - 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

Decision and Order

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 and 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 the Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Each Respondent shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures each Respondent has implemented or plans to implement to ensure that they have complied or will comply with each paragraph of the Order, including the following information:

Decision and Order

1. Each month in which Respondent Members took other than one-third of the Corpus Christi Plant's Base PET Production or Base PTA Production output, including how much PET and PTA each Respondent Member used, and any steps CCP took to offer unused capacity to third parties;
 2. Each instance in which a Respondent Member requested that the Corpus Christi Plant change a particular grade of PET, the resolution of that request, and CCP's efforts to accommodate those requests;
 3. Each instance in which a Respondent Member requested to expand PET, PTA, or feedstock capacity at the Corpus Christi Plant, the resolution of that request, and CCP's efforts to accommodate those requests;
 4. Each instance in which any person requested to license or acquire intellectual property owned by CCP, and CCP's response;
 5. A detailed description of any Confidential Information received by any Respondent Member; and
 6. The log required by Paragraph III.D.
- D. Each compliance report shall be verified in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Each Respondent shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, each Respondent shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

IX. Change in Respondent

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least 30 days prior to:

- A. Its proposed dissolution;
- B. Its proposed acquisition, merger or consolidation; or
- C. Any other change in the Respondent, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

Decision and Order

X. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XI. Term

IT IS FURTHER ORDERED that this Order shall terminate on February 20, 2039.

By the Commission.

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

[Redacted From the Public Record Version, But Incorporated By Reference]

Analysis to Aid Public Comment

Appendix B**Monitor Agreement****Confidential/ Non-Public Appendix C****Monitor Compensation****[Redacted From the Public Record Version, But Incorporated By Reference]****ANALYSIS OF CONSENT ORDERS TO AID PUBLIC COMMENT****I. Introduction**

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (“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*

Analysis to Aid Public Comment

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

Analysis to Aid Public Comment

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

Analysis to Aid Public Comment

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

Analysis to Aid Public Comment

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.

Complaint

IN THE MATTER OF

PENN NATIONAL GAMING, INC.,
AND
PINNACLE ENTERTAINMENT, INC.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. C-4658; File No. 181 0011

Complaint, September 28, 2018 – Decision, February 21, 2019

This consent order addresses the \$2.8 billion acquisition by Penn National Gaming, Inc. of certain assets of Pinnacle Entertainment, Inc. The complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by eliminating meaningful and substantial competition between Penn and Pinnacle for casino services in the St. Louis, Kansas City, and Cincinnati area markets. The consent order requires Penn to divest to Boyd Gaming Corporation: (1) one of Pinnacle's casinos in the St. Louis, Missouri area, the Ameristar Casino Resort Spa in St. Charles; (2) Pinnacle's only casino in the Kansas City, Missouri area, the Ameristar Kansas City Casino Hotel; and (3) both of Pinnacle's casinos in the Cincinnati, Ohio area: the Belterra Casino Resort in Florence, Indiana, and the Belterra Park casino and racetrack in Cincinnati.

Participants

For the *Commission*: Maria DiMoscato, Rohan Pai, and Cathleen Williams.

For the *Respondents*: Nelson O. Fitts and Katharine R. Haigh, Wachtell, Lipton, Rosen & Katz; Clifford H. Aronson, Thomas Pak, and Kenneth B. Schwartz, Skadden, Arps, Slate, Meagher & Flom LLP.

COMPLAINT

1. Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Penn National Gaming, Inc. ("PNG"), a corporation subject to the jurisdiction of the Commission, agreed to acquire Respondent Pinnacle Entertainment, Inc. ("Pinnacle"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

2. Respondent PNG is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its headquarters and