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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.10147 – Mitsui & Co / Mitsui Chemicals / Honshu Chemical Industry**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 30 March 2021, the Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which Mitsui & Co.,

[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 (the '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').

Ltd. ("Mitsui Bussan", Japan) and Mitsui Chemicals, Inc. ("Mitsui Chemicals", Japan) intend to acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Honshu Chemical Industry Co., Ltd. ("Honshu Chemical" or the "Target", Japan) (the "Transaction"). The concentration is accomplished by way of purchase of shares. Mitsui Bussan and Mitsui Chemicals will be jointly referred to as the "Notifying Parties". The Target and the Notifying Parties will be referred to as the "Parties".

1. THE PARTIES

(2) Mitsui Bussan is a global trading organisation which is active in various sectors, including: (i) iron and steel products; (ii) mineral and metal resources; (iii) energy; (iv) machinery and infrastructure; (v) chemical products; (vi) life style; and (viii) innovation and corporate development. Mitsui Bussan is headquartered in Tokyo, Japan and is listed on the Tokyo Stock Exchange.

(3) Mitsui Chemicals is engaged in the production and sale of chemical products worldwide. Mitsui Chemicals' principal business areas are: (i) mobility products; (ii) healthcare products; (iii) food and packaging products; and (iv) basic materials. Mitsui Chemicals is headquartered in Tokyo, Japan and is listed on the Tokyo Stock Exchange.

(4) Honshu Chemical is engaged in the production and sale of chemical products. Honshu Chemical's principal activities are the production and sale of: (i) 4,4' biphenol; (ii) cresol derivatives; (iii) electronic materials; and (iv) special bisphenols. Honshu Chemical is headquartered in Tokyo, Japan and is listed on the Tokyo Stock Exchange.

2. THE TRANSACTION

(5) On 11 November 2020, the Notifying Parties entered into a shareholder agreement pursuant to which Mitsui Bussan and Mitsui Chemicals agreed to acquire joint control of the entire issued share capital of Honshu Chemical. Pre-Transaction, no single person or entity has sole control or joint control over Honshu Chemical (see further para (7) below). Following completion of the Transaction, Mitsui Chemicals will own 51% of the issued shares in Honshu Chemical, and Mitsui Bussan will own the remaining 49%.

(6) As decisions in relation to Honshu Chemical's commercial strategy will require a majority of at least 52% to pass, Mitsui Chemicals or Mitsui Bussan can each block decisions requiring a vote by the shareholders. Moreover, Mitsui Chemicals and Mitsui Bussan will each have the right to appoint three of the seven directors to the Board,[3] including one representative director each[4] and none of them has a casting vote. Finally, each of Mitsui Chemicals and Mitsui Bussan will have the right to veto strategic decisions of the Board including the adoption of Honshu Chemical's annual

[3] The seventh director will be appointed by unanimous consent of the Shareholders Steering Committee. The Steering Committee is composed of four members, with the Notifying Parties each able to appoint two members.

[4] Under Japanese corporate law, only representative directors have the power to "represent" the company in an official capacity (e.g. signing legal documents on behalf of the company).

budget and business plan. Honshu Chemical will therefore be jointly controlled by Mitsui Chemicals and Mitsui Bussan.

(7) The Commission notes that pre-Transaction, Mitsui Bussan and Mitsui Chemicals have each already owned 27% of Honshu Chemical, representing […]% each of the de-facto voting rights in Honshu Chemical.[5] It should be noted that Mitsui Bussan and Mitsui Chemicals belong to separate corporate groups and are ultimately controlled by separate entities.

(8) The Commission's Consolidated Jurisdictional Notice[6] sets out that in the absence of specific veto rights, two or more undertakings with minority shareholdings may have joint control over an enterprise when: (i) the shareholders together hold a majority of the voting rights in the target enterprise; and (ii) they act together in exercising these voting rights, either as a result of an agreement or on a de facto basis.[7] The Commission notes that pre-Transaction, neither of Mitsui Bussan and Mitsui Chemicals held specific veto rights or had any form of negative control over Honshu Chemical. While the first of these two cumulative criteria is fulfilled in the case at hand, the second is not, as (a) there are no agreements or arrangements (either formal or informal) between Mitsui Bussan and Mitsui Chemicals to coordinate their votes at Honshu Chemical's shareholder meetings and (b) Mitsui Chemicals has never exercised its right to vote in any of Honshu's shareholder meetings but has instead always delegated its votes to Honshu (although it was not obliged to do so).

(9) Pre-Transaction, Honshu Chemical has been performing its operations on the markets where it is active on a lasting basis, beyond one specific function for either of Mitsui Bussan or Mitsui Chemicals and conducting a substantial portion of its activities beyond the scope of its sale/purchase relationships with its parents..

(10) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(11) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[8]. Each of them has a Union-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

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5 For the avoidance of doubts, each of Mitsui Bussan and Mitsui Chemicals are minority shareholders of Honshu Chemical, and neither Mitsui Bussan nor Mitsui Chemicals has any veto rights over any of the decisions taken by Honshu Chemical, nor has any of them has the right to appoint any directors to the Board or to appoint any members of Honshu Chemical's senior management (or to block the appointment of any director or any members of Honshu Chemical's senior management). As a result, neither of Mitsui Bussan and Mitsui Chemicals have control over Honshu Chemical pre-Transaction.

6 Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ C 95, 16.4.2008, p. 1; the 'CJN').

7 Paragraphs 74 to 76 of the CJN. In the clear absence of *de facto* joint control (given that Mitsui Chemicals has never exercised its right to vote in any of Honshu's shareholder meetings) it is not necessary to assess the extent of potential commonality of interest between Mitsui Bussan and Mitsui Chemicals that could be indicative of such a situation of *de facto* joint control as described in paragraph 76 of the CJN.

8 Turnover calculated in accordance with Article 5 of the Merger Regulation.

(12) The Transaction therefore has a Union dimension within the meaning of Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction

(13) The Transaction does not give rise to any horizontal overlaps. However, it results in a number of vertical relationships between Mitsui Bussan's and Mitsui Chemicals' activity in the supply of basic chemicals and Honshu Chemical's activities in the supply of special bisphenol for polycarbonate resins and 4,4-biphenol.

4.2. Market Definitions

4.2.1. Special bisphenol for polycarbonate resins

(14) Special bisphenol for polycarbonate resins are chemicals used as a monomer in the production of polycarbonate resins, either as a substitute for bisphenol A ("Bis-A", whose use in certain applications, such as baby bottles, has been prohibited in many jurisdictions), or co-polymerised with Bis-A to reinforce polycarbonate resins. The main categories of special bisphenols for polycarbonate resins (representing the majority of special bisphenols for polycarbonate resins commercialised worldwide) are listed in Table 1 below.

Table 1 Special bisphenols for polycarbonate resin products and their chemical name (based on IUPAC Nomenclature)[9]

Special bisphenols for polycarbonate resin	Chemical Name (based on IUPAC Nomenclature)
Bis-Z	4,4'-Cyclohexylidenebisphenol
BisOC-FL	4,4'-[1-[4-[1-(4-Hydroxyphenyl)-1-methylethyl]phenyl]ethylidene]bisphenol
BisP-AP	4,4'-(1-Phenylethylidene)bisphenol
BisP-TMC[10]	4,4'-(3,3,5-Trimethylcyclohexylidene)bisphenol
BisP-HTG	4,4'-(3,3,5-Trimethylcyclohexylidene)bisphenol
BisP-MIBK	4,4'-(1,3-Dimethylbutylidene)bisphenol
BisPEO-FL	Bisphenoxyethanolfluoren

[9] Honshu Chemicals manufactures [Current sales strategy] special bisphenol for polycarbonate resins, [Current sales strategy].

[10] BisP-TMC and BisP-HTG are listed in the table above as having the same chemical name. This is because BisP-TMC and BisP-HTG are in fact the same chemical, although they are treated as separate products by Honshu, for commercial reasons.

Special bisphenols for polycarbonate resin	Chemical Name (based on IUPAC Nomenclature)
S-BOC	4,4'-(1-Methylethylidene)bis(2-methylphenol)
TrisP-HAP	4,4',4"-Ethylidynetrisphenol
BINOL-DC	2,2'-([1,1'-Binaphthalene]-2,2'-diyldioxy)diacetic acid
BisP-M	4,4′-(1,3-Phenylenediisopropylidene)bisphenol
BisP-B	4,4′-sec-Butylidenediphenol
BisOPPEO-FL	2,2'-[(fluoren-9,9-diyl)bis(bipheny-5,2-diyloxy)]diethanol
BINOL-2EO	2,2'-([1,1'-binaphthalene]-2,2'-diylbis(oxy))bis(ethan-1-ol)

Source: Notifying Parties

4.2.1.1. Product market definition

(15) The Commission has not yet considered the market for special bisphenols for polycarbonate resins (or any other category of bisphenol).

(16) The Notifying Parties consider that special bisphenols for polycarbonate resins form a market which does not include other special bisphenols, such as special bisphenols for epoxy resins (or other bisphenols such as Bis-A), due to their specific properties and characteristics as well as the necessity to manufacture them on specific equipment which is different from that used for other special bisphenols. In any case, if a wider market definition for special bisphenols were to be considered, the combined market shares of the Parties would not be higher.[11]

(17) The Notifying Parties consider that special bisphenols for polycarbonate resins are widely substitutable among them, so that the market does not require further segmentation.[12]

(18) As regards potential market definitions broader than the supply of special bisphenols for polycarbonate resins, the Commission notes that both demand- and supply-side substitutability between special bisphenol for polycarbonate resins on the one hand and other types of bisphenols or special bisphenols on the other is limited. In particular, as regards demand-side substitutability, special bisphenol for polycarbonate resins fulfil specific functions, and provide specific characteristics, such as heat resistance and durability, to polycarbonate resins that other special bisphenols (or other types of bisphenols), such as special bisphenol for epoxy resins, do not provide.

(19) As regards a potential narrower market definition, distinguishing between each individual type of special bisphenol for polycarbonate resin, the Commission observes that while there appears to be some degree of substitutability between

11 Form CO, paragraphs 6.31 to 6.38
12 Form CO, paragraphs 6.39 to 6.43

various categories of special bisphenols for polycarbonate resins, important price-differences among these categories of products would point towards the absence of complete demand-side substitutability, at least for some categories of customers. As regards supply-side substitutability, the Commission notes that the Notifying Parties acknowledge that it is not always possible to switch production easily between certain types of special bisphenol for polycarbonate resins (and in particular it is not possible to switch production between BisOPPEO-FL and other types of special bisphenol for polycarbonate resins).[13]

(20) The market investigation did not indicate that the market for special bisphenols for polycarbonate resins could be broader, so as to include other special bisphenols, or should be further segmented.

(21) In any event, the Commission considers that, for the purpose of this decision, the precise question of whether the relevant product market (i) comprises all special bisphenols, (ii) comprises only special bisphenols for polycarbonate resins or (iii) is segmented between all individual types of special bisphenols for polycarbonate resins listed in paragraph (14) (Table 1) above can be left open, as these alternative product market definitions do not affect the outcome of the competitive assessment of the Transaction as to its compatibility with the internal market or the functioning of the EEA Agreement.

4.2.1.2. Geographic market definition

(22) The Commission has not yet considered the market for special bisphenols for polycarbonate resins.

(23) The Notifying Parties submit that the geographic market for special bisphenols for polycarbonate resins is global given that: (i) suppliers are active globally from production facilities across the world; (ii) customers in the EEA are supplied from facilities located in other world regions; and (iii) there are no regulatory or other barriers preventing a new or existing supplier located outside the EEA from supplying customers located within the EEA.[14]

(24) The Commission observes that special bisphenols for polycarbonate resins are rather expensive non-hazardous speciality chemical products, with low unit transport costs. These elements could point towards a potential global market for such products. The market investigation did not provide any indications pointing towards either plausible alternative potential geographic market definitions (*i.e.* EEA-wide or worldwide) for special bisphenols for polycarbonate resins.

(25) In any event, for the purpose of assessing the Transaction, the exact scope of the geographic market definition can be left open since the above-mentioned plausible alternative geographic market definitions (EEA-wide or worldwide), do not affect the outcome of the competitive assessment of the Transaction as to its compatibility with the internal market or the functioning of the EEA Agreement.

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13 Form CO, paragraph 6.41

14 Form CO, paragraphs 6.64 and 6.65

4.2.2. 4,4' biphenol

(26) 4,4' biphenol is an organic compound and is a derivative of biphenyl, which is used to produce liquid crystal polymers (a key raw material in components for computers and electronic devices) and polyphenylsulfone (a polymer used in medical equipment and plumbing systems).

4.2.2.1. Product market definition

(27) The Commission has not yet considered the market for 4,4' biphenol.

(28) The Notifying Parties consider that 4,4' biphenol forms part of a market which does not include other biphenols such as 2,2' biphenol, due the differences of specific properties, characteristics (such as melting temperature) and uses of the two products, as well as the necessity to manufacture 4,4' biphenol on specific equipment.[15] In any case, if a wider market definition for biphenol were to be considered, the combined market shares of the Parties would be lower.

(29) The Commission observes that 4,4' biphenol is not substitutable from either a demand-side or a supply side with any other chemical product (such as *e.g.* 2,2' biphenol). In addition, there is no further differentiation based on grade, application, quality or concentration within 4,4' biphenol products. The market investigation did not provide any indication that the relevant product market should be defined as being narrower or broader than 4,4 biphenol.

(30) As a result, the Commission considers that, for the purpose of this decision, 4,4 biphenol constitutes a relevant product market.

4.2.2.2. Geographic market definition

(31) The Commission has not yet considered the market for 4,4' biphenol.

(32) The Notifying Parties submit that the geographic market for 4,4' biphenol is global given that: (i) suppliers are active globally from a limited number of production facilities, and in particular the United States of America and India; (ii) customers in the EEA are regularly supplied from facilities outside of the EEA in various locations around the world; and (iii) there are no regulatory or other barriers preventing a new or existing supplier located outside the EEA from supplying customers located within the EEA.[16]

(33) The Commission notes that 4,4' biphenol is a non-hazardous speciality chemical products, that is actively traded around the world. There are tariffs applied to imports of 4,4' biphenol from outside the EEA, nonetheless, these represent only 5.5% of the sale price, and these tariffs do not apply to Japanese suppliers, as a result of the EU-Japan trade agreements. These elements could point towards a potential global market for 4,4' biphenol. The market investigation did not provide any indications pointing towards either plausible alternative potential geographic market definition (*i.e.* EEA-wide or worldwide) for 4,4 biphenol.

(34) In any event, for the purpose of assessing the Transaction, the exact scope of the geographic market definition can be left open since the above-mentioned plausible

15 Form CO, paragraphs 6.47 and 6.48

16 Form CO, paragraph 6.67

alternative geographic market definitions (EEA-wide or worldwide), do not affect the outcome of the competitive assessment of the Transaction as to its compatibility with the internal market or the functioning of the EEA Agreement.

4.2.3. Methyl isobutyl ketone ("MIBK")

(35) MIBK is an organic solvent used among other in paints, coatings, adhesives, in the production of tires as well as in the pharmaceutical industry as an extraction material.

4.2.3.1. Product market definition

(36) The Commission has not yet considered the market for MIBK.

(37) The Notifying Parties submit that MIBK should be considered as one single product market, due to the absence of alternatives to MIBK in most applications. In addition, MIBK is generally manufactured in dedicated facilities that use a specialised equipment to this end.[17]

(38) The Commission observes that MIBK is not substitutable from either a demand-side or a supply side with any other chemical product. In addition, there is no further differentiation based on grade, application, quality or concentration within MIBK. The market investigation did not provide any indication that the relevant product market should be defined as being narrower or broader than MIBK.

(39) As a result, the Commission considers that, for the purpose of this decision, MIBK constitutes a relevant product market.

4.2.3.2. Geographic market definition

(40) The Commission has not yet considered the market for MIBK.

(41) The Notifying Parties submit that the geographic market for MIBK is at least EEA-wide.[18]

(42) The Commission notes that (i) there are significant differences between EEA and non-EEA prices for MIBK, (ii) the transportation costs associated with importing MIBK into the EEA are significant (10-12%) and (iii) in addition, some tariffs (0-5%) may as well apply to imports of MIBK into the EEA. These elements could point towards a potential EEA-wide market for MIBK. The market investigation did not provide any indications pointing towards either plausible alternative potential geographic market definition (*i.e.* EEA-wide or worldwide) for MIBK. In any event, for the purpose of assessing the Transaction, the exact scope of the geographic market definition can be left open since the above-mentioned plausible alternative geographic market definitions (EEA-wide or worldwide), do not affect the outcome of the competitive assessment of the Transaction as to its compatibility with the internal market or the functioning of the EEA Agreement.

17 Form CO, paragraphs 6.58 and 6.59

18 Form CO, paragraph 6.71

4.2.4. Acetone

(43) Acetone is a widely used colourless solvent with a characteristic smell. It is also used as a raw ingredient in the manufacture of a wide variety of chemical products.

4.2.4.1. Product market definition

(44) In previous decisions, the Commission identified a separate product market for acetone.[19]

(45) The Notifying Parties agree with the Commission's view regarding the market definition for acetone.[20]

(46) The Commission observes that acetone is not substitutable from either a demand-side or a supply side with any other chemical product. In addition, acetone is a uniform chemical product, which does not have different grades. The market investigation did not provide any element suggesting that the Commission should depart from its past decisional practice with respect to the relevant product market definition for acetone.

(47) As a result, the Commission considers that, for the purpose of this decision, acetone constitutes a relevant product market.

4.2.4.2. Geographic market definition

(48) In previous decisions, the Commission considered the geographic market for acetone to be EU-wide.[21]

(49) The Notifying Parties submit that the geographic market for acetone is at least EEA-wide.[22]

(50) The Commission notes that (i) the transportation costs associated with importing acetone into the EEA are significant (up to 20%) and (ii) in addition some tariffs (0-6%) may as well apply to imports of acetone into the EEA. These elements could point towards a potential EEA-wide market for acetone. The market investigation did not provide any element suggesting that the Commission should depart from its past decisional practice with respect to the relevant geographic market for acetone.

(51) In any event, for the purpose of assessing the Transaction, the exact scope of the geographic market definition can be left open since the above-mentioned plausible alternative geographic market definitions (EEA-wide or EU-wide), do not affect the outcome of the competitive assessment of the Transaction as to its compatibility with the internal market or the functioning of the EEA Agreement.[23]

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19 See Cases M.3024 – *Bain Capital / Rhodia*, decision of 19 December 2002; M.5712 – *Mitsubishi Chemical Holdings / Mitsubishi Rayon Co*, decision of 25 February 2010; and Case M.6171 – *IPIC / CEPSA*, decision of 5 July 2011.

20 Form CO, paragraph 6.52

21 See Cases M.3024 – *Bain Capital / Rhodia*, decision of 19 December 2002; M.5712 – *Mitsubishi Chemical Holdings / Mitsubishi Rayon Co*, decision of 25 February 2010; and Case M.6171 – *IPIC / CEPSA*, decision of 5 July 2011.

22 Form CO, paragraph 6.68

23 The Commission notes that the Notifying Parties have only provided EEA market shares (instead of EU market shares) for acetone. Nonetheless, the Notifying Parties confirmed that their market shares for

4.2.5. Methanol

(52) Methanol is a liquid petrochemical derived (amongst other processes) from natural gas and used in the production of resins for building materials and engineering plastics; as well as in fuel applications, in particular the production of unleaded gasoline.

4.2.5.1. Product market definition

(53) In previous decisions, the Commission identified a separate product market for methanol.[24]

(54) The Notifying Parties agree with agree with the Commission's view regarding the market definition for methanol.[25]

(55) The Commission observes that methanol is not substitutable from either a demand-side or a supply side with any other chemical product. In addition, methanol is a uniform chemical product, which does not have different grades. The market investigation did not provide any element suggesting that the Commission should depart from its past decisional practice with respect to the relevant product market definition for methanol.

(56) As a result, the Commission considers that, for the purpose of this decision, methanol constitutes a relevant product market.

4.2.5.2. Geographic market definition

(57) In previous decisions, the Commission considered that, although methanol is internationally traded as a commodity (as it can be profitably transported over long distances) the market is not worldwide in scope as conditions of competition vary between the three main demand areas of the world (Western Europe, North America and Asia), principally due to differences in demand patterns and significant import duties in each region.[26]

(58) The Notifying Parties submit that the geographic market for methanol is EEA-wide.[27]

(59) The Commission notes that (i) the transportation costs associated with importing methanol into the EEA are significant (up to 20%) and (ii) in addition some tariffs (0-5.5%) may as well apply to imports of methanol into the EEA. These elements would point towards a potential EEA-wide market for methanol. The market investigation did not provide any element suggesting that the Commission should depart from its past decisional practice with respect to the relevant geographic market for methanol.

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acetone (both volume-based and value-based) at EU level would not differ substantially from their market shares for acetone at the EEA level.

24 See Cases M.331 – *Fletcher Challenge / Methanex*, decision of 31 March 1993; M. 1813 – *Industri Kapital/(Nordkem)/Dyno,* decision of 12.07.2017; and M.4737 – *SABIC / GE Plastics*, decision of 2 August 2017.

25 Form CO, paragraph 6.55

26 See Cases M.331 – *Fletcher Challenge / Methanex*, decision of 31 March 1993; M. 1813 – *Industri Kapital/(Nordkem)/Dyno,* decision of 12.07.2017; and M.4737 – *SABIC / GE Plastics*, decision of 2 August 2017.

27 Form CO, paragraph 6.70

(60) As a result, the Commission considers that, for the purpose of this decision, the market for methanol is EEA-wide.

5. COMPETITIVE ASSESSMENT

5.1. Overview of affected markets

(61) The Transaction does not give rise to any horizontally affected markets. However, the Transaction gives rise to the creation of four affected vertical links, as summarised in Table 2 below:[28]

Table 2: Vertically affected markets

Upstream products	Downstream product	Reason why the link is vertically affected
Acetone MIBK" Methanol	Special bisphenols for polycarbonate resins	Affected downstream, because Honshu Chemical's estimated market share in the sale of special bisphenol for polycarbonate resins is approximately [30-40]% at worldwide level and [60-70]% at EEA level
Methanol	4,4' biphenol	Affected downstream, because Honshu Chemical's estimated market share in the sale of 4,4' biphenol is approximately [50-60]% at EEA level

(62) Only Honshu Chemical is active in the supply of special bisphenols for polycarbonate resins and 4,4' biphenol, with market shares above 30% at either worldwide or EEA level. As regards the upstream products (namely acetone, methanol and MIBK), these are sold by both Notifying Parties, but not by Honshu Chemicals. The Notifying Parties' market share in the supply of the upstream products are very limited. The Parties' and their competitors' market shares in the supply of special bisphenols for polycarbonate resins, 4,4' biphenol, MIBK, acetone and methanol are presented below in Tables 3 to 7 respectively.

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28 In addition to the four affected vertical links described in this table, the Commission notes that:
(i) both Mitsui Bussan and Mitsui Chemicals are active in the sale of caustic soda, which is also an input for the manufacture of special bisphenol for polycarbonate resins as well as of 4,4' biphenol. However, none of them supplies caustic soda in the EEA. While the Commission has consistently held that the relevant geographic market for caustic soda was the EEA, in case M.9756 – Nouryon/CP Kelco, the Commission also envisaged the possibility that the relevant geographic market for caustic soda could be worldwide in scope. While the market investigation in that case seems to exclude this possibility, the Commission ultimately left the geographic market definition open. At any rate, no risks of customer or input foreclosure arise as a result of Honshu Chemical' strong position in the supply of the relevant downstream products, as Honshu Chemical's purchase shares for caustic soda would be less than [0-5]% at both EEA and global level.
(ii) Honshu Chemical is also active in the sale of additives for photoresists for g/i-Line ("APG"). However, Honshu Chemical has no sales of this product in the EEA, and the Notifying Parties claim that there are no customers for this product in the EEA. The Notifying Parties also confirmed that "*they do not believe that Honshu Chemical's shares are likely to exceed 30% on a worldwide basis"*. Nonetheless, even if this were to be the case, the Notifying Parties confirmed that (a) the Parties' market shares in the supply of all relevant inputs for the manufacture of APG would remain below [0-5]% and (b) Honshu Chemical's purchase shares for each of these products would be less than [0-5]%. As a result, no risk of either input or customer foreclosure would arise even if Honshu Chemical had a strong position in the supply of APG.

Table 3: Market share estimates for the supply of special bisphenol for polycarbonate resins, 2019

Supplier	Worldwide		EEA	
	Volume shares	Value shares	Volume shares	Value shares
Honshu Chemical	**[30-40]%**	**<[30-40]%**	**[60-70]%**	**<[60-70]%**
Rheine Chemie	0 – 5%	Not provided	[0-5]%	Not provided
Deepack Nitrite	[10-20]%	Not provided	[30-40]%	Not provided
Taoka Chemical Co., Ltd	[30-40]%	Not provided	-	Not provided
Others	*5 – 10%*	*Not provided*	-	*Not provided*
Total	**100%**	**100%**	**100%**	**100%**

Source: Notifying Parties' estimates

Table 4: Market share estimates for the supply of 4,4' biphenol, 2019

Supplier	Worldwide		EEA	
	Volume shares	Value shares	Volume shares	Value shares
Honshu Chemical	**[20-30]%**	**<[20-30]%**	**[50-60]%**	**<[50-60]%**
SI Group, Inc.	[50-60]%	Not provided	[30-40]%	Not provided
Others	*[20-30]%*	*Not provided*	*[20-30]%*	*Not provided*
Total	**100%**	**100%**	**100%**	**100%**

Source: Notifying Parties' estimates

Table 5: Market share estimates for the supply of MIBK, 2019

Supplier	Worldwide		EEA	
	Volume shares	Value shares	Volume shares	Value shares
Mitsui Chemicals	**[5-10]%**	**[5-10]%**	**[0-5]%**	**[0-5]%**
Mitsui Bussan	**[0-5]%**	**[5-10]%**	**[0-5]%**	**[0-5]%**
Combined	**[10-20]%**	**[10-20]%**	**[0-5]%**	**[0-5]%**
Shell Netherlands Chemie BV	Not provided	Not provided	[40-50]%	[30-40]%
Arkema Group	Not provided	Not provided	[10-20]%	[10-20]%
Others	*Not provided*	*Not provided*	*[30-40]%*	*[60-70]%*
Total	**100%**	**100%**	**100%**	**100%**

Source: Notifying Parties' estimates

Table 6: Market share estimates for the supply of acetone, 2019

Supplier	Worldwide (for illustration, not a relevant market)		EEA[29]	
	Volume shares	Value shares	Volume shares	Value shares
Mitsui Chemicals	**[0-5]%**	**[0-5]%**	**-**	**-**
Mitsui Bussan	**[0-5]%**	**[0-5]%**	**[0-5]%**	**[0-5]%**
Combined	**[0-5]%**	**[0-5]%**	**[0-5]%**	**[0-5]%**
INEOS Phenol GmbH	[10-20]%	[10-20]%	[60-70]%	50 – 60%
Cepsa Química Bécancour	Not provided	Not provided	[20-30]%	10 – 20%
Versalis S.p.A.	Not provided	Not provided	[10-20]%	10 – 20%
Total	**100%**	**100%**	**100%**	**100%**

Source: Notifying Parties' estimates

29 The Notifying Parties have only provided EEA market shares (instead of EU market shares) for acetone. Nonetheless, the Notifying Parties confirmed that their market shares for acetone (both volume-based and value-based) at EU level would not differ substantially from their market shares for acetone at the EEA level.

Table 7: Market share estimates for the supply of methanol, 2019

Supplier	Worldwide (for illustration, not a relevant market)		EEA	
	Volume shares	Value shares	Volume shares	Value shares
Mitsui Chemicals	[0-5]**%**	[0-5]**%**	-	-
Mitsui Bussan	[0-5]**%**	[0-5]**%**	[0-5]**%**	[0-5]**%**
Combined	[0-5]**%**	[0-5]**%**	[0-5]**%**	[0-5]**%**
Methanex corporation	[5-10]%	[10-20]%	[20-30]%	[20-30]%
Oman Methanol Company LCC	Not provided	Not provided	0 - 5%	0 - 5%
OCI Beaumont LCC	Not provided	Not provided	0 - 5%	0 - 5%
Others	*[80-90]%*	*[70-80]%*	*65 – 80%*	*65 – 80%*
Total	**100%**	**100%**	**100%**	**100%**

Source: Notifying Parties' estimates

5.2. Vertical link between acetone, methanol or MIBK (upstream) and special bisphenol for polycarbonate resins (downstream)

5.2.1. The Notifying Parties' view

(63) As regards potential input foreclosure concerns, the Notifying Parties point to their very low combined market shares[30] in the three upstream markets of acetone, methanol and MIBK, as well as to the presence in each of these markets of a large number of alternative suppliers (with market shares higher than those of the Notifying Parties, see Tables 5 – 7 above).

(64) Therefore, the Notifying Parties conclude that the merged entity would not have the *ability* to engage in a customer foreclosure strategy.

(65) The Notifying Parties also stress that they would have no *incentive* to engage in a customer foreclosure strategy, *i.e.* to reduce or restrict sales of upstream inputs of acetone, methanol and MIBK to Honshu's downstream, competitors since these downstream competitors would simply source the relevant inputs from one of the many strong competitors of the Notifying Parties in the relevant upstream markets.

(66) These upstream competitors of the Notifying Parties are collectively responsible for more than [90-100]% of the supply in each of the upstream markets, and would easily have sufficient capacity to supply all downstream manufacturers of special bisphenol for polycarbonate resins in the event of any attempted foreclosure by the Notifying Parties. As a result, any potential input foreclosure strategy would have the only effect of causing losses to the Notifying Parties upstream, and there would be no subsequent increase in sales by Honshu Chemical downstream, since Honshu Chemical's competitors would be able to easily source their upstream inputs from the Notifying Parties' upstream competitors.[31]

(67) These facts, according to the Notifying Parties, are such that the combined entity will have neither the *ability*, nor the *incentive* to engage in any input foreclosure strategy following the Transaction, since Honshu Chemical's competitors in the supply of special bisphenol for polycarbonate resins will have the possibility to source the upstream inputs from any of the Notifying Parties' many competitors in

30 Form CO, paragraphs 6.96 to 6.101.

31 Notifying Parties' response to the Commission's RFI7, paragraphs 1.2 to 1.5

the upstream markets. These upstream competitors are collectively responsible for more than [90-100]% of the supply in each of the upstream markets.

(68) As regards potential customer foreclosure concerns,[32] the Notifying Parties observe that the entirety of Honshu's supplies of acetone, methanol and MIBK, [Current production and procurement strategy], is sourced [Current production and procurement strategy]. Moreover, Honshu Chemical sources [Current production and procurement strategy], which means that there can be no customer foreclosure as a result of the Transaction with respect to MIBK.

(69) Finally, for each of acetone, methanol and MIBK, Honshu Chemical accounts for less than [0-5]% of the purchasing market for the relevant upstream inputs globally and in the EEA, as all three of these products are also used for the manufacture of many other products, distinct from special bisphenol for polycarbonate resins. Therefore, there are numerous other potential purchasers of these inputs other than Honshu Chemical.

(70) Therefore, the Notifying Parties conclude that the merged entity would not have the *ability* to engage in a customer foreclosure strategy.

(71) The Notifying Parties also stress that they would have no *incentive* to engage in a customer foreclosure strategy. If Honshu Chemical were to reduce its purchases of the relevant upstream inputs from the Notifying Parties' competitors, given Honshu Chemical's de minimis share of purchases, there would be no effect on the upstream competitors' competitive viability or profitability; they would simply supply their products to the many other available customers representing over [90-100]% of the share of purchases.

(72) The Notifying Parties conclude that the only consequence of any customer foreclosure attempt from their side would be to limit Honshu Chemical's potential sources of supply for the upstream inputs. This restriction on Honshu Chemical's procurement abilities would be likely to increase Honshu Chemical's costs and so decrease profitability, without generating any subsequent gains for the Notifying Parties at upstream level.[33]

(73) As regards the definition of potential narrower markets for each individual type of special bisphenol for polycarbonate resins (e.g. BisPEO-FL), the Notifying Parties state that Honshu Chemical's market share in the supply of special bisphenol for polycarbonate resins overall is "*likely to be broadly representative*" of its shares with respect to the individual special bisphenol for polycarbonate resins that it supplies.[34] However, the Notifying Parties submit that there is no available data that could allow to estimate Honshu Chemical's shares of individual special bisphenol for polycarbonate resins. The Notifying Parties observe as well that the relevant upstream products are homogeneous, indistinguishable products, which Honshu Chemical purchases [Current procurement strategy] for use in the manufacture of special bisphenols as well as several other products.[35]

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32 Form CO, paragraphs 6.102 to 6.106.

33 Notifying Parties' response to the Commission's RFI7, paragraphs 1.8 to 1.13

34 Form CO, paragraph 6.88

35 Form CO, paragraph 6.41

(74) Consequently, according to the Notifying Parties, there is no prospect of customer foreclosure with respect to any of the input products required to manufacture any special bisphenol for polycarbonate resins.

5.2.2. The Commission's assessment

(75) The Commission considers that none of the three vertical relationships in question would give rise to input foreclosure concerns, (i) for lack of *ability,* in light of the Parties' limited market shares upstream in the supply of acetone, methanol and MIBK, as well as the presence of a large number of alternative suppliers for each of these inputs, and (ii) for lack of *incentives*, given that, in the absence of ability, such an input foreclosure strategy would only lead to a reduction of the combined entity's profitability as a consequence of lost sales in the upstream market with no sales increase in the downstream market.

(76) Given that the combined entity would not have the *ability* or the *incentives* to engage in an input foreclosure strategy, it is not necessary for the Commission to assess the potential *impact* of such a foreclosure strategy on effective competition.

(77) For the reasons outlined below, the Commission considers as well that the Transaction does not give rise to any customer foreclosure concerns.

(78) The Commission considers that the combined entity would not have the *ability* to engage in customer foreclosure strategies*,* in light of the fact that acetone, methanol and MIBK are very common chemicals, each one of them having a number of uses other than the manufacture of special bisphenol for polycarbonate resins. Honshu Chemical's purchase shares for each of these products would be less than [0-5]% at both EEA and global level, such that the upstream rivals of the Notifying Parties will continue to have access to over [90-100]% of the worldwide and EEA customer bases for acetone, methanol and MIBK post-Transaction. In addition, as regards MIBK specifically, the Commission notes that Honshu Chemical already sources the [Current procurement strategy], so that there are [Current production and procurement strategy] to foreclose in that respect.

(79) Concerning the Notifying Parties' *incentive* to engage in a customer foreclosure strategy, the Commission concludes that the combined entity would have no incentive to pursue a customer foreclosure strategy since this would not lead to an increase in profitability in either the upstream or downstream markets, and would rather likely lead to a decrease in the overall profitability of the merged entity as a result of a reduction in available sources of supply for Honshu Chemical.

(80) Given that the combined entity would not have the *ability* or the *incentives* to engage in a customer foreclosure strategy, it is not necessary for the Commission to assess the potential *impact* of such a foreclosure strategy on effective competition.

(81) The Commission observes that this analysis would not change in the event that potential alternative market definitions were considered for special bisphenols for polycarbonate resins, namely:

(a) as regards a hypothetical broader market for the supply of all special bisphenols, the Notifying Parties estimate that Honshu Chemical's market share would also be no higher than [30-40]% at worldwide level, and circa 50-60% at EEA level. Notably, Honshu Chemical does not supply special bisphenols other than special bisphenols for polycarbonate resins in the EEA.

The relevant affected upstream markets for all special bisphenols, are the same as for the narrower sub-segment of special bisphenols for polycarbonate resins. As a result, no customer foreclosure concerns arise, because the combined entity would not have the *ability* to engage in customer foreclosure strategies, in the same fashion as described above (see paragraph (78)). Same as above (see paragraph (79)), the combined entity would also have no *incentive* to engage in a customer foreclosure strategy, since the overall financial impact of such a customer foreclosure strategy would be detrimental to it. Same as above (see paragraph (80)), given that the combined entity would not have the *ability* or the *incentives* to engage in a customer foreclosure strategy, it is not necessary for the Commission to assess the potential *impact* of such a foreclosure strategy on effective competition.

(b) as regards the definition of potential narrower markets for each individual type of special bisphenol for polycarbonate resins (*e.g.* BisPEO-FL), as mentioned above, the Notifying Parties state that Honshu Chemical's market share in the supply of special bisphenol for polycarbonate resins overall is "*likely to be broadly representative*"[36] of its shares with respect to the individual special bisphenol for polycarbonate resins that it supplies. In any event, as Honshu Chemical's purchase shares for each of the relevant upstream product would be less than [0-5]% at both EEA and global level, and as these upstream products are homogeneous, indistinguishable products, which Honshu Chemical purchases [Current procurement strategy] for use in the manufacture of special bisphenols as well as several other products, customer foreclosure concerns can be excluded, for lack of *ability,* irrespective of the precise segmentation of the downstream products and irrespective of Honshu Chemical's precise market share in any potential downstream sub-market (see paragraph (78)(77)). Same as above (see paragraph(79)), customer foreclosure concerns can be excluded, for lack of *incentive*, since the overall financial impact of such a customer foreclosure strategy would be detrimental to it. Same as above (see paragraph (80)), given that the combined entity would not have the *ability* or the *incentives* to engage in a customer foreclosure strategy, it is not necessary for the Commission to assess the potential *impact* of such a foreclosure strategy on effective competition.

(82) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to the vertical link between acetone, methanol or MIBK (upstream) and special bisphenol for polycarbonate resins (downstream), under any plausible geographic market definition.

5.3. Vertical link between methanol (upstream) and 4,4' biphenol (downstream)

5.3.1. The Notifying Parties' views

(83) As regards potential input foreclosure concerns, the Notifying Parties underline that their combined share in the supply of methanol (which is an input for the manufacturing of 4,4' biphenol) is extremely low (below [0-5]% in the EEA and

[36] Form CO, paragraph 6.88

worldwide, see table 7). The presence of many other suppliers competing with the Notifying Parties for the supply of methanol is such that any input foreclosure strategy they might attempt to engage in will not succeed.[37]

(84) Therefore, the Notifying Parties conclude that the merged entity would not have the *ability* to engage in a customer foreclosure strategy.

(85) The Notifying Parties also stress that they would not have the *incentive* to engage in a potential input foreclosure strategy. The Notifying Parties have a de minimis share (<[0-5]%) in the EEA with respect to the supply of methanol. Their competitors upstream are collectively responsible for more than [90-100]% of the supply of methanol (which is a commodity product used across a variety of applications) and would easily have sufficient capacity to supply all downstream manufacturers of 4,4' biphenol in the event of any attempted foreclosure by the Notifying Parties. No manufacturer of 4,4' biphenol is reliant on the Notifying Parties with respect to their supply of methanol.

(86) The Notifying Parties conclude that the only consequence of any input foreclosure attempt on their side would be a loss of sales for them upstream. These losses would not be compensated by any subsequent increase in sales of 4,4' biphenol by Honshu Chemical downstream, since Honshu Chemical's competitors would be able to easily source their methanol requirements from the Notifying Parties' competitors.[38]

(87) As regards potential customer foreclosure concerns,[39] the Notifying Parties argue once again that Honshu Chemical's total share of purchase of methanol is less than [0-5]%.[40] Moreover, methanol is used for many other uses apart from the manufacture of 4,4' biphenol.

(88) Therefore, the Notifying Parties conclude that the merged entity would not have the *ability* to engage in a customer foreclosure strategy.

(89) The Notifying Parties also stress that they would have no *incentive* to engage in a customer foreclosure strategy. If Honshu Chemical were to reduce its purchases of methanol from the Notifying Parties' competitors, given Honshu Chemical's de minimis share of purchases, there would be no effect on the upstream competitors' competitive viability or profitability; they would simply supply their products to the many other available customers representing over [90-100]% of the share of purchases.

(90) The Notifying Parties conclude that the only consequence of any customer foreclosure attempt from their side would be to limit Honshu Chemical's potential sources of supply for the upstream inputs. This restriction on Honshu Chemical's procurement abilities would be likely to increase Honshu Chemical's costs and so decrease profitability, without generating any subsequent gains for the Notifying Parties at upstream level.[41]

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37 Form CO, paragraphs 6.135 to 6.138

38 Notifying Parties' response to the Commission's RFI7, paragraphs 1.24 to 1.27

39 Form CO, paragraphs 6.139 to 6.145.

40 [90-100]% of which are made in Japan.

41 Notifying Parties' response to the Commission's RFI7, paragraphs 1.28 to 1.32

(91) Therefore the Notifying Parties conclude that any customer foreclosure strategy attempted by the Notifying Parties will not be successful.

5.3.2. The Commission's assessment

(92) The Commission considers that this vertical relationship would give rise to no input foreclosure concerns, (i) for lack of *ability*, in light of the Parties' limited market share upstream in, as well as the presence of a large number of alternative suppliers for, the supply of methanol, and (ii) for lack of *incentive*, since such a strategy would lead to a reduced profitability of the combined entity as a result of lost sales in the upstream market, which would not be compensated by any sales increase in the downstream market.

(93) Given that the combined entity would not have the *ability* or the *incentives* to engage in an input foreclosure strategy, it is not necessary for the Commission to assess the potential *impact* of such a foreclosure strategy on effective competition.

(94) For the reasons outlined below, the Commission considers as well that the Transaction does not give rise to any customer foreclosure concerns.

(95) The Commission considers that the combined entity would not have the *ability* to engage in customer foreclosure strategies, in light of the fact that methanol is a very common chemical, which has a number of uses other than the manufacture of 4,4' biphenol. Honshu Chemical's purchase shares would be less than [0-5]% in the EEA and global level, such that the Notifying Parties' upstream rivals will continue to have access to over [90-100]% of the worldwide and EEA customer bases for methanol post-Transaction.

(96) The Commission also considers that the Notifying Parties would have no *incentive* to pursue a customer foreclosure strategy since this would not lead to an increase in profitability in either the upstream or downstream markets, and would rather likely lead to a decrease in the overall profitability of the merged entity as a result of a reduction in available sources of supply for Honshu Chemical.

(97) Given that the combined entity would not have the *ability* or the *incentives* to engage in a customer foreclosure strategy, it is not necessary for the Commission to assess the potential *impact* of such a foreclosure strategy on effective competition.

(98) In light of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement in relation to the vertical link between methanol (upstream) and 4,4' biphenol (downstream), under any plausible geographic market definition.

5.4. Conglomerate effects

(99) The Commission considers that the Transaction does not raise serious doubtsas to its compatibility with the internal market or the functioning of the EEA Agreement in relation to potential conglomerate effects involving product sold by Honshu Chemical in the one hand and either of the Notifying Parties on the other hand.

6. CONCLUSION

(100) For the above reasons, the European Commission decides not to oppose the Transaction and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President