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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Repsol S.A.
Méndez Álvaro 44
28045 Madrid
Spain

Bunge Global S.A.
Route de Florissant 13
1206 Geneva
Switzerland

Subject: **Case M.11575 – REPSOL / BUNGE / BISA**
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 17 January 2025, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004.

(2) The notification concerns the undertakings Repsol, S.A. ('Repsol', Spain) and Bunge Global, S.A. ('Bunge', Switzerland, and, together with Repsol, the 'Notifying Parties').[3]

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 OJ C, C/2025/607, 24.1.2025.

(3) Repsol and Bunge intend to acquire within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation joint control of the whole of Bunge Ibérica, S.A. ('BISA', Spain, and, together with the Notifying Parties, the 'Parties'), currently solely controlled by Bunge, by way of purchase of shares (the 'Transaction').

1. THE PARTIES

(4) Repsol is a global integrated energy company active in the oil, gas and electricity industries. Repsol's business also includes a division for renewable energy, including renewable fuels.

(5) Bunge is an agribusiness and food company listed on the New York Stock Exchange. Bunge is predominantly active in the sale of oilseeds meals, oils as well as other vegetable oils. Bunge also sells grains, including corn, wheat, barley and milled products, such as wheat flour, as well as unprocessed oilseeds and other products.

(6) BISA operates three oilseed crushing plants located in Barcelona, Bilbao and Cartagena (Spain) and is mainly active in the oilseed processing and production, distribution and supply of plant-based oils, fats and proteins. BISA also produces biodiesel and related by-products.

2. THE CONCENTRATION

(7) Pursuant to a Sale and Purchase Agreement signed on 26 March 2024, Repsol will indirectly acquire from Bunge a shareholding representing 40% of the voting rights in BISA. Bunge will continue to indirectly hold the remaining 60% of BISA's voting rights.

2.1. Acquisition of joint control

(8) BISA's board will consist of [BISA's board structure], and will pass decisions on ordinary matters by simple majority. However, having regard to the considerations described below, each of Repsol and Bunge will have the possibility of exercising decisive influence on BISA.

(9) *First*, the approval of directors nominated by each of Repsol and Bunge will be required for decisions on certain reserved matters including, among others, [BISA's list of reserved matters].

(10) *Second*, Bunge will have the right to appoint [BISA's director], while Repsol will have the right to appoint [certain BISA's managers].[4]

(11) As a result, Repsol and Bunge will acquire joint control over BISA.

2.2. Full functionality of the joint venture

(12) BISA will be a full functional joint venture within the meaning of Article 3(4) of the Merger Regulation because it will perform on a lasting basis all the functions of an autonomous economic entity.

[4] The [role of BISA's manager and BISA's strategy].

(13) *First*, BISA will continue to have sufficient resources to operate independently on the market. These will include three plants for the crushing of oilseeds, including own assets, [number of] employees in operational and commercial functions and financial resources from its own cash flow and external financing.

(14) *Second*, BISA will continue to have its own access to and presence on the market serving its own customers and supplying different types of grains, soybeans, oilseed meal and hull, lecithin, crude and refined oilseed oil, biodiesel, glycerine, free fatty acids, deodorizer distillates, electricity, etc.

(15) *Third*, BISA's sale and purchase relationship with its parent companies will represent [BISA's operations].

(16) *Fourth*, BISA is intended to operate on a lasting basis and the Notifying Parties have not established any finite duration of their partnership.

(17) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) and 3(4) of the Merger Regulation.

3. UNION DIMENSION

(18) The concentration has a Union dimension because it exceeds the turnover thresholds referred to in Article 1(2) of the Merger Regulation: the undertakings concerned have a combined aggregate worldwide turnover of more than € 2 500 million (Repsol: € […]; Bunge: € […]), each of them has a Union-wide turnover of more than € 250 million (Repsol: € […]; Bunge: € […]) and they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.

4. MARKET DEFINITION

(19) The Commission decision in case M.11204 *Bunge / Viterra*[5] distinguished crude vegetable oil based on the type of oilseeds, namely rapeseed, sunflower seed and soybeans. The Commission assessed these markets based on catchment areas with a 500 Km radius, as well as on a national basis.

(20) In the same decision, the Commission left open the question whether Fatty Acid Methyl Ester (FAME) biodiesel and hydrotreated vegetable oil (HVO) biodiesel belong to separate markets. It also left open the question whether the biodiesel markets have an EEA-wide or regional (transnational) scope.

(21) The investigation in the present case did not call into question this approach.

5. COMPETITIVE ASSESSMENT

(22) The Transaction gives rise to vertically affected markets in Spain between BISA's upstream supply of crude vegetable oil and Repsol's downstream production of biodiesel.

(23) The Transaction also results in horizontal and vertical relationships for a number of other markets. However, none of these relationships give rise to affected markets

[5] Commission decision on 1 August 2024 in Case M.11204 *Bunge / Viterra*.

within the meaning of recital 25(g) Annex I to Regulation (EU) 2023/914[6], as they meet the conditions for review under point 5 or benefit from the flexibility clauses of point 8 of the Notice on Simplified Treatment[7]. Therefore, these relationships will not be further discussed in this decision.

5.1. Input foreclosure

(24) Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream. In practice, these factors are often examined together since they are closely intertwined.[8]

(25) In Spain, BISA has a considerable market share in the upstream market for crude oilseed oil ([30-40]%), particularly in the subsegment of crude soybean oil ([70-80]%). Crude vegetable oil can be used as a feedstock in the production of HVO biodiesel, where Repsol has a market share in Spain of [60-70]%.

(26) Nonetheless, for the reasons explained below, BISA will not be able to engage in an input foreclosure strategy against downstream producers of biodiesel competing against Repsol.

(27) *First*, BISA sells most of its crude oils to companies processing it into [information of BISA's current customers]. Because those companies are not competing against Repsol, they are not possible targets of a hypothetical input foreclosure strategy.

(28) *Second*, the only [BISA's customer information] biodiesel producers acquiring sizeable volumes of crude oil from BISA are [BISA's customer information]. [BISA's customer information] these customers are large, sophisticated agribusiness having their own in-house production of crude oilseed oils. In response to the Commission's questions, [BISA's customer] confirmed that they do not expect any significant impact from the Transaction and explained that they would be able to replace BISA's supply with no additional investments.[9] Other downstream customers confirmed that there is abundant supply of vegetable crude oil for the production of biodiesel in Spain and internationally.[10]

(29) *Third*, other inputs can replace crude vegetable oil for the production of biodiesel. In fact, market participants explained that the industry is progressively shifting

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6 Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023, p. 22.

7 Commission Notice on a simplified treatment for certain concentrations under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings 2023/C 160/01, OJ C 160, 5.5.2023, p. 1.

8 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 6 ('NHMG'), paras. 31 ff.

9 Correspondence on 14 January 2025.

10 Minutes of a call on 13 December 2024.

towards so-called 'second generation feedstock' (*i.e.* recycled fats of vegetable or animal origin) in compliance with EU regulation in this sector.[11]

(30) Since BISA will not be able to engage in input foreclosure, it is not necessary to assess its incentive to do so or the impact of this hypothetical strategy.

5.2. Customer foreclosure

(31) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this downstream presence, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market (the input market) and reduce their ability or incentive to compete. In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[12]

(32) Repsol has a considerable market share in the downstream market for HVO biodiesel in Spain ([60-70]%).

(33) Although crude vegetable oil can be used as a feedstock in the production of HVO biodiesel, [Repsol's information on production process]. […], Repsol's biodiesel plant processes waste feedstock, mainly used cooking oil. Since Repsol [Repsol's information on supply sources], it will not be able to engage in any customer foreclosure strategy in this market.

(34) Since Repsol will not be able to engage in customer foreclosure, it is not necessary to assess its incentive to do so or the impact of this hypothetical strategy.

6. CONCLUSION

(35) For the above reasons, the European Commission has decided not to oppose the notified operation 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)
Teresa RIBERA
Executive Vice-President

[11] Minutes of a call on 13 December 2024.
[12] NHMG, paras. 58 ff.