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***Case No COMP/M.6141 - CHINA
NATIONAL AGROCHEMICAL
CORPORATION/ KOOR
INDUSTRIES/ MAKHTESHIM
AGAN INDUSTRIES***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 03/10/2011

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

Subject: Case No COMP/M.6141 – CHINA NATIONAL AGROCHEMICAL CORPORATION/ KOOR INDUSTRIES/ MAKHTESHIM AGAN INDUSTRIES
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

1. On 29 August 2011, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings China National Agrochemical Corporation ("CNAC", China), belonging to China National Chemical Corporation ("ChemChina", a company which is wholly owned by the Chinese State), and Koor Industries ("Koor", Israel), belonging to IDB Group, acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking Makhteshim Agan Industries Ltd. ("MAI", Israel) by way of purchase of shares (CNAC and Koor are designated hereinafter as the "notifying parties" or "the Parties").

I. THE PARTIES AND THE OPERATION

The Parties

2. CNAC is the agrochemical division of ChemChina. ChemChina is wholly-owned by the Chinese State, which exercises its rights through the Central State-owned Assets

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.

Supervision and Administration Commission of the State Council (“Central SASAC”), an agency of the Chinese government. CNAC manufactures and sells active ingredients and formulated products used for crop protection. In the EEA, CNAC only sells active ingredients.

3. **Koor** is a public holding company part of the IDB group, which invests in sectors such as communication, finance and insurance, heavy industry and transportation, retail, real estate and technology.
4. **MAI**, the target company is an agrochemical manufacturer and distributor of branded off-patent crop protection and non-agricultural crop products (such as crop protection agents for home and garden). Koor currently owns a 47% shareholding in the Target.

Independence of CNAC

5. The transaction involves CNAC, a subsidiary of ChemChina, a Chinese state-owned enterprise (SOE). The notifying parties argue that ChemChina and CNAC on the one side and the remaining Chinese SOEs on the other side have an independent power of decision in the market within the meaning of recital 22 of the Merger Regulation and that they therefore do not act as one economic unit. The notifying parties further submit that most of these entities compete with each other and do not share at the operational level any information.
6. In previous cases², the Commission looked at a worst case scenario in which all Chinese SOEs (including those under regional SASACs) are regarded as acting as one undertaking. However, the Commission eventually left open whether Chinese SOEs in the sectors in question acted as one single economic entity³. In particular, in a decision regarding Chemchina⁴, the Commission left open whether ChemChina enjoys independent power of decision in relation to other undertakings under central and regional SASACs.
7. For the purpose of the assessment of this case, this decision takes as starting point for the analysis a worst case scenario in which all horizontal and vertical overlaps between MAI, Koor and all Chinese SOEs are taken into account, as if all the Chinese SOEs in the sectors concerned were part of a single economic unit with ChemChina and CNAC. It can eventually be left open whether Chemchina and CNAC enjoy independent power of decision in relation to central and regional SASACs and other Chinese SOEs, since the proposed transaction does not raise concerns even if all the Chinese SOEs in the sector are part of a single economic unit with ChemChina and CNAC.

² Case COMP/M.6082 - CHINA NATIONAL BLUESTAR / ELKEM, Commission's decision of 31 March 2011; case COMP/M.6113 – DSM / SINOCHEM / JV, Commission's decision of 19 May 2011.

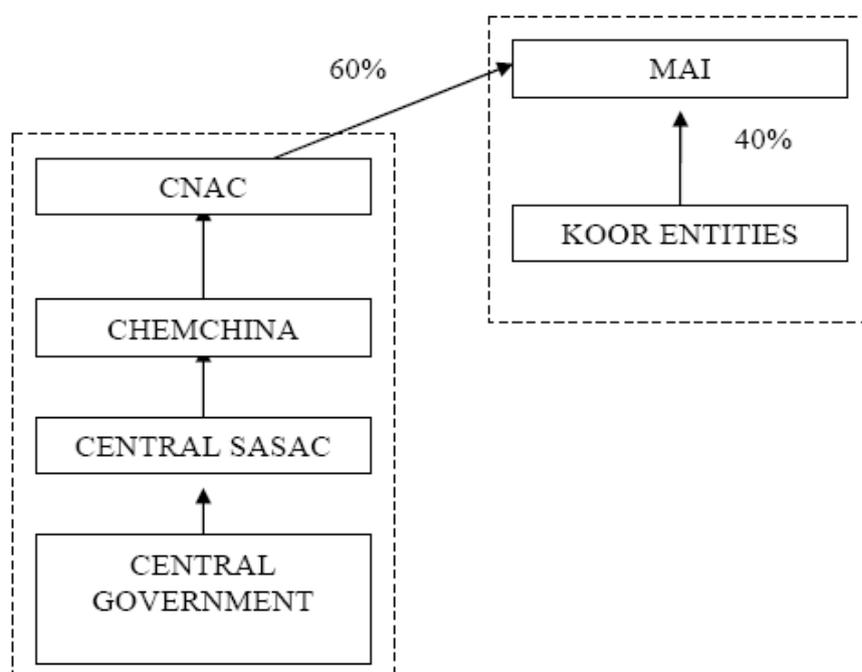
³ Case COMP/M.6113 – DSM / SINOCHEM / JV, Commission's decision of 19 May 2011, recital 16.

⁴ Case COMP/M.6082 - CHINA NATIONAL BLUESTAR / ELKEM, Commission's decision of 31 March 2011, recital 34.

II. THE CONCENTRATION

8. On 8 January 2011, MAI, Koor, M.A.G.M. Chemistry Holdings Ltd. ("MAGM", a wholly-owned subsidiary of Koor; referred to thereafter together with Koor as "the Koor entities"), CNAC and Merger Sub⁵ (a wholly-owned subsidiary of CNAC) signed a Merger Agreement. The same day Koor, MAGM and CNAC signed a Shareholders Agreement.
9. As a result of the transaction, CNAC and the Koor Entities will respectively hold approximately 60% and 40% of MAI's issued and outstanding ordinary shares (Chart 1).

Chart 1- Structure of MAI's shareholding following the proposed transaction



10. CNAC and Koor will each appoint members of MAI's Board in proportion with their respective economic stakes. Moreover, as long as Koor owns [...] of MAI's ordinary shares, Koor will have a veto right over the hiring and firing of the following members of MAI's senior management: Chief Executive Officer, President, Chief Financial Officer, Chief Operating Officer, General Counsel and Head of Research & Development. The rights which allow Koor to veto decisions which are essential for the strategic commercial behaviour of MAI do not go beyond the veto right over the hiring and firing of MAI's senior management.
11. According to the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, *"joint control may exist even where there is no equality between the two parent companies. This is the case where minority shareholders have additional rights which allow them to veto decisions which are essential for the strategic commercial behaviour of the joint*

⁵ [...].

venture. (...) *The power to co-determine the structure of the senior management, such as the members of the board, usually confers upon the holder the power to exercise decisive influence on the commercial policy of an undertaking*"⁶. Accordingly, at closing, CNAC and Koor will jointly control MAI.

12. Hence, the proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

13. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁷ (ChemChina: EUR [...] million, IDB: EUR [...] million, MAI: EUR 1 782 million). Each of them has an EU-wide turnover in excess of EUR 250 million (ChemChina: EUR [...] million; IDB: EUR [...] million, MAI: EUR [...]million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

IV. MARKET DEFINITION

1. AGROCHEMICAL PRODUCTS

1.1. Product market definition

1.1.1. Active ingredients

14. Active ingredients constitute the key raw materials in order to manufacture agricultural protection products. The production of crop protection products follows three stages: (i) the production of the active substances, (ii) the manufacture of the formulations from the active substances and inert ingredients, and (iii) the packaging of such formulations.
15. The Commission found in earlier decisions that active ingredients are not substitutable for one another but form separate product markets, since each active substance has its unique properties and, where appropriate, is patented.⁸
16. The notifying parties agree with the precedents as far as patented active ingredients are concerned. For off-patent ingredients however, they argue that those active ingredients, which fall within the same class of molecules are typically substitutable for each other from both a demand and a supply-side point of view. They put forward that for many pests, diseases or weeds, there is a multitude of formulated products incorporating different active ingredients which are designed to address these threats. They further argue that farmers can and do frequently switch among these formulated products depending on local

⁶ Recitals 65 and 69.

⁷ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

⁸ Case COMP/M.2547-Bayer/Aventis Crop Science, recital 918; case COMP/M.737-Ciba-Geigy/Sandoz, recital 125.

conditions and the price of formulated products. Therefore, they conclude, that the price of upstream active ingredients, particularly off-patent, is constrained by substitutability of downstream formulated products and farmers willingness to switch. Finally, they claim, that for off-patent ingredients there is often considerable supply-side substitutability among the producers of active ingredients that fall within the same class of molecules.

17. The market investigation confirmed that active ingredients for crop-protection productions are generally not substitutable for one another but form separate product markets⁹. Respondents referred to the unique chemical characteristics and different properties of active ingredients. Furthermore they point out that the active ingredient of one formulated product cannot easily be substituted, as this would require costly and time-consuming product development, testing and registration of the new formulated product.
18. However, the market investigation in this case was not conclusive as regards the question whether off-patent active ingredients belonging to the same class of molecules should fall within the same relevant market. Indeed, while the market investigation showed that off-patent active ingredients within the same class of molecules are similar in terms of characteristics, functionality, price and mode of use¹⁰, the majority of suppliers of crop protection products explained that it is difficult to switch from the use of one off-patent active ingredient to another off-patent active ingredient within the same class of molecules as this requires long and costly registration procedures¹¹. Nevertheless, respondents to the market investigation confirmed the view of the Parties that farmers frequently switch between crop protection products based on off-patent active ingredients which fall in the same class of molecules, especially to save costs¹².
19. In any event, the precise product market definition with regard to off-patent active ingredients can be left open for the purpose of this decision since the competitive assessment would not change under any of the alternative definitions of the product markets discussed above.

1.1.2. Formulated products

20. Formulated products are compounds of active and inert ingredients, which are ready to be applied for their respective purpose. According to previous Commission decisions formulated products can be distinguished by type as follows.

⁹ Replies to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 5. Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 7.

¹⁰ Replies to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 6. Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 8.

¹¹ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 10.

¹² Replies to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 7. Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 9.

21. Herbicides are crop protection products that prevent or reduce weed competition in a crop. The Commission decided in precedent cases that the market for herbicides has to be further segmented into (i) selective and (ii) non-selective herbicides.¹³ It has defined non-selective herbicides as crop protection products which are designed to clear fields of weeds after the harvest of one crop and prior to the sowing of the next. Selective herbicides are designed to kill only weeds and leave intact the crop to which they are applied.¹⁴ The Commission considered further possible segmentations distinguishing between broadleaf weed insecticides, graminicides and broad spectrum herbicides and differentiating between pre- and post-emergence herbicides.¹⁵
22. In previous decisions the Commission decided to subdivide the agricultural insecticides markets by crop, rather than by the insect it is designed to defeat as in general insecticides are designed to combat a range of insects infecting a particular plant.¹⁶ Furthermore, the Commission found a further sub-segmentation of these markets into foliar and soil insecticides.¹⁷
23. Molluscicides are products to combat snails and other types of molluscs. The Commission came in precedent decisions to the conclusion that there is a distinct market for molluscicides, which cannot be further sub-divided.¹⁸ In relation to fungicides the Commission held that the market has to be segmented by crops, since it found that various plants display differing disease patterns¹⁹. It also considered a possible further division by type of disease (e.g. downy mildew) but eventually left it open if such a differentiation would be appropriate.²⁰
24. Soil fumigants are products to prepare and clean up soils that have been used for intensive crop production by sterilising the soil and removing remaining pests and diseases. The Commission has found in an earlier decision that soil fumigants constitute a distinct product market, but did not envisage any further segmentation.²¹
25. Seed treatment is the application of specific formulations on seeds to protect them at an early stage of their development. In previous decisions the Commission has found that

¹³ Case COMP/M.1806- *AstraZeneca/Novartis*, recital 54.

¹⁴ Case COMP/M.4972-*Permira/Arysta*, recital 18.

¹⁵ Case COMP/M.1806-*AstraZeneca/Novartis*, recital 68. According to the Commission pre-emergence herbicides are applied to a target crop before it has germinated whereas post-emergence graminicides are applied after germination.

¹⁶ Case COMP/M.2547-*Bayer/Aventis Crop Science*, recital 61.

¹⁷ Case COMP/M.2547-*Bayer/Aventis Crop Science*, recital 61.

¹⁸ Case COMP/M.2547-*Bayer/Aventis Crop Science*, recital 527.

¹⁹ Case COMP/M.2547-*Bayer/Aventis Crop Science*, recital 655.

²⁰ Case COMP/M.2547-*Bayer/Aventis Crop Science*, recital 655.

²¹ Case COMP/M.1931-*BASF/American Cynamid (AHP)*, recital 27.

seed treatment constitutes a separate product market rather than a particular type of application of insecticides and fungicides. Nevertheless, it decided that this market may then be further divided by type (insecticide, fungicide) and by crop.²²

26. Nutrients are employed to treat deficiency symptoms such as iron deficiency. The Commission suggested in previous decisions that the market for nutrients may be further split by type of crop as a given type of plant suffers predominantly from the same nutrient deficiency.²³
27. According to the Commission's past decisions there are separate markets for plant growth regulators for individual crop types.²⁴
28. Professional pest control products are insecticides for use by professional pest control operators, industrial customers and local authorities and municipalities. They differ in packaging, distribution and formulation from products sold to the household customer. The Commission has taken into account the following possible sub-segmentation of the market for professional pest control products by type, when assessing the competitive impact in *Bayer/Aventis Crop Science*: multipurpose insecticides, products for cockroaches, products for flies, ticks and fleas and products for rodenticides.²⁵
29. In *Bayer/Aventis Crop Science*, the Commission indicated that the existence of a separate product market for non-agricultural crop protection agents for home and garden, further segmented by type (herbicides, insecticides, fungicides), had been to a large degree confirmed by the market investigation. However, the Commission left the precise market definition open.²⁶
30. For the purpose of the proposed transaction, the notifying parties accept the Commission's prior market definitions.
31. The market investigation confirmed that the market for herbicides should be sub-divided into selective and non-selective herbicides²⁷, and according to crop²⁸. Moreover, a majority of respondents²⁹ indicated that further sub-segmentations should be applied, distinguishing

²² Case COMP/M.2547-*Bayer/Aventis Crop Science*, recital 823; COMP/M.5675-Syngenta/Monsanto's Sunflower Seed Business, recital 109.

²³ Case COMP/M.737-*Ciba-Geigy/Sandoz*, recital 122.

²⁴ E.g. Case COMP/M.1931-*BASF/American Cyanamid (AHP)*, recital 28; case COMP/M.737-*Ciba-Geigy/Sandoz*, recital 123.

²⁵ Case COMP/M.2547-*Bayer/Aventis Crop Science*, recital 954-997.

²⁶ Case COMP/M.2547-*Bayer/Aventis Crop Science*, recital 999.

²⁷ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, questions 11 and 12.

²⁸ With the exception of perennial crops fruits and nuts, citrus fruits and grapes, where non-selective herbicides and selective herbicides are used to control weeds without damaging the crop.

²⁹ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 13.

between broadleaf weed herbicides, graminicides and broad-spectrum herbicides and between pre- and postemergence herbicides respectively. Finally, the market investigation confirmed that a segmentation by crop should be applied within respectively seed treatment insecticides and seed treatment fungicides³⁰.

32. With regard to formulated products, the competitive assessment in this case will be conducted under the segmentations described in paragraphs 21 to 31 above. Regarding segmentations that were envisaged but were left open in past decisions, it is not necessary to come to definitive conclusions in this case since the competitive assessment would not change whichever precise product market definition is retained.

1.2. Geographic market definition

1.2.1. Active ingredients

33. According to the Commission's past decisions the relevant geographic scope of the markets for active ingredients is at least EEA-wide if not worldwide.³¹
34. The notifying parties agree with this definition of the geographic market for active ingredients.
35. Since MAI and Chinese SOEs are only overlapping in off-patent active ingredients, it can be left open whether the market for patented active ingredients is EEA-wide or worldwide.
36. The market investigation in this case showed that the markets for off-patent active ingredients are worldwide in scope. Producers of formulated products frequently source off-patent active ingredients from outside the EEA, while off-patent active ingredients produced in the EEA are occasionally exported outside the EEA³². According to the majority of respondents suppliers of off-patent active ingredients act globally, supply conditions are negotiated irrespective of the origin of the supplier, and for most respondents services such as warehousing, engineering and after sales support do not necessarily have to be provided within the EEA³³.

³⁰ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 16.

³¹ Case COMP/M.2547-*Bayer/Aventis Crop Science*, recital 919.

³² Replies to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 9. Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 21.

³³ Replies to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, questions 9, 11 and 12. Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, questions 17, 19, 20, 21.

1.2.2. Formulated products

37. The Commission has found in previous decisions that the markets for formulated products are national in scope, since the registration of downstream agrochemicals is still regulated only at the national level.³⁴
38. In the notifying parties' opinion this definition of the geographic scope the markets for formulated products is appropriate.
39. The market investigation has confirmed that the respective product markets for formulated products are national in scope³⁵, in particular because each EU Member State remains responsible for granting its national registrations and maintaining specific national data requirements.

2. NON-AGROCHEMICAL PRODUCTS

2.1. Product market definition

40. The Parties' overlapping non-agrochemical products are all carotenoids, namely natural beta-carotene, lutein and natural tomato lycopene. Carotenoids are fat-soluble materials, and are mostly used as pigments for foods and cosmetics, and to impact colour to animal flesh. The Commission has previously considered carotenoids to be a separate market from vitamins, and other types of nutrients, as they are generally not interchangeable with each other.³⁶ Moreover, it considered a further distinction between beta-carotene and other carotenoids.³⁷ The Commission has also envisaged a distinction between natural beta-carotene and synthetic beta-carotene. However, it eventually concluded that the precise definition could be left open.³⁸ The Commission has not yet analysed whether there are separate markets for lutein or lycopene.
41. The exact market definition for carotenoids can be left open in this case, since the transaction does not raise any competition concerns irrespective of the precise product market definition.

2.2. Geographic market definition

42. In previous decisions the Commission found the geographic scope for the beta-carotene and carotenoids' market to be at least EEA-wide, and indicated that they could be even worldwide.³⁹

³⁴ Case COMP/M.4972-*Permira/Arysta*, recital 24.

³⁵ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 23.

³⁶ E.g. Case COMP/M.5927- *BASF/Cognis*.

³⁷ Case COMP/M.5927- *BASF/Cognis*.

³⁸ Case COMP/M.5927- *BASF/Cognis*, recital 145.

³⁹ Case COMP/M.5927- *BASF/Cognis*, recital 151.

43. In any event, the precise definition of the geographic market with regard to non-agrochemical products can be left open for the purposes of this decision as the competitive assessment would not change under any of the possible geographic market definitions.

3. RAW MATERIALS

3.1. Product market definition

44. The notifying parties submit that each of the raw materials they source or supply constitutes a separate product market, as these raw materials are not substitutable with one another from a demand side as they have different uses. This definition would be in line with previous Commission decisions regarding raw materials for chemical applications.⁴⁰

45. However, the precise definition of the product market with regard to raw materials can be left open for the purposes of this decision as the competitive assessment would not change under any of the possible product market definitions.

3.2. Geographic market definition

46. The notifying parties suggest that the potential relevant geographic scope of the product markets for the raw materials is worldwide, since they are traded on a global basis. They submit that this definition complies with previous Commission's decisions regarding other raw materials for chemical applications.⁴¹

47. However, the precise definition of the geographic market with regard to raw materials can be left open for the purposes of this decision as the competitive assessment would not change under any of the possible geographic market definitions.

V. COMPETITIVE ASSESSMENT

48. In the following, the competitive analysis of the transaction is presented both in a scenario where ChemChina/CNAC is deemed to constitute an economic unit with an independent power of decision from the Chinese State, and in a scenario where this is not the case and where the market position of ChemChina/CNAC is taken together with other Chinese SOEs. Whilst this changes the relevant market share situation, it does not alter the conclusion of the competitive analysis as under either scenario the concentration would not lead to any competition concerns.

⁴⁰ Case COMP/M.2231-*Huntsman International/Albright & Wilson Surfactants Europe*.

⁴¹ Case COMP/M.2231-*Huntsman International/Albright & Wilson Surfactants Europe*..

1. AGROCHEMICAL PRODUCTS

1.1. Horizontal overlaps

49. The assessment of the horizontal overlaps between the Parties considers the worst case scenario as if all the Chinese SoEs were part of a single economic unit with ChemChina and CNAC⁴².

1.1.1. Active ingredients

Horizontal overlaps between MAI and CNAC

50. At the worldwide level, the proposed transaction leads to a series of horizontal overlaps between MAI and CNAC⁴³. The five active ingredients for which there is a horizontal overlap at a worldwide level are chlorothalonil, oxiadiazon, cypermethrin, glyphosate and imidacloprid. The latter three active ingredients are also sold by other Chinese SOEs. The market shares by volume⁴⁴ of MAI and CNAC and the other SOE in the referred active ingredients are provided in Table 1.⁴⁵

Table 1 – Worldwide market shares by volume in markets with horizontal overlaps between MAI and CNAC

	CNAC	MAI	Combined CNAC/MAI	Central SoEs (*)	Regional SoEs	Combined SoEs (*) /MAI
Chlorothalonil	[0-5]%	[0-5]%	[0-5]%	-	-	[0-5]%
Oxadiazon	[5-10]%	[0-5]%	[5-10]%	-	-	[5-10]%
Cypermethrin	[0-5]%	[0-5]%	[0-5]%	-	[5-10]%	[5-10]%
Glyphosate	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%
Imidacloprid	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[5-10]%	[10-20]%

(*) Including CNAC

Source: Parties' estimates

42 To identify the Chinese SoEs manufacturing and selling active ingredients the notifying parties obtained a complete list of Chinese producers from a database maintained by the Pesticide Testing Office of the Chinese Ministry of Agriculture. As a result 55 Central and Regional SoEs were identified.

43 At the EEA level, the proposed transaction does not result in horizontal overlaps in active ingredients between the parties or between MAI and any Chinese SOEs.

44 The Parties believe that the prices they charge for their active ingredients are, generally, in the same price range of the active ingredients sold by their competitors. Therefore, in the Parties' view, there are no reason why value shares would be materially different than volume shares. Moreover, the Parties submit that shares of supply on a volume basis are an appropriate indicator of market structure for commodity products such as active ingredients.

45 The market shares reported in the tables in this decision rely on data compiled by ChemChina Information Center, a consulting subsidiary of ChemChina, and Sinodata, a Chinese consulting firm. For this purpose they collected 2010 sales data for each SoE for each overlapping active ingredient.

51. In view of the market shares shown in Table 1, the proposed transaction does not lead to horizontally affected markets for any of the referred active ingredients at the worldwide level.

Horizontal overlaps between MAI and SOEs other than CNAC

52. In case of considering the horizontal overlaps between MAI and SOEs other than CNAC, the proposed transaction would lead to overlaps in eight active ingredients at the worldwide level. These active ingredients are abamectin, chlorpyrifos, lambda-cyhalothrin, prochloraz, propiconazole, tebuconazole, thiophanate-methyl and trinexapac-ethyl. The market shares by volume of MAI and the SOE other than CNAC in the referred active ingredients are provided in Table 2.

Table 2 – Worldwide market shares by volume in active ingredients in markets with horizontal overlaps between MAI and Chinese SoEs other than CNA

	Central SoEs	Regional SoEs	MAI	Combined
Abamectin	[5-10]%	[10-20]%	[0-5]%	[10-20]%
Chlorpyrifos	-	[0-5]%	[0-5]%	[5-10]%
Lambda-cyhalothrin	-	[5-10]%	[0-5]%	[5-10]%
Prochloraz	[0-5]%	[0-5]%	[0-5]%	[5-10]%
Propiconazole	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Tebuconazole	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Thiophanate-methyl	-	[0-5]%	[0-5]%	[0-5]%
Trinexapac-ethyl	-	[0-5]%	[0-5]%	[0-5]%

Source: Parties' estimates

53. In view of the market shares shown in Table 2, the proposed transaction gives rise to a horizontally affected market in relation to the market for abamectin.

54. While CNAC/ChemChina is not present in the market for abamectin, MAI [...]. The increment in market share brought by the transaction would be extremely low ([0-5]%). Furthermore, the combined market share is rather small and remains below the 25% safe harbour threshold set in the merger regulation.⁴⁶

55. The market investigation revealed that the majority of the customers of active ingredients consider that the impact of the transaction on the markets for the supply of active ingredients would be minor⁴⁷. It further revealed that the transaction might result in a reduction of the prices of off-patent active ingredients.⁴⁸

⁴⁶ Paragraph 32 of the EU Merger Regulation.

⁴⁷ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 32.

⁴⁸ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 34.c.

56. In the light of the above, it can be concluded that the proposed transaction raises no competition concerns in relation to horizontal overlaps in the market for abamectin.

Horizontal overlaps between MAI and Jiangsu Kuaida

57. In case Jiangsu Kuaida Agrochemical Co., Ltd ("Jiangsu Kuaida") were considered to be an SOE or to be controlled by an SOE⁴⁹, the proposed transaction would result in additional horizontal overlaps in three active ingredients at a worldwide level. These active ingredients are chlorotoluron, isoproturon and linuron. The market shares by volume of MAI and Jiangsu Kuaida in the referred active ingredients are provided in Table 3.

Table 3 – Worldwide market shares by volume in active ingredients in markets with horizontal overlaps between MAI and Jiangsu Kuaida

	Jiangsu Kuaida	MAI	Combined
Chlorotoluron	[5-10]%	[0-5]%	[5-10]%
Isoproturon	[0-5]%	[0-5]%	[5-10]%
Linuron	[10-20]%	[20-30]%	[30-40]%

Source: Parties' estimates

58. In view of the market shares shown in Table 3, the proposed transaction gives rise to a horizontally affected market in relation to the market for linuron.

59. The notifying parties submit that other competitors could themselves easily produce linuron and that alternative suppliers do exist (e.g. Novafito). Moreover, they claim that there is an excess capacity of about 20% for linuron on a worldwide basis, so that even if as a result of the proposed transaction MAI and Jiangsu Kuaida were to join forces, they would not be in a position to unilaterally increase prices. Finally, the notifying parties note, that the linuron market is mature and that its demand is declining due to increasingly restrictive legislation.

60. The market investigation revealed the existence of potential entrants from China and India in the market for the supply of linuron.⁵⁰ As regards switching between active ingredient suppliers, the market investigation showed that customers consider that it would be relatively easy to change supplier⁵¹ and that, although contracts are negotiated on average every three to five years⁵², they generally do not involve exclusive supply agreements⁵³.

⁴⁹ The Parties, however, do not consider Jiangsu Kuaida to be a Chinese SOE or controlled by an SOE given that the parent of Jiangsu Kuida is 63% publicly owned and only the remaining 37% is being owned by two Chinese regional SOEs.

⁵⁰ Replies to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 22.

⁵¹ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 27.

⁵² Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 26.

The market investigation showed that the majority of the respondents having either MAI, CNAC, or other Chinese SOEs as main suppliers of active ingredients, in case these suppliers were to raise their prices by 5-10 %, would consider switching to an alternative supplier without this being a source of concern for their business⁵⁴.

61. Furthermore, the majority of the replies from suppliers of active ingredients did not reveal any competitive concerns as regards the impact of the proposed transaction on the markets for active ingredients⁵⁵. The market investigation showed that the majority of suppliers of formulated products considered that the impact of the transaction at the worldwide level on the markets for the supply of active ingredients would not be material⁵⁶. However, several respondents indicated that in the longer term the transaction might allow the merged entity to market and distribute its portfolio of active ingredients and possibly that of other Chinese SOEs more successfully in the EEA given MAI's presence in the EU and even to engage in predatory practices for some of the active ingredients mentioned in this decision⁵⁷.
62. However, for a predatory practice to work, the merged entity would need to have enough market power so that it can reasonably expect to be able to raise prices once it has driven its rivals out of the market. The market shares for the different active ingredient, as shown in the precedent tables, do not allow to conclude that even if taken together the Chinese SoEs will have sufficient market power to profitably engage in a predatory practice. The absence of significant entry barriers is another factor which will defeat any attempt to engage in a predatory strategy.
63. As regards the potential effect on prices, the market investigation revealed that various suppliers of active ingredients consider that as a result of the transaction the prices of active ingredients might fall⁵⁸ (including the prices for off patent crop protection products⁵⁹).

⁵³ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 25.

⁵⁴ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 28.a and question 28.b.

⁵⁵ Replies to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 23.

⁵⁶ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 32.

⁵⁷ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, questions 32 and question 34. Replies to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 23.

⁵⁸ Replies to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 23.c.

⁵⁹ Replies to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 23.d.

64. In the light of the above, it can be concluded that the proposed transaction does not raise competition concerns in relation to the market for linuron.

1.1.2. Formulated products

65. The proposed transaction does not lead to horizontal overlaps in the markets for formulated products between MAI and CNAC or between MAI and any Chinese SOEs in the EEA⁶⁰. Indeed none of CNAC or any Chinese SOEs sells formulated products in the EEA.⁶¹

66. A respondent to the market investigation indicated that the transaction might lead to less innovation because producers of formulated products as a result of increased competition from Chinese companies would not be able to recoup their R&D expenditures and decide altogether not to engage in R&D⁶². However, the proposed transaction would not limit innovation since the merged entity is a producer of off-patent formulated products in which R&D is not a key factor⁶³. Therefore the R&D activities of off-patent formulated products manufacturers are not affected by a potential reduction in the prices of formulated products. As to R&D based agrochemical companies, they base their business strategy in bringing continuously new patent protected products into the market. Therefore, the R&D companies will always invest in R&D irrespectively of the prices of off-patent products.

67. Therefore the transaction does not raise any competition concerns in relation to horizontal overlaps in the markets for formulated products.

1.2. Vertical relationships

Description of vertical relationships

68. The proposed transaction will also lead to some vertical relationships. However, there are only a limited number of markets which could potentially be affected through the transaction.

69. A number of downstream markets where MAI is active are affected as a result of the potential combined market share in excess of 25% upstream regarding linuron (see Table 3 above).

70. In a number of those national markets the downstream market shares of MAI are however limited. This applies to pre-emergence selective broad spectrum herbicides for

⁶⁰ CNAC does not sell any formulated products in the EEA. Furthermore, according to the Parties, Chinese SoEs do not sell formulated products in the EEA since they do not have the requisite product registrations at the Member State level. Registration at the Member State level is considered a costly and lengthy process which takes approximately 2 to 3 years and costs approximately EUR 1 million

⁶¹ It is not necessary to consider any potential overlaps at the worldwide level since the geographic scope of the market for formulated products is considered to be either national or EEA-wide.

⁶² Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, questions 32 and question 34.

⁶³ R&D for off-patent products manufacturers are mainly related to registration costs of the product in the different countries.

(i) maize in the Czech Republic, Hungary, Poland, Romania, Slovakia (where MAI's downstream national market shares is below 2%); (ii) potato in Austria, Belgium, Bulgaria, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and the UK (where MAI's downstream national market shares remain below 30%), (iii) vegetables in Belgium, the Czech Republic, Finland, France, Germany, Greece, Italy, Poland, Portugal, Romania, Slovakia, Spain (where MAI's downstream national market shares remain below 25%) and in Ireland (where MAI's downstream national market share reaches [40-50]%) (iv) sunflower in Bulgaria, Hungary, Romania and Spain (where MAI's downstream national market shares remain below 25%). MAI's downstream national market shares are presented in Table 4 below.

Table 4 – Market shares in the downstream markets for pre-emergence selective broad spectrum herbicides for maize, potato, vegetables and sunflower

Pre-emergence selective broad spectrum herbicides for maize							
Country	MAI's market share	Competitor 1	Market share of competitor 1	Competitor 2	Market share of competitor 2	Competitor 3	Market share of competitor 3
Czech Republic	[0-5]%	Monsanto	[30-40]%	Syngenta	[30-40]%	Oxon	[20-30]%
Hungary	[0-5]%	Syngenta	[30-40]%	Sumitomo	[20-30]%	BASF	[10-20]%
Poland	[0-5]%	Syngenta	[20-30]%	Monsanto	[5-10]%	Dow	[10-20]%
Romania	[0-5]%	Bayer	[30-40]%	Syngenta	[10-20]%	Monsanto	[10-20]%
Slovakia	[0-5]%	Monsanto	[40-50]%	Dow	[30-40]%	BASF	[5-10]%
Pre-emergence selective broad spectrum herbicides for potato							
Austria	[0-5]%	Bayer	[20-30]%	FMC	[20-30]%	BASF	[10-20]%
Belgium	[5-10]%	Bayer	[60-70]%	Various	[10-20]%	FMC	[5-10]%
Bulgaria	[20-30]%	Syngenta	[30-40]%	Bayer	[10-20]%	Imaspro-Resources	[10-20]%
Czech Republic	[10-20]%	Bayer	[20-30]%	DuPont	[20-30]%	FMC	[10-20]%
Finland	[10-20]%	Bayer	[20-30]%	Syngenta	[10-20]%	Bayer	[10-20]%
France	[5-10]%	Syngenta	[20-30]%	Bayer	[5-10]%	FMC	[10-20]%
Germany	[0-5]%	Syngenta	[40-50]%	Bayer	[20-30]%	FMC	[0-5]%
Greece	[20-30]%	Bayer	[30-40]%	Chimac Agriphar	[10-20]%	BASF	[5-10]%
Ireland	[40-50]%	Bayer/Interfarm Ariguard	[20-30]%	Syngenta	[10-20]%	BASF	[5-10]%
Italy	[20-30]%	Bayer	[10-20]%	Various (including Goan, Bayer &	[10-20]%	BASF	[10-20]%

				Sumitomo)			
Poland	[10-20]%	Bayer	[40-50]%	Dupont	[10-20]%	FMC	[0-5]%
Portugal	[10-20]%	Bayer	[30-40]%	Saptec	[20-30]%	Agroquiza	[10-20]%
Romania	[5-10]%	Bayer	[50-60]%	DuPont	[10-20]%	CIG-TURDA	[5-10]%
Slovakia	[10-20]%	Bayer	[40-50]%	Nitrokemia	[20-30]%	FMC	[5-10]%
Slovenia	[0-5]%	Not available					
Spain	[20-30]%	Bayer	[30-40]%	Various	[10-20]%	Syngenta	[10-20]%
UK	[10-20]%	Belchim	[30-40]%	Bayer	[30-40]%	Various	[10-20]%
Pre-emergence selective broad spectrum herbicides for vegetables							
Belgium	[5-10]%	Dow	[40-50]%	FMC	[5-10]%	Various	[0-5]%
Czech Republic	[20-30]%	BASF	[40-50]%	Dow	[10-20]%		
Finland	[10-20]%	BASF	[20-30]%	Syngenta	[10-20]%	Bayer	[10-20]%
France	[0-5]%	Bayer	[30-40]%	BASF	[30-40]%	FMC	[30-40]%
Germany	[10-20]%	Dow	[40-50]%	BASF	[20-30]%	FMC	[5-10]%
Greece	[5-10]%	Dow	[50-60]%	BASF	[20-30]%	FMC	[5-10]%
Ireland	[10-20]%	Syngenta	[30-40]%	BASF	[10-20]%	Belchim	[5-10]%
Italy	[5-10]%	Dow	[50-60]%	BASF	[10-20]%	Various (including Bayer & Goan)	[5-10]%
Poland	[10-20]%	Bayer	[10-20]%	BASF	[20-30]%	FMC	[10-20]%
Portugal	[0-5]%	Dow	[50-60]%	BASF	[20-30]%	Agroquiza	[5-10]%
Romania	[10-20]%	BASF	[60-70]%	Dow	[20-30]%		
Slovakia	[5-10]%	BASF	[30-40]%	Dow	[10-20]%	Bayer	[5-10]%
Spain	[5-10]%	Dow	[30-40]%	Agrimor	[5-10]%	Syngenta	[0-5]%
Pre-emergence selective broad spectrum herbicides for sunflower							
Bulgaria	[5-10]%	BASF	[10-20]%	Dow	[10-20]%	Monsanto	[5-10]%
Hungary	[0-5]%	Dow	[20-30]%	Syngenta	[10-20]%	DuPont	[5-10]%
Romania	[5-10]%	DuPont	[40-50]%	Monsanto	[10-20]%	Syngenta	[5-10]%
Spain	[20-30]%	Various (mainly BASF)	[70-80]%	Not available			

Source: Parties' estimates

71. Moreover, there are two affected downstream markets in which MAI has a downstream market share of more than 25% in some EEA Member States and CNAC or another Chinese SOEs are supplying corresponding active ingredients. First, in the market for seed treatment insecticides for corn in Bulgaria, MAI has a market share of [30-40]%⁶⁴. The corresponding active ingredient is imidacloprid for which the Parties and Chinese SOEs have a combined market share of [10-20]% worldwide (see Table 1). Second, in the market for non-selective herbicides, post-emergence broad spectrum herbicides in Lithuania, MAI's market share is approximately [30-40]%⁶⁵. The corresponding active ingredient is glyphosate for which the Parties and Chinese SOEs have a combined market share of [5-10]% worldwide (see Table 1).

Input foreclosure

72. The notifying parties submit that it is unlikely that they would be able to engage in input foreclosure, pointing out that their market share upstream remains limited. They argue competition by multinational companies is such that an input foreclosure strategy could not possibly be successful.

73. Regarding linuron, a number of credible alternatives exist, such as Weylchem ([...]) and Novafito. However, the market investigation indicated that switching among suppliers of active ingredients used for crop protection can be long (several years) and costly⁶⁶.

74. Nevertheless, MAI's competitors in the markets for pre-emergence selective broad spectrum herbicides often rely on other active ingredients than linuron. In particular, (i) in all of the EEA Member States where MAI sells pre-emergence selective broad spectrum herbicides for maize, none of MAI's top competitors sells competing products that use the active ingredient linuron, (ii) in 11⁶⁷ of the 17 EEA Member States where MAI sells pre-emergence selective broad spectrum herbicides for potato, none of MAI's top competitors sells formulated products that use the active ingredient linuron⁶⁸; (iii) in each EEA Member State where MAI sells pre-emergence broad spectrum herbicides for vegetables and sunflower, there are additional competitors with larger shares than MAI that sell competing producing using active ingredients other than linuron. The market investigation confirmed that the major suppliers of pre-emergence selective broad spectrum herbicides in the EEA do not depend on the sourcing of Linuron from the Parties or Chinese SOEs.

⁶⁴ MAI's main competitors in this market are Bayer with [10-20]%, Nufarm with [5-10]% and Syngenta with [0-5]%.

⁶⁵ MAI's main competitors in this market are Sinon with [30-40]% and Cheminova with [30-40]%.

⁶⁶ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 27.

⁶⁷ Austria, Bulgaria, Czech Republic, France, Finland, Greece, Hungary, Ireland, Italy, Romania and Spain.

⁶⁸ In particular, with respect to Ireland, where MAI's share is [40-50]% for pre-emergence selective broad spectrum herbicides for potato, all of the competing products in Ireland are based on an active ingredient other than linuron.

75. Therefore, it is unlikely that a foreclosure strategy would lead to increased prices in the downstream markets for pre-emergence selective broad spectrum herbicides in the EEA, even supposing that Jiangsu Kuaida and the Parties would join forces after the transaction, since MAI's main competitors do not rely on linuron.
76. Regarding active ingredients other than linuron, the Parties' market shares (even taking into account all Chinese SOEs) in the various markets for active ingredients remain limited (below 20%). It is therefore highly unlikely that the Parties and Chinese SOEs would have alone the ability to successfully foreclose their customers of these active ingredients.
77. One respondent in the market investigation expressed the concern⁶⁹ that Chinese consortia for certain active ingredients (such as abamectin⁷⁰) were recently created within the China Crop Protection Industry Association ("CCPIA") with the possible intention to raise prices⁷¹. Such associations regroup Chinese SOEs but also Chinese private companies and foreign companies such as Syngenta in the case of paraquat. The respondent to the market investigation that expressed concerns in relation to these associations indicated that the present transaction may facilitate such coordination, thereby fuelling price increases for active ingredients, and put MAI's competitors at a disadvantage. This respondent also stresses the difficulty to switch to alternative sources (i.e. sources that do not belong to the existing active ingredient consortia), switching being both long and costly. As a result MAI's competitors would be led to invest less in registration of crop protection products using these active ingredients.
78. However, it is unlikely that the proposed transaction would allow such a concern to materialise. First, should Chinese agrochemical consortia limit output or fix prices or organize a foreclosure strategy on worldwide markets for certain active ingredients, this practice could fall under the antitrust rules of the Treaty on the Functioning of the European Union. They have thus an incentive not to engage in such practices.
79. Second, the current transaction does not change the incentives to collectively engage or not to engage in such general output restrictions or price rises. The general concern on output restrictions or prices rises would thus not be merger specific.
80. Third, without prejudice to the application of the antitrust rules of the Treaty on the Functioning of the European Union, the factual elements provided by the respondent to the market investigation do not allow to demonstrate that the creation of Chinese active ingredient consortia within CCPIA has at least until now led to output restrictions or price increases. For instance, the price of abamectin sold as an active ingredient fell from USD

⁶⁹ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, questions 31-34.

⁷⁰ The following active-ingredient-based working groups have been created within the China Crop Protection Industry Association : 2,4-D, abamectin, acetochlor, carbendazim, chlorothalonil, chlorpyrifos, glyphosate, imidacloprid, mancozeb, paraquat, pymetrozine and triazine.

⁷¹ This alleged intention was reported by press articles such as "China to create more agchem consortiums", *Agrow*, (accessed on CCPIA's website, at <http://www.ccpia.com.cn/en/content.asp?newsid=L009271004590823>) and "Abamectin prices soars", *Insecticides China News*, Vol. 3, Issue 5, 2010.

[...]/kg in 2010 when the abamectin consortium was created to USD [...]/kg in the first half 2011, a fall of over 27%⁷².

81. Fourth, as regards the more specific concern of the respondent of a strategy of discriminatory prices rises which would spare MAI, it is unlikely that the members of the Chinese consortia for certain active ingredients would have incentives to enter into an input foreclosure strategy to the exclusive benefit of MAI and detriment of all other manufacturers of formulated products: (i) although some minority-held subsidiaries of CNAC are members of such consortia, CNAC is not itself a member of the China Crop Protection Industry Association; (ii) companies other than CNAC or ChemChina would have to pay the cost of such foreclosure (resulting from the price discrimination between MAI and other customers) while all benefits would accrue to MAI's shareholders (CNAC and Koor); (iii) for such a strategy to be successful, other companies than just Chinese SOEs would need to participate given the limited market shares of Chinese SOEs in the active ingredients that are produced by either MAI or ChemChina/CNAC; (iv) with regard to abamectin specifically, the notifying parties indicated that as of August 2010, the following Chinese companies were not members of the abamectin working group: Guilin Jiqi Bio-Chemia Co., Ltd., Hebei XingBai Biological Technology Co., Ltd., Wuhan Tianhui Biological Engineering Co., Ltd., Jiangsu Bailing Agrochemical Co., Ltd., Inner Mongolia Biok Biology Co., Ltd., Inner Mongolia New Veyong Biochemical Co., Ltd., Ningxia Qiyuan Pharmaceutical Co., Ltd., Syngenta Biotechnology (China) Co Ltd., Shandong Keda Chuangye Biology Co., Ltd., Shandong Qingdao Hansen Biologic Science Co., Ltd., Shandong Weifang Rainbow Chemical Co., Ltd., Zhejiang Huiguang Biochemical Co., Ltd., and Ningxia Dadi Fengziyuan Bio-Pharmaceutical Co., Ltd.. All this would render a coordinated input foreclosure strategy in favour of MAI and to the detriment of other producers difficult to implement.
82. Fifth, the market investigation confirmed that several Indian and Chinese companies recently entered the markets for active ingredients.⁷³ Attempts to cartelise the market for active ingredients could thus possibly be countered by entry from other players in the world.
83. Therefore it is unlikely that the notifying parties could successfully attempt to foreclose, alone or in coordination with other companies, the supply of active ingredients for crop protection products.

Customer foreclosure

84. The notifying parties deny having either the ability or the incentive to engage in customer foreclosure. They emphasize their limited market share in the downstream markets and the very small percentage of the respective worldwide demand of the relevant active ingredients that they represent. In particular, they submit that at least in the cases of imidacloprid and linuron there exist demand for these active ingredients also

⁷² From a broader perspective, the price of abamectin sold as an active ingredient fell from USD 400/kg in 2005 to USD [...]/kg in the first half 2011. Source: Parties' memorandum of 11 September 2011, p.4; Parties' replies of 22 September 2011 to the questions asked by the case team on 20 September 2011, question 2.

⁷³ Replies to the Commission's request for information to suppliers of formulated products used for crop protection of 1 September 2011, question 29.

for the use in other products, so that competitors will find other markets for their output. Hence, they conclude that it would be unlikely for upstream prices to increase in case of customer foreclosure.

85. MAI used approximately [...] tons of linuron in its formulated products sold in the EEA. This tonnage represents [30-40]% of the active ingredient tonnage used to make linuron formulated products worldwide. Accordingly, the bulk of demand for linuron will remain open post transaction.
86. However, Weylchem [...] ⁷⁴.
87. On the other hand, Weylchem also indicated that the transaction would lead to reduced prices for active ingredients ⁷⁵. In addition, Novafito, the other main alternative for the supply of Linuron did not express concerns with regard to the impact of the transaction on the market of linuron and indicated that it expected stronger competition on prices ⁷⁶.
88. MAI used approximately [...] tons of glyphosate (the active ingredient used in MAI's non-selective herbicides, post-emergence broad spectrum herbicides in Lithuania) in its formulated products sold in the EEA. This tonnage represents [0-5]% of the glyphosate active ingredient tonnage used to make formulated products worldwide. Accordingly, the bulk of demand for glyphosate will remain open post transaction.
89. MAI used approximately [...] tons of imidacloprid (the active ingredient used in MAI's seed treatment insecticides for corn in Bulgaria) in the imidacloprid formulated products it sold in the EEA. This tonnage represents [0-5]% of the imidacloprid active ingredient tonnage used to make imidacloprid formulated products worldwide. Accordingly, the bulk of demand for imidacloprid will remain open post transaction.
90. Therefore, even if upstream competitors lost these sales of linuron, glyphosate or imidacloprid to CNAC or the Chinese SOEs, it is unlikely to be sufficient to cause upstream prices of this active ingredient to increase.
91. In addition, regarding linuron, even if MAI and the Chinese SOEs were able to raise the price of linuron post merger, a customer foreclosure strategy is unlikely to lead to increases in downstream prices as MAI's top competitors in the markets for pre-emergence selective broad spectrum herbicides often rely on other active ingredients than linuron.
92. Moreover, the market investigation revealed that the vast majority of suppliers of active ingredients and formulated products consider that as a result of the transaction both the

⁷⁴ Weylchem's non-confidential reply to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 19.

⁷⁵ Weylchem's non-confidential reply to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 25.

⁷⁶ Novafito's non-confidential reply to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 23 and 24.

prices of off-patent active ingredients⁷⁷ and the prices for off patent crop protection products⁷⁸ might fall.

2. NON-AGROCHEMICAL PRODUCTS

93. In relation to non-agrochemical products, the proposed transaction does not lead to any horizontal overlap between the business activities of MAI and CNAC on a worldwide level.
94. However, in case the overlaps between MAI and Chinese SOEs other than CNAC are considered, the proposed transaction leads to horizontal overlaps with respect to various carotenoids that are used as pigments in human food applications⁷⁹. These horizontal overlaps arise with respect to the markets for natural beta-carotene, lutein and natural tomato lycopene.

Beta-Carotene for human use

95. The market shares of MAI and other Chinese SOEs by volume in the market for beta carotene for human use in are provided in Table 5⁸⁰.

⁷⁷ Replies to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 23.c.

⁷⁸ Replies to the Commission's request for information to suppliers of active ingredients used for crop protection of 1 September 2011, question 23.d.

⁷⁹ These non-agrochemical products are used in dietary supplements and food colouring.

⁸⁰ The market data regarding the Chinese SoEs present in non-agrochemical products derives from a database maintained by SinoData. The reported data in the market share tables concerning non-agrochemical products partially relies on information published in the Carotenoids Marketing Review published by Global Industry Analysts, Inc.

**Table 5 - Market shares by volume in the market
for beta carotene for human use in 2010**

	EEA		Worldwide	
	Natural	Synthetic	Natural	Synthetic
	Market share (%)	Market share (%)	Market share (%)	Market share (%)
Central SoEs	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Regional SOEs	[0-5]%	[0-5]%	[0-5]%	[0-5]%
MAI	[5-10]%	[0-5]%	[10-20]%	[0-5]%
Combined	[5-10]%	[0-5]%	[10-20]%	[0-5]%
BASF AG	[0-5]%	[20-30]%	[0-5]%	[20-30]%
DSM Nutritional Products (*)	[80-90]%	[50-60]%	[70-80]%	[60-70]%
Allied	[0-5]%	[10-20]%	[0-5]%	[5-10]%
Parry Nutraceuticals	[0-5]%	[0-5]%	[5-10]%	[0-5]%
Zhejiang NHU	[0-5]%	[0-5]%	[0-5]%	[0-5]%
ZMC	[0-5]%	[0-5]%	[5-10]%	[0-5]%
Divis	[0-5]%	[0-5]%	[0-5]%	[0-5]%

(*) including Vitatene

Source: Parties' estimates

96. In the light of the market shares shown in Table 5, the proposed transaction does not give rise to affected beta-carotene markets under any possible product and geographic market definition.

Lutein for human use

97. The market shares of MAI and other Chinese SOEs by volume in the market for lutein for human use in are provided in Table 6.

**Table 6 - Market shares by volume in the market
for lutein for human use in 2010**

	EEA	Worldwide
	Market share (%)	Market share (%)
Central SoEs	[0-5]%	[0-5]%
Regional SoEs	[0-5]%	[0-5]%
MAI	[0-5]%	[5-10]%
Combined	[5-10]%	[5-10]%
Kemin + DSM Nutritional Products	[60-70]%	[50-60]%
Cognis UK Ltd (now part of BASF AG)	[0-5]%	[5-10]%
Omniactive/Kencor	[10-20]%	[10-20]%
Cactus Botantics (Shanghai)	[0-5]%	[0-5]%
Parry Nutraceuticals	[0-5]%	[0-5]%
Pioneer Enterprise	[0-5]%	[0-5]%
Beijing Refine Biology Technology	[0-5]%	[0-5]%

Source: Parties' estimates

98. In the light of the market shares shown in Table 6, the proposed transaction does not give rise to an affected market in the market of lutein for human use under any possible product and geographic market definition.

Lycopene

99. The market shares of MAI and other Chinese SOEs by volume in the market for lycopene are provided in Table 7.

Table 7 - Market shares by volume in the market for lycopene in 2010

	EEA	Worldwide
	Market share (%)	Market share (%)
Central SoEs	[0-5]%	[0-5]%
Regional SoEs	[0-5]%	[0-5]%
MAI	[10-20%]	[10-20]%
Combined	[10-20]%	[10-20]%
DSM Nutritional Products (*)	[20-30%]	[50-60]%
BASF AG	[5-10%]	[0-5]%
Cyanotec	[5-10%]	[0-5]%
Parry Nutraceuticals	[10-20%]	[0-5]%
Chengdu Wagott Pharmaceutical	[0-5%]	[0-5]%
ZMC	[0-5%]	[0-5]%
Sun Ray India	[0-5%]	[0-5]%
Phyto Food	[0-5%]	[0-5]%
Chenguang	[0-5%]	[0-5]%
Tomato Red	[0-5%]	[0-5]%
Ningbo Shunkang Health Food	[0-5%]	[0-5]%
Viva Herba India	[0-5%]	[0-5]%
Xinjiang Hongfan Biology Technology	[0-5%]	[0-5]%
Zhejiang Xinhecheng Co., Ltd.	[5-10%]	[5-10]%
Zhejiang NHU	-	[0-5]%

(*) including Vitatene

Source: Parties' estimates

100. In the light of the market shares shown in Table 7 and assuming that the market shares of the Chinese SOEs have to be attributed to the Parties' market shares, the proposed transaction would lead to a horizontally affected market for lycopene both at an EEA-wide (combined market share: [10-20]%) and worldwide level (combined market share: [10-20]%).

101. However, the proposed transaction does not raise any competition concerns in relation to the market for lycopene since it leads to a very small increment of [0-5]% and [0-5]% at EEA-wide and worldwide level respectively. Furthermore, the combined

market share is rather small and remains below the 25% safe harbour threshold set in the merger regulation⁸¹.

3. RAW MATERIALS

102. The proposed transaction does not lead to any horizontally affected market in relation to raw materials used in the production of agrochemicals other than active ingredients under any plausible market definition.

4. NO RISK OF COORDINATION BETWEEN CHINESE SOEs (OTHER THAN CHEMCHINA) AND IDBH

103. The notifying parties argue that it would be wrong to suggest that there are any risks of coordination between the activities of the companies controlled by IDBH (other than MAI) and the Chinese SOEs (other than ChemChina⁸²).

104. Indeed the transaction does not raise competition concerns in relation to a potential coordination between Chinese SOEs (other than ChemChina) on the one side and IDBH subsidiaries (other than MAI) on the other side given their limited revenues in relation to the products where they overlap in the EEA compared to the total size of the corresponding EEA markets⁸³.

VI. CONCLUSION

105. 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.

*For the Commission
(signed)
Joaquín ALMUNIA
Vice-President*

⁸¹ Paragraph 32 of the EU Merger Regulation.

⁸² The markets where IDBH (through MAI) and Chemchina overlap have already been discussed in this note.

⁸³ Details of these revenues have been provided in the Form CO (p.374-381).