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*Case No IV/M.769 -  
Norsk Hydro / Arnyca  
(Enichem Agricoltura)*

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 29/07/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.07.1996

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying parties**

Dear Sirs,

**Subject: Case No. IV/M.769 - Norsk Hydro/Arnyca (Enichem Agricoltura)  
Notification of 27.06.1996 pursuant to Article 4 of Council Regulation No 4064/89**

1. On 27 June 1996 the Norwegian company Norsk Hydro A.S.A. ("HYDRO") notified the Commission of its intention to acquire the major part of the fertilizer business of Agricoltura S.p.A. (formerly Enichem Agricoltura S.p.A.), a company belonging to the Enichem group ("ENICHEM"). This acquisition takes place through Arnyca S.r.l. ("ARNYCA"), a dormant company controlled by ENICHEM.
2. After examination of the notification the Commission has concluded that the notified operation falls within the scope of application of Council Regulation N° 4064/89 and does not raise serious doubts as to its compatibility with the common market or with the functioning of the EEA Agreement.

## **I. THE PARTIES**

3. HYDRO is active in the production of chemical and mineral fertilizers, oil and gas, petrochemical and light metals industries.
4. ARNYCA will own before completion the major part of the ENICHEM fertilizer business, which includes the production and sale of fertilizers and intermediates with manufacturing plants located in Ferrara, Ravenna and Barletta (Italy).

## **II. THE OPERATION**

5. On the basis of the notified agreements, HYDRO is to acquire the entire share capital of ARNYCA, to which ENICHEM will have previously transferred the major part of its fertilizer business. This business includes the assets connected to the exercise of the production and sale of fertilizers with manufacturing plants in Ferrara, Ravenna and Barletta. ENICHEM will retain the fertilizer businesses of Terni Industrie Chimiche and Sariaf. HYDRO [...] <sup>(1)</sup>.
6. The acquisition is the result of the restructuring and liquidation of Enichem Agricoltura S.p.A. which was examined and approved by the Commission in its decision of 21 June 1995 on the State aid granted to the company in connection with the restructuring.

## **III. CONCENTRATION**

7. The transaction, involving acquisition of sole control by HYDRO of parts of Enichem Agricoltura's assets, is a concentration within the meaning of article 3(1) (b) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

8. The combined aggregate worldwide turnover of the undertakings concerned exceeds 5.000 million ECU. The aggregate Community wide turnover of HYDRO and ENICHEM's transferred assets each exceed 250 million ECU. ARNYCA achieves more than two-thirds of its turnover in Italy. HYDRO does not achieve more than two-thirds of its turnover in one and the same Member State. The operation has therefore a Community dimension.

## **V. THE RELEVANT MARKETS**

### **A. Relevant product market**

9. Nitrogen (N), phosphorus (P) and potassium (K) constitute the primary plant nutrients which are needed in large quantities for agricultural applications. Fertilizers can be in a single nutrient form (straight nitrogen, straight phosphate and straight potash fertilizers) or in a compound form which may contain any combination of N, P, and K (multinutrient fertilizers).

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<sup>(1)</sup> Deleted - Business secrets.

10. The sector concerned by the present operation is the production and sale of nitrogen containing fertilizers, which includes straight nitrogen and nitrogen-containing compounds fertilizers.
11. There are various types of straight nitrogen fertilizers, which vary in their chemical composition, and in particular in their content of nitrogen. Calcium ammonium nitrate (CAN), ammonium nitrate (AN) and urea are by far the most common in Europe. Other less used straight nitrogen fertilizers also include urea ammonium nitrate solutions (UAN) and ammonium sulphate (AS).
12. The processing of nitrogen containing fertilizers requires different types of production facilities for the different types of fertilizers. Nonetheless, nearly all manufacturers produce a wide range of these products. The raw materials needed are principally natural gas and air, the reaction of which produces ammonia, which is the basic intermediate.
13. Urea and AN are basic chemical compounds. Urea is produced by reacting ammonia with carbon dioxide (a by-product of ammonia production) in a complex chemical procedure. AN is produced by reacting ammonia with nitric acid. CAN and UAN are obtained by further processing urea and AN.
14. Compound fertilizers can be in the form of NPK, NP, NK and vary in their percentage of nitrogen, phosphate and potash. They can be produced as complex granules whereby each granule contains each of the nutrients, or in the form of a blend where each of the nutrient is present in separate granules and then "blended" to the right formula.
15. The parties have suggested a broad product market definition including all the nitrogen-containing fertilizers (urea, CAN, UAN, AN, AS, other straight nitrogen, NPK), or in alternative a subdivision between straight nitrogen and compounds fertilizers.
16. From the demand perspective, the various specific types of nitrogen containing fertilizers each have individual characteristics. For instance, urea, which is the most concentrated solid fertilizer available (46% N), is most effective at medium temperatures and in the presence of moisture, e.g. in southern Europe. CAN and AN are the two of the most important nitrates. CAN is the major source of straight N within the EU, and is particularly used in north and east European regions. It contains nitrogen which is immediately available to plants and its lime content helps to limit any increase in soil acidity. AN is most commonly used in the UK, France and Spain. NPK compounds fertilizers are widely used in Europe, since they offer further options to meet the different agronomic and environmental requirements of soils and crops in the EU.
17. The choice of the farmer as to what product he actually purchases will be a result of a combinations of factors including local availability, efficiency of the product (which can change depending on type of crop, local climatic and soil conditions), application method, farmer preference and price (expressed homogeneously per unit of nitrogen). In addition, accessibility to the different fertilizers varies depending upon factors such as different packaging, transportation and storage requirements.
18. For the purpose of the present case it is however not necessary to decide whether all nitrogen containing fertilizers constitute the same product market, or whether straight nitrogen fertilizers and nitrogen-containing compounds constitute two separate product markets, or even if within straight nitrogen fertilizers a further product market subdivision

could be maintained. In fact, as it is demonstrated in the assessment below, a dominant position would not be created or reinforced even on the narrowest product market definition.

19. Ammonia is a key intermediate for the production of nitrogen containing fertilizers. Because of its importance, every major producer of fertilizers has its own ammonia production capacity. The large majority of ammonia is used internally by fertilizer producers. However, ammonia is a commodity which is traded worldwide, being easily and economically transportable in bulk as a raw material. Despite the fact that HYDRO, as the majority of its competitors, is a net purchaser of ammonia, it does also sell [...] <sup>(2)</sup> amounts of ammonia (approximately [...] <sup>(3)</sup> of its total capacity). On its part, ARNYCA sells approx. 10% of its capacity, while the rest is used captively. As HYDRO and ARNYCA's combined sales on the Western European market represent approximately [...] <sup>(4)</sup> of the total trade, the ammonia market is not affected by this concentration.

## **B. Geographic Reference Market**

20. There is significant trade of nitrogen containing fertilizers between the various Member States of the EEA. In particular, CAN, urea and NPK are largely traded (e.g. large quantities are imported in UK, France, Germany and Italy). The major exporters are Belgium, the Netherlands, France and Germany. Data provided by the European Fertilizers Manufacture's Association (EFMA) for Italy show that in 1993/94 the imports of nitrogen containing fertilizers accounted for approx. 40% of the total consumption. Within the EEA as a whole trade is estimated to amount to approx. 39.5% of the total consumption in 1994/95, and imports from non EEA countries amount to approx. 29.1% of the EEA total consumption.
21. Regarding the single products, the 1994/95 NPK's EEA trade is estimated at 36% of the EEA consumption, the EEA trade of CAN is estimated to be approx. 50% of the EEA consumption and urea's EEA trade is estimated to be 50.3% of the EEA consumption.
22. Considering this high volume of trade between Member States, the market appears to be of EEA dimension. This dimension of the geographic market has been proposed by the notifying parties and has also been confirmed by clients and competitors. There are no significant regulatory limitations on the accessibility and trade of fertilizers in the EEA. One exception is represented by AN, for which special safety requirements concerning storage, shipping and usage are provided in Austria, Germany, Belgium, Denmark, Finland, Ireland, and Holland. However, since HYDRO and ARNYCA's AN sales in these countries are minimal, it is not necessary for the present case to identify any of the above countries as separate geographic markets. Certain restrictions on the use of fertilizers to limit their impact on environment are present and vary in the different EU countries. The investigation carried out has shown that these restrictions are not sufficient to qualify national markets as separate, given in particular the high level of inter-state trade.
23. The geographic market for urea tends to be wider than Western European. In fact, urea has become the world's major source of nitrogen and is traded worldwide on a large scale. Its shipping is extremely cost efficient, also as a consequence of its production costs which are the lowest compared to the other straight nitrogen fertilizers. EFMA's data show important worldwide patterns for urea's imports from non-Western European countries which amounted to 1243 Kt product in 1994/95, i.e. 45.9% of the Western European internal

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<sup>(2)</sup> Deleted - Business secrets.

<sup>(3)</sup> Deleted - Business secrets. Less than 15%.

<sup>(4)</sup> Deleted - Business secrets. Between 5% and 15%.

production and 47,9% of the EEA consumption. Also, urea prices appear quite homogeneous worldwide. Duties are still present on imports into EU. However, these tariffs are to be substantially reduced under new Europe (Association) agreements, for example with the Central and Eastern European States, under new free trade agreements, as with the Baltic States, and under the WTO rules.

## VI. ASSESSMENT<sup>(5)</sup>

24. The fertilizer industry worldwide has experienced sharp variations in the balance between offer and demand as a result of the break-up of the former Soviet Union. In the EU, the major drive for change has been the reform of the agricultural sector under the new Common Agricultural Policy. In particular, set-aside requirements have significantly reduced the fertilized areas. In addition, new environmental regulations are moving farmers to focus more on the improved use of animal manure and on more efficient use of mineral fertilizers. Under these circumstances, Western European demand has declined quite substantially over the last years. Market conditions are to remain tight notwithstanding the more favourable trend forecast at a world level. Competitive pressure from Eastern European and non-European countries will remain strong. In fact, imports of nitrogen fertilizers into Western Europe has increased by approximately 45% between 1990 and 1995. The EU market will further open-up following the entering into force of both new European (Association) agreements and new free trade agreements, and also with the implementation of the WTO rules. All these agreements are providing for a substantial reduction of import duties on all nitrogen fertilizers. The fall in agricultural prices, the opening-up of the market, as well as new environmental constraints are keeping under constant pressure the European companies, obliging them to reduce and streamline excess and inefficient capacity and to re-balance supply and demand.
  25. The market for nitrogen containing fertilizers is characterized by a small number of major competitors, mainly belonging to chemical groups, who are stronger in their home markets primarily due to historical reasons. These include KEMIRA of Finland, AGROLINZ of Austria, BASF of Germany, DSM of the Netherlands, GRANDE PAROISSE (GP) of France and FERTIBERIA of Spain.
  26. Companies active in the market have the possibility of adjusting the production of the various types of fertilizers according to the variation of the demand, therefore there is a substantial volume of trade among the EEA as there is competition to satisfy the demand where it occurs. Large shipments over long distance are, in fact, very common as bulk sea freight is extremely cost efficient and as the demand for fertilizers varies according also to the slight difference in season between North and South Europe. Long distance trade is a common practice.
- A. NPK, Nitrates and Urea**
27. CAN, Urea and NPK are the three product areas where the activities of HYDRO and ARNYCA overlap.

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<sup>(5)</sup> For the purpose of the following assessment, all figures concerning nitrogen fertilizers are calculated and expressed in terms of the nitrogen contained (KtN), unless differently indicated.

28. As to NPK, HYDRO and ARNYCA's EEA combined market share will be [...] <sup>(6)</sup> (in 1995 HYDRO: [...] <sup>(7)</sup>; ARNYCA [...] <sup>(8)</sup>). The closest competitor is KEMIRA, which had in 1995 [...] <sup>(9)</sup> of the market, followed by BASF with [...] <sup>(10)</sup>. At the national level there is essentially no geographic overlap in this market, with the exception of Italy.
29. As to CAN, HYDRO and ARNYCA's combined market share will be [...] <sup>(11)</sup> (in 1995 HYDRO: [...] <sup>(12)</sup>; ARNYCA [...] <sup>(13)</sup>). DSM has had in 1995 a market share [...] <sup>(14)</sup>. As to AN (the second most commonly used nitrate in Western Europe, which appear highly substitutable to CAN both from the demand and the supply side), in 1995 HYDRO has had a market share of [...] <sup>(15)</sup>, ARNYCA has had [...] <sup>(16)</sup>, GP has had [...] <sup>(17)</sup> market share in the EEA. Since in the EEA the CAN market size is bigger than that of AN, even considering the two products as being part of the same market, the market share of HYDRO/ARNYCA is not increased.
30. As regards urea, HYDRO and ARNYCA's combined market share will be [...] <sup>(18)</sup> (in 1995 HYDRO: [...] <sup>(19)</sup>; ARNYCA [...] <sup>(20)</sup>) Among the competitors, GP has had in 1995 a market share [...] <sup>(21)</sup>. Again, there is essentially no geographic overlap in this market, with the exception of Italy. However, as noted above, the geographic market for urea tends to be worldwide.
31. The situation on the markets for these products reflects the overall patters described above for the fertilizer market in general. Price competition is strong, due to the decline in the demand and to the pressure exerted by imports from outside EEA. Even if the single fertilizers are in principle differentiated on the basis of farmers' needs (which are determined by a number of physical and technical factors as described in para. V.A. above ) the relative price, in terms of nitrogen content, plays an important role in farmers' choice. If the price per unit of nitrogen changes significantly between products containing nitrogen then a shift to a less expensive nitrogen carrier can take place.

## B. Straight nitrogen fertilizers

32. As the parties and some competitors have also suggested, CAN, AN, urea, together with UAN, AS and other straight nitrogen fertilizers could be considered as being part of the same relevant product market. If this market definition is accepted, the combined market share of HYDRO and ARNYCA in the EEA will be of [...] <sup>(22)</sup> (in 1995 HYDRO: [...] <sup>(23)</sup>;

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<sup>(6)</sup> Deleted - Business secrets. Between 20% and 30%.

<sup>(7)</sup> Deleted - Business secrets. More than 10%.

<sup>(8)</sup> Deleted - Business secrets. Less than 5%.

<sup>(9)</sup> Deleted - Business secrets. Between 15% and 25%.

<sup>(10)</sup> Deleted - Business secrets. Between 5% and 10%.

<sup>(11)</sup> Deleted - Business secrets. Between 25% and 35%.

<sup>(12)</sup> Deleted - Business secrets. More than 20%.

<sup>(13)</sup> Deleted - Business secrets. Less than 5%.

<sup>(14)</sup> Deleted - Business secrets. Between 10% and 20%.

<sup>(15)</sup> Deleted - Business secrets. Between 20% and 30%.

<sup>(16)</sup> Deleted - Business secrets. Less than 5%.

<sup>(17)</sup> Deleted - Business secrets. Between 10% and 20%.

<sup>(18)</sup> Deleted - Business secrets. Between 30% and 40%.

<sup>(19)</sup> Deleted - Business secrets. Less than 20%.

<sup>(20)</sup> Deleted - Business secrets. Less than 20%.

<sup>(21)</sup> Deleted - Business secrets. Between 5% and 10%.

<sup>(22)</sup> Deleted - Business secrets. Between 20% and 30%.

ARNYCA [...] <sup>(24)</sup>). The closest competitors in this market definition is GP with an EEA share of [...] <sup>(25)</sup> in 1995, followed by BASF and KEMIRA with [...] <sup>(26)</sup> each. Again, as for the broader Nitrogen-containing fertilizers market definition, there is minimal geographic overlap, indeed limited to Italy, between the activities of HYDRO and ARNYCA.

33. The addition of the markets for UAN, AS and other straight nitrogen fertilizers, which are far less important in volume than Urea, CAN and AN in the EEA, does not change the competitive assessment made on the individual products above. This assessment remains therefore valid for the enlarged market definition.
34. In light of the above, it appears that a dominant position of HYDRO will not be created or strengthened as a result of the acquisition of ARNYCA, in any of the possible above market definitions.

## VII. ANCILLARY RESTRICTIONS

35. The parties have stipulated a non-competition clause which imposes on ENICHEM a non-competition obligation for any activity of manufacturing and trading of fertilisers and ammonia, in all the countries of the world, for a period of [...] <sup>(27)</sup>, [...] <sup>(28)</sup>. It is however stipulated that [...] <sup>(29)</sup>.
36. This non-competition obligation on ENICHEM is designed to assure the transfer of the full value of the fertiliser business, in particular its goodwill and know-how. It appears therefore necessary for the acquisition to take place. In addition, its duration is limited to a period of [...] <sup>(30)</sup> from the transfer <sup>(31)</sup>. Its geographic scope however must be limited to the area where ENICHEM was active before the sale. <sup>(32)</sup>

## VIII. CONCLUSION

37. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.
38. This decision is without prejudice of the position of the Commission as regards the fulfilment by the Italian government of the conditions set out in the above mentioned State aid decision.

For the Commission

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<sup>(23)</sup> Deleted - Business secrets. More than 20%.

<sup>(24)</sup> Deleted - Business secrets. More than 5%.

<sup>(25)</sup> Deleted - Business secrets. Between 5% and 15%.

<sup>(26)</sup> Deleted - Business secrets. Between 5% and 10%.

<sup>(27)</sup> Deleted - Business secrets. Not more than 5 years.

<sup>(28)</sup> Deleted - Business secrets.

<sup>(29)</sup> Deleted - Business secrets.

<sup>(30)</sup> Deleted - Business secrets. Not more than 5 years.

<sup>(31)</sup> See Commission Notice regarding restrictions ancillary to concentrations, OJ C 1990 203/5, III.A.2.

<sup>(32)</sup> See Commission Notice regarding restrictions ancillary to concentrations, OJ C 1990 203/5, III.A.3.