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Subject: State aid SA 39009. (2014/N) – Slovakia – LIP – Aid to Duslo, a.s.

Sir,

1. Procedure

- (1) By electronic notification registered on 1 July 2014 at the Commission (SANI 10157; 2014/068528), the Slovak authorities notified pursuant to Article 108(3) TFEU regional aid they granted on 26 June 2014, subject to Commission approval, in favour of Duslo, a.s. for an investment project in Šal'a, in the region of Nitra, West Slovakia.
- (2) By letters of 25 July (2014/077558) and 24 September (2014/095953), the Commission requested supplementary information on the notified aid measure which was submitted by letters registered at the Commission on 25 August (2014/086149) and 31 October 2014 (2014/9867).

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SLOVAKIA

2. Description of the measure

- (3) The Slovak authorities intend to promote regional development by providing regional aid in the form of a tax rate reduction (corporate income tax relief) for an initial investment project in the form of a fundamental change of the overall production process of its existing establishment in Šal'a, in the NUTS 3 region of Nitra, an assisted area pursuant to Article 107(3)(a) of the TFEU with a standard regional aid ceiling for large enterprises of 40% gross grant equivalent (GGE)¹.

2.1. The beneficiary

- (4) The recipient of the aid is Duslo, a.s., a large undertaking which has its principle place of business in Šal'a.
- (5) Duslo a.s. produces industrial fertilisers based on its own production of ammonia. The plant uses ammonia for the production of a one-component fertiliser – urea, as well for the production of nitric acid and ammonium nitrate that serves as the basis for the production of one-component and multicomponent fertilisers: CAN, ASN, ASN+MG, UAN.
- (6) Duslo a.s. is a major European producer of nitrogen and compound fertilisers (both granulated and liquid) and a global supplier of rubber chemicals (it is one of the five largest global producers of rubber chemicals manufacturing anti-degradants, accelerators and inhibitors). In addition, the company manufactures polyvinyl acetate and polyacrylate adhesives and dispersions, various special products of magnesium chemistry and special products of organic and inorganic chemistry.
- (7) The company was founded in 1958 as Dusikáreň Šal'a. After several transformations, the joint-stock company Duslo, a.s. was established. In 2005, it became part of AGROFERT, a. s. with its registered seat Prague, the Czech Republic.
- (8) The AGROFERT Group, owned by Mr. Andrej BABIŠ, consists of the parent company AGROFERT, a.s. and subsidiary companies from various industries and fields such as retail products and services. The AGROFERT Group is active particularly in the following areas: chemistry, agriculture, food industry, ground technology, renewables, forestry, timber harvesting and processing. Other important subsidiaries of the Group with the same profile as Duslo include Lovochemie, a.s. specialised in the production and sale of fertilisers, GreenChem Holding B.V, specialised in production of AdBlue; SKW Stickstoffwerke Piesteritz GmbH, specialised in the production of urea, ammonia, agrochemicals.

¹ See Slovakia's regional aid map in Commission decision of 13 September 2006 on State aid case N 469/06 – Slovak Republic Regional aid map 2007-2013 (OJ C 256, 24.10.2006, p. 6).

- (9) Duslo, a.s. is the parent company for HNOJIVÁ Duslo, also active on the Nitrogen fertiliser market and Duslo Energy s.r.o., active on the energy market as well as VUCHT a.s., a research and development company.
- (10) In 2013, Duslo, a.s employed 2 205 people and AGROFERT employed 34 399 persons in total of which 6 071 in Slovakia.

2.2. *The investment project*

- (11) The investment project aims at dismantling an old ammonia production unit and building a new production unit in which the overall production process of ammonia production will be fundamentally changed.
- (12) The fundamental change is aimed at introducing so-called best available technologies ("BAT technologies") aiming at improving several steps of the production process, leading to higher energy efficiency of the entire process. Efficiency will be enhanced by reducing the energy intensity of the production per unit of production from app. [...] GJ per ton of produced ammonia to below [...] GJ per ton of ammonia, i.e. reduction by [...]%. The consumption of natural gas per unit of production of ammonia will be reduced by [...] m³ per ton of ammonia, i.e. by [...]%. The production of waste water will be reduced by [...] m³ per year, i.e. by [...]%; the total waste water pollution will be reduced by [...] tons of NH₄⁺ per year, i.e. reduction by [...]%. The amount of emissions of CO₂/ammonia (tons) will be reduced by [...]%. The investment will also bring enhanced operation safety in terms of production securing against leakage of chemicals and fire incidents.
- (13) The new technology will enable the beneficiary to increase the ammonia production capacity from 1,300.00 tons a day to 1,600.00 tons a day. This represents an increase in the annual production capacity from 474,500.00 tons to 584,000.00 tons.
- (14) The investment into ammonia production is arguably linked to an investment into the urea intensification process, for which the beneficiary is not using State aid. This EUR [10-40] million investment project that started in June 2014, aims at increasing the performance and capacity of urea production related equipment. Slovakia states that the increase in the plant's production capacity of various N-fertilisers which constitute the downstream markets in this case (see more information below) is not the result of the increased ammonia production, but due to the intensified urea production process.
- (15) The investment project into the ammonia production started in July 2014. Completion is planned for June 2017. Full production of the ammonia plant is expected in 2018.

2.3. *The aid measure: aid amount, form of aid, incentive effect*

- (16) The amount of aid granted by the Slovak authorities is EUR 58 560 000 in nominal value and EUR 51 965 564 in discounted² value.
- (17) The Slovak authorities confirmed that the beneficiary applied for the aid prior to the start of works on 5 May 2014.
- (18) The form of aid is a tax rate reduction (corporate income tax relief) to be applied for a duration of ten years and starting in 2017, with the first tranche of the relief being applicable in 2018.
- (19) The aid is supposed to be paid out in following instalments in thousands EUR:

Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Tax allowance	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Table I: Aid payment schedule in EUR nominal value

- (20) The Slovak authorities gave the assurance that both the amount of aid (in present value) and the aid intensity represent a maximum which will not be exceeded for the project.
- (21) The Slovak authorities also confirm that the aid for the project will not be cumulated with aid received for the same eligible costs from other local, regional, national or Community sources.
- (22) The aid measure is granted from the scheme XR 84/2008³.

2.4. *The cost of the investment measure*

- (23) The total eligible investment costs of the ammonia production project are EUR 310 000 000 in 2014 present value. Table II provides a breakdown of the total eligible costs of the project by year and category. The Urea intensification investment has a total investment cost of EUR [10-40] million.

Table II: Eligible investment costs (present value in EUR million)

	2014	2015	2016	2017	Total
<i>Building</i>		[...]			[...]

² The present value is calculated on the basis of a base rate of 1.53%, applicable on the date of the notification, on top of which 100 basis points need to be added according to the Commission Communication on reference rate (OJ C 14, 19.1.2008, p.6).

³ OJ C 7, 13.1.2009

Machinery/ Equipment	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	310

- (24) The Slovak authorities confirm that no aid will be requested for used or existing equipment, and that such equipment is not included in the eligible expenses of the project.
- (25) The tax reduction is granted under the condition that the beneficiary will maintain the investment in the assisted region for a minimum period of five years after the completion of the investment project.

2.5. *Financing of the investment*

- (26) The Slovak authorities confirm that the beneficiary's own contribution exceeds 25 per cent of the eligible costs, which is free of any public support.

2.6. *Legal basis and granting authority*

- (27) The national legal basis for the aid measure is the following:
- a. Act no. 561/2007 Coll. on investment aid and on amendments and supplements to certain acts, as amended
 - b. Act no. 595/2003 Coll. on income tax, as amended;
 - c. Regulation of the Government of the Slovak Republic no. 481/2011 Coll. laying down the maximum investment aid intensity and the amount of investment aid depending on the form of investment aid and unemployment rates in districts by region of the Slovak Republic, as amended
 - d. Act No. 231/1999 Coll. on State aid and amending and supplementing certain acts, as amended;
 - e. Act No. 523/2004 Coll. on financial regulation of public administration and amending and supplementing certain acts, as amended
 - f. Decision No. 17/2014 of the Ministry of Economy of the Slovak Republic of 26 June 2014

2.7. *Contribution to regional development*

- (28) The Slovak authorities indicate that the investment project ensures that the employment of circa 1 800 employees engaged in the production of ammonia in the region will be maintained. It will also ensure the maintenance of about 1 600 indirect jobs by the suppliers. Through the stated improvements of energy efficiency and lowered environmental impact, as well as the increased safety of operation, the project also contributes positively to the ecological sustainability of the region.

2.8. *Maintenance of the investment*

- (29) The Slovak authorities confirmed that the investment project is required to be maintained in the region concerned for a minimum period of five years from the day of its completion.

2.9. General provisions

- (30) The Slovak authorities have committed to submit to the Commission:
- a. within two months of granting the aid, a copy of the relevant acts concerning this aid measure;
 - b. on a five-yearly basis, starting from the approval of the aid by the Commission, an intermediary report (including information on the aid amounts being paid, on the execution of the aid contract and on any other investment projects started at the same establishment/plant);
 - c. within six months after payment of the last tranche of the aid, based on the notified payment schedule, a detailed final report.

3. Assessment of the aid measure and compatibility

3.1. Existence of aid

- (31) As laid down in Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade among Member States is incompatible with the Internal Market.
- (32) In order to qualify as State aid, the following conditions must be met on a cumulative basis: i) the aid has to be granted by an act of a Member State or out of State resources, ii) it has to confer an economic advantage to undertakings, iii) the advantage has to be selective, and iv) the measure distorts or threatens to distort competition and affect trade between Member States.
- (33) The support to the Duslo, a.s. will be provided by the Slovak authorities in the form of a tax allowance and is thus financed from State resources. The support is thus given by a Member State and through State resources within the meaning of Article 107(1) of the TFEU.
- (34) The aid is granted to a single company, Duslo, a.s., thus the measure is selective.
- (35) The aid will relieve the company from costs and charges (tax) which Duslo a.s. normally would have to bear itself under normal market conditions and, therefore, the undertaking benefits from an economic advantage over its competitors.
- (36) The aid will be granted by the Slovak authorities for an investment resulting in the production of ammonia. Since this product is subject to trade between Member States, the support provided is likely to affect trade between Member States.

- (37) The economic advantage granted to Duslo, a.s., over its competitors for production of goods which are subject to intra-EU trade has the potential to distort or threaten to distort competition.
- (38) Consequently, the Commission considers that the notified measure constitutes State aid in favour of Duslo, a.s., within the meaning of Article 107(1) TFEU.

3.2. *Applicability of the RAG 2007-2013 and legality of the aid measure*

- (39) The applicability of the Regional Aid Guidelines 2007-2013⁴ (hereafter "RAG 2007-2013") for aided regional investment projects where the aid application and the conditional granting of the aid occur before July 2014, is governed by paragraph 188 and paragraph 20 of the Guidelines on regional State aid for 2014-2020⁵ (hereafter "RAG 2014-2020"). According to these provisions, regional aid intended to be awarded after 31 December 2013 and before 1 July 2014 will be assessed in accordance with the guidelines on national regional aid for 2007-2013. 'Date of award of the aid' (see paragraph 20(d)) means the date when the Member State took a legally binding commitment to award the aid that can be invoked before the national courts. Given that the granting decision by the Slovak government was adopted on 26 June 2014 and was conditional only on the Commission's approval of the proposed aid measure, paragraphs 188 and 20 (d) of the RAG 2014-2020 have been satisfied and the RAG 2007-2013 is applicable to the measure.
- (40) As to the legality of the measure, by notifying the planned aid measure before putting it into effect, the Slovak authorities respected their obligation under Article 108(3) of the TFEU and the individual notification requirement expressed in Article 7 of the Regional Aid Block Exemption Regulation⁶ and Article 6(2) of the General Block Exemption Regulation⁷.

3.3. *Compatibility of the aid measure*

- (41) As the measure relates to regional investment aid, the Commission assessed it on the basis of the RAG 2007-2013. The measure was notified as aid which exceeds the thresholds defined in points 64 and 67 of the RAG 2007-2013. Therefore, the Commission took into account the provisions of the RAG and, specifically, the provisions of section 4.3 of the RAG 2007-2013 relating to large investment projects.

3.3.1. *Compatibility with the general provisions of the RAG 2007-2013*

- (42) The Commission emphasises that this decision should not prejudice the assessment of similar measures under the new Regional Aid Guideline. This concerns in particular the issue of the incentive effect (see paragraphs 62 and 63 of the new RAG).

⁴ OJ C 54, 04.03.2006, p. 13.

⁵ OJ C 209, 23.7.2013, p. 1.

⁶ OJ L 302, 1.11.2006, p. 29.

⁷ OJ L 214, 9.8.2008, p. 3.

- (43) There is no indication that Duslo, a.s. or the AGROFERT Group would be in financial difficulty as the conditions laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁸ are not fulfilled. Therefore, the aid beneficiary is eligible for regional aid.
- (44) The aid is granted in application of a block-exempted scheme (see footnote 3) which respects the standard compatibility criteria of the RAG 2007-2013.
- (45) In particular, the project constitutes a fundamental change in the overall production process of an existing establishment and thus comprises an initial investment within the meaning of point 34 of the RAG 2007-2013: the new design of the ammonia production plant greatly increases the efficiency of the production process by increasing production amounts and decreasing energy consumption.
- (46) The costs eligible for investment aid (see Table II above) are defined in line with the RAG 2007-2013.
- (47) The beneficiary also has the obligation to maintain the investment in the region for a minimum of five years after completion of the project. The beneficiary provides a financial contribution of at least 25% of the eligible costs in a form which is free of any public support.
- (48) As the aid is granted under regional aid schemes, point 10 of the RAG requiring additional elements to be taken into account for the assessment of ad hoc aid is not pertinent at this stage of investigation.
- (49) In view of these considerations, the Commission considers at this stage that the standard compatibility criteria are met.

3.3.2. Compatibility with the provisions for aid to large investment projects

3.3.2.1. Single Investment project

- (50) Pursuant to paragraph 60 of the RAG 2007-2013, Member States are prevented from dividing large investment projects into sub-projects in order to escape the provisions of the Guidelines applying to large investment projects as the Commission will consider these projects to be one single investment project if initial investment projects are undertaken in a period of three years by one or more companies and the investments consist of fixed assets combined in an economically indivisible way.
- (51) The beneficiary did not carry out an aided investment within the three years preceding the investment. It is to be noted that the linked investment into the urea intensification process appears to be linked because the increased Urea production will be used to a significant degree in the production of UAN (one of the relevant downstream markets in this case). However, as that investment project is not supported by State aid, the Commission does not need to decide whether or not the two projects constitute a SIP. The eligible costs would

⁸ OJ C 244, 1.10.2004, p. 2.

merely be increased if the two projects were considered to be one single project.

3.3.2.2. Aid intensity (point 67 of the RAG 2007-2013)

- (52) The planned aid amount for the ammonia production investment project is EUR 58 560 000 in nominal value and EUR 51 965 564 in present value (discounted to the date of notification). According to the scaling down mechanism laid down in point 67 of the RAG 2007-2013, the eligible costs of EUR 310 million⁹ lead to a maximum allowable aid intensity of 18.89% GGE (Gross Grant Equivalent) for the project, i.e. EUR 58 560 000.
- (53) Since the intensity of the proposed aid (EUR 51 965 564 ~ 16.76% GGE) does not exceed the maximum allowable aid intensity, the proposed aid intensity for the project complies with the RAG 2007-2013.

3.3.2.3. Application of the filters for in-depth assessment laid down in paragraph 68(a) and (b) of the RAG 2007-2013

- (54) The Commission's approval of regional aid to large investment projects falling under paragraph 68 of the RAG 2007-2013 within the preliminary examination depends on the beneficiary's market share before and after the investment and on the capacity created by the investment, as well as on whether or not the market in question is underperforming.
- (55) Under paragraph 68(a) of the RAG, Member States must demonstrate that the beneficiary of an aid measure granted for a large investment project does not account for a market share exceeding 25% in the relevant product and geographic market before and after the investment.
- (56) Pursuant to paragraph 68(b) of the RAG, the Member State must also show that the capacity created by the investment does not exceed 5% of the market measured by apparent consumption in the EEA in the year preceding the investment if the market in question is underperforming, i.e. is in decline. A market is underperforming if its average annual growth rate was below the average annual growth rate of the EEA GDP in the 5 years preceding the start of the investment.
- (57) To carry out the relevant tests under paragraphs 68(a) and (b), the Commission has first to establish appropriate product and geographic market definitions.

a) Product concerned

- (58) According to paragraph 69 of the RAG 2007-2013, the product concerned is normally the product covered by the investment project. When the project concerns an intermediate product and significant part of the production output

⁹ It is to be noted that viewing the ammonia production investment project and the urea intensification investment project as one single investment, the maximum allowable State aid intensity for the combined project would be 18.44% and the real intensity, (calculated with the unchanged aid amount of EUR 51 965 564) would be 15.33%.

is not sold on the market, the product concerned may be the downstream product.

- (59) As a result of the investment, Duslo, a.s. will produce more ammonia. Only 1% of the produced ammonia will be sold to unrelated parties and about 9% of the production will be "sold" within the AGROFERT group¹⁰, and the remaining portion of the ammonia will be used for the plant's own fertiliser production. Therefore, the Commission considers that the product concerned for the purpose of this decision is not ammonia, but the downstream products.
- (60) More specifically, the ammonia will be used in Duslo, in Lovochemie and in Hnojiva Duslo Strazske for the production of urea, nitric acid, and ammonium nitrate which, together with other raw materials, will then be used for the production of a range of nitrogen fertilisers. As a practical guidance, the Commission asked the Slovak authorities to designate all downstream products of the beneficiary for which at least 2% of the ammonia produced at the plant will be used. On this basis, the Slovak authorities indicated that the ammonia will be used to produce Urea, CAN, UAN, ASN (including ASN+MG) and the technical by-product Ad Blue. Thus, it can be established that the ammonia is an intermediary product which is not the product concerned for the purposes of defining the relevant product market in this case, but that the products deemed concerned to be taken into account for the definition of the relevant product market are the downstream products Urea, CAN, UAN, ASN (including ASN+MG) and AdBlue.

b) Relevant product market

- (61) Fertilisers are either organic (i.e. manure, etc.) or mineral (i.e. obtained through an industrial process). The three main nutrients which are added in the soil, through the use of mineral fertilisers, to maximise plant growth and optimise crop results are: Nitrogen (N), Phosphorus (P) and Potassium (K). Whereas the basic N production process is a chemical process, K and P are obtained through a mining process. Through these basic production processes, basic straight fertilisers are obtained. Fertilizers can be in single nutrient form (straight N, straight P, and straight K) or in a complex form which may contain any combination of N, P and K. This may be achieved by chemical means (compound fertilizers) or mechanically (blended fertilizers). A further distinction can be made between field application and "specialty" application; the former is spread on a field and diluted progressively by rain or irrigation water, the latter concerns fully water soluble or liquid fertilizers applied in liquid form.¹¹
- (62) The ammonia downstream products manufactured by the Duslo plant that are relevant to this decision are several mineral Nitrogen field fertilisers in a

¹⁰ A large part of it notably to Lovochemie in the Czech Republic and Hnojiva Duslo Strazske in Slovakia for further processing in the production of the same products as by the beneficiary Duslo plant.

¹¹ See merger cases Case No COMP/M.2524- Hydro/Sqm/Rotem/JV, 05/12/ 2001, Document No on EUR-Lex: 301M2524 p. 3, Case No COMP/M.4730 – Yara/Kemira Grwohow, 21/09/2007, Document no. on EUR-Lex: 32007M4730, p. 3.

single nutrient form, so-called straight fertilisers, one type of complex form fertiliser (ASN) and the technical by-product AdBlue.

- (63) The various types of straight N fertilizers produced by Duslo a.s. vary in their chemical composition, and in particular in their nitrogen content.
- a. Urea is produced by as a result of a reaction of ammonia with carbon dioxide. It is also a by-product of ammonia, the basic intermediary material for the production of straight nitrogen fertilizers. Urea is widely used in the agricultural industry as an animal feed additive and fertilizer (containing 46% Nitrogen), that is described as Carbonic acid diamide, prilled nitrogen fertiliser¹². Urea can also be used in certain technical applications ("technical urea"). Whilst urea for agricultural use can be either in prilled or in granular form, technical urea (TU) is only used in prilled form, whereas the terms "granules" and "prills" relate solely to the physical characteristics of the same basic chemical product¹³.
 - b. CAN, i.e., Ammonium Potassium Nitrate with dolomite (or calcium ammonium nitrate). It is a straight N-mineral fertiliser for field application in a hard form; Fertilizer grade CAN contains roughly 8% calcium and 21-27% nitrogen¹⁴;
 - c. UAN, i.e. Ammonium nitrate and urea solution (or urea ammonium nitrate solution). UAN is a liquid N-mineral fertiliser for field application; its main difference to CAN is its liquid form, which makes it more suitable to use in dry periods.
- (64) ASN is a mineral Nitrogen field fertiliser in a complex form for field application. In comparison with the previous products, in addition to nitrogen, ASN also contains sulphur. However, sulphur is merely a supplement to nitrogen and has no influence on its characteristics. Sulphur is added into ASN because it fixes ammonia and thus prevents air pollution. However, as regards ASN's product characteristics, intended use, there no difference between it and the straight N-fertilisers. This product of the beneficiary also includes the version "ASN + Magnesium" which is fully substitutable with ASN.
- (65) AdBlue is a technical product used in utility vehicles to reduce exhaust gas emissions. It is a solution of high purity urea, dissolved in demineralised water that (used in conjunction with certain specific technologies) leads to a reduction of harmful emissions by a very significant degree.
- (66) The Slovak authorities confirmed that the ammonia to be produced on the manufacturing facility that is the subject matter of this decision will not be used for products other than those mentioned above.
- (67) Paragraph 69 of the RAG provides that the relevant product market includes the product concerned and its substitutes considered to be such either by the

¹² Commercially, fertilizer urea can be purchased as prills or as a granulated material.

¹³ Case No IV/M.832 -Norsk Hydro/Enichem Agricoltura – Terni II. 25/10/1996, CELEX database Document No.396M0832, para 18.

¹⁴ http://en.wikipedia.org/wiki/Calcium_ammonium_nitrate

consumer (by reason of the product's characteristics, prices and intended use) or by the producer (through flexibility of the production installations).

- (68) In order to be able to define the relevant product market, it is necessary to assess the substitutability among and within the particular group of ammonia downstream products.

The view of Slovakia

- (69) The Slovak authorities suggest that in addition to the product market of AdBlue, which clearly represents a separate product market in the case, the market for nitrogen fertilisers for field application as a whole should be considered as a single relevant product market instead of the various sub-markets of the straight N-fertiliser market and the ASN market, as there is both supply and demand side substitutability between the various sub-groups of N-fertilisers.
- (70) With regard to supply side substitutability the Slovak authorities note that nearly all manufacturers produce a wide range of fertiliser products. More specifically, different types of N-field fertilisers are interchangeable from the perspective of their production regardless of their exact composition, nitrogen content or application technique. All types of the N-mineral fertilisers for field applications have the same characteristics, production process, distribution chains, comparable production costs, etc.
- (71) The Slovak authorities further argue that from the demand side perspective all of these fertilisers have the same characteristics, intended use and comparable market price. Therefore, all of them are used by the customers as substitutes and are applied by them in response to the actual weather conditions and the customers' actual needs. The small differences between the particular N-mineral fertilisers for field application do not disqualify them from their mutual substitutability from the demand side perspective. No fertiliser-product has exactly the same composition and characteristics as another one. Nevertheless, in general any N-mineral fertiliser for field application can be used as a substitute by the customer if the desired type is not available or its actual price is higher. The Slovak authorities argue that the Commission's decisional practice in merger cases have confirmed that there is demand side substitutability between various straight N-fertilisers, as the case COMP/M.4730 *Yara / Kemira Growhow*¹⁵ stated that “*alternative products are able to exercise competitive pressure.*” This opinion was further confirmed in the more recent Commission decision COMP/M.6695 *Azoty Tarnów / Zakłady azotowe pulawy*¹⁶, which clearly stated that according to market participants, at least straight N-mineral fertilizers for field application are fully substitutable from the demand-side.

The decisional practice of the Commission

- (72) In its previous decisions, the Commission concluded that mineral fertilizers were distinct from organic fertilizers. A further distinction between field fertilizers and specialty fertilizers has also been considered, and the Commission has also found that N-, P- and K-fertilizers represented separate product markets.

¹⁵ Case No. COMP/M4730 – Yara/ Kemira Growhow, EURLEX website number: 32007M4730

¹⁶ Case NO. COMP/M.6695 Azoty Tarnów / Zakłady Aazotowe Pulawy, EURLEX website number: 32013M6695

- (73) A range of merger decisions discussed extensively whether or not the N-fertiliser market should be further subdivided.
- (74) As regards demand side substitutability, earlier cases, like *Norsk Hydro Arnyka*, concluded that various specific types of nitrogen containing fertilizers each have individual characteristics¹⁷. 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. Besides, the specific choice of the farmer will result from a combination 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.
- (75) As regards supply side substitutability, the *Yara Kemira* merger decision acknowledged that although nearly all manufacturers produce a wide range of these products¹⁸, market investigation in the most recent merger case on the subject, *Azoty Tarnow*¹⁹ suggested that different types of N-fertilisers were not necessarily substitutable from the supply-side, as they are not produced on the same machines and with the same processes and, with the exception of AN and CAN, it is not easy to switch production (in terms of time, equipment, manufacturing costs and marketing costs) between the different types of N-straight fertilizers²⁰. *Yara Kemira* also stated that the processing of nitrogen containing fertilizers requires different types of production facilities for the different types of fertilizers²¹.

Conclusion on the relevant product market

- (76) As a result, the Commission concludes for the purpose of this decision, that due to the limited supply side substitutability between the various types of N-fertilisers, it cannot consider the N-fertiliser market as a single undivided market. Therefore, each of the sub-markets of straight N-fertilisers relevant to this case, i.e. Urea, CAN, UAN, and ASN as well as AdBlue are treated as separate markets.

c) Relevant geographic market

- (77) The Slovak authorities suggested that the EEA is the relevant geographic market but stated that statistics are only available for the EU 27. They point out that their main source of information, Fertilizer Europa, uses EU-27 fertiliser market statistics which is a good proxy for the EEA, as the numbers would be highly comparable to the EEA figures.

¹⁷ Case No. IV /M – 769 – Norsk Hydro Arnika (Enichem Agricoltura, CELEX database document No 369M/0769 paragraph 16.

¹⁸ Case No. COMP/M4730 – Yara/ Kemira Growhow EURLEX website number: 32007M4730

¹⁹ Case No. COMP/M.6695 – Azoty Tarnow/Zaklady Azotowe Pulawy, 18/01/2013 Document No. on EUR-Lex: 32013M.6695, para 18. p. 5.

²⁰ Yara Kemira also stated that The processing of nitrogen containing fertilizers requires different types of production facilities for the different types of fertilizers.

²¹ Yara/Kemira, paragraph 12.

- (78) A number of merger cases dealing with the N-fertilisers market established that the geographic market for these products is at least EEA wide²². The *Yara/Kemira* merger case also established that the geographic market for AdBlue is EEA wide.²³
- (79) The Commission considers that the EEA is an appropriate geographic reference for the purpose of the assessment of the aid project at hand.

d) Paragraph 68 test of the RAG: the beneficiary's market share

- (80) The beneficiary's (at the level of the parent company and its affiliated companies, the AGROFERT Group) in each of the relevant product markets are as follows:

Table III: Market shares on the relevant markets (based on statistics by Fertilizer Europe, a data provider for fertiliser capacity and sales data)

	2013 ²⁴			2018		
	EU27 volume	AGROFERT	Market share	EU27 volume	AGROFERT	Market share
N-fertilisers (in t)	45 653 000	[...]	<25%	46 081 000	[...]	<25%
Urea (in t)	11 432 609 ²⁵	[...]	<25%	11 624 000	[...]	<25%
CAN (in t)	9 807 000	[...]	<25%	9 971 000	[...]	<25%
UAN (in t)	4 273 333	[...]	<25%	4 345 000	[...]	<25%
ASN/ASN+MG (in t)	1 896 154	[...]	<25%	1 928 000	[...]	<25%
AdBlue ²⁶ (in t)	1 800 000	[...]	<25%	3 600 000	[...]	<25%

- (81) Therefore, the Commission concludes that the threshold laid down in paragraph 68(a) of the RAG 2007-13 is not exceeded.

²² See e.g. Norsk Hydro/Enichem para 23; Azoty Tarnow, para 23;

²³ See para 192.

²⁴ The year in fact refers to the 2012/2013 agricultural year between July 2012 and June 2013.

²⁵ IFA (International Fertiliser Industry Association) statistics: Data only for 2012 as not available for 2013.)

²⁶ Source: Interger-research.com

e) Capacity increase created by the project (Point 68(b) of the RAG)

- (82) As pointed out in paragraph (55) above, in the case of large investment projects, Member States must also show that the capacity created by the investment does not exceed 5% of the market measured by apparent consumption in the EEA in the year preceding the investment if the market in question is underperforming, i.e. is in absolute or relative decline. A market is underperforming if its average annual growth rate was below the average annual growth rate of the EEA GDP in the 5 years preceding the start of the investment.
- (83) Given the fact that almost all ammonia will be used for own production or sold to affiliated companies, an increase in the ammonia production capacity is not relevant in this decision
- (84) As a result of the investment (in particular the part relating to the urea intensification process), the capacity for the various relevant products (N-fertilisers, as well as its sub-markets and AdBlue) will be increased. The capacity increase measured with regard to the apparent consumption of the products in the EEA registered in the year prior to the investment was as follows:

Table IV: Capacity increase with regard to apparent consumption

Product concerned	Apparent consumption of the product in the EU-27 ²⁷ (in t) (2012/2013 agricultural year)	Production at the Duslo plant before investment (2013) (in t)	Production at the Duslo plant after investment (2018) (in t)	Capacity increase in percent of apparent consumption 2012/13
N-fertilisers	45 323 000	[...]	[...]	<5%
Urea	11 432 609	[...]	[...]	<5%
UAN	4 273 333	[...]	[...]	<5%
ASN/ASN+MG	1 896 154	[...]	[...]	<5%
CAN	2 648 000	[...]	[...]	<5%
AdBlue	1 800 000	[...]	[...]	<5%

- (85) As it can be seen from the above figures, the capacity increase does not exceed the 5% threshold in any of the relevant markets. Therefore, the Commission

²⁷ General comment: for all data (IFA, EF) the used data is EU 27. EEA data is not available.

concludes that the test laid down by in the second part of point 68(b) of the RAG is complied with.

f) Conclusion on the 68(a) and (b)-tests

- (86) The outcome of the 68(a) and (b)-tests does not require the Commission to proceed to an in-depth assessment based on the IDAC, and it shows that the distortion of competition because of the aid would be limited.

3.3.2.4. The positive effects of the aid outweigh its negative effects

- (87) Given the outcome of the 68(a) and (b)-tests, the aid measure would cause only limited negative effects in terms of distortion of competition.
- (88) The aid measure contributes significantly to regional development in a proportionate manner and by creating an incentive effect for the beneficiary to proceed with the investment project. The Commission notes that the incentive effect requirements laid down in § 38 of the RAG are met. The Commission therefore considers that the aid has had an incentive effect on the investment and has triggered its positive contribution to the development of the assisted region concerned.
- (89) The RAG state that regional aid can only play an effective role if it is used sparingly and proportionately and is concentrated on the most disadvantaged regions of the European Union. In particular, the permissible aid ceilings should reflect the relative seriousness of the problems affecting the development of the regions concerned. Furthermore, the advantages of the aid in terms of the development of a less favoured region must outweigh the resulting distortions of competition
- (90) The Treaty allows the Commission to accept distortions of competition and trade in order to favour the regional development of regions eligible for regional aid pursuant to Article 107(3)(a) of the TFEU. The weight given to the positive effects resulting from the aided investment is greater in the case of the most disadvantaged regions covered by Article 107(3)(a) of the TFEU than in those covered by Article 107(3)(c) of the TFEU.
- (91) The aid intensity of 16.76% GGE applied to the investment project was subject to the scaling down of standard regional aid ceilings pursuant to § 67 of the RAG and does not exceed the applicable regional aid ceiling. It can therefore be considered to be proportionate to the handicaps to be addressed in the Nitra region, considered eligible for regional aid pursuant to Article 107(3)(a) of the TFEU.
- (92) Having established that the aid provides an incentive for carrying out the investment in the region concerned and is proportionate, it is necessary to balance the positive effects of the aid with its negative effects
- (93) By maintaining 1 800 direct and about 1 600 indirect jobs, and contributing to the sustainability of the region both in terms of improving its environmental and economic status, the aided investment contributes to the regional

development of a region declared eligible for regional aid pursuant to Article 107(3)(a) of the TFEU.

- (94) The aid does not lead to the creation or the strengthening of a dominant market position of the aid beneficiary and the effects of the capacity created by the investment on the relevant product markets are very limited.
- (95) Since the aid respects the maximum scaled down aid intensity ceiling applicable to large investment projects, in accordance with the RAG and with the regional aid map approved for Slovakia for the period 2007-2013, the Commission considers that the aid has no excessive negative effect on trade which would be incompatible with the internal market.
- (96) The Commission concludes that Slovakia demonstrated that the investment project contributes towards the achievement of the cohesion objective, which is an objective of common interest, The aided investment contributes significantly to the improvement of the socio-economic situation and to the development of the region concerned, in particular in view of its effect on employment maintenance including at the beneficiary's supplier base.
- (97) In light of the above, the Commission concludes that the benefits of the aid measure outweigh the resulting distortion of competition and negative effects on trade between Member States.
- (98) This decision is made without prejudice to Commission scrutiny of the implementation of EU environmental legislation, including in particular the need to carry out an environmental impact assessment when required by law.

4. Conclusion

- (99) The notified aid meets all the compatibility criteria laid down in the RAG. The fact that the thresholds of the tests laid down in paragraph 68(a) and (b) of the RAG are not exceeded signals that the aid does not lead to major distortions of competition. Since the aid contributes to the positive effects analysed in section 3.3.2.4. of the present Decision in a region eligible for regional aid pursuant to Article 107(3)(a), the contribution of the aid to regional development outweighs its negative effects on trade and competition. Accordingly, the notified aid measures can be considered compatible with the internal market in accordance with Article 107(3)(a) TFEU.
- (100) The Commission has therefore decided not to raise any objections to the aid because it is compatible with the internal market under Article 107(3) a) of the Treaty on the Functioning of the European Union.

If the decision contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
B – 1049 Brussels
Belgium
Fax No: 32 2 296 12 42

Yours faithfully,
For the Commission

Margrethe Vestager
Member of the Commission