



Final Report of the Hearing Officer¹
Case M.7962 – CHEMCHINA/SYNGENTA

1. On 23 September 2016 the European Commission (the "Commission") received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation² by which the Chinese State-owned undertaking China National Chemical Corporation ("ChemChina") acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the Swiss undertaking Syngenta AG ("Syngenta") by way of purchase of shares (the "Transaction"). ChemChina and Syngenta will be referred to collectively as "the Parties".
2. ChemChina is active in the agrochemical sector through China National Agrochemical Corporation, which controls its wholly-owned subsidiary Adama Agricultural Solutions ("Adama", Israel). Adama is primarily active at the global level in the manufacturing and sale of off-patent formulated crop protection products. Syngenta is a global player in the agrochemical sector, being active, amongst others, in the research, development, manufacture and marketing of crop protection products and seeds.
3. The Commission's first phase investigation raised serious doubts as to the compatibility of the Transaction with the internal market and the EEA Agreement, in particular in relation to the horizontal effects of the Transaction in a high number of European crop protection markets. Moreover, further investigation was needed in relation to lawn and garden products, the global merchant market for a number of active ingredients and possible foreclosure effects arising from bundling practices. On 28 October 2016, the Commission adopted a decision initiating proceedings pursuant to Article 6(1)(c) of the Merger Regulation to which the Parties submitted written comments on 9 and 29 November 2016.
4. On 16 November 2016, at the Parties' request, and pursuant to Article 10(3), second subparagraph, of the Merger Regulation, the second phase period for reviewing the Transaction was extended by 10 working days. Under the same legal basis, in agreement with the Parties, on 3 January 2017 the Commission further extended that review period by 10 working days.
5. Upon its request, I have recognised Finchimica S.p.A as an interested third person in the current proceedings on 11 January 2017.
6. The Parties submitted a first set of commitments on 10 January 2017. On the basis of feedback from the Commission's targeted market test of this package, launched on

¹ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, OJ L 275, 20.10.2011, p. 29 ("Decision 2011/695/EU").

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

10 January 2017, the Parties submitted improved commitments on 27 January 2017 (the "Final Commitments").

7. The Commission did not issue a statement of objections.³ There was no formal oral hearing in accordance with Article 14 of Commission Regulation (EC) No 802/2004.⁴
8. In the draft decision the Commission comes to the conclusion that the Final Commitments are adequate and sufficient to eliminate the significant impediment to effective competition in the crop protection markets where competition concerns have been raised. As a result, the Commission declares the Transaction compatible with the internal market and the EEA Agreement, subject to conditions and obligations intended to ensure that the Parties comply with the Final Commitments.
9. I have reviewed the draft decision pursuant to Article 16(1) of Decision 2011/695/EU and I conclude that it deals only with objections in respect of which the Parties have been afforded the opportunity of making known their views.
10. Overall, I consider that the effective exercise of procedural rights has been respected in this case.

Brussels, 24 March 2017

Joos STRAGIER

³ Article 10(2) of the Merger Regulation states that "*decisions pursuant to Article 8(1) or (2) concerning notified concentrations shall be taken as soon as it appears that the serious doubts referred to in Article 6(1)(c) have been removed, particularly as a result of modifications made by the undertakings concerned*". Therefore, where the parties have offered commitments before the Commission has issued a Statement of Objections and those commitments are sufficient to remove the serious doubts, the Commission shall take a Decision under Article 8(2) without issuing a Statement of Objections. In this sense, see, for example, case COMP/M.5440 Lufthansa/Austrian Airlines, para. 10 and Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1, point 18).

⁴ Commission Regulation (EC) No 802/2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (OJ L 133, 30.4.2004, p.1; corrigendum OJ L 172, 6.5.2004, p. 9).