



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19-12-1997

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

Dear Sirs,

**Subject: Case No IV/M.1057 - Terra Industries/ICI**

Notification of 20.11.1997 pursuant to Article 4 of Council Regulation N/ 4064/89

1. On 20.11.1997 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ("the Merger Regulation") by which Terra Industries, Inc. ("Terra Industries") of the USA acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the fertilizer business of Imperial Chemical Industries PLC ("ICI") of the UK.

**I THE PARTIES AND THE OPERATION**

2. Terra Industries is majority-owned by Minorco S.A. ("Minorco") of Luxembourg, which is in turn controlled by the Anglo American Corporation of South Africa Limited ("AAC"). Terra Industries is active in the distribution of crop production products and services, the manufacture of nitrogen-based fertilizers, and the manufacture of methanol. The company is almost exclusively active in North America.  
It has only occasionally sold limited amounts of ammonia nitrate on a spot basis into the EU.
3. Minorco is the overseas investment vehicle of AAC. It is mainly active in minerals mining. Minorco also owns the Cleveland potash mine in the UK and a number of industrial companies in the paper sector.

4. AAC is a South African conglomerate with wide ranging mining, financial and industrial interests. AAC does not have any other interest in this sector than Terra Industries and the Cleveland potash mine.
5. ICI is a large chemical company, which produces a wide variety of chemical products such as coatings, paints, explosives, resins, food flavours and fragrances, industrial chemicals, performance chemicals, and fertilizers.
6. The operation consists of Terra Industries acquiring the fertilizer business (“the Business”) from ICI by way of purchase of assets. The Business primarily manufactures ammonium nitrate which is a source of nitrogen used in the manufacture of fertilizers.

## **II THE CONCENTRATION**

7. The operation will give Terra Industries sole control over the fertilizer business of ICI. The operation thus constitutes a concentration within the meaning of Article 3 (1)(b) of the Merger Regulation.

## **III COMMUNITY DIMENSION**

8. The undertakings concerned have a combined aggregate worldwide turnover of more than 5000 million ECU. Each of the undertakings has a Community-wide turnover in excess of 250 million ECU and they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension according to Article 1(2) of the Merger Regulation.

## **IV COMPATIBILITY WITH THE COMMON MARKET**

### **A. Relevant product markets**

9. The three main nutrients of fertilizers are nitrogen (N), phosphorous (P) and potassium (K). Fertilizers are supplied as “straights” (i.e. single nutrients), and as compounds and blends which combine N, P and K.
10. As mentioned above, the Business mainly produces ammonium nitrate, which is a source of nitrogen used in the manufacture of fertilizers. The Business sells its production of ammonium nitrate either as a straight N fertilizers or as an ingredient for manufacturers of blended fertilizers. The Business only to a limited extent manufactures blended NK fertilizers or sells intermediate products such as nitric acid and carbon dioxide to external customers.
11. The Business is one of the major producers of ammonium nitrate in the UK. Still, even on the narrow market of just ammonium nitrate it had a share of less than 25% of total UK sales of ammonium nitrate in 1996/97. It is, therefore, not necessary to examine other alternative product market definitions for fertilizers, and the product market definition thus can be left open since, even on the narrowest possible market definition, the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

## **B. Relevant geographic markets**

12. According to the parties the market for ammonium nitrogen may be global. In this respect the parties point to large imports into the Community from Russia. It may well be that the relevant geographic market is larger than the Community. However, whether the relevant geographic market are considered to be national, the EU or wider than the EU need not to be decided in the present case since, even on the narrowest possible market definition, the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

## **C. Competitive assessment**

13. The Business purchases a small amount of potash from the Cleveland potash mine in the UK for the production of a particular NK blend of fertilizer. The Cleveland potash mine is owned by Minorco and has a market share of 45-50% of the UK market. However, the amount of potash bought by the Business is so small that it has no effect neither on the market position of the Business, nor of the Cleveland potash mine. In particular this vertical relationship does not give rise to any kind of foreclosure effects for third parties. In any case there are large imports of potash into the UK and the potash market is likely to be wider than the UK. Consequently the operation will not give rise to the strengthening or creation of a dominant position due to this vertical link.
14. The operation could only give rise to a horizontal effect if the relevant geographic market was to include North America. However, it would not lead to the creation of a dominant position, even if this was to be the case, since Terra Industries only have about 15% of the North American market. In this respect it should also be noted that resourceful competitors such as Norsk Hydro, Kemira, BASF and as well as other players exist.

## **V ANCILLARY RESTRAINTS**

15. The parties have presented a number of contractual provisions which they consider as ancillary restraints.
16. ICI has undertaken not to compete with the Business for a period of [ \* ] years and it has undertaken not to solicit employees for a period of [ \* ] years without the approval of Terra Industries. Furthermore, there are a number of confidentiality clauses concerning the Business which apply only to non-public information related to the Business. Also, ICI has undertaken not to make any material changes to the Business until completion. The non-compete clause fulfils the requirements set out in paragraph III.A. of the Commission Notice Regarding Restrictions Ancillary to Concentrations and the non-solicitation clause is also considered necessary in order to protect Terra's legitimate interests and therefore these clauses can be regarded as ancillary. To the extent that the other protective covenants mentioned constitute restrictions to competition, they can also be regarded as directly related and necessary to the implementation of the concentration and thus ancillary pursuant to the Merger Regulation.

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\* Deleted business secret

17. Furthermore, the parties have entered into a number of supply and service agreements concerning for example the supply of gas, water, electricity, hydrogen, ammonia to Terra for various periods of time both by ICI to Terra and also in many cases by Terra to ICI. The parties submit that these arrangements are designed to avoid disruption to the Business and to ICI's retained businesses following the sale. However, these agreements go beyond the scope of the concentration and cannot be considered as necessary and directly related to the implementation of the concentration and are therefore not covered by the present decision.

## **VI CONCLUSION**

18. 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 (EEC) No. 4064/89.

For the Commission