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Case No COMP/M.2524 - HYDRO / SQM / ROTEM / JV

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

Subject: **Case No COMP/M.2524 – HYDRO/SQM/ROTEM/JV**
Notification of 31 October 2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 31/10/2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings Norsk Hydro ASA ("Hydro", Norway) and NutriSI N.V. ("NutriSI", Belgium), a joint venture between Sociedad Quimica y Minera de Chile SA ("SQM", Chile) and Rotem Amfert Negev Ltd ("Rotem", Israel), acquire within the meaning of Article 3(1)(b) of the Council Regulation control in a newly created company constituting a joint venture ("Newco") which will be active in the field of specialty fertilisers.

2. After an examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No. 4064/89 and does not raise serious doubts as to its compatibility with the Common Market and with the EEA Agreement

I. THE PARTIES

3. Hydro is a diversified worldwide industrial group, based in Norway, active in the oil and energy, light metals and mineral fertiliser sectors.

4. NutriSI is 50/50 joint venture between SQM and Rotem. NutriSI produces water soluble NPK fertilisers and markets them in Europe and worldwide. In addition, NutriSI markets in Europe and in other parts of the world the specialty fertiliser produced by its parents.

5. SQM is a Chilean company, active in the production and distribution of mineral fertilisers, industrial chemicals, iodine and lithium. Rotem is an Israeli company active in the production and distribution of mineral fertilisers and chemicals.

II. THE OPERATION

6. As a result of the operation Hydro and NutriSI will set up a 50/50 joint venture company, Newco, to which they will contribute their production facilities for the production of water-soluble NPK fertilisers in the EEA. The production facilities are located in Belgium and in the Netherlands. In addition, Hydro will contribute to Newco its Dutch production facility for liquid fertilisers.

III. THE CONCENTRATION

7. Newco will be a full function joint venture governed by a board of directors consisting of […] members of which Hydro and NutriSI shall appoint […]members each. Strategic decisions, such as the annual budget, will require the unanimous consent of the board. Both Hydro and NutriSI will have the power to block actions which determine the strategic commercial behaviour of Newco and will thus jointly control the new entity.

8. Newco will be vested with sufficient financial resources ([…]) and human resources needed in order to operate on the market as an autonomous economic unit. Newco will source some […]of its raw materials requirements from the parent companies. The parties have, however, submitted that these products will be sold at market prices at arms length basis and that they are mostly substitutable with alternative raw materials.

9. The operation therefore constitutes a full-function joint venture according to Article 3(2) of the Merger Regulation.

IV. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Hydro: EUR 19,344 million; NutriSI: EUR 59 million, plus SQM's turnover of EUR 544 million, and Rotem's turnover of EUR 1,959 million). The aggregate Community-wide turnover of Hydro and NutriSI exceeds EUR 250 million (Hydro […]; NutriSI: […], plus SQM's turnover of […], and Rotem's turnover of […]), and none of them 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.

V. THE RELEVANT MARKET

Relevant product markets

11. Fertilisers are either organic (i.e. manure, etc.) or mineral (i.e. obtained through an industrial process). Only mineral fertiliser are relevant for the assessment of the present concentration as neither Newco nor its parents will be active in the field of organic fertilisers.

12. 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.

13. Basic straight fertilisers can either be used directly by growers or serve as raw materials for other fertilisers such as straight and compound (or blend) fertilisers. Straight fertilisers are single salt products, obtained through a chemical process, that contain only one or two nutrients. Examples of straight fertilisers are Calcium Nitrate ("CN"), Potassium Chloride ("KCl"), Potassium Nitrate ("KN"), and Mono Potassium Phosphate ("MKP"). Compound or blend fertilisers (such as "NPK" fertilisers) are produced, through a physical blending process, out of two or more straight fertilisers.

14. Each of these products might also be divided into three sub-categories: field fertilisers (which are spread on a field and which dilute progressively with rain or irrigation water), water-soluble fertilisers (which are mixed with irrigation water at the grower's site) and liquid fertilisers (which are delivered to the grower in liquid form). Some compound fertilisers, water-soluble fertilisers, liquid fertilisers, and straight field fertilisers are furthermore generally referred to as "specialty fertilisers".

15. The parties submit that N, P and K fertilisers should be seen as three separate markets segments, as each of them satisfies a specific need for plant growth and is not substitutable with one another. The parties submit, however, that further segmentations (straight/compound fertilisers, field/water-soluble/liquid fertilisers) would not constitute appropriate product market definitions. More particularly, the parties argue that when selecting a nutrient carrier, the farmer always has a choice between a number of sources containing the required nutrient(s) in various concentrations and forms. Therefore, the parties contend that the market is characterised by a continuous chain of substitution.

16. According to the narrowest possible market definition proposed by the parties, the relevant products markets which have to be taken into account for the assessment of the present concentration are the following: (i) water-soluble NPK fertilisers; (ii) liquid fertilisers; (iii) field N containing fertilisers; (iv) water-soluble N containing fertilisers; (v) water-soluble CN; (vi) field P containing fertilisers; (vii) water-soluble P containing fertilisers; (viii) MKP; (ix) field (chlorine-free) K containing fertilisers; (x) water-soluble (chlorine-free) K containing fertilisers[1]; (xi) water-soluble KN.

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[1] According to the information submitted by the parties all water-soluble K containing fertilisers are chlorine-free.

17. Pursuant to an alternative wider market definition, which according to the parties would be more appropriate, the relevant markets would be: (i) all N containing fertilisers (which would include all field/water-soluble/liquid N containing fertilisers, as well as NPK, CN, MKP and KN, as far as concerns their N content); (ii) all P containing fertilisers (which would include all field/water-soluble/liquid P containing fertilisers, as well as NPK, and MKP as far as concerns their P content); and all K containing fertilisers (which would include all field/water-soluble/liquid K containing fertilisers, as well as NPK, MKP and KN, as far as concerns their K content).

18. The Commission has considered fertilisers in a number of previous cases[2]. The definition of the relevant product markets has been left open by the Commission in all but one decision (*Kali und Salz*), where the Commission concluded that straight and compound K fertilisers constitute separate product markets.

19. In the present case, a precise market definition may be left open since no competition concerns arise in any of the possible product market definitions.

Relevant geographic markets

20. As regards the relevant geographic markets, the parties argue that the scope is at least EEA-wide. The only exception, they submit, is liquid fertilisers which is a local activity due to logistical constraints[3]. In previous decisions, the Commission has defined the mineral fertiliser markets as at least EEA-wide. The investigation has confirmed that, except for liquid fertilisers (which appear to have regional dimension), the mineral fertiliser markets have at least a European dimension.

VI. COMPETITIVE ASSESMENT

Water soluble NPK and liquid fertilisers

21. Newco will only be active in the production and marketing of water-soluble NPK and liquid fertilisers. The only horizontal overlap will concern the water-soluble NPK segment, where Hydro is currently active with an estimated market share by volume of [10-20]%, and NutriSI with an estimated market share by volume of [0-10]%. Newco, therefore, will have an estimated market share of [10-30]% on the water-soluble NPK segment.

22. Newco's estimated market share on the water-soluble NPK segment does not raise in itself competition concerns. Moreover, consumers will continue to have the choice of selecting the product from several well established European competitors, some of which with important market shares such as Scott and Kali und Saltz (who, according to the parties, each have an estimated market share by volume of about [10-20]%), or Trans Resources International ("TRI") and Kemira Oy (who, according to the parties, each have an estimated market share by volume of about 5%).

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2 Case IV/M.308 - Kali und Salz; case IV/M.769 - Norsk Hydro/Arnyca; case IV/M.832 - Norsk Hydro/Terni; case COMP/M.1517 - Rhodia/Donau Chemie/Albright & Wilson.

3 Liquid fertilisers are mixed with water, are bulky and can only be transported by tanker lorry over short distances, which the parties estimate to be within a 200 to 300 km radius from the production site.

23. As regards the liquid fertilisers segment, no horizontal overlap will occur as a result of the establishment of Newco. Newco will be active on this segment through a Dutch production facility which Hydro will confer to Newco. Neither NutriSI nor SQM and Rotem, however, are active on this segment.

24. Therefore, the establishment of Newco does not raise serious doubts of compatibility with the common market with regard to the production of water-soluble NPK and liquid fertilisers.

Water-soluble KN and MKP

25. Newco's parent companies will continue to produce straight water-soluble fertilisers that serve as raw materials for the production of Newco's products. Specifically, Hydro will supply Newco with Nitric Acid and Ammonium Nitrate, SQM will supply water-soluble KN, and Rotem will supply MKP.

26. Water-soluble KN and MKP constitute vertically affected markets, as SQM has an estimated market share by volume of about [20-30]% in the production of KN[4], and Rotem an estimated market share by volume of about [50-60]% in the production of MKP. The concentration, however, will not lead to supply shortages of MKP or KN to Newco's competitors.

27. With regard to MKP, in fact, even assuming that Rotem would be able to cut supplies or discriminate against Newco's competitors[5], the latter would still be able to source their MKP needs from other important MKP producers such as TRI, Prayon, and Rhodia which, according to the parties, have an estimated market share by volume of [15-25]%, [15-25]% and [0-10]%[6] respectively. Similarly, with regard to KN, even assuming that SQM could cut supplies or discriminate against Newco's competitors, the latter would still be able to source their KN needs from other important KN producers such as TRI or Kemira which, according to the parties, have an estimated market share by volume of [40-60]% and [10-20]% respectively.

28. Finally, it is also excluded that the establishment of Newco might lead to the creation or strengthening of a dominant position of Rotem or SQM in the production and sale of MKP or KN as a result of their expected increase of sales to Newco. As regards MKP, according to the parties' estimates, Rotem's increased sales of MKP as raw material, resulting from its supplies to Newco, would only represent [<5]% of Rotem's total capacity. As regards KN, it can be excluded that an increase of SQM's sales of such product to Newco would lead it to become dominant on a market where its main competitor (TRI) has an estimated market share of about [40-60]%.

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4 Hydro had an estimated market share below 4% on this segment. However, according to the information submitted by the parties, Hydro terminated its KN production in July 2001.

5 The parties submit, however, that since there is over-capacity on the market and heavy competition for the water-soluble NPK blenders' business between the different MKP suppliers, Rotem would have no reason to cut existing customers.

6 Furthermore, according to the parties, for the production of water-soluble NKP, MKP can be almost entirely substituted by other products, which place an effective competitive constraint on MKP producers.

Field N containing fertilisers, water-soluble N containing fertilisers, water-soluble CN and all N containing fertilisers

29. After the establishment of Newco, Hydro, SQM and Rotem will remain active in the production and sale of field and water-soluble N containing fertilisers. According to the parties, field N containing fertilisers make up about 98% of all N containing fertilisers (the remaining 2% being represented by water-soluble N containing fertilisers, such as water-soluble CN, and liquid N containing fertilisers). Therefore, a manufacturer's market shares on the alternative wider market definition proposed by the parties (see point 17), which includes all N containing fertilisers, would roughly correspond to the market share of such manufacturer on the market for field N containing fertilisers.

30. With regard to field N containing fertilisers, Hydro has an estimated market share by volume of [20-30]%, while SQM and Rotem have a combined market share by volume of [<1]%. Therefore, given the market shares of limited significance on this market, after the establishment of Newco, the market structure is not conducive to co-ordination of competitive behaviour between Hydro, SQM and Rotem in the production and sale of field N containing fertilisers or in a wider market including all N containing fertilisers.

31. With regard to water-soluble N containing fertilisers, Hydro has an estimated market share by volume of about [25-35]% (which is mainly due to its water-soluble CN production), while SQM and Rotem have an estimated combined market share by volume of about [0-10]% (which is mainly due to SQM's production of water-soluble KN). However, it is unlikely that the establishment of Newco will have as its objet or effect the co-ordination of SQM's sales of water-soluble KN and water-soluble CN because Newco will be active only on the production of water-soluble NPK and liquid fertilisers, and because, as explained by the parties, water-soluble KN is a carrier of water-soluble K containing fertilisers rather than a carrier of water-soluble N containing fertilisers[7].

32. With regard to water-soluble CN, if this were considered a separate product market, Hydro and SQM will both remain active on this market with an estimated market share by volume of about [85-95]% and [0-5]% respectively. It can be excluded that the establishment of Newco might have the object or effect of coordination between them, because Hydro has already a quasi monopoly on this product market and it would therefore have no interest to coordinate its behaviour with a small producer like SQM. Thus it is very unlikely that a co-ordination between Hydro and SQM might arise as a result of the establishment of Newco.

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[7] According to the information submitted by the parties, total sales of water-soluble KN in the EEA represent 104.4 thousand tons of water-soluble K containing fertilisers sales and 29.1 thousand tons of water-soluble N containing fertilisers sales.

Field P containing fertilisers, water-soluble P containing fertilisers and all P containing fertilisers

33. After the concentration, both Hydro and Rotem will remain active in the segment of field P containing fertilisers where Rotem has an estimated market share of about [0-10]% and Hydro of about [10-20]%. As regards water-soluble P containing fertilisers, only Rotem will remain active after the establishment of Newco.

34. There is no likelihood that Hydro and Rotem would co-ordinate their behaviour in the market of field P containing fertilisers because, given the market shares of limited significance they hold on this market, after the establishment of Newco the market structure is not conducive to co-ordination of competitive behaviour between such companies.

35. For the same reasons, the establishment of Newco does not raise concerns of possible coordination of competitive behaviour between Hydro and Rotem on the wider market definition proposed by the parties which includes all P containing fertilisers.

Water-soluble (chlorine-free) K containing fertilisers, field (chlorine-free) K containing fertilisers, and all K containing fertilisers

36. As regards water-soluble (chlorine-free) K containing fertilisers, after the establishment of Newco, only SQM and Rotem will be active on this market. Therefore, any possible coordination of SQM's and Rotem's competitive behaviour would not result from the envisaged setting up of Newco, but rather from their pre-existing joint venture NutriSI[8]. It is therefore very unlikely that SQM and Rotem would coordinate their competitive behaviour on the water-soluble K containing fertilisers segment as a result of the establishment of Newco.

37. As regards field (chlorine-free) K containing fertilisers, SQM has an estimated market share by volume of [0-5]%, Hydro of [0-5]% and Rotem of about [0-5]%. Given the very low market share of the parties, it can be excluded that the establishment of Newco might allow the parent companies to co-ordinate their behaviour in this product market.

38. As regards the alternative wider market definition proposed by the parties, which includes all K containing fertilisers, Hydro's market share is of about [5-10]% and the other parties have an insignificant presence (NutriSI of [<1]%, SQM of about [<5]% and Rotem of more than [<5]%). Hydro's position is mainly due to its sales of non chlorine-free field K containing fertilisers. Given the insignificant market shares of NutriSI, SQM and Rotem, it can be excluded that the establishment of Newco might allow the parent companies to co-ordinate their behaviour in this product market.

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8 The parties however submit that within NutriSI, Rotem and SQM are each exclusively competent to determine the pricing and marketing strategy for their own water-soluble (chlorine-free) K containing fertilisers.

VII. CONCLUSION

39. The Commission's investigation has confirmed the assessment set out above.

40. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission