

***Case No COMP/M.4730 -
YARA / KEMIRA
GROWHOW***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(2) NON-OPPOSITION
Date: 21/09/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21-09-2007

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION IN
CONJUNCTION WITH 6(2)

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.4730 - Yara/ Kemira GrowHow
Notification of 2 August 2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 2 August 2007 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No. 139/2004 by which Yara International ASA ("Yara", Norway) acquires sole control of Kemira GrowHow Oyi ("GrowHow", Finland) by way of purchase of shares. Yara announced a public bid for the outstanding shares on 18 July.
2. In the course of the proceedings, the notifying party submitted undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the Merger Regulation. In particular, on 31 August 2007, Yara has submitted a first set of remedies. The Commission assessed the appropriateness of the remedies offered and carried out a market test. On this basis, on 19 September 2007, Yara submitted an amended set of undertakings.
3. In light of these modifications, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious

¹ OJ L 24, 29.1.2004 p. 1.

doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

4. **Yara** is active in the manufacture of field and water soluble mineral fertilizers. Yara also produces and distributes certain nitrogen-based chemicals. Yara is listed on the Oslo stock exchange. The main shareholder in Yara is the Norwegian State which holds 36.2% of the company's share capital. In view of the presence at shareholders' meetings in the past three years it can be assumed that Yara is controlled by the Norwegian State².
5. **GrowHow** is incorporated and headquartered in Helsinki, Finland, and listed on the Helsinki Stock Exchange. It is active in the production of fertilizers for crop cultivation and feed phosphates for use of animal feed as well as process chemicals for various industrial uses.

II. THE OPERATION

6. On 24 May 2007 Yara acquired a 30.05% shareholding in GrowHow from the State of Finland. Yara considers that this acquisition represents the first step of the public bid for GrowHow that was announced on 18 July 2007 and as such would be covered by the exception of Article 7(2) of the Merger Regulation from the prohibition of implementing a concentration. Yara states that pending the Commission's examination of the transaction it will not exercise the voting rights conferred with the 30.05% shareholding. The information provided by the parties indicates that Yara acquired control of GrowHow by the purchase of the stake of 30.05%³.
7. Article 7(2) applies to acquisitions of packages of shares from "various sellers", the so-called "creeping bids". The Commission considers that the exemption of Article 7(2) is therefore not applicable in a case where a controlling stake is acquired by the purchaser of a single package of shares from one seller. The Commission therefore takes the view that an infringement of the stand-still obligation in Article 7(1) and of the notification requirement in Article 4(1) cannot be excluded in the present case and may examine in a separate procedure whether a sanction under Article 14(2) is appropriate.

III. CONCENTRATION

8. The proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

² Based on shareholder attendance at the last three Annual General Meetings of the company Norway's 36.2% shareholding conferred the right to cast 70%, 69% and 70% respectively of votes represented at the Annual General Meeting.

³ Based on shareholders' attendance in the last three Annual General Meetings the shareholding of 30.05% conferred the ability to cast 54.7%, 79.7% and 82.6% respectively of the votes.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁴. Each of them have a Community-wide turnover in excess of EUR 250 million, but 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.

V. COMPETITIVE ASSESSMENT

10. The proposed concentration concerns the production and distribution of mineral field fertilizers, water soluble fertilizers (so-called "specialty fertilizers") and different chemical products associated with fertilizer manufacturing.

A. FERTILIZERS

1. Field Fertilizers

1.1 Relevant product markets

11. 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 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.
12. There are various types of straight and compound (or blended) field applied fertilizers. For straight N there is, for instance, urea, AN, CAN, etc. The various types vary in their chemical composition and in particular in their content of nitrogen. The processing of nitrogen containing fertilizers requires different types of production facilities for the different types of fertilizers. Nonetheless, the parties consider that - although there are different types of N-fertilizers - all N-fertilizers for field application form one single product market since the products would be interchangeable from a customer perspective and since the manufacturers would produce a wide range of these products. In view of this, the parties total the N-content of the different N-containing fertilizers for estimating the market size for N-fertilizers and their market shares.
13. The parties consider that the same considerations apply to P- and K-fertilizers, i.e. all P-containing fertilizers would belong to a single product market and all K-fertilizers would belong to a single product market. The parties attribute the portion of each nutrient in a given straight or compound fertilizer to the respective N-, P-, or K- market.

⁴ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

14. In its previous decisions the Commission considered that mineral fertilizers are distinct from organic fertilizers⁵ and that mineral field fertilizers are distinct from mineral specialty fertilizers⁶. The Commission further found N-, P- and K-fertilizers to represent separate product markets. It was left open whether any sub-segmentation for N, P or K is appropriate, in particular a distinction in straight and compound/blended fertilizers. Only concerning K fertilizers the Commission previously decided that in the markets for K-fertilizers a distinction between straight fertilizers and compound fertilizers should be made⁷.
15. The market test confirmed the distinction for mineral N-, P- and K fertilizers. Concerning potential sub-segments, the Commission received a considerable number of answers stating that straight, compound and blended fertilizers should be regarded as separate product markets; some competitors moreover consider that each fertilizer product represents a market on its own. Some argue that each type of soil or crop requires a different type of fertilizer. Also, some restrictions of use would not allow the application of certain products in some countries. Some producers argue that different products require different production facilities.
16. However, the vast majority of competitors and customers list a large number of potential substitutes for each of the different fertilizer products. In addition, the parties provided independent statistics showing a close correlation of prices of the different products in relation the N-, P- or K content of products at least as far as straight fertilizers are concerned.
17. In consequence, even though the production of individual fertilizers like urea, AN or UAN may require special production facilities and even though for certain soils or crops some fertilizers may be better suited than others, the price correlation shows that the alternative products are able to exercise competitive pressure.
18. For compound and blended products the price comparisons with straight products are more difficult due to the influence of the other nutrients. However, in view of the fact that end-customers need all three primary nutrients N, P and K and farmers are able to match the NPK nutrient ratio of compound NPKs by using blended NPKs or a mix of straight fertilizers the price for compound products appears to be constrained by the price of the underlying straight products. Also, the parties explain that there is a relatively stable price relationship between the price of NPK, the sum of the component prices for the equivalent blend and equivalent amounts of nutrients so that compound/blended products can be regarded as substitute for straight N-, P-, K- and vice versa.
19. However, the product market definition can be left open, since the merger will not lead to a significant impediment of effective competition on any potential product market.

⁵ COMP/M.2524 Hydro/SQM/ROTEM/JV

⁶ IV/M.769 Norsk Hydro /Arnyca of 29/7/1996; COMP/M.2524 Hydro/SQM/ROTEM/JY of 5/12/2001.

⁷ IV/M.308 Kali+Salz/MdK/Treuhand OJ 1994 L 38, para. 29.

1.2. Relevant geographic markets

20. The parties submit that the market for the N, P and K markets are global. In any event, the parties have considered that the narrowest possible market is EMEA-wide⁸, due to a high level of international trade. For N-Fertilizers the parties state that the prices for all N-containing fertilizers are driven by urea prices which in turn depend on prices of natural gas.
21. The responses received in the market test support the view that the market is at least EEA-wide. The high levels of imports into the EEA (N 10%, P 60%, and K 40%) suggest that the market may indeed be wider.

1.3. Impact on competition

22. The parties' activities overlap in the production and sale of N fertilizers, P fertilizers, K-fertilizers and compound/blended NPK fertilizers. The market shares below include the sales of the joint venture between Terra Industries ("Terra UK", UK) and GrowHow that was recently approved by the UK competition authorities.

N-Fertilizers

23. The parties estimate their combined market share on the N-fertilizers' market as follows:

	Market size (kt)	Yara	GrowHow	Terra UK	Combined (Yara, GrowHow, Terra UK)
World	89,417	[0-5]*%	[0-5]%	[0-5]%	[5-10]%
EMEA	18,842	[10-20]%	[0-5]%	[0-5]%	[10-20]%
EEA	10,852	[20-30]%	[5-10]%	[0-5]%	[30-40]%

24. Major competitors in the EEA are Agrofert ([5-10]%), Pulawy ([5-10]%), K+S ([5-10]%), Grand Paroisse ([5-10]%), Fertiberia ([0-5]%), DSM Agro ([0-5]%).
25. For straight N-fertilizers the parties estimated market share in the EEA is [20-30]% ([20-30]% Yara, [5-10]% GrowHow, [0-5]% Terra UK). For compound/blended fertilizers containing nutrient N the parties estimated market share in the EEA is [40-50]% ([20-30]% Yara, [10-20]% GrowHow, [0-5]% Terra UK).

P-Fertilizers

26. The parties estimate that their combined market share on the P-fertilizers' market as follows:

	Market size (kt)	Yara	GrowHow	Terra UK	Combined (Yara, GrowHow, Terra UK)
World	36,703	[0-5]%	[0-5]%	[0-5]%	[0-5]%
EMEA	5,282	[5-10]%	[5-10]%	[0-5]%	[10-20]%
EEA	3,138	[5-10]%	[5-10]%	[0-5]%	[10-20]%

⁸ Thus including the area that covers Russia, the Former Soviet Union, the Middle East, North Africa, Central and Eastern Europe and the member states of the EEA.

27. Major competitors in the EEA are Fertiberia ([5-10]%), Groupe Chimique TN [5-10]%, OCP ([5-10]%), K+S ([0-5]%).
28. For straight P-fertilizers the parties estimated market share in the EEA is [0-5]% ([0-5]% Yara, [0-5]% GrowHow, [0-5]% Terra UK). For compound/blended fertilizers containing nutrient P the parties estimated market share in the EEA is [20-30]% ([10-20]% Yara, [10-20]% GrowHow, [0-5]% Terra UK).

K-Fertilizers

29. The parties estimate that their combined market share on the K-fertilizers' market as follows:

	Market size (kt)	Yara	GrowHow	Terra UK	Combined (Yara, GrowHow, Terra UK)
World	18,197	[5-10]%	[0-5]%	[0-5]%	[5-10]%
EMEA	5,384	[5-10]%	[0-5]%	[0-5]%	[10-20]%
EEA	4,172	[5-10]%	[5-10]%	[0-5]%	[10-20]%

30. Major competitors in the EEA are K+S ([20-30]%), Israel Chemicals ([5-10]%), Grand Paroisse ([0-5]%).
31. For straight K-fertilizers the combined market shares in the EEA are estimated with [0-5]%. For compound/blended fertilizers containing nutrient K the EEA market share is estimated at [20-30]%
32. The market test confirmed the approximate market sizes for the N-, P-, and K markets as estimated by the parties. The market test further confirmed that there are several competitors in the EEA and significant imports to the EEA (e.g. 30% of total urea consumption in the EEA result from imports from the other countries in the EMEA, for NPK imports from the other countries in the EMEA to the EEA amount to ca. 11%).
33. The Commission therefore considers that the present transaction will not create any risk of a significant impediment of effective competition in light of the parties' market shares, the presence of a number of competitors in each of the segments for the production of field fertilizers and significant competition constraints exercised by producers outside the EEA.

2. Secondary nutrients : Mg containing fertilizers

34. Magnesium ("Mg") constitutes a secondary nutrient. It is an important constituent of chlorophyll and of a large number of enzymes necessary for normal growth. Mg plays an active part in the movement of nutrients, especially phosphate, within the plant and is associated with the control of water within plant cells.
35. There are various types of Mg fertilizers, such as dolomite limestone, kieserite, magnesium sulphate, and magnesium nitrate. Kieserite, magnesium sulphate, and magnesium nitrate are available in either water-soluble or non-soluble form.
36. The essential purpose of each of these fertilizers is to provide the secondary nutrient Mg to plants. Therefore, the parties submit that all Mg-containing fertilizers represent a

product market, as they can each be regarded as a functional substitute to the others. In this respect, the results of the market investigation confirmed the parties' view.

37. The parties' activities overlap only in the production and sale of Water Soluble Mg containing fertilizers. Only Yara sells minor quantities of non water-soluble Mg containing fertilizers⁹.
38. The effects of the proposed transaction on the market for Mg containing water soluble fertilizers are further discussed below (para 37 et seq.).

3. Specialty Fertilizers

3.1 Relevant product and geographic market

39. Specialty fertilizers are fully water-soluble fertilizers ("WS") that are manufactured to a high degree of purity. WS are typically used for particular crop types that are grown using specific methods, particularly glasshouses and/or fertigation (a combination of fertilizer with irrigation), but can also be employed for "foliar application", namely directly to the growing plant leaves. The results of the market investigation indicate that, in view of the different end-applications and of the significant price differences, N, P, K and Mg based Water Soluble fertilizers constitute distinct markets from the corresponding field fertilizers. Moreover the results of the market investigation indicate also on this sector that all of respectively N, P K and Mg based fertilizers should be considered as constituting single markets.
40. As regards WS complex fertilizers, which are derived from the blending of the different straight fertilizers, the majority of the respondents to the market investigation believes that WS straight fertilizers exercise a significant competitive constraint on WS complex fertilizers and therefore the two kinds of fertilizers can be considered as belonging to the same product market. The question of whether or not complex and straight WS soluble fertilizers are part of the same market can, however, be left open given that, as further explained below, the transaction will not create any competition concerns on any reasonable definition of the relevant product market.
41. Finally, in line with the Commission's findings in a previous case¹⁰, the results of the market investigation confirm that the relevant geographic market for these products is at least EEA-wide.
42. Liquid fertilizers are a particular type of WS fertilizers which are already mixed with water. These fertilizers are bulky and, therefore, as the Commission noted in a previous case¹¹, cannot be transported over long distances (the maximum distance being within a 200-300 km radius from the production site). On this basis, the market was previously defined by the Commission as having a regional dimension. The results of the market investigation

⁹ Yara sells these products mainly in France where its sales account for ca. [10-20]% of the total consumption of this product. It also sells these products in Norway, Germany, the Netherlands, Denmark and Spain but its sales do not exceed [0-5]% of the total consumption of these products in each of these countries.

¹⁰ COMP M: 2524 Hydro/SQM/Rotem/JV

¹¹ COMP M: 2524 Hydro/SQM/Rotem/JV

confirm the Commission's findings in its previous case and indicate an at most national dimension of the relevant geographic market. On this basis, the parties' activities will not overlap given that GrowHow sells specialty liquid fertilizers only in Finland whereas Yara sells these products only in Spain, the Benelux area and Northern France. Therefore, these products will not be discussed any further in the present decision.

3.2 Competitive assessment

(i) Horizontal overlaps

43. At a global level, the parties estimate that their combined market share will not exceed [0-5]% on any of the N, P, K, and Mg based WS specialty fertilizers market.
44. The parties' combined share of supply of WS N, WS P and WS K in the EEA would be respectively [30-40]%, [10-20]% and [10-20]%, with an increment of [0-5]% to Yara's existing shares in each case. With regard to the WS NPK segment, the parties' estimated combined share would be [20-30]% representing an increment of [0-5]% to Yara's existing share on the EEA markets. A number of competitors such as Haifa, Fuentes, Fenasa and, specifically on the WS NPK segment, also Compo and Scott will remain present in each of the N, P, K and NPK WS fertilizer markets post transaction.
45. On the EEA market for WS Mg-containing fertilizers the parties would have a combined market share of [10-20]% (Yara [10-20]%; GrowHow [0-5]%) but the increment brought about by the transaction is very limited.
46. In view of the comparatively limited position of the parties on each of these markets and of the minor increment brought about by the transaction, the Commission considers that the concentration will not significantly impede effective competition on the markets for specialty Water Soluble N, P K and Mg based fertilizers.

(ii) Vertical relationships

47. GrowHow produces WS SOP, a straight K fertilizer that is also used as an input in the production of WS NPKs. As a consequence, the transaction gives rise to a vertical relationship. However given GrowHow's market share on the EEA SOP market is below [0-5]% and that the parties' combined market share on the downstream market for WS NPKs is [20-30]%, none of these markets is affected by the present transaction. Moreover it should be noted that GrowHow currently uses only [0-5]% of its WS SOP production for the production of WS NPKs fertilizers and that generally SOP is a minor raw material for the production of WS NPKs. The main raw material for the production of these fertilizers is KNO₃. In view of the fact that i) WS SOP accounts for only a minor part of the production costs of NPK fertilizers and that ii) there are alternative producers of WS SOP the transaction is not likely to result into any input foreclosure for the producers of WS NPKs. Similarly, given that the parties would have only a [20-30]% market share on the downstream WS NPKs segment, the transaction is not likely to create any risk of customer foreclosure.

4. Micronutrients

4.1 Relevant product and geographic market

48. Plant micronutrients include boron (B), cobalt (Co), copper (Cu), iron (Fe), manganese (Mn), molybdenum (Mo) and zinc (Zn). Micronutrients reinforce and supplement the

strong plant growth and structures provided by macro and secondary nutrients and are supplied either in combination with other primary, secondary or micro-nutrients or individually.

49. The parties acknowledge that from a demand side perspective, individual micronutrients have different primary functions and therefore are not generally functional substitutes. However, the parties claim that there is a certain degree of interdependency between certain micronutrients and that in practice farmers often apply products that cover several micronutrients.
50. In light of the above, the parties submit that the relevant market should comprise all micronutrients, without any further segmentation of the market. Nevertheless, the parties acknowledge that it would be conceivable to delineate a narrow segment for chelated micronutrients, based on the format of the product and the method of application.¹² However, the ultimate definition of the relevant product market might be left open as this would not alter the conclusions of the competitive assessment below.
51. The parties submit that the micronutrients market should also be considered at least EEA-wide in scope, due to the fact that many of the major WS producers also sell micronutrients and distribute those products all over Europe and beyond and that transport costs for micronutrients are not significant. However the ultimate definition of the relevant geographic market can be left open since this would not alter the conclusions of the competitive assessment.

4.2 Competitive assessment

52. The parties estimate their combined shares to be below [0-5]% at a global level and below [10-20]% both in the EEA and in each of the countries within the EEA where their activities overlap. On the narrower sub-segment for chelated micronutrients, the parties estimate that their combined shares would be around [5-10]% (Yara [5-10]%; GrowHow [0-5]%) in the EEA and will not exceed [10-20]% in any of the countries in which the parties' activities overlap. The transaction is not likely to create any competition problems on these markets.

5. Distribution of fertilizers

5.1. Definition of relevant markets

53. The parties submit that the distribution channels for all mineral field fertilizers are the same. The market investigation indicates that mineral field fertilizers and WS fertilizers are sold through the same distribution channels. Basically three different levels of the distribution channels may be distinguished: i) supply of fertilizers to wholesalers; ii) supply to distributors/retailers; iii) supply to end customers. Whereas wholesalers source fertilizers at least on an EEA-wide basis, the supply to retailers and to end-customers is of a national dimension. In view of this, the Commission considers as relevant

¹² Chelated products are characterized by the fact that the inorganic nutrient is enclosed by an organic molecule; this prevents the micronutrient from reacting with components in the soil and becoming insoluble as a result. Chelated micronutrients are therefore particularly used for application in irrigation systems. Chelating agents can also facilitate the penetration of the micronutrient through foliar application.

distribution market the sales to those purchasers (typically retailers and end-customers) who source mineral fertilizers on a national basis.

5.2. Impact on competition

54. The parties submit that they are active mainly on the supply of fertilizers to wholesalers. However, in some EEA countries they are also active on the supply of fertilizers to retailers or end-customers. The parties further submit that in most EEA countries only one of them is active in supplying retailers or end-customers so that the concentration will not cause any change on the relevant national distribution market. According to the information submitted by the parties their activities in distribution to retailers and end-customers overlap only in Belgium, Denmark, France, Germany, Latvia, the Netherlands and the UK. In Belgium (ca. [0-5]%), France (ca. [20-30]%) Germany ([10-20]%), the Netherlands ([0-5]%) and the UK (ca. [10-20]%) the market position of the parties is limited or the increment brought about by the transaction is insignificant. However, the parties reach high combined market shares of ca. [90-100]% in Denmark and of ca. [60-70]% in Latvia.

Danish distribution market

55. In 2006, Yara together with two large Danish farming cooperatives, Dansk Landbrugs Grovvarereselskab A.m.b.a. (DLG) and Agro Danmark A.m.b.A., created the joint venture FertiSupply. The creation of FertiSupply has been assessed and cleared by the Danish competition authority in 2006 subject to commitments. The Danish competition authority found the market share to be around 55-60%.
56. Growhow is active in the Danish distribution market through its 50/50 joint venture with DLA Agro Group (DLA), another large Danish cooperative. The joint venture that was created in 2006, AgrowLine A/S ("AgrowLine"), has a market share of ca. 35%.

Conclusion on the Danish distribution market

57. In view of the high combined market share and the control over two main distribution channels in Denmark the Commission has serious doubts as to a significant impediment of effective competition on the Danish market.

Remedies

58. In order to address the Commission's concerns on the Danish distribution market for mineral field fertilizers Yara offered to cease its participation in the FertiSupply joint venture and to cause FertiSupply to be wound up by 30 June 2008 (the end of the current fertilizer year) at the latest. Yara further commits not to enter into any exclusive supply agreement for mineral fertilizers in Denmark with its joint venture partners DLG and Agro Denmark within a period of five years following the date of the Decision.

Assessment of the remedy

59. The sale of the participation in FertiSupply will remove the overlap on the Danish distribution market and will lead to a combined market share of ca. 35%. The commitment by Yara not to enter into exclusive supply contracts with its former joint venture partners for the supply of mineral fertilizers makes it furthermore likely that Yara's products will be available to any purchaser in Denmark. The market test confirms that the status quo ante will be secured by way of the proposed remedy. The remedy

therefore removes the Commission's serious doubts as to a significant impediment of effective competition on the Danish market for the distribution of mineral fertilizers.

Latvian Distribution market

60. Yara is active in Latvia through ZemNor SIA which it controls jointly with two other shareholders (Zemgale Agro and Dobeles Seklas). GrowHow is active in distribution to retailers and end-customers in Latvia through SIA Kemira GrowHow with an estimated share of supply of 50%.
61. The transaction will also lead to a combined market share of [60-70]% ([10-20]% Yara, [50-60]% GrowHow) on the Latvian market for the distribution of field fertilizers.

Conclusion on the Latvian distribution market

62. The Commission has serious doubts that this could lead to a significant impediment of effective competition in the market for fertilizer distribution in Latvia.

Remedies

63. In view of this, Yara commits to divest its shareholding in ZemNor SIA within six months from the date of this Decision. Yara further commits not to enter into exclusive supply contracts with ZemNor SIA or its former joint venture partners for the supply of mineral fertilizers in Latvia.

Assessment of remedies

64. The sale of the participation in ZemNor SIA will remove the overlap on the Latvian distribution market. The commitment by Yara not to enter into exclusive supply contracts for the supply of mineral fertilizers ensures that Yara's products will be available to other potential distributors in Latvia and that wholesalers are able to source from other producers. The remedy therefore removes the Commission's serious doubts as to a significant impediment of effective competition on the Latvian market for the distribution of mineral fertilizers.

Vertical relationships

65. The parties' activities on the fertilizer distribution markets also give rise to vertical relationships. In particular, where the parties or one of them have high market shares on a national distribution market it has to be considered whether the merger could lead to a foreclosure situation. Apart from Denmark and Latvia, the parties have a high market share only on the Estonian national distribution market (GrowHow ca. [30-40]%)¹³. Given the comparatively modest combined market shares of the parties in the production market and the availability of fertilizers from other sources the Commission considers that customers would not be foreclosed. Moreover, potential foreclosure of supply

¹³ Concerning Norway, the parties submit that Yara is not active in distribution but sells only to wholesalers. GrowHow has minor sales through its Danish joint venture AgrowLine in Norway. In Finland, Yara has no sales of field fertilizers; GrowHow is active only in supplying wholesalers but is not supplying retailers or end-customers.

channels would not be caused by the merger but rather be a consequence of the previously existing situation.

66. GrowHow owns and operates the only phosphate mine currently existing in the EEA. The parties submit that the proposed operation will have no effect as GrowHow currently uses 100% of its production captively for its own downstream production. In any case the output of the GrowHow mine represents less than [10-20]% of Western European phosphate consumption. The parties and their competitors will continue to have to import phosphate for the very large part of their needs.

B. INDUSTRIAL PRODUCTS

6. Anhydrous ammonia

6.1. Relevant product market

67. Anhydrous ammonia is a gaseous compound of nitrogen and hydrogen that must be stored under pressure or at low temperatures since it boils at -33° . It represents a key factor for the production of all N-fertilizers and is also employed in the chemical industry, mainly for the production of polymers and organic amines.
68. Due to its peculiar characteristics and low degree of substitutability with other chemical products for the applications in the chemical industry, the parties submit that anhydrous ammonia for industrial purposes forms a product market of its own. The Commission agrees with the parties' definition of the product market which has also been confirmed by the market investigation.
69. In the parties' view, a distinction is to be made between large industrial customers having access to an ammonia import terminal and customers requiring smaller quantities who do not have access to such terminals and are normally supplied by trucks. The first group of customers can source their ammonia needs globally, whereas the second source their products mainly at national level or within the area of North Western Europe¹⁴. The market investigation confirms this distinction between ammonia for fertilizer production which is delivered in large quantities and anhydrous ammonia for industrial purposes.

6.2. Relevant geographic market

70. The supply of large quantities of anhydrous ammonia, to the fertilizer industry for example is global as the product can be shipped worldwide in large vessels. However, smaller industrial customers do not require the large volumes transported by these vessels. These industrial customers are therefore generally supplied by truck or rail. Accordingly, the parties claim that the geographic scope of the market of anhydrous ammonia is more limited and dependent on the location of the customer and of relevant production plants or import terminals. Specifically, the parties claim that the market for anhydrous ammonia is mainly national, with the exception of the area of North Western Europe that represents a separate geographic market due to the intense transportation

¹⁴ North Western Europe is defined as France, Germany, Denmark, Belgium, the Netherlands and Luxembourg.

infrastructure. The market investigation has largely confirmed the parties' definition of the geographic dimension of the market.

6.3 Impact on competition

71. Both parties are active in the supply of anhydrous ammonia in North Western Europe, where their combined market share will be [30-40]%. The parties claim that the proposed transaction will not have any impact on the competition on that market, as the merged entity will be constrained by the presence of other strong players on the market, such as Agrofert, Deutsche BP and GPN. Moreover, the parties submit that these players have excess capacity that can be released on the market.
72. Some respondents, mainly customers, to the Commission's market investigation have raised competition concerns, claiming that the proposed transaction will possibly lead to price increases and to a significant reduction of available suppliers and of the available quantity of anhydrous ammonia. Nevertheless, all of these respondents stated that they have potential alternative suppliers. The market investigation has further revealed that the majority of the competitors that have responded have spare capacity available to restrain any attempt by the merged entity to increase prices by the combined entity.
73. Consequently, the Commission considers that the transaction does not raise serious doubts in this market.

7. Aqueous ammonia

7.1 Relevant product market

74. Aqueous ammonia is anhydrous ammonia dissolved in demineralised water, typically 25% of ammonia and 75% of water. The parties consider that aqueous ammonia constitutes a separate product market from anhydrous ammonia in light of the low demand substitutability between the two products. Nevertheless, the parties submit that there is significant supply side substitutability between the two products; in fact, the parties claim that since aqueous ammonia is simply anhydrous ammonia diluted in water, all ammonia producers would be able to offer aqueous ammonia and could easily expand their sales.
75. The market investigation has largely confirmed the non-substitutability between the two products from the demand side, as none of the customers who replied to the Commission's questionnaires would start purchasing or increase its purchases of anhydrous ammonia to convert it into aqueous ammonia, were the prices of aqueous ammonia to increase by 5-10%. This is because anhydrous ammonia is a hazardous material and requires significantly more investment in facilities and security than aqueous ammonia. The Commission's market investigation has identified a lack of supply side substitutability between the two products, as the vast majority of respondents would not start selling or increase their sales of aqueous ammonia by converting part of their anhydrous ammonia into aqueous ammonia, should the price of aqueous ammonia increase by 5-10%. In fact, the producers would have to invest in a dilution unit, whose cost varies between 0.5 and 1 million Euros.

7.2. Relevant Geographic market

76. Aqueous ammonia is mainly delivered to customers by truck. In light of the high transportation costs, the parties propose that the relevant markets are generally national.

The parties further propose the definition of a North Western dimension, including Belgium, France, the Netherlands, Luxembourg, Denmark and Germany to account for the significant trade flows between these countries due to a dense transportation infrastructure and a high concentration of both producers and consumers. This definition has been supported by the majority of the respondents to the Commission's market investigation. However as the remedies presented by the parties address the competition concerns on any reasonable geographic market the exact market definition can be left open.

7.3 Impact on competition

77. Both parties are active in the production and supply of aqueous ammonia; in the notification it is estimated that they would have a combined market share of [50-60]% in the North-Western Europe area. In a second submission, the parties have restated their market shares estimate to take into account demand from customers unknown to the parties, increasing the market size of an additional 25% of volume. Consequently the parties submit that their combined market share in North Western Europe for aqueous ammonia is [40-50]%. While the Commission agrees that the original estimates may have been slightly too low no substantiated arguments have been put forward to justify an increase of the size proposed by the parties. In any event, the recalculated combined market share is still of an amplitude to raise serious doubts.
78. In North Western Europe, the parties exclude competition concerns on the markets for aqueous ammonia due to the presence of other competitors and significant excess capacity, especially in the market for anhydrous ammonia.
79. As explained above (75), the market investigation has shown that the excess capacity in the market for anhydrous ammonia does not affect the market for aqueous ammonia, because there is no supply-side substitutability. Moreover, the market investigation has shown that while there are several competitors, these competitors have much smaller capacities for aqueous ammonia than the parties and will be unlikely to be able to restrain the parties' behaviour. This conclusion has been further confirmed by the concerns expressed by numerous respondents to the Commission's market investigation regarding the risks of reduction of competition, of price increase, and of reduced access to supplies in this market.
80. The proposed transaction will significantly strengthen the parties' position in the market/s for aqueous ammonia in the Nordic countries. On the national markets the parties would enjoy, individually, significant market power in Norway (where Yara has a market share of [90-100]%), Finland (where GrowHow has a market share of [90-100]%) and Sweden (where Yara has a market share of [70-80]%). It is clear that even if the relevant geographic markets are national Yara and GrowHow must be regarded as the most likely potential entrants in national markets where the other party has an extremely high market share. The Commission has therefore serious doubts that the proposed concentration would lead to a significant impediment of effective competition whether or not the relevant geographic market is national or includes the three Nordic countries (where the combined market share would be over [90-100]%).

7.4 Remedies

81. In order to solve competition problems in the North Western Europe and in the Nordic Countries, the parties have offered commitments comprising the disposal of the aqueous ammonia business in the plants of Tertre in Belgium (GrowHow) and in the plant of

Köping, in Sweden (Yara). In both cases, the parties will carve out the aqueous ammonia business lines in the existing plants of Tertre and Köping.

82. In Tertre, the business line will include the supply of anhydrous ammonia from the parties at the site, the blending facility to produce aqueous ammonia, the storage and loading facilities and the customer base from the site. In Köping, the business line will include the supply of anhydrous ammonia from the parties, the blending of anhydrous ammonia with demineralised water to create aqueous ammonia, the storage and loading facilities and the marketing, selling and distribution operations to customers from the site.
83. These disposals will significantly reduce the parties' combined share of aqueous ammonia that will be reduced from [50-60]% to [30-40]% in North Western Europe, thereby completely removing any overlap of the parties' activities on this market. In the Nordic Countries, the parties will have no activities in Sweden, while retaining their original market shares in Norway and Finland.

7.5 Assessment of the remedies

84. The market test of the commitments has revealed some concerns from the majority of respondents on the viability of the divested business, particularly in Tertre. Specifically, the concerns related to the high level of dependence on the parties' supply of raw material (anhydrous ammonia) to the potential buyer of the divested business.
85. In order to address these concerns, the parties have offered a guaranteed and preferential access for the buyer in case of temporary or permanent interruption of supplies of anhydrous ammonia, in case of the latter for a transitional period. These supplies will take place (a) in the case of Köping from the plant in [...] and (b) in the case of Tertre from [...]. Also, the sale of products by Yara to the purchasers of the businesses will be on agreed cost basis.
86. Access to these alternative sources of supplies will allow the buyer to effectively compete in the market for aqueous ammonia as it would grant an alternative source of raw material that would not be limited to the quantities available at the plant and made available by the parties. As regards the capacity divested, the Commission notes that Yara has committed to supply up to the capacity of the aqueous ammonia plant in both Köping ([...]kt per year) and Tertre ([...]kt per year). Yara's current sales of aqueous ammonia from Köping are [1-15]kt. Therefore, it is noted that Yara's current commitment permits growth from current sales levels by a factor of [...]. Yara's current sales of aqueous ammonia from Tertre are [1-15]kt. The commitment allows for an expansion of sales by [...]% from Yara's current sales. The commitments allow therefore in both cases for the possibility of a very significant expansion of sales and ensure that the acquirer will be able to exercise an effective competitive constraint on the merged entity on this market.
87. Accordingly, the Commission considers that the commitments offered remove the serious doubts identified on these markets.

8. Nitric acid

88. Nitric acid (HNO₃) is a fundamental intermediate product in the production of fertilizers. It is an aqueous solution of hydrogen nitrate and it is mostly used for the manufacture of fertilizers: according to the parties, in fact, almost 80% of nitric acid

produced in Europe is used for that purpose. Nitric acid has also numerous uses in the chemical industry, such as the production of intermediates for polyurethanes, of adipic acid and of dyestuff and explosives.

89. According to the parties, nitric acid should be subdivided in three different product markets, depending on the concentration of nitric acid in the solution:
- a. Weak nitric acid (with a concentration between 54% and 65%).
 - b. Azeotropic nitric acid (with a concentration of approximately 68%).
 - c. Concentrated nitric acid (with a concentration of 98% to 99%).
90. The definition of three separate product markets is based on the fact that the applications for each of the concentrations are different; there is no demand-side substitutability and the prices for each of the products are different. Furthermore, there is little supply side substitutability as additional equipment is necessary to increase the concentration of weak nitric acid to that of azeotropic nitric acid and the manufacture of concentrated nitric acid involves a different process and entirely different plant to that used for the transformation of weak acid to azeotropic acid. The Commission agrees with the parties' definition of three separate product markets which was also confirmed by the market investigation.

8. 1 Weak nitric acid

8.1.1. Relevant product and geographic markets

91. Weak nitric acid is a low-concentrated solution of nitric acid (between 54% and 65%), whose main application relates fertilizer production, "Cleaning In Place" in the dairy industry, surface treatment of metals and manufacture of cleaning agents. For the reasons expressed above (88-90), weak nitric acid constitutes a separate product market.
92. Weak nitric acid is usually transported by truck or rail to industrial customers. According to the parties, transportation costs are high in relation to the cost of the product itself and the distance over which the product can be transported vary depending on the topography of the region and the density of the infrastructures. In some cases, weak nitric acid can be transported up to 900 km.
93. The parties, therefore, claim that the geographic scope of the market for weak nitric acid is national, with the exception of the area of North Western Europe that, thanks to the dense transportation infrastructure and the concentration of industrial activity, the parties claim to be a separate geographic market. The market investigation has largely confirmed the parties' definition. The Commission shares the view of the parties on the geographic dimension of the market, however, as the remedies proposed address the competition concerns raised under any reasonable geographic market definition, the exact market definition can be left open.

8.1.2. Competitive assessment

94. Both parties are active in the production and supply of weak nitric acid, particularly in North Western Europe. In the notification, Yara estimates the combined market share at [40-50]% in North Western Europe and at [80-90]% for Sweden. For the Nordic countries taken together the parties' market share would be [80-90]%; however in Norway and in Finland the parties' activities do not overlap. In a second submission, the parties have restated their market shares estimate to take into account a customer of a

competitor, previously unknown to the parties, that has a demand of 20 kt of weak nitric acid. Accordingly, the parties have increased the market size by 20kt and have increased the volume by an additional 25%, in order to take into account other potentially unknown customers active on the market. Consequently the parties submit that their combined market share in North Western Europe for weak nitric acid is [30-40]%. While the Commission agrees that the original estimates may have been too low no substantiated arguments have been put forward to justify an increase of the size proposed by the parties. The Commission has recalculated the market size, consequently taking into account only the additional 20kt. Following this calculation, the parties market share in North Western Europe for weak nitric acid is [40-50]%, which is still of an amplitude to justify the competition concerns.

95. With regard to North Western Europe, the parties claim that the merged entity will be constrained by a number of competitors such as GPN, BASF and Agrofert and that the capacity available for the market is much higher than the demand. Competitors' answers to the market test revealed that there is little spare capacity. Indeed, the parties have told the Commission that the bottleneck in most nitrogen fertilizer plants is the supply of weak nitric acid. Moreover, some respondents active in Germany, Belgium and Denmark have raised concerns that this merger will lead to upward pressure on prices in the area.
96. In Sweden, the parties claim that GrowHow's increment to the market share would be less than [0-5]%. The rest of the market is covered by imports, [10-20]% by Helm and [0-5]% by Brenntag, which sources weak nitric acid from the GrowHow's plant in Denmark.
97. According to the Commission's view the proposed transaction will significantly strengthen the parties' position in the market for weak nitric acid in Sweden or in the Nordic Countries taken together. Concerns arise from the fact that in the neighboring countries of Norway and Finland the parties have market shares of respectively [80-90]% (Yara) and [90-100]% (GrowHow). Therefore, the proposed concentration raises serious doubts of an significant impediment to effective competition on this market both in North Western Europe and in Sweden/the Nordic countries.

8.1.3 Remedies

98. In order to solve competition problems in the North Western Europe and in the Nordic countries, the parties have offered to divest the weak nitric acid business in the plants of Tertre in Belgium and in the plant of Köping, Sweden. In both cases the parties will carve out the weak nitric acid business lines in the existing plants of Tertre and Köping.
99. In Tertre, the business line will include the supply of weak nitric acid (below 65% by weight) from the parties at the site, the storage and truck loading facilities and the marketing, selling and distribution operations to customer from the site. In Köping, the business line will include the supply of weak nitric acid (53% and 62%) from the parties, the storage and truck loading facilities and the marketing, selling and distribution operations to customer from the site.

8.1.4 Assessment of the remedies

100. These divestments will significantly reduce the parties' combined share of weak nitric acid that will be reduced from [40-50]% to [10-20]% in North Western Europe, completely removing any overlap of the parties' activities on this market. In the Nordic Countries, the parties will have almost no activity in Sweden, while retaining their original market shares in Norway and Finland.
101. The market test of the commitments has revealed some concerns from the majority of the respondents on the viability of the divested business, as structured. The main concern relate to the high level of dependence of the buyer on the parties' supply of raw material and activities in the plant..

However, the Commission notes that current sales from Tertre are [1-15] kt and Yara has offered capacity of 26kt or [...] % of current sales.

102. Current sales from Köping are [1-15] kt and Yara has offered capacity of 16kt or [...] % of current sales. This tonnage would enable the purchaser to cater for all the Swedish demand ([...] kt in 2006) or over half the demand in the Nordic countries.
- 103.
104. In relation to the need of alternative sources, Yara amended its original commitments so as to provide for an alternative source of weak nitric acid from [...] and from [...] in the case of temporary or permanent interruptions of supplies of weak nitric acid in Tertre or Köping respectively, in case of permanent interruptions for a transitional period. Also, Yara will sell the input products on a cost basis to the purchaser.
105. In view of this, the Commission considers that the remedy is capable of removing its serious doubts as to a significant impediment of effective competition on this market.

8.2 Azeotropic nitric acid

8.2.1 Relevant product and geographic markets

106. Azeotropic nitric acid presents a concentration of nitric acid of approximately 68%. It is mainly employed for the production of isocyanates and adipic acid. For the reasons expressed above (88-90), azeotropic nitric acid constitutes a separate product market.
107. Azeotropic nitric acid is highly corrosive, toxic and has high water content. Therefore, the transportation costs of azeotropic nitric acid are generally high. Consequently the parties claim that the geographic dimension of the market for azeotropic nitric acid is national. In light of the dense transportation infrastructure and the concentration of industrial activity, the parties claim that the area of North Western Europe should be considered as one separate geographic market. The market investigation largely confirms the parties' definition. However, since the operation does not raise competition concerns on any reasonable product market, the market definition may be left open.

8.2.2. Competitive assessment

108. Both parties are active in the production and supply of azeotropic nitric acid in North Western Europe and in Italy, where their combined shares will be respectively [30-40]% and [40-50]%.
109. In Italy, the merger does not bring any change to the competitive scenario, in view of the minimal overlap ([0-5]%) in the parties' activities. Moreover, the parties submit that the presence of competitors, such as Radicci, and Rhodia, will be an efficient competitive constraint on the parties' behaviour. The respondents to the market investigation did not express any competition concerns and the Commission considers that the transaction would be unlikely to have anticompetitive effects in this market.
110. With regard to North Western Europe, the parties claim that with a market share of [30-40]% they will remain second to the biggest player on the market, BASF. Moreover, the parties will remain under the competition constraints of other big players, such as GPN and Agrofert, Piesteritz.
111. One respondent from Germany has raised competition concerns, fearing an increase in the price of the product. Another respondent active in North Western Europe has expressed some concerns over the possibility of a price increase.
112. The market test has however also shown that there is excess capacity in the market and that available capacity will further increase in the future to limit the parties' possibilities of price increases. Consequently, also taking into consideration the parties' combined market shares and the capacity situation, the Commission believes that this transaction will not lead to anticompetitive effects on this market.

8.3 Concentrated nitric acid

8.3.1. Relevant product and geographic market

113. Concentrated nitric acid is a highly concentrated solution of nitric acid (98 to 99%). The main applications are the production of TDI polyurethanes, nitrocellulose, explosives, additives for diesel oil, and nitration reactions in general. For the reasons expressed above (88-90), concentrated nitric acid constitutes a separate product market.
114. Concentrated nitric acid can be transported over longer distances compared to the other two forms of nitric acid, as the transport costs are lower. Accordingly the parties submit that the geographic dimension of the market is wider than national and should cover the area of Western Europe. The market investigation largely confirms the parties' definition of the scope of the geographic market. However, the definition of the dimension of the geographic market can be left open as the remedies offered by the parties address the competition concerns raised on any reasonable market.

8.3.2. Competitive assessment

115. Both parties are active in the production and supply of concentrated nitric acid in Western Europe, where the merged company will gain a market share of [60-70]% (Yara [30-40]%; GrowHow [20-30]%). The parties claim that the overlap is only due to Yara supplying a single customer through a long-term contract and making sporadic back-ups to another company active in the market, for which it does not have spare

capacity and has to source its concentrated nitric acid from other producers when it has production problems or plant shut-downs.

116. The market investigation did not support Yara's view concerning its limited market presence and has identified other companies who have sourced small quantities concentrated nitric acid from Yara sporadically. Also, for some companies the supply by Yara represents a significant proportion of their overall requirements. Lastly, companies based in Germany, France, and Belgium expressed serious competition concerns regarding highly likely substantial price increases and potential problems with adequate product availability.
117. In view of this and of the parties' combined high market shares the Commission has serious doubts that the concentration could lead to a significant impediment of effective competition on the market for concentrated nitric acid in Western Europe.

8.3.3. Remedies

118. In order to solve the competition concerns raised by the Commission, the parties have proposed to divest their concentrated nitric acid business in the plant of Tertre, where the business line will be carved out from the existing plant. The line will comprise the supply of concentrated nitric acid from the parties at the site and the customer base from the site, excluding captive sales.
119. These divestments will decrease the parties' combined share of concentrated nitric acid that will be reduced to Yara's existing [30-40]% market share in Western Europe, thereby completely removing any overlap of the parties' activities on this market.
120. To address concerns expressed in the market test that the Tertre plant may be closed, Yara has offered an alternative source of supply that will be made available from alternative production sites, for a transitional period of [...] years.

8.3.4. Assessment of the remedies

121. As regards the capacity of the divested asset, Yara has committed to supply up to 40kt per year. Current sales are [15-30] kt. Therefore the current commitment allows the purchaser to increase its sales of concentrated nitric acid by over [...]% from the current levels.
122. The Commission therefore considers that the remedy will eliminate the competition problem relating to concentrated nitric acid.

8.4. 2EHN

8.4.1. Relevant product and geographic markets

123. 2EHN is an additive which improves the centane numbers of diesel oil. The key raw materials in the production of 2EHN are 2 ethyl-hexanol (2EH) and concentrated nitric acid. According to the parties' submission, 2EH represents approximately [...]% of the raw material costs for the production of 2EHN, while concentrated nitric acid represents approximately [...]% of these costs. The parties submit that the 2EHN market is EEA-wide.

8.4.2. Competitive assessment

124. GrowHow is active in the market for the production of 2EHN through a 49% interest in Cetpro, a company active on this market. Vertical concerns arise because Yara supplies concentrated nitric acid to another company (SNPE) also active on this market.
125. The parties have submitted that the merged entity will have no incentive to foreclose supplies of concentrated nitric acid to the company supplied by Yara. They argue that the company concerned has numerous supply alternatives, while Yara would have only this one customer that it has been supplying for [...] years and that Yara would have difficulties in finding alternative customers.
126. The Commission considers that none of the other potential suppliers would have the necessary capacity to supply Yara's customers. The remedy offered to resolve the competition concerns related to concentrated nitric acid will also resolve any problems relating to the supply of this product to Yara's customers as it will establish a new player with the capability of selling 20kt.

9. Ammonium Nitrate (AN)

127. Ammonium nitrate (AN) in addition to being used as a fertilizer is used in the manufacture of civil, and to lesser extent of military, explosives. There is no significant difference in the product characteristics of the AN used in the two applications. However, the end uses are entirely different and it is therefore appropriate to define a separate product market for AN for explosives.
128. AN is obtained by the reaction of anhydrous ammonia with nitric acid. AN for industrial applications can be offered in three different forms: as porous prills, as granules (solid) and as a solution. AN solution is an intermediate product in the manufacturing process of solid AN. It can also be obtained by dissolving solid AN. AN solution is used for the production of emulsion or slurry explosives. In light of the different use of and the low substitutability from the demand side between these products, the parties claim that the three forms of AN for industrial application all constitute a different market. The Commission agrees with the parties' view on the product market definition.

9.1 Solid AN and prills

129. There is only limited demand for solid AN and prills in the EEA. GrowHow is not active in selling AN prills. Concerning solid AN the parties operations serve different customers in different regions and industrial customers tend to be supplied on a regional basis. Yara's customers are in Portugal and Italy and are supplied from its plant at Pardies (France). GrowHow's solids AN customers are exclusively in the United Kingdom and Ireland.
130. In view of the different geographic areas that the parties sell solid AN and the fact that there is no difference between fertilizer AN and the solid AN (including prills) used for explosives the Commission does not consider that the proposed operation will give rise to competition concerns in relation to these products.

9.2 AN solution

9.2.1. Relevant product and geographic markets

131. AN solution is delivered in a heated state on insulated trucks, because if the temperature falls the product solidifies and it is no longer useable. Consequently, in light of the risks associated with the transportation of the product over long distances, the parties submit that the geographic market for the supply of AN solution is national in scope.
132. The market investigation has indicated that the suppliers sell AN solution in a geographic area that is wider than national, comprising an area up to 700 km from the point of production. Particularly, in the area of North-Western Europe, where there is a dense transportation infrastructure. The majority of the companies active in this area source from neighbouring countries. Moreover, the market investigation has shown that in some cases there can be trans-border trade in the Nordic Countries; GrowHow supplies [...] in Sweden from Finland and the demand in Norway is [...] by Yara's plant at Köping, in Sweden. The Commission considers that the geographic scope for the market for AN solution is wider than national; however, it does not appear necessary to ultimately conclude on the geographic market definition given that the remedies offered by the parties are able to address any competition concerns on any reasonable market definition.

9.2.2. Competitive assessment

133. The parties' activities in the market for AN solution overlap in North Western Europe and in the Nordic countries. Particularly, in North-Western Europe, the parties' combined shares would be [50-60]%. In the Nordic countries, the proposed transaction will create a monopoly in Sweden, where the parties will have a combined share of 100%. Moreover, in the neighbouring countries of Norway (Yara) and Finland (GrowHow) the parties individually hold [90-100]% market shares.
134. In North Western Europe, the parties claim that the actual overlap is minimal and that the merged entity will be constrained by the presence of other competitors or potential competitors on that market, such as BASF in Germany, GPN in France and DSM in Denmark.
135. Some respondents from Germany and France have expressed competition concerns, particularly with regard to the potential reduction of the available supply of AN solution in this geographic area. One respondent has expressed doubts as to the ability of the other manufacturers active on the market to supply the necessary quantities of AN solution and the required quality of AN solution. Indeed, in Germany ([60-70]%, [60-70]% Yara; [0-5]% GrowHow) and in France ([50-60]%, [40-50]% Yara; [10-20]% GrowHow) the parties' market share will exceed [50-60]%.
136. With regard to the Nordic countries, by defining the geographic scope of the market as national, the parties claim that there is no overlap in their activities, except for Sweden, where the overlap is only due to GrowHow supplying [...]. Moreover, it should be noted that, even if the geographic market were to be considered national, the parties are considered by most of the respondents to the market investigation as potential competitors. These respondents from Sweden, Norway and Finland have unanimously

expressed serious competition concerns that the proposed transaction will lead to the elimination of competition and to a substantial price increase.

137. On the basis of the above, Commission's view is that the proposed transaction will significantly strengthen the parties' position in the market for AN solution in North Western Europe and in the Nordic Countries and it has serious doubts as to a significant impediment of effective competition.

9.2.3 Remedies

138. In order to address the competition concerns raised by the Commission, the parties have proposed to divest the AN solution business in the plants of Tertre in Belgium and in the plant of Köping, Sweden. Similarly to the commitments previously described, in both cases, the parties will carve out the AN solution business lines in the existing plants of Tertre and Köping.
139. In Tertre, the business line will include the supply of AN solution from the parties at the site, one loading quay for AN solution and the industrial customer base from the site, excluding the fertilizer customer base. In Köping, the business line will include the supply of AN solution from the parties, the loading of the product and the marketing, selling and distribution operations to customers from the site.

9.2.4. Assessment of the remedies

140. These disposals will significantly reduce the parties' combined share of AN solution that will be reduced from [50-60]% to [40-50]% in North Western Europe, completely removing any overlap of the parties' activities on this market. In the Nordic Countries, the overlap in the parties' activity in Sweden will be eliminated, the parties retaining only GrowHow's [20-30]% market share, while their original market shares in Norway and Finland will remain unchanged. In the Nordic countries considered as a whole the parties the parties market share would fall to [30-40]%.
141. The market investigation on the commitments has revealed some concerns from the majority of the respondents on the viability of the divested business, particularly with regard to the quantities of AN solution supplied by the parties and the security of these supplies. According to these companies, the quantities would not allow the buyer to effectively compete on the market for AN solution. Moreover, in light of the structure of the divestiture, concerns were raised on the actual independence of the buyer from the parties.
142. In order to address the concerns regarding security of supply, the parties have offered to provide supplies from alternative sources for a period of up to [...] years from Sluiskil (for Tertre) and from Rostock (for Köping) in the event of temporary or permanent interrupts of supplies; in the latter case for a transitional period.
143. As regards the concerns regarding viability and the need for further capacity divestment, the Commission notes that Yara's current sales of AN Solution from Köping are [25-40]kt per year and Yara has committed to supply up to 42 kt per year. This would permit expansion of current sales of up to [...]% and, in particular, would allow the acquirer of the business to supply [...]% of the market in Norway and Sweden or [...]% of the demand in Nordic countries in the future.

144. As regards Tertre, Yara has committed to increase the divested capacity to 7kt per year, which represents a [...] % increase over current sales levels. The Commission therefore considers that the commitments offered remove the serious doubts identified on these markets.

10. CO2

10.1. Relevant product market

145. Carbon dioxide (CO₂) is a natural product contained in air. It is also a by-product of the fertilizer production and, more specifically, of the ammonia production process. CO₂ can be produced also by other industrial processes, but it must be noted that the CO₂ emitted in industrial processes is not always suitable for industrial uses due to the high costs for its purification. Apart from ammonia production, currently CO₂ is derived from other production processes such as the purification of certain synthesis gases and ethylene oxide production. The recovery of CO₂ from ethanol fermentation is also widely practiced in distilleries and breweries. Moreover the parties submit in their notification that bio-ethanol production can be an alternative source of CO₂. However, ammonia production represents to date the purest and therefore the most cost efficient source of CO₂.

146. Before raw CO₂ can be used it needs to be purified and liquefied. It may also be solidified; solid CO₂ is known as dry ice. The CO₂ which is not processed is vented in the atmosphere. CO₂ is used in a wide range of applications: in the beverage industry, especially for the production of soft drinks, in the food industry to ensure freshness and safety, welding, other chemical applications (eg pH control and carbonisation.)

147. The Commission has considered in previous cases¹⁵ that CO₂ constitutes a separate market from other industrial gases. Furthermore the Commission has subdivided the market for the supply of liquid CO₂ to end customers according to the different modes of transport of liquid CO₂ and has identified different markets for the supply of liquid CO₂ in tonnage, bulk and cylinders. The results of the market investigation confirm the Commission's findings in previous cases.

10.2. Relevant geographic market

148. There are no countries where both parties have CO₂ production plants. GrowHow produces raw CO₂ at its ammonia-producing fertilizers plants in the UK and Belgium; Yara produces raw CO₂ in Norway, Italy and the Netherlands. Terra, the joint venture recently entered into by GrowHow in the UK, is active in the UK in the sale of liquefied CO₂ to distributors in the UK. In the UK GrowHow supplies raw CO₂ derived from its ammonia production at its Ince plant (UK) to a liquefaction plant which is also situated in the site and is owned by Air Liquid. Yara has two terminals to import liquid CO₂ in the UK in Middlesburgh (Teesside) and Purfleet (Essex).

149. Given that raw CO₂ cannot be transported and must be liquefied at the ammonia plant, the parties' activities do not overlap in the production of raw CO₂. As regards liquid CO₂, its high transport costs and other logistic reasons exclude any possible

¹⁵ COMP M. 4141 Linde/BOC.

competitive interaction between the parties' production facilities apart from i) GrowHow's plant in Belgium and Yara's plant in the Netherlands and ii) in the UK, where the parties are active, as described above, at different levels of the CO₂ production and supply chain. Therefore the competitive analysis will focus only on these two areas.

Belgium and the Netherlands

150. The parties consider Belgium and the Netherlands to constitute one single geographic market and the results of the market investigation support the parties' submission.

UK

151. The parties submit, in line with the recent report of the UK Competition Commission¹⁶, that the UK constitutes a separate market and that, although the high costs of transport, relative to the retail price of the liquid CO₂, there is sufficient overlap between the different sources of liquid CO₂ to consider that there are no regional markets within the UK for the market for wholesale supply of CO₂ to distributors. The UK competition Commission considered such national market included Yara's imports of CO₂ in the UK from its terminal and specified that Yara was the only importer to have the necessary equipment (terminals and fleet) to be able to exercise a competitive constraint on other producers of liquid CO₂ established in the UK.
152. The Commission found in a previous case¹⁷ that also the supply of liquid CO₂ in bulk and cylinders from distributors to the end customers takes place at a national level.
153. The results of the market investigation confirm the national dimension of the UK markets for the i) supply of liquid CO₂ to the distributors and ii) supply of liquid CO₂ to end- customers.

10.3 Competitive assessment

Belgium and the Netherlands

154. GrowHow sells raw CO₂ produced at its plant in Belgium, at Tertre, to a liquid CO₂ producer ACP, which owns a liquefaction unit situated in GrowHow's production site in Tertre, while Yara produces liquid CO₂ at its Sluiskil plant, located at the border between Belgium and the Netherlands, and sells liquid CO₂ in bulk in the Netherlands and Belgium.
155. On this market, Yara has a market share of [20-30]% in the area comprising the two countries¹⁸. GrowHow does not sell liquid CO₂. Therefore there are no horizontal overlaps.

¹⁶ Report of the UK Competition Commission of 11 July 2007 on the Kemira GrowHow/Terra case.

¹⁷ COMP M: 4141 Linde/BOC.

¹⁸ Yara's market share in Belgium would be [0-5]% and in the Netherlands [40-50]%.

156. In the parties' view the proposed transaction will not raise vertical competition concerns on the Belgian and/or Dutch market given that i) GrowHow only supplies ACP with raw Co2 under a long term contract; ii) in the medium term there are no alternative means for GrowHow to sell its raw CO2 other than to ACP and that iii) ACP has access to alternative sources of supply of raw CO2 (mainly bio-ethanol producers) in the Benelux area. At a vertical level, the Commission therefore considers that the present transaction will not strengthen the combined entity's ability and incentive to foreclose its competitors on the distribution level.

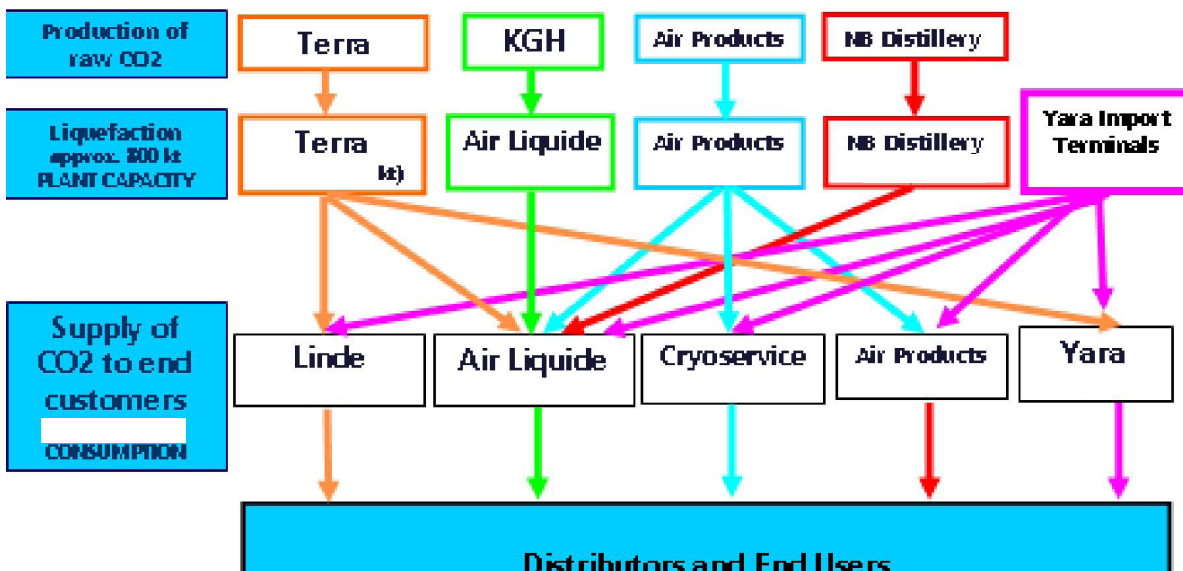
157. In this respect it should be noted that the only customer which is currently sourced by GrowHow is ACP. However, the existence of a long term contract and relationship between the two companies as well as the fact that raw CO2 cannot travel for long distances, GrowHow appears dependant on ACP at least as much as ACP is dependant on GrowHow, lead to the conclusion that the combined entity would have no incentive to foreclose ACP's raw CO2 supply.

158. Moreover ACP would have alternative sources of raw CO2 in the area. In particular it could be supplied by the joint venture (Carbolim) which it currently controls together with Air Liquide in the Netherlands (at Gleen) and which is supplied of raw CO2 by DSM. This joint venture has recently expanded its liquefaction capacity (currently amounting to [...] KT) by a further [...] KT.

159. On this basis, the Commission believes that the transaction is unlikely to create any competition concerns on the markets for liquid CO2 in the area comprising Belgium and the Netherlands.

UK

160. The table below represents the liquid CO2 supply chain in the UK.



[...]

161. As previously explained, in the UK, GrowHow is only active as a supplier of raw CO₂ to Air Liquide for liquefaction at a plant owned by Air Liquide in Ince. GrowHow has recently entered into a joint venture agreement with Terra, which supplies liquid CO₂ to Yara as well as to two other distributors of liquid CO₂ but does not have any sales to end-customers. Yara has two import terminals for liquid CO₂ (with a total capacity of [...] KT). It also buys liquid CO₂ from other producers ([...]) and supplies CO₂ in the UK market to end-users in bulk¹⁹ as well as to all other distributors of liquid CO₂ active in the UK market.
162. The parties' activities overlap only at the level of the supply of liquid CO₂ to distributors. On this segment Yara supplies liquid CO₂ to [...] ([...] KT in 2006), [...] ([...] KT in 2006), [...] ([...] KT in 2006) and to a minor extent [...] ([...] KT in 2006, [...] KT in 2005 and [...] KT in 2004). Terra supplies liquid CO₂ to [...] ([...] KT in 2006) and [...] ([...]KT in 2006). The other suppliers of liquid CO₂ active at this level are NB Distilleries, a distillery situated in the Northern part of the UK, which currently sells [...] liquid CO₂ [...]to [...], and Air Products, [...]. Yara and Terra together supply [...] KT of liquid CO₂ to distributors, which account for [60-70]% of the merchant sales of liquid CO₂ to distributors in the UK.
163. On the segment of supply of liquid CO₂ in bulk to end-users, Yara sells [...]kt²⁰ and has a market share of around [30-40]%. Its main competitors are Air Liquid ([40-50]%), which is currently largely dependent on GrowHow for its supplies of raw CO₂ at the Ince plant and Linde ([10-20]%) which does not own a liquefaction plant and depends almost entirely on Yara and Terra for its supplies of liquid CO₂. Other competitors are Air Products ([5-10]%) and Cryoservice([5-10]%).
164. The parties submit that the proposed transaction will not lead to anti-competitive effects on the UK market for liquid CO₂ for a number of reasons. First, the parties note that GrowHow's only customer is Air Liquid which is supplied with a long term contract, which (if the joint venture proceeds) can be modified only under the supervision of the UK Competition Commission, pursuant to the commitments GrowHow has offered to the Competition Commission.
165. Secondly, the parties note that there is overcapacity on the liquefaction segment in the UK, which is not controlled by the parties. In particular the parties note that currently the liquefaction capacity in the UK is [...] kt a year (including the capacity of [...] kt of Yara's import terminal at Purfleet²¹) whereas the UK estimated demand of liquid CO₂ in the UK is only [...] KT.
166. Thirdly, the parties submit that there are alternative sources of liquid CO₂ (mainly bio-ethanol producers) in the UK.
167. [...].

¹⁹ Yara does not supply any gas in cylinders.

²⁰ Yara sells also [...] of dry ice in the UK and Ireland and [...] of liquid CO₂ in Ireland. The figures included in the diagram above include also these quantities.

²¹ The parties submit that the other terminal (50KT) in the Northern part of the UK at Teeside is used only for exports.

168. Fifthly, the parties claim that, given that they are mainly fertilizers producers and that they do not focus on CO₂ supply their CO₂ activities are merely ancillary and serve to reduce the costs of the fertilizers production. They would have therefore no incentive not to sell liquid CO₂ to the other distributors.
169. However the respondents to the market investigation have identified a number of concerns arising from the proposed transaction. First, it should be noted that Yara and Terra/GrowHow are supplying several companies active in the distribution of liquid CO₂. Therefore the existence of the *raw* CO₂ supply agreement between Kemira GrowHow and Air Liquide at Ince, monitored by the UK Competition Commission, is not sufficient to exclude competition concerns on the level of supply of liquid CO₂.
170. Secondly, the results of the market investigation show that the spare capacity available in the UK is to a very large extent (more than [80-90]%) controlled by the parties. The remaining spare capacity available in the market is not sufficient to constitute a credible alternative to the parties' supplies
171. Thirdly, it should be noted that, as also stated by the Competition Commission, bio-ethanol sources of CO₂ are still undeveloped in the UK and may not develop as foreseen particularly in the light of recent large increases in grain prices. Moreover, some of the respondents to the market investigation have indicated that due to significant differences in the quality of raw CO₂ obtained from bio-ethanol, the latter cannot be satisfactorily used by all liquid CO₂ producers.
172. [...].
173. According to other market participants, only Yara owns the specialised ships needed to transport CO₂ to the UK. Given the very high cost of specialised ships and port facilities it is highly unlikely that other companies would be willing to invest to start importing CO₂ in the UK.
174. Respondents to the market investigation have expressed the concern that the transaction would significantly i) strengthen Yara's ability and incentives to foreclose access to liquid CO₂ to its main competitors on the downstream market for the supply of liquid CO₂ to end users and ii) result in possible price increases on this market.
175. In particular, in view of the reasons explained above, post-transaction the merged entity will be able to control the supplies of liquid CO₂ to the other distributors and their costs and, would therefore, be able to foreclose their access to liquid CO₂. At the same time, the parties would have the incentives to foreclose, given that this would allow them to limit their competitors' position in, or to exclude them from, the downstream retail market for the supply of liquid CO₂, thus increasing the combined entity's sales and allowing it to increase its prices in this segment and thereby more than compensate any losses derived from not selling to other distributors.
176. In the light of the foregoing, the Commission has competition concerns that the proposed transaction would lead to a significant impediment of effective competition on the markets for supply of liquid CO₂ to distributors and on the markets for the supply of liquid CO₂ to end-users in the UK. Therefore the transaction, as initially notified, raises serious doubts as to its compatibility with the common market.

10.4 Remedies offered in the UK

177. In order to address such concerns, Yara has submitted on 31 August 2007 a set of remedies including, inter alia, in relation to the UK CO₂ markets, the undertaking to procure that the joint venture to be entered into by Terra and Kemira GrowHow in the United Kingdom (the Joint Venture) will offer CO₂ liquefaction capacity at the Joint Venture's Billingham production site to any distributor or end-user of CO₂ that wishes to enter into an agreement (hereafter "Capacity Access Agreements") with the Joint Venture for this purpose, up to a total annual limit of [...] kt capacity for all Buyers. Yara has, in addition, committed that in the event that it has not secured Capacity Access Agreements representing a minimum amount ([...] kt) of capacity within a specified period, it will secure that the Joint Venture will divest the CO₂ liquefaction plant at Billingham.
178. The Commission assessed the appropriateness of the remedies offered and carried out a market test. On this basis and further discussions and negotiations with the parties, it appeared that the divestment of the liquefaction unit of the Billingham plant in the UK along with measures to ensure security of supply in case of permanent plant closure would best address the competition concerns raised by the proposed transaction.
179. Therefore, on 19 September 2007, the parties have offered an amended set of commitments including the undertaking to procure that the Joint venture divests the liquefaction plant at Billingham. Yara also offered to procure that the Joint venture would enter into a supply agreement of raw CO₂ with the buyer of the liquefaction facility and, upon request of the purchaser, an agreement for the operation and management of the liquefaction plant by the Joint Venture on the purchaser's behalf. In the event of a permanent closure of the fertilizer plant, Yara committed to ensure supply of liquid CO₂ from alternative sources or it will cause the joint venture with Terra to allow the construction of an additional liquefaction unit at the plant in Severnside.

10.5. Assessment of the remedies

180. Billingham is a plant currently belonging to Terra. Its liquefaction unit has a capacity of [250-300] KT and is currently supplying [...] KT of liquid CO₂ in the UK. Therefore its divestment would make available a significant amount of capacity to third parties, who, given the significant spare capacity available, would be also able to increase the plant's current sales of liquid CO₂ and, therefore, exercise an effective competitive constraint on the parties. At the same time, the divestment would remove the parties' overlap (in terms of sales) on the segment of sale of liquid CO₂ to distributors. Moreover, after the disposal of the Billingham facility, the parties' liquefaction capacity, including Yara's terminals, would be limited to [...] KT (out of a total capacity of the 750 in the UK).
181. The Commission considers that due to i) the significant capacity of the liquefaction unit which will allow the purchaser to expand from the unit's current sales and customer base and ii) the ensured supplies of raw CO₂ that the liquefaction unit at Billingham is a viable business and will be able to effectively compete with the parties.
182. On this basis, the Commission considers the above mentioned commitments sufficient to remove any competition concerns from this market.

11. UREA

11.1 Relevant product market

183. Urea ((NH₂)₂CO), which contains 46% of nitrogen, can be supplied either as a liquid or as a solid product in form of prills or granules with a smaller particle size. Urea is commercially produced from two raw materials, ammonia and carbon dioxide. Given that large quantities of carbon dioxide are produced during the manufacturing of ammonia, these processes allow a direct synthesis of urea. Urea for industrial purpose is mainly used for the manufacturing of plastics, various glues and for animal feed providing a relatively cheap source of fixed nitrogen to promote growth. Another major field of urea application is the use as NO_x-reducing reactant in industrial plants and diesel engines. In addition, urea is used to produce isocyanuric acid, for specialty chemical and pharmaceutical synthesis, dyestuffs and textiles, mineral wool, chipboard and moulding in metallurgy.
184. The parties submit that there is only one single urea market since there is no significant chemical or physical difference between the products for use as fertilizers and that for technical uses.

11.2 Geographic market

185. The parties submit that the market for urea is global in scope. The Commission also considers that the relevant geographic market for the production and supply of Urea is world-wide in scope. More than 40 % of urea sold to industrial customers in Europe is imported from countries outside the EEA, most importantly from Russia, Ukraine, Egypt, Libya and the Middle-East.

11.3 Impact on competition

186. The parties estimate their combined market share on the market for urea for technical purposes as follows:

	Market size (kt)	Yara	GrowHow	Combined (Yara, GrowHow)
EEA	727	[20-30]%	[0-5]%	[30-40]%

187. Major competitors in the EEA are SKW ([10-20]%), GPN ([0-5]%), BASF ([0-5]%). Imports of Urea into the EEA from non-EEA-countries amount to [40-50]%. The market investigation did not identify any concerns.
188. The Commission therefore considers that the present transaction will not create any risk of a significant impediment of effective competition in light of the parties' modest market shares and the presence of a number of competitors in the production of Urea.

12. ADBLue

12.1. Relevant product market

189. AdBlue is a recently developed reducing agent used in diesel-powered freight trucks and public transport vehicles to reduce exhaust gas NO_x emissions for compliance with EU emissions targets. AdBlue is a solution of high purity urea, dissolved in demineralised water that can only be used in conjunction with Selective Catalytic Reduction (SCR) technology, where it leads to a reduction of harmful emissions by

approximately 90%. AdBlue can also be used for the same purpose on board ships and industrial plants.

190. The parties consider that AdBlue forms a distinct market due to its uniform product properties and the lack of demand side substitutability with any other product in relation to the SCR system.

12.2 Geographic market

191. The parties submit that the market for the production and supply of AdBlue is at least EMEA-wide in scope, and at the very least EEA-wide.

192. The Commission considers that the relevant geographic market for the production and supply of AdBlue is EEA-wide in scope. AdBlue is supplied from a limited number of production sites to customers all over the EEA without encountering any factual or regulatory barrier to trade.

12.3. Impact on competition

193. The parties estimate their combined market share on the ADBLue market as follows:

	Market size (kt)	Yara	GrowHow	Combined (Yara, GrowHow)
EEA	61,4	[30-40]%	[0-5]%	[30-40]%

194. Major competitors in the EEA are Dynea ([20-30]%), Univar ([10-20]%), BASF ([10-20]%).

195. The responses to the Commission's market investigation did not identify any competition concerns. The Commission therefore considers that the present transaction will not create any risk of a significant impediment of effective competition in light of the parties' market shares, the presence of a number of significant competitors in the production of ADBLue.

VI. CONDITIONS AND OBLIGATIONS

196. The commitments under Sections B (and the corresponding Schedules) of the Commitment texts attached herewith constitute conditions of this decision, as only through full compliance therewith (subject to any change pursuant to the review clause), can the structural change on the relevant market be achieved. The remaining commitments constitute obligations, as they concern the implementing steps, which are necessary to achieve the sought structural change.

VII. CONCLUSION

197. 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) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission
(signed)
Neelie KROES
Member of the Commission

Case M. 4730 – Yara/Kemira Growhow**COMMITMENTS TO THE EUROPEAN COMMISSION**

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Yara International ASA (“*Yara*”) hereby provides the following Commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the proposed acquisition of Kemira Growhow Oyj by Yara to be compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “*Decision*”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

1.1.1. Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Closing: the date on which the Divestment Shareholding is divested by Yara.

Divestment Shareholding: Yara’s 49% shareholding in ZemNor.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Yara and who has received from Yara the exclusive Trustee Mandate to sell the Divestment Shareholding to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [CONFIDENTIAL] from the Effective Date.

Hold Separate Manager: the person appointed by Yara to exercise Yara’s rights in relation to the operation of ZemNor following the Effective Date.

Joint Venture Partners: limited liability company Dobeles sēklas (registered with the Republic of Latvia’s Enterprise register with the number 850300462 and legal address Dobeles district, Auru pagasts, Liepziedi 1, LV-3710); and limited liability company Zemgale-agro (registered with the Republic of Latvia’s Enterprise register with the number 850300571 and the legal address Dobeles, Uzvaras 26, LV-3701).

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Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Yara, and who has the duty to monitor Yara's compliance with the conditions and obligations attached to the Decision.

Parties: Yara and Kemira Growhow Oyj.

Personnel: all personnel currently employed by Yara in connection with ZemNor and staff seconded to ZemNor.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Shareholding in accordance with the criteria set out in Section D.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [CONFIDENTIAL] from the end of the First Divestiture Period.

ZemNor: Limited Liability Company ZemNor SIA a company organised under the laws of the Republic of Latvia with its registered office at Dobele, Uzvaras 26., LV-3701, Republic of Latvia.

1.1.2. Section B. The Divestment Shares

1.1.2.1. Commitment to divest

1. In order to restore effective competition, Yara commits to divest, or procure the divestiture of the Divestment Shareholding by the end of the Trustee Divestiture Period to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 14. To carry out the divestiture, Yara commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Shareholding within the First Divestiture Period. If Yara has not entered into such an agreement at the end of the First Divestiture Period, Yara shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Shareholding in accordance with the procedure described in paragraph 23 in the Trustee Divestiture Period.
2. Yara shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Yara has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 14 and if the closing of the sale of the Divestment Shareholding takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of ZemNor, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over ZemNor is no longer necessary to render the proposed concentration compatible with the common market.
4. Yara further commits that it shall not, for a period of five years from the Effective Date, enter into any exclusive supply arrangements for field fertilizers in Latvia with ZemNor

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or the Joint Venture Partners. For the avoidance of doubt, Yara shall not be prevented from continuing to supply ZemNor or the Joint Venture Partners in the future on a non-exclusive basis.

1.1.3. Section C. Related commitments

1.1.3.1. Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, Yara shall preserve the economic viability, marketability and competitiveness of the Divestment Shareholding, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Shareholding. In particular, Yara undertakes:
 - (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Shareholding or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of ZemNor;
 - (b) to make available sufficient resources for the development of ZemNor, on the basis and continuation of the existing agreements and business plans; and

1.1.3.2. Hold-separate obligations of Parties

6. Yara commits, from the Effective Date until Closing, to keep the Divestment Shareholding and its participation in ZemNor separate from the businesses it is retaining and to ensure that personnel involved in the operation of ZemNor – including the Hold Separate Manager – have no involvement in any business retained and vice versa. Yara shall also ensure that ZemNor personnel do not report to any individual outside ZemNor or the Hold Separate Manager.
7. Yara shall assist the Monitoring Trustee in ensuring that ZemNor is managed separately from the rest of Yara's business. Yara shall appoint a Hold Separate Manager who shall be responsible for Yara's participation in the management of ZemNor, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall act independently and in the best interest of ZemNor with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Yara.
8. To ensure that the Divestment Shareholding is held and managed as a separate entity the Monitoring Trustee shall exercise Yara's rights as shareholder in ZemNor (except for rights to dividends that may be due before Closing) with the aim of ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Yara, and with a view to fulfilling Yara's obligations under the Commitments. Furthermore, the Hold Separate Manager and the Monitoring Trustee shall each have the power to exercise all rights relating to ZemNor, including those relating to the appointment and replacement of members of the board of ZemNor.

1.1.3.3. Ring-fencing

9. Yara shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other

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information of a confidential or proprietary nature relating to ZemNor. In particular, the participation of ZemNor in a central information technology network shall be severed to the extent possible, without compromising the viability of ZemNor. Yara may obtain information relating to ZemNor which is reasonably necessary for the divestiture of the Divestment Shareholding or whose disclosure to Yara is required by law.

1.1.3.4. Due Diligence

10. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Shareholding, Yara shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process provide to potential purchasers sufficient information as regards the Divestment Shareholding;

1.1.3.5. Reporting

11. Yara shall submit written reports in English on potential purchasers of the Divestment Shareholding and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
12. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

1.1.4. Section D. The Purchaser

13. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop ZemNor as a viable and active competitive force in competition with the Parties and other competitors, in conjunction with its fellow shareholders in ZemNor;
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Shareholding (the before-mentioned criteria for the purchaser hereafter the "**Purchaser Requirements**").
14. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Yara has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Yara must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Shareholding is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify

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that the purchaser fulfils the Purchaser Requirements and that the Divestment Shareholding is being sold in a manner consistent with the Commitments.

Section E. Trustee**1.1.4.1. I. Appointment Procedure**

15. Yara shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Yara has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Yara at that time or thereafter, Yara shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
16. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Shareholding, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

1.1.4.2. Proposal by the Parties

17. No later than one week after the Effective Date, Yara shall submit a list of one or more persons whom Yara proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Yara shall submit a list of one or more persons whom Yara proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 16 and shall include:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

1.1.4.3. Approval or rejection by the Commission

18. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Yara shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Yara shall be free to choose the Trustee to be appointed from among the names approved. The

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Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

1.1.4.4. New proposal by the Parties

19. If all the proposed Trustees are rejected, Yara shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 15 and 18.

1.1.4.5. Trustee nominated by the Commission

20. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Yara shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

1.1.4.6. II. Functions of the Trustee

21. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Yara, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

1.1.4.7. Duties and obligations of the Monitoring Trustee

22. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
- (ii) oversee the on-going management of Yara's participation in ZemNor with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Yara with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Shareholding, and the keeping separate of the Divestment Shareholding from the business retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;
 - (b) supervise the Hold Separate Manager's participation in the management of ZemNor, in accordance with paragraph 7 of the Commitments;
 - (c) (i) in consultation with Yara, determine all necessary measures to ensure that Yara does not after the effective date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to ZemNor, in particular strive for the severing of the ZemNor's participation in a central information technology network to the extent possible, without compromising the viability of ZemNor, and (ii) decide whether such information may be disclosed to Yara as the disclosure is reasonably necessary to allow Yara to carry out the divestiture or as the disclosure is required by law;

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- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to Yara such measures as the Monitoring Trustee considers necessary to ensure Yara's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of Divestment Shareholding, the holding separate of the Divestment Shareholding and the non-disclosure of competitively sensitive information;
- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, potential purchasers receive sufficient information relating to the Divestment Shareholding in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process;
- (vi) provide to the Commission, sending Yara a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Shareholding so that the Commission can assess whether the shareholding is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Yara a non-confidential copy at the same time, if it concludes on reasonable grounds that Yara is failing to comply with these Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph 13, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of ZemNor after the Sale and as to whether the Divestment Shareholding is sold in a manner consistent with the conditions and obligations attached to the Decision.

1.1.4.8. Duties and obligations of the Divestiture Trustee

23. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Shareholding to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 14. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Yara, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
24. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

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1.1.4.9. III. Duties and obligations of the Parties

25. Yara shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Yara's books, records, documents, management or other personnel, facilities, sites and technical information and any such information in relation to ZemNor as is in Yara's hands as may be necessary for fulfilling its duties under the Commitments, and Yara shall provide the Trustee upon request with copies of any document. Yara shall make available to the Trustee one or more offices on its premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
26. Yara shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request in respect of the Divestment Shareholding. This shall include all administrative support functions relating to the Divestment Shareholding which are currently carried out at headquarters level. Yara shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Yara shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
27. Yara shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Yara shall cause the documents required for effecting the sale and the Closing to be duly executed.
28. Yara shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Yara for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
29. At the expense of Yara, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Yara's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Yara refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Yara. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 28 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Yara during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

1.1.4.10.IV. Replacement, discharge and reappointment of the Trustee

30. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require Yara to replace the Trustee; or
 - (b) Yara, with the prior approval of the Commission, may replace the Trustee.
31. If the Trustee is removed according to paragraph 30, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 15-20.
32. Beside the removal according to paragraph 30, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

33. The Commission may, where appropriate, in response to a request from Yara showing good cause and accompanied by a report from the Monitoring Trustee:
- (i) Grant an extension of the time periods foreseen in the Commitments, or
 - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Yara seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Yara be entitled to request an extension within the last month of any period.

.....
Thomas Wessely
duly authorised for and on behalf of Yara
19 September 2007

Case M.4730 – Yara/Kemira Growhow

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Yara International ASA (“*Yara*”) hereby provides the following Commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the the proposed acquisition of sole control of Kemira GrowHow Oyj by Yara to be compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “*Decision*”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

Section A: Definitions

1. The following definitions apply in these commitments:

AgroDK means Agro Danmark A.m.b.A a cooperative society under the laws of Denmark (CVR No 16563307) with its principal place of business at Møllebugtvej 7, 7000 Fredericia, Denmark.

Closing means the date on which the Termination Agreement takes effect or, if no Termination Agreement is entered into, the date on which Yara exits from FertiSupply in exercise of its Termination Rights.

Divestment Shareholding means Yara’s 50% shareholding in FertiSupply.

DLG means Dansk Landbrugs Grovvarereselskab A.m.b.a. a Danish cooperative society (CVR No 24246930) with its principal place of business at Axelborg, Vesterbrogade 4A, 1503 København, Denmark

Effective Date means the date of the adoption of the Decision.

FertiSupply means FertiSupply I/S, a joint venture established between the Joint Venture Partners in connection with the purchase, sale and distribution of mineral fertilizers in Denmark.

Hold Separate Manager means the person appointed by Yara to exercise Yara’s rights in relation to the operation of FertiSupply, if required.

Joint Venture Partners means Yara Denmark, AgroDK and DLG.

Monitoring Trustee or **Trustee** means one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Yara, and who has

the duty to monitor Yara's compliance with the conditions and obligations attached to the Decision, if required.

Parties means Yara and Kemira GrowHow Oyj.

Partnership Agreement means the agreement entered into by the Joint Venture Partners in connection with the establishment of FertiSupply.

Personnel means all personnel currently employed by Yara in connection with FertiSupply, and staff seconded to FertiSupply.

Termination Agreement means a contemplated agreement to be entered into between the Joint Venture Partners to terminate the Joint Venture and cause FertiSupply to be wound up.

Termination Rights means the contractual right of Yara to cause the termination of the FertiSupply joint venture under the Partnership Agreement or the Supplemental Agreement.

Supplemental Agreement means the Agreement entered into by the Joint Venture Partners in order to implement remedies agreed with the Danish Competition Authority (konkurrencestyrelsen) in connection with the creation of FertiSupply.

Yara Danmark means Yara Danmark A/S, a wholly-owned subsidiary of Yara.

Yara means Yara International ASA, a Norwegian publicly traded company listed on the Oslo Stock Exchange.

Section B. Commitments

2. In order to restore effective competition, Yara commits, as soon as possible, to cease its participation in the FertiSupply joint venture and to cause FertiSupply to be wound up. To implement this commitment, Yara has already commenced negotiations with the Joint Venture Partners with a view to entering into the Termination Agreement and alternative supply arrangements for the current fertilizer year. Yara's intention is to seek to conclude the Termination Agreement on or before the Effective Date.

3. If, for whatever reason, it does not prove possible to conclude the Termination Agreement by the Effective Date Yara will seek to continue negotiations with the Joint Venture Partners and conclude the Termination Agreement as soon as practicable thereafter.

4. If it has not been possible to conclude the Termination Agreement by [CONFIDENTIAL] Yara commits to exit the FertiSupply joint venture by exercising on [CONFIDENTIAL] at the latest its contractual Termination Rights under either:

- (a) clause 11 of the Partnership Agreement; or
- (b) clause 4 of the Supplemental Agreement.

in order to secure the winding up of FertiSupply [CONFIDENTIAL].

5. In the event that Yara has not concluded a Termination Agreement by the Effective Date Yara further commits to enter into the hold-separate obligations set out in paragraphs 8 to 10 below and to appoint the Monitoring Trustee.

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6. In order to maintain the structural effect of these Commitments, Yara shall not, for a period of 10 years after the Effective Date acquire direct or indirect influence over the whole or part of the fertilizer distribution activity of DLG or AgroDK in Denmark unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the fertilizer distribution activity of DLG or AgroDK in Denmark is no longer necessary to render the proposed concentration compatible with the common market.

7. Yara further commits that it shall not, for a period of five years from the Effective Date, enter into any supply arrangement for field fertilizers in Denmark with either DLG or AgroDK on an exclusive basis. For the avoidance of doubt, Yara shall not be prevented from continuing to supply DLG and AgroDK in the future on a non-exclusive basis.

Section C. Related commitmentsHold-separate obligations

8. In the event that it has not been possible for Yara to conclude a Termination Agreement by the Effective Date, until Closing, Yara shall assist the Monitoring Trustee in ensuring that FertiSupply is managed separately from the remainder of Yara's business. Yara shall appoint a Hold Separate Manager who shall be responsible for Yara's participation in the management of FertiSupply, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall act independently with a view to securing the orderly winding up of FertiSupply and its independence from the businesses retained by the Parties.

9. Yara further commits, from the Effective Date until Closing, in the event that it has not been possible to conclude a Termination Agreement by the Effective Date, to keep the Divestment Shareholding and participation in FertiSupply separate from the remainder of its business and to ensure that Personnel involved in the operation of FertiSupply – including the Hold Separate Manager – have no involvement in any Yara business and vice versa. Yara shall also ensure that the Personnel do not report to any individual other than the Hold Separate Manager.

10. Until FertiSupply has been wound up and Yara's participation in the Joint Venture has ceased, the Hold Separate Manager shall exercise Yara's rights as shareholder in FertiSupply (except for its rights for dividends that are due before Closing), with the aim of securing the orderly winding up of FertiSupply and with a view to fulfilling Yara's obligations under the Commitments. The Hold Separate Manager and the Monitoring Trustee shall each have the power to replace members of the board of FertiSupply that have been appointed on behalf of Yara.

Ring-fencing

11. Yara shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to FertiSupply. In particular, the participation of FertiSupply in a central information technology network shall be severed to the extent possible, without compromising the viability of FertiSupply. Yara may obtain information relating to FertiSupply which is reasonably necessary in order for Yara to exercise its Termination Rights or whose disclosure to Yara is required by law.

Reporting

12. In the event that it has not been possible for Yara to conclude a Termination Agreement by the Effective Date Yara shall submit written reports in English on its further negotiations with the other Joint Venture Partners and/or its exercise of the Termination Rights and steps taken to bring about Yara's exit from FertiSupply in accordance with the contractual provisions of the Partnership Agreement or the Supplemental Agreement (as the case may be).

Section D. Trustee

Appointment Procedure

13. In the event that it has not been possible for Yara to conclude a Termination Agreement by the Effective Date, Yara shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee.

14. The Monitoring Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Yara in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Parties

15. No later than one week after the Effective Date, Yara shall submit a list of one or more persons whom Yara proposes to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 13 and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments; and
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

Approval or rejection by the Commission

16. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Yara shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Yara shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

17. If all the proposed Trustees are rejected, Yara shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 13 and 16.

Trustee nominated by the Commission

18. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Yara shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

19. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Yara, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

20. The Monitoring Trustee shall:

- (viii) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ix) oversee the on-going management of Yara's participation in FertiSupply with a view to ensuring the orderly winding-up of FertiSupply and monitor compliance by Yara with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the keeping separate of the Divestment Shareholding from the business retained by the Parties, in accordance with paragraph 9 of the Commitments;
 - (b) supervise the Hold Separate Manager's participation in the management FertiSupply, in accordance with paragraph 8 of the Commitments;
 - (c) (i) in consultation with Yara, determine all necessary measures to ensure that Yara does not, after the Effective Date, obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to FertiSupply, in particular strive for the severing of FertiSupply's participation in a central information technology network to the extent possible, without compromising the viability of FertiSupply, and (ii) decide whether such information may be disclosed to Yara as the disclosure is reasonably necessary to allow Yara to carry out the divestiture or as the disclosure is required by law;
- (x) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (xi) propose to Yara such measures as the Monitoring Trustee considers necessary to ensure Yara's compliance with the conditions and obligations attached to the Decision, in particular the hold separate obligations set out in Section C above and the non-disclosure of competitively sensitive information;

- (xii) review and assess the progress of the process to bring about the winding-up of FertiSupply;
- (xiii) provide to the Commission, sending Yara a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of FertiSupply so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture and winding-up process. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Yara a non-confidential copy at the same time, if it concludes on reasonable grounds that Yara is failing to comply with these Commitments;

1.1.4.11.III. Duties and obligations of the Parties

21. Yara shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Yara's books, records, documents, management or other personnel, facilities, sites and technical information and any such information of FertiSupply as is in Yara's hands necessary for fulfilling its duties under the Commitments and Yara and FertiSupply shall provide the Trustee upon request with copies of any document. Yara shall make available to the Trustee one or more offices on its premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

22. Yara shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request.

23. Yara shall indemnify the Monitoring Trustee and its employees and agents (each an "*Indemnified Party*") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Yara for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

24. At the expense of Yara, the Monitoring Trustee may appoint advisors (in particular for legal advice), subject to Yara's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Yara refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Yara. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 23 shall apply mutatis mutandis.

1.1.4.12.IV. Replacement, discharge and reappointment of the Trustee

25. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

- (a) the Commission may, after hearing the Trustee, require Yara to replace the Trustee; or
- (b) Yara with the prior approval of the Commission, may replace the Trustee.

26. If the Trustee is removed according to paragraph 25, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 13-17.

27. Beside the removal according to paragraph 25, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

1. The Commission may, where appropriate, in response to a request from Yara showing good cause and accompanied by a report from the Monitoring Trustee:
 - i. Grant an extension of the time periods foreseen in the Commitments, or
 - ii. Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Yara seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Yara be entitled to request an extension within the last month of any period.

.....
Thomas Wessely
duly authorised for and on behalf of Yara

19 September 2007

Case M.4730 – Yara/Kemira Growhow

2. COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Yara International ASA (“*Yara*”) and Kemira GrowHow Oyj (“*Growhow*”) (together, the “*Parties*”) hereby provide the following Commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the proposed acquisition of sole control of GrowHow by Yara to be compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “*Decision*”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

2.1.1. Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004.

Billingham: the CO2 liquefaction plant currently operated by the Joint Venture at its fertilizer production plant at Billingham, Teeside, United Kingdom;

Closing: the transfer of the legal title of the Divestment Business to the Purchaser

Divestment Business: the liquefaction unit at Billingham described in Section B and the Schedule that the Parties and the Joint Venture commit to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Yara and who has received from Yara the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [CONFIDENTIAL] from the Effective Date.

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Hold Separate Manager: the person appointed by the Joint Venture for the Divestment Business to manage the day-to-day liquefaction activities at Billingham under the supervision of the Monitoring Trustee.

Joint Venture: the joint venture that GrowHow has entered into with Terra in relation to their respective UK fertiliser businesses, the creation of which has been approved, subject to certain remedies in connection with industrial process chemicals, by the United Kingdom Competition Commission under the United Kingdom Enterprise Act 2002.

Liquefaction Plant: means the Joint Venture's liquid CO2 plant at the Joint Venture's site at Billingham, including its associated equipment and the liquid CO2 storage and road tanker loading facilities.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by the Parties and the Joint Venture, and who has the duty to monitor Yara and the Joint Venture's compliance with the conditions and obligations attached to the Decision.

Purchaser: the entity or entities approved by the Commission as acquirer of the Divestment Business in accordance with the criteria in Section D.

Tender Offer: the public tender offer made by Yara for the entire issued and to be issued share capital of GrowHow which it does not currently hold, made pursuant to Chapter 6, Section 10 of the Finnish Securities Market Act.

Terra: Terra Industries, Inc. a company incorporated under the laws of Maryland, United States and having its principal place of business at 600 Fourth Street, PO Box 6000, Sioux City, Iowa, United States.

Terra Nitrogen (UK) Limited: a company incorporated under the laws of England and Wales under number 3455690 currently operating the Billingham fertilizer plant.

Trustee(s): The Monitoring Trustee and, if required, the Divestment Trustee.

Trustee Divestiture Period: the period of [CONFIDENTIAL] from the end of the First Divestiture Period.

2.1.2. *Section B: Commitment to divest the CO2 liquefaction unit at Billingham*

2.1.2.1. Commitment to divest

34. In order to restore effective competition, Yara commits to procure the divestiture of the Divestment Business by the Joint Venture by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18. To carry out the divestiture, Yara commits to seeking a purchaser and to procure that the Joint Venture enters into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If the Joint Venture has not entered into such an agreement at the end of the First Divestiture Period, Yara shall grant the Divestiture Trustee an

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exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 25 in the Trustee Divestiture Period.

35. Yara shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, the Joint Venture has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 16 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.
36. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

2.1.2.2. Structure and definition of the Divestment Business

37. The Divestment Business consists of the liquefaction unit operated by the Joint Venture at Billingham Teeside, United Kingdom. The Divestment Business, described in more detail in the Schedule, include
- (a) the Liquefaction Plant;
 - (b) all licences, permits and authorisations issued by any governmental organisation solely for the benefit of the Divestment Business;
 - (c) all contracts, commitments and customer orders for the supply of liquid CO2 from Billingham;
 - (d) all customer, credit and other records in respect of the supply of liquid CO2 from Billingham;
 - (e) the benefit, on the terms set out in paragraphs 5 and 6 below, of a Raw CO2 Supply Agreement; and
 - (f) the benefit, on the terms set out in paragraph 7 below, of an Operation and Management Agreement.

2.1.2.3. Raw CO2 Supply Agreement

38. Yara agrees to procure that the Joint Venture enters into a long-term supply agreement with the Purchaser of the Divestment Business for raw carbon dioxide from Billingham fertilizer plant (the "**Raw CO2 Supply Agreement**") on the terms outlined below.
39. Save as set out below, the Raw CO2 Supply Agreement [**CONFIDENTIAL**]. The terms of the Raw CO2 Supply Agreement shall include the following:
- (a) *Duration of Raw CO2 Supply Agreement:* [**CONFIDENTIAL**] Yara shall have the right to terminate the agreement [**CONFIDENTIAL**] only in the event of a permanent plant closure, as described in paragraph (e) below.

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- (b) *Supply volume*: the Purchaser will have the right to be supplied with such amounts of raw CO2 as it may stipulate in advance for the forthcoming year up to the production capacity of the Liquefaction Plant taking into account any planned shutdowns of the Liquefaction Plant or the ammonia production facility at Billingham.
- (c) *Access pricing*: the raw CO2 will be made available on pricing terms to be negotiated between the Joint Venture, Yara and the Purchaser.
- (d) *Temporary shutdown of the Billingham plant*: the Joint Venture will advise the Purchaser of any potential supply limitation as a result of reduced ammonia production at Billingham as soon as practical after the situation becomes evident, and will provide six months' notification of any planned temporary plant shutdown, including shutdown for economic or commercial reasons. Nothing in the Raw CO2 Supply Agreement shall oblige the Joint Venture to supply the Purchaser with raw or liquid CO2 at Billingham when CO2 is unavailable due to a planned or unplanned shutdown of the ammonia plant at Billingham or an event of Force Majeure.
- (e) *Permanent plant closure*: In the event of a permanent closure of ammonia production at Billingham, the Joint Venture will give 18 months' notice to the Purchaser. In the event of Permanent plant closure at Billingham that takes effect within [CONFIDENTIAL] years of Closing, Yara will procure that the Joint Venture will at the option of the Purchaser either: (i) during the initial [CONFIDENTIAL] year period from Closing only, supply the Purchaser with available amounts of liquid CO2 from [CONFIDENTIAL] on a cost-price basis; or (ii) permit the construction and installation by the Purchaser of an additional CO2 liquefaction facility at [CONFIDENTIAL] which shall be supplied by [CONFIDENTIAL] on terms equivalent to the Raw CO2 Supply Agreement for Billingham, subject to the difference in available raw CO2 capacity at [CONFIDENTIAL]

Operating and Management Agreement

40. Yara shall procure that the Joint Venture will, at the option of the Purchaser, enter into an operating and management agreement with the Purchaser under which the Joint Venture will provide all necessary services to the Purchaser in respect of the operation and management of the Divestment Business. Such services shall be provided on arms length terms and shall be made available to the Purchaser for the duration of the Raw CO2 Supply Agreement. The Purchaser may also opt to operate the Liquefaction Plant on an entirely separate basis.

Ring-fencing

41. Yara and the Joint Venture shall implement all necessary measures to ensure that Yara does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the liquefaction activities employing the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Yara and the Joint Venture may obtain information relating to the Divestment

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Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Yara and/or the Joint Venture is required by law.

2.1.2.4. Preservation of Viability, Marketability and Competitiveness

42. From the Effective Date until Closing, Yara shall procure that the Joint Venture preserves the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall procure that the Joint Venture minimises as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Yara undertakes to procure that the Joint Venture:

- (a) will not carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the liquefaction activity at Billingham using the Divestment Business;
- (b) will make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans.

2.1.2.5. Hold-separate obligations of Parties

43. Yara commits to procure that the Joint Venture, from the Effective Date until Closing, will, as far as reasonable practicable, keep the Divestment Business separate from the businesses it is retaining and to ensure that the Hold Separate Manager has no involvement in any business retained and vice versa.

44. Until Closing, Yara shall assist the Monitoring Trustee, and shall procure that the Joint Venture assists the Monitoring Trustee in ensuring that the Divestment Business are managed and operated in the normal course of business as a distinct and saleable entity separate from the businesses retained by the Parties. Yara shall procure that the Joint Venture appoints a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

2.1.2.6. Due Diligence

45. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Yara shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process procure that the Joint Venture provides to potential purchasers sufficient information as regards the Divestment Business;

2.1.2.7. Reporting

46. Yara shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

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47. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

2.1.3. *Section D. The Purchaser*

48. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:

- (a) be independent of and unconnected to the Parties and the Joint Venture;
- (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
- (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the “**Purchaser Requirements**”).

49. The final binding sale and purchase agreement, the Raw CO2 Supply Agreement and the Operation and Management Agreement shall be conditional on the Commission’s approval. When the Joint Venture has reached an agreement with a purchaser, Yara shall procure that it shall, together with Yara, submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Yara must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business are being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business are being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Business if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

2.1.4. *Section E. Trustee*

2.1.4.1. I. Appointment Procedure

50. Yara and the Joint Venture shall jointly appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. Yara shall procure that the Joint Venture complies with all obligations applicable to Yara which result from the following paragraphs and from the Trustee Agreement. If the Joint Venture has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Yara at that time or thereafter, Yara and the Joint Venture shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The

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appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

51. The Trustee shall be independent of the Parties and the Joint Venture, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Yara in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

2.1.4.2. Proposal by the Parties

52. No later than one week after the Effective Date, Yara shall submit a list of one or more persons whom Yara proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Yara shall submit a list of one or more persons whom Yara proposes to be appointed as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 18 and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
- (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

2.1.4.3. Approval or rejection by the Commission

53. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Yara shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Yara shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

2.1.4.4. New proposal by the Parties

54. If all the proposed Trustees are rejected, Yara shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 18 and 19.

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2.1.4.5. Trustee nominated by the Commission

55. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Yara shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

2.1.4.6. II. Functions of the Trustee

56. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Yara, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

2.1.4.7. Duties and obligations of the Monitoring Trustee

57. The Monitoring Trustee shall:

- (xiv) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (xv) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Yara and by the Joint Venture with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 9 and 10 of the Commitments;
 - (b) supervise the identification and management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 11 of the Commitments;
 - (c) (i) in consultation with Yara, determine all necessary measures to ensure that Yara does not after the Effective Date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Yara and/or the Joint Venture as the disclosure is reasonably necessary to allow Yara and/or the Joint Venture to carry out the divestiture or as the disclosure is required by law;
 - (d) monitor the splitting of assets between the Divestment Business and the Joint Venture or Affiliated Undertakings;
- (xvi) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

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- (xvii) propose to Yara and/or the Joint Venture such measures as the Monitoring Trustee considers necessary to ensure Yara's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (xviii) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process potential purchasers receive sufficient information relating to the Divestment Business in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process;
- (xix) provide to the Commission, sending Yara and the Joint Venture a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Yara and the Joint Venture a non-confidential copy at the same time, if it concludes on reasonable grounds that Yara and/or the Joint Venture is failing to comply with these Commitments;
- (xx) within one week after receipt of the documented proposal referred to in paragraph 22, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Business affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

2.1.4.8. Duties and obligations of the Divestiture Trustee

58. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 16. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Yara and the Joint Venture, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
59. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

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2.1.4.9. III. Duties and obligations of the Parties

60. Yara shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks, and shall procure that the Joint Venture does the same. Yara shall procure that the Trustee shall have full and complete access to any of the Joint Venture's books, records, documents, management or other personnel, facilities, sites and technical information and any books and records exclusively connected to the Divestment Business necessary for fulfilling its duties under the Commitments and Yara will procure that the Joint Venture shall provide the Trustee upon request with copies of any document. Yara shall, and will procure that the Joint Venture shall, make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
61. Yara shall procure that the Joint Venture shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level, if any. Yara shall procure the provision of, and shall cause the Joint Venture and its advisors to provide, the Monitoring Trustee, on request, the information submitted to potential purchasers, and in particular shall procure that the Monitoring Trustee is given access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Yara shall and shall procure that the Joint Venture shall, inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
62. Yara shall procure that the Joint Venture grants or procures Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Yara shall procure that the Joint Venture shall cause the documents required for effecting the sale and the Closing to be duly executed.
63. Yara shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Yara or the Joint Venture for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
64. At the expense of Yara, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Yara's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Yara refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Yara. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 36 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use

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advisors who served Yara during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

2.1.4.10.IV. Replacement, discharge and reappointment of the Trustee

65. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require Yara to replace the Trustee; or
 - (b) Yara, with the prior approval of the Commission, may replace the Trustee.
66. If the Trustee is removed according to paragraph 32, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 17 to 22.
67. Beside the removal according to paragraph 32, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

2.1.5. Section F. The Review Clause

68. The Commission may, where appropriate, in response to a request from Yara showing good cause and accompanied by a report from the Monitoring Trustee:
- (iii) Grant an extension of the time periods foreseen in the Commitments, or
 - (iv) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Yara seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Yara be entitled to request an extension within the last month of any period.

.....
 Thomas Wessely
 duly authorised for and on behalf of Yara

19 September 2007

Schedule

Particulars of the Divestment Business

1. The Divestment Business have the following legal and functional structure:

The Divestment Business is currently owned and operated by the Joint Venture. Liquid CO₂, which arises as a by-product of fertilizer production at Billingham, is currently sold by the Joint Venture to CO₂ distributors in the UK. Currently, Yara understands that the Joint Venture makes sales from Billingham of CO₂ liquefied using the Divestment Business to [CONFIDENTIAL]. The Divestment Business is a collection of assets and are not incorporated separately.

The Divestment Business forms an integrated part of the Joint Venture's ammonia production facility at Billingham and are closely connected to the Joint Venture's fertilizer production plant. The production of fertilizers is by far the principal activity at the Joint Venture's Billingham site. The fertilizer production and sale business at Billingham was transferred to the Joint Venture on completion of the joint venture agreement on 14 September 2007.

The Divestment Business comprise the liquefaction unit of the Joint Venture's Billingham plant and sales of liquid CO₂ to UK customers. This is not currently a stand-alone business activity and will therefore be separated from the Joint Venture's current plant and operations at Billingham as described at section B of these Commitments and below.

2. As the Joint Venture has only just taken effect, the precise scope of the Divestment Business will need to be discussed and agreed with the Monitoring Trustee. The Divestment Business will comprise, at minimum, the following:

- (a) the following main tangible assets:
 - (i) the plant for the liquefaction of carbon dioxide located at the Joint Venture's Billingham fertilizer production site;
 - (ii) storage facilities for liquid carbon dioxide; and
 - (iii) loading facilities
- (b) any relevant licences, permits and authorizations;
- (c) the principal contracts, agreements, leases, commitments and understandings relating to the sale of liquid CO₂ at Billingham including:
 - (i) Contract commencing [CONFIDENTIAL] between Terra and Yara for the supply of liquid CO₂ from Billingham;
 - (ii) Contract commencing [CONFIDENTIAL] between Terra and Yara for the supply of liquid CO₂ for export;

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- (d) all necessary customer, credit and other records required for evaluation and operation of the Divestment Business
 - (e) the benefit of a Raw CO2 Supply Agreement as described in paragraphs 5 and 6 of these Commitments; and
 - (f) the benefit of an Operation and Management Agreement as described in paragraph 7 of these Commitments.
3. The Divestment Business shall not include:
- (i) all assets of the Joint Venture, as the case may be, which relate to any business or operations of the Joint Venture other than liquefaction of raw CO2 at Billingham, including, without limitation, all other operations at the Billingham site;
 - (ii) all land and tangible assets of the Joint Venture at Billingham other than as particularised in paragraph 2 above;
 - (iii) all licences, permits and authorizations that do not relate exclusively to the Divestment Business or that are required to be retained by the Joint Venture in connection with its retained business activities and/or to perform its obligations under the Operating, Maintenance and Supply Agreement;

**Case COMP M.4730 –
Yara International ASA / Kemira GrowHow Oyj**

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Yara International ASA (“*Yara*”) hereby provides the following Commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the proposed acquisition of sole control of GrowHow by Yara to be compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “*Decision*”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

Closing: the transfer of the legal title of a Divestment Business to a Purchaser.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Yara and who has received from Yara the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Divestment Business: means the Köping Divestment business and the Tertre Divestment Business.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [CONFIDENTIAL] months from the Effective Date.

Hold Separate Manager: the person appointed by Yara for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule.

Köping AN Solution Supply Business: means the operations comprised of: (i) the receipt of supplies of AN solution; (ii) the loading of AN solution at the Köping Site; and (iii) the marketing, selling and distribution operations in connection with AN solution to customers from the Köping Site.

Köping Aqueous Ammonia Supply Business: the operations comprised of: (i) the receipt of anhydrous ammonia from Yara; (ii) the blending of anhydrous ammonia with demineralised water to create aqueous ammonia at the Köping Site; (iii) the storage and loading of aqueous ammonia at the Köping Site; (iv) the marketing, selling and distribution operations in connection with aqueous ammonia to customers from the Köping Site.

Köping Customer List: the list of Yara's material customers used exclusively in relation to the Köping Divestment Business as at the date of adoption of the Decision.

Köping Divestment Business: means the Köping AN Solution Supply Business, the Köping Aqueous Ammonia Business, and the Köping Weak Nitric Acid Business.

Köping Purchaser: the entity (or entities) approved by the Commission as acquirer of the Köping Divestment Business in accordance with the criteria set out in Section D.

Köping Site: the Yara production facility for ammonium nitrate at SE-731 29 Köping, Sweden.

Köping Weak Nitric Acid Business: means the operations comprised of: (i) the receipt of supplies of weak nitric acid (53% and 62%); (ii) the storage and loading of weak nitric acid at the Köping Site; and (iii) the marketing, selling and distribution operations in connection with weak nitric acid to customers from the Köping Site;

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Yara, and who has the duty to monitor Yara's compliance with the conditions and obligations attached to the Decision.

Moveable Assets: all of the moveable assets and other equipment owned by Yara used exclusively in relation to the Divestment Business as at the date of adoption of the Decision.

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the Schedule.

Purchaser: the Köping Purchaser or the Tertre Purchaser.

Tertre AN Solution Supply Business: means the operations comprised of: (i) the receipt of supplies of AN solution from Yara at the Tertre Site; (ii) one loading quay for AN solution at the Tertre Site; and (iii) the industrial customer base in connection with AN solution delivered from the Tertre Site. (The fertilizer customer base, including SECO, is not included).

Tertre Aqueous Ammonia Supply Business: the operations comprised of: (i) the receipt of anhydrous ammonia from Yara at the Tertre Site to produce aqueous ammonia; (ii) the blending facility to produce aqueous ammonia at the Tertre Site; (iii) the storage and loading of aqueous ammonia at the Tertre Site; (iv) the customer base in connection with aqueous ammonia to customers from the Tertre Site.

Tertre Concentrated Nitric Acid Supply Business: the operations comprised of: (i) the receipt of supplies of concentrated nitric acid from Yara at the Tertre Site; and (ii) the customer base in connection with concentrated nitric acid to customers in Western Europe from the Tertre Site (excluding captive sales of concentrated nitric acid at the Tertre site).

Tertre Customer List: the list of Yara's material customers used exclusively in relation to the Tertre Divestment Business as at the date of adoption of the Decision

Tertre Divestment Business: means the Tertre AN Solution Supply Business, the Tertre Aqueous Ammonia Business, the Tertre Weak Nitric Acid Business and the Tertre Concentrated Nitric Acid Business.

Tertre Purchaser: the entity (or entities) approved by the Commission as acquirer of the Tertre Divestment Business in accordance with the criteria set out in Section D.

Tertre Site: the GrowHow fertilizer production facility at B-7333 Tertre, Belgium.

Tertre Weak Nitric Acid Business: means the operations comprised of: (i) the receipt of supplies of weak nitric acid (below 65% by weight) from Yara at Tertre; (ii) the storage and truck loading facilities for weak nitric acid at the Tertre Site; and (iii) the marketing, selling and distribution operations in connection with weak nitric acid to customers from the Tertre Site.

Trustee Divestiture Period: the period of [CONFIDENTIAL] months from the end of the First Divestiture Period.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Western Europe: Norway, Sweden, Finland, Denmark, Germany, Switzerland, the Netherlands, Belgium, the UK, Ireland, France, Spain, Portugal, Italy and Luxembourg.

Yara: Yara International ASA incorporated under the laws of Norway, with its registered office at Bygdøy Allé 2, PO Box 2464, Solli, N-0202 Oslo, Norway and Affiliated Undertakings.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, Yara commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 23. To carry out the divestiture, Yara commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Yara has not entered into such an agreement at the end of the First Divestiture Period, Yara shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 32 in the Trustee Divestiture Period.
2. Yara shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Yara has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 23 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

Köping Divestment Business

4. The Köping Divestment Business consists of the Yara businesses currently conducted from Yara's ammonium nitrate production site at Köping, Sweden comprising:
 - a) the AN Solution Supply Business;
 - b) the Aqueous Ammonia Supply Business; and
 - c) the Weak Nitric Acid Supply Business.

5. The Köping Divestment Business, which is described in more detail in Schedule 1, includes:
 - a) the goodwill of the Köping Divestment Business;
 - b) the Customer List of the Köping Divestment Business;
 - c) the Moveable Assets of the Köping Divestment Business;
 - d) all licences, permits and authorisations issued by any governmental organisation to the extent they relate exclusively to the Köping Divestment Business;
 - e) all contracts, commitments and customer orders of the Köping Divestment Business; all customer, credit and other records of the Köping Divestment Business (items referred to under (a)-(e) hereinafter collectively referred to as “Assets”); and
 - f) the Key Personnel of the Köping Divestment Business.

6. In order to ensure that the Purchaser is able to continue the Köping Business as a viable business on a long-term basis Yara will enter into either a lease agreement or a sale agreement (at the option of the Purchaser) in relation to the storage, handling and loading facilities that form part of the Köping Divested Business. In addition, Yara will enter into a long-term supply contract under which the Purchaser will commit to purchase from Yara and Yara will commit to supply the Köping Divestment Business in accordance with the following:
 - a) anhydrous ammonia for use in manufacturing aqueous ammonia at the Köping Site, at an annual minimum supply volume of 6 kt up to the capacity of the aqueous ammonia dissolution unit (i.e., [CONFIDENTIAL] kt expressed as 100% NH₃) to be divested to the Köping Purchaser;
 - b) weak nitric acid (53% and 62%) at an annual minimum supply volume of 5 kt up to a maximum annual supply volume of 16 kt; and
 - c) AN solution at an annual minimum supply volume of 23 kt up to an annual maximum supply volume of 42 kt.

In each case, Yara will negotiate in good faith with the Köping Purchaser should the Köping Purchaser want to offtake additional volumes of product beyond the capacity limits indicated above.

Supply will be on the basis of Yara’s standard product specifications.

7. Yara will enter into this supply agreement at Closing for a period to be negotiated with the Purchaser but not less than [CONFIDENTIAL] years (and renewable at the option of the Purchaser). The supply agreement will contain provision, in the event of the permanent closure of the Köping Site, for supply of Products from an

alternative production site during an initial period of [CONFIDENTIAL] years from Closing of the sale of the Köping Divestment Business, as more fully set out in Schedule 2.

Tertre Divestment Business

8. The Tertre Divestment Business consists of the GrowHow businesses currently conducted from GrowHow's production site at Tertre, Belgium comprising:
 - a) the Tertre AN Solution Supply Business for industrial customers;
 - b) the Tertre Aqueous Ammonia Supply Business;
 - c) the Tertre Weak Nitric Acid Supply Business; and
 - d) the Tertre Concentrated Nitric Acid Supply Business.
9. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule 3. The Divestment Businesses, which are described in more detail in the Schedule 3, include:
 - a) the goodwill of the Tertre Divestment Business;
 - b) the Customer List of the Tertre Divestment Business;
 - c) the Moveable Assets of the Tertre Divestment Business;
 - d) all licences, permits and authorisations issued by any governmental organisation to the extent they relate exclusively to the Tertre Divestment Business;
 - e) all contracts, commitments and customer orders of the Tertre Divestment Business; all customer, credit and other records of the Tertre Divestment Business (items referred to under (a)-(e) hereinafter collectively referred to as "Assets"); and
 - f) the Personnel of the Tertre Divestment Business.
10. In addition to the above, Yara commits to entering into a long term Operating, Maintenance and Supply Agreement with the Purchaser of the Tertre Divestment Business, the principal terms of which are described in Schedule 2 and the Purchaser of the Tertre Divestment Business, the principal terms of which are described in Schedule 4.
11. In order to ensure that the Purchaser is able to continue the Tertre Business as a viable business on a long-term basis Yara will enter into either a lease agreement or a sale agreement (at the option of the Purchaser) in relation to the storage, handling and loading facilities that form part of the Tertre Divested Business. In addition, Yara will enter into a long-term supply contract under which the

Purchaser will commit to purchase from Yara and Yara will commit to supply the Tertre Divestment Business the following:

- a) anhydrous ammonia for use in manufacturing aqueous ammonia at the Tertre Site, at an annual minimum supply volume of 10 kt up to the capacity of the aqueous ammonia dissolution unit (i.e., [CONFIDENTIAL] kt expressed as 100% NH₃) to be divested to the Tertre Purchaser;
- b) weak nitric acid (less than 65%) at an annual minimum supply volume of 9 kt up to an annual maximum supply volume of 26 kt;
- c) AN solution at an annual minimum supply volume of 2.5 kt up to an annual maximum volume of 7 kt; and
- d) concentrated nitric acid at an annual minimum supply volume of 14 kt up to an annual maximum supply volume of 40 kt;

In each case, Yara will negotiate in good faith with the Tertre Purchaser should the Tertre Purchaser want to buy additional volumes of product beyond the capacity limits indicated above.

Supply will be on the basis of Yara's standard product specifications.

12. Yara will enter into this supply agreement at Closing for a period to be negotiated with the Purchaser but not less than [CONFIDENTIAL] years (and renewable at the option of the Purchaser). The supply agreement will contain provision, in the event of the permanent closure of the Tertre Site, for supply of Products from an alternative production site during an initial period of [CONFIDENTIAL] years from Closing of the sale of the Tertre Divestment Business, as more fully set out in Schedule 2.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

13. From the Effective Date until Closing, Yara shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular, Yara undertakes:

- a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the

nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

- b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans; and
- c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of Parties

- 14. Yara commits, from the Effective Date until Closing, so far as reasonably possible and practicable, to keep the Divestment Business separate from the businesses it is retaining and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. Yara shall also ensure that the Personnel do not report to any individual outside the Divestment Business.
- 15. Until Closing, Yara shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. Yara shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

- 16. Yara shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Yara may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Yara is required by law.

Non-solicitation clause

- 17. Yara undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [CONFIDENTIAL] years after Closing.

Non-compete clause

18. Yara undertakes that it and its Affiliated Undertakings will not, for a period of [CONFIDENTIAL] years after Closing, in relation to the Divestment Business (as now carried on), canvass or solicit the custom of any person, firm or company who has within one year prior to Closing been a regular customer in relation to the Divestment Business.

Due Diligence

19. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Yara shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
- a) provide to potential purchasers sufficient information as regards the Divestment Business; and
 - b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

20. Yara shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
21. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchasers

22. In order to ensure the immediate restoration of effective competition, the Köping Purchaser and the Tertre Purchaser in order to be approved by the Commission, must:
- a) be independent of and unconnected to the Parties;
 - b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors; and
 - c) neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary

approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the “Purchaser Requirements”).

23. The final binding sale and purchase agreement as the well as the supply and operating agreements shall be conditional on the Commission’s approval. When Yara has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Yara must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

Appointment Procedure

24. Yara shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Yara has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Yara at that time or thereafter, Yara shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
25. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Parties

26. No later than one week after the Effective Date, Yara shall submit a list of one or more persons whom Yara proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Yara shall submit a list of one or more persons whom Yara proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that

the proposed Trustee fulfils the requirements set out in paragraph 25 and shall include:

- a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
- b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and
- c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

27. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Yara shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Yara shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

28. If all the proposed Trustees are rejected, Yara shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 24 and 27.

Trustee nominated by the Commission

29. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Yara shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

30. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Yara, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

31. The Monitoring Trustee shall:

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- i. propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- ii. oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Yara with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 14 and 15 of the Commitments;
 - b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 15 of the Commitments;
 - c) (i) in consultation with Yara, determine all necessary measures to ensure that Yara does not after the effective date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Yara as the disclosure is reasonably necessary to allow Yara to carry out the divestiture or as the disclosure is required by law;
 - d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Yara or Affiliated Undertakings;
- iii. assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- iv. propose to Yara such measures as the Monitoring Trustee considers necessary to ensure Yara's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- v. review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;

- vi. provide to the Commission, sending Yara a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Yara a non-confidential copy at the same time, if it concludes on reasonable grounds that Yara is failing to comply with these Commitments; and
- vii. within one week after receipt of the documented proposal referred to in paragraph 23, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

- 32. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 23. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Yara, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- 33. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

III. Duties and obligations of the Parties

- 34. Yara shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Yara's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information

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necessary for fulfilling its duties under the Commitments and Yara and the Divestment Business shall provide the Trustee upon request with copies of any document. Yara and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

35. Yara shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Yara shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Yara shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
36. Yara shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Yara shall cause the documents required for effecting the sale and the Closing to be duly executed.
37. Yara shall indemnify the Trustee and its employees and agents (each an “Indemnified Party”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Yara for any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
38. At the expense of Yara, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Yara’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Yara refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Yara. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 37 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Yara during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

39. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (g) the Commission may, after hearing the Trustee, require Yara to replace the Trustee; or
 - (h) Yara, with the prior approval of the Commission, may replace the Trustee.
40. If the Trustee is removed according to paragraph 39, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 24-29.
41. Beside the removal according to paragraph 39, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

42. The Commission may, where appropriate, in response to a request from Yara showing good cause and accompanied by a report from the Monitoring Trustee:
- i. Grant an extension of the time periods foreseen in the Commitments, or
 - ii. Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Yara seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Yara be entitled to request an extension within the last month of any period.

.....
Thomas Wessely
duly authorised for and on behalf of Yara

19 September 2007

SCHEDULE 1
Particulars of the Köping Divestment Business

1. The Köping Divestment Business as operated to date has the following legal and functional structure:
 - (a) The Köping Divestment Business is currently owned and operated by Yara. The Köping Divestment Business forms part of Yara's Industrial Segment and is not incorporated separately. The manufacturing operations of the Köping Divestment Business at Köping are closely connected to Yara's solid ammonium nitrate business, which is the principal product produced at Köping and which is by far the greater part of business activity conducted at the Köping Site ([CONFIDENTIAL] of production at the Köping Site is represented by the Köping Divestment Business). The solid ammonium nitrate business will be retained by Yara at Closing.
 - (b) The Köping Divestment Business comprises the sales and marketing activity of Yara in respect of aqueous ammonia, weak nitric acid and AN solution carried on from the Köping Site. The marketing, sales and other administrative functions of the Köping Divestment Business are predominantly located at Landskrona, currently an integral part of the Industrial Segment's total activity that is based in Sweden. The Köping Divestment Business is not currently a stand-alone business activity and will therefore be separated from Yara's current operations at Köping as described below.
2. Following paragraph 5 and 6 of these Commitments, the Köping Divestment Business includes, but is not limited to:
 - a) the following main tangible assets:

Aqueous ammonia

- one dissolution unit (with a maximum capacity of [CONFIDENTIAL] kt expressed as 100% NH₃);
- two storage tanks (135 m³ and 1967 m³);
- one loading facility for trucks (with a maximum annual capacity of 78 kt (which is equivalent to 19.5 kt expressed as 100% NH₃)); and
- one loading station for rail cars (at which trucks may also load) (with a maximum annual capacity of 84.5 kt (which is equivalent to 21 kt expressed as 100% NH₃)).

Weak nitric acid

- one storage tank (500 m³ for nitric acid with a concentration of 62%);
- one storage tank (50 m³ for nitric acid with a concentration of 53%);
- one loading facility for trucks (40 m³/h) (with a maximum annual capacity of 65 kt (which is equivalent to 34 kt expressed as 100% HNO₃ of 53% concentration; or 40 kt expressed as 100% HNO₃ of 62%)); and
- one loading facility for rail cars (40 m³/h) (at which trucks may also load) (with a maximum annual capacity of 65 kt (which is equivalent to 34 kt expressed as 100% HNO₃ of 53% concentration; or 40 kt expressed as 100% HNO₃ of 62%)).

AN solution

- two loading facilities for trucks (one of 25 m³/h with a maximum annual capacity of 45.5 kt and one of 35 m³ with a maximum capacity of 65 kt).

Note that it is not possible to load aqueous ammonia and weak nitric acid from the same loading space at the same time.

- b) all main licences, permits and authorisations required for the operation of the Köping Divestment Business;
- c) all contracts, agreements, leases, commitments and understandings required for the operation of the Köping Divestment Business;
- d) the Customer List (including contracts and relationships with all customers of the Köping Divestment Business including all customer, credit and other records). The Customer List for Köping is [CONFIDENTIAL];
- e) one senior sales person and one additional sales person for the Köping Divestment Business; and
- f) the arrangements for the supply to the Köping Divestment Business, pursuant to an Operating, Maintenance and Supply Agreement, the provisions of which are more fully described in Schedule 2.

3. The Köping Divestment Business shall not include:

- (c) all assets of Yara which relate to any other business or operations of Yara, including, without limitation, all other operations at the Köping Site;

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- (d) all land and Moveable Assets of Yara which relate to the Storage and Handling Operations to the extent that the Purchaser opts for a lease instead of a sale; or
- (e) all licences, permits and authorizations that do not relate exclusively to the Köping Divestment Business or that are required to be retained by the Seller to perform its obligations under the Operating, Maintenance and Supply Agreement.

SCHEDULE 2

**Heads of Terms of the Operating Maintenance and Supply Agreement for
the Köping Divestment Business**

1. PRODUCTS

1.1 Yara will, throughout the term of the agreement, supply the Köping Divestment Business with the following products (together the *Products*) at the Köping Site:

- (a) anhydrous ammonia for the manufacturing of aqueous ammonia;
- (b) weak nitric acid (53% and 62%); and
- (c) AN solution.

2. TERMS OF SUPPLY

2.1 Under the supply obligation pursuant to Section 1 of this Schedule, Yara will enter into a long-term supply contract under which the Purchaser will commit to purchase from Yara and Yara will commit to supply the Köping Divestment Business in accordance the following:

- (a) anhydrous ammonia for use in manufacturing aqueous ammonia at the Köping Site, at an annual minimum supply volume of 6 kt up to the capacity of the aqueous ammonia dissolution unit (which is [CONFIDENTIAL] kt, expressed as 100% NH₃) to be divested to the Köping Purchaser;
- (b) weak nitric acid (53% and 62%) at an annual minimum supply volume of 5 kt up to a maximum annual supply volume of 16 kt; and
- (c) AN solution at an annual minimum supply volume of 23 kt up to an annual maximum supply volume of 42 kt.

In each case, Yara will negotiate in good faith with the Köping Purchaser should the Köping Purchaser want to offtake additional volumes of product beyond the capacity limits indicated above.

2.2 The Products made available by Yara shall comply with Yara's standard specifications for Products produced at Köping (*Specifications*) [CONFIDENTIAL], subject to agreed amendments to the Specifications between the parties from time to time.

2.3 The Purchaser shall have the right to accept or refuse any non-Specification Products, provided that it shall not unreasonably refuse to accept non-Specification Products if such Products are otherwise suitable for use by the Purchaser's customers.

3. TERM

3.1 The agreement will have an initial term of [CONFIDENTIAL] years unless terminated as a result of:

- (a) Breach of material obligation, including failure by the Köping Divestment Business to make payment, by a party where that party has not taken steps to remedy the breach within 20 business days or receipt of written notification from the other party of the occurrence of such breach;
- (b) Either party becoming insolvent, unable to pay its debts, making a general assignment or arrangement with its creditors, passing a resolution for its winding-up or liquidation, becoming subject to the appointment of an administrator, liquidator, receiver, compulsory manager, trustee or other similar official, or similar event;
- (c) Permanent closure of the Köping Site (cf: clause 8 below); or
- (d) An event of Force Majeure.

4. PURCHASE PRICE

4.1 The purchase price for the Products shall be calculated on a cost basis to be appropriately indexed for the entire term of the agreement. The ammonia purchase price shall be CFR Köping plus duties. The exact cost price formula for each Product shall be agreed upon between Yara and the Purchaser(s) on a cost basis.

4.2 Any dispute between Yara and the Purchaser(s) in connection with the calculation of the cost price formula which cannot be settled by mutual agreement between the parties shall be referred to a single arbitrator to be appointed by agreement between Yara and the Purchaser(s), or failing agreement, to be appointed by the Monitoring Trustee for determination. The arbitrator shall reach his determination, which shall be final and binding on Yara and the Purchaser(s), in accordance with the principle that the purchase price for the Products shall be cost-based and reasonable.

HEALTH AND SAFETY

4.3 The Purchaser shall ensure that it and any of its subcontractors, employees, agents, or any other person under the Purchaser's control that enters the Köping Site at the Purchaser's invitation complies with all relevant laws and regulations, including health, safety, security and environment laws and regulations, and will all of Yara's HSE requirements in relation to the Köping Site generally.

5. TITLE AND RISK

5.1 Title to and risk of loss or damage in the Products shall pass from Yara to the Purchaser at the relevant Delivery Point.

5.2 The Delivery Point shall be:

- (a) for anhydrous ammonia the flange of the aqueous ammonia plant at Köping;
- (b) for weak nitric acid, the flange of the plant used for the storage and handling/loading of weak nitric acid at Köping;
- (c) for AN solution, the outlet flange of the AN solution plant at Köping.

6. OPERATING SERVICES

6.1 Yara shall, against an arms' length operating fee, provide all necessary services (the *Operating Services*) required for the safe and efficient operation and maintenance of all equipment used for the storage and handling of aqueous ammonia, weak nitric acid and AN solution at the Köping Site (*the Storage and Handling Facilities*).

6.2 The Operating Services shall include the following:

- (a) Provision of demineralised water (or other necessary raw materials) that are used in the production of aqueous ammonia;
- (b) Provision of operations labour, supervision and management, such that the Storage and Handling Facilities can be operated as a reasonable and prudent operator;
- (c) Provision of maintenance labour, supervision and management such that the Storage and Handling Facilities can be maintained in accordance with the Operation and Maintenance Plan;
- (d) Technical and engineering support in relation to the Operating Services and modifications to the Storage and Handling Facilities;
- (e) Operation of the entry weighbridge and the exit weighbridge at the Köping Site;
- (f) Necessary general administration and management services; and
- (g) To the extent requested by the Purchaser, the offloading and storing on a cost basis of ammonia bought by the Purchaser from third parties.

6.3 Yara shall perform the Operating Services with its own personnel (or third party personnel contracted by Yara) and acting as a reasonable and prudent operator and in compliance with all relevant licences and authorisations and shall be responsible for the management, direction, control and supervision of personnel responsible for the performance of the Operating Services.

6.4 Yara employees carrying out the Operating Services are bound to act on the directions of Yara management and the duties and responsibilities of many of such employees are integrated into the overall operation of Yara's retained businesses at the Köping Site.

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6.5 Yara shall consider all reasonable operating requests from the Purchaser but in the performance by Yara of the Operating Services it shall at all times be recognized that Yara shall not be obliged to comply with any request or direction from the Purchaser which:

- (a) Conflicts with the conditions and methods of working, discipline or other terms of employment of Yara's employees;
- (b) Conflicts with any HSE or product stewardship standards of Yara laws or regulations in relation to Yara's retained businesses at the Köping Site;
- (c) May reasonably be expected to adversely affect the performance of the Operating Services or other operation of Yara's retained businesses at Köping;
- (d) Otherwise conflicts with any applicable law or the requirements of any licence or authorisation.

7. OPERATING AND MAINTENANCE PLANNING

7.1 Yara will provide timely information to the Purchaser on:

- (a) The schedule of shutdowns, turnarounds and replacements in connection with the Storage and Handling Facilities and Yara's retained businesses at the Köping Site (*Planned Shutdowns*);
- (b) Routine and other maintenance for the Storage and Handling Facilities; and
- (c) Any Yara plant modifications for the storage and handling facilities.

7.2 Yara shall inform the Purchaser as soon as practicable of all unplanned or emergency shutdowns which limits or stops either the ability to use the Storage and Handling Facilities or Yara's ability to supply or procure any or all of the Products.

8. PERMANENT CLOSURE OF THE KÖPING PLANT

8.1 In the event of a permanent closure of the Köping plant, Yara will give 12 months notice to the Purchaser.

8.2 If, within the period ending [CONFIDENTIAL] years from Closing, Yara permanently closes the Köping Site, the Purchaser(s) shall be entitled, during the initial [CONFIDENTIAL] year period from Closing only, to be supplied with the agreed volumes of Products from Yara's [CONFIDENTIAL] plant on substantially similar terms as those applying under this Commitment. In particular, the price for Products supplied to the Purchaser(s) from [CONFIDENTIAL] shall be calculated on a cost basis at source (to include all raw material, manufacturing, handling and other variable, fixed, overhead and capital costs).

8.3 The products made available by Yara to the Purchaser(s) under paragraph 8.2 above shall comply with Yara's standard product specifications for [CONFIDENTIAL].

8.4 For the avoidance of doubt and subject only to the provisions of paragraph 8.2 above, in the event of a permanent closure of the Köping plant, Yara's obligations under the Operating Maintenance and Supply Agreement shall cease.

9. PLANT MODIFICATIONS

9.1 The Purchaser and Yara agree that Yara may carry out all necessary plant modifications in relation to the Storage and Handling Facilities.

9.2 Yara shall inform the Purchaser of any plant modification which will give rise to a Planned Shutdown but shall not be required to obtain the Purchaser's consent to carry out plant modifications.

9.3 The reasonably incurred costs of plant modifications shall be for the Purchaser's account to the extent that such modifications benefit the Purchaser or are required in order to comply with health and safety laws and authorisations or laws and regulations applicable to the Divestment Business from time to time.

10. USE OF PRODUCTS

10.1 The Purchaser acknowledges and agrees that each of the Products are used by Yara in connection with the businesses retained by Yara at the Köping Site and that Yara may, from time to time and without limiting its supply obligations in paragraphs 1 and 2, remove quantities of Products from the Storage and Handling Facilities for use in its own businesses.

11. RESTRICTION ON ASSIGNMENT AND SUB-CONTRACTING

11.1 Neither Yara nor the Purchaser may, without the prior written consent of the other (not to be unreasonably withheld or delayed) assign or transfer the whole or part of this agreement. This clause shall not prevent assignments to a subsidiary, holding company or subsidiary of a holding company of either Yara or the Purchaser.

11.2 Neither party may sub-contract or delegate in whole or in part the performance of any of its obligations under this Agreement without the prior written consent of the other (such consent not to be unreasonably withheld).

12. CONFIDENTIALITY

12.1 The parties shall at all times during the continuance of this agreement, and for a period of 10 years following its expiry, keep all Confidential Information confidential to the party receiving it and shall not disclose such Confidential Information to any other person.

12.2 This clause shall not apply to information in the public domain, information acquired from a third party (not in breach of any obligation in disclosing it), information already known to a party, information disclosed with the prior written consent of either party, or disclosures required by law or the requirements of a recognised stock exchange of which the securities of the disclosing party are, or are proposed to be, quoted.

13. DISPUTE RESOLUTION

13.1 Should a dispute arise between Yara and the Purchaser regarding the implementation of any term of the Operating, Maintenance and Supply Agreement, such dispute shall be submitted to a fast track resolution procedure (the “Fast Track Resolution Procedure”).

13.2 The Fast Track Resolution Procedure will operate as follows:

- (a) The party who seeks to initiate the Procedure (the *Initiating Party*) shall notify the other party (the *Other Party*) of its request and specify the reasons why it believes that a failure by the Other Party to meet such request would be inconsistent with these Commitments.
- (b) The Purchaser and Yara (including the relevant Affiliated Undertaking) shall use their best efforts to resolve all differences of opinion and to settle all disputes that may arise through co-operation and consultation within a reasonable period of time not to exceed 15 calendar days.
- (c) Should the Purchaser and Yara fail to resolve their differences of opinion through co-operation and consultation, the Initiating Party shall within seven days initiate an arbitration process.
- (d) To initiate the arbitration process, the Initiating Party shall give written notice to the Other Party nominating an arbitrator and stating the specific nature of the claim, the factual basis of its position and the relief requested. In such case, the Other Party shall appoint another arbitrator within 14 calendar days after receipt of the written notice. The arbitrators so appointed shall appoint a third arbitrator to be president of the arbitration tribunal within seven calendar days after both arbitrators have been nominated. If the arbitrators nominated by the Purchaser and Yara cannot agree on the nomination of a third arbitrator, they shall request that the Stockholm Chamber of Commerce appoint the third arbitrator.
- (e) Any of the arbitrators will be entitled to request any relevant information from the Purchaser, Yara or the relevant Affiliated Undertaking. The arbitrators shall agree in writing to keep any confidential information and business secrets disclosed to them in confidence. Throughout these Commitments the standards attributed to confidential information and business secrets are those as set out in accordance with European Community law.
- (f) The burden of proof in any dispute governed by this Section shall be as follows: (i) the Initiating Party must produce evidence of a prima facie case, and (ii) if the Initiating Party produces evidence of a prima facie case, the arbitrators must find in favour of the Initiating Party unless the Other Party can produce evidence to the contrary.
- (g) The arbitration procedure shall follow the Rules of the Stockholm Chamber of Commerce. The arbitration shall be conducted in Stockholm. The language of

the arbitration shall be English. In the event of disagreement between the parties to the arbitration regarding the interpretation of the Commitments, the arbitrators shall inform the Commission and may seek the Commission's interpretation of the Commitments before finding in favour of any party to the arbitration. The Commission may, at any time, issue a submission during the arbitration procedure

- (h) The arbitration award shall, in addition to dealing with the merits of the claim, impose the fees and costs of the prevailing party upon the party that is unsuccessful.
- (i) Decisions of the arbitrators shall be final and binding on all persons submitting to arbitration.
- (j) Nothing in the above-described arbitration procedure shall affect the powers of the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation and the EC Treaty.

13.3 The parties shall report to the Commission any matters which the Commission reasonably requests in order to determine whether the parties have complied with the present commitments with regard to dispute resolution. Any such report shall be sent to the Commission within 15 working days from the date the Commission makes a request.

SCHEDULE 3

Particulars of the Tertre Divestment Business

1. LEGAL AND FUNCTIONAL STRUCTURE

1.1. The Tertre Divestment Business as operated to date has the following legal and functional structure:

- (a) The Tertre Divestment Business is currently owned and operated by GrowHow. The Tertre Divestment Business forms part of GrowHow's industrial segment and is not incorporated separately. The manufacturing operations of the Tertre Divestment Business at Tertre are closely connected to GrowHow's nitrate-based fertilizer business, which is the principal activity at Tertre and which is by far the greater part of business activity conducted at the Tertre Site (the Tertre Divestment Business represents [CONFIDENTIAL] of site-produced volumes). The nitrate based fertilizer business and sales of AN solution to fertilizer producers will be retained by Yara at Closing.
- (b) The Tertre Divestment Business comprises the marketing, sales and distribution activity of GrowHow in respect of AN solution, aqueous ammonia, weak nitric acid and concentrated nitric acid carried on from the Tertre Site.

2. TERTRE DIVESTMENT BUSINESS

2.1 Following paragraphs 8 and 9 of these Commitments, the Tertre Divestment Business includes, but is not limited to:

- a) the following main tangible assets. Unless where otherwise specified, the Purchaser will be offered the option either purchase or lease on a long-term basis the tangible assets. In any event, Yara envisages that the Purchaser will request that Yara provides certain operating and maintenance services on behalf of the Purchaser.

Aqueous ammonia

- one dissolution unit (with a maximum capacity of [CONFIDENTIAL] kt expressed as 100% NH₃);
- one tank for storage of aqueous ammonia;
- one loading facility for trucks; and
- one loading facility for rail wagons (the combined maximum annual capacity of the truck and rail loading facilities is 80 kt (which is equivalent to 25 kt expressed as 100% NH₃)).

Weak nitric acid

- one dedicated storage tank of 130m³;
- one blending facility to produce different grades of weak nitric acid; and
- one dedicated loading facility for trucks (with a maximum annual capacity of 75 kt (which is equivalent to 49 kt expressed as 100% HNO₃ of 65% concentration)).
- access to a loading facility for rail wagons (ownership of which will be retained by Yara and which Yara will also use in its retained business) up to the Purchaser's required volumes (note this is the same facility as that used for azeotropic and concentrated nitric acid). The maximum annual capacity of the rail loading facility is 175 kt (which is equivalent to 114 expressed as 100% HNO₃ of 65% concentration).

AN solution

- access to one loading facility for trucks (ownership of which will be retained by Yara and which Yara will also use in its retained business) up to the Purchaser's required volumes. The maximum annual capacity of this truck loading facility is 60 kt.

Concentrated nitric acid

- access to a loading facility for rail wagons (ownership of which will be retained by Yara and which Yara will also use in its retained business) up to the Purchaser's required volumes (note this is the same facility as that used for azeotropic and weak nitric acid). The maximum annual capacity of this rail loading facility is 70 kt.

- b) all main licences, permits and authorisations required for the operation of the Tertre Divestment Business;
- c) all contracts, agreements, leases, commitments and understandings required for the operation of the Tertre Divestment Business;
- d) the Customer List (including contracts and relationships with all customers of the Tertre Divestment Business, and all customer, credit and other records). The Customer List for Tertre is [CONFIDENTIAL];
- e) one senior sales person and one additional sales person for the Tertre Divestment Business;
- f) the arrangement for the supply to the Tertre Divestment Business, pursuant to an Operating, Maintenance and Supply Agreement, the main provisions of which are more fully described in Schedule 4.

2.2. The Tertre Divestment Business shall not include:

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- a) all assets of GrowHow which relate to any other business or operations of GrowHow including, without limitation, all other operations at the Tertre Site;
- b) all land and Moveable Assets of Yara which relate to the Storage and Handling Operations to the extent that the Purchaser opts for a lease instead of a sale;
- c) all licences, permits and authorizations that do not relate exclusively to the Tertre Divestment Business or that are required to be retained by Yara to perform its obligations under the Operating, Maintenance and Supply Agreement;
- d) captive sales of concentrated nitric acid at the Tertre site (e.g., to [...]) or outside Western Europe; and
- e) AN solution sales to fertilizer companies (including [...]).

SCHEDULE 4

**Heads of Terms of the Operating Maintenance and Supply Agreement for
the Tertre Divestment Business**

1. SUPPLY AGREEMENT

1.1. Yara will, throughout the term of the agreement, supply the Tertre Divestment Business with the following products (together the *Products*) at the Tertre Site:

- a) anhydrous ammonia
- b) weak nitric acid (below 65% concentration)
- c) AN solution
- d) concentrated nitric acid (99% concentration)

2. TERMS OF SUPPLY

2.1 Under the supply obligation pursuant to Section 1 of this Schedule, Yara will enter into a long-term supply contract under which the Purchaser will commit to purchase from Yara and Yara will commit to supply the Tertre Divestment Business with:

- a) anhydrous ammonia for use in manufacturing aqueous ammonia at the Tertre Site, at an annual minimum supply volume of 10 kt up to the capacity of the aqueous ammonia dissolution unit (which is [CONFIDENTIAL] kt, expressed as 100% NH₃) to be divested to the Tertre Purchaser;
- b) weak nitric acid (less than 65%) at an annual minimum supply volume of 9 kt up to an annual maximum supply volume of 26 kt;
- c) AN solution at an annual minimum supply volume of 2.5 kt up to an annual maximum volume of 7 kt; and
- d) concentrated nitric acid at an annual minimum supply volume of 14 kt up to an annual maximum supply volume of 40 kt;

In each case, Yara will negotiate in good faith with the Tertre Purchaser should the Tertre Purchaser want to buy additional volumes of product beyond the capacity limits indicated above.

2.2. The Products made available by Yara shall comply with the standard Specifications currently applicable at the Tertre Site (Specifications) [CONFIDENTIAL], subject to agreed amendments to the Specifications between the parties from time to time.

2.3 The Purchaser shall have the right to accept or refuse any non-Specification Products, provided that it shall not unreasonably refuse to accept non-Specification Products if such Products are otherwise suitable for use by the Purchaser's customers.

3. TERM

3.1 The agreement will have an initial term of not [CONFIDENTIAL] years unless terminated as a result of:

- a) breach of material obligation, including failure by the Tertre Divestment Business to make payment, by a party where that party has not taken steps to remedy the breach within 20 business days or receipt of written notification from the other party of the occurrence of such breach;
- b) either party becoming insolvent, unable to pay its debts, making a general assignment or arrangement with its creditors, passing a resolution for its winding-up or liquidation, becoming subject to the appointment of an administrator, liquidator, receiver, compulsory manager, trustee or other similar official, or similar event;
- c) permanent closure of the Tertre Site (cf: Clause 9 below); or
- d) an event of Force Majeure.

4. PURCHASE PRICE

4.1 The purchase price for the Products shall be calculated on a cost basis to be appropriately indexed for the entire term of the agreement. The ammonia purchase price shall be CFR NWE plus duties. The exact cost price formula for each Product shall be agreed upon between Yara and the Purchaser(s) on a cost basis.

4.2 Any dispute between Yara and the Purchaser(s) in connection with the calculation of the cost price formula which cannot be settled by mutual agreement between the parties shall be referred to a single arbitrator to be appointed by agreement between Yara and the Purchaser(s), or failing agreement, to be appointed by the Monitoring Trustee for determination. The arbitrator shall reach his determination, which shall be final and binding on Yara and the Purchaser(s), in accordance with the principle that the purchase price for the Products shall be cost-based and reasonable.

5. HEALTH AND SAFETY

5.1 The Purchaser shall ensure that it and any of its subcontractors, employees, agents, or any other person under the Purchaser's control that enters the Tertre Site at the Purchaser's invitation complies with all relevant laws and regulations, including health, safety, security and environment laws and regulations, and with all of Yara's HSE requirements in relation to the Tertre Site generally.

6. TITLE AND RISK

6.1 Title to and risk of loss or damage in the Products shall pass from Yara to the Purchaser at the relevant Delivery Point.

6.2 The Delivery Point shall be:

- a) for aqueous ammonia the flange of the plant used for storage and handling/loading of aqueous ammonia at Tertre;
- b) for weak nitric acid, the flange of the plant used for storage of weak nitric acid at Tertre;
- c) for AN solution, the flange of the plant used for the loading of AN solution at Tertre; and
- d) for concentrated nitric acid, the loading point of concentrated nitric acid at Tertre.

7. OPERATING SERVICES

7.1 Yara shall, against an arms' length operating fee, provide all necessary services (the *Operating Services*) required for the safe and efficient operation and maintenance of all equipment used for the storage and handling of aqueous ammonia, weak nitric acid, AN solution and concentrated nitric acid at the Tertre Site (*the Storage and Handling Facilities*).

7.2 The Operating Services shall include the following:

- a) Provision of demineralised water (or other necessary raw materials) that are used in the production of aqueous ammonia;
- b) Provision of operations labour, supervision and management, such that the Storage and Handling Facilities can be operated as a reasonable and prudent operator;
- c) Provision of maintenance labour, supervision and management such that the Storage and Handling Facilities can be maintained in accordance with the Operation and Maintenance Plan;
- d) Technical and engineering support in relation to the Operating Services and modifications to the Storage and Handling Facilities;
- e) Operation of the entry weighbridge and the exit weighbridge at the Tertre Site;
- f) Necessary general administration and management services; and
- g) To the extent requested by the Purchaser, the offloading and storing on a cost basis of ammonia bought by the Purchaser from third parties.

7.3 Yara shall perform the Operating Services with its own personnel (or third party personnel contracted by Yara) and acting as a reasonable and prudent operator and in compliance with all relevant licences and authorisations and shall be responsible for the management, direction, control and supervision of personnel responsible for the performance of the Operating Services.

7.4 Yara employees carrying out the Operating Services are bound to act on the directions of Yara management and the duties and responsibilities of many of such employees are integrated into the overall operation of Yara's retained businesses at the Tertre Site.

7.5 Yara shall consider all reasonable operating requests from the Purchaser but in the performance by Yara of the Operating Services it shall at all times be recognized that Yara shall not be obliged to comply with any request or direction from the Purchaser which:

- a) Conflicts with the conditions and methods of working, discipline or other terms of employment of Yara's employees;
- b) Conflicts with any HSE or product stewardship standards of Yara laws or regulations in relation to Yara's retained businesses at the Tertre Site;
- c) May reasonably be expected to adversely affect the performance of the Operating Services or other operation of Yara's retained businesses at Tertre;
- d) Otherwise conflicts with any applicable law or the requirements of any licence or authorisation.

8. OPERATING AND MAINTENANCE PLANNING

8.1 Yara will provide timely information to the Purchaser on:

- a) The schedule of shutdowns, turnarounds and replacements in connection with the Storage and Handling Facilities and Yara's retained businesses at the Tertre Site (*Planned Shutdowns*);
- b) Routine and other maintenance for the Storage and Handling Facilities; and
- c) Any Yara plant modifications for the storage and handling facilities.

8.2 Yara shall inform the Purchaser as soon as practicable of all unplanned or emergency shutdowns which limits or stops either the ability to use the Storage and Handling Facilities or Yara's ability to supply or procure any or all of the Products.

9. PERMANENT CLOSURE OF THE TERTRE PLANT

9.1 In the event of a permanent closure of the Tertre plant, Yara will give 12 months notice to the Purchaser.

9.2 If, within the period ending [CONFIDENTIAL] years from Closing, Yara permanently closes the Tertre Site, the Purchaser(s) shall be entitled, during the initial [CONFIDENTIAL] year period from Closing only, to be supplied with the agreed volumes of Products from the following alternative supply locations on substantially similar terms as those applying under this Commitment: (i) aqueous ammonia and weak nitric acid, from Yara's plant at [CONFIDENTIAL]; (ii) AN Solution, from Yara's plant at [CONFIDENTIAL]; and (iii) concentrated nitric acid, from Yara's plant at [CONFIDENTIAL] or alternatively from third party producers if sufficient capacity is not available at the [CONFIDENTIAL] production site. In particular, the price for Products supplied to the Purchaser(s) from the specified alternative locations shall be calculated on a cost basis at source (to include all raw material, manufacturing, handling and other variable, fixed, overhead and capital costs).

9.3 The Products made available by Yara to the Purchaser(s) under paragraph 9.2 above shall comply with Yara's standard product specifications applicable to the relevant alternative supply plant.

9.4 For the avoidance of doubt and subject only to the provisions of paragraph 9.2 above, in the event of a permanent closure of the Tertre plant, Yara's obligations under the Operating Maintenance and Supply Agreement shall cease.

10 PLANT MODIFICATIONS

10.1 The Purchaser and Yara agree that Yara may carry out all necessary plant modifications in relation to the Storage and Handling Facilities.

10.2 Yara shall inform the Purchaser of any plant modification which will give rise to a Planned Shutdown but shall not be required to obtain the Purchaser's consent to carry out plant modifications.

10.3 The reasonably incurred costs of plant modifications shall be for the Purchaser's account to the extent that such modifications benefit the Purchaser or are required in order to comply with health and safety laws and authorisations or laws and regulations applicable to the Divestment Business from time to time.

11. USE OF PRODUCTS

11.1 The Purchaser acknowledges and agrees that each of the Products are used by Yara in connection with the businesses retained by Yara at the Tertre Site and that Yara may, from time to time and without limiting its supply obligations in paragraphs 1 and 2, remove quantities of Products from the Storage and Handling Facilities for use in its own businesses.

12. RESTRICTION ON ASSIGNMENT AND SUB-CONTRACTING

12.1 Neither Yara nor the Purchaser may, without the prior written consent of the other (not to be unreasonably withheld or delayed) assign or transfer the whole or part of this agreement. This clause shall not prevent assignments to a subsidiary, holding company or subsidiary of a holding company of either Yara or the Purchaser.

12.2 Neither party may sub-contract or delegate in whole or in part the performance of any of its obligations under this Agreement without the prior written consent of the other (such consent not to be unreasonably withheld).

13. CONFIDENTIALITY

13.1 The parties shall at all times during the continuance of this agreement, and for a period of 10 years following its expiry, keep all Confidential Information confidential to the party receiving it and shall not disclose such Confidential Information to any other person.

13.2 This clause shall not apply to information in the public domain, information acquired from a third party (not in breach of any obligation in disclosing it), information already known to a party, information disclosed with the prior written consent of either party, or disclosures required by law or the requirements of a recognised stock exchange of which the securities of the disclosing party are, or are proposed to be, quoted.

14. DISPUTE RESOLUTION

14.1 Should a dispute arise between Yara and the Purchaser regarding the implementation of any term of the Operating, Maintenance and Supply Agreement, such dispute shall be submitted to a fast track resolution procedure (the ***Fast Track Resolution Procedure***).

14.2 The Fast Track Resolution Procedure will operate as follows:

- (a) The party who seeks to initiate the Procedure (the ***Initiating Party***) shall notify the other party (the ***Other Party***) of its request and specify the reasons why it believes that a failure by the Other Party to meet such request would be inconsistent with these Commitments.
- (b) The Purchaser and Yara (including the relevant Affiliated Undertaking) shall use their best efforts to resolve all differences of opinion and to settle all disputes that may arise through co-operation and consultation within a reasonable period of time not to exceed 15 calendar days.
- (c) Should the Purchaser and Yara fail to resolve their differences of opinion through co-operation and consultation, the Initiating Party shall within seven days initiate an arbitration process.
- (d) To initiate the arbitration process, the Initiating Party shall give written notice to the Other Party nominating an arbitrator and stating the specific nature of the claim, the factual basis of its position and the relief requested. In such case, the Other Party shall appoint another arbitrator within 14 calendar days after receipt of the written notice. The arbitrators so appointed shall appoint a third arbitrator to be president of the arbitration tribunal within seven calendar days after both arbitrators have been nominated. If the arbitrators nominated by the Purchaser and Yara cannot agree on the nomination of a third

arbitrator, they shall request that the Stockholm Chamber of Commerce appoint the third arbitrator.

- (e) Any of the arbitrators will be entitled to request any relevant information from the Purchaser, Yara or the relevant Affiliated Undertaking. The arbitrators shall agree in writing to keep any confidential information and business secrets disclosed to them in confidence. Throughout these Commitments the standards attributed to confidential information and business secrets are those as set out in accordance with European Community law.
- (f) The burden of proof in any dispute governed by this Section shall be as follows: (i) the Initiating Party must produce evidence of a prima facie case, and (ii) if the Initiating Party produces evidence of a prima facie case, the arbitrators must find in favour of the Initiating Party unless the Other Party can produce evidence to the contrary.
- (g) The arbitration procedure shall follow the Rules of the Stockholm Chamber of Commerce. The arbitration shall be conducted in Brussels. The language of the arbitration shall be English. In the event of disagreement between the parties to the arbitration regarding the interpretation of the Commitments, the arbitrators shall inform the Commission and may seek the Commission's interpretation of the Commitments before finding in favour of any party to the arbitration. The Commission may, at any time, issue a submission during the arbitration procedure
- (h) The arbitration award shall, in addition to dealing with the merits of the claim, impose the fees and costs of the prevailing party upon the party that is unsuccessful.
- (i) Decisions of the arbitrators shall be final and binding on all persons submitting to arbitration.
- (j) Nothing in the above-described arbitration procedure shall affect the powers of the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation and the EC Treaty.

14.3 The parties shall report to the Commission any matters which the Commission reasonably requests in order to determine whether the parties have complied with the present commitments with regard to dispute resolution. Any such report shall be sent to the Commission within fifteen (15) working days from the date the Commission makes a request.