



EUROPEAN COMMISSION
DG Competition

***Case M.7784 - CF INDUSTRIES HOLDINGS / OCI
BUSINESS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 04/12/2015

***In electronic form on the EUR-Lex website under document
number 32015M7784***



Brussels, 04.12.2015
C(2015) 8895 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

**Subject: Case M.7784 – CF INDUSTRIES HOLDINGS / OCI BUSINESS
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹ and Article 57 of the Agreement on the European Economic
Area²**

- (1) On 30 October 2015, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking CF Industries Holdings, Inc. ("CF", the United States) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over OCI Business. (The Netherlands), by way of purchase of shares ("the Transaction"). CF is hereinafter referred to as "the Notifying Party" and CF and OCI Business are collectively designated as "the Parties".³

1. THE PARTIES

- (2) CF is active in the manufacturing and distribution of nitrogen fertilizers and other nitrogen-based products. It operates nitrogen manufacturing complexes in the United States, Canada and the United Kingdom, and distributes plant nutrients

¹ OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

² OJ L 1, 3.1.1994, p.3 ("the EEA Agreement").

³ Publication in the Official Journal of the European Union No C 370, 07.11.2015, p.5.

through terminals, warehouses, and associated transportation equipment located primarily in the United States.

- (3) OCI N.V is active in the manufacturing and distribution of nitrogen fertilizers, melamine , methanol and other natural gas-based chemical products.
- (4) OCI Business consists of OCI's activities in the manufacturing and supply of nitrogen fertilizers, melamine and methanol and trading and distribution of nitrogen fertilizers. It has manufacturing facilities in the United States and the Netherlands, and a global distribution network.

2. THE OPERATION AND THE CONCENTRATION

- (5) Pursuant to a Combination Agreement dated 6 August 2015, by and among CF, Holdco (a new holding company based in the United Kingdom, and constituted for the sole purpose of engaging in the operation contemplated by the Combination Agreement and without any further business activities), MergerCo (a wholly-owned subsidiary of Holdco) and OCI N.V, OCI N.V. will contribute its wholly owned subsidiaries carrying out the OCI Business to Holdco. MergerCo will then merge with and into CF, with CF surviving as a direct or indirectly subsidiary of Holdco. After completion of the Transaction CF will acquire sole control over OCI Business.
- (6) The Transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (CF: EUR 3 983 million, OCI Business: EUR [CONFIDENTIAL - OCI Business worldwide turnover] million).⁴ Each of them has an EU-wide turnover in excess of EUR 250 million (CF: EUR [CONFIDENTIAL – EU TURNOVER] million, OCI Business: EUR [CONFIDENTIAL - OCI Business eu turnover] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (8) The notified operation therefore has a Union dimension.

4. RELEVANT MARKETS AND COMPETITIVE ASSESSMENT

- (9) The Parties produce and distribute a number of nitrogen-based chemicals. These products are either sold as nitrogen-based fertilizers or further processed to produce other nitrogen-based fertilizers and chemicals. Certain chemical products (such as nitric acid and ammonia) are also used in non-agricultural applications.

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation.

- (10) More precisely, the Parties' activities overlap in the manufacturing and distribution of nitric acid, ammonia and nitrogen based fertilizers.⁵

4.1. Product market definitions

4.1.1. Nitric Acid

- (11) Nitric acid is a pale straw to colourless liquid with a strong odour, slightly viscous and mildly to highly corrosive depending on the acid concentration. Typical uses of nitric acid are in the manufacture of fertilizers, the production of intermediates for polyurethanes, of adipic acid, of dyestuffs and of explosives.
- (12) Nitric acid is produced and supplied in different concentrations: (i) *weak nitric acid* (with a concentration between 54% and 65%), which is mainly used for fertilizer production, surface treatment of metals and manufacture of cleaning agents; (ii) *azeotropic nitric acid* (with a concentration of approximately 68%), which is mainly employed for the production of isocyanates and adipic acid and (iii) *concentrated nitric acid* (with a concentration of 98% to 99%), which is used for the production of TDI polyurethanes, nitrocellulose, explosives, additives for diesel oil, and nitration reactions in general.
- (13) In previous decisions,⁶ the Commission defined separate product markets for each of the three types of nitric acids described above given the lack of demand side substitutability, each type of nitric acid having different applications and prices, and the very limited supply side substitutability.
- (14) The Notifying Party submits that a distinction can be made between the three types of nitric acid, although the product market definition can ultimately be left open.
- (15) In any event, the Commission considers that for the purposes of the present case, the exact definition of the market for nitric acid can be left open, as it does not ultimately influence the competitive assessment of the Transaction.

4.1.2. Ammonia

- (16) Ammonia comprises anhydrous ammonia and aqueous ammonia. Anhydrous ammonia is a gaseous material at ambient temperature that is refrigerated or compressed and stored as a liquid. It is manufactured by reacting nitrogen from the air with hydrogen in the presence of a catalyst at high temperature and high pressure. Aqueous ammonia is anhydrous ammonia dissolved in demineralised water, typically 25% of ammonia and 75% of water.

⁵ The Transaction also gives rise to vertical links between the nitrogen-based fertilizers production and (i) the upstream markets for the supply of ammonia and nitric acid as inputs for the manufacture of fertilizers and (ii) the downstream markets for fertilizer's distribution where CF is active at the retail level and OCI at the trading/wholesale level. However, these vertical relationships do not lead to any vertically affected market and therefore will not be further discussed in this decision.

⁶ Case No. COMP/M.4730 - Yara/Kemira Growhow, paras. 91 et seq; Case No COMP/M.6695 – Azoty Tarnów/ Zakłady Azotowe Puławy, paras. 26-29.

- (17) Ammonia can be used as an input for the production of nitrogen-based fertilizers,⁷ but also be sold directly as fertilizer (by injection in the soil) it in the soil as compressed gas) and for industrial applications. In the EEA, ammonia is sold almost exclusively for industrial purposes.⁸ For instance, ammonia can be sold for the manufacture of pharmaceuticals, dyes, plastics and man-made fibres, for heat treatment of metals, nitrogen-oxides (NO_x) abatement in industrial boilers and power plants, and as a refrigerant.
- (18) In a previous decision,⁹ the Commission defined distinct markets for anhydrous and aqueous ammonia in light of the low demand and supply-side substitutability between the two products.¹⁰ As to anhydrous ammonia, the Commission concluded that a further distinction could be made for ammonia for industrial purposes, generally supplied by trucks, and ammonia for fertilizer production, which is generally delivered in large quantities through an import terminal.
- (19) The Notifying Party is of the view that it is not necessary to conclude on the distinction between anhydrous and aqueous ammonia.
- (20) For the purposes of the present case, the Commission considers that the relevant product market definition for ammonia can be left open, since no serious doubts as to the compatibility of the Transaction with the internal market arise, whatever the product market definition.

4.1.3. *Nitrogen-based fertilizers*

- (21) Nitrogen is one of the primary plant nutrients which are needed in large quantities for agricultural applications as a fertilizer.¹¹
- (22) A distinction can be made between fertilizers in single nutrient form ("straight nitrogen") or in a complex form which may contain any combination of nitrogen, phosphorus and potassium. This combination may be achieved by chemical means ("compound fertilizers") or mechanically ("blended fertilizers"). There are various types of straight nitrogen fertilizers, which vary in their chemical composition, production mode and in particular in their content of nitrogen, such as ammonium nitrate (AN), calcium ammonium nitrate (CAN) and urea ammonium nitrate solution (UAN).
- (23) Another distinction can be made between "field" and "specialty" application. Field fertilizers, such as urea, AN and CAN, are spread on a field and diluted

⁷ World-wide, the large majority of ammonia is used captively by fertilizer producers. The Notifying Party submits that every major producer of nitrogen-based fertilizers has its own ammonia production capacity, due to its importance as an input.

⁸ The Notifying Party submits that there are no Union or national regulations that prohibit the sale of ammonia as a fertilizer, but ammonia is more suitable for very cold climates of e.g. Northern America where the soil and crops freeze during winter. Thus, the more temperate climate, crops and other agronomic factors in the EEA favor the use of other nitrogen fertilizers instead of ammonia. As a result, the use of ammonia as fertilizer for direct application in the EEA is negligible.

⁹ Case No COMP/M.4730 - Yara/ Kemira GrowHow, paras. 67-69.

¹⁰ Case No COMP/M.4730 - Yara/ Kemira GrowHow, paras. 74-75.

¹¹ Together with phosphorus and potassium.

progressively by rain or irrigation water. Specialty fertilizers, such as UAN, are fully water-soluble fertilizers that are manufactured to a high degree of purity.

- (24) In previous decisions,¹² the Commission has left open whether any sub-segmentation for nitrogen-based fertilizers, and in particular, a distinction between straight and compound/blended fertilizers, is appropriate. Moreover, the Commission has ultimately left open the questions of whether (i) field fertilizers are distinct from specialty fertilizers and (ii) different types of straight nitrogen-based fertilizers (e.g., urea, ammonia and UAN) constitute separate product markets.
- (25) The Notifying Party submits that all nitrogen based fertilizers should be considered part of a single product market, although the product market definition can be left open.
- (26) For the purpose of present case, the relevant product market definition for nitrogen based fertilisers can be left open, since no serious doubts as to the compatibility of the Transaction arise, whatever the product market definition.

4.2. Geographic market definitions

4.2.1. Nitric Acid

- (27) In previous decisions,¹³ the Commission left the relevant geographic market definition for weak nitric acid open, but noted that several factors pointed to the existence of national or regional (supra-national) geographic markets.
- (28) The Parties's activities only overlap in relation to weak nitric acid. In case of a national market definition, their activities only overlap in Ireland. The Notifying Party submits that the market for weak nitric acid is wider than national and covers the broader Western European region. According to the Notifying Party, this is demonstrated by the fact that there is no production of nitric acid in Ireland, and consequently Irish customers source their needs from imports, which therefore represent 100% of national demand.
- (29) Moreover, the Notifying Party claims that nitric acid is a commoditized product; imports are not subject to tariffs, marketing authorizations or any other special regulations and that a number of producers (among which Azelis, Borealis, Eurochem, Ineos and Yara), with facilities located across Western Europe import or have the capacity to import their product into Western European countries, including Ireland.
- (30) The Notifying Party further submits that in any event, the relevant geographic market definition can be left open because the Transaction does not raise any competitive concerns with regard to the production and sale of nitric acid.

¹² Case No. COMP/M.4730 - Yara/Kemira Growhow, paras. 14-1; .see also Case No IV/M.769 – Norsk Hydro /Arnyca; Case No COMP/M.2524 –Hydro/SQM/ROTEM/JY.

¹³ Cases No. COMP/M.4730 - Yara/Kemira Growhow, paras. 91 et seq and COMP/M.6695 – Azoty Tarnów/ Zakłady Azotowe Puławy, paras. 30 et seq.

- (31) The market investigation investigation revealed that weak nitric acid are usually transported by ship, truck or rail to industrial customers. Transportation costs are high and the distance over which the products can be transported varies depending on the region and transport infrastructure.
- (32) As to the situation in Ireland, the market investigation showed that currently there is no production of nitric acid in the country (following the closing down, about ten years ago, of a chemical company which was producing nitric acid in Ireland) and consequently all volumes are contracted, either directly or through distributors, from abroad, mainly from the United Kingdom and the Continental EEA (Belgium, Denmark, the Netherlands, Luxembourg, Austria, Finland, Norway and Sweden). The lack of local production does however not provide conclusive evidence regarding the scope of the geographic market.
- (33) Transport costs play therefore an important part of the product's final costs. Based on the prices with and without transport costs charged by the Parties to Irish customers in 2014, transportation costs represent approximately [30-60]% of final price. According to market participants, travel costs for volumes coming from the Continental EEA are estimated to be around 15% higher due to the extra ferry, or Channel Tunnel crossing.¹⁴
- (34) As a result, customers in Ireland try to reduce the distance their nitric acid supplies will have to travel, while competitors in the Continental EEA do not actively try to come into the market, since the economics and the high transport costs are not interesting commercially. It has to be noted, however, that the market investigation confirmed that there are no administrative or regulatory barriers to entry for nitric acid, which can be traded and transported without any restrictions within the EEA.
- (35) In the light of the results of the market investigation, whether in the present case the relevant geographical market for weak nitric acid is national or wider can be left open since the Transaction would not give raise to serious doubts as to its compatibility with the internal market under the narrowest possible geographical market, which is national.

4.2.2. *Ammonia*

- (36) For anhydrous ammonia, the Commission has in the past found that, whilst the supply of large quantities (to the fertilizer industry for example) is global as the product can be shipped worldwide in large vessels, the geographic scope of the market of anhydrous ammonia for smaller industrial customers comprised a region narrower than the EEA. In a previous case, the Commission considered North Western Europe, comprising of France, Germany, Denmark, Belgium, the Netherlands and Luxembourg as the relevant geographical market due to the intense transportation infrastructure in that area.¹⁵

¹⁴ See minutes of teleconference with [CONFIDENTIAL – NAME OF CF CUSTOMER] (of November 4, 2015) and [CONFIDENTIAL – NAME OF CF CUSTOMER] of November 4, 2015).

¹⁵ Case No COMP/M.4730 - Yara/ Kemira GrowHow, para. 70.

- (37) As to aqueous ammonia, which is mainly delivered to customers by truck, the Commission left open the precise market definition, even though its market investigation supported North Western Europe as a relevant geographic market.¹⁶
- (38) The Notifying Party is of the view that the precise geographic scope of the market for ammonia does not need to be defined for the purpose of assessing the Transaction.
- (39) In the light of the outcome of the market investigation, the relevant geographic market definition for ammonia can be left open in the present case, since no competition concerns arise, whatever the geographic market definition.

4.2.3. *Nitrogen-based fertilizers*

- (40) In previous decisions concerning nitrogen fertilizers, the Commission found that the relevant geographic market is at least EEA-wide and possibly wider in scope, given that nitrogen-containing fertilizers are largely traded at global level¹⁷ and levels of imports into the EEA are high.¹⁸
- (41) The Notifying Party submits that all nitrogen fertilizer product segments are global in scope, but it is not necessary to define the precise scope of the geographic market, since the transaction does not raise any competitive concerns.
- (42) In this case, the relevant geographic market definition for nitrogen based fertilizers can be left open, since no serious doubts as to the compatibility of the Transaction with the internal market arise, whatever the geographic market definition.

4.3. **Competitive assessment**

4.3.1. *Nitric Acid*

- (43) For the manufacturing and distribution of weak nitric acid, and depending on the geographical market definition, the Parties' activities overlap in Ireland, in case of a national market definition and in North Western Europe, in case of a wider, (supra-national) regional .
- (44) The Notifying Party submits that nitric acid is an intermediate product, and most of it is used captively in the production of other chemicals. Therefore, there is very little trade of nitric acid and market data available in relation to the open market.

¹⁶ in light of the transportation costs, the significant trade flows between the northwestern European countries due to a dense transportation infrastructure, and a high concentration of both producers and consumers (see Case No COMP/M.4730 - Yara/ Kemira GrowHow, para. 76).

¹⁷ Case No. COMP/M.6695 - Azoty Tarnów/Zakłady Azotowe Puławy, paras. 21-23. There are no significant regulatory limitations.

¹⁸ Case No COMP/M.4730 - Yara/ Kemira GrowHow, para. 21. In 2007 imports into the EEA amounted to 10% for N-based fertilizers. In *Hydro/SQM/Rotem/JV* and *Yara/Kemira GrowHow* the Commission alluded to a geographic dimension that was narrower than the EEA for liquid fertilizers, see Case COMP/M.2524 *Hydro/SQM/Rotem/JV*, para. 20, and Case No COMP/M.4730 - Yara/ Kemira GrowHow, para. 42.

- (45) Based on available data, the Parties' combined market share for weak nitric acid within North Western Europe¹⁹ would amount to [10-20]% (CF: [10-20]%, OCI Business: [0-5]%).²⁰
- (46) The Notifying Party submits that the Parties are not able to provide market data and shares estimates for Ireland where CF sold [CONFIDENTIAL – VOLUME OF SALES] mt and OCI Business [CONFIDENTIAL – VOLUME OF SALES] mt (out of [CONFIDENTIAL – VOLUME OF SALES] mt sold in the EEA in 2014). The Notifying Party, however, stresses that other competitors sell or have the ability to sell into Ireland (for example, Azelis and Yara).
- (47) In any event, the market investigation also revealed that the Transaction will not give rise to competitive concerns for the supply of weak nitric acid in Ireland, the only EEA country where both Parties were active in 2014.
- (48) First, during the market investigation, it became apparent that the biggest challenge Irish consumers of weak nitric acid face is the absence of a local producer, which is unrelated to the Transaction. Indeed, there was one such producer, who was supplying the majority of the Irish demand, but stopped operating more than a decade ago. Following that, some consumers turned to the nearest available sources located in the United Kingdom, and in particular GrowHow's (now CF's) plant in Billingham.²¹
- (49) Second, OCI's activities in Ireland are limited to the supply to one distributor. Indeed, following the closure of the Irish chemical producer's plant in 2004, only one customer, which already had commercial relationships with OCI on other products, started sourcing its weak nitric acid from OCI. Since then and up to date, this distributor of chemicals has been the only Irish customer of OCI. In 2014, OCI's sales to this customer represented less than 1% of OCI's weak nitric acid sales, the remaining 99% being sold in the Netherlands.
- (50) OCI is not therefore a close competitor of CF for the supply of weak nitric acid in Ireland. Other suppliers of nitric acid having facilities in the United Kingdom, where CF sells the majority of its weak nitric acid production, like Azelia and Ineos, are closer competitors to CF.
- (51) Third, the market investigation revealed that if CF was to raise prices post-Transaction, customers would look for alternative sources of supply coming from the Continental EEA, including in particular Yara which owns a plant in the Netherlands, where OCI's plant is located. Nitric acid is perceived by market participants as a commoditized product for which there is no regulatory barriers that could prevent a supplier active in Continental EEA from entering the Irish market.

¹⁹ North Western Europe includes France, Germany, Belgium, Denmark, the Netherlands, Luxembourg, Austria, Finland, Norway, Sweden, the United Kingdom and Ireland.

²⁰ This market share includes CF's sales to Huntsman linked the remedy obligation in Case No. COMP/M.4730 - *Yara/Kemira Growhow*. Without taking into account these sales, CF's market share was estimated at [0-5]% in 2014.

²¹ See minutes of teleconference with [CONFIDENTIAL – NAME OF CF CUSTOMER] (of November 4, 2015) and [CONFIDENTIAL – NAME OF CF CUSTOMER] of November 4, 2015).

- (52) Finally, if customers highlighted during the market investigation that few players are actually supplying weak nitric acid into Ireland, they did not express any concerns as to the impact of the Transaction, combining CF and OCI's plants, on this market.
- (53) In the light of the above and in view of the information available to it and the outcome of the market investigation, the Commission concludes that the examined horizontal overlap does not give rise to serious doubts as to the compatibility of the Transaction with the internal market for weak nitric acid, in particular in Ireland.

4.3.2. *Ammonia*

- (54) The Parties' activities overlap in the manufacturing and supply of both anhydrous and aqueous ammonia.
- (55) For anhydrous ammonia,²² the combined market share of the Parties is [10-20]% at worldwide level (CF: [10-20]% and OCI Business: [0-5]%) in terms of volume and value, [10-20]% in the EEA (CF: [5-10]% and OCI Business: [10-20]%) both in terms of volume and value and [20-30]% in North Western Europe in terms of capacity.²³
- (56) The Parties' main competitors are among others Yara ([5-10]% in value and volume at global level, [10-20]% in value and volume in the EEA and [30-40]% in capacity in North Western Europe), Grupa Azoty ([0-5]% in value and volume in the EEA) and Borealis ([10-20]% in capacity in North Western Europe).
- (57) For aqueous ammonia, the combined share of the Parties is around [5-10]% in the EEA in terms of volume (with an increment of [0-5]%)²⁴, while in North Western Europe, it is below 20%.²⁵ Strong competitors are present on this market, such as Yara which is leading the market with [40-50]% of market share in the EEA, followed by BASF ([10-20]%).
- (58) In the light of the outcome of the market investigation and mainly in view of the low overall market share and increment and the existence of strong competitors at the EEA and Western Europe levels, the Commission concludes that the examined horizontal overlap does not give rise to serious doubts as to the compatibility of the Transaction with the internal market for the supply of anhydrous and aqueous ammonia, under any product market definition.

4.3.3. *Nitrogen-based fertilizers*

- (59) If the narrowest possible segmentation of nitrogen-based fertilizers is considered,, the Parties' activities overlap with respect to manufacturing of UAN.

²² The Parties submit that, in the EEA, anhydrous ammonia is solely used for industrial purposes.

²³ The market data provided are based on 2014 figures. As to North Western Europe, the Parties' were not able to provide market shares data in volume and value, nor at national level. However, the Parties confirmed that their combined market shares would in any event be lower or just over 20%.

²⁴ The Parties were not able to provide market data in value but submitted that it would not materially differ from market share in volume.

²⁵ The market share of OCI Business is estimated at [10-20]%.

- (60) At world-wide level, the combined market shares of the Parties are [20-30]% (CF: [20-30]%, OCI Business: [0-5]%) in volume and [30-40]% (CF: [30-40]%, OCI Business: [0-5]%) in value. A number of competitors will remain post-Transaction, such as Yara ([5-10]%), MHTP ([5-10]%) and PotaschCorp ([5-10]%). Also, it should be noted that OCI Business does not have sales outside the EEA.
- (61) In the EEA, the combined market shares of the Parties are [10-20]% (CF: [0-5]%, OCI Business: [5-10]%) in terms of volume and [10-20]% (CF: [0-5]%, OCI Business: [5-10]%) in terms of value. Yara is market leader with market shares of [20-30]% and [20-30]% respectively, while Achema is third with market shares similar to those of the Parties post-Transaction.
- (62) Given the low overall combined market shares and increment, in particular in the EEA, as well as the competitive landscape, the Commission concludes that the examined horizontal overlap does not give rise to serious doubts as to the compatibility of the Transaction with the internal market for nitrogen based fertilizers and in particular UAN.

5. CONCLUSION

- (63) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission
(Signed)*

*Margrethe VESTAGER
Member of the Commission*