



EUROPEAN COMMISSION  
DG Competition

***Case M.8435 –  
FMC/DUPONT  
DIVESTMENT BUSINESS***

Only the English text is available and authentic.

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

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Decision on the implementation of commitments - Purchaser  
approval  
Date: 22.12.2017



## EUROPEAN COMMISSION

Brussels, 22.12.2017  
C(2017) 9159 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**To the notifying party**

Dear Sir/Madam,

**Subject: Case M.8435 – FMC/DuPont Divestment Business  
Approval of Nufarm Limited as purchaser of the Divestment Business relating to certain crop protection assets and business activities of FMC Corporation, following your letter of 15 November 2017 and the Trustee's opinion of 22 November 2017**

### FACTS AND PROCEDURE

1. By decision of 27 July 2017 (the "Decision") based on Article 6(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings<sup>1</sup> (the "Merger Regulation"), the Commission declared the merger between FMC Corporation ("FMC") and assets of E.I. du Pont de Nemours and Company (the "DuPont Divestment Business") compatible with the internal market subject to full compliance with the commitments submitted by FMC, which were annexed to the Decision (the "Commitments").
2. In particular, pursuant to the Decision, the Commitments provide that in order to address serious doubts raised by the combination of FMC's and the DuPont Divestment Business' activities in certain cereal herbicide markets, FMC would divest its sulfonylurea and florasulam businesses in the EEA through exclusive licences to thifensulfuron-ethyl, tribenuron-ethyl, metsulfuron-ethyl and florasulam – including mixtures with other active ingredients – and the necessary personnel to run these businesses (the "Divestment Business").

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<sup>1</sup> OJ L 24, 29.01.2004, p. 1. 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.

3. Against this background, by letter of 15 November 2017 to the Commission, FMC proposed Nufarm Limited ("Nufarm" or the "Proposed Purchaser" and, together with FMC, the "Parties") for approval by the Commission, as purchaser of the Divestment Business, and submitted the proposed Umbrella Agreement and related agreements (the "Proposed Agreements"), which were eventually entered into on 8 November 2017 (hereinafter the "Transaction").
4. On 22 November 2017, the monitoring trustee supervising the implementation of the Commitments, Advolis (the "Trustee"), separately submitted an assessment of Nufarm's suitability as a purchaser (the "Reasoned Opinion"). In particular, the Trustee indicated that Nufarm fulfils the criteria of the purchaser requirements in paragraph 16 of the Commitments. In this assessment, the Trustee also indicated that, on the basis of the Proposed Agreement, the Divestment Business would be sold in a manner consistent with the Commitments.

## **ASSESSMENT OF THE PROPOSAL**

### **Legal framework**

5. Pursuant to paragraph 17 of the Commitments, the Commission has to verify that the purchaser fulfils the purchaser criteria and that the Divestment Business is being sold in a manner consistent with the Commitments.
6. According to paragraph 16 of the Commitments, in its assessment of the Proposed Purchaser, the Commission should ensure in particular that:
  - a. The purchaser is independent from and unconnected to the Parties and their affiliated undertakings.
  - b. The purchaser has the financial resources, proven expertise and incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
  - c. The acquisition of the Divestment Business by the purchaser must neither be likely to create, in 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. In particular, the purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

### **Description of the Proposed Purchaser**

7. Nufarm is an Australian company active in the supply of crop protection products and seed technology.
8. With global sales of approximately AUD 3 111 million (EUR 2 200 million), Nufarm is the ninth largest crop protection company worldwide and has operations in the Americas, Asia, Australia, Europe and New Zealand.

### **Independence from the Parties**

9. Pursuant to paragraph 16 (a) of the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent from and unconnected to the Parties and their affiliated undertakings.

10. According to the information provided by FMC and the Trustee, there are no joint-ventures in which FMC and Nufarm participate, and Nufarm can be considered to be independent from and unconnected to FMC in terms of investments and ownership. FMC does not share any executive and non-executive directors with Nufarm.
11. Moreover, the Trustee considers that pre-existing commercial relationships in place between FMC and Nufarm should not impede the independence of Nufarm from FMC because they are not material and have been concluded in line with industry practice.
12. On the basis of the information provided by FMC and taking into account the Reasoned Opinion submitted by the Trustee, the Commission considers that Nufarm is, and will continue to be post-Transaction, independent and unconnected to the Parties and their affiliated undertakings.

**Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor**

13. Pursuant to paragraph 16 (b) of the Commitments, in order to be approved by the Commission, a suitable purchaser must have the financial resources, proven expertise and the incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.
14. Nufarm has significant financial resources, In 2016, it achieved total sales of approximately AUD 3 111 million (EUR 2 200 million) with an EBITDA of AUD 390 million (EUR 270 million). This compares to a purchase price of approximately USD 90 million for the Divestment Business.
15. In terms of proven expertise, Nufarm is an established crop protection player with a long history and strong expertise. It further has developed experience in managing acquisitions in the agrochemicals sector, through its acquisition of F&N Agro Polska. The Trustee considers that Nufarm will be able to manage the integration of the Divestment Business within Nufarm's existing portfolio.
16. In terms of incentives, the Trustee indicates that Nufarm through the acquisition of the Divestment Business will be able to extend its herbicide range of products with a complementary portfolio and to expand its footprint in Europe. Moreover, the Trustee considers that the acquisition of the Divestment Business is an important milestone for Nufarm and will allow it to grow its European business.
17. On the basis of the information provided by FMC and taking into account the Reasoned Opinion submitted by the Trustee, the Commission considers that Nufarm has sufficient financial resources, proven expertise and the incentives to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.

**Absence of *prima facie* competition problems**

18. Pursuant to paragraph 16 (c) of the Commitments, the acquisition of the Divestment Business by the Purchaser must neither be likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be

expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

19. In the present case, the Transaction gives rise to horizontal overlaps in the markets for cereal post-emergence broadleaf herbicides in several EEA Member States. However, the Parties' combined shares are well below 20% in all Member States, with the exception of Greece where they hold a combined share of [20-30]% but with a limited market share addition (Nufarm [0-5]% and Divestment Business [20-30]%). Moreover, the Parties face several other competitors in Greece which are active in the sale of cereal post-emergence broadleaf herbicides. The Transaction does not trigger merger control filings anywhere in the world.
20. On the basis of the above and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the acquisition of the Divestment Business by Nufarm does not create *prima facie* competition concerns, nor does it give rise to a risk that the implementation of the Commitments will be delayed.

### **Conclusion on the purchaser criteria**

21. In light of the above considerations, taking into account the Reasoned Opinion submitted by the Trustee, and taking into account the information available to it, the Commission concludes that Nufarm meets the purchaser criteria set out in paragraph 16 of the Commitments.
22. This assessment is based on the information available to the Commission for the purpose of the present buyer approval decision and is without prejudice to the review of the acquisition of the Divestment Business by Nufarm under the applicable merger control rules, if any.

### **ASSESSMENT OF THE TRANSACTION DOCUMENTS**

23. The Proposed Agreements comprise: [...].
24. The Trustee reviewed the Proposed Agreements and confirmed that they fulfil the condition of the Commitments to transfer the Divestment Business to a Suitable Purchaser. In general, the Trustee considered that the terms of the Proposed Agreements reflect FMC's obligations set out in the Commitments.
25. The Trustee also identified two modifications from the Commitments: (i) the extension of the non-compete clause from two years as foreseen in the Commitments to three years; and (ii) the transfer of customer lists and other records for the past three years instead of the five foreseen in the Commitments due to FMC's inability to retrieve older records.<sup>2</sup>
26. The Commission considers that these two points do not affect the viability of the Divestment Business going forward. The Commission also finds, for the first issue, that, in light of the general characteristics of the industry as well as of the time needed to develop products and in particular for Nufarm to integrate the

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<sup>2</sup> The Parties confirmed [...] that FMC is entitled to sell formulations of florasulam – one of the active ingredients included in the Divestment Business – in co-packs with other products in Europe only insofar as the bottles containing the individual components are fused together so that they cannot be separated.

Divestment Business, such an extension – agreed in negotiations between Nufarm and FMC – is proportionate, in this particular case, to ensure the viability and competitiveness of the Divestment Business.

27. In light of the above considerations and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that the Proposed Agreements are consistent with the Commitments and that, accordingly, the Divestment Business is being sold in a manner consistent with the Commitments.

## **CONCLUSION**

28. On the basis of the above assessment, the Commission approves Nufarm as a suitable purchaser of the Divestment Business.
29. Moreover, on the basis of the Proposed Agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
30. This decision only constitutes approval of the Proposed Purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that FMC has complied with the Commitments.
31. This decision is based on paragraph 17 of the Commitments attached to the Commission Decision of 27 July 2017.

*For the Commission*

*(Signed)*  
*Johannes LAITENBERGER*  
*Director-General*