



EUROPEAN COMMISSION
DG Competition

Case M.8725 - NUFARM / CENTURY

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 06/03/2018

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

**Subject: Case M.8725 - Nufarm/Century
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**

Dear Sir or Madam,

- (1) On 30 January 2018, the Commission received notification of a proposed concentration ('the Transaction') pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004³ by which Nufarm Europe GmbH, controlled by Nufarm Ltd ('Nufarm', Australia), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of a portfolio of crop protection products in the EEA ('Century' or the 'Target') from Adama Agricultural Solutions Ltd. ('Adama', Israel) and Syngenta AG ('Syngenta', Switzerland) by way of purchase of assets.⁴ Adama and Syngenta are wholly-owned subsidiaries of China National Agrochemical Corporation ('CNAC'), which is itself a subsidiary of ChemChina, a Chinese State-owned company. Nufarm is hereinafter referred to as the 'Notifying Party'. Nufarm and Century are jointly referred to as the 'Parties'.

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 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').

⁴ Publication in the Official Journal of the European Union No C 45, 7.2.2018, p. 4.

1. THE PARTIES AND THE OPERATION

- (2) Nufarm is an Australian-based public company founded in 1957 that offers products in the areas of crop protection including herbicides, insecticides, fungicides, and seed technologies. Nufarm operates primarily in the off-patent segment of the crop protection market, which consists of products based on active ingredients ('AIs') for which the patent has expired.
- (3) Century is divested as part of the commitments offered by ChemChina to the Commission to approve the acquisition of Syngenta in Case M.7962 – *ChemChina/Syngenta*. Century comprises a portfolio of crop protection products including herbicides, fungicides, insecticides, seed treatment products, and plant growth regulators ('PGRs'). It includes the rights to a number of crop protection product registrations on specific geographies in the EEA, pipeline registrations and intellectual property rights related to these product registrations and necessary to maintain such registrations and continue selling and manufacturing these products. Nufarm would also be granted an irrevocable, exclusive, transferable, royalty-free license, to obtain access and to use the product registration data relating to the products and lead AI data.
- (4) On 24 October 2017, Nufarm entered into two Asset Purchase and Sale Agreements, one with Adama and one with Syngenta, pursuant to which Nufarm is to acquire sole control of Century. The agreements include as annexes a Trademark Assignment Agreement and a Transition Supply Agreement. The Syngenta Asset Purchase and Sale Agreement additionally includes a Trademark License Agreement.
- (5) The Target includes all assets and registrations necessary to run a crop protection business and achieve turnover in this sector. Thus, the Target constitutes an undertaking or part of an undertaking within the meaning of the Merger Regulation.
- (6) Accordingly, the Transaction constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

2. EU DIMENSION

- (7) The Transaction does not have a Union dimension within the meaning of Article 1 of the Merger Regulation, since the combined aggregate worldwide turnover of the Parties does not reach EUR 2,500 million
- (8) On 5 December 2017 the Notifying Party informed the Commission in a reasoned submission that the Transaction was capable of being reviewed under the national competition laws of five Member States (Germany, Poland, Portugal, Romania and Spain) and requested the Commission to examine the Transaction. None of the Member States that were competent to review the Transaction indicated its disagreement with the request for referral within the period laid down by the Merger Regulation
- (9) The Transaction is therefore deemed to have an EU dimension in accordance with Article 4(5) of the Merger Regulation.

3. RELEVANT MARKET DEFINITION

- (10) The Transaction concerns two types of chemical products for agricultural use, namely AIs and crop protection products (the latter also known as "formulated products"). AIs and crop protection products are used for application in agricultural production in order to protect a crop from biological organisms (pests) that can negatively affect the crop development, either by attacking it or by depriving the crop of its resources.
- (11) Both Parties are active in the supply of generic crop protection products in the EEA. In addition, Nufarm (but not Century) is also active in the supply of AIs in the EEA.⁵

3.1. Relevant product markets

3.1.1. AIs

- (12) AIs are key components of crop protection products, which produce the desired biological effect, i.e. killing a pest or making it inoffensive. They are used as an input by manufacturers of crop protection products to manufacture those products.
- (13) In previous cases⁶, the Commission found that from an end-user/farmer's point of view there may be a certain degree of substitutability among different groups of AIs, which for instance are able to address the same pest for a given crop. Nonetheless, the Commission noted that from a direct demand perspective there is no substitutability across different AIs for crop protection product manufacturers. This is because each crop protection manufacturer can only rely on a specific AI for the production of its registered crop protection product. Indeed, each crop protection product registration authorizes the use of specific AIs, which cannot be substituted or changed unless a new product registration application is filed. Therefore, the Commission considered each AI as a distinct product market.
- (14) In the present case, there is no reason to depart from the well-established decisional practice described above. Therefore, the Commission will consider each AI as a distinct product market.

3.1.2. Crop protection products

- (15) Crop protection products are composed of one or more AIs mixed with inactive ingredients such as solvents, fillers, and adjuvants. These ingredients aim at making the AIs more stable, effective, safer, or easier to apply. Manufacturers of crop protection products supply those products to distributors or directly to end users, i.e. farmers.
- (16) Depending on the type of organism they target, crop protection products can be categorised into four sectors, including herbicides (to control weeds), insecticides (to control insects), fungicides (to control diseases triggered by

⁵ The AIs supplied by Nufarm are only off-patent AIs, meaning that it only supplies AIs discovered or developed by other companies.

⁶ See e.g. M.7962 – ChemChina/Syngenta, paras 101-102.

fungi), as well as other products such as PGRs. Some crop protection products can also be applied on seeds to protect them from insects and diseases (seed treatment products). The types of crops on which crop protection products can be applied include, among others, cereals, corn, vegetables and fruits.

3.1.2.1. Herbicides

- (17) Herbicides are crop protection products that control weeds. In previous cases⁷, the Commission has considered a distinction between (i) selective herbicides and (ii) non-selective herbicides. Non-selective herbicides are defined as crop protection products designed to tackle weeds after the harvest of any crop and prior to the sowing of the next. In contrast, selective herbicides are created to kill only the weeds while leaving intact the crop to which they are applied.⁸
- (18) In addition, within selective herbicides, the Commission has concluded that the different types of crops constitute relevant segmentations. Within selective herbicides for cereals, the Commission has considered that a distinction among wheat herbicides, barley herbicides, and "other cereal" herbicides is appropriate. This conclusion is based on the principle that each farmer has specific needs for its crop/pest combinations that can only be met by selective herbicides products which will target and be effective on its specific crop.⁹
- (19) In previous decisions¹⁰, the Commission also concluded on a further distinction between the following selective herbicides: (i) broadleaf weed herbicides, (ii) graminicides (control of grass weeds) and (iii) broad spectrum herbicides (products active against both grass weeds and broadleaf weeds). Indeed, if a farmer faces harmful grass weeds or broadleaf weeds in his crop fields, he needs to use herbicides capable of controlling these particular weeds. Moreover, the Commission considered a distinction within selective herbicides based on the stage of application, notably between (ii) pre-emergence and (iii) post-emergence herbicides.¹¹ Pre-emergence herbicides are applied to a target crop before it has germinated whereas post-emergence herbicides are applied after germination.
- (20) In the present case, there is no reason to depart from the decisional practice described above. Therefore, the relevant product markets to retain for the competitive analysis of the Transaction are: selective herbicides segmented by specific crop, by specific weed targeted and by timing of their application.

3.1.2.2. Fungicides

- (21) Fungicides prevent deterioration of plants and plant products from fungi and moulds before and after harvesting.

⁷ See M.6141 – China National Agrochemical Corporation/Koor Industries/Makhteshim Agan Industries, para 21 and M.7962 – ChemChina/Syngenta, para 111.

⁸ The Transaction does not give rise to any horizontal overlaps or vertical links in the area of non-selective herbicides in the EEA as Century is not active either in the supply of AIs for non-selective herbicides or in the supply of non-selective herbicides in the EEA.

⁹ See M.7962 – ChemChina/Syngenta, para 114.

¹⁰ See M.7962 – ChemChina/Syngenta, para 115.

¹¹ Ibidem.

- (22) Similarly as for herbicides, in some previous cases, the Commission considered segmentations of each fungicide market by type of crop. Moreover, the Commission proposed a further split for cereals, notably into wheat, barley, and other cereals.¹²
- (23) Furthermore, previous Commission decisions found further possible distinctions by reference to particular diseases relevant for each crop. For instance, the Commission noted that distinctions could be made between fungicides against powdery mildew, fusarium, rusts, eyespot and septoria.¹³
- (24) In the present case, there is no reason to depart from the decisional practice described above. Therefore, the relevant product markets to retain for the competitive analysis of the Transaction are: fungicides segmented by specific crop and by specific disease targeted.

3.1.2.3. Insecticides

- (25) Insecticides are crop protection products aimed at killing or suppressing insects so as to promote plant growth and improve crop yields.
- (26) In previous cases, the Commission found that the relevant product markets for insecticides should be defined by crop and subdivided into products for foliar or soil application.¹⁴ Moreover, similarly as for herbicides and fungicides, the Commission distinguished between wheat insecticides, barley insecticides, and “other cereal” insecticides. Furthermore, the Commission also considered that it was relevant to distinguish insecticides according to the type of pest, namely between chewing or sucking pests, notably to ensure the effectiveness of the product.¹⁵
- (27) In the present case, there is no reason to depart from the decisional practice described above. Therefore, the relevant product markets to retain for the competitive analysis of the Transaction are: insecticides segmented by specific crop, per foliar and soil application and per type of pest.

3.1.2.4. PGRs

- (28) Plant growth regulators are agrochemical products that inhibit, stimulate or modify plant growth and development.
- (29) In previous cases, the Commission has found that plant growth regulators for individual crops form separate relevant product markets.¹⁶ In the present case, there is no reason to depart from this decisional practice. Therefore, the relevant product markets to retain for the competitive analysis of the Transaction are PGRs segmented by specific crop.

¹² See M.7962 – ChemChina/Syngenta, para 130.

¹³ See M.7962 – ChemChina/Syngenta, para.127.

¹⁴ See M.7962 – ChemChina/Syngenta, para. 122.

¹⁵ Ibidem.

¹⁶ See M.7962 – ChemChina/Syngenta, para. 138.

3.1.2.5. Seed treatment formulations

- (30) Seed treatment is the so-called dressing of seeds with specific crop protection formulations to protect them at early stages of their development. Seed treatment formulations consist of either fungicides or insecticides or a combination of both, and additional chemical substances such as additives, polymers, anti-freezing agents, dyes or pigments.
- (31) In previous cases, the Commission found that seed treatment formulations constitute a separate product market, rather than a particular application of insecticides and fungicides.¹⁷ Moreover, it found that seed treatment formulations may be further segmented into insecticides and fungicides and that these two segments may be sub-segmented by crop.¹⁸
- (32) In the present case, there is no reason to depart from this decisional practice. Therefore, the relevant product markets to retain for the competitive analysis of the Transaction are: seed treatment formulations segmented by specific crop and by pest (i.e. insecticides or fungicides).

3.2. Relevant geographic markets

3.2.1. Active ingredients

- (33) In its past decisions, the Commission has considered the relevant geographic market for AIs to be at least EEA-wide, if not worldwide. This is because these AIs can be produced anywhere in the world and are sourced in relation to the production plants of the various crop protection products manufacturers, which might be located both within and outside the EEA¹⁹ In the present case, the same geographic dimensions will be retained.

3.2.2. Crop protection products

- (34) In its past decisions, the Commission found that the relevant geographic markets for crop protection products (herbicides, fungicides, insecticides, PGRs, seed treatment formulations, including their respective segmentations) are national in scope. This is partly because although AIs are approved at EU level,²⁰ formulated crop protection products need to be authorised by each Member State. Moreover, these products are labelled and branded differently on the basis of the country in which they are being commercialized. Furthermore, in past decisions, the Commission took into account the fact that distribution is organized on a national basis, with suppliers having in most cases national sales organizations or distributing via the sales organization of another manufacturer operating in the relevant Member State.²¹

¹⁷ See M.7962 – ChemChina/Syngenta, para 140.

¹⁸ See M.7962 – ChemChina/Syngenta, para 140.

¹⁹ See M.7962 – ChemChina/Syngenta, para 166.

²⁰ Before an AI can be used in crop protection products sold to farmers in the EEA the AI must have been approved by the Commission, upon the advice of the European Food Safety Authority ("EFSA").

²¹ See M.7962 – ChemChina/Syngenta, paras 172-173.

- (35) In the present case, there is no reason to depart from the decisional practice described above. Therefore, the markets for herbicides, fungicides, insecticides, PGRs and seed treatment formulations (including their respective segmentations) are considered national in scope.

4. COMPETITIVE ASSESSMENT

- (36) On the basis of the relevant markets defined in Section 3, the Transaction leads to horizontal overlaps in a number of national markets for fungicides, herbicides, insecticides, PGRs and seed treatment formulations in particular as regards cereals, oilseed rape, corn, fruit, vegetables and sunflower.²² The Transaction also leads to vertical links between the upstream supply of AIs by Nufarm and the downstream activities of the Parties in the supply of crop protection products.

4.1. Horizontal overlaps

- (37) The Commission's competitive assessment has been focused on the narrowest segmentation for which data is available, that is, the Crop/Sector²³/Segment/Sub-segment level.
- (38) Overall, based on the data submitted by the Notifying Party for 2016 and 2015 at the level of Crop/Sector/Segment/Sub-segment, the Commission has identified a total of 246 markets where both Parties are present. Out of those markets, 43 are horizontally affected markets in that the Parties' combined market share is 20%²⁴ or higher, involving 12 different Member States.²⁵
- (39) Furthermore, the Commission has assessed in more detail some markets for herbicides for corn, which were not affected in 2015 and 2016 but could become affected in the foreseeable future because both Century and Nufarm have some pipeline products in this area. These markets will be discussed further in the Section 4.1.2.1.

4.1.1. Cereals

- (40) In the area of cereals, 22 markets will be horizontally affected as a result of the Transaction, namely: (i) three markets in selective herbicides, (ii) four markets in fungicides, (iii) two markets in insecticides, (iv) ten markets in PGRs and (v) three markets in seed treatment formulations.

²² The Transaction does not give rise to any horizontally affected markets as regards the supply of AIs.

²³ "Sectors" include insecticides, fungicides, selective herbicides, PGRs and seed treatment formulations.

²⁴ Unless specified otherwise, market shares provided in this section are for 2016 and are expressed in value. The Parties were unable to provide 2017 data.

²⁵ On 22 December 2017, Nufarm has been approved by the Commission as a suitable purchaser of certain assets which FMC has to divest following the Commission's decision in case M.8435 – FMC/DuPont Divestment Business. These assets include herbicides used to control broadleaf weeds in cereal crops. The market shares provided by the Notifying Party take into account these assets by attributing them to Nufarm.

4.1.1.1. Selective herbicides for cereals

- (41) As regards selective herbicides for cereals, the Transaction would lead to three affected markets for broadleaf weed post-emergence selective herbicides for particular types of cereals, of which two in Spain and one in Portugal.
- (42) In the market for selective herbicides for barley, broadleaf, post-emergence, in Portugal, the Parties would hold a combined market share of [20-30]% (Nufarm: [5-10]%, Century: [10-20]%) and would face competition from Dow-DuPont with a higher share ([20-30]%) and Sapec ([20-30]%).
- (43) In the market for selective herbicides for wheat, broadleaf, post-emergence, in Spain, the Parties would hold a combined share of [30-40]% but with a limited increment (Nufarm: [30-40]%, Century: [0-5]%). They would also face competition from Dow-DuPont with a higher share ([30-40]%) and Adama-Syngenta ([5-10]%).
- (44) In the market for selective herbicides for barley, broadleaf, post-emergence, in Spain, the Parties would hold a combined share of [30-40]% (Nufarm: [10-20]%, Century: [10-20]%) and would face competition from Dow-DuPont with a higher share ([40-50]%) and Bayer ([10-20]%). Adama-Syngenta ([5-10]%) and Saipec ([5-10]%) are also present. The Parties' combined share was higher in 2015 ([40-50]%) due to decreasing sales of Nufarm. The Notifying Party argues that, for the purpose of their activities in this market, Nufarm and Century rely on an AI (bromoxynil) which is currently approved in the EU only until 31 July 2018, at which time the Parties expect that the approval will be withdrawn due to health concerns. In previous decisions, the Commission has acknowledged that bromoxynil is under regulatory threat in the EEA.²⁶
- (45) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning selective herbicides for cereals.

4.1.1.2. Fungicides for cereals

- (46) As regards fungicides for cereals, the Transaction would lead to four affected markets in four Member States.
- (47) In the market for fungicides for barley, rust, in Spain, the Parties would hold a combined share of [20-30]% (Nufarm: [0-5]%, Century: [10-20]%) and would face competition from Bayer ([30-40]%) and BASF ([20-30]%), both with a higher share.
- (48) In the market for fungicides for other cereals, fusarium, in Germany-Austria²⁷, the Parties would hold a combined share of [20-30]% (Nufarm: [0-5]%, Century: [10-20]%) and would face competition from BASF with a higher share ([40-50]%) and Bayer ([10-20]%).

²⁶ See M.7962 – ChemChina/Syngenta, paras 1175 and 1964.

²⁷ Germany and Austria are assessed together (see M.7962 – ChemChina/Syngenta, para 308).

- (49) In the market for fungicides for wheat, fusarium, in Hungary, the Parties would hold a combined share of [30-40]% albeit with a very limited increment (Nufarm: [0-5]%, Century: [30-40]%). They would face competition from BASF ([20-30]%) and BASF ([20-30]%).
- (50) In the market for fungicides for wheat, rust, in Lithuania, the Parties would hold a combined share of [20-30]% (Nufarm: [10-20]%, Century: [0-5]%) and would face competition from Bayer ([30-40]%) and BASF ([20-30]%), both with a higher share
- (51) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning fungicides for cereals.

4.1.1.3. Insecticides for cereals

- (52) As regards insecticides for cereals, the Transaction would lead to two affected markets in insecticides for wheat, foliar, broad spectrum, in Spain and Sweden.
- (53) In the market for insecticides for wheat, foliar, broad spectrum, in Spain, the Parties would hold a combined share of [20-30]% albeit with a limited increment (Nufarm: [0-5]%, Century: [20-30]%). They would face competition from Adama-Syngenta with a higher share ([20-30]%), BASF ([10-20]%) and FMC ([10-20]%).
- (54) In the market for insecticides for wheat, foliar, broad spectrum, in Sweden, the Parties would hold a combined share of [20-30]% albeit with a limited increment (Nufarm: [0-5]%, Century: [10-20]%). They would face competition from Adama-Syngenta ([40-50]%) and Dow-DuPont ([20-30]%), both with a higher share.
- (55) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning insecticides for cereals.

4.1.1.4. PGRs for cereals

- (56) As regards PGRs for cereals, the Transaction would lead to ten affected markets in seven member States.
- (57) In the market for PGRs for wheat in Belgium, the Parties would hold a combined share of [30-40]%, with a limited increment (Nufarm: [0-5]%, Century: [20-30]%). They would face competition from BASF with a higher share ([40-50]%) and Adama-Syngenta ([10-20]%).
- (58) In the market for PGRs for other cereals in Lithuania, the Parties would hold a combined share of [20-30]%, with a limited increment (Nufarm: [0-5]%, Century: [20-30]%). They would face competition from BASF ([30-40]%) and Adama-Syngenta ([20-30]%), both with a higher share.
- (59) In the market for PGRs for wheat in Lithuania, the Parties would hold a combined share of [20-30]% (Nufarm: [5-10]%, Century: [10-20]%). They

- would face competition from market leader Adama-Syngenta ([30-40]%) and BASF ([10-20]%).
- (60) In the market for PGRs for other cereals in Estonia, the Parties would hold a combined share of [40-50]%, but with a limited increment (Nufarm: [0-5]%, Century: [40-50]%). They would face competition from BASF ([30-40]%) and Bayer ([10-20]%). The Parties rely on different AIs to manufacture their formulated products which suggest that the Parties' products are not close competitors. Century offers a formulated product based on trinexapac-ethyl while Nufarm sells a formulated product based on chlormequat-chloride.
- (61) In the market for PGRs for wheat in Estonia, the Parties would hold a combined share of [20-30]% (Nufarm: [10-20]%, Century: [10-20]%). They would face competition from the market leader Adama-Syngenta ([50-60]%) and BASF ([10-20]%) The Parties rely on different AIs to manufacture their crop protection products, which seems to suggest that the Parties are not close competitors. Century sells a formulation based on the AI trinexapac-ethyl, while Nufarm's product is based on chlormequat-chloride.
- (62) In the market for PGRs for other cereals in the Netherlands, the Parties would hold a combined share of [20-30]% (Nufarm: [5-10]%, Century: [10-20]%). They would face competition from Adama-Syngenta ([20-30]%) and BASF ([20-30]%).
- (63) In the market for PGRs for wheat in the Netherlands, the Parties would hold a combined share of [20-30]% (Nufarm: [0-5]%, Century: [20-30]%). They would face competition from market leader Adama-Syngenta ([30-40]%) and BASF ([20-30]%).
- (64) In the market for PGRs for wheat in Finland, the Parties would hold a combined share of [20-30]% (Nufarm: [10-20]%, Century: [5-10]%). They would face competition from BASF ([40-50]%) and Adama-Syngenta ([30-40]%), both with a higher share.
- (65) In the market for PGRs for wheat in France, the Parties would hold a combined share of [20-30]% (Nufarm: [10-20]%, Century: [5-10]%). They would face competition from BASF ([30-40]%) with a higher share and Adama-Syngenta ([10-20]%).
- (66) In the market for PGRs for wheat in Romania, the Parties would hold a combined share of [30-40]% (Nufarm: [20-30]%, Century: [5-10]%). They would face competition from BASF ([10-20]%), Eastman Chemical Company ([10-20]%), Adama-Syngenta ([10-20]%) and Globachem ([10-20]%). The Parties have one AI in common, chlormequat chloride, but [...] of Nufarm's sales of PGRs for wheat in Romania are based on another ingredient, trinexapac-ethyl, which seems to suggest that the Parties are not close competitors.
- (67) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning PGRs for cereals.

4.1.1.5. Seed treatment formulations for cereals

- (68) As regards seed treatment for cereals, the Transaction would lead to three affected markets in three Member States.
- (69) In the market for seed treatment for barley, fungicides, in Hungary, the Parties would hold a combined share of [20-30]% (Nufarm: [10-20]%, Century: [0-5]%). They would face competition from market leader Bayer ([50-60]%) and BASF ([20-30]%).
- (70) In the market for seed treatment for wheat, insecticides, in France, the Parties would hold a combined share of [20-30]% (Nufarm: [20-30]%, Century: [0-5]%). They would face competition from market leader Bayer ([40-50]%) and Adama-Syngenta ([20-30]%).
- (71) In the market for seed treatment for wheat, fungicides, in Romania, the Parties would hold a combined share of [20-30]% (Nufarm: [5-10]%, Century: [10-20]%). They would face competition from Bayer ([20-30]%) and Adama-Syngenta ([20-30]%).
- (72) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning seed treatment formulations for cereals.

4.1.1.6. Conclusion

- (73) On the basis of the above, the Commission considers that the Transaction does not raise serious doubts as regards its impact on the various crop protection markets for cereals.

4.1.2. Corn

- (74) In the area of corn, three markets will be horizontally affected as a result of the Transaction, namely: (i) one market in selective herbicides, (ii) one market in insecticides, and (iii) one market in seed treatment. In addition, the Commission has assessed a number of markets for selective herbicides for corn in which the Parties have pipeline products, as explained in more detail below.

4.1.2.1. Selective herbicides for corn

- (75) In the market for selective herbicides for wheat, broadleaf, post-emergence, in Spain, the Parties would hold a combined share of [20-30]% albeit with a limited increment (Nufarm: [0-5]%, Century: [20-30]%). They would face competition from Adama-Syngenta ([20-30]%) and BASF ([20-30]%).
- (76) Furthermore, as mentioned above, the Commission has assessed in more detail some corn herbicides markets which were not horizontally affected in 2015 and 2016, but could become affected in the foreseeable future, because both Century and Nufarm have some pipeline products in this area. The Commission has taken into account these pipeline products because their entry on the market has either recently occurred or is very likely to occur in the near future.

According to the Horizontal Merger Guidelines, the Commission may take into account future changes to the market that can reasonably be predicted.²⁸⁻²⁹

- (77) Nufarm has three pipeline products in selective herbicides for corn, namely Ikanos, Kideka and Nagano. Nufarm plans to launch these three products in [information about Nufarm's business strategy in the EEA in relation to selective herbicides for corn]. Ikanos (Nicosulfuron 40 OD) is already registered in some countries (especially in Eastern Europe) and in the other countries it will [information about Nufarm's business strategy in certain EEA countries]. Kideka (Mesotrione 100 SC) is [information about the nature of Nufarm's pipeline product Kideka (Mesotrione 100 SC)]. Finally, Nagano (Mesotrione 100 + Bromoxynil 100 OD) is a new product developed by Nufarm.
- (78) The Century portfolio includes two pipeline products in selective herbicides for corn, which were expected to be launched in 2017-2018. As regards Sulcotrione 150 + Nicosulfuron 20 OD, the Parties state that the registration process has been delayed due to regulatory concerns expressed by some Member States and that, as a result, no launch in 2018 is planned for this product. As regards Mesotrione 100 SC, the Parties state that the product obtained registrations in 2017 in Hungary, France, Germany, Portugal, Greece, Spain and Italy.
- (79) The Parties have calculated their market share projections in selective herbicides markets for corn taking these pipeline products into account. These market share projections are for peak sales, which are expected to be reached [information about the Parties' estimates for business growth in selective herbicides markets for corn]. The Parties expect their market share to be below 20% in all markets for selective herbicides for corn, except (i) in broadleaf post-emergence in Germany and Austria ([20-30]%), Italy ([20-30]%), Netherlands ([20-30]%), Poland ([40-50]%), Spain ([30-40]%) and (ii) in graminicides post-emergence in Spain ([30-40]%).
- (80) These market shares have been calculated by the Parties on the basis of the current market size in these countries. It is however likely that, in the next few years, the size of these markets will significantly increase. Indeed, as of last year, a number of generic companies started entering the broadleaf markets with very similar products to those of Nufarm and Century, including Albaugh, Rotam, Globachem, Life Scientific and Cheminova (FMC). Therefore, the merged entity's market shares by [information about the Parties' estimates for business growth in selective herbicides markets for corn] are expected to be lower than indicated in these long term projections. Furthermore, in these broadleaf and graminicides markets, all large integrated crop protection companies are currently present, including Adama-Syngenta, Bayer, BASF and Dow-DuPont.

²⁸ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, para 9.

²⁹ Moreover, Nufarm has other pipeline products (notably in fruit fungicides and cereals fungicides). However, according to the Notifying Party, either their launch has not yet been decided or they will have a very limited impact on relevant markets (market share [0-5]% at peak sales). In addition, Century also has pipeline products in insecticides that are currently under registration process. However, Nufarm has a marginal position in the relevant national markets within the EEA (with market shares generally [0-5]%).

- (81) Furthermore, the market investigation has not revealed any competition concerns arising from the Transaction in relation to selective herbicides for corn, including as regards the Parties' pipeline products in this area.

4.1.2.2. Insecticides for corn

- (82) In the market for insecticides for corn, foliar, broad spectrum, in Spain, the Parties would hold a combined share of [20-30]% albeit with a limited increment (Nufarm: [0-5]%, Century: [20-30]%). They would face competition from Adama-Syngenta ([20-30]%) and Bayer ([10-20]%). The market investigation has not revealed any competition concerns arising from the Transaction as regards insecticides for corn.

4.1.2.3. Seed treatment formulations for corn

- (83) In the market for seed treatment for corn, insecticides, in Romania, the Parties would hold a combined share of [50-60]% (Nufarm: [40-50]%, Century: [10-20]%). Other players active in the market include Bayer ([10-20]%), Sharda ([5-10]%), FMC ([5-10]%) and Adama-Syngenta ([0-5]%).

- (84) The Notifying Party claims that, although the merged entity would have high market shares in seed treatment for corn, insecticides, in Romania, the Transaction does not raise competition concerns in this market, for the following reasons. In this market, Century and Nufarm both sell only one formulated product each based on the AI imidacloprid (which is part of the category of neonicotinoids). The use of imidacloprid as a seed treatment has been suspended in the EU since 2013 for most crops.³⁰ Romania is the only Member State where a temporary emergency use authorisation for neonicotinoid seed treatments has been granted and only for corn and sunflower. This authorisation is renewed by the Romanian authorities on an annual basis. The Notifying Party claims that, due to growing political pressure from the Commission, it is unlikely that the Romanian authorities will renew such authorisation in the next years. The Notifying Party points out that the failure to renew the authorisation will have a direct impact on the Parties' share in the market concerned, given that the Parties do not have any alternative products.

- (85) The Notifying Party also claims that is expected that in 2018 all outdoor uses of neonicotinoids will be banned by the Commission, for all crops. This would put an end to the use of neonicotinoids as a seed treatment even in Romania. Indeed, according to the Notifying Party, in February the European Food Safety Authority ('EFSA') is expected to finalise a risk assessment for neonicotinoids. According to the Notifying Party, this ban takes the form of a draft Commission Implementing Regulation intended to restrict the use of imidacloprid to seeds to be used in permanent greenhouses where the crop stays within its entire life cycle within the greenhouse.

³⁰ Commission Implementing Regulation (EU) No 485/2013 of 24 May 2013 amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substances Clothianidin, Thiamethoxam and Imidacloprid, and prohibiting the use and sale of seeds treated with plant protection products containing those active substances.

- (86) The Commission notes that, in its recent decision in *Dow/DuPont*, it already described imidacloprid as being a product under strong regulatory pressure in the EEA and took this into account in its competitive assessment.³¹ In doing so, the Commission notably considered that the products using this AI (i.e. neonicotinoids) exerted only limited competitive pressure in view of the expectation that they would exit the market in the near future. In addition, the Commission notes that, in the report published by EFSA on 28 February 2018, the risks of imidacloprid (and of some other neonicotinoids) have been confirmed, emphasising in particular the risks they pose for bees.³²
- (87) Moreover, the Commission notes that rival companies active in the market for seed treatment for corn, insecticides, in Romania offer products that do not rely on imidacloprid as an AI. In particular, Bayer uses thiacloprid, Adama-Syngenta uses tefluthrin, Arysta uses cypermethrin and Mesuro uses methiocarb. It is therefore likely that these players will have the opportunity to expand sales for their products, as opposed to the Parties' product based on an AI which is under regulatory threat in Romania.
- (88) Furthermore, the market investigation has not revealed any competition concerns arising from the Transaction in relation to seed treatment formulations for corn in Romania.

4.1.2.4. Conclusion

- (89) On the basis of the above, the Commission considers that the Transaction does not raise serious doubts as regards its impact on the various crop protection markets for corn.

4.1.3. Fruit

- (90) In the area of fruits, seven markets will be horizontally affected as a result of the Transaction, namely: (i) two markets in selective herbicides, (ii) two markets in fungicides and (iii) three markets in insecticides.

4.1.3.1. Selective herbicides for fruit

- (91) As regards selective herbicides for fruit, the Transaction would lead to three affected markets for broadleaf post-emergence herbicides for particular types of fruit in Spain.
- (92) In the market for selective herbicides for citrus fruit, broadleaf post-emergence, in Spain, the Parties would hold a combined share of [20-30]% (Nufarm: [5-10]%, Century: [10-20]%). They would face competition from Dow-DuPont ([20-30]%) and FMC ([10-20]%).
- (93) In the market for selective herbicides for other fruit, broadleaf, post-emergence, in Spain, the Parties would hold a combined share of [30-40]% (Nufarm: [5-10]%, Century: [20-30]%). They would face competition from Dow-DuPont ([10-20]%) and Sapec ([10-20]%). The Parties do not rely on the

³¹ See M.7932 – Dow/DuPont, paras 1310, 1414 and 1467 (the latter mentioning specifically Nufarm's insecticides products based on imidacloprid).

³² See EFSA press release of 28 February 2018 available on <https://www.efsa.europa.eu/en/press/news/180228>.

same AIs to manufacture crop protection products, which seems to suggest that they are not close competitors. Century's products are based on Diflufenican (Pyridine), Fluroxypyr (Pyridine) and Oxyflurofen (PPO – Diphenyl Ester), whereas Nufarm's products are based on MCPA (Phenoxy).

- (94) The market investigation did not reveal any competition concerns arising from the Transaction in any markets for selective herbicides for fruit.

4.1.3.2. Fungicides for fruit

- (95) As regards fungicides for fruit, the Transaction would lead to two affected markets in Romania.
- (96) In the market for fungicides for other fruit, leafspots, in Romania, the Parties would hold a combined share of [20-30]%, (Nufarm: [5-10]%, Century: [20-30]%) and would face competition from Dow-DuPont ([10-20]%) and BASF ([10-20]%).
- (97) In the market for fungicides for pome fruit, powdery mildew, in Romania, the Parties would hold a combined share of [20-30]%, (Nufarm: [0-5]%, Century: [20-30]%) and would face competition from BASF ([20-30]%) and Adama-Syngenta ([10-20]%).
- (98) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning fungicides for fruit.

4.1.3.3. Insecticides for fruit

- (99) As regards insecticides for fruit, the Transaction would lead to three affected markets in Spain, Hungary and Greece.
- (100) In the market for insecticides for grapes, foliar, chewing, in Spain, the Parties would hold a combined share of [20-30]% (Nufarm: [5-10]%, Century: [10-20]%). They would face competition from market leader Dow-DuPont ([20-30]%) and BASF ([10-20]%).
- (101) In the market for insecticides for pome fruit, broad spectrum, in Greece, the Parties would hold a combined share of [30-40]% albeit with a small increment (Nufarm: [0-5]%, Century: [20-30]%). They would face competition from Adama-Syngenta ([10-20]%), BASF ([10-20]%), Bayer ([10-20]%) and Dow-DuPont ([5-10]%). The Parties rely on different AIs to manufacture their crop protection products, which suggests that they are not close competitors. Century's sales are made through Chlorpyrifos 480 EC, while Nufarm has a different formulation based on Lambda-cyhalotrin.
- (102) In the market for insecticides for pome fruit, foliar, broad spectrum, in Hungary, the Parties would hold a combined share of [20-30]% (Nufarm: [5-10]%, Century: [10-20]%). They would face competition from Dow-DuPont ([10-20]%) and Agrochemie ([10-20]%).

- (103) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning insecticides for fruit.

4.1.3.4. Conclusion

- (104) On the basis of the above, the Commission considers that the Transaction does not raise serious doubts as regards its impact on the various crop protection markets for fruit.

4.1.4. *Oilseed rape*

- (105) In the area of oilseed rape, three markets will be horizontally affected as a result of the Transaction, namely: (i) two markets in fungicides and (ii) one market in insecticides.

4.1.4.1. Fungicides for oilseed rape

- (106) In the market for fungicides for oilseed rape, leaves, leafspots, in Lithuania, the Parties would hold a combined share of [20-30]%, (Nufarm: [0-5]%, Century: [20-30]%) and would face competition from market leader BASF ([30-40]%) and Bayer ([20-30]%).

- (107) In the market for fungicides for oilseed rape, leaves, leafspots, in Romania, the Parties would hold a combined share of [20-30]%, (Nufarm: [0-5]%, Century: [20-30]%) and would face competition from Bayer ([20-30]%) and BASF ([10-20]%).

- (108) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning fungicides for oilseed rape.

4.1.4.2. Insecticides for oilseed rape

- (109) In the market for insecticides for oilseed rape, foliar, broad spectrum, in Sweden, the Parties would hold a combined share of [20-30]% (Nufarm: [5-10]%, Century: [10-20]%). They would face competition from market leader Adama-Syngenta ([30-40]%) and Bayer ([30-40]%).

- (110) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning insecticides for oilseed rape.

4.1.4.3. Conclusion

- (111) On the basis of the above, the Commission considers that the Transaction does not raise serious doubts as regards its impact on the various crop protection markets for oilseed rape.

4.1.5. *Vegetables*

- (112) In the area of vegetables, three markets will be horizontally affected as a result of the Transaction, namely: (i) two markets in selective herbicides and (ii) one market in insecticides.

4.1.5.1. Selective herbicides for vegetables

- (113) In the market for selective herbicides for industrial crops, graminicides, post-emergence, in Spain, the Parties would hold a combined share of [20-30]% (Nufarm: [0-5]%, Century: [20-30]%). They would face competition from Bayer ([20-30]%) and Dow-DuPont ([20-30]%).
- (114) In the market for selective herbicides for tomatoes, graminicides, post-emergence, in Spain, the Parties would hold a combined share of [20-30]% (Nufarm: [0-5]%, Century: [10-20]%). They would face competition from market leader Bayer ([20-30]%) and Adama-Syngenta ([20-30]%).
- (115) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning selective herbicides for vegetables.

4.1.5.2. Insecticides for vegetables

- (116) In the market for insecticides for potatoes, foliar, broad spectrum, in Italy, the Parties would hold a combined share of [20-30]% (Nufarm: [0-5]%, Century: [10-20]%). They would face competition from market leaders Adama-Syngenta ([20-30]%) and Bayer ([20-30]%).
- (117) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning insecticides for vegetables.

4.1.5.3. Conclusion

- (118) On the basis of the above, the Commission considers that the Transaction does not raise serious doubts as regards its impact on the various crop protection markets for Vegetables.

4.1.6. *Sunflower*

- (119) In the area of sunflower, three markets will be horizontally affected as a result of the Transaction, namely: (i) two markets in selective herbicides and (ii) one market in seed treatment formulations.

4.1.6.1. Selective herbicides for sunflower

- (120) In the market for selective herbicides for sunflower, graminicides, post-emergence, in Hungary, the Parties would hold a combined share of [20-30]% (Nufarm: [5-10]%, Century: [10-20]%). They would face competition from market leader PSP ([20-30]%) and Montanwerke ([10-20]%).
- (121) In the market for selective herbicides for sunflower, graminicides, post-emergence, in Romania, the Parties would hold a combined share of [20-30]% (Nufarm: [5-10]%, Century: [10-20]%). They would face competition from market leader PSP ([20-30]%) and Nissan Chemicals ([10-20]%).
- (122) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning selective herbicides for sunflower.

4.1.6.2. Seed treatment formulations for sunflower

- (123) In the market for seed treatment for -sunflower, insecticides, in Romania, the Parties would hold a combined share of [20-30]% (Nufarm: [5-10]%, Century: [20-30]%). They would face competition from Bayer ([10-20]%) and Procera ([10-20]%). In this market, as mentioned in paragraph (84) above in relation to corn, Century and Nufarm both sell only one formulated product based on the AI imidacloprid which is under regulatory threat, although it currently benefits from the same annual derogation as in corn. The market features other players such as Syngenta and Dow-DuPont, which offer alternative products in the market.
- (124) The market investigation has not revealed any competition concerns arising from the Transaction in relation to any of the markets concerning seed treatment formulations for sunflower.

4.1.6.3. Conclusion

- (125) On the basis of the above, the Commission considers that the Transaction does not raise serious doubts as regards its impact on the various crop protection markets for sunflower.

4.2. Vertical links

- (126) The Transaction leads to vertical relationships because Nufarm (but not Century) sells some volumes of two specific AIs (tebuconazole and bromoxynil) which are used by Century/Nufarm in the downstream markets for some crop protection products manufactured with tebuconazole or bromoxynil.
- (127) Based on the data submitted by the Notifying Party for 2016 at the level of Crop/Sector/Segment/Sub-segment, the Commission has identified the following vertically affected markets.
- (128) As regards bromoxynil, the only vertically affected market is selective herbicides for barley, broadleaf, post-emergence in Spain, where the Parties would hold a combined share of [30-40]% (as mentioned in Section 4.1.1.1. above).
- (129) As regards tebuconazole, the Transaction gives rise to seven vertically affected markets concerning formulated products for which tebuconazole is used. In these seven markets only Century is present.³³ These markets are fungicides for wheat, fusarium, in Croatia (market share of [50-60]%), fungicides for wheat, fusarium, in Czech Republic ([30-40]%), fungicides for wheat, fusarium, in Hungary ([30-40]%), fungicides for wheat, fusarium, in Poland ([30-40]%), fungicides for sunflower, rust, in Romania ([70-80]%), fungicides for wheat, fusarium, in Slovakia ([40-50]%), and fungicides for sunflower, rust, in Slovakia ([40-50]%).
- (130) In relation to input foreclosure, Nufarm estimates its market share for the supply of each of bromoxynil and tebuconazole in the EEA to be below [10-20]%.³⁴

³³ Nufarm has very limited activities ([0-5]% market share) in fungicides for wheat, fusarium, in Hungary.

³⁴ Moreover, bromoxynil is under regulatory threat in the EEA, as explained in Section 4.1.1.1. above.

Nufarm therefore does not appear to have a significant degree of market power upstream and risks of input foreclosure are unlikely to arise as a result of the Transaction.

- (131) In relation to customer foreclosure, as regards bromoxynil, for the reasons explained above in Section 4.1.1.1., it appears that the merged entity would not have a significant degree of market power in selective herbicides for barley, broadleaf, post-emergence in Spain. There is therefore no risk of customer foreclosure as alternative suppliers of bromoxynil will have various alternative outlets for their AIs.
- (132) In relation to the downstream markets for formulated products based on tebuconazole, the Commission notes that Century's market shares are high in some of these markets. However, formulated product markets are defined narrowly at a Crop/Sector/Segment/Sub-segment level and with a national geographic dimension, whereas AIs such as tebuconazole have various applications in terms of crops and pests covered and have an EEA dimension. Tebuconazole as a fungicide is effective against leafspots, rust, powdery mildew and fusarium. It can be used for all types of cereals, fruits, vegetables (including potatoes) and oilseed rape and it is currently sold, outside the countries mentioned in paragraph (129), in France, Germany, Portugal, the Netherlands, Greece, Croatia, Italy and Spain. Alternative suppliers of tebuconazole will have therefore various alternative outlets for their AI, both in terms of applications and of EEA countries (including countries where Century is not or less present). There is therefore no risk of customer foreclosure arising from the Transaction.
- (133) In addition, the market investigation has not revealed any competition concerns arising from the Transaction in relation to vertical links between the Parties' AIs and crop protection products in the EEA.
- (134) On the basis of the above, the Commission considers that the Transaction does not raise serious doubts in relation to vertical links between AIs and crop protection products.

5. CONCLUSION

- (135) 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.
- (136) This decision is without prejudice to the Commission's approval of Nufarm as a suitable purchaser in case M.7962 – *ChemChina/Syngenta* and of the Commission's assessment of whether the terms of the divestiture are consistent with the Commission's decision and the commitments in that case.

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission