



EUROPEAN COMMISSION

DG Competition

***Case M.9686 - MITSUI / BELCHIM
CROP PROTECTION***

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval
Date: 27/04/2021



EUROPEAN COMMISSION

Brussels, 27.04.2021
C(2021) 3097 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Mitsui & Co Ltd
3-1 Ohtemachi 1-chome Chiyoda-ku
100-8631 Tokyo
Japan

Dear Sir or Madam,

**Subject: Case M.9686 – Mitsui/ Belchim
Approval of Andermatt Biocontrol AG as purchaser of the PGR
Divestment Business following your letter of 2 April 2021 and the Trustee's
opinion of 20 April 2021**

1. FACTS AND PROCEDURE

- (1) By decision of 11 February 2021 (the 'Decision'), based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the 'Merger Regulation')¹ and Article 57 of the Agreement on the European Economic Area² the Commission declared the operation by which Mitsui & Co Ltd. ('Mitsui') acquires sole control of Belchim Crop Protection NV ('Belchim') compatible with the internal market and the EEA Agreement. The Decision is subject to the conditions

¹ 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.

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

and obligations laid down in the commitments annexed to the Decision (the 'Commitments'). Mitsui and Belchim are hereinafter collectively referred to as the 'Parties'.

- (2) In particular, under the Commitments, Mitsui undertook to transfer the distribution business of the plant growth regulator ('PGR') Biox-M in Germany, Poland as well as in Denmark, Finland, Norway and Sweden (the 'Nordics') (the 'PGR Divestment Business') in order to address the serious doubts raised in the post-harvest potato PGR market in these countries. Alternatively, in case it is not successful, Mitsui undertook to transfer Belchim's distribution business of the PGR product 1,4 Slight in the same countries.
- (3) By letter of 17 March 2021, revised on 2 April 2021, the Parties proposed Andermatt Biocontrol AG ('Andermatt') for approval by the Commission as remedy-taker of the PGR Divestment Business and submitted three proposed agreements: (i) an agreement whereby Mitsui assigns the Biox-M distribution business to Andermatt, with the approval of Xeda International SA ('Xeda'), the product manufacturer, (the 'Assignment Agreement'); (ii) an amendment to the current Biox-M distribution agreement with Xeda, whereby Mitsui (via its wholly owned subsidiary Certis) stops the distribution of Biox-M in Germany, Poland and in the Nordics but continues in other assigned territories (the 'Amendment to the Distribution Agreement'); (iii) a transitional services agreement whereby Certis provides services to Andermatt to ensure a smooth transfer of PGR Divestment Business (the 'Transitional Services Agreement'). The three agreements are hereafter collectively referred to as the 'Transaction Documents'.
- (4) The monitoring trustee, Monitoring Trustee Partners B.V. (the 'Trustee') has submitted on 20 April 2021 an assessment of Andermatt's suitability as a remedy-taker (the 'Reasoned Opinion') and, in particular, has indicated that it fulfils the criteria of the purchaser requirements in section D (paragraph 14) of the Commitments attached to the Decision. In its Reasoned Opinion, the Trustee also indicated that, on the basis of the Transaction Documents, the PGR Divestment Business would be sold in a manner consistent with the Commitments.

2. ASSESSMENT OF THE PROPOSAL

2.1. Legal Framework

- (5) Pursuant to paragraph 15 of the Commitments, the Commission has to verify that the remedy-taker fulfils the purchaser criteria and that the PGR Divestment Business is being transferred in a manner consistent with the Commitments.
- (6) According to paragraph 14 of the Commitments, in order to be approved by the Commission, any remedy-taker must fulfil the following criteria:
 - (a) The remedy-taker shall be independent of and unconnected to each of Mitsui and Belchim and their affiliated undertakings (this being assessed having regard to the situation following the transfer of the PGR Divestment Business);
 - (b) The remedy-taker shall have the financial resources, proven expertise and incentive to maintain and develop the PGR Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

- (c) The remedy-taker shall be a company already active in the crop protection industry;
- (d) The assignment of PGR Divestment Business to the remedy-taker 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.

2.2. Brief description of the proposed purchaser

- (7) Andermatt specialises in the production and the commercialisation of biological plant protection, biostimulant and biocide products. It has its own research & development and manufacturing capabilities. In addition to its own products, Andermatt also distributes third-party products. Headquartered in Switzerland, where it has over 170 products in its portfolio, Andermatt has 14 subsidiaries across the world and makes use of an additional 80 distributors.
- (8) In particular, in Germany, Andermatt operates through its subsidiaries while in Poland, Andermatt operates through a 20% minority participation in Biocont Polska. Andermatt has confirmed that its relevant boards have already approved the incorporation of a new wholly owned subsidiary in Poland. In the Nordics, Andermatt distributes its proprietary products via third-party distributors. In 2020, the consolidated net sales of Andermatt Group were approximately EUR [...], and the company employed over 300 employees.
- (9) Andermatt currently distributes Biox-M in Switzerland.

2.3. Independence from the Parties

- (10) Pursuant to paragraph 14(a) of the Commitments, in order to be approved by the Commission, a suitable purchaser must be independent from and unconnected to each of Mitsui and Belchim and their affiliated undertakings.
- (11) According to the information provided by Mitsui and the Trustee, there are no cross-shareholdings nor common shareholdings between either of Mitsui or Belchim and Andermatt, and Andermatt does not share any executive or non-executive directors with Mitsui or Belchim.³
- (12) Although there are some cross supplies of products and services, in particular distribution services, between Andermatt and each of the Parties, these accounted for approximately [5-10]% of Andermatt's revenues in 2020. Because these agreements are not material to Andermatt's business and were concluded in line with industry practice, they do not affect Andermatt's independence from each of Mitsui and Belchim. The Trustee therefore considers that Andermatt and the Parties and their affiliated undertakings are independent.⁴
- (13) On the basis of the information provided by Mitsui and taking into account the Reasoned Opinion submitted by the Trustee, the Commission concludes that Andermatt is, and will continue to be after the transfer of the PGR Divestment Business, independent and unconnected to each of Mitsui and Belchim and their respective affiliated undertakings.

³ Reasoned Opinion, section 4.2.

⁴ Reasoned Opinion, section 4.3 and 4.4.

2.4. Financial resources, proven expertise and incentive to maintain and develop the PGR Divestment Business as a viable and active competitor

- (14) Pursuant to paragraph 14(b) of the Commitments, in order to be approved by the Commission, the remedy-taker must have the financial resources, proven expertise and incentive to maintain and develop the PGR Divestment Business as a viable and active competitive force in competition with the Parties and other competitors. In particular, and pursuant to paragraph 14(c) of the Commitments, the remedy-taker must be already active in the crop protection industry.
- (15) Based on information provided by Mitsui and the Trustee, Andermatt had a consolidated net revenue in 2020 of EUR [...], which represented an increase of 15% from 2019. In addition to its capability to generate positive operational cash flows, Andermatt's creditworthiness is considered "high". The Trustee therefore concluded that Andermatt has the financial resources to maintain and develop the PGR Divestment Business.⁵
- (16) In terms of proven expertise, according to the information provided by Mitsui and the Trustee, Andermatt has been active in the crop protection industry for the last 30 years. It already distributes its own and third-party products in Germany, Poland and in the Nordics, including products for potato crops. In addition, Andermatt distributes Biox-M in Switzerland since 2015. It therefore has the know-how and technical expertise with regards to the product and its distribution and it has also experience in the potato crops markets in the relevant countries.⁶
- (17) In terms of incentives, the Trustee notes that Biox-M fits well with Andermatt's strategy of focusing on biocontrol products. It allows Andermatt to expand its geographic coverage (of the product) from Switzerland to the relevant countries enhancing its product portfolio for potato crops. In addition, the Trustee notes that Andermatt's forecasts for the next three years indicate that Andermatt expects to increase the current sales of Biox-M in all the relevant countries.⁷
- (18) Based on the information provided by Mitsui and taking into account the Trustee's Reasoned Opinion, the Commission considers that Andermatt is active in the crop protection industry, has sufficient financial resources, proven expertise and the incentives to maintain and develop the PGR Divestment Business as a viable and active competitive force in competition with Mitsui and other competitors.

2.5. Absence of prima facie competition problems

- (19) Pursuant to paragraph 14(d) of the Commitments, the transfer of the PGR Divestment Business to a suitable remedy-taker 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.
- (20) Mitsui and the Trustee consider that there are no horizontal or vertical relationships between the activities of Andermatt and the PGR Divestment Business. Accordingly, the transfer of the PGR Divestment Business would not be likely to create prima facie competition concerns.

⁵ Reasoned Opinion, section 6.2.

⁶ Reasoned Opinion, section 6.3.

⁷ Reasoned Opinion section 6.4 and 7.

- (21) In addition, Mitsui does not anticipate that the transfer of the PGR Divestment Business will trigger any merger control filings. The Trustee has accordingly not identified a risk of delayed implementation of the Commitments due to outstanding regulatory approvals.
- (22) 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 PGR Divestment Business by Andermatt is neither likely to create *prima facie* competition concerns, nor give rise to a risk that the implementation of the Commitments will be delayed.
- (23) This *prima facie* assessment is based on the information available for the purpose of this buyer approval and is without prejudice to the review of the transfer of the PGR Divestment Business to Andermatt under the applicable merger control rules, if any.

2.6. Assessment of the Transaction Documents

- (24) As mentioned in paragraph (3), the Transaction Documents include three set of agreements: the Assignment Agreement; the Amendment to the Distribution Agreement; and the Transitional Services Agreement.
- (25) Pursuant to the Transitional Services Agreement, Certis supplies to Andermatt, at its requests and for a limited period of time⁸ the following services: education and training, [...].
- (26) The Trustee reviewed the Transaction Documents and confirmed that they fulfil the condition of the Commitments to transfer the PGR Divestment Business to a suitable remedy taker. In general, the Trustee considered that the terms of the Transaction Documents reflect Mitsui's obligations set out in the Commitments.
- (27) In particular, the Trustee noted that the scope of Transitional Services Agreement goes beyond the Commitments, which includes only education and training services. As Mitsui explained and the Trustee confirmed, the additional services are intended to support the transition of the PGR Divestment Business to Andermatt by mitigating any unforeseen risks.⁹ Moreover, as explained in the TSA itself, these services are provided at the option of Andermatt and to the extent needed. In addition, some of these services ([...]) will be provided against a fee. Therefore, it is not in Andermatt's interest to rely beyond the necessary on Certis for the provision of these services.
- (28) In light of the above considerations, the Commission concludes that the Transaction Documents are consistent with the Commitments and that, accordingly, the PGR Divestment Business is being transferred in a manner consistent with the Commitments.

3. CONCLUSION

- (29) On the basis of the above assessment, the Commission approves Andermatt Biocontrol AG as a suitable remedy-taker for the above-mentioned reasons.

⁸ Education and training, [...] can be provided for up to two years, all other services can be provided for [...].

⁹ Mitsui's response to RFI no. 22, and Reasoned Opinion, section 5.3.2.

- (30) On the basis of the Transaction Documents, the Commission further concludes that the PGR Divestment Business is being sold in a manner consistent with the Commitments.
- (31) This decision only constitutes approval of the proposed purchaser identified herein and of the Transaction Documents. This decision does not constitute a confirmation that Mitsui has complied with its Commitments.
- (32) This decision is based on paragraph 15 of the Commitments attached to the Commission Decision of 11 February 2021.

For the Commission

(Signed)
Olivier GUERSENT
Director-General