

**REFERENCE RELATING TO THE ANTICIPATED JOINT VENTURE
BY KEMIRA GROWHOW OYJ AND TERRA INDUSTRIES INC.**

**Notice of provisional findings made under Rule 10.3
of the Competition Commission Rules of Procedure**

1. On 26 January 2007, the Office of Fair Trading, in exercise of its duty under section 33 of the Enterprise Act 2002 (the Act) and its power under section 36(5) of the Act, referred to the Competition Commission (CC) the anticipated joint venture between Kemira GrowHow Oyj and Terra Industries Inc for investigation and report within a period ending on 12 July 2007.

Provisional findings

2. The CC inquiry group (the Group) appointed to consider this reference has made the following provisional findings on the statutory questions it has to decide pursuant to section 36(1) of the Act:
 - (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) the creation of that situation may be expected to result in a substantial lessening of competition within the markets for carbon dioxide, nitric acid of 58 to 60 per cent concentration, aqueous ammonia and anhydrous ammonia in the UK.
3. The Group's provisional findings on these questions and its reasons are set out in full in its provisional findings report, a summary of which is attached to this notice (see note below).

The next steps

4. Kemira GrowHow Oyj and Terra Industries Inc and other interested parties are now invited to provide the Group with their reasons in writing as to why these provisional findings should not become final (or, as the case may be, should be varied).
5. These reasons should be received by the Group no later than 25 May.
6. The Group will have regard to any such reasons in making their final decisions on the statutory questions and actions.
7. The Group will shortly send to Kemira GrowHow Oyj and Terra Industries Inc and publish a notice of the actions which they consider might be taken by the CC to remedy the adverse effects provisionally identified.



Robert Turgoose
Group Chairman
4 May 2007

Note: A copy of this notice and the summary of the provisional findings report will be placed on the CC website on 4 May. The CC proposes to publish the provisional findings report on its website by 9 May. The published version of the provisional findings report will not contain any information which the Group considers should be excluded from the report, having regard to the three considerations set out in section 244 of the Act.

Summary

1. On 26 January 2007, the Office of Fair Trading (OFT) referred an anticipated joint venture between Kemira GrowHow Oyj (Kemira) and Terra Industries Inc (Terra)¹ to the Competition Commission (CC) for investigation and report. The reference was made under section 33 of the Enterprise Act 2002 (the Act). We are required to publish our final report within a period ending on 12 July 2007. Our terms of reference are shown in Appendix A.

2. The anticipated joint venture (JV) would merge the greater part of the UK businesses of these two international companies.² These are both fertilizer production businesses, but both also produce and sell chemical products.

3. The parties overlap in the production and sale of:
 - ammonium nitrate (AN), which is used both as a fertilizer and for the manufacture of explosives;
 - ammonium nitrate sulphate (ANS), which is used as a fertilizer;
 - complex fertilizers, which are based on AN but also include phosphorus and potassium;
 - nitric acid, which is an intermediate product for the manufacture of AN, and which is also used by other chemicals businesses;
 - ammonia, which is an intermediate product for the manufacture of AN, and which is also used by other chemicals businesses to which it is supplied in two forms: anhydrous ammonia and aqueous ammonia; and
 - raw carbon dioxide (CO₂), which is a by-product of ammonia manufacture and some of which is sold on for a variety of end uses, such as the carbonation of soft drinks.

¹We refer to Terra and Kemira jointly as 'the parties'.

²There is a small part of Kemira's UK business, including a facility at Hull, that will not become part of the JV.

4. Terra has facilities at Billingham and Severnside; Kemira has one at Ince. Whilst the parties are of broadly similar sizes in their fertilizer businesses, Terra has much larger revenues from chemicals, partly due to its business history. Terra occupies part of the former ICI site at Billingham with several important customers nearby.
5. Both the parties appear to have been under considerable financial pressure in recent years. Natural gas is their most important raw material and high natural gas prices in the UK in the winter of 2005/2006, compared with other countries, apparently put them at a disadvantage to their competitors. Natural gas prices have since fallen.
6. We considered what would have happened if the JV were not to proceed. We expected that in the absence of the JV the parties would continue as separate companies and would compete with each other, in each of the relevant markets, with levels of competition broadly similar to those in the recent past.
7. We considered the market for AN fertilizers. We found that AN and ANS were substitutes. We found that urea-based fertilizers were substitutes for AN-based fertilizers for many (but by no means all) customers. AN, ANS, urea and a number of other AN fertilizers are known as straight-N fertilizers.
8. We found that there were high levels of imports, from a variety of origins, and facilitated by effective distribution channels.
9. We examined the prices of AN, urea and natural gas. This evidence suggested that UK market prices were likely to be constrained by substitution, or the threat of substitution, of the parties' AN by imported AN and urea.

10. We considered whether the JV might be able to selectively increase prices to those customers that would not switch to imported AN or urea. We found that this was unlikely since these customers could source through merchants.
11. We did not expect that the JV would lead to a substantial lessening of competition (SLC) in the market for straight-N fertilizers.
12. We considered the market for complex fertilizers—those that have more than one main nutrient, typically combining nitrogen, potassium and phosphorus. Such fertilizers come in two forms: compound fertilizers, which combine the nutrients chemically, and blended fertilizers, which combine them by physical mixing.
13. Although some farmers have preferences for either blended or compound fertilizers, we found that they were substitutes and formed part of one compound fertilizers market. Imports appeared to form a fairly small part of this market; we examined the market on a UK basis whilst recognizing that it could be wider.
14. Terra has a very small share of the UK market for compound fertilizers. The JV would have only a slightly larger share than the current share of Kemira, and there would be other substantial competitors.
15. We did not expect that the JV would lead to an SLC in the market for compound fertilizers.
16. We considered the supply of AN to non-agricultural customers. Whilst use as a fertilizer is the most important function of AN, it does have other uses. The most significant of these, by far, is its use by explosives manufacturers.

17. The JV would merge the only two UK producers of AN; non-agricultural customers obtain currently almost all their supplies from these two producers. We considered the evidence and views put to us by both the customers and the producers. Non-agricultural customers, which have somewhat different requirements from agricultural customers, have not in the past had strong needs to seek alternative sources of supply, although they have investigated this to some degree.
18. We expect that if the customers were threatened with significant price increases there would be stronger commercial incentives for both the customers and third parties (other producers and merchants) to develop alternative arrangements, and we therefore expect the likelihood of success to be greater than the customers have suggested.
19. In our view, each of the alternative sources is potentially viable, although we recognize that there are practical issues to be overcome. However, on balance, we consider that at least one of the alternatives would be both practically and economically viable, thereby constraining the JV's prices.
20. We therefore consider that the JV would not be able to implement a selective increase in prices to non-agricultural customers and the JV may not be expected to result in an SLC in the supply of AN to non-agricultural customers.
21. We considered the market for CO₂. We found that the ammonia production process, as operated by the parties, was one of the most effective sources of CO₂, resulting in relatively low purification costs. As a result, the parties have a very high share of the market for the supply of CO₂ to distributors.

22. The parties told us that there were many other potential sources of CO₂, but we found that at present there were relatively few, and that to exploit each potential source would require significant capital investment. Whilst there was evidence of planned investment in bio-fuel plants (another possible source of suitable CO₂), most of these plans were at an early stage and it was far from clear that we could expect CO₂ liquefaction equipment to be installed in the foreseeable future.
23. We therefore considered that the joint venture may be expected to result in an SLC in the market for the supply of CO₂ to distributors in the UK.
24. We considered the market for nitric acid. We found that the parties competed significantly only in the supply of 58-60 per cent concentration nitric acid. As they are the only two UK suppliers and as transport costs rendered imports unattractive, the JV would be expected to have a monopoly in this market.
25. We therefore considered that the JV may be expected to result in an SLC in the supply of 58-60 per cent nitric acid.
26. We considered the market for aqueous ammonia. We found that the relevant market was UK wide, the threat of imports being an insufficient constraint on prices. We found that the JV would have a market share of over 75 per cent, and that the other two suppliers to this market were dependent on the parties.
27. We therefore consider that the JV may be expected to result in an SLC in the market for the supply of aqueous ammonia to customers in the UK.
28. We considered the market for anhydrous ammonia. We found that the relevant market was UK wide, since importing was costly due to the chemical's hazardous

nature. The parties are the only two suppliers, so the formation of the JV would create a monopoly supplier.

29. We therefore consider that the JV may be expected to result in an SLC in the market for the supply of anhydrous ammonia to customers in the UK.

30. We provisionally conclude that the anticipated joint venture between Kemira GrowHow Oyj and Terra Industries Inc constitutes a relevant merger situation which may be expected to result in SLCs in each of the markets for CO₂, nitric acid (of 58 to 60 per cent concentration), aqueous ammonia and anhydrous ammonia.