

ANTICIPATED JOINT VENTURE BETWEEN KEMIRA GROWHOW OYJ AND TERRA INDUSTRIES INC.

Statement of issues

The reference

1. Our terms of reference require us to consider the formation of a joint venture by Kemira GrowHow Oyj and Terra Industries Inc. (the parties). The inquiry group (the Group) is required to determine:
 - whether a relevant merger situation has been created; and
 - if so, whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition within any market or markets in the UK.
2. The issues that the Group is considering are as follows.

Market definition

3. The appropriate definition of the markets affected by the formation of the joint venture (the relevant markets), and in particular in relation to supply-side and demand-side substitution:

Fertilizers

The parties overlap in the supply of Ammonium Nitrate and Ammonium Nitrate with Sulphur fertilizers:

- (a) whether there is a distinct market for Ammonium Nitrate fertilizers or whether this forms part of a wider market including, for example, Urea or complex fertilizers (those containing Nitrogen, Phosphate, and Potassium);
- (b) whether there is a distinct market for Ammonium Nitrate with Sulphur fertilizers or whether this forms part of a wider market; and
- (c) the geographic extent of the market(s) that include Ammonium Nitrate and Ammonium Nitrate with Sulphur fertilizers (taking account of transport and storage costs as well as regulatory factors such as safety legislation).

Process chemicals

The parties overlap in the supply of: Nitric Acid with concentration levels of 58 to 60 per cent,¹ Anhydrous Ammonia, Aqueous Ammonia, Ammonium Nitrate for technical uses and Carbon Dioxide²:

- (a) whether each of these process chemicals forms a distinct product market, including whether:

¹Nitric acid is also supplied at concentrations of 98 per cent and 69/70 per cent. We have been told that there is no significant overlap between the parties in the supply of acid at these concentrations.

²The parties both produce raw Carbon Dioxide for liquefaction. Terra liquefies Carbon Dioxide and sells this on; Kemira liquefies Carbon Dioxide for Air Liquide.

- (i) different concentrations of Nitric Acid are substitutes for one another due to demand-side or supply-side substitution;
 - (ii) Ammonium Nitrate for technical uses (mainly for explosives) forms part of the market for Ammonium Nitrate fertilizers or whether there are considerations, such as service quality or distribution issues, such that it forms a separate product market;
 - (iii) customers supplied by pipeline should be considered to be outside of the markets for the relevant chemicals; and
- (b) the geographic extent of the process chemicals markets (taking account of transport and storage costs as well as regulatory factors such as safety legislation).

Counterfactual

4. What may have been expected to occur in the short to medium term without the formation of the joint venture (the counterfactual), and, in particular, for each of the parties, whether its UK fertilizer and process chemicals business would have:
- (a) remained an independent and viable business; or
 - (b) been subject to restructuring, possibly reducing the scope or intensity of competition; or
 - (c) ceased trading, and if so what would have happened to its assets and customer relationships.

Assessment of the competitive effects of the proposed joint venture

Underlying factors

5. The competitive conditions in each of the relevant markets, and in particular:
- (a) the extent of competition between the parties prior to the transaction;
 - (b) the importance of alternative suppliers;
 - (c) the key considerations influencing the purchasing behaviour of customers, and in particular the importance of:
 - (i) price;
 - (ii) reliability of supply;
 - (iii) other aspects of product or service quality;
 - (d) how prices are determined;
 - (e) seasonality and local factors affecting the use of fertilizers (and in particular the use of Urea);
 - (f) the effects of changes in input costs, eg the price of natural gas;

- (g) whether there is scope for price discrimination (eg to technical users of Ammonium Nitrate);
- (h) anticipated changes in production capacities, as appropriate; and
- (i) the extent of barriers to entry or expansion for each of the relevant markets.

Competitive effects

- 6. Against this background, the possible competitive effects of the proposed joint venture within each of the relevant markets to be identified, and, in particular:
 - (a) whether the formation of the joint venture may be expected to create or increase market power in any relevant market and lead to an increase in prices or a reduction in service for some or all customers;
 - (b) whether there are any efficiencies that could be expected to arise from the joint venture and their impact on any relevant market;
 - (c) whether, in any of the relevant market(s), any possible lessening of competition might be offset by the buyer power of customers; and
 - (d) whether, taking account of all of the above, the proposed joint venture may be expected to result in a substantial lessening of competition within any market or markets in the UK or a part of the UK.

Remedies

- 7. Should the Group conclude that the formation of the joint venture may be expected to result in a substantial lessening of competition, it will consider whether and, if so, what remedies might be appropriate, and will issue a further statement at a later date. The Group welcomes comments on what structural and/or behavioural remedies would be appropriate in the event of such a finding.

Relevant customer benefits

- 8. In any consideration of possible remedies the Group will consider whether any relevant customer benefits might be expected to arise as a result of the joint venture and, if so, what these benefits are likely to be and which customers would benefit. Customer benefits are benefits to customers at any point in the value chain and are not limited to benefits to end-consumers.

Comments

- 9. Anyone wishing to comment on any of the issues raised is requested to do so by 9 March 2007 by email to kemira.terra@cc.gsi.gov.uk or in writing to:

Kemira/Terra Inquiry
Inquiry Secretary
Competition Commission

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