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 Where possible the information omitted has been replaced by ranges of figures or a general description.

AGROFERT, a.s.
Pyšelská 2327/2
149 00 Praha 4, Chodov
Czechia

Subject: **Case M.10834 – AGROFERT / BOREALIS NITRO**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 6 February 2023, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which AGROFERT, a.s. (Czechia) ("**AGROFERT**"[3] or "**Notifying Party**") will acquire sole control of Borealis Chimie S.A.S. (France), Borealis Produits et Engrais Chimiques du Rhin S.A.S. (PEC-Rhin) (France), Borealis L.A.T France S.A.S. (France), Borealis Agrolinz Melamine Deutschland GmbH (Germany), Borealis Agrolinz Melamine GmbH (Austria), Borealis L.A.T GmbH (Austria), Feboran EOOD (Bulgaria) and Borealis L.A.T Italia s.r.l. (Italy) (together with their subsidiaries "**Borealis NITRO**") by way of purchase of shares (the

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 Including AGROFERT Group together with its controlled subsidiaries.

"**Transaction**").[4] AGROFERT and Borealis NITRO are designated hereinafter as the "Parties".

1. THE PARTIES

(2) **AGROFERT** is a privately held Czech group of companies active in *inter alia* the agricultural sector, in the food industry, in the media sector, and in the chemical industry. Its activities in the chemical industry include the production and supply of fertilizers and technical nitrogen products. AGROFERT manufactures and distributes various types of straight nitrogen fertilizers, compound/blended fertilizers containing nitrogen, as well as technical nitrogen products such as AdBlue, ammonia (both aqueous and anhydrous), nitric acid, urea, and urea ammonium nitrate[5] in production facilities in Czechia, Slovakia, and Germany. AGROFERT's shares are held by two trusts whose founder and beneficiary is Andrej Babiš.

(3) **Borealis NITRO** is the fertilizer and nitrogen business of the Austrian Borealis group. Borealis NITRO is active in the production and supply of fertilizers, technical nitrogen products and melamine with production facilities in France, Germany, Austria, and Bulgaria. In terms of fertilizers, Borealis NITRO's product range consists of straight nitrogen fertilizers and compound/blended fertilizers containing nitrogen. In terms of technical nitrogen products, Borealis NITRO distributes AdBlue, urea for technical use and animal feed, ammonia and urea solutions, and pure ammonium nitrate, as well as nitric acid (including weak nitric acid).

2. THE TRANSACTION

(4) The Transaction consists of AGROFERT's acquisition of sole control over Borealis NITRO.

(5) On 28 July 2022, AGROFERT and AGROFERT's wholly-owned subsidiary SKW Stickstoffwerke Piesteritz GmbH (Germany) on the one hand, and Borealis AG (Austria) and Borealis France S.A.S (France)[6] on the other hand concluded a share purchase agreement (the "**SPA**"). The SPA provides for the transfer of all shares in the Borealis entities that make up Borealis NITRO[7] to AGROFERT. Regarding Borealis Agrolinz Melamine GmbH (Austria), after closing of the SPA, 10% of its shares will be held by AGROFERT's wholly-owned subsidiary SKW Stickstoffwerke Piesteritz GmbH (Germany) and the remaining 90% will be held by Borealis L.A.T GmbH (Austria), which at that point will be AGROFERT's wholly-owned subsidiary.

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4 Publication in the Official Journal of the European Union No C 057, 16.2.2023, p. 23.

5 Urea and urea ammonium nitrate can be used as straight nitrogen fertilizers and for other technical purposes.

6 Borealis AG and Borealis France S.A.S., which is a wholly owned subsidiary of Borealis AG, directly or indirectly, own the shares of the entities which together form Borealis NITRO.

7 Borealis Chimie S.A.S. (France), Borealis Produits et Engrais Chimiques du Rhin S.A.S. (PEC-Rhin) (France), Borealis L.A.T France S.A.S. (France), Borealis Agrolinz Melamine Deutschland GmbH (Germany), Borealis L.A.T GmbH (Austria), Feboran EOOD (Bulgaria) and Borealis L.A.T Italia s.r.l. (Italy).

(6) The Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million (AGROFERT EUR […] million (2021); Borealis NITRO EUR […] million (2021)).[8] The aggregate Union-wide turnover is more than EUR 250 million (AGROFERT EUR […] million; Borealis NITRO EUR […] million) and neither achieves more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The Transaction therefore has a Union dimension.

4. RELEVANT MARKETS

(8) The Transaction results in affected markets in relation to horizontal overlaps for the production and sale of nitrogen based fertilizers and other technical nitrogen products, namely, AdBlue, ammonia (both aqueous and anhydrous)[9] and weak nitric acid. In addition, the Transaction gives rise to an affected vertical link between the upstream market for the production and supply of nitrogen fertilizers on which both Parties are active and the downstream national markets for the retail sale of mineral fertilizers to end customers in Czechia, Slovakia, Hungary, Romania, Croatia and Poland in which AGROFERT is active.[10]

4.1. Nitrogen based fertilizers

(9) Nitrogen (N), phosphorus (P) and potassium (K) constitute the primary plant nutrients which are needed in large quantities for agricultural applications and are administered to plants as fertilizers.

(10) Fertilizers can be in single nutrient form (straight nitrogen, straight phosphorus, and straight potassium) or in a complex form which may contain any combination of nitrogen, phosphorus and potassium. This may be achieved by chemical means (compound fertilizers) or mechanically (blended fertilizers). The Parties' activities overlap regarding the production and supply of straight nitrogen fertilisers of the following types: calcium ammonium nitrate ("**CAN**"), urea ammonium nitrate ("**UAN**") and urea.[11]

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8 Turnover calculated in accordance with Article 5 of the Merger Regulation.

9 The market for anhydrous ammonia will not be considered further as the Parties' overlap on this market does not give rise to any affected markets.

10 Other vertical relationships that do not result in affected markets include: (i) the upstream EEA-wide market of urea for technical use and downstream EEA-wide plausible sub-segment for UAN fertilizers and UAN for technical use; (ii) upstream EEA-wide market for urea for technical use and downstream EEA-wide market for AdBlue; (iii) upstream EEA-wide market for urea for technical use and downstream worldwide or EEA-wide market for melamine; (iv) upstream segment for AN for technical use as a solution and downstream EEA-wide plausible sub-segment for UAN fertilizers and EEA-wide market for UAN for technical use; and (v) upstream EEA-wide market for anhydrous ammonia, and downstream EEA-wide markets for the production and supply of nitrogen fertilizers and for urea for technical use.

11 Borealis NITRO also produces ammonium nitrate ("**AN**"), but AGROFERT does not produce AN.

4.1.1. Product market definition

(11) In its previous decisions, the Commission considered that mineral fertilizers, such as the industrially produced nitrogen fertilizers produced by the Parties (CAN, UAN and urea), are distinct from organic fertilizers, which are naturally produced.[12] For mineral fertilizers a further distinction between field fertilizers and specialty fertilizers has also been considered in previous decisions.[13]

(12) The Commission has also previously considered that within mineral fertilizers nitrogen, phosphorus and potassium fertilizers represent separate product markets. However, it has left open whether any further segmentation within nitrogen, potassium or phosphorus fertilizers should be made, in particular between straight and compound/blended fertilizers.[14]

(13) With regard to nitrogen fertilizers, the Commission considered in previous decisions that there are various types of straight nitrogen fertilizers which vary in their chemical composition and, in particular, in their nitrogen content. In a previous decision, the Commission left open the product market definition for straight nitrogen fertilisers. It considered that on the one hand the production of individual straight nitrogen fertilizers like urea, AN or UAN may require special production facilities, and that some fertilizers may be better suited than others for certain soils or crops, on the other hand, the price correlation between them shows that alternative products are able to exercise competitive pressure on each other.[15]

(14) The Notifying Party submits that the various straight nitrogen fertilizers are part of a single market for nitrogen fertilizers, stressing that the Commission's earlier findings continue to apply as confirmed market mechanisms have not changed.[16] The Notifying Party submits that the function of the various nitrogen fertilizers is essentially the same in that they provide the plants with nitrogen.[17] The prices of the various nitrogen fertilisers are strongly correlated in relation to their nitrogen content.[18] This is also illustrated by customers citing the price of other types of nitrogen fertilizers when negotiating the price of a specific nitrogen fertilizer.[19]

(15) The results of the market investigation indicated that the majority of customers and competitors view all types of straight nitrogen fertilizers as substitutable. For some end-users liquid nitrogen fertilizers (i.e. UAN) and solid nitrogen fertilizers (i.e. urea, CAN, AN) cannot be used in all cases as certain end-users lack access to equipment for the spreading of liquid fertilizers.[20] Customers and competitors also indicated that in case of a 5 - 10% price increase for CAN, a majority of customers

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12 Case No Comp/M.6695, *Azoty Tarnów/Zaklady Azotowe Pulawy,* paragraph 13; Case No COMP/M.4730 - *Yara/Kemira GrowHow*, paragraph 14.

13 Field fertilizers are spread as solid granules on a field and diluted progressively by rain or irrigation water, while specialty fertilizers are water soluble or liquid fertilizers applied in liquid form to the field. See Case IV/M.769 - *Norsk Hydro /Arnyca*.

14 Case No Comp/M.6695, *Azoty Tarnów/Zaklady Azotowe Pulawy,* paragraph 14.

15 Case No COMP/M.4730 - *Yara / Kemira GrowHow*, paragraph 16.

16 Form CO, paragraph 113.

17 Form CO, paragraph 114.

18 Form CO, paragraph 115.

19 Form CO, paragraph 116.

20 Replies to eRFI Market Investigation, Customers, question B.A.1 and replies to eRFI Market Investigation, Competitors, question B.A.1.

would shift some or a vast amount of their demand to other straight nitrogen fertilizers, which is further evidence of demand-side substitutability.[21] Customers and competitors also confirmed that when they negotiate prices of CAN, customers refer to the prices of other straight nitrogen fertilizers such as urea.[22] Thus, the market investigation indicated that various straight nitrogen fertilizers are interchangeable and likely constitute one market.[23]

(16) For the purpose of this decision, however, it can be left open whether a distinction should be made between markets for CAN, UAN, AN and urea or whether markets can be defined wider as all straight nitrogen fertilizers or even wider as a market including all nitrogen fertilizers as the Transaction does not raise serious doubts as to its compatibility with the internal market under any of these plausible product market definitions.

4.1.2. Geographic market definition

(17) In previous decisions the Commission has considered the market for nitrogen fertilizers geographically to be at least EEA-wide in scope.[24] Moreover, due to high levels of imports of nitrogen fertilizers into the EEA it has been considered that markets may be even wider than the EEA.[25]

(18) The Notifying Party submits that, in line with previous decisions, the market for straight nitrogen fertilizers is at least EEA-wide in scope.[26] The Notifying Party submits that: (i) nitrogen fertilizer prices are strongly correlated across the EEA;[27] (ii) there are substantial imports from outside the EEA; (iii) transport costs do not represent a material share of the price of nitrogen fertilizers; and (iv) numerous competitors are active across various EEA countries.[28]

(19) The results of the market investigation confirmed an at least EEA-wide market for nitrogen fertilizers, straight nitrogen fertilizers, CAN, UAN or urea. A majority of respondents responded that the market is at least EEA-wide in scope.[29] Moreover, customers source nitrogen fertilisers on an EEA-wide basis and some customers even source globally.[30] The same is true for suppliers who responded that they supply on an EEA-wide or even global scale.[31] Regarding transport costs as a percentage of total price, competitors stated that these range on average between

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21 Replies to eRFI Market Investigation, Customers, question B.A.3 and replies to eRFI Market Investigation, Competitors, question B.A.3.

22 Replies to eRFI Market Investigation, Customers, question B.A.6 and replies to eRFI Market Investigation, Competitors, question B.A.5.

23 Especially solid nitrogen fertilizers appear to be interchangeable. However, for the purposes of this decision, it can be left open whether there should be a distinction between the markets for liquid and solid nitrogen fertilizers.

24 Case No COMP/M.7784 – *CF Industries / OCI Business*, paragraph 40.

25 Case No COMP/M.4730 - *Yara / Kemira GrowHow*, paragraphs 21-23.

26 Form CO paragraph 128.

27 The Notifying Party substantiates this with an analysis prepared by Frontier Economics (Annex 6(3)(1) to the Form CO).

28 Form CO, paragraph 129.

29 Replies to eRFI Market Investigation, Customers, question B.3 and replies to eRFI Market Investigation, Competitors, question B.3.

30 Replies to eRFI Market Investigation, Customers, question BA.8.

31 Replies to eRFI Market Investigation, Competitors, question BA.9.

2-8% of the total price for their direct customers.[32] All competitors mention that there are limited to no trade barriers within the EEA and agree that the geographic market for nitrogen fertilizers to be at least EEA-wide in scope because producers sell nitrogen fertilisers from production facilities to customers across the EEA.[33] Therefore, the market investigation confirms that the market for nitrogen fertilizers is at least EEA-wide in scope.[34]

(20) Moreover, import statistics provided by Eurostat demonstrate that imports of various nitrogen fertilizers constitute a considerable and increasing share of supply in the EEA. In 2021, imports represented 30% of the total consumption of nitrogen fertilizers in the EU.[35] For the first eight months of 2022, imports for nitrogen fertilizers increased by an additional 19% compared to the same period in 2021.[36]

(21) Finally, the Commission's analysis of the Parties' sales data does not reveal any patterns in the Parties' sales or pricing strategies that would contradict an at least EEA-wide market for nitrogen fertilizers.

(22) In light of the above, the Commission considers that the market for the production and supply of all nitrogen fertilizers, or the market including all straight nitrogen fertilizers or including the different types (CAN, UAN or urea), to be at least EEA-wide in scope.

4.2. Distribution of fertilizers

(23) The Transaction gives rise to a vertical link between the upstream EEA-wide market for the production and supply of all nitrogen fertilizers (including plausible sub-segmentation into straight nitrogen fertilizers or into different types: CAN, UAN or urea) on which both Parties are active and the downstream national markets for the retail sale of mineral fertilizers (including all nitrogen fertilizers) to end customers in the Czechia, Slovakia, Hungary, Romania, Croatia and Poland on

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32 Replies to eRFI Market Investigation, Competitors, question BA.7.

33 Replies to eRFI Market Investigation, Competitors, question BA.6 and B.3.

34 The Commission received a letter from Niederösterreichischer Bauernbund (NÖ Bauernbund) dated 23 July 2022. Moreover, the Commission had a conference call with the representatives of NÖ Bauernbund on 15 September 2022 to hear their views on the Transaction. The Commission also included NÖ Bauernbund as one of the recipients of the RFI in the market investigation, providing them with an opportunity to provide their views on the Transaction. NÖ Bauernbund argued amongst others that given rising transport costs, regulatory developments and special soil conditions in Austria there is a national market in Austria or regional market for the production and supply of CAN. This was not confirmed by the market investigation or the European Commission's economic analyses. The majority of respondents to the market investigation replied that the market is at least EEA-wide. While soil conditions may play a role when using a nitrogen fertilizer, the market investigation indicated that the various types can be used interchangeably with adaptations. There is ample cross-border trade of nitrogen fertilizers, including from and to Austria and there are no regulatory differences between Member States that would amount to barriers to trade. Moreover, while transport costs may have increased with rising fuel prices, price increases in natural gas have a stronger impact on the total price of nitrogen fertilizers, therefore rising natural gas prices has in fact led to a decreasing role of transport costs in the total costs of nitrogen fertilizers. Therefore, rising natural gas prices possibly lead to a widening of the geographic market, which is also evidenced by increasing imports from outside the EEA in response to higher natural gas prices.

35 See Communication from the European Commission, *Ensuring availability and affordability of fertilisers*, Annex 2, page 4.

36 Ibid., page 5.

which AGROFERT is active. Borealis NITRO has only marginal and occasional sales to end customers.

4.2.1. Product market definition

(24) In the past, the Commission considered as relevant market as the distribution to purchasers who source mineral fertilizers on a national basis which in that case it identified to typically be retailers and end-customers.[37]

(25) The Notifying Party submits that there is a relevant product market for retail sales of all mineral fertilizers to end-customers. End-customers primarily purchase fertilizers from specialized retailers for agricultural products (selling for example, fertilizers, pesticides, seeds and feedstuff) although it is not excluded that larger end customers can source nitrogen fertilizers directly from manufacturers or wholesalers.[38]

(26) The results of the market investigation confirm the previous finding that there is a market for the distribution of all types of mineral fertilizers.[39] In particular, the majority of respondents considered that all types of mineral nitrogen fertilizers are sold through the same distribution channels.[40] The Commission did not find substantiated evidence suggesting that it should depart from the previous product market definition of distribution of all mineral fertilizers to end-customers.

4.2.2. Geographic market definition

(27) In line with the Commission's previous practice,[41] the Notifying Party agrees that the relevant geographic market for retail sales of mineral fertilizers to end customers is national in scope.[42]

(28) Market participants that replied to the market investigation indicated that the market for the supply of mineral fertilizers to retailers and to end-customers may be national or wider than national.[43] Taking into account the overall evidence on the file, the Commission's market investigation overall confirms the previous Commission's finding that in the distribution market the sales to those purchasers (typically retailers and end-customers) are considered on a national basis.[44]

4.3. Technical nitrogen products

4.3.1. AdBlue

(29) AdBlue is a solution of high purity urea (automotive urea) and demineralized water that is used in diesel-powered freight trucks, personal vehicles and public transport vehicles to reduce exhaust gas NOx emissions for compliance with EU emissions

37 Case No COMP/M.4730 - *Yara / Kemira GrowHow*, paragraph 53.
38 Form CO, paragraph 194.
39 Replies to eRFI Market Investigation, Retailers, question B.2.
40 Replies to eRFI Market Investigation, Retailers, question B.2.
41 Case No COMP/M.4730 - *Yara / Kemira GrowHow*, paragraph 53.
42 Form CO, paragraph 195.
43 Replies to eRFI Market Investigation, Retailers, question B.1.
44 Case COMP/M.4730 – *Yara / Kemira GrowHow*, paragraph 53.

targets. AdBlue is a urea solution with a urea content of 32.5%.[45] It is used in conjunction with Selective Catalytic Reduction technology, where it leads to a reduction of harmful emissions by approx. 90%. AdBlue can also be used for the same purpose on ships and in industrial plants.

(30) AdBlue producers generally operate one of two models: (i) vertically integrated players; and (ii) blenders. Vertically integrated AdBlue producers have their own urea production units and produce AdBlue from that urea. Other AdBlue producers purchase automotive urea on the market (normally in solid form known as urea prills) and operate a blending facility where they dilute automotive urea (or a urea solution with a higher urea content than AdBlue) with water to produce AdBlue.

4.3.1.1. Product market definition

(31) The Commission previously considered that AdBlue could form a distinct product market.[46]

(32) The Notifying Party submits that AdBlue can be defined as a separate product market from a demand-side perspective. The Notifying Party argues that the relevant product market also encompasses non-branded urea solutions whose chemical composition is identical to the chemical composition of AdBlue sold under the AdBlue® trademark.

(33) Furthermore, the Notifying Party notes that there is a high degree of supply-side substitutability between the production of AdBlue and other urea solutions (with a different urea content) as AdBlue and other urea solutions are produced in the same type of production facilities.

(34) The results of the market investigation confirm that there is a separate product market for AdBlue.[47] While the market investigation suggested there is supply-side substitutability between AdBlue and other products produced by diluting concentrated urea, it also confirmed that AdBlue is a separate product with limited, if any, demand-side substitutability between AdBlue and other urea solutions with the same chemical composition. As such, while producers can easily change the ratio at which they dilute urea prills, the vast majority of customers confirmed that they only purchase trademarked AdBlue solutions and would not consider purchasing urea of the same concentration without the trademark.[48] In practice therefore, because there is little if any demand-side substitutability between trademarked AdBlue and urea diluted to the same concentration, the Commission considers there could be a separate product market that only encompasses AdBlue.

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45 In order to sell AdBlue under the AdBlue® trademark, a supplier of AdBlue needs to enter into a trademark licensing agreement with the German Verband der Automobilindustrie e.V., which owns the AdBlue® trademark. However, there are a number of suppliers across Europe which have not concluded such a trademark license agreement and, therefore, sell a non-branded urea solution whose chemical composition is identical to the chemical composition of AdBlue sold under the AdBlue® trademark and thus serves the same need as AdBlue. Such suppliers of a non-branded urea solution are sometimes referred to as "unregistered" suppliers. Form CO, paragraph 200.

46 Case COMP/M.4730 – *Yara / Kemira GrowHow*, paras. 189-190.

47 Replies to eRFI Market Investigation, Customers, question C.1 and Competitors, C.1.

48 Replies to eRFI Market Investigation, Customers, questions C.5, C.8, and C.10.

(35) For the purpose of this decision, however, it can be left open whether there should be a separate product market for urea solutions with the AdBlue trademark or whether it should also encompass all urea solutions with the same concentration because the Transaction does not raise serious doubts as to its compatibility with the internal market under either product market definition.

4.3.1.2. Geographic market definition

(36) The Commission previously found that the relevant geographic market for AdBlue is EEA-wide in scope as the supply of AdBlue does not encounter any "factual or regulatory" barriers to trade.[49]

(37) The Notifying Party submits that, in line with previous decisions, the geographic market is EEA-wide because: (i) AdBlue is traded cross-border and can be transported over long distances; (ii) there are a large number of facilities across the EEA with overlapping catchment areas; and (iii) suppliers are not restricted by customers location because they typically transport concentrated urea solutions longer distances before diluting to make AdBlue.[50]

(38) The results of the market investigation confirmed a lack of barriers to trade in the EEA[51] and the Commission did not find any evidence suggesting that it should depart from the previous geographic market definition.

4.3.2. Aqueous ammonia

(39) Ammonia is manufactured by reacting nitrogen from the air with hydrogen in the presence of a catalyst at high temperature and high pressure.[52] Ammonia can be diluted in demineralised water, typically 25% of ammonia and 75% of water. In distinction to "anhydrous ammonia" (not diluted in water) the product diluted in water is named "aqueous ammonia". Anhydrous ammonia is used as an input material for the production of nitrogen fertilisers and other industrial applications,[53] while the main uses[54] of aqueous ammonia include the use of aqueous ammonia in DeNOx systems in order to reduce or eliminate nitric oxides ("**NOx**") emissions and the use of aqueous ammonia as a fermentation agent in the food industry.[55]

(40) Aqueous ammonia is usually transported by truck or rail, more specifically by tank trunks or tank wagons. Its transportation, storage and handling needs to comply with international regulations and safety guidelines due to its toxicity.[56]

(41) AGROFERT is active in the production and supply of aqueous ammonia through its production facilities in Piesteritz (Germany), Šaľa (Slovakia) and Pardubice

49 Case COMP/M.4730 – *Yara / Kemira GrowHow*, paragraph 192.
50 Form CO, paragraph 243.
51 Replies to eRFI Market Investigation, Customers, question C.2.
52 Case No COMP/M.8674 – *BASF / Solvay's Polyamide Business*, paragraph 31.
53 Case No COMP/M.8674 – *BASF / Solvay's Polyamide Business*, paragraph 31.
54 According to the Notifying Party, aqueous ammonia can also be used as a raw material for the production of plant protection products, the production of sodium carbonate, the production of polyacrylamides, the pH adjustment in the production of emulsion polymers, the pH adjustment in the formulation of paints and as a fermentation agent for the production of bioethanol. See Reply to RFI 10 of 28 February 2023, question 1.
55 Replies to RFI 10 of 28 February 2023, question 1.
56 Form CO, paragraph 202.

(Czechia).[57] Borealis NITRO's production facilities for aqueous ammonia are located in Grandpuits (France), Ottmarsheim (France), and Linz (Austria).

4.3.2.1. Product market definition

(42) The Commission has previously considered that aqueous ammonia constitutes a separate product market from anhydrous ammonia due to the low demand substitutability, considering that customers would not start purchasing or increase their purchases of anhydrous ammonia to convert it into aqueous ammonia in reaction to a 5-10% price increase. This is because anhydrous ammonia is a hazardous material and requires significantly more investment in facilities and security than aqueous ammonia. [58] The Commission also previously considered that there is a lack of supply-side substitutability between these products, as the vast majority of respondents would not start selling or increase their sales of aqueous ammonia by converting part of their anhydrous ammonia into aqueous ammonia, should the price of aqueous ammonia increase by 5-10%.[59] The Notifying Party does not contradict the Commission's previous findings.[60] In addition, the market investigation largely confirms the non-substitutability between the two products.[61]

(43) In light of the above, the Commission will consider a separate market for aqueous ammonia for the purpose of this decision.

4.3.2.2. Geographic market definition

(44) The Commission has previously considered that the market for aqueous ammonia may be national or regional in scope. In *Yara / Kemira GrowHow* the Commission considered a geographic market encompassing the North Western European region, including Belgium, France, the Netherlands, Luxembourg, Denmark and Germany, in light of the significant trade flows between these countries due to a dense transportation infrastructure and the high concentration of both producers and consumers.[62]

(45) The Notifying Party submits that the relevant geographic market for aqueous ammonia is EEA-wide and in any event wider than national, considering the cross-border trade of aqueous ammonia within the EEA.[63] The Notifying Party submitted that if a regional market were to be considered, it should encompass all the countries that are either in their entirety or to an overwhelming extent within the overlapping 1,000 kilometres catchment areas of the Parties' production facilities i.e. Austria, Belgium, Croatia, Czechia, Denmark, France, Germany, Hungary, Italy, Luxembourg, the Netherlands, Poland, Romania, Slovakia and Slovenia (referred to as the "**Regional Segment A**").[64] For completeness, the Notifying Party also provided market share data on a catchment area basis i.e. a 1,000

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57 [Information on the production of aqueous ammonia in AGROFERT's production facilities in Pardubice].

58 Case No COMP/M.4730 – *Yara / Kemira GrowHow*, paragraph 75.

59 Case No COMP/M.4730 – *Yara / Kemira GrowHow*, paragraphs 74-75.

60 Form CO, paragraph 229.

61 Replies to eRFI Market Investigation, Customers, question E.1., Replies to eRFI Market Investigation, Competitors, question E.1..

62 Case No COMP/M.4730 - *Yara / Kemira GrowHow*, paragraph 76.

63 Form CO, paragraph 241.

64 Form CO, paragraph 246.

kilometre radius around each of the Parties' aqueous ammonia production facilities,[65] and national market shares.

(46) There was no indication in the market investigation that the relevant geographic market should be national. The majority of customers and competitors that responded to the market investigation indicated that aqueous ammonia is usually sourced within a radius of 500 kilometres from the production plant.[66] Although, in reaction to a potential price increase of 5 - 10% the majority of customers who responded to the market investigation indicated that they would consider purchasing from further afield, from neighbouring countries, across the EEA and up to 1000 kilometres from the place of delivery.[67] These results are in line with Regional Segment A suggested by the Notifying Party and described in paragraph (45) above.

(47) In fact, the Parties themselves supply aqueous ammonia cross-border over distances of 1000 kilometres or more. AGROFERT's subsidiary Duslo with its aqueous ammonia production in Šaľa, Slovakia sells aqueous ammonia to customers in Austria, Bosnia and Herzegovina, Croatia, Czechia, Hungary, Serbia, Slovakia, Slovenia (within a 1,000 kilometres radius) and even to customers in Estonia and Italy which are located more than 1,000 kilometres from the production plant. Similarly, Borealis NITRO sells aqueous ammonia from its production plants in France to customers located in Italy, Switzerland, Belgium, Germany and the Netherlands and from its production plant in Linz, Austria to customers located in Germany, Hungary, Italy, Poland, Slovakia, Slovenia and Switzerland.[68]

(48) However, as the Transaction will not give rise to any competition concerns on any plausible geographic market, it can be left open whether or not the geographic market definition should be considered as EEA-wide, regional or based on a 1,000 kilometres catchment area around the production plant.

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65 Form CO paragraph 934. The Notifying Party submitted that it does not have access to data which would allow it to estimate the Parties' market shares in a region which is precisely defined by a 1,000 kilometres radius around a production plant. It has therefore identified the countries, the territory of which is located within a radius (bee-line distance) of 750 kilometres – as a conservative proxy for a catchment area of 1,000 kilometres by road or rail – around the respective aqueous ammonia production facility, either in its entirety or to an overwhelming extent, i.e., for the predominant part. Countries which are only partly located within this radius have only been taken into account if clearly more than half of their territory was located within this radius.

66 Replies to eRFI Market Investigation, Competitors, question E.2., Replies to eRFI Market Investigation, Customers, question E.1.

67 Replies to eRFI Market Investigation, Customers, questions E.4 – E.11.

68 Replies to RFI 10 of 28 February 2023, question 5.

4.3.3. Weak nitric acid

(49) Weak nitric acid is a low-concentrated solution of nitric acid (between 54% and 65%),[69] whose main application relates to fertilizer production. Other applications also include "Cleaning In Place" in the dairy industry, surface treatment of metals and manufacture of cleaning agents.[70]

(50) As weak nitric acid serves as an input for the production of nitrogen fertilizers, most manufacturers of nitrogen fertilizers have own nitric acid production facilities. Most of the weak nitric acid produced by manufacturers of nitrogen fertilizers is used captively whereas only small volumes of weak nitric acid are sold on the merchant market by manufacturers of nitrogen fertilizers.[71]

(51) Weak nitric acid is usually transported by truck or rail, more specifically by tank trucks and in tank wagons. Its transportation, storage and handling need to comply with international regulations and safety guidelines due to its corrosiveness and toxicity.[72]

(52) AGROFERT's weak nitric acid production facilities are located in Piesteritz (Germany), Šaľa (Slovakia), Strážske (Slovakia),[73] Pardubice (Czechia), and Lovosice (Czechia). Borealis NITRO's weak nitric acid production facilities are located in Grandpuits (France), Grand-Quevilly (France), Ottmarsheim (France),[74] and Linz (Austria).[75]

4.3.3.1. Product market definition

(53) The Commission has previously considered three separate product markets for nitric acid, depending on its concentration, i.e., weak nitric acid (with a concentration between 54% and 65%), azeotropic nitric acid (with a concentration of approx. 68%), and concentrated nitric acid (with a concentration of 98% to 99%).[76]

(54) The definition of three separate product markets is based on the fact that the applications for each of the concentrations are different; there is no demand-side substitutability and the prices for each of the products are different. The Commission has previously found that there is also little supply side substitutability as additional equipment is necessary to increase the concentration of weak nitric acid to that of azeotropic nitric acid and the manufacture of concentrated nitric acid

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69 Processes for the production of nitric acid are based on the Ostwald process, in which ammonia is oxidized with air to form nitric monoxide (NO). NO is further oxidized to form nitrogen dioxide (NO2) which finally is absorbed in water to produce nitric acid (HNO3). The most common concentration grade of nitric acid is weak nitric acid, which is, to the overwhelming extent, used for the production of fertilizers. Form CO, paragraph 791.

70 Case COMP/M.4730 – *Yara / Kemira GrowHow*, paragraph 91.

71 Form CO, paragraph 811.

72 Form CO, paragraphs 271 and 273.

73 [Information on the production of weak nitric acid in AGROFERT's production facility in Strážske].

74 [Information on the production of weak nitric acid in Borealis NITRO's production facility in Ottmarsheim].

75 Form CO, paragraph 262.

76 Cases COMP/M.6695 – *Azoty Tarnów / Zakłady Azotowe Puławy*, paragraphs 26-29; COMP/M.4730 – *Yara / Kemira GrowHow*, paragraphs 91-93.

involves a different process and entirely different plant to that used for the transformation of weak acid to azeotropic acid.[77]

(55) The Notifying Party submits that there is a separate market for weak nitric acid, in line with the Commission's precedent.[78]

(56) The results of the market investigation confirmed the Commission's earlier finding that weak nitric acid is a distinct market from azeotropic nitric acid and concentrated nitric acid.[79]

(57) In light of the above, the Commission considers that the market for weak nitric acid is a separate product market.

4.3.3.2. Geographic market definition

(58) The Commission has previously left the relevant geographic market definition for weak nitric acid open, but noted that several factors pointed to the existence of national or regional (based on a radius of 1,000 kilometres around a production plant) geographic markets and a separate market for North Western Europe, because of the existing dense transportation infrastructure and the concentration of industrial activity in that area.[80]

(59) The Notifying Party submits that the relevant geographic market for weak nitric acid is EEA-wide because there is relevant cross-border trade of weak nitric acid in the EEA. The Notifying Party further submits that if one assumed that the relevant geographic market for weak nitric acid was not EEA-wide, any plausible geographic segment for weak nitric acid is in any event wider than national and should be considered as at least regional.[81] The Notifying Party submitted that if a regional market were to be considered, it should encompass all the countries that are either in their entirety or to an overwhelming extent within the overlapping 1,000 km catchment areas of the Parties' production facilities i.e. Austria, Belgium, Croatia, Czechia, Denmark, France, Germany, Hungary, Italy, Luxembourg, the Netherlands, Poland, Romania, Slovakia and Slovenia[82] (referred to as the "**Regional Segment B**").[83] For completeness, the Notifying Party also provided market share data on a catchment area basis i.e. a 1,000 kilometre radius around each of the Parties' weak nitric acid production facilities,[84] and national market shares.

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77 COMP/M.4730 – *Yara / Kemira GrowHow*, paragraph 90.

78 Form CO, paragraph 258.

79 Replies to eRFI Market Investigation, Customers, question D.1.; Replies to eRFI Market Investigation, Competitors, question D.1.

80 Cases COMP/M.8674 – *BASF / Solvay's Polyamide Business*, paragraphs 91-94; Case COMP/M.6695 – Azoty *Tarnów / Zakłady Azotowe Puławy*, paragraphs 26-29; COMP/M.4730 – *Yara / Kemira GrowHow*, paragraphs 91-93.

81 Form CO, paragraph 260.

82 Form CO, paragraph 263.

83 Form CO, paragraph 246.

84 Form CO paragraph 934. The Notifying Party submitted that it does not have access to data which would allow it to estimate the Parties' market shares in a region which is precisely defined by a 1,000 kilometres radius around a production plant. It has therefore identified the countries, the territory of which is located within a radius (bee-line distance) of 750 kilometres – as a conservative proxy for a catchment area of 1,000 kilometres by road or rail – around the respective weak nitric acid production facility, either in its entirety or to an overwhelming extent, i.e., for the predominant part. Countries

(60) Nothing in the market investigation indicated that the relevant geographic market should be national. The majority of customers and competitors that responded to the market investigation indicated that weak nitric acid is usually sourced within a radius of 500 kilometres from the production plant.[85] Although in reaction to a potential price increase of 5 - 10% the majority of customers who responded to the market investigation indicated that they would consider purchasing from further afield, across the EEA and up to 1,000 kilometres from the place of delivery.[86] These results are in line with Regional Segment B suggested by the Notifying Party and described in paragraph (59) above.

(61) In fact, the Parties themselves supply weak nitric acid cross-border and distances of 1,000 kilometres or further. For instance, AGROFERT's production facility in Šaľa (Slovakia) achieves 90% of its weak nitric acid sales with customers located within a distance of approximately 900 kilometres from the production plant (including customers located in Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czechia, Estonia, Hungary, Italy, Poland, Serbia, Slovakia, Slovenia and Switzerland) and also sells weak nitric acid to customers located more than 1,500 kilometres from the production plant (including customers in Estonia and Ukraine). Borealis NITRO also sells weak nitric acid from its production plans in France to customers located in Czechia, Netherlands, Poland, Belgium, Germany, Ireland and Spain.[87]

(62) However, as the Transaction will not give rise to any competition concerns on any plausible geographic market, it can be left open whether or not the geographic market definition should be considered as EEA-wide, regional or based on a 1,000 kilometres catchment area around the production plant.

5. COMPETITIVE ASSESSMENT

(63) As set out in paragraph (8), AGROFERT and Borealis NITRO are both active in the production and distribution of nitrogen based fertilizers and nitrogen technical products, amongst other products, which results in horizontally affected markets for nitrogen fertilizers, AdBlue, aqueous ammonia and weak nitric acid. In addition, the Transaction gives rise to markets that are affected by virtue of the vertical links between the Parties' products upstream – production and sale of all nitrogen based fertilisers (including CAN, UAN, AN and urea) and distribution of these products downstream, in Czechia and Slovakia. The Parties also distribute nitrogen fertilizers in Hungary, Romania, Croatia and Poland, but none of these markets result in affected vertical links.

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which are only partly located within this radius have only been taken into account if clearly more than half of their territory was located within this radius.

85 Replies to eRFI Market Investigation, Competitors, question D.2., Replies to eRFI Market Investigation, Customers, question D.2.

86 Replies to eRFI Market Investigation, Customers, questions D.4. – D.14..

87 Form CO, paragraphs 266-267.

5.1. Analytical framework

5.1.1. Framework for the competitive assessment of horizontally affected markets

(64) The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the "Horizontal Merger Guidelines") distinguish two main ways in which concentrations between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.[88]

(65) A concentration giving rise to non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by one merging party on the other, as a result of which the merged entity would have increased market power without resorting to coordinated behaviour. This may be the case, in particular, if the concentration creates or strengthens a dominant position. According to recital 25 of the preamble of the Merger Regulation, a significant impediment to effective competition can also result from a concentration that eliminates important competitive constraints even if the merged entity would not have a dominant position on the market concerned. In this regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the concentration.[89]

(66) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. Not all of these factors need to be present for significant non-coordinated effects to be likely. The list of factors, each of which is not necessarily decisive in its own right, is also not an exhaustive list.[90]

(67) The Horizontal Merger Guidelines also describe a number of factors that could counteract any harmful effects of the merger on competition, including the likelihood of buyer power, entry and efficiencies.[91]

5.1.2. Framework for the competitive assessment of vertically affected markets

(68) A merger may result in foreclosure where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete. Two forms of foreclosure can be distinguished. The first is where the merger is likely to raise the costs of downstream rivals by restricting their access to an important input (input foreclosure). The second is where the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base (customer foreclosure).[92]

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88 OJ C 31, 05.02.2004, p. 5.

89 Horizontal Merger Guidelines, paragraphs 24-38.

90 Horizontal Merger Guidelines, paragraphs 24-38.

91 Horizontal Merger Guidelines, paragraphs 64-88.

92 Non-Horizontal Merger Guidelines, paragraph 30.

(69) Input foreclosure arises where, post-merger, the new entity would be likely to restrict access to the products or services that it would have otherwise supplied, absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may lead the merged entity to profitably increase the price charged to consumers, resulting in a significant impediment to effective competition.[93] In assessing the likelihood of an anticompetitive input foreclosure scenario, the Commission examines, first, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs, second, whether it would have the incentive to do so, and third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[94]

(70) Customer foreclosure may occur when a supplier integrates with an important customer in the downstream market. Because of this integration, the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market and reduce their ability or incentive to compete. In turn, this may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger. This may allow the merged entity profitably to establish higher prices on the downstream market.[95] In assessing the likelihood of an anticompetitive customer foreclosure scenario, the Commission examines, first, whether the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from its upstream rivals, second, whether it would have the incentive to reduce its purchases upstream, and third, whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[96]

5.1.3. Straight Nitrogen Fertilisers

(71) As shown in Table 1 below, on a plausible market for the supply and production of straight nitrogen fertilizers the Parties' estimated combined market share will be around [10-20]%. The only plausible horizontally affected market in the EEA is the market for CAN, on which the Parties' combined estimated market share will be [20-30]% with an increment of [10-20]% brought by Borealis NITRO.

Table 1 - Parties' market shares (sales volume) for straight nitrogen fertilizers 2021 - EEA-wide

2021	All straight N fertilizers	Urea	CAN	AN	UAN
AGROFERT	[5-10]%	[5-10]%	[10-20]%	[0-5]%	[10-20]%
Borealis NITRO	[5-10]%	[0-5]%	[10-20]%	[10-20]%	[0-5]%
Combined	**[10-20]%**	**[10-20]%**	**[20-30]%**	**[10-20]%**	**[10-20]%**

Source: Form CO, Table 6.7.3.2.

93 Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Non-Horizontal Merger Guidelines"), OJ C 265, 18.10.2008, paragraph 31.

94 Non-Horizontal Merger Guidelines, paragraph 32.

95 Non-Horizontal Merger Guidelines, paragraph 46.

96 Non-Horizontal Merger Guidelines, paragraph 59.

5.1.3.1. The production and supply of CAN in the EEA

(72) As noted above, the Parties' combined market shares for CAN on a sales volume basis result in an affected market with a combined market share of [20-30]% (AGROFERT [10-20]% and Borealis NITRO [10-20]%), if the market was defined narrow as the market for the production and supply of CAN. The Parties' and their competitors' shares in such a narrow market are set out in Table 2 below.

Table 2 - Parties' and Competitors' market shares (sales volume) for CAN 2021 - EEA-wide

2021	CAN
AGROFERT	[10-20]%
Borealis NITRO	[10-20]%
Combined	**[20-30]%**
Yara	[20-30]%
OCI	[5-10]%
Eurochem	[5-10]%
Nitrogénművek	[5-10]%
Fertiberia	[5-10]%
Grupa Azoty	[5-10]%
Others	[10-20]%

Source: Form CO, Tables 7A.3.2a and 7A.3.2b.

(73) The Notifying Party submits that the Transaction will not result in a significant impediment to effective competition with regard to CAN because: (i) the combined market share only slightly exceeds 20%; (ii) the capacity-based market share is lower than 20%; and (iii) Yara will remain the largest market participant and the Parties will face competition from a number of large competitors.

(74) For the reasons set out below, the Commission considers that the Transaction does not raise serious as to its compatibility with the internal market or the functioning of the EEA Agreement as a result of the horizontal overlap between the Parties in the production and supply of CAN in the EEA.

(75) *First*, a sufficient number of competitors will remain active in the production and sale of CAN in the EEA post-Transaction.

(76) The Notifying Party estimates that its largest competitors with regard to the production and sale of CAN in the EEA (on a production volume basis) are Yara International ASA (estimated market share [20-30]%), OCI N.V. (estimated market share [5-10]%), Eurochem Group AG (estimated market share [5-10]%), Nitrogénművek Zrt. (estimated market share [5-10]%), Fertiberia SA (estimated market share [5-10]%) and Grupa Azoty S.A. (estimated market share [5-10]%).[97]

(77) A large majority of customers and competitors in the market investigation confirms that there will continue to be a sufficient number of competitors supplying CAN

[97] Form CO, paragraph 624.

would remain active in the EEA after the Transaction.[98] Indeed, Yara will remain the largest supplier of CAN both in terms of capacity and sales volume.

(78) *Second*, when looking at capacity based shares, no affected market arises as the combined market share of the total EEA-wide capacity for the production of CAN fertilizers amounts to less than 20% (AGROFERT [5-10]% and Borealis NITRO [10-20]%).[99] The main competitors' capacity based market shares are as follows: Yara International ASA (estimated capacity-based share [20-30]%), Nitrogénművek Zrt. (estimated capacity-based share [10-20]%), OCI N.V. (estimated capacity-based share [10-20]%), Eurochem Group AG (estimated capacity-based share [5-10]%), Grupa Azoty S.A. (estimated capacity-based share [5-10]%) and Fertiberia SA (estimated capacity-based share [5-10]%).[100] In addition, all competitors replied that they could increase the capacity for the production of CAN to some extent.[101]

(79) *Third*, as noted above in paragraph (14), there is considerable demand-side substitution between different types of solid straight nitrogen fertilisers with customers and competitors indicating that in case of a 5 - 10% price increase for CAN, customers would shift their demand to various degrees to other nitrogen fertilizers.[102]

(80) *Fourth*, a majority of customers submitted that the effects of the Transaction on competition for CAN would be neutral or even positive.[103] In fact, customers submitted that there are sufficient suppliers and that some degree of consolidation may be positive for competition on the market to keep stable capacities in the market.[104] In addition, a majority of customers as well as competitors responded that the Transaction will have no effect on prices of CAN.[105]

(81) As noted above in paragraph (19) (footnote 34), the Commission received a complaint from NÖ Bauernbund arguing that the Transaction will have detrimental effects on the markets for nitrogen-based fertilizers, in particular the market for CAN in Austria, which is, according to NÖ Bauernbund, of utmost importance for Austrian farmers, resulting in less price competition and higher prices and further concerns regarding stability of supply. Following its market investigation however, the Commission considers that the complaint is unfounded. First, the Commission's market investigation assessed thoroughly if there is a separate product market for CAN, and did not conclude on this point given the evidence that nitrogen fertilizers may be interchangeable, but rather investigated a plausible market for CAN, for which it did not find serious doubts as to the compatibility with the internal market. Second, the Commission considers that even if there were a market for the supply of CAN this market would be wider than national and at

98 Replies to eRFI Market Investigation, Customers, questions B.A.12 and B.A.13 and replies to eRFI Market Investigation, Competitors, question B.A. 16.

99 Form CO, paragraph 623.

100 Form CO, Annex 6(7).

101 Replies to eRFI Market Investigation, Competitors, question B.A.13.

102 Replies to eRFI Market Investigation, Customers, question B.A.3 and replies to eRFI Market Investigation, Competitors, question B.A.3.

103 Replies to eRFI Market Investigation, Customers, question B.A.15.

104 Replies to eRFI Market Investigation, Customers, question B.A.16.

105 Replies to eRFI Market Investigation, Customers, question B.A.17 and replies to eRFI Market Investigation, Competitors, question B.A. 20.

least EEA-wide[106] and, therefore, in line with the competitive assessment the Transaction does not raise serious doubts as to its compatibility with the internal market. Third, the other factors cited in the complaint such as: (i) the supply shortage of nitrogen-based fertilizers due to disruption of production in the Ukraine and sanctions on Russian producers; and (ii) supply shortages of the main feedstock (natural gas); are not merger specific and, these factors have an EEA-wide dimension and are of uncertain duration. They do not affect the definition of an at least EEA-wide market; the Commission's investigation has found no decrease of nitrogen fertilizer imports from Russia based on Eurostat data (see paragraph (19)) and these factors do not result in a different outcome of the competitive assessment.

(82) In conclusion, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement as a result of the horizontal overlap between the Parties in the production and supply of CAN in the EEA.

5.1.4. Vertically affected markets of distribution of Nitrogen Fertilizers in Czechia

(83) As explained in Section 5.1.3 (paragraph (67)) , on the upstream market of the supply of nitrogen fertilizers, including the different types, which is at least EEA-wide in scope, the combined market share of the Parties' is estimated at [10-20]% in the EEA. Even considering possible narrower product markets of supply of separate nitrogen fertilizers (CAN, UAN and urea) in the EEA, the market shares of the merged entity are below 30% for each of these products. On the downstream market of the distribution of all mineral fertilizers to end-customers in Czechia, AGROFERT has market shares of [30-40]% in Czechia, while Borealis NITRO's that does not operate its own retail network and has a market share of below [0-5]% from direct sales to customers.[107]

(84) The Notifying Party submits that its largest competitors in the downstream market for the retail sale of mineral fertilizers to end customers in Czechia are HOKR, spol. s.r.o. (estimated share of approx. [5-10]%), MJM agro, a.s. (estimated share of approx. [5-10]%), RWA Czechia, s.r.o. (estimated share of approx. [5-10]%), Agro 2000 s.r.o. (estimated share of approx. [5-10]%), and Agro Blatná, a.s. (estimated share of approx. [5-10]%).[108]

(85) The Notifying Party submits that the Transaction will not impede effective competition due to vertical effects in Czechia, either in terms of input and customer foreclosure.[109] With regard to input foreclosure, the Notifying Party argues that it does not have a significant degree of market power in the upstream market. The Notifying Party estimates the combined market share on the EEA-wide market for the production and supply of nitrogen fertilizers is approximately [10-20]% and that there are a large number of competitors on the upstream market. Due to the absence of market power on the upstream market, the Notifying Party argues that

106 The EEA wide dimension of the market was also confirmed by Austrian customers (see Replies to eRFI Market Investigation, Customers, question B.3).
107 Form CO, paragraph 599.
108 Form CO, paragraph 596.
109 Form CO, paragraph 599.

post-Transaction the merged entity would not have the ability to engage in input foreclosure.

(86) The Notifying Party also argues that the vertical link between the upstream EEA-wide market for the production and supply of nitrogen fertilizers and the downstream national markets for the retail sale of all nitrogen fertilizers to end customers in Czechia does not give rise to customer foreclosure concerns in relation to any downstream national market. This is for two reasons, first, there is a sufficiently large number of competing retailers in the downstream market in Czechia (e.g., HOKR, spol. s.r.o., MJM agro, a.s., RWA Czechia, s.r.o., Agro 2000 s.r.o. and Agro Blatná, a.s.). Second, due to Borealis NITRO's small market presence on the downstream market, the Transaction virtually does not alter AGROFERT's market position, the affected market arises due to the pre-existing downstream position of AGROFERT.

(87) With respect to input foreclosure, the Commission's market investigation confirmed that in the upstream market, on any plausible basis, the merged entity would not have significant market power. As set out in paragraph (71), the market shares on the upstream market of the supply of nitrogen based fertilizers in the EEA are significantly below 30% and the Commission's investigation found that sufficient number of competitors would remain in the market post-Transaction as explained in Section 5.1.3 and would act as a competitive constraint on the merged entity. The majority of retailers responding to the market investigation replied that in their view there will be a sufficient number of competitors who supply mineral fertilizers in the EEA after the proposed transaction.[110] For example, one respondent to the market investigation, specifically with regard to the Czech market explained: "*In the Czech Republic, it is possible to obtain fertilizers from other producers, if the commercial conditions from Agrofert are unsuitable.*"[111] Another retailer explained that it considers the upstream market to be EEA-wide or potentially global, implying that it would have sufficient alternative suppliers post-Transaction. As such, the Commission considers that the merged entity would not have the ability or incentive to engage in input foreclosure preventing AGROFERT's competitors downstream to competitively source nitrogen based fertilizers.

(88) With respect to customer foreclosure, according to the Commission's guidelines,[112] a vertical merger may affect upstream competitors by increasing their cost to access downstream customers or by restricting access to a significant customer base. The Commission's investigation in this case found that the merged entity will not have the ability to restrict access to a significant customer base. There is no indication in the market investigation that AGROFERT's position at the retail level post-Transaction will provide to AGROFERT the ability or the incentive to foreclose its upstream competitors from a distribution channel in Czechia. AGROFERT pre-Transaction did not represent a significant customer of nitrogen fertilizers as it largely distributes its own products. In Czechia approximately [80-90]% of mineral fertilizers distributed by AGROFERT in 2021 were own mineral fertilizers. In this respect, the Commission also notes that Borealis

110 Reply to eRFI Market Investigation, Retailers, question D.1.
111 Reply to eRFI Market Investigation, Retailers, question D.15.
112 Non-Horizontal Merger Guidelines, paragraph 60.

NITRO's market share in the downstream market is below [0-5]% and as such, the Transaction does not bring a material change to AGROFERT's position on the downstream market in Czechia. The Commission found that sufficient number of downstream players able to compete with AGROFERT post-Transaction allowing upstream suppliers of mineral fertilizers to access independent third party-retailers in Czechia.

5.1.5. Vertically affected markets of distribution of Nitrogen Fertilizers in Slovakia

(89) In Slovakia, AGROFERT has a market share downstream of [30-40]%, while Borealis NITRO that does not operate its own retail network has a market share of below [0-5]% from direct sales to customers.

(90) The Notifying Party submits that its largest competitors in the downstream market for the retail sale of mineral fertilizers to end customers in Slovakia are Interagros, a.s. (roughly estimated share of approx. [30-40]%), Sunflower, a.s. (roughly estimated share of approx. [10-20]%), Arimex Bratislava spol. s.r.o. (roughly estimated share of approx. [5-10]%), RWA Slovakia spol. s.r.o. (roughly estimated share of approx. [5-10]%), and Agroracio, a.s. (roughly estimated share of approx. [5-10]%).[113]

(91) The Notifying Party submits that the Transaction will not impede effective competition due to vertical effects in Slovakia, either in terms of input and customer foreclosure.[114] With regard to input foreclosure, the Notifying Party argues that it does not have a significant degree of market power in the upstream market. The Parties' estimate combined market share on the EEA-wide market for the production and supply of nitrogen based fertilizers is approximately [10-20]% and there are a large number of competitors on the upstream market. Due to the absence of market power on the upstream market, the Notifying Party argues that post-Transaction the merged entity would not have the ability to engage in input foreclosure.

(92) The Notifying Party also argues that the vertical link between the upstream EEA-wide market for the production and supply of nitrogen fertilizers and the downstream national markets for the retail sale of mineral fertilizers to end customers in Slovakia does not give rise to customer foreclosure concerns in relation to any downstream national market. This is for two reasons, first, there is a sufficiently large number of competing retailers in the downstream market. Second, due to Borealis NITRO's small market presence on the downstream market, the Transaction virtually does not alter AGROFERT's market position, the affected market arises due to the pre-existing downstream position of AGROFERT.

(93) With respect to input foreclosure, the Commission's market investigation confirmed that in the upstream market, on any plausible basis, the merged entity would not have significant market power. As set out in paragraph (71), the market shares on the upstream market of the supply of nitrogen based fertilizers in the EEA are significantly below 30% and the Commission's investigation found that sufficient number of competitors would remain in the market post-Transaction as explained in Section 5.1.3 and would act as a competitive constraint on the merged

113 Form CO, paragraph 596.
114 Form CO, paragraph 599.

entity. The majority of retailers responding to the market investigation replied that in their view there will be a sufficient number of competitors who supply mineral fertilizers in the EEA after the proposed transaction.[115] For example, one retailer explained that they consider the upstream market to be EEA-wide or potentially global, implying that they would have sufficient alternative suppliers post-Transaction.[116] As such, the Commission considers that the merged entity would not have the ability or incentive to engage in input foreclosure preventing AGROFERT's competitors downstream to competitively source nitrogen based fertilizers.

(94) With respect to customer foreclosure, according to the Commission's guidelines,[117] a vertical merger may affect upstream competitors by increasing their cost to access downstream customers or by restricting access to a significant customer base. The Commission's investigation in this case found that the merged entity will not have the ability to restrict access to a significant customer base. There is no indication in the market investigation that AGROFERT's position at the retail level post-Transaction will provide to AGROFERT the ability or the incentive to foreclose its upstream competitors from a distribution channel in Slovakia. AGROFERT pre-Transaction did not represent a significant customer of nitrogen fertilizers as it largely distributes its own products. In Slovakia approximately [70-80]% of mineral fertilizers distributed by AGROFERT in 2021 were own mineral fertilizers. In this respect, the Commission also notes that Borealis NITRO's market share in the downstream market is below [0-5]% and as such, the Transaction does not bring a material change to AGROFERT's position on the downstream market in Slovakia. The Commission also found that a sufficient number of downstream players able to compete with AGROFERT post-Transaction allowing upstream suppliers to access independent third party-retailers in Slovakia.

5.1.6. AdBlue

(95) The Parties' activities overlap in production and supply of AdBlue. The Parties and their competitors' shares are set out below in Table 3. The Notifying Party submits that the Transaction will not result in a significant impediment to effective competition with regard to AdBlue because: (i) the Parties' combined shares remain below 25%; (ii) the Parties' combined shares are lower when considering capacity-based shares; (iii) a sufficient number of competitors will remain post-Transaction.

115 Reply to eRFI Market Investigation, Retailers, question D.1.
116 Reply to eRFI Market Investigation, Retailers, question D.15.
117 Non-Horizontal Merger Guidelines, paragraph 60.

Table 3 – Parties' market shares (sales volume) for AdBlue 2021 - EEA-wide

2021	AdBlue
AGROFERT	[20-30]%
Borealis NITRO	[0-5]%
Combined	**[20-30]%**
Yara	[30-40]%
BASF	[10-20]%
Grupa Azoty	[5-10]%
Tennants	[0-5]%
Arom-Dekar	[0-5]%
Gaschema	[0-5]%
Agrola	[0-5]%
Other	[10-20]%
Total	**100.0%**

Source: Form CO, Tables 7B.3.2a and 7B.3.2b

(96) The Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement as a result of the horizontal overlap between the Parties in the production and supply of AdBlue for the following reasons.

(97) *First*, the Parties combined market shares remain at less than 25% with an increment of less than 5%.

(98) *Second*, the market shares are lower when considering capacity-based market shares for urea. According to the Notifying Party, AdBlue is a urea solution manufactured from urea and there is no separate production line or dedicated urea capacity for the production of AdBlue. Therefore, the Notifying Party believes that there is no meaningful way to provide data on the capacity for the production of AdBlue.

(99) On the basis of capacity data for urea, an affected market arises as the Parties' combined shares in the EEA would be [20-30]% (AGROFERT [10-20]%, Borealis NITRO [0-5]%). Based on the Notifying Party's estimates, the most important competitors in the EEA-market for AdBlue when looking at capacity shares for urea are Yara [20-30]%, Grupa Azoty [10-20]%, Achema [5-10]%, BASF [5-10]%, OCI Nitrogen [5-10]%, Azomures [0-5]%, Fertiberia [0-5]%, and Interago [0-5]%.

(100) *Third*, a sufficient number of credible competitors will remain on the market post-Transaction.

(101) Based on the Notifying Party's estimates, the most important competitors in the EEA-market for AdBlue are Yara [30-40]%, BASF [10-20]%, and Grupa Azoty [5-10]%. The Notifying Party also submits that these suppliers operate a large number of production facilities for AdBlue to supply customers across the EEA—estimating that there are at least 120 production facilities for AdBlue sold under the AdBlue® trademark in the EEA.[118]

[118] Form CO, paragraph 213.

(102) The results of the market investigation confirm that there will be a sufficient number of credible competitors post-Transaction, in particular Yara, which will remain the largest player post-Transaction with a market share of [30-40]% as well as BASF, Grupa Azoty, and multiple other credible players, including Tennants, Arom-Dekar, Gaschema, and Agrola. The market investigation also confirmed that these suppliers have spare capacity to produce additional AdBlue in the event of customers switching away due to a hypothetical 5-10% price increase.[119]

(103) In conclusion, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement as a result of the horizontal overlap between the Parties in the production and supply of AdBlue.

5.1.7. Aqueous ammonia

(104) The Parties' activities horizontally overlap in the production and supply of aqueous ammonia.

(105) The Notifying Party submits that the Transaction will not result in a significant impediment to effective competition with regard to aqueous ammonia mainly because: (i) the Parties' combined market shares do not exceed 25% under any of the following plausible geographic market definitions, EEA-wide, regional or based on a 1,000 kilometres catchment area around the production plant; (ii) there are multiple suppliers of aqueous ammonia that are able to supply all plausible geographic segments; (iii) customers can easily switch to new suppliers in the short term.[120]

(106) Several elements suggest that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement as a result of the horizontal overlap between the Parties in the production and supply of aqueous ammonia.

(107) *First*, under all plausible geographic market segmentations the Parties' combined market shares do not exceed 25%. In line with the Horizontal Merger Guidelines, due to the moderate combined market share of less than 25%, it can be presumed that the concentration does not give rise to a significant impediment to effective competition under any plausible geographic market definition.[121]

(108) The Parties' activities do not give rise to an affected market at the EEA-wide level.[122] Under the Regional Segment A proposed by the Notifying Party the Parties' combined market shares amount to [20-30]% with an increment of [10-20]% brought by Borealis NITRO.[123]

(109) For reasons of completeness the Notifying Party has also provided market shares under: (i) the Regional Segment A; and (ii) catchment areas defined by a 1,000 kilometres radius around each of the Parties' aqueous ammonia production

119 Reply to eRFI Market Investigation, Competitors, question C.12.

120 Form CO, paragraphs 942 - 996 and 1015 - 1017

121 Form CO, paragraph 922.

122 The Parties' combined market shares are estimated at [10-20]% with an increment of [5-10]% brought by Borealis NITRO.

123 Form CO, paragraphs 946-949.

facilities.[124] As illustrated in Table 4 below, in the Regional Segment A and the 1,000 kilometre catchment areas, the Parties' market shares will remain below 25%.

Table 4: Parties' and main competitors' market shares (sales volume) for aqueous ammonia 2021 - Regional segments

2021	Regional Segment A	AGROFERT			Borealis NITRO		
		Piesteritz (Germany)	Šaľa (Slovakia)	Pardubice (Czechia)	Grandpuits (France)	Ottmarsheim (France)	Linz (Austria)
AGROFERT	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[10-20]%
Borealis NITRO	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[10-20]%	[10-20]%	[0-5]%
Combined	**[20-30]%**	**[10-20]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**
Yara	[30-40]%	[20-30]%	[20-30]%	[10-20]%	[30-40]%	[30-40]%	[20-30]%
BASF	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%
Grupa Azoty	[5-10]%	[10-20]%	[10-20]%	[10-20]%			[10-20]%
OCI	[5-10]%	[5-10]%			[5-10]%	[5-10]%	
Ineos			[5-10]%	[5-10]%			[5-10]%
Others	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[10-20]%

Source: Form CO, Table 7D.4.2 and paragraphs 947 - 971 to the Form CO.

(110) *Second*, there are several established competitors that will continue to exert significant competitive pressure on the Parties post-Transaction. In fact, the majority of competitors who responded to the Commission's market investigation and expressed a view indicated that following the Transaction sufficient competitors supplying aqueous ammonia will remain active in all relevant jurisdictions as well as across the EEA.[125]

(111) The Notifying Party estimates that its largest competitors with regard to the production and sale of aqueous ammonia under the Regional Segment A are Yara (estimated market share [30-40]%), BASF (estimated market share [10-20]%), Grupa Azoty (estimated market share [5-10]%) and OCI (estimated market share of [5-10]%), with Yara remaining the largest competitor following the Transaction.[126] Similarly, when considering the narrower regional segments (see Table 4 above), the Parties will continue to face competitive constraints from a number of competitors post-Transaction with Yara remaining the Parties' largest competitor in most alternative regional segments.

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[124] Form CO paragraph 934. The Notifying Party submitted that it does not have access to data which would allow it to estimate the Parties' market shares in a region which is precisely defined by a 1,000 kilometres radius around a production plant. It has therefore identified the countries, the territory of which is located within a radius (bee-line distance) of 750 kilometres – as a conservative proxy for a catchment area of 1,000 kilometres by road or rail – around the respective aqueous ammonia production facility, either in its entirety or to an overwhelming extent, i.e., for the predominant part. Countries which are only partly located within this radius have only been taken into account if clearly more than half of their territory was located within this radius.

[125] Replies to eRFI Market Investigation, Competitors, question E.10..

[126] Replies to RFI 10 of 28 February 2023, question 6.

(112) *Third*, a majority of both customers and competitors who responded to the Commission's market investigation confirmed that there would be no negative impact on competition for aqueous ammonia, as sufficient suppliers will remain post-Transaction, nor on prices, as customers and competitors do not expect price increases on the market for aqueous ammonia, as a result of the Transaction.[127]

(113) *Fourth*, customers of aqueous ammonia can switch suppliers easily and in the short term without incurring any significant costs as aqueous ammonia is a commodity product. In fact, approximately [50-60]% of AGROFERT's sales of aqueous ammonia are spot sales and Borealis NITRO usually does not have long-term supply agreements from aqueous ammonia, as sales are taking place mainly on a spot basis.[128]

(114) In conclusion, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement as a result of the horizontal overlap between the Parties in the production and supply of aqueous ammonia under any plausible geographic market.

5.1.8. Weak nitric acid

(115) The Parties' activities horizontally overlap in the production and supply of weak nitric acid. The Notifying Party submits that the Transaction will not result in a significant impediment to effective competition with regard to weak nitric acid mainly because: (i) the Parties' combined market shares do not exceed 25% in the EEA and amount to [30-40]% at the level of the Regional Segment B; (ii) there are multiple suppliers of weak nitric acid under all relevant geographic segments; (iii) the Parties' sales of weak nitric in the merchant market are negligible.[129]

(116) The Parties' combined market shares in the market for weak nitric acid amount to [20-30]% at the EEA-wide level with an increment of [5-10]% brought by Borealis NITRO and to [30-40]% under the Regional Segment B with an increment of [10-20]% brought by Borealis NITRO. For reasons of completeness the Notifying Party has also provided market shares under the alternative narrower catchment areas defined by a 1,000 kilometres radius around each of the Parties' weak nitric acid production facilities (Table 5 below).[130]

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127 Replies to eRFI Market Investigation, Customers, question E.17. and replies to eRFI Market Investigation, Competitors, question E.17.

128 Form CO, paragraph 917.

129 Form CO, paragraphs 907-909.

130 Form CO paragraphs 824-826. The Notifying Party submitted that it does not have access to data which would allow it to estimate the Parties' market shares in a region which is precisely defined by a 1,000 kilometres radius around a production plant. It has therefore identified the countries, the territory of which is located within a radius (bee-line distance) of 750 kilometres – as a conservative proxy for a catchment area of 1,000 kilometres by road or rail – around the respective weak nitric acid production facility, either in its entirety or to an overwhelming extent, i.e., for the predominant part. Countries which are only partly located within this radius have only been taken into account if clearly more than half of their territory was located within this radius.

Table 5: Parties' and main competitors' market shares (sales volume) for weak nitric acid 2021 - Regional segments

2021	Regional Segment B	AGROFERT				Borealis NITRO		
		Piesteritz (Germany)	Lovosice (Czehcia)	Šaľa (Slovakia)	Pardubice (Czhechia)131	Grandpuits (France)	Grand-Quevilly (France)	Linz (Austria)
AGROFERT	[10-20]%	[20-30]%	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%	[30-40]%
Borealis NITRO	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[5-10]%
Combined	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[40-50]%**	**[40-50]%**	**[30-40]%**	**[30-40]%**	**[40-50]%**
Yara	[30-40]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%
BASF	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%
Grupa Azoty	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%			[10-20]%
OCI	[5-10]%	[10-20]%	[10-20]%			[10-20]%	[10-20]%	
Dafcochim				[5-10]%				
Others	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%

Source: Form CO, Table 7C.4.2 and paragraphs 835 - 872 to the Form CO.

(117) Although the merged entity would be a significant supplier of weak nitric acid under all plausible geographic market segments, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement as a result of the horizontal overlap between the Parties in the production and supply of weak nitric acid for the following reasons.

(118) *First*, there are several established competitors that will continue to exert significant competitive pressure on the Parties post-Transaction. In fact, the majority of competitors who responded to the Commission's market investigation and expressed a view, indicated that there will be sufficient number of competitors for the supply of weak nitric acid remaining post-Transaction.[132] The Notifying Party estimates that its largest competitors with regard to the production and sale of weak nitric acid under the Regional Segment B are Yara (estimated market share [30-40]%), OCI (estimated market share of [5-10]%), Grupa Azoty (estimated market share of [5-10]%) and BASF (estimated market share [5-10]%).[133] Similarly, when considering the narrower regional segments (see Table 5 above), the Parties will continue to face competitive constraints from a number of sizeable competitors post-Transaction.

131 The calculation of the Parties' market shares in that segment also take into account the estimated Dutch sales of OCI's weak nitric acid production facility in Geleen and Yara's weak nitric acid production facility in Sluiskil, considering that OCI's weak nitric acid production facility is located within approximately 910 kilometres by road from AGROFERT's production facility in Pardubice (i.e., less than 1,000 kilometres by road) and Yara's weak nitric acid facility approximately 1,000 kilometres by road from AGROFERT's production facility in Pardubice. As a result, both of these suppliers still exert competitive pressure on the Parties within the catchment area of AGROFERT's production facility in Pardubice.

132 Replies to eRFI Market Investigation, Competitors, questions D.10. - D.12..

133 Form CO, paragraph 841.

(119) *Second*, all competitors who expressed a view in the Commission's market investigation confirmed that there would be no negative effects as a result of the Transaction on competition for weak nitric acid, as sufficient competitors will remain post-Transaction, nor on prices, as competitors do not expect price increases.[134] Feedback received by customers was overall less positive, as they indicated potential price increases, but on balance not sufficient to raise concern and no substantiated complaints were submitted.[135]

(120) *Third*, the weak nitric acid merchant market is extremely small in comparison to the total EEA-wide production (estimated at approximately [0-5]%), as producers use most of the production volume internally.[136] The Parties themselves use weak nitric acid mainly captively for their own production of nitrogen fertilizers and only sell small quantities of weak nitric acid on the merchant market.[137] Due to their captive needs both Parties prefer to sell weak nitric acid on a spot basis, which makes it easier for customers to switch among suppliers.[138] Furthermore, the main direct customers of weak nitric acid are distributors, most of which multi-source weak nitric acid from several producers as the product is a pure commodity with the same characteristics regardless of the plant from which it is sourced.[139]

(121) In *conclusion*, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement as a result of the horizontal overlap[140] between the Parties in the production and supply of weak nitric acid under any plausible geographic market.

6. CONCLUSION

(122) For the above reasons, the European Commission has decided not to oppose the notified concentration 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.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

134 Replies to eRFI Market Investigation, Competitors, questions D.10. - D.12..

135 Replies to eRFI Market Investigation, Customers, questions D.14. - D.15..

136 Form CO, paragraphs 796 and 895. Also Case COMP/M.6695 – *Azoty Tarnów / Zakłady Azotowe Puławy*, paragraph 63.

137 For instance Borealis NITRO sold only approximately [0-5]% of its total production capacity on the merchant market in 2021. Form CO, paragraphs 900 – 901.

138 Form CO, paragraph 801.

139 Replies to RFI 10 of 28 February 2023, question 12.

140 For reasons of completeness, we note that there are also vertically affected markets between the Parties' upstream activities in the production and supply of weak nitric acid and the Parties' activities downstream in the EEA-wide market for the production and supply of nitrogen fertilizers. These vertical relationships are not able to give rise to any input or customer foreclosure competition concerns because the vast majority of manufacturers of nitrogen fertilizers are vertically integrated into weak nitric acid and would source week nitric acid from third party suppliers only exceptionally, for example in the event of plant outages.