

Terms of reference and conduct of the inquiry

Terms of reference

1. On 26 January 2007 the OFT sent us the following reference:
 1. Whereas in exercise of its duty under section 33(1) of the Enterprise Act 2002 (“the Act”) to make a reference to the Competition Commission (“the CC”) in relation to an anticipated merger the Office of Fair Trading (“the OFT”) believes that it is or may be the case that—
 - (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of one or more relevant merger situations in that:
 - (i) enterprises carried on by or under the control of Kemira GrowHow Oyj will cease to be distinct from enterprises carried on by or under the control of Terra Industries Inc; and
 - (ii) the value of turnover in the United Kingdom of the enterprise being taken over exceeds £70 million; and
 - (b) the creation of that/those situations may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, namely the supply of nitric acid, anhydrous ammonia, aqueous ammonia, liquid carbon dioxide and ammonium nitrate for non-agricultural applications.
 2. The OFT, in exercise of its duty under section 33(1) of the Act hereby refers to the CC, for investigation and report within a period ending on 12 July 2007, the following questions in accordance with section 36 of the Act—
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of one or more relevant merger situations; and
 - (b) if so, whether the creation of that situation or situations may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom.
 3. In relation to the question whether one or more relevant merger situations will be created, the CC shall exclude from consideration one of the subsections (1) and (2) of section 23 of the Act if it finds that the other is satisfied.

(signed) **Vincent Smith**
Senior Director for Competition
26 January 2007

Conduct of the inquiry

2. We sought evidence from competitors, customers, merchants and importers in respect of the supply of AN and other fertilizers, nitric acid, anhydrous ammonia, aqueous ammonia, liquid CO₂ and AN for non-agricultural applications.
3. The administrative timetable for the inquiry was published on the CC website on 16 February 2007.
4. Members of the Group, accompanied by CC staff, visited the site of Kemira at Ince, Cheshire, on 16 February.
5. We sent questionnaires to third parties, ie competitors and customers. Submissions were also received from some of these. We held hearings or meetings with 21 third parties. Summaries of information received can be found on the CC website.
6. We published an issues statement on 23 February 2007.
7. We received joint written evidence from Kemira and Terra and separate questionnaire replies. A non-sensitive version of the joint evidence was published on the CC website. We held a hearing with Kemira and Terra jointly, and a hearing with each of them separately.
8. In the course of our inquiry we sent the parties draft material from our provisional findings report. A non-sensitive version of our provisional findings was published on our website on 10 May 2007.
9. We would like to thank all who assisted in our inquiry.