

## **ACQUISITION BY LINERGY LIMITED OF ULSTER FARM BY-PRODUCTS LIMITED**

### **Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)**

Whereas:

- (a) the Competition and Markets Authority (CMA) has reasonable grounds for suspecting that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in Linergy Limited (**Linergy**), Ulster Farm By-Products Limited (**Ulster Farm**) and S.A.P.I. S.p.A. (**SAPI**) ceasing to be distinct (the '**transaction**');;
- (b) the CMA is considering whether it is or may be the case that, pursuant to section 33 of the Act, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, or should the transaction complete, pursuant to section 22 of the Act, a relevant merger situation has been created and whether the creation of that situation may be expected to result, in the case of the former, or has resulted, in the case of the latter, in a substantial lessening of competition in any market or markets in the United Kingdom (UK);
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 or section 33 of the Act as the case may be which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to each of Linergy, Ulster Farm and SAPI (**Order**).

## **Commencement, application and scope**

1. This Order commences on the commencement date: 19 March 2015.
2. This Order applies to Linergy, Ulster Farm and SAPI.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Linergy, Ulster Farm or SAPI to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

## **Management of the Linergy and Ulster Farm businesses until determination of proceedings**

4. Except with the prior written consent of the CMA, Linergy, Ulster Farm and SAPI shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 or section 33 of the Act as the case may be or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
  - (a) lead to the integration of the Ulster Farm business with the Linergy business;
  - (b) transfer the ownership or control of the Linergy business or the Ulster Farm business or any of their subsidiaries; or
  - (c) otherwise impair the ability of the Ulster Farm business or the Linergy business to compete independently in any of the markets affected by the transaction.
5. However, this Order shall not prevent:
  - (a) the legal completion of the transaction;
  - (b) the resignation of [X] as directors of Ulster Farm;
  - (c) the appointment of [X] as directors of Ulster Farm (for the avoidance of doubt, such directors shall be subject to the terms of this order, and in particular paragraph 6(l), following their appointment); and
  - (d) the appointment of [X] as a director of Linergy (for the avoidance of doubt, who shall be subject to the terms of this order, and in particular paragraph 6(l), following his appointment).

6. Further and without prejudice to the generality of paragraph 4 and subject to paragraphs 3 and 5, Linergy, Ulster Farm and SAPI shall, to the extent that the relevant business is under its control, at all times during the specified period procure that, except with the prior written consent of the CMA:
- (a) the Ulster Farm business is carried on separately from the Linergy business and the Ulster Farm business's separate sales or brand identity is maintained;
  - (b) the Ulster Farm business and the Linergy business are maintained as a going concern and sufficient resources are made available for the development of the Ulster Farm business and the Linergy business by the relevant business or its parent company, on the basis of their respective pre-merger business plans;
  - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Ulster Farm business or the Linergy business;
  - (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;
  - (e) except in the ordinary course of business for the separate operation of the two businesses:
    - (i) all of the assets of the Ulster Farm business and the Linergy business are maintained and preserved, including facilities and goodwill;
    - (ii) none of the assets of the Ulster Farm business or the Linergy business are disposed of; and
    - (iii) no interest in the assets of the Ulster Farm business or the Linergy business is created or disposed of;
  - (f) there is no integration of the information technology of the Ulster Farm or Linergy businesses, and the software and hardware platforms of the Ulster Farm business shall remain essentially unchanged, except for routine changes and maintenance;
  - (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Ulster Farm business will be carried out by the Ulster Farm business alone and for the avoidance of doubt the Linergy business will not negotiate on behalf of the Ulster Farm

business (and vice versa) or enter into any joint agreements with the Ulster Farm business (and vice versa);

- (h) all existing contracts of the Ulster Farm business and the Linergy business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Ulster Farm business or Linergy business;
- (j) no key staff are transferred between the Ulster Farm business and the Linergy business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Ulster Farm business and the Linergy business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Ulster Farm business (or any of its employees, directors, agents or affiliates) to the Linergy business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) or where strictly necessary for the purpose of completion of the transaction, in which cases this is on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

## **Compliance**

- 7. Each of Linergy, Ulster Farm and SAPI shall procure that each of its subsidiaries complies with this Order as if the Order had been issued to each of them.
- 8. Each of Linergy, Ulster Farm and SAPI shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Linergy, Ulster Farm and SAPI respectively and their respective subsidiary(ies) with this Order. In particular, on 26 March 2015 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the relevant Chief Executive Officer of each of Linergy, Ulster Farm and SAPI or other persons of each company as agreed with the CMA shall, on behalf of Linergy, Ulster Farm and SAPI respectively, provide a statement to the CMA in the form set

out in Annex A to this Order for Linergy, Annex B to this Order for Ulster Farm and Annex C to this Order for SAPI, in each case confirming its compliance with this Order.

9. At all times, Linergy, Ulster Farm and SAPI shall actively keep the CMA informed of any material developments relating to the Ulster Farm business or the Linergy business, which includes but is not limited to:
  - (a) details of key staff who leave or join the Ulster Farm business or the Linergy business;
  - (b) any interruption of the Ulster Farm or Linergy business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
  - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Ulster Farm business or Linergy business including any substantial changes in customers' demand; and
  - (d) substantial changes in the Ulster Farm business's or Linergy business's contractual arrangements or relationships with key suppliers.
10. If Linergy, Ulster Farm or SAPI has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Linergy, Ulster Farm or SAPI may be directed to appoint under paragraph 11.
11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
12. Each of Linergy, Ulster Farm and SAPI shall comply in so far as it is able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

## **Interpretation**

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

14. For the purposes of this Order:

**‘the Act’** means the Enterprise Act 2002;

**‘an affiliate’** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

**‘business’** has the meaning given by section 129(1) and (3) of the Act;

**‘commencement date’** means 19 March 2015;

**‘control’** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**‘the decisions’** means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

**‘key staff’** means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

**‘Linergy’** means Linergy Limited;

**‘the Linergy business’** means the business of Linergy and its subsidiary(ies) carried on as at the commencement date;

**‘the ordinary course of business’** means matters connected to the day-to-day supply of goods and/or services by Ulster Farm or Linergy and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Ulster Farm and Linergy;

**‘SAPI’** means S.A.P.I. S.p.A., a company incorporated under the laws of Italy, whose registered office is at 1, Via Paletti, Castelnuovo Rangone (MO), Italy;

**‘specified period’** means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

**‘subsidiary’**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**‘the transaction’** means the transaction by which Linergy, Ulster Farm and SAPI will cease, or have ceased, to be distinct within the meaning of section 23 of the Act;

**‘the two businesses’** means the Linergy business and the Ulster Farm business;

**‘Ulster Farm’** means Ulster Farm By-Products Limited;

**‘the Ulster Farm business’** means the business of Ulster Farm and its subsidiaries carried on as at the commencement date;

unless the context requires otherwise, the singular shall include the plural and vice versa.

## **Compliance statement for Linergy Limited**

I *[insert name]* confirm on behalf of Linergy that:

### **Compliance in the Relevant Period**

1. In the period from *[insert date]* to *[insert date]* (the Relevant Period):
  - (a) Linergy has complied with the Order of 19 March 2015 made by the CMA in relation to the transaction (the Order).
  - (b) Linergy's subsidiaries have also complied with this Order.
2. Subject to paragraphs 3 and 5 of the Order, except as regards the Ulster Farm business for the period prior to completion of the transaction, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Linergy that might prejudice a reference of the transaction under section 22 or section 33 of the Act as the case may be or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the Ulster Farm business with the Linergy business;
    - (ii) transfer the ownership or control of the Linergy business or the Ulster Farm business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Ulster Farm business or the Linergy business to compete independently in any of the markets affected by the transaction.
  - (b) The Ulster Farm business has been carried on separately from the Linergy business and the Ulster Farm business's separate sales or brand identity has been maintained.
  - (c) The Ulster Farm business and the Linergy business have been maintained as a going concern and sufficient resources have been made available for the development of the Ulster Farm business and the Linergy business, on the basis of their respective pre-merger business plans.
  - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Ulster Farm business or the Linergy business, except in the ordinary course of business.



- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Ulster Farm business and the Linergy business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Ulster Farm business and the Linergy business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Ulster Farm business or the Linergy business have been disposed of; and
  - (iii) no interest in the assets of the Ulster Farm business or the Linergy business has been created or disposed of.
- (g) There has been no integration of the information technology of the Ulster Farm business or Linergy businesses, and the software and hardware platforms of the Ulster Farm business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Ulster Farm business have been carried out by the Ulster Farm business alone and, for the avoidance of doubt, the Linergy business has not negotiated on behalf of the Ulster Farm business (and vice versa) or entered into any joint agreements with the Ulster Farm business (and vice versa).
- (i) All existing contracts of the Ulster Farm business and the Linergy business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Ulster Farm business or the Linergy business.
- (k) No key staff have been transferred between the Ulster Farm business and the Linergy business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Ulster Farm business and the Linergy business.

(m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Ulster Farm business (or any of its employees, directors, agents or affiliates) to the Linergy business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

- (i) key staff that have left or joined the Ulster Farm business or the Linergy business;
- (ii) interruptions of the Ulster Farm business or the Linergy business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Ulster Farm business or the Linergy business; or
- (iv) substantial changes in the Ulster Farm business's or Linergy business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Linergy and its subsidiaries remain in full compliance with the Order and will, or will procure that Ulster Farm, continue actively to keep the CMA informed of any material developments relating to the Ulster Farm business or the Linergy business in accordance with paragraph 9 of the Order.

## **Interpretation**

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF LINERGY LIMITED

Signature .....

Name .....

Title .....

Date .....

## **Compliance statement for Ulster Farm By-Products Limited**

I *[insert name]* confirm on behalf of Ulster Farm that:

### **Compliance in the Relevant Period**

1. In the period from *[insert date]* to *[insert date]* (the Relevant Period):
  - (a) Ulster Farm has complied with the Order of 19 March 2015 made by the CMA in relation to the transaction (the Order).
  - (b) Ulster Farm's subsidiaries have also complied with this Order.
2. Subject to paragraphs 3 and 5 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by Ulster Farm that might prejudice a reference of the transaction under section 22 or section 33 of the Act as the case may be or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the Ulster Farm business with the Linergy business;
    - (ii) transfer the ownership or control of the Linergy business or the Ulster Farm business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Ulster Farm business or the Linergy business to compete independently in any of the markets affected by the transaction.
  - (b) The Ulster Farm business has been carried on separately from the Linergy business and the Ulster Farm business's separate sales or brand identity has been maintained.
  - (c) The Ulster Farm business has been maintained as a going concern and sufficient resources have been made available for the development of the Ulster Farm business on the basis of its pre-merger business plan(s).
  - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Ulster Farm business except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Ulster Farm business has been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Ulster Farm business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Ulster Farm business have been disposed of; and
  - (iii) no interest in the assets of the Ulster Farm business has been created or disposed of.
- (g) There has been no integration of the information technology of the Ulster Farm business or Linergy businesses, and the software and hardware platforms of the Ulster Farm business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Ulster Farm business have been carried out by the Ulster Farm business alone and, for the avoidance of doubt, the Linergy business has not negotiated on behalf of the Ulster Farm business (and vice versa) or entered into any joint agreements with the Ulster Farm business (and vice versa).
- (i) All existing contracts of the Ulster Farm business have been serviced by Ulster Farm, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Ulster Farm business.
- (k) No key staff have been transferred between the Ulster Farm business and the Linergy business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Ulster Farm business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the

two businesses, has passed, directly or indirectly, from the Ulster Farm business (or any of its employees, directors, agents or affiliates) to the Linergy business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

- (i) key staff that have left or joined the Ulster Farm business;
- (ii) interruptions of the Ulster Farm business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Ulster Farm business; or
- (iv) substantial changes in the Ulster Farm business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. Ulster Farm and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Ulster Farm business or the Linergy business in accordance with paragraph 9 of the Order.

### **Interpretation**

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF ULSTER FARM BY-PRODUCTS LIMITED

Signature .....

Name .....

Title .....

Date .....

**Compliance statement for S.A.P.I. S.p.A.**

I *[insert name]* confirm on behalf of SAPI that:

**Compliance in the Relevant Period**

1. In the period from *[insert date]* to *[insert date]* (the Relevant Period):
  - (a) SAPI has complied with the Order of 19 March 2015 made by the CMA in relation to the transaction (the Order).
  - (b) SAPI's subsidiaries have also complied with this Order.
2. Subject to paragraphs 3 and 5 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by SAPI that might prejudice a reference of the transaction under section 22 or section 33 of the Act as the case may be or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the Ulster Farm business with the Linergy business;
    - (ii) transfer the ownership or control of the Linergy business or the Ulster Farm business or any of their subsidiaries; or
    - (iii) otherwise impair the ability of the Ulster Farm business or the Linergy business to compete independently in any of the markets affected by the transaction.
  - (b) The Ulster Farm business has been carried on separately from the Linergy business and the Ulster Farm business's separate sales or brand identity has been maintained.
  - (c) The Ulster Farm business has been maintained as a going concern and sufficient resources have been made available for the development of the Ulster Farm business on the basis of its pre-merger business plan(s).
  - (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Ulster Farm business except in the ordinary course of business.

- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the Ulster Farm business has been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the Ulster Farm business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the Ulster Farm business have been disposed of; and
  - (iii) no interest in the assets of the Ulster Farm business has been created or disposed of.
- (g) There has been no integration of the information technology of the Ulster Farm business or Linergy businesses, and the software and hardware platforms of the Ulster Farm business have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Ulster Farm business have been carried out by the Ulster Farm business alone and, for the avoidance of doubt, the Linergy business has not negotiated on behalf of the Ulster Farm business (and vice versa) or entered into any joint agreements with the Ulster Farm business (and vice versa).
- (i) All existing contracts of the Ulster Farm business have been serviced by Ulster Farm, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the Ulster Farm business.
- (k) No key staff have been transferred between the Ulster Farm business and the Linergy business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Ulster Farm business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the



two businesses, has passed, directly or indirectly, from the Ulster Farm business (or any of its employees, directors, agents or affiliates) to the Linergy business (or any of its employees, directors, agents or affiliates), or vice versa.

(n) Except as listed in paragraph (o) below, there have been no:

- (i) key staff that have left or joined the Ulster Farm business;
- (ii) interruptions of the Ulster Farm business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
- (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Ulster Farm business; or
- (iv) substantial changes in the Ulster Farm business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. SAPI and its subsidiaries remain in full compliance with the Order and will, or, prior to the completion of the transaction, will procure that Ulster Farm will, continue actively to keep the CMA informed of any material developments relating to the Ulster Farm business or the Linergy business in accordance with paragraph 9 of the Order.

### **Interpretation**

4. Terms defined in the Order have the same meaning in this compliance statement.

FOR AND ON BEHALF OF S.A.P.I. S.p.A.

Signature .....

Name .....

Title .....

Date .....