

---

Anticipated Acquisition by John Thompson Limited of the Northern Ireland Compound Animal Feed Business and assets of AB Agri Limited

ME/3637/08

The OFT's decision on reference under section 22(1) given on 24 June 2008. Full text of decision published on 2 July 2008.

---

**Please note that square brackets indicate figures or text which have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.**

## **PARTIES**

1. **John Thompson Limited** (Thompson) is a subsidiary of **Barnett & Hall Holdings Ltd** (BHH), a joint venture between **W&R Barnett Ltd** (WRB) and **Origin Enterprises Plc** (Origin). Thompson is active in the production and distribution of animal feeds and distribution of fertilisers on behalf of third party manufacturers and importers.
2. **AB Agri Ltd** (AB Agri) is a subsidiary of **Associated British Foods**. AB Agri produces and distributes animal feeds and feed micro-ingredients to farmers and purchases grain and oilseeds from them. It has facilities in the UK and China and produces animal feeds at a plant at Knockmore, Northern Ireland. AB Agri also distributes fertilisers in Northern Ireland. The turnover of the business and assets being acquired was approximately £40.5 million for the financial year to September 2007.

## **TRANSACTION**

3. Thompson proposes to acquire the Northern Ireland compound animal feeds business and assets of AB Agri (the AB Agri Business) by way of an asset purchase agreement. The AB Agri Business will comprise the feed

production operations, blending operation and assets of AB Agri located at Knockmore, Northern Ireland, together with certain associated brand names, and customer lists, but will not include the land and buildings on which the AB Agri Business is currently located.

4. The parties notified the transaction to the OFT on 28 April 2008. The OFT's administrative deadline is 25 June 2008.

## **JURISDICTION**

5. As a result of this transaction Thompson and the AB Agri Business will cease to be distinct. The parties overlap in the manufacture and distribution of certain types of animal feeds and in the distribution of fertiliser in a substantial part of the UK (Northern Ireland) and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## **MARKET DEFINITIONS**

6. The parties overlap in the distribution of fertiliser and animal feed, each of which is considered below.
7. There is also a vertical relationship between the parties, as AB Agri currently acquires animal feed ingredients from Thompson's owners, WRB and Origin, both of whom import and supply animal feed ingredients which are used in the manufacture of compound feeds. AB Agri does not supply feed ingredients to others so the parties do not overlap at this level of the supply chain. As there is no overlap between the parties in ingredients any assessment of this level of the supply chain would examine only the effect of concentration at the downstream level on existing market conditions upstream. In the absence of competition concerns it is not necessary to conclude on the extent of any market for the supply of animal feed ingredients.

## Fertiliser

8. The parties overlap in the distribution of fertiliser to end-users. Thompson distributes fertiliser on behalf of another BHH subsidiary, Independent Fertilisers, and third party competitors. Independent Fertilisers also distributes (after importing and blending) fertiliser to end-users itself. WRB and other Origin subsidiaries, including Goulding Chemicals in Ireland, import and blend ingredients for fertiliser, but do not distribute it. AB Agri distributes fertiliser on behalf of third party producers. The parties submit AB Agri is not active in the production or blending of fertiliser.
9. The supply of fertiliser has been considered in the past by the European Commission (EC), the Competition Commission and the OFT.<sup>1</sup> In each of these cases, the supply of fertiliser to end-customers/users was considered a distinct product market, although which level of the supply-chain customers were supplied from was less clear. In *Yara/Kemira*, the EC also found that different types of fertiliser are sold through the same distribution channels, precluding narrower segmentation based on different fertiliser types in the distribution market.
10. Although in the OFT's recent decision in *Origin/Masstock* different types of fertiliser were considered to constitute separate markets, there was no evidence in the current case that such a distinction at the distribution level was relevant for the purposes of considering the overlap in the parties' businesses, or would affect the outcome of the competitive assessment. The parties' combined share of supply in the distribution of fertiliser to end-users in Northern Ireland is less than 9 per cent. Distribution of fertiliser in Northern Ireland is highly fragmented (over three-quarters of the market is provided by distributors with a share of supply less than 5 per cent). Given the parties' limited activity in this sector and in the absence of any third party concerns we do not consider this overlap further.

## Animal feed – product market

11. Both Thompson and AB Agri are active in the production and supply of animal feed. Animal feed can be segmented by animal type into that for

---

<sup>1</sup> See Competition Commission, *Kemira GrowHow Oyj and Terra Industries Inc Merger Inquiry*, July 2007; European Commission, *Comp/M.4730 Yara/Kemira GrowHow*, September 2007 (*Yara/ Kemira*); and OFT *Completed Acquisition by Origin Enterprises PLC of Masstock Group Holdings Limited*, April 2008 (*Origin/Masstock*).

ruminants (mainly dairy and beef cattle and sheep) and that for monogastric animals (mainly pigs and poultry). The parties supply both ruminant and monogastric feed. It can be segmented further into different feed types, such as compounds or blends. The parties submit that all animal feedstuff forms a single product market. We consider the degree of substitutability between these different types of animal feed and thus the extent of the product market below.

### Monogastric and Ruminants

12. Given the different nutritional requirements of ruminants and monogastric animals, their respective feedstuffs are not interchangeable. Furthermore the customer base will be different for each animal type. We therefore do not consider demand-side substitution possible in relation to ruminants and monogastric animals.
13. The parties claim that supply-side substitution is relatively straightforward. While medication is required in some monogastric feed that may be detrimental to other animals, this can be resolved by running a cleaning batch of feed through the production system before producing unmedicated feeds. In addition, while EU legislation bans the use of fishmeal in ruminant only plants, and a physical separation is required in multi-species, the parties submitted that fishmeal is not used at all in Northern Ireland, and that the use of fishmeal is not therefore the impediment to supply-side substitution that it might be in other regions for single species-manufacturers. Third party evidence obtained by the OFT did not exclude the possibility of fish meal being used in Northern Ireland, but it did not appear that the major manufacturers currently use fishmeal.
14. Third party competitors did not support the parties' assertion on the ease of supply-side substitution. Competitors suggested that monogastric and ruminant feeds are commonly produced at separate plants, or on separate production lines, and that switching would not occur following a ten per cent price rise, both due to the cost of switching and differences in margin structure. This was emphasised by competitors active in the supply of feed for only one animal type and particularly so for ruminant-only competitors, who submitted that it was particularly costly to switch from ruminant to monogastric feed such as poultry feed (relative to switching from poultry to ruminants).

15. While the EC has in the past considered all animal feed products as a single market,<sup>2</sup> the OFT has considered the supply of different types of animal feed to be in different markets, largely due to the difficulties associated with fishmeal.<sup>3</sup> Despite the possible absence of fishmeal impediments as a factor, given the lack of substitution on the demand-side and the mixed evidence on supply-side substitution the OFT has taken a cautious approach and considered monogastric and ruminant feed to form separate product markets, although competition concerns do not arise on any reasonable market definition.

#### Ruminants

16. The OFT considered whether the product market is narrower than ruminant feed – ruminant feed relevant to this case includes that for beef and dairy cattle and sheep. Retail customers generally source only one of these, while buyer groups and merchants may source them together. Nevertheless, as before, the nutritional requirements of the animals are different and so we do not consider demand-side substitution to be feasible. On the supply-side, however, there is a consensus between the notifying parties and third parties that the feed is virtually equivalent and all ruminant suppliers produce feed for all types of relevant ruminant animal. We therefore do not distinguish between different types of ruminant animal feed.

#### Monogastric

17. The OFT also considered whether the product market is narrower than that for monogastric feed, which includes pig and poultry feed relevant to this case. Retail customers and buyer groups generally source only one animal type, while merchants tend to source both together. Nevertheless, as before, the nutritional requirements of pigs and poultry are different and so we do not consider demand-side substitution to be feasible.
18. On the supply-side, both pig and poultry feed are manufactured on the same production line and there are no contamination regulations preventing immediate substitution. While some third party suppliers produce only one of the animal feeds, there are a significant number that produce both.

---

<sup>2</sup> See Comp/M.2271 – *Cargill/ Agribands*, February 2001 (*Cargill/Agribands*).

Some suppliers indicated that switching between pig and poultry is far easier than to ruminants as the differences between the feeds are far less and switching can be achieved quickly and at low cost. While third party evidence suggests that monogastric feed may form a single product market, we have taken a cautious approach and considered poultry and pig feed separately, although competition concerns do not arise on any reasonable market definition.

## Feed type

19. Livestock may be fed using one or more of a number of different feed types (in addition to grazing and silage). The parties overlap in the supply of compound feeds and meals. Compound feeds are combinations of ingredients mixed together and processed to suit the feeds' intended purpose and then generally pelleted. Meals are semi-processed blend alternatives produced in a mash rather than in pellet form. Meals and compounds can be fed to ruminants, poultry and pigs. Ruminants and pigs may also be fed using blends, an unprocessed mixture of raw materials that are complements to straights (raw materials). Farmers can also home-mix using straights and a premix (a blend of vitamins and trace elements).
20. The parties submit that meals are identical to blends except that meals are produced using compound equipment. This was largely confirmed by third parties who often considered 'meals' and 'blends' to be the same. The parties submit that when fed to ruminants and pigs, these feedtypes, as well as compounds, are nutritionally equivalent and therefore form a single product market.<sup>4</sup> This is supported by past EC cases.<sup>5</sup>
21. Some third parties did not support the views of the parties. On the demand-side, a number of third parties submitted that switching by the customer is restricted by the feeding equipment used, which is designed specifically for pelleted products. On the supply-side, third parties suggested that switching production from compounds to blends would

---

<sup>3</sup> See, for example, *Completed acquisition by ABF Holdings Ltd of Primary Diets Ltd*, September 2006, (*ABF/Primary Diets*).

<sup>4</sup> Poultry cannot consume blends so this single product market would be exclusive of blends with respect to poultry.

<sup>5</sup> See *Cargill/Agribands*. However, in *Comp/M.2956, CVC/Pai Europe/Provimi*, October 2002 (*CVC/Provimi*), however, the European Commission noted that complete feed and pre-mix appeared to be a separate market.

require changes to manufacturing systems, and that a ten per cent price rise would not be sufficient to justify a change in system operation.

22. Given the mixed evidence on the substitutability of different feed types, the OFT has taken a cautious approach and considered compound feed to be a separate market for the purposes of the competitive assessment. While the parties also overlap in the supply of meals, all compound manufacturers are active in meal and/or blend production, alongside a range of blend manufacturers. We therefore consider that if no competition concerns are found in the supply of compound feed supply none could be found in the supply of meals.

### **Animal feed - geographic market**

23. In the past both the EC<sup>6</sup> and the OFT<sup>7</sup> have considered the market for the supply of animal feed to be significantly larger than an area equivalent to the size of Northern Ireland. The parties submit that the relevant markets in this case extend beyond the boundary of Northern Ireland for every possible product market and into (at least) the north of the Republic of Ireland. The parties provided evidence of both customers and sales in the Republic of Ireland and active competition in Northern Ireland from suppliers in the Republic. While the proportion of the parties' sales in the Republic of Ireland is relatively small, it was relatively high for certain customer groups. Third parties (customers and competitors) also supported the parties' submission of a geographic market wider than that of just Northern Ireland to include the north of Eire (referred to as 'the north of Ireland').

### **Conclusion – animal feed markets**

24. On the basis of the analysis set out above, the OFT considers the following markets relevant to the competitive assessment:
- Compound feed supply for ruminants in the north of Ireland;
  - Compound feed supply for poultry in the north of Ireland; and
  - Compound feed supply for pigs in the north of Ireland.

---

<sup>6</sup> *Cargill/Agribands and CVC/Provimi.*

<sup>7</sup> See *ABF/Primary Diets and Acquisition by W L Duffield & Sons Limited of the ruminant feed business of Bury Nutrition, part of ABNA Limited, December 2002.*

## **HORIZONTAL ISSUES**

### **Ruminant feed**

25. The parties provided estimates of share of supply for compound ruminant feed, based on tonnage sold. The merger will strengthen Thompson's leading position resulting in a combined share of supply of nearly [below 20] per cent with an increment of [5 – 10] per cent. However, a number of strong competitors will remain post-merger, two of whom represented stronger constraints pre-merger (based on market share) than AB Agri. Customers' views were consistent with the market share figures, suggesting that there would remain a range of alternative suppliers post-merger, and that switching costs were low. The parties also provided evidence of a high number of customers switching suppliers. Finally, all competing suppliers indicated that they were operating below capacity and could expand to meet increased demand. While one competitor raised concerns, these appeared to be aimed at the increased competitive threat posed by the transaction rather than any possible harm to customers.
26. Given the above analysis, the OFT does not consider that there is a realistic prospect that the merger would substantially lessen competition in the supply of compound ruminant feed.

### **Pig feed**

27. The parties submitted that their combined share of supply for compound pig feed was [15-25] per cent. These figures are based on 2007 tonnage sold, adjusted to account for the loss of significant business to a local competitor. The merger will create the second biggest competitor in the market, which has one large player, Kiernan Milling, which supplies over half the market and has a significant volume gap to the next biggest supplier. The market position of Kiernan Milling, and the evidence of switching to Kiernan Milling provided by the parties, suggests that the parties are not each other's closest competitors. Rather, any lost sales following a price rise would likely be to Kiernan Milling.
28. Evidence from third parties was consistent with that supplied by the parties. Customers indicated that switching was straightforward and could be done almost immediately, at negligible cost. Some customers did

express concerns regarding the absence of alternative suppliers. However, another customer suggested that the merger would have no effect on price, that there were a number of alternative suppliers, and that any concerns are reflective of wider industry conditions.

29. Although the market is highly concentrated, this is partly driven by a competitor who supplies more than half the market. Furthermore, despite some customer concerns over the absence of choice following the loss of a supplier, the merger represents only a reduction in suppliers from seven to six and some of the remaining competitors indicated that they have spare capacity to expand. We therefore do not consider that there is a realistic prospect that the merger would substantially lessen competition in the supply of compound pig feed.

### **Poultry feed**

30. The parties submitted that over half of the poultry feed market is accounted for by an exclusive long-term toll manufacturing contract for Thompson to supply Moy Park, a poultry processor. Under this contract, Thompson supplies Moy Park from a dedicated feed production plant, built exclusively to service the Moy Park contract and not available to supply third parties. Moy Park purchases the raw materials and Thompson acts merely as a toll manufacturer. The production at this plant is not available for third parties and the supply volumes, according to the parties, should not be included within the market.
31. Including the Moy Park volumes, the parties account for in excess of 35 per cent of the manufacture of poultry feed. Excluding Moy Park sales, the parties combined share of the 'external' market is [below 10] per cent.<sup>8</sup> AB Agri, in particular, has very little activity in this sector, giving an increment of under [2 – 5] per cent. Post-merger the merged entity would be the fourth largest supplier (excluding the Moy Park sales) with strong competition provided by a further four relatively strong competitors. Additionally, there have been no concerns from customers or competitors specifically relating to this sector. We therefore do not consider that there

---

<sup>8</sup> This includes two feed producers who supply in-house, on the basis that one producer also competes for third party sales. Even if we remove the feed producer for which the OFT could not obtain evidence of third party sales, the parties market share would only be [5 – 15] per cent.

is a realistic prospect that the merger would substantially lessen competition in the supply of compound poultry feed.

### **Coordinated effects**

32. The OFT did not receive any evidence to suggest coordination pre-merger, that AB Agri was disrupting collusion, or that the merger will significantly increase the ability or incentives for coordination in any of the markets assessed. There are, however, some features of the market that may support coordination: the markets are transparent, there appear to be numerous reference points around which coordination could occur, and the products are largely homogenous (although possibly less so for compound feeds). Further, some third parties suggest there may be mechanisms through which information may be shared. However, shares of supply in all of the markets assessed indicate asymmetry between suppliers. Most competitors have also indicated substantial spare capacity to expand. Compound feed demand is generally perceived amongst industry participants to be declining significantly either as customers switch to cheaper blends over time or agri-business in the region declines.
  
33. Furthermore, the geographic market for all products assessed spans two currency areas such that exchange rate changes will constantly alter the relative price (and costs) received by some suppliers making them less able and willing to align their pricing behaviour and less able to detect cheating. There is also some evidence, although not conclusive, supporting possible countervailing buyer power for some customers and additionally, for ruminant feed supply, there a large number of smaller competing players, both of which have the potential to upset any coordination. We therefore do not believe there is any likelihood of any coordinated effects arising from the merger.

## VERTICAL ISSUES

34. Origin and WRB each supply ingredients used in the production of compound animal feed. The OFT considered whether the potential loss of AB Agri as a customer of these ingredients (on the basis that Origin and WRB would supply it) would be significant and mean that sales by other suppliers of animal feed ingredients, for example, would be so reduced that they could no longer import these raw materials at a minimum efficient scale.
35. The parties provided indicative share of supply estimates for the demand for animal feed ingredients in the north of Ireland, their own share being approximately [25 – 35] per cent.<sup>9</sup> Third parties, however, suggested that the custom of AB Agri and Thompson together represented between 50 – 60 per cent of the downstream compounding market, although these shares were estimates only and were not supported by the horizontal competitive assessment of upstream supply. For all compound feed together AB Agri and Thompson submit they would have a combined share of supply of [15 – 20] per cent, while a further eight companies have shares of supply above five per cent. This was generally supported by third parties at the downstream level.
36. In addition to the merged entity's relatively small market share for each of the overlapping compound feeds (meaning that a significant portion of the customer base for each of the overlapping compound feeds will remain available), those active upstream can also supply to blenders and direct to agricultural merchants, such that the shares of supply for compound animal feed set out in the horizontal assessment are not indicative of the concentration of the customer base for the supply of raw materials – these shares will significantly overestimate the concentration.
37. The OFT obtained information from upstream suppliers on the share of their total supply purchased by AB Agri. These figures were not sufficiently high to suggest that any exclusionary effect from the loss of AB Agri as a customer would be significant, nor allow the parties to deprive upstream suppliers of significant economies of scale. This is supported in this case by the number of significant potential customers that would remain post-

---

<sup>9</sup> While third parties disputed the estimates provided by the parties, the shares were broadly indicative of market conditions at the upstream level.

merger. As a result of this analysis, the OFT did not consider there to be a realistic prospect that the merger would substantially lessen competition as a result of downstream customer foreclosure.

38. The OFT also considered the possibility of input foreclosure. Although no conclusion was made on the relevant upstream market, as there will be increase in concentration at the upstream level there will be no material change in the parties' ability to foreclose as a result of the merger. Furthermore, it seems unlikely, should they currently have any market power upstream (and this is not certain from the parties' current share of supply for animal feed raw materials), that their incentive to do so will increase as a result of the merger. AB Agri represents a relatively small increment when considering total animal feed together and any attempt at foreclosure post-merger, if possible, will not be significantly more rewarding than pre-merger. We therefore do not consider that there is a realistic prospect that the merger will substantially lessen competition as a result of input foreclosure.

### **THIRD PARTY VIEWS**

39. The OFT sought the views of a large number of third parties, although relatively few responses were obtained. Of the responses, approximately half had concerns, focusing largely on the vertical issues discussed above, although there were some concerns regarding the horizontal concentration in relation to compound animal feed. The concerns expressed by third parties have been dealt with above.

### **ASSESSMENT**

40. The parties overlap in the supply of animal feed and the distribution of fertiliser. However, given the low market share of the parties and the highly fragmented market in relation to fertiliser distribution, the OFT did not undertake a detailed investigation of this market on the basis that no competition concerns arise there.
41. In relation to animal feeds, the OFT considered whether animal feeds could be considered as one distinct market or a number of separate markets based on animal and/or feed type. The parties submitted that all ruminants and monogastric animals should be considered together, as well as all feed types. However, the OFT found that, with the exception of ruminants,

there is little demand side substitution between feed for different animals, and third parties suggested that switching production between feed types for different animals is not straightforward, The OFT therefore considered feed for ruminants, pigs and poultry to comprise three different markets.

42. The OFT also found that there are some impediments to switching between different types of feed, particularly when farming systems are designed to accommodate pelleted compound feed. The OFT took a cautious approach, and considered compound feed separately from other feed types, on the basis that if there are no competition concerns in relation to compound feed (where the parties shares were highest), there cannot be competition concerns in relation to other feed types. Consistent with the views of both the parties and third parties, the OFT found the geographic market to be the north of Ireland (Northern Ireland and the north of the Republic of Ireland).
43. The parties have a low market share in relation to each distinct market for animal feed (excluding a large contract to supply poultry feed to Moy Park, for which the parties merely act as a toll manufacturer). In each market, a number of competitors will remain post-merger, many of whom are at least as strong as the parties and have capacity to expand (in relation to pig feed, the market also has one particularly strong supplier, which appears to be the strongest constraint on each of the merging parties). Third party evidence suggested that switching between suppliers is straightforward. Given these factors, it appears that there will be sufficient remaining constraints on the merged entity such that the loss of competition between the parties is unlikely to be significant.
44. While there are some features of the various markets for animal feed that may support coordination, a number of factors count against this: asymmetry of shares of supply, substantial spare capacity, declining demand for compound animal feed, different currencies used within the geographic market, and possible buyer power. There was no evidence in this case that the merger will increase the ability or incentive for coordination in any of the markets assessed.
45. Finally, the OFT considered whether vertical concerns would arise as a result of Thompson's parent companies being active in the supply of raw materials to animal feed manufacturers. There were complaints over the possibility of both input and customer foreclosure. It was submitted that

Thompson and AB Agri together represent a significant amount of the market and that the loss of AB Agri as a customer would mean that other suppliers of animal feed would, for example, be unable to import raw materials at a minimum efficient scale. However, the OFT found that any exclusionary effect from the loss of AB Agri as a customer will not be significant, nor allow the merged entity to deprive upstream suppliers of significant economies of scale.

46. In relation to input foreclosure, the parties do not overlap in the supply of raw materials, so the ability of the parties to foreclose will not change. Should they have any existing ability to do so, it seems unlikely their incentive to do so would increase with the increment from the merger representing a small increase in overall raw materials.
47. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

48. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.