

CMA ACCEPTANCE OF INTERIM UNDERTAKINGS

ANTICIPATED ACQUISITION BY CLARIANT OF CERTAIN ASSETS AND THE DE/ANTI-ICING FLUIDS FOR AIRCRAFT AND RAIL APPLICATIONS FROM KILFROST

On 17 February 2016 the Competition and Markets Authority (CMA) referred the anticipated acquisition by Clariant International AG, Clariant Produkte (Deutschland) GmbH and Clariant Production UK Limited (together **Clariant**), all of whom are subsidiaries of Clariant AG, of certain assets and the de/anti-icing fluids for aircraft de/anti-icing (ADF) and rail applications (RDF) from Kilfrost Limited (**Kilfrost**) for an in-depth investigation (the **reference**).

The reference has not been finally determined in accordance with section 79(1) of the Enterprise Act 2002 (the **Act**).

The CMA wishes to ensure that no action is taken pending final determination of the reference 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.

Now pursuant to section 80(2) of the Act for the purposes of preventing pre-emptive action, Kilfrost gives to the CMA and the CMA accepts the Undertakings set out in Annex A below and accordingly the Undertakings come into force in accordance with section 80(5) of the Act.

Signed by authority of the CMA.

John Wotton
Group Chairman
22 March 2016

**ANTICIPATED ACQUISITION BY CLARIANT OF CERTAIN ASSETS
AND THE DE/ANTI-ICING FLUIDS FOR AIRCRAFT AND RAIL
APPLICATIONS FROM KILFROST**

**Interim Undertakings accepted by the
Competition and Markets Authority pursuant to section 80(2) of the
Enterprise Act 2002 (the Act)**

- A. On 17 February 2016 the Competition and Markets Authority (CMA) referred the anticipated acquisition by Clariant International AG, Clariant Product (Deutschland) GmbH And Clariant Production UK Limited, all of whom are subsidiaries of Clariant AG (together **Clariant**), of certain assets and the de/anti-icing fluids for aircraft de/anti-icing (ADF) and rail applications (RDF) from Kilfrost Limited (**Kilfrost**) for an in-depth investigation (the **reference**).
- B. The acquisition concerns the sale of certain assets, contracts and the de/anti-icing fluids for the ADF and RDF business carried on by Kilfrost in Europe excluding all the states which were members of the former Soviet Union other than Russia (the '**transaction**').
- C. The transaction has not completed and is subject to and conditional upon certain conditions being met including 'approval' by the CMA (the **competition condition**). The competition condition may be waived by Clariant.
- D. Kilfrost previously licensed Clariant to use certain of Kilfrost's trademarks and intellectual property (the **Licences**) in a specific geographic area (the **Licensed Territory**).
- E. 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.
- F. The CMA wishes to ensure that no action is taken pending final determination of the reference 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.

Now for the purposes of preventing pre-emptive action, Kilfrost gives to the CMA the following undertakings (the **Undertakings**) pursuant to section 80(2) of the Act:

Management of the Kilfrost business until determination of proceedings

1. Except with the prior written consent of the CMA, Kilfrost undertakes that, in relation to the transaction, it will not during the specified period take any action which might prejudice the reference concerned or impede the taking of any action under the Act by the CMA or other party which may be justified by the CMA's decisions on the reference, including any action which might:
 - (a) complete the transaction;
 - (b) lead to the integration of the Kilfrost business with the Clariant business;
or
 - (c) otherwise impair the ability of Kilfrost to compete independently in any of the markets affected by the transaction.

2. Further and without prejudice to the generality of paragraph 1, Kilfrost will at all times during the specified period, procure that except with the prior written consent of the CMA:
 - (a) the Kilfrost business is carried on separately from the Clariant business and Kilfrost's separate sales or brand identity is maintained;
 - (b) the Kilfrost business is maintained as a going concern and sufficient resources are made available for the development of the Kilfrost business, on the basis of its pre-transaction business plans;
 - (c) the nature, description, range and quality of goods and services currently supplied in the United Kingdom by Kilfrost are maintained and preserved;
 - (d) there is no integration of the information technology of the two businesses;
 - (e) the customer and supplier lists of the two businesses are operated and updated separately and Kilfrost will not enter into any agreements jointly with Clariant;
 - (f) all existing contracts continue to be serviced by whichever of the Clariant business or Kilfrost business respectively was awarded the contract;
 - (g) no key staff are transferred between the two businesses; and
 - (h) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature, shall pass, directly or indirectly, from Kilfrost (or any of its employees, directors, agents or affiliates) to Clariant (or any of its

employees, directors, agents or affiliates), except as permitted by the Licences and within the Licensed Territory.

Compliance

3. Kilfrost shall forthwith provide to the CMA such information or statement of compliance it may from time to time require for the purposes of monitoring compliance with these Undertakings. In particular, on the 4th day of April 2016 and subsequently on the 4th day of each month, (or, where the 4th does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Kilfrost shall provide a monthly statement to the CMA on behalf of Kilfrost confirming compliance with these Undertakings in the form set out in the Appendix to these Undertakings.
4. Kilfrost shall comply in so far as it is able with such written 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 these Undertakings.

Interpretation

5. The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
6. For the purposes of these Undertakings:

'the Act' means the Enterprise Act 2002 as amended;

'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 the 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;

'the Clariant business' means the de/anti-icing fluids for aircraft (ADF) and rail applications (RDF) business carried on by Clariant in Europe as at 19 November 2015;

'Clariant AG' means a company registered and incorporated in Switzerland whose registered office is at Rothausstrasse 61, CH-4132 Muttenz 1 Switzerland;

‘Clariant International AG’ means a company incorporated and registered in Switzerland with the registration number CHE 106.515.013 whose registered office is at Rothausstrasse 61, CH-4132 Muttenz 1 Switzerland;

‘Clariant Product (Deutschland) GmbH’ means a company incorporated and registered in Germany with the registration number HRB 42045 whose registered office is Brüningstrasse 50, D-65929 Frankfurt a.M., Germany and whose principle place of business is Am Unisys Park 1, D-65843 Sulzbach, Germany;

‘Clariant Production UK Limited’ means a company incorporated and registered in England and Wales whose registered number is 03380658 and whose registered office is at Clariant House Unit 2 Rawdon Park Yeadon Leeds West Yorkshire United Kingdom;

‘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 but without having a controlling interest in that body corporate or in that enterprise, and in the case of a body corporate, a person shall for the purposes of these Undertakings be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10% or more of its issued share capital or which carry an entitlement to vote at meetings of that body corporate of 10% or more of the total number of votes which may be cast at such meetings;

‘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;

‘the Kilfrost business’ means the de/anti-icing fluids for aircraft (ADF) and rail applications (RDF) business carried on by Kilfrost as at 19 November 2015;

‘Kilfrost Limited’ means a company incorporated and registered in England and Wales with the registration number 0297731 whose registered office is located at Albion Works, Albion Works, Haltwhistle, Northumberland, England, NE49 0HJ;

‘the ordinary course of business’ means matters connected to the day-to-day supply of goods and services by Kilfrost;

'the specified period' means the period beginning on the date of these Undertakings and terminating when the reference is finally determined in accordance with sections 79(1) and (2) of the Act;

'the two businesses' means the Kilfrost business and the Clariant business;
and

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

FOR AND ON BEHALF OF Kilfrost Limited

Name

Position

Signature

Date

Compliance statement for Kilfrost Limited

I [insert name] confirm on behalf of Kilfrost Limited (Kilfrost) that:

- (a) Kilfrost has complied with the undertakings given by it and accepted by the CMA on 22 March 2016 ('the Undertakings') in the period from **[insert date]** to **[insert date]**.
- (b) No action has been taken by Kilfrost in the period from **[insert date]** to **[insert date]** that will impede the taking of any action by the CMA which may be justified by its decision on the reference.
- (c) The Kilfrost business has been maintained as a going concern and sufficient resources have been made available for the development of the Kilfrost business on the basis of its pre-transaction plan(s).
- (d) Kilfrost remains in full compliance with the Undertakings.
- (e) The Kilfrost business's customer/supplier lists have been operated and updated purely for the purposes of the Kilfrost business.
- (f) All customer/supplier negotiations for the Kilfrost business have been carried out independently.
- (g) There have been no substantive changes to the nature, description, range and quality of any goods and/or services currently supplied in the United Kingdom by the Kilfrost business.

Contracts

- (h) All existing contracts awarded to the Kilfrost business continue to be serviced by Kilfrost.

Information technology systems

- (i) There have been no integration of the information technology systems of the Clariant business and the Kilfrost business.

Staff

- (j) no key staff have been transferred between the two businesses.

Confidential information

(k) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the two businesses, has passed, directly or indirectly, from Kilfrost (or any of its employees, directors, agents or affiliates) to Clariant (or any of its employees, directors, agents or affiliates), except as permitted by the Licences and within the Licensed Territory.

FOR AND ON BEHALF OF Kilfrost Limited

Name

Position

Signature

Date