

Anticipated acquisition by Origin UK Operations Limited of Provantis Amenity Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6607/16

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 24 June 2016. Full text of the decision published on 13 July 2016.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. Origin UK Operations Limited (**Origin**) has agreed to acquire Provantis Amenity Limited (**Provantis**) (**the Merger**). Origin and Provantis are together referred to as the Parties.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the distribution of amenity products in Great Britain. Amenity products are used for the improvement, maintenance and construction of sports and landscaped turf areas, and include grass seeds, fertilisers, plant protection products, and soil and turf improvers. The Parties also have a vertical relationship as Provantis' subsidiary, Headland Amenity Limited (**Headland**), buys conventional compound granular fertilisers¹ from PB Kent, a trading division of Origin.

¹ A type of fertiliser used in the amenity sector. The relevance of different fertiliser types is described in paragraphs 28 to 33.

4. In relation to the horizontal overlap, the CMA assessed the impact of the Merger on the basis of a frame of reference for the distribution of amenity products in three regional areas (Scotland, the north of England, and the south of England and Wales).
5. The CMA used information obtained from the Parties and third parties to assess whether the Merger would give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the distribution of amenity products in the regional areas identified above. The evidence available to the CMA demonstrated that the Parties are not each other's closest competitors, there is a wide range of alternative suppliers of amenity products and that customers are able to easily switch suppliers and to multi-source their requirements. The CMA therefore found no competition concerns as a result of horizontal unilateral effects.
6. In relation to the vertical relationship, the CMA investigated whether the merged entity would have the ability to engage in a foreclosure strategy to the detriment of other distributors of amenity products, for instance by refusing to supply, or increasing the wholesale price of, conventional compound fertilisers. Such partial or total input foreclosure could harm competition in the distribution of amenity products.
7. However, the evidence gathered by the CMA indicated that the merged entity would not have the ability to foreclose rival distributors from access to conventional compound granular fertilisers.
8. The CMA therefore does not believe that the Merger will give rise to a realistic prospect of an SLC.
9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

10. Origin is active in the production and distribution of fertilisers for use in agriculture and, through its trading division PB Kent, specialist fertilisers for use in the amenity sector (eg fertilisers for sports turf, landscaping, golf courses and contract lawn care). Its parent company, Origin Enterprises plc, owns Rigby Taylor Limited (**Rigby Taylor**). Rigby Taylor is active in the distribution of amenity products. Rigby Taylor's UK turnover in 2015 was around £25 million.

11. Provantis has one wholly owned subsidiary, Headland Amenity Limited (**Headland**), which is active in the distribution of amenity products. The turnover of Headland in the financial year ending 31 December 2015 was around £[~~3~~] million worldwide and around £[~~3~~] million in the UK.

Transaction

12. Origin has agreed to purchase the entire issued share capital of Provantis (the **Merger**). The transaction has not been notified in any other jurisdictions.

Jurisdiction

13. As a result of the Merger, the enterprises of Origin and Provantis will cease to be distinct.
14. The Parties submitted that they overlap in relation to the distribution of amenity products within Great Britain, with a combined share of supply by value of [20-30]% (and an increment of [0-5]%). The CMA therefore believes that the share of supply test in section 23 of the Act is met.
15. The CMA 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.
16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 6 May 2016 and the statutory 40 working day deadline for a decision is therefore 1 July 2016.

Counterfactual

17. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.²

² [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

18. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frames of reference

19. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.³
20. The Parties activities overlap horizontally in the distribution of amenity products in Great Britain. The Parties also have a vertical relationship, insofar as Headland (and Rigby Taylor) buy fertilisers for use in the amenity sector from PB Kent, a trading division of Origin.

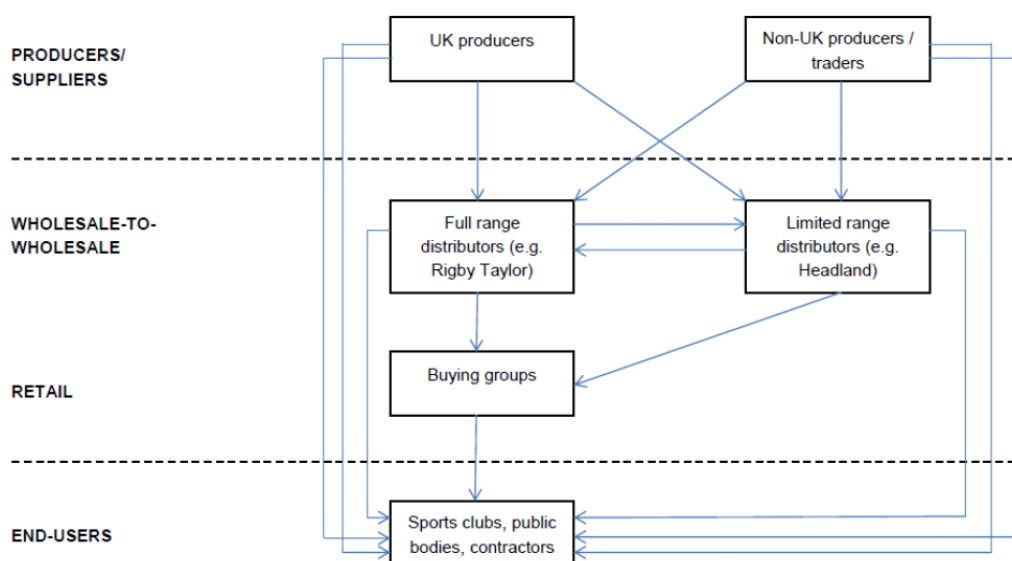
Product scope

Horizontal overlap in the distribution of amenity products

21. With regard to the horizontal overlap, the Parties submitted that the relevant product frame of reference is the distribution of amenity products. Amenity products are products for the improvement, maintenance, and construction of sports, amenity and landscaped turf areas, including: grass seeds; fertilisers; plant protection products (such as herbicides and fungicides); top dressings; and soil and turf improvers.
22. Amenity products are manufactured by a number of firms, and are sold to end-users, such as sports clubs, by manufacturers directly, as well as through distributors (such as Rigby Taylor and Headland). No single manufacturer produces a full range of amenity products, and they may use wholesalers (which stock products) to supply amenity products to end-users. Figure 1 shows the different possible supply chains for amenity products in Great Britain.

³ [Merger Assessment Guidelines](#), paragraph 5.2.2.

Figure 1: Supply chains for amenity products in Great Britain



Source: Parties' submissions

Aggregation based on supply-side factors

23. In Silos/Cleancrop,⁴ where the parties to the transaction overlapped in respect of their distribution activities for crop protection products, the OFT found that 'although different crop protection products will not generally be substitutable from the end-user's perspective, the overlap in this case related to distribution of a full or wide range of products, hence there is no basis for separate markets distinguishing between types of crop protection products.'⁵
24. The CMA believes that similar considerations apply to the distribution of amenity products in the context of assessing the Merger. Although different types of amenity products will generally not be substitutable from an end-user's (ie a demand-side) perspective, the conditions are met for aggregating several narrow frames of reference into one broader one, on the basis of supply-side considerations. In particular:
- (a) To a large extent, the same group of firms compete to supply amenity products to retail and end-users;⁶

⁴ ME/4917/11 Completed acquisition by Silos (UK) Limited of Cleancrop UK Limited, 3 June 2011.

⁵ ME/4917/11 Completed acquisition by Silos (UK) Limited of Cleancrop UK Limited, 3 June 2011, paragraph 8.

⁶ *Merger Assessment Guidelines*, paragraph 5.2.17.

- (b) Third party competitors told the CMA that it was relatively straightforward for distributors to alter or expand their range of amenity products, and that they could do so within a relatively short timescale; and
- (c) The conditions of competition between distributors are similar across different types of amenity products. For example, the CMA estimated that the Parties have very similar shares of supply within fertilisers and chemicals as they do across a range of other amenity products.⁷

Full range and limited range distributors

- 25. The Parties submitted, and third parties confirmed, that in the distribution of amenity products there were 'full range' and 'limited range' distributors. Full range distributors sell both 'core' (including: grass seeds; chemicals; fertilisers; and soil and turf improvers) and 'non-core' (including: sand; tools; line markings; and sports equipment) amenity products. Limited range distributors focus primarily on supplying all or some of the core amenity products.
- 26. Several third party competitors confirmed that, like Rigby Taylor, they sell a full range of amenity products, although the proportions of their sales by product types differ from that of Rigby Taylor.
- 27. Unlike full-range distributors, Headland is mainly active in the supply of fertilisers and chemicals, and does not supply grass seeds or turf. On a cautious basis, the CMA also assessed narrower product frames of reference and, in particular, estimated the Parties' shares of sales within the fertiliser and chemicals categories separately.⁸ However, the CMA believes that no competition concerns arise even on this narrower basis.

Vertical relationship in the production and wholesale supply of fertilisers for use in the amenity sector

- 28. PB Kent is active upstream in the production and wholesale supply of conventional compound fertilisers while Headland (and Rigby Taylor) are active downstream in the distribution of amenity products, including conventional compound fertilisers. The CMA considers the relevant downstream frame of reference to be the distribution of amenity products. The

⁷ [Merger Assessment Guidelines](#), paragraph 5.2.17.

⁸ These estimates are based on a limited data set, as only a few third party competitors were able to supply revenue data split by product type.

relevant upstream frame of reference is discussed in the following paragraphs.

29. The Parties submitted that the relevant product frame of reference is the supply of conventional compound granular fertilisers.⁹
30. Conventional compound granular fertilisers are fertilisers that have not been produced to release nutrients over a longer time period (ie conventional as opposed to slow-release or controlled-release) and contain the customer's required mix of nutrients in each individual granule of fertiliser (ie compound). They differ from blended fertilisers, which are a mixture of separate granules of each of the required nutrients that have been blended together in a machine.
31. The Parties submitted the results of a survey of end-users commissioned by Rigby Taylor, which showed that [X]. Furthermore, the Parties submitted that end-users may not regard conventional and "slow-release" fertilisers as interchangeable.
32. Third parties confirmed that different types of fertilisers are not generally demand-side substitutes, with several customers indicating that there was a limited extent to which they would substitute between the types of fertiliser in the event of a small but significant and non-transitory increase in price.
33. Third party producers also stated that there was limited supply-side substitution between these different types of fertilisers. Two producers stated that it would not be easy to switch existing production to produce a different type of fertiliser, and that this would require capital investment in a new plant.

Conclusion on product scope

34. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
 - (a) The distribution of amenity products (in relation to the Parties' horizontal overlap and to customers downstream of the Parties); and
 - (b) The production and wholesale supply of conventional compound granular fertilisers (in relation to the Parties' vertical relationship and suppliers upstream of the Parties).

⁹ PB Kent produces conventional compound granular fertilisers.

Geographic scope

Horizontal overlap in the distribution of amenity products

35. With regard to their horizontal overlap, the Parties submitted that the relevant geographic frame of reference is Great Britain and, on a conservative basis, at least regional and broadly delineated on the following basis: (i) Scotland; (ii) the north of England; and (iii) the south of England and Wales.
36. The Parties submitted, and third parties confirmed, that distributors are able to satisfy orders across Great Britain, using a range of logistics providers, with the cost of delivery being insignificant. Origin submitted that Rigby Taylor is able to make deliveries to customers across Great Britain from each of its warehouses.
37. The Parties submitted that customers can also collect orders directly from distributors' depots, although only a small proportion ([REDACTED]%) by value) of Rigby Taylor's orders in 2015 were collected by customers. Rigby Taylor has three depots located in Midlothian (Scotland), Stallingborough (north of England) and Camberley (south of England), and orders are allocated and fulfilled by warehouses based on the regions in which they are located. Similarly, Sherriff Amenity (identified by the Parties and third parties as Rigby Taylor's closest national competitor), has three depots located in Perth (Scotland), Cheshire (in the north of England), and Suffolk (in the south of England).
38. The Parties submitted that Rigby Taylor's sales teams are organised to serve Scotland, the north of England, and the south of England, [REDACTED].
39. Some competitors told the CMA that they tend to have a stronger geographical focus on either Scotland, the north of England, and/or the south of England. The Parties submitted that Headland has relatively few customers in Scotland, and its only distribution centre is in Lincolnshire.

Vertical relationship in the production and wholesale supply of fertilisers for use in the amenity sector

40. With regard to assessment of vertical effects, the Parties submitted that the relevant geographic frame of reference is Great Britain.
41. The Parties submitted that since conventional compound fertilisers are imported into Great Britain from the EU, as well as from outside the EU (eg from Israel and the US), Great Britain is a cautious geographical frame of reference.

42. One third party competitor stated that it was actively seeking to import fertilisers from European producers. A third party fertiliser producer outside the UK, confirmed that it would have the ability to supply fertilisers to the whole of Great Britain.

Conclusion on geographic scope

43. For the reasons set out above, on a cautious basis the CMA has considered the impact of the Merger in relation to the horizontal overlap in the distribution of amenity products in the following geographic frames of reference:

- (a) Scotland;
- (b) The north of England (comprising the North East, North West, and Yorkshire and the Humber); and
- (c) The south of England (comprising the East Midlands, West Midlands, East of England, London, South East, and South West) and Wales.

44. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference for the horizontal overlap, since, as set out below, no competition concerns arise on any plausible basis.

45. In relation to the vertical relationship in the purchase of fertilisers for use in the amenity sector, the CMA has considered the impact of the Merger using a geographic frame of reference of Great Britain.

Conclusion on frame of reference

46. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:

- (a) The distribution of amenity products in Scotland, north of England and south of England and Wales (separately);
- (b) The production and wholesale supply of conventional compound granular fertilisers in Great Britain.

Competitive assessment

Horizontal unilateral effects

47. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and

without needing to coordinate with its rivals.¹⁰ Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the distribution of amenity products in Scotland, in the north of England, and in the south of England and Wales.

48. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA has considered:
- (a) Shares of supply;
 - (b) The closeness of competition between the Parties; and
 - (c) Competitive constraints from alternative suppliers.

Shares of supply

49. Table 1 below sets out the Parties' combined shares of supply and also the shares of supply of their main competitors, based on the Parties' estimates and third party responses. The figures exclude sales from manufacturers of amenity products selling directly to end-users.

Table 1: Distributors of amenity products, estimated share of sales in 2015

<i>Distributors</i>	<i>Share of sales (%)</i>			
	<i>Great Britain</i>	<i>Scotland</i>	<i>North of England</i>	<i>South of England and Wales</i>
Origin (Rigby Taylor)	[20-30]	[20-30]	[20-30]	[20-30]
Headland*	[0-5]	[0-5]	[0-5]	[5-10]
<i>Combined</i>	<i>[20-30]</i>	<i>[20-30]</i>	<i>[30-40]</i>	<i>[30-40]</i>
Sherriff	[10-20]	[10-20]	[10-20]	[10-20]
Aitken†	[10-20]	[30-40]	[10-20]	[10-20]
Maxwell Amenity Limited‡	[10-20]	[5-10]	[10-20]	[10-20]
ICL*	[5-10]	[5-10]	[10-20]	[10-20]
Avoncrop	[0-5]	[0-5]	[0-5]	[5-10]
Countrywide	[0-5]	[0-5]	[0-5]	[5-10]
Other full-range	[10-20]	[5-10]	[5-10]	[10-20]
Other limited-range	[5-10]	[0-5]	[5-10]	[5-10]

Source: Origin estimates and third party responses

Notes:

The 'other' categories include distributors with less than 4.5% share of supply in all regions.

* Headland and ICL are limited-range distributors.

† Aitken refers to two companies, Aitken (Seedsmen) Limited and Aitken Sportsturf Limited, under common ownership.

‡ Maxwell Amenity Limited trades as Pitchcare.com and Amenity Land Solutions.

¹⁰ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

50. The Parties' combined shares of supply are relatively low, at both the national and regional level, ranging from [20-30]% to [30-40]%. Based on information provided by the Parties and some third parties, the CMA estimated that, at a national level, the Parties have a combined share of supply in 2015 of [20-30]%, with an increment of [0-5]%, in relation to the distribution of amenity products in Great Britain.
51. The shares of supply also show that, apart from the Parties, there are at least four other suppliers with a significant presence and also a number of other suppliers with smaller shares. On a conservative basis, the CMA also estimated the Parties' combined share of supply in each region for fertilisers and chemicals separately.¹¹ In each case, these estimates were below [20-30]%.
52. The CMA considers that the Parties' combined shares of supply do not, in and of themselves, raise prima facie competition concerns.

Closeness of competition

53. Where products or services are differentiated, for example by branding or quality, unilateral effects are more likely where the merging firms' offerings compete closely.¹² The CMA considers that there is a limited degree of differentiation between rival distributors and that this is mainly on the basis of the range of products each distributor sells.¹³ Nevertheless, the CMA analysed the extent to which the Parties competed against each other pre-Merger.
54. The Parties submitted that they are not close competitors. Rigby Taylor is positioned as a 'one-stop shop', providing a broad range of amenity products including both 'core' products (such as seeds, chemicals, fertilisers and soil and turf improvers) and 'non-core' products (such as tools and sports equipment). In contrast, Headland is positioned as a provider of a more limited range of amenity products, and mainly provides fertilisers and chemicals. This characterisation of the Parties' positioning was confirmed by third party customers and competitors.
55. The Parties also submitted that their sales to each other's top 50 customers accounted for a very small proportion of overall sales. Headland's top 50

¹¹ These estimates are based on a limited data set, as only a few third party competitors were able to supply revenue data split by product type.

¹² [Merger Assessment Guidelines](#), paragraph 5.4.6.

¹³ The majority of third party customers told the CMA that they did not consider distributors' brands to be important in relation to amenity products. Nearly all third party competitors also told the CMA that they offer technical advice and that they are able to deliver products to customers anywhere in Great Britain.

customers by value accounted for approximately [REDACTED]%¹⁴ of Headland's sales and only approximately [REDACTED]% of Rigby Taylor's overall sales. Conversely, Rigby Taylor's top 50 customers by value accounted for approximately [REDACTED]%¹⁵ of Rigby Taylor's sales and only approximately [REDACTED]% of Headland's overall sales. These figures also reflected sales across the three geographic regions under consideration (ie Scotland, the north of England, and the south of England and Wales).

56. Most third parties responding to the CMA did not regard Headland and Rigby Taylor as close competitors, including third parties from across the three regions. However, a few did consider that they were close competitors with respect to fertilisers and chemicals.
57. ICL was most frequently cited by third parties as the closest competitor to Headland.¹⁶ Rigby Taylor was often not listed by third parties as a close competitor to Headland, and where third parties did so, it was often listed as second closest.¹⁷
58. Sherriff was most frequently cited by third parties as the closest competitor to Rigby Taylor. Headland was often not listed by third parties as a close competitor to Rigby Taylor, and where third parties did so, it was normally not as its closest competitor.¹⁸
59. In relation to competitive tenders for local authorities and/or other public body contracts, Rigby Taylor participates in formal tenders which are publicly advertised and has a number of framework agreements in place with these customers. Headland does not participate in formal tenders, nor does it have any framework agreements with public bodies. Furthermore, whilst Headland has limited activities in respect of informal tenders (where the public body customer will typically contact three competing providers and request quotations), the Parties stated that they are not aware of Rigby Taylor having ever competed against Headland in respect of any informal tenders. Two local authorities that responded to the CMA's investigation confirmed that they had not heard of Headland and had never bought from Headland.

¹⁴ £[REDACTED] / £[REDACTED]

¹⁵ £[REDACTED] / £[REDACTED]

¹⁶ 5 customers and 2 competitors considered ICL to be the closest competitor to Headland.

¹⁷ 8 out of 10 third party customers that purchased from Headland did not list Rigby Taylor as a close competitor to Headland. Two third party customers and three competitors did list Rigby Taylor as a close competitor to Headland, often in second-place to another competitor. Only one customer, regarded Rigby Taylor as Headland's closest competitor.

¹⁸ 7 out of 8 third party customers (including local authorities) that bought from Rigby Taylor did not list Headland as a close competitor to Rigby Taylor. All 5 competitors either did not list Headland or did not list it within the top 2 closest competitors to Rigby Taylor. Only one customer regarded Headland as Rigby Taylor's closest competitor.

60. Therefore, while the evidence suggests that the Parties compete for some customers, the CMA considers that they are not particularly close competitors and not each other's closest competitors in the distribution of amenity products across the three geographic regions.

Competitive constraints

61. Unilateral effects resulting from a merger are more likely where customers have little choice of alternative suppliers.¹⁹ Accordingly, the CMA assessed the extent to which the merged entity would continue to be effectively constrained by other suppliers following the Merger.
62. The Parties and third parties identified several national competitors (such as Rigby Taylor, Sherriff, ICL and Maxwell Amenity Limited), several regional competitors (such as Aitken, Avoncrop, Collier Turf Care, and Countrywide), and a long tail of many smaller competitors. The extent of the presence of these competitors is also consistent with the shares of supply in Table 1.
63. In relation to ad hoc sales of amenity products (for example, to sports clubs and associations, and to contractors), the Parties consider that Rigby Taylor primarily competes with other 'full range' distributors, including Sherriff, Countrywide, Maxwell Amenity Limited, and Collier Turf Care Limited.
64. The Parties submitted, and third parties confirmed, that customers are able to easily switch suppliers and to multi-source their requirements. For instance, third party customer respondents, based in all regions, said that they typically bought amenity products from a wide range of suppliers, from multiple suppliers, and also named a wide range of potential alternative suppliers.²⁰ The majority of customers said that they were happy to do so and did not consider any specific distributors to be preferable to any other, provided they were able to obtain the products they needed.
65. Origin submitted that the Headland brand was recognised and respected within the amenity sector, with Headland's products viewed as innovative and technically relevant [X].
66. However, several customers told the CMA that although they liked the quality of Headland's products, they could buy alternative products from other distributors. Based on the evidence available to it, in particular views from a majority of customers who responded to the CMA, the CMA considers the

¹⁹ [Merger Assessment Guidelines](#), paragraph 5.4.12.

²⁰ 11 third party customers (excluding local authorities) responded to the CMA's request for information. As a group, they bought amenity products from 21 different suppliers in 2015. The mean number of actual suppliers is 3.64, and the median number of actual suppliers is 4. Only one customer bought from a single supplier.

merged entity would face sufficient competition from a number of other distributors and would not have an incentive to reduce innovation or the quality of its products. The CMA therefore does not consider that the Merger will result in a reduction of innovation.

67. In summary, the CMA believes that third party competitors will continue to exert a sufficient competitive constraint on the merged entity.

Conclusion on horizontal unilateral effects

68. As set out above, the CMA believes that, while the Parties compete, they are not each other's closest competitors. The evidence also demonstrates that there will continue to be a wide range of other distributors of amenity products that customers are able to buy from, and that customers are able to easily switch suppliers and to multi-source their requirements. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the distribution of amenity products in each of the three geographic regions.

Vertical effects

69. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitor of the supplier's customers.
70. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in a substantial lessening of competition in the foreclosed market(s), not merely where it disadvantages one or more competitors.²¹ In the present case, the CMA has considered whether there is a realistic prospect of the merged entity, through PB Kent (a trading division of Origin which produces specialist fertilisers for use in the amenity sector), engaging in a foreclosure strategy to the detriment of other distributors of amenity products, for instance by refusing to supply or increasing the wholesale price of conventional compound fertilisers.

²¹ In relation to this theory of harm 'foreclosure' means either foreclosure of a competitor or to substantially competitively weaken a competitor.

71. The CMA's approach to assessing vertical theories of harm is typically to analyse (a) the ability of the merged entity to harm competitors, for example through raising prices or refusing to supply them (b) whether the merged entity would have the incentive to do so, and (c) whether the effect of any action by the merged entity would be sufficient to reduce competition in the affected market to the extent that it gives rise to the realistic prospect of an SLC.²² These criteria would have to be met cumulatively for the theory of harm to be substantiated.

Ability

72. Origin and Provantis currently have a vertical relationship, as Provantis' subsidiary, Headland, buys conventional compound granular fertilisers²³ from PB Kent, a trading division of Origin. As a result of the Merger, both Headland and PB Kent will be under the common ownership of Origin.
73. First, the CMA notes that the Merger would not enhance any hypothetical ability (if Origin already had such an ability) to engage in any input foreclosure strategy, given that the merged entity's position in the upstream wholesale supply of conventional compound granular fertilisers will be unchanged following the Merger. Accordingly, in this section, the CMA effectively considers the extent to which Origin may have already had the ability to engage in an input foreclosure strategy.
74. Third party distributors explained that conventional compound granular fertilisers are a key product in the amenity sector, so it was important for distributors of amenity products to be able to offer this type of fertiliser in their ranges.
75. Several third party distributors told the CMA that, within Great Britain, they knew of only two significant plants that could produce conventional compound granular fertilisers: PB Kent's facility (in Immingham, North East Lincolnshire) and the Scotts Company's (**Scotts'**) facility (in Howden, East Riding of Yorkshire).
76. Two third party distributors thought that Scotts' facility in the UK does not currently produce 'amenity-grade' fertilisers which had sufficiently small granules (or prills) that made it suitable for use on fine turfs or golf courses, and so Scotts' product is less preferred for amenity use. The CMA noted that these views conflicted with Scotts' own views about its capabilities. Scotts told

²² [Merger Assessment Guidelines](#), paragraphs 5.6.6 to 5.6.7.

²³ A type of fertiliser used in the amenity sector. The relevance of different fertiliser types is described in paragraphs 28 to 33.

the CMA that it believes its facility is very similar to PB Kent's and that it could produce the same types of fertilisers as PB Kent.

77. Some third party distributors also noted that, post-Merger, PB Kent could raise prices or refuse to supply fertilisers to them, and that there would be very limited alternatives that they could turn to in Great Britain. Some of these distributors did not consider importing conventional compound granular fertilisers to be an attractive alternative due to higher transport costs.²⁴
78. The Parties submitted that Origin does not have the ability to foreclose competing distributors in relation to the supply of conventional compound granular fertilisers for use in the amenity sector. The Parties said that, if Origin imposed price increases or refused to supply competing distributors, those distributors could obtain conventional compound granular fertilisers from a number of established producers. In addition, the Parties submitted that fertilisers can be imported from countries including Belgium, Israel and the US.
79. The Parties also submitted that Westland Horticulture Limited (**Westland**), a company active in the production of fertilisers for the home and garden sector, has recently invested in building a new fertiliser plant in Northern Ireland, with enough capacity to supply the entire demand for conventional compound granular fertilisers for use in the amenity sector in Great Britain.
80. The Parties submitted some estimates of shares of supply of fertilisers for use in the amenity sector in Great Britain. Origin estimated that:
- (a) Around [X] tonnes are produced and supplied by PB Kent, of which around [X] tonnes were supplied to Rigby Taylor and around [X] tonnes were supplied to Headland. These are conventional compound granular fertilisers;
 - (b) Around [X] to [X] tonnes are produced and supplied by ICL Group, being a range of conventional, slow release and controlled release compound fertilisers, blended fertilisers and liquid fertilisers;²⁵
 - (c) Around [X] tonnes are produced and supplied by Greenbest, but this is all blended granular fertiliser; and

²⁴ The CMA considers that importing more expensive types of fertiliser, such as slow-release compound fertilisers, may be more feasible as transport costs would make up a lower proportion of the total cost of supplying these types of fertiliser. [X].

²⁵ The Parties were unable to provide precise data on the proportion of ICL's fertilisers that were conventional compound fertilisers.

(d) The remainder ([REDACTED] to [REDACTED] tonnes) is from imports, and consists of a range of conventional, slow release and controlled release compound fertilisers, blended fertilisers and liquid fertilisers.²⁶

81. In relation to shares of capacity and the extent of spare capacity:

(a) The Parties submitted that PB Kent's current production capacity is, on average, [REDACTED] tonnes per week (or [REDACTED] tonnes per year), but this could vary between [REDACTED] to [REDACTED] tonnes per week depending on the product being produced, the length of production runs and the packing constraints following the granulation process. PB Kent's full year forecast for 2016 states that it expects to sell [REDACTED] tonnes, implying spare capacity of around [REDACTED] %.

(b) Scotts told the CMA that its facility could produce [REDACTED] to [REDACTED] tonnes per year, and that it currently had a spare capacity of around [REDACTED] tonnes (or [REDACTED] to [REDACTED]). Furthermore, Scotts told the CMA that it believes its facility is very similar to PB Kent's and that it could produce the same types of fertilisers which PB Kent can produce.

(c) The CMA was unable to confirm with Westland its production capabilities or its capacity.

82. Based on the Parties' submission, PB Kent is currently supplying around [REDACTED] tonnes per year of conventional compound fertilisers for amenity use to third parties.²⁷ The CMA notes that PB Kent's current supply of [REDACTED] tonnes per year of conventional compound fertilisers for amenity use to third parties is much less than Scotts' current spare capacity of around [REDACTED] per year.

83. In light of the evidence set out above, and in particular on the basis of Scotts' current spare capacity relative to the amount of conventional compound fertiliser which PB Kent supplies to third parties, the CMA believes that the merged entity would not have the ability to engage in input foreclosure of competing distributors of amenity products by refusing to supply or increasing the wholesale price of PB Kent's conventional compound granular fertilisers.

Incentive and effect

84. Given the CMA's conclusions on the Parties' lack of ability to foreclose as a result of the Merger, it was not necessary for the CMA to reach a conclusion

²⁶ The Parties were unable to provide precise data on the proportion of conventional compound fertilisers.

²⁷ The Parties submitted that PB Kent produced and supplied around [REDACTED] tonnes, of which around [REDACTED] tonnes were supplied to Rigby Taylor and around [REDACTED] tonnes were supplied to Headland.

on any incentive or the likely effect of any hypothetical input foreclosure strategy.

Conclusion on vertical effects

85. As set out above, the CMA does not believe that the Parties will have the ability to engage in any input foreclosure strategy as a result of the Merger. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects.

Barriers to entry and expansion

86. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.²⁸
87. Third party competitors indicated that it is relatively straightforward to enter into the distribution of amenity products, and did not think that there were any material barriers to entry. Similarly, third party competitors did not think that there were material barriers to existing distributors expanding their range of products or establishing new brands.
88. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

89. The CMA contacted customers, competitors and suppliers of the Parties. Most customers did not raise concerns. A few customers raised general concerns regarding the potential impact on prices and value-for-money. Several competitors raised concerns about the possibility of input foreclosure by PB Kent.
90. Two competitors expressed a concern that Headland's products will become less 'unique' if, in the medium-term, Rigby Taylor gained access to the know-how or 'technologies' behind Headland's products.
91. Third party comments have been taken into account where appropriate in the competitive assessment above.

²⁸ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

Decision

92. Consequently, the CMA 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.
93. The Merger will therefore **not be referred** under section 33(1) of the Act.

Nelson Jung
Director of Mergers Group
Competition and Markets Authority
24 June 2016