

# Anticipated acquisition by Origin UK Operations Limited of assets comprising the business of Bunn Fertiliser Limited

## Decision on relevant merger situation and substantial lessening of competition

**ME/6667/17**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 14 July 2017. Full text of the decision published on 10 August 2017.

**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.**

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## SUMMARY

1. Origin UK Operations Limited (**Origin**) has agreed to acquire assets comprising the business of Bunn Fertiliser Limited (**Bunn**) (the **Merger**). Origin and Bunn 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 turnover 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 supply of fertilisers in Great Britain. The Parties supply each of nitrogen (**N**), phosphorus (**P**), potassium (**K**) and complex fertilisers from their depots located throughout Great Britain. The CMA assessed the impact of the Merger in the supply of each of N, P, K and complex fertilisers within approximate 150-mile catchment areas of each of the Parties' depots.
4. The CMA found competition concerns in the supply of N, P, K and complex fertilisers in the 150-mile catchment area around the Parties' depots in Montrose, for the following reasons:
  - (a) the Parties' have a high combined share of supply in that area and are located close to each other;
  - (b) the Parties are seen by customers as close competitors particularly in the supply of P, K and complex fertilisers;
  - (c) alternative suppliers impose a limited competitive constraint; and
  - (d) several customers raised concerns in relation to the loss of competition in central/eastern Scotland.
5. The CMA believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of N, P, K and complex fertilisers within 150 miles of the Parties' Montrose depots. The CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to any other area.
6. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 21 July 2017 to offer an undertaking to the CMA that might be accepted by the CMA.

If no such undertaking is offered, then the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

## ASSESSMENT

### Parties

7. Origin is a blender and distributor of fertilisers, supplying from eight depots<sup>1</sup> in Great Britain. Origin is ultimately owned by Origin Enterprises plc (**Origin Enterprises**), which is active in the production and distribution of agricultural products and the supply of agricultural services in the UK, Ireland, Poland, Romania and Ukraine. The turnover of Origin Enterprises in its financial year ending 31 July 2016 was approximately £1,155m worldwide, of which approximately £[X] was in the UK.
8. Bunn is a blender and distributor of fertilisers, supplying from six depots in Great Britain. Bunn is currently owned by Koch Industries Inc (**Koch**). The turnover of Bunn in its financial year ending 31 December 2015 was approximately £[X] worldwide, of which approximately £[X] was in the UK.

### Transaction

9. Origin has agreed to purchase Bunn from Koch.

### Procedure

10. The CMA's mergers intelligence function identified this transaction as warranting an investigation.<sup>2</sup>
11. The Merger was considered at a Case Review Meeting.<sup>3</sup>

### Jurisdiction

12. As a result of the Merger, the enterprises of Origin and Bunn will cease to be distinct.
13. The UK turnover of Bunn exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

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<sup>1</sup> The CMA uses the term 'depot' in the decision widely to refer to sites at which fertilisers are manufactured, blended, processed and/or supplied from.

<sup>2</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

<sup>3</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

14. 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.
15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 May 2017. The statutory 40 working day deadline for a decision is therefore 17 July 2017.

## Counterfactual

16. 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 a 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.<sup>4</sup>
17. In this case, the CMA considered whether it was appropriate to take the prevailing conditions of competition as the counterfactual against which to assess the impact of the Merger. This was because, during 2016 and 2017, Bunn closed six of its depots (the **closed Bunn depots**). The CMA considered whether Bunn would have closed these depots in the absence of the Merger.
18. Based on the Parties' internal documents, the CMA believes that there is no realistic prospect that the closed Bunn depots would have remained operational in the absence of the Merger. The CMA therefore believes that the prevailing conditions are the most competitive realistic counterfactual in this case. However, the CMA notes that, within the [§]. These documents show that Bunn intended to [§].<sup>5</sup> Therefore, although the CMA has considered the prevailing conditions of competition to be on the basis of the remaining depots only, it has, on a cautious basis, assigned all of the sales volumes and values from the closed Bunn depots to the nearest remaining Bunn depots for the purposes of calculating regional shares of supply (see paragraph 103).
19. There is no evidence supporting a counterfactual other than the prevailing conditions of competition, and the Parties and third parties have not put

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<sup>4</sup> [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).

<sup>5</sup> See [§].

forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## **Background**

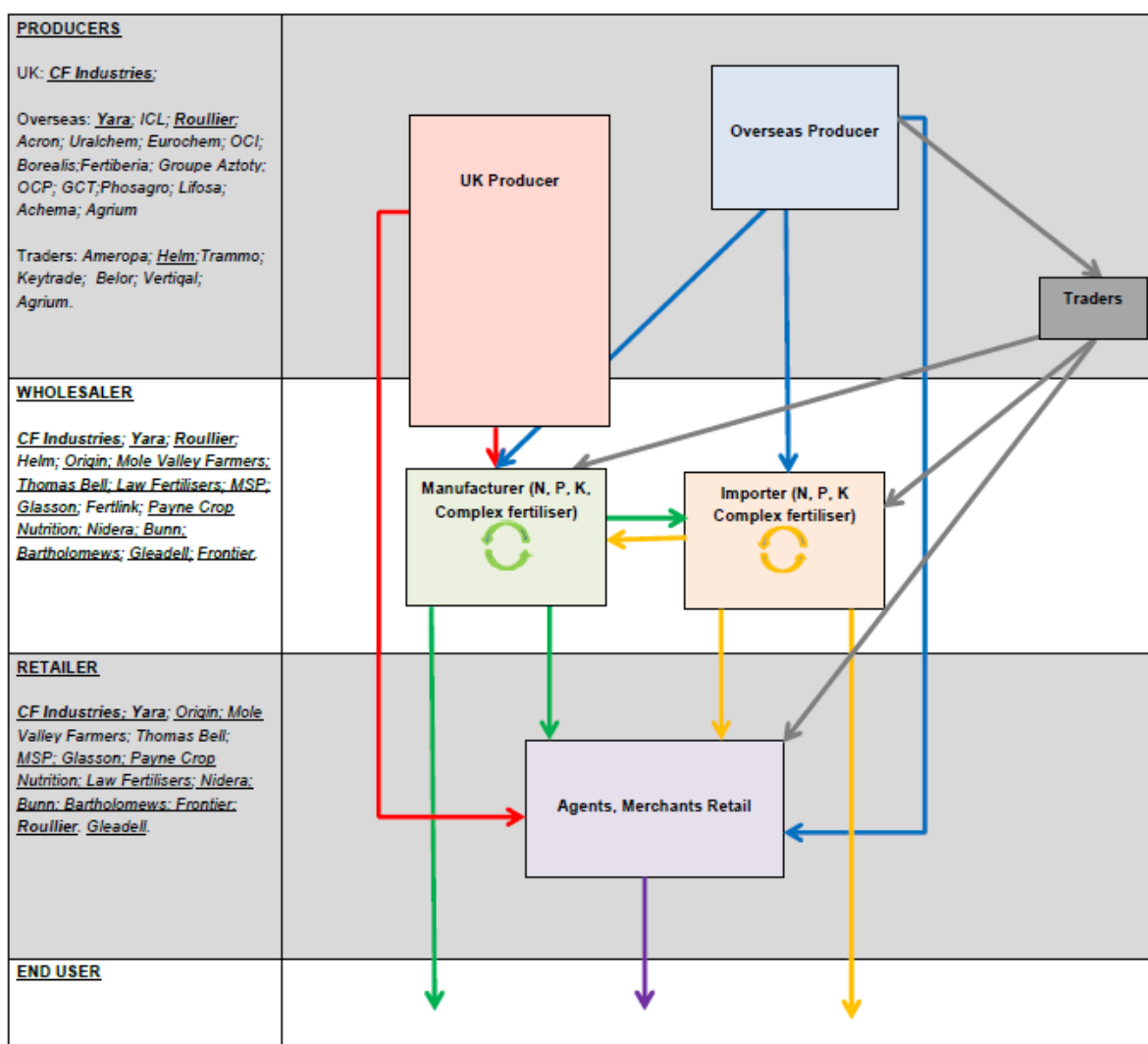
### ***Types of fertiliser***

20. Fertilisers consist of one or more of the main nutrients required by plants, in particular 'primary nutrients', which are N, P and K. All plants need a balance of these primary nutrients, although the required proportions vary from crop to crop. These primary nutrients are applied to the land either separately in the form of a 'straight' fertiliser (ie a fertiliser with just one primary nutrient) or combined in the form of a 'complex' fertiliser (ie the fertiliser contains more than one primary nutrient). Where the CMA refers to N, P or K, it refers to straight N, straight P or straight K fertilisers respectively.
21. Complex fertilisers, also known as 'NPK fertilisers' or 'multi-nutrient fertilisers', come in two forms:
  - (a) Blended fertilisers: these are obtained by dry-mixing several materials in a blending machine. Each fertiliser granule contains one type of primary nutrient but, in aggregate, the whole blend of raw materials contains a specified mix of N, P and K.
  - (b) Compound fertilisers: these are obtained by combining primary nutrients through chemical reactions, such that each individual granule contains a specified mix of N, P and K.
22. The markets for N and complex fertilisers are significantly larger than the markets for P and K fertilisers. P and K fertilisers are often used by end-users (farmers) in conjunction with precision farming methods. Precision farming methods can involve the application of straight fertilisers to precise areas of land to meet the nutritional needs of that land. Differing soil conditions and land usage (eg grassland or arable farming) affect the optimum balance of N, P and K needed by farmers.

### ***Fertiliser supply chain***

23. The Parties submitted that the majority of their sales are to merchants (regional or national) and buying groups, with the remaining [X] % of sales made directly to end users (farmers). The Parties' submitted that the British fertiliser supply chain can be illustrated as shown in Figure 1 below.

Figure 1: Parties' illustration of the British fertiliser supply chain



**Key**

	Represents trading between parties at the same level of the supply chain
<u>Company</u>	Company vertically integrated across the: (1) producer, (2) wholesaler; and (3) retail levels of the supply chain
<u>Company</u>	Company vertically integrated across either: (1) the producer; and (2) wholesaler levels of the supply chain; or (1) the wholesaler; and (2) retailer levels of the supply chain.

24. Third parties confirmed that businesses active at the wholesale level may sell their products to other wholesalers, retailers or directly to end-users. Third parties also confirmed that businesses active at the retail level may engage directly with overseas producers and traders, rather than source their fertilisers at the British wholesale level.
25. The Parties would both be characterised as 'manufacturers' in Figure 1, with their customers principally at the retail and end-user level.

## Frame of reference

26. 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 merging 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.<sup>6</sup>
27. The Parties overlap in the distribution and blending of N, P, K and complex (predominantly blended) fertilisers in Great Britain for use in agriculture.
28. Origin Enterprises, through a number of subsidiaries including Origin, produces and supplies compound fertilisers for use in the amenity sector (eg fertilisers for sports turf, landscaping and golf courses) in the UK. Bunn also supplies some fertiliser for use in the amenity sector, however its sales in this sector are negligible. Therefore, the CMA did not investigate the supply of fertilisers for use in the amenity sector further.
29. Origin Enterprises also owns Masstock Group Holdings Limited and United Agri Products Limited, which both trade under the name **Agrii**. Agrii purchases fertilisers from [X], as well as other suppliers, and resells the fertilisers primarily to end-users in Great Britain. This vertical overlap is considered further from paragraph 165 below.

## Product scope

30. Origin submitted that the appropriate product frames of reference should be for the supply of:
  - (a) N;
  - (b) P;
  - (c) K; and
  - (d) complex (including compound and blended),fertilisers for use in agriculture.

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<sup>6</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

31. These four frames of reference reflect previous Office of Fair Trading (**OFT**), Competition Commission (**CC**) and European Commission (**EC**) decisional practice.

*Straight fertilisers (N, P and K)*

32. In identifying the product frame of reference, the CMA seeks to identify the narrowest set of products that would satisfy the hypothetical monopolist test.<sup>7</sup> In this case, the CMA asked the Parties' customers how they would respond if the price of a straight fertiliser rose by 5%.
33. The Parties' customers include both merchants and buying groups (collectively **Merchants**) and end-users (farmers). Merchants, including Agrii, operate at the retail level of the fertiliser supply chain, purchasing fertiliser from manufacturers, importers or distributors either on behalf of or for resale to farmers. The CMA engaged with the Parties' customers at both the Merchant level and the farmer level, with a much higher response rate at the Merchant level. Given that the majority of the Parties' supply is to Merchants, and that Merchant demand is driven by farmer demand, the CMA believes the customer responses received provide a reasonable reflection of relevant customer views.
34. Customers were asked how they would respond to a price rise in respect of each of N, P and K fertilisers separately. Most customers indicated that they would accept the price rise or defer their purchase. No customer stated that they would purchase an alternative type of straight fertiliser (eg P instead of K) in response to the price increase.
35. This is consistent with the OFT's previous finding that substitution across N, P and K fertilisers is constrained by the need to meet a crop's nutritional requirements.<sup>8</sup> For this reason there appears to be limited or no demand-side substitutability between straight N, P and K fertilisers.
36. While the boundaries of the relevant frame of reference are generally determined by reference to demand-side substitution alone,<sup>9</sup> the CMA may widen the scope of the market where there is evidence of supply-side substitution.

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<sup>7</sup> [Merger Assessment Guidelines](#), paragraph 5.2.8.

<sup>8</sup> ME/5109/11, [Origin/CM Fertilisers](#) (14 September 2011), paragraph 16.

<sup>9</sup> [Merger Assessment Guidelines](#), paragraph 5.2.17.



37. The OFT has previously declined to broaden straight fertiliser frames of reference on the basis of supply-side substitution because:
- (a) different fertiliser varieties can require different, albeit related, production facilities, possibly requiring material adjustment costs;
  - (b) spare capacity in domestically-produced straight N does not appear to have been switched to produce straight P and K, which are predominantly imported;
  - (c) shares of supply differ for the different straight fertilisers, especially in straight N compared with straight P and K; and
  - (d) prices and profit margins differ between the different straight fertilisers.<sup>10</sup>
38. The CMA assessed whether the same or similar supply-side considerations still apply. The CMA found that the information provided by the Parties and third parties indicated that the OFT's approach should be maintained. In particular, the CMA found:
- (a) the Parties' shares of supply, and those of their largest competitors, vary by type of straight fertiliser (eg Yara and CF Industries (**CF**), two significant national suppliers of N, either do not supply each of P or K, or supply only very small volumes);
  - (b) of all the depots supplying N in Great Britain, a third do not supply P or K;
  - (c) spare capacity of domestically-produced N has not been switched to producing P or K; and
  - (d) the Parties' margins per tonne (and those of a competitor also active across all three straight fertilisers) vary [X] across each of N, P and K.
39. This evidence indicates that the conditions of competition vary considerably between N, P and K fertilisers. For this reason, the CMA does not believe it appropriate to widen the frames of reference for each of N, P and K.

#### *Sub-categories of N fertiliser*

40. Origin submitted that the product frame of reference for N fertiliser should not be defined more narrowly, eg by using separate frames of reference for products such as urea or ammonium nitrate (both types of N fertiliser). Origin submitted that it would be possible for a supplier to supply a different sub-

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<sup>10</sup> [Origin/CM Fertilisers](#), paragraph 19.

category of N fertiliser within a short period if it became advantageous to do so. However, Origin also noted [X] in relation to urea, which is typically imported from China or North Africa.

41. The OFT and CC previously found sub-types of N fertiliser to be substitutes for each other for many, if not all, customers.<sup>11</sup>
42. In the current investigation, although some customers indicated a preference for a particular sub-type of N, all customers who drew a distinction between sub-types, indicated that they would consider switching between sub-types if there were a price increase in any one sub-type. This evidence supports the OFT and CC's previous findings that sub-types of N fertiliser are a substitute for many, if not all, customers. For this reason, the CMA does not believe it appropriate to identify narrower frames of reference for N fertilisers. The CMA has however considered any differentiation between suppliers in relation to these sub-types of N where relevant to its competitive assessment.

### *Complex fertilisers*

43. As explained at paragraphs 20 and 21 above, complex fertilisers contain a combination of N, P and K fertilisers in either a blended or compound form.
44. Origin submitted that straight fertilisers impose a competitive constraint on complex fertilisers, and vice versa.
45. In *Yara/Kemira Growhow*,<sup>12</sup> the EC noted that farmers can replicate the N, P and K nutrient ratio of compound fertilisers by using blended fertilisers or a mix of straight fertilisers. The EC noted that the price of complex fertilisers was therefore related to the price of the constituent straight fertilisers.
46. The OFT has previously received mixed views on the extent of demand-side substitutability between straight fertilisers and complex fertilisers and, on a cautious basis, has assessed them separately.<sup>13</sup>
47. In the present case, to assess demand-side substitution the CMA asked customers how they would respond to a 5% increase in compound and blended fertilisers, in addition to the questions on price increases in straight N, P and K.

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<sup>11</sup> Eg Competition Commission, *Kemira Growhow/Terra Industries* (7 July 2007), paragraphs 7.25 and 7.26.

<sup>12</sup> COMP/M.4730, *Yara/Kemira Growhow* (21 September 2007), paragraph 18.

<sup>13</sup> Eg *Origin/CM Fertilisers*, paragraph 28.

48. The CMA received evidence that customers would not switch from straight fertilisers to complex fertilisers in response to a 5% price increase. Only one customer indicated that a price rise for straight P or K fertilisers may prompt a switch to a complex (PK) alternative.
49. When customers were asked what they would do in response to a 5% price increase in blended or compound fertilisers, customers most commonly said that they would either accept the price rise or switch from blends to compounds (or vice versa). Only one customer identified straight fertilisers as an alternative to either compounds or blends.
50. On the supply-side, the CMA noted:
- (a) A supplier of straight fertilisers would need to have the necessary equipment at its depots to blend fertilisers, or the technology to produce compound fertilisers. This would be a material cost and would make supply side substitution from straights to complex fertilisers less likely.
  - (b) The Parties' national shares of supply in complex fertilisers are significantly different from their shares of supply for some straights (ie straight N), and their largest rivals' shares also differ significantly between straight fertilisers and complex fertilisers (eg in relation to straight P and straight K compared with their shares in complex).
  - (c) The Parties' margins per tonne for complex fertilisers also vary [X] from their equivalent margins for straight fertilisers.
  - (d) Although all depots that supply complex fertilisers also supply N fertilisers, many do not supply P or K fertilisers. Similarly, although most depots supplying straight N also supply complex fertilisers, far fewer supply straight P and straight K. Therefore, supply-side substitution from complex fertilisers to the full range of straight fertilisers appears unlikely.
51. The above evidence indicates that the conditions of competition vary considerably between each straight fertiliser and complex fertilisers.
52. For this reason, the CMA does not believe it appropriate to widen the frame of reference for straight fertilisers to include complex fertilisers, or vice versa.

#### *Sub-categories of complex fertilisers*

53. As explained above, complex fertilisers may be either compound (a chemical fusion of primary nutrients) or blended (a dry mix of primary nutrient granules). Origin submitted that compound and blended fertilisers compete directly with one another and do not constitute separate product markets.

54. The OFT and CC have previously found that, although farmers typically have a preference for either a blended or compound fertiliser, and that compound fertilisers are more expensive than blended fertilisers, they are substitutes and form part of one 'complex' fertilisers frame of reference.<sup>14</sup>
55. In the present case, in response to the CMA's questions on how customers would react to price rises in each of compound and blended fertilisers, the CMA found customers' responses to be mixed:
- (a) In response to a 5% increase in the price of blends, customers mostly indicated that they would accept the price increase; however, a small but significant number stated that they would switch to compound fertilisers.
  - (b) In response to a 5% increase in the price of compounds, a similar proportion of customers indicated they would accept the increase as indicated that they would switch to blends.
56. The CMA held more detailed discussions with several customers. This evidence revealed that:
- (a) compounds are generally considered to be superior to blends, producing better results, though lacking the flexibility of blends to tailor the exact N, P and K content to farmers' specific requirements;
  - (b) the price differential between compounds and blends varies over time, with compounds typically between c.£5-20 per tonne more expensive;
  - (c) in general, a reduced price differential would prompt some farmers to switch from blends to compounds, though some farmers may still prefer to use a tailored blended fertiliser; and
  - (d) many farmers will simply opt for the cheapest complex fertiliser, which is usually blended.
57. This evidence indicates that there is some differentiation between compound and blended fertilisers, and the extent to which they are substitutable from a demand perspective depends on the requirements of the farmer, with at least some customers being willing to switch between them.
58. Based on the above evidence, and consistent with precedent, the CMA believes blended and compound fertilisers to be substitutes for many, if not all, farmers. For this reason, the CMA has considered them within the same product frame of reference, whilst identifying any differentiation between the

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<sup>14</sup> See [Kemira Growhow/Terra Industries](#), paragraphs 8.2-8.4 and [Origin/CM Fertilisers](#), paragraphs 29-30.

Parties' and their rivals' offerings for complex fertilisers in the competitive assessment.

### *Liquid vs granular fertilisers*

59. Liquid fertilisers contain the same nutrients as granular fertilisers but require a different application method and therefore different farming equipment to granular fertilisers. Liquid fertilisers are predominantly N fertilisers, though one competitor told the CMA that there are small volumes of liquid complex fertilisers.
60. The Parties do not supply liquid fertiliser in Great Britain.<sup>15</sup>
61. Origin submitted that, whilst liquid fertilisers may not be immediately interchangeable with granular fertilisers, they do impose a constraint. Origin submitted evidence of several customers switching from granular fertilisers to liquid fertilisers, though not in the other direction.
62. During the CMA's investigation, customer responses were mixed on whether liquid fertilisers were alternatives to granular fertilisers.
63. In light of the mixed evidence received, and on a cautious basis, the CMA excluded liquid fertilisers from its product frame of reference. However, the CMA considered suppliers of liquid fertilisers as an out-of-frame constraint on the Parties in its competitive assessment and it did not affect the outcome of the CMA's analysis. The CMA has not therefore needed to conclude on this aspect of the product frame of reference.

### *Conclusion on product scope*

64. For the reasons set out above, the CMA has assessed the impact of the Merger in the following product frames of reference:
  - Supply of N fertilisers for use in agriculture.
  - Supply of P fertilisers for use in agriculture.
  - Supply of K fertilisers for use in agriculture.
  - Supply of complex fertilisers for use in agriculture.

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<sup>15</sup> Bunn ceased supplying liquid fertiliser from 1 July 2017.

## **Geographic scope**

65. Origin submitted that the appropriate geographic frame of reference is Great Britain, whilst noting the importance of imports to the supply of fertilisers in Great Britain and the commodity nature of the products.
66. The CMA has found that suppliers and customers tend to refer to any Great Britain-wide activity or operator in the fertiliser sector as being 'national' and the CMA uses the term 'national' in this sense for the purposes of this decision.
67. The OFT has previously assessed the fertiliser sector on both national and sub-national bases, without needing to conclude on the precise geographic frame of reference.<sup>16</sup>
68. In support of a national frame of reference, Origin submitted that British fertiliser suppliers have moved towards national pricing policies in recent years. Origin also submitted that there is little difference between the service proposition of a national supplier and a smaller local supplier and that the largest customer orders do not exceed the capability of smaller suppliers. The Parties also pointed to suppliers, such as CF, which appeared to supply customers across Great Britain despite operating only two depots.
69. Evidence from the Parties' internal documents on the appropriate geographic frame of reference was mixed. Several internal documents indicated [REDACTED].
70. The Parties conducted a detailed analysis of the distances to which they delivered from their depots. Origin's analysis demonstrated that [90-100]% of its deliveries occur within 150 miles of its depots, with [60-70]% occurring within 100 miles. Bunn's analysis demonstrated that [70-80]% of its deliveries occur within 150 miles of its depots, with [40-50]% occurring within 100 miles.<sup>17</sup>
71. The Parties also provided evidence showing that transport/delivery costs vary depending on the distance travelled, though these costs also vary depending on the location of the depot and the delivery route required.
72. The CMA asked the Parties' competitors over what distance from their depots 80% of their customer deliveries are made. Four competitors' responses were consistent, indicating a 100-150 mile customer catchment area. Two

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<sup>16</sup> [Origin/CM Fertilisers](#); ME/4849/11, [Koch/Bunn](#) (24 February 2011); ME/3556/08, [Origin/Masstock](#) (6 May 2008)

<sup>17</sup> Bunn's analysis was conducted on the basis of 2015/2016 data, ie prior to Bunn closing six depots, and over the same period as the 2015/2016 data used in the CMA's share of supply analysis (see paragraph 103(b)).

competitors' responses indicated they achieved national coverage with relatively few depots.

73. The majority of competitors confirmed that their delivered prices varied to some extent depending on the delivery distance, although the extent of the variation differed. Some competitors simply added a surcharge to their delivered price for remote regions, while others had a matrix of prices for different destinations in Great Britain.
74. The CMA notes that suppliers' offerings vary by depot, as analysed in the competitive assessment below. In addition, the majority of competitors said that customer prices are negotiated and agreed on an individual (and often regional) basis.
75. A quarter of customers said that depot location or receiving timely deliveries are important factors in their choice of supplier. Some customers said that, for this reason, they had a preference for local supply.
76. Customers identified different fertiliser supplier options based on their areas of operation. Consistent with this view, most customers who raised concerns with the Merger did so on a regional basis, with Scotland, South West England/Wales and East Anglia being the areas where concerns were expressed. Several customers said that the Merger did not cause them concerns in some of their areas of operation, but that it did in others. One customer explained that its options differed by region and it was less able to switch suppliers in certain regions.
77. Based on the evidence set out above, the CMA believes the location of suppliers is a significant factor of competition in the fertiliser sector. The evidence suggests that competition is principally regional, though there are some national suppliers.
78. Based on the evidence of the Parties and third parties, the CMA believes the Parties and their competitors primarily compete in the supply of fertilisers within approximately 150 miles of their depots. The CMA recognises that there will be variation in the distances which suppliers are willing to serve, depending on the size of the order, the transport network, the location of their depots, the delivery route, and the business model of the supplier. The CMA has considered these features where relevant in its competitive assessment. Therefore, while the CMA uses 150-mile catchment areas as its starting point, it has considered the broader competitive conditions in each area.

### *The Parties' depots*

79. Although the CMA has considered frames of reference in 150-mile catchment areas centred on the Parties depots, because of the overlapping nature of some of these catchment areas, and the many other features which affect competition regionally, the CMA has presented its analysis by grouping the Parties' overlapping catchment areas into four broad regions: Scotland, South West England/Wales, East Anglia and northern England.
80. The Parties' relevant business activities overlap in:
- (a) Scotland, where the Parties have the following depots:
    - (i) Origin: Ayr
    - (ii) Origin: Invergordon
    - (iii) Origin: Montrose
    - (iv) Bunn: Montrose
  - (b) South West England and South Wales (the **South West**), where the Parties have the following depots:
    - (i) Origin: Newport
    - (ii) Origin: Plymouth
    - (iii) Bunn: Avonmouth
    - (iv) Bunn: Sharpness
  - (c) East Anglia, where the Parties have the following depots:
    - (i) Origin: Ipswich
    - (ii) Bunn: Great Yarmouth
    - (iii) Bunn: Seething
  - (d) Northern England, where the Parties have the following depots:
    - (i) Origin: Immingham
    - (ii) Origin: Silloth
    - (iii) Bunn: Middlesbrough



81. In all of the above regions, the Origin depots listed are within 150 miles of the Bunn depots in that region, and vice versa.

### *Conclusion on geographic scope*

82. For the reasons set out above, the CMA has considered the impact of the Merger in 150-mile catchment areas around each of the Parties' depots.
83. For presentational purposes, the CMA has grouped the Parties depots into four regions for the purposes of its competitive assessment: Scotland, the South West, East Anglia and northern England.

### *Customer segmentation*

84. The CMA considered whether to define separate frames of reference for customers at the retail (Merchant) and end-user (farmer) level. Evidence received from Merchants indicated that their purchasing decisions are driven by their customers' (ie farmers') needs. The CMA therefore does not believe it is appropriate to segment the relevant frames of reference by customer type. However, the CMA has considered any differentiation in customer requirements in its competitive assessment where relevant.

### *Conclusion on frame of reference*

85. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- Supply of N fertilisers (for use in agriculture) within 150-mile catchment areas of each of the Parties' depots.
  - Supply of P fertilisers (for use in agriculture) within 150-mile catchment areas of each of the Parties' depots.
  - Supply of K fertilisers (for use in agriculture) within 150-mile catchment areas of each of the Parties' depots.
  - Supply of complex fertilisers (for use in agriculture) within 150-mile catchment areas of each of the Parties' depots.

## **Competitive assessment**

### *Horizontal unilateral effects*

86. 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 to degrade quality on its own and without needing to coordinate with its rivals.<sup>18</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.

87. 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 each of the frames of reference set out above.
88. Although the CMA has conducted its competitive assessment on a regional basis, some of the Parties' submissions and evidence applied more broadly. The CMA discusses this broader evidence first before setting out its competitive assessment for each of the areas where the Parties' activities overlap.

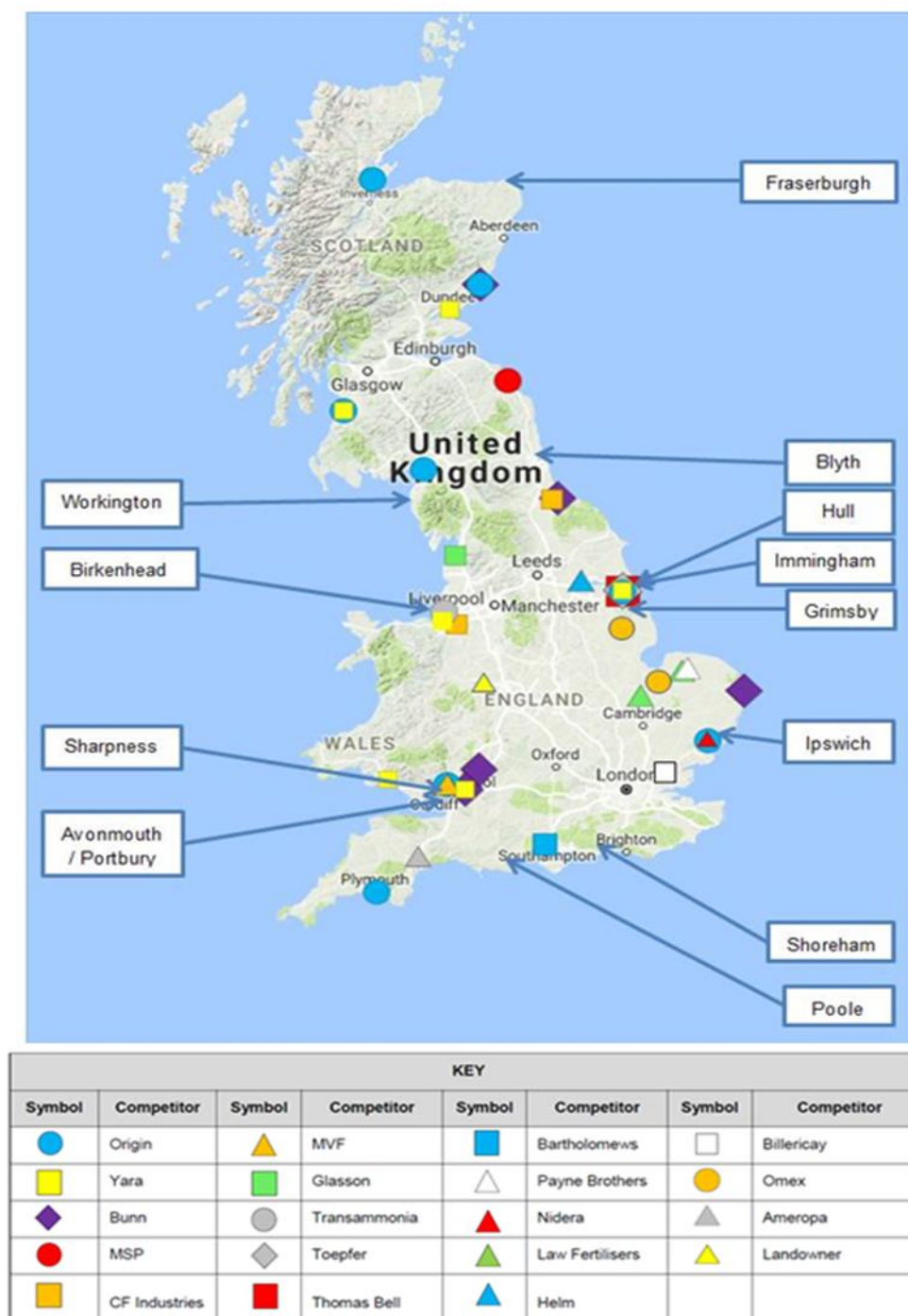
### ***National observations***

89. The Parties submitted that there are 19 fertiliser suppliers within Great Britain, as identified (by location) in Figure 2 below:

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<sup>18</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Figure 2: location of fertiliser suppliers in Great Britain<sup>19</sup>



90. Of the 19 suppliers identified in Figure 2, the CMA has identified four as national suppliers: Yara, CF, Origin and Bunn. The other suppliers operate

<sup>19</sup> The CMA has been unable to verify all the information contained in Figure 2. The CMA has identified that Thomas Bell supplies straight N fertiliser from three ports, not all of which are identified in Figure 2. The CMA also believes that Glasson operates from two additional depots not identified in Figure 2.

regionally, some as traders or importers (as defined in Figure 1) from the ports identified in Figure 1.

### *Shares of supply*

91. The Parties submitted estimated national shares of supply based on volumes. The Parties said that their combined national shares of supply for N, P, K and complex fertilisers were [20-30]%, [50-60]%, [60-70]% and [40-50]% respectively.

### *Closeness of competition*

92. The Parties submitted that they are not close competitors in the supply of P or K fertilisers. The Parties said that they face significant competition for these products from other competitors and that national switching data does not indicate that they are close competitors.
93. The Parties did not make any submissions on their closeness of competition in relation to the supply of N or complex fertilisers.
94. The Parties submitted that there is, in general, no clear pattern of switching between Origin and Bunn (on the basis of changes in individual customer purchase volumes from the Parties during 2015 and 2016). However, the CMA believes that relatively little weight can be ascribed to this analysis. For example, the prevalence of multi-sourcing in the fertiliser sector means that customers may regularly switch (or threaten to switch) purchases between Origin and Bunn without this competitive process being reflected in customers' total order volumes with each of the Parties.
95. The Parties' internal documents provided to the CMA contain [REDACTED]. Origin's performance management documents refer to [REDACTED] on several occasions and [REDACTED] on one occasion. Bunn's corresponding documents also refer to [REDACTED]. However, [REDACTED], describes Origin as Bunn's main competitor.
96. In response to the CMA's investigation, 83% of customers said that Origin and Bunn are close competitors. Some customers felt strongly about this, stating that Origin and Bunn are the two main national suppliers of blended fertilisers (with the other two national suppliers focussing on compounds rather than blends). The CMA discusses customer comments on closeness of competition on a region-specific basis below.

### *Competitive constraints*

97. The CMA received mixed views from customers on the effectiveness of the competitors identified by the Parties in Figure 2 above. For example, some customers (although not necessarily the same customers in each case):
- (a) demonstrated an unwillingness to work with suppliers that are vertically integrated and compete with the customer at the Merchant level of the supply chain;
  - (b) ruled out a number of alternative suppliers on the basis of their distance from the customer;
  - (c) ruled out a number of suppliers on the basis that they did not supply the relevant product sought by the customer; and/or
  - (d) did not see importers/traders as direct suppliers but rather as suppliers to their suppliers.
98. The CMA was told by both the Parties and third parties that importers would bring in shipments of fertilisers when it made economic sense. The CMA also received evidence that some very large Merchants could bring in their own shipments, though not as a regular arrangement.<sup>20</sup> Because of the inconsistent nature of these arrangements, the CMA believes it unlikely that they provide a significant competitive constraint on the Parties. This is reflected in the CMA's regional analysis below.
99. All of the concerns raised in paragraph 97 above are explored in more detail in the regional analyses below. The CMA also discusses customer comments on regional suppliers in this analysis.

### ***Regional analysis***

#### *The CMA's approach*

100. To assess the horizontal unilateral effects of the Merger in each of the overlapping areas, the CMA considered in each area:
- (a) shares of supply;
  - (b) the closeness of competition between the Parties; and

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<sup>20</sup> The Parties submitted that making shipments to the UK could be risky given that there could be material changes in commodity prices and exchange rate fluctuations. In addition, shipments would usually only be economical when made on a large scale.

(c) competitive constraints from alternative suppliers.

*Methodology for shares of supply analysis*

101. The Parties did not provide share of supply data on a regional or depot basis. The CMA has therefore estimated shares of supply for the Parties and their competitors based on 2015/2016 annual volume data from the Parties and their competitors.
102. The CMA aggregated the total volumes supplied from each Party or competitor depot within each 150-mile catchment area to provide an estimate of the total supply in that area, from which the CMA calculated suppliers' individual shares. The CMA acknowledges that this approach is likely to overstate the share of supply of suppliers inside (but close to) the catchment boundary, which may supply significant volumes outside the catchment area; and is likely to understate the share of supply of suppliers located outside (but close to) the catchment boundary, which may supply significant volumes into the catchment area. However, this potential overstatement and understatement applies to both the Parties' estimated shares and to its competitors' shares.
103. The CMA also recognises two further difficulties in its share of supply calculations:
  - (a) Volume data was not always available at an individual-depot level or split by product category. The shares of supply calculated by the CMA are based on the best available data.<sup>21</sup>
  - (b) Volume figures for Bunn relate to 2015/16, when it operated 12 depots rather than six. On a cautious basis, the CMA has allocated the closed Bunn depot volumes to its remaining depots (see paragraph 18).
104. The CMA used the estimated share of supply calculations as a starting point for its competitive assessment. The CMA then conducted a detailed assessment of customers' supply options within each region, on which it placed more weight.
105. In its detailed assessment of supply options, the CMA took into account:

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<sup>21</sup> For example, for one supplier which was unable to provide individual depot data, the CMA split its volumes evenly across its depots.

- (a) The suppliers available to customers in each region and where they supply within that region, including evidence on volumes delivered to specific local areas within a region.
- (b) The service proposition of suppliers, including the type of fertiliser offered.
- (c) The relative locations of the Parties and their competitors in each region.

### *Scotland*

106. In Scotland there are three Origin depots (Invergordon, Ayr and Montrose) and one Bunn depot (Montrose).

### *Shares of supply*

107. The CMA conducted separate share of supply analyses centred on each of the Origin Ayr and Origin Invergordon catchment areas. Given the presence of both an Origin and a Bunn depot in Montrose, the CMA conducted a single share of supply analysis for these depots.
108. The CMA's analysis found that the Parties' have combined shares of supply in excess of 40% in:
- (a) P, K and complex fertilisers within 150 miles of Origin Ayr;
  - (b) N, P, K and complex fertilisers within 150 miles of Montrose; and
  - (c) P, K and complex fertilisers within 150 miles of Origin Invergordon.
109. The shares of supply for these frames of reference ranged from [40-50] to [90-100]%.<sup>22</sup>

### *• Invergordon*

110. Although the 150-mile catchment area around Origin Invergordon incorporates Origin and Bunn in Montrose,<sup>22</sup> these depots are serving largely different areas. Origin submitted evidence that its Invergordon depot [X]. In contrast, the Parties submitted that Bunn and Origin Montrose predominantly supply central/eastern Scotland.
111. Given the CMA's conclusions in relation to the Parties' overlapping activities in Montrose, and given that addressing these concerns would address the

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<sup>22</sup> The only other supplier present in the Invergordon catchment area is Yara, operating from its Dundee depot.

Parties overlapping activities in the Invergordon catchment area, the CMA did not find it necessary to investigate the Invergordon catchment area further.

- *Ayr*

112. The high shares of supply in the Origin Ayr catchment area occurred between 100-150 miles from the depot. These high shares were either caused by the Parties overlapping depots at Montrose (ie Origin and Bunn Montrose) or in northern England (ie Origin Silloth and Bunn Middlesbrough). Given the CMA has assessed the Montrose, Silloth and Middlesbrough overlaps in their corresponding frames of reference, it did not investigate the Ayr catchment area separately.

*Closeness of competition*

113. The CMA considered the extent to which the Parties' depots in Montrose are constrained by their rivals' depots, using shares of supply and geographic proximity as indicators of competitive constraint. This assessment found that, in the Montrose area, Origin and Bunn are geographically each other's closest competitor. Combined with the high estimated shares of supply of the Parties in the Montrose catchment area, this indicates that they exert the greatest competitive constraint on each other.
114. The CMA asked the Parties' Scottish customers whether the Parties are close competitors. With respect to N fertilisers, some customers noted that Origin and Bunn were not necessarily close competitors for all customers as Bunn sells a more limited range of N products. However, two customers said that Origin and Bunn were particularly close competitors in the supply of N in Scotland. In relation to P, K and complex fertilisers (particularly blended), there was clear customer consensus that the Parties are close competitors.
115. The CMA received more customer complaints about the effects of the Merger in Scotland than in any other area.

*Competitive constraints*

116. The CMA identified the following competing suppliers within 150 miles of Montrose: Yara (Dundee and Ayr) and McCreath, Simpson & Prentice (**MSP**) (Berwick).
117. The Parties submitted that Yara, MSP, CF, Helm, Glasson, Thomas Bell and Omex all supply in Scotland. The range of fertilisers supplied by these suppliers in Scotland is as follows:



<b>N, P, K and complex</b>	MSP, Helm, Glasson
<b>N and complex</b>	Yara <sup>23</sup> , CF, Omex
<b>N</b>	Thomas Bell

- *Third party views on competition in Scotland*

118. Customers consistently told the CMA that Yara is a credible alternative supplier for N in Scotland. However, customers stated that alternative supply options for P, K and complex fertilisers are limited. Customers said that blenders in northern England (eg Glasson, Helm and MSP) may supply into southern Scotland for sufficiently large orders, but the majority of customers thought they would be unlikely to supply further north. The majority of customer concerns were therefore focussed on the limited supply options in the geographically central and northern belts of Scotland, particularly in the central/eastern area supplied from Montrose.
119. Although customers were most concerned about the impact of the Merger in central/eastern Scotland, some Scottish customers also raised concerns in relation to alternative suppliers in southern Scotland. Glasson was considered by a quarter of customers to be too far away to be credible, and one customer said that Helm did not deliver to Scottish customers. MSP was also not viewed as an effective alternative supplier by several customers because it either doesn't supply at the Merchant level, or because its vertical integration means that MSP's retail business competes with Merchant customers.
120. The responses the CMA received from competitors in relation to Scotland were consistent with these customer views. One competitor from northern England submitted that the Merger would create such a dominant position for the Parties in Scotland that they would find it difficult to compete.

- *CMA commentary on alternative suppliers*

121. On the basis of customer comments and the proximity of Yara's depots to the Parties' depots in Montrose, the CMA believes that Yara is a credible alternative supplier of N and complex fertilisers in the Montrose area and therefore acts as a competitive constraint on the Parties for these products. The CMA notes that the competitive constraint imposed by Yara may be weaker in respect of smaller orders.<sup>24</sup>

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<sup>23</sup> The CMA understands that Yara has supplied some very small amounts of P and K in other areas of Great Britain, but not Scotland.

<sup>24</sup> The Parties submitted that Yara does not supply orders of less than nine tonnes directly to customers, while orders of between nine and fifteen tonnes face a higher per tonne delivery cost relative to larger orders.

122. The evidence from both customers and competitors suggests that MSP's business model is different to that of the Parties. MSP operates primarily at the Merchant level and has not demonstrated a willingness to supply the Parties' Merchant customers. Neither does it currently supply north of Montrose.<sup>25</sup> The CMA therefore believes that MSP is not a credible alternative supplier for most of the Parties' Montrose customers.
123. Customer comments also indicated that Glasson and Helm are located too far away and do not supply into the areas of Scotland supplied by the Parties from Montrose. The CMA therefore believes that neither Glasson nor Helm are credible alternative suppliers to the Parties' customers from Montrose.
124. The CMA received no evidence that Thomas Bell regularly supplies fertilisers to Scottish customers.
125. One customer said that it thought Omex may be operating out of Dundee; however, no Scottish customers stated that Omex is a good alternative to the Parties. A number of customers confirmed that they could not use Omex as a supplier because it supplies liquid fertilisers only. The CMA therefore does not believe that Omex provides any material competitive constraint on the Parties' in Montrose.
126. CF's Ince and Billingham depots are located approximately 250 and 300 miles respectively from the Parties' Montrose depots. CF was unable to confirm the location of their end-customers because it does not deliver its products (it operates on a collection-only basis whereby customers arrange their own collection). One customer said that CF supplies N and compound fertilisers into Scotland, but the CMA was unable to ascertain the volumes supplied by CF into Scotland or the areas of Scotland which it supplied. Due to the distances required for shipments into central/eastern Scotland from CF's sites, the CMA notes that any constraint from CF is likely to be only for large customer orders (ie for large Merchants).
127. In summary, the CMA believes Yara provides a competitive constraint on the Parties' Montrose depots in respect of N and complex fertilisers. The CMA notes that CF might provide an additional limited constraint on the Parties for N and compound fertilisers for large customer orders.

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<sup>25</sup> See endnote.

### *Conclusion on competitive concerns in Scotland*

128. The CMA did not need to investigate the Origin Ayr and Origin Invergordon catchments areas separately from Montrose and northern England.
129. In respect of the Montrose catchment area, the CMA believes:
- (a) The Parties have high combined market shares across all fertiliser types, ranging from [40-50] to [90-100] %.
  - (b) The Parties are seen by customers as close competitors, particularly in P, K and blended (complex) fertilisers.
  - (c) Yara provides a competitive constraint on the Parties in relation to N and complex fertilisers. CF might also provide a limited constraint.
  - (d) No further credible alternative suppliers were identified by the CMA.
130. For these reasons, and taking into account the substantial level of customer concerns in central/eastern Scotland, the CMA believes that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of N, P, K and complex fertilisers in the 150-mile catchment area around the Parties' Montrose depots.

### *South West (including South West England and Wales)*

131. In the South West there are two Origin depots (Plymouth and Newport) and two Bunn depots (Sharpness and Avonmouth).

### *Shares of supply*

132. The CMA conducted a share of supply analysis centred on the Origin Plymouth and Bunn Sharpness catchment areas. The CMA did not conduct separate analyses centred on the Origin Newport or Bunn Avonmouth depots as their proximity to Bunn Sharpness would produce similar results.
133. The CMA's analysis found that the Parties' have combined shares of supply ranging from [40-50] to [60-70] % in:
- (a) N, P, K and complex fertilisers within 150 miles of Origin Plymouth; and
  - (b) P and K fertilisers within 150 miles of Bunn Sharpness.

### *Closeness of competition*

134. The CMA considered the extent to which the Parties' depots in the South West are constrained by their rivals' depots, using shares of supply and geographic proximity as indicators of competitive constraint. This assessment found that:

- (a) Mole Valley Farmers (**MVF**) is likely to exert the greatest competitive constraint on Origin Plymouth across all types of fertiliser, being the only other competitor within 100 miles. Bunn is not geographically a close competitor to Origin Plymouth, as it is located over 100 miles away.
- (b) The Parties are geographically close competitors in the Sharpness catchment area across all types of fertiliser, though there are rivals in this area too.

### *Competitive constraints*

135. The CMA asked the Parties' customers in the South West for their views on the impact of the Merger. Eight customers responded to the CMA, with five raising concerns. These concerns largely resulted from Merchant customers being unwilling to use MVF as an alternative supplier given its downstream Merchant operations.

136. The Parties submitted that Yara, Helm, Glasson, Thomas Bell, CF, Bartholomews, Gleadell, MVF, Nidera and Omex are all credible alternative suppliers in the South West. The range of fertilisers supplied by these suppliers in the South West is as follows:

<b>N, P, K and complex</b>	Helm, Glasson, Bartholomews, MVF
<b>N, K and complex</b>	Yara
<b>N and complex</b>	CF, Omex
<b>N</b>	Thomas Bell, Gleadell, Nidera

137. Helm does not fall within either the Plymouth or Sharpness 150-mile catchment areas and the CMA did not find any evidence of Helm, Gleadell or Nidera consistently supplying Merchant or farmer customers in the South West. The CMA therefore does not believe these suppliers are credible alternatives to the Parties.

138. As in Scotland, some customers said that they could not use Omex as a supplier because it supplies liquid fertilisers only. The CMA therefore does not believe that Omex provides any material competitive constraint on the Parties' in the South West.

139. However, the CMA found that Glasson, Bartholomews, MVF, Yara, Thomas Bell and CF are all credible alternative suppliers to the Parties in the South West, for the following reasons:
- (a) All these suppliers provided evidence to the CMA on their volumes and geographic coverage in the South West. In particular, the CMA confirmed that at least three of these suppliers deliver into Devon and Cornwall, which some competitors might find more difficult to reach.
  - (b) Customers viewed Glasson, Bartholomews, Thomas Bell, Yara and CF as credible alternatives to the Parties in this region.
  - (c) Although some customers indicated that they would not use MVF (see paragraph 135), MVF's volumes in the South West suggest that a significant proportion of customers view them as a credible alternative. Although MVF has traditionally supplied farmers, it currently supplies some Merchants and it told the CMA that [X].
140. Within the Plymouth catchment area, Yara, Bartholomews, Thomas Bell and Mole Valley are all present; and, in the Sharpness catchment area, Glasson and CF are also present. The CMA therefore believes that there are at least four credible alternative suppliers to the Parties in each catchment area.

*Conclusion on competitive concerns in the South West*

141. In respect of the Plymouth, Sharpness, Avonmouth and Newport catchment areas, the CMA has found that the Parties have high combined shares of supply in some fertiliser categories but the Parties face competitive constraints from several other suppliers. There are at least four other credible suppliers in each area.
142. For these reasons, and placing particular weight on the number of credible alternative suppliers to the Parties, 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 relation to the supply of N, P, K or complex fertilisers in 150-mile catchment areas around the Parties' Plymouth, Sharpness, Avonmouth and Newport depots.

*East Anglia*

143. In East Anglia, there is one Origin depot (Ipswich) and two Bunn depots (Seething and Great Yarmouth).

### *Shares of supply*

144. Given that the Parties' three depots in East Anglia are located close to each other, the CMA conducted its share of supply analysis centred on the one Origin depot in the region. The CMA chose this depot because it is the most southerly located of the three depots and, given that a greater number of competitors are located to the north, an assessment centred on the Origin Ipswich depot would identify any harm that may result from the Merger in this area.
145. The CMA found that the Parties have up to a [40-50]% share of supply of fertiliser in the Ipswich catchment area, depending on the type of fertiliser.

### *Closeness of competition*

146. The CMA considered the extent to which the Parties' depots are constrained by their rivals' depots in each of the relevant catchment areas, using shares of supply and geographic proximity as indicators of competitive constraint. The CMA noted that, because of the proximity of their depots, the Parties are likely to compete closely for all fertiliser types in East Anglia, although the volumes supplied by Thomas Bell and Bartholomews suggest they are also significant constraints on the Parties.

### *Competitive constraints*

147. Customers had mixed views on the Merger and its impact in East Anglia. One customer thought that the Merger would reduce choice, but another said that there were plenty of suppliers in the region. One competitor was also concerned about the impact of the Merger in East Anglia.
148. The Parties submitted that CF, Yara, Helm, Glasson, Bartholomews, Thomas Bell, Payne Crop Nutrition, Gleadell, Nidera, Law Fertilisers, Omex, Billericay and Brineflow all supply fertiliser in East Anglia. The range of fertilisers supplied by these suppliers in East Anglia is as follows:

<b>N, P, K and complex</b>	Yara, Helm, Glasson, Bartholomews, Thomas Bell, Payne Crop Nutrition, Gleadell, Law Fertilisers
<b>N and complex</b>	CF, Omex, Brineflow
<b>N</b>	Nidera, Billericay

149. All of these suppliers are present in the Origin Ipswich 150-mile catchment area.

150. For the reasons set out above in relation to other catchment areas, the CMA believes that CF, Yara, Glasson, Thomas Bell and Bartholomews are all credible, active suppliers of fertilisers in East Anglia, each imposing a material competitive constraint on the Parties in relation to their products supplied. Given the Parties face competitive constraints from at least five credible alternative suppliers, four of which supply all fertiliser types, the CMA has not needed to assess the extent of the competitive constraint imposed on the Parties by the further alternative suppliers listed in paragraph 148.

*Conclusion on competitive concerns in East Anglia*

151. In respect of the Ipswich, Great Yarmouth and Seething catchment areas, the CMA believes the Parties face significant competitive constraints from CF, Yara, Glasson, Thomas Bell and Bartholomews. There are also several other suppliers operating within these catchment areas which may provide additional constraints.
152. For these reasons, 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 relation to the supply of N, P, K or complex fertilisers in a 150-mile catchment area around the Parties' Ipswich, Great Yarmouth and Seething depots.

*Northern England*

153. In northern England there are two Origin depots (Silloth and Immingham) and one Bunn depot (Middlesbrough).

*Shares of supply*

154. The CMA calculated estimated shares of supply for the Parties and its competitors for 150-mile catchment areas around each of Silloth, Immingham and Middlesbrough.
155. The CMA found that the Parties' estimated shares of supply did not exceed 40% in any product or geographic frame of reference, except in relation to P and K fertilisers supplied in the Silloth and Immingham catchment areas. The shares of supply of P and K in these frames of reference ranged from [40-50] to [60-70]%.

*Closeness of competition*

156. The CMA considered the extent to which the Parties' depots are constrained by their rivals' depots in each of the relevant catchment areas, using shares of supply and geographic proximity as indicators of competitive constraint. This

analysis indicated that the Parties were not each other's closest constraint in any of the frames of reference due to the closer proximity to each of the Parties' depots of significant rival suppliers of each type of fertiliser.

#### *Competitive constraints*

157. Customers did not express any strong concerns about the impact of the Merger in northern England. When asked about alternative suppliers, customers stated that CF, Thomas Bell, Glasson and Helm were all good alternatives to the Parties.
158. The Parties submitted that CF, Yara, Helm, Glasson, Thomas Bell, Payne Crop Nutrition, MVF, Gleadell, Nidera and Omex all supply fertiliser in northern England. The range of fertilisers supplied by these suppliers in northern England is as follows:

<b>N, P, K and complex</b>	Yara, Helm, Glasson, Payne Crop Nutrition, MVF, Gleadell, Nidera
<b>N and complex</b>	CF, Omex
<b>N</b>	Thomas Bell

159. Of these suppliers, the following are in the CMA's 150-mile catchment areas:

<b>Silloth</b>	CF, Yara, Helm, Glasson (and MSP*)
<b>Immingham</b>	CF, Yara, Helm, Glasson, Thomas Bell, Payne Crop Nutrition, Gleadell, Nidera, Omex (and Law Fertilisers*)
<b>Middlesbrough</b>	CF, Yara, Helm, Glasson, Thomas Bell, Payne Crop Nutrition, Gleadell, and Omex (and MSP and Law Fertilisers*)

\* Suppliers not identified by the Parties

160. For the reasons set out above in relation to other catchment areas, the CMA believes that CF, Yara, Glasson and Thomas Bell are all credible, active suppliers of fertilisers in northern England, each imposing a material competitive constraint on the Parties in relation to their products supplied. In addition, customers told the CMA that Helm is also a good alternative for all products, and its location means that it constrains all three of the Parties' sites in this area. Given the Parties face competitive constraints from at least four credible alternative suppliers in each catchment area, the CMA has not needed to assess the extent of the competitive constraint imposed on the Parties by the further alternative suppliers listed in paragraph 158.



### *Conclusion on competitive concerns in northern England*

161. In respect of the Silloth, Immingham and Middlesbrough catchment areas, the CMA believes there are least four alternative credible suppliers to the Parties. There are also several other providers operating within these catchment areas which may provide additional constraints.
162. For these reasons, 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 relation to the supply of N, P, K or complex fertilisers in a 150-mile catchment area around the Parties' Silloth, Immingham and Middlesbrough depots.

### *Conclusion on horizontal unilateral effects*

163. As set out above, the CMA believes that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of N, P, K and complex fertilisers in the 150-mile catchment area around the Parties' Montrose depots.
164. The CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to any other area.

### ***Vertical effects***

165. 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 downstream competitors of the supplier's customers. Vertical mergers may be competitively benign or even efficiency-enhancing<sup>26</sup> 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 an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.<sup>27</sup>
166. In the present case, the CMA has considered whether the Merger may result in input foreclosure for Agrii's competitors as a result of the Parties diverting their supply to Agrii.
167. The CMA notes that the sector is already characterised by a high degree of vertical integration (eg between wholesalers and retailers – see Figure 1).

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<sup>26</sup> [Merger Assessment Guidelines](#), paragraph 5.6.1

<sup>27</sup> In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

168. As discussed above in relation to horizontal effects, the CMA found that, outside of a 150-mile catchment area around the Parties' Montrose depots, the Parties face significant competitive constraints from other suppliers. This indicates that, should the Parties seek to favour Agrii over other merchant customers, these customers would have sufficient alternative suppliers available.
169. The CMA's market testing did not indicate that Agrii held a particularly strong position as a merchant, either in the Montrose catchment area or elsewhere. Therefore, any attempts by the Parties post-Merger to worsen their offer to merchant customers may not lead to substantial gains to Agrii, making such a strategy unprofitable.
170. Some customers of the Parties are farmers, or buying groups representing farmers, rather than merchants. This indicates that, if the Parties were to disadvantage some merchants, end-users could find other ways of sourcing fertiliser without turning to Agrii. This would further reduce the incentive for the Parties to seek to foreclose merchants.

#### *Conclusion on vertical effects*

171. For the reasons set out above, the CMA does not believe that the Parties have the ability or incentive to foreclose Agrii's competitors. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to the supply of N, P, K or complex fertilisers in any area.

#### ***Barriers to entry and expansion***

172. Entry, or the expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>28</sup>
173. Origin submitted that barriers to entry in the supply of fertilisers in Great Britain are low. Origin said that a new entrant would not need their own depot to supply fertilisers into Great Britain as third parties can provide dry-bulk handling services and facilities at ports around Great Britain. If, however, a competitor wished to establish its own blending facility, the Parties estimated

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<sup>28</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

that this would take [REDACTED] and it would cost roughly £[REDACTED] per annum to lease a warehouse and £[REDACTED] to purchase a blending unit.

174. Origin submitted that barriers to expansion are also low as it would simply require importing additional volumes or leasing additional warehouse or storage facilities.
175. Origin identified three instances of competitors opening new blending facilities since 2013: in Immingham, Howden and Fakenham. Origin also submitted that MVF expanded its capacity in Newport in 2015, and facilities at Goole and Fakenham were acquired by new owners in 2012 and 2016 respectively. Origin also stated that a number of competitors (particularly [REDACTED]) were pursuing aggressive growth strategies.
176. However, the CMA notes that none of these examples demonstrate entry or expansion into Scotland where the CMA has identified competition concerns. The CMA was not supplied with any evidence to indicate that entry and/or expansion was planned in Scotland, or that competitors would seek to enter or expand in Scotland in response to the Merger.
177. The Parties and third parties provided evidence which demonstrated that suppliers do not generally operate their sites at full capacity, except at peak times, and that the size of the fertiliser market has been in decline in Great Britain in recent years. The CMA notes that these factors are likely to reduce the incentive to enter into a new area.
178. For these reasons, the CMA believes that entry or expansion would not be timely, likely and sufficient to prevent the realistic prospect of an SLC in the Montrose catchment area as a result of the Merger.

### **Third party views**

179. The CMA contacted customers and competitors of the Parties. Some customers raised concerns regarding the number of alternative suppliers that would remain post-Merger in various parts of Great Britain.
180. Third party comments have been taken into account where appropriate in the competitive assessment above.

### **Conclusion on substantial lessening of competition**

181. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of N, P, K and complex

fertilisers for use in agriculture within a 150-mile catchment area around the Parties' depots in Montrose.

## **Decision**

182. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the UK.
183. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised<sup>29</sup> whilst the CMA is considering whether to accept undertakings<sup>30</sup> instead of making such a reference. The Parties have until 21 July 2017<sup>31</sup> to offer an undertaking to the CMA.<sup>32</sup> The CMA will refer the Merger for a phase 2 investigation<sup>33</sup> if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides<sup>34</sup> by 28 July 2017 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

**Adam Land**  
**Senior Director, RBFA**  
**Competition and Markets Authority**  
**14 July 2017**

## **Endnote**

MSP supplies a limited amount of fertiliser from its Berwick depot to existing end-customers north of Montrose.

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<sup>29</sup> Section 33(3)(b) of the Act.

<sup>30</sup> Section 73 of the Act.

<sup>31</sup> Section 73A(1) of the Act.

<sup>32</sup> Section 73(2) of the Act.

<sup>33</sup> Sections 33(1) and 34ZA(2) of the Act.

<sup>34</sup> Section 73A(2) of the Act.