

ACQUISITION BY ORIGIN UK OPERATIONS LIMITED OF ASSETS COMPRISING THE BUSINESS OF BUNN FERTILISER LIMITED

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

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that it is or may be the case that Origin UK Operations Limited and assets comprising the business of Bunn Fertiliser Limited (**Bunn**) have ceased to be distinct;
- (b) the CMA is considering whether to make a reference under section 22 of the Act;
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Origin Enterprises plc (**Origin Enterprises**) and Origin UK Operations Limited (**Origin UK**) (**Order**).

Commencement, application and scope

1. This Order commences on the commencement date: 10 August 2017.
2. This Order applies to Origin Enterprises and Origin UK.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Origin Enterprises or Origin UK to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the Origin Enterprises/Origin UK and the Bunn businesses until determination of proceedings

4. Except with the prior written consent of the CMA, Origin Enterprises and Origin UK shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Bunn business with the Origin Enterprises business;
 - (b) transfer the ownership or control of the Origin Enterprises business or the Bunn business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the Bunn business or the Origin Enterprises business to compete independently in any of the markets affected by the transaction.

5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, Origin Enterprises and Origin UK shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the Bunn business is carried on separately from the Origin Enterprises business and the Bunn business's separate sales or brand identity is maintained;
 - (b) the Bunn business and the Origin Enterprises business are maintained as a going concern and sufficient resources are made available for the development of the Bunn business and the Origin Enterprises business, on the basis of their respective pre-merger business plans;
 - (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Bunn business or the Origin Enterprises business;
 - (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;
 - (e) except in the ordinary course of business for the separate operation of the two businesses:

- (i) all of the assets of the Bunn business and the Origin Enterprises business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Bunn business or the Origin Enterprises business are disposed of; and
 - (iii) no interest in the assets of the Bunn business or the Origin Enterprises business is created or disposed of;
- (f) there is no integration of the information technology of the Bunn or Origin Enterprises businesses, and the software and hardware platforms of the Bunn business shall remain essentially unchanged, except for routine changes and maintenance;
- (g) The customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Bunn business will be carried out by the Bunn business alone and for the avoidance of doubt the Origin Enterprises business will not negotiate on behalf of the Bunn business (and vice versa) or enter into any joint agreements with the Bunn business (and vice versa);
- (h) all existing contracts of the Bunn business and the Origin Enterprises business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the Bunn business or Origin Enterprises business;
- (j) no key staff are transferred between the Bunn business and the Origin Enterprises business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the Bunn business and the Origin Enterprises business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Bunn business (or any of its employees, directors, agents or affiliates) to the Origin Enterprises business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) and on the basis that, should the transaction be prohibited,

any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

6. Origin Enterprises and Origin UK shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
7. Origin Enterprises and Origin UK shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Origin Enterprises and Origin UK and their subsidiaries with this Order. In particular, on 23 August 2017 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officers of Origin Enterprises and Origin UK or other persons of Origin Enterprises and Origin UK as agreed with the CMA shall, on behalf of Origin Enterprises and Origin UK, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
8. At all times, Origin Enterprises and Origin UK shall, or shall procure that Bunn shall, actively keep the CMA informed of any material developments relating to the Bunn business or the Origin Enterprises business, which includes but is not limited to:
 - (a) details of key staff who leave or join the Bunn business or the Origin Enterprises business;
 - (b) any interruption of the Bunn or Origin Enterprises business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Bunn or Origin Enterprises business including any substantial changes in customers' demand; and
 - (d) substantial changes in the Bunn or Origin Enterprises business's contractual arrangements or relationships with key suppliers.
9. If Origin Enterprises or Origin UK has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Origin Enterprises and/or Enterprises UK may be directed to appoint under paragraph 10.

10. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
11. Origin Enterprises and Origin UK shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

12. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
13. For the purposes of this Order:

'the Act' means the Enterprise Act 2002;

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

'Bunn' means the assets comprising the business of Bunn Fertiliser Limited (registered at Lakeside 500, 1st Floor, Old Chapel Way, Broadland Business Park, Norwich, United Kingdom, NR7 0WG, with registration number 08272284) that were the subject of the transaction as at the commencement date;

'the Bunn business' means the business of Bunn and its subsidiaries carried on as at the commencement date;

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

'commencement date' means 10 August 2017;

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

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

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

'the ordinary course of business' means matters connected to the day-to-day supply of goods and/or services by Bunn or Origin Enterprises and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Bunn and Origin Enterprises;

'Origin Enterprises' means Origin Enterprises plc, registered at 4-6 Riverwalk, Citywest Business Campus, Dublin 24, D24 DCW0, Ireland, with registration number 426261.

'the Origin Enterprises business' means the business of Origin Enterprises and its subsidiaries carried on as at the commencement date;

'Origin UK' means Origin UK Operations Limited, registered at 1-3 Freeman Court, Jarman Way, Orchard Road, Royston, Hertfordshire, SG8 5HW, with registration number 02465499;

'the Origin UK business' means the business of Origin UK and its subsidiaries carried on as at the commencement date;

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

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

'the transaction' means the transaction by which Origin UK and Bunn have ceased to be distinct within the meaning of section 23 of the Act;

'the two businesses' means the Origin Enterprises business and the Bunn business;

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

Greg Bonné
Assistant Director, Mergers

Compliance statement for Origin Enterprises/Origin UK¹

I [insert name] confirm on behalf of Origin Enterprises/Origin UK that:

Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) Origin Enterprises/Origin UK has complied with the Order made by the CMA in relation to the transaction on 10 August 2017 (the Order).
 - (b) Origin Enterprises/Origin UK's subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by Origin Enterprises/Origin UK that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the Bunn business with the Origin Enterprises/Origin UK business;
 - (ii) transfer the ownership or control of the Origin Enterprises/Origin UK business or the Bunn business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the Bunn business or the Origin Enterprises/Origin UK business to compete independently in any of the markets affected by the transaction.
 - (b) The Bunn business has been carried on separately from the Origin Enterprises/Origin UK business and the Bunn business's separate sales or brand identity has been maintained.
 - (c) The Bunn business and the Origin Enterprises/Origin UK business have been maintained as a going concern and sufficient resources have been made available for the development of the Bunn business and the Origin

¹ Delete as appropriate throughout the compliance statement.

Enterprises/Origin UK business, on the basis of their respective pre-merger business plans.

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

- (j) No changes have been made to key staff of the Bunn business or the Origin Enterprises/Origin UK business.
- (k) No key staff have been transferred between the Bunn business and the Origin Enterprises/Origin UK business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the Bunn business and the Origin Enterprises/Origin UK business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Bunn business (or any of its employees, directors, agents or affiliates) to the Origin Enterprises/Origin UK business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
 - (i) key staff that have left or joined the Bunn business or the Origin Enterprises/Origin UK business;
 - (ii) interruptions of the Bunn business or the Origin Enterprises/Origin UK business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
 - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Bunn business or the Origin Enterprises/Origin UK business; or
 - (iv) substantial changes in the Bunn or Origin Enterprises/Origin UK business's contractual arrangements or relationships with key suppliers.
- (o) *[list of material developments]*

3. Origin Enterprises/Origin UK and its subsidiaries remain in full compliance with the Order and will, or will procure that Bunn, continue actively to keep the CMA informed of any material developments relating to the Bunn or the Origin Enterprises/Origin UK business in accordance with paragraph 8 of the Order.

Interpretation

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

FOR AND ON BEHALF OF ORIGIN ENTERPRISES/ORIGIN UK

Signature

Name

Title

Date