

## **Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 10 August 2017**

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

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

We refer to your letters dated 27 July 2017 and 1 August 2017 requesting that the CMA consents to derogations to the Initial Enforcement Order of 10 August 2017 (the '**Initial Order**'). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Origin Enterprises plc (**Origin Enterprises**) and Origin UK Operations Limited (**Origin UK**) (together, Origin) are required to hold separate the assets comprising the Bunn Fertiliser Limited (**Bunn**) business from the Origin Enterprises business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference. After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Origin Enterprises and Origin UK may carry out the following actions, in respect of the specific paragraphs:

#### **1. Paragraphs 4 and 5 of the Initial Order**

Origin has sought consent to integrate the Bunn business and the Origin Enterprises business immediately in order preserve the value of the Bunn business, but subject to a ring-fence of the parts of the Bunn business in relation to which the CMA has found that the transaction may lead to a substantial lessening of competition (**SLC**), namely the operation of Bunn in Montrose (the **Bunn Montrose Business**). The proposed ring-fence seeks to ensure that the Bunn Montrose Business will not be integrated with the Origin Enterprises business and will be managed independently,

in accordance with paragraphs 4 and 5 of the Initial Order and subject only to the derogations set out in paragraphs 2 to 7 of this letter.

As the CMA found that the transaction gives rise to a realistic prospect of an SLC in relation to Origin UK and Bunn's operations at Montrose only, the CMA consents to any act or omission by Origin Enterprises or Origin UK that would otherwise constitute a breach of the Initial Order, but only to the extent that such act or omission does not affect or otherwise impact directly or indirectly the Bunn Montrose Business or the operations of Origin UK in Montrose (the **Origin Montrose Business**). For the avoidance of doubt, the Bunn Montrose Business includes all assets (including stock), staff and the provision of any centralised functions that are necessary for the Bunn Montrose Business to operate as a standalone viable business (eg accounting, human resources).

The CMA grants this derogation subject to the Bunn Montrose Business employees listed in Annex 1 (as amended at the discretion of the CMA) each signing a non-disclosure agreement (**NDA**) as approved by the CMA.

## **2. Paragraphs 5(c) and 5(i) of the Initial Order**

In order to urgently preserve the value and viability of the Bunn Montrose Business, the CMA consents to the appointment of an interim general manager for the Bunn Montrose Business. The CMA gives its consent on the basis that the proposed interim general manager of the Bunn Montrose Business is currently a consultant to the Bunn business with the requisite experience, and provided that:

- the employee does not have access to business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature (**confidential information**) relating to Origin; and
- the employee enters into an NDA approved by the CMA to preserve confidential information relating to the Bunn Montrose Business.

## **3. Paragraphs 4(a), 5(a), 5(c) and 5(i) of the Initial Order**

The CMA understands that the Bunn Montrose Business currently has no terminal operations manager dedicated to it. The previous Bunn Montrose terminal operations manager resigned in July 2017 and the role is currently being fulfilled by the terminal operations manager at Bunn's Middlesbrough depot on a part-time basis.

On the basis that the terminal manager role is a full-time role and critical to the success of the Bunn Montrose Business, Origin UK has sought consent for the appointment of an interim terminal operations manager for the Bunn Montrose Business. The proposed interim operations manager candidate currently works for

Origin UK and the employee would be seconded to the Bunn Montrose Business for the period in which the Initial Order remains in force and will be reporting to the interim general manager. Origin UK informed the CMA that the interim terminal operations manager would not have access to commercially sensitive information relating to the Bunn Montrose Business as the role is predominantly logistical.<sup>1</sup>

In order to urgently preserve the value and viability of the Bunn Montrose Business, and in light of the need for oversight of the operational running of the Bunn Montrose depot, the CMA consents to the appointment of a current Origin UK employee as interim terminal operations manager of the Bunn Montrose Business, provided that:

- the employee does not have access to any commercially sensitive information relating to the Bunn Montrose Business;
- the employee does not have access to confidential information relating to Origin Enterprises; and
- the employee enters into a non-disclosure agreement (NDA) in a form approved by the CMA to preserve confidential information relating to the Bunn Montrose Business should this be inadvertently disclosed.

#### **4. Paragraphs 4(a), 5(g) and 5(l) of the Initial Order**

The CMA understands that the Bunn business' supply contracts will not be transferring to Origin as part of the transaction and, as such, the Bunn Montrose Business will not have any ongoing contracts for the supply of raw materials. To the extent that the existing stock levels held by the Bunn Montrose Business are insufficient to meet its customers' requirements, Origin UK has sought consent to supply the Bunn Montrose Business with raw materials on arm's length commercial terms.

The CMA consents to Origin UK supplying the Bunn Montrose Business with raw materials, provided that:

- the Bunn Montrose Business is not obliged to purchase raw materials from Origin UK or Origin Enterprises;
- the Bunn Montrose Business is not restricted from purchasing raw materials from third parties; and

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<sup>1</sup> The interim Terminal Operations Manager is not active in making sales (nor in determining the pricing of such sales), nor are they active in purchasing raw materials (nor in negotiating the prices paid for such purchases). Instead, the role of the interim Terminal Operations Manager focusses upon the day-to-day operational continuity of the Bunn Montrose Business, with responsibilities including (i) managing the production staff, (ii) maintaining health and safety standards, (iii) ensuring the proper operation and management of facilities, (iv) monitoring and managing stock and raw materials (including ensuring that stock and raw materials are stored appropriately), and (v) ensuring that routine and business-critical repair and maintenance work is identified and undertaken.

- the interim general manager keeps the CMA informed (on a weekly basis) of any raw materials supplied by Origin UK to the Bunn Montrose Business.

## **5. Paragraphs 4(a), 5(c) and 5(l) of the Initial Order**

Prior to completion of the transaction, the Bunn business operated a number of support services from its head office in Norwich. Origin UK informed the CMA that following the transaction the Bunn business will no longer have its own dedicated support services and that all back-office functions will be carried out centrally by Origin UK. Origin UK therefore sought consent for named individuals within Origin UK to provide the following support services to the Bunn Montrose Business:

- a) payroll;
- b) human resources;
- c) information technology;
- d) finance (including invoicing);
- e) accounting; and
- f) regulatory compliance (including health and safety).

In order to preserve the viability of the Bunn Montrose Business, the CMA consents to Origin UK providing the above support services to the Bunn Montrose Business, provided:

- access to information relating to the Bunn Montrose Business is limited to named individuals approved by the CMA and as listed in Annex 2 (as amended from time to time at the discretion of the CMA);
- the named individuals enter into an NDA in a form approved by the CMA;
- any information obtained by the named individuals in providing the support services is used only for the purpose of the provision of those services; and
- the information cannot be accessed by Origin UK or Origin Enterprises employees who are not named individuals.

## **6. Paragraphs 4(a) and 5(a) of the Initial Order**

The CMA understands that following the completion of the transaction, the Bunn Montrose Business ceased to be covered by its existing insurance policy. Origin UK has therefore sought consent to include the Bunn Montrose Business within its insurance policies.

Given that Origin UK is responsible and liable for the Bunn Montrose Business, and in order to preserve the value of the Bunn Montrose Business, the CMA consents to Origin UK including the Bunn Montrose Business in its insurance policies, on the basis that any new owner of the Bunn Montrose Business will be capable of taking out a replacement insurance policy.

#### **7. Paragraphs 4(a), 5(a) and 5(l) of the Initial Order**

Given that Origin UK is responsible and liable for the Bunn Montrose Business, Origin UK has sought consent to:

- a) allow Origin UK employees to provide training to the Bunn Montrose Business's general manager on Origin UK's health and safety policy;
- b) require that Bunn Montrose's Business is operated in accordance with Origin UK's health and safety policy; and
- c) require that Bunn Montrose's interim general manager and/or interim terminal operations manager report any information necessary to comply with Origin UK's health and safety policy to Origin UK's Health, Safety and Compliance Manager.

Origin UK informed the CMA that compliance with Origin's health and safety policy would not influence the commercial direction of the Bunn Montrose Business.

In order to preserve the viability of the Bunn Montrose Business, the CMA consents to Origin UK carrying out the above listed health and safety activities, provided Origin UK's Health, Safety and Compliance manager enters into an NDA in a form approved by the CMA to preserve the confidentiality of any Bunn Montrose information and to ensure it is only shared for the purpose of ensuring compliance with Origin UK's health and safety policy.

Yours sincerely

Greg Bonné

## ANNEX 1



## ANNEX 2

**Origin UK Finance Team:**

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**Origin UK Support Team:**

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