

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

Decision on acceptance of undertakings in lieu of reference

ME/6667/17

Introduction

1. On 10 August 2017 Origin UK Operations Limited ("**Origin**") acquired certain assets comprising the business of Bunn Fertiliser Limited ("**Bunn**") (the **Merger**).
2. On 14 July 2017, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On 21 July 2017, Origin offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to Origin on 28 July 2017, pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it was considering Origin's offer (the **UILs Provisional Acceptance Decision**).
4. The text of the SLC Decision and the UILs Provisional Acceptance Decision are available on the CMA webpages.¹

¹ See <https://www.gov.uk/cma-cases/origin-uk-operations-bunn-fertiliser-merger-inquiry>.

The undertakings offered

5. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the supply of fertilisers within 150 miles of each of the sites operated by Origin and Bunn in Montrose, Scotland. The CMA did not find competition concerns in relation to any of the other overlaps.
6. As set out in the UIL Provisional Acceptance Decision Origin has offered to divest the assets and transfer the staff and customer and supply contracts that comprise the operations of Bunn in Montrose (the **Divestment Business**), as set out in the text of the consultation on the CMA webpages² (the **UILs**).
7. Origin has also offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer, before the CMA finally accepts the UILs. Origin has proposed Glasson Grain Ltd (**Glasson**) as the upfront buyer.

Consultation

8. On 7 September 2017, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the UILs, inviting interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex 1 of this decision.³ For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLC identified in the SLC decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation.⁴
9. The CMA received one submission during the consultation period. The submission highlighted a proposed exit by Glasson's parent company from the pet retail market and questioned Glasson's commitment to the Scottish fertiliser market. Glasson has supplied fertiliser in the UK for over 25 years and currently supplies fertiliser into southern Scotland from its depots in England. The CMA has not seen any evidence to suggest that Glasson would demonstrate a lower level of commitment to the central/eastern Scottish fertiliser market than it does to other areas of the UK. Accordingly, this third

² See <https://www.gov.uk/cma-cases/origin-uk-operations-bunn-fertiliser-merger-inquiry>.

³ The full consultation text was published on <https://www.gov.uk/cma-cases/origin-uk-operations-bunn-fertiliser-merger-inquiry>.

⁴ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

party submission did not cause the CMA to change its preliminary view that the UILs would be acceptable.

10. The CMA therefore considers that the UILs offered by Origin are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and that Glasson is a suitable purchaser of the Divestment Business.

Decision

11. For the reasons set out above, the CMA considers that the UILs provided by Origin are as comprehensive a solution as is reasonable and practicable and remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the UILs offered by Origin pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.
12. The undertakings, which have been signed by Origin and will be published on the CMA webpages,⁵ will come into effect from the date of this decision.

Adam Land
Senior Director, RFBA
Competition and Markets Authority
16 October 2017

⁵ See <https://www.gov.uk/cma-cases/origin-uk-operations-bunn-fertiliser-merger-inquiry>.

Annex 1

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

Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

ME/6667/17

Introduction

13. On 10 August 2017, Origin UK Operations Limited (**Origin**) acquired assets comprising the business of Bunn Fertiliser Limited (**Bunn**) (the **Merger**).
14. On 14 July 2017, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger (which at the time had not yet completed) constitutes a relevant merger situation⁶ that may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**). The text of the SLC Decision is available on the CMA webpages.⁷
15. On 21 July 2017, Origin offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act.
16. On 28 July 2017, the CMA gave notice to Origin, pursuant to section 73A(2)(b) of the Act, that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering Origin's offer (the **UIL Provisional Acceptance Decision**).

⁶ Pursuant to section 25(4) of the Act the four-month period mentioned in section 24 of the Act is extended while the CMA is seeking undertakings in lieu of reference.

⁷ See <https://www.gov.uk/cma-cases/origin-uk-operations-bunn-fertiliser-merger-inquiry>

The undertakings offered

17. As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the supply of nitrogen, phosphorus, potassium and complex fertilisers within 150 miles of Origin and Bunn's Montrose depots.
18. As set out in the UIL Provisional Acceptance Decision, to address the SLC identified by the CMA Origin has offered undertakings to divest the assets and transfer the staff and customer and supply contracts that comprise the operations of Bunn in Montrose (the **Divestment Business**). The text of the undertakings is available on the CMA webpages (the **Proposed Undertakings**).⁸
19. Origin has also offered to enter into an agreement for the sale and purchase of the Divestment Business with an upfront buyer, before the CMA finally accepts the Proposed Undertakings. Origin has proposed Glasson Grain Ltd (**Glasson**) as the upfront buyer. This agreement will be conditional on acceptance by the CMA of the Proposed Undertakings, including approval of Glasson as the buyer of the Divestment Business.

CMA assessment

20. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings or concerns about their implementation.⁹ This is because the Proposed Undertakings will result in the divestment of the entirety of Bunn's operations in Montrose, thereby removing the overlap between Origin and Bunn in the Montrose area and the increment resulting from the Merger in relation to the supply of fertilisers.
21. The CMA currently believes that the sale of the Divestment Business will enable Glasson to begin blending and supplying fertiliser to customers in competition with Origin's pre-existing operations in Montrose and, as such, the Proposed Undertakings will result in replacing the competitive constraint provided by Bunn in Montrose that would otherwise be lost following the Merger.

⁸ See <https://www.gov.uk/cma-cases/origin-uk-operations-bunn-fertiliser-merger-inquiry>

⁹ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

22. The CMA also currently believes that the Proposed Undertakings would be capable of ready implementation because the assets comprising the Divestment Business will include Bunn's Montrose blending and warehousing facilities and the transfer of staff and its customer and supplier contracts relating to Bunn's Montrose business.
23. However, these views are subject to responses to this consultation, as required by Schedule 10 of the Act.

Suitability of the proposed purchaser

24. In approving a purchaser, the CMA's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The CMA therefore seeks to ensure that:
 - (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it;
 - (b) the proposed purchaser is independent of and unconnected to the merging parties;
 - (c) the proposed purchaser has the necessary financial resources, expertise, incentive and intention to maintain and operate the divested business as an effective competitor in the marketplace;
 - (d) the proposed purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
 - (e) the acquisition by the proposed purchaser does not itself create an SLC within any market or markets in the UK.¹⁰
25. Glasson is wholly owned by Wynnstay Group plc, which is active in the supply of raw materials to the agriculture sector. Glasson currently operates three fertiliser blending facilities in the UK, and has supplied fertiliser in the UK for over 25 years. Glasson's turnover in its most recent financial year was approximately £69m across all business activities.
26. Glasson supplies fertiliser into southern Scotland from its operations in the northwest of England but has limited sales in eastern/central Scotland. Glasson's purchase of the Divestment Assets would bring Glasson into direct

¹⁰ [OFT1122](#), paragraphs 5.25–5.30.

competition with Origin in the Montrose area, replacing the competitive constraint provided by Bunn's Montrose business that would otherwise be lost following the Merger. Since Glasson currently has limited operations in the area around Montrose, the CMA does not believe its purchase of the Divestment Assets would itself create an SLC.

27. Glasson and Wynnstay told the CMA that they are independent of the Parties, with no common shareholdings, directorships, significant structural links or commercial arrangements.
28. Having considered Glasson's funding and reviewed its financial accounts, the CMA believes that Glasson would have the necessary financial resources to finance the purchase of the Divestment Business and to operate it effectively in the future.
29. Given that Glasson is an established supplier of fertilisers, and based on information provided by Glasson about its plans to operate the Divestment Business, the CMA considers that Glasson has the necessary expertise, incentives and intention to maintain the Divestment Business as an effective competitor to Origin in the Montrose Area.
30. Therefore, subject to responses to this consultation, the CMA currently considers Glasson to be a suitable purchaser of the Divestment Business.

Proposed decision and next steps

31. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by Glasson are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
32. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings in lieu of a reference of the Merger for a phase 2 investigation. The text of the proposed undertaking is available on the CMA web pages.¹¹
33. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material

¹¹ See <https://www.gov.uk/cma-cases/origin-uk-operations-bunn-fertiliser-merger-inquiry>

change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.¹²

34. Representations should be made in writing to the CMA and be addressed to:

Kate Botting
Mergers Group
Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD

Email: kate.botting@cma.gsi.gov.uk

Telephone: 020 3738 6438

Deadline for comments: 21 September 2017

¹² Under paragraph 2(4) of Schedule 10 to the Act.