

## **ACQUISITION BY MOLE VALLEY FARMERS LIMITED OF THE RETAIL BUSINESS OF COUNTRYWIDE FARMERS PLC**

### **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 arrangements are in progress or in contemplation which, if carried into effect, will result in Mole Valley Farmers Limited (Mole Valley), through its wholly owned subsidiary Mole Valley Wholesale Limited, and the retail business of Countrywide Farmers plc ceasing to be distinct;
- (b) the CMA is considering whether to make a reference under section 22 or 33 of the Act;
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under sections 22 or 33 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 Countrywide Farmers plc (Countrywide) (Order).

#### **Commencement, application and scope**

1. This Order commences on the commencement date: 5 February 2018.
2. This Order applies to Countrywide.
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

Countrywide to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

4. This Order prevents the completion of any agreement or arrangement which transfers the ownership or control of the Countrywide business or any of Countrywide's subsidiaries, including any business of Countrywide at the commencement date which is not the subject of the transaction.

#### **Management of the Countrywide business until determination of proceedings**

5. Except with the prior written consent of the CMA, Countrywide shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 or 33 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) transfer the ownership or control of the Countrywide business; or

(b) otherwise impair the ability of the Countrywide business to compete independently in any of the markets affected by the transaction.

6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3, Countrywide shall at all times during the specified period procure that, except with the prior written consent of the CMA:

(a) the Countrywide business is maintained as a going concern and sufficient resources are made available for the development of the Countrywide business on the basis of its pre-merger business plans;

(b) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Countrywide business;

(c) the nature, description, range and quality of goods and/or services supplied in the UK by the Countrywide business are maintained and preserved;

(d) except in the ordinary course of business:

(i) all of the assets of the Countrywide business are maintained and preserved, including facilities and goodwill;

(ii) none of the assets of the Countrywide business are disposed of; and

(iii) no interest in the assets of the Countrywide business is created or disposed of;

- (e) no changes are made to key staff of the Countrywide business;
- (f) all reasonable steps are taken to encourage all key staff to remain with the Countrywide business.

## **Compliance**

7. Countrywide shall procure that each of its subsidiaries complies with this Order as if the Order had been issued to each of them.
8. Countrywide 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 Countrywide and its subsidiaries with this Order. In particular, on 19 February 2018 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Countrywide or other persons of Countrywide as agreed with the CMA shall, on behalf of Countrywide, provide a statement to the CMA in the form set out in the Annexes to this Order confirming compliance with this Order.
9. At all times, Countrywide shall each actively keep the CMA informed of any material developments relating to the Countrywide business, which includes but is not limited to:
  - (a) details of key staff who leave or join the Countrywide business;
  - (b) any interruption of the Countrywide 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 Countrywide business including any substantial changes in customers' demand; and
  - (d) substantial changes in the Countrywide business's contractual arrangements or relationships with key suppliers.
10. If Countrywide has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Countrywide may be directed to appoint under paragraph 11.
11. 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.

12. Countrywide shall comply in so far as it is 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**

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
14. 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;

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

**'commencement date'** means 5 February 2018;

**'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;

**'Countrywide'** means Countrywide Farmers plc, company number 3776711;

**'the Countrywide business'** means the business of Countrywide and each of its subsidiaries (including, any business of Countrywide which is not the subject of the transaction) carried on as at the commencement date;

**'the decisions'** means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 or section 36 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 Countrywide and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Countrywide;

**'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 Mole Valley Farmers Plc and the retail business of Countrywide would cease to be distinct within the meaning of section 23 of the Act as contemplated in the sale and purchase agreement of 21 October 2017;

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

Colin Raftery  
Director, Mergers

## Compliance statement for Countrywide

I [insert name] confirm on behalf of Countrywide that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Countrywide has complied with the Order made by the CMA in relation to the transaction on 5 February 2018 (the Order).
  - (b) Countrywide'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 Countrywide that might prejudice a reference of the transaction under section 22 or 33 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) transfer the ownership or control of the Countrywide business; or
    - (ii) otherwise impair the ability of the Countrywide business to compete independently in any of the markets affected by the transaction.
  - (b) The Countrywide business has been maintained as a going concern and sufficient resources have been made available for the development of the Countrywide business, on the basis of its pre-merger business plans.
  - (c) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Countrywide business, except in the ordinary course of business.
  - (d) The nature, description, range and quality of goods and/or services supplied in the UK by the Countrywide business have been maintained and preserved.
  - (e) Except in the ordinary course of business:
    - (i) all of the assets of the Countrywide 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 Countrywide business have been disposed of; and
  - (iii) no interest in the assets of the Countrywide business has been created or disposed of.
- (f) All existing contracts of the Countrywide 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.
- (g) No changes have been made to key staff of the Countrywide business.
- (h) All reasonable steps have been taken to encourage all key staff to remain with the Countrywide business.
- (i) Except as listed in paragraph (j) below, there have been no:
- (i) key staff that have left or joined the Countrywide business;
  - (ii) interruptions of the Countrywide 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 Countrywide business; or
  - (iv) substantial changes in the Countrywide business's contractual arrangements or relationships with key suppliers.
- (j) *[list of material developments]*

3. Countrywide and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Countrywide business in accordance with paragraph 9 of the Order.

### **Interpretation**

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

FOR AND ON BEHALF OF COUNTRYWIDE

Signature .....

Name .....

Title .....

Date .....