

**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 1 March 2018**

**Completed acquisition by Flogas Consumer Limited of the LPG supply business of Countrywide Farmers plc**

We refer to your letters dated 28 February and 5 March 2018 requesting that the CMA consent to derogations to the Initial Enforcement Order of 1 March 2018 (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, DCC, Topco and Flogas are required to hold separate the Countrywide business from the DCC, Topco and Flogas businesses 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, DCC, Topco and Countrywide may carry out the following actions, in respect of the specific paragraphs, provided that in each case they do not share any confidential information more widely than is strictly necessary to carry out the relevant action:

**1. Paragraphs 5(c), (i) and (j) of the Initial Order**

The CMA understands that, prior to completion, the Countrywide business was an unincorporated business within Countrywide Farmers plc and, as such, under the control of senior management within Countrywide Farmers plc. Not all of those managers were transferred with the Countrywide business as part of the transaction.

In order to ensure the effective operation of the Countrywide business the CMA consents to the appointments of:

- (a) the following senior managers to run the Countrywide business:
  - (i) [redacted]; and
  - (ii) [redacted].(together the 'Countrywide Senior Management Team')
- (b) the following individuals as directors of Countrywide LPG Ltd:
  - (i) [redacted]; and

(ii) [X].

The CMA consents to these appointments subject to the individuals each signing appropriate non-disclosure agreements and receiving appropriate training to ensure that they understand the requirements of the Initial Order.

## **2. Paragraphs 5(a) and (g) of the Initial Order**

The CMA understands that certain contractual counterparties of the Countrywide business may require parental guarantees from the DCC Group because Countrywide LPG Ltd is in effect a new company with no previous credit history.

In order to ensure the effective operation of the Countrywide business the CMA consents to the provision of such guarantees by [X] [an entity controlled by DCC], specifically in relation to the following obligations:

- (a) the obligations of the Countrywide business under contracts with suppliers and landlords; and
- (b) the reasonable borrowings of the Countrywide business.

The CMA understands that prior to completion the Countrywide business relied on Countrywide Farmers plc for short-term financial support. In order to ensure that the Countrywide business is maintained as a going concern and has sufficient resources available, the CMA also consents to DCC providing suitable levels of short-term financial support to the Countrywide business where this is needed to finance its day-to-day operations, including the purchase of LPG for resale.

As a new business, Countrywide will need to arrange insurance. In order to facilitate this, the CMA consents to:

- (a) Countrywide benefitting from and being covered by insurance policies organised by the DCC, dealing with such issues as public liability, product liability, medical and employee liability; and
- (b) Countrywide benefitting from and being covered by relevant group-wide credit-insurance policies organised by and in the name of DCC.

The CMA also consents to those individuals within the Countrywide business responsible for dealing with such guarantees and insurance policies being permitted to liaise with their counterparts of DCC, which is limited to [X], for the purpose of ensuring that the Countrywide business is covered by and complies with the terms and procedures of these agreements. The CMA consent is subject to the named individuals each signing appropriate non-disclosure agreements.

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

The CMA understands that certain of the activities currently carried out by the Countrywide business – essentially the entering into of regulated consumer hire agreements for tanks – can only be carried out by businesses that are authorised by the Financial Conduct Authority. In order to ensure the continued and effective

operation of the Countrywide business, and in the knowledge that [X] [an entity controlled by DCC] is authorised by the Financial Conduct Authority to enter into regulated consumer hire agreements, the CMA consents to Countrywide entering into an Appointed Representative Agreement with [X] [an entity controlled by DCC] under which [X] [an entity controlled by DCC] would appoint Countrywide as its Appointed Representative.

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

As noted above, the CMA understands that prior to completion the Countrywide business was an unincorporated business within Countrywide Farmers plc. As such, it has received back-office support from the wider Countrywide Farmers plc in areas such as finance and IT which did not transfer with the Countrywide business on completion.

In order to ensure the effective operation of the Countrywide business the CMA consents to DCC providing the following back-office support services to the Countrywide business:

- (a) payroll services; and
- (b) IT implementation and maintenance.

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

To ensure the continuity and viability of the Countrywide business, the CMA consents to the Countrywide Senior Management Team requesting assistance from relevant persons within the DCC in developing and implementing legal compliance awareness, training, systems and procedures within the Countrywide business limited to:

- (a) applicable contract, competition, consumer and data protection regulations;
- (b) HR / employment regulations;
- (c) health, safety and environmental regulations;
- (d) Financial Conduct Authority requirements;
- (e) logistics, routing and technical fleet operations;
- (f) direct debit and similar non-technical and/or non-commercial banking arrangements including security;
- (g) compliance with the DCC's hedging requirements; and
- (h) obtaining and maintaining an operating licence and associated liaison with the Traffic Commissioner.

The provision of the above-mentioned assistance is limited to [X] of DCC. The CMA consent is subject to the named individuals each signing appropriate non-disclosure agreements.

#### **6. Paragraph 5(a) of the Initial Order**

The CMA understands that the DCC and Countrywide businesses are required to comply with consumer protection legislation and avoid potential confusion about the ownership of the Countrywide business, and therefore consents to the Countrywide business making clear in an appropriate way to consumers that it has changed ownership, and is now part of DCC.

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

The CMA understands that DCC uses a cash pooling service provided by [X] to manage the liquidity of its UK operating subsidiaries.

In order to allow the Countrywide business access to an operationally efficient liquidity control mechanism while still maintaining operational control of its cash balances, the CMA consents to the Countrywide business being included as a participant in the cash pool. Access to information resulting from cash pooling is limited to [X]. The CMA consent is subject to the named individuals each signing appropriate non-disclosure agreements.