



# News Release

## CC SETS CONDITIONS TO ALLOW HERBICIDES MERGER

06/09

10 February 2009

The Competition Commission (CC) will allow the completed acquisition by Nufarm Crop Products UK Limited (Nufarm) of AH Marks Holdings Limited (AH Marks) subject to Nufarm adopting a package of measures to protect the interests of their customers.

In its final report published today at [www.competition-commission.org.uk](http://www.competition-commission.org.uk), the CC has concluded that the merger would lead to a substantial lessening of competition in the UK markets for the supply of herbicide products based on two chemicals sold under brand names such as Agritox and Optica. The chemicals are phenoxy acids, technically known as MCPA and MCPP-p.

There is a wide variety of herbicide products based on different chemicals used for the prevention and control of weeds in crops. Phenoxy herbicides are used as a relatively low-cost method of broadleaf weed control in grasslands and cereals. Nufarm's and AH Marks's businesses overlap in the production of technical acid, manufacturing concentrates and formulated products. Before the merger, AH Marks was an independent UK manufacturer and exporter of chemical products.

In order to address the potential damage to competition and protect customers' interests, Nufarm will be required to adopt a package of remedies aimed at facilitating the entry of certain companies into the markets for MCPA and MCPP-p. In the event that Nufarm is unable to fulfil the requirements of this package of remedies to the CC's satisfaction within a time frame acceptable to the CC, Nufarm may be required to sell the AH Marks business.

Inquiry Group Chairman and Chairman of the CC, Peter Freeman said:

We found that this merger harmed competition in some important and specific herbicide products—brands such as Agritox and Optica as well as the chemicals that go into them. This harm may be relatively short term as EU controls on manufacture and sale of these particular herbicides are relaxed over the next few years, making it easier for other companies to compete with Nufarm. Nevertheless there will be a temptation for Nufarm to raise its prices before that happens. We have therefore put in place a package of measures to speed up market entry by competitors and to give UK distributors and farmers access to an alternative source of supply.

We considered making Nufarm sell the AH Marks business, and we might still have to do this. However, it is now nearly a year since this merger was

completed. No one has breached the law, but this is an example of a case where prior notification to the OFT, in advance of completion, would have been much better for all concerned.

For MCPA, the package of remedies includes extending an existing agreement for Nufarm to supply MCPA technical acid to Dow Agrosiences as well as the transfer of an MCPA formulated product registration to Dow for it to sell. It also requires Nufarm to create and register a new MCPA formulated product and transfer that registration to Sarzyna, another company looking to enter the market. With regard to MCPP-p, Nufarm will be required to supply MCPP-p manufacturing concentrate and formulated products to Headland and UPL.

### **Notes to editors**

1. The CC is an independent public body, which carries out investigations into mergers, markets, and the regulated industries.
2. Nufarm Crop Products UK Limited is a wholly-owned subsidiary of Nufarm UK Limited whose ultimate parent company is Nufarm Limited, a company listed on the Australian Stock Exchange.
3. The members of the Nufarm/AH Marks Inquiry Group are: Peter Freeman, Richard Taylor, Jonathan Whitarcar and Jeremy Peat.
4. The merger was referred by the Office of Fair Trading (OFT) on 29 August 2008 and the CC was required to publish its final report by 12 February 2009.
5. The Enterprise Act 2002 empowers the OFT to refer to the CC completed or proposed mergers for investigation and report which create or enhance a 25 per cent share of supply in the UK (or a substantial part thereof) or where the UK turnover associated with the enterprise being acquired is over £70 million.
6. The CC has a 24-week period in which it is required to publish its report, which may be extended by no more than eight weeks if it considers that there are special reasons why the report cannot be published within that period.
7. Further information on the CC and its procedures, including its policy on the provision of information and the disclosure of evidence, can be obtained from its website at: [www.competition-commission.org.uk](http://www.competition-commission.org.uk).
8. Enquiries should be directed to Siobhan Allen on 020 7271 0242 (email [siobhan.allen@cc.gsi.gov.uk](mailto:siobhan.allen@cc.gsi.gov.uk)).