

## Completed acquisition by Origin Enterprises plc of Masstock Group Holdings Limited

ME/3556/08

The OFT's decision on reference under section 22(1) given on 6 May 2008. Full text of decision published on 22 May 2008.

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**Please note that square brackets indicate figures or text which have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.**

### **PARTIES**

1. **Origin Enterprises** (Origin) operates in the agri/nutrition sector in the Republic of Ireland and the UK, importing, blending and distributing fertiliser to the agricultural merchant trade.
2. **Masstock Group Holdings Limited** (Masstock) is a provider of agricultural input products and farm consultancy services. It principally operates through two trading subsidiaries – Masstock Arable (UK) Limited and Dalgety Agar Polska Sp z.o.o.. Masstock generated £191.6 million turnover in the UK in the last financial year.

### **TRANSACTION**

3. Origin acquired 59.97 per cent of the entire issued share capital of Masstock on 1 February 2008, with an option to acquire all of the remaining shares. The OFT received a satisfactory submission on 6 March 2008.
4. The administrative deadline is 6 May 2008 and the (extended) statutory deadline is 2 June 2008.

## JURISDICTION

5. As a result of this transaction Origin and Masstock have ceased to be distinct. The UK turnover of Masstock exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

## MARKET DEFINITION

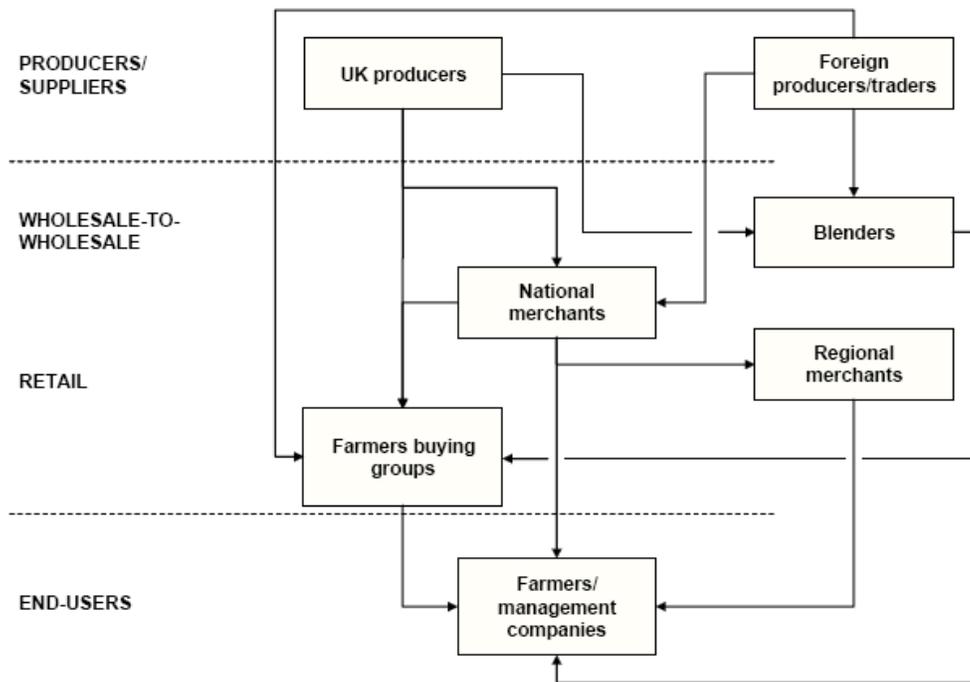
### Background – supply chain

6. Origin and Masstock both supply fertiliser. However, they claim that the acquisition has not led to any horizontal overlap between the parties' businesses, as Masstock operates downstream of Origin. Origin claims that it supplies primarily to wholesalers, merchants, agents on commission and buyer groups, and that Masstock operates at the retail level and sells to end-users i.e. farmers.
7. In *Kemira/Terra*<sup>1</sup> the Competition Commission (CC) found that the distribution of fertiliser was more complicated than a supplier-wholesaler–retailer relationship. In particular, suppliers could use a range of distribution channels for their fertilisers. Figure 1 reproduces a graphical representation of the supply chain of fertilisers used in *Kemira/Terra*:

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<sup>1</sup> CC report *Kemira GrowHow Oyj and Terra Industries Inc merger inquiry: A report on the anticipated joint venture between Kemira GrowHow Oyj and Terra Industries Inc* (11 July 2007).

**Figure 1: the fertiliser supply chain**



Source: CC, based on Terra and Kemira.

8. The OFT's investigation suggested that the supply chain could be more complicated than that set out above. For example, Origin, whose position in the market is largely consistent with that of a blender, supplies to Masstock, who could be considered either a merchant or management company. [See end note] What it does suggest, however, is that the distinction between wholesale and retail supply is somewhat blurred in relation to the supply of fertiliser.
9. The different chains of supply set out in Figure 1 are particularly relevant to this case, as although Origin and Masstock operate at different levels of the supply chain, they may ultimately be alternative suppliers to farmers buying groups, and farmers themselves. The OFT has therefore considered both the horizontal and vertical relationships of the parties in the competitive assessment.

**Product market**

10. Fertilisers used in agricultural applications generally contain at least one of three main nutrient types: nitrogen (N), phosphorous (P) and/or potassium

(K). Fertiliser can be segmented into straight (a fertiliser containing one main nutrient type) and complex (a fertiliser containing more than one nutrient type) fertilisers. The parties supply both straight and complex fertiliser.

11. The OFT considered whether straight and complex fertilisers were part of the same product market. On the supply side, it seems that large suppliers of complex fertilisers could switch to supplying straight fertilisers directly if the price of straight fertilisers was to increase. While ultimately leaving the market definition undecided, the European Commission (Commission) also suggested in *Yara/Kemira*<sup>2</sup> that end-users could mix nutrients together themselves. In *Kemira/Terra* the CC considered straight N fertilisers separately from complex fertilisers, although was not required to come to a conclusion on this issue for the purposes of its analysis. The views of third parties on substitution between straight and complex fertilisers were inconclusive, so the OFT has taken a cautious approach and considered straight and complex fertilisers separately.
12. There are multiple types of straight N, P and K fertilisers. In relation to N fertilisers, for example, these include urea, calcium and ammonium nitrate, amongst others. These varieties can require different production facilities and some are more appropriate for certain crops than others. However, previous cases have found that N, P and K fertilisers each represent a separate product market, and the OFT did not obtain evidence to suggest that it should change this approach.
13. Finally, the OFT considered whether there was a distinction between compound and blended complex fertilisers. Compound fertilisers are produced by combining the nutrients N, P and K in a single granule by means of a chemical reaction. Blended fertilisers mechanically mix different granules containing either N, P or K to form a desired composite of N, P and K. In *Kemira/Terra* the CC found that, although farmers had preferences for either blended or compound fertilisers, they were substitutes and formed part of one complex fertilisers market. The OFT did not obtain any evidence during its investigation to suggest that it should change this approach.

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<sup>2</sup> COMP/M.4730, *Yara/Kemira GrowHow* (21 September 2007).

14. In summary, the following distinctions can be drawn from the OFT's analysis of the various product markets:
- N, P and K fertilisers are considered distinct markets
  - Straight/complex fertilisers are considered separately, and
  - No single combination of compound or blended fertilisers is considered distinct, and compound and blended complex fertilisers are considered in the same frame of reference (i.e. complex fertilisers).
15. Despite these distinctive product markets, the issues arising in the competitive assessment are relatively similar in relation to each product. Unless otherwise stated, the competitive assessment considers the fertiliser market as a whole, noting where appropriate particular characteristics of the different product markets.

### **Geographic market**

16. In previous OFT, CC and Commission investigations, the various markets for fertiliser have tended to be at least UK wide. In *Kemira/Terra* the market for N fertilisers was considered to be at least EEA wide, and the market for complex fertilisers considered to be UK-wide. In *Yara/Kemira* a distinction was made at various levels of the supply chain; wholesalers were found to source fertiliser on at least an EEA wide basis whereas the supply to retailers and end customers was found to have a national dimension.
17. The parties submit that Origin supplies fertilisers across the UK and the Republic of Ireland, while Masstock is a supplier of agricultural input products across England, Scotland and Wales. Some third party responses confirm the reach of the parties, with both being considered national suppliers.
18. In no prior examinations of the supply of fertiliser has a sub-national geographic frame of reference been deemed appropriate. However, the OFT did obtain some evidence to support a sub-national approach. Customers of the parties suggested that they faced a different choice of local and national suppliers in different regions, and that the intensity of competition exerted on the parties varied by region. Origin told the OFT that it could not competitively service the whole of the geographic area supplied by Masstock (through its network in Scotland, England and Wales), and that it

supplies the majority of its product in Scotland, England and Wales within 75 miles of its five depots. One third party also suggested that prices varied by local competitive conditions.

19. Although ultimately the geographical market does not alter the OFT's conclusion on the competitive assessment, the OFT has taken a cautious approach and has considered both the national market for the supply of fertiliser, and sub-national markets, focussing on the supply of fertiliser to the areas supplied by Origin's depots at Plymouth, Ipswich, Newport (South Wales), Immingham and Ayr.

## HORIZONTAL ISSUES

### Market shares

20. Origin estimates that the value of the wholesale supply of fertilisers in the UK is approximately £614 million. Origin's market shares were estimated as follows:

Supply of fertilisers to wholesalers	[10 – 20] per cent
Supply of straight fertilisers to wholesalers	[10 – 20] per cent
Supply of complex fertilisers to wholesalers	[10 – 20] per cent

21. The parties also supplied market share estimates for competitors, which showed that Origin faced a number of competitors with a similar or greater market share in relation to both straight and complex fertilisers. One competitor was particularly strong in relation to straight fertilisers, with a market share of over 50 per cent.

22. Masstock's market shares were estimated by the parties as follows:

Supply of fertilisers to farmers	[10 – 20] per cent
Supply of straight fertilisers to farmers	[0 – 10] per cent
Supply of complex fertilisers to farmers	[10 – 20] per cent

23. The parties also supplied market share estimates for Masstock competitors on a total fertiliser only basis. These market share figures suggested a fragmented market, with the leading share of supply only 15 per cent, and a number of small suppliers.

24. Distinct market shares for N, K and P fertilisers were not provided for either party, but the parties submitted that market shares by nutrient did not differ significantly from the supply of all straight fertilisers. In addition, Origin was unable to provide market shares on a regional basis. They estimated that the split of straight and complex fertiliser for those geographical areas supplied by their five depots would not differ greatly from area to area, although given the concentration of sales around Origin's depots the OFT would expect sub-national market shares to be higher than Origin's national share.
25. Origin also provided a list of competitors in each geographical area supplied by their five depots. Each list contained at least three national competitors, and a number of local competitors. While one party implied that the level of competition with Masstock varies by region, the parties asserted that Masstock does not have any production facilities that would lead to regional differences in share of supply. While the parties could not provide sub-national shares of supply, data provided by the parties suggested that at least four Masstock competitors were active across all five geographical areas served by Origin's depots.

### **Closeness of competition**

26. The parties claim that no horizontal overlaps exist and hence no horizontal concerns arise as a result of the merger. However, as discussed above, there appear to be a number of routes to market for suppliers of fertiliser. In response to a query from the OFT Origin did confirm that it supplied a small volume of both straight and complex fertiliser directly to farmers or to buyer groups ([10 – 20] per cent and [10 – 20] per cent respectively of Origin's total volumes – implying a [less than five] per cent increment on a UK basis). Some third parties had either previously sourced, or currently sourced, fertiliser from both Masstock and Origin. Other third party responses supported the assertion that the parties operate largely at different levels of the supply chain.
27. Notwithstanding the parties' submissions, the information obtained by the OFT suggests that at least some third parties view Origin and Masstock as alternative suppliers of fertiliser to farmers/buying groups, and possibly to other merchants. However, the parties provided the OFT with a number of alternative providers of fertiliser at both a national and sub-national level,

supplying each of the fertiliser types discussed in the product market section above. Third parties, including those who were concerned about the loss of a supplier, indicated that post-merger they would continue to have alternative suppliers from whom to obtain fertilisers.

28. In summary, the evidence suggests that, while the parties are not each other's closest competitors, the exact degree of overlap between the activities of the parties is uncertain (at both a national and sub-national level). However, on a national level the parties shares of supply are sufficiently small, and the number of alternative competitors sufficiently great, such that even if they were direct competitors the transaction would not raise competition concerns. At a sub-national level, while Origin could not provide the OFT with market shares for each of the geographical areas supplied by their five depots, there appear to be a number of alternative suppliers of fertilisers, many of whom also compete with the parties on a national basis. The OFT does not therefore consider that the merger will result in competition concerns on a horizontal basis in any of the relevant product markets.

## **VERTICAL ISSUES**

29. As discussed above, Origin's position in the supply chain appears largely consistent with that of a blender (as set out in Figure 1). Origin imports fertiliser which it blends to suit particular farm production systems and regional soil deficiencies. These blended products are then distributed primarily to wholesalers, merchants, agents on commission and buyer groups.
30. Masstock's services were consistent with those of either a merchant or management company in Figure 1. Masstock has no blending capabilities itself, and is simply involved in the purchase and sale of fertiliser to end users, that is, farmers.
31. Given the vertical relationship between the parties, the OFT considered whether – at any level of the supply chain – the parties would have the ability and incentive to foreclose supply to downstream market participants, or foreclose a route to market for upstream market participants.

#### Foreclosure of sources of supply for fertiliser producers

32. As set out above, Masstock's purchases of fertiliser account for just [10 – 20] per cent of total supply at a national level, which it obtains from a number of sources. No raw material fertiliser producer (either suppliers to Origin or Origin competitors) raised any concerns that Masstock may in future source more (or all) of its fertiliser needs from Origin. On the basis of this low market share, and the lack of third party concerns, the OFT does not consider that the merger will foreclose access to the market for fertiliser producers.

#### Foreclosure of supply by Origin to Masstock competitors and buyer groups

33. The OFT did receive third party concerns over the possibility of Origin refusing to supply other buyers (whether merchants, buying groups or farmers), or favouring Masstock over other buyers (whether through providing fertiliser on better terms or supplying Masstock in preference to other buyers).
34. As a starting point for this concern, the OFT considered the pre-merger relationship between Masstock and Origin. Masstock's purchases accounted for just [10 – 20] per cent of Origin sales and [10 – 20] per cent of Masstock's fertilisers. These figures suggest that if the parties were to attempt to internalise the supply of fertilisers, the subsequent realignment of supply/demand arrangements could be substantial for the parties. This would be particularly difficult given the price sensitive nature of the fertiliser market and the inefficiencies that the parties would incur by Masstock sourcing exclusively from Origin (Origin relies on imported fertilisers and is vulnerable to shortages of supply).
35. Given the market share figures, there appears to be little economic incentive for Origin to foreclose supply to Masstock's competitors. Even in the event that Origin does refuse to supply Masstock's competitors (or seeks to supply on inferior terms), the evidence shows that a number of alternative supply routes currently exist for Masstock's competitors, or could exist in the future. Firstly, whether the market is national or sub-national in nature, there appear to be a number of different sources of supply for each of the fertiliser types discussed above. Secondly, Origin does not produce the raw ingredients from which it makes its blends. If Origin chose to foreclose supply to Masstock's competitors, it is possible

that these competitors would source their own raw materials directly or indirectly through sponsoring new entry into the blending market. There was no evidence that Origin maintains prohibitively large supplier leverage with raw material fertiliser producers worldwide, such as to be the preferred importer of such materials.

36. On this basis, the OFT does not consider that there is a realistic prospect of the merger leading to foreclosure of supply to Masstock competitors and buyer groups.

### **THIRD PARTY VIEWS**

37. The OFT consulted a range of third parties at all levels of the supply chain. However, responses were relatively limited. Of the third parties that did respond, some expressed the vertical concerns set out above. Two were specifically concerned with the loss of a current (or potential) supplier while two expressed concern at potential preferential treatment Masstock may receive in the supply of fertiliser. However, all three indicated that alternative fertiliser suppliers existed post-merger.

### **ASSESSMENT**

38. Both Origin and Masstock are involved in the supply of fertiliser in England, Scotland and Wales. Origin supplies primarily to wholesalers, merchants, agents on commission and buyer groups, while Masstock operates at the retail level and sells to end-users, that is, farmers.
39. The starting point for the OFT's assessment of the relevant markets were the previous CC and Commission decisions in the fertiliser industry. Third parties consulted by the OFT supported the product markets identified in these cases, including separate markets for straight and complex fertilisers, separate markets for N, P and K fertilisers, and no clear distinction between compound and blended fertilisers. However, in relation to the geographic market, third parties suggested that there was some degree of sub-national competition in relation to the supply of fertiliser, contrary to the conclusions in previous CC and Commission decisions. The OFT took a cautious approach, and considered the possibility of sub-national competition in its competitive assessment. Overall however, similar issues

arose in the competitive assessment irrespective of the various product and geographic markets identified.

40. While the parties considered themselves to operate predominantly at different levels of the supply chain, the OFT found that chains of supply in relation to fertiliser were relatively complex, and that there were a number of different routes to market for fertiliser producers. At least some customers saw Origin and Masstock as alternative suppliers of fertiliser, and the OFT therefore considered whether any competition issues arose at a horizontal level. However, on the basis of the parties' relatively small share of supply at a national level, and the presence of a large number of alternative providers at both a national and sub-national level, the OFT did not consider that there was a realistic prospect that the merger would raise competition concerns at a horizontal level.
41. The OFT did receive some concerns from third parties about the loss of a potential supplier, suggesting that Origin would supply Masstock exclusively, or would supply Masstock on more favourable terms than Masstock's competitors. The OFT found that the parties' current relationship meant that any internalisation of supply would require a substantial realignment of their current demand/supply relationships, which would be particularly difficult given the price sensitive nature of the fertiliser market and the inefficiencies Masstock would experience purchasing solely from Origin. The OFT also found that even if Origin did foreclose supply of fertiliser to Masstock competitors, there were a number of alternative sources of direct and indirect supply available to these competitors. Given these factors, the OFT did not consider that there is a realistic prospect of the merger resulting in competition concerns at a vertical level.
42. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

43. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.

**End note: Origin also submitted that the vast majority of blenders' sales are to merchants**