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ME/6569/15

**PROPOSED ACQUISITION BY CLARIANT OF THE EUROPEAN
AIRCRAFT AND RAIL DE-ICING BUSINESS OF KILFROST**

Response from Clariant to 11 March 2016 Issues Statement

24 March 2016

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On 11 March 2016, the Competition & Markets Authority (“**CMA**”) published an Issues Statement (the “**Issues Statement**”) in relation to the anticipated acquisition by Clariant International AG, Clariant Produkte (Deutschland) GmbH and Clariant Production UK Limited of the European aircraft de-icing fluid (“**ADF**”) business and the rail de-icing fluid (“**RDF**”) business (excluding the former soviet republics other than Russia) of Kilfrost Group plc and its subsidiary, Kilfrost Limited (respectively, “**Clariant**”, “**Kilfrost**” and the “**Transaction**”).

This paper (the “**Issues Response**”) contains Clariant’s comments on the Issues Statement. On 10 March 2016, Clariant provided the CMA with its initial submission (the “**Initial Submission**”) on the Transaction. In this Issues Response, Clariant has taken every opportunity to cross-refer to arguments and evidence in the Initial Submission to avoid duplication and has focused instead on presenting the key reasons for Clariant’s view that the Transaction will not lead to a substantial lessening of competition, where such points are relevant to the Issues Statement.

When assessing the true competitive and commercial context for the Transaction, the CMA is urged to consider the empirical evidence presented by Clariant in the Initial Submission, as referenced below, and presented also at other stages of the CMA’s Phase 1 and Phase 2 reviews of the Transaction. In summary, the evidence suggests credible alternative competition in a tender-based EEA marketplace which sees no barriers to expansion by suppliers from country to country. Any view that the merging parties are uniquely close competitors disregards the commercial reality of a bidding market and supply chain which are, in both cases, demonstrably international.

In further comments below, this Issues Response references the relevant paragraph of the Issues Statement at the beginning of each comment and in the order of the Issues Statement.

Market definition

10 – It is not necessary to supply all types of ADF: We note the CMA has stated that it will consider the strength of the constraint posed by suppliers of one type of ADF only. Clariant’s view is that it is not necessary for a supplier of ADF to supply all three types of ADF in order to be able to operate credibly on the ADF market. Please see paragraph 4.7 of the Initial Submission for further evidence on this point.

11 – The competitive dynamic is on an EEA market: Clariant welcomes the statement that the CMA will assess the boundaries of the applicable geographic market and consider the ability of suppliers active in the EEA to win UK business. Paragraphs 4.8-4.22 of the Initial Submission present extensive evidence as to why suppliers compete for business in tenders on an EEA basis and why only limited infrastructure is needed in a particular country (including the UK). The CMA is urged to consider the true dynamic of geographic competition in this case and, in determining the relevant market, to look beyond the fact that (with Kilfrost) the UK happens to have a long-established domestic supplier.

Counterfactual

13-15 – [REDACTED]

Theory of harm 1 – loss of a supplier of ADF to customers in the UK

17 – There is no evidence for increased prices: With regard to the suggestion that the Transaction could lead to increased prices, the evidence on pricing trends in recent tenders, described at paragraph 11.5 of the

Initial Submission, demonstrates that the general trend of competition in ADF tenders has led to decreased prices. The threat of credible alternative suppliers and the buying power of airlines, airports and ground handling companies mean that the Transaction will not lead to an increase in prices, degradation of service levels or loss of innovation. ADF is a tender-based market with switching a common feature and occurrence, and in the face of this Clariant and its competitors will be forced to continue providing high levels of service at competitive prices and to continue innovating.

18 – The existence of competitive constraints can be demonstrated: As the Issues Statement states, the nature of the competitive relationship and the potential competitive constraint exerted by third-party suppliers are fundamental elements for an assessment of this theory of harm. In Clariant’s view, the existence of demonstrable competition is very much the main point for an assessment of the Transaction. The key aspects of this view are as follows:

- There is compelling evidence of other suppliers who are already present in the UK or likely to bid for UK contracts. Section 5 of the Initial Submission identifies such competitors and describes their marketing focus on the UK.
- At the same time, there is no evidence that Clariant and Kilfrost are uniquely close competitors in the UK. An analysis of UK tender evidence shows a low proportion of tenders in which Clariant and Kilfrost both submitted bids – see paragraph 7.8.2 of the Initial Submission.
- Post-Transaction, there will be actual and potential competitors to challenge Clariant for its market share. Competitors will view the Transaction as an opportunity to compete for contracts and grow their market share and several competitors are already actively marketing in the UK. The competitive effects of the Transaction are assessed at section 11 of the Initial Submission.

Theory of harm 2 – loss of a potential competitor

24 & 26 – Clariant welcomes the indication that the CMA is not minded to investigate theories of harm relating to runway de-icing products or RDF. Clariant does not currently supply RDF and does not currently supply runway de-icing products in the UK.

Countervailing factors

27 – Clariant has the following comments on the various headings under “Entry and expansion”

- **Switching is easy** - There are no technical or practical impediments to switching and switching costs for customers are low. The key requirement for expansion into the UK is to ensure adequate supply chain to allow timely delivery to the destination, but this supply chain need not be in the UK itself, as the example of Clariant demonstrates. These points are addressed at paragraphs 7.12-18 of the Initial Submission.
- **Market entry is easy** – There are no significant regulatory hurdles and the product is unsophisticated in technical terms. Information on entry issues is found at section 9 of the Initial Submission, with certification and approval requirements described at paragraphs 9.11-22.
- **Potential customer expansion** – The above-referenced section on competitor offerings (see comment on paragraph 18 of the Issues Statement) demonstrates the likely expansion of other EEA suppliers. As is explained at paragraph 5.3 of the Initial Submission, the reasons for Abax’s exit

from the UK related to its commercial circumstances and Abax remains a viable potential competitor.