



## **DETERMINATION OF MERGER NOTIFICATION M/07/041 – ORIGIN/ODLUM**

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### **Section 21 of the Competition Act 2002**

### **Proposed acquisition of sole control of the Odlum Group by Origin Enterprises plc**

**Dated 29/08/07**

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### **Introduction**

1. On 31 July 2007, the Competition Authority, in accordance with section 18(1)(a) of the Competition Act, 2002 (the "Act"), was notified on a mandatory basis of the proposed acquisition of sole control of the Odlum Group ("Odlum") by Origin Enterprises plc ("Origin").

### **The proposed transaction**

2. Origin already holds a 50% shareholding in Odlum, which gives it joint control. The proposed transaction involves the acquisition of sole control of Odlum, through Unifood Limited, a wholly-owned subsidiary of Origin, acquiring 100% of the issued share capital of Greentrack Limited ("Greentrack"). Greencore Group plc is the ultimate parent company of Greentrack.

### **The Undertakings Involved**

#### *The Acquirer*

3. Origin, which trades on the IEX Market in Dublin and the AIM Market in London, recently acquired the former agri/nutrition and ambient food businesses of IAWS (which is a 70% shareholder in Origin). These consist of agricultural inputs, marine proteins and food products (including the brands Shamrock and Roma). Origin does not manufacture any food products itself and has no food manufacturing facility in Ireland or elsewhere. Origin does not have a set of audited accounts, but its admission document for AIM/IEX shows a 12-month turnover of €816.871 million to 31 July 2006.
4. IAWS is an international food and agribusiness group, with lifestyle food operations in Ireland, the UK, France, the US and Canada, servicing over 50,000 customers. The lifestyle food business focuses on niche high quality growth segments of the bakery and convenience food markets.

#### *The Target*

5. Odlum is a private unlimited company. It mills, sells and distributes flour and oatmeal, as well as other products such as oat bars, bread and cake mixes and health products, primarily on the island of Ireland. It also has specialised export oatmeal sales. As mentioned in paragraph 2, Odlum is currently owned and jointly controlled by Greencore Group plc and Origin.

In the financial year ended 29 September 2006, Odlum had a turnover of €75.937 million, of which €65.981 million was generated in the State.

## **Analysis**

### *Horizontal Overlaps*

6. Both Origin (through its Shamrock-branded flour) and Odlum (through its Odlum-branded flour) sell packaged flour to retailers
7. Both Odlum (through the Odlum brand) and Origin (through its Shamrock brand), sell packaged readymade mixes, e.g. for breads and cakes, to retailers.

### *Vertical Aspects*

8. There are various areas where the parties operate on different levels of the supply chain (and also have a vertical relationship):
  - Odlum pre-packs and supplies Shamrock with all of its packaged flour;
  - Cuisine de France Limited, a wholly-owned subsidiary of IAWS, purchases approximately [ ]% of its bulk flour requirement from Odlum. Cuisine de France is an Irish manufacturer of French breads;
  - Origin's wholly-owned subsidiary, R&H Hall, sells approximately 50,000 tonnes of grain to Odlum (out of a total of approximately 220,000 tonnes purchased by Odlum per annum). R&H Hall is an importer and supplier of a range of animal feed ingredients and grains, including milling wheat; and
  - R&H Hall also rents out storage facilities to Odlum at Dublin and Cork Ports.

### *Competitive Effects – Horizontal Overlaps*

9. In relation to the first area of horizontal overlap (the sale of packaged flour to retailers), the parties were unable to provide the Authority with estimates of their sectoral shares. Odlum's revenue from sales of its packaged flour in the last financial year was €[ ] million and it is clear from the Authority's investigation that Odlum is the leader in this sector in the State. However, Shamrock's sales of packaged flour in the last financial year only amounted to €2.7 million.
10. As part of the Authority's investigation, the major packaged flour customers of the parties were contacted. None of these customers expressed concerns in relation to the merger. It was also apparent from the Authority's investigation that many major retailers and retail chains sell own-brand flour (which can be sourced from the UK) in addition to branded flour (other brands include Allinson, Flahavan's, McDougall's and Miller's Harvest), thus providing choice to consumers and a competitive constraint to the parties' packaged flour products.
11. Moreover, the joint control currently held by Origin in Odlum, along with the existing close business ties between these parties, appears to indicate

that conditions of competition will not be greatly altered by the proposed transaction.

12. Given the reaction of the parties' packaged flour customers, the own label and branded alternatives available to consumers and the existing relationship between the parties, the Authority considers that the proposed transaction does not raise competition concerns in relation to the sale of packaged flour to retailers in the State.
13. In relation to the second area of horizontal overlap (the sale to retailers of readymade mixes, e.g. for cakes and breads), this overlap is minimal as Shamrock only sells €[ ] worth of such products, compared to a corresponding figure for Odlum of €[ ] million.
14. In the course of the investigation, customers did not express concerns to the Authority in relation to this area of overlap. In addition, there are several competing brands, such as Betty Crocker, Greens, Wrights, Jane Asher and McDougall's, as well as some own-brand products.
15. Given the limited nature of the overlap, the reaction of the parties' customers, the alternatives available to consumers and the existing relationship between the parties, the Authority considers that the proposed transaction does not raise competition concerns in relation to the sale of packaged readymade mixes e.g. for breads and cakes, to retailers in the State.

#### *Competitive Effects – Vertical Aspects*

16. As well as competing horizontally in relation to packaged flour and readymade mixes, the parties also operate at different levels of the supply chain and therefore the vertical aspects of the proposed transaction must also be analysed.
17. Although less problematic than horizontal mergers, vertical mergers may significantly lessen competition through both non co-ordinated effects and co-ordinated effects. In this case, the Authority does not have any concerns regarding co-ordinated effects. The analysis below therefore only considers non co-ordinated effects.
18. In analysing the non-horizontal effects of a merger, the key question is whether or not either of the undertakings involved has market power in any of the vertically related markets in which they operate. Such market power is necessary but is not in itself a sufficient "pre-requisite for competitive harm from foreclosure."<sup>1</sup>
19. An anticompetitive effect of the transaction is only present if the merged entity has the ability and incentive to foreclose a product/service from its competitors and if this results in demonstrable harm to consumers. Two separate types of foreclosure are examined below: input foreclosure and customer foreclosure.<sup>2</sup> Input foreclosure occurs where the integrated firm has market power in the upstream market and the merger is likely to raise the costs of downstream rivals by restricting their access to an important

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<sup>1</sup> Economic Advisory Group for Competition Policy, 2006, *Non-Horizontal Mergers Guidelines: Ten Principles*, Brussels: the Commission, p.4. This may be accessed at [www.ec.europa.eu/dgs/competition/eaqcp.htm](http://www.ec.europa.eu/dgs/competition/eaqcp.htm).

<sup>2</sup> The conditions for input and customer foreclosure were discussed at length in the Authority's recent Determination in relation to M/07/012 - Bord na Mona/AES.

input. Customer foreclosure occurs where the integrated firm is an important customer in the downstream market and the merger is likely to foreclose upstream rivals by restricting their access to a sufficient customer base.

20. In relation to the first vertical aspect listed at paragraph 8 above, the fact that Odlum already provides Shamrock with all of its packaged flour means that this vertical aspect will not raise additional competition concerns as a result of the proposed transaction.
21. In relation to the second vertical aspect listed, as Cuisine de France sources [ ]% of its flour from millers outside of the State, this lessens any risk of input or customer foreclosure. Therefore, this aspect will not raise competition concerns as a result of the proposed transaction.
22. In relation to the third vertical aspect, Odlum currently purchases approximately 23% of its milling grain requirements from R&H Hall, 20% from other Irish suppliers and the remainder directly from sources abroad. The Authority does not consider there to be a risk of input foreclosure as it is possible for purchasers to obtain grain from other suppliers in the State or elsewhere. The Authority also does not consider there to be a risk of customer foreclosure as, should Odlum shift more of its purchases to R&H Hall, the suppliers mostly affected would be outside the State. In addition, the Irish grain trading companies (many of whom also trade in products other than milling wheat) that were contacted by the Authority did not indicate any concerns in relation to the proposed acquisition.
23. In relation to the fourth vertical aspect, the Authority does not consider there to be a risk of input foreclosure due to the existence of other storage suppliers. Origin has indicated to the Authority that it considers R&H Hall's share of the grain storage sector to be approximately [ ]%. Furthermore the Authority also does not consider that there is a risk of customer foreclosure as there are many additional customers who will continue to require storage facilities post-merger.
24. In summary, for the areas of horizontal overlap identified in paragraph 8, the Authority considers that the proposed transaction does not raise competition concerns given the limited nature of the overlap, the reaction of the parties' customers, the alternatives available to consumers and the existing relationship between the parties: For the areas of vertical overlap identified in paragraph 8 the Authority concludes that the merged entity has neither the incentive nor ability to foreclose in any of the instances considered. The Authority therefore considers that the proposed transaction does not raise competition concerns in the State.<sup>3</sup>

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<sup>3</sup> The Authority did not consider it necessary to define either product or geographic markets in relation to any of the overlaps identified, as the proposed transaction does not raise competition concerns in relation to any of the areas of overlap.

**Determination**

The Competition Authority, in accordance with section 21(2)(a) of the Act, has determined that, in its opinion, the result of the proposed acquisition of the Odlum Group by Origin Enterprises plc will not be to substantially lessen competition in markets for goods or services in the State and, accordingly, that the acquisition may be put into effect.

**For the Competition Authority**

Dr. Paul K. Gorecki

Member of the Competition Authority