

**COMPLETED ACQUISITION BY NUFARM CROP PRODUCTS UK LIMITED OF  
AH MARKS HOLDINGS LIMITED**

**Directions issued pursuant to paragraph 6 of the Undertakings given by  
Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited  
and adopted by the Competition Commission on 2 September 2008**

To preserve the possibility of restoring effective competition in the markets affected by the acquisition by Nufarm Crop Products UK Limited of AH Marks Holdings Limited through the separation of the Nufarm Crop Products UK Limited business and the AH Marks Holdings Limited business as viable, marketable and competitive businesses;

To ascertain precisely the degree of integration which has occurred to date between Nufarm Crop Products UK Limited and AH Marks Holdings Limited, the current and proposed arrangements for managing the two businesses, and to ascertain what changes to those arrangements, if any, are necessary; to supervise the establishment of mechanisms for ensuring compliance with the Undertakings; to monitor compliance by Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited, as appropriate, with the Undertakings; and so far as possible, to ensure their full and effective compliance;

The CC now issues written directions under paragraph 6 of the Undertakings that, for the purpose of securing compliance with the Undertakings, Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited shall appoint a Monitoring Trustee in accordance with the terms provided for in the Annex and Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited shall comply with the obligations set out in the Annex.

*(signed)* PETER FREEMAN  
Group Chair  
19 September 2008

## ANNEX

1. In order to ascertain precisely the degree of integration which has occurred to date between Nufarm Crop Products UK Limited of AH Marks Holdings Limited, to supervise the establishment of mechanisms for ensuring compliance with the Undertakings, to monitor compliance by Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited, as appropriate, with the Undertakings; and, so far as possible, to ensure their full and effective compliance, Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited shall appoint a Monitoring Trustee (MT). The functions of the MT shall be as set out below. The MT shall act on behalf of the CC and shall be under an obligation to the CC to carry out his functions to the best of his abilities.
2. Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited shall cooperate fully with the MT, in particular as set out below. Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited shall ensure that the terms and conditions of appointment of the MT shall reflect and give effect to the functions and obligations of the MT, Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited as set out in this document.

### General

3. The MT shall possess appropriate qualifications and experience to carry out his functions.
4. The MT shall neither be nor become exposed to a conflict of interest.
5. The MT shall be remunerated and reimbursed by Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited for all reasonable costs properly incurred in accordance with the terms and conditions of his appointment. This shall be done in such a way that does not impede his independence or his ability to effectively carry out his functions.
6. The MT shall be appointed by Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited as soon as is reasonably practicable and in any event by 5pm on Friday 26 September 2008 and shall continue to act until the CC has finally determined the reference (within the meaning of section 79 of the Enterprise Act 2002).
7. The appointment of an MT by Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited shall be subject to the approval of the CC as to the identity of the MT and his terms and conditions of appointment in their entirety (ie the CC shall have the right of veto). To this end, Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited shall inform the CC as soon as is reasonably practicable and in any event by 5pm on Tuesday 23 September 2008 of the identity of the MT that Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited propose to appoint and provide the CC with draft terms and conditions of appointment and once appointed, Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited shall provide the CC with a copy of the agreed terms and conditions of appointment.

### Primary Functions

8. The Primary Functions of the MT shall be (i) to ascertain precisely the degree of integration which has occurred to date between Nufarm Crop Products UK and

AH Marks Holdings Limited, the current and proposed arrangements for managing the two businesses, and what changes to those arrangements, if any, are necessary to preserve the possibility of the CC taking any remedial action, if required; (ii) to supervise the establishment of mechanisms for ensuring compliance with the Undertakings; (iii) to monitor compliance by Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited, as appropriate with the Undertakings; and (iv) so far as possible, ensure the full and effective compliance of Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited with the Undertakings during his term of appointment.

9. The MT shall take such steps as he reasonably considers necessary in order for him to effectively carry out his Primary Functions. Those steps may include, but shall not be limited to, the monitoring of communications within the merged business of Nufarm Crop Products UK Limited and AH Marks Holdings Limited, including written and electronic communications, telephone conversations and attending meetings
10. The MT shall comply with any requests made by the CC for the purpose of ensuring the full and effective compliance by Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited with the Undertakings.

### **Obligations of Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited**

11. Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited and their employees, officers, directors, advisers and consultants, shall cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his Primary Functions, including but not limited to:
  - (a) the provision of such facilities as an office equipped with a workstation, telephone, fax machine and computer with Internet access at any and all premises of the merged Nufarm Crop Products UK Limited and AH Marks Holdings Limited business as the MT may reasonably require; and
  - (b) the provision of full and complete access to all personnel, books, records, documents, facilities and information of the merged Nufarm Crop Products UK Limited and AH Marks Holdings Limited business as the MT may reasonably require access to.
12. If any of Nufarm Limited, Nufarm UK Limited or Nufarm Crop Products UK Limited is in any doubt as to whether any action or communication would infringe the Undertakings, they should contact the MT for clarification.
13. If any of Nufarm Limited, Nufarm UK Limited or Nufarm Crop Products UK Limited has any reason to suspect that the Undertakings might have been breached, they should notify the MT and the CC immediately.

### **Reporting functions**

14. Ten working days following the date of his appointment the MT is required to provide a report to the CC. This report should set out, in detail, the degree of integration which has occurred between Nufarm Crop Products UK Limited and AH Marks Holdings Limited, the current and proposed arrangements for managing the two businesses, and recommend what changes to those arrangements, if any, are necessary. This report should provide detailed information as to the mechanisms

which have been or should be put in place to ensure compliance with the Undertakings.

15. Following provision of the report referred to in paragraph 14 above, the MT shall provide every fortnight thereafter to the CC a statement certifying whether or not, in his view, Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited have complied with the Undertakings. At the same time, the MT shall provide the CC with a report setting out his views in relation to the following:
  - (a) The basis for the MT's view that the Undertakings have, or have not as the case may be, been complied with. In particular, the MT should set out and explain whether: (i) anything has caused him to be concerned as to whether Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited have complied with the Undertakings, and if it has, why he was satisfied of compliance; (ii) he has any remaining doubts or uncertainties as to whether Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited have complied with the Undertakings; and (iii) anything causes him to be concerned about a possible future breach of the Undertakings (whether deliberate or inadvertent).
  - (b) The extent and nature of any communication that has taken place between the merger parties since the last report.
  - (c) The performance of the AH Marks Holdings Limited business, including any factors that might indicate asset deterioration (eg losing important personnel or important contracts).
  - (d) Whether appropriate steps are being taken to maintain the AH Marks Holdings Limited business as a going concern.
  - (e) Any current or anticipate requests for consent to vary the Undertakings.
  - (f) The extent to which the MT considers that he is in a good position to monitor the compliance with the Undertakings of Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited.
  - (g) The extent to which Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited have cooperated with the MT in his task of monitoring their compliance with the Undertakings. The MT should provide details of any aspects of the cooperation of Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited that he considers could be improved.
  - (h) The extent to which the MT considers that he is in a good position to monitor the compliance of Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited with the Undertakings. The MT should set out and explain if there is anything that he considers would assist him in monitoring the compliance of Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited.
  - (i) The information used to compile the report, including discussions that have been held by the MT, any sites visits and participation in meetings with customers.
16. When providing his reports to the CC the MT must ensure that he does not disclose any information or documents to the CC which Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited would be entitled to withhold from the CC on the grounds of legal privilege.

17. The MT should notify the CC immediately if he forms a reasonable suspicion that the Undertakings have been breached, or if he considers that he is not in a position to effectively carry out his Primary Functions. In that situation, the MT should set out the reasons for his view and attach any relevant supporting evidence available to him (unless doing so would infringe his obligations referred to in paragraph 16 above).
18. All communications between the MT and the CC (including the statements and reports referred to in paragraph 17) shall be confidential and should not be disclosed to Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited, save with the express written permission of the CC. In relation to the possibility of disclosure of such communications to third parties, the CC shall act in accordance with the provisions of Part 9 of the Enterprise Act 2002. The MT shall not disclose such communications to third parties.

## **Interpretation**

19. In these directions references to 'the Undertakings' are references to the Undertakings given by Nufarm Limited, Nufarm UK Limited and Nufarm Crop Products UK Limited and adopted by the CC on 2 September 2008. Terms and expressions defined in the Undertakings shall have the same meaning in these directions, unless the contents requires otherwise.
20. To the extent that the Undertakings are addressed to a person's conduct outside the UK, it shall only apply to the extent that that person is carrying on business in the UK.