Completed acquisition by Motor Fuel Limited of 228 petrol stations and other assets from Murco Petroleum Limited

ME/6471-14

Please note that [✄] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. Motor Fuel Limited (**MFL**) is part of the Motor Fuel Group group of companies (**MFG**), which owns petrol stations that supply petrol, diesel and auto-LPG,[1] and retail items through convenience stores located on the forecourt. MFG, including MFL, is ultimately owned by Patron Capital L.P. IV (**Patron**) through Patron's interest in Scimitar Top Co Limited (**Scimitar**), which is MFG's ultimate UK parent company. Scimitar owns 60 petrol stations (**the MFG Sites**) in the UK via a number of wholly owned subsidiaries, which together comprise MFG, one of which is MFL.

2. Murco Petroleum Limited (**Murco**) is an indirectly wholly-owned subsidiary of the Murphy Oil Corporation, a US oil and gas exploration and production company. In the UK, Murco operates refining, distribution and marketing operations and, prior to the transaction, owned 228 petrol stations that supply petrol, diesel and auto-LPG, and retail items through convenience stores located on the forecourt.

3. In the acquisition, which completed on 30 September 2014, MFL purchased from Murco its 228 petrol stations located across the UK (**the Murco Sites**),[2] and 226 road fuel supply contracts in relation to independent petrol stations not owned by Murco (**the Target Business**).

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[1] Liquid Petroleum Gas.
[2] Including all fixed plant, loose plant, equipment and goodwill associated with each property.

4. MFG and the Target Business (**the Merging Businesses**) overlap in the supply of a number of retail services through the petrol stations they own: the retail supply of road fuel (petrol and diesel), auto-LPG, and grocery retailing.

5. As regards the retail supply of auto-LPG, the CMA considered this to be a separate market from the retail supply of road fuel and assessed the effect of the merger both nationally and at a local level, following the approach taken in Shell/Rontec (2012)[3] by the Office of Fair Trading (**OFT**).[4] No competition concerns were found nationally and no local overlaps were identified by this approach (measured in drive-time isochrones). Therefore, the CMA found no realistic prospect of a substantial lessening of competition in the retail supply of auto-LPG at a national or local level.

6. As regards grocery retailing, the CMA assessed the effect of the merger both nationally and at a local level, in line with previous OFT and Competition Commission decisions, in relation to the supply of groceries, taking into account the asymmetric nature of the competitive constraints exercised by grocery stores of different sizes. No competition concerns were found either nationally or in any of the localities where the Merging Businesses' activities overlap as identified by this approach (measured in drive-time isochrones), and the CMA therefore found no realistic prospect of a substantial lessening of competition in the retail supply of groceries at a national or local level.

7. As regards the retail supply of road fuel, in line with previous cases considered by the OFT[5] the CMA assessed the effect of the merger on the market for the off-motorway retail supply of road fuel both nationally and at a local level. At the local level, the CMA used drive-time isochrones of 10 minutes (for urban areas) and 20 minutes (for rural areas) to delineate the geographic scope.

8. On the evidence available to it, the CMA found that the merger gives rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to the retail supply of road fuel in Hythe, Kent.

9. The CMA also examined potential vertical effects arising from MFG's presence post-merger both in the wholesale supply of road fuel to petrol

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[3] Completed acquisition by Shell UK Limited of 253 petrol stations from Consortium Rontec Investments LLP ME/5191/11, OFT decision of 3 February 2012.
[4] By virtue of the Enterprise and Regulatory Reform Act 2013 and the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional Provisions and Savings) Order, No 416 of 2014, the OFT's and the Competition Commission's merger control functions were transferred to the CMA on 1 April 2014.
[5] For example, see Completed acquisition by Rontec Investments LLP of petrol forecourts, stores and other assets from Total Downstream UK plc, Total UK Limited and their affiliates (Rontec/Total), ME/5139/11, OFT decision of 20 October 2011.

stations (upstream), as a result of MFL’s acquisition of Murco’s 226 road fuel supply contracts to independent petrol stations, and in the retail supply of road fuel to motorists (downstream), by virtue of being an owner of petrol stations. The CMA found that that there is no realistic prospect of a substantial lessening of competition arising through vertical input foreclosure post-merger. In particular, the CMA considers that MFG either has no ability to foreclose or where some ability may exist in relation to the current contracts, MFG’s incentives to foreclose post-merger are weak.

10. The CMA considered whether entry or expansion of existing firms could mitigate the effect of the acquisition on competition but did not find that entry was sufficiently likely in the local Hythe area to offset the substantial lessening of competition.

11. Consequently, the CMA believes 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 and the CMA therefore intends to make a merger reference in respect of this merger (for a full merger investigation) under sections 22(1) and 34ZA(2) of the Enterprise Act 2002 (**the Act**). However, instead of making such a reference, under section 73 of the Act the CMA is able to accept undertakings from merger parties to take such action as the CMA considers appropriate for the purpose of remedying, mitigating or preventing the substantial lessening of competition. MFL has until 31 December 2014 to offer an undertaking to the CMA that might be accepted by the CMA in lieu of making a reference. If no such undertaking is offered, the CMA will refer the merger.

ASSESSMENT

Parties

12. The purchaser of the Target Business is St Albans Operating Company Limited (**SAOCL**), a newly established wholly owned subsidiary of MFL, which is part of MFG and which is ultimately owned and controlled by Patron.[6] Patron owns an [✂] equity share in the ultimate UK parent company of MFG, Scimitar. The remaining [✂] of the shares in Scimitar are owned by non-controlling management and investors.

[6] Patron already owns the freehold to 53 of the Murco Sites via its subsidiary Scorpion PFS 1 Limited.

13. Scimitar owns 60 petrol stations in the UK via a number of wholly owned subsidiaries, including MFL (the MFG Sites).[7]

14. The parties said that the MFG Sites are run under a ‘commission operator’ model whereby MFG appoints a commission operator to have day-to-day responsibility for operating the pumps and running the shop, including hiring the staff and buying and selling the groceries while MFG sets the fuel price. The MFG Sites operate under the BP, Jet, and Total brands.

15. Murco is an indirectly wholly owned subsidiary of the Murphy Oil Corporation, a US oil and gas exploration and production company. In the UK, Murco operates refining, distribution and marketing operations and, prior to the transaction, owned 228 petrol stations.

16. The Target Business which MFL has purchased from Murco includes:

- 228 petrol stations located across the UK (the Murco Sites),[8] and
- 226 road fuel supply contracts in relation to independent dealers.

In the year ending 31 December 2013, the UK turnover of the Target Business was [over £70 million].

Transaction

17. The merger was completed on 30 September 2014. MFL purchased the Target Business from Murco for a consideration of [✂] plus the estimated working capital and inventory amounts.

Jurisdiction

18. As a result of the merger MFL and the Target Business have ceased to be distinct within the meaning of section 23(1) of the Act. The turnover of the Target Business in the UK is over £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

19. The Merger Notice submitted to the CMA by MFL and Murco (together referred to in this decision as **the Parties**) in respect of this completed acquisition was accepted, under section 96(2A) of the Act, as being

[7] 45 sites are owned by MFL, six by Goldstar Fuels LLP, four by Fuel Stop (UK) Limited, four by Highway Stops Limited and one by Gold Star FSL LLP. Together these companies comprise MFG.
[8] Including all fixed plant, loose plant, equipment and goodwill associated with each property.

satisfactory on 27 October 2014.[9] Therefore, the statutory deadline under section 34ZA of the Act for the CMA to announce its decision on whether to make a merger reference is 22 December 2014.

Counterfactual

20. The CMA considers the effect of a merger by comparing the likely situation post-merger compared to the most competitive counterfactual, providing always that it considers that counterfactual to be a realistic prospect. In practice, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the effect of a merger unless it has good reason to adopt a different counterfactual.[10]

21. The CMA did not receive any evidence to suggest that the counterfactual against which to assess the impact of the merger in the present case should be anything other than the pre-merger competitive situation.

Frame of reference

Introduction

22. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of a market do not determine the outcome of the competitive effects analysis of a merger in any mechanistic way as there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[11]

23. The CMA's approach to market definition is to begin with the overlapping products of the Parties in the narrowest plausible candidate product market and then to assess whether this can be widened on the basis of demand-side substitution and supply-side substitution, where appropriate.[12]

24. The merger in the present case has potential 'horizontal' effects on competition as the Merging Businesses have overlapping activities in the retail supply of services that are available from the petrol stations they own. These services include:

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[9] The CMA sent a Notice under Section 96(2A) of the Enterprise Act 2002 to MFG on 27 October 2014.
[10] See Merger Assessment Guidelines, paragraphs 4.3.5.
[11] Merger Assessment Guidelines, paragraph 5.2.2.
[12] See section 5.2 of the Merger Assessment Guidelines.

- the retail supply of road fuel (including both petrol and diesel);
- the retail supply of auto-LPG; and
- the retail supply of groceries.

25. Petrol stations are typically owned and operated on the basis of the following models:

    - Owned and operated by oil companies ('COCO').[13]
    - Owned by an oil company that supplies the road fuel but operated by an independent third party ('CODO').[14] Under this agreement the third party manages daily operations, but the oil company takes fuel pricing decisions.
    - Owned and operated by independent third parties ('DODO').[15] Under this agreement, the third party typically uses the brand of the oil company but takes the fuel pricing decisions.

26. MFG said that, due to these different models, the branding of a site will not always reflect the ownership structure, and petrol stations with the same branding may be competing against each other.

Pricing

27. MFG told us that both MFG and Murco operate a 'commission operator' model [✂].[16] [✂]. [✂]. MFG told us that it has exclusive road fuel supply contracts with [✂] and its petrol stations are branded to reflect these contracts. MFG said that Murco petrol stations are branded under the Murco brand as Murco supplies the fuel to its sites.[17]

28. MFG told us that it regularly collects and assesses data in order to set the retail fuel prices at each of its sites. This data comes from:

    - MFG's daily [✂];
    - 'marker' site [✂];

[13] Company Owned, Company Operated.
[14] Company Owned, Dealer Operated.
[15] Dealer Owned, Dealer Operated.
[16] The MFG sites are dealer-owned (because MFG is not an oil company) and dealer operated ('DODOs'). Murco's sites, prior to the merger, were COCOs as Murco is active in the production of road fuel in the UK through the Milford Haven Refinery and the contract manager was self-employed.
[17] All the Murco Sites and the third party sites supplied by Murco are operated under the Murco brand.

- wholesale market[✂], and
- [✂].

29. [✂]. [✂]. Typically, MFG selects as 'price markers' [✂] as the 'primary marker'. MFG submitted that [✂].

30. MFG told us that the identity of its price markers for each of its sites [✂].[18]

Retail supply of road fuel – product scope

31. The CMA notes that the OFT has considered the retail supply of road fuel in two recent cases,[19] including considering the segmentation between motorway sites and off-motorway sites.[20]

32. MFG submitted that, in line with previous OFT decisions,[21] the relevant product market is the retail supply of road fuel to motorists and that no further segmentation between different types of petrol and diesel is required.[22] MFG said that a market segmentation between petrol stations located on a motorway and those not located on a motorway was not relevant in the UK market as the UK has no toll system motorways, which limit choice for consumers.

33. The CMA notes that the MFG Sites and the Murco Sites are all off-motorway petrol stations. However, the CMA recognises that, in some areas, motorway sites may provide some competitive constraint (although competitive constraints are likely to be asymmetric with off-motorway sites constraining motorway sites more than the other way round). In line with previous cases, the CMA has not found it necessary to conclude whether motorway sites and off-motorway sites should be treated as being in separate markets but, on a cautious basis, has assessed the merger initially in relation to the retail supply of road fuel at off-motorway sites. The CMA has then considered the competitive constraint imposed by motorway sites in the competitive assessment of each site where competition concerns might arise, as appropriate.

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[18] MFG submitted that the price markers [✂].
[19] Rontec/Total (2011) and Shell/Rontec (2012).
[20] See Shell/Rontec (2012), paragraph 29. 'In this case the OFT has not needed to conclude on whether a separate market exists for the retail supply of road fuel at motorway sites, but has considered this segmentation in the competitive assessment as it relates to local overlaps and the appropriate set of competing sites to be considered for motorway sites'.
[21] For example, ME/5191/11 Shell/Rontec.
[22] MFG submitted that there is supply-side substitution as the distribution of petrol and diesel takes place at petrol service stations. However, MFG acknowledged that there is no demand-side substitutability between petrol (leaded and unleaded) and diesel.

Retail supply of road fuel – geographic scope

34. MFG submitted that the retail market for road fuel is likely to be national in scope, but, in line with previous OFT decisions,[23] considered the effect of the merger also on the basis of local areas. In line with the analysis carried out in previous OFT decisions, MFG used a 10-minute drive-time isochrone in urban areas, and a 20-minute drive-time isochrone in rural areas as proxies for the potential geographic scope of the local markets.

35. The CMA agrees with this approach and has assessed the effect of the merger in the market for the retail supply of road fuel (off-motorways) on both a national and local level, using 10-minute and 20-minute drive-time isochrones to delineate the geographic scope at the local level (for urban and rural areas respectively).

Retail supply of auto-LPG – product scope

36. MFG submitted that auto-LPG is in a separate product market from the supply of other road fuels.[24]

37. The CMA did not receive any evidence otherwise. Therefore, and in line with previous OFT decisions,[25] the CMA considered that the retail supply of auto-LPG constitutes a separate product frame of reference from the retail supply of road fuel (petrol and diesel).

Retail supply of auto-LPG – geographic scope

38. In Shell/Rontec (2012) the OFT carried out an overlap analysis using 10, 20, 30 and 40-minute drive-time isochrones. It noted that the broad consensus among third parties was that a 20-minute isochrone was the most appropriate.

39. The Parties analysed the geographic market for the retail supply of auto-LPG both nationally and at the local level.

40. To identify overlaps between the Merging Businesses, the Parties defined the geographic scope of local markets using the most conservative isochrones applied in Shell/Rontec*,* ie 40-minute drive-time isochrones.

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[23] For example, ME/5191/11 Shell/Rontec, ME/5139/11 Rontec/Total.
[24] The Parties submitted that: (i) auto-LPG has a miles-per-gallon ratio of 20% or less and it is approximately 50% cheaper than other road fuels; (ii) specialist equipment (including pressurised storage facilities and dedicated pumps) is required to be installed to supply auto-LPG from petrol stations; (iii) vehicles need to be specially adapted to use auto-LPG; and (iv) the primary use of auto-LPG is as a heating product and, as a result, its price varies during the year, peaking during the winter months.
[25] See ME/5191/11 Shell/Rontec.

41. The CMA has assessed the effect of the merger in the market for the retail supply of auto-LPG nationally and at the local level. On a cautious basis and, taking into account the precedents, the CMA has analysed local markets on the basis of 30 and 40-minute drive-time isochrones.[26] However, since no competition concerns have been found in any of the drive-time isochrones on this basis, the CMA has not needed to conclude on the geographic boundaries of local markets for the retail supply of LPG.

Retail supply of groceries – product scope

42. The Parties submitted that all of the MFG Sites and the Murco Sites have an on-site shop, with the size of these shops varying from site to site. The Parties said that, in previous cases, the OFT and the Competition Commission had classified grocery stores according to their size and had determined that competitive constraints faced by such stores are asymmetric as follows:

- One-stop stores, ie those with a net sales area of more than 1,400 square metres, are competitively constrained only by other one-stop stores.
- Mid-sized stores, ie those with a net sales area of less than 1,400 square metres but more than 280 square metres, are competitively constrained by other mid-sized stores and by one-stop stores.
- Convenience stores, ie those with a net sales area of less than 280 square metres, are competitively constrained by other convenience stores, by mid-sized stores and by one-stop stores.

43. The Parties told us that all stores on the MFG Sites and the Murco Sites have a net sales area below 280 square metres. Accordingly, on the basis of the above classification, the Merging Businesses' stores can be classified as convenience stores, competitively constrained by one-stop stores, mid-sized stores and other convenience stores.

44. A third party agreed with the Parties that petrol stations' on-site shops face competition from a wide range of shops (eg mid-range stores, one-stop stores, convenience stores and independent grocery stores).[27]

45. The CMA did not receive any evidence to suggest a contrary view and therefore, in line with previous OFT and Competition Commission decisions,

[26] The Merging Businesses do not overlap within 10 and 20-minute drive-time isochrones.
[27] A competing grocery retailer submitted that limited assorted discounters (such as Lidl), newsagents and/or off licences exert a limited constraint on on-site petrol station shops.

assessed the merger in relation to the supply of groceries taking into account the asymmetric constraints exercised by stores of different sizes.

Retail supply of groceries – geographic scope

46. The CMA noted that previous OFT decisions on grocery stores adjacent to petrol stations[28] defined the same geographic market as in the grocery market. Previous OFT decisions, and the Competition Commission's Groceries Report,[29] identified that the relevant geographic scope is essentially local but that a national dimension of competition also exists. The OFT has defined the geographic scope at the local level as follows:

- for one-stop stores: a 10-minute drive-time in urban areas and a 15-minute drive-time in rural areas;
- for mid-sized stores: a 5-minute drive-time in urban areas and a 10-minute drive-time in rural areas. These stores are also constrained by one-stop stores within a 10-minute drive-time in urban areas or a 15-minute drive-time in rural areas; and
- for convenience stores: a 5-minute drive-time and a one-mile radius in all areas. These stores are constrained by one-stop stores within a 10-minute drive-time in urban areas or a 15-minute drive-time in rural areas and by mid-sized stores within a 5-minute drive-time in urban areas or a 10-minute drive-time in rural areas.

47. In Tesco/Alfred Jones (2013),[30] the OFT said that, in line with some previous cases, a one mile isochrone was used for convenience stores[31] rather than the 5-minute drive-time because there was evidence that such a measure was appropriate in that case.

48. In line with these various precedents, the Parties considered the market for the retail supply of groceries both nationally and at the local level. They proposed to identify local overlaps areas based on:

- all convenience stores and petrol station kiosks within one mile; and
- all convenience stores and petrol station kiosks within a 5-minute drive-time.

[28] See, for example, Rontec/Total (2012)
[29] The supply of groceries in the UK market investigation, 30 April 2008
[30] ME/6131/13 - Anticipated acquisition by One Stop Stores Limited of 33 stores from Alfred Jones (Warrington) Limited, trading as Spar (2013).
[31] See for example CGL/Somerfield and CGL/David Sands.

49. The CMA noted that a one-mile measure may be more appropriate for convenience stores to which consumers tend to travel by foot, rather than to on-site petrol station stores which are more likely to be mainly used by motorists. The CMA also noted that, in this case, it had not received any evidence that a radius of one mile was an appropriate geographic market, and therefore it did not use this filter in its overlap analysis.

50. Therefore, the CMA has considered the effect of the merger in the market for the retail supply of groceries both nationally and at the local level using 5-minute drive-time isochrones.

Wholesale supply of road fuel – product scope

51. The Parties submitted, in line with the Competition Commission's decision in DCC Energy UK Limited/Rontec Investments Limited (2012), that there is a single product market for the wholesale distribution of transport and heating road fuels.

52. The CMA did not receive any evidence suggesting a contrary view. Therefore, the CMA has assessed the merger in relation to this market.

Wholesale supply of road fuel – geographic scope

53. In DCC/Rontec the Competition Commission decided that the distribution of transport and heating road fuels in Great Britain was the relevant market within which to assess competitive effects and that wholesale suppliers competed on a national, regional or local basis depending on the location of their distribution network.

54. In line with this decision, the Parties submitted that there is a single market for the distribution of transport and heating road fuels in Great Britain and that wholesale contracts are generally negotiated at a national (or regional) level with pricing based on the volume of road fuel purchased.

55. However the Parties also submitted that some independent petrol stations might have a more limited choice of suppliers because the wholesale supply of road fuels by a supplier was dependent, to some extent, on the location of a nearby road fuel refinery or terminal. They also submitted that some oil companies have minimum volume requirements for a delivery and some require a site to have minimum opening hours.

56. The CMA noted that competition in the wholesale supply of road fuels takes place at the national level and may also take place at the regional or local

level. However since no competition concerns were found in this market, the CMA has not needed to conclude on the geographic scope of this market.

Competitive assessment

57. Theories of harm are hypothesised by the CMA to provide a framework for assessing the effects of a merger and for considering whether or not the merger might lead to a substantial lessening of competition.[32]

58. In the present case the CMA considered four theories of harm:

(a) Unilateral effects in the retail supply of road fuel (petrol and diesel) at off-motorway petrol stations.

(b) Unilateral effects in the retail supply of auto-LPG.

(c) Unilateral effects in the retail supply of groceries.

(d) Vertical effects in the wholesale supply of road fuel to petrol stations.

Each of these concerns is addressed in turn below.

Horizontal unilateral effects in the retail supply of road fuel (petrol and diesel)

59. MFG and the Target Business overlap in the retail supply of road fuel at off-motorway sites in the UK.

60. The CMA assessed, both nationally and locally, whether the merger could give rise to a realistic prospect of a substantial lessening of competition, resulting in either the merged entity having the ability profitably to increase the retail price of road fuel, or the worsening of non-price factors of competition (such as reduced service quality) following the removal of a significant competitive constraint, or both.

National level

61. The Parties submitted that their combined national share of supply of road fuel would be around [0 to 10]% by number of sites and around [0 to 10]% by sales volumes.[33] They explained that their share of supply by volume was lower than their share of supply by number of sites as they typically had

[32] See Merger Assessment Guidelines, Section 4.2.
[33] The Parties said that these estimates do not include the 226 dealer contracts as, although operated under the Murco brand, these sites are owned and controlled by independent third parties. If Murco's dealer sites were included, the combined share of supply of the Parties would be about [0 to 10]%. Shares of supply by volumes are estimated on the basis of an average volume of road fuel sold of 4,143 KL per annum.

smaller sites and lower levels of sales per site than, for example, supermarket sites.

62. The Parties submitted that at the national level, there are many competitors, with 62% of UK petrol stations being independently owned, about 22% being owned by oil companies and around 16% being owned by supermarkets.

63. Given the low combined shares of supply and the number of competitors present at the national level, the CMA concludes that there is no realistic prospect of a substantial lessening of competition in the retail supply of road fuel (petrol and diesel) at the national level.

Local level

64. The Parties submitted that the filtering methodology applied in previous OFT decisions[34] should be adopted in the assessment of the merger at the local level. The Parties identified local markets where the Merging Businesses compete on the basis of the 10 and 20-minute drive-time isochrones described above, centred on each MFG and Murco branded site.[35] Having thus identified areas of overlap, the Parties used the following filters to identify areas where the merger may give rise to competition concerns. Any site which failed any one (or more) of the filters below was then considered for more detailed assessment.

    (i) Price markers, whereby:

        a. either of the Merging Businesses identifies a site of the other as its main price marker; and/or
        b. either of the Merging Businesses identifies a site of the other as one of three or fewer competing sites; and/or
        c. the merger would lead to a reduction in competing brands in the marker lists from four to three or fewer.

    (ii) Geographic proximity of the Merging Businesses, whereby the Merging Businesses are the nearest sites in terms of drive-time.

    (iii) Fascia count reduction, whereby the merger results in a reduction in the number of brands or owners of petrol stations from 4 or more to 3 or fewer.

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[34] Shell/Rontec (2012), Rontec/Total (2011) and Sainsbury/Rontec (2014).
[35] Murco's sites and independent dealers served by Murco at the wholesale level are all Murco branded.

65. In relation to the fascia reduction filter in (iii) above, the CMA notes that previous OFT decisions did not consider reductions in the number of owners but focused on the number of brands that would remain post-merger. However, since the Parties submitted only partial information on the ownership structure of their competitors in each local area, the CMA, taking a cautious approach,[36] only filtered out a local area on filter (iii) where both:

(a) there are at least three other competitor brands; and [37]

(b) there are at least three other competitor owners.[38]

66. The CMA considers that the methodology proposed by the Parties is relevant for the current case as:

(a) MFG sets retail prices at each site [✂]; and[39]

(b) the branding of a site does not necessarily reflect the ownership so stations with the same branding may be price competing between each other.

67. The Parties carried out an initial overlap analysis for the 60 MFG sites, the 228 Murco sites and the 226 retailers which have dealer contracts with Murco. This exercise identified 57 horizontal overlaps between the Merging Businesses. The CMA verified this analysis and found it to be robust.

[36] The CMA notes that the use of fascia reduction by owners in addition to fascia reduction by brands did not identify any additional problematic areas.
[37] The CMA did not count as independent competitor brands: (i) sites which are unbranded and (ii) sites which have the same brand as an MFG site.
[38] We do not count as competitor owners: (i) sites for which the Parties were not able to identify the owner, and (ii) sites which have the same owner in the local area.
[39] Murco [✂]. Murco told the CMA that [✂].

68. On the basis of the three filters described above, the CMA identified six local areas which required a more detailed local competitive assessment as set out in the table below.

Area	Filters failed
1. MFG Central Garage (Hythe) / Murco Hythe	• Closest sites • Price marker • Fascia reduction
2. MFG Hagley Road / Murco Bearwood Sandon / Murco Derry	• Closest sites • Price marker
3. MFG Bath Service Station / Murco Slough	• Closest sites • Price marker
4. MFG Whittleway / Murco Derby / Murco Traffic	• Closest sites • Price marker
5. MFG Brueton Service Station / Murco Knowle	• Fascia reduction
6. MFG Ambassador / Murco Stamford Hill	• Price marker

Local areas of concern

69. The CMA assessed the effects of the merger in each of the six local area overlaps shown in the table, considering: (i) drive-time distances between the Merging Businesses' sites and other competitors, (ii) characteristics of the Merging Businesses' sites (eg opening times and products), (iii) the number and geographic locations of competitors present in the local area, and (iv) where relevant, any competitors located on motorways.

70. The CMA notes that in some previous cases parties have carried out surveys to estimate diversion ratios as a way of estimating the closeness of competition between merging businesses. However, in this case, the Parties did not provide such evidence. This limited the extent to which the CMA could gauge the strength of the competitive constraint exerted by any particular competitor.[40]

MFG Central Garage (Hythe) / Murco Hythe

71. The overlapping sites are located in Hythe, Kent. The closest sites to MFG Central Garage (branded BP) are Murco Hythe and Jet Palmarsh, a

[40] By contrast see paragraph 67 of Shell/Rontec.

competitor, both being about a five minute drive-time away. There are no other competitors within a 10-minute drive-time of the MFG site.

72. The closest site to Murco Hythe is MFG Central Garage, around a 6-minute drive-time away, while the next nearest competitor is about a 7-minute drive-time away. There are five other competitors by brand or ownership within a 10-minute drive-time from the Murco site, one of which is a Tesco in nearby Folkestone.

73. MFG Central Garage lists [✄], as its primary marker. It lists Murco Hythe as another one of its price markers. Murco Hythe lists [✄] and also MFG Central Garage as its price markers. The Parties submit that the Tesco site is the main constraint on both MFG Central Garage and Murco Hythe.

74. The CMA notes that the merger leaves the MFG Central Garage site with only one rival within a 10-minute drive-time and thus, within that isochrone, reduces the number of competitors from three to two.

75. The CMA has considered carefully the argument of the Parties that the Tesco in Folkestone is the main competitive constraint on the MFG Central Garage in Hythe, as well as on the Murco in Hythe. The CMA has had regard to the fact that the Tesco site in Folkestone is only just outside the 10-minute isochrone around MFG Central Garage in Hythe (at 10.5 minutes' drive-time) and that [✄].

76. The CMA does not dispute that there is likely to be some constraint posed by the Tesco on MFG Central Garage. However, the CMA notes:

(i) the Tesco site is materially further away from MFG Central Garage than Murco Hythe (10.5 minutes compared with 5.5 minutes);

(ii) the Tesco site is in Folkestone, whereas the MFG Central Garage site is in Hythe – although the Murco Hythe site is on the edge of Folkestone it is on the side of Folkestone closest to Hythe and is situated on the main road towards Hythe;

(iii) whereas Murco Hythe is on the same main road as MFG Central Garage, the Tesco site in Folkestone is on an altogether different route; and

(iv) the Parties have provided little evidence supporting the existence of strong competition from the Tesco site.

In particular, in the absence of a customer survey, the CMA has insufficient evidence to be assured that, in the event of a price rise at the MFG Hythe site, a sufficient number of customers will not divert to the Murco site (which is the closest to MFG) to make the price rise unprofitable.

77. Moreover, the CMA notes that, even were it to expand the isochrone to a drive time of 11 minutes so as to include Tesco, the effect of the merger would still be to reduce the number of competing fascia in the expanded isochrone around MFG Central Garage from four to three.

78. For these reasons, the CMA considers that there is a realistic prospect of a substantial lessening of competition as a result of the merger in the Hythe local area.

MFG Hagley Road / Murco Bearwood Sandon

79. The overlapping sites are located to the west of Birmingham. The MFG Hagley Road station, branded Jet, and Murco Bearwood station are the nearest petrol stations in the area, being only 1.5 minutes away from each other. The nearest competitor is a BP-branded station 2 minutes' drive-time away from MFG Hagley Road and 3 minutes' drive-time away from Murco Bearwood. This BP station is a large petrol station on the same major road as the MFG site but on the other side of the road.

80. There are also other Murco sites in the area. From the MFG Hagley Road site: Murco Derry is about 6 minutes' drive-time away, Murco's Brandhall and Parkside sites are both about 7 minutes' drive-time away, and Murco New John is about 10 minutes' drive-time away. The Jackson service station, a dealer supplied by Murco, is located 8 minutes away from the MFG site.

81. There are 28 other petrol stations within a 10-minute drive-time from Murco Bearwood, including eight competitors by brand. There are 29 other petrol stations within a 10-minute drive-time from MFG Hagley Road including six competitors by brand and more than ten by owner.

82. The CMA notes that there are also two competitor petrol stations around Murco Bearwood and MFG Hagley Road which are located on a motorway.[41] These sites are branded BP and are located less than 8 minutes' and 7 minutes' drive-time away from Murco and MFG, respectively. In any event, although these sites may exercise some competitive constraints on the Merging Businesses, there are many off-motorway competitors in the area located closer to the merging parties.

[41] These sites have not been considered in the fascia count.

83. The price marker lists submitted by the Parties show that Murco Bearwood lists [✄] and MFG Hagley Road as its price markers. MFG Hagley Road lists [✄] as its primary marker and lists Murco Bearwood, among others, as price markers.

84. On the basis of this evidence, and in particular given the number of competitors in the local area, the CMA considers that the merger does not raise a realistic prospect of a substantial lessening of competition in this area.

MFG Bath Road / Murco Slough

85. The Merging Businesses' overlapping sites are located in Slough. MFG Bath Road, branded Jet, is the nearest site to Murco Slough, being about a 4-minute drive-time away. However, around the MFG Bath Road station there are six other petrol stations, including five competing brands, all closer to it geographically than Murco Slough.

86. Within a 10-minute drive-time from MFG Bath Road, there are 20 other petrol stations, including six competitors by brand. There are 14 other petrol stations within a 10-minute drive-time from Murco Slough, including six competitor brands. MFG Bath Road has seven other petrol stations within 5 minutes, including five competitors by brand, while Murco Slough has four other petrol stations within a 6-minute drive-time, including four competitors by brand.

87. For its price markers, MFG Bath Road lists [✄], as its primary marker, with Murco Slough, [✄] and [✄] listed as price markers. Murco Slough lists a [✄] MFG's Bath Road station, located a mile away, as its price markers.

88. The CMA notes that Murco Slough was part of a Murco 'price initiative' [✄] [✄]. The CMA reviewed Murco's strategy in relation to its Slough site and found that [✄]. [✄]

89. The CMA also considers that Murco's price strategy [✄], coupled with the fact that MFG lists [✄] as its primary price marker, suggests that both the Merging Businesses consider [✄] as the principal price benchmark in the area.

90. On the basis of the high number of other competitors in the local area and the evidence on pricing behaviour, the CMA considers that the merger does not raise a realistic prospect of a substantial lessening of competition in this area.

MFG Whittleway / Murco Derby

91. The Merging Businesses' overlapping sites are located in Derby. MFG Whittleway, branded as a BP station, and Murco Derby are about 2 minutes' drive-time away from each other. There is a competitor, Morrisons, which is

located very close to the MFG Whittleway site and a 2-minute drive-time away from Murco Derby.[42] The next closest competitors by drive-time are Texaco Pentagon and Shell Allastree, less than 5 and 6 minutes away, respectively, from the MFG Whittleway site. Another Murco site, Murco Traffic, is less than 4 minutes' drive-time from MFG Whittleway, but there are three competitor brands closer than MFG Whittleway to Murco Traffic. In this local area there is also a Murco dealer, Normanton service station, which is 7 minutes' drive-time away from MFG Whittleway.

92. There are 14 other petrol stations within a 10-minute drive-time from MFG Whittleway, including eight competitors by brand. There are nine other petrol stations within a 10-minute drive-time from Murco Derby, including six different brands.

93. MFG Whittleway specifies [✂] as its primary marker and lists Murco Derby, [✂] and [✂] as other price markers. Murco Derby lists [✂] and MFG Whittleway as price markers.

94. MFG Whittleway is located on a main through road, as are both Morrisons and Texaco Pentagon. Murco Derby is on an industrial estate to which drivers are likely to commute.

95. On the basis of this evidence, and in particular given the number of competitors in the local area, the CMA considers that the merger does not raise a realistic prospect of a substantial lessening of competition in this area.

MFG Brueton / Murco Knowle

96. The overlapping sites are located in Solihull, a town to the south-east of Birmingham. Around MFG Brueton (which is branded BP) there are two Murco sites, Knowle and Olton, which are about 7 and 8 minutes' drive-time away respectively. There are three other petrol stations, including two competing brands, located closer to MFG Brueton than either of these Murco sites.

97. There are seven petrol stations within a 10-minute drive-time from MFG Brueton, including three competitors by brand.

98. There are several other petrol stations, including five different brands, around Murco Olton within a 10-minute drive-time. There are only two competitors, by both brand and owner, around Murco Knowle within a 10-minute drive-time.

[42] Morrisons and MFG Whittleway have the same postcode. For this reason the distance in drive-time is zero. However the Parties told us that these sites are 0.7 miles away from each other.

99. The CMA considered whether there is a substantial lessening of competition in the 10-minute drive-time around Murco Knowle, given that the number of separately-branded competitors in that isochrone is reduced by the merger from three to two. However, the CMA considers that there is no realistic prospect of a substantial lessening of competition, given that MFG Brueton does not appear to be a particularly close competitor of Murco Knowle. In particular:

(i) the merging businesses do not price mark each other at all in the area. Murco Knowle lists [✂] and [✂] as price markers ([✂] competitors in Knowle). MFG Brueton identifies [✂] as its primary price marker and lists three other sites, [✂] and [✂], as price markers (all of which are in Solihull). Murco Olton lists [✂] and [✂] as price markers (all of which are in Solihull);

(ii) they are on different roads, and indeed on opposite sides of a west-east motorway, the M42. Both sites are town centre sites (in different towns) rather than on through roads. In other words, they are on different traffic flows; and

(iii) they are not geographically very close to each other, being 8 minutes' drive-time away, whereas Esso Widney and Sainsbury's Dorridge are both close to Murco Knowle.

100. On the basis of this evidence, and in particular given that the two overlapping petrol stations are in different towns, with a number of more local competitors to each site in each town, the CMA considers that the merger does not raise a realistic prospect of a substantial lessening of competition in this area.

MFG Ambassador / Murco Stamford Hill

101. The overlapping sites are located in north London. The MFG Ambassador site, which is branded BP, is about a 6-minute drive-time away from Murco's Stamford Hill site. However, as a result of the traffic system, to travel from the MFG Ambassador site to the Murco site is just a 3.5-minute drive-time. There are three other petrol stations, including three competitor brands, located closer to Murco Stamford Hill than the MFG site; and one other petrol station, around 3 minutes away, closer to the MFG site than the Murco site.

102. There are seven other petrol stations within 10 minutes' drive-time from MFG Ambassador, including five competitors by brand; and there are seven other stations offering four different brands within 10 minutes' drive-time from Murco Stamford Hill.

103. The Parties told us that MFG Ambassador identifies [✂] as its primary marker and lists Murco Stamford Hill, [✂] and [✂] as other price markers. Murco Stamford Hill lists MFG Ambassador and [✂] as price markers.

104. On the basis of this evidence, and in particular given the number of competitors in the local area, the CMA considers that the merger does not raise a realistic prospect of a substantial lessening of competition in this area.

Horizontal unilateral effects in the retail supply of auto-LPG

105. MFG and Murco both sell auto-LPG at some of their sites giving rise to a horizontal overlap between the Merging Businesses for the retail supply of auto-LPG in the UK.

106. The CMA assessed, on both a national and local level, whether the merger could give rise to a realistic prospect of a substantial lessening of competition as a result of the merged firm having the ability profitably to increase the retail price of auto-LPG or to reduce service quality following the removal of a significant competitive constraint.

National level

107. The Parties submitted that the Merging Businesses' combined share of supply at the national level would be around [0 to 10]% by number of operated sites.[43]

108. The Parties submitted that MFG and Murco, with only 14 auto-LPG sites between them, are very minor players in the auto-LPG market, which is dominated by those oil companies and supermarkets which have invested in the facilities to supply auto-LPG. The Parties told us that non-petrol station suppliers are also significant competitors in this market, together with specialists which convert cars to auto-LPG and maintain storage units to supply the product to customers.

109. A third party submitted that non-petrol station retailers compete with petrol station suppliers but said that they may need to price at a discount to be competitive and often have to have repeat local customers.

110. The CMA considers that the national share of supply of the merged entity is likely be very low in this market. Also, no third party concerns were raised in respect to this product. Therefore the CMA concludes that there is no realistic

[43] This estimate includes non-petrol station sites. The Parties submitted that their combined share of supply would be around [0 to 10]% if considering only branded petrol stations.

prospect of a substantial lessening of competition in the retail supply of auto-LPG at the national level as a result of the merger.

Local level

111. As described above, the CMA considered a range of geographic markets to identify potential overlaps between the Parties. Using these approaches, the CMA identified one area of overlap, which is between MFG Great Barr Service Station and Murco Olton. Murco Olton is 29 minutes away from the MFG Great Barr site, while the MFG site is, as a result of the traffic system, 21 minutes away from the Murco site.

112. The Parties submitted that the CMA should consider the number of competitors (by brand and by owner) within 30 and 40-minute drive-times from these two sites. Given that there is no overlap between the Parties on a 20-minute drive-time basis, the CMA agreed that this approach was appropriate.

113. There are 17 other petrol stations all supplying auto-LPG, including five competitor brands, nearer to MFG Great Barr than Murco Olton. These are all within a 30-minute drive-time of the MFG site. There are six other petrol stations supplying auto-LPG, including three competitor brands, nearer to Murco Olton than MFG Great Barr. There are four competitors by brand within a 30-minute drive-time of Murco Olton.

114. Texaco Circle service station is located less than 9 minutes away from the MFG site. There is a Shell site less than a 4-minute drive-time away from Murco Olton.

115. On the basis of this evidence, the CMA considers that there is no realistic prospect of a substantial lessening of competition in the retail supply of auto-LPG at the local level as a result of the merger.

Horizontal unilateral effects in the retail of groceries

116. The Parties submitted that groceries were bought and sold by the operators of their petrol stations (ie not by MFG or Murco) [✄]. Both the Merging Businesses [✄]. The operator of the grocery store primarily decides the range of grocery products and their prices. However, MFG and Murco require [✄].

117. MFG [✄]. [✄]. [✄]. [✄]. [✄].[44]

[44] Murco [✄].

118. On the basis of this evidence, the CMA believes that the Parties have, to some extent, the ability to influence the offering and price of the groceries retailed through the stores at their petrol stations. Therefore, it has assessed, both on a national and local basis, whether the merger could give rise to a realistic prospect of a substantial lessening of competition via the merged firm having the ability profitably to increase the retail price, and/or to reduce the range or quality of the service provided, following the removal of a significant competitive constraint.

National level

119. As explained above, the Parties submitted that competition takes place between operators of grocery stores and, as such, there is no direct competition between MFG and Murco in the retail supply of groceries. In any event, they submitted that their combined share of supply is likely to be under [0 to 10]% by volume or value of sales if supermarkets were taken into account.[45]

120. On the basis of this evidence, the CMA concludes that there is no realistic prospect of a substantial lessening of competition in the retail supply of grocery at the national level as a result of the merger.

Local level

121. To identify local overlaps, the CMA used 'maximum reach' isochrones of 10 minutes' drive-time for both urban and rural areas for the Parties' convenience stores, as used in CGL/Somerfield (2011).[46] The 'maximum reach' isochrones, centred on each MFG and Murco site, provided a conservative approach to capture any overlap between the Parties.[47]

122. Once local areas resulting in overlaps between the Parties within the maximum reach isochrones were identified, the CMA filtered out those areas which were unlikely to raise competition concerns based on a fascia count in each area. Following the precedents, a local area was deemed unlikely to raise competition concerns if at least three other (non-merging) fascia were present. The CMA considered other convenience stores (both petrol stations'

[45] This estimate is based on data provided by Experian that estimates the total number of petrol station shops at 7,605.
[46] ME/3777/08 - Anticipated acquisition by Co-operative Group Limited of Somerfield Limited (2008). We derived maximum reach isochrones doubling the radius of the primary isochrones for convenience stores – ie a 5-minute drive-time.
[47] This approach is able to capture situations in which on-site grocery stores may represent competing alternatives for customers located between them, even if each on-site grocery store is not within the other's store-centred isochrone.

on-site stores and stand-alone grocery stores) and larger stores to constrain the Parties' stores, in line with the product frame of reference set out above.

123. On the basis of this methodology, the CMA identified initially 42 overlap areas. However, the CMA found that in none of these overlaps areas would the merger result in a reduction in the number of fascia of grocery stores from four to three or fewer.

124. On the basis of this evidence, the CMA considers that there is no realistic prospect of a substantial lessening of competition in the retail supply of groceries at the local level as a result of the merger.

Vertical effects

Vertical effects in the supply of road fuel (petrol and diesel) to petrol stations

125. The CMA considered whether MFG's presence post-merger in both the wholesale supply of road fuel to petrol stations (upstream) and the retail supply of road fuel to motorists (downstream) might give rise to partial input foreclosure.[48] Following the merger, MFG would replace Murco in the upstream market for the wholesale supply of road fuel through the transfer of 226 dealer contracts. As a result, the merger could create new vertical overlaps where an MFG petrol station overlaps with an independent dealer served by MFG at the wholesale level.[49]

126. The merger might provide MFG with the ability to increase wholesale road fuel prices charged to independent dealers which compete with MFG's petrol stations in the retail supply of road fuel so as to lessen competition from these sites, enabling MFG to increase its share of this market. This merger effect would depend on the extent to which: (i) independent dealers would increase road fuel prices charged to end customers as a result of the increase in the wholesale price; and (ii) MFG would be able to capture those customers who would switch away from the independent dealers' sites following the increase in retail prices.

127. There are a number of factors which need to be considered to understand whether the merged entity would foreclose its rivals:

[48] Total input foreclosure is an extreme case of partial input foreclosure where the upstream firm increases prices to such a level that there is no downstream demand.
[49] This concern is limited to independent dealers because they compete directly with MFG in the retail supply of road fuel and rely on external source of supply of road fuel at the wholesale level (MFG post-merger). We note that a merger-specific effect could arise only in relation to the MFG Sites, as, prior to the merger, Murco was supplying fuel to independent dealers in the wholesale market and retailing road fuel through the Murco Sites.

- *Ability.* MFG would need to have the ability to increase wholesale road fuel prices charged to independent dealers. Such ability would arise to the extent that independent dealers, supplied by MFG post-merger, cannot switch to other suppliers in case of a price increase in the wholesale supply of road fuel (eg if there are provisions in their contracts limiting termination and/or because there are only a limited number of potential suppliers in a local area).

- *Incentive.* MFG would need to have an incentive to engage in this strategy. Such incentives would arise to the extent that MFG is able to capture a substantial proportion of those sales which would switch away from competitors following the increase in their road fuel prices, which will depend, for example, on the number of effective competitors in a local area.

- *Effect.* To the extent that MFG would have the ability and incentive to foreclose, the CMA would then go on to consider the impact of such foreclosure on competition in the downstream market. As the CMA does not consider that MFG would have the ability or incentive to foreclose (see below), it has not in this case gone on to assess the effect of such actions.

Ability to foreclose

128. First, the CMA considered whether the merged entity would have the ability to foreclose downstream competitors in the retail supply of road fuel at the national level. This would be the case if MFG post-merger would have a significant presence in the wholesale market at the national level.

129. The Parties submitted that Murco's share of supply in the wholesale market for the supply of road fuel to petrol stations is around [0 to 10]% by volume per brand.[50]

130. Even if a margin of uncertainty around this estimate is taken into account, the share of supply of the merged entity at the national level is very low. This suggests that the Parties are unlikely to have the ability to foreclose downstream rivals on a national basis.

131. Second, the CMA considered whether there are any local areas where specific circumstances give the Parties the ability to foreclose downstream

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[50] This estimate is calculated on the basis of a set of assumptions about the merged entity and the market. In relation to the merged entity, the Parties submitted that (i) it will supply road fuel to the 228 Murco petrol stations and to the 226 sites under the dealer contracts; and (ii) the merged entity will supply an average of [✂] KL per annum to each site. In relation to the market, the Parties submitted that there are a total of 8,616 petrol stations and on average each station supplies 4,143 KL per annum.

rivals (noting that, as set out in paragraph 55, the Parties submitted that some independent petrol stations may have a more limited choice of suppliers).

132. The CMA identified the local areas where MFG sites overlap with Murco independent dealer sites in the retail supply of road fuel. The CMA used the same methodology applied in the local analysis of horizontal overlaps between the Parties' sites, but centred isochrones on MFG sites and Murco independent dealers' sites to identify overlaps. The CMA identified 29 such overlap areas.

133. The CMA then applied the fascia reduction filter in order to focus the vertical effect analysis on those overlap areas where incentives to foreclose were more likely to arise. This analysis identified two local areas, around the Murco Meister and Murco Devlia independent dealers. The CMA then considered whether MFG was likely, post-merger, to have the ability and/or incentive to foreclose these two particular independent dealers.

134. The Parties submitted that there was no realistic prospect of a substantial lessening of competition due to this possible vertical effect as there were many other road fuel suppliers to whom the independent dealers could switch were MFG to raise the wholesale price. In particular, the Parties told us that, in addition to Murco, there are a number of road fuel wholesalers active in both the overlap areas. The Parties said that Certas, BP, Shell and Phillips 66 (Jet brand) are all currently supplying independent dealers in a 20-minute drive-time around Murco Meister; and BP, Valero (Texaco brand), Esso, Greenergy, Callow and Certas are all currently supplying independent dealers in a 20-minute drive-time around Murco Devlia.[51]

135. The Parties also submitted that in both areas there are a number of potential suppliers that could enter the market. For example, around Murco Meister, Harvest Energy, Esso, Greenergy and Valero (Texaco brand) could supply this area; while around Murco Devlia, potential suppliers are Phillips 66 (the Jet brand) and Harvest Energy.

136. The CMA also notes that, while the parties have identified alternative sources of supply available to independent dealers within the same isochrones defined for the retail supply of road fuel, wholesale suppliers might be able to supply from greater distances, making this a conservative analysis. Given that there are several alternative suppliers within this narrow isochrones, the CMA has not defined the geographic boundaries of the local wholesale supply market.

[51] All sites, except MFG Sunnylodge, are located in rural areas.

Incentive to foreclose

137. In relation to incentives to foreclose, the CMA notes that there are many competitors within the isochrones of both sites and that some of these competitors are located between the MFG site and the relevant independent dealer. This evidence suggests that, in the event of a price rise at the independent dealer site, the diversion to the MFG site would be limited. For this reason, the CMA considers that MFG would have weak incentives to foreclose its rivals downstream.

138. Overall, considering the evidence on both ability and effect, the CMA considers that there is no realistic prospect of a substantial lessening of competition arising through vertical input foreclosure post-merger.

Barriers to entry and expansion

139. The Parties submitted that entry into the retail supply of road fuel market is relatively easy through the acquisition of a petrol station site. The cost of acquiring a single petrol station in a good quality location (with annual sales of 3 million litres of road fuel and turnover of around £0.5m in its shop) is estimated by MFG to be between £1m and £1.5m. A smaller site, of the type owned by many single-site owners, would be a lot cheaper.

140. The Parties said that it is much more difficult to build a new site given the planning and environmental consents required. MFG estimated that it would cost around £1.5m to build a site from scratch, and it would take around 6 to 12 months (or longer given the time for planning and environmental consents in certain locations).

141. The CMA assesses barriers to entry and expansion by considering whether such entry or expansion is timely, likely and sufficient.

142. The CMA did not receive any evidence to suggest that competitor entry or expansion will prevent a substantial lessening of competition from arising in the Hythe local area as a result of the merger. Therefore the CMA has no grounds for believing that entry or expansion will mitigate the effects of the merger in this local area.

Buyer power

143. Buyers of petrol and diesel in the Hythe local area are individuals and companies. It is unlikely that individuals possess any countervailing buyer power to the extent that they could prevent a substantial lessening of competition from arising in this case. The CMA notes that it did not receive

any submissions in relation to buyer power in any of the markets considered above.

Third party views

144. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

145. On the basis of the evidence we have received, and our assessment as set out in this decision, the CMA believes 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, specifically in the market for the retail supply of road fuels in the Hythe area in Kent, as a result of the lessening of competitive constraints on MFG Central Garage in Hythe.

146. The CMA therefore considers that it is under a duty to refer this merger under section 22(1) of the Act. However, the duty to refer is not exercised pursuant to section 22(3)(b) whilst the CMA is considering whether to accept undertakings under section 73 of the Act in lieu of a reference. Pursuant to section 73A(1) of the Act, MFL has until 31 December 2014 to offer an undertaking to the CMA that might be accepted by the CMA under section 73(2) of the Act. If MFL does not offer an undertaking by this date, or if MFL indicates before this date that it does not wish to offer an undertaking, or if pursuant to section 73A(2) of the Act the CMA decides by 8 January 2015 that there are no reasonable grounds for believing that it might accept the undertaking offered by MFL, or a modified version of it, the CMA will make a merger reference of the merger pursuant to sections 22(1) and 34ZA(2) of the Act.

Michael Grenfell
Senior Director, Sector Regulation and Concurrency
Competition and Markets Authority
22 December 2014