COMPETITION COMMISSION

DCC Energy UK Limited/Rontec Investments LLP

A report on the completed acquisition by DCC Energy Limited from Rontec Investments LLP of certain oil distribution businesses previously owned by Total UK Limited

4 September 2012

Website: www.competition-commission.org.uk

Members of the Competition Commission who conducted this inquiry

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The Competition Commission has excluded from this published version of the final report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets.

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Summary

1. On 4 April 2012, the Office of Fair Trading (OFT) referred to the Competition Commission (CC) for investigation and report the completed acquisition by DCC Energy UK Ltd (DCC EUK) from Rontec Investments LLP (Rontec) of certain businesses previously owned by Total UK Ltd (Total).

2. In June 2011 Rontec acquired a number of businesses active in retail fuel and oil distribution in the UK from Total. In September 2011, DCC EUK agreed to buy three of these businesses from Rontec. The businesses were: the Butler Fuels business, which involved the sale and distribution of heating and transport fuels and other petroleum products to domestic and business customers; the Dealer business, which was the contractual right to supply transport fuels to certain dealer-owned, dealer-operated (DODO) retail service stations operated under the Total brand; and the Islands business, which was Total's oil distribution and retail service station businesses on the Isle of Man and the Channel Islands. The Islands business did not operate within the UK and as a result the acquisition of that business was not relevant to our assessment of the effects of the merger within the UK.

3. We concluded what would have happened in the absence of the merger (the counterfactual). We considered that the appropriate timing for the counterfactual was mid September 2011, when Rontec agreed to sell the businesses to DCC EUK. We concluded that it was most likely that Butler Fuels would have been sold by Rontec and continued to compete as a distributor of transport fuels and heating oil products, either as a stand-alone business or as part of a larger company group. We noted that the Dealer business would have either continued to operate as part of Rontec or would have been sold by Rontec to a third party. In either case the Dealer business would have continued to operate in competition with DCC EUK.

4. There are a number of different ways that oil products are delivered to customers. Oil majors and traders predominantly deliver large loads in articulated tankers (artics). Distributors usually deliver smaller loads than oil majors and traders in smaller rigid tankers. A distributor will often deliver to a number of customers in one journey (on a 'milk round'). Distributors may collect oil products from refineries or terminals for delivery to customers or deliver from their own depots.

5. There are three broad categories of distributor, which vary according to the extent of their geographic coverage and size. National distributors have a depot network of national or near-national scope. Regional distributors are mid-sized distributors that operate from a number of depots and are able to supply all fuels to all types of local customers (domestic and small business, agricultural and industrial customers). Regional distributors are likely to operate on a sufficient scale to compete with national distributors for regional contracts. Local distributors deliver only within a limited distance around their depot and mainly compete for small customers. Distributors may on occasion subcontract other distributors to make deliveries outside the area where they supply directly. Regional distributors in particular may be able to use subcontracting to compete with national distributors on a wider basis.

6. We considered that the distribution of transport and heating fuels in Great Britain was the relevant market within which to assess competitive effects. The potential differences in the size of the depot network and degree of sophistication of the logistics required to serve customers with different geographic scope, and differences in the number of competing suppliers suggested to us that it was appropriate to consider competitive effects for the following customer segments:

(a) 'Bulk' customers which typically require full artic loads.

(b) DODO retail forecourts, supplied with transport fuels (usually in full artic loads).

(c) Customers which require smaller deliveries that are not delivered in an artic. These are non-bulk customers and include local customers, regional customers, and multi-regional customers (some of which may be present in many parts of the UK). Within this segment we identified multi-site non-bulk (MSNB) customers as a significant group. These are regional and multi-regional customers and are customers that do not take artic deliveries but have a number of delivery locations in one or more regions. They may be large purchasers overall.

7. We did not see scope for harm to competition for supply to bulk customers and DODO retail forecourts, since customers had a range of viable supply options and would be prepared to switch to obtain a lower price.

8. We assessed the scope for competition at a local level and found that there were 12 local areas where there was a potential concern. In these areas both DCC EUK and Butler Fuels (the merger parties) were present but only a small number of other suppliers that could deliver non-artic loads were also present. However, we considered that small-scale entry into these areas would be viable because these areas were all close to a terminal of an oil major or trader, which meant that an entrant would be able to load product at the terminal and would not have to build its own depot. Therefore we concluded that harm to competition for local customers would be unlikely to arise from the merger.

9. We assessed the position of MSNB customers that required supply over a wide geographic area (either within one region or across a number of regions). In this case, if the customer wished to receive its requirements from a single supplier, the supplier would have to be capable of delivering over at least the area where the customer was present. We assessed whether such customers would be able to benefit from enough competition post-merger, if they sourced their requirements from a single distributor. We also assessed whether these customers had viable alternatives to receiving their requirements from a single supplier.

10. We found that there were a large number of alternative suppliers competing for direct supply to MSNB customers that had sites in relatively close proximity. There were few suppliers with a nationwide or near-nationwide scope for direct deliveries (ie with a nationwide or near-nationwide depot network). We therefore considered whether it was feasible to multi-source from a number of suppliers. We found that a large proportion of MSNB customers would multi-source and had received supplies from alternative suppliers in the last six months. We found that the work involved in switching was not large enough to discourage it and that any possible loss of total volume discounts from suppliers, if a customer were to split its requirements between a number of suppliers, was unlikely to discourage multi-sourcing significantly.

11. We also found that over half of the MSNB customers that we surveyed would switch if prices increased by 5 per cent and only a small proportion said they would not switch regardless of the extent of the price increase.

12. Only a small proportion of MSNB customers identified both the merger parties as possible suppliers and we concluded that the merger parties were not particularly close competitors for customers in this segment.

13. We concluded that the evidence that most MSNB customers used several suppliers and that switching costs did not appear to be significant showed that there were a

number of alternative suppliers available to customers and there would be adequate competition post-merger. We concluded that the proposed merger would not be likely to give rise to substantial harm to MSNB customers.

14. We therefore concluded that the merger would not be likely to give rise to an SLC in any market in the UK.

Findings

1. The reference

1.1 On 4 April 2012, the OFT referred the completed acquisition by DCC EUK from Rontec of certain businesses previously owned by Total.

1.2 The CC must decide:

(a) whether a relevant merger situation has been created; and

(b) if so, whether the creation of that situation has resulted in, or may be expected to result in, an SLC within any market or markets in the UK for goods or services.

1.3 Our terms of reference are in Appendix A.

1.4 This document, together with its appendices, constitutes our findings. Further information, including non-commercially-sensitive versions of DCC EUK's submission and summaries of evidence from third parties, can be found on our website.[1]

2. The companies

DCC plc

2.1 DCC plc (DCC) is an international procurement, sales, marketing, distribution and business support service group headquartered in Dublin and listed on the Irish and London Stock Exchanges. For the year ended 31 March 2012, DCC's turnover was €10.7 billion (£8.2 billion)[2] and operating profit was €185 million (£142 million). The market capitalization of DCC plc is approximately €1.5 billion (£1.1 billion).

2.2 DCC is the parent company of DCC EUK, which supplies oil products in the UK. DCC EUK has expanded in the UK via a series of acquisitions of oil distribution businesses in the UK over the past 12 years.[3] DCC EUK is a major subsidiary of DCC Energy. DCC Energy's turnover was €7.8 billion (£6.0 billion) and operating profit was €83.5 million (£64.6 million) in the year ended 31 March 2012.

2.3 GB Oils Limited (GB Oils) is the principal operating company of DCC EUK's oil distribution business in Great Britain. It is the largest heating and transport fuel distributor in the UK, with 782 trucks delivering fuel from 102 depots/terminals, located throughout the UK. In 2011, GB Oils delivered [✂] billion litres of fuel to approximately [✂][4] customers. It operates over 60 different brands in the UK.[5] In the year ended 31 March 2012, GB Oils generated UK turnover of £[✂] billion and operating profit of £[✂] million.[6]

2.4 GB Oils purchases a range of heating and transport fuels from refineries and terminals for delivery direct to its customers or for delivery to its depots. Product delivered

[1] www.competition-commission.org.uk/our-work/dcc-rontec.
[2] Exchange rate used = €1.3:£1.
[3] DCC EUK has invested €578 million (approximately £430 million) on buying businesses in the oil distribution sector over the past 12 years (excluding the present transaction). DCC EUK has also grown the GB Oils business organically, but the large majority of the growth has come through acquisitions (Source: DCC EUK).
[4] Source: DCC EUK.
[5] Principal brands are Bayford Oil, Brogan Fuels, Carlton Fuels, CPL, Emo Oil, F. Peart & Co., Gulf, Scottish Fuels, Severn Fuels, Southern Counties, Team Flitwick, and Town & Country Fuels (as well as other regional and local brands).
[6] Source: financial statements. In the year ended 31 March 2011 revenue was £3.1 billion and operating profit £46 million.

to depots is subsequently loaded on to smaller trucks for delivery to customers. Delivery (or 'drop' or 'load') sizes range from 500 litres for domestic customers up to 36,000 litres for some large commercial customers. GB Oils also supplies transport fuels for retail under several brands including Gulf, Pace UK and Texaco.

2.5 [Between 80 and 95] of GB Oils' tankers are articulated and are largely used to transport fuel from terminals to its depots, with the rest of the fleet delivering fuel from the depots to customers.

Butler Fuels

2.6 Total is a subsidiary of Total Downstream UK plc. It is part of Total SA, an international oil and gas corporation. Total was active in retail fuel and oil distribution activities in the UK, the Isle of Man and the Channel Islands and owns the Lindsey Oil refinery. During its period of ownership by Total, Butler Fuels was operated as an unincorporated business in Great Britain under the Total Butler brand. It supplied oil products for Total in Great Britain, in particular heating oil and transport fuels to a range of domestic, commercial, industrial and agricultural customers. Butler Fuels has [35–45] depots in Great Britain.

Rontec

2.7 Rontec is a special purpose joint venture partnership between GMR Capital Limited (GMR), Investec plc (Investec), Grovepoint Capital LLP and others, set up to acquire parts of the downstream oil businesses (including retail fuel and oil distribution) of Total in the UK, the Isle of Man and the Channel Islands. GMR wholly owns Snax 24 Limited, which operates 68 service stations in England, Scotland and Wales (of which 44 are owned by Snax).

3. The merger and the relevant merger situation

Outline of merger situation

3.1 In June 2011 Rontec acquired a number of businesses active in retail fuel and oil distribution in the UK from Total. On 22 September 2011, DCC EUK signed three conditional share purchase agreements (SPAs) to acquire from Rontec the share capital of companies that owned some of the business assets that Rontec had previously acquired from Total. The acquisition by DCC EUK of the three businesses completed on 31 October 2011. The businesses acquired were:

(a) the Butler Fuels business acquired pursuant to the Total UK Fuel Oil Business SPA. The Butler Fuels business was defined in the SPA as 'the operation of the Total UK network of Total Butler branded sales centres, distribution depots and delivery locations in England and Wales, including the sale and distribution of diesel, fuel oil and other petroleum products to domestic and business customers';[7]

(b) the Dealer business acquired pursuant to the Total Dealer Business SPA which provides for the acquisition of Rontec Dealer Limited, a non-trading holding company which held the contractual right to supply transport fuels to 318 DODO retail service stations operated under the Total brand; and

[7] Source: Schedule 11 Agreement for the sale and purchase of the Total UK Fuel Oil Business.

(c) the Islands business pursuant to the Logistics Services Agreement, which provided for the acquisition by DCC EUK of Total's oil distribution and retail service station businesses on the Isle of Man and the Channel Islands.

3.2 The Islands business does not operate within the UK and the acquisition of this business is not therefore relevant to our assessment of the effects of the merger within the UK.[8] As a result, the acquisition by DCC EUK of the Islands business is not considered further for the purposes of this inquiry.

The rationale for the merger

3.3 DCC EUK's strategy is to buy companies as cheaply as possible, improve underlying performance of the acquired company, and integrate the acquired operations into the broader GB Oils portfolio. [✂] GB Oils generally continues to use the local brands of acquired businesses for reasons of customer recognition/loyalty.

3.4 DCC EUK considered that its acquisition of the businesses from Rontec would allow it to achieve further economies through [✂]. DCC EUK considered that these efficiencies would help it to remain competitive with smaller competitors which it said operated on a much lower cost base. It said that the acquisition would also enable it to enhance its competitive offering in the supply of transport fuels to retail sites (and especially to those sites owned or supplied by oil majors/traders and major supermarkets).

Relevant merger situation

3.5 Under section 35 of the Act, the CC is required to decide first whether the acquisitions outlined above constitute a relevant merger situation and if so, if that relevant merger situation has caused, or may be expected to cause, a substantial lessening of competition. Section 23 of the Act provides that a relevant merger situation is created where:

(a) two or more enterprises cease to be distinct; and

(b) either the turnover test or the share of supply test is satisfied.

Enterprises ceasing to be distinct

3.6 The Act defines an 'enterprise' as 'the activities or part of the activities of a business'. 'Business' is defined as 'including a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge'.[9]

3.7 The Total UK Fuel Oil Business SPA for the sale of the Butler Fuels business by Rontec to DCC EUK provides for the transfer of employees, intellectual property (trademarks) and goodwill in addition to the transfer of assets and customer agreements. We are therefore satisfied that the Butler Fuels business described and defined in the Total UK Fuel Oil Business SPA satisfies the definition of a 'business' for the purposes of the Act.

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[8] The statutory test in section 35(1)(b) of the Act requires us to consider the effect of the merger on competition within any market or markets in the UK; the acquisition of the Islands business is not relevant to that assessment. The area of operation of the Islands business is outside the UK. In view of this and the small size of the Islands business we do not consider that its acquisition will have a material impact on the extent of competition of the UK businesses.
[9] Section 129(1) and (3) of the Act.

3.8 As noted in paragraph 3.1(b) DCC EUK also acquired the Dealer business from Rontec. Rontec established a new company, Rontec Dealer Limited, for the purposes of transferring the assets and contracts used in the Dealer business from Total to Rontec. DCC EUK acquired the entire issued share capital of Rontec Dealer Limited pursuant to the Total Dealer Business SPA. We are satisfied that, although a non-trading holding company, Rontec Dealer Limited was a business for the purposes of the Act, since it had the benefit of a number of agreements to sell finished petroleum products to service stations in England and Wales and had the benefit of the Total Fuel Cards Agreement, which was a series of agreements between Total and retailers governing the acceptance of the Total Fuel Cards at the dealer sites. The Total Dealer Business SPA also provided for the sale of other assets.[10] We are accordingly satisfied that the Total Dealer Business SPA provided for the transfer of shares, assets and goodwill sufficient to constitute a business for the purposes of the Act.

3.9 We are therefore satisfied that the Butler Fuels business and the Dealer business are ‘enterprises’ for the purposes of the Act. We are also satisfied that, since each SPA provided for the sale to DCC EUK of 100 per cent of the shares in companies which conducted the businesses, both enterprises have been brought under the control of DCC EUK and both enterprises have ceased to be distinct from DCC EUK, as described in section 26 of the Act.[11]

Turnover or share of supply tests

3.10 In considering whether a relevant merger situation has been created, the Act requires the CC to establish that the transaction has a sufficient nexus with the UK. This will be the case if either the turnover test or the share of supply test is satisfied. The turnover test is met where the value of the turnover in the UK of the ‘enterprise being taken over’ exceeds £70 million. The UK turnover of each of the Butler Fuels and Dealer businesses substantially exceeds £70 million. The UK turnover of Butler Fuels in 2011 was £[✂] million.[12] In the four months to March 2012 the turnover for the supply of transport fuels pursuant to the Dealer Agreement was £[✂] million.[13] Therefore the turnover test under section 35 of the Act is satisfied. Since the turnover test is satisfied, there is no need to consider the share of supply test.

3.11 For the reasons given above we are satisfied that a relevant merger situation has been created by the acquisition by DCC EUK of both Butler Fuels and the Dealer business and we have jurisdiction to consider whether the creation of that situation has resulted or may be expected to result in an SLC within any market or markets in the UK for goods or services.

4. Counterfactual

4.1 We considered what would have happened in the absence of the merger (the counterfactual).[14] Our Merger Assessment Guidelines (‘The Guidelines’) explain that we may examine several possible counterfactual scenarios and must select the most likely scenario absent the merger.[15] Typically, the most likely scenario will be a

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[10] Including fixed assets, goodwill, receivables and prepayments.
[11] We note that while the acquisition of the Islands business forms part of the overall merger situation referred to us, as it has no UK operations, we have not had regard to it for the purposes of establishing jurisdiction.
[12] See Appendix B, Table 3.
[13] See Appendix B, Table 4.
[14] The Guidelines, paragraph 4.3.1, state: ‘The application of the SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the “counterfactual”.’
[15] CC and OFT, *Merger Assessment Guidelines, CC2 (Revised)*, September 2012, paragraph 4.3.5.

continuation of the pre-merger situation. However, it may not be if we have good evidence to think otherwise: we need to be able to predict events with confidence in deciding the likely counterfactual.[16] The Guidelines note that 'the CC will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments'.[17]

4.2 Total made initial contact with a wide selection of potential buyers, received a large number of expressions of interest and several non-binding offers. A number of shortlisted bidders performed due diligence and made final offers. Total decided to enter exclusive negotiations with Rontec in March 2011 and reached an agreement on 21 June 2011. Total indicated that there were a number of interested parties for the target businesses.

4.3 We were told by Rontec that it acquired the target businesses as part of a single package of Total's downstream fuel assets in the UK. Total was not willing to sub-divide its sales package for the purposes of the sale. However, the Butler Fuels and Dealer businesses did not fall within Rontec's core strategic goals and Rontec always intended to sell them to a third party. Rontec spoke to DCC EUK and three other companies about a possible sale,[18] all of which contacted Rontec proactively.

4.4 The sale of the businesses by Total to Rontec was agreed before the further sale to DCC EUK. We therefore consider that the appropriate pre-merger situation is with Rontec as owner of the businesses. We consider that the appropriate timing for the counterfactual is mid September 2011, when Rontec agreed to sell the businesses to DCC EUK.

4.5 We have not received any views that Butler Fuels was not a viable business. Rontec, and earlier, Total, had both received approaches from a number of interested parties to acquire this business. We note that the current management team is operating Butler Fuels as a stand-alone company, and has told us that it will generate profits in the 2012/13 financial year. DCC EUK considered that if the merger had not taken place, Rontec would have sold Butler Fuels to another company. We consider that the appropriate counterfactual for Butler Fuels is that it would have continued to compete as a distributor of transport fuels and heating oil products, either as a stand-alone business or as part of a larger company group.

4.6 With regard to the Dealer business we noted that Rontec had incorporated the Dealer business as a limited company as part of its deal structure. In addition, DCC EUK had satisfied itself about the remaining duration of the underlying Dealer contracts and the profitability of the Dealer business. This provided evidence that the Dealer business could be owned and operated as a viable enterprise for the fore-seeable future, either by DCC EUK, by Rontec or by another company.

4.7 We considered that the most likely alternative owners for the Dealer business would have been another company active in the distribution of transport fuels and/or heating oil products. Rontec told us that none of the parties that had expressed interest in Butler Fuels was also interested in acquiring the Dealer business, and that it received no separate expression of interest in it. However, we note that the business was profitable at the operating profit level[19] and it was feasible for Rontec to

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[16] The Guidelines, paragraph 4.3.2.
[17] The Guidelines, paragraph 4.3.6.
[18] [✂], [✂] and [✂]. [✂] and [✂] submitted indicative bids, however, the price was not high enough to interest Rontec.
[19] See Appendix B, Table 4. The operating profit for the dealer business was [✂] million for the first half of 2010 (under Total ownership) and [✂] million for the four months to March 2012 (under DCC EUK ownership).

continue to operate the business itself or to sell it to a third party. Since the business was profitable we consider it should have been possible to find a purchaser. We concluded that the Dealer business would have either continued to operate as part of Rontec or would have been sold by Rontec to a third party. In either case the Dealer business would have continued to operate in competition against DCC EUK.

4.8 We concluded that the appropriate counterfactual for the Dealer business was continued operation of the activities for the foreseeable future, under ownership independent of DCC EUK.

5. Oil distribution industry

5.1 Crude oil is refined to produce a range of different petroleum products. There are presently seven major refineries in operation in the UK. There is an active international market in petroleum. Petroleum products are imported or exported to match UK demand. In 2010 the final consumption of petroleum products in the UK was over 65 million tonnes. Transport fuels accounted for the majority (circa 72 per cent) of this product, with petrol amounting to 15 million tonnes, diesel (derv) 21 million tonnes, and aviation fuel 11 million tonnes.[20] Other products include gas oil (5 million tonnes)[21] and kerosene (heating oil, 4 million tonnes). The remaining 9 million tonnes represent a variety of products including gases (such as liquefied petroleum gas), lubricants, fuel oil,[22] and bitumen. Consumption of petroleum products is forecast by DECC to decline at 0.7 per cent a year over the period to 2030 (see Appendix B).[23]

5.2 As noted above, the road transport sector is the largest user of petroleum with the majority of sales of road transport fuel made by retail filling stations.[24] The main users of gas oil are industrial, commercial and agricultural customers that use the product for plant and machinery such as construction equipment and tractors. Some gas oil is also used for heating. Around 2.5 million tonnes of kerosene (63 per cent) is used for domestic heating, with the remaining 1.5 million tonnes used for heating by industrial, commercial and agricultural customers.

5.3 UK prices of petroleum products are strongly influenced by international petroleum prices, since product can be easily imported or exported as required. Prices can therefore be volatile. Frequently UK prices to large customers are indexed to the international product price.[25]

Oil distribution

5.4 Product from refineries and imported product is transported by pipelines and other means to terminals for onward distribution to customers. Appendix B[26] contains a map of UK oil refineries, pipelines and major distribution terminals. There are a number of different ways that products are delivered to customers. Oil majors and traders predominantly deliver large loads (usually full loads) in artics. The capacity of an artic varies depending on the fuel being delivered.[27] Typically for diesel or gas oil

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[20] Aviation fuel is delivered by pipeline to larger airports.
[21] Gas oil is also known as red diesel. It is essentially the same product as diesel but is dyed red to distinguish it because it is taxed at a lower rate.
[22] Fuel oil is a heavier product that is delivered in heated tankers.
[23] www.decc.gov.uk/en/content/cms/about/ec_social_res/analytic_projs/en_emis_projs/en_emis_projs.aspx#2011-projections.
[24] Petrol and diesel are also delivered to some large customers which have their own tanks.
[25] Platts prices are generally recognized as industry benchmarks for crude oil and oil product prices.
[26] Appendix B, Figure 2.
[27] The density of fuels varies between the different types of fuel. A vehicle can carry up to a given weight of product so the volume that represents a full load is different by product.

an artic will carry up to 36,000 litres but it will be able to carry slightly more kerosene and petrol. In contrast distributors mainly focus on smaller customers that take smaller loads.

Oil majors and traders

5.5 Oil majors and traders sell oil products to large commercial customers, retail forecourts and distributors. Oil majors such as BP, ConocoPhillips, Esso and Shell are vertically-integrated oil exploration and production companies that have the capability to deliver oil products to end customers in the UK (either directly or by using hauliers), including retail forecourts. Retail forecourts that use an oil major's brand are supplied by that oil major on an exclusive basis. In recent years several oil majors have rationalized their refining and marketing (downstream) activities in the UK.

5.6 Traders buy product from refiners or on the international market, store this product in bulk storage facilities and deliver to end customers. Some also have retail forecourts. Traders include Greenergy, Harvest Energy (Harvest), World Fuel Services, Essar, Mabanaft, Prax Petroleum (Prax) and Inver Energy.

5.7 Evidence from third parties suggests that most oil majors have exited the distribution business for volumes that cannot be delivered in an artic and most traders do not supply such loads.[28,29] Oil majors and traders supply distributors and appear to compete with distributors for some large commercial customers.[30]

Distributors

5.8 Distributors supply transport fuels and heating oil products to final customers on a local, regional or national basis. Distributors purchase product from oil majors and traders, take orders from customers, and deliver the product. Distributors usually deliver smaller loads than oil majors and traders and delivery vehicles are mainly smaller rigid tankers.[31] Individual customer loads are usually smaller and a truck will often deliver to a number of customers in one journey (on a 'milk round'). Most distributors are independent of oil majors and traders.[32]

5.9 Distributors may collect oil from refineries or terminals in trucks (buying 'ex-rack') or arrange for delivery to their depots by oil majors, traders or independent transport companies (generally in an artic). Larger distributors may also use their own artics for delivery to their depots and to large customers.

5.10 There are three types of distributor which vary according to the extent of their geographic coverage: national distributors, regional distributors and local distributors. Distributors in the UK vary in size from sole traders to divisions of large companies. The larger distributors are shown in Table 1 below.[33] The largest is GB Oils, which is

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[28] See Appendix D, paragraph 22.
[29] We noted in particular that the main parties' internal documents state the market shares of GB Oils, Watson Fuels (Watson), NWF, Rix Petroleum (Rix) and Goff (as the 'traditional market') and Mabanaft, Greenergy, Harvest, World Fuel and Prax (as 'traders') which suggests that they see those as their most important competitors; see Appendix D, paragraph 13.
[30] See Appendix D, paragraphs 16 & 17 as well as 19–21.
[31] Rigid tankers vary in size with smaller vehicles carrying around 12,000 litres up to the largest carrying 22,000 to 24,000 litres. Load sizes can vary from 500 litres or more for a domestic customer delivery to larger loads for commercial and agricultural customers.
[32] Previously, many oil majors had authorized distributors in the UK that delivered product to smaller customers on the oil major's behalf.
[33] Note the table refers to 138 companies. The OFT (in its Off-Grid Energy market study, Table 4.6) has estimated that there are around 380 distributors in the UK. The balance are very small distributors.

around three to four times the size of the next largest distributor, Watson.[34] Butler Fuels is third largest. Distributors may also deliver outside their area of direct supply by subcontracting deliveries to other suppliers.

[34] GB Oils is three times the size of Watson when measured by number of trucks and independent distributor volumes and four times the size when measured by turnover. Note that the figures for GB Oils do not include Butler Fuels.

TABLE 1 **Distributor sizes**

	Company	*Principal areas of operation*	*DCC EUK estimate of independent distributor volumes '000 litres*	*DCC EUK estimate of total volume '000 litres*	*Turnover (last reported) £m*	*Trade press estimate of tankers*	*Number of depots*
1	GB Oils	National	[1,200–1,500]	[4,750–5,000]	3,151	887	196
2	Watson	South, Midlands Mid Wales, North	[500–600]	[1,100–1,300]	834	300	[✂]
3	Butler Fuels	Most of England, Wales	[400–500]	[600–700]	214	191	[✂]
4	North Western Farmers (NWF)/ Eversons	Midlands, North-West, South	[300–400]	[400–500]	290	90	[✂]
5	Rix	Yorkshire, Lincolnshire, Mercia, Midlands, North-East, East Scotland, East Anglia	[200–300]	[400–500]	425.5	76	[✂]
6	Goff Petroleum	East Anglia, Kent, Sussex	[200–300]	[200–300]	93	110	[✂]
7	WCF	North-West	[100–200]	[200–300]	123	32	[✂]
8	Highland Fuels	Scotland	[100–200]	[200–300]	180	40	[✂]
9	BWOC	South Wales, North-West, West Country, Scotland	[100–200]	[600–700]	492	N/A	[✂]
10	Gleaner Oils	Scotland	[100–200]	[100–200]	118	37	[✂]
11	Wallace Oil	Scotland	[100–200]	[100–200]	N/A	N/A	[✂]
12	Barton Petroluem	Leicester, Oakley, Watford, Wellingborough	[100–200]	[100–200]	71	26	[✂]
13	Fuel Oils Holdings	South-East	[100–200]	[100–200]	91	38	[✂]
14	Crown Oil	Direct supply from Manchester to Hull; nationwide using subcontractors	[< 100]	[200–300]	147	N/A	[✂]
15	Wessex Petroleum	South	[< 100]	[100–200]	116	N/A	[✂]
16	Linton Fuel Oils	South-East	[< 100]	[100–200]	109	37	[✂]
17	Samuel Cooke	North-West	[< 100]	[200–300]	106	N/A	[✂]
18	Chandlers Oil & Gas Limited (Chandlers)	Lincolnshire, Northampton	[< 100]	[<100]	65	36	[✂]
19	Johnston Oils Limited	Scotland	[< 100]	[100–200]	92	54	[✂]
20	Allan Stobart	Carlisle, Penrith	[< 100]	[<100]	N/A	N/A	[✂]
	Subtotal		[4,000–5,000]				
	Additional 118 companies		[2,500–2,800]				
	Total identified by DCC EUK		[7,000–8,000]				

Source: DCC EUK and other company views. Independent distributor volumes: DCC EUK estimate. Areas of coverage: DCC EUK estimate, supplemented with company websites. History: company websites. Total volumes: DCC EUK estimates. Turnover: Companies House—last available annual report. Tanker numbers: *Fuel Oil News*, February 2012. GB Oil figure includes Pace. Depot numbers: companies and the OFT.

*There are 131 owned GB Oils depots. GB Oils also operates out of 65 third party owned locations (terminals and depots).
† Based on data from 2010.
Note: DCC EUK's estimates of independent distributor volume exclude large customers requiring in excess of 15 million litres per year, forecourt delivery, aviation and marine.

National distributors

5.11 National distributors have a depot network of national or near-national scope. They include GB Oils, Butler Fuels, Watson and NWF. Each has an extensive depot network, relying on subcontractors only for areas where they do not have a depot. The depot network of GB Oils is shown in Appendix B.[35] National distributors generally deliver to all customer segments, including domestic customers and businesses of varying geographic scope. However, not all deliver to retail forecourts. Watson told us that delivery to retail forecourts was only a small part of its business. Crown Oil told us that it did not deliver to retail forecourts. Appendix B[36] shows GB Oils' customer numbers and sales. On the basis of the breakdown used by GB Oils its largest customer groups are commercial customers and national accounts, which together account for [✂] of GB Oils' total volume but only [✂] per cent of its customers.

Regional distributors

5.12 Regional distributors operate from a number of depots and are able to supply all fuels to all types of local customers (ie domestic and small business, agricultural and industrial customers). Regional distributors are mid-sized and operate on a sufficient scale to compete with national distributors for regional contracts and may be able to compete with national distributors on a national basis through subcontracting. Regional distributors include: Goff Petroleum, Rix, Chandlers, Fuel Oils, and Barton Petroleum.

5.13 Some regional distributors claimed that they were capable of operating on a national basis through subcontracting. One of the distributors that relies to a large extent on subcontracting is Crown Oil. Crown Oil has two depots only (in Bury and Doncaster) and delivers to customers outside its own direct delivery area by using sub-contractors.[37,38]

Local distributors

5.14 Local distributors are small operations which deliver only within a limited distance around their depot. They are effective competitors for small customers (ie domestic and agricultural customers and some small businesses) as they are most likely to have a smaller cost base and their customers appreciate suppliers with local knowledge. However, small suppliers do not have the capacity to deliver large volumes in single loads (ie more than 22,000 to 24,000 litres[39]) as they do not own or lease artics.[40] Local suppliers therefore appear to compete with the merger parties for domestic and farming customers and smaller local businesses in the specific local areas where they compete. However, some of these local suppliers focus either only on the supply to certain customer segments (ie local domestic or agricultural customers or small local businesses) or supply a limited range of fuels. Because of this, certain local suppliers might not compete for all types of customers.[41]

[35] Appendix B, Figure 3.
[36] Appendix B, Table 5.
[37] See Appendix D, paragraph 8.
[38] We consider whether local or regional distributors could extend their supply area by subcontracting to compete on a wider basis in paragraphs 7.33–7.35.
[39] Or less if the distributor has smaller trucks.
[40] See Appendix D, paragraphs 3 & 4.
[41] See Appendix C, paragraph 14.

6. Market definition

6.1 The Guidelines[42] state that the purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of the merger. The Guidelines go on to state that the CC will identify the market within which the merger may give rise to an SLC, and that this will include the most relevant constraints on behaviour of the merger firms.

6.2 The Guidelines also note that in practice, the analysis leading to the identification of the market or markets and assessment of competitive effects will overlap, with many of the factors affecting market definition being relevant to the assessment of competitive effects and vice versa.[43]

6.3 Our view is that the distribution of transport and heating fuels in Great Britain is an appropriate starting point as a relevant market within which to assess competitive effects. This is because *(a)* the merger parties overlap in this market; *(b)* the most direct competition faced by one supplier of these products seems to come from other suppliers of the same products; and *(c)* this definition provides an appropriate framework for evaluating any constraints on the merged firm's conduct in relation to the overlap products.

6.4 However, we note that within the relevant market there may be segments within which the conditions of competition differ. In this section, we set out the relevant market and segments within this market in which we have assessed the effects of the merger and we note where we have dealt in our competitive assessment with issues relevant in the context of market definition.

Customer segmentation

Bulk customers

6.5 We did not find evidence to suggest that the total annual volume purchased by the customer was a relevant factor. Therefore we did not consider segmentation by total volume further. However, it was apparent to us that drop sizes were an important factor in determining the types of suppliers that compete for certain types of business. Oil majors and traders told us that they would compete to supply bulk customers and would generally deliver artic loads. Some told us that part loads delivered in an artic would occasionally also be viable and some said that they would also supply customers which mainly took artic deliveries, but also required smaller loads to some locations.[44]

Non-bulk customers

6.6 We found that geographic scope was relevant for non-bulk customers only. The potential differences in the size of the depot network and degree of sophistication of the logistics required to serve customers with different geographic scope suggested to us that it was appropriate to segment non-bulk customers further by the customer's geographic scope.

6.7 The geographic scope of customers varies and can be local, regional, multi-regional or national:

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[42] The Guidelines, paragraph 5.2.1.
[43] The Guidelines, paragraph 5.1.1.
[44] See Appendix D, paragraphs 16 &17.

(a) Local customers include domestic heating oil customers, agricultural customers, and small commercial/industrial customers, usually requiring fuel deliveries to a single site.

(b) Regional and multi-regional customers are generally larger commercial/industrial customers and public sector customers. Regional and multi-regional customers include MSNB customers. This is a significant customer segment and consists of customers that have a number of delivery locations in one or more regions, but do not take a large proportion of bulk deliveries. They may be large purchasers overall.

Summary of differences in supply-side capabilities and demand-side requirements

6.8 There are differences in the distribution of fuels to the customer groups discussed in paragraphs 6.5 to 6.7, both in terms of supply-side capabilities and demand-side requirements. This suggests that different customer groups may face different competitive landscapes.

6.9 Therefore we thought it appropriate to consider competitive effects for the following customer segments:

(a) 'Bulk' customers, which typically require deliveries in full artic loads (see paragraphs 7.7 to 7.9).[45]

(b) DODO retail forecourts. These are supplied with transport fuels only. These customers also usually require full artic deliveries (see paragraphs 7.10 to 7.15).[46]

(c) Customers that require smaller deliveries that are not delivered in an artic (these are non-bulk customers). These include:

(i) local customers (see paragraphs 7.16 to 7.18);

(ii) regional customers; and

(iii) multi-regional customers (some of which may be present in all regions of the UK);

The MSNB customers, discussed in paragraph 6.7(b) above are the customers in 6.9(c)(ii) and 6.9(c)(iii). These customers are considered in paragraphs 7.19 to 7.47.

6.10 We found that customers would be unable to switch between fuels unless they were willing to incur high costs.[47] Evidence from the customer survey and third parties has shown that switching for domestic or business customers of any size between fuels would require considerable investment.[48] Over 80 per cent of MSNB customers said that they would find it difficult or impossible to do so.[49] DCC EUK told us—and other

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[45] It is worth noting that the merger parties distinguish 'national account' customers, ie customers requiring volume above a certain threshold and additional services. The definition of this customer segment differs between the merger parties.
[46] DODO customers are bulk customers, however they are not end-users of the product but retailers.
[47] See Appendix D, paragraph 68 and Appendix E, Table 25.
[48] See Appendix D, paragraphs 67 & 68.
[49] See Appendix E, Table 25.

suppliers confirmed—that switching between the delivery of heating and transport fuels would be easy for suppliers and would not give rise to significant costs.[50,51]

6.11 Following our competitive assessment, we did not reach a firm view on whether specific subsets of the segments identified would form a market that would satisfy the hypothetical monopolist test. However, we were content that we had identified and considered all relevant competitive constraints in our assessment and no reasonable alternative market definition would have led to a different conclusion regarding the substantive effects of the merger.

7. Assessment of the competitive effects of the merger

7.1 In this section we assess the competitive effects of the merger. Our assessment was based mainly on three sources of information:

(a) An analysis of local competition around overlap areas between GB Oils depots and Butler Fuels depots to assess the degree of competition that would result after the merger (see Appendix C).

(b) The views of DCC EUK, competitors to GB Oils and customers (see Appendix D).

(c) A survey of customers of GB Oils commissioned by the CC and conducted by an independent market research agency which considered all customer segments (see Appendix E).

7.2 We assessed competition for each of the relevant customer segments delineated above (see paragraph 6.9). We describe details of our approach regarding customer segmentation in paragraphs 7.3 to 7.5.

7.3 We were told that oil majors and traders would compete to supply bulk customers and would generally deliver artic loads, but would also occasionally deliver less than artic loads.[52] The maximum load that a rigid tanker can deliver is 22,000 to 24,000 litres, therefore in our analysis we used a drop size of 25,000 litres or more as the threshold for bulk deliveries.[53] Some oil majors and traders told us that they would supply customers which mainly took bulk artic deliveries but also required smaller drops to some locations.[54] Therefore we considered two categories of bulk customers in the survey—those which only received drop sizes of 25,000 litres or more and those which received drop sizes of 25,000 litres or more but also smaller drops.

7.4 For the purposes of the survey we considered two types of local customers by distinguishing between local customers in areas with four or more suppliers (including DCC EUK and Butler Fuels (counted as one supplier)) and in areas with fewer suppliers (based on data from the OFT off-grid energy market study).[55] We considered customers with three or more sites in one region as multi-site, single-region customers and those with sites in three or more regions (and therefore with at

[50] See Appendix D, paragraph 25.
[51] However, we note that petrol is subject to more stringent regulations for its delivery and storage than other petroleum products and many distributors did not stock it (see paragraph 7.6).
[52] See Appendix D, paragraph 16.
[53] We note that DCC EUK used 30,000 litres as the threshold for defining a non-bulk customer, however, we do not consider that using a higher threshold would have made a material difference to our assessment.
[54] Since we used these additional breakdowns, we refer to the different types of customers considered in the survey as customer categories rather than as customer segments.
[55] We used three suppliers because in merger investigations a merger that reduces the number of competitors to three is frequently indicative of a problem.

least three sites, one in each region) as multi-site, multi-region customers. We refer to both as multi-site customers below. We used three sites as the threshold for single-region customers to exclude cases where a customer had two sites in very close proximity since we thought this was less likely for customers with three sites. Similarly, we used three rather than two regions as the lower bound for multi-regional customers to exclude customers situated on the border between two regions where the sites were in close proximity but in two regions.[56]

7.5 Generally, we use the term 'region' loosely to refer to the region in which customers or suppliers are located. However, for the purposes of the survey we used NUTS1 regions[57] to establish the number of regions where a customer required deliveries.

Differences between fuels supplied

7.6 From information supplied by DCC EUK and third parties we understood that the number or type of alternative suppliers did not differ significantly by fuel, regardless of the type of customer which uses the fuel. The exceptions to this were diesel and petrol. Many distributors did not stock (or sell) petrol, which is subject to more stringent regulations for its delivery and storage than other petroleum products. Some local suppliers did not actively compete to deliver diesel. These suppliers said the profit margins on supplying diesel were low.[58,59] As we explain in the following paragraphs (and in more detail in Appendix C) this did not matter for our findings regarding possible harm for local customers.

Competitive effects for different customer segments

Bulk customers

7.7 Third parties commented that distributors, traders and oil majors would compete for business with customers requiring predominantly or only artic loads.[60] The survey found that only around half of the bulk survey respondents mentioned both the merger parties as feasible suppliers[61] and found that only one respondent, which also bought smaller volumes, gave the merger parties as its only feasible suppliers.[62] All other bulk customers that mentioned both the merger parties as feasible suppliers stated at least two additional feasible suppliers.

7.8 In the survey, 89 per cent of the 92 bulk customers that mentioned more than one possible supplier said that they occasionally or regularly used several suppliers.[63,64] We found that a very large share of the respondents that always or sometimes buy full loads and currently use one of the merger parties as their main supplier said that they would switch to a third party, as opposed to another GB Oils brand or Butler

[56] See Appendix E, paragraph 7.
[57] The Nomenclature of Territorial Units for Statistics (NUTS) is a geocode standard for referencing the subdivisions of the UK. There are 12 first level (NUTS1) regions in the UK, nine are in England and one each for Scotland, Wales and Northern Ireland.
[58] See Appendix D, paragraph 24.
[59] We note that the tax rate on diesel (and petrol) is higher than on gas oil and kerosene, which also means the financial returns are low in relation to the inventory financing required.
[60] See Appendix D, especially paragraphs 16 & 17.
[61] 42 per cent of those buying full loads only and 50 per cent of those that also buy smaller volumes; see Appendix E, Table 5.
[62] See Appendix E, Table 5. It accounts for 4 per cent of the 28 respondents.
[63] The survey responses showed that these customers were most likely of all customer categories to use several suppliers. See Appendix E, Tables 7 & 12. In relation to such multi-sourcing we focus on customers that are aware of more than one possible supplier, since the few that are only aware of one possible supplier will obviously not use another supplier.
[64] The number of bulk customers (ten) that always use the same supplier is too low for reliable conclusions. We note that none of the bulk customers said that the work involved in switching would be a reason why they would stay with the same suppliers; see Appendix E, Table 11.

Fuels, if the existing supplier ceased supply or increased price by 5 or 10 per cent.[65] Third party suppliers also told us that bulk customers would buy from the cheapest supplier on the day they required a delivery and would be willing to switch to get a lower price.

7.9 Therefore overall we did not see scope for harm to competition for supply to bulk customers.

DODO forecourts

7.10 Evidence gathered from DCC EUK and third parties suggested that there is significant competition for supplying DODO petrol forecourts, mainly from oil majors, traders and large distributors. However, we noted that Watson told us that delivery to retail forecourts was only a small part of its business and Crown Oil said that it did not supply to forecourts (see paragraph 5.11 above). In general, DODO forecourts which take full artic loads appear to have access to a number of oil majors and traders and independent brands such as Gulf or Rix. Smaller DODO businesses, which require smaller volumes in total, might have a more limited choice of suppliers. Third party responses did not suggest that there would be regions where there would be few suppliers to DODO forecourts.[66] Many suppliers of DODO forecourts did not regard the merger parties as close competitors.[67]

7.11 The survey showed that only around one-quarter of the DODO respondents (28) said that both the merger parties would be possible suppliers. Of those, only six (21 per cent, accounting for 6 per cent of all DODO respondents) did not state an alternative supplier besides the merger parties. Others stated at least two alternative suppliers besides GB Oils and/or Butler Fuels.[68] Although the large majority of DODO forecourts (66 per cent) said that they would always use the same supplier, only 10 per cent of these said that they would do so because they had a limited choice of supplier and only 3 per cent said that they would so because it was too much work to change supplier.[69]

7.12 The responses to the switching questions, and the questions about what customers would do if their existing supplier ceased to supply, suggested that third party suppliers are the main competitive constraint on GB Oils rather than Butler Fuels. When DODO customers which currently use GB Oils as their main supplier were asked what they would do if their current GB Oils supplier ceased to supply, 63 per cent said they would move to third party suppliers. Only 4 per cent said they would move to Butler Fuels. When asked what they would do if their price increased by 5 or 10 per cent, 75 per cent of DODO customers of GB Oils said that they would reduce or move business to a supplier other than the merger parties. Only 7 per cent of the DODO customers of GB Oils said that they would switch to Butler Fuels.

7.13 We note that some of the respondents which use GB Oils as their main supplier said they would switch from one GB Oils brand to another.[70] These customers were recorded as switching to GB Oils. As a consequence the constraint imposed by third party suppliers and Butler Fuels on GB Oils may be understated. This is the case since these respondents would very likely have chosen either Butler Fuels or a third

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[65] See Appendix E, Tables 17 & 21.
[66] See Appendix D, section 'available suppliers' for details (paragraph 75 and following).
[67] See Appendix D, paragraph 85.
[68] See Appendix E, Tables 4 & 5.
[69] See Appendix E, Tables 7 & 11.
[70] The question asked was what the customer would do if its existing supplier ceased to supply. This meant that the customer could state another GB Oils brand as a supplier that it would switch to.

party supplier instead, had the question asked for alternatives in case of the closure of GB Oils or a price increase by GB Oils (rather than just by the GB Oils brand the customer was using). The number of respondents that currently use Butler Fuels is very low and did not allow us to assess whether GB Oils was an important constraint for Butler Fuels.

7.14 When DODO customers which currently use either GB Oils or Butler Fuels as their main supplier were asked what they would do if their existing supplier ceased to supply, 62 per cent said that they would switch to third parties, as opposed to another GB Oils brand or Butler Fuels. 73 per cent of DODO customers which currently use either GB Oils or Butler Fuels as their main supplier said that they would switch to third parties, as opposed to another GB Oils brand or Butler Fuels if their existing supplier increased price by 5 or 10 per cent.[71]

7.15 The above suggests that the merger parties are not particularly important suppliers to forecourts. We note from a small number of the views expressed to us that we cannot be certain that there are no niches of the DODO business where the merger parties overlap in the area and are more significant competitors, such as for the supply to forecourts with very low annual sales located in certain areas of Great Britain. However, we considered such niches unlikely to exist.[72] Therefore overall we did not see scope for harm to competition for supply to DODO forecourts.

Non-bulk customers

Local customers

7.16 We analysed competition at a local level (for supplying domestic, agricultural and local business customers). The survey showed that only around one-quarter of the (non-bulk) single-site customers identified both the merger parties as suppliers that could meet their fuel requirements. Only 13 per cent of (non-bulk) single-site respondents that considered both the merger parties to be possible suppliers did not indicate another supplier that could also meet their requirements.[73] The majority of the single-site customers (56 per cent or more) that presently mainly use either of the merger parties stated that they would switch to third parties if their present supplier ceased supplying them or if its price increased by 5 to 10 per cent.[74,75]

7.17 These findings are consistent with the evidence on local catchment areas which showed that there were only a few areas where both the merger parties were present and where only a small number of other suppliers (besides the merger parties) were also present (see Appendix C for details). This analysis focused on areas where the catchment areas of Butler Fuels depots and GB Oils depots[76] overlapped. We used conservative (ie broad) filters to identify potentially problematic local areas and then focused on the particular circumstances within each area to form a view on whether a

[71] Appendix E, Tables 20 & 24.
[72] See Appendix D paragraph 86.
[73] See Appendix E, Table 5. This is the share for single-site customers with four or more alternative suppliers based on the OFT's Off-Grid Energy market study (category B5). The number of single-site respondents in areas with fewer suppliers is four. All of those identified two or more alternative suppliers in addition to the parties.
[74] See Appendix E, Tables 19 & 23.
[75]We note that not all customers may be fully aware of all the brands GB Oils is trading under. Some of the respondents that stated the alternative supplier that they would switch to may have given a GB Oils brand, assuming it was independent. However, we did not know which supplier the respondent would have chosen had they been asked for their choice if all GB Oils brands had increased price or ceased trading. Consequently we placed a somewhat lower value on the response to those questions in our conclusions. The categorization into GB Oils (brand) and third party was added in the course of the analysis and was not stated by the respondents.
[76] The catchment area was defined as capturing 80 per cent of deliveries from a given site.

competition problem existed.[77] We found that there were only 12 local catchment areas where our approach suggested a potential problem.

7.18 We found that the 12 potential problem areas were located near to terminals or refineries of the oil majors and traders. This meant that entry on a small scale would be viable for two reasons. First, an entrant would be able to compete by delivering directly from these terminals or refineries, which would be a lower cost entry than if the entrant had needed to invest in a 'wet' depot (ie with its own fuel storage tanks). Second, if an entrant built its own depot in the area it would be able to source fuel economically, without being disadvantaged by high transport costs (see also paragraphs 7.49 to 7.51). Therefore we concluded that the threat of entry into these areas would impose a competitive constraint on the merger parties.[78] Considering the above, we thought that harm to competition for local customers was unlikely to arise from the merger.

Multi-site non-bulk customers

7.19 In our assessment of multi-site customers requiring non-bulk deliveries (in tankers that are not artics) we distinguished between customers with sites in a single region and those with sites in several regions.

7.20 In relation to its MSNB customers' geographic scope of business DCC EUK made a number of points about its MSNB customers. It said that:

(a) [✂] per cent of MSNB customers had only [✂] sites;

(b) [✂] per cent of MSNB customers purchased for [✂] sites. It said that 'even if each of these sites were in a separate region, [✂]; and

(c) the great bulk of the sites (supplied by DCC EUK) of a majority of the MSNB customers operating more than 100 sites was [✂] in [✂] region and these [✂] could be expected to have the greatest propensity to multi-source for competitive reasons, ie so as to put potential suppliers into head-to-head competition with one another.

7.21 We noted that [✂] per cent of GB Oils' MSNB customers are in two or more regions, accounting for [✂] per cent of its total MSNB customer volume, and [✂] per cent are in three or more regions, accounting for [✂] per cent of its total MSNB customer volume. Table 2 shows that the number of sites per customer generally increases as the number of regions where the customer has sites increases. Table 2 also shows that MSNB customers present in more regions are less concentrated geographically, since the percentage of sites in the region with the most sites reduces.

[77] In our filters, we distinguished competitors with a national or near-national depot network from smaller suppliers, because some smaller competitors may impose a weaker constraint on the parties (for example, they may not supply all products). If there were no competing national distributors present we identified potentially problematic areas as those where there were fewer than six other suppliers present. We also identified potentially problematic areas as those where there was one or no competing national distributors present and the merger parties had a share of depots in the area of more than 30 per cent. With this second screen we then formed a further judgement based on the share of the national supplier (if present) and the other suppliers that were present in the area (see Appendix C, paragraphs 11–24 for further details).

[78] The local effects analysis is described in detail in Appendix C and the analysis of entry in Appendix F. Where our conclusions relate to domestic customers buying heating oil they are consistent with the findings in the OFT's Off-Grid Energy market study, see in particular paragraphs 4.27–4.30 of the OFT report regarding the number of available suppliers and paragraphs 4.32, 4.39 & 4.40 regarding entry.

TABLE 2 **Breakdown of GB Oils' MSNB customers by NUTS1 region, data for 2011**

Number of NUTS1 regions where customer has locations	*Number of customers*	*Sum of total number of sites*	*Average % of sites in the largest region*	*Sum of 2011 customer volumes million litres*	*Average number of sites per customer*
1	[✂]	[✂]	[✂]	[✂]	[✂]
2	[✂]	[✂]	[✂]	[✂]	[✂]
3	[✂]	[✂]	[✂]	[✂]	[✂]
4	[✂]	[✂]	[✂]	[✂]	[✂]
5	[✂]	[✂]	[✂]	[✂]	[✂]
6	[✂]	[✂]	[✂]	[✂]	[✂]
7	[✂]	[✂]	[✂]	[✂]	[✂]
8	[✂]	[✂]	[✂]	[✂]	[✂]
9	[✂]	[✂]	[✂]	[✂]	[✂]
10	[✂]	[✂]	[✂]	[✂]	[✂]
11	[✂]	[✂]	[✂]	[✂]	[✂]
12	[✂]	[✂]	[✂]	[✂]	[✂]
Total	[✂]	[✂]	[✂]	[✂]	[✂]

Source: DCC EUK and CC analysis.

7.22 We assessed the position of MSNB customers that required supply over a wide geographic area (either within one region or across a number of regions). In this case, if the customer wished to receive its requirements from a single supplier, the supplier would have to be capable of delivering over at least the area where the customer was present. We assessed whether such customers would be able to benefit from enough competition post-merger, if they sourced their requirements from a single distributor. We also assessed whether these customers had viable alternatives to receiving their requirements from a single supplier. Competition in the supply to MSNB customers is considered in more detail below.

- *Closeness of competition by geographic coverage of the customer*

7.23 Information from the main and third parties suggested that generally suppliers with a given geographic scope competed for all types of customers with the same or a smaller geographic scope.[79] Some also competed for customers with sites outside their area of direct delivery through subcontracting (see paragraph 5.13). We found that national distributors compete for national as well as regional and local business, while regional competitors appear mainly to compete for regional business (with a similar geographic 'footprint') and local business.[80]

7.24 We found that there were a large number of alternative suppliers competing for direct supply to business customers that had sites in a small area, but few suppliers with a nationwide or near-nationwide depot network for direct deliveries (see paragraphs 5.8 to 5.14).

7.25 Responses to our customer survey showed that some customers prefer to deal with suppliers which can supply sites throughout the areas where they are present. The responses suggested that the vast majority of respondents saw it as important or very important that their supplier is able to supply sites throughout their region or

[79] The exception was some small local suppliers that only competed for certain customer types (see paragraph 5.14).
[80] See Appendix D, paragraphs 3, 28 & 29 and 33 & 34.

regions.[81] However, most of the respondents also said that they would use several different suppliers to supply their requirements.[82,83]

7.26 We therefore assessed whether customers with a larger geographic business had alternatives to direct supply from a single distributor with a footprint at least as large as their own.

7.27 We examined the alternatives that MSNB customers may consider, besides having a supplier with a matching area of direct supply, if the customer's sites are spread out over a number of regions. We also examined the alternatives that distributors might consider to expand their geographic coverage to compete for larger customers. The alternatives considered were:

(a) multi-sourcing by customers, so that the customer has a range of suppliers based on a regional split; and

(b) subcontracting and backloading by a supplier to increase its geographic coverage.

7.28 Multi-sourcing from several suppliers potentially increases the number of suppliers available to a customer, since, if practicable, the customer would be able to split its orders on a regional basis between several suppliers.

7.29 We received mixed evidence on the attractiveness of multi-sourcing from DCC EUK and from third parties. DCC EUK said that customers would be able to split their demand between several suppliers, whether to distributors delivering directly or to those which supply a part of the customer's requirement by subcontracting. According to two large diesel customers, multi-sourcing leads to less-competitive offers.[84] However, other customers said that they would use more than one supplier, each with a very wide, 'national' depot network (as opposed to using distributors on a regional split).[85] Two mid-sized distributors commented that customers with nationwide fuel requirements would be able to buy from multiple regional suppliers and thus receive more competitive pricing. A trader thought that this was because no single supplier would be the most competitive in every region.[86]

7.30 The survey provided evidence on the prevalence and feasibility of multi-sourcing. A large proportion of respondents across customer categories said that they used several suppliers.[87] Of those that had mentioned at least one alternative supplier to their current supplier, over 40 per cent used another supplier regularly, and around the same proportion used another supplier on an occasional basis.[88,89]

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[81] 88 per cent of the MSNB, single-region respondents and 91 per cent of the MSNB, multi-region respondents; see Appendix E, Table 6.
[82] 53 per cent of the single-region MSNB customers and 63 per cent of the multi-region MSNB customers said that they used more than one supplier; see Appendix E, Table 6.
[83] We note the apparent contradiction for multi-region respondents. The reason may be that respondents use different suppliers, but that each supplier delivers throughout the regions where fuel is required.
[84] See Appendix D, paragraph 43.
[85] See Appendix E, Table 6.
[86] Appendix D, paragraph 44.
[87] 63 per cent of single-region MSNB respondents and 53 per cent of multi-region MSNB respondents; see Appendix E, Table 6.
[88] 48 per cent of multi-region MSNB customers and 41 per cent of single-region MSNB customers do so regularly; see Appendix E, Table 7.
[89] The survey also found that 47 per cent of single-region and 63 per cent of multi-region MSNB customers that are very likely to switch or reduce business in the event of a 5 or 10 per cent price increase said that they would switch to several suppliers; see Appendix E, Table 16.

7.31 To assess the attractiveness of multi-sourcing further we considered whether it could have drawbacks for customers. Some customers told us they were concerned that they could lose their priority status with a supplier in the event of supply shortages or transport disruptions, or if a customer's volume discount was reduced because the total volume with a particular supplier was lower. [90] Some customers were also concerned about the administrative effort required to multi-source.[91]

7.32 Third party suppliers told us that volume discounts based on the total requirement were unusual and that usually discounts were given for larger load sizes.[92] The survey evidence was mixed. 21 per cent or less of MSNB customers said that they received a bulk buying/volume discount.[93] However, the responses did not allow us to identify whether the discounts were given for load size or total volume requirement. Although we cannot wholly exclude the possibility that the loss of a volume discount is a switching cost for some MSNB customers, we concluded, in view of the comments that volume discounts were rare, that they were unlikely to discourage multi-sourcing significantly.

7.33 We assessed whether subcontracting allows a supplier to extend its geographic coverage. Evidence from Crown Oil and third parties suggested to us that Crown Oil is the only distributor that relies to a large extent on subcontracting.[94] Some third parties (customers and suppliers) told us that distributors that relied on subcontracting potentially imposed less of a competitive constraint, as customers appeared to perceive direct deliveries as more competitive.[95] However, the third party evidence also suggested to us that the use of subcontractors did not appear to be a problem if service and price were the same as that from direct suppliers.

7.34 Some third parties (customers and suppliers) told us that subcontracting distributors might be less competitive in their offer or unwilling to compete for deliveries which involved a large share of subcontracting. In contrast DCC EUK told us that subcontracting distributors faced very limited additional cost and a large number of distributors would be willing to fulfil orders as subcontractors.[96] Crown Oil told us that the cost of subcontracting was no higher than if it delivered the product itself because it would be paying the subcontractor for the cost of delivery which it would otherwise incur itself. However, other parties told us that the costs would be higher since the subcontractor would also require a margin.[97,98]

7.35 Some customers may be willing to trade off the convenience of dealing with only one supplier against a somewhat higher price (to avoid the additional effort required to deal with several suppliers). However, the customer survey showed that, of the MSNB customers, most[99] stated that it would not matter to them whether their supplier used a subcontractor.[100]

7.36 We also considered backloading, which is a practice where a tanker on a delivery round loads further product at a third party supply point such as a depot. This then

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[90] See Appendix D paragraph 50.
[91] See Appendix D paragraph 43.
[92] See Appendix D, paragraphs 46 & 49.
[93] 21 per cent of multi-region and 15 per cent of single-region customers; see Appendix E, Table 10.
[94] Crown Oil said that it supplied [✂] a proportion of its business by subcontracting, [✂].
[95] See Appendix D, paragraph 53.
[96] See Appendix D, paragraphs 43 & 52.
[97] For example, Watson said that when it used its own trucks the cost was marginal because spare capacity on the vehicle was being used, but with a subcontractor it would be paying the full cost.
[98] One customer provided evidence of an occasion [✂].
[99] 85 and 79 per cent of the multi-region and single-region customers respectively, see Appendix E, Table 8.
[100] However, the share of respondents that did not know whether subcontractors were used was also non-negligible (21 per cent for multi-region and 20 per cent for single-region respondents). See Appendix E, Table 8.

allows the tanker to make deliveries on the return journey to its home depot, which extends its operational range and improves the efficiency of the delivery round. It is potentially an additional means to increase a supplier's geographic coverage (but still at a fairly local level). Comments from parties generally suggested that backloading from other distributors' depots, was not frequently used and it does not appear to play a significant role in competition in the market.[101] DCC EUK said that backloading was very relevant as a means by which distributors could extend the operational range of their deliveries at the local level. However, the evidence we have considered, detailed in Appendix D, showed it not to be frequently used in practice.

7.37 The evidence in paragraphs 7.27 to 7.36 suggests that multi-sourcing is a feasible option for increasing the number of suppliers that a MSNB customer could use. In addition most MSNB customers are not concerned if a supplier subcontracts some of its supplies to a third party supplier. Backloading does not appear to be a significant factor in the market.

- *Customer switching*

7.38 We looked at customer switching behaviour to identify how easily customers were able to switch. We also used customers' responses on switching to identify the closeness of competition between the merger parties and between the merger parties and third parties. Finally we considered whether there were any costs associated with switching that would affect customers' ability to switch.

7.39 The survey assessed customers' willingness to switch due to increases in the price of their main fuel. Approximately one-third of MSNB customers[102] that responded to the survey said they would consider looking for an alternative supplier if the price they are currently paying increased by 1 or 2 per cent compared with the market. Approximately one-fifth[103] more would consider looking for an alternative if the price increased by 3 to 5 per cent. In total therefore around half of the MSNB customers would consider switching if their price increased by 5 per cent. Only 13 per cent of multi-region MSNB customers and 18 per cent of single-region MSNB customers said that they would not consider switching or be able to switch regardless of the extent of any price increase.

7.40 The evidence on customer switching also allowed us to assess the closeness of competition between the merger parties and third parties. Some suppliers with regional or (near) national scope mentioned both the merger parties as suppliers they competed with.[104] However, the customer survey showed that only five respondents were unaware of an alternative supplier besides the merger parties (one multi-region respondent and four single-region respondents). All others mentioned two or more additional suppliers.

7.41 One-third or more of the MSNB customers that responded to the survey that used either of the merger parties as their main supplier would switch to a third party if their present supplier ceased to supply, rather than to another brand of the merger parties.[105,106]

[101] See Appendix D, paragraph 69.
[102] 34 per cent of multi-region and 28 per cent of single-region MSNB customers (Appendix E, Table 14).
[103] 18 per cent of multi-region and 21 per cent of single-region MSNB customers (Appendix E, Table 14).
[104] A small number mentioned that the Butler Fuels service had deteriorated in recent years so that it was no longer an equally effective competitor. See Appendix D, paragraph 31.
[105] ie not another GB Oils brand.

7.42 Around one-quarter of MSNB customers that responded to the survey also said that they would be very likely to move or reduce business if prices increased by 5 or 10 per cent (note this response contrasts with the response in paragraph 7.39 because that response asked whether customers would consider switching whereas this response identifies customers that said they would be very likely to switch). Of these customers around two-thirds said they would switch to a third party and not to another brand of the merger parties. This amounts to 18 per cent of all MSNB customers that responded to the survey.[107] For the same reasons as we discussed in paragraph 7.13, in our view the shares above are likely to be a lower bound of switching.[108]

7.43 The customer survey evidence suggested a very limited constraint by Butler Fuels on GB Oils:[109]

(a) It showed that only 18 per cent of multi-region MSNB customers and 14 per cent of single-region MSNB customers said that both merger parties would be possible suppliers.[110]

(b) Compared with those switching to third parties (see paragraph 7.40) only a small number of MSNB customers would switch to Butler Fuels if GB Oils ceased to supply.

(c) Of GB Oils' MSNB customers, only a small proportion of the respondents that currently use GB Oils, and that said they would switch supplier in response to a 5 or 10 per cent price increase, said they would move their business to Butler Fuels.[111] This was a much smaller proportion than those that said they would move to third parties.

7.44 We also considered whether there were switching costs that would affect the ability of a customer to switch supplier. The merger parties said that customers faced no costs or barriers to switching between fuel distributors and price was the main factor in determining customers' purchasing decisions.[112] Some MSNB customers and a supplier suggested that there were significant administrative costs associated with switching supplier but other parties did not think it would involve significant cost.[113]

7.45 However, no multi-region MSNB customers and only 6 per cent of single-region MSNB customers that responded to the survey said that they always used the same

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[106] 32 per cent of multi-region and 44 per cent of single-region MSNB respondents said that they would use a third party if their present supplier ceased to supply (Appendix E, Table 22).

[107] 28 per cent of multi-region MSNB respondents and 26 per cent of single-region MSNB respondents said that they would be very likely to move or reduce business at a price increase of 5 or 10 per cent by their current supplier (note that these two shares are calculated from raw data). Of those who said this, 67 per cent of multi-region MSNB respondents and 70 per cent of single-region MSNB said that they would move to a third party if prices increased by 5 or 10 per cent; see Appendix E, notes to Table 18.

[108] The question referred to the customer's current supplier and many GB Oils customers said that they would switch to another GB Oils brand if their present supplier ceased to supply or if price increased by 5 or 10 per cent. If the question had asked for alternatives if all GB Oils brands had ceased to supply or increased price (rather than just by the GB Oils brand the customer was using), these customers would very likely have chosen either Butler Fuels or a third party instead. The shares of respondents who told us that they would switch to third parties (or Butler Fuels) is therefore likely to understate the constraint third parties impose on GB Oils. None of the MSNB customers that used Butler Fuels said that they would switch to Butler Fuels in the event of their present supplier ceasing to supply, because Butler Fuels does not use multiple brands. See Appendix E, Tables 18 & 22.

[109] The number of survey responses from MSNB customers using Butler Fuels was too small to draw conclusions regarding the constraint third parties or GB Oils impose on Butler Fuels.

[110] See Appendix E, Table 4.

[111] Three of nine multi-region MSNB respondents (or 33 per cent); see Appendix E, Table 18.

[112] DCC EUK said that the large majority of customers (about [95 to 100] per cent of all GB Oils' customers) did not have a contract and therefore had no switching costs when deciding to purchase from another distributor. Those commercial customers that did buy on a contract basis did so almost invariably for short durations, following tender processes, with no customer switching costs at contract end.

[113] Both from running the tender process and changing supply arrangements. See Appendix D, paragraphs 58, 60 & 61 and 63.

supplier because it was too much work to switch.[114] The survey results also showed that MSNB customers had been able to switch in practice. A large proportion of MSNB customers that responded to the survey told us they had used a supplier other than their main supplier within the last six months (77 per cent of multi-region MSNB customers and 82 per cent of single-region MSNB customers).[115,116] Therefore we concluded that switching costs would generally not be significant. This suggested that the comments on the significant level of switching cost made to us by some customers are likely to represent particular circumstances rather than a general issue.

- *Competition for tenders*

7.46 Competition for larger requirements, including multi-region deliveries, also takes place through tenders. The merger parties compete for tendered volumes with other regional and national distributors. Information from third parties suggested that some suppliers would be unable to compete effectively due to the need for suppliers to have various ISO accreditations and to comply with more stringent customer requirements.[117] DCC EUK said that the fact that it did not have ISO accreditation had never been an inhibitor to it doing business.[118]

7.47 We noted that information provided by Butler Fuels on a number of tenders by 'national account' customers was consistent with the merger parties and Watson being important competitors for tenders for 'national' business and that neither larger regional suppliers nor traders frequently competed for this type of business.[119]

7.48 The evidence provided by the survey was of limited value since only a low number of MSNB customers had tendered their business. We received mixed evidence from third parties about how easy it was for a customer to split its requirements in a tender and about the cost of retendering.[120] We also noted that the survey responses showed that multi-sourcing was prevalent. We decided that we had not seen sufficient reliable evidence that suggested that the conditions of competition for tendered business would be significantly different to those for other non-tendered business.

Entry and expansion

7.49 In our local effects analysis (see paragraphs 7.16 to 7.18 and Appendix C) we found that there were 12 local catchment areas of potential competitive concern. In line with the Guidelines (paragraph 5.8.3), in our assessment of the effect of the merger on competition we assessed whether entry by new firms or expansion by existing ones might mitigate the initial effect of the merger on competition. In assessing entry or expansion we considered if it would be: *(a)* timely; *(b)* likely; and *(c)* sufficient.

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[114] See Appendix E, Table 11.
[115] See Appendix E, Table 12.
[116] Evidence gathered from the merger parties on previous switching of suppliers by customers suggested that different types of customers are loyal to their supplier to differing extents. While a large proportion of domestic customers appear to be retained each year the customer survey suggests that MSNB customers are less loyal (and less loyal than the information from suppliers suggests). The apparent difference could be because the customers surveyed may have purchased continuously from their main supplier but may also have used other suppliers. This is unlikely to be observable by the main supplier. Monument Fuels said that it would be able to retain 75 per cent of its domestic customers; Watson said that circa 50 to 70 per cent of its domestic customers would be loyal and 65 per cent of the GB Oils domestic customers were retained over the last year; see Appendix D, paragraph 55.
[117] A-One and Watson.
[118] Appendix D, paragraph 37.
[119] Moreover, one large customer told us that it had had difficulties in finding suppliers interested in delivering its requirements and one of the traders told us that it would not be interested in tendered business. See Appendix D, paragraphs 38 & 39.
[120] See Appendix D, paragraphs 37–39, 42–44, 59–61 and 63.

7.50 Entry and expansion is discussed in Appendix F. We noted in Appendix F that there were many examples of entry on a small scale in a local area.[121] We found that entry would be particularly viable if an oil terminal or refinery was close because a distributor may be able to enter with just a parking facility and load at the oil terminal or refinery, which is a lower-cost option than building a depot including storage tanks.[122] Therefore we consider that local market entry would be likely, timely and sufficient to counteract competitive effects in relation to small customers in local areas, including into areas where the number of available competitors would be small post-merger.[123]

7.51 We did not receive evidence on recent entry on a national basis or evidence of distributors contemplating entry on a regional or national scale in future. Moreover, we found that the cost of entry at a regional or national level would be substantial, and that the time required would be long because any such expansion would be more likely to be made on an incremental basis. Given the relative maturity of the oil distribution market we were unconvinced that entry on a regional or national scale or expansion of smaller suppliers to such a scale was a likely prospect currently, or in response to competitive effects of the merger.[124]

Summary of findings on competitive effects

7.52 We examined the competitive effects for each customer segment. Our findings are set out below.

Bulk customers

7.53 We have concluded that the merger would not be likely to give rise to an SLC for bulk customers (see paragraphs 7.7 to 7.9).

DODO forecourts

7.54 We have concluded that the merger would not be likely to give rise to an SLC for DODO forecourts (see paragraphs 7.10 to 7.15).

Non-bulk customers

Local customers

7.55 We assessed the competition for local customers in paragraphs 7.16 to 7.18 and found that there were 12 candidate problem areas where the number of alternative suppliers besides the merger parties (supplying all types of fuel) was fewer than three after the merger. However, we concluded that, because these areas were located near to terminals or refineries of the oil majors and traders the threat of entry into these areas would impose a competitive constraint on the merger parties. Therefore we concluded that the merger would not be likely to give rise to an SLC for local customers.

[121] See Appendix F, paragraphs 2–7 and Table 1.
[122] See Appendix F, paragraphs 40–43.
[123] See Appendix C, paragraph 26.
[124] See Appendix F, paragraph 8.

MSNB customers

7.56 We have discussed above whether MSNB customers, particularly those with a wide geographic business, would be likely to be harmed by the merger. We noted in particular:

(a) the small share of MSNB customers that considered both the merger parties to be possible suppliers, which suggests that GB Oils and Butler Fuels are not very close competitors (paragraphs 7.40 and 7.41); and

(b) the prevalence of multi-sourcing among customers and their ability and propensity to switch to third parties if their present supplier ceased supply or increased price (see paragraphs 7.28 to 7.32 and 7.38 to 7.45).

7.57 Therefore we have concluded that the proposed merger would not be likely to give rise to an SLC for MSNB customers.

8. Conclusions on the SLC test

8.1 Our views on the competitive effects for each customer segment are set out in paragraphs 7.52 to 7.57. For each customer segment we concluded that the proposed merger would not be likely to give rise to an SLC.

8.2 We conclude that the merger would not be likely to give rise to an SLC in any market in the UK.