

Anticipated acquisition by Moto Hospitality Limited of First Motorway Services Ltd

ME/3799/08

The OFT's decision on reference under section 33(1) given on 22 September 2008. Full text of decision published 6 October 2008.

Please note that square brackets indicate figures or text which have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Moto Hospitality Limited (Moto)** operates Motorway Service Areas (MSAs) and non-MSAs throughout the UK. Its MSAs offer fuel stations, public lavatory facilities, parking areas, picnic areas, catering and retail outlets, business lounges and meeting rooms and overnight accommodation to travellers.
2. **First Motorway Services Limited (FMS)** was established in 1996, and also provides MSA services in the UK. FMS operates two MSA sites, at Bolton and Magor, and a truck stop on the A40 at Whitchurch (Symonds Yat). FMS's UK turnover for the year ended 31 March 2007 was [].

TRANSACTION

3. Moto has agreed to purchase the whole of the share capital of FMS for a consideration of []. The acquisition is conditional on the Vendors, being the shareholders of FMS, entering into an agreement to (re)acquire the Bolton MSA from Moto by way of an assets sale for the purchase price of [], simultaneously or immediately subsequent to the acquisition by Moto of FMS. Therefore the acquisition of the Bolton MSA (by Moto) is not considered further.
4. The transaction was notified by a merger notice on 6 August 2008. The (extended) statutory deadline expires on 22 September 2008.

JURISDICTION

5. As a result of this transaction Moto and FMS will cease to be distinct. The parties overlap in the operation of motorway service areas and the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

BACKGROUND

6. The OFT last considered the market for MSAs in 1995 when it looked at the proposed acquisition by Granada plc¹ of certain assets of Pavilion Ltd (the 1995 merger).² At the time MSAs were, in general, not closer than 30 miles apart which allowed a driver to have a choice of two or three MSAs if they were looking for a stop every two hours.
7. The 1995 merger raised competition concerns in certain localities and a partial divestment to address local competition issues was considered appropriate. The Secretary of State accepted Undertakings in Lieu of a reference on 5 October 1995 for the divestment of the Magor MSA on the M4 and the Rivington MSA (now know as Bolton MSA) on the M61. These two MSAs were subsequently sold to a Management Buyout team, First Motorway Services Limited. In essence, therefore, this merger seeks to reverse, in part, the required divestments made following the 1995 merger. The major change since the 1995 merger has been the entry of an MSA at Cardiff Gate, junction 30, some 16 miles west of Magor now operated by Welcome Break.

MARKET DEFINITION

8. The parties overlap in the operation of MSAs. The ease of HGV and caravan parking at MSAs compared to other alternatives, the late night opening hours, and general convenience of an MSA which results in travellers avoiding the need to travel off route, point to MSAs being a market on their own.

¹ In July 2000, Granada merged with Compass Group plc. The merged businesses were re-organised to create two focussed groups: a hospitality group (Compass Hospitality) which included all of the interests of Compass and Granada in hotels and MSAs, and a media Group (Granada Media). These two groups were subsequently demerged in 2001, when Compass renamed the MSAs Moto Hospitality Limited. The Moto MSAs were later sold to Maquarrie Bank in 2006 retaining their name.

² At the time that this case was considered, it was not OFT policy to publish its advice to the Secretary of State in merger cases other than as required by section 75H of the Fair Trading Act 1973.

9. From discussions with industry groups in the context of this merger it appears that, for HGV drivers, truck stops³ (including those on trunk roads) may be in the same market as MSAs. However, for individual leisure and business drivers this is probably not the case. No third parties suggested a wider product market, for car drivers, than all MSAs and in the area around Magor on the M4 none suggested any wider alternatives that competed with the local MSAs for business.
10. Therefore, as a general proposition, the market appears to be no wider than MSAs (for car drivers) and possibly MSAs and truck stops for HGV drivers. FMS's Symonds Yat truck stop may therefore offer some constraint in the latter market but not the former.
11. The primary overlap in this case is at the local level around the Magor MSA and in this local area there does not seem to be any reason to divert from the product market outlined above.

Geographic scope

12. MSAs meet the needs of drivers on Great Britain's motorway network. The main MSA firms therefore operate a national (that is GB-wide) network to cover the GB road network. There does not appear to be any regional aspects to competition in MSA services and so no regional market has been defined.
13. Although operators may compete at a national level, drivers can only choose between individual service areas that are convenient for their journey. The Highways Agency recommends that drivers take breaks about every two hours and limits the distances between MSA to a recommended minimum of 28 miles (based on approximately 30 minutes drive time for a HGV), with an absolute minimum acceptable distance between facilities of 12 miles in England. The policy restricting MSA operators from operating adjacent sites no longer applies.
14. Regulations allow operators to advertise an MSA up to 70 miles ahead (so when a driver is considering entering a MSA they will be aware of all MSAs in the next 70 miles). On this basis, drivers may be expected to be willing to choose between two or three sites (as long as they are within 70 miles of each other) when deciding where to stop.

HORIZONTAL ISSUES

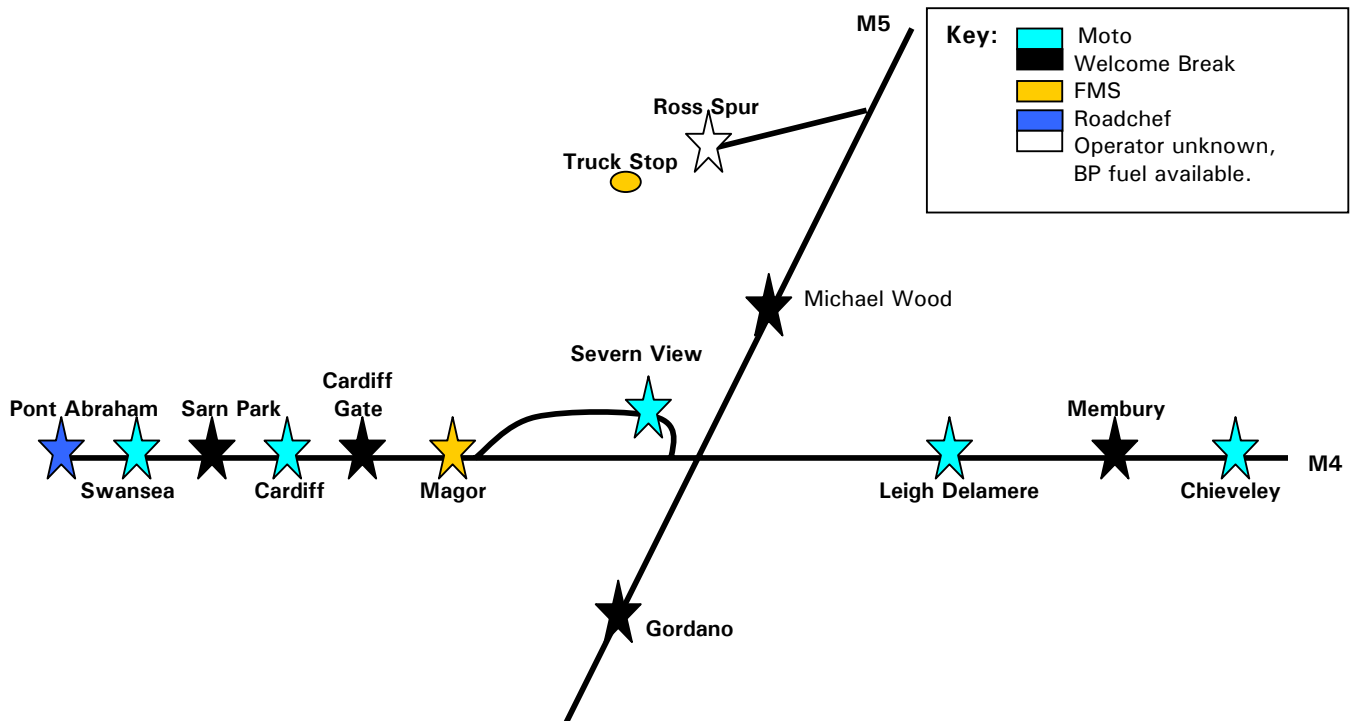
National analysis

³ To be signed from a motorway a Truck stop must provide a minimum of 30 HGV parking spaces, fuel, hot drinks, food, showers, free short term parking, free flush toilets and hand washing facilities and access to cash operated telephones. These minimum facilities must be available 24 hours a day, except Christmas Day, Boxing Day and New Year's Day.

15. Following the transaction Moto will have a combined national share of MSAs of [35-40 per cent] based on the number of sites⁴ or [] based on revenue. There are about 88 MSA sites so an average MSA would generate revenue of approximately £18m per annum, or 1.1 per cent of the market. FMS's revenue of [] suggests its revenue market share is [less than 1 per cent]. Even in a concentrated market such a small increase in market share should not raise concerns, and there is little evidence of Moto engaging in continuous acquisitions in an attempt to gain market power.
16. These data may exaggerate the situation slightly because Moto's revenue will also include the revenue from truck stops (which Welcome Break and Road Chef do not appear to operate). The acquisition of Symonds Yat truck stop should be considered in the wider market for HGV services but this market would also include a large number of other truck stops that we have not been able to gather information about.
17. Overall, the low increment (less than 1 per cent) to Moto's share of supply at a national level suggests that the acquisition does not raise national competition concerns.

Local analysis

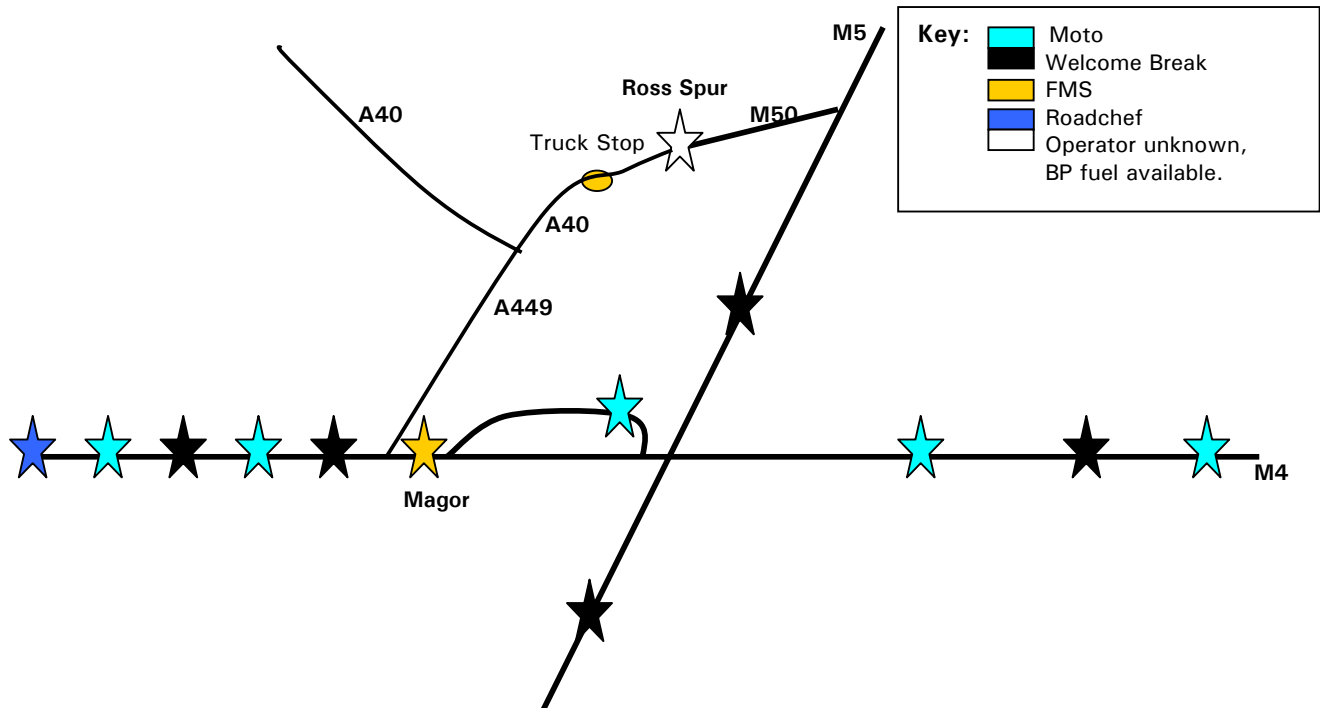
MSAs



⁴ 'double sided' MSA are treated as one and truck stops are not included.

18. The diagram above (which is not to scale) shows the local area under consideration. The main customers likely to use the sites affected by this merger are long-distance drivers travelling along the M4 from London to South Wales (Swansea). Starting from London the following MSA sites and operators can be found along the M4: Heston, Reading, Chieveley (all Moto), Membury (Welcome Break) Leigh Delamere (Moto), Magor (FMS), Cardiff Gate (Welcome Break), Cardiff West (Moto), Sarn Park (Welcome Break), Swansea (Moto) and Pont Abraham (Road Chef). The Road Chef (Pont Abraham) site is more than 70 miles and the Moto (Swansea) site more than 65 miles from Magor with three intervening MSAs so neither of these appears close enough to constrain the Magor site directly although there could be an element of a chain of substitution. The same applies to the Heston and Reading MSAs which are approximately 117 and 92 miles respectively to the east of Magor. The Membury and Leigh Delamere sites to the east and Cardiff Gate, Cardiff West and Sarn Park sites to the west are within 70 miles of Magor and so would be advertised along side this site and so are considered capable of exerting a constraint on Magor.
19. Moto also operate the MSA at Severn View, on the M48 by the old Severn Bridge. There were conflicting views from third parties as to whether drivers would consider Severn View as an alternative to Magor (and vice versa). Drivers taking the M48 to go past Severn View to rejoin the M4 and the possibility of stopping at Magor will travel for a slightly longer distance. Third parties commented that the different motorways are used for different journeys and traffic past Severn View had fallen markedly since the opening of the new Severn Bridge (M4) crossing. One third party considered that a strong preference would be needed to consider switching and another doubted that Magor and Severn View were alternatives. The Severn View MSA is therefore unlikely to be in the same market as Magor. The Ross Spur MSA on the M50 (which is not yet fully operational) is also not considered to be a suitable alternative to Magor for most traffic, because traffic will rarely flow directly from the Magor MSA to the Ross Spur MSA.
20. In addition, not all long-distance drivers along the East or West M4 will stay on this motorway; some will turn off on to the M5. If this occurs the next MSAs in both directions are operated by Welcome Break (Gordano 16.5 miles from Magor going south, and Michael Wood 25.3 miles going north). There may be a separate local market including Magor and these two MSAs serving traffic on these routes but the OFT does not consider that the acquisition would give rise to a substantial lessening of competition in this alternative market given the immediate presence of the two Welcome Break MSAs.

MSAs and truck stops



21. The diagram above (which is not to scale) shows the Symonds Yat truck stop which is located on the A40 some eight miles from the Ross Spur MSA at the end of the M50, its nearest competitor. There appears to be few other truck stops in the area. To the south of the Symonds Yat truck stop the A40 and A449 leads to the M4 near Magor (the parties were unable to identify any alternative truck stop facilities on the route from Symonds Yat to Magor). However, not all traffic going (or coming from the) south of Symonds Yat would have come from the M4 as the A40 leads to the centre of Wales. Further, although one of the main roads from Symonds Yat does meet the M4 at a point close to Magor, to travel to the Magor site from this junction would involve turning back on the direction of travel and heading out of Wales towards the M5. If a long-distance driver had wanted to be near the M5 it is unlikely they would have used the A40 (or the M50 spur) and would have probably stayed on the M5 all the way south. Further, since HGV drivers have strictly controlled driving hours it is unlikely they would take such a major diversion simply to use an alternative MSA.
22. Taking account of this, the OFT believes that if traffic did travel between the M4 and Symonds Yat, it would most probably have come from the Welsh section of the M4. Moto does not operate sites that compete with Symonds Yat to the North and in the South the closest competitor is Cardiff Gate (Welcome Break), with possibly Cardiff West (Moto) and Sarn Park (Welcome Break) also being alternatives. It should also be taken into account that by no means all long-distance traffic passing Symonds Yat will be using the M4.

Unilateral effects

23. All of the MSAs in the local area are accessible from both sides of the motorway. All of them apart from Ross Spur (which is currently being developed and does not have many facilities apart from petrol) have a reasonable range of services including restaurants, retail, accommodation, and other services, (Leigh Delamere is the only one with a grocery outlet – M&S Simply Food). Third parties confirmed that regulations ensured any MSA opened would have a range of services for drivers.
24. Within each local market the strongest competitors to each MSA are considered to be those MSAs (or truck stops) nearest on the same direct motorway route. The evidence is that drivers (especially HGV drivers) will stop at the closest location when they need a break for comfort or regulatory reasons, given that there is little variation in the facilities offered at all MSAs. Third parties have suggested that Cardiff Gate (Welcome Break) is the closest competitor to both the Magor and Symonds Yat sites (as well as to Cardiff West) while Membury is a closer, physical, competitor to Leigh Delamere than Magor. A third party suggested that competition would focus on adjacent MSAs but there could be a chain of substitution given the reasonably large distances from Membury to Leigh Delamere and then Magor.

The primary affected markets (HGV/cars on the M4 and HGVs on the A40)

Site	Distance to Magor (miles)	Time to Magor (minutes) ⁵
Membury (WB)	60.8	
Leigh Delamere (Moto)	32.8	36 ⁶
[Symonds Yat] (FMS)	n/a	
[Severn View] (Moto)	[15.5] ⁷	[19]
Magor (FMS)	-	
Cardiff Gate (WB)	16.2	21
Cardiff West	25.6	35

⁵ Cheiveley (Moto) is at J13 and Membury is in between J14 and J15. Leigh Delamere is at junction 17, Magor 23A, Cardiff Gate J30, Cardiff West J33, Sarn Park J36, Swansea J47, and Pont Abraham J49 (9 minutes further). The distinction between J23 and J23A is significant as it can take 10 minutes to travel between these two. (The times come from the Traffic Wales' website).

⁶ From AA route planner, this makes Leigh Delamere a slightly less convenient alternative to Magor than Moto's Cardiff West.

⁷ This is the distance from leaving the M4, travelling via Severn View to Magor on the M48 (the quickest route), this may take about 19 minutes (about 9 minutes more than the direct M4 route).

(Moto)		
Sarn Park (WB)	38.9	50
[Swansea] (Moto)	64.9	81

25. From the above table it can be seen that the distance between the Welcome Break sites on the M4 (Membury and Cardiff West) is 77 miles or over an hour which is too great a distance for them to be advertised on the same road sign. However, drivers will be aware when passing these sites that there are no other Welcome Break MSAs for a while. When reaching Leigh Delamere the distance to the next Welcome Break site is such as to allow the advertising of that site. Moreover, although the gaps between a Moto MSA and an alternative MSA are large most existed pre-merger and the merger only increases the gap by 16.2 miles (the distance between Magor and Cardiff Gate), increasing the time taken to reach a non-Moto MSA by 21 minutes. The OFT does not consider that this minimal increase will create a realistic prospect of a lessening of competition for long distance drivers travelling along the M4.⁸
26. The OFT understands that Cardiff Gate does not have any capacity constraints, the HGV park has 35 spaces (and 5 caravan places), with, at most, 15 HGV stopovers on the busiest day, and the car park has 165 spaces (plus 15 disabled spaces), and is only two-thirds full at peak. Although this number of HGV spaces is not large compared to some areas such as Leigh Delamere it is reasonable compared to other MSAs in the area such as Cardiff West (with 29 HGV spaces). This would suggest that Cardiff Gate has some spare capacity at all times both for HGV and other car-borne traffic.
27. Moreover, one third party estimated that only 40% of traffic going past Magor MSA would remain on the M4 and consequently pass the Leigh Delamere MSA with the rest using the M5.
28. In conclusion, therefore, the acquisition of Magor MSA and Symonds Yat truck stop is not considered to give rise to a realistic prospect of a

⁸ Magor is at junction 23A and Cardiff Gate is at junction 30 so there are 6 turn-offs between these two sites. Drivers going to the city of Newport (most of those using these junctions) are unlikely to use MSAs so close to their final destination e.g. Magor. Drivers heading for North Wales are unlikely to use the Severn crossings. Drivers heading for central east Wales will probably use the M48. However, any drivers who come from the South-East (and thus pass Leigh Delamere) and then go to Central Wales (the area around Aberystwyth) may well pass Magor and then leave the motorway prior to passing Cardiff Gate for an extended journey. The RHA agreed that these were major routes for HGV drivers. Drivers doing this journey may face a reduction in choice of service area. The service areas do not keep records of the destinations of drivers who stop there and so there is no way of determining the proportion of Magor customers that are travelling to central Wales (and not passing Cardiff Gate) as opposed to South East Wales (e.g. Swansea). Cardiff Gate still appears to be the closest competitor to Magor and Moto would not be able to discriminate between customers with different alternatives. This factor is increased when it is considered that some Magor customers will be travelling via the M5.

substantial lessening of competition since the Welcome Break MSA at Cardiff Gate is, and will remain, the closest competitor to both sites in terms of location and facilities. The acquisition only gives Moto two consecutive MSAs (on one particular route, which is not used by all and possibly not even the majority of traffic, given the alternative potential M5 route). The maximum distance from any Moto to the nearest competing site in the area is not affected, and journey times to avoid stopping at a Moto are only increased by 21 minutes for those travelling west along the M4.

Coordinated effects

29. Moto has stated to the OFT that they are not aware of FMS's pricing policy, which would suggest they are not monitoring or coordinating prices with them pre-merger and that the nature of FMS's pricing has no affect on Moto's pricing strategy. Moto also submits that other MSA operators do not adopt wide variations in prices in different parts of the road network.
30. Moto stated that it believed that their competitors adopt national pricing strategies and stated that it monitors prices generally but without focusing on specific MSAs. [].
31. []. It is possible that off-motorway constraints may be stronger and create a wider market for fuel depending on how easy it might be for traffic to get on and off the motorway to use alternative providers.
32. One theory of harm could be that the merger would lead to a reduction in competition and price rises between Moto and Welcome Break in the central M4 area (around Magor) where a duopoly situation will arise post-merger. To test the plausibility of such a theory of tacit coordination, the OFT considered whether prices are higher than average in areas where Moto and Welcome Break currently have a duopoly (e.g. in the Eastern M4, Eastern M62, and M40).
33. To this end, the OFT asked Moto to compare non-fuel local pricing and explain price variations. [].
34. A third party supplied information on overnight parking prices for a large proportion of Moto, Welcome Break and Roadchef MSAs in Great Britain. These included costs for cars, HGV (parking only), and HGV (with a food voucher). The car prices did not vary much over the different sites and the value of the food vouchers varied so HGV overnight parking only prices were used for comparison. The OFT could not confidently draw any specific conclusions from this sample data given that the variation across the sample was significant (ranging between £13.00 and £17.00) which would give rise to a distortive effect when calculating and comparing an average price in a particular area, and that local HGV parking rates may be

determined by other factors apart from nearby MSAs (such as the extent of local truck stops that may be part of a wider market or quality and advantages due to location) for which there was no control in the data.

35. The parties evidence to the OFT suggests that coordinated effects is an unlikely outcome. [].
36. Although MSAs have fewer products than, say, supermarkets, they do sell a wide range of products that suggests that coordination would not be easy. Moreover, unlike many markets, although the price of products is clear at the point of purchase, at the time of deciding which MSA fascia or site to purchase from (or leaving the motorway) pricing is not transparent (with no outside store advertising). Once a driver has stopped at an MSA they are unlikely to drive to another if they see a high retail price partly because this may be the expectation but also because they could not be sure the product would be available or any cheaper at the next MSA. It may take a driver several trips (or longer) before they are able to compare the prices, and availability, of products at MSAs and for many drivers these trips may be infrequent making recalling prices difficult. The population of regular users of particular MSAs may be a small part of a MSAs total trade with particular purchasing characteristics that would not necessarily protect others. These factors suggest that individual MSAs, as regards price, may be, to some degree, more akin to local monopolies, which would restrict the value of coordination with weaker punishment since this may not be expected to attract new customers; also MSAs are differentiated by their location that may also affect their costs. In light of the evidence discussed above, the OFT does not consider there to be a realistic prospect of a substantial lessening of competition arising from coordinated effects.

Barriers to entry and expansion

37. The MSA network at the time of the 1995 merger had been developed around the long standing spacing criteria of 30 miles between sites. However, this has since been relaxed (allowing entry at Cardiff Gate). The current policy from the Department of Transport⁹ would, for example, allow a new entry site between Leigh Delamere and Magor, as the minimum acceptable distance is now 12 miles. These MSA sites are 32.8 miles apart and Moto has suggested that the bridges and heavy traffic in the Bristol area, thus lengthening journey times may constitute a ground for consent. However, no third parties commented on the likelihood of applying for or being granted planning permission for such a site and the Highways Agency commented that while entry between existing MSAs was possible it was unlikely given that a specific need would have to be demonstrated.

⁹ Department of Transport Circular 01/2008 - Policy on Service Areas and Other Roadside Facilities on Motorways and All Purpose Trunk Roads in England.

38. However, it has not been necessary to conclude on barriers to entry as the acquisition does not give rise to a substantial lessening of competition in either the local MSA or the wider MSA and truck stop markets.

Buyer power

39. Customers are individual leisure, business, and HGV drivers. MSAs operators do not have any contracts with commercial customers and so there is no buyer power in this market.

Third Party Views

40. Third party comments have been discussed above. Relatively few third parties responded. Third party customers were either unconcerned or raised issues that were not merger specific.

ASSESSMENT

41. Moto is acquiring Magor MSA on the M4 in Wales¹⁰ and a truck stop on the A40 at Symonds Yat. The parties both compete in a GB market for MSA services and the truck stop may also compete with a wider pool of facilities for HGV drivers although, apart from Symonds Yat, none has been identified in this local market. However, the conclusions arising from this do not rely on the precise market definition.
42. Pre-merger the closest competitor to both the acquired sites is the Welcome Break MSA at Cardiff Gate (which has opened since the 1995 merger). This site is not capacity constrained and is just 21 minutes from the acquired MSA along the M4. Users of the Magor MSA may also pass other Welcome Break MSAs on the M5, and are unlikely to drive past the Moto Severn View MSA on the same journey (but may be able to use this as an off-route alternative). Moto also own the next MSA on the M4 driving East from Magor (Leigh Delamere) at a distance of nearly 33 miles. Given the proximity (and number) of the Welcome Break alternatives it is not considered that these two MSAs in sequence would create a realistic prospect of a substantial lessening of competition. A significant amount of traffic (perhaps half) going east from Magor will use the M5 and so will, in any case, not pass these two consecutive Moto MSAs on the same journey.
43. Most customers are individuals so buyer power is low and the barriers to entry are such that firms can probably set short-term prices at profit maximising levels until entry appears likely (e.g. planning permission is granted).

¹⁰ Divested by Granada following an Undertaking in Lieu given when Granada acquired Pavilion MSAs in 1995 see footnote 1.

44. The market is relatively transparent to the competing firm and could be conducive to tacit coordination. [].
45. Prices at Magor are not monitored by Moto and so it is unlikely to have played a maverick role in the price setting. Price comparisons between MSAs may be difficult for customers who are a diverse and irregular group and so punishment (in the event of 'cheating') may be difficult with no easy means of attracting new customers quickly. In light of this it appears the change in the local area from a three MSA operator market to a duopoly between Moto and Welcome Break would not pose a realistic prospect of a substantial lessening of competition from coordinated effects.
46. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

47. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.