
Anticipated acquisition by GB Oils Limited of Pace Fuelcare Limited

ME 4924/11

The OFT's decision on reference under section 22(1) given on 24 June 2011 (the Decision). The full text of the Decision was published on 20 July 2011.

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

THE PARTIES

1. **GB Oils Limited (GB Oils)** is a wholly owned subsidiary of DCC plc (DCC) and operates as DCC's oil distribution business in Great Britain, distributing heating and transport fuels and fuel oils to domestic, commercial, industrial and agricultural customers throughout Great Britain. GB Oils operates under a number of different brands, principally: Bayford Oil, Brogan Fuels, Carlton Fuels, CPL, Emo Oil, F.Peart & Co., Gulf, Scottish Fuels, Southern Counties, Team Flitwick, and Town & County Fuels (as well as other regional and local brands). On the Isle of Wight, GB Oils operates under the Vectis Oils brand. It also retails fuels under brands including Shell, Gulf and Texaco. GB Oils' turnover for the year ended 31 March 2010 was around £2.4bn, all of which was achieved in the UK.
2. **Pace Fuelcare Limited (Pace)** is a wholly owned subsidiary of Pace Petroleum Limited, itself a wholly owned subsidiary of Refined Holdings Limited, which in turn is a wholly owned subsidiary of MRH (GB) Limited (MRH), the ultimate parent company of the MRH Group of

companies.¹ Pace is a distributor of transport fuels and heating oils trading in the South East, South West, East Anglia, the Midlands, the Home Counties and the Isle of Wight. It distributes transport fuels and heating oils to just under 80,000 customers, trading from 19 depots in (Mainland) England and one terminal on the Isle of Wight, as well as a number of barges on the River Thames. Pace trades only under the Pace Fuelcare brand in respect of its oil distribution business. Pace's turnover for the year ending 27 September 2009 was approximately £133m.

TRANSACTION

3. The parties entered into a sale and purchase agreement on 16 February 2011 pursuant to which GB Oils proposes to acquire the entire issued share capital of Pace from Pace Petroleum Limited. The agreement is, inter alia, conditional on OFT clearance.
4. The parties notified the transaction to the Office of Fair Trading (OFT) on 22 March 2011. The OFT's administrative deadline for deciding whether to refer the merger to the Competition Commission (CC) was 1 June 2011.

JURISDICTION

5. As a result of this transaction GB Oils and Pace will cease to be distinct. The UK turnover of Pace exceeds £70 million so the turnover test contained in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. Therefore the OFT 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. In its decision, the OFT stated that it believes that it is or may be the case that the merger may result or may be expected to result in a substantial lessening of competition in the distribution of heating oils and transport fuels in the Isle of Wight.

¹ MRH is one of the biggest independent fuel retailers in the UK. The Group owns and operates around 300 petrol stations, with a fuel volume totalling around 1.1 billion litres per year. The petrol stations will be retained by MRH post-merger.

7. In particular, the OFT found that on the Isle of Wight the parties are the only two distributors of heating oils and transport fuels. Both parties are supplied with oil and fuel from Pace's terminal located at Cowes on the Isle of Wight. The OFT received a large number of concerns that customers on the Island will have no choice in distribution post-merger and, as a consequence, that prices may increase and/or the quality of service may reduce.
8. The OFT examined whether the threat of supplies from the Mainland would act as a sufficient constraint to the merged entity. The OFT examined data provided by the parties purporting to show that oil could be supplied from the mainland at a lower price than supplied by Pace's Cowes terminal. However, the OFT was not provided with any examples of actual supply to or new entry on the Isle of Wight market from the Mainland (other than direct supply to Tesco – as part of a wider supply contract). Therefore, on the basis of the evidence available to it and the number of concerns raised by third parties, the OFT concluded that it would not be unreasonable to conclude that the Isle of Wight should be treated as a distinct market. The merger will reduce the number of distributors on the Isle of Wight from two to one and the threat of supply from the Mainland would not, on its own, be an effective constraint.
9. Accordingly, the OFT found itself under a duty to refer the merger to the CC.

DIVESTMENT UNDERTAKINGS OFFERED BY GB OILS

10. To address the OFT's competition concerns, GB Oils offered to give undertakings not to acquire Pace's oil distribution business on the Isle of Wight and the Cowes terminal operated by Pace (the Retained Business). In particular, the parties proposed that the Sale and Purchase Agreement (SPA) already signed between GB Oils and Pace be amended so as to exclude the Retained Business from the scope of the business to be sold to GB Oils. This would mean, in effect, that GB Oils did not acquire ownership or control of the Retained Business which would remain with Pace Petroleum.

11. In considering the proposed undertakings, the OFT's starting position is that it must be confident, without the need to undertake a detailed investigation, that the proposed undertakings will restore pre-merger levels of competition.
12. Based on the documentation presented to the OFT, the OFT considers that the remedy GB Oils has proposed will restore the competitive level prior to the merger. Pace Petroleum has asserted that it has the resources, the expertise and the incentive to operate the Retained Business on an ongoing basis, that the Retained Business is profitable and that the existing sales and terminal staff will be retained by the Retained Business.

CONSULTATION

13. On 26 July 2011 the OFT published the proposed undertakings inviting interested parties to give their views on them by 12 August, which was extended to 19 August 2011, pursuant to paragraph 2(1) Schedule 10 of the Act.²
14. The OFT received comments from a number of interested parties during the consultation. Some third parties contended that since Pace had agreed to sell the Isle of Wight business to GB Oils, this suggested no long term interest in retaining the business. In addition, some third parties indicated that they believed that GB Oils had received other expressions of interest in acquiring its fuel oils distribution business on the Isle of Wight but had not sought to enter into meaningful discussions with such prospective purchasers. Furthermore, concerns were expressed about the ongoing commercial relationship that would exist between GB Oils and Pace - since the latter would continue to retain the freehold on a number of fuel depots on the mainland to be leased to GB Oils – and the potential for this to distort competition on the Isle of Wight.
15. Some specific questions were raised regarding the treatment of 'national account' customers and the potential for confusion arising from the use of the Pace brand by the two companies.

² See Annexe attached.

16. In relation to these concerns, the OFT has considered Pace's business plans and its intentions for the business. The OFT continues to believe that, as a wholly owned subsidiary of MRH, Pace Petroleum has the resources, expertise, incentive and intention to maintain the Retained Business as a robust ongoing business over the long term. In addition, the undertakings provide that GB Oils and its parent company, DCC PLC, cannot acquire or obtain the Isle of Wight business of Pace (in whole or in part) now or at any time in the future, without the OFT's prior written consent. So even if Pace Petroleum decided to exit the Retained Business (or some part of it) in the future any prospective sale to GB Oils would still be subject to regulatory consideration. Moreover, it seems unlikely that Pace Petroleum would exit the Retained Business without selling it (that is, close the business completely), given the value of the terminal and the associated distribution sales.
17. As regards other expressions of interest that GB Oils might have received in acquiring Pace's Isle of Wight (distribution) business or, it seems, GB Oils own Isle of Wight business, this is a matter for GB Oils. In particular, the legislation does not allow the OFT to devise or select the divestment remedy, nor can the OFT impose an alternative remedy on GB Oils. The only question to be considered by the OFT is whether the remedy that has been proposed addresses the adverse effects arising from the merger itself.
18. The OFT accepts that there will remain some on-going commercial links between Pace Petroleum and GB Oils since Pace Petroleum will retain the freehold interests in certain of the depots on the mainland to be acquired by GB Oils. The details of these property interests have been fully included within the documentation provided to the OFT and the OFT does not believe that the existence of these links has the ability to impact on competition within the Isle of Wight market.
19. As regards the specific questions that have been raised: any national account customers will continue to be supplied by the existing supplier. While there might be some initial confusion arising from the fact that two companies may advertise using the Pace name, in reality this will not give rise to any material consumer detriment. Any prospective customer on the Isle of Wight responding to, say, an

advertisement from a Pace depot on the mainland would be re-directed to GB Oils Isle of Wight business (Vectis Oils) – [].

DECISION

20. The Decision concluded that the merger would be referred to the CC if the parties failed to give suitable undertakings pursuant to section 73 of the Act to address the competition concerns identified in the Decision.
21. The OFT considers that the undertakings provided by GB Oils are clear cut and appropriate to remedy, mitigate or prevent the substantial lessening of competition and any adverse effects resulting from it. The OFT has therefore decided to accept the undertakings offered by GB Oils.
22. The merger will therefore not be referred to the Competition Commission and the undertakings, which have been signed by GB Oils, will come into effect from this date.

Annexe

Anticipated acquisition by GB Oils Limited of Pace Fuelcare Limited

Notice under Paragraph 2(1) Schedule 10 of the Enterprise Act 2002 of proposed undertakings in lieu of reference pursuant to section 73 of the Enterprise Act 2002

OFT's duty to refer

On 24 June 2011, the OFT announced its decision to suspend its duty to refer the anticipated acquisition by GB Oils Limited (GB Oils) of Pace Fuelcare Limited (Pace) to the Competition Commission (CC) under section 33 of the Enterprise Act 2002 because the OFT was considering whether to accept appropriate undertakings from GB Oils in lieu of reference.

The OFT believes that it is or may be the case that the merger may result or may be expected to result in a substantial lessening of competition in the distribution of heating oils and transport fuels in the Isle of Wight. The text of the OFT's decision, published on 20 July 2011 (the decision), provides full details on the OFT's findings.

In summary, the OFT found that on the Isle of Wight the parties are the only two distributors of heating oils and transport fuels. Both parties are supplied with oil and fuel from Pace's terminal located on the Isle of Wight. The OFT received a large number of concerns that customers will have no choice in distribution post-merger and, as a consequence, that prices may increase or the quality of service may reduce.

The OFT examined whether the threat of supplies from the Mainland or new entry will act as a significant constraint to the merged entity. In addition, the OFT examined data provided by the parties showing that oil could be supplied from the mainland at a lower price than supplied by Pace's Cowes terminal. However, the OFT was not provided with any examples of actual entry to the Isle of Wight market from the Mainland. Therefore, as a result of the evidence available to it and the number of

concerns raised by third parties, the OFT concluded that it would not be unreasonable to conclude that the Isle of Wight should be treated as a distinct market. The merger will reduce the number of distributors on the Isle of Wight from two to one and the threat of supply from the Mainland would not, on its own, be an effective constraint.

Accordingly, the OFT found itself under a duty to refer the merger to the CC.

Undertakings offered by GB Oils

To address the OFT's competition concerns, GB Oils offered not to acquire Pace's oil distribution business on the Isle of Wight and the Cowes terminal operated by Pace (the Retained Business). In particular, the parties proposed that the Sale and Purchase Agreement (SPA) already signed between GB Oils and Pace be amended so as to exclude the Pace fuel distribution business on the Isle of Wight and Pace's Cowes Terminal from the scope of the business to be sold to GB Oils and over which completion will occur. This would mean, in effect, that GB Oils does not acquire ownership or control of the Retained Business.

In approving the proposed undertakings, the OFT's starting position is that it must be confident, without the need to undertake a detailed investigation, that the proposed undertakings will restore pre-merger levels of competition.

Based on the documentation presented to the OFT, the OFT considers that the remedy GB Oils has proposed will restore the competitive level prior to the merger. Pace has confirmed that it has the resources, the expertise and the incentive to operate the Retained business on an ongoing basis, that the Retained Business is profitable and that the existing sales and terminal staff will be retained by the Retained Business.

Process going forward

The acceptance by the OFT of these proposed undertakings in lieu is dependent on this public consultation.

The OFT considers that the proposed undertakings offered by GB Oils are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in its decision of 24 June 2011.

The OFT therefore gives notice that it is minded to accept undertakings in lieu in the form of the proposed undertakings.

Download the proposed undertakings in lieu at www.offt.gov.uk.

Before reaching a decision as to whether to accept the proposed undertakings, interested parties are invited to make their views known.

Representations should be made in writing to:

Bob Gaddes
Mergers Group
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX
Telephone: 020 7211 8965
Email: bob.gaddes@oft.gsi.gov.uk

Deadline for comments: 19 August 2011