

Completed acquisition by DCC Energy UK Limited from Rontec Investments LLP of certain businesses previously owned by Total Downstream UK plc

ME/5218/11

The OFT's decision on reference under section 22(1) given on 4 April 2012. Full text of decision published 23 May 2012.

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.

PARTIES

1. **GB Oils Limited (GB Oils)** is the principal operating company of DCC plc in the oil distribution industry within Great Britain. GB Oils is owned by DCC Energy UK Limited (DCC), an intermediate holding company, owned by DCC plc. GB Oils distributes heating, transport and gas oil products 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, Severn Fuels, Southern Counties, Team Flitwick, and Town & Country Fuels (as well as other regional and local brands). It also supplies transport fuels for retail under brands including Gulf, Pace UK and Texaco. GB Oils' turnover for the year ended 31 March 2011 was around £3.15 billion, all of which was achieved in the UK.

- **DCC plc (DCC plc)** is an international procurement, sales, marketing, distribution and business support service group headquartered in Dublin and listed on the Irish and London Stock Exchanges. DCC plc is the parent company of DCC Energy UK Limited (DCC). DCC is the intermediate holding company of GB Oils. DCC plc has five core businesses: DCC Energy, DCC SerCom (IT and entertainment products), DCC Healthcare, DCC Food and Beverage and DCC Environmental. For the financial year 2011, DCC plc's world-wide turnover was €8.68 billion.¹
2. **DCC Energy UK (DCC)** is an oil procurement, sales, marketing and distribution, liquefied petroleum gas (LPG) and fuel card services business in Great Britain, Ireland, Denmark and Austria.
 3. **Rontec Investments LLP (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 oil businesses (including retail fuel and oil distribution) of Total Downstream in the UK, Isle of Man and Channel Islands.
 4. **Total Downstream UK plc and Total UK Limited (Total)** was active in fuel retail and oil distribution activities in the UK, the Isle of Man and the Channel Islands. Total is a subsidiary of Total SA, an international oil and gas corporation with its headquarters in Paris.
 5. **Total Butler (TB)** is a distributor of heating, transport and gas oil products ('the oil products') to domestic, commercial, industrial and agricultural customers, in England and parts of Wales.² TB was acquired by Rontec from Total as part of a wider transaction also including Total's estate of company owned petrol forecourts, and

¹ Of the DCC group's total world-wide turnover of €8.68 billion for 2011, the UK accounted for €6.39 billion.

² Total's oil distribution business does not have operations in Scotland or Northern Ireland.

then immediately on-sold to DCC.³ Total Butler has recently been renamed Butler Fuels. In total, DCC acquired from Total (through Rontec) three businesses: TB, the dealer business and the Channel Islands and Isle of Man businesses, all detailed below.

TRANSACTION

6. On 21 June 2011, Rontec agreed to buy a number of businesses from Total.
7. On 22 September 2011, DCC signed three conditional sale and purchase agreements (SPAs) to acquire from Rontec a number of businesses, that Rontec had previously agreed to acquire from Total, for Euro 67 million (£59 million). These include:
 - Total Butler, that is, the assets now incorporated in TB
 - the dealer business, that is, the contractual right to supply transport fuels to 318 dealer owned dealer operated retail service stations currently under the Total brand, and
 - the islands business, comprising the entire issued share capital of Total's oil distribution and retail service station businesses on the Isle of Man and the Channel Islands.
8. The acquisition by DCC of the three businesses above completed on 31 October 2011. Initial Undertakings were accepted by the OFT on 4 November 2011.⁴

³ ME/5139/11, OFT decision, proposed acquisition by Rontec Investments LLP of petrol forecourts, stores and other assets from Total Downstream UK plc, Total UK Limited and their affiliates, 20 October 2011.

⁴ www.offt.gov.uk/OFTwork/mergers/Mergers_home/register/Initial-undertakings.

9. The OFT's administrative deadline for deciding whether to refer the merger to the Competition Commission (CC) is 8 March 2012 and the extended statutory deadline for a decision is 7 April 2012.

JURISDICTION

10. The OFT believes that the proposed transaction has resulted in two or more enterprises ceasing to be distinct under section 23(1) of the Enterprise Act 2002 (the Act).

EU jurisdiction

11. The transaction is not subject to EU Council Regulation 139/2004 because both DCC plc and the acquired businesses achieve more than two-thirds of their EU-wide turnover in one and the same EU State, namely the UK.⁵ The DCC plc group achieved about 72 per cent of its total turnover within the UK for the financial year ended 31 March 2011.

Total Butler

12. The OFT considers, and the parties did not seek to argue otherwise, that TB comprises an enterprise for the purposes of the Act. TB generated £ [greater than 70 million] turnover in 2009 and, on 3 December 2010, had generated a turnover of £[] million.⁶ Consequently, the turnover test contained in section 23(1)(b) of the Act is met by dint of the TB business alone.

⁵ The parties submit that the Isle of Man and Channel Islands businesses generated £[] million and £[] million turnover in 2010.

⁶ The parties submit that, owing to the fact that: (i) the former Total businesses formed part of the Total group (and so consolidated their financial data direct into the Total group accounts); and (ii) only the islands businesses were already incorporated entities, fully audited turnover for the last complete financial year is not available. Instead, the most recent turnover data from a number of sources has been included.

Dealer business

13. The parties submit that the historic turnover figure for the supply of transport fuels is not known to DCC, but that in 2010 the dealer agreement represented [] litres of fuel.
14. The parties argue that the dealer business should not be regarded as comprising a business and therefore would not be reviewable as part of the relevant merger situation. In particular, they state that DCC has acquired a portfolio of individual contracts housed in a holding company that will last on average for a further [] years only, and that very limited physical assets and additional obligations (such as acquiring services for credit/debit card transactions and pump maintenance) are acquired. As such, they consider that the arrangement is closer in nature to that of a short-term outsourcing than the acquisition of a longer-term enterprise. However, the OFT considers that the acquisition by DCC of the businesses covered by the dealer agreement constitutes, on an 'is or may be the case' standard, two enterprises ceasing to be distinct for the purposes of section 23 of the Act. This is because pursuant to the dealer agreement:
 - customer records are transferring from TBⁱ to DCC
 - staff are transferring from TB to DCC to manage the dealer agreement contracts at least for the remainder of the contractual terms,
 - goodwill is being acquired by DCC
 - some (albeit limited) assets are being acquired by DCC (such as pole signs and fascia), and
 - DCC will take responsibility for performing certain obligations under the contracts (such as, for example, acquiring services for credit/debit card transactions and pump maintenance).

15. The OFT has therefore considered in its investigation the effects on competition arising in the UK as a result of the dealer agreement as part of its review of the relevant merger situation.

Islands business

16. The islands agreement is a separate sale and purchase agreement from the dealer agreement and TB agreement. DCC will acquire the entire issued share capital in the stand-alone oil distribution business previously carried on by Total on the Isle of Man and on Jersey and Guernsey. These businesses are self-standing and operate independently of and have no commercial interaction with the dealer business and the TB business.
17. The OFT considers that the arrangements under the islands agreement would result in two or more enterprises ceasing to be distinct under section 23(1) of the Act. The acquisition by DCC of the businesses covered by the islands agreement is therefore part of the relevant merger situation reviewable by the OFT. However, the OFT has not considered the islands agreement further because the businesses act on a stand-alone basis and are not conducted within the UK. Given their geographic coverage and the fact that they operate on a stand-alone basis independent of the TB and dealer businesses, the OFT does not consider that the islands agreement acquisition will have a conceivable impact on competition within the UK.
18. Consequently, the islands agreement is not considered further in this decision.

Conclusion

19. The OFT considers that, as a result of the transaction, DCC, including GB Oils, and the acquired businesses have ceased to be distinct. The UK turnover of TB is £[greater than 70 million] for 2009. Therefore, the turnover test contained in section 23(1)(b) of the Act is satisfied.

RATIONALE FOR THE MERGER

20. DCC argues that the acquisition of the businesses would allow it to achieve further economies of scale through distribution efficiencies and the centralisation of certain management or other key functions. DCC considers that these efficiencies will help it to remain competitive with smaller competitors who operate on a much lower costs base and that it would enable DCC to improve its geographical coverage in Great Britain and enhance its competitive offering in the supply of transport fuels to retail sites, in particular sites owned or supplied by oil majors or bulk traders and major supermarkets.

BACKGROUND

21. In the context of Total Downstream UK's exit from retail fuel and oil distribution, other mergers have been reviewed by the OFT.⁷ The primary issue in these cases has been local retail overlaps between petrol forecourts.
22. The OFT has also recently considered three other acquisitions by DCC of oil distribution businesses: GB Oils/Brogans (undertakings in lieu accepted in relation to oil distribution in the Western Isles of Scotland),⁸ GB Oils/Pace Fuelcare⁹ (undertakings in lieu accepted in relation to oil distribution on the Isle of Wight) and GB Oils/Severn

⁷ ME/5191/11, OFT decision, completed acquisition by Shell UK Limited of 253 petrol stations from Rontec Investments LLP, 3 February 2012. See also ME/5139/11, proposed acquisition by Rontec Investments LLP of petrol forecourts, stores and other assets from Total Downstream UK plc, Total UK Limited and their affiliates, 20 October 2011.

⁸ ME/4406/10, OFT decision, completed acquisition by GB Oils Limited of Brogans Holdings Limited, 20 April 2010.

⁹ ME/4924/11, OFT decision, anticipated acquisition by GB Oils limited of Pace Fuelcare Limited, 20 July 2011.

(cleared unconditionally).¹⁰ In 2007, the OFT reviewed DCC's acquisition of CPL, which was cleared unconditionally.¹¹

23. In October 2011, the OFT published the findings of a market study into off-grid energy, which focused, amongst other things, on the supply of domestic heating oil.¹² The study found that, on the whole, competition works well, with consumers offered a good choice of suppliers.¹³ The OFT decided not to make a market investigation reference to the CC.

COUNTERFACTUAL

24. In line with its Mergers Assessment Guidelines, the OFT adopts the prevailing conditions of competition as the most appropriate counterfactual to assess this transaction. The parties have not submitted any alternative counterfactual on which to base the assessment.¹⁴

MARKET DEFINITION

25. The OFT considers that the relevant products for consideration concern the distribution of oil products (including heating oil, transport fuels and fuel oils) in Great Britain.

¹⁰ ME/5237/11, OFT decision, completed acquisition by DCC of the Severn Fuels business, 20 January 2012.

¹¹ ME/3186/07, OFT decision, anticipated acquisition by DCC of CPL Petroleum Limited, 24 August 2007.

¹² OFT 1380, Off-grid Energy, OFT Market Study, October 2011.

¹³ OFT 1380, paragraph 4.15 ff.

¹⁴ The OFT has not needed to consider whether the counterfactual is that the acquired businesses would have remained with Total or, on the other hand, with Rontec, given that, in either case, the acquired businesses would have continued to operate in competition against DCC/GB Oils.

26. These are discussed in relation to product and geographic scope in greater detail below, with reference to the following elements of the transaction:

- distribution of oil products, and
- wholesale supply of fuel to independent retail petrol forecourts.

Distribution of oil products

Product scope

Segmentation by oil product

27. Both parties distribute oil products.¹⁵ There are four basic oil products supplied by both GB Oils and TB: diesel (DERV), gas oil, kerosene and petrol.
28. The parties submit that there is a single market for the distribution of diesel, gas oil, kerosene and petrol on the basis of supply side factors, given that:
- a. all these products may be distributed using the same tankers and depot equipment
 - b. oil distributors supply the full range of oil products and can alter quantities placed on tankers in line with demand
 - c. distributors do not specialise in particular types of oil products, and

¹⁵ Many distributors, including DCC, also offer heavy fuel oil which is oil principally used for industrial (not domestic) boilers and transport fuel in some marine boilers. TB does not distribute heavy fuel oils.

- d. tankers have separate compartments allowing them to deliver different products on the same route.
29. Evidence available to the OFT suggests that oil distribution businesses typically appear to have a business model involving a range of oil products, possibly reflecting scale economies in purchasing, storage, distribution and seasonality of customer demand.
30. In GB Oils/Brogans¹⁶ and GB Oils/Pace,¹⁷ the OFT considered that it may be appropriate to aggregate markets to include all types of heating oils and transport fuels on the basis of supply side considerations. However, the OFT did not need to conclude firmly in these cases.
31. In this case, the OFT is of the view that the precise market definition taken, whether it includes all heating oils and transport fuels together or whether subdivided between heating oils and transport fuels or by reference to a particular type of fuel, does not affect the assessment of the competition effects arising from the merger.

Segmentation by customer

32. In GB Oils/Pace, the OFT noted that there may be a basis for segmenting markets by customer type, in that the competitive environment may differ between them.¹⁸ In that transaction, however, the OFT did not need to reach a view on the question of customer segmentation given that it would not affect its analysis. In the current transaction, the OFT's market investigation has indicated that it is appropriate and meaningful for the purposes of

¹⁶ ME/4406/11, paragraph 12.

¹⁷ ME/4924/11, paragraph 11.

¹⁸ ME/4924/11, paragraph 12.

the competitive analysis to define separate markets by customer type to take account of the specific requirements of certain customer types.

33. The OFT's Merger Assessment Guidelines¹⁹ outlines in paragraphs 5.2.28 to 5.2.30 the circumstances in which the OFT may consider it appropriate to define relevant markets for separate customer groups. Specifically, it identifies that such segmentation may be necessary where suppliers can target higher prices at customers willing to pay more, or when competition for customers differs significantly between different customer groups. The Guidelines state that in determining whether there are separate customer groups, the key question is whether some customers could get better terms for the same requirements and sets out a number of conditions that must hold for customer segmentation to be relevant.²⁰ The OFT has taken account of these factors in its analysis below in considering potential customer segmentation in relation to the distribution of oil products.

Customer requirements differ

34. The parties submit that customers range from domestic, agricultural, small commercial customers and small retail petrol outlets to large scale commercial users. The parties provide bulk supplies to large commercial users such as large delivery or logistics companies. In addition to bulk supplies, the parties define a further separate group of commercial customers, requiring lower

¹⁹ Merger Assessment Guidelines, OFT1254/CC2 (Revised) September 2010 ('the Guidelines').

²⁰ Specifically these requirements are that: customers who pay a low price cannot resell to those who would otherwise pay a high price; suppliers can identify those with a high willingness to pay, or those in a weak bargaining position, and therefore can adopt a different negotiating stance towards them; and customers have different preferences, or have access to different sets of suppliers (Merger Assessment Guidelines paragraph 5.2.30).

volumes, as 'national accounts'. This is discussed further at paragraphs 48 to 55 below.

35. The OFT's market test in this case indicated the following customer groups:

- bulk delivery customers often requiring full tanker load deliveries (this includes, for example, large transport, delivery or logistics companies as well as large scale users such as marine, aviation and other haulage companies) ('bulk customers'); this customer group includes within it as a separate market wholesale supply of transport fuels to retail forecourts
- a range of customers requiring multi-site deliveries across a wider geographic area whose demand volumes per site are smaller than full tanker load ('multi-site non-bulk customers'); these customers range in terms of their volume requirements as well as the geographic coverage they require: at one end of the scale, such customers require multiple deliveries across the whole country; others will require delivery across multiple regions; whilst at the other end of the scale, such customers may have delivery requirements in a single geographic region; as discussed below, the different geographic profile of customers within this group will determine what set of suppliers are potentially available to serve them, and
- local customers (including large customers requiring deliveries to one site only, yet whose demand volumes per site are smaller than full tanker loads) and smaller commercial or domestic customers ('small commercial and domestic').²¹

The characteristics of these customer groups are discussed below.

²¹ Of GB Oils' non-domestic customers, [75 to 100] per cent are single site customers. This, the parties argue, is the case across the industry with the exception of oil distributors that focus on full loads from refineries or terminals.

Bulk delivery customers

36. Information received from third parties suggests that demand side requirements between different types of customer vary significantly. Bulk delivery customers can have an annual demand of oil products of up to 100 million litres per annum. These customers require frequent deliveries to a significant number of bulk fuel storage sites. Each delivery can be up to 36,000 litres, that is, a typical full tanker load. These customers may also require smaller sized deliveries which are typically made to sites without bulk storage facilities.
37. Within the bulk delivery category, the parties accept that the dedicated tankers used to deliver fuel to forecourts in the dealer business will not be available to deliver oil to other customers as part of general distribution activity.²² Hence, the parties recognize the possibility of a distinct market being cautiously defined on the basis of wholesale supply of transport fuels to retail forecourts.ⁱⁱ

Multi-site non-bulk

38. The market test has shown that the demand requirements for customers requiring multiple site deliveries differ from those of bulk delivery customers. In particular, these customers generally require delivery across a wider geographic area.
39. Third party feedback indicated that, compared to bulk customers, multi-site non-bulk customers require a significantly smaller volume of fuel of typically around [] million litres per annum or less, and, given the absence of large bulk storage facilities generally, require delivery of smaller drop sizes across a significant number of sites. As set out above, the delivery requirements of this customer group

²² In Rontec/Total, in addition to the retail supply of fuel, the OFT gave consideration in its competitive assessment to Total's supply and distribution of fuel at the wholesale level.

can be over a large area. This can be nationally in the case of some customers (meaning across much of Great Britain), across multiple regions or in some cases across a single regional.

40. The parties consider that multi-site non-bulk customers are not a homogenous group of customers and that their overall numbers, compared to single site customers, are small (see paragraph 57 below and also footnote 21 above).
41. The OFT accepts that the demand requirements of multi-site non-bulk customers are not homogenous. In fact, its investigation has indicated that such multiple site customers can differ significantly (in terms of volume or oil product demanded, number of sites, type of contract, or frequency of deliveries required). There is thus a broad range of such multiple site customers. What they have in common, however, is the need to serve multiple sites across a wider geographic area with volumes per site that are smaller than full tanker loads.
42. The parties submit that few of DCC's customers have multiple site and multiple region requirements and that even fewer customers require sites to be served on a national basis.
43. Furthermore, the parties maintain:
 - on the demand side, such multi-site non-bulk customers can split their order by region or by product type amongst more than one distributor, and
 - on the supply side, oil distributors can subcontract deliveries to areas where they do not have delivery capabilities.
44. The OFT's market test in this case confirmed that multi-site non-bulk customers rarely award DCC a single contract for all their oil product requirements, and often split contracts, for example across certain sites or for certain oil products, to a small number of suppliers. At the same time, however, and contrary to the parties' arguments, customers stated that they award contracts to a limited

number of suppliers because they explicitly value the associated efficiencies (reduced transaction costs) of dealing with a limited number of oil distributors only (see also paragraph 45, 61 and 211 below).

45. The OFT's market test in this case indicated that splitting contracts by dual-sourcing, or dealing with a small set of suppliers, may be appropriate for some customers because different oil products are required in different volume bands to different locations. For example, a customer may have a very large volume DERV requirement delivered to a few sites, which would then potentially be contestable by the oil traders and bulk traders, but a requirement for small gasoil deliveries to multiple sites, for which a contract with a depot network supplier is preferred.
46. The parties' argument in respect of the availability of subcontracting arrangements on the supply side was supported by the OFT's market test in this case, but only in part. This issue is considered below (see paragraphs 127 to 132 below).

The parties segment customers by type

47. The OFT notes that the parties segment customers by type, in particular in relation to 'national accounts'. This is discussed below. The OFT notes that what these customers have in common is the need for multiple site deliveries over a larger geographic area.
48. The parties' internal description for what the OFT has referred to as multi-site non-bulk customers that most adequately captures the specific demand requirements of this customer group, is 'national account'. Both parties identify 'national account' customers served by their businesses, although internal categorisation may differ, the criteria for allocation between these sets may not be consistent and may not always in practice be strictly applied. DCC, for example, defines a 'national account' as:
 - annual volume requirements of more than []

- customers' need for centralised services and [], and
 - requirement to supply to multiple sites across Great Britain.
49. The merger investigation demonstrated that contractual arrangements vary. These can include fixed term contracts of between one and two years, spot purchases, or flexible purchasing where a pre-agreed pricing formula applies. It appears that, below a certain volume, purchases are usually not subject to a contract, but rather supplied on a spot basis under DCC's standard terms and conditions, that is, the customer is charged based on the price at the time of the order.
50. The parties submit that the key considerations at TB in deciding whether a customer is a national account are:
- the volumes required per annum (TB considers an account to be national if it is in excess of [] litres per annum)
 - whether particular services are required [], and
 - [].
51. As is the case with DCC, contractual arrangements can differ, from fixed term contracts using daily or weekly pricing mechanisms to more flexible arrangements such as spot buying.
52. DCC supplies oil products to [] 'national accounts'.
53. TB distributes oil products to [] 'national accounts'.
54. As the parties note, TB's 'national accounts' represent customers requiring smaller volumes to be delivered across a far larger number of sites. The parties observe that TB has a number of 'national accounts' that represent buying groups and therefore have a very high number of delivery locations to be served.

55. An overview of the parties 'national accounts' is summarised in Table 1 below.

Table 1 – Volumes per site for 'national accounts'

	GB OILS	TOTAL BUTLER
'National accounts'	[300 to 600]	[50 to 150] ²³
Sites	[8,000 to 12,000]	[5,000 to 10,000]
Sites per account	[1 to 50]	[50 to 100]
Volume (litres)	[500m to 900m]	[50m to 100m]
Volume per account (litres)	[1.5m to 2m]	[500,000 to 1m]
Volume per site (litres)	[50,000 to 100,000]	[5,000 to 15,000]

Source: the parties

56. Looking at the profile of the parties' customers demonstrates that both of the parties serve a number of multi-site customers where sites are located across a wide geographic area. This detail is further set out in Table 2 below.

²³ TB states that [] of these are single site customers.

Table 2 - Multiple site accounts

	GB Oils ²⁴	Total Butler
Total multiple site accounts (excl Scotland)	[100 to 200]	[50 to 100]
Multiple site accounts in one region (excl Scotland)	[30 to 80]	[1 to 20]
Multiple site accounts across more than one region (excl Scotland)	[50 to 150]	[50 to 100]

Source: OFT analysis based on information from the parties

57. According to DCC, most of its multiple site customers operate in relatively few regions. GB Oils estimates that of its customers with an annual demand volume of over one million per year, [one to 50] out of its [50 to 150] multiple site accounts require sites to be served in only two regions of England Wales and [one to 50] require drops across all regions of England and Wales. Of GB Oils customers with an annual requirement above 500,000 litres, [one to 50] of its [100 to 200] multiple site customers operate across all UK regions while [30 to 90] operate only in two regions. In this respect, the OFT notes that the number of customers requiring delivery across multiple sites, whether in a single region or across multiple regions, can in no sense be regarded as negligible – not least given the considerable value of these accounts, reflecting their volume requirements.

²⁴ Based on over [] million litres and average drops of less than 10,000 litres.

Different customer types may have access to, or preferences for, different sets of suppliers

58. The demand requirements of the customer groups identified above, in particular multi-site non-bulk customers, have implications for which types of oil supplier are able to compete effectively for their business.
59. The parties submit that oil majors and bulk traders compete actively with them for large scale commercial customers, bulk delivery and multiple site customers (including 'national accounts'). They argue that competitors do not need a depot network to compete in this sphere, since they may supply direct or via independent hauliers, and can supply large volumes over long distances. In addition, the parties submit that oil majors and bulk traders may requisition contract storage and deliveries on their behalf by local distributors, in order to cover a wider geographic area.
60. Third party evidence suggests that certain bulk storage sites are indeed supplied on a sole supplier basis. Because of high volume storage capacity, bulk deliveries may be supplied direct from refineries or terminals or via independent hauliers, and can involve the supply of large volumes over longer distances, as the parties suggest. However, evidence available to the OFT indicates that only bulk delivery customers can be supplied direct by oil majors and bulk traders. This is because they can accommodate large tanker, full load deliveries. Multiple site customers, by definition, require smaller drop volumes and may need a higher frequency of deliveries for which different types of infrastructure (in particular appropriate tankers and depot networks) are more suitable.
61. Customers explained that the price band achieved in contracts reflects expected total purchase volumes and allows customers to benefit from volume related discounts (compared with making numerous smaller purchases). Also, customers explicitly value the convenience of dealing with one or few suppliers, as this reduces supplier management costs. Certain customer groups require

deliveries to hundreds of separate sites under a single supply agreement.

62. The scope for customer segmentation as discussed above also has associated geographic scope implications. Small customers typically purchase on a localised basis for delivery to one or few sites. Larger customers may have supply requirements (or be supplied from sources) over a much wider geographic area. This may be either because they require oil delivery to multiple sites over a broad regional or national area under a single contract, or because the volume of their demand is sufficient to make supply economic over a longer distance even taking into account delivery transport costs.
63. Customers who require frequent supplies to multiple sites across a large geographic area may seek to source from a depot network with (at least) similar coverage. This may be with respect to a regional requirement, a multi-regional requirement or national requirement.
64. Local customers include smaller non-domestic and domestic customers with no multi-site requirements. This customer group requires low drop sizes of oil products. Suppliers typically sell a portfolio of fuels delivered to smaller non-domestic and domestic customers alongside other products or services.²⁵

Conclusion

65. In GB Oils/Brogans and GB Oils/Pace, the OFT considered that it may be appropriate to aggregate markets to include all types of heating oils and transport fuels on the basis of supply side considerations. In the current transaction, the OFT has not had to reach a view on whether these oil types constitute separate markets or a single market. The OFT does not consider that the existence or otherwise of competition concerns would be affected

²⁵ OFT 1380, paragraph 4.14.

by the precise market definition taken – whether it includes all heating, transport and gas oils together or by reference to a particular type of fuel.

66. For the purposes of assessing the current merger, the OFT considers that there is a sound basis for adopting a customer segmentation approach in this case. This is because multi-site non-bulk customers are likely to be identifiable, and as discussed above, may have preferences for, or access to, a different set of suppliers from other customer types. Arbitrage through resale between different end customer types is unlikely.
67. The OFT considers it appropriate to define and consider separate markets for:
- the wholesale supply of transport fuels to retail forecourts
 - the supply of oil products to multi-site non-bulk customers, and
 - the supply of oil products to local customers.

Geographic scope

68. GB Oils is active in the supply of oil throughout the UK. TB's distribution business did not have operations in Scotland or Northern Ireland, but has good coverage of much of England through its depot network, especially in southern England, the Midlands, East Anglia and Yorkshire.

Wholesale supply of transport fuels to retail forecourts

69. The parties submit that the geographic market for the wholesale supply to petrol forecourts is likely to be national.
70. Third party evidence suggested, however, that competitive conditions may vary by geography, as a consequence of the delivery and distribution logistics involved in supplying specific regions. In addition, the OFT's merger investigation demonstrated

that some large wholesale suppliers do not distribute in the whole of Great Britain. In response to third party comments, therefore, the OFT considered whether competition concerns might arise on the regional level following the merger.

71. Given its conclusions overall in this case, the OFT has not needed to consider whether the merger could have effects also at the local retail level (on the basis of internalisation of diverted downstream demand).

Supply of oil products to multi-site non-bulk customers

72. The parties submit that the relevant geographic market for the distribution of oil products is national. The parties argue that oil distributors can operate from a depot, refinery, terminal or parking space at which they can leave a tanker and that there is no need for an oil distributor to operate a storage depot in a locality to be able to deliver oil to customers in that area.
73. The key, according to the parties, is to establish a 'milk round'. Once established, the distance from depot does not matter. The incremental cost of supplying an additional customer depends on proximity to the distribution route, not the depot, the parties submit. Distributors can collect oil from refineries and terminals in large articulated tankers and transfer oil in smaller quantities to smaller tankers parked in the area to be served. This, the parties state, allows servicing of smaller drop customers without the need for depot infrastructure. To illustrate the range of distribution options, DCC provided the OFT with comparative data on the cost of running a depot and the cost of loading oil from a terminal. The data demonstrates, DCC argues, that terminal operations might in some instances be more cost effective than a depot infrastructure.
74. In summary, the parties state that the network of depots, terminals, refineries and parking spaces creates a series of overlapping chains of distribution that together create national coverage and facilitates national competition.

75. The OFT notes that, as described above, bulk deliveries may be supplied by depots with large storage capacity or direct from refineries or terminals or via independent hauliers to the storage sites of bulk delivery customers. This type of supply arrangement can involve deliveries over long distances, indicating, potentially, a large geographic market.
76. The case for customer segmentation as discussed above has associated geographic scope implications. In GB Oils/Pace, the OFT considered the overlap between the parties' substantial depot networks over a wide regional area. Similarly, in the context of the current transaction, the OFT considers that the ability to supply to multi-site non-bulk customers is primarily achieved through relevant depot infrastructure.
77. On the demand side, and contrary to what the parties argue above (see, in particular, paragraph 43 above), the market test indicated that multi-site non-bulk customers have a strong preference for oil distributors with commensurate geographic coverage. This is largely driven by the efficiencies of dealing with a very limited set of suppliers.
78. The OFT therefore considers that, in relation to the supply of oil products to multi-site non-bulk customers, a national geographic scope is therefore relevant for customers with national (or suitably broad) delivery requirements.
79. However, as discussed above, there are some multiple site customers who require deliveries on a regional basis (whether to few or many distinct sites). The OFT considers that there may be regional aspects to the geographic scope of supply conditions for such customers. The various regions within which the parties overlap will differ in terms of which other suppliers are present and the extent of their depot infrastructure.

Supply of oil products to local customers

80. Supply at a local level is relevant in relation to smaller non-domestic and domestic customers.
81. In the context of examining competition at a local level, the parties submit that the presence or absence of a depot does not, in itself, indicate the level of constraint posed by a competitor on the parties. The parties argue that they face competition from competitors from a greater distance than might be implied by basing a catchment area on the supply pattern of GB Oils' individual depots. In the parties' opinion, supplying customers cost effectively relies on the ability to establish a route of customers. Therefore, the viability of a 'milk round' does not depend on how far individual customers are located from each depot but rather on their proximity to the distribution route and thus the incremental cost of supplying them.
82. In GB Oils/Pace and GB Oils/Severn, the OFT took the view that distributors are unlikely to be competitive in areas where they have a weak distribution network, particularly for small volume deliveries, such that specific customers are likely to consider only those suppliers with depots within their locality as potential suppliers. The OFT's market investigation in this case has confirmed this view.
83. The OFT understands that suppliers typically deliver oil products direct to customers. Therefore, the boundaries of the geographic market are determined by how far suppliers are prepared to travel to deliver oil products to their customers.
84. For small, individualised volume drops, delivery costs are likely to account for a more significant proportion of total costs than for

customers requiring larger volumes.²⁶ This implies some limited distance within which deliveries will be economic and able to compete effectively with a local supplier. Evidence available to the OFT suggests that prices and margins can vary significantly between different geographic locations, indicating that competitive conditions can vary between local areas.

85. The OFT's market study report cited evidence showing that (at least for the retail of domestic heating oil) firms may compete most strongly within a radius of around 30 miles from their supply points such as depots and terminals.²⁷ Third party competitors in this case indicated that their typical catchment areas served from local depots ranged from 20 to 25 miles for some, to 30 to 40 miles for others.
86. Catchment areas are useful as a measure of the area within which the great majority of a location's custom is located.²⁸ Catchment area data submitted for both parties showed 80 per cent of deliveries were within an average distance of [20 to 30] miles. The OFT recognises that the 80 per cent catchment areas can vary significantly between depots. For TB depot and terminal locations the range is from [10 to 50] miles.
87. The catchment area data for TB also showed that on average:
 - [30 to 40] per cent of TB orders were from within 10 miles
 - [35 to 45] per cent from between 10 and 20 miles
 - [15-25] per cent from between 20 and 30 miles, and

²⁶ In relation to domestic kerosene deliveries, for example, the parties note that owing to small delivery sizes and infrequent orders, domestic kerosene deliveries incur higher costs than other fuels.

²⁷ OFT1380, Off-grid energy Market Study, October 2011, paragraph 4.25.

²⁸ Merger Assessment Guidelines, paragraph 5.2.25.

- [five to 15] per cent from more than 30 miles.
88. Taking into account the **areas** of the concentric bands generated by each radius (rather than the linear length of the radius itself), these figures actually imply that the **density** of distribution of deliveries within 10 miles is considerably higher than in the 10- to 20-mile band (by a ratio of [0 to 10] to 1), and far higher than in the 20- to 30-mile band (ratio of [five to 15] to one).

Conclusion

89. The OFT considers that it is appropriate for it to examine the merger with respect to:
- the wholesale supply of transport fuels to independent petrol forecourts at a national and regional level
 - the supply of oil products to multi-site non-bulk customers assessed at a national and regional level, and
 - the distribution of oil products to local customers; consistent with previous approaches in GB Oils/Brogans, GB Oils/Pace and DCC/Severn, the OFT considered data on the positions of the parties and their competitors (primarily in terms of number and locations of oil distribution depots) with respect to radii of 10, 20 and 30 miles from each of the target depots.

COMPETITIVE ASSESSMENT – UNILATERAL EFFECTS

90. DCC submitted its estimates of market shares with respect to oil distribution within Great Britain as a whole, submitting that, post-merger, DCC would have a market share of 16 per cent, with an increment of two per cent. This includes volumes attributable to the oil majors and bulk traders.

91. The parties argue that there are many competing distributors of oil products within the UK, including:
- oil majors
 - large regional or national independent distributors
 - multiple smaller, local and regional independent distributors, and
 - companies operating without storage depots.
92. The parties quote the OFT market study into off-grid energy, noting that there are approximately 200 oil distributors operating in England, Wales and Scotland in the distribution of kerosene. Furthermore, the parties note that, according to their calculations, the top 17 oil distributors across all oil products in GB account for only 29 per cent of oil volumes, with the remaining 71 per cent split across a large number of companies.
93. The OFT considers on the basis of the above that concerns can be ruled out in relation to the distribution of oil products at a national level if no regard is had to any customer segmentation.
94. The OFT has also been able to rule out any concerns arising in relation to bulk delivery customers as a whole, on the basis of a significant number of alternative suppliers (including the large oil majors and traders) and on the absence of third party concerns.
95. However, the OFT examines below the effect of the merger on the three different bases on which concerns have been expressed: namely the wholesale supply of transport fuels to independent petrol forecourts at a national and regional level; the supply of oil products to multi-site non-bulk customers assessed at a national and regional level; and the distribution of oil products to local customers.

Unilateral effects at the level of wholesale supply to independent petrol forecourts

96. GB Oils supplies transport fuels to dealer owned dealer operated (DODO) sites, both operating under exclusive branded contract (the largest group operating under the Gulf brand) and also supplying on a spot basis to sites which are unbranded and free to procure from any source.
- Through the dealer agreement (see paragraphs 13 to 15 above), DCC acquired contracts to supply 318 Total branded DODO sites. These DODO sites will remain Total branded until the expiry of the current supply contract (the average outstanding duration at completion was [] years).
 - TB had contracts to supply 84 DODO sites under its 'Power' brand, and also supplied unbranded sites as part of its oil distribution business.
97. The OFT notes that GB Oils has a significant existing business in the supply to dealer sites under various retail brand names including Gulf (for which it holds an exclusive UK licence), UK, Texaco and Scottish Fuels.

National

98. The parties submit that the share of transport fuels accounted for by the merged entity is low at [0 to 10] per cent nationally (see below). They argue that even if the market is narrowly defined as supply to DODO sites, this would give the merged entity a combined volume share of around [five to 15] per cent. Oil company owned sites and supermarket owned forecourts, the parties submit, will continue to exercise very significant indirect constraints on the supply of transport fuels to DODO retail fuel sites.

Table 3 - Share of wholesale volumes to petrol forecourts (GB)

	All forecourt sites	Dealer sites²⁹
Forecourt fuel sales volume	35,800m (litres)	13,300 m (litres)
DCC sales/share	[]m / [0 to 10] per cent	[]m / [0 to 10] per cent
Acquired Total branded dealer sites sales/share	[]m / [0 to 10] per cent	[]m / [0 to 10] per cent
Power branded dealer sites sales/share	[]m / [0 to 10] per cent	[]m / [0 to 10] per cent
COMBINED SALES/SHARE	[]m / [0 to 10] per cent	[]m / [5 to 15] per cent

Source: parties' estimates

99. Table 4 below compares average annual volumes across different types of forecourt sites, including independent dealers.

²⁹ This column excludes oil company owned sites and supermarkets.

Table 4 - UK forecourt market ownership (2011)³⁰

Ownership	Nr of outlet	Av volume (KL pa)	Market share (per cent)	Outlet share (per cent)
Oil company	2,198	4,695	28.3	25.1
Dealer	5,301	2,295	33.3	60.5
Supermarket	1,266	11,112	38.4	14.4
UK total	8,765		100	100

100. The OFT notes that the parties' share and increment are markedly higher on a share of sites basis, rather than on a volume/value basis. This is true for assessment based on all forecourt sites and if limited to dealer sites. The reason is that supermarket and company owned sites have much higher average volumes than dealer sites. The parties submit that post merger they account for [20 to 25] per cent of branded dealer owned sites, ahead of BP (20.8 per cent) and Texaco (17.3 per cent).
101. The parties submit that that on expiry of the acquired Total contracts DCC will face intense competition from other wholesalers to continue to supply those sites, and that []. This is confirmed by internal documents provided.
102. Internal documents show that post-merger, DCC will be the largest supplier of retail petrol station in GB, serving more than [] sites (including unbranded sites).
103. No third party concerns were raised in relation to wholesale supply to independent petrol forecourts on a national level.

³⁰ Forecourt Trader, Fuel Market Review 2011, June 2011.

104. In summary, the OFT considers that the parties' current share of branded dealer sites, and of volumes, does not appear high enough to raise concerns on a national basis, in particular given that competition to supply independent dealers site takes place on a continual basis as time limited exclusive supply contracts expire.

Regional

105. Some concerns were expressed to the OFT about the remaining supply options for DODO retail sites in Wales. The concerns were expressed on the basis of a reduction in a limited set of suppliers active in competing to offer branded supply to independent dealer sites who require, according to their own descriptions, 'small volumes'.
106. The OFT notes that maps of the parties' dealer sites do not indicate that their overlap is particularly concentrated in one area of the country.
107. According to the parties, GB Oils has 45 branded DODO sites in Wales, and there are ten Total branded sites. There appear to be only five Power contracted sites in Wales. These figures compare with 548 forecourt outlets in Wales in total (including company owned and supermarkets). To the extent that the proportion of dealer sites to total sites in Wales is similar to the rest of GB (that is around 60 per cent), the parties would not have an especially large share by number of dealers sites supplied in Wales (below 20 per cent).
108. Table 5 below compares average annual volumes across different groups of dealer sites. It indicates that, with the exception of Total branded forecourts, DCC predominantly supplies to dealers with low average annual sales.

Table 5 - Average volume per branded dealer site

Dealer sites group/brand	Average volume (litres p.a.)
All (UK)	2,295,000
GB Oils	[]
Total	[]
Power	[]

Source: Forecourt Trader and the parties

109. The parties submit that oil majors can and do compete to supply smaller dealers, including in urban and non-urban locations in Wales.

110. This was confirmed by one of the oil majors. However, one oil major observed that they do not actively seek sites that have volumes below three million litres per year. Another oil major noted that regional distribution depended on whether they had the required storage and distribution logistics serving such regions.

111. According to Fuel Market Review 2011, there are several other suppliers with dealer networks active in Wales. These include Murco, NWF Fuels, Valero, and Oil4Wales.³¹ BWOC (a subsidiary of Mabanaft) is a supplier of bulk fuel to retail sites (including branded dealer sites), predominantly active in South West England and therefore potentially well-placed to supply into Wales.

112. Other comments received from third parties also indicated that:

- suppliers active in Wales also own refineries in Wales³²

³¹ Fuel Market Review 2011.

³² Fuel Market Review 2011.

- a specific brand exclusive to Welsh retailers exists, and
 - recent entry has occurred.
113. Third parties also noted that the Total branded forecourts are typically large enough to attract a range of potential suppliers, and that TB's Power brand was considered to be too limited in scale to have a significant impact on competition.

Conclusion

114. On balance, the OFT's merger investigation did not support the view that either Total or TB (Power) have been disproportionately important alternatives to GB Oils for smaller independent dealers.
115. There is some evidence that small volume independent dealers in specific geographic areas may have somewhat fewer options for branded supply contracts than do larger sites. However, the evidence available to the OFT does not indicate that Total previously targeted its dealer presence at smaller sites and suggests that there continue to be other remaining supply options overall. Therefore, a merger-specific effect appears limited in this regard.
116. However, in light of the overall competitive assessment below, the OFT does not need to conclude on whether the merger creates a realistic prospect of a substantial lessening of competition in the provision of wholesale supply of fuel to independent petrol forecourts.³³

³³ The OFT has not had to conclude on the effect of the merger on the supply of fuel to local retail markets. In particular, the OFT has not had to consider whether a wholesale price increase (or other worsening of terms) – passed on in full or part to the retail price – could become more profitable than the pre-merger situation, since some of the wholesale margin lost from customers who switch retail sites may now be recouped through increased wholesale volumes at the other sites (that is whether there is scope for internalisation of diverted downstream demand).

Distribution of oil products: Unilateral effects for multi-site non-bulk customers

Shares of supply/competitors to the merging parties

117. The parties referred to their overall market shares in relation to oil distribution across GB as a whole, arguing that this demonstrates that the effect of the merger was small and that there would remain a significant number of viable alternative suppliers.
118. However, as noted in the discussion on market definition (see in particular paragraphs 39, 60 and 84 above), some multi-site non-bulk customers need lower drop sizes compared to bulk delivery customers. Evidence received from third party customers and suppliers suggested that oil majors and bulk traders are unlikely to sell to customers requiring such coverage because of volume size and multiple site requirements. Therefore, the OFT does not consider the market share estimates provided by the parties to reflect the extent of rivalry between them for supply to multi-site non-bulk customers.
119. The parties provided some data on volumes attributable to their multi-site customer accounts, segmented in various ways. Whilst this indicated that GB Oils' volumes supplied to such customers may be several times the volumes supplied by TB (indicated as some [] to [] million litres), the quality of the data provided is not sufficient to translate into any form of reliable estimates of shares of supply for this customer group as a whole.
120. The parties provide data from customer lists from its recently acquired businesses Pace, Brogans and Pearts, which, according to the parties, demonstrates that regional companies are able to serve multi-site non-bulk customers on a regional basis. The OFT notes that Pace and Brogans were oil distributors with considerable depot infrastructure similar to that of TB, and that the acquisitions resulted in this depot capability being taken out of the market.

121. In the absence of any reliable estimate of market share estimate for this customer group, the OFT's investigation has sought to understand whether the size of a supplier's depot network impacts on its ability to act as a competitive constraint in relation to multi-site non-bulk customers. The OFT assessed a range of evidence in seeking to answer this question.

122. In GB Oils/Pace, the OFT identified TB as an important competitive constraint on GB Oils, in particular given the size and scope of TB's depot network:

'Based on the evidence available to it, the OFT understands that on a regional level, there are at least two other competitors, TB and Watson Petroleum, who will continue to impose a competitive constraint to the parties post-merger'.³⁴

123. Similarly, the OFT market study identified that there were only three large firms having sizeable national networks, GB Oils, TB and Watson Fuels (Watson), followed by eight large regional and smaller national networks.³⁵

124. This is further illustrated in Table 6 below.

³⁴ ME/4924/11, paragraph 32.

³⁵ OFT 1380, figure 4.5 and paragraph 4.19.

Table 6 - Number of depots by selected oil distributor

Company	Number of depots
GB Oils	131 ⁱⁱⁱ
TB	40 ^{iv}
Watson	41
NWF	16
Goff	14
Advance/Silveys	10
Highland Fuels	9
Rix	6
Crown Oils	1

Source: parties' estimate^v

125. The OFT's market investigation in this case has confirmed that, besides the oil majors and bulk traders, there are only three large dense depot networks with national coverage: GB Oils, TB, and Watson. The merger will reduce this number to two.
126. Outside of this group of firms with a dense depot network, there are a limited number of other oil distributors who have a cross-regional distribution of depots, such as NWF/Eveson (16 depots) and Goff (14 depots). These other distributors have a lower coverage (on a depot basis) than the parties and Watsons. There are around 20 smaller regional operators, who distribute in local regions only and often do not have more than two to three depots. The very large majority of oil distributors operate at local level from one depot only.

Constraint through subcontracting arrangements

127. The parties maintain that the depot infrastructure and the geographic location of depots has no relevance to the ability of oil distributors to compete and that this has no bearing on the competitive constraint that any oil distributor would exercise on the parties' post-merger.
- First, they argue that multi-site non-bulk customers break-up requirements to use a number of smaller suppliers as a suitable alternative to a supplier with wider coverage. This point has been discussed earlier in the context of market definition (see paragraph 43 above): the OFT does not consider this point has been substantiated in its market investigation.
 - Second, DCC states that traders, distributors and hauliers regularly use distributors on a subcontracting basis to deliver oil products 'out of area' or will themselves be used to make such deliveries on behalf of other distributors. DCC mentioned a number of sub-contractors who they consider to be rivals for all customer types. In this respect, the 'splitting' is done by the contract supplier, rather than by the customer itself.
128. In particular, the parties note that Crown Oil is a competitor that has traditionally operated tankers in the North of England and has expanded by winning a supply contract of more than 100 million litres per year, which it has served through sub-contracting to local distributors (as shown in Table 6 above, Crown only has one depot).
129. The parties submit that subcontracting oil deliveries is widespread in the industry. To support this proposition, the parties provide information on their own subcontracting arrangements:
- GB Oils used other distributors to deliver [0 to 10] per cent of its volume on a 2012 financial year to date basis, and

- [10 to 20] per cent of TB's volume to multiple site customers in 2011 was delivered by third parties.³⁶

130. Furthermore, according to the parties, competition for multi-site non-bulk customers is intense as demonstrated by the decline in pence per litre (ppl) for DERV, which accounts for the majority of volumes of all products sold to this customer group.

131. The OFT has considered carefully the extent to which a subcontracting model can provide a constraint on the merging parties in respect of multi-site non-bulk customers. In this respect, the OFT notes that:

- In respect of the suppliers cited by the parties as providing coverage through subcontracting, the OFT notes that the websites quoted by these suppliers typically advertise a capability for delivering oil products across the UK. However, evidence available to the OFT suggests that even the most prominent of these suppliers, Crown Oil, has been unable to participate in certain tenders precisely because of complexities involved in subcontracting to multiple other oil distributors.
- Whilst it is the case that the OFT's market investigation did show that some customers mentioned Crown Oils as a possible alternative to the merging parties, the OFT also notes that a significant proportion of customers who mentioned Crown Oil as a potential supplier also raised concerns about the current transaction.

132. The OFT does not, therefore, believe that there is sufficiently clear evidence for it to conclude that companies with smaller depots

³⁶ The parties also provide some information on Fuelline, a business set up by Brogans to pursue multiple site customers outside Scotland. Fuelline is based in Southampton and does not operate a depots. According to the parties, Fuelline was very successful in attracting business across smaller volumes. No further data, however, has been provided.

networks are able to compete effectively through the use of a subcontracting model for multi-site non-bulk customer business against the merging parties.

Closeness of competition

133. The OFT asked the parties for customer gains and losses data in relation to national and regional accounts, with a view to understanding possible rates of diversion between them and the extent to which they could be said to be closer competitors than other competitors with materially lower depot coverage. The parties were able to provide very limited material in response to this request, but the data produced by the parties indicated as follows:

- According to the parties' submission, in 2011 there were only a very limited number of occasions in which GB Oils and TB both submitted offers in response to requests for proposals. Of [] offers for tenders submitted in 2011 by TB, only [less than 15 per cent] were also bid for by GB Oils.
- For contracts of between [] million litres per year, other competitors involved in the tender process included Watson and Crown Oil.
- For one contract of 20 million litres per year, other competitors involved in the tender process included Essar, Greenergy, Harvest, Petroplus, Pace and Watson.

134. The parties submitted that the limited number of occasions on which TB and GB Oils competed in the same tender reflects the fact that while GB Oils and Butler Fuels compete nationally, Butler Fuels traditionally has a larger number of smaller customers compared to GB Oils, while GB Oils will actively pursue larger volume tenders (see further in this respect the parties' differing approaches to national accounts, as discussed in paragraphs 48 to 55 above).

135. The parties also argued that this tender evidence demonstrates the extent to which DCC and TB compete with a wide range of other distributors and traders.
136. In relation to both of these points, the OFT notes that the win/loss data provided by the parties in relation to 2011 is for a single year and is therefore of limited probative value.
137. In relation to the argument that the data demonstrate that the parties' are differentiated in terms of customer profile, the OFT notes that of the 2011 tenders listed for each party, the largest annual volume bid for by TB was [] million litres, and the second largest [] million litres, whereas GB Oils' two largest bids were for annual volumes in excess of [] million litres. However, the OFT also notes that the majority of both parties' bids were for annual volumes below [] million litres ([] of [] TB bids; [] of [] GB Oils bids). [] of GB Oils bids, and [] of TB's were for volumes below [] million. The data on customer orders therefore confirm that there is a reasonable degree of overlap in the volumes of tenders for which the companies bid.
138. In relation to what this data demonstrate about the constraint from other suppliers, the OFT notes that Crown Oil appears to tender only for contracts at the lower end of the range. For the largest contract identified, of the potential suppliers the large majority are bulk traders (Essar, Greenergy, Harvest and Petroplus), a GB Oil company (Pace) or Watson.

Internal documents

139. In order to assist the OFT's scrutiny of the merger, the parties provided a number of internal documents. These provided some insight into which companies are considered by DCC to be close competitors:
- One document internal to DCC notes that TB is the third largest fuel distributor in the UK after GB Oils and Watson with a

concentration in England and Wales and a 'strong presence in national accounts'.³⁷ An associated document states that the market for fuel distribution is highly fragmented and that TB is one of the distributors with a strong presence in England and Wales.³⁸

- An internal strategy document lists [].³⁹ This is reiterated in another strategy document

140. The OFT considers that the first document cited above is of more evidential relevance given that it refers specifically to 'national accounts' (given that the OFT's focus in relation to this theory of harm is on multi-site non-bulk customers). The OFT places less weight on the second document given that it is not focussed on 'national accounts'. In addition, the OFT notes that Pace has already been acquired by DCC and that the 'non-traditional' suppliers listed by DCC appears to relate to supply to bulk delivery customers.

141. As such, although not conclusive, the internal documents taken in the round appear to suggest that TB should be considered as one of the key competitors to DCC in the supply to multi-site non-bulk customers.

Customer comments

142. As part of its market investigation in this case, the OFT contacted around 40 customers of the parties whose demand profile required delivery to multiple sites on either a regional or national basis. A significant number (close to half) of those customers that provided

³⁷ DCC plc's document 'Proposal to acquire certain of the downstream assets of Total in Britain', dated 13 July 2011.

³⁸ [].

³⁹ Slide on 'Key Competitors (traditional)' from a GB Oils' strategic plan for 2011 to 2014, dated October 2010.

responses raised concerns about the transaction on the basis of loss of competition between the parties supplying to multi-site customers. These included customers requiring coverage across most of the country, and others with more regional needs.

143. Customers with specific regional requirements may face a reduction in competing options in those regions where the parties overlap. As illustrated above, there are a number of smaller regional oil distributors which may have suitable coverage within their operational area in addition to the merging parties and Watson (for example Goff in the East and South East of England). However, these alternative supply options are of more limited value to multi-site non-bulk customers that have multi-regional or national requirements. Indeed, of the multi-site non-bulk customers from whom the OFT received information, only three identified Rix as a viable alternative supplier, two identified NWF and none identified Goff.
144. Although Watson is present in each overlap region, there are certain regions where the number of depots operated by Watson, and/or by smaller regional suppliers are markedly lower than the number operated by each of the merging parties, such that the parties might be considered the leading two suppliers. This is particularly the case in Yorkshire and Humber, but to a lesser extent also in the South East and East of England regions.
145. Customers did not support the parties' contention that multi-site, non-bulk customers could use a wide range of other distributors to effect multi-region deliveries themselves and/or in conjunction with locally-based distributors through subcontracting, if deliveries were required outside their delivery area. Customers raising concerns did not in general see these alternative suppliers (with the exception of Watson) as good alternatives to the merging parties' offers. In this respect, it is relevant to note that:
 - of the multi-site non-bulk customers from whom the OFT received information, only a quarter of those regarded Crown as a viable alternative supplier (compared to a significant majority

of customers who saw Total Butler as a viable alternative supplier to GB Oils, or vice-versa, and a third that saw Watsons as an alternative supplier), and

- of those customers that did identify Crown as a viable alternative supplier, the majority of them were – notwithstanding their knowledge of Crown – still concerned about the effect of the merger.

146. The OFT's market investigation did not confirm the parties' contention that customers do not attribute much value to having a single point of supply and that commercial customers can and do split their demand into a number of smaller sections which could be served by a larger number of distributors over a greater geographic area. On the contrary, the market investigation in this case consistently demonstrated the value some customers attach to procuring from a small number of oil distributors only.

147. Furthermore, third party comments indicated the following:

- A significant number of purchasers of large volumes of oil have experienced limited options for obtaining multi-site supplies in relation to specific oil products at a particular volume size. Customers noted that the oil majors and bulk traders would not supply deliveries of such size and expressed concerns at the limited number of providers with sufficient national coverage for their specific delivery site locations and size requirements. This customer group identified TB and Watson as the two likely alternatives to GB Oils and vice versa.
- This was confirmed by another, albeit smaller, set of customers concerned about pre-merger attempts to exercise market power by GB Oils in the negotiation of supply terms, and the related worsening of customers' negotiating position from the loss of TB as an alternative option.

- Overall, a significant number of third parties considered that TB exercises a competitive constraints on GB Oils, in particular in the tendering process for 'national accounts', and vice versa.
148. Other third parties to the OFT's market investigation were less concerned about the effects of the transaction. However, the OFT is mindful that a proportion of such customers expressed satisfaction with the terms of the existing contracts and the service provided; the OFT notes in this respect that these customers often did not appear to consider the implications of the transaction for their position when their current contracts expired.

Conclusion on unilateral effects for supply to multi-site non-bulk customers

149. Overall, the evidence available to the OFT suggests that GB Oils, TB and Watsons are the main supply options for multi-site non-bulk customers. The merger therefore represents a significant reduction in their supply options.
150. The OFT notes that local sourcing may imply additional costs and it has not been shown, on the evidence available to it, that it is a cost efficient alternative to single or dual sourcing, or procuring from a small number of suppliers. Equally, whilst procuring supply through a supplier which itself subcontracts to third parties in particular localities is clearly a logistical possibility, it is not generally viewed as a fully competitive alternative to a supplier with a significant depot network. The OFT's market testing has confirmed that the parties' customers in this segment are concerned about the impact of the transaction.
151. The OFT therefore concludes, for the reasons set out above, that the proposed transaction gives rise to a realistic prospect of a substantial lessening of competition in the distribution of oil products to multi-site non-bulk customers. The OFT considers that such concerns are likely to be particularly acute in relation to customers that seek delivery on a national or multi-regional basis, but the OFT considers that concerns may arise also for customers

requiring multi-site delivery in a single region. Given its conclusion, the OFT has not needed to investigate in detail the competitive position which will pertain in individual GB regions in this respect.

Distribution of oil products: Unilateral effects at local level

152. The current transaction involves the acquisition of 40 oil storage depots. For each of the 40 TB depots, the parties identified at least one GB Oils depot present within a 30-mile radius.
153. The OFT observes that concerns may arise if, post-merger, there are only few effective competitors remaining to the merged entity in a relevant local area, or the merged entity controls a very high proportion of local distribution capacity.

Existing methodology for considering local overlaps

154. In considering local area overlaps, the OFT has had regard to certain measurable criteria discussed and applied in the GB Oils/Pace case. These criteria relate to:
- the number of other competitors with a depot presence within a given local overlap radius (10, 20 or 30 miles)
 - the number of such competitors which have multiple (at least two) depots, and
 - the merging parties' share of depots by number within a given local overlap radius.
155. The 'multiple depot' criterion reflects the proposition that larger, established suppliers with depot networks may provide a stronger competitive constraint on the merged entity than smaller players. The 'depot share' criterion in part reflected OFT concerns in GB Oils/Pace about the impact of potential post-merger capacity rationalisation on capacity constraints during periods of peak demand, but also provides a proxy for the parties' share of depot capacity in a local area.

156. In GB Oils/Pace, the OFT examined whether in any overlapping area there were at least three alternative distributors, two of whom were distributors with multiple depot facilities within or just outside the catchment area that could provide a competitive constraint to the merged entity post-merger.

The parties' views on the existing methodology

157. The parties argued that depots play a limited role in that a depot is not always necessary for a distributor to be able to supply customers within a particular locality. Capacity, according to the parties, is not dependent on the number of depots, but rather on the number of tankers that any distributor operates out of one or more supply bases. Specifically, the distributor:

- may send its tankers to deliver to customers over a wider distance, potentially 'backloading' from a competitor⁴⁰
- could seek to base itself at another operator's depot, terminal or refinery, and
- could build a new depot, relying on the low costs of entry and expansion.

158. In support of the above, the parties submit that depot capacity is not constrained and that customers' difficulties in accessing supplies of oil products in winter 2010/2011 were attributable to closed roads and problems associated with delivery capabilities and access to stock from terminals.

⁴⁰ According to the parties, oil distributors can enter into 'backloading' or resupply arrangements with competitors, which extend the operational range of their tankers. 'Backloading' is where a tanker on an outward journey begins to run short of onboard oil it can visit a competitor depot to refuel, so that it would have onboard stock enabling it to make deliveries on the return journey to its home depot.

159. Furthermore, the parties state that for the distribution of domestic kerosene, based on a sample of GB Oils depots, there is no relationship between the margins GB Oils achieves and customer distance from its depots. This, the parties suggests, shows that distance from the depot is not a meaningful determinant of customer prices and that the distance over which distributors can and do deliver oil products does not necessarily equate to a mileage radius from a distributor's depot. They submit that, in putting together delivery 'milk rounds', distributors focus on trying to cluster deliveries to reduce distance (and time spent) travelling between customers, rather than focusing on absolute distance from the supply point to a customer. As noted above, the parties also submit that distributors can extend their effective operational range by acquiring additional tankers, by basing themselves from parking spaces or third party depots or terminals, or by engaging in 'backloading'.
160. The parties provided data sourced from [], indicating that various suppliers sell into overlap areas from outside a 20/30-mile radius from the target depot. They argue that the data provide evidence to support the parties' views that the geographic markets are wider than posited by the OFT's analysis of 10-, 20- and 30-mile catchments. The OFT considers the [] data of relatively limited value as it accounts for only a limited proportion of overall customer volumes. The OFT does not contest that some deliveries are made outside a 30- or even 50-mile range. However, it is important to be aware that catchment area data for this transaction demonstrates that 80 per cent of deliveries were within an average distance of [20 to 30] miles (see paragraph 86 above).
161. In connection with the methodology employed previously by the OFT, the parties state that the '50 per cent test':
- disregards the prospect of entry or expansion through expanding existing 'milk rounds', the use of parking spaces and backloading, and

- ignores the existence of spare capacity across Great Britain which would not be reduced by the merger.
162. The parties also argue that the 'multiple depot' criterion does not take account of the realities of competition at local level. In this respect, they point to the findings of the OFT's market study on the number of suppliers of heating oil enjoyed by different proportions of consumers. The parties argue that there were a very limited number of locations in the UK where there were currently three or fewer suppliers within 50 miles of a TB depot, where GB Oils overlapped with TB.
163. With respect to the 'multiple depot' criterion, the parties submit that there is no inherent difference in the competitiveness of a distributor according to whether it operates one or several depots within a locality. They argue that:
- larger operators do not have lower costs. (The parties submitted data to show that some single depot operators have lower overheads, and do not suffer from materially worse fuel purchase costs.)
 - single depot operators do not necessarily have less spare capacity than a multiple depot operator, and
 - available price evidence does not support the idea that larger operators in a local area charge lower prices. In this respect, the parties submitted data from mystery shopping exercises as evidence to show that single depot operators compete effectively on price with multiple depot operators.
164. In summary, the parties maintain that a single depot (even if newly opened) is as effective a competitor to the merged entity as a much larger distributor, including a multi-depot operator. DCC in particular notes that, following the acquisition of a number of oil distributors in the UK, they have found no evidence to suggest that multiple depot operators are inherently more efficient or achieve significantly better purchasing terms.

165. According to the parties, this is further supported by the statement that the industry as a whole is characterised by very low net operating margins (estimated at about two per cent). The parties note that a distributor's capital costs need to be recovered through volumes secured through the year and that this encourages a practice where distributors seek volume sales wherever possible.⁴¹
166. Whilst disputing the use of radii around a depot, the parties argue that when considering the transaction at a local level, the OFT should bear in mind:
- the number of existing competitors (irrespective of whether they operate multiple depots within a local area or otherwise)
 - the low barriers to entry into local areas
 - customers' ability to shop around (including through the use of buying groups), to source supplies at the lowest price, and,
 - associated with this, low operating margins encouraging sales wherever possible.
167. Finally, the parties have provided 'mystery shopping' data which, they argue, shows that GB Oils typically monitors the prices of at least five competitors in a local area, including those of smaller suppliers as well as distributors located at a distance greater than 30 miles from GB Oils' own depot.⁴² The parties observe that this price data further supports their view that larger operators in a local area do not charge lower prices and that they benchmark their prices against those of smaller oil distributors.

⁴¹ According to the parties, distributors hold very little stock, typically no more than two days' worth.

⁴² The OFT notes that the parties have not been able to provide mystery shopping data in relation to the period prior to completion.

OFT assessment of the parties' arguments

168. First, the OFT has considered the extent to which it should continue to have regard to the existence of depots at a local level. The OFT notes the parties' arguments and the evidence provided in relation to local competition, delivery patterns, and the criteria discussed in GB Oils/Pace and considered in this case.
169. As noted above, the OFT considers that capacity shares are potentially relevant in these markets, and that the share of depots provides a relevant proxy. The OFT recognises that depots are not homogenous in terms of either storage capacity or number of tankers operated, and that these can usefully supplement information on competitor and depot locations. However, the OFT notes that such additional information is not readily available at disaggregated local level.
170. In addition to the approach employed in GB Oils/Pace, the OFT has, in the present transaction, requested information in relation to individual catchment area data, as well as depot margin data. Catchment areas are useful as a measure of the area within which the great majority of a location's custom is located.
171. Second, the OFT has considered the question of the significance of operators having multiple depots. Consistent with GB Oil/Pace, the OFT is unable to rule out that a distributor with a number of depots could be expected to impose a stronger competitive constraint on the merged entity than a small distributor with a single depot facility. The fact that there are a significant number of operators within the UK that do function on the basis of a single depot does not undermine this view. Nor has the OFT received information during the course of its market investigation in the present case that undermines the analysis undertaken in GB Oils/Pace.
172. The OFT considers that it remains plausible that operation of multiple depots in local area may offer certain operational cost advantages, such as, for example, enabling more efficient optimisation of delivery 'milk rounds' within an area. The OFT also notes that operators with multiple depots might be considered as

more established and long-term rivals than smaller single depot operators.

173. The OFT therefore continues to consider it may be appropriate to take account of whether suppliers within a local area have a single depot or have multiple depots in considering the prospect of a loss of competition in a given area. However, the OFT has not had to conclude on whether the balance of considerations supports retention of the multiple depot criterion as a determinative factor in the analysis.

174. However, the OFT notes in any event that, even absent placing weight on the multiple depot criterion, there would remain a number^{vi} of local overlap areas⁴³ where there are fewer than three rivals with depots within a 20-mile radius.

175. Third, the OFT has considered the parties' arguments on the '50 per cent test'. In relation to the parties' argument that the '50 per cent test' does not fully reflect the existence of spare capacity across Great Britain, the OFT notes that:

- [],⁴⁴ and
- the OFT's off-grid market study notes that final consumers could be affected by capacity constraints at any level of the supply chain.⁴⁵

176. The '50 per cent test' assists in this analysis as it identifies local areas where the parties may have control over a particularly high share of local oil distribution capacity, as proxied for by their share of depots.

⁴³ These areas are [].

⁴⁴ The parties submit that [].

⁴⁵ OFT1380, paragraph 4.12 and Annex F.

177. Fourth, in relation to the parties' arguments about 'milk rounds' and entry and expansion at a local level, these are addressed in paragraphs 81 to 84 above and are considered in the context of barriers to entry at paragraphs 196 to 199 below. In short, the OFT does not consider that the parties' generic arguments in relation to entry and expansion at the local level, including through procurement of additional tankers or by the use of 'backloading' or by employing parking spaces, undermines the need for a consideration of the reduction in competition of actual, current suppliers in local areas around TB depots.

Application of the methodology to the current case

178. In employing the 'multiple depot' criterion in the present case, the OFT has examined local areas on the basis of two different approaches on the basis of which suppliers might be considered to enjoy 'multi-depot' advantages (and therefore an enhanced competitive constraint):

- the first approach (adopted by the parties in their submission) is to examine whether there are at least two operators within a radius around the TB depot who have multiple depots within 50 miles, and
- the second approach is to examine whether there are at least two operators within a radius around the TB depot who have multiple depots within the given radius under consideration (whether that is 10, 20 or 30 miles).

179. With respect to considering depot shares as an additional test, in GB Oils/Pace, the OFT considered whether or not the parties would have more than 50 per cent of depots in any local area (the '50 per cent test').

180. Reflecting the alternative approaches to definition of a 'multi-operator depot' that are described above, the OFT has sought to differentiate between the local areas by categorising local areas as follows:

- Group A – those in which the local area fails either:
 - the '50 per cent' test on the basis of either the 30-mile or 20-mile radius, or
 - the 'multiple depot' operator test (where multiple depot operator is defined as an operator having multiple depots within 50 miles) on the basis of either the 30-mile or 20-mile radius.⁴⁶
- Group B – those not in Group A in which the local area fails:
 - the 'multiple depot' operator test (where multiple depot operator is defined as an operator having multiple depots within the relevant 20-mile or 30-mile radius catchment area) on the basis of the 20-mile or 30-mile radius.⁴⁷
- Group B* – those that would be in Group B but that would also fail:
 - the '50 per cent' test on the basis of the 10-mile radius, or
 - the 'multiple depot' operator test (where multiple depot operator is defined as an operator having multiple depots within 50 miles) on the basis of the 10-mile radius,

⁴⁶ Group A includes areas around TB depots in: [...].

⁴⁷ Group B includes areas around TB depots in: [].

- but only where the 80 per cent catchment area for that area is below 20 miles.⁴⁸

181. In its Issues Paper analysis, the OFT identified [] local overlap areas in Group A, [] areas in Group B, and [] areas in Group B*. The parties submit that certain adjustments should be made to give equivalent treatment to the parties' and competitors' parking space site locations (as opposed to fixed depots), and to account for additional market information subsequently identified. Such adjustments would, the parties submit, result in [] areas in Group A, [] in Group B, and [] in Group B*.⁴⁹
182. Given that the OFT has reached a realistic prospect of a substantial lessening of competition in relation to the supply to multi-site non-bulk customers, it has not been necessary for the OFT to reach a conclusion on whether the test for reference is met in relation to specific local overlap areas. The OFT considers that local considerations may need to be assessed in detail also.

BARRIERS TO ENTRY AND EXPANSION

183. Where the combination of merging businesses raise potential concerns about the ability to raise prices or reduce other aspects of the competitive offer, the OFT also considers the responses of others. Entry by potential rivals, or expansion by existing rivals, can mitigate the effect of a merger on competition. In assessing whether entry or expansion might prevent or mitigate a substantial lessening of competition, the focus is on whether such behaviour would be timely, likely and sufficient in scope.

⁴⁸ Group B* includes areas around TB depots in: [].

⁴⁹ [].

Oil distribution: Entry or expansion of depot networks

184. The OFT has considered whether entry or expansion could resolve the OFT's concerns in relation to unilateral effects in the distribution of oil products for multi-site non-bulk customers.
185. The OFT notes that establishing a new large national depot network from scratch would involve very large set up costs in terms of investment in depot infrastructure and associated delivery tankers.
186. The creation of a new network through combining smaller regional depot networks, either through acquisition or joint working, may be more feasible. The growth of GB Oils and other distributors reflects some history of network expansion through acquisition of smaller networks. The OFT off-grid market study report referred to hearing several examples of expanding firms opening new depots in recent years.⁵⁰ Likewise, the parties provided some evidence to demonstrate recent entry or expansion. However, expansion such as to replicate the network operated by TB would be expected to take longer than would be required to prevent merger effects arising.
187. The parties submit that distributors who operate from a single depot, and subcontract deliveries to areas where they do not have a depot infrastructure, indicate that it is not necessary for a distributor to develop a national network of depots to be able to compete with the merged entity. As set out above, the OFT considers that such distribution arrangements are unlikely to be of a scale sufficient to mitigate the effects of the merger on competition in the supply of oil products to multi-site non-bulk customers and in particular to those customers with national or multi-regional demands.

⁵⁰ OFT 1380, paragraph 4.36.

188. In relation to depot networks, the costs of new entry are likely to be considerable. Although expansion by acquisition appears to be a potentially viable strategy, the OFT has no evidence to indicate this prospect is sufficiently timely or likely to remove the OFT's concerns. The OFT also notes that the merger has some potential actually to raise barriers to expansion by removing TB as a potential platform from which to build a company better able to match GB Oils' geographic coverage.
189. The OFT has not received any evidence during the course of its investigation that would indicate that the creation, whether through entry or expansion, of a depot network commensurate in size with that of TB was timely or likely such as to remove the OFT's concerns in relation to supply of oil products to multi-site non-bulk customers. In light of the evidence available to it, the OFT therefore concludes that entry or expansion is not likely, timely and sufficient to mitigate the effects of the merger on competition.

Oil distribution: Entry within concentrated local areas

190. The OFT has considered whether entry or expansion could resolve the potential for concerns in relation to unilateral effects in the distribution of oil products for customers in local areas around TB's depots.
191. In GB Oils/Pace, the OFT identified certain potential barriers to new entry into the distribution of heating oils and transport fuels in the Isle of Wight. In particular, the threat of supply from the mainland was not considered strong enough to remove concerns about the concentration on the Isle of Wight. The OFT recognises that the overlap areas in this case do not involve offshore supply access issues equivalent to the Isle of Wight.
192. In the OFT's off-grid market study, the OFT found that barriers to entry in the retail supply of domestic heating oil were low in most

areas.⁵¹ Access to depots was seen as the greatest barrier to entry. Distance from oil import terminals was seen as potentially relevant to entry prospects, since delivery direct from terminals may in some circumstances avoid the entry costs required to invest in new depot facilities.

193. The market study notes that entry costs depend on the scale of entry. There is evidence both of small firms entering and surviving in the market, and of expansion at a larger scale. The market study found that around 10 per cent of the top 50 firms active in the supply of heating oils had entered the sector since 2004.
194. The parties submit that there are low barriers to entry and expansion. They suggest that setting up new depots, or relying on haulage from terminals, acquiring more tankers, renting parts of third party depots or parking spaces would enable alternative distributors to replace any capacity restriction applied by the merged entity. They provide a number of examples which, they maintain, indicate that new entry and expansion for individual depots would be sufficient, timely and on a scale that would constrain the merged entity.
195. The parties argue that the cost of a new depot is in the range of £ [less than 500.000], and that depots can be expanded at low cost by adding storage tanks or having more tankers operating from it. The parties submit that a further alternative to building new depots is to use underground storage tanks at disused former retail forecourts. The planning process would be shorter and the overall costs in the regional of £ [less than 500.000]. DCC considers that that the payback period for constructing a new depot would range from [less than five] to [less than 10] years, depending on whether tankers and land were leased or purchased. Based on its own experience, DCC maintains that a profitable margin could be achieved as early as [] of the operation of a new depot and should be achieved by [].

⁵¹ OFT 1380, paragraphs 4.32 to 4.40.

196. The OFT notes that setting up a 'milk round' requires equipment (such as tankers of the appropriate size) as well as the customer base and logistics support functions to run 'milk rounds' in the most effective way possible.
197. The OFT also notes that entry barriers in local markets may include the set-up costs involved in sourcing necessary infrastructure and working capital as well as anticipation of an aggressive pricing response by incumbents.
198. The OFT's market test in this case indicated that some third parties consider small scale new entry from scratch difficult, in particular in terms of accessing credit/capital. The same group noted, however, that existing suppliers can expand their presence and that Watson is an example of this. Some third parties were of the view that expansion by existing suppliers into new areas was a more likely source of entry in local markets.
199. A limited number of third parties suggested that the overall scale of GB Oils' business may enable it to target low prices to particular local areas. A credible threat of retaliation by incumbents may in some circumstances discourage entrants.⁵²
200. For the OFT to be able to rely on the prospect of entry or expansion to remove competition concerns that would otherwise arise, it must have evidence to indicate that such entry or expansion is timely, likely and sufficient, as opposed to merely being possible or hypothetical. In this case, the OFT does not consider that it has sufficient, specific evidence in relation to the local areas around TB's depots that entry or expansion was timely and likely, and would be sufficient, such as to rule out concerns. However, given that the OFT has not concluded on the extent of local overlap concerns, it is also not necessary to conclude whether local entry is likely to be of a scale, and timely in nature, so as to

⁵² Merger Assessment Guidelines, OFT1254/CC2 (Revised), paragraph 5.8.8.

mitigate any effects of the merger on competition at the local overlap level.

Entry and expansion in wholesale supply to independent petrol forecourts

201. The OFT considers that wholesale supply of transport fuels to forecourts requires access to certain amounts of infrastructure and assets, depending on the intended geographic scope of supply activity.
202. However, given the position reached in the competitive assessment, it has not been necessary for the OFT to consider in detail the conditions relating to entry in this sector, and the consequent degree of constraint imposed on existing market participants by potential entry or expansion.

BUYER POWER

203. Countervailing buyer power arises where an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise its prices. Where individual negotiations are prevalent, the buyer power possessed by one customer will not typically protect other customers from adverse effects that might arise from the merger.⁵³

Oil distribution: National and regional

204. The OFT has considered whether the threat of the exercise of buyer power could resolve the potential for concerns in relation to unilateral effects in the distribution of oil products for multi-site non-bulk customers.

⁵³ Merger Assessment Guidelines, OFT1254/CC2 (Revised), paragraph 5.9.6.

205. The parties argue that larger customers buy oil on a contract basis following tender processes which maximise their negotiating power and choice. The parties submit that there has been a material increase in the number of such customer buying groups (and the volume of products purchased by them) and consider that this increases customers' buying power. The parties maintain that such buying groups are price conscious, face no switching costs and are generally able to play existing suppliers off against each other to obtain the best prices, primarily by varying the volumes that they source from each supplier.
206. The OFT notes that buying groups procure on behalf of local authorities or local organisations such as schools or hospitals and prefer to work with local suppliers over larger regional or national suppliers.
207. The parties also submit that because of deliveries 'out of area' through subcontracting (as discussed above), multiple site customers are able to and do exercise buyer power and are not obliged to deal only with GB Oils, TB, and Watson.
208. No compelling evidence has been provided by the parties to demonstrate that particular customers (including those whose deliveries are sub-contracted) possess buyer power and are in a position to use their purchasing power to such a degree as to prevent the merging parties from raising prices.
209. The OFT notes also that a significant number of multi-site non-bulk customers were concerned about the merger and did not consider that they enjoyed sufficient buyer power given the few remaining alternative suppliers of scale.

Oil distribution: Local

210. The parties submit that the large majority of customers buy oil on a spot basis and have no switching costs when deciding from which distributor to purchase oil. The parties also cite data from the OFT's market study finding that 38 per cent of domestic customers

receive multiple quotes before ordering. The OFT considers it unlikely that individual local customers will be able to exercise significant buyer power given their typically limited volume requirements. The OFT also notes that the merger investigation did not suggest that local customers possess buyer power. Given the OFT's overall conclusions, however, it has not had to reach any conclusion in relation to the exercise of buyer power for customers at local level.

Conclusion

211. For countervailing buyer power to prevent an SLC, it must remain effective following the merger. As set out above multi-site non-bulk customers prefer to dual-source or deal with a limited set of providers, splitting contracts either in a general sense, in relation to specific regions, or with respect to different specific products. A significant proportion of those customers contacted by the OFT expressed concern that the transaction would significantly reduce their switching options and hence their bargaining position.
212. Overall, based on the evidence available to it the OFT is of the view that countervailing buyer power is unlikely to prevent the identified competition concerns in the current transaction.

THIRD PARTY VIEWS

213. Third party comments have been discussed above where relevant.
214. The OFT received a significant number of third party responses during the course of its market investigation.
215. A number of third parties did not raise any concerns about the proposed transaction. However, a significant number did raise concerns, as identified in the OFT's competitive assessment set out above. In particular:

- A significant number of customers have experienced limited options for obtaining multiple site supplies in relation to specific oil products at a particular volume size. Customers noted that the oil majors and bulk traders would not supply deliveries of such size. This customer group identified TB as the likely alternative to GB Oils and vice versa.
- A number of multi-site non-bulk customers expressed concerns at the limited number of providers with sufficient national coverage for their specific delivery site locations and size requirements. Again, these customers viewed TB as one of the few remaining independent distributors of sufficient size and broadly national coverage to be able to compete effectively with GB Oils.
- Although some customers did name Watson and, to a lesser degree, Crown Oil, as potential alternatives to the merging parties in the supply of oil products to multi-site non-bulk customers, a significant proportion nevertheless raised concerns about the merger.
- A smaller set of customers expressed concerns about pre-merger attempts to exercise market power by GB Oils in the negotiation of supply terms, and the related worsening of customers' negotiating position from the loss of TB as an alternative option. This was not limited to multi-site non-bulk customers.
- Overall, a significant number of third parties considered that TB exercises competitive constraints on GB Oils, in particular in the tendering process for 'national accounts', and vice versa.

216. Other third parties to the OFT's market investigation were less concerned about the effects of the transaction. These customers tended to express satisfaction with the terms of the existing contracts and the service provided.

217. Further, third party feedback consistently demonstrated the value multi-site non-bulk customers attach to procuring from a small number of oil distributors. The benefits associated included lower transaction costs and security of supply.
218. Some information received during the merger investigation, suggested that the OFT should examine whether there are regional aspects to the wholesale supply of transport fuels.

ASSESSMENT

219. The parties overlap in the distribution of oil products.
220. The parties supply four basic oil products: diesel, gas oil, kerosene and petrol. For the purposes of the current transaction, the OFT has not had to reach a view on whether these oil types constitute separate markets or a single market.
221. The OFT's market test in this case indicated the following customer groups that should be considered for assessment in this transaction:
- 'bulk customers' (this customer group includes within it, as a separate market, wholesale supply of transport fuels to retail forecourts)
 - a range of customers requiring multi-site deliveries across a wider geographic area whose demand volumes per site are smaller than full tanker load ('multi-site non-bulk customers'), and
 - local customers (including large customers requiring deliveries to one site only) and smaller commercial or domestic customers ('small commercial and domestic').
222. Based on the Guidelines, OFT adopted a customer segmentation approach in this case and found that multi-site non-bulk customers

are likely to be identifiable, and may have preferences for, or access to, a different set of suppliers from other customer types.

223. On the basis of the above, the OFT considered it appropriate to define and consider a separate market for the supply of oil products to multi-site non-bulk customers.
224. The OFT also found that multi-site non-bulk customers who require frequent supplies to multiple sites across a large geographic area will typically seek to source from a depot network with similar coverage. This may be with respect to a regional requirement, a multi-regional requirement or national requirement.
225. The OFT's market investigation demonstrated that there are only three large dense depot networks with broadly national coverage: GB Oils, TB, and Watson. There are a limited number of other oil distributors who have a more limited cross-regional distribution of depots.
226. The OFT's merger investigation also found that offering 'virtual' national supply, through the use of subcontracting arrangements, was a complex and not always competitive alternative, although Crown Oil has had some success in gaining customer awareness of its offering on this basis.
227. On the basis of the above, the OFT concludes that the merger represents a reduction in the number of suppliers to multi-site non-bulk customers. In terms of suppliers with a broadly national physical depot network, the merger represents a reduction in the number of suppliers from three to two. Taking account of the possibility of 'virtual' national supply through the use of subcontracting arrangements, the merger might be characterised as a 'four to three' in terms of major providers, although the constraint from the fourth provider should not be seen as comparable to that from suppliers with a physical depot network.

228. A significant number of customers to the merging parties raised concerns about the transaction on the basis of loss of competition between the parties supplying to multi-site non-bulk customers.
229. During the course of its investigation, the OFT has not received any evidence suggesting that the creation, whether through entry or expansion, of a depot network commensurate in size with that of TB was timely or likely such as to remove the OFT's concerns in relation to supply of oil products to multi-site non-bulk customers.
230. The merger investigation demonstrated that multi-site non-bulk customers prefer to dual-source or deal with a limited set of providers, often splitting contracts in relation to specific regions, or with respect to different specific products. Based on the evidence available to it, the OFT concluded that countervailing buyer power is unlikely to prevent the identified competition concerns in the current transaction.
231. Given the OFT's overall competitive assessment in this case, it has not been necessary for the OFT to reach a conclusion on whether the test for reference is met in relation to specific local overlap areas. However, the OFT notes that there are a number of local areas which, on a preliminary analysis, could be considered to raise concerns and hence would merit further investigation by the CC.
232. The OFT does not need to conclude on whether the merger creates a realistic prospect of a substantial lessening of competition in the provision of wholesale supply of fuel to independent petrol forecourts
233. Based on the evidence available to it, the OFT considers that the proposed transaction gives rise to a realistic prospect of a substantial lessening of competition in the distribution of oil products for multi-site non-bulk customers.

UNDERTAKINGS IN LIEU OF REFERENCE

234. Where the duty to make a reference under section 22(1) of the Act is met, pursuant to section 73(2) of the Act the OFT may, instead of making such a reference, accept from the parties concerned such undertakings as it considers appropriate for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may result from it.
235. [] However, the parties offered no remedies designed to address the OFT's concerns in relation to oil distribution to multi-site non-bulk customers. As such, given that the remedies offered do not address the competition concerns identified by the OFT, the OFT does not consider it appropriate to suspend its duty to refer to consider undertakings in lieu of reference.

DECISION

236. The completed transaction will be referred to the Competition Commission pursuant to section 22(1) of the Act.

ⁱ The parties clarified that customer records and staff are transferred from Total and not TB.

ⁱⁱ The parties presented but did not recognise market definition in this way.

ⁱⁱⁱ The parties clarified that GB Oils has 88 depots in England and Wales. The figure in the table includes depots located in Scotland as well as parking sites for tankers.

^{iv} The parties clarified that TB has 35 depots in England and Wales. The parties had originally indicated that TB has 40 depots and subsequently clarified that this includes five parking sites.

^v The table is not exhaustive and lists depot numbers for larger operators only.

^{vi} The parties provided further information identifying further competitors within a 20-miles radius of one of the overlap areas.