Anticipated acquisition by Motor Fuel Limited of 90 petrol stations from Shell Service Station Properties Limited, Shell U.K. Limited and GOGB Limited

ME/6534/15

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 26 August 2015. Full text of the decision published on 24 September 2015.

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

SUMMARY

1. Motor Fuel Limited (**MFL**) is an indirect subsidiary of Scimitar Topco Limited (**Scimitar**), which is ultimately owned by Clayton, Dubilier & Rice Fund IX LP (**CD&R**). Scimitar indirectly owns 284 petrol filling stations (**PFS**) operated under the Motor Fuel Group (**MFG**) brand. PFS supply petrol, diesel, auto-liquid petroleum gas (**auto-LPG**), and retail items through convenience stores located on the forecourt.

2. The acquisition relates to the purchase by MFL from Shell Service Station Properties Limited, Shell U.K. Limited and GOGB Limited (together **Shell**) of 90 PFS located across the UK (the **Shell Target Sites**) (together the **Parties**) (the **Merger**).

3. The Competition and Markets Authority (**CMA**) considers that Scimitar and the Shell Target Sites will cease to be distinct as a result of the Merger, that the turnover test is met and that, accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

4. The Parties overlap in the retail supply of road fuel (petrol and diesel), auto-LPG, and grocery retailing. The CMA has assessed each of these areas of supply from PFS as separate product markets and has assessed the Merger at a national and local level. This is consistent with the approach taken in previous cases. As regards the retail supply of auto-LPG, at a national level based on the number of branded PFS sites the Parties will have a combined

share of sites of [less than 10%] with a minimal increment. Only one local overlap in the Shell-Shinfield/MFG Herds Garage area of Reading was identified. In this area, the reduction in fascia by brand around the MFL site is 10 to 9 and 9 to 8 around the Shell Target Site. The sites are not geographically close and, based on the number of branded PFS sites selling auto-LPG in the overlap area, the Parties will have a combined share of sites of between [0–10]%. On the basis of these factors, the CMA does not believe that the Merger will give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the retail supply of auto-LPG at a national or local level.

5. As regards grocery retailing, the CMA assessed the effect of the merger at a national and local level, in line with previous Office of Fair Trading (**OFT**) and Competition Commission (**CC**) decisions, taking into account the asymmetric nature of the competitive constraints exercised by grocery stores of different sizes. At a national level, the combined share of supply of MFG and Shell is likely to be under [0–10]% (based on either volume or value of sales). In each of the local areas where the Parties' activities overlap there were at least five competing stores within the relevant five minute drive-time isochrone. The CMA therefore does not believe that the Merger will give rise to a realistic prospect of an SLC in the retail supply of groceries at a national or local level.

6. As regards the retail supply of road fuel, the CMA assessed the effect of the merger on the market for the retail supply of road fuel (petrol and diesel) from off-motorway sites at a national and local level. The Parties' combined national share of supply of road fuel would be around [0–10]% by number of sites and around [0–10]% by volume, with a negligible increment. At the local level, in line with previous decisions, the CMA used drive-time isochrones of 10 minutes (for urban areas) and 20 minutes (for rural areas) to delineate the geographic scope.

7. MFL identified 92 local overlap areas and then applied the filters described below to identify local areas of potential concern. On the basis of the evidence available to it, and in particular, information on price markers, the Parties' low shares of supply, the presence of non-target Shell sites (which will continue to impose a constraint as independent price setters) and the number of independent price setters not being reduced below four in any of these local areas, the CMA does not believe that the Merger will give rise to a realistic prospect of an SLC in the retail supply of road fuel at either a national or local level.

8. The CMA also examined potential vertical effects arising from MFL's presence post-merger both in the wholesale supply of road fuel to PFS (upstream), and in the retail supply of road fuel to motorists (downstream), by virtue of being

an owner of PFS. The CMA believes that MFG either has no ability to foreclose or, where some ability may exist in relation to the current contracts, MFG would have insufficient incentives to foreclose downstream. The CMA therefore does not believe that the Merger will give rise to a realistic prospect of an SLC as a result of vertical input foreclosure.

9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

10. MFL is ultimately owned and controlled by CD&R,[1] which owns a [✄]% equity share in Scimitar.[2] Scimitar owns 284 PFS in the UK via a number of subsidiaries, including MFL.[3] These stations are operated under the MFG brand.

11. MFL submitted that the MFG sites are run under a 'commission operator' model whereby MFG appoints a commission operator to have day-to-day responsibility for operating the pumps and running the shop, including hiring the staff and buying and selling the groceries while MFG sets the fuel price. The MFG sites operate under various brands, including BP, Jet, Total and Murco.

12. The Shell Target Sites are owned by Shell, which is ultimately owned by Royal Dutch Shell plc. Shell submitted that the UK turnover attributable to the Shell Target Sites in the financial year ended 31 December 2014 was [over £70 million].

Transaction

13. Pursuant to agreements signed on 10 April 2015, MFL will acquire the Shell Target Sites located across the United Kingdom together with certain plant, machinery, equipment, furniture, fixtures and fittings and other tangible assets for a consideration of [✄] for the Shell Sites based in England and Wales and [✄] for the Shell Sites in Scotland. Completion is planned to occur in phases over a period of months, with the first completion on 1 July 2015 and the last

[1] On 8 June 2015, Patron Capital agreed to sell its interest in Scimitar to CD&R. The European Commission cleared this transaction on 6 July 2015 – Comp/M.7656.
[2] [✄]
[3] 45 sites are owned by Motor Fuel Limited, six by Goldstar Fuels LLP, four by Fuel Stop (UK) Limited, four by Highway Stops Limited and one by Gold Star FSL LLP. The 228 Murco sites are owned by St Albans Operating Company Limited.

completion planned to occur on 29 October 2015. Dry stock (ie groceries) is purchased [✂] for each relevant property. Wet stock (ie fuel) is purchased on the basis of a retailer supply agreement [✂] (the **Retailer Supply Agreement**).

Jurisdiction

14. As a result of the Merger, the enterprises of Scimitar and the Shell Target Sites will cease to be distinct. The UK turnover of the Shell Target Sites exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

15. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 2 July 2015 and the statutory 40 working day deadline for a decision is therefore 26 August 2015.

Counterfactual

17. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions as between the merging parties.[4]

18. In this case, the CMA found no evidence supporting a different counterfactual, and MFL and third parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

[4] *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

Frame of reference

19. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgment. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.[5]

20. The Parties overlap in the supply of a number of retail services through their PFS, namely the retail supply of road fuel, auto-LPG, and grocery retailing.

21. The CMA's approach to determining an appropriate frame of reference is to begin with the overlapping products of the parties in the narrowest plausible candidate product market and then to assess whether this can be widened on the basis of demand-side substitution and supply-side substitution, where appropriate.[6]

Retail supply of road fuel – product and geographic scope

22. Both the OFT and the CMA have considered the retail supply of road fuel in a number of previous cases.[7] These decisions considered whether retail supply of road fuel should be further segmented into supply from motorway and off-motorway sites but did not find it necessary to reach a definitive conclusion. Given that in this case the MFG and Shell Target Sites are all off-motorway PFS, the CMA has assessed the Merger in relation to the retail supply of road fuel from off-motorway sites.

23. MFL submitted that the relevant product market should be the retail supply of fuel to motorists and that no further segmentation between different types of petrol and diesel was required.

24. MFL submitted that, in line with previous decisions,[8] it had considered the effect of the merger on the basis of local areas. MFL used a 10 minute drive-time in urban areas and a 20 minute drive-time in rural areas in its analysis of the market as proxies for the potential geographic scope of the local market.

[5] *Merger Assessment Guidelines*, paragraph 5.2.2.
[6] *Merger Assessment Guidelines,* Section 5.2.
[7] See *Proposed acquisition by Rontec Investments LLP of petrol forecourts, stores and other assets from Total Downstream UK plc, Total UK Limited and their affiliates* (ME/5139/11) (*Rontec/Total* (2011)), OFT decision of 20 October 2011 and *Shell/Rontec* (2012) *MFL/Murco* (2014).
[8] For example, *Shell/Rontec* (2012), *Rontec/Total* (2011) and *MFL/Murco* (2014).

25. As the CMA has not received any evidence from third parties who replied to its merger investigation to indicate that it should deviate from its approach in previous cases, the CMA assessed the effect of the merger on the retail supply of road fuel (petrol and diesel) from off-motorway sites at a national and local level, using 10 minute drive-time isochrones for urban areas and 20 minute drive-time isochrones for rural areas to delineate the geographic scope at the local level.

Retail supply of auto-LPG – product and geographic scope

26. MFL submitted that auto-LPG is in a separate product market from the supply of other road fuels.[9]

27. The CMA did not receive any evidence to the contrary from third parties who replied to its merger investigation in this case. Therefore, and in line with previous OFT and CMA decisions,[10] the CMA has assessed the Merger separately in relation to the retail supply of auto-LPG.

28. In *Shell/Rontec*,[11] the OFT carried out an overlap analysis using 10, 20, 30 and 40 minute drive-time isochrones. It noted in that case that the broad consensus among third parties who replied to its merger investigation was that a 20 minute isochrone was the most appropriate.

29. In the current case, the CMA assessed the effect of the merger in the retail supply of auto-LPG nationally and at the local level. At the local level, as the Parties' closest sites were situated approximately 38 minutes away from each other, the CMA used 40 minute isochrones to assess competitive effects on a conservative basis.

Retail supply of groceries – product and geographic scope

30. In past cases, the CC and the OFT have considered that grocery retailing comprises three broad product markets:[12]

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

[10] See, *Shell/Rontec* (2012), *Rontec/Total* (2011) and *MFL/Murco* (2014).

[11] *Anticipated acquisition by Shell UK Limited of 253 PFS from Consortium Rontec Investments LLP* (ME/5191/11).

[12] See ME/3777/08 *Anticipated acquisition by Co-operative Group Ltd of Somerfield Ltd*, OFT decision 20 October 2008 (CGL/Somerfield) and ME/1456/04 *Completed acquisition by Somerfield plc of 114 Safeway Stores from WM Morrison Supermarkets plc*, OFT decision 23 March 2005 (Somerfield/Morrisons).

- one stop stores (OSS): those with a net sales area of 1,400 square metres or above.[13] These stores form their own product market;
- mid size stores: those with a net sales area of less than 1,400 square metres but above 280 square metres. These stores are constrained by OSS and so OSS must be included in any market definition with mid-size stores as its focus; and
- convenience stores: those with a net sales area of less than 280 square metres. These stores are constrained by all grocery stores and so a product market focussed on convenience stores must also include mid-size and OSS.

31. MFL submitted that all of the MFG sites and the Target Shell Sites have an on-site shop, with the size of these shops varying from site to site, but not exceeding 280 square metres. Accordingly, given that the Parties' on-site shops do not exceed 280 square metres, on the basis of the above classification, the Parties' stores can be classified as convenience stores, competitively constrained by one-stop stores, mid-sized stores and other convenience stores.

32. Previous OFT decisions on grocery stores adjacent to PFS[14] defined the same geographic market as in the grocery market. These previous decisions, and the CC's groceries report,[15] identified the relevant geographic scope as essentially local but that a national dimension of competition also exists. At the local level, the OFT defined the geographic scope for convenience stores as a five minute drive-time and a one-mile radius in all areas. These stores are constrained by one-stop stores within a 10 minute drive-time in urban areas or a 15 minute drive-time in rural areas and by mid-sized stores within a five minute drive-time in urban areas or a 10 minute drive-time in rural areas.

33. In this case, MFL submitted that as the primary shopping mission of a customer to a petrol station is usually to buy fuel (and the purchase of groceries is ancillary to this), the decision on where to shop is based on the choice of petrol station. Therefore, the geographic scope of the market for

[13] In its market investigation into groceries, the CC considered that the floor size threshold for larger grocery stores was larger than 1,000 to 2,000 square metres (paragraph 12) but used the threshold of 1,400 square metres for much of its analysis (paragraph 13). In Tesco/CWS the CC also used 1,400 square metres as the threshold.
[14] See, for example, *Rontec/Total* (2011).
[15] The Supply of Groceries in the UK market investigation, 30 April 2008.

these purposes would be equivalent to the retail supply of fuel (ie 10 and 20 minute isochrones).[16]

34. In this case, the CMA did not receive evidence from third parties to indicate the approach used in previous cases was inappropriate. Therefore, the CMA has assessed the merger in relation to the supply of groceries at a national and local level (five minute drive-times) taking into account the asymmetric constraints exercised by stores of different sizes.

Wholesale supply of road fuel (petrol and diesel) to petrol stations – product and geographic scope

35. In *DCC/Rontec*,[17] the CC decided that the distribution of transport and heating fuels in Great Britain was the relevant market within which to assess competitive effects and that wholesale suppliers compete on a national, regional or local basis depending on the location of their distribution network.

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

37. In *MFL/Murco*,[18] the CMA assessed the wholesale supply of road fuel at both a national and local level although did not conclude on geographic scope.

38. The CMA did not find any evidence in this merger investigation to indicate that the approach taken in the *DCC/Rontec* case was inappropriate. However, since no competition concerns arise on the basis of any plausible market definition, the CMA does not need to conclude on the geographic scope of this market.

Conclusion on frame of reference

39. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:

- the retail supply of road fuel (petrol and diesel), from off-motorway sites, both nationally and locally, based on 10 and 20 minute drive-time isochrones;

[16] To the extent that the merger does not raise any concerns in relation to the supply of fuel, the Parties submitted that it was unlikely to raise any concerns in relation to the supply of groceries, given that there are significantly more suppliers of convenience groceries in these areas.
[17] DCC Energy UK Limited/Rontec Investments LLP (2012).
[18] *MFL/Murco* (2014).

- auto-LPG, both nationally and locally within a 40 minute drive-time isochrone;
- grocery retailing, both nationally and locally using 5 minute drive-time; and
- the wholesale supply of fuel to PFS at national and local level.

Competitive assessment

Horizontal unilateral effects

40. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.[19] Horizontal unilateral effects are more likely when the merger parties are close competitors.

Retail supply of road fuel

41. The CMA assessed whether the Merger may give rise to a realistic prospect of an SLC in relation to unilateral horizontal effects in the retail supply of road fuel.

42. PFS are typically owned and operated on the basis of the following models:

- Owned and operated by oil companies – company owned, company operated (**COCO**);
- Owned by an oil company that supplies the road fuel but operated by an independent dealer – company owned, dealer operated (**CODO**). In this model, the dealer manages daily operations, but the oil company takes fuel pricing decisions;
- Owned and operated by independent dealers – dealer owned, dealer operated (**DODO**). In this model, the third party typically uses the brand of the oil company but takes the fuel pricing decisions.

43. MFL submitted that these different models, sometimes operated behind a common fascia, indicate that the branding of a site will not always reflect the ownership structure and that forecourts with the same branding may be directly competing against each other and setting their prices independently.

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[19] *Merger Assessment Guidelines*, from paragraph 5.4.1.

44. MFL submitted that it operates a 'commission operator' model under which an operator is responsible for the direct management of the sites (although MFG sets the fuel prices), the Shell Target Sites are all CODO sites where Shell retains price-setting control at each fuel station. The branding of MFG sites depends on the relevant fuel supplier.[20] MFL submitted that the Shell Target Sites will continue to carry the Shell branding [✂].

45. MFL submitted that it regularly collects data at each site (which is used in order to set retail prices for fuel at each site) in relation to:

- MFG's daily [✂];
- [✂] ('marker prices');
- wholesale market [✂]; and
- [✂].

46. MFL submitted that [✂].

47. MFL submitted that it typically selects as price markers [✂]. However, MFL also submitted that supermarkets, [✂], were often [✂] markers because their outlets are usually in high profile locations capable of commanding higher fuel throughput. Supermarkets are also often price leaders in their local area. MFL submitted that the identity of price markers for each site [✂]. In particular, in the case of the ex-Murco sites, acquired in 2014, the price markers [✂].

48. The CMA assessed, both nationally and locally, whether the merger could give rise to a realistic prospect of an SLC in the retail supply of road fuel from off-motorway sites, resulting in the merged entity having the ability to profitably increase the retail price of road fuel, or worsen non-price factors of competition (such as reduced service quality) following the removal of a significant competitive constraint, or both.

National level

49. MFL submitted that the Parties' combined national share of supply of road fuel would be around [0–10]% by number of sites and around [0–10]% by volume.

[20] MFG trades under the following brand fascia - BP; Jet; Total; Low Cost Fuels; and 228 sites are currently branded 'Murco' but will be re-branded to either BP, Jet or Texaco.

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

51. Given the low combined shares of supply and the number of competitors present at the national level, the CMA believes that the merger does not give rise to a realistic prospect of an SLC in the retail supply of road fuel (petrol and diesel) in the UK.

Local level

52. MFL submitted that the filtering methodology applied in previous OFT and CMA decisions[21] to identify initial areas of overlap,[22] should be adopted in the assessment of the Merger at the local level. As a result, 35 local areas were identified where there is at least one Shell Target Site within the relevant isochrone of a MFG site and 57 local areas where there is at least one MFG site within the relevant isochrone of a Shell Target Site, resulting in a total of 92 local overlap areas.

53. Having identified the areas of overlap, MFL used the following filters, consistent with those used in the *MFL/Murco* case, to identify areas where the Merger could give rise to competition concerns. The CMA considered any site which failed one (or more) of the filters below for a more detailed assessment.

- Price markers: (i) either party identifies a site of the other party as its primary price marker; or (ii) either party identifies a site of the other party as one of three or fewer competing sites;
- Geographic competitors: the Parties' sites are the closest in terms of drive-time; and
- Fascia: reduction in fascia from 4 to 3 (by brand and owner) within 10/20 minute drive-times in urban/rural areas around both Parties' sites.

54. MFL carried out an initial overlap analysis for the MFG sites, and the Target Shell Sites. This exercise identified 12 overlaps between the Parties where one or more of the above filters were failed. The CMA verified this analysis and considered it to be robust.

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[21] Shell/Rontec (2012), Rontec/Total (2011), Proposed acquisition by J Sainsbury plc of 18 petrol stations from Rontec Investments LLP (Sainsbury/Rontec (2012)) *and* MFL/Murco (2014).
[22] Isochrones of 10 minutes (in urban areas) and 20 minutes (in rural areas) centred on the Target Shell Sites and the MFG sites to identify overlapping areas.

55. In relation to the fascia reduction by brand filter mentioned above, MFL submitted that counting fascia in a local area solely on the basis of brand was flawed, not least because there will be areas where there will be no reduction in brand count post-merger.

56. In addition to providing fascia counts on the basis of brand and ownership for the purposes of the fascia filter, MFL also provided fascia counts for where non-target Shell sites were counted as a separate fascia, on the basis that these sites would remain as independent price setters after the Merger.[23]

57. The CMA considers that a fascia count based on price setters, as proposed by MFL,[24] is relevant for the current case as the Merger involves the acquisition of individual Shell Target Sites, and any non-target Shell sites in the local overlapping areas will remain post-merger to pose a competitive constraint on the merged entity.[25] However, ownership structures are complex and it is difficult to judge whether fascia are truly independent from one another, and whether the 'owner' listed in the data is the operator or the owner. Therefore, in line with precedent, the CMA first examined areas where the filter was failed on the basis of a brand fascia reduction, and then assessed the ownership of PFS in more detail in those areas.

58. Of these 12 local areas referred to in paragraph 54, eight failed only one of the filters referred to above in paragraph 53.

59. MFG Barnet/Shell New Barnet failed only the fascia count filter. On further analysis, the CMA found that there will be at least five independent price setters in each of the Parties' isochrones, neither of the Parties price marked each other and the sites of the Parties are not geographically the closest to each other. Therefore the CMA considers that the Merger does not give rise to a realistic prospect of an SLC in this area.

60. Seven local areas[26] failed only the price marker filter. On further analysis, the CMA found that in each of these seven areas neither Party price marked the

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[23] The CMA has previously used this approach for example in *Anticipated acquisition by Asda Stores Limited of five grocery stores and three petrol filling stations from Co-operative Group Limited* (ME/6466/14) (Full text decision), see paragraph 60.

[24] To achieve its set of price setters for each area MFG took as a starting point the Experian Catalist site owner data for the brand and owner of the site. It then checked the site fascia from desk top resources, and then took into account the following assumptions – i) Sainsbury's, Tesco and Morrisons branded sites are independently priced, ii) BP branded sites listed as owned by BP Express Shopping Ltd, a subsidiary of BP, are priced by BP, iii) Esso branded sites listed as owned by ROK UK, a subsidiary of Esso, are priced by Esso, and iv) Sites listed as owned by MRH are priced by MRH (a company with a similar operating model to MFG). For sites where it was not clear who set the price, MFG did not include in its count of independent price setters.

[25] Shell confirmed that all the Shell non-target sites, in the four local areas are priced by Shell, with the exception of two in the Shell Sedgley Road/MFG Tipton local area.

[26] Shell Burgess Hill/MFG Hassocks, Shell Ilford/MFG Loxford, MFG Clarence Road/Shell Sedgley Road, MFG Crusader/Shell Whitstable, MFG Leander/Shell Thames Valley, MFG Primrose/Shell Apsley, and MFG Reading/Shell Shinfield.

other as its primary price marker. In addition, in respect of each of these seven areas at least four brands will remain post-merger, the Parties' sites are not geographically the closest to each other and the Parties' combined share of supply is less than [15–25]% in each area. Therefore the CMA considers that the Merger does not give rise to a realistic prospect of an SLC in these areas.

61. The CMA considered that the remaining four local areas required a more detailed competitive assessment on the basis that they failed more than one filter, and/or because of considerations related to the local geography (for example the Parties' sites were particularly close and/or their competitors were located further away or appeared to be otherwise more difficult to access).

Table 1: Filters failed

Overlap sites	**Filters Failed**
Shell Harrow/MFG Ten Pin	• Fascia reduction from 4 to 3 in the MFG isochrone (where non-target Shell sites are not treated as a separate fascia) • Geographically closest sites (Shell Harrow is the closest site to MFG Ten Pin but not vice versa) • [✄] price marker
Shell Sevenoaks/MFG St Johns Hill	• Fascia reduction from 4 to 3 in the MFG isochrone (where non-target Shell sites are not treated as a separate fascia) • Geographically closest sites • [✄] price marker
Shell New Barnet/MFG Wood Street	• Fascia reduction from 4 to 3 in the Shell isochrone
MFG Tipton/Shell Sedgley Road	• Geographically closest sites (ie Shell Sedgley Road is the closest to MFL Tipton but not vice versa) • Price marker: [✄]

Source: CMA analysis based on the MFL submissions

Local areas of concern

62. The CMA assessed the effects of the Merger in each of the four local area overlaps shown in the table above, considering: (i) drive-time distances between the Parties' sites and other competitors, (ii) characteristics of the Parties' sites, and (iii) the number and geographic locations of competitors

present in the local area.[27]

Shell Harrow/MFG Ten Pin

63. As noted in Table 1 above, this overlap merited a more detailed assessment as a result of the fact that: (i) Shell Harrow and MFG Ten Pin are geographically the closest sites to one another; (ii) Shell Harrow is listed as MFG Ten Pin's [✂] price marker (Shell Harrow [✂] price mark MFG Ten Pin); and (iii) there is a post-merger reduction in brands from 4 to 3 in the MFG isochrone (when non-target Shell sites are not treated as a separate fascia).

The Parties' submissions

64. MFL submitted that the geographic proximity of the sites does not mean that the sites are each other's closest competitors because the sites are on different traffic flows serving different customers, in particular:

- The Shell Harrow site is situated on the main A404 Pinner Road in central Harrow;

- Passing traffic on the main A404 will not be aware of the MFG site due to its location off the main road; such customers are likely to choose between the Shell Harrow site, the BP Bessborough site (which now includes an M&S food offering), or the Jet Kenton Park Service Station on the same east/west main road. The nearest station to Shell is the BP Bessborough M&S site which is the premier site on this traffic flow as it has a large forecourt easily accessible by virtue of its roundabout location, and a high value retail (M&S) offering; and

- In contrast, the MFG Ten Pin site is situated in a residential area to the north of the main A404 Pinner Road, on a north-south route: the A4090. The site cannot be seen from the A404,[28] and as such serves local customers and those driving north/south rather than traffic on the A404. It is a small site which shares an entrance with a tyre company.

65. In relation to the status of the Shell Harrow site as MFG Ten Pin's [✂] price marker, MFL submitted that MFG Ten Pin was an ex-Murco site purchased by MFL in October 2014 and the price marker information was based purely on [✂] rather than on other parameters of competition and was historic to Murco's ownership of the site. MFG submitted that it had not yet changed Ten

[27] The CMA notes that in some previous cases merger parties have carried out surveys to estimate diversion ratios as a way of estimating the closeness of competition between Parties. However, in this case, no such evidence was provided. By contrast see paragraph 67 of *Shell/Rontec* (2012).
[28] This has been verified by the CMA.

Pin’s markers from those determined by Murco but that it planned to do so in the future. MFL submitted that as customers of the MFG site were more likely to be local customers, given that passing traffic on the A404 would be unaware of the site as it cannot be seen from the junction, the more likely price markers for this site were the [✂], and [✂] based on the fact that they were on the same north/south traffic flow.

66. In relation to the reduction in brand fascia within a 10 minute drive-time, MFL submitted that there will be no change to the number of price setters in this local area as a result of the merger. This is because in the local area there are two non-target Shell sites where Shell will remain as an independent price setter. Therefore, in the 10 minute drive-time isochrone around the MFG site there will remain four price setters, namely BP, MFG, Shell and Esso, while in the 10 minute drive-time isochrone around the Shell Target Site there will remain six independent price setters, namely BP, MFG, Shell, Path Services, Esso and MRH.

CMA assessment

67. Based on the evidence submitted by the Parties, and evidence from third parties who responded to the CMA’s merger investigation, the CMA does not consider that this overlap gives rise to a realistic prospect of a substantial lessening of competition for the following reasons:

- Whilst the Parties’ sites are geographically close to each other, MFG Ten Pin is situated off the main road (A404) in a residential area and is therefore not located on the same traffic flow as Shell Harrow;

- Post-merger, there will be no change in the number of price setters in the local area as Shell will remain in the local area as an independent price setter. In the Ten Pin 10 minute drive-time isochrone there will be four independent price setters (BP, MFG, Shell and Esso) and in the Shell Harrow isochrone there will be six independent price setters (BP, MFG, Shell, Esso, Path Services, and MRH); and

- Based on Experian Catalist data submitted by MFL, post-merger, in the MFG isochrone the Parties’ will have a combined share of supply of approximately [5–15]%, with an increment of [0–10]% and in the Shell Harrow isochrone the Parties’ will have a combined share of supply of approximately [5–15]%, with an increment of [0–10]%.

Shell Sevenoaks/MFG St Johns Hill

68. As noted in Table 1 above, this overlap merited a more detailed assessment as a result of the fact that: (i) Shell Sevenoaks and MFG St Johns Hill are geographically the closest to one another; (ii) Shell Sevenoaks and MFG St Johns Hill list each other as [✂] price markers; and (iii) there is a post-merger reduction in brands from 4 to 3 in the MFG isochrone (when the non-target Shell sites are not treated as a separate fascia).

The Parties' submissions

69. MFL submitted that the geographic proximity of the sites does not indicate that the sites are each other's closest competitors because they are on different traffic flows serving different customers in particular:

- The MFG site is located on the main A225 in central Sevenoaks, a north/south road. The easiest site for a customer to reach from the MFG site is the Sainsbury's Sevenoaks site; as going instead to the Target Shell Site would involve a difficult right turn at a busy interchange junction, while the Sainsbury's site is on the same north/south road; and

- The Shell Target Site is situated on the A25 east/west road. A customer driving through, or living in the area, would compare prices to the Sainsbury's Sevenoaks site or the Tesco Sevenoaks site as well as the Shell Target Site. All of these sites are within a 5 minute drive-time of each other, with the Sainsbury's and Tesco sites signposted from the A25.

70. In relation to the fact that both Parties price mark each other, MFL submitted that both Parties' primary price marker is the [✂] PFS. MFG St Johns Hill also price marks the [✂] PFS as its second primary marker. MFG St Johns Hill price marks Shell Sevenoaks [✂], while Shell Sevenoaks price marks MFG St Johns Hill [✂].[29]

71. MFL submitted that all the sites in this area are competing with each other, and that the price marker information suggests that both the MFG and Shell Target sites consider [✂] to be their closest competitor. MFL submitted that the price marker information supports a view that the main price setters in Sevenoaks are the supermarket sites: [✂].

72. In relation to the reduction in brand fascia within a 10 minute drive-time, MFL submitted that there will be no change to the number of independent price setters in this local area as a result of the merger. This is because there is a

[29] Shell uses [✂].

non-target Shell site where Shell will remain as an independent price setter. Therefore, in the 10 minute drive-time isochrone around the MFG site there will remain four price setters, namely, MFG, Sainsbury's, Shell and Tesco, while in the 10 minute drive-time isochrone around the Shell Target Site there will remain five independent price setters, namely MFG, Sainsbury's, Shell, Tesco and Esso.

CMA assessment

73. Based on the evidence submitted by the Parties, and evidence from third parties who responded to the CMA's merger investigation, the CMA does not consider that this overlap gives rise to a realistic prospect of a substantial lessening of competition for the following reasons:

- Post-merger, there will be no change in the number of price setters in the local area as Shell will remain in the local area as an independent price setter. In the St Johns Hill 10 minute drive-time isochrone there will be four independent price setters (MFG, Sainsbury's, Shell and Tesco) and in the Shell Sevenoaks isochrone there will be five independent price setters (MFG, Sainsbury's, Shell, Tesco and Esso).

- In Sevenoaks, regardless of which isochrone selected, post-merger, there will be at least four independent price setters within approximately five minutes' drive of either of the Parties PFS;

- Neither Party price marks [✄] and both Parties price mark [✄] as their primary price marker; and

- Based on Experian Catalist data submitted by MFL, post-merger, in the MFG isochrone the Parties' will have a combined share of supply of approximately [5–15]%, with an increment of [0–10]% and in the Shell Sevenoaks isochrone the Parties will have a combined share of supply of approximately [5–15]%, with an increment of [0–10]%. On the basis of this data, Sainsbury's and Tesco had a combined volume share of [✄]%.

Shell New Barnet/MFG Wood Street

74. As noted in Table 1 above, this overlap merited a more detailed assessment as a result of the fact that there is a post-merger reduction in brands from 4 to 3 in the Shell Target Site's isochrone (when the non-target Shell sites are not treated as a separate fascia).

The Parties' submissions

75. In relation to the reduction in brand fascia within a 10 minute drive-time, MFL submitted that:

- In MFG Wood Street's isochrone, there is no reduction as a result of the merger, as there are non-target Shell sites at Stirling Corner and Mill Hill where Shell will remain as an independent price setter;

- Post-merger, in the 10 minute drive-time isochrone around the MFG site there will remain five independent price setters, namely, MFG, Shell, BP, Esso and Morrisons; and

- Post-merger in the 10 minute drive-time isochrone around Shell New Barnet, there will remain four independent price setters, namely MFG, BP, MRH and Esso.[30]

76. The MFG site is located in High Barnet, while the Shell Target Site is located in New Barnet, a distance of some seven minutes' drive-time away. MFL submitted that the MFG and Shell Target sites are located on different traffic flows, with the A1000 running north/south through the area, and different east/west roads (A110 and A411) running from this.

77. Shell New Barnet is situated on the A110 east/west road, and the Esso New Barnet site and BP Odeon Connect site, are very close geographically, 1.8 and 3.3 minutes' drive-time, respectively. MFL submitted that [✂]. MFL considers that this site serves both transient and local customers to New Barnet on the A110.

78. MFG Wood Street is on the A411 east/west road. The MFG site has a very small forecourt, and MFL considers that it mainly serves transient and local customers to New Barnet. By virtue of its location on the traffic flow between Whetstone and Borehamwood towards the A1, MFL submitted that a customer is most likely to consider the BP Odeon Connect, Shell Stirling Corner sites or Morrisons Borehamwood (4.7, 7.6 and 8.1 minutes' drive-time, respectively, from the MFG site) as competitors. [✂]. MFL submitted that Morrisons Borehamwood, the supermarket site in the area, acts as a price leader.

[30] Depending on whether Tesco or Esso sets the price at their Tesco/Esso joint Venture sites the reduction in independent price setters could be a six to five.

CMA assessment

79. Based on the evidence submitted by the Parties and evidence from third parties who responded to the CMA's merger investigation, the CMA does not consider that this overlap gives rise to a realistic prospect of a substantial lessening of competition for the following reasons:

- Neither Party price marks the other's sites;
- Post-merger, there will be no change in the number of price setters in the local area around MFG Wood Street because Shell will remain in the local area as an independent price setter. In the Wood Street 10 minute drive-time isochrone there will be five independent price setters (MFG, Shell, BP, Esso and Morrisons) and in the Shell New Barnet isochrone there will be four independent price setters (MFG, BP, MRH and Esso) post-merger; and
- Based on Experian Catalist data submitted by MFL, post-merger, in the MFG isochrone the Parties' will have a combined share of supply of approximately [5–15]%, with an increment of [0–10]% and in the Shell New Barnet isochrone the Parties' will have a combined share of supply of approximately [5–15]%, with an increment of [0–10]%.

MFG Tipton/Shell Sedgley Road

80. As noted in Table 1 above, this overlap merited a more detailed assessment as a result of the fact that: (i) Shell Sedgley Road and MFG Tipton are geographically the closest to one another, and (ii) Shell Sedgley Road and MFG Tipton listed each other as, respectively, [✂] price markers.

The Parties' submissions

81. MFL submitted that the geographic proximity of the sites does not mean that the sites are each other's closest competitors because the sites are on different traffic flows serving different customers and in particular:

- MFG Tipton is located on the A4037 north/south road;
- Shell Sedgley Road is located on the A457 east/west road into Birmingham;
- There are five sites located between 3.5 and 5 minutes from the MFG site, and depending on the time of day and the resulting levels of traffic, any one of these five alternative sites could be considered closest by drive-time;

- Customers of MFG Tipton were likely to compare prices at the nearby [✂] site located on the same traffic flow (a site which is also MFG's main price marker). In addition, the [✂] site is also on the same north/south traffic flow;

- Customers of Shell Sedgley Road were likely to be Birmingham commuters, and as a result likely to compare prices with other sites on the same road (such as the Shell Sedgley site or the Texaco Dudley site) or the nearby supermarket sites such as [✂];

- MFG Tipton site operates as a bunkering site for non-retail users (ie through supplying fuel for HGVs and local businesses) with between [✂]% of its monthly sales to non-retail customers; and

- Shell Sedgley Road, does not make any bunkering sales.

82. In relation to the Parties’ price markers, MFL submitted that the MFG site price marks the Shell Target Site as its [✂] price marker, while the Shell Target Site price marks the MFG site as its [✂] price marker [✂]. MFL considers that the main competitors to either site are the supermarket sites, [✂] – MFG Tipton lists [✂] as its primary price marker and [✂] as its secondary price marker; and Shell Sedgley Road lists [✂] as its first primary price marker and [✂] as its second primary marker.

CMA assessment

83. Based on the evidence submitted by the Parties and evidence from third parties who responded to the CMA’s merger investigation, the CMA does not consider that this overlap gives rise to a realistic prospect of a substantial lessening of competition for the following reasons:

- Whilst the Parties’ sites are geographically close to each other, MFG Tipton is located on the A4037 north/south road and is therefore not located on the same traffic flow as Shell Sedgley Road;

- MFG Tipton offers a different proposition to Shell Sedgley Road, in that it offers bunkering services to local businesses;

- Both Parties price mark the [✂] PFS before each other;

- Post-merger, in the 10 minute drive-time isochrone based on Shell Sedgley Road, there are 31 competing stations with at least seven independent price setters, including BP, Asda, MFG, Tesco, Co-op, Sainsbury’s and Shell. In the 10 minute drive-time isochrone centred on MFG Tipton, there are 33 competing PFS including at least six independent price setters, namely BP, Asda, MFG, Tesco, Shell, and Morrisons; and

- Based on Experian Catalist data submitted by MFL, post-merger, in the MFG isochrone the Parties' will have a combined share of supply of approximately [5–15]%, with an increment of [0–10]% and in the Shell Sedgley Road isochrone the Parties' will have a combined share of supply of approximately [5–15]%, with an increment of [0–10]%.

Conclusion on horizontal unilateral effects in the retail supply of road fuel

84. Accordingly, for the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the retail supply of road fuel (petrol and diesel), either nationally or locally.

Retail supply of auto-LPG

85. The CMA considered the effect of the merger in the market for the retail supply of auto-LPG nationally and at the local level. As in this case the Parties closest sites were situated approximately 38 minutes away from each other, the CMA used, on a conservative basis, a 40 minute isochrone to assess competitive effects.

86. On the basis of third party replies to its merger investigation, no competition concerns were found nationally and only one local overlap was identified (Shell-Shinfield/MFG Herds Garage). In this area, the reduction in fascia by brand around the MFG site is 10 to 9 and 9 to 8 around the Shell Target Site. Given that the Parties are not geographically the closest, and combined with the high fascia count in each isochrone and the low combined share of supply by number of branded PFS in the overlap area selling auto-LPG ([0–10]%), the CMA believes that the merger will not give rise to a realistic prospect of an SLC in the retail supply of auto-LPG at a national or local level.

Retail supply of groceries

87. The CMA considered the effect of the merger in the market for the retail supply of groceries both nationally and at a local level using 5 minute drive-time isochrones. No competition concerns arose either nationally, or in any of the localities where the Parties' activities overlap (measured in drive-time isochrones) because there are at least four other convenience stores in each of the five identified overlaps. Furthermore, no concerns were raised by third parties who replied to the CMA's merger investigation. The CMA therefore

believes that the Merger will not give rise to a realistic prospect of an SLC in the retail supply of groceries at a national or local level.

Vertical effects

88. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitors of the supplier's customers.

89. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.[31]

90. In the present case, as a result of MFG acting as a supplier of fuel at the wholesale level to 226 independently owned sites[32] and the Shell Target Sites being retail suppliers of fuel, the CMA considered whether the merged entity could increase the price it charges for fuel to rival PFS (partial input foreclosure) thereby making it harder for rival PFS to compete by increasing their costs and making them less competitive.[33]

91. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) its incentive to do so, and (c) the overall effect of the strategy on competition.[34]

Ability

92. MFL submitted that in order to implement a partial foreclosure strategy, MFG would need to have the ability to increase wholesale road fuel prices charged to independent dealers (third parties who buy fuel wholesale from MFG), with such an ability arising to the extent that independent dealers could not switch to another supplier where there is a price increase in the wholesale supply of fuel. At the national level, MFL submitted that its share of supply in the wholesale market would be [0–10]% based on the supply of fuel to the 226 dealer sites. MFL identified 37 local areas where MFG supplied independent dealer sites and Shell Target Sites overlap. In these local areas, MFL submitted that it would have no ability to foreclose downstream competitors,

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[31] In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.
[32] As a result of the MFG/Murco Merger in 2014.
[33] *Merger Assessment Guidelines,* paragraphs *et seq*.
[34] *Merger Assessment Guidelines*, paragraph 5.6.6.

as in all overlap areas, there are many other fuel suppliers to whom the dealer sites could switch if MFG threatened to raise its wholesale price. MFL also noted that the supply contracts are only for [✄].

93. With regard to ability to partially foreclose, the CMA considered three questions: the cost of the input relative to the cost of the final product; the extent to which rival petrol manufacturers can avoid a price increase by switching away from this input; and the ability to pass through cost increases.

94. In terms of the extent to which the dealers can avoid a price increase by switching away from the input, the CMA notes that at a national level there are many other suppliers[35] and MFG's shares of supply are very low. On the basis of the evidence available in the 37 local areas where MFG supplied independent dealer sites and Shell Target Sites overlap there will remain post-merger at least five alternative suppliers.

95. In conclusion, the CMA considers that given that these contracts last for [✄], MFG may have the ability to raise prices temporarily as dealers are 'locked-in'[36] during these periods. This may be the case for example where the dealer is on a nominal pump price contract, where MFG has more discretion over price.[37]

96. However the CMA considers that in the long run (as the Murco fuel supply contracts expire or are terminated) dealer stations would be able to avoid any price increase by switching away from supply by MFG, due to the high fascia count of other brands both nationally and locally.

Incentive

97. MFL argued that there would be no economic incentive to either increase the retail price at its own sites, or the wholesale prices to the independent dealer sites. It submitted that in all 37 local vertical overlap areas there were many competitors within the isochrones of the independent dealer, MFG or Shell Target Site. Specifically, none of the Shell Target Sites price marks a MFG dealer site, the Shell Target Site is not the closest in drive-time to any MFG dealer site and the post-merger fascia count in the overlapping local areas will be five or more suppliers post-Merger.

98. The CMA considers that, because of the high fascia count in each local area, and the lack of geographical proximity, the dealers would not be able to easily

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[35] These include BP, Esso, Shell, Texaco, Jet, Certas, Gulf, Havest Energy, Maxol, Rix, Gleaner, BWOC, Tate Fuels, Topaz and Manx Petroleum.
[36] MFL submitted [✄].
[37] MFL submitted [✄].

pass on any cost increase. The CMA further considers that any diversion to the Shell Target Site would be limited, and as such MFL would have insufficient incentives to foreclose downstream.

99. Furthermore, no third parties who responded to the CMA's merger investigation expressed concerns about vertical foreclosure. Therefore, on the basis of the evidence it has found on both ability (when contracts expire) and incentive (for the duration of the contracts), the CMA considers that the Merger does not give rise to a realistic prospect of an SLC as a result of partial vertical input foreclosure in relation to the wholesale supply of road fuel (petrol and diesel) to PFS.

Barriers to entry and expansion

100. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.[38]

101. However, the CMA has not had to conclude on barriers to entry or expansion in this case since the Merger does not give rise to competition concerns on any basis.

Third party views

102. The CMA contacted competitors of the Parties, and relevant trade associations. No third parties raised concerns about the Merger.

Decision

103. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.

104. The Merger will therefore **not be referred** under section 33(1) of the Act.

Sheldon Mills
Senior Director
Competition and Markets Authority
26 August 2015

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[38] *Merger Assessment Guidelines*, from paragraph 5.8.1.