

Anticipated acquisition by MRH (GB) Limited of 78 service stations from Esso Petroleum Company Limited

ME/6563/15

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 26 November 2015. Full text of the decision published on 23 December 2015.

Please note that [X] 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. MRH (GB) Limited group (**MRH**) is the UK's largest independent service station owner and operator. MRH has agreed to acquire 78 company owned/ leased service stations (**sites**) located across East Anglia and the South East from Esso Petroleum Company Limited (the **Esso Target sites**) (the **Merger**). MRH and the Esso Target sites are together referred to below as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that the Parties 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.
3. The Parties overlap in the retail supply of services from the service stations they own/lease. These services include:
 - (a) the retail supply of road fuel (petrol and diesel); and
 - (b) the retail supply of groceries.

The CMA has assessed these as separate product markets. This is consistent with the approach taken in previous cases.

4. With regard to 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, MRH estimated that the Parties' combined share of supply was likely to be [0–5]% (based on either volume or value of sales). In each of the 13 local areas where the Parties' activities overlap there were at least five competing stores within a 5-minute drive-time isochrone. For these reasons, 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 groceries at a national or local level.

5. With regard to the retail supply of road fuel, the CMA assessed the effect of the Merger at a national and local level. The Parties estimated that their combined national share of supply of road fuel was around [5–10]% by number of sites and around [5–10]% by volume, with a negligible increment arising from the Merger. For this reason, 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 a national level.
6. 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. MRH identified 47 Esso Target sites and 58 MRH sites, which have catchment areas in which the other merging Party has at least one site and then applied filters (see paragraph 46) to identify local areas of potential concern.
8. On the evidence available to it, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the retail supply of road fuel in local areas in Cambridge and Brighton.
9. The CMA considered whether entry or expansion of existing firms could mitigate the effect of the acquisition on competition but did not receive any evidence to suggest that competitor entry or expansion would offset an SLC in either of the local areas.
10. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). MRH has until 3 December 2015 to offer an undertaking which might be accepted by the CMA. If no such undertaking is offered then the CMA will refer the Merger for a more in-depth investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

11. MRH is the UK's largest independent service station owner and operator. MRH owns over 370 service stations, the majority of which are branded Esso, BP, Texaco or Jet.
12. Esso Petroleum Company, Limited is selling 78 company owned/leased service stations. Esso submitted that the UK turnover attributable to the Esso Target sites exceeds £70 million in the UK ([~~§~~]).

Transaction

13. Pursuant to agreements signed on 11 March 2015, MRH is acquiring the 78 Esso Target sites in two tranches. Tranche 1 comprises 36 sites and tranche 2 comprises 42 sites,ⁱ all located across East Anglia and South East England. Each tranche has staggered completion dates, with the acquisition of the final site in Tranche 2 planned to complete on 2 December 2015.ⁱⁱ The agreements provide that the business carried on in relation to each of the sites are to be acquired as a going concern, including both certain enumerated assets (including equipment, motor fuel stock and other stock, and the benefit of certain contracts), and providing for the transfer of relevant employees under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Jurisdiction

14. The CMA believes that the acquisition of each of the 78 Esso Target sites by MRH are in consequence of the same arrangements. Accordingly it considers it appropriate, pursuant to section 27(5) of the Act¹ to treat them as occurring simultaneously on the date of the latest event, namely the acquisition of Esso Field Road Service Station, which is expected to be completed on 2 December.ⁱⁱ
15. As a result of the Merger, the enterprises of MRH and the Esso Target sites will cease to be distinct.
16. The UK turnover of the Esso Target sites exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

¹ As modified by Article 3 of the Enterprise Act 2002 (Anticipated Mergers) Order, SI No. 2003/1595).

17. 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.
18. The CMA opened an own-initiative investigation into the Merger by sending an Enquiry Letter to MRH on 20 August 2015. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 12 October 2015 and the statutory 40-working-day deadline for a decision is therefore 4 December 2015.

Counterfactual

19. 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.²
20. In relation to the local areas where we carried out a detailed assessment MRH submitted that [REDACTED]. The Esso Target site, City Service Station, is a leasehold property. MRH acquired the leasehold title [REDACTED].
21. The CMA has noted MRH's submissions with regard to the City Service Station site. However, the CMA believes that the evidence before it does not support using a different counterfactual in this local area as [REDACTED].
22. MRH made no submissions on the relevant counterfactual in relation to any other local area.
23. Therefore, the CMA believes that the prevailing conditions of competition is the relevant counterfactual in all local areas.

Frame of reference

24. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement.

² *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).

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 merging 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.³ 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.⁴

25. The Parties overlap in the retail supply of road fuel (ie both petrol and diesel, but excluding auto-LPG) and groceries from their service stations.

Retail supply of road fuel – product and geographic scope

26. Both the OFT and the CMA have considered the retail supply of road fuel in several previous cases.⁵ In these previous decisions, the relevant product market was considered to be the retail supply of road fuel to motorists and that no further segmentation was necessary between different types of fuel, such as petrol and diesel or 'regular' and 'super', for reasons of supply-side substitutability even though petrol and diesel are self-evidently not demand-side substitutes. No evidence was found to contradict this market definition in this case. These previous decisions also considered whether the 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. In this case all the MRH sites are off-motorway, while the Esso Target sites are a mix of motorway and non-motorway sites. This mix has been taken into consideration by the CMA in its competitive assessment.
27. MRH acknowledged the general approach taken by the OFT and CMA in previous cases and framed its approach and submissions on the retail supply of road fuel using these precedents. In terms of geographic scope, MRH submitted that, in line with previous decisions,⁶ it had considered the effect of the Merger on the basis of local areas. MRH 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.

³ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁴ [Merger Assessment Guidelines](#), Section 5.2.

⁵ 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 \(2014\)](#), and [MFL/Shell \(2015\)](#).

⁶ For example, [Shell/Rontec \(2012\)](#), [Rontec/Total \(2011\)](#) and [MFL/Murco \(2014\)](#).

28. As the CMA has not received any evidence from third parties which replied to its enquiries 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) 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. The CMA also considered the effect of the Merger at the national level.

Retail supply of groceries – product and geographic scope

29. In past cases, the CC and the OFT have considered that the retail supply of groceries comprises three broad product markets:⁷
- One-stop stores (OSS): those with a net sales area of 1,400 sq metres or above.⁸ These stores form their own product market.
 - Mid-size stores: those with a net sales area of less than 1,400 sq metres but above 280 sq metres. These stores are constrained by OSS and so OSS must be included in any market definition with mid-size stores as its focus.
 - Convenience stores: those with a net sales area of less than 280 sq metres. These stores are constrained by all grocery stores and so a product market focused on convenience stores must also include mid-size and OSS.
30. MRH submitted that all of the MRH sites and the Target Esso sites have an on-site shop, with the size of these shops varying from site to site, but not exceeding 280 sq metres. Accordingly, on the basis of the above classification, the Parties' stores can be classified as convenience stores, competitively constrained by OSS, mid-size stores and other convenience stores.
31. Previous OFT decisions on grocery stores adjacent to service stations⁹ defined the same geographic market as in the grocery market. These previous decisions, and the CC's Groceries Report,¹⁰ identified the relevant geographic scope as essentially local but that a national dimension of

⁷ 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).

⁸ 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.

⁹ See, for example, *Rontec/Total* (2011).

¹⁰ The Supply of Groceries in the UK market investigation, 30 April 2008.

competition also exists. At the local level, the OFT defined the geographic scope for convenience stores as a 5-minute drive-time and a one-mile radius in all areas. These stores are constrained by OSS within a 10-minute drive-time in urban areas or a 15-minute drive-time in rural areas and by mid-size stores within a 5-minute drive-time in urban areas or a 10-minute drive-time in rural areas.

32. In the present case, third party responses to the CMA's merger investigation did not indicate that the approach used in previous cases was inappropriate. Therefore, following the precedents referred to above, the CMA assessed the Merger in relation to the supply of groceries at a national and local level (5-minute drive-times) taking into account the asymmetric constraints exercised by stores of different sizes.

Conclusion on frame of reference

33. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- the retail supply of road fuel (petrol and diesel), both nationally and locally, based on 10- and 20-minute drive-time isochrones; and
 - grocery retailing, both nationally and locally, using 5-minute drive-time isochrones.

Competitive assessment

Horizontal unilateral effects

34. Horizontal unilateral effects may arise when one firm merges with a competitor which 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.¹¹ Horizontal unilateral effects are more likely when the merging parties are close competitors.

Retail supply of road fuel

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

¹¹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

36. Service stations 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 which 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.
37. The CMA notes that these different models, which are sometimes operated behind a common fascia, show that the branding of a site will not always reflect the ownership structure, and that service stations with the same branding may be directly competing against each other (and, conversely, that service stations with different branding may not compete against each other).
38. MRH operates under a PropCo, OpCo¹² structure. [REDACTED] However, pricing and marketing is common across all MRH subsidiaries.
39. The branding of the MRH sites depends on its supply arrangements with the oil companies. The majority are branded Esso, BP, Texaco or Jet. MRH said that the 78 Esso Target sites will continue to carry the Esso branding (and be supplied with fuel from Esso).¹³

Price marking

40. MRH submitted that it monitors [REDACTED] price markers per site, [REDACTED], the price markers did not capture all the sources of competitive constraint in relation to any site, or group of sites, whether within or outside the relevant catchment area. MRH said that a price leader in an area might not be one of its price markers but MRH would, in any event, take into account effects of changes in this leader's prices by virtue of the impact of its decisions on the pricing of other sites which MRH does mark in the area.

¹² Property Company/Operating Company.

¹³ This arrangement is pursuant to [REDACTED].

41. MRH submitted that [REDACTED].^{14,15} MRH submitted that competitor price data are not available for all competitors, since a competitor site that does not accept fuel cards does not have its pricing data included in the information provided by Experian Catalist. At the local level, [REDACTED] prices [REDACTED], which in turn are heavily influenced by volatility in wholesale Platts prices¹⁶ and supermarket marketing strategy/promotions. However, MRH said that, [REDACTED]. MRH submitted that prices change almost daily at [REDACTED] MRH's sites, indicating the strong competition between service stations on the basis of price.
42. Esso submitted that it did not identify 'primary markers' as have been seen in previous cases. [REDACTED]
43. 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, resulting in the merged entity having the ability profitably to 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

44. MRH submitted that the Parties' combined national share of supply of road fuel would be around [5–10]% by number of sites and around [5–10]% by volume, with a negligible increment. The CMA is aware from previous cases¹⁷ that, at the national level, there are many competitors, with 62% of UK service stations being independently owned, 22% being owned by oil companies and around 16% being owned by supermarkets. Given the Parties' 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

45. Based on the drive-time isochrones described above, MRH carried out a local analysis of overlaps for the MRH and Esso Target sites and identified 47 Esso Target sites and 58 MRH sites, which have catchment areas in which the other merging party has at least one site.

¹⁴ [REDACTED]

¹⁵ [REDACTED]

¹⁶ Platts is a leading global provider of energy, petrochemicals, metals and agriculture information, and a source of benchmark price assessments for those commodity markets.

¹⁷ MFL/Shell.

46. Consistent with previous cases¹⁸ MRH then applied the following filters to identify areas where the Merger may give rise to competition concerns:
- I. price markers, where:
 - either party identifies a site of the other party as its main price marker; or
 - either party identifies a site of the other party as one of three or fewer competing sites; or
 - the merger would lead to a reduction in competing brands in the marker lists from four to three or fewer.
 - II. geographic competitors: the Parties' sites are the closest in terms of drive-time; or
 - III. fascia: reduction in fascia from four to three (by brand or owner) within 10/20-minute drive-times in urban/rural areas around both Parties' sites. The CMA notes that counting fascia alone has some limitations, and therefore has only put limited weight on this metric in its assessment of local competition. It also notes that any Esso sites which are not being acquired as part of this transaction will continue to act as a competitive constraint post-merger.¹⁹
47. MRH submitted that 22 service stations (resulting in 17 overlap areas) failed one or more of the filters above. MRH also submitted that the failure to meet one or more of these filters should not be considered sufficient to meet the threshold for an SLC finding, and that it was necessary to consider the appropriate weight to be attached to all relevant evidence, taken in the round, for the individual overlaps. The CMA reviewed MRH's filtering, found an additional overlap area, and assessed in detail a total of 18 overlap areas after applying the filters above.
48. Of the 18 overlaps, 14 failed only the price marker filter. On further analysis, the CMA found that in 12²⁰ of these 14 overlap areas at least one of the

¹⁸ Shell/Rontec (2012), Rontec/Total (2011), Proposed acquisition by J Sainsbury plc of 18 petrol stations from Rontec Investments LLP ([Sainsbury/Rontec \(2012\)](#)), MFL/Murco (2014) and MFL/Shell (2015).

¹⁹ The CMA 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) ([ASDA / Co-op \(2014\)](#)), see paragraph 60, and in MFL/Shell (2015).

²⁰ MRH Baddow Road / Esso Oaklands Service Station, MRH Daneholes / Esso Chafford Service Station, MRH Faringdon Spar / Esso Harold Park Service Station, MRH Forest Hill / Esso Foxberry Service Station, MRH Jolly Sailor / Esso Staines Road, MRH Manor / Esso Autohalt Service Station, MRH Offham / Esso Brackenhill, MRH Oxshott / Esso Beech, MRH Royal Oak / Esso Broadway Service Station, MRH Southgate / Esso Highfields Service Station, MRH Southall / Esso Studley Grange, and MRH Thetford East and West / Esso Barton Mills.

Parties did not rank the other as a price marker (except in one,²¹ [✂]), at least four brands and owners will remain post-Merger, the Parties' sites are not geographically the closest to each other, and estimated diversion ratios were low. Therefore the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in these 12 overlap areas.

49. As a result of this analysis, the CMA considered that only the six remaining overlap areas required a more detailed competitive assessment.

Detailed local assessment

50. The CMA assessed the effects of the Merger in each of the six local areas shown in Table 1.

Table 1: Filters failed

Overlap areas	Filters failed
MRH Girton Spar / MRH Cambridge Spar / Esso City Service Station	<ul style="list-style-type: none"> • Fascia count: <ul style="list-style-type: none"> - Centred on the MRH Girton Spar site the fascia filter is failed – 4:3. • Geographic competitors: <ul style="list-style-type: none"> - MRH Girton Spar and Esso City Service Station sites are 3.9 minutes' drive-time from each other. The next closest competitors are 5.3 and 5.8 minutes away from MRH Girton Spar. • Price markers <ul style="list-style-type: none"> - [✂] - [✂] - [✂] - [✂]
MRH Brighton Spar / Esso Patcham Service Station	<ul style="list-style-type: none"> • Geographic competitors: <ul style="list-style-type: none"> - MRH Brighton and Esso Patcham Service Station sites are 1.4 minutes' drive-time from each other. They are therefore each other's closest competitor geographically. The next closest competitors are 2.8 and 3.5 minutes away from MRH Brighton. • Price markers <ul style="list-style-type: none"> - [✂] - [✂]

²¹MRH Faringdon Spar/ Esso Harold Park.

Overlap areas	Filters failed
MRH Aveley Spar / Esso Meads Service Station / Esso M25 Thurrock Motorway Service Area	<ul style="list-style-type: none"> • Geographic competitors: <ul style="list-style-type: none"> - MRH Aveley Spar and Esso Meads Service Station and Esso M25 Thurrock Motorway Service sites are 5 and 5.7 minutes' drive-time from each other. The next closest competitors are 5.9 and 8 minutes away from MRH Aveley Spar. • Price markers: <ul style="list-style-type: none"> - [✂] - [✂]
MRH Admiral / Esso West End Service Station	<ul style="list-style-type: none"> • Geographic competitors: <ul style="list-style-type: none"> - MRH Admiral and Esso West End Service Station sites are 1.6 minutes' drive-time from each other. The next closest competitors are 2.5 and 3.8 minutes away from MRH Admiral. • Price markers: <ul style="list-style-type: none"> - [✂] - [✂]
MRH Plumstead Common / Esso Lakedale Service Station	<ul style="list-style-type: none"> • Price markers: <ul style="list-style-type: none"> - [✂] - [✂]
MRH Sidley / Esso Glyne Gap	<ul style="list-style-type: none"> • Price markers: <ul style="list-style-type: none"> - [✂] - [✂]

51. MRH provided information onⁱⁱⁱ own- and cross-price elasticities in the local areas, which the CMA understands [✂]. To facilitate the interpretation of this information, the CMA used MRH's estimates of own- and cross-price elasticities to estimate diversion ratios²² (from the price-marked Esso sites to the MRH sites). The CMA has also combined these estimates of diversion ratios with estimates of variable profit margins to generate GUPPIs (Gross Upward Pricing Pressure Indices).

52. The CMA notes that there is a degree of uncertainty/bias surrounding these metrics. In particular:

²² 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.

- (a) The cross-price elasticities provided by MRH were estimated based on [redacted] – see paragraph 41). In circumstances where [redacted], and to the extent that price changes of service stations are correlated, the cross-price elasticities [redacted] might overestimate the ‘true’ cross-price elasticities.
- (b) In areas where there are multiple MRH sites around an Esso site, [redacted]. The incentive to change price at an Esso site will depend on the aggregate diversion ratio from that site to all MRH sites present in the area. In areas where the actual diversion to the omitted sites is significant, the diversion ratios estimated by the CMA will underestimate the ‘true’ diversion ratios.; and
- (c) [redacted] (see paragraph 41).
- (d) The elasticitiesⁱⁱⁱ available only allow the CMA to estimate diversion ratios from the Esso Target sites to the MRH sites, but not vice versa.
53. Despite these limitations, to the extent that [redacted], these biases will be reduced. In some areas the different biases may work in opposite directions. In general, the diversion ratios are likely to be overestimated in areas where several competitors around the Parties’ sites have been omitted [redacted], and underestimated in areas where there are several MRH sites [redacted], the CMA considers that it is appropriate to place some weight on this piece of evidence as part of an overall picture made up of several pieces of evidence.
54. Variable margins in this sector are low (typically around 5%), and therefore the GUPPIs estimated by the CMA are relatively low. In general, the CMA has observed that service stations compete strongly on price, with suppliers being well informed about the prices of their competitors and responding to price changes promptly. In this industry context, and if consistent with other factors (see paragraph 53), the CMA believes that even moderate diversion ratios and relatively low GUPPIs could be indicative of an SLC. The CMA found no evidence that upward pricing pressure would be countervailed or mitigated by other factors (such as efficiencies or competitor repositioning).
55. The CMA assessed the likely change in competitive conditions in each of the six sites on the basis of the following factors: (i) key parameters of differentiation, such as information about locations and drive-time distances between the Parties’ sites and those of its competitors, information on local traffic flows, and consideration of the extent to which the sites are similar in terms of their offering (eg in terms of access, canopy, facilities, etc); (ii) price

markers;²³ (iii) diversion ratios and GUPPIs;²⁴ and, to a lesser extent, (iv) market shares. In the individual local assessments, the relevance and importance of these factors varies.

MRH Girton Spar / MRH Cambridge Spar / Esso City Service Station

56. As noted in Table 1, this competitive overlap merited a more detailed assessment as a result of the fact that it failed all three of the filters, namely: (i) there is a post-merger reduction in price setters from four to three in the MRH Girton Spar isochrone; (ii) MRH Girton Spar and Esso City Service Station sites are geographically the closest sites to one another (3.9 minutes' drive-time from each other); and (iii) Esso City Service Station is a price marker for both MRH Girton Spar and MRH Cambridge Spar, and Esso City Service Station price marks against MRH Girton Spar.

The Parties' submissions and local geography

57. MRH submitted that the geographic proximity of the MRH Girton Spar and Esso City Service Station sites does not mean that the sites are each other's closest competitors because the sites are on different traffic flows. In particular:

- MRH Girton Spar is located on the Cambridge-bound A1037 Huntingdon Road and is convenient for local traffic and commuters travelling into the city on this road. MRH submitted that, in terms of convenient alternatives, commuters travelling into the city are very unlikely to divert to the Esso City Service Station, as this would require a driver to turn off the main road into Cambridge to drive to the Histon Road through a residential area. On exiting the service station, the driver would then need to turn right into heavily congested traffic to resume their journey into the city (or make a round trip to get back to the Huntingdon Road).
- Esso City Service Station is located on the B1049, Histon Road. MRH submitted that traffic coming into the city by this route would be very unlikely to choose to divert right onto the A1037 to MRH Girton Spar, away from the city centre.
- MRH submitted that, leaving the city, traffic along the Huntingdon Road would pass MRH Girton Spar on the right and could more easily carry on

²³ Since these sites are monitored by the Parties on a regular basis, [REDACTED].

²⁴ Which are informative on the closeness of competition between the Parties and provide an indication of the incentives to increase prices post-Merger (while taking into account the uncertainties around these metrics).

to Tesco Bar Hill or the Shell A14 Cambridge Services than turn east towards Esso City Service Station. [REDACTED]

58. In relation to the price marking by both MRH Girton Spar and MRH Cambridge Spar of Esso City Service Station and the fact that MRH Girton Spar is used as a marker for the Esso City Service Station, [REDACTED].^{25,26}
59. In relation to the reduction in price setters within a 10-minute drive-time of MRH Girton Spar, MRH submitted that it is only in relation to MRH Girton Spar that there is a reduction in the number of price setters in the isochrone from four to three. Otherwise, when centred on MRH Cambridge Spar and Esso City Service Station the remaining price setters in the isochrones are seven in both cases. In addition, once in Cambridge, there are a number of supermarkets with service stations, including Sainsbury's and Tesco Milton.
60. MRH submitted that, while the combined share of supply based on the MRH Girton Spar catchment area is [20–30]%, the increment is very small at [5–10]%. In addition, both [REDACTED], and [REDACTED], each have two sites in the isochrones, which give them a larger share of supply than the Parties' post-Merger share, with [REDACTED], having a [50–60]% share in this area.
61. MRH said that the diversion ratio estimated by the CMA materially overstates the likely diversion between the MRH and Esso site in practice, since the diversion ratio is derived from an incomplete data set which does not reflect the full extent of competitive constraints in the area. The fact that [REDACTED], has a [50–60]% share of supply in the area reinforces its view that the CMA's estimated [50–60]% diversion ratio is likely to be an inaccurate indicator of consumer behaviour.
62. Finally, MRH submitted that [REDACTED] (see paragraph 20).

Third party comments

63. Third party competitors told the CMA that MRH Girton Spar, MRH Cambridge Spar and Esso City Service Station are close competitors and that the Merger created the potential for retail pricing to be influenced.

²⁵ [REDACTED]
²⁶ [REDACTED]

CMA assessment

64. Based on the evidence before it, the CMA believes that the overlap between MRH Girton Spar and the Esso City Service Station gives rise to a realistic prospect of an SLC for the following reasons:
- The Parties price mark each other and Esso City Service Station is ranked [X] among MRH Girton Spar's [X] price markers.
 - MRH Girton Spar and Esso City Service Station are each other's closest competitors in terms of location (3.9 minutes' drive-time from each other). The next closest are 5.3 and 5.8 minutes away from MRH Girton Spar.
 - The CMA estimated a diversion ratio of [50–60]% from Esso City Service Station to MRH Girton Spar, and a relatively high GUPPI of [0–5]%. The CMA understands that [X].
 - Post-Merger there is a reduction in price setters to three²⁷ in the isochrone based on MRH Girton Spar; and
 - Based on Experian Catalist data submitted by MRH, post-Merger in the MRH Girton Spar isochrone the Parties will have a combined share of supply of approximately [20–30]%, with an increment of [5–10]%, and in the Esso City Service Station isochrone the Parties will have a combined share of supply of approximately [10–20]%, with an increment of [0–5]%.²⁸
65. Based on the evidence before it, the CMA does not believe that the overlap between MRH Cambridge Spar and the Esso City Service Station gives rise to a realistic prospect of an SLC for the following reasons:
- Although MRH Cambridge Spar price marks the Esso Target site, it is its [X] marker. Esso City Service Station does not price mark MRH Cambridge Spar.
 - MRH Cambridge Spar and Esso City Service Station are not each other's closest competitors in terms of location (5.7 minutes' drive-time from each other). Shell Newham, Shell Teversham (owned by Marshall Motor Group) and Sainsbury's Coldham Lane are closer geographically (4.4 minutes, 4.6 minutes and 5.1 minutes' drive-time respectively).

²⁷ MRH, Tesco, and Shell.

²⁸ Combined shares based on MRH Girton Spar's isochrone includes the market shares of MRH Girton Spar, MRH Cambridge Spar and MRH Lolworth, which are all present in the isochrone. Combined shares based on MRH Cambridge Spar's isochrones includes the market shares of MRH Girton Spar, MRH Cambridge Spar and MRH Orchard, all present in the isochrone.

- The diversion ratio from Esso City Centre to MRH Cambridge Spar is relatively low at [10–20]% (GUPPI of [0–5]).
- Post-Merger there will be a reduction in price setters from eight to seven;²⁹ and
- Based on Experian Catalist data submitted by MRH, post-Merger in the MRH Cambridge Spar isochrone the Parties will have a combined share of supply of approximately [20–30]%, with an increment of [5–10]%, and in the Esso City Service Station isochrone the Parties will have a combined share of supply of approximately [10–20]%, with an increment of [0–5].

MRH Brighton Spar / Esso Patcham Service Station

66. As noted in Table 1, this competitive overlap merited a more detailed assessment as a result of the fact that two of the filters were failed, namely: (i) MRH Brighton and Esso Patcham Service Station sites are geographically the closest sites to one another (1.4 minutes' drive-time); and (ii) the Parties both price mark each other, with MRH Brighton ranking the Esso site as its [✂] price marker.

The Parties' submissions and local geography

67. MRH submitted that, despite being geographically close, the two service stations represent very different offerings. MRH Brighton Spar [✂]. It boasts a large forecourt with a modern starter gate layout, has a car wash [✂] and has a branded shop measuring 91.4 sq metres, containing a Costa coffee shop and 24-hour off-licence offering. By comparison, Esso Patcham has a four square layout, providing a slower customer experience, a smaller shop measuring 45 sq metres, and no additional facilities such as a car wash. MRH said that Brighton Spar serves transient customers from the A27 and A23, north and southbound, as it is situated on a roundabout at the junction between the A27 and A23, while Esso Patcham is situated on the southbound carriageway of the A23. MRH submitted that, for these reasons, Esso Patcham generally serves only road fuel customers, and local customers are considered more likely to use the supermarkets such as Asda, Tesco or Sainsbury's, as alternatives.
68. MRH submitted that, whilst both MRH Brighton Spar and Esso Patcham price mark one another, [✂].

²⁹ MRH, Shell, Sainsbury's, Tesco, Marshall Motor Group, Teversham Motors and Wallis & Son Ltd.

69. MRH also said that the other markers for the two sites differ. [X], while MRH currently uses [X] sites as its [X] and [X] markers.
70. With the isochrone centred on MRH Brighton Spar, MRH submitted that the Parties have a combined market share of [10–20]% (increment [5–10]%), which is similar to [X] and [X] and the combined share of the [X] service stations in the area ([10–20]%). MRH submitted that post-Merger there will be a reduction in the number of price setters in this isochrone from 13 to 12.
71. MRH submitted that, over the recent months, a number of service stations in the area, including Esso Patcham, have closed and reopened or are preparing to reopen following refurbishment.³⁰ In the week immediately after the closure of the Esso Patcham site, the volumes at Brighton Spar increased by [5–10]% compared to the previous week, while, in the week after Esso Patcham reopened, volumes at Brighton Spar decreased by [10–20]% compared to the previous week. MRH submitted that these volume changes at MRH Brighton Spar are substantially smaller than those that would be implied by the CMA's estimated diversion ratios. MRH submitted that average weekly volumes at Brighton Spar were [10–20]% greater during the period when both Asda Hollingbury and Esso Patcham (but not Asda Marina) were closed than when only Esso Patcham was closed. During the period when the Asda Marina site was also closed an additional [10–20]% increase in average weekly volumes at Brighton Spar was observed. Therefore, MRH submitted that closure of each of the Asda sites coincided with a greater increase in average volumes at MRH Brighton Spar than when Esso Patcham was closed.
72. MRH submitted that the difference in markers and the comparable market shares of both BP and Shell in the respective catchment areas indicated other strong competitors in this area, and the volume changes as a result of closures suggested that the diversion ratio between the Parties' sites is weaker than estimated by the CMA.
73. MRH submitted that, with regard to MRH Downsway and Esso Hove, these two sites, also in the overlap area, are situated on different spurs out of the city and that their presence does not have a material impact on the competitive analysis of this area. MRH Downsway primarily serves a residential area and so customers diverting from this site are likely to continue out to Asda Hollingbury. Esso Hove is situated in a more commercial area next to the railway station, with numerous alternative competitors to the east

³⁰ Esso Patcham – closed June 2015 and reopened on 26 October 2015, Asda Hollingbury – closed on 30 August 2015, and is currently closed and Asda Marina closed 13 September 2015 and reopened in the first week of November 2015.

and west and is not considered by MRH to be a close competitor of MRH Downsway.³¹

Third party comments

74. The CMA received mixed views from third party competitors. While one considered Esso Patcham to be a close competitor to MRH Brighton and MRH Downsway, another did not consider the Parties to be close competitors. A third considered that the Merger created the potential for retail pricing to be influenced in the area.

CMA assessment

75. With regard to the overlap between MRH Brighton Spar and Esso Patcham, the CMA notes the Parties' submission on the effect of the closure of Esso Patcham on MRH Brighton Spar. In particular, the CMA notes that the Esso Patcham site was closed during the nine-week period from 28 June 2015 and that, during that period, average fuel volumes sold at MRH Brighton Spar were [5–10]% higher than in the four weeks prior to the closure of the Esso site. However, the CMA believes that these average sales increase should not be directly interpreted as evidence of low diversions for the following reasons: (i) there is significant volatility in the weekly sales figures, with MRH Brighton Spar's volumes being between [20–30]% higher and [5–10]% lower than the average volume sold pre-closure of Esso Patcham in the weeks following the closure of Esso Patcham; and (ii) it is unclear the extent to which the observed changes in volumes are a consequence of the closure of Esso Patcham, or a result of changes in prices during the period. In fact, MRH's data shows that while in the period before Esso Patcham's closure MRH Brighton offered discounts, it did not continue to offer these discounts during the period that Esso Patcham was closed.
76. The CMA has considered [redacted]. The CMA also notes that its diversion estimates do not include the effect of sales diverted to MRH Downsway, another MRH site in the overlap, which will bias the diversion ratios and GUPPI to be underestimates.
77. Based on the evidence before it, the CMA believes that, notwithstanding the number of price setters remaining post-Merger, the overlap between MRH Brighton Spar and Esso Patcham gives rise to a realistic prospect of an SLC for the following reasons:

³¹ MRH also said that a significant proportion of the traffic using Esso Hove are taxis, which are particularly price sensitive, thus imposing ongoing price pressure on this site.

- The Parties price mark each other. MRH Brighton Spar ranks the Esso site as its [redacted] price marker out of [redacted], while MRH Brighton Spar is one of [redacted] price markers for Esso Patcham.
- MRH Brighton Spar and Esso Patcham are each other's closest competitors in terms of location (1.4 minutes' drive-time) on the A23.
- The Parties are located on the same traffic flow. MRH Brighton is located on a roundabout under the A27, on the A23, making it easily accessible for customers coming from or heading towards Esso Patcham. The next closest competitors are 2.8 and 3.5 minutes away from MRH Brighton Spar; and
- The CMA calculated an estimated diversion ratio from Esso Patcham Service Station to MRH Brighton Spar of [40–50]% (GUPPI of [0–5]%). The CMA understands [redacted].

78. The CMA notes that both Parties have other sites in the isochrones centred on MRH Brighton Spar and Esso Patcham Service Station, namely MRH Downsway and Esso Hove. However, MRH Downsway and Esso Hove are not the closest geographically either to each other or to MRH Brighton Spar or to Esso Patcham. Therefore the competitive constraint from these sites will be lower than the constraint from the main overlap sites. In addition neither MRH Downsway nor Esso Hove price mark each other, MRH Brighton Spar or Esso Patcham. Therefore, the CMA does not believe that the overlap between MRH Downsway and Esso Hove Service Station gives rise to a realistic prospect of an SLC.

MRH Aveley Spar / Esso Meads Service Station / Esso M25 Thurrock Motorway Service Area

79. As noted in Table 1, this competitive overlap merited a more detailed assessment as a result of the fact that two of the filters were failed, namely: (i) MRH Aveley Spar, Esso Meads Service Station and Esso M25 Thurrock Motorway Service Station sites are the closest sites geographically to one another (5 and 5.7 minutes' drive-time respectively); and (ii) the Parties price mark each other, with MRH Aveley Spar ranking Esso Meads and Esso M25 Thurrock as its [redacted] and [redacted] price markers. Esso Meads price marks MRH Aveley Spar.

The Parties' submissions and local geography

80. MRH carried out overlap analysis using the ONS classification of MRH Aveley Spar as being in a rural area, with a consequent catchment area of

20 minutes. However, this brings in a large number of service stations south of the river Thames, which would require customers to use the Dartford toll bridge to reach them. MRH therefore re-ran its overlap analysis on MRH Aveley Spar, treating it as an urban site with a 10-minute catchment area. The Parties said that this was more consistent with their knowledge of the local area.³²

81. Within the revised 10-minute isochrone centred on MRH Aveley Spar,³³ there will be four price setters³⁴ and five brands post-Merger. The Parties' combined post-Merger share of supply would be [20–30]% (increment [5–10]%). MRH submitted that this would be smaller than the market shares of [X] ([40–50]%) and similar to [X] ([20–30]%). If the Esso M25 Thurrock site is not included, the Parties' combined share of supply would drop to [10–20]%.
82. Although the sites are geographically close, MRH submitted that there are both traffic flow and traffic type considerations which mean that the Parties cannot be considered as close competitors. In particular:
 - The primary users of both Esso Meads and Esso M25 Thurrock are truck drivers purchasing diesel, with data showing that over [70–80]% of transactions at these sites are for diesel ([70–80]% at Esso Meads and [70–80]% at Esso M25 Thurrock), in contrast to [40–50]% at MRH Aveley Spar; and
 - The Esso Meads site is attractive to HGV customers due to its wide forecourt and high canopy, in contrast to the more traditional four square layout at MRH Aveley Spar.

MRH said that HGVs cannot access MRH Aveley Spar due to the size of the facility.³⁵ MRH submitted that, for these reasons, sites such as Esso Meads and Esso M25 Thurrock compete with other specialist truck stops for custom, rather than with smaller stations such as MRH Aveley Spar.

³² The CMA accepts MRH's arguments.

³³ The redrawing of the isochrone centred on MRH Aveley Spar from 20 minutes to a 10-minute drive-time takes the following six Esso Target sites out of the catchment area: Esso Beam Service Station / Esso Chafford Service Station / Esso Harold Park Service Station / Esso Ingrave Service Station / Esso Rainham Road Service Station / Esso Warley Service Station.

³⁴ MRH, Tesco, Sainsbury's and SR Services Ltd.

³⁵ The height of the canopy cannot accommodate articulated or large rigid HGVs and smaller HGVs (typically 3.5–12 tonnes) would find it difficult to manoeuvre on the site. Such traffic would also find it difficult to use the site because of width restrictions on the access road. MRH provided a video of the quickest route between Esso Meads and MRH Aveley. The CMA considers it was clear from this video that the route was along largely residential roads, with speed bumps and width restrictions.

83. MRH submitted that for those drivers of cars and light commercial vehicles who could theoretically divert between Esso Meads and MRH Aveley Spar, the road flows make it inconvenient to do so.³⁶
84. MRH submitted that MRH Aveley Spar also [redacted], than the [redacted] average found across the MRH network, demonstrating that it is used far more frequently by local residents topping up rather than by commuter traffic.
85. With regard to potential diversion to Esso M25 Thurrock, MRH submitted a snap shot of prices in the local area for 4 November 2015,³⁷ noting that charges were approximately 10 pence per litre more at this service station than elsewhere locally. MRH said that, if travelling in that direction, customers would go to Tesco Lakeside. The non-motorway entrance to Esso M25 Thurrock is situated on a roundabout, and customers travelling from Aveley would simply bear right instead of left to access Tesco Lakeside Extra and take advantage of the lower prices. MRH submitted that while Esso M25 Thurrock is accessible by local residents and visitors to Lakeside Retail Park, it should be classified as a motorway service station. Its road count of 70,125 vehicles per day is far higher than the counts of 10,371 and 7,434 recorded at Esso Meads.
86. MRH submitted that its price marker selection is based [redacted] does not take account of other factors such as those outlined above.

Third party comments

87. Third party responses were mixed. One third party considered that Esso Beam was a close competitor to MRH Aveley Spar and Esso Rainham, and that Esso Meads was a close competitor to MRH Aveley Spar, and another commented that there was potential for retail pricing to be influenced as a result of the Merger. However, another third party did not consider the Parties to be close competitors.

³⁶ To reach Esso Meads would require crossing the A13, therefore westbound customers driving from Aveley are more likely to continue along the A1306 to Tesco Rainham Extra. This route is also used by commuters seeking to avoid the busy A13. Residents travelling east from Aveley will typically leave via Ship Lane to join the A13 or A1306. Tesco Lakeside is very convenient for those travelling east on the A1306 or into Lakeside Retail Park, representing the shortest round trip journey time from Aveley. Those wishing to travel from Esso Meads to MRH Aveley Spar are not able to turn right into Purfleet Road from the A1306 due to central reservation barriers, and so would need to take a short detour.

³⁷ MRH Aveley Spar: - 104.9ppl unleaded, 108.9ppl diesel.
Tesco Lakeside - 103.9ppl unleaded, 107.9ppl diesel.
Tesco Rainham - 103.9ppl unleaded, 106.9ppl diesel.
Meads OTR Service Station (Target) 105.9ppl unleaded, 107.9ppl diesel.
London Road Service Station (branded Texaco) - 110.9ppl unleaded, 111.9ppl diesel.
M25 Thurrock MSA (Target) 117.9ppl unleaded, 120.9ppl diesel.

88. In response to third party comments that Esso Beam is a close competitor to MRH Aveley Spar, MRH submitted that:
- Esso Beam is outside the 10-minute revised drive-time isochrone;³⁸
 - motorists using Esso Beam would also pass Tesco Rainham (whether travelling eastbound or westbound); and
 - if approaching Esso Beam on the westbound carriageway of the A1306 (ie the morning commute), it is not physically possible to turn right into the site.³⁹

CMA assessment

89. Based on the evidence before it, the CMA does not believe that the overlap between MRH Aveley Spar, Esso Meads and Esso M25 Thurrock gives rise to a realistic prospect of an SLC for the following reasons:
- Whilst the Parties' sites are geographically close to each other by drive-time (5 and 5.7 minutes respectively), MRH Aveley Spar is located in the centre of a small town and is therefore not located on the same traffic flow as Esso Meads on the A1306, or Esso M25 Thurrock.
 - There are traffic restrictions on the quickest route between Esso Meads and MRH Aveley Spar.
 - Both Esso Meads and Esso M25 Thurrock offer a different proposition to MRH Aveley Spar, in that over [70–80]% of their business is diesel, and that they are designed to take HGVs, which MRH Aveley Spar is not; and
 - Esso M25 Thurrock is essentially a motorway service station and, as such, would be constrained by other motorway service stations rather than a local service station; and, while it is accessible to local residents, its pricing is consistently higher than other local sites and the Tesco Lakeside service station is accessible from the same roundabout in the Thurrock Lakeside Retail Park.
90. With regard to the third party's comments about Esso Beam as a close competitor to MRH Aveley Spar, given that MRH Aveley does not price mark

³⁸ See paragraph 80.

³⁹ The commuter flow for local residents (ie from Aveley and Purfleet) tends to be westbound on the A1306 towards London in the morning (to avoid the queues on the A13) and eastbound on the A13 in the evening (because there are no queues after Barking and so the journey home is quicker); meaning that commuter traffic will typically not pass Esso Beam on the accessible (eastbound) carriageway. MRH said that Esso Beam predominantly serves local traffic in the Rainham and Dagenham areas.

the site and that Tesco Rainham Extra is closer to MRH Aveley Spar than Esso Beam, which is just outside the 10-minute catchment area, the CMA does not believe that this potential overlap gives rise to a realistic prospect of an SLC.

MRH Admiral / Esso West End Service Station

91. As noted in Table 1, this competitive overlap merited a more detailed assessment as a result of the fact that two of the filters were failed, namely: (i) MRH Admiral and Esso West End Service Station sites are geographically the closest sites to one another (1.6 minutes' drive-time); and (ii) the Parties price mark each other, with MRH Admiral ranking Esso West End as its [redacted] price marker and Esso West End ranking^{iv} MRH Admiral as [redacted] price marker.

The Parties' submissions and local geography

92. MRH submitted that the Applegreen Chelmsford Service Station, to the north of MRH Admiral, poses a strong competitive constraint. MRH said that Applegreen positions itself as a price discounter and that one of the reasons it does not accept fleet cards is in an effort to keep its prices low. However, [redacted].
93. MRH submitted that the locations of competitor sites in the MRH Admiral isochrone mean that there are more convenient competitor sites serving customers diverting from MRH Admiral and Esso West End in all directions. Those approaching Esso West End from the east will have driven past the BP Chelmsford Connect, and if they continue into the town centre or to the railway station, they will not pass MRH Admiral. MRH said that the number of sites in this area and the road layout means that only people turning in one of five directions at Esso West End will pass MRH Admiral.
94. MRH submitted that a high number of price setters will remain post-merger, (ten in the isochrone centred on MRH Admiral, including Tesco, and 11 in the isochrone centred on Esso West End) and that the Parties' combined market shares are low at [10–20]% (increment [5–10]%).

Third party comments

95. The CMA received mixed views from third party competitors. While one considered Esso West End and MRH Admiral to be close competitors and a second commented that there was potential for retail pricing to be influenced as a result of the Merger, a third said that they were not close competitors.

CMA assessment

96. Based on the evidence before it, the CMA does not believe that the overlap between MRH Admiral and Esso West End gives rise to a realistic prospect of an SLC for the following reasons:

- Although the Parties price mark each other, [REDACTED]. MRH rank [REDACTED] as its main^v price marker with Esso West End ranked [REDACTED]; and Esso West End [REDACTED] and [REDACTED] as its [REDACTED] price markers, with the MRH Admiral site [also marked].
- The estimated diversion ratio from Esso Meads to MRH Admiral is low at [10–20]% (GUPPI of [0–5]%), and may be an overestimate, in particular, because [REDACTED].
- Whilst the Parties' sites are geographically close to each other, the CMA notes the number of price setters that will remain post-merger, including the Applegreen service station, with its reputation for low-cost fuel, in the isochrone.
- There are three supermarkets in the isochrone centred on MRH Admiral: Tesco Chelmsford, Sainsbury's Springfield and Asda Chelmsford; and
- The Parties' combined market share is low at [10–20]%.

MRH Plumstead Common / Esso Lakedale Service Station

97. As noted in Table 1, this competitive overlap merited a more detailed assessment as a result of the fact that both Parties failed the price marker filter: MRH Plumstead Common lists the Esso Lakedale Service Station as its [REDACTED] price marker, while MRH Plumstead Common is price marked by Esso Lakedale.

The Parties' submissions and local geography

98. MRH submitted that the differences in location of these two sites suggests that the diversion ratio estimated by the CMA is overstated. MRH Plumstead Common is located on a residential road, has limited opening hours and a small shop of only 33 sq metres, half the size of an average MRH store. Consequently, MRH considers that the MRH site largely caters for local traffic. On the other hand, Esso Lakedale is situated on the A206, Plumstead High

Street, an arterial road, and is open 24 hours a day, 7 days a week.⁴⁰ MRH submitted that it would be unlikely that residential customers would opt to divert from a local site to a more congested area, particularly in view of a third service station, Harvest Energy (Woolwich), which is at a similar distance from MRH Plumstead Common.

99. MRH submitted that drivers travelling past and choosing to use Esso Lakedale are unlikely to divert to go through a residential area and would continue east along the A206 to the Harvest Energy Station at Thamesmead; while those continuing west would reach MRH Hexagon, which in turn is constrained by the Asda Charlton site. This last site falls marginally outside the catchment area for Esso Lakedale, but MRH noted Asda's intense price competition for fuel sales.
100. MRH said that customers diverting from MRH Plumstead Common are more likely to combine refuelling with supermarket shopping given the number of large supermarket competitors⁴¹ with service stations within an approximate 15 minutes' drive-time of MRH Plumstead Common.
101. MRH submitted that MRH Plumstead Common has a strong customer base amongst local taxi and private hire vehicle drivers who are particularly price sensitive and are attracted to the 'Special Price Day' offers at this site. MRH said that there would be no incentive to increase prices post-Merger as it would push customers to alternative sites in the area, in particular because these customers are both more likely to search for low-cost fuel and to have a higher number of opportunities to find it over a much wider area.
102. Post-Merger, a number of price setters will remain. MRH submitted that in the isochrone centred on MRH Plumstead Common the Merger creates a reduction of six to five in price setters, while in the Esso Lakedale isochrone the Merger creates a reduction of eight to seven.
103. MRH acknowledged that the Parties price mark each other; however, the first ranked marker for MRH Plumstead Common is [✂], located outside of the 10-minute isochrone, which MRH submitted demonstrates that retailers can and do take account of competitive constraints located outside a 10-minute drive-time. Esso Lakedale also price marks against [✂].

⁴⁰ The 2014 traffic count by the Department for Transport shows that the A206, Plumstead High Street, has an annual average traffic flow of 14,774 vehicles per day. As MRH Plumstead Common is on a B classified road no similar data is available, but given the largely residential nature of the area MRH would expect it to be lower.

⁴¹ Morrisons Thamesmead, Morrisons Erith, Sainsbury's Dartford, Sainsbury's Eltham and Sainsbury's Bugsby's Way.^{vi}

104. MRH submitted that, post-Merger, competitors would remain which had significant market shares, including in the MRH isochrone [X] and [X] with shares of [20–30]% and [10–20]% respectively, and [X] with [10–20]%. While in the Esso Lakedale isochrone [X] acts as a strong competitor with a market share of [30–40]%.

Third party comments

105. Third party competitors said that Esso Lakedale was a close competitor to MRH Plumstead Common and MRH Hexagon.

CMA assessment

106. Based on the evidence before it, the CMA does not believe that the overlap between MRH Plumstead Common, and Esso Lakedale gives rise to a realistic prospect of an SLC for the following reasons:

- While the market shares are relatively high (combined shares of supply are around [20–30] to [40–50]%, with an increment of around [5–10] to [10–20]%), the CMA believes that the Parties face significant constraints from competitors within the catchment area, including price marker sites, and from competitors located just outside the catchment area, such as a [X] site [X] and a number of supermarkets.⁴²
- The Parties are not each other's closest competitors geographically and they are located on different traffic flows.
- For MRH Plumstead Common, Esso Lakedale is ranked [X] out of [X] price markers; while, for the Esso site, MRH Plumstead Common is [X] price marker. Based on MRH's elasticity [X], diversion from Esso Lakedale to MRH Plumstead Common is quite low ([20–30]%, with a GUPPI of [0–5]%) and
- The Parties' sites have different characteristics, in particular in terms of size and opening hours.

MRH Sidley / Esso Glyne Gap

107. As noted in Table 1, this competitive overlap merited a more detailed assessment as a result of the fact that the Parties failed the price marker filter:

⁴² The CMA notes that there are a number of on-site service stations located at supermarkets approximately 15 minutes' drive-time away: Morrisons Thamesmead, Morrisons Erith, Sainsbury's Dartford, Sainsbury's Eltham, and Sainsbury's Bugsby's Way.

MRH Sidley lists the Esso Glyne Gap Service Station as its [X] price marker, while Esso Glyne Gap price marks MRH Sidley.

The Parties' submissions and local geography

108. MRH noted that the market shares are higher when the catchment area centres on MRH Sidley, but submitted that this is primarily due to the current road layout meaning that sites in nearby Hastings fall outside of the 10-minute drive-time. The Bexhill–Hastings link road will be opened in the near future and, while it is not yet possible to calculate the drive-time along this road, it is expected that this will bring the Tesco Hastings Extra into the catchment area and other sites to the east of the isochrones, such as a Sainsbury's and Asda.
109. MRH submitted that, when the isochrone is centred on Esso Glyne Gap, the [X] has a [20–30]% market share. Therefore the opening of the link road will markedly reduce MRH Sidley's current market share.
110. While Esso Glyne Gap price marks MRH Sidley [X].
111. MRH submitted that, in the existing 10-minute drive-time isochrones, there would be a number of price setters remaining post-Merger. These remaining price setters include Localfuels, which has recently reopened a former Texaco site⁴³ within the catchment area of both sites. MRH submitted that the volume estimated for this Localfuels site is likely to be similar to when it was a Texaco site, particularly as the Localfuels site has a lower pricing proposition. Taking this information into account, MRH estimated that the combined market share of MRH Sidley and Esso Glyne Gap post-Merger would be reduced by [5–10]% with the isochrone centred on MRH Sidley and lower by [0–5]% when centred on Esso Glyne Gap.
112. MRH submitted that the diversion ratio estimated by the CMA is low, notwithstanding the high market shares, and highlights that the main customer flows to the sites are different. MRH Sidley is situated in a residential area, and customers are more likely to divert to a nearby alternative to top up, such as Jet [X] or Pace, rather than driving to the Esso Glyne Gap site, or would fill up while carrying out a supermarket shop. Those customers served by Esso Glyne Gap are mainly transient and could also be served by one of two Jet stations, located either side of Esso Glyne Gap on the A259 coastal road, or the new Localfuels site which is just off the A259.
113. MRH submitted that there are significant qualitative differences between the Parties' sites which impact on the customer demand. MRH Sidley is a much

⁴³ Closed in 2012.

smaller station compared with Esso Glyne Gap, and has a local and residential trade. MRH Sidley shares its site access with Sussex Used Cars and a local resident. Esso Glyne Gap, on the other hand, is located opposite a large retail park, with an M&S, a Tesco, a B&Q and a sports centre.

Third party comments

114. The CMA received mixed views from third party competitors. One party considered that MRH Sidley and Esso Glyne Gap were close competitors while another did not.

CMA assessment

115. While the market shares are relatively high (combined shares of supply are around [10–20] or [30–40]%, with an increment of around [5–10] or [20–30]%),⁴⁴ based on the evidence before it, the CMA does not believe that the overlap between MRH Sidley and Esso Glyne Gap gives rise to a realistic prospect of an SLC for the following reasons:

- The parties are not geographically each other's closest competitors.
- Post-Merger the reduction in price setters is from six to five when centred on MRH Sidley or from ten to nine when centred on Esso Glyne Gap.
- The Parties' sites are on different traffic flows, with MRH Sidley on a north–south flow and Esso Glyne Gap on an east–west flow.
- Diversion from Esso Glyne Gap to MRH Sidley calculated on the basis of MRH's elasticity [ϵ] is low ([5–10]%, GUPPI of [0–5]%), and likely to be overestimated [ϵ].
- There has been recent new entry in the area by Localfuels; and
- The new Bexhill–Hastings link road will bring other sites into the isochrone centred on the MRH site, including the Tesco Hastings Extra.

Retail supply of groceries

116. The CMA considered the effect of the merger in the retail supply of groceries both nationally and at a local level using 5-minute drive-time isochrones. No competition concerns arose nationally due to the Parties' tiny market shares,

⁴⁴ In the catchment area centred on MRH Sidley the combined market shares are [30–40]% (increment [10–20]%), while in the catchment area centred on Esso Glyne Gap the combined market shares are [10–20]% (increment [5–10]%).

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 13 identified overlap areas. 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.

Barriers to entry and expansion

117. 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.⁴⁵
118. The CMA did not receive any evidence to suggest that competitor entry or expansion will prevent an SLC from arising in either the MRH Girton Spar / Esso City or the MRH Brighton / Esso Patcham local areas as a result of the Merger. Therefore the CMA has no grounds for believing that entry or expansion will mitigate the effects of the Merger in these local areas.

Buyer power

119. Buyers of petrol and diesel in the MRH Girton Spar / Esso City and the MRH Brighton / Esso Patcham local areas are individuals and companies. The CMA considers it unlikely that these buyers will possess any countervailing buyer power to the extent that they could prevent an SLC from arising in this case. The CMA did not receive any submissions in relation to buyer power in any of the markets considered.

Third party views

120. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

121. On the basis of the evidence set out above, the CMA believes 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, specifically in the market for the retail supply of road fuel in local areas in Cambridge and Brighton, as a result

⁴⁵ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

of the lessening of competitive constraints between MRH Girton Spar Service Station and Esso City Service Station in Cambridge and between MRH Brighton Spar Service Station and Esso Patcham Service Station in Brighton.

122. The CMA therefore considers that it is under a duty to refer this Merger for more detailed scrutiny under section 33(1) of the Act. However, the duty to refer is not exercised pursuant to section 33(3)(b) whilst the CMA is considering whether to accept undertakings under section 73 of the Act in lieu of a reference. Pursuant to section 73A(1) of the Act, the Parties have until 3 December 2015 to offer an undertaking to the CMA that might be accepted by the CMA under section 73(2) of the Act. If the Parties do not offer an undertaking by this date, or if the Parties indicate before this date that they do not wish to offer an undertaking, or if pursuant to section 73A(2) of the Act the CMA decides by 10 December 2015 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it, then the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

Andrea Coscelli
Executive Director, Markets and Mergers
Competition and Markets Authority
26 November 2015

ⁱ MRH advised that Tranche 1 comprised 37 sites while tranche 2 comprised 41 sites.

ⁱⁱ MRH has since advised that the acquisition of Esso Field Road Service Station is now expected to complete on 7 January 2016.

ⁱⁱⁱ MRH clarified that references to elasticities information or data in the text should be read as estimates.

^{iv} It has been clarified that Esso does not rank its price markers (see paragraph 42 above).

^v MRH clarified that it refers to first ranked rather than main price marker.

^{vi} MRH also argued that Asda Charlton and Asda Isle of Dogs should be included.