

Anticipated acquisition by Dover Corporation of Wayne Fueling Systems Ltd

Decision on relevant merger situation and substantial lessening of competition

ME/6626/16

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.

CONTENTS

	<i>Page</i>
SUMMARY	1
Forecourt solutions, tank gauges and payment systems	3
ASSESSMENT	4
Parties.....	4
Transaction	4
Jurisdiction	4
Counterfactual.....	5
Background.....	5
Frame of reference	8
Competitive assessment.....	21
Barriers to entry and expansion in fuel dispensers in the UK.....	38
Countervailing buyer power	42
Third party views.....	44
Conclusion on substantial lessening of competition.....	45
Decision	45

SUMMARY

1. Dover Corporation (**Dover**) has agreed to acquire Wayne Fueling Systems Ltd (**Wayne**) (the **Merger**). Dover and Wayne are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply 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. Both Dover and Wayne are manufacturers of fuel dispensers used at petrol forecourts and associated payment and fuelling automation systems. Wayne is vertically integrated in the UK, it distributes the fuel dispensers to UK customers and provides a range of aftermarket services including maintenance. Dover has an exclusive relationship with the sales and service division of Tokheim Group S.A.S (**Tokheim SSD**) for the supply to Tokheim SSD and the distribution by Tokheim SSD of Dover fuel dispensers in the UK.
4. The CMA has assessed the competitive effects of the Merger in the following frames of reference:
 - (a) the supply and distribution of fuel dispensers and aftermarket services in the UK;
 - (b) the supply of forecourt solutions (forecourt controllers, point of sale (**POS**) systems, back office systems (**BOS**) and wetstock management software) in the UK;
 - (c) the supply of tank gauges in the UK;
 - (d) the supply of payment systems to petrol stations in the UK; and
 - (e) the supply of remote wetstock analytic services at a global level.
5. The CMA found that the Parties are two of the three major suppliers of fuel dispensers to customers in the UK. The evidence shows that the UK market for fuel dispensers is highly concentrated with the Parties facing strong competition from only one other supplier, Gilbarco. This is supported by tender data, third party views, and the Parties' internal documents.
6. The CMA found that suppliers other than Gilbarco (eg Petrotec) pose only a limited constraint on the Parties in the supply of fuel dispensers, having regard to: (i) their small shares of supply; (ii) third party comments on their limited ability to distribute and provide support on a large scale; and (iii) the internal documents of the Parties, which focus on each other and Gilbarco.
7. The CMA considers that barriers to entry and expansion in the supply of fuel dispensers in the UK are significant due to customer preferences and the need for scale to make entry and expansion profitable. In particular, it is

difficult for a manufacturer to establish its own distribution business in the UK, or to form a partnership with a suitable distributor in the UK, especially as distributors typically distribute products from only one manufacturer so at any point there is a limited number of available distributors in the UK. Although some competitors indicated an intention to grow their UK presence, the CMA does not consider that such expansion is likely to be sufficient on a timely basis to replace the competitive constraint that would be lost by the Merger.

8. The CMA therefore believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the supply of fuel dispensers in the UK as a result of horizontal unilateral effects.

Forecourt solutions, tank gauges and payment systems

9. The CMA did not find any competition concerns arising from the Merger in the supply of forecourt solutions, tank gauges and payment systems since the Parties have low combined shares of supply and face strong competition from other competitors and there were no concerns from third parties.

Remote wetstock analytic services

10. Remote wetstock analytic services monitor fuel inventories remotely through the collection and analysis of data and then alert stations to loss of fuel. The CMA has assessed the supply of remote wetstock analytic services within a distinct frame of reference, excluding self-supply, on the basis that it is served by a different, and smaller, set of competitors than other forecourt solutions. The CMA noted that remote wetstock analytics services can be provided globally from a single location and that sales do not require a strong local presence. Therefore, the CMA assessed the supply of these services within a global frame of reference.
11. The CMA found that the Merger does not give rise to a realistic prospect of an SLC in the supply of remote wetstock analytic services because the Parties are constrained by several other effective competitors and because the market is relatively nascent, with low barriers to expansion.

Conclusion

12. The CMA has found that, as a result of the Merger, there is a realistic prospect of an SLC in the supply of fuel dispensers in the UK. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 17 October 2016 to offer an undertaking to the CMA that might be accepted by the CMA. If no such

undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

13. Dover is a publicly-listed company on the New York Stock Exchange that manufactures and supplies industrial equipment and components, including fuel dispensing, automation and payment systems, worldwide. In Europe, Dover manufactures and distributes fuel dispensers mainly from its facility in Dundee, Scotland.
14. In 2015, Dover's annual global turnover was around £ [X], of which around £ [X] million was generated in the UK.
15. Wayne is a global provider of fuel dispensing, automation and payment systems and aftermarket services for retail and commercial fuel stations. Wayne's headquarters are in Austin, Texas, and it has manufacturing operations in the USA, Sweden, Brazil and China. In 2015, Wayne's global turnover was approximately £ [X] million, of which approximately £ [X] million was generated in the UK.

Transaction

16. The transaction is the proposed acquisition by Dover of Wayne from Riverstone Holdings LLC (a private equity firm) by way of an agreement and plan of merger dated 8 June 2016. The aggregate amount payable by Dover for Wayne will be \$780 million, subject to adjustments.
17. The Parties informed the CMA that the Merger was also the subject of review by competition authorities in the USA and Russia and that the Merger has been cleared in these jurisdictions.

Jurisdiction

18. As a result of the Merger, the enterprises of Dover and Wayne will cease to be distinct.
19. The Parties overlap in the supply of fuel dispensers and automation and payment systems. The Parties have a combined share of supply of fuel dispensers in the UK of over 50% (with an increment of more than 20%), either by value or volume (see Tables 1 and 2 below). The CMA therefore believes that the share of supply test in section 23 of the Act is met.

20. 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.
21. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 15 August 2016 and the statutory 40 working day deadline for a decision is therefore 10 October 2016. The Merger was considered at a Case Review Meeting.¹

Counterfactual

22. The Parties submitted that that the appropriate counterfactual was the prevailing conditions of competition. The CMA received no evidence to indicate that it should adopt a counterfactual other than the prevailing conditions of competition.
23. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Background

Overlap between the Parties

24. The Parties overlap in the supply of fuel dispensers and automation and payment systems in many countries, including the UK. The Parties are also vertically related, as Dover supplies components and parts that are used in the manufacture of fuel dispensers to Wayne and other original equipment manufacturers (**OEMs**).²
25. The Parties' overlaps in these products have resulted from their recent acquisitions:
 - (a) Dover acquired the fuel dispenser and automation and payment systems businesses of Tokheim Group S.A.S in January 2016. Tokheim Group S.A.S's downstream sales and services division, Tokheim SSD, which offers distribution and after-sales services, was not acquired by Dover and was retained by Tokheim Group S.A.S.

¹ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

² Based on data provided by the Parties, the CMA estimates that Dover accounts for less than 1% of the overall supply of components and parts for fuel dispensers in the European Economic Area (EEA). Given Dover's very small share of supply and the existence of both a wide range of competitors and alternative customers, the CMA does not believe that there is a realistic prospect of an SLC arising from the vertical effects of the Merger, and therefore has not considered this vertical overlap further.

- (b) In May 2016, Dover acquired Fairbanks Environmental Limited (**Fairbanks**). Fairbanks supplies wetstock management and on-site services, including remote wetstock analytics.
 - (c) In June 2016, Dover acquired the Tokheim ProGauge automated tank gauge system business.
 - (d) In early 2016, Wayne acquired Vianet Fuel Solutions Limited (**Vianet**). Vianet provides fuel management solutions and forecourt services, including remote wetstock analytics.
26. The supply chain for fuel dispensers (and payment automation systems) involves the following elements:
- (a) Manufacture: the Parties and their competitors tend to manufacture dispensers and payment/automation systems at centralised production facilities. For example, (among others) Wayne has production facilities in Malmo, Sweden for the supply of dispensers and systems to Europe, Russia and Central Asia, and Austin, Texas for supply to North and Central America. Competitors have stated that they have similar manufacturing models.
 - (b) Distribution: the Parties and their competitors tend to use national distributors for the sale of dispensers and systems. Distributors may be involved in the bidding for new contracts (potentially with the assistance of a manufacturer), import and storage of products. These national distributors may be subsidiaries of the manufacturing business (as in the case of, for example, Wayne and Petrotec in the UK) or closely related entities (for example, Tokheim SSD for Dover, see paragraph 29).
 - (c) Installation: distributors tend to install and service dispensers for an initial warranty period. The CMA has been told by third parties that this is typically 12 months.
 - (d) Aftermarket services (including maintenance): customers may use distributors or third party providers to provide ongoing repairs and maintenance for dispensers and payment/automation systems when the initial warranty period is over. Customers have a range of servicing needs, ranging from emergency call outs (in as little as four hours) to planned and preventative maintenance (typically conducted twice a year for dispensers).
27. The distribution, installation and aftermarket services are either provided by the manufacturers direct or through long term partnership with third party distributors in the UK.

28. Wayne is vertically integrated in the UK, manufacturing the products at its plants abroad and then distributing them to its UK customers and providing associated aftermarket services. Wayne bids directly for contracts and holds the relationship with its customers in the UK.
29. Dover manufactures its fuel dispensers at its plant in Dundee. Dover bids and has a direct relationship with some large customers (eg BP, Total), while Tokheim SSD bids to supply Dover's products to smaller customers (such as supermarkets) and manages these relationships. Dover has an exclusive supply and distribution agreement with Tokheim SSD to distribute the fuel dispensers it manufactures to customers in the UK, and to provide aftermarket services, under which:
 - (a) Dover agrees not to supply to another distributor in the UK and Tokheim SSD agrees not to distribute fuel dispensers in the UK on behalf of other manufacturers;³
 - (b) The input price charged by Dover is an important factor in Tokheim SSD's bids;⁴ and
 - (c) Dover can be involved in providing technical information and support to Tokheim SSD in the preparation of its bids, and Dover and Tokheim SSD may decide together specific input prices for highly competitive tenders.
30. Both Parties are vertically integrated with regard to the supply of installation and aftermarket services, as Wayne supplies these services directly to customers in the UK and Dover has a long term exclusive contract (with limited exceptions) with Tokheim SSD for the provision of aftermarket repair and maintenance services for Dover dispensers.⁵
31. Given the close degree of control over Tokheim SSD's price, bidding behaviour and aftermarket services, the CMA considers that, for the purposes of the below competition assessment, Dover effectively controls the sale of fuel dispensers through Tokheim SSD.
32. As Wayne is vertically integrated, and as Dover has a combination of a direct relationship with some customers and a long-term exclusive partnership with Tokheim SSD through which it effectively competes for other customers, the CMA considers that both Parties are present at the upstream and downstream level of the supply chain for fuel dispensers and payment and fuelling automation systems. The CMA notes that the other main supplier of fuel

³ The agreement between Dover and Tokheim SSD of January 2016 provides that [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

dispensers and payment and fuelling automation systems in the UK (Gilbarco) is also vertically integrated. Therefore, unless specified otherwise, references to the supply of fuel dispensers below include the supply of associated distribution services and aftermarket services.

Frame of reference

33. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. 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.⁶
34. The CMA's approach to market definition is to start with the narrowest plausible candidate frame of reference and see if this can be widened on the basis of demand- and supply-side substitutability factors.⁷

Product scope

Fuel dispensers

35. The CMA considered segmenting the supply of fuel dispensers by:
- (a) Customer type (ie retail and non-retail) and customer size; and
 - (b) Fuel type (ie petrol, diesel, compressed natural gas and liquefied natural gas, and non-fuel products such as AdBlue⁸).
36. As explained above, the Parties and other main suppliers through vertically integrated or long-term distribution arrangements are active throughout the supply chain. In addition, customers typically use the same supplier for the supply of fuel dispensers and associated services, for efficiency reasons (see also evidence set out in paragraphs 79 and 80).

⁶ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁷ [Merger Assessment Guidelines](#), paragraph 5.2.

⁸ Diesel exhaust fluid (commonly referred to as AdBlue) is an aqueous urea solution used as a consumable product in conjunction with a selective catalytic reduction system to reduce nitrogen oxide emissions from the exhaust of diesel vehicles. It does not replace the fuel, but is used in addition to diesel to reduce emissions from the engine. Unlike fuel, it is not injected into the engine but directly into a modified part of the vehicle's exhaust.

37. Therefore, the CMA has assessed the effects of the Merger in the supply of fuel dispensers.

Segmentation by customer type and size

38. The Parties identified the following categories of customers: (i) retail customers, including major oil companies, national oil companies, supermarkets and independent petrol station chains; and (ii) non-retail customers (eg fleet or car hire companies). However, the Parties submitted that segmentation by customer type is not appropriate given that all types of customer use fuel dispensers of the same design. The Parties also submitted that both they and their competitors provide dispensers (including the installation and servicing) to both retail and non-retail customers.⁹
39. Information submitted by the Parties and third parties indicated that the tender and negotiation processes followed by customers of different sizes and type can differ, in particular with regard to their duration and geographic scope. For example, some major oil companies appear to tender every three years on a global or regional basis and seem to have a preference for suppliers with significant scale, while most supermarkets appear to tender on a national basis. Independents and non-retail customers appear to negotiate their terms of supply on a case-by-case basis.
40. Moreover, competitors told the CMA that the needs of large customers (eg large supermarket chains) differ from those of small customers, for example in terms of the scale of the necessary distribution network required for the installation and servicing of dispensers.
41. Evidence gathered by the CMA also showed some differentiation in the fuel dispensers used by non-retail customers and retail customers, for example in the appearance of the equipment, though the CMA noted that these differences were small and there were no differences in the technical specification of the equipment used by the two groups of customers.
42. The CMA may aggregate markets based on supply-side factors if the following two conditions are satisfied:

⁹ The Parties also submitted that other national competition authorities have considered the supply of fuel dispensers as the appropriate frame of reference in previous merger decisions, although without concluding on the relevant product market. For instance, the German Federal Cartel office, in its review of Dover's acquisition of the Tokheim fuel dispenser business in 2015, assessed the merger by reference to the supply of fuel dispensers (see German FCO, ref. no. B5-128/15). The Spanish competition authority, in its review of Dresser Industries' acquisition of Nuovo Pignone in 2004, assessed the merger by reference to the supply of fuel dispensers, although it did not exclude the possibility of further segmentation (see N-04023).

- (a) the same production assets can be used to supply the different products and firms have the ability and incentive quickly (generally within a year) to shift capacity between the different products depending on demand; and
 - (b) the same firms compete to supply the different products and the conditions of competition between the firms are the same for each product.¹⁰
43. Competitors said that switching between serving different customer types is easy, cheap and can be accomplished within a few weeks. Competitors said that the same set of suppliers supplies dispensers and servicing to both retail and non-retail customers, and both large and small customers. This suggests that supply-side substitution in the supply of fuel dispensers between retail and non-retail customers, and between large and small customers, is possible.
44. All groups of customers confirmed that they are broadly served by the same competitor set, and the CMA found that, notwithstanding the differences in tender frequency between different customer types, the nature of competition is similar for both retail and non-retail customers, and for large and small customers. The CMA notes that, even where a large customer tenders on a wide (ie regional) geographic basis, suppliers can still often bid for just parts of the contract, in the territories they can serve, making competition more local and similar to the conditions of competition for smaller customers.
45. On the basis of this evidence, the CMA believes that it is not appropriate to segment the supply of fuel dispensers by customer type and size. However, the different requirements of separate customer groups, such as the larger scale distribution network required by larger customers for installation and servicing, are taken into account in the competition assessment.

Segmentation by fuel type

46. The Parties submitted that the main dispenser components are the same across dispensers for different types of fuel, with only minor modifications being necessary to deal with differences in pressure and temperature. The Parties submitted that most of their competitors also produce dispensers for all types of fuel.
47. The Parties further stated that AdBlue is dispensed in the same way as diesel. They said that it is sold from the same dispensing equipment and, in the UK,

¹⁰ [Merger Assessment Guidelines](#), 5.2.17.

is often available in combined multi-product dispensers which also offer diesel.

48. Third party responses indicated that there is significant supply-side substitutability between fuel dispensers for different types of fuel. Competitors said that switching supply between different fuel types is easy, cheap and can be accomplished within a few weeks. Competitors also said that the same set of suppliers supply fuel dispensers for all types of fuel, and that the nature of competition is similar across the fuel types. Tender data from customers also indicates that customers typically have the same supplier(s) of fuel dispensers for all types of fuel.
49. On the basis of this evidence, the CMA believes that it is not appropriate to segment the supply of fuel dispensers by different types of fuel.

Conclusion on product scope for fuel dispensers

50. For the reasons set out above, the CMA believes that it is appropriate to assess the competitive effects of the Merger in a frame of reference for the supply of fuel dispensers, including the supply of distribution and associated aftermarket services.

Payment and automation systems

51. 'Payment and automation systems' refers to the electronic hardware and software systems that are needed in a petrol station environment.
52. The CMA identified seven products within this category which could constitute separate product frames of reference:
 - (a) Forecourt controllers;¹¹
 - (b) POS systems;
 - (c) BOS;
 - (d) Wetstock management software¹²;
 - (e) Tank gauging products¹³;

¹¹ Forecourt controllers are an automation system that links different systems and devices including POS systems, dispensers, price signs and tank gauges.

¹² Wetstock management systems are an analytical software tool that monitors a fuel station's fuel inventories through the collection and analysis of either daily or real-time data.

¹³ Tank gauges are an instrument that measures the fuel level in storage tanks.

(f) Remote wetstock analytic services; and

(g) Payment systems.

Parties' submission

53. The Parties said that they do not distinguish between each of the different products that compose payment and automation systems as the products link together to comprise the suite of electronic systems required in a petrol station environment.
54. The Parties stated that:
- (a) Payment and automation systems are supplied both to commercial fleet customers and to retail customers, although there are some differences between the systems supplied to each type of customer (eg fleet customers do not need to process credit and debit card payments).
- (b) Payment and automation systems are used in all outlets that require payment processing and inventory management, including shops, restaurants, hotels, cinemas, etc. The Parties said that enabling general retail payment systems to serve petrol stations requires only minor software and linkage adjustments.

Forecourt controllers, POS systems, BOS and wetstock management software

55. The CMA noted that some internal documents from the Parties referred to forecourt controllers, POS systems, BOS and wetstock management software as a group for the purposes of a competitive comparison,¹⁴ though the CMA also noted that other documents identified the products separately.¹⁵
56. Both customers and competitors told the CMA that the same set of suppliers supply these four products (including the Parties, Petrotec, HTEC and Gilbarco), and that the nature of competition is similar across the products.
57. Third parties also indicated that switching supply between these product groups is relatively easy.
58. The CMA believes that this evidence indicates that there is a significant degree of supply-side substitution in the supply of forecourt controllers, POS systems, BOS and wetstock management software, which would suggest it is

¹⁴ Merger Notice, for instance, Annex 8E-II, p39.

¹⁵ Merger Notice, for instance, Annex 8E-11 p32.

appropriate to consider these products within one frame of reference. However, given that the CMA has not identified any plausible competition concerns arising from the Merger in relation to these products on any basis, the CMA has not had to conclude on the appropriate frame of reference for these products.

Tank gauging products

59. A tank gauge is used to measure the fuel level in a storage tank. This function is not performed by any other forecourt product or system.
60. On the basis of third party responses to its investigation, the CMA has identified a different set of competitors for tank gauges than for forecourt solutions or remote wetstock analytic services. Third parties indicated that tank gauges are supplied not only by fuel dispenser suppliers but also by suppliers of other petrol station infrastructure, such as fuel tanks. The competitor set for these products therefore includes fuel dispenser suppliers, such as Dover, Wayne and Gilbarco, and other suppliers, such as Franklin Fuelling. This indicates that the nature of competition is different for the supply of tank gauges.
61. In light of this evidence and on a cautious basis, the CMA has assessed the competitive effects of the Merger in a frame of reference for the supply of tank gauges. However, given that the CMA has not identified any plausible competition concerns arising from the Merger in relation to tank gauges, the CMA has not had to conclude on the appropriate frame of reference for these products.

Remote wetstock analytic services

62. The Parties submitted that remote wetstock analytic services are part of the wider suite of electronic systems used in a petrol station environment and, therefore, this product should be considered within a broader frame of reference for payment and automation systems.

- *Demand-side substitution*

63. Suppliers of remote wetstock analytic services monitor fuel inventories through the collection and analysis of either daily or real-time data, and alert petrol stations to loss of fuel, either sudden (eg in the event of theft) or gradual (eg where there may be a leak). This function is not provided by a forecourt inventory monitoring solution.

64. An internal document from Dover¹⁶ recognises that ‘advanced human-assisted analysis’, unlike other mechanisms: (i) identifies losses with extreme precision (eg 5 to 6 litre losses); (ii) pinpoints the source of loss; and (iii) applies big data analysis methods for site and network optimisation.
65. On the basis of the additional functionality provided by remote wetstock analytic services, and on a cautious basis, the CMA does not consider that the frame of reference can be widened on a demand-side basis.
- *Supply-side substitution*
66. The CMA identified a different set of competitors for the supply of ‘advanced human assisted analysis’ from those that supply less advanced wetstock management mechanisms as part of a forecourt solution.
67. Third party responses indicated a smaller set of competitors for remote wetstock analytic services than for forecourt solutions. In the UK, the competitor set for remote wetstock analytic services includes Dover (through Fairbanks), Wayne (through Vianet), Gilbarco, and Suresite (distributor for Australian analytics company Leighton O’Brien).
68. Some suppliers of other forecourt solutions said that developing a remote wetstock analytics service would be very expensive and would take three to five years, as they are complex products. These suppliers said that they would not start offering these products in response to a change of demand or price rise.
69. On the basis of this evidence, and on a cautious basis, the CMA believes that it is appropriate to assess the competitive effects of the Merger in a frame of reference for the supply of remote wetstock analytic services.

Payment systems

70. The Parties submitted that payment systems can be used in a range of different environments and not just petrol stations.
71. The Parties also said that, while some competitors only offer payment systems (eg Ingenico and Verifone), suppliers of payment systems may expand into other automation systems, or vice versa.
72. However, third party responses to the CMA’s investigation indicated that the frame of reference for payment systems should not include other automation

¹⁶ See Dover’s ‘Board of Directors Meeting – Deal Briefing’, 5 May 2016, pp6-7.

systems. Customers said that they usually tender for payment and other automation systems separately and that certain providers are only strong competitors in one or other of these products. Customers identified a broader set of competitors for payment systems than for other automation systems. Competitors confirmed that customers select various systems separately.

73. Third party evidence of supply-side side substitution between payment and automation systems was mixed. Some competitors submitted that switching supply between payment systems and automation systems could be done easily and within a short period, whilst others stated that switching supply is only possible if a supplier is already active in the supply of both payment and automation systems.
74. In light of this evidence and on a cautious basis, the CMA has assessed the competitive effects of the Merger in a frame of reference for the supply of payment systems for petrol stations. However, given that the CMA has not identified any plausible competition concerns arising from the Merger in relation to payment systems, the CMA has not had to conclude on the appropriate frame of reference for these products.

Conclusion on product scope

75. For the reasons set out above, the CMA has assessed the competitive effects of the Merger in frames of reference for the supply of:
- (a) fuel dispensers, including the supply of distribution and associated aftermarket services;
 - (b) forecourt solutions (forecourt controllers, POS systems, BOS and wetstock management software);
 - (c) tank gauges;
 - (d) remote wetstock analytic services; and
 - (e) payment systems to petrol stations.

Given that the CMA has not identified any plausible competition concerns arising from the Merger in relation to the supply of forecourt solutions, payment systems and tank gauges, the CMA has not had to conclude on the appropriate frame of reference for these products.

Geographic scope

Fuel dispensers

Parties' submission

76. The Parties submitted that the appropriate geographic frame of reference for the supply of fuel dispensers is at least EEA wide. The Parties noted that they produce fuel dispensers and systems from locations in Scotland (Dover) and Sweden (Wayne) for supply across the EEA and beyond, and that some customers tender for EEA-wide or even broader contracts.
77. The Parties submitted that it is not necessary for a manufacturer of fuel dispensers to have a local presence in order to compete successfully,¹⁷ as manufacturers may use third parties for the provision of installation and after-sales services. The Parties further stated that: (i) access to local installation and after-sales support is easy and does not prevent suppliers without a UK distribution presence from competing effectively; (ii) service and maintenance does not require specialist knowledge or any involvement of the OEM, given the commoditisation of dispensers due to customer requirements and regulatory standards; and (iii) it is not costly to establish an in-house distribution business.

CMA analysis

- *Demand-side substitution*

78. Customers told the CMA that the manufacturing location of a supplier is irrelevant as products can be shipped large distances at a low cost relative to the cost of the product. This is consistent with the Parties' submissions.
79. However, at the distribution level and for the supply of installation and after-sales services, most customers said that they require a local UK presence.¹⁸ Many customers emphasised the importance of a supplier's proven ability to support and maintain its own devices in the UK and that the absence of this

¹⁷ The Parties submitted that the Spanish national competition authority (see *Dresser Industries/ Nuovo Pignone* (2004) and *Electra Partners/Tokheim* (2005)) and the German Federal Cartel Office (*Dover/Tokheim* (2015)) in previous decisions related to the supply of fuel dispensers found that the markets for the sale of fuel dispensers should be defined as at least EEA-wide. However, the CMA notes that the most recent decisions of the Spanish national competition authority left open the definition of the geographic dimension of the market and that the authority noted customers' submissions concerning the importance of the geographic proximity of suppliers of fuel dispensers to their customers.

¹⁸ Customers said that they were willing to purchase from a distributor or from a manufacturer provided that their supplier had a local presence in order to provide installation and after-sales services. Some customers stated that they have used both manufacturers and distributors on different occasions.

proven ability can contribute to a supplier failing to win contracts. Many customers added that they prefer not to use third party distributors for installation and after-sales support, as this is more complex and does not guarantee high quality service (eg independent suppliers of after-sales services may not use OEM parts). Customers said that they therefore usually viewed suppliers without a strong, well-established distributor or a subsidiary in the UK as unable to meet their needs. Customers gave examples of occasions when this has been an important factor in their choice of supplier.

80. Furthermore, even though support and after-sales services might be provided by a third party services provider with no connection with the OEM, customers said that they tend to use the authorised OEM's support and after-sales services, at least for around two years, so that they do not lose the OEM's warranty.
81. National customers, such as supermarkets, told the CMA that they tend to issue national tenders and look for suppliers that can service and support their dispensers nationally. Customers that typically run global or regional tenders, such as major oil companies, said that, to ensure they achieve a strong local presence for installation and after-sales service, they will often split their tenders to attract local (ie usually national) suppliers.
82. The CMA noted that the Parties' internal documents also indicated that service quality and relationships are important purchasing criteria for customers, implying that a local presence is an important factor.¹⁹
83. On the basis of this evidence, it appears that demand-side substitution is not sufficient to widen the frame of reference beyond the UK.
 - *Supply-side substitution*
84. The main suppliers of fuel dispensers in the UK are vertically integrated, either through a direct local presence in the UK (Wayne and Gilbarco) or through a long-term contractual partnership with a distributor (Dover).
85. Competitors submitted that establishing a UK presence is not easy and would take 5 to 10 years. Competitors said that: i) entering the UK with a subsidiary would involve a considerable investment; and ii) entering the UK with a distributor was difficult, as high quality distributors are scarce.
86. Third parties told the CMA that distributors typically distribute products from only one manufacturer and, for this reason, there is a limited number of

¹⁹ Merger Notice, Annex 10-IE, p40.

available distributors in the UK. Third parties also said that some potential distributors are financially fragile or cannot handle the volume required by some customers.

87. The CMA noted that the main distributors in the UK (other than Tokheim SSD), which were mentioned by third parties (ie Eurotank and Premier) currently distribute, and have distributed in the past, small volumes of fuel dispensers in the UK. For this reason, the manufacturers (eg Petrotec and Scheidt & Bachmann (**S&B**)) which have sought to distribute in the UK through these distributors have achieved only small shares of supply over the last ten years.
88. The CMA also noted that the set of competitors varies across countries. For instance, a Dover internal document stated that: 'Tokheim and GVR [Gilbarco] are leaders in Europe overall but leadership position in specific countries varies based on strength of distribution network and aftermarket services, manufacturing presence and large customers/accounts'.²⁰ Another Dover internal document states that, whilst 'Tokheim [Dover] holds a significant secondary position in Europe', it is 'market share leader in UK'.²¹
89. At the Issues Meeting the Parties acknowledged that different fuel dispenser suppliers have a strong market presence in different countries, usually reflecting their country of origin (eg Petrotec in Portugal and Spain, and S&B in Germany).
90. On the basis of this evidence, it appears that supply-side substitution is not sufficient to widen the frame of reference beyond the UK.
 - *Conclusion on geographic scope*
91. In light of this evidence, and on a cautious basis, the CMA believes that it is appropriate to assess the competitive effects of the Merger in a frame of reference for the supply of fuel dispensers in the UK.

Forecourt solutions, tank gauges and payment systems to petrol stations

92. In relation to forecourt solutions and payment systems, some customers that responded to the CMA's investigation stated that it was less important for a

²⁰ See Dover's internal document regarding Wayne's acquisition entitled: 'Acquisition Approval Pack, SPA Signing Approval', 7 June 2016.

²¹ See Dover's internal document, prepared by PricewaterhouseCoopers, entitled: 'Executive Summary: Project Jarvis', 8 June 2016, p19.

supplier of these products to have a UK presence than for a supplier of fuel dispensers.

93. However, other customers submitted that a local presence was required (for sales support and after-sales services) due to the complex nature of these products. Some tender data supported this view. For example, [X] to establish a relationship with a distributor in the UK in order to win a contract for the supply of payment terminals.
94. With regard to the supply of tank gauges, some third parties that responded to the CMA's investigation submitted that a local presence was required to install and maintain tank gauges, including to conduct an annual inspection of this equipment.
95. Customers told the CMA that short resolution times in maintenance are important for the supply of forecourt solutions, payment systems and tank gauges.
96. On the supply side, third party evidence indicated that there are some barriers to establishing a local presence but also suggested that some of the challenges which applied to fuel dispensers (ie the investment required and the time to set up a local presence, or the limited number of suitable distributors) apply less in relation to the supply of forecourt solutions, tank gauges and payment systems.
97. On the basis of this evidence, and on a cautious basis, the CMA has assessed the competitive effects of the Merger in a frame of reference for the supply of forecourt solutions, tank gauges and payment systems in the UK. However, given that the CMA has not identified any competition concerns arising from the Merger in relation to these products, the CMA has not had to conclude on the appropriate geographic frame of reference for them.

Remote wetstock analytic services

98. The Parties submitted that the appropriate geographic frame of reference for the supply of remote wetstock analytic services is global on the basis that these services can be provided globally from any location. The Parties submitted that Fairbanks provides remote monitoring to around 15,000 retail petrol stations globally, primarily from its analytics centre in Lancashire. The Parties gave examples of competitors operating similarly on a global basis.²²

²² The Parties pointed to Gilbarco (the largest player globally) and Leighton O'Brien (a software company headquartered in Australia which has entered into a strategic partnership with Suresite in the UK). The Parties

99. From a demand-side perspective, customer views were mixed. Some customers stated that they would contract with non-UK suppliers, noting that the most important criterion in their choice of supplier is the accuracy of the analysis, and not where the monitoring occurs. However, others expressed a preference for suppliers with a UK presence, either because they operate in the same time zone or because they have some local expertise.
100. Suppliers of remote wetstock analytic services submitted that, while analytic services can be conducted at a global level, local support is important to manage the relationship with the customer and some local knowledge can assist in identifying risk factors for particular sites.
101. From a supply-side perspective, the evidence available to the CMA indicated that establishing a UK presence is relatively easy and requires only a small sales/marketing team. For example, Leighton O'Brien recently started supplying remote wetstock analytic services in the UK through a strategic partnership with Suresite, [REDACTED]. Other suppliers, such as [REDACTED], have also previously entered the UK to serve customers (although [REDACTED] has since exited).
102. Third parties stated that remote wetstock analytic services is a nascent and growing sector, especially in view of higher standards introduced by changes in the Industry Codes of Practice. In this context, other suppliers, such as [REDACTED] might expand into the supply of these services into the UK.
103. The CMA noted that the Parties' internal documents considering Dover's acquisition of Fairbanks²³ and Wayne's acquisition of Vianet²⁴ identified significant global growth opportunities for these companies.
104. On the basis of this evidence, and in particular the limited requirements for a local presence that can be readily established, the CMA believes that it is appropriate to assess the competitive effects of the Merger in a frame of reference for the supply of remote wetstock analytic services at a global level.

Conclusion on frame of reference

105. For the reasons set out above, the CMA has assessed the competitive effects of the Merger in the following frames of reference:

also mentioned other suppliers of remote wetstock analytic services who are active globally but who do not currently have a UK presence (Orpak, SAP and Warren Rogers).

²³ See Dover's 'Board of Directors Meeting – Deal Briefing', 5 May 2016, pp7-8.

²⁴ See Wayne's 'Board of Directors Review: Business Development opportunity – FMS', p6.

- (a) the supply of fuel dispensers in the UK;
 - (b) the supply of forecourt solutions (forecourt controllers, POS systems, BOS and wetstock management software) in the UK;
 - (c) the supply of tank gauges in the UK;
 - (d) the supply of payment systems to petrol stations in the UK; and
 - (e) the supply of remote wetstock analytic services at a global level.
106. However, the CMA did not have to conclude on the product and geographic frame of reference for the supply of forecourt solutions, tank gauges and payment systems.

Competitive assessment

Theories of harm

107. The CMA's investigation has focused on the horizontal unilateral effects of the Merger in each of the frames of reference mentioned above.
108. 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 to degrade quality on its own and without needing to coordinate with its rivals.²⁵ Horizontal unilateral effects are more likely when the merger parties are close competitors, and when alternative competitive constraints are weak.

Horizontal unilateral effects in the supply of fuel dispensers in the UK

Shares of supply

109. The Parties estimated the total value of the supply of fuel dispensers in the UK to be around £22.5 million per year.²⁶ⁱ On this basis, the Parties estimated that they had a combined share of supply of [30-40]% in 2015. The CMA noted that the Parties' estimate of the average size of the total market is unlikely to be a reliable estimate in any given year, since the Parties also said that the number of dispensers actually replaced in any year varies.

²⁵ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

²⁶ The Parties' estimate of the overall size of the relevant frame of reference is based on: i) the number of retail petrol stations in the UK (8,490); ii) the average number of fuel dispensers at each petrol station (4.1); iii) the average replacement cycle per dispenser (3.5); and iv) the average unit price for a replacement dispenser (£1,200).

110. The CMA estimated the shares of supply of the Parties and of their competitors in the supply of fuel dispensers in the UK on three different bases: (i) value of sales in 2015; (ii) volume of sales over the last five years; (iii) installed base in 2015. To estimate these shares, the CMA requested data on the volume and value of sales and installed base from all suppliers known to be active in the UK (although some smaller suppliers did not respond to this request). Tables 1 to 3 show the results.
111. Table 1 shows the shares of supply of the Parties and third parties, by value, in 2015.

Table 1: Shares of supply of fuel dispensers in the UK, by value, in 2015

Supplier	Share,% (excluding 'others')
Dover	[30-40]
Wayne	[20-30]
Combined	[50-60]
Gilbarco	[30-40]
Pumptronics	[5-10]
S&B	[5-10]
Petrotec	[0-5]
Total	100

Source: Revenue data from the Parties and third parties.

112. The CMA estimated that the Parties have a combined share of supply of fuel dispensers in the UK of around [50-60]%. This estimate excludes some small suppliers which did not provide data to the CMA, but the CMA has found little evidence to suggest that these suppliers supply any material volume of sales in the UK. In particular, the CMA's investigation found that the 'other' suppliers of fuel dispensers identified by the Parties (eg Tatsuno, Mepsan and Censtar) are either not present in the UK or sell only a very small number of fuel dispensers in the UK. Moreover, the CMA noted that its estimate is based on data from the six largest suppliers, the smallest of which has only a [0-5]% share, so any other suppliers would have shares smaller than this.
113. The shares of supply in Table 1 are based on the value of sales in the UK recorded by manufacturers, both directly and through distributors. The CMA noted that this is not an equal comparison as distributors will then add a mark-up on to the product when they sell it to customers. Therefore, this methodology may understate the share of supply for those suppliers that sell primarily or entirely through distributors (eg Dover and Petrotec).ⁱⁱ For this reason, the CMA has also estimated the shares of supply of the Parties by volume.

114. Table 2 sets out the shares of supply of the Parties and third parties, by volume, in the last five years.

Table 2: Shares of supply of fuel dispensers in the UK, by volume, 2011-2015

Supplier	2011 (%)	2012 (%)	2013 (%)	2014 (%)	2015 (%)
Dover	[20-30]	[30-40]	[20-30]	[20-30]	[40-50]
Wayne	[20-30]	[20-30]	[30-40]	[30-40]	[30-40]
<i>Combined</i>	[50-60]	[50-60]	[50-60]	[50-60]	[70-80]
Gilbarco	[20-30]	[20-30]	[40-50]	[30-40]	[10-20]
Petrotec	[10-20]	[10-20]	[5-10]	[5-10]	[0-5]
S&B	[0-5]	[0-5]	[0-5]	[0-5]	[5-10]
Total	100				

Source: Volume of sales data from the Parties and third parties.ⁱⁱⁱ

115. The table shows that the combined share of the Parties has changed each year but has been consistently above 50% for the past five years. The Parties' average combined share of supply in the last five years is [50-60]%. In addition, in the most recent year, 2015, the combined share of supply is [70-80]% on this basis. Again, this does not include suppliers that have not supplied information to the CMA but, for the reasons explained above, the CMA has seen no evidence of material supply by any other supplier. Gilbarco is the only competitor to the Parties to have consistently a substantial share.
116. While shares of supply by volume will tend to reflect suppliers' competitive strength during the period over which they are calculated (in this case, the years 2011 to 2015), they may also be misleading if, for example, suppliers may be simply replacing old dispensers supplied by the same manufacturer. Therefore the CMA has also estimated shares of supply based on installed base over the last five years. These shares are likely to reflect suppliers' cumulative historical performance in the market over a longer period of time.
117. Table 3 sets out the shares of supply of the Parties and third parties, by installed base, over the last five years.

Table 3: Shares of supply of fuel dispensers in the UK, by installed base, 2011 to 2015

Supplier	2011 (%)	2012 (%)	2013 (%)	2014 (%)	2015 (%)
Dover	[10-20]	[20-30]	[20-30]	[20-30]	[20-30]
Wayne	[20-30]	[20-30]	[20-30]	[20-30]	[20-30]
<i>Combined</i>	[40-50]	[40-50]	[40-50]	[40-50]	[40-50]
Gilbarco	[50-60]	[50-60]	[50-60]	[40-50]	[40-50]
Petrotec	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
S&B	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Total	100	100	100	100	100

Source: Data from the Parties and third parties, with CMA estimates.^{iv}

118. The table shows that the Parties have had a large and growing share of the installed base, while Gilbarco, which has been historically strong, has been declining over time. This is consistent with the volume data shown in Table 2. Petrotec's and S&B's share of the installed base has remained consistently small. Again, the CMA has not included any other smaller suppliers in this table because it has seen no evidence that they have a material installed base.
119. Furthermore, Tables 1, 2 and 3 refer to the value and volume of direct and indirect sales of fuel dispenser. The values of aftermarket sales are not included. Evidence from customers indicate that some competitors listed in the table have a weaker offer of distribution, installation and aftermarket services, and some customers do not consider alternatives to the Parties to both the supply of fuel dispenser and associated distribution and aftermarket services. Therefore, the shares of supply in the tables may underestimate the share of supply of the Parties across the supply chain for fuel dispensers.
120. The CMA considers that these stable shares of supply above 50% for five years on a number of measures raise prima facie competition concerns and assessed the closeness of competition between the parties.²⁷

Closeness of competition

121. The CMA has considered whether the Merger will lead to a loss of competition for those customers that consider Wayne's sales and Dover's sales (direct or intermediated) to be alternatives.²⁸

Parties' submissions

122. The Parties submitted that they are not each other's closest competitors, as the principal competitive constraint faced by Dover is from Gilbarco.

Third party submissions

123. All customers and all competitors who responded to the CMA's investigation stated that the Parties are close competitors.

²⁷ [Merger Assessment Guidelines](#), paragraph 5.3.5.

²⁸ As explained above, Dover's distributor, Tokheim SSD, cannot sell products from other manufacturers if those products could be supplied by Dover (ie for those products which Dover manufactures, it is an exclusive distributor of Dover). If Dover were to increase its input prices to its distributor post-Merger, or similarly to fail to give it a discount needed to win a tender, Tokheim SSD may be forced to raise its prices. The CMA therefore considers that Dover's intermediated sales compete with Wayne's direct sales.

124. Many third Parties submitted that the Parties and Gilbarco are the only credible suppliers of fuel dispensers and associated servicing (either directly or through a closely related distributor) in the UK.
125. When asked by the CMA to rate suppliers of fuel dispensers as strong, medium or weak, the Parties were the only suppliers who were rated as strong by all customers, compared to competitors such as Gilbarco who were generally rated as strong and other competitors who were generally considered medium or weak competitors. Customers noted that both of the Parties are strong in terms of their quality, price, service (such as installation and repairs), scale and geographic coverage. Most customers that responded to the CMA's investigation said that these factors, in particular quality and price, were important in their choice of supplier of fuel dispensers. One large customer stated that it knew of no other suppliers of fuel dispensers in the UK.
126. Some customers stated that they required suppliers to be able to supply them on a large scale or across multiple countries. These customers considered the Parties to be two of only three viable suppliers of fuel dispensers that could satisfy their requirements (the third supplier being Gilbarco).
127. Many customers expressed concerns that, after the Merger, Gilbarco would be their only viable alternative supplier of fuel dispensers and servicing in the UK.
128. Some customers said that they currently have, or would prefer to have, more than one supplier of fuel dispensers. These customers said that, after the Merger, they would be forced to choose the merged entity and Gilbarco as their suppliers of fuel dispensers in the UK.
129. The CMA believes that this evidence indicates that the Parties are close, and possibly each other's closest, competitors in the supply of fuel dispensers in the UK.

Internal documents

130. The Parties' internal documents indicate that they consider each other to be close competitors. For example, in a Wayne internal document, a diagram of competitive positioning showed Wayne and Tokheim (now Dover) to be close in terms of the level of technology in the fuel dispensers they supply.²⁹ In

²⁹ Merger Notice, Annex 9J, p37.

another internal document, Wayne and Tokheim (now Dover) were listed as two of 'three major players'.³⁰

131. Overall, the Parties' internal documents indicate that the competitors against which each of the Parties most regularly monitors its position is the other party and Gilbarco.³¹
132. Dover's internal documents also indicate that other competitors (eg Tatsuno and Censtar) are not strong competitors in Europe. For example, Dover identifies as weaknesses that Tatsuno has a 'Japan-centric management' and that Censtar has not been successful in exporting outside China.³²
133. The CMA believes that the Parties' internal documents indicate that they are close competitors in the supply of fuel dispensers in the UK.

Tender data

134. The Parties submitted information about recent tenders in which they had participated. In the majority of instances, the Parties were not able to identify the firms against which they were competing, and therefore the CMA has not been able to place significant weight on this evidence.
135. However, the CMA also collected information from the Parties' customers about their recent tenders.³³ This evidence indicated that:
 - (a) in the majority of tenders, the Parties competed against each other and there was only one other competitor present;
 - (b) in the majority of tenders in which only one of the Parties tendered, there was only one other competitor present; and
 - (c) in a quarter of the occasions where both the Parties tendered and rankings were provided, the Parties came first and second. The Parties were always both ranked in the top three.
136. This evidence suggests that the Parties are regarded as credible alternative bidders and, therefore, are likely to cause each other and Gilbarco to bid more keenly than they would in the absence of one of them.³⁴ A reduction in the

³⁰ Merger Notice, Annex 8E-II, p27.

³¹ Merger Notice, Annex 8E-II, p27, p39, Annex 10-I(b), Annex 10-I (e), p32.

³² Merger Notice, Annex 9L, p13. See also, Annex 8E-I, p20.

³³ The CMA collected tender data for the period from 2008-2016, although most of the data provided refers to tenders that occurred after 2013.

³⁴ It is sometimes argued that a bidding process is sufficient to induce even just two bidders to set prices at a competitive level. However, there are several features of 'ideal markets' (eg 'smooth trade-off' between prices and profits, 'lumpy' contracts and high contestability) that are important for fierce competition to be expected to emerge between just two competitors. The CMA currently considers that at least some of these factors are not

number of credible bidders from three to two might therefore lead to a price increase. A third party noted that, currently, the price of fuel dispensers is higher in the USA, where only Wayne and Gilbarco are major suppliers and Dover is not present, than in the UK, where there are currently three major suppliers of fuel dispensers.

137. The CMA believes that the evidence on tenders indicates that the Parties are close competitors in the supply of fuel dispensers in the UK.

Conclusion on closeness of competition

138. On the basis of all this evidence, the CMA believes the Parties to be close competitors in the supply of fuel dispensers in the UK, and possibly each other's closest competitor.

Competitive constraints

Gilbarco

139. Customers and competitors agreed that Gilbarco was the strongest competitor to the Parties.
140. Whilst Gilbarco has the highest share of supply of fuel dispensers by installed base in the UK, both its annual volume of sales and its installed base have decreased [§]. This indicates that, recently, and compared with its competitors, Gilbarco has been competing less strongly for tenders than it has in the past.
141. Some customers stated that they require their suppliers to be able to supply them on a large scale, or across multiple countries, and that, for this reason, Gilbarco is the only alternative to the Parties.
142. Wayne's internal documents refer to Gilbarco as one of the 'three major players' in the industry,³⁵ and show it as a close competitor of the Parties in terms of its technology.³⁶
143. The tender data provided by customers also showed that Gilbarco was a close competitor to the Parties. No other competitor appeared to be a close competitor to the Parties.

present in the supply of fuel dispensers. For instance, customers can and do split contracts, they maintain multiple suppliers' dispensers in their installed base and, as discussed below, barriers to entry in the supply of dispensers appear to be high.

³⁵ Merger Notice, Annex 8E-II, p24.

³⁶ Merger Notice, Annex 9J, p37.

144. On the basis of this evidence and the evidence below, the CMA believes Gilbarco to be the only close competitor to the Parties in the supply of fuel dispensers in the UK.

Petrotec

145. Petrotec is a Portuguese manufacturer of fuel dispensers. It started operating in the UK in 2005, initially through a distributor (first Broomsgrove and then Premier), but has recently established its own distribution business in the UK.
146. In 2005, Petrotec won a significant contract with Tesco. Since then, it has continued to win some volume from Tesco, [REDACTED].
147. Petrotec has also tendered to supply fuel dispensers to [REDACTED], but [REDACTED]. On the basis of the tender evidence available to the CMA (as provided by customers) while the either or both of Parties have competed in [REDACTED] tenders, Petrotec has competed in only [REDACTED] tenders relating to UK supply (however, [REDACTED] of these were global tenders which had a UK component and it is not certain whether Petrotec was considered for the UK element). Tender evidence provided by the Parties suggests they have competed for [REDACTED] contracts for the supply of dispensers in the last three years. [REDACTED]. This demonstrates that Petrotec has not competed with the Parties for many UK contracts.
148. Third party views also suggested that Petrotec only competes with the Parties to a limited extent. One customer told the CMA that Petrotec has not been successful in expanding rapidly in the UK because it has not had reliable distribution and service partners. Some customers said that Petrotec might not have the ability to serve consistently a large estate (both for installation and ongoing servicing) and, for this reason, it would be a significant risk to award Petrotec a significant contract. The CMA notes that the maintenance of the fuel dispensers supplied by Petrotec [REDACTED].
149. After 10 years of operating in the UK, Petrotec still has a low share of supply of fuel dispensers in the UK [REDACTED].
150. On the basis of this evidence, the CMA believes Petrotec currently to be a weak competitor to the Parties in the supply of fuel dispensers in the UK.

S&B

151. S&B is a German manufacturer of fuel dispensers, with a small presence in the UK. In the last five years, S&B has never had a share higher than 5% in the supply of fuel dispensers in the UK.

152. S&B supplies fuel dispensers in the UK both directly and through its distributors (Eurotank and Premier). Although S&B is a significant supplier of fuel dispensers in some other countries (eg Germany and Eastern European countries), a third party told the CMA that S&B is downsizing its presence in the UK with regard to the supply of fuel dispensers in order to focus on other products.
153. [REDACTED].
154. Third parties told the CMA that: (i) S&B's strategic focus is the supply of forecourt solutions and payment systems, not the supply of fuel dispensers; (ii) the UK is not a priority country for S&B with regard to the supply of fuel dispensers; and (iii) S&B is not taking action to strengthen its market position in fuel dispensers in the UK – in particular, some said that S&B is not price competitive for fuel dispensers in the UK. [REDACTED]. Even the third parties that identified S&B as a supplier of fuel dispensers said that S&B was not an effective competitor to the Parties.
155. On the basis of this evidence, the CMA believes S&B to impose a negligible constraint on the Parties.

Other competitors

156. Some customers and competitors mentioned Tatsuno, Mepsan, Censtar, Bennett and Pumpronic (owned by Premier) as suppliers of fuel dispensers. However, most customers and competitors that responded to the CMA's investigation did not consider these suppliers to be effective competitors to the Parties for the supply of fuel dispensers in the UK, due to their small presence in, or absence from, the UK.
157. The CMA's investigation indicated that:
- (a) Tatsuno [REDACTED] is imposing a negligible constraint on the Parties (see paragraphs 222 to 226 below for a discussion of barriers to entry and expansion);
 - (b) Mepsan has a different geographic focus, being a significant supplier in Turkey, with no presence in the UK;
 - (c) Censtar appears to be focused on serving Asian customers and does not appear to be present in the UK;
 - (d) Bennett's website suggests that it is not active in the UK, serving only the United States, Latin America and the Middle East; and

(e) Pumptronics is a relatively small supplier in the UK. [X].

158. On the basis of this evidence, the CMA believes these other suppliers impose a negligible constraint on the Parties.

Conclusion on horizontal unilateral effects in the supply of fuel dispensers

159. The supply of fuel dispensers in the UK is highly concentrated, with three large competitors (the Parties and Gilbarco). Third party evidence indicates that these three suppliers are close competitors (particularly in relation to their ability to install and service dispensers); tender evidence indicates that in most cases the Parties compete against each other and with Gilbarco; and internal documents confirm that these three suppliers are each other's closest competitors.

160. The CMA believes that suppliers other than Gilbarco (eg Petrotec) pose only a limited constraint on the Parties in the supply of fuel dispensers, having regard to: (i) their small shares of supply; (ii) third party comments on their lack of credibility, in particular in relation to their ability to distribute and provide customer support on a large scale; and (iii) the internal documents of the Parties, which focus on each other and Gilbarco.

161. On the basis of this evidence, the CMA believes that the Parties impose a significant competitive constraint on each other, with Gilbarco being the only remaining significant competitor post-Merger.

162. As a result of the elimination of the competitive constraint that is exerted by the Parties on each other, the Merger may lead to a price increase or a degradation of the Parties' fuel dispenser offerings in the UK.

163. Accordingly, the CMA believes that the Merger raises significant competition concerns in relation to the supply of fuel dispensers in the UK.

Horizontal unilateral effects in the supply of forecourt solutions in the UK

Shares of supply

164. The CMA estimated the shares of supply of the Parties and their competitors, by value, of forecourt solutions in the UK. These estimates were based on a combination of revenue information provided by the Parties and third parties, as well as estimated revenues of third parties where the CMA was not able to gather information. Table 4 presents the results.

Table 4: Estimated share of supply of forecourt solutions in the UK, 2015

Supplier	Share%³⁷
Dover	[5-10]
Wayne	[0-5]
<i>Combined</i>	<i>[10-20]</i>
Oracle	[30-40]
Wincor-Nixdorf	[20-30]
NCR	[5-10]
Ingenico	[5-10]
GVR	[5-10]
S&B	[0-5]
Total	100

Source: Revenue data and estimates from the Parties and third parties.

165. The Parties have a combined share of around [10-20]% in the supply of forecourt solutions in the UK, with an increment of [0-5]%. The main supplier of forecourt solutions in the UK is Oracle. The CMA notes that these estimates might overstate the Parties' shares to the extent that they omit other suppliers which were not identified by the Parties.
166. The CMA notes that Wayne has an 'alliance' with Wincor-Nixdorf by which Wayne and Wincor-Nixdorf are preferred suppliers to one another. For example, Wayne acts as a distributor for certain Wincor-Nixdorf products (eg its NAMOS POS product)³⁸ and Wincor-Nixdorf acts as a distributor for certain Wayne products (eg its Fusion forecourt controller product). Wayne said that it uses Wincor-Nixdorf as its preferred supplier mainly where it and Wincor-Nixdorf are selling complementary products. The partnership between Wayne and Wincor-Nixdorf does not prevent them from sourcing products from other suppliers. Therefore, for the purposes of its competitive assessment, the CMA has not aggregated Wayne and Wincor-Nixdorf products.
167. The Parties' low combined share of supply of forecourt solutions in the UK indicates that there is no realistic prospect of competitive concerns arising from the Merger in this frame of reference.

³⁷ The CMA has excluded 'others' as a sensitivity should no other competitors exist.

³⁸ [NAMOS POS product](#).

Closeness of competition

Tender information

168. The CMA received data from four large customers relating to their last tenders for forecourt solutions. This data showed that the Parties had not bid against each other in any of these tenders. Moreover, it showed that there is a wide range of potential suppliers participating in tenders for forecourt solutions, including Invenco, Wincor-Nixdorf, NCR, Gilbarco and S&B.

Third party views

169. Third parties that responded to the CMA's investigation stated that the Parties compete with each other in the supply of forecourt solutions. However, third parties also submitted that the range of suppliers of forecourt solutions is broader than the range of suppliers of fuel dispensers, and includes competitors that supply products for general retail environments, eg Oracle.
170. When asked to rate suppliers of forecourt solutions, customers indicated that there is a wide range of suppliers that they would consider credible and suitable to meet their needs.
171. The CMA's investigation also showed that the majority of suppliers mentioned by third parties offer all or most forecourt solutions required by petrol stations, including products that are specific to petrol stations, such as forecourt controller systems.
172. No third party expressed any concerns about the competitive effects of the Merger in relation to the supply of forecourt solutions in the UK.

Internal documents

173. Internal documents of Wayne indicate that it considers NCR, Verifone and Gilbarco to be its closest competitors in the supply of forecourt solutions in the UK.³⁹ In one document, Wayne indicated that these suppliers have an offering similar to its own in terms of technology and geographic coverage.

CMA conclusion on horizontal unilateral effects in the supply of forecourt solutions in the UK

174. Given the Parties' low combined share of supply and third party evidence indicating that the Parties, after the Merger, will remain constrained by a

³⁹ Merger Notice, Annex 8E-II, p31.

number of other suppliers of forecourt solutions, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of forecourt solutions in the UK.

Horizontal unilateral effects in the supply of tank gauges in the UK

Shares of supply

175. The CMA estimated the shares of supply of the Parties and their competitors, by value, of tank gauges in the UK. These estimates were based on a combination of revenue information provided by the Parties and third parties, as well as estimated revenues of third parties where the CMA was not able to gather information. Table 5 presents the results.

Table 5: Estimated shares of supply of tank gauges in the UK, 2015

Supplier	Share (%)
Wayne	[10-20]
Dover	[0-5]
<i>Combined</i>	<i>[10-20]</i>
Gilbarco	[80-90]
Franklin	[0-5]
Vectec	[0-5]
Total	100

Source: Revenue data from the Parties and third parties.

176. The Parties' combined share of supply of tank gauges in the UK is low, at approximately [10-20]%, with a very small increment ([0-5]%). This estimate may overestimate the share of supply of the Parties as it does not include revenue information for competitors that were identified by the CMA or those that did not respond to the CMA's information request. The main supplier of tank gauges in the UK is Gilbarco.

177. The Parties' low combined share of supply of tank gauges in the UK indicates that there is no realistic prospect of competitive concerns arising from the Merger in this frame of reference.

Third party submissions

178. Whilst some customers that responded to the CMA's investigation stated this is a concentrated market, with a narrow range of suppliers, they also indicated that there are alternative suppliers of tank gauges in the UK.

179. Competitors that responded to the CMA's investigation stated that the supply of tank gauges is 'fairly competitive', mentioning various manufacturers of tank gauges, such as Franklin, Vectec, Merridale and Hectronic.
180. No third party expressed any concerns about the competitive effects of the Merger in relation to the supply of tank gauges in the UK.

Internal documents

181. Dover's internal documents indicate that the Parties are constrained by other suppliers of tank gauges in the UK, including competitors other than Gilbarco. For example, an internal document states that Franklin offers low cost tank gauges and has recently improved its brand and product recognition.⁴⁰

CMA conclusion on horizontal unilateral effects in the supply of tank gauges in the UK

182. Given the low combined shares of supply of the Parties and third party evidence indicating that the Parties, after the Merger, will remain constrained by a number of other suppliers of tank gauges, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of tank gauges in the UK.

Horizontal unilateral effects in the supply of payment systems to petrol stations in the UK

Shares of supply

183. The CMA has estimated the shares of supply of the Parties and their competitors, by value, of payment systems to petrol stations in the UK. These estimates were based on a combination of revenue information provided by the Parties and third parties, as well as estimated revenues of third parties where the CMA was not able to gather information. Table 6 presents the results.

⁴⁰ Merger Notice, Annex 8E-1, p36.

Table 6: Estimated share of supply of payment systems to petrol stations in the UK, 2015

Supplier	Share, %
Wayne	[5-10]
Dover	[0-5]
Combined	[5-10]
Petrotec	[40-50]
Verifone	[10-20]
Wincor-Nixdorf	[10-20]
Ingenico	[10-20]
S&B	[0-5]
Gilbarco	[0-5]
Total	100

Source: Revenue data and estimates from the Parties and third parties.

184. The Parties' combined share of supply of payment systems to petrol stations in the UK is low, at approximately [5-10]%, with an increment of [0-5]%. The main suppliers of payment systems to petrol stations in the UK are Petrotec, Verifone and Wincor-Nixdorf. The CMA notes that these estimates might overstate the Parties' shares to the extent that they omit other suppliers which were not identified by, or who did not respond to, the CMA.
185. The Parties' low combined share of supply of payment systems to petrol stations in the UK indicates that there is no realistic prospect of competitive concerns arising from the Merger in this frame of reference.

Closeness of competition and competitive constraints

186. The CMA received tender data from three customers relating to one occasion each where they had tendered for payment systems in the UK since 2011. The Parties each competed once only, and this was in the same tender process. They were not present in the other two tenders. Moreover, a wide range of other suppliers competed in these tenders, including Gilbarco, Verifone, Ingenico, Wincor-Nixdorf and Lafon.
187. All customers that responded to the CMA's investigation said that the Parties are close competitors, but mentioned a number of alternative suppliers of payment systems to petrol stations in the UK. Customers said that there are many suppliers of these products, including some large providers which also supply retailers in other markets. Customers identified ten suppliers of payment systems to petrol stations, and submitted that all of them are either strong or average competitors: HTEC, Wincor-Nixdorf, Dover, Wayne, Gilbarco, Verifone, NCR, Ingenico, S&B and Invenco.

188. No third party expressed any concerns about the competitive effects of the Merger in relation to the supply of payment systems to petrol stations in the UK.
189. Internal documents provided by Wayne also indicate that Gilbarco, Verifone, Dover, Invenco and Lafon are competitors in payment systems to petrol stations in the UK.⁴¹

Conclusion on horizontal effects in the supply of payment systems

190. The CMA believes the Parties to be competitors in the supply of payment systems to petrol stations in the UK. However, given the low combined shares of supply of the Parties and internal and third party evidence indicating that the Parties, after the Merger, will remain constrained by a number of other suppliers, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of payment systems to petrol stations in the UK.

Horizontal unilateral effects in the supply of remote wetstock analytic services at a global level

Shares of supply

191. The Parties provided the CMA with estimated shares of supply, by value, of remote wetstock analytic services worldwide. Table 7 presents this data.

Table 7: Estimated share of supply of remote wetstock analytic services globally, in 2015

Supplier	Share of supply (%)
Dover	[10-20]
Wayne	[10-20]
Combined	[20-30]
Gilbarco	[40-50]
Warren Rogers	[20-30]
Leighton O'Brien	[5-10]
Clearstone	[0-5]
EMS	[0-5]
Total	100

Source: Fairbanks' estimates based on sites and Parties' actual numbers (excludes self-supply).⁴²

⁴¹ Merger Notice, Annex 8E-II, p30

⁴² The Parties noted that the vast majority (around 70% to 90%) of wetstock analytic services is carried out in-house and that the alternative of in-house provision represents as great a constraint on suppliers of these

192. The Parties' combined share of supply of remote wetstock analytic services worldwide is moderately low, at approximately [20-30]%, with an increment of [10-20]%. The main alternative suppliers of these services are Gilbarco, Warren Rogers and Leighton O'Brien. The CMA notes that these estimates might overstate the Parties' shares to the extent that they omit other suppliers which did not respond to the CMA.
193. The Parties' moderately low combined share of supply of remote wetstock analytic services worldwide suggests that there is no realistic prospect of competitive concerns arising from the Merger in this frame of reference. However, the supply of wetstock analytic services is a nascent and expanding market, in which past shares of supply might not accurately reflect current or future competition.

Closeness of competition and competitive constraints

194. Several customers and competitors told the CMA that the Parties are close competitors in the supply of remote wetstock analytic services. In particular, some third parties submitted that the Parties are two of the three main suppliers of remote wetstock analytic services in the UK, with Gilbarco as the alternative. Some competitors also stated that the Parties' remote wetstock analytic services are particularly sophisticated when compared to competing products, and that Gilbarco is the only alternative supplier whose products are as technologically sophisticated as the Parties' products.
195. However, both third party evidence and internal documents also indicate that the Parties are currently constrained by other suppliers of remote wetstock analytic services in the UK, including Gilbarco and Suresite (Leighton O'Brien).
196. Moreover, other internal documents submitted by the Parties indicate that the Parties are constrained in the UK by overseas suppliers of remote wetstock analytic services, including Warren Rogers, as suppliers operate on a global basis with little local presence.

Conclusion on horizontal unilateral effects in the supply of remote wetstock analytic services

197. The supply of remote wetstock analytic services is a relatively new market with low barriers to geographic expansion. While the Parties are close

services as other competitors. However, the Parties were unable to identify examples of customers switching back to self-supply once they had begun outsourcing this service, and evidence from customers which had outsourced this service suggested that they would not consider switching supply back in-house on the basis that this would require both investment and expertise.

competitors in the UK, the evidence indicates that there are many alternative suppliers, some of which are already operating in the UK and others which could begin to operate in the UK easily. The CMA believes that these alternative suppliers of remote wetstock analytic services would sufficiently constrain the Parties in the supply of this product after the Merger.

198. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of remote wetstock analytic services at a global level.

Conclusion on horizontal unilateral effects

199. The CMA believes that the Merger raises significant competition concerns in relation to the supply of fuel dispensers in the UK. For all the other overlap products, the CMA found that the Merger does not give rise to a realistic prospect of an SLC.

Barriers to entry and expansion in fuel dispensers in the UK

200. Entry, or the expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases might 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.⁴³
201. The CMA considered the barriers to entry and expansion in relation to the supply of fuel dispensers in the UK.

Parties' submissions

202. The Parties submitted that barriers to expansion are low and that existing suppliers of fuel dispensers in other territories can expand into the UK with minimal investment. The Parties gave examples of firms such as Tatsuno, a Japanese manufacturer, which has started production in the Czech Republic for the supply of fuel dispensers into the European market; and Petrotec, which has won contracts for the supply of fuel dispensers to UK-based customers.

⁴³ In terms of timeliness, the CMA's guidelines indicate that it may consider entry or expansion within less than two years as timely, but this is assessed on a case-by-case basis, depending on the characteristics and dynamics of the market, as well as on the specific capabilities of potential entrants. [Merger Assessment Guidelines](#), paragraph 5.8.11.

CMA analysis

203. The CMA notes that the location of manufacturing facilities does not constitute a barrier to entry or expansion, since fuel dispensers are transported internationally by all suppliers. However, the CMA has considered a number of factors, which, taken together, it believes may constitute significant barriers to entry and expansion in the supply of fuel dispensers in the UK. In particular, the principal barriers are the need for:

- (a) A local distribution presence; and
- (b) Reputation and scale.

A local distribution presence

204. Most customers that responded to the CMA's investigation said that they require their supplier of fuel dispensers to have a local UK presence, either directly or through a long-term partnership with a reliable distributor. Several customers stated that some suppliers, even if they are well-known manufacturers of fuel dispensers with a strong presence in other countries, cannot meet their needs in the UK because they do not have access to a reliable local distribution network in the UK.
205. The Parties said that there were several distributors which could partner with a new entrant (eg Eurotank, Premier, Cameron Forecourt and TLM). Third parties did not consider Eurotank to be a reliable distribution partner.
206. However, suppliers told the CMA that establishing a presence in the UK is difficult. One competitor said that potential distributors already have exclusive contracts or long-term partnerships with other suppliers of fuel dispensers, which limited their ability to work with new entrants.⁴⁴ One distributor estimated that finding and building a presence with a suitable new distributor would take a manufacturer which does not currently supply in the UK at least two years. [REDACTED] it took three to five years to establish its position in the UK, but even then it had been very difficult.
207. [REDACTED].
208. One competitor added that customers often have a preference to contract with manufacturers directly as distributors may not be able to deliver adequate service levels.

⁴⁴ [REDACTED].

209. On the basis of this evidence, the CMA believes that establishing a credible local distribution presence can be a significant barrier to entry or expansion for suppliers of fuel dispensers in the UK.

Reputation and scale

210. Customers stated that brand and reputation were important factors when choosing their fuel dispenser supplier because safety and reliability of supply were key factors. This was supported by the Parties' internal documents.
211. The Parties submitted that potential entrants to the UK are large, internationally-established manufacturers that are able to partner with well-established and credible UK distribution businesses. The Parties said that reputation and scale should not be a barrier to entry or expansion for these firms.
212. However, the evidence available to the CMA indicates that, other than the Parties and Gilbarco, there are no suppliers with a strong presence throughout Europe. All other competing suppliers (eg Petrotec and S&B) have, at best, a significant presence in and near their home countries.
213. Furthermore, those international suppliers of fuel dispensers which have competed to sell fuel dispensers in the UK without having a significant local presence have made few sales. For example, customers noted that large manufacturers such as Petrotec and S&B have remained operating at a small scale in the UK over many years and are unable to build up a reputation due to lack of scale in their distribution presence.
214. Some customers said that using a supplier with a small or unproven distribution presence in the UK would be a significant risk compared with using an established large supplier. One customer said that it would prefer to accept a significant price rise rather than switch to a smaller supplier, and another customer stated that, while it would be willing to use a smaller supplier, it would only start with a small trial, and that it would take several years before it would consider the supplier to be credible on a larger scale.
215. On the basis of this evidence, the CMA believes that the reputation and scale of both the fuel dispenser manufacturer and the distributor it uses are a significant barrier to entry or expansion for a supplier of fuel dispensers in the UK.

Competitors who could potentially expand in the UK

216. The CMA contacted suppliers of fuel dispensers that could potentially enter the UK, or expand their supply in the UK, to investigate whether they were likely to do so in a timely way and with sufficient scale to constrain the Parties.

Petrotec

217. [REDACTED].

218. [REDACTED].

219. [REDACTED]. [REDACTED] national coverage demanded by larger customers would require a big investment, in a market that is characterised by short term contracts. [REDACTED] it is difficult to find certified and reliable subcontractors. [REDACTED].

220. This evidence indicates that Petrotec's expansion in the UK and, in particular, the establishment of its own distribution business, is still at an initial phase and is anticipated to take a few years. [REDACTED].

221. Accordingly, the CMA believes that the expansion of Petrotec is not likely to be sufficient and timely to constrain the Parties after the Merger to prevent the realistic prospect of an SLC in the supply of fuel dispensers in the UK.

Tatsuno

222. Some third parties told the CMA that Tatsuno might try to expand its very limited presence in the UK.

223. However, a third party stated that, for Tatsuno to 'accelerate' the process of entry, it would need to find a new distributor, which it believed would take Tatsuno at least two years. [REDACTED] noted that finding a distributor was difficult, because there are few distributors present in the UK which are reliable and have experience, and those that are present are normally tied up under long term agreements with other manufacturers.

224. The CMA was not provided with any evidence on how Tatsuno would establish its reputation or build its scale in the UK.

225. Moreover, evidence collected by the CMA indicates that Tatsuno [REDACTED]. [REDACTED].

226. Accordingly, the CMA believes that the expansion of Tatsuno is not likely to be sufficient and timely to constrain the Parties after the Merger to prevent the realistic prospect of an SLC in the supply of fuel dispensers in the UK.

Others

227. Third parties were sceptical about the prospect of entry or expansion of any other supplier of fuel dispensers in the UK, including S&B and Mepsan, and the CMA has seen no evidence to indicate that any other supplier is likely to enter the UK or to expand their supply of fuel dispensers in the UK on a timely and sufficient basis to constrain the Parties post-Merger.

Conclusion on barriers to entry

228. For the reasons set out above, the CMA believes that barriers to entry and expansion in the supply of fuel dispensers in the UK are significant, particularly given the difficulty in establishing reliable distribution on a scale necessary to serve large national customers and with a reliable reputation. Although some competitors have expressed an intention to grow their UK presence, the CMA does not believe that such expansion is likely to be delivered on a timely basis to provide a sufficient constraint on the Parties to prevent an SLC arising from the Merger in the supply of fuel dispensers in the UK.

Countervailing buyer power

229. The CMA has assessed whether the Parties' customers might be able to use their negotiating strength to limit the ability of the merged firm to raise prices or to degrade the quality of their offering.⁴⁵
230. The CMA considered whether there are any customers of fuel dispensers that the Parties are reliant on to such an extent that the loss of that customer would be detrimental to the Parties' business such that those customers might be able to exert buyer power over the Parties by switching, or threatening to switch, to other suppliers of fuel dispensers.

Parties' submission

231. The Parties submitted that they face a countervailing constraint on the supply of fuel dispensers in the UK from buyer power. The Parties stated that:
- (a) It is easy for customers of fuel dispensers to switch to other suppliers of fuel dispensers, particularly given the commoditised nature of fuel dispensers, and because it is easy for suppliers with a presence in the UK to expand;

⁴⁵ [Merger Assessment Guidelines](#), from paragraph 5.9.1.

- (b) Fuel dispenser customers are in a position to sponsor the entry and expansion of a new supplier of fuel dispensers, as large customers are well placed to guarantee purchases on a scale sufficient to incentivise investments by smaller suppliers to expand or to establish local distribution activities;
- (c) Where a manufacturer of fuel dispensers gains an improved foothold in the UK via sponsored expansion this will benefit not only the firm(s) exercising buyer power, but all customers, for whom the supplier in question becomes a more attractive and credible supply option.

232. The Parties also said that the significant decrease in fuel dispenser prices in the UK over the last 11 years is indicative of customers' countervailing buyer power.

CMA analysis

233. Information submitted by the Parties on their revenue generated by their top customers in the UK and in the EEA show that the Parties' customer bases are diverse and that neither of the Parties is reliant on any particularly large customers. For instance, none of Wayne's customers of fuel dispensers in the UK represent more than [X]% of Wayne's UK revenue. One of Dover's customers of fuel dispensers in the UK (Shell) represented [X]% of its UK revenue in 2015, but the Parties also told the CMA that customer demand changes significantly from year to year, which would suggest that another customer might be more significant in another year. The customer base data also shows that both of the Parties supply a large number of smaller customers.

234. Furthermore, the CMA notes that, even where a market is characterised by large customers, possibly even larger than the suppliers, it does not necessarily follow that there will be countervailing buyer power.⁴⁶ Rather, buyer power is unlikely to protect customers when they lack alternative suppliers.⁴⁷ Given that the CMA has found that most large customers cannot credibly threaten to switch to other suppliers of fuel dispensers (other than Gilbarco), particularly considering the barriers to entry and expansion that the CMA has identified (see paragraphs 203 to 228), even large customers of the Parties may not be able to exert much buyer power in their negotiations.

235. The CMA notes that there are no past examples of large customers sponsoring the entry or expansion of a manufacturer of fuel dispensers, or

⁴⁶ [Merger Assessment Guidelines](#), paragraph 5.9.4

⁴⁷ [Merger Assessment Guidelines](#), paragraph 5.9.3.

facilitating access to a distribution network. [X]. This does not appear to have made [X] a realistic supplier for other large customers, and therefore does not suggest that any one customer taking on a new supplier will necessarily benefit other customers.

236. The CMA has not been provided with any compelling evidence that the Parties' customers have exercised any countervailing buyer power in their negotiations with the Parties pre-Merger, and the CMA notes that exerting buyer power post-Merger would be even harder as customers would have fewer alternatives. The CMA has also not seen evidence that any countervailing buyer power might be relied upon to protect all customers given that contracts are negotiated individually rather than through standard pricing.

Conclusion on countervailing buyer power

237. Based on the evidence set out above, the CMA does not believe that the buyer power of the Parties' customers would be sufficient to mitigate a realistic prospect of an SLC arising as a result of the Merger in the supply of fuel dispensers, including the supply of distribution and associated aftermarket services, in the UK.

Third party views

238. The CMA contacted customers and competitors of the Parties and received replies from i) all major competitors of the Parties in the distribution of fuel dispensers in the UK; ii) most major oil companies (eg BP, Shell) and supermarket chains; and iii) some responses from independent retailers and smaller customers.
239. The majority of competitors and customers that responded to the CMA's investigation expressed concerns with the competitive effects of the Merger in the supply of fuel dispensers in the UK. A competitor and a customer also expressed concerns regarding the effects of the Merger in the supply of remote wetstock analytic services. Third parties did not express concerns with regard to the effects of the Merger on the supply of any other products.
240. Some third parties expressed concerns that the Parties may seek to limit the supply of spare parts for fuel dispensers or limit the ability of third party contractors to conduct repair work on Dover/Wayne dispensers. However, the CMA considers that this concern was not merger-specific, as pre-Merger the Parties are already able to limit the supply of spare parts or the ability of third parties to conduct repair work on Dover/Wayne dispensers.

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

Conclusion on substantial lessening of competition

242. Based on 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 as a result of horizontal unilateral effects in relation to the supply of fuel dispensers, including the supply of distribution and associated aftermarket services, in the UK.

Decision

243. Consequently, 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 UK.

244. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised⁴⁸ whilst the CMA is considering whether to accept undertakings⁴⁹ instead of making such a reference. The Parties have until 17 October 2016⁵⁰ to offer an undertaking to the CMA.⁵¹ The CMA will refer the Merger for a phase 2 investigation⁵² 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 the CMA decides⁵³ by 24 October 2016 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Sheldon Mills
Senior Director, Mergers
Competition and Markets Authority
10 October 2016

ⁱ The CMA notes that the Parties' estimate of £22.5m for the UK fuel dispenser market included retail customers only; the Parties estimated the wider market to be £24.5m.

ⁱⁱ Paragraph 113 should read: "The shares of supply in Table 1 are based on the value of sales in the UK recorded by manufacturers, both directly and through distributors. The CMA noted that this is not

⁴⁸ Section 33(3)(b) of the Act.

⁴⁹ Section 73 of the Act.

⁵⁰ Section 73A(1) of the Act.

⁵¹ Section 73(2) of the Act.

⁵² Sections 33(1) and 34ZA(2) of the Act.

⁵³ Section 73A(2) of the Act.

an equal comparison as distributors will then add a mark-up on to the product when they sell it to customers. Therefore, this methodology may understate the share of supply for those suppliers that sell primarily or entirely through distributors (eg Petrotec).”

iii The CMA notes the Parties’ market shares in Table 2 were based on the volumes of fuel dispensers they supplied in the UK to retail customers only.

iv The CMA notes the Parties’ market shares in Table 3 were based on their installed base of fuel dispensers in the UK for retail customers only.