

# Completed acquisition by Flogas Consumer Limited of the LPG supply business of Countrywide Farmers plc

## Decision on relevant merger situation and substantial lessening of competition

ME/6735/18

Please note that [X] indicates figures or text which have been deleted or replaced in ranges for reasons of commercial confidentiality.

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## SUMMARY

1. On 28 February 2018, DCC plc (**DCC**) acquired through Flogas Consumer Limited (**Flogas**) the Liquefied Petroleum Gas (**LPG**) supply business owned by Countrywide Farmers plc (**Countrywide**) (the **Merger**).<sup>1</sup> Flogas and Countrywide 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' enterprises have ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the supply of bulk LPG to domestic and commercial customers, and the supply of LPG cylinders, in Great Britain. LPG is used by domestic and commercial customers for various purposes such as cooking, heating, air conditioning, outdoor activities, industrial processes and as fuel for vehicles.
4. The CMA assessed the merger using separate frames of reference for the supply of bulk LPG and LPG cylinders, mainly because of different delivery methods, significant price differences, segmentation in internal documents and difference in the competitive set. The CMA also found that segmentation is appropriate in the frame of reference for bulk LPG to domestic and small commercial customers, large commercial customers and those who buy fuel for vehicles (known as autogas customers).
5. Flogas is a national LPG supplier, serving customers across the whole of Great Britain. Countrywide, on the other hand, is a regional supplier, mainly operating in the Central and South West parts of England, and in Wales. The CMA has focused its assessment on the geographic areas where the Parties' activities overlap. These have been identified with reference to the location of the Parties' LPG depots and catchment areas around each depot.
6. The CMA has assessed the impact of the Merger in the supply of bulk LPG and LPG cylinders to domestic and small commercial customers in the areas where the Parties' activities overlap. It also assessed the impact in the supply of bulk LPG to large commercial customers and to autogas customers in Great Britain, although it was not necessary to conclude in relation to either of these as no competition concerns arise on any plausible basis.

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<sup>1</sup> Countrywide Farmers plc was placed into administration on 7 March 2018.

*Bulk LPG to domestic and small commercial customers*

7. The CMA has found that Countrywide did not impose a particularly strong constraint upon Flogas pre-Merger, and that Calor and Avanti, in combination with many independent suppliers, will continue to impose sufficient competitive constraints upon the Parties.
8. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of bulk LPG to domestic and small commercial customers in the areas where the Parties overlap.

*LPG cylinders*

9. The CMA has found that Countrywide did not impose a particularly strong constraint upon Flogas. In contrast, Calor and a number of independents operating LPG cylinder businesses impose a strong constraint. While Avanti currently has a more limited presence in the supply of cylinders in certain areas where the Parties' catchment areas overlap, it is a strong competitor in the vicinity of its cylinder depots and its expansion plans mean that it is likely to be a stronger competitive constraint in the near future. Finally, and consistent with Avanti's expansion plans there do not seem to be significant barriers to further entry and expansion by local or regional independents.
10. Therefore, taking all evidence in the round, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of LPG cylinders in the areas where the Parties overlap.

*Bulk LPG to large commercial customers and autogas customers*

11. The CMA has found that there is very limited direct competition between the Parties in the supply of bulk LPG to large commercial customers and autogas customers, and therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.
12. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

13. DCC is an international LPG, oil, healthcare and technology company. Its subsidiary Flogas supplies bulk LPG, cylinders and autogas to domestic and

commercial customers in Great Britain. DCC's worldwide turnover was approximately £12.3 billion for the financial year ended 31 March 2017.

14. Countrywide also supplies bulk LPG, cylinders and autogas to domestic and commercial customers in Great Britain. Its UK turnover in the financial year ended 26 November 2017 was approximately £16.5 million.

## Transaction

15. Flogas and Countrywide entered into a Sale and Purchase Agreement on 9 January 2018 and completed the Merger on 28 February 2018.

## Procedure

16. The CMA's mergers intelligence function decided this Merger warranted an investigation and sent an Enquiry Letter to DCC on 9 February 2018.<sup>2</sup>
17. The Merger was considered at a Case Review Meeting.<sup>3</sup>

## Jurisdiction

18. As a result of the Merger, the enterprises of DCC and Countrywide have ceased to be distinct.
19. The Parties overlap in the supply of bulk LPG to domestic and small commercial customers in Great Britain, with a combined share of supply of [20-30]% and an increment [0-5]%.<sup>4</sup> The CMA therefore believes that the share of supply test in section 23 of the Act is met.
20. The Merger completed on 28 February 2018 and the CMA was informed about it on 1 March 2018. The four-month deadline for a decision under section 24 of the Act is 10 July 2018, following extension under section 25(2) of the Act.
21. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

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<sup>2</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

<sup>3</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

<sup>4</sup> DCC submitted these estimated shares of supply based on volumes in 2017 and indicated that the share of supply test was met on this basis.

22. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 1 May 2018 and the statutory 40 working day deadline for a decision is 9 July 2018, following an extension.

## Counterfactual

23. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>5</sup>
24. In this case, there is no evidence supporting a different counterfactual, and DCC and third parties have not put forward arguments in this respect. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual. However, the CMA notes that a relatively small proportion of Countrywide's sales of cylinders were through Countrywide Farmers retail stores, and the recent closure of these stores could change Countrywide's position with regard to cylinders. This is taken into account in the competitive assessment.

## Background

25. The Parties overlap in the supply of bulk LPG and the supply of cylinders in Great Britain.<sup>6</sup> LPG is used by domestic and commercial customers for various purposes such as cooking, heating, air conditioning and outdoor activities. It is also used in agricultural and industrial processes by commercial customers. A relatively small amount of LPG is used as a fuel for vehicles (ie autogas).
26. Both Parties operate LPG depots from where they deliver bulk LPG and cylinders. Bulk LPG is delivered using trucks that refill the LPG tanks at the customer premises. Bulk LPG customers include domestic customers, small and large commercial customers, and autogas customers. LPG cylinders can

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<sup>5</sup> *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

<sup>6</sup> DCC also supplies LPG to customers in Northern Ireland through its LPG business in Ireland. However, Countrywide is not active in Northern Ireland, and therefore there is no overlap in Northern Ireland.

be delivered directly to end-users or sold to dealers and stockists which act as retail intermediaries between the Parties and end-users, often under exclusive supply contracts. The Parties told the CMA that key to the success of an LPG business is making deliveries efficiently. This limits the distance from a depot to where a customer can be economically supplied. Prices for both bulk LPG and cylinders are typically individually negotiated between the Parties and the customers or retail intermediaries.

27. Calor is the largest firm in the LPG sector, followed by Flogas and Avanti. These firms operate on a national basis, but their strength varies to some extent across the country. There are also a number of regional independents, including Countrywide, which is a large regional supplier mainly focussed on the South West and Central part of England and on Wales, using 10 depots.<sup>7</sup>
28. Previously, the Office of Fair Trading (**OFT**) and Competition Commission (**CC**) investigated the supply of LPG in the following cases:
  - (a) Merger investigation into Flogas's acquisition of the LPG business of BP (**Flogas/BP**);<sup>8</sup>
  - (b) OFT market study into off-grid energy (**OFT market study**);<sup>9</sup>
  - (c) CC market investigation into the supply of bulk LPG for domestic use (**CC market investigation**).<sup>10</sup>
29. The CC market investigation resulted in the CC imposing the Domestic Bulk LPG Market Investigation Order and the Domestic Bulk LPG Market Investigation (Metered Estates) Order (the **CC orders**) which aimed to make it easier for customers to switch suppliers as they were facing a number of difficulties that prevented, restricted or distorted competition for the supply of LPG.<sup>11</sup>

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<sup>7</sup> Countrywide depots are located in Burton, Dartington, Defford, Indian Queens, Melksham, Presteigne, St Austell, Stanlow, Weston and Wrexham.

<sup>8</sup> *Completed acquisition by Flogas UK Limited of BP's LPG business in Great Britain (trading as MacGas)*, OFT decision, 11 January 2013.

<sup>9</sup> *Off-grid energy, an OFT market study*, OFT report of October 2011 (OFT1380).

<sup>10</sup> *Market investigation into supply of bulk liquefied petroleum gas for domestic use*, Competition Commission report of 29 June 2006.

<sup>11</sup> For example, the CC orders require that exclusivity periods are limited to 2 years; the tank transfer process must, subject to exceptions, be at no cost to customers; the period of notice to end supply agreements must not exceed 42 days; and suppliers must provide a telephone point where customers can be quoted prices. Also, suppliers must annually provide the CMA with customer switching data.

## Frame of reference

30. 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 merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>12</sup>

### **Product scope**

31. In its submissions to the CMA, DCC analysed the Merger by reference to the framework for analysis used by the OFT in *Flogas/BP*,<sup>13</sup> which included separate frames of reference for:
- (a) the supply of bulk LPG to domestic and small commercial customers;
  - (b) the supply of bulk LPG to large commercial customers;
  - (c) the supply of bulk LPG to autogas customers; and
  - (d) the supply of LPG cylinders.

### *Segmentation between bulk LPG and cylinders*

32. LPG is supplied either in bulk and delivered by tanker to an external storage tank on the customer's premises, or in cylinders (also known as bottles) of various sizes. Bulk LPG is generally supplied to customers who are not connected to mains gas, or to commercial customers who have a specific need for LPG in certain industrial processes.
33. In *Flogas/BP*, the OFT considered that the supply of bulk LPG and cylinder LPG should be considered to constitute separate markets, mainly because switching between the two forms of supply is unlikely, given differences in terms of price, space requirements and convenience of delivery and handling, and because there was little evidence of switching.
34. In this case, DCC submitted that LPG supplied in cylinders is identical to LPG supplied in bulk and serves broadly the same uses. However, DCC also noted

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<sup>12</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>13</sup> *Completed acquisition by Flogas UK Limited of BP's LPG business in Great Britain (trading as MacGas)*, OFT decision, 11 January 2013.

that there are certain uses, such as outdoor recreational activities, for which cylinders are more appropriate than a large tank and, more generally, that cylinders are typically only used if bulk LPG is not a viable option (eg when access to a customer's site is difficult for large delivery).

35. DCC also submitted that the delivery methods differ between bulk and cylinder LPG. Flogas's bulk deliveries begin from refineries, bulk depots or third-party locations using 7 to 12 tonne tankers, while cylinders can be either sold directly to end-users from filling plants, delivered to dealers using 5 to 10 tonne trailers, or delivered to stockists using 1.5 to 7 tonne vehicles.
36. DCC also told the CMA that cylinder LPG is generally [redacted]. Data submitted by DCC on average prices per tonne confirms a [redacted] price difference ([redacted]) between bulk and cylinder LPG.<sup>14</sup>
37. The CMA found in both Parties' management accounts and business plans that they distinguish between bulk and cylinders when discussing their financial performance.<sup>15</sup>
38. The available evidence also indicates that the competitive set varies for bulk LPG and cylinder LPG. For example, some competitors only offer bulk LPG (eg J Gas and Callow Gas), while others only offer cylinder LPG (eg Warrior Gas and Andy's Gas).
39. Accordingly, in light of the evidence described above, which is consistent with the conclusions reached by the OFT in *Flogas/BP*, the CMA believes that the supply of bulk LPG and the supply of cylinders should be considered within separate frames of reference.

#### *Segmentation by customer type*

40. The CMA has considered whether the demand-side requirements and conditions for competition differ for, in particular, domestic customers and small commercial customers, large commercial customers, and autogas customers.

#### *Domestic and small/large commercial bulk LPG customers*

41. In *Flogas/BP*, the OFT analysed the merger by reference to separate customer segments for domestic and small commercial customers, and large commercial customers. This was primarily because several large customers

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<sup>14</sup> DCC response to RFI 1, Annex 1.1 and DCC response to RFI 2, Annex 14.1.

<sup>15</sup> DCC response to Enquiry Letter, Annex 14.1 and Annex 16.1.



stated that they preferred to buy from large, national suppliers, instead of regional suppliers (eg in order to single-source), and because there were significant differences in pricing and margins.

42. In this case, DCC submitted that the actual product supplied, the means of supply and the competitive dynamics are largely identical for domestic and commercial customers. DCC also submitted that LPG fulfils many of the same functions for domestic and commercial customers.
43. With respect to the size of commercial customers, DCC submitted that whether customers can be characterised as 'large' or 'small' depends on their volume requirements rather than the purpose of use or delivery method.<sup>16</sup> DCC proposed that [redacted] tonnes per annum might be a suitable cut-off between large and small customers.
44. DCC told the CMA that for large commercial customers, [redacted]. [redacted] and its average price per tonne for bulk LPG is [redacted] lower ([redacted]) compared to that for small commercial customers.<sup>17</sup>
45. Some competitors told the CMA that they distinguish between large and small commercial customers in the ordinary course of business. These competitors said that they:
  - (a) Define larger commercial customers with a national focus as "national accounts" and these large customers typically have multiple sites within a range of geographic locations (multi-regional or often national);
  - (b) Distinguish between two main segments for business customers: "commercial" and "industrial", with industrial customers being characterised by higher volumes of supply.
46. Accordingly, in light of the evidence described above, which is consistent with the conclusions reached by the OFT in *Flogas/BP*, the CMA believes that the supply of bulk LPG to domestic and small commercial customers, on the one hand, and large commercial customers on the other should be considered within separate frames of reference.<sup>18</sup>

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<sup>16</sup> Flogas's largest customers are [redacted], whereas its smaller customers tend to be various types of businesses ([redacted]) and domestic customers.

<sup>17</sup> The CMA notes that Countrywide has had only [redacted] large commercial customers and therefore has focused on Flogas's practices for these purposes.

<sup>18</sup> The CMA notes that there is unlikely to be a clear-cut volume-based threshold to distinguish between large and small domestic customers but has, for the purposes of this case, applied the [redacted] tonnes per annum threshold used in practice by DCC for this purpose. The precise threshold would not affect the CMA's assessment in this case.

### *Autogas customers*

47. In *Flogas/BP*, the OFT analysed the merger by reference to a separate customer segment for autogas customers. This was primarily because the OFT found that autogas customers (mainly forecourts) require significantly more frequent and larger deliveries than either commercial or domestic customers. Also, buyers of autogas, unlike other commercial customers, frequently own their own storage equipment, which would give them a greater ability to switch between suppliers.
48. In this case (as well as in *Flogas/BP*), DCC submitted that segmentation of bulk LPG by end use (ie for autogas) is an artificial exercise because autogas is the same product as bulk LPG and supplied in tankers in the same way as domestic and commercial bulk deliveries.
49. The CMA found that both Flogas and Countrywide management accounts and business plans categorise bulk LPG supplied for use as autogas separately from other forms of bulk LPG.<sup>19</sup> The CMA notes that this suggests the Parties consider autogas to be a separate component of their bulk LPG business.
50. Therefore, in line with the conclusions reached by the OFT in *Flogas/BP*, the CMA believes that the supply of bulk LPG to autogas customers should be considered within a separate frame of reference.

### *Conclusion on product scope*

51. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
  - (a) the supply of bulk LPG to domestic and small commercial customers;
  - (b) the supply of bulk LPG to large commercial customers;
  - (c) the supply of bulk LPG to autogas customers; and
  - (d) the supply of LPG cylinders.

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<sup>19</sup> See, for example, Annex 14.1, 16.1, 19.1 to DCC response to the Enquiry Letter, and Annex 5.1. to DCC's response to RFI 1.

## Geographic scope

### Background

52. The purpose of defining the relevant geographic scope is to identify the most significant competitive alternatives available to the customers of the merger firms and the most relevant constraints on behaviour of the merger firms.<sup>20</sup> This requires the CMA to locate the geographic area(s) where both Parties actually compete for customers. Relevant geographic markets may be based on the location of suppliers or customers.
53. Bulk LPG is typically supplied out of depots from which suppliers deliver to customers. On this basis, the CMA considers that customers should be able to procure bulk LPG from those suppliers within a distance or along a route that is economically viable. The focal point for the CMA's investigation is the available alternatives for each customer (although, consistent with the CMA's established practice, appropriate proxies and methodologies group together customers who could face similar competitive conditions for practical reasons). This may result in competitive conditions varying between local areas.
54. Where competitive conditions vary on a local basis due to logistical (eg depots) and economic (cost and time of delivery) reasons, the CMA's starting point for determining where the Parties' overlap is by identifying the relevant catchment area of the Parties' depots.<sup>21</sup>
55. In *Flogas/BP*, the OFT's assessment was focussed on the competitive implications of a merger between two companies operating on a national basis. The OFT analysed that merger on both a national basis and a regional basis, although market definition was left open (because competition concerns did not arise on either basis). The OFT found that competition had a local dimension such that the appropriate framework for assessment was likely to be "*larger than individual counties*" and ultimately used regional subdivisions "*for practical reasons*" (ie data availability in that case).
56. An earlier Competition Commission (**CC**) market investigation found that the "*supply of domestic bulk LPG has a local dimension in Great Britain, with smaller suppliers building reputations in their local area, and the larger*

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<sup>20</sup> [Merger Assessment Guidelines](#), paragraphs 5.2.1. and 5.2.22. ff.

<sup>21</sup> Consistent with the CMA's established practice, the determination of overlapping catchment areas provides a starting point for identifying potential competitive interactions between the Parties, and does not constitute a mechanistic framework for competitive assessment. The CMA may consider, for example, whether there are customers located within a part of a catchment area who could be more acutely affected by the Merger. Equally, the CMA will also consider constraints imposed by competitors outside a catchment area.

*suppliers recognizing the importance of a local sales-support presence.*<sup>22</sup> It also found that depots could economically supply domestic customers to a range of 100 miles, although it did not confirm that all companies actually supply customers as far as 100 miles (which is consistent with the evidence available to the CMA in this case, which consistently indicates that the Parties and their competitors actually supply within much shorter distances).

57. The CMA considers that, in this case, for certain types of customers, a national frame of reference would not be appropriate given that Countrywide supplies LPG on a regional basis, focusing on Central and South West part of England, and Wales. Also, the majority of LPG suppliers (all except for Flogas, Calor and Avanti) are only active on a local or regional basis, and therefore, competitive conditions may vary between different areas.
58. DCC submitted analysis in line with the regional framework for assessment used by the OFT in *Flogas/BP*. It also submitted information on the Parties' depot catchment areas covering 80% of its customers. These catchment areas correspond to an average drive time of [50-75] minutes (Flogas) and [50-75] minutes (Countrywide) for domestic and small customers, and [50-75] minutes (Flogas) and [50-75] minutes (Countrywide) for cylinders.
59. Several competitors provided the CMA with information on the average distance from their depots within which 80% of their customers are located, while acknowledging that this may vary from depot to depot. Across competitors, this ranged from 30 to 180 minutes for the supply of bulk LPG to domestic and small commercial customers, and from 30 to 60 minutes for the supply of cylinders.
60. The CMA considers that the evidence described above, taken in the round, suggests that a localised analysis seems appropriate for both the supply of bulk LPG to domestic and small commercial customers and for the supply of cylinders. Moreover, the CMA considers that a drivetime of 60 minutes around each depot would give a reasonable indicator of catchment areas (although it is not necessary to conclude on a precise figure since the CMA's conclusions on the effects of the merger would not change on any reasonable estimate of catchment areas).

#### *Domestic and small commercial customers of bulk LPG*

61. Consistent with the approach described above, the CMA's analysis of the competitive implications of the Merger focusses on the areas where the

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<sup>22</sup> *Market investigation into supply of bulk liquefied petroleum gas for domestic use*, Competition Commission report of 29 June 2006, Appendix E, paragraph 21.

Parties' catchment areas overlap for their supply of bulk LPG to domestic and small commercial customers.

62. Figure 1 illustrates catchment areas for the supply of bulk LPG to domestic and small commercial customers from each of the Parties' depots. Each catchment area is based on the drive-time that would cover 80% of the customers served from that depot, and should therefore be viewed as indicative of customers served rather than necessarily the area over which each Party would be willing to serve customers.

**Figure 1: Parties' catchment areas for domestic and small commercial customers**



*Source: Parties' maps*

*Notes: black triangles are depots; light shaded areas are depot specific catchment areas; dark shaded areas are overlapping catchment areas*

63. As Figure 1 shows, the CMA found that Countrywide's depot-specific catchment areas overlap substantially with those of Flogas, mainly within the Central and South West parts of England, and Wales.
64. Accordingly, on the basis of the evidence above, the CMA has considered the impact of the Merger on the supply of bulk LPG to domestic and small commercial customers in the Parties' overlapping catchment areas, based on 60-minute drivetime isochrones from the Parties' depots.

*Large commercial and autogas customers of bulk LPG*

65. In *Flogas/BP*, the OFT considered that the geographic scope for large commercial customers and autogas customers is likely to be national as it found that many of these customers operate from multiple sites across Great Britain and several prefer a national supplier. However, the OFT did not conclude on the relevant geographic scope given the lack of concerns on any geographic basis.
66. DCC analysed the Merger by reference to the framework for analysis used by the OFT in *Flogas/BP*.
67. In this case, the CMA considers that it is not necessary for the CMA to reach a conclusion on the geographic frame of reference with respect to large commercial customers and autogas customers, since, as set out below, no competition concerns arise on any plausible basis. However, for the purpose of its assessment, the CMA has considered a national frame of reference.

## *Cylinder LPG*

68. Similar to the approach taken with respect to the supply of bulk LPG to domestic and small commercial customers, and consistent with the approach described above (see paragraphs 52 to 54), the CMA's analysis focusses on the Parties' overlapping catchment areas for their supply of cylinder LPG.
69. Figure 2 illustrates the depot-specific catchment areas for the supply of cylinder from each of the Parties' depots (with the same caveats as apply to Figure 1).

**Figure 2: Parties' catchment areas for cylinders**



*Source: Parties' maps*

*Notes: black triangles are depots; light shaded areas are depot specific catchment areas; dark shaded areas are overlapping catchment areas*

70. As Figure 2 shows, the CMA found that Countrywide's catchment areas overlap substantially with those of Flogas, mainly within Central and South West parts of England, and Wales.
71. Accordingly, on the basis of the evidence above, the CMA has considered the impact of the Merger on the supply of bulk LPG to domestic and small commercial customers in the Parties' overlapping catchment areas, based on 60 minutes drivetime isochrones from the Parties' depots

### *Conclusion on geographic scope*

72. For the reasons set out above, the CMA considers that the competitive assessment should be focused on the geographic areas where the Parties actually compete for customers, which is for the supply of bulk LPG to domestic and small commercial customers and the supply of cylinder LPG, can be approximated by the overlapping catchment areas.
73. As described above, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference for the supply of bulk LPG to large commercial customers and autogas customers, since, as set out below, no competition concerns arise on any plausible basis. However, for the purpose of its assessment, the CMA has considered a national frame of reference.

### **Conclusion on frame of reference**

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

- (a) the supply of bulk LPG to domestic and small commercial customers in overlapping catchment areas;
  - (b) the supply of bulk LPG to large commercial customers in Great Britain;
  - (c) the supply of bulk LPG to autogas customers in Great Britain; and
  - (d) the supply of LPG cylinders in overlapping catchment areas.
75. The CMA notes that it has considered within its competitive assessment any constraints from outside the frames of reference and segmentation within the frames of reference.

## **Competitive assessment**

### ***Horizontal unilateral effects***

76. The focus of the CMA's assessment is on horizontal unilateral effects in each of the frames of reference set out above. 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.<sup>23</sup>
77. Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the frames of reference set out above.
78. In contrast with *Flogas/BP*, which involved two national suppliers, the Merger relates to the acquisition by a national supplier of a large regional supplier. The CMA's investigation is therefore particularly focussed on the areas within which the impact on competition resulting from the Merger may be more significant and therefore uses data on both a regional and a more granular level.<sup>24</sup>

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<sup>23</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

<sup>24</sup> Which may not necessarily correspond to the broader analysis of supply competition, on a national and regional basis, that was appropriate to analyse the change in market structure brought about by the *Flogas/BP* merger.

## Supply of bulk LPG to domestic and small commercial customers

### Shares of supply

79. DCC submitted estimated shares of supply of bulk LPG to domestic and small commercial customers for both Parties and their competitors at a regional level. The CMA notes that DCC's estimates are based on its industry experience and knowledge, as DCC is not aware of any reliable third-party data sources.
80. The CMA was able to obtain 2017 volume data from several of the Parties' competitors around each of their depots, and replaced the Parties' estimated volumes for competitors with actual volume data (allocated to each region based on the location of the competitor's depot). These estimated shares of supply are shown in Table 1.<sup>25 i</sup>

**Table 1: Shares of supply for domestic and small commercial customers by region in 2017**

	South West	South Wales	Central	North & Mid Wales	North West	North East	East Anglia	South East	Scotland
Flogas	[30-40]	[20-30]	[10-20]	[30-40]	[5-10]	[30-40]	[60-70]	[10-20]	[20-30]
Countrywide	[10-20]	[5-10]	[5-10]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
<b>Parties combined</b>	<b>[40-50]</b>	<b>[30-40]</b>	<b>[20-30]</b>	<b>[30-40]</b>	<b>[10-20]</b>	<b>[30-40]</b>	<b>[60-70]</b>	<b>[10-20]</b>	<b>[20-30]</b>
Calor	[30-40]	[50-60]	[50-60]	[40-50]	[70-80]	[20-30]	[0-5]	[60-70]	[50-60]
Avanti	[5-10]	[0-5]	[10-20]	[5-10]	[0-5]	[10-20]	[30-40]	[10-20]	[10-20]
Others	[10-20]	[10-20]	[5-10]	[10-20]	[10-20]	[20-30]	[0-5]	[5-10]	[0-5]
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Volume estimates provided by DCC adjusted with competitors' actual volumes where available

81. The share data set out in the table above shows that the Parties' combined share is not at a level that normally gives rise to prima facie competition concerns in any region, except in the South West where the combined share is slightly above the threshold.<sup>26</sup> In addition, the CMA notes that the increment is relatively small in other regions, suggesting that the effect of the Merger in these regions is likely to be limited.
82. Focussing on the regions that include the Parties' overlapping catchment areas (ie South West England, Central England, South Wales, and North & Mid Wales), the CMA notes that Calor has a strong presence across all

<sup>25</sup> The CMA notes that these estimated shares do not show substantial differences compared to the shares originally estimated by DCC. The CMA also recognises that allocating the volume entirely to the region where a depot is located can result in imprecise estimates, especially when a depot is close to a regional border.

<sup>26</sup> *Merger Assessment Guidelines*, from paragraph 5.3.5. The CMA notes that it does not apply these thresholds mechanically and that the 40% threshold refers to products that are undifferentiated. In East Anglia, the combined share is also above the threshold, however, Countrywide has no significant presence there.



regions, Avanti's strength varies by region and there are many regional independent suppliers active, which include Premier Gas, Cardiff Gas, J Gas, Rose Gas, Gas4Wales, LPG Direct, Extra Gas, HBS, Warrior Gas, Callow Gas and Carver Gas.

83. To inform the CMA's analysis of the impact of the Merger for the supply of bulk LPG to domestic and small commercial customers where the Parties' catchment areas overlap, the CMA has also conducted additional analysis in order to assess competition and the effects of the Merger at a more granular level. The CMA was able to obtain 2017 volume data from the Parties, Calor and Avanti.
84. Table 2 below highlights certain counties<sup>27</sup> in which there appears to be a particularly significant degree of competitive interaction between the Parties (in particular because, when considering only the Parties and the two other national suppliers (Calor and Avanti), Countrywide has a share of supply of at least 5%).

**Table 2: Shares of supply for domestic and small commercial customers by county in 2017**

	<b>Flogas</b>	<b>Countrywide</b>	<b>Parties combined</b>	<b>Calor</b>	<b>Avanti</b>
Herefordshire	[10-20]	[20-30]	<b>[30-40]</b>	[60-70]	[0-5]
Leicestershire and Rutland	[30-40]	[5-10]	<b>[40-50]</b>	[50-60]	[0-5]
Northamptonshire	[20-30]	[5-10]	<b>[30-40]</b>	[60-70]	[5-10]
Oxfordshire	[20-30]	[10-20]	<b>[30-40]</b>	[50-60]	[5-10]
Powys	[20-30]	[20-30]	<b>[50-60]</b>	[40-50]	[5-10]
Shropshire	[10-20]	[10-20]	<b>[30-40]</b>	[40-50]	[20-30]
Warwickshire	[20-30]	[20-30]	<b>[50-60]</b>	[40-50]	[5-10]
Worcestershire	[10-20]	[40-50]	<b>[50-60]</b>	[30-40]	[5-10]
Dorset and Somerset	[20-30]	[10-20]	<b>[30-40]</b>	[50-60]	[5-10]
West Midlands	[20-30]	[5-10]	<b>[30-40]</b>	[50-60]	[10-20]
Gloucestershire, Wiltshire	[20-30]	[20-30]	<b>[40-50]</b>	[50-60]	[0-5]
South Wales	[40-50]	[10-20]	<b>[60-70]</b>	[30-40]	[0-5]
<b>TOTAL</b>	<b>[20-30]</b>	<b>[10-20]</b>	<b>[40-50]</b>	<b>[40-50]</b>	<b>[5-10]</b>

Source: CMA analysis of sales volumes provided by the Parties, Calor and Avanti at county level

85. The CMA found that the areas in the table above together comprise a larger, contiguous area which is almost entirely contained within the overlap of the Parties' catchment areas. Table 2 confirms Calor's general strong presence across the area, and shows Avanti's relatively modest presence compared to its much stronger presence in other parts of Great Britain. The CMA notes

<sup>27</sup> In order to identify counties consistently across suppliers, the CMA has used data at either NUTS2 or NUTS3 level, depending on data availability.

that this analysis does not include the presence of independent suppliers and therefore overstates the Parties', Calor's and Avanti's shares of supply.

86. With respect to shares of supply at both regional and county level, the CMA believes that these might overstate the competitive strength of the established market players, as shares may be driven by customers who have not switched for some time, but this market has become more dynamic since the CC orders and actual switching rates, while still low (around 4%), have increased. Therefore, as set out in the following section, the CMA also considered recent switching data.

*Closeness of competition and competitive constraints*

- *Switching data*

87. DCC submitted switching data for each of the Parties covering the period between 2015 and early 2018 for the area comprising the counties mentioned in Table 2.<sup>28</sup>
88. The CMA adjusted the data set focusing on the period between 2016 and early 2018 as there is no associated volume data for 2015 (only switching counts) and there was a very high number of switches from Flogas to [redacted], unlike in the two subsequent years. Therefore, data from 2016 onwards may better represent current competitive conditions.

**Table 3: Switches from Flogas between 2016 and early 2018**

	<b>Number of switches</b>	<b>Share of switches</b>	<b>Share of switching volumes</b>
Calor	[redacted]	[40-50]%	[30-40]%
Avanti	[redacted]	[10-20]%	[20-30]%
Countrywide	[redacted]	[10-20]%	[10-20]%
Gas4Wales	[redacted]	[0-5]%	[5-10]%
Others	[redacted]	[10-20]%	[5-10]%
Outside good	[redacted]	[5-10]%	[5-10]%
<b>Total</b>	[redacted]	<b>100%</b>	<b>100%</b>

*Source: switching data provided by DCC*

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<sup>28</sup> LPG suppliers are required to record all customer switching following the CC order, and therefore this data includes all switching that took place.

**Table 4: Switches from Countrywide between 2016 and early 2018**

	Number of switches	Share of switches	Share of switching volumes
Calor	[X]	[30-40]%	[30-40]%
Flogas	[X]	[20-30]%	[20-30]%
Avanti	[X]	[20-30]%	[20-30]%
Callow Gas	[X]	[10-20]%	[5-10]%
Others	[X]	[0-5]%	[5-10]%
<b>Total</b>	[X]	<b>100%</b>	<b>100%</b>

Source: switching data provided by DCC

89. The switching data set out in Tables 3 and 4 confirms that Calor imposes a strong constraint on both Parties, with the largest share of switching from both. Also, Avanti appears to be a stronger competitor to the Parties than its shares of supply in Tables 1 and 2 would suggest, with more switches from Flogas than Countrywide, and more switches from Countrywide than Flogas (by volume). This might indicate that Avanti has recently become a more aggressive competitor. Switching varied by county but this pattern was relatively consistent across the whole area.
90. The share of switching from Flogas to Countrywide appears relatively low compared to Countrywide’s shares of supply in Table 2.<sup>29</sup> Also, while Countrywide has a higher share of switches than other local competitors, the CMA notes that most of them have a narrower footprint than Countrywide. The other competitors in the switching data include LPG Wales, Callow Gas, J Gas, Extra Gas, Premier Gas, Cardiff Gas, West Wales Gas, Carver Gas and HBS.
- *Pricing dashboard*
91. DCC submitted data from its pricing dashboard which is used by its sales team when negotiating prices with domestic customers. This dataset indicates occasions in which a customer was successfully retained or gained after a negotiation and includes the name of the competitor that the customer mentioned in the negotiation (or from which the customer switched).<sup>30</sup>

<sup>29</sup> In order to compare the shares of supply with switching shares from Flogas, Flogas should be excluded from Table 2.

<sup>30</sup> The dataset complements Flogas’s switching data, as switching data relates to customers lost by Flogas, while the dashboard data covers those gained or successfully retained.

92. For the purpose of its competitive assessment, the CMA focused on the area consisting of the counties mentioned in Table 2. The data covers the period between 4 January 2017 and 3 May 2018.

**Table 5: Competitors mentioned in pricing dashboard**

	Count	Percentage
Calor	[X]	[50-60]%
Avanti	[X]	[20-30]%
Countrywide	[X]	[5-10]%
Others	[X]	[5-10]%
Total	[X]	100%

Source: pricing dashboard data provided by DCC

93. The analysis of the pricing dashboard set out in Table 5 shows similar results to the switching data. Again, it shows that Calor is the strongest competitor, as well as Avanti being a strong competitor to Flogas, and significantly stronger than Countrywide. Other competitors mentioned by Flogas’s customers were Callow Gas, Cardiff Gas, Extra Gas, Gas4Wales, J Gas, LPG Direct, LPG Wales, Northern Energy and Premier Gas.

- *Internal documents*

94. DCC submitted various internal documents, most of which provide insight into competitive dynamics at a national level. These documents include assessments of Flogas’s market position and its “*main competitors*” Calor and Avanti.<sup>31</sup> Countrywide’s business plan did not include an assessment or mentions of its competitors.
95. DCC’s internal documents related to the Merger stated that “*the bulk LPG market is [X] with [0-5] major national companies supplying around [80-90]% of the market. The domestic market in particular is consolidated, with [70-80]% of the market represented by [0-5] players, Flogas ([X]), Calor ([X]) and Avanti ([X]). The remaining [20-30]% is covered by a wide group of local operators.*”<sup>32</sup>
96. With respect to Countrywide, DCC’s documents mentioned that “[Countrywide] is the [0-5] largest UK LPG distributor focused on the Southwest regions of the UK” and “across Gloucester, Worcestershire and

<sup>31</sup> See for example, *DCC LPG 3 Year Plan, Flogas Britain Limited* dated October 2017, submitted as Annex 19.1 to DCC’s response to the Enquiry Letter.

<sup>32</sup> A memo addressed to the CEO and CFO of DCC plc entitled *Project Waterloo Investment Proposal* dated 28 July 2017, submitted as Annex 21.1 to DCC’s response to the Enquiry Letter.

*Herefordshire, Countrywide management estimate their market share in these [redacted] geographies is [20-30]%, although their national share is only [0-5]%.”* Callow Gas is mentioned as Countrywide’s main competitor.<sup>33</sup>

97. Also, with regard to Flogas’s own position in Countrywide’s ‘core geographies’ it is mentioned that *“Flogas does not have a strong presence in these locations, whereas Calor have over [40-60]% of the local market.”*<sup>34</sup>

- *Postcode level data*

98. For the areas in Table 2, the CMA has also considered the number of remaining suppliers after the Merger, based on information by postcode district provided by UKLPG (the LPG trade association in the UK). This data is used for the UKLPG’s online tool that customers can use to identify potential suppliers. The data shows that there will be on average 6 suppliers left after the Merger in the areas specified in Table 2.<sup>35</sup> For certain areas there might be even more suppliers as some suppliers (including Gas4Wales and Extra Gas) are not members of UKLPG.

- *Third party views*

99. Overall, the CMA received a limited number of responses from customers. Some customers raised concerns about the Merger, mainly indicating that the Merger would leave a limited number of suppliers in their local areas and therefore that the Merger might have a negative impact on pricing. The CMA notes however that these customers were located in areas where the CMA has found multiple potential suppliers based on the UKLPG postcode level data.

100. Some competitors raised concerns about the Merger indicating, in particular, that it will reduce the market share of independents and that it will significantly increase the market position of Flogas, particularly in South West England. However, the majority of competitors were not concerned about the Merger.

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<sup>33</sup> Acquisition proposal to the Board of DCC plc entitled *Countrywide LPG (Project Waterloo)* dated 28 August 2017, submitted as Annex 21.2 to DCC’s response to the Enquiry Letter.

<sup>34</sup> Acquisition proposal to the Board of DCC plc entitled *Countrywide LPG (Project Waterloo)* dated 28 August 2017, submitted as Annex 21.2 to DCC’s response to the Enquiry Letter.

<sup>35</sup> There are a small number of postcode districts where there will be 3 or fewer suppliers after the Merger, mainly in or around Bristol, Cardiff and Newport. The CMA found that areas which surround these postcode districts are supplied by a much greater number of suppliers. It therefore seems likely that either the actual number of suppliers in those postcode districts is greater than indicated in UKLPG data, or those postcode districts correspond to urbanised areas where bulk LPG supply is not needed as individuals and businesses are connected to the mains gas network.

### *Conclusion on horizontal unilateral effects*

101. In summary, the CMA has found that Countrywide did not impose a particularly strong constraint upon Flogas pre-Merger, and that Calor and Avanti, in combination with many independent suppliers, imposed significant competitive constraints on both Parties and will continue to do so post-Merger. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of bulk LPG to domestic and small commercial customers.

### *Supply of bulk LPG to large commercial customers*

102. DCC submitted that there is a very minimal overlap in the Parties' activities with respect to large commercial customers, as Countrywide only has [redacted] large commercial customers. Also, the bidding data submitted by DCC for the period 2016 to 2018 showed that Flogas never lost or won a large commercial customer to or from Countrywide.
103. Based on the above, the CMA believes that there is very limited direct competition between the Parties, with Countrywide imposing very limited (if any) constraint on Flogas, and therefore found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of bulk LPG to large commercial customers.

### *Supply of bulk LPG to autogas customers*

104. DCC submitted that it primarily sells autogas to petrol stations and only sells a very small proportion for storage in bulk to end-users, whereas Countrywide sells primarily to end-users by operating so called 'key sites' (ie sites where customers must insert a key card in order to access the pump). As noted above, in *Flogas/BP*, the OFT found that many petrol stations prefer a national supplier, and Countrywide is not active nationwide. Customers mentioned Calor, Avanti and Premier LPG as alternatives to Flogas.
105. Accordingly, the CMA found that there is very limited direct competition between the Parties and therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of bulk LPG to autogas customers.

## Supply of LPG cylinders

### Shares of supply

106. DCC submitted estimated shares of supply of cylinder LPG for both Parties and their competitors at a regional level. The CMA adjusted these shares similarly to the shares of bulk LPG supply for domestic and small commercial customers. Table 6 presents the CMA's share of supply estimates.

**Table 6: Shares of supply in cylinder LPG by region in 2017**

	South West	South Wales	Central	North & Mid Wales	North West	North East	East Anglia	South East	Scotland
Flogas	[40-50]	[10-20]	[20-30]	[30-40]	[10-20]	[20-30]	[30-40]	[30-40]	[20-30]
Countrywide	[5-10]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
<b>Parties combined</b>	<b>[40-50]</b>	<b>[10-20]</b>	<b>[30-40]</b>	<b>[40-50]</b>	<b>[10-20]</b>	<b>[20-30]</b>	<b>[30-40]</b>	<b>[30-40]</b>	<b>[20-30]</b>
Calor	[30-40]	[70-80]	[60-70]	[50-60]	[60-70]	[70-80]	[50-60]	[50-60]	[70-80]
Avanti	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]	[0-5]
Others	[10-20]	[10-20]	[5-10]	[5-10]	[10-20]	[0-5]	[0-5]	[5-10]	[0-5]
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Volume estimates provided by DCC adjusted with competitors' actual volumes where available

107. The share data set out in the table above shows that the Parties' combined share is not at a level that normally gives rise to prima facie competition concerns in any region, except in the South West and North & Mid Wales, where the combined share is slightly above the threshold.<sup>36</sup> ii In addition, the CMA notes that the increment is relatively small in other regions, suggesting that the effect of the Merger in these regions is likely to be limited.
108. Focussing on the regions that include the Parties' overlapping catchment areas (ie South West England, Central England, South Wales, and North & Mid Wales), the CMA notes that Calor has a strong presence across all regions, Avanti is active but has relatively low volumes and there are many regional independent suppliers active, which include Cardiff Gas, Carver Gas, Extra Fuel, Four Seasons, Gas4U, Gas4Wales, LPG Direct, Rose Gas, TGS, and Warrior Gas.
109. To inform the analysis of the impact of the Merger for the supply of LPG cylinders where the Parties' catchment areas overlap, the CMA has also

<sup>36</sup> [Merger Assessment Guidelines](#), from paragraph 5.3.5. The CMA notes that it does not apply these thresholds mechanically and that the 40% threshold refers to products that are undifferentiated. In East Anglia, the combined share is also above the threshold, however, Countrywide has no significant presence there.

conducted additional analysis in order to assess competition and the effects of the Merger at a more granular level, again using data from the Parties, Calor and Avanti.

110. Table 7 below highlights certain counties<sup>37</sup> in which there appears to be a particularly significant degree of competitive interaction between the Parties (in particular where Countrywide has a share of supply of at least 5%, or other counties in the contiguous area).

**Table 7: Shares of supply in cylinder LPG by county in 2017**

	<b>Flogas</b>	<b>Countrywide</b>	<b>Parties combined</b>	<b>Calor</b>	<b>Avanti</b>
Cornwall and Isles of Scilly	[30-40]	[5-10]	<b>[40-50]</b>	[50-60]	[0-5]
Devon	[40-50]	[5-10]	<b>[50-60]</b>	[40-50]	[0-5]
Dorset and Somerset	[40-50]	[0-5]	<b>[40-50]</b>	[40-50]	[5-10]
Flintshire and Wrexham	[20-30]	[5-10]	<b>[30-40]</b>	[60-70]	[0-5]
Herefordshire	[30-40]	[10-20]	<b>[50-60]</b>	[40-50]	[0-5]
Oxfordshire	[20-30]	[10-20]	<b>[40-50]</b>	[50-60]	[0-5]
Powys	[50-60]	[10-20]	<b>[60-70]</b>	[30-40]	[0-5]
Warwickshire	[30-40]	[10-20]	<b>[50-60]</b>	[40-50]	[0-5]
Worcestershire	[20-30]	[10-20]	<b>[40-50]</b>	[50-60]	[0-5]
West Midlands	[20-30]	[0-5]	<b>[30-40]</b>	[40-50]	[20-30]
Gloucestershire, Wiltshire and Bristol/Bath area	[20-30]	[0-5]	<b>[30-40]</b>	[60-70]	[0-5]
<b>Total</b>	<b>[30-40]</b>	<b>[10-20]</b>	<b>[40-50]</b>	<b>[50-60]</b>	<b>[0-5]</b>

*Source: CMA analysis of sales volumes provided by the Parties, Calor and Avanti at county level*

111. The share data set out in the table above shows that the Parties' combined share is just above the level that normally gives rise to prima facie competition concerns. Table 7 confirms Calor's general strong presence. Avanti has two cylinder depots in the area where the Parties' catchment areas overlap, and a strong, local presence around those depots, but currently lacks significant activities in other counties mentioned. The CMA notes that this analysis does not include the presence of independent suppliers and therefore overstates the Parties', Calor's and Avanti's shares of supply.
112. As with shares of supply for bulk LPG, these shares may to some extent reflect longstanding supply relationships and do not necessarily reflect current competitive conditions (although switching and dashboard data is not available for cylinders).

<sup>37</sup> In order to identify counties consistently across suppliers, the CMA has used data at either NUTS2 or NUTS3 level, depending on data availability.



## *Closeness of competition and competitive constraints*

- *Internal documents*

113. DCC submitted various internal documents that show that Flogas and Countrywide are largely focussed on bulk selling, which accounts for the majority of their LPG sales.<sup>38</sup> As a result, most of DCC's internal documents focused on discussing bulk LPG or the supply of LPG in general, and do not provide material insight into competitive conditions for the supply of LPG cylinders.

114. However, one internal document related to the transaction mentioned that Avanti is "*looking to build a cylinder business in the UK*",<sup>39</sup> indicating Flogas believes that Avanti might further expand its cylinder business. This is discussed further in the 'entry and expansion' section below.

- *Postcode level data*

115. For the areas in Table 7, the CMA has also considered the number of remaining suppliers after the Merger, based on information by postcode district provided by UKLPG. This shows that there will be on average 6 suppliers left after the Merger.<sup>40</sup>

- *Third party views*

116. The CMA received a very limited number of responses from LPG cylinder customers (eg dealers and stockists). Some customers raised concerns about the merging parties raising prices and a decreased level of competition. However, these customers also indicated that switching is easy and that Avanti might expand into their region. Some other customers said that switching is difficult due to time and cost (eg cost of bottles from a new supplier during the switching process), while other customers told the CMA that new suppliers may provide free bottles which reduces switching costs.

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<sup>38</sup> DCC response to the Enquiry Letter, Annex 21.2, dated 28 August 2017, and Annex 21.4, dated 28 August 2017.

<sup>39</sup> DCC's acquisition proposal to its board entitled *Countrywide LPG (Project Waterloo)* dated 28 August 2017, submitted as Annex 21.2 to DCC's response to the Enquiry Letter.

<sup>40</sup> There are several postcode districts where there will be 3 or fewer suppliers after the Merger, mainly in or around Bristol, Cardiff and Newport. The CMA found that areas which surround these postcode districts are supplied by a much greater number of suppliers. It therefore seems likely that either the actual number of suppliers in those postcode districts is greater than indicated in UKLPG data, or those postcode districts correspond to urbanised areas where bulk LPG supply is not needed as individuals and businesses are connected to the mains gas network. The CMA notes that two suppliers ([REDACTED]) were mistakenly included as potential suppliers, while two other suppliers ([REDACTED]) were not included in the data, as they are not members of UKLPG.

117. Customers mentioned Calor, Avanti and HBS as alternatives to the Parties. Only one customer told the CMA that the Parties competed closely before the Merger.

*Competitive constraints from stockists and dealers*

118. DCC submitted that Flogas sells about [40-60]% of its cylinders to end-users, [20-40]% to dealers and [20-40]% to stockists, whereas Countrywide sells about [40-60]% of its cylinders to end-users, [20-40]% to dealers (it has only [X] dealers) and [0-20]% to stockists. The CMA notes that the figure for Countrywide's proportion sold to stockists included sales through Countrywide Farmers retail stores (about [0-20]%) which have ceased. Therefore, the Parties mainly compete directly for end-users.
119. DCC submitted that stockists and dealers impose strong competitive constraints in relation to sales of LPG cylinder to end-users as they develop direct relationships with the customers they serve. DCC also submitted that stockists and dealers could easily switch to other suppliers and provided examples of dealers or stockists switching to Calor, Avanti, HBS and Energas.
120. Some stockists confirmed to the CMA that they compete directly with LPG suppliers, depending on the distance between the LPG supplier and the end-customer (ie they compete primarily for customers close to the supplier). The CMA notes that the constraints imposed by stockists, therefore, is likely to vary by local area.

*Entry and expansion*

121. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases, may mean that there is no SLC. In assessing entry or expansion, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>41</sup>
122. DCC submitted that entry and expansion into LPG cylinder supply is easy and asset requirements are limited. Suppliers need gravel surface, cages to store cylinders, a forklift, welfare facilities, fencing and a delivery truck. Suppliers can fill their cylinders at filling plants (either their own or a competitor's) and it takes three months to obtain an operator's licence.
123. DCC also told the CMA that LPG cylinder dealers can easily broaden their business through small investments in cylinders and tanks, and organically develop into becoming LPG suppliers by first distributing cylinders from an

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<sup>41</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

LPG supplier, then distributing its own cylinders filled by a third party and eventually building its own cylinder filling plant. DCC mentioned Four Seasons as an example of this type of entry.

124. In addition, DCC submitted several recent examples of entry or expansion into LPG cylinders: Andy's Gas, Four Seasons, TGS, Extra Fuels, Gas4Wales, HBS, Logan's Logs and Park Gas. DCC told the CMA that relatively large customers can encourage expansion into new areas (ie if there is a good business opportunity, LPG suppliers might be willing to travel further and expand their areas).
125. DCC also mentioned future expansion by Avanti and provided the CMA with UGI's (Avanti's parent company) 2014 Analyst Day presentation showing its prioritized areas for organic growth (which included South Wales) and mentioning a potential re-entry strategy into cylinders.
126. Avanti, which acquired its bulk business from Shell in 2011 and acquired Lister Gases and Summerways Bridge in 2016 to re-enter the LPG cylinder supply business, told the CMA that it has serious plans to expand its footprint in cylinders. [REDACTED].
127. Avanti also told the CMA that it is currently selecting the best areas where to expand, which depend on [REDACTED]. It also mentioned that new areas for expansion may include [REDACTED] the Parties' catchment areas overlap. As indicated above (see paragraph 116), some customers told the CMA that they are aware of Avanti's expansion into the supply of cylinders in new areas.
128. Some local competitors said that expansion is difficult due to poor refinery supply, costs and market leaders reducing prices. However, one competitor confirmed expansion by regional suppliers and specifically mentioned Premier LPG, Extra Fuels and J Gas, while another competitor told the CMA that it is not costly to expand if distribution and supply networks are already in place.
129. UKLPG told the CMA that it is fairly easy to enter the LPG supply market. The new entrant needs to get a tanker and LPG supplied from a refinery. For cylinders specifically, entry would involve the purchase of cylinders and the cost of establishing a network of cylinders. It also told the CMA that entrants are usually regional and that there are examples of recent entrants. [REDACTED].
130. In *DCC/Rontec*<sup>42</sup> the CC assessed competition with regard to the supply of heating oil and transport fuels to, amongst others, domestic and commercial customers whose supply chain shows significant similarities to the supply of

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<sup>42</sup> CC report on the *completed acquisition by DCC Energy Limited from Rontec Investments LLP of certain oil distribution businesses previously owned by Total UK Limited*, dated 4 September 2012.

LPG. In this case, the CC found that, given the existence of many fuel distributors, there are no insurmountable barriers to entry and identified many examples of small scale entry.

#### *Conclusion on horizontal unilateral effects*

131. In summary, the CMA has found that Countrywide did not impose a particularly strong constraint upon Flogas, whereas Calor imposes a strong constraint upon the Parties together with many independents operating LPG cylinder businesses. While Avanti currently has a more limited presence in cylinders in areas where the Parties' catchment areas overlap, it is a strong competitor in the vicinity of its cylinder depots and its expansion plans mean that it is likely to be a stronger competitive constraint in the near future, and there do not seem to be significant barriers to further entry and expansion by local or regional independents. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of bulk LPG to domestic and small commercial customers.

#### **Third party views**

132. The CMA contacted customers and competitors of the Parties, and the UK LPG trade association. Some customers and a few competitors raised concerns. No other third parties raised concerns about the Merger.
133. Third party comments have been taken into account where appropriate in the competitive assessment above.

#### **Conclusion on substantial lessening of competition**

134. Based on the evidence set out above, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in relation to the supply of bulk LPG to domestic and small commercial customers, large commercial customers, autogas customers, or the supply of LPG cylinders.

#### **Decision**

135. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
136. The Merger will therefore **not be referred** under section 22(1) of the Act.

**Andrea Gomes da Silva**  
**Executive Director, Markets and Mergers**  
**Competition and Markets Authority**  
**9 July 2018**

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<sup>i</sup> Table 1: Flogas considers that the CMA's analysis very materially overstates its share of supply in East Anglia as a result of the activities of some or all of the Parties' competitors in East Anglia being materially understated.

<sup>ii</sup> Footnote 36: The CMA notes that it incorrectly stated that the combined share of supply in cylinder LPG in East Anglia, as shown in Table 6, is above the threshold that normally gives rise to prima facie competition concerns.