# Completed acquisition by Nicholls' (Fuel Oils) Limited of the oil distribution business of DCC Energy Limited in Northern Ireland

# Decision on relevant merger situation and substantial lessening of competition

**ME/6762/18**

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

## SUMMARY

1. On 30 April 2018, Nicholls' (Fuel Oils) Limited (**Nicholls**) completed the acquisition of the former oil distribution business of DCC Energy Limited in Northern Ireland (the **ex-DCC business**) (the **Merger**). Nicholls and the ex-DCC business are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Nicholls and the ex-DCC business is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the turnover 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 both supply kerosene, gas oil, petroleum products for road vehicles (**petrol**), and diesel fuel for road vehicles (**derv**) in Northern Ireland. The CMA found that the conditions of competition differ by customer type and geographic area. The CMA has therefore assessed the impact of the Merger in the following frames of reference:

   - the supply of (i) kerosene, gas oil, and derv to large commercial and indirect customers, and (ii) petrol to all commercial and indirect customers in Northern Ireland; and

- the supply of kerosene, gas oil, and derv to domestic and small and medium-sized commercial customers within local catchment areas of 20-30 miles.

4. For both frames of reference, the CMA found that the Parties' combined share of supply is moderate and that the increment brought about by the Merger is limited. The CMA also found that many competitors would continue to compete with the Parties and that switching between suppliers is straightforward. Most third parties the CMA contacted did not raise concerns regarding the Merger.

5. The CMA also considered whether the Merger would give the Parties the ability to foreclose downstream competitors, through Nicholls' part ownership of Puma Energy Belfast Limited, which owns and operates a fuel storage terminal in Belfast. The CMA found that the Parties would not have the ability to engage in such a strategy.

6. The CMA therefore believes that the Merger will not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects or vertical effects.

7. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

# ASSESSMENT

## Parties

8. Nicholls supplies kerosene, gas oil, petrol, derv, AdBlue, coal, and lubricants in the UK, including in Northern Ireland. Nicholls' turnover in the financial year ended 31 March 2018 was approximately [✄], [✄] of which was generated in the UK.

9. The ex-DCC business supplies kerosene, gas oil, petrol and derv in Northern Ireland. The ex-DCC business' turnover in the financial year ended 31 March 2018 was approximately [✄], [✄] of which was generated in the UK.

## Transaction

10. On 22 March 2018, Nicholls entered into a business transfer agreement with DCC Energy Limited (**DCC Energy**), a wholly-owned subsidiary of DCC plc. It completed the acquisition of the ex-DCC business on 30 April 2018. The Merger did not include DCC Energy's retail business in Northern Ireland,

which DCC Energy retained, or DCC Energy's fuel import terminal, which was sold to Valero Logistics UK Limited.

## Procedure

11. The CMA's mergers intelligence function identified this transaction as warranting an investigation.[1]

## Jurisdiction

12. Each of Nicholls and the ex-DCC business is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.

13. The UK turnover of the ex-DCC business exceeds £70 million. The turnover test in section 23(1)(b) of the Act is satisfied.

14. The Merger completed on 30 April 2018. It was first made public on 15 May 2018. The four-month deadline for a decision under section 24 of the Act, following extensions under section 25(2) of the Act, is 19 December 2018.

15. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.

16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 20 September 2018. The statutory 40 working day deadline for a decision is therefore 14 November 2018.

## Counterfactual

17. 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.[2]

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[1] See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.
[2] *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

18. In this case, no evidence supports a different counterfactual. Nicholls 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.

## Background

19. Crude oil is refined to produce a range of different petroleum products, including transport fuels (petrol, derv, gas oil,[3] and aviation fuel), kerosene (heating oil), gases, lubricants, fuel oil,[4] and bitumen. The Parties both supply kerosene, gas oil, petrol, and derv in Northern Ireland.

20. The distribution of petroleum products to customers in Northern Ireland can be split into three stages:

- *Stage 1 – from source to refineries*: crude oil is transported from oil fields by pipeline or boat to one of the six major refineries operating in the UK, where crude oil is refined into petroleum products.

- *Stage 2 – from refineries to terminals*: as Northern Ireland has no refineries, petroleum products are transported by sea from the UK refineries to one of four terminals (three in Belfast and one in Derry) in Northern Ireland.

- *Stage 3 – onward distribution to customers*: petroleum products are delivered to customers from terminals in several different ways, as discussed below.

21. The overlap in the Parties' activities relates to stage 3 of the oil distribution process. Distributors supply heating and transport fuels to final customers on a local or regional basis. Distributors deliver the fuels to customers either directly from the terminal (ex-rack)[5] or from their own depots (ex-depot).[6] Whether a distributor supplies a customer ex-rack or ex-depot largely depends on the size of the customer and, to a lesser extent, the type of fuel (eg petrol is almost always supplied ex-rack).

[3] Gas oil is also known as red diesel. It is essentially the same product as derv but dyed red to distinguish it because it is taxed at a lower rate.
[4] Fuel oil is a distillate fuel commonly used for burning in furnaces and boilers.
[5] Nicholls explained that for some large commercial customers and all indirect customers, it is also possible for those customers to use their own trucks or contract a third-party haulage company to collect the products directly from the terminals under the Parties' supply agreements. If so, customers will receive an invoice from the Parties for the product supplied but cover their own transport costs.
[6] Some smaller distributors in Northern Ireland do not have depots and always deliver straight to customers.

## Frame of reference

22. Market definition provides a framework for assessing the competitive effects of a merger. It 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. 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.[7]

### *Product scope*

23. The Parties overlap in the supply of kerosene, gas oil, petrol, and derv in Northern Ireland. Nicholls submitted that separate product frames of reference could be defined for:

    *(a)* the supply of kerosene to end domestic customers;

    *(b)* the supply of diesel, gasoil, kerosene, and petrol to end commercial customers; and

    *(c)* the supply of diesel, gasoil, kerosene, and petrol to distributors, resellers, and wholesalers that resell the products either to another intermediary or end customers (**indirect customers**).

*Type of fuel*

24. In *DCC/CPL*, the OFT found that demand-side substitution between different fuel types is limited.[8] The CMA has not found evidence to depart from that precedent. Different types of fuel are used for different purposes: kerosene is predominantly used for heating; gas oil is predominantly used for off-road vehicles (eg plant and machinery, including diggers, forklifts, and tractors); and derv and petrol are different types of road transport fuel.

25. The CMA may aggregate several narrow markets into one broader market based on supply-side factors where: (i) firms can quickly shift capacity between the different products depending on demand for each, and (ii) the same firms compete to supply the products and conditions of competition are

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[7] *Merger Assessment Guidelines*, paragraph 5.2.2.
[8] *Anticipated acquisition by DCC PLC of CPL Petroleum Limited*, OFT Decision, 24 August 2007.

the same.[9] The OFT and CC have consistently aggregated markets to include all types of heating and transport fuels based on supply-side substitution.[10]

26. In the present case, the evidence indicates that oil distributors can quickly and easily shift capacity between the different types of fuel they distribute. The same vehicles are used to distribute different types of fuel and customers frequently require two or more products to be delivered at the same time. Most vehicles have multiple compartments, which enable them to transport different fuels simultaneously.

27. In addition, the available evidence shows that the same firms generally compete to supply all types of fuel and that competitive conditions for different types of fuel are very similar. For example:

    *(a)* all four terminals in Northern Ireland supply all four fuel types (except for the BSL terminal, which does not supply petrol);

    *(b)* the majority of suppliers to commercial and indirect customers supply all four types of fuel; and

    *(c)* almost all suppliers will have multiple tanks at their depots for diesel, gas oil, and kerosene.[11]

28. Accordingly, the CMA has considered the different types of heating and transport fuels together based on supply-side substitutability.

*Customer groups*

29. The CMA may sometimes define relevant markets for separate customer groups if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers, and require a separate analysis.[12] This may happen when, for example, suppliers can target higher prices to customers willing to pay more, or when competition for customers differs significantly between different customer groups.

30. Nicholls submitted that customers generally fall into two categories, based on the method of delivery used:

    *(a)* Domestic customers (requiring kerosene) and small and medium-sized commercial customers (ie requiring up to 20,000 litres of derv, gasoil,

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[9] *Merger Assessment Guidelines*, paragraph 5.2.17.
[10] See eg *Completed acquisition by GB Oils Limited of Brogan Holdings Limited*, OFT Decision, 20 April 2010.
[11] Petrol is rarely stored at a depot and is almost always delivered to a customer ex-rack.
[12] *Merger Assessment Guidelines*, paragraph 5.2.28.

and kerosene). The Parties generally supply these customers ex-depot using small tankers and rigid trucks.

*(b)* Large commercial customers (ie requiring around 20,000 litres or more of derv, gasoil, kerosene and petrol) and all indirect customers (which generally always order at least 20,000 litres or more of derv, gasoil, kerosene, and petrol). The Parties generally supply these customers ex-rack to the customer's location using larger articulated vehicles.[13]

31. Nicholls submitted that there are significant differences in how the Parties supply different types of customer. These include differences in (i) the geographic areas over which the customers are supplied, (ii) how the prices to these customers are set and negotiated, and (iii) the competitors the Parties compete with to sell to different types of customer.

32. The CMA found that the competitive conditions, including the geographic area supplied, prices, and active competitors generally differ between (i) domestic and small and medium sized commercial customers, and (ii) large commercial and indirect customers. The CMA has therefore split the product frame of reference by customer type.

*Conclusion on product scope*

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

- the supply of kerosene, gas oil, and derv to large commercial and indirect customers and petrol to all commercial and indirect customers;[14] and
- the supply of kerosene, gas oil and derv to domestic and small and medium/sized commercial customers.

***Geographic scope***

34. Suppliers typically deliver fuels direct to customers (that is, domestic and commercial premises).[15] Therefore, as the OFT found in *GB Oils / Brogan*,

[13] As discussed above, petrol is rarely stored at a depot and is almost always delivered to a customer ex-rack.
[14] For petrol, "all commercial and indirect customers" corresponds to all those customers who are not served from retail petrol forecourts.
[15] However, as discussed at footnote 5 above, Nicholls explained that some customers also collect products directly from the terminals.

how far suppliers are prepared to travel may determine the boundaries of the geographic frame of reference.[16]

35. Nicholls submitted that the geographic frame of reference differed depending on the type of customer as follows:

*(a)* Domestic customers requiring kerosene and small and medium-sized commercial customers requiring derv, gasoil or kerosene are usually supplied ex-depot, typically within a 20-30-mile radius of the depot.[17]

*(b)* Large commercial and indirect customers are regularly supplied across the whole of Northern Ireland from the terminals in Belfast or Derry.

36. Third parties confirmed the geographic scope suggested by Nicholls for each group of customers. In addition, the CMA found that the geographic scope for all commercial and indirect customers requiring petrol is Northern Ireland-wide because petrol is almost always delivered or collected ex-rack across all locations in Northern Ireland.

### *Conclusion on frame of reference*

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

- the supply of kerosene, gas oil and derv to large commercial and indirect customers and petrol to all commercial and indirect customers in Northern Ireland; and

- the supply of kerosene, gas oil and derv to domestic and small and medium/sized commercial customers within local catchment areas of 20-30 miles.

38. It was not necessary, however, for the CMA to conclude on the precise frame of reference because, as set out below, no competition concerns arise on any plausible basis.

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[16] *Completed acquisition by GB Oils Limited of Brogan Holdings Limited*, OFT Decision, 20 April 2010.
[17] Many suppliers in the greater Belfast area supply all volumes ex-rack, due to the proximity of customers to the fuel terminals. Therefore, it is not necessary for suppliers to have a depot in this area.

## Competitive assessment

### *Horizontal unilateral effects*

39. 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.[18] Horizontal unilateral effects are more likely when the merging parties are close competitors.

40. 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.

### *Supply of kerosene, gas oil and derv to large commercial and indirect customers and petrol to all commercial and indirect customers in Northern Ireland*

*Shares of supply*

41. Nicholls estimated that the Parties have a combined share of supply by sales volume for sales of all fuels (ie kerosene, gas oil, derv, and petrol) to all customers (including direct and indirect) in Northern Ireland of approximately [10-20]%, with an increment of [5-10]%. The CMA was able to verify Nicholls' estimates with data gathered from third parties, which confirmed that, overall, the Parties' shares in Northern Ireland are moderate.

42. Table 1 below provides an overview of the Parties' shares of supply split by fuel type, based on the data supplied by the Parties. The CMA did not obtain sufficient data from third parties to verify the estimates for individual fuels.

**Table 1: Parties' shares of supply by volume in Northern Ireland**

| | *All fuels* | *Kerosene* | *Gas oil* | *DERV* | *Petrol* |
|---|---|---|---|---|---|
| **Parties combined** | [10-20]% | [20-30]% | [30-40]% | [10-20]% | [5-10]% |
| **Increment** | [5-10]% | [10-20]% | [10-20]% | [0-5]% | [0-5]% |

Source: Nicholls estimates

Notes: Includes sales to direct and indirect customers. Based on values distributed through Belfast terminals only.

43. The CMA has not been able to estimate accurately the Parties' shares of supply for either (i) large commercial and indirect customers and (ii) domestic and small and medium-sized commercial customers on a Northern Ireland-

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

wide basis. The responses the CMA received as part of its investigation were insufficient to create any meaningful comparison.

44. The CMA nonetheless considers that the data set out above is likely to be indicative of the competitive strength of the Parties and their main competitors within these narrower customer segments. The CMA notes, in this regard, that none of the other available evidence suggests that these estimated shares materially understate the competitive significance of the Parties within these segments.

*Closeness of competition*

45. Nicholls submitted that Nicholls and the ex-DCC business were not very close competitors for large commercial and indirect customers. Nicholls noted, in this regard, that it has a fleet of [✂] articulated trucks used to deliver large volumes, whereas the ex-DCC business had [✂].

46. However, the available evidence suggests that [✂] of the ex-DCC business' and [✂] of Nicholls' indirect customers were also served by the other Party, which does not support the Parties' claim that the ex-DCC business and Nicholls are not close competitors. Some customers also indicated that the Parties were competing closely for indirect customers.

47. Therefore, the CMA believes that Nicholls did compete closely with the ex-DCC business in relation to the supply of kerosene, gas oil and derv to large commercial and indirect customers and petrol to all commercial and indirect customers in Northern Ireland.

*Competitive constraints*

48. The Parties submitted that they will continue to be constrained by several other large competitors in relation to the supply of kerosene, gas oil and derv to large commercial and indirect customers and petrol to all commercial and indirect customers in Northern Ireland, including LCC, AH Fuels, Carlisle Fuels, Jennings Fuels, WR Kennedy, Patterson Oils, Scotts, and Valero. The Parties also said that most larger competitors supply kerosene, gas oil, derv and petrol to both large commercial and indirect customers.

49. The CMA's investigation found that a number of large competitors – of sufficient scale to be active across Northern Ireland – would continue to constrain the Parties post-Merger. In particular:

   *(a)* LCC Group is an independent family-owned company, established in 1980 which provides a range of services spanning various energy sectors

across the world. LCC Group trades under various names (including LCC Oil, Star Fuels, Riverside Oils, Campsie Fuels and Black Emerald Fuels) and is active across Northern Ireland.

*(b)* Essar Oil (UK) Limited is a wholly-owned subsidiary of Essar Energy Limited, a multinational corporation with annual revenues of US$35 billion and investments in Steel, Energy, Infrastructure and Services. Essar Oil (UK) Limited supplies gasoil, derv, kerosene and petrol to the reseller market in Northern Ireland.

*(c)* WR Kennedy was founded in 1962 and is active in the home heating, commercial fuel and lubricant markets in Northern Ireland. WR Kennedy distributes gasoil, derv, kerosene and petrol across Northern Ireland.

*(d)* Scotts Fuels is a family-owned and run business established in 1954. Scotts Fuels delivers transport and heating fuels across Northern Ireland.

*(e)* Kelly Oils has been operating since 1990 and supplies transport and heating fuels across most of Northern Ireland.

*(f)* AH Fuel Oils was established over 20 years ago and delivers transport and heating fuels across Northern Ireland.

50. The available evidence indicates that these competitors have the ability to compete effectively with the Parties on a Northern Ireland-wide basis, in particular because they have access to the upstream supply of heating and transport fuels and established distribution networks of depots and pick-up locations.

51. Multiple customers and competitors told the CMA that there are very many suppliers that actively compete for large commercial and indirect customers on a Northern Ireland-wide basis. Third parties consistently mentioned LCC, Scotts Fuels, Kelly Fuels, AH Fuels and WR Kennedy, in particular, as large players.

52. The Parties submitted that the switching costs are low, and that customers often multi-source and will switch suppliers depending on who can offer the best deal for a particular order. Most large commercial and indirect customers that responded to the CMA’s questions indicated that switching suppliers was relatively easy. The CMA also found that many large commercial and indirect customers buy fuel from many different suppliers.

53. Most customers and competitors viewed the sector as very competitive. They noted that there are a large number of distributors, competing aggressively on

price and service quality.[19] Some third parties told the CMA that, post-Merger, they would still be able to choose from a large number of suppliers. In addition, most large commercial and indirect customers that responded to the CMA's investigation did not raise concerns regarding the Merger.

*Conclusion*

54. For the reasons set out above, the CMA believes that, post-Merger, a significant number of competitors will constrain the Parties and that customers can easily switch suppliers. The CMA therefore 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 kerosene, gas oil and derv to large commercial and indirect customers and petrol to all commercial and indirect customers in Northern Ireland.

***Supply of kerosene, gas oil and derv to domestic and small and medium sized commercial customers within local catchment areas***

55. As noted above, the CMA has not been able to estimate accurately the Parties' shares of supply by volume or revenue for domestic and small and medium-sized commercial customers on a Northern Ireland-wide basis.[20] However, it believes that the shares for all customers in Table 1 above are likely to be broadly indicative of the competitive strength of the Parties and their rivals (in particular because none of the other available evidence suggests that these estimated shares materially understate the competitive significance of the Parties).

56. Nicholls has eight active depots in Northern Ireland. It also has agreements to buy product from [✄] fuel storage terminals in Northern Ireland, [✄]. The ex-DCC business has five active depots in Northern Ireland[21] and has agreements with [✄].[22]

57. Nicholls submitted that there are over 200 small and medium-sized suppliers, and approximately 15 major fuel suppliers (ie those with multiple depots

[19] Some competing distributors raised concerns that the Merger would lead to a player exiting the wholesale market, which might reduce the number of supply options available to distributors and negatively affect their ability to access oil.
[20] The CMA calculated shares of supply by number of depots/pick-up locations within 20 and 30-mile radii from the Parties' depots in Table 2.
[21] Nicholls told the CMA that the ex-DCC business had closed its [✄] depot pre-Merger and was closing is depot in [✄].
[22] Pre-Merger, the ex-DCC business also had agreements with [✄] and purchased on a spot-purchase basis from [✄].

present on a Northern Ireland-wide basis) in Northern Ireland. It therefore argued that sufficient competitors would remain in all local areas post-Merger.

58. Multiple customers and competitors told the CMA that there are very many suppliers, both on a Northern Ireland-wide and local basis, that actively compete for smaller customers in Northern Ireland.[23] Third parties consistently mentioned LCC, Scotts Fuels, Kelly Fuels, AH Fuels and WR Kennedy, in particular, as large players. Price comparison websites, such as cheapestoil.co.uk, also listed a large number of competitors, corroborating the evidence the CMA received during its merger investigation.

59. The CMA's investigation confirmed that there are many suppliers in all local overlap areas. Table 2 below shows the local areas where the Parties overlap within 20 and 30-mile radii from each other's depots.[24] In all cases, a significant number of competing depots remain located within the 20 and 30-mile radii areas from the Parties' depots and the Parties account for a limited proportion (ie less than [10-20]%) of all depots/pick-up locations.[25] These competitors include both smaller suppliers that only operate a single depot as well as a significant number of suppliers that operate multiple depots across Northern Ireland.

**Table 2: Parties' shares of supply (by number of depots/pick-up locations) and the number of competing depots within 20 and 30-mile radii from the Parties' depots**

| Depot location | Within 20-mile radius | | Within 30-mile radius | |
|---|---|---|---|---|
| | Parties' combined share of supply by number of depots/pick-up locations | Number of competing depots[26] | Parties' combined share of supply by number of depots/pick-up locations | Number of competing depots |
| ***DCC Belfast[27]*** | [0-5]% | [✂] | [5-10]% | [✂] |
| ***DCC Coleraine*** | [5-10]% | [✂] | [5-10]% | [✂] |
| ***DCC Cookstown[28]*** | [10-20]% | [✂] | [5-10]% | [✂] |
| ***DCC Dromore*** | [5-10]% | [✂] | [5-10]% | [✂] |

[23] The CMA's investigation did not support Nicholl's view that there were 15 large competitors present on a Northern-Ireland basis, but as outlined at paragraph 49 above, the CMA believes that a number of large competitors will remain post-Merger.
[24] The Parties submitted that they are also constrained by other competitors located outside the local catchment areas.
[25] The ex-DCC business closed its depot in [✂] and currently uses this for parking trucks only. Therefore, this does not represent an overlap with the Parties' active depots. In addition, Nicholls told the CMA that the ex-DCC business' depot in [✂] is also only used to park trucks. Therefore, the ex-DCC business' depots in [✂] have been excluded from the CMA's local overlap analysis.
[26] This may include some suppliers who do not own depots but supply the local areas ex-rack from the fuel storage terminals in Belfast and Londonderry or from depots belonging to other suppliers.
[27] The Parties supply customers ex-rack from the fuel storage terminals located in the Belfast area. The location, therefore, corresponds to a pick-up location, eg a truck parking place, not a depot.
[28] Nicholls told the CMA that the ex-DCC business planned to close its depot in [✂]. The CMA has nonetheless considered the [✂] depot in its overlap analysis.

| Depot location | Within 20-mile radius | | Within 30-mile radius | |
|---|---|---|---|---|
| | **Parties' combined share of supply by number of depots/pick-up locations** | **Number of competing depots[26]** | **Parties' combined share of supply by number of depots/pick-up locations** | **Number of competing depots** |
| ***DCC Newry*** | [5-10]% | [✄] | [0-5]% | [✄] |
| ***DCC Omagh*** | [10-20]% | [✄] | [10-20]% | [✄] |
| ***Nicholls Ballyclare*** | [0-5]% | [✄] | [5-10]% | [✄] |
| ***Nicholls Ballymagorry (Strabane)*** | [10-20]% | [✄] | [5-10]% | [✄] |
| ***Nicholls Ballymena*** | *No overlap* | | [5-10]% | [✄] |
| ***Nicholls Belfast*** | [0-5]% | [✄] | [0-5]% | [✄] |
| ***Nicholls Coleraine*** | [5-10]% | [✄] | [5-10]% | [✄] |
| ***Nicholls Craigavon*** | [0-5]% | [✄] | [5-10]% | [✄] |
| ***Nicholls Dungannon*** | [5-10]% | [✄] | [5-10]% | [✄] |
| ***Nicholls Enniskillen*** | *No overlap* | | [10-20]% | [✄] |
| ***Nicholls Londonderry (Greysteel)*** | [10-20]% | [✄] | [5-10]% | [✄] |

Source: CMA analysis based on data submitted by Nicholls and third parties' responses.

60. While very many competing depots and competitors remain within each of the 20-30-mile catchment areas of each of the Parties' depots, the competitive strength of these suppliers may vary. For example, the available evidence indicates that the competitive constraint exerted by smaller competitors, particularly those without a depot, may be weaker with respect to commercial customers that prefer to deal directly with a depot.

61. However, while some larger operators that the CMA contacted mentioned that a local depot could be advantageous, most third-party responses indicated that small competitors, including those without a depot, can compete effectively with larger distributors for domestic and small and medium-sized commercial customers. Indeed, some respondents indicated that there may be cost advantages in not having a depot because overheads would be lower.

62. Some smaller competitors for the supply of kerosene, gas oil and derv to domestic and small and medium sized commercial customers obtain the fuel that they supply from suppliers in the large commercial and indirect segment. As discussed at paragraphs 41 to 54 above, the CMA believes that, post-Merger, a significant number of competitors will constrain the Parties in the large commercial and indirect segment and that customers can easily switch suppliers. For this reason, the CMA considers that the Merger will not diminish the ability of smaller competitors to obtain supplies of heating and transport fuels, and therefore continue to compete, in the same way as they do at present.

63. The available evidence also indicates that switching costs are low. Customers face no break fees or other disincentives to switching. Only a small proportion of domestic and small and medium-sized commercial customers pay by direct debit or any other regular payment type which would imply an ongoing contractual relationship. Smaller customers can also compare prices on price comparison websites or become a member of an oil buying club that negotiates with fuel suppliers to get the best offer for the scheme members. Most third-party responses did not indicate that switching suppliers would be difficult or costly.

64. Finally, most respondents did not raise concerns regarding the Merger. Many respondents said that the market was already very competitive, and some indicated that the market was oversaturated with too many distributors. Some customers thought that the Merger could be pro-competitive because it would allow the Parties to buy fuel from the terminals at more competitive prices, leading to lower prices to final customers.

65. Overall, the available evidence indicates that each local overlap area will continue to be served by a large number of competitors, who will collectively constrain the Parties post-Merger.

*Conclusion*

66. For the reasons set out above, the CMA believes that the Parties will be sufficiently constrained by local and regional oil suppliers in each of the local areas where they overlap post-Merger. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of kerosene, gas oil and derv to domestic and small and medium-sized commercial customers within the local catchment areas set out above.

***Vertical effects***

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

68. Vertical mergers may be competitively benign or even efficiency-enhancing but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm’s competitors. The CMA only regards such

foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.[29]

69. In the present case, the CMA has considered whether Nicholls' acquisition of the ex-DCC business would give the Parties the ability to foreclose downstream competitors, through Nicholl's part-ownership of Puma Energy Belfast Limited (**Puma Belfast**), which owns and operates a fuel storage terminal in Belfast. The CMA has considered whether potential input foreclosure concerns could arise if Nicholls were to be able to raise the price or stop supplying product from the Puma Belfast terminal to its downstream rivals.[30]

70. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.[31] This is discussed below.

*Ability*

71. Nicholls owns a [✂] share in Puma Belfast, which owns and operates one of the three fuel storage terminals in Belfast. The remaining share in Puma Belfast is owned by Puma Energy UK Limited (**Puma UK**), which has entered into a joint venture agreement with Nicholls. Nicholls receives a throughput fee for product sold through the terminal.[i] Some third parties raised concerns that Nicholls' share in the Puma Belfast terminal could allow it to limit supply or increase prices to other oil distributors.

72. The CMA's investigation found that the product in the Puma Belfast terminal is currently owned and sold by Puma UK. Under the joint venture agreement between Nicholls, Puma UK and Puma Belfast, [✂]. Nicholls submitted that [✂].

73. The CMA has not been required to conclude on whether Nicholls could have the ability to influence the conditions of supply from the Puma Belfast terminal. This is because the Puma Belfast terminal is, in any case, one of three terminals in the Belfast area, and one of four terminals in Northern Ireland and the available evidence indicates that the other terminals have sufficient spare capacity to meet additional demand from Nicholls' downstream rivals if Nicholls were able to increase prices or stop product

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[29] In relation to this theory of harm 'foreclosure' means either total foreclosure of a rival or to substantially competitively weaken a rival.
[30] *Merger Assessment Guidelines*, paragraphs 5.6.5 and 5.6.9 et seq.
[31] *Merger Assessment Guidelines*, paragraph 5.6.6.

being supplied to its competitors from the Puma Belfast terminal. The CMA therefore believes that Nicholls' downstream rivals would be able to avoid any price increase for supplies from the Puma Belfast (if Nicholls were able to implement such a price increase) by switching to alternative sources of supply.[32]

74. Accordingly, the CMA does not believe that the Merger would give the Parties the ability to foreclose downstream competitors. It is therefore not necessary to assess whether Nicholls would have the incentive to pursue a foreclosure strategy and what effect this could have on competition in the supply of oil products in Northern Ireland.

*Conclusion on vertical effects*

75. For the reasons set out above, the CMA believes that the merged entity would not have the ability to foreclose downstream competitors through Nicholls' shareholding in Puma Belfast, as alternative sources of supply will remain post-Merger. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to the supply of oil products in Northern Ireland.

## Decision

76. 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.

77. The Merger will therefore **not be referred** under section 22(1) of the Act.

**Colin Raftery**
**Senior Director, Mergers**
**Competition and Markets Authority**
**7 November 2018**

[i] Paragraph 71: The CMA notes that it incorrectly stated that Nicholls receives a throughput fee for product sold through the Puma Belfast terminal. Puma Energy Belfast Limited receives a throughput fee for any product that goes through the Puma Belfast terminal.

[32] *Merger Assessment Guidelines*, paragraph 5.6.10(b).