

ANTICIPATED ACQUISITION BY WORLD FUEL SERVICES INC OF UVAIR EUROPEAN FUELLING SERVICES LIMITED

Decision on relevant merger situation and substantial lessening of competition

ME/6856/19

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 12 February 2020. Full text of the decision published on 24 March 2020.

Please note that [X] 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. World Fuel Services Inc (**WFS**) has agreed to acquire UVair European Fuelling Services Limited (**UVair**) (the **Merger**). WFS and UVair 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 WFS and UVair is an enterprise, that these enterprises will cease to be distinct as a result of the Merger, and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties are active in the supply of aviation fuel at airports in the UK. There are three main ways in which aviation fuel is supplied at airports:
 - a) **Into-Plane Suppliers** – suppliers of aviation fuel who control the distribution infrastructure on the basis of a concession agreement entered into with the airport operator and retain title from purchase ex-refinery (or ex-import terminal) until transfer to the customer.
 - b) **Troughputters** – suppliers of aviation fuel who do not control the distribution infrastructure but retain title from purchase ex-refinery (or ex-

import terminal) until transfer to the customer. Throughputters enter into arrangements with one or more Into-Plane Suppliers to use their on-airfield storage capacity and Into-plane supply services.

- c) **Resellers** – suppliers who only acquire title to the aviation fuel at wingtip once it has passed through the infrastructure at the airport.¹ Resellers have no physical role in the delivery of the aviation fuel at the airport and only resell the fuel once it is delivered to the aircraft by Into-Plane Suppliers or Throughputters.
4. Consistent with the European Commission's (the **EC**) approach in *WFS/Exxon*², the CMA considered separate product frames of reference for (i) Into-Plane Suppliers and Throughputters on the one hand (together **Physical Suppliers**³) and (ii) Resellers on the other. This is because Resellers operate under different business models and focus on different customer groups than Into-plane Physical Suppliers.⁴
5. Evidence showed that Resellers set prices at the level of an individual airport and that a customer visiting a specific airport has limited ability to substitute to another airport. Therefore, the CMA has considered the impact of the Merger at an airport-level.
6. However, third party evidence also suggested that a supplier's ability to offer a global network of airports is considered to be an important factor by customers which is likely to influence the relative competitive strength of different suppliers. Therefore, the CMA has also taken a supplier's ability to offer a global network into account in its competitive assessment.
7. The CMA has assessed the impact of the Merger in the following frames of reference:
- a) the supply of aviation fuel by Resellers at individual airports; and
- b) the supply of aviation fuel by Physical Suppliers at individual airports.
8. The CMA examined whether the Merger raises competition concerns as a result of horizontal unilateral effects in the supply of aviation fuel by Resellers at each of the individual [] airports where the Parties overlap.

¹ Merger Notice submitted by the Parties on 20 January 2020 (the **Merger Notice**), pages 3-4.

² Case COMP/M.7965 – World Fuel Services Corporation/Certain aviation fuels assets belonging to Exxon (*WFS/Exxon*),

³ There are two forms of physical supply of aviation fuel, ie into-plane supply and supply by Throughputters (**Physical Supply**).

⁴ *WFS/Exxon*, paragraphs 17-26. Also see paragraph 31 below.

9. In its assessment the CMA considered the relative competitive strength of different Resellers in general, as indicated by (i) the characteristics of each Reseller's network and (ii) other evidence, such as the Parties' internal documents and third party evidence. The CMA then assessed the likelihood of competition concerns arising at individual airports by reference to the Resellers present at each airport. Finally, the CMA considered whether any barriers might be sufficient to prevent established suppliers from expanding their networks.
10. The CMA found that competition concerns did not arise in relation to the supply of aviation fuel by Resellers at individual airports, in particular because:
 - a) The Merger will have only a modest effect on the number of airports served by the Parties and will therefore have little effect on the overall attractiveness of the Parties' network relative to the networks offered by their competitors;
 - b) At least AEG and Avfuel are close competitors to the Parties and Jetex, Collins and Air BP are also competitors to the Parties in the UK;
 - c) At least three of these suppliers are present at each of the airports in the UK where the Parties' activities overlap; and
 - d) Barriers to expansion by established Resellers appear to be low such that even if fewer competitors were present at each airport, established Resellers could expand their operations.
11. The CMA also examined whether the Merger could give rise to vertical effects, ie whether post-Merger WFS could limit rival Resellers' access to its Physical Supply, thereby worsening other Resellers' ability to compete against the merged entity at [REDACTED] airports where WFS is active as a Physical Supplier and UVair as a Reseller.
12. The CMA found that WFS would not have the ability to foreclose rival Resellers at 13 of these airports due to the presence of competing Physical Suppliers with the ability to supply competing Resellers and, in one case, because WFS will imminently cease to be the Physical Supplier at an airport.
13. The CMA believes that WFS may have an ability to foreclose rival Resellers at RAF Northolt and Southampton airports, given that WFS is the only Physical Supplier at these airports. However, WFS [REDACTED] the physical infrastructure at these airports from the airport operators. Airport operators' submissions indicated that they would be unlikely to [REDACTED] were it to attempt any foreclosure

strategy. The CMA therefore considers that this will act as a strong disincentive against attempting to foreclose at these airports.

14. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral and vertical effects.
15. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

16. WFS is part of the World Fuel Services Corporation group, a US company listed on the New York Stock Exchange. WFS provides airport fuel services in the UK as both a Physical Supplier and as a Reseller.
17. In 2018, WFS supplied fuel at [X] airports in the UK. It is an Into-Plane Supplier at [X] airports, a Throughputter at [X] airports and a Reseller at [X] airports. It currently owns physical infrastructure at [X] UK airports and leases physical infrastructure at [X].
18. UVair is a wholly owned subsidiary of Universal Weather and Aviation, Inc. (**Universal**), incorporated in the Republic of Ireland and headquartered in Texas, USA. UVair supplies aviation fuel on a Reseller basis at [X] airports in the UK. It procures aviation fuel, and the delivery of aviation fuel, from a range of Physical Suppliers at the airports where it acts as a Reseller.
19. WFS' turnover in the UK for financial year ended 2018 as a Physical Supplier was £[X]; and as a Reseller £[X]. UVair's total revenue in the UK for financial year ended 2018 was £[X].

Transaction

20. WFS has agreed to acquire the entire issued share capital of UVair from Universal. WFS will acquire all of UVair's global business, including goodwill, customer contacts and staff.
21. The Merger is conditional, inter alia, on the approval by competition authorities in [X].
22. [X].

Rationale for the Merger

23. WFS believes that the Merger will [REDACTED].

Jurisdiction

24. Each of WFS and UVair is an enterprise⁵ and they will cease to be distinct as a result of the Merger.⁶
25. The Parties both supply aviation fuel at airports in the UK. The Parties' combined share of supply exceeds 25% for the supply of aviation fuel by Resellers at [REDACTED] airports.⁷ The CMA believes that the share of supply test is met on the basis that these airports, taken in aggregate, account for a substantial part of the UK. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
26. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
27. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 24 December 2019 and the statutory 40 working day deadline for a decision is therefore 20 February 2020.

Counterfactual

28. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it 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.⁸

⁵ In relation to UVair, the CMA notes that its business in the UK includes goodwill, customer lists and staff, elements which the CMA's guidance identifies as common components of an 'enterprise' (*Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), paragraph 4.8).

⁶ In accordance with section 26 of the Act.

⁷ The Parties' estimated that their combined share of supply exceeds 25% at [REDACTED].

⁸ *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).

29. In this case, there is no evidence supporting a different counterfactual than the prevailing conditions of competition, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Background

Supply of aviation fuel

30. The Parties' activities overlap in the supply of aviation fuel at 44 airports in the UK. There are three main ways in which aviation fuel is supplied at airports:⁹

- a) **Into-Plane Suppliers** typically purchase fuel ex-refinery (or ex-storage tank or ex-ship at an import terminal) and transport it to an off-airfield storage terminal near the individual airport. From there, the aviation fuel is transported to an on-airfield storage site at the airport and distributed into the aircraft. This is shown in Figure 1 below.

Key:

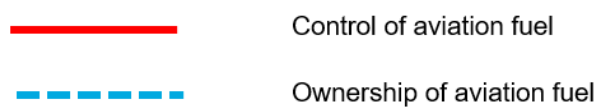
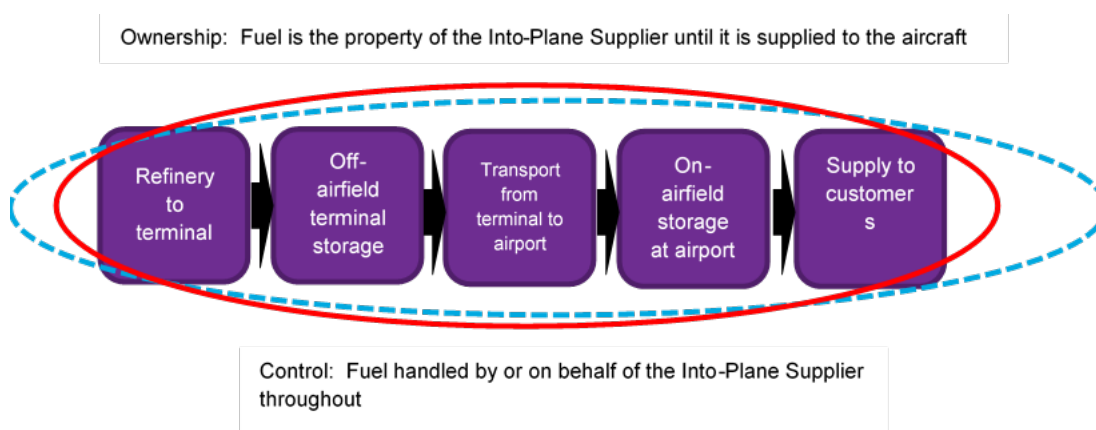


Figure 1

Figure 1: Into-Plane Supplier

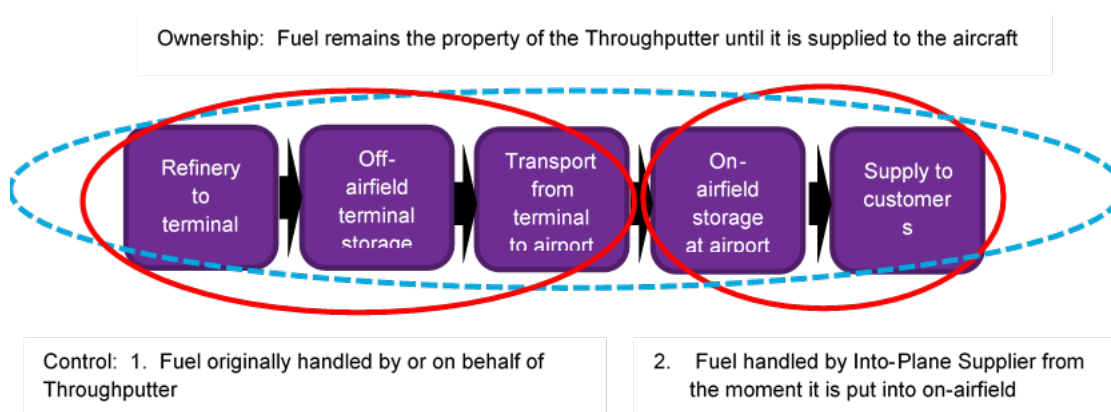


⁹ Merger Notice, paragraph 12.6.

Source: Parties, Merger Notice, pages 29-30.

- b) **Throughputter:** Like Into-Plane Suppliers, Throughputters also purchase aviation fuel and transport it to an off-airfield storage terminal near the individual airport. Unlike an Into-Plane Supplier, Throughputters do not control any infrastructure at the airport. Instead, each Throughputter has an arrangement with one or more Into-Plane Suppliers to use the infrastructure owned and/or operated by the Into-Plane Suppliers, in return for a handling fee. This is shown in Figure 2 below.

Figure 2: Throughputter

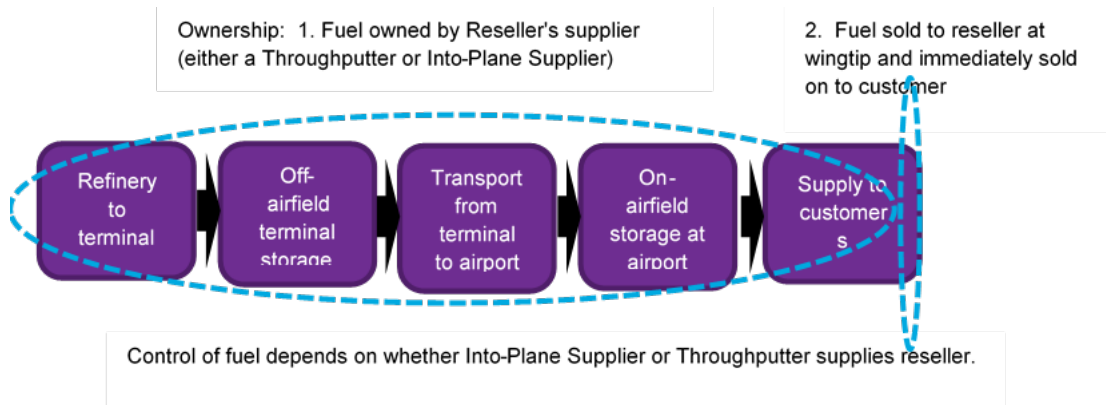


Source: Parties, Merger Notice, pages 29-30.

- c) **Resellers** have no physical presence at the airport. Resellers procure fuel from Physical Suppliers or fixed base operators (FBOs)¹⁰ and the Physical Supplier carries out the physical refuelling process. Resellers acquire title to the aviation fuel from the Physical Supplier once it has passed through the airport infrastructure (ie at the 'wingtip'). Title then immediately passes to the end-customer. This is shown in Figure 3 below.

Figure 3: Reseller

¹⁰ A fixed base operator (FBO) provides a range of services to general aviation customers, specifically private/corporate jets including refuelling services. Merger Notice, page 29.



Source: Parties, Merger Notice, pages 29-30.

Supply of aviation fuel to different customer groups

31. The CMA's investigation found that Physical Suppliers and Resellers tend to have different business models and focus on supply to different customer groups: (i) Physical Suppliers focus on commercial aviation customers, who operate scheduled air services and scheduled air transport operations and usually purchase fuel from Physical Suppliers, often putting out large volumes of fuel to tender; (ii) whereas Resellers overwhelmingly supply general aviation customers, who do not operate scheduled air transport operations and tend to demand ad hoc volumes pursuant to an invoicing arrangement or by using a fuel card system.¹¹

Commercial and general aviation airports

32. The CMA understands that certain airports cater predominantly to commercial aviation customers (**commercial airports**) while other airports cater predominantly to general aviation customers (**general aviation airports**).
33. Physical Suppliers and Resellers are active across both types of airports.

Competition between Resellers

34. The Parties submitted that aviation fuel prices vary from airport to airport and that price competition takes place at the level of an individual airport.¹² However, although competition takes place at an airport level, the Parties also submitted that the scale of a Reseller's network was important to customers.¹³ This is consistent with third party evidence suggesting that a

¹¹ Merger Notice, paragraph 13.2c)ii).

¹² Merger Notice, paragraphs 13.15, 15.45, and 16.1 to 16.3.

¹³ Merger Notice, paragraph 15.48.

Reseller's ability to offer a global network of airports is considered to be an important factor by customers.¹⁴ A credible Reseller, therefore, needs to have a network of sufficient scale to attract customers since a wider network increases customer convenience.

35. The Parties submitted that Resellers typically do not charge customers for signing up to their Aviation Fuel Cards¹⁵ and therefore customers will typically carry several Aviation Fuel Cards and use the one which offers them the best deal for a particular transaction.¹⁶ This submission was consistent with evidence from another Reseller and with customer responses.¹⁷ Given that aviation fuel is a homogenous product and, as third party evidence confirmed, customers are price sensitive,¹⁸ this multisourcing behaviour suggests that customers are likely to choose the Reseller with the lowest price and whose Aviation Fuel Card the customer holds at any individual airport.

Frame of reference

36. 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.¹⁹
37. The Parties overlap in the supply of aviation fuel at [REDACTED] airports in the UK. The Parties overlap as Resellers at all of these airports²⁰ and have a vertical relationship at [REDACTED] airports,²¹ where WFS is active as a Physical Supplier and UVair is active as a Reseller.

¹⁴ See paragraphs 50-52 below.

¹⁵ Aviation Fuel Cards are ID cards that allow them to obtain fuel and have it charged to the account they hold with a Reseller.

¹⁶ Merger Notice, paragraph 15.35.

¹⁷ Customers which responded to CMA's questionnaires generally used one or two Resellers other than Parties.

¹⁸ Eg [REDACTED] submitted that it '*considers price, terms and ability physically to supply required volume <...>*'. [REDACTED] submitted that it usually picks whoever offers the best price.

¹⁹ [Merger Assessment Guidelines](#), paragraph 5.2.2.

²⁰ [REDACTED].

²¹ [REDACTED].

Product scope

Parties' submissions

38. The Parties referred to the EC's decision in *WFS/Exxon*, which distinguished between Physical Suppliers and Resellers due to their different business models and focus on supply to different customer groups (with Physical Suppliers focusing on commercial aviation customers and Resellers on general aviation customers, as discussed in paragraph 31). The Parties submitted that the delineation between Physical Suppliers and Resellers at commercial airports is not as binary as the EC concluded in *WFS/Exxon*, as there is a spectrum of demand for aviation fuel at any given airport and different means of supplying the various sources of demand.²² Moreover, the Parties submitted that the activities of Physical Suppliers and Resellers are converging, noting that it has observed in the past three years that Physical Suppliers have shifted from targeting mainly commercial aviation customers and are increasingly targeting smaller volumes and a wider range of customers.²³ On that basis, the Parties submitted that the split between Physical Supply and Reselling represents the narrowest plausible frame of reference for commercial airports.
39. The Parties also submitted that any distinction between Physical Suppliers and Resellers was not appropriate at general aviation airports owing to the difference between the largest and smallest aircraft user being relatively small. The Parties further submitted that at these airports there is a limited or infrequent opportunity to sell high volumes to commercial customers, and there is no distinction between different sources of supply.²⁴ The Parties therefore submitted that the narrowest frame of reference for general aviation airports is the aviation fuel supply market for each airport, with no distinction between supply by Physical Suppliers or by Resellers.

CMA's assessment

40. The CMA considers that it is appropriate to make a distinction between Resellers and Physical Suppliers and to apply separate product frames of reference for (i) Physical Supplier only supply and (ii) Reseller only supply, as the EC did in *WFS/Exxon*.²⁵

²² Merger Notice, paragraph 13.3.

²³ Merger Notice, paragraph 13.4.

²⁵ *WFS/Exxon*, paragraphs 17-26.

41. As explained in paragraph 31 above, Physical Suppliers and Resellers have different business models and focus on supply to two different customer groups: (i) commercial aviation customers usually purchase fuel from Physical Suppliers, often putting out large volumes of fuel to tender; (ii) Resellers mostly supply general aviation customers, who tend to demand ad hoc volumes pursuant to an invoicing arrangement or by using a fuel card system.
42. However, in assessing competition within the frame of reference of the supply of aviation fuel by Resellers, the CMA has taken into account the competitive constraint posed by Physical Suppliers where relevant.
43. Finally, the CMA's investigation indicated that the business models of Physical Suppliers and Resellers did not vary materially between general aviation and commercial airports. In particular, third party evidence indicated that the market players themselves generally do not vary their commercial behaviour by reference to different types of airports.

Conclusion on product scope

44. 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 aviation fuel by Resellers; and
 - b) the supply of aviation fuel by Physical Suppliers.

Geographic scope

45. The Parties submitted, that as the EC concluded in *WFS/Exxon*, the relevant geographic frame of reference for both the Physical Supplier and the Reseller market is at airport level.²⁶ Although the Parties also submitted that for some smaller airports the alternate of using another nearby airport imposes some competitive constraint on fuel pricing.²⁷
46. The CMA notes that Resellers set prices at the level of an individual airport and that a customer visiting a specific airport has limited ability to substitute to another airport. Therefore, the CMA has considered the impact of the Merger at an airport-level.²⁸

²⁶ *WFS/Exxon*, paragraph 29.

²⁷ Merger Notice, paragraph 13.12.

²⁸ While the CMA believes that the geographic frame of reference is an airport level, it has taken into account the global size of each Reseller's network in its competition assessment, as discussed in paragraphs 50-52.

Conclusion on frame of reference

47. 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 aviation fuel by Resellers at individual airports; and
 - b) the supply of aviation fuel by Physical Suppliers at individual airports.

Competitive assessment

48. The CMA has considered two theories of harm related to:
- a) Horizontal unilateral effects in the supply of aviation fuel by Resellers at individual airports where the Parties overlap as Resellers; and
 - b) Vertical effects (input foreclosure of rival Resellers) at individual airports where WFS is active as a Physical Supplier and UVair as a Reseller.

Horizontal unilateral effects

49. 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.²⁹ 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 supply of aviation fuel by Resellers at each airport where the Parties overlap as Resellers.

Importance of Reseller networks

50. The Parties emphasised the importance of the size of a Reseller's network. The Parties submitted that customers of Resellers are attracted to signing up to a particular Reseller based on that Reseller's network (including where their Aviation Fuel Card will be accepted).³⁰ Moreover, the Parties submitted that for the majority of customers of Resellers, the offering of a comprehensive service across a range of airports (at least nationally or regionally) is important.³¹

²⁹ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

³⁰ Merger Notice, paragraph 15.35.

³¹ Merger Notice, paragraph 15.48.

51. As explained in paragraph 34 above, third party evidence available to the CMA confirmed the Parties' submissions and indicated that a Reseller's ability to offer a global network of airports is considered to be an important factor by customers. The majority of customers responding to the CMA's investigation considered the size of the global network to be important. One more customer emphasised the importance of a supplier's network and submitted that the size of a supplier's network is a decisive factor when making the decision which supplier to start negotiations on the supply of aviation fuel with.
52. Therefore, the CMA's investigation found that a credible Reseller needs to have a network of sufficient scale to attract customers since a wider network increases customer convenience and the size of a Reseller's global network is likely to influence the relative competitive strength of different suppliers.³² For this reason, the CMA has taken a Reseller's ability to offer a global network into account in its competitive assessment.

Competitive strength of different Resellers

53. In its assessment the CMA has thus first considered evidence regarding the relative competitive strength of different Resellers in general, as indicated by (i) the characteristics of each Reseller's network and (ii) other evidence, such as the Parties' internal documents and third party evidence. The CMA has then considered evidence regarding which Resellers are present at the individual airports where the Parties' activities overlap as Resellers. This allowed the CMA to assess the likelihood of competition concerns at individual airports.
54. Finally, the CMA considered what barriers to entry in the supply of aviation fuel at individual airports exist in order to understand whether any barriers might be sufficient to prevent established suppliers from expanding their network.

Characteristics of Reseller networks in the UK and globally

55. The Parties submitted that there are at least five other Resellers active in the UK, with a similar scale to the Parties and who will continue to operate in the UK following the Merger, namely: Associated Energy Group LLC (**AEG**), Collins Aerospace, a subsidiary of United Technologies Corporation (**Collins**), Jetex FZE (**Jetex**), Aviation Services Management FZE (**ASM**) and Avfuel

³² Eg a customer is more likely to hold a Reseller's Aviation Fuel Card if that Reseller has a larger network, meaning that the Reseller is more likely to be a competitor at a particular airport.

Corporation (**Avfuel**) (collectively and together with the Parties referred to as **Large Resellers**).

56. Given the evidence regarding the relevance of a supplier’s network in customer choice, paragraph 34, the CMA compared the size of the global networks of the Parties with the rival Resellers mentioned in paragraph 55, as well as Air BP (who acts both as a Physical Supplier and Reseller) who is also a competitor to the Parties (see paragraph 72) in Table 1.

Table 1: Global Network size of Large Resellers and revenue in the UK

	WFS	UVair	Merged Entity	AEG	Avfuel	Jetex	Collins	ASM	Air BP
Number of airports Resellers are currently present at globally	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Revenue in 2018 globally (£m)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Unknown ³³	[REDACTED]	[REDACTED]	Unknown	Unknown
Revenue in 2018 in the UK (£m)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Unknown	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Responses to RFI3 Q1, third-party questionnaires, Reseller websites.

57. Table 1 suggests that:
- a) AEG has the largest global network in terms of airports, followed relatively closely by Jetex, Avfuel, ASM and the Parties. Collins’ and Air BP’s global networks are substantially smaller.
 - b) The Merger will increase the size of the Parties’ combined global network but only to a limited extent. Globally, the Parties’ network of airports post-Merger will continue to be smaller than those of AEG, Avfuel and Jetex.
 - c) WFS has by far the largest global revenues, followed distantly by AEG, followed distantly by UVair and Jetex, followed by Collins.
 - d) WFS similarly has the largest UK revenues, followed by UVair and AEG and Air BP, followed distantly by Jetex and Collins. ASM’s UK revenues are very small.

³³ The CMA sought, as part of its investigation, information on market dynamics from third parties. Where third parties failed to respond or did not hold the requested information, the information has been marked as ‘unknown’.

Other evidence regarding the general competitiveness of different Resellers (and other competitors) in the UK

Closeness of competition between the Parties

58. The Parties submit that WFS does not compete any more closely with UVair than with other Resellers.
59. In considering the closeness of competition between the Parties, the CMA has considered:
- a) Size of Resellers' global networks;
 - b) Internal documents; and
 - c) Third-party views
- *Size of Resellers' global networks*
60. As discussed in paragraph 57, both Parties have relatively large networks globally and in the UK. This suggests that the Parties compete closely with each other.
- *Internal documents*
61. One UVair document described UVair's view on its global competitive landscape at the end of 2017. This document suggests that the Parties compete closely with one another, listing WFS as a major competitor '*globally as a supplier, reseller, and processer*'.
- *Third-party views*
62. Third-party evidence indicates that the Parties compete closely with each other. Two Resellers of aviation fuel that responded to the relevant question of the CMA's request for information, considered both Parties to be their main competitor in supplying aviation fuel in the UK. Rival Physical Suppliers and FBOs, and airport operators generally considered the Parties to be each other's main competitors. Customers generally considered WFS and UVair to be alternative Resellers (at airports where they are present) in the UK.
- *Conclusion*
63. The size of the Parties' networks, UVair's internal document and third-party responses indicate that the Parties are close competitors.

Competition from other suppliers

64. The CMA has considered evidence regarding the competitive constraint from the five Resellers (AEG, Collins, Jetex, ASM and Avfuel) identified by the Parties as well as evidence regarding the competitive constraint on the Parties from other suppliers, including FBOs and Physical Suppliers.
- *AEG*
65. The evidence provided indicates that AEG is a strong competitor to the Parties, specifically:
- a) As discussed in paragraph 57, AEG's global network is larger than the Parties' in terms of the number of airports. Further, AEG has larger revenues than UVair globally and comparable revenues to UVair in the UK. This indicates that AEG is a strong competitor to the Parties.
 - b) One of UVair's internal document suggests that, globally, AEG is an important competitor to UVair. In particular, AEG is included in UVair's list of major competitors and described as a 'market disruptor'.³⁴
 - c) Third-party views similarly indicate that AEG is an important competitor to the Parties. AEG was considered to be a viable alternative to the Parties by most customers. Moreover, the majority of airport operators and Physical Suppliers/FBOs considered AEG to be the Parties' main competitor.
 - d) AEG submitted that [REDACTED].³⁵ This suggests that AEG might become an even stronger competitor of the Parties at these airports in the future.
- *Avfuel*
66. The evidence indicates that Avfuel is also a strong competitor to the Parties.
67. First, Avfuel is present at a larger number of airports globally than both Parties.
68. Second, one of UVair's internal document mentions Avfuel as a major competitor which suggests that Avfuel might be UVair's global competitor.³⁶

³⁴ Merger Notice, UVair's Annex 015 – 'UVair Business Plan'.

³⁵ [REDACTED].

³⁶ Merger Notice, UVair's Annex 015 – 'UVair Business Plan'.

69. Third, one Large Reseller mentioned Avfuel to be its main competitor together with the Parties. Avfuel was also considered to be an alternative to the Parties by half of customers. Half of Physical Suppliers/FBOs and some airport operators considered Avfuel to be the Parties' main competitor at airports where they compete/operate.

- *Jetex*

70. The evidence indicates that Jetex is a competitor to the Parties.

71. As discussed in paragraph 57, while Jetex' global and UK revenues are smaller than the Parties', its global network is larger than the Parties' combined in terms of the number of airports. Jetex itself considered both Parties to be its main competitors, and, moreover, Jetex was considered to be a viable alternative to the Parties by nearly a third of customers. Finally, half of Physical Suppliers/FBOs and one airport operator considered Jetex to be the Parties' main competitor at airports where they compete/operate.

- *Air BP*

72. Air BP is active in the UK as a Physical Supplier as well as a Reseller.³⁷ The evidence indicates that Air BP is a competitor to the Parties.

73. Air BP is present at a smaller number of airports globally than the Parties. Air BP itself did not consider to be the Parties' main competitor in resale of aviation fuel.

74. Notwithstanding the above, third party evidence showed that nearly half of customers purchased fuel from Air BP in the UK. Moreover, one Physical Supplier/FBO and some horizontal airport operators considered Air BP to be the Parties' main competitor in Resale of aviation fuel. This suggests that Air BP is likely to impose some competitive constraint on the Parties.

- *Collins*

75. The evidence suggests that Collins is a competitor to the Parties.

76. The evidence discussed in paragraph 57 indicates that Collins has a smaller network than the Parties. However, Collins itself considered both Parties to be its main competitors. Further, one third of Physical Suppliers/FBOs and one

³⁷ Page 3 of the Merger Notice states that Air BP is a Physical Supplier. However, [REDACTED] submitted that [REDACTED]. Further, four customers said that they purchased aviation fuel from Air BP when asked which Resellers of aviation fuel they purchased fuel from.

airport operator considered Collins to be the Parties' main competitor at airports where they compete/operate. This suggests that Collins is likely to impose some competitive constraint on the Parties.

- *ASM*

77. The evidence indicates that ASM may be a weaker competitor to the Parties.

78. As discussed in paragraph 57, while ASM is present at a similar number of airports as the Parties both in the UK and globally, its UK revenues are very small. This suggests that ASM might be a relatively weak competitive constraint to the Parties, particularly in the UK.

79. ASM was considered to be a viable alternative to the Parties by only one customer. No Physical Supplier/FBO or airport operators considered ASM to be the Parties' main competitor at airports where they compete/operate.

- *Other suppliers*

80. The evidence indicates that other smaller Resellers are unlikely to constrain the Parties. As discussed in paragraph 34, customers generally appeared to consider the size of the global network to be important. Therefore, smaller Resellers might not have access to a network of sufficient scale to attract customers. While some customers seemed open to purchasing from smaller Resellers, only one explicitly considered them to be viable alternatives.³⁸ Further, only one customer purchased fuel from a smaller Reseller.

81. In terms of the constraint from the FBOs, UVair's internal document mentions Signature as a major competitor, which suggests that Signature might be a global competitor of UVair. Further, two FBOs were mentioned by a Reseller to be its main competitors together with the Parties and Avfuel.

82. However, the evidence also suggests that there is likely to be a limit to the competitive constraint on the Parties provided by Signature (or FBOs more generally). In particular, one FBO submitted that some of its sales were made via Resellers' fuel cards. This suggests that FBOs are an alternative route to market for Resellers. This is consistent with third party views. The majority of

³⁸ One customer explicitly considered smaller Resellers to be viable alternatives. One customer considered only 'one' smaller Reseller to be a viable alternative. One customer only considered smaller Resellers to be important 'if price difference is significant'. Three customers appeared to be open to purchasing from smaller Resellers as long as the Resellers met certain criteria. One customer explicitly did not consider smaller Resellers be viable alternatives to the Parties.

customers did not consider FBOs to be viable alternatives and half of customers stated that FBOs were generally more expensive than Resellers.

- *Conclusion*

83. The evidence indicates that AEG and Avfuel are strong competitors to the Parties. The evidence suggests that Jetex, Collins and Air BP are also competitors to the Parties.
84. However, the evidence indicates that:
- a) ASM is unlikely to constrain the Parties to any material extent;
 - b) Signature (or FBOs more generally) cannot be considered as a standalone constraint;
 - c) It seems unlikely that other smaller Resellers could constrain the Parties.

Airport level assessment

85. Based on the above analysis the CMA has considered which of AEG, Avfuel, Jetex, Collins and Air BP (together referred to as **Competing Resellers**) are present at each airport at which the Parties overlap. Table 2 also shows (i) how many Competing Resellers are present at each airport³⁹ and (ii) shares of supply at each of the overlapping airports estimated by the Parties (where available). However, the Parties confirmed that the share of supply estimates were based on a number of assumptions which the CMA could not independently verify. Therefore, the CMA did not rely on these shares of supply in its assessment.

³⁹ The CMA has established presence of Competing Resellers at airports through Party and third-party submissions, Reseller websites, flock.aero and WFS sales data.

Table 2: Number of competitors and shares of supply at each airport

Airport	Number of competing Resellers ⁴⁰	Combined share of supply in Resale of aviation fuel	Increment
[X]	5	[0-5]%	[0-5]%
[X]	5	[30-40]%	[10-20]%
[X]	5	N/A	N/A
[X]	5	[5-10]%	[0-5]%
[X]	5	[10-20]%	[0-5]%
[X]	5	[5-10]%	[0-5]%
[X]	5	[20-30]%	[5-10]%
[X]	5	[60-70]%	[5-10]%
[X]	5	[30-40]%	[10-20]%
[X]	5	N/A	N/A
[X]	5	[20-30]%	[0-5]%
[X]	5	[5-10]%	[0-5]%
[X]	5	N/A	N/A
[X]	5	[20-30]%	[5-10]%
[X]	5	[20-30]%	[10-20]%
[X]	5	N/A	N/A
[X]	4	[10-20]%	[5-10]%
[X]	4	N/A	N/A
[X]	4	[10-20]%	[0-5]%
[X]	4	[30-40]%	[10-20]%
[X]	4	[10-20]%	[0-5]%
[X]	4	[10-20]%	[0-5]%
[X]	4	[10-20]%	[0-5]%
[X]	4	N/A	N/A
[X]	4	[0-5]%	[0-5]%
[X]	4	[5-10]%	[0-5]%
[X]	4	[20-30]%	[10-20]%
[X]	≥3	N/A	N/A
[X]	≥3	N/A	N/A
[X]	≥3	N/A	N/A
[X]	≥3	N/A	N/A
[X]	≥3	N/A	N/A
[X]	≥3	N/A	N/A
[X]	≥3	N/A	N/A
[X]	≥3	N/A	N/A
[X]	3	[40-50]%	[5-10]%
[X]	3	[0-5]%	[0-5]%
[X]	3	[10-20]%	[0-5]%
[X]	3	[10-20]%	[0-5]%
[X]	3	[10-20]%	[5-10]%
[X]	3	[10-20]%	[0-5]%
[X]	3	[40-50]%	[10-20]%
[X]	3	[10-20]%	[5-10]%

Source: Parties' and third-party submissions

86. This assessment shows that, following the Merger, the Parties will be constrained by at least three other competing Resellers at each airport. Given the evidence that customers often hold Aviation Fuel Cards from multiple Resellers (see paragraph 35 above) and since aviation fuel is a homogenous product and customers are price sensitive, the CMA considers that customers are likely to be able to switch supplier easily in response to any attempt by the Merged Entity to increase prices materially. The CMA, therefore, considers that the evidence regarding the number of Resellers present at each

⁴⁰ Number of competing Resellers does not include the Parties.

overlapping airport indicates that competition concerns are unlikely to arise in this case.

87. The CMA's conclusion is consistent with the lack of third party concerns about the Merger received during the investigation.⁴¹ Third party comments have been taken into account where appropriate in the competitive assessment.

Barriers to entry and expansion

88. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁴²
89. The CMA has considered whether there is evidence that barriers to entry are low such that competition concerns would not arise even if there were fewer competitors present at an individual airport because an established Reseller could easily expand to serve the airport(s) concerned.
90. The Parties submitted that barriers to entry to become a Reseller at a given airport are almost non-existent. The Parties submitted that the entrant Reseller simply has to establish payment/credit terms with one or more of the Physical Suppliers active at the airfield. The Parties also explained that Physical Suppliers have every incentive to maximise the volume of fuel supplied through their infrastructure (whether they are an Into-Plane Supplier or a Throughputter). The Parties submitted that Resellers do not have a physical (or even retail) presence at airports they offer supply at, so there are no sunk costs or physical limitations.⁴³
91. To support their submission the Parties noted that entries and/or expansions take place informally, without formal plans or internal documents prepared for senior management or the board of directors.⁴⁴ Consistent with this submission, the CMA is aware that the Parties have expanded their Reseller network [redacted].⁴⁵ This is consistent with there being low barriers to expansion for established Resellers.
92. This view is supported by third-party evidence, which similarly suggests that established Resellers of aviation fuel could quickly and easily start supplying

⁴¹ 32 out of 36 third parties expressed no concern regarding the Merger.

⁴² [Merger Assessment Guidelines](#), from paragraph 5.8.1.

⁴³ Merger Notice, page 8.

⁴⁴ Parties' response to RF12, question 2.

⁴⁵ Merger Notice, paragraphs 21.5-21.6.

airports which they currently do not supply. Specifically, one Reseller stated that expanding a *'fuel agreement with a fuel provider to add another location is all that is needed to start supply an airport'* and *'[n]o material costs are involved in adding locations unless a fuel provider requires a security deposit for extending credit.'* Another Reseller stated that expansion to a new airport could take place *'by establishing a contract based on payment terms and pricing. No direct costs involved, only man hours'*.

93. Therefore, the CMA considers that, even if there were fewer competitors present at any of the individual overlapping airport, the evidence indicates that barriers to entry and expansion are sufficiently low that established Resellers such as AEG, Avfuel and Jetex would quickly be able to expand to supply that airport.

Conclusion on horizontal unilateral effects

94. For the reasons set out above, the CMA considers that:
- a) The Merger will have only a modest effect on the number of airports served by the Parties globally and will therefore have a limited effect on the overall attractiveness of the Parties' network relative to the networks offered by their competitors;
 - b) AEG and Avfuel are strong competitors to the Parties and Jetex, Collins and Air BP are also to some extent competing with the Parties in the UK;
 - c) At least three of these suppliers are present at each of the overlapping airports in the UK; and
 - d) Barriers to expansion by established Resellers appear to be low such that even if fewer competitors were present at each airport, established suppliers could easily expand their operations.
95. Accordingly, the CMA 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 aviation fuel by Resellers at individual airports where the Parties overlap as Resellers.

Vertical effects

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

97. In the present case, WFS is active as a Physical Supplier at a number of airports and is therefore an upstream supplier to UVair and other Resellers. The CMA has considered whether post-Merger WFS could limit rival Resellers' access to its Physical Supply, thereby worsening other Resellers' ability to compete in supplying aviation fuel to customers.
98. 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.⁴⁶

Ability

99. The CMA considered whether rival Resellers have alternative suppliers they could switch to in case of any attempted foreclosure by WFS. In its assessment, the CMA considered whether:
- a) Upstream shares of supply and sales indicated that WFS faced competition from other Physical Suppliers at the relevant airports; and
 - b) Competing Physical Suppliers faced capacity constraints which would inhibit their ability to supply rival Resellers.

Upstream shares of supply and sales

100. As discussed in paragraph 37, at 15 airports in the UK WFS is active as a Physical Supplier whereas UVair is active as a Reseller (ie the Parties have a vertical relationship). The Parties' estimates of upstream shares of supply of WFS and its competitors at these airports are provided in Table 3 below.

Table 3: Shares of Physical Supply at airports with vertical overlap

Airport	WFS' share of Physical Supply	Competing Physical Suppliers' share
RAF Northolt	100%	
Southampton	100%	
[REDACTED]	[60-70]%	Shell [40-50]%
[REDACTED]	[60-70]%	Shell [40-50]%
[REDACTED]	[40-50]%	Shell [40-50]%, Q8 [10-20]%, Gulf [10-20]%
[REDACTED]	[40-50]%	Shell [60-70]%
[REDACTED]	[40-50]%	Gulf [20-30]%, BP [10-20]%, Mabanaft [10-20]%, Q8 [10-20]%
[REDACTED]	[30-40]%	Gulf [40-50]%, Q8 [30-40]%
[REDACTED]	[30-40]%	Gulf [40-50]%, Mabanaft [20-30]%, BP [5-10]%, Q8 [5-10]%
[REDACTED]	[20-30]%	Gulf [30-40]%, BP [10-20]%, Q8 [10-20]%, Mabanaft [10-20]%
[REDACTED]	[10-20]%	BP [30-40]%, Q8 [30-40]%, Gulf [20-30]%, Mabanaft [10-20]%
[REDACTED]	[5-10]%	BP [80-90]%, Q8 [10-20]%

⁴⁶ [Merger Assessment Guidelines](#), paragraph 5.6.6.

[REDACTED]	[5-10]%	Essar [70-80]%, Shell [20-30]%, Mabanaft [5-10]%
[REDACTED]	[5-10]%	Shell [30-40]%, BP [30-40]%, Q8 [20-30]%, Vitol [10-20]%
[REDACTED]	[0-5]%	Shell [40-50]%, Essar [30-40]%, Q8 [10-20]%, Vitol [10-20]%, BP [0-5]%

101. The shares of supply above suggest that WFS would be unlikely to have ability to foreclose rival Resellers at [REDACTED] (ie airports where WFS has a share of supply of 10% or less).
102. Further, at [REDACTED] WFS' total sales to Resellers were low relative to UVair's Reseller revenues at these airports.⁴⁷ This is consistent with other Physical Suppliers being active at these airports and supplying material volumes to competing Resellers.
103. This evidence therefore suggests that WFS is unlikely to have ability to foreclose rival Resellers at [REDACTED] since competing Resellers would likely be able to easily switch to alternative Physical Suppliers.
104. Finally, the [REDACTED] airport operator submitted that [REDACTED].⁴⁸ This indicates that no vertical effects would arise at this airport.
105. The CMA therefore, focussed its assessment on RAF Northolt, Southampton, [REDACTED] where the Parties' estimated that WFS had a larger share of Physical Supply or where WFS is the only Physical Supplier.
106. At RAF Northolt and Southampton WFS is the sole Physical Supplier. Therefore, switching to an alternative Physical Supplier is not an option for competing Resellers. Consequently, the CMA considers that WFS is likely to have the ability to foreclose at these airports.
107. At [REDACTED] there is a competing Physical Supplier. The CMA has therefore considered whether the competing Physical Suppliers at these airports are likely to have sufficient capacity to expand to supply competing Resellers.

Capacity constraints

108. One Physical Supplier suggested that it would be difficult to increase its presence as a Physical Supplier at [REDACTED] due to restricted access to use the airport storage.

⁴⁷ No more than [REDACTED]% of UVair's Reseller revenues. WFS also made a very low absolute value of sales to Resellers at these airports (no more than £[REDACTED]).

⁴⁸ Email from [REDACTED] sent on 12 December 2019: [REDACTED].

109. However, another Physical Supplier suggested that it ‘has flexibility both upwards and downwards of around 5-10% regarding its supply of fuel at airports’ as ‘it could use its current fleet and try to maximise its usage’.
110. The CMA’s analysis confirmed that a 5% capacity expansion by [REDACTED] could fully replace WFS’ volumes to Resellers at [REDACTED]. Also, 5-10% capacity expansion by [REDACTED] could cover a significant portion ([40-50]-[90-100]%) of WFS’ volumes to Resellers at [REDACTED]. This, combined with [REDACTED] submission that it *‘is keen to grow and expand in all of its key locations, [REDACTED]’* suggests that WFS’ would be unlikely to have an ability to foreclose rival Resellers at [REDACTED] since competing Resellers would switch to an alternative Physical Supplier.⁴⁹ This is consistent with the EC’s finding in relation to Birmingham and London Luton in the *WFS/Exxon* case.⁵⁰

Conclusion on ability to foreclose

111. The evidence suggests that WFS would not have the ability to foreclose rival Resellers at 13 of these airports due to the presence of competing Physical Suppliers with the ability to supply competing Resellers and in one case because [REDACTED].
112. However, WFS may have an ability to foreclose rival Resellers at RAF Northolt and Southampton, given that WFS is a monopolist at these airports.

Incentive

113. The CMA assessed whether the Parties would have the incentive to foreclose rival Resellers in RAF Northolt and Southampton.
114. The Parties submit that the Merged entity would not have the incentive to foreclose rival Resellers in RAF Northolt and Southampton, or more generally.⁵¹
115. The CMA found that rival Resellers could not switch from WFS to rival Physical Suppliers at Southampton and RAF Northolt given that WFS is an upstream monopolist at these airports. However, WFS [REDACTED] the physical infrastructure at these airports from the airport operators. Airport operators’

⁴⁹ [REDACTED].

⁵⁰ *WFS/Exxon*, paragraphs 39-40.

⁵¹ Merger Notice, paragraphs 19.7, 19.29 and 19.30.

submissions indicated that they would be unlikely to [redacted] were it to attempt any foreclosure strategy.⁵² This is consistent with the EC's findings in *WFS/Exxon*.⁵³ The CMA considers that this will act as a strong disincentive against attempting to foreclose at these airports.

116. In addition, the Parties submitted that customers could oppose a foreclosure strategy by tankering (carrying more fuel than is required to reach a destination in order to avoid refuelling). This was supported by third party evidence, which suggested that aircraft owners could tanker or oppose the foreclosure strategy more generally.⁵⁴
117. Finally, the CMA notes that there is no evidence of current foreclosure by WFS at Southampton and RAF Northolt airports despite WFS' existing ability to do so. This is consistent with WFS lacking any incentive to foreclose following the Merger.

Conclusion on vertical effects

118. 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 the supply of aviation fuel at individual airports where WFS is active as a Physical Supplier and UVair as a Reseller.

Decision

119. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
120. The Merger will therefore **not be referred** under section 33(1) of the Act.

Eleni Gouliou
Director, Mergers
Competition and Markets Authority
12 February 2020

⁵² Eg [redacted] submitted that any foreclosure attempts would affect who that airport operator decided to award the physical supplier contract to in the first place. Another airport operator stated that: 'UVair would have to be licensed to operate by [redacted] and it would be very unlikely they would obtain a licence should the airport assess that as a potential risk'.

⁵³ *WFS/Exxon*, paragraphs 42 and 46.

⁵⁴ One airport operator stated that in response to WFS' foreclosure strategy 'customer would be able to go to other airports to tanker in fuel rather than using the infrastructure at the airport'. Another airport operator stated that it 'is the customer who decides on their supplier so we wouldn't see a [foreclosure] scenario such as this arise'.