

Completed acquisition by Clayton, Dubilier & Rice Holdings, LLC of Wm Morrison Supermarkets Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6966/21

The CMA's decision on reference under section 22(1) of the Enterprise Act 2022 announced on 24 March 2022. Full text of the decision published on 3 May 2022.

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 27 October 2021, Clayton, Dubilier & Rice Holdings, LLC (**CD&R**) acquired Wm Morrison Supermarkets Limited (**Morrisons**) (the **Merger**).¹ CD&R and Morrisons are together referred to as the **Parties** or the **Merged Entity**.
2. Morrisons is a British supermarket retailer, headquartered in Bradford, active in the retail and wholesale supply of groceries, as well as the retail supply of petrol and diesel (**road fuel**), liquified petroleum gas used as a fuel for road vehicles (**auto-LPG**), apparel, and general merchandise products throughout the UK and online. CD&R exercises indirect control over a number of portfolio companies, including the Motor Fuel Group (**MFG**). MFG owns and operates 921 petrol filling stations (**PFSs**) throughout the UK, through which it supplies road fuel, auto-LPG, and convenience groceries. MFG also supplies road fuel on a wholesale basis to independent dealer sites.

¹ Final Merger Notice submitted to the CMA on 26 January 2022 (**FMN**), paragraphs 4-5. Wm Morrison Supermarkets Limited changed its name from Wm Morrison Supermarkets PLC on 17 November 2021.

3. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of CD&R and Morrisons 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.

Frame of reference

4. The Parties primarily overlap in the supply of the following in the UK:²
 - (a) retail supply of road fuel;
 - (b) retail supply of auto-LPG; and
 - (c) retail supply of convenience groceries.

Retail supply of road fuel

5. In line with the CMA's approach in precedent cases, the CMA considered it appropriate to assess the impact of the Merger on the retail supply of road fuel (without further segmentation between petrol and diesel) both at the national and local level. At the local level, in line with the recent *Bellis/Asda* investigation,³ the CMA adopted the following catchment areas: (i) non-supermarket PFSs up to 10 minutes drive-time; and (ii) supermarket PFSs up to 20 minutes drive-time.

Retail supply of auto-LPG

6. In line with the CMA's approach in recent cases, the CMA considered it appropriate to assess the impact of the Merger on the retail supply of auto-LPG (distinct from road fuel, due to limited supply and demand-side substitutability) at both the national and local levels. Demand for auto-LPG has declined significantly over the past few years and remains in marked decline. The Parties submitted compelling evidence showing MFG's pre-existing commercial strategy to remove all of its auto-LPG facilities by 2024 (including the removal of auto-LPG from most of the areas where the Parties overlap by the end of 2022). Where MFG has previously removed auto-LPG

² The Parties also have minor overlaps in the supply of other products, such as the provision of electronic vehicle charging. The CMA found that the Merger does not give rise to any plausible competition concerns in these areas, including because the Parties have very low combined shares. As such, they are not discussed further in this Decision.

³ CMA decision of 20 April 2021, case ME/6911/20 - *Bellis Acquisition Company 3 Limited/Asda Group Limited (Bellis/Asda)*.

facilities from its PFSs, it has not marketed or sold these assets (for continued operation in the local area) to third parties. The CMA also believes that there is no alternative, less anticompetitive purchaser (eg, rival PFSs in the relevant local areas) for MFG's auto-LPG facilities. It was therefore not necessary for the CMA to carry out a competitive assessment to conclude that there is no realistic prospect that the Merger could lead to a substantial lessening of competition (**SLC**) in the supply of auto-LPG.

Retail supply of convenience groceries

7. In line with the CMA's approach in precedent cases, the CMA considered it appropriate to assess the impact of the Merger on the retail supply of convenience groceries (which are constrained by other convenience groceries, mid-size stores and one-stop stores), both at the national and local level. At the local level, the CMA considered the following geographic frames of reference:
 - (a) for convenience stores that are co-located within a PFS, a 5-minute drive-time catchment; and
 - (b) for standalone convenience stores, both a 1-mile radius and 5-minute drive-time catchment.

Conclusion on frame of reference

8. The CMA has therefore assessed the impact of the Merger adopting the following frames of reference:
 - (a) retail supply of road fuel at both a national and local level; and
 - (b) retail supply of convenience groceries at both a national and local level.

Horizontal unilateral effects

Road fuel

9. In *Bellis/Asda*, the CMA used a decision rule to assess the competitive impact of the Merger in local areas where the Parties' activities overlap. This decision rule took into account the competitive parameters in each local area, for example by incorporating the drive-time distance between PFSs, the number of alternatives available to customers, differentiation between the Parties, and whether Asda had taken into account the acquirers' prices when setting its own prices in a local area.

10. The decision rule set out in *Bellis/Asda* in its local assessment of the retail supply of road fuel was the starting point for the CMA's assessment in this case. The CMA found that it would be appropriate to apply the same decision rule in this case for several reasons. First, the CMA noted the similarities between the two cases, in particular the fact that both involve an acquirer with a large portfolio of non-supermarket PFSs acquiring a target with a large portfolio of supermarket PFSs. Second, the CMA received evidence from third parties and found evidence in the Parties' internal documents indicating that the relevant parameters of competition have not changed since the *Bellis/Asda* decision. On this basis, the CMA considered it appropriate to use the decision rule adopted in *Bellis/Asda* to identify the number of local areas where there is a realistic prospect of an SLC. The CMA made one adjustment to the *Bellis/Asda* decision rule to reflect Morrisons' own price strategy in local areas.
11. Using the decision rule, the CMA found that the Merger gives rise to a realistic prospect of an SLC in the retail supply of road fuel in 121 local areas.
12. With regard to the national retail supply of road fuel, on the basis of the Parties' low combined shares of supply at a national level and the presence of many large and small rivals in the market, the CMA found no competition concerns.

Convenience groceries

13. In *Bellis/Asda*, the CMA also applied a decision rule in its assessment of convenience groceries. This decision rule adopted a weighted fascia count that was adjusted by the competitive constraint exerted by different types of convenience stores.
14. In this case, the CMA found that the main factors that affect customers' choice of convenience groceries at a local level are still location, size, and brand. The CMA found the relevant parameters of competition have not changed since the *Bellis/Asda* investigation, and that there is no other reason that it would not be appropriate to apply the decision rule set out in that decision in the local assessment of the retail supply of convenience groceries.
15. Using this decision rule, the CMA has not identified a realistic prospect of an SLC in any local area. On this basis, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in any local areas in relation to the retail supply of convenience groceries.
16. With regard to the national retail supply of convenience groceries, on the basis of the Parties' low combined shares of supply at a national level and on

the basis of third party evidence received during the CMA's merger investigation, the CMA found no competition concerns.

Decision

17. The CMA therefore believes that the Merger gives rise to a realistic prospect of a SLC as a result of horizontal unilateral horizontal effects in the retail supply of road fuel in 121 local areas.
18. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). CD&R has until 31 March 2022 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

CD&R and MFG

19. CD&R is private equity group based in the US, which operates globally and makes investments through a number of different funds. Its portfolio companies operate in a variety of economic sectors.⁴ As a result of the Merger, Morrisons is controlled by CD&R.
20. CD&R exercises control over MFG through one of its funds.⁵ MFG owns and operates 921 PFSs throughout the UK and also supplies road fuel on a wholesale basis to 169 independent dealer sites, including 161 Murco-branded dealer sites in the UK.⁶ CD&R also exercises control over a number of other portfolio companies active in a variety of economic sectors. Three of CD&R's portfolio companies have immaterial actual or potential links with Morrisons.⁷ The CMA does not believe that these links raise significant concerns and they are not considered further in this Decision.
21. The turnover of CD&R in the financial year ending 2021 was approximately £[><] in the UK.⁸

Morrisons

22. Morrisons is a British supermarket retailer, headquartered in Bradford, active in the retail and wholesale supply of groceries, as well as the retail supply of apparel, general merchandise products, road fuel and auto-LPG throughout the UK and online.⁹ Prior to the Merger, Morrisons was listed on the London Stock Exchange.¹⁰
23. Morrisons operates a network of 497 grocery stores in the UK, which are mainly supermarkets. It also owns 339 PFSs, the majority of which are co-located with a Morrisons grocery store.¹¹ Morrisons wholesale supplies

⁴ FMN, paragraph 5.

⁵ FMN, paragraph 5.

⁶ FMN, paragraph 5.

⁷ American Greetings supplies greeting cards to a number of retailers in the UK, [><]; Westbury Street provides contract caterer and hospitality services and purchases [><]; and Multi-Color Corporation supplies label solutions and indirectly supplies [><].

⁸ FMN, paragraph 54.

⁹ FMN, paragraphs 87-99.

¹⁰ FMN, paragraph 47.

¹¹ FMN, paragraph 1.

convenience groceries to approximately 1,163 McColl's owned and 109 Morrisons Daily branded stores.^{12, i}

24. The turnover of Morrisons in the financial year ending 2021 was approximately £17.6 billion in the UK.

Transaction

25. The Merger was brought into effect by way of a recommended public offer (**the Offer**) pursuant to the UK City Code on Takeovers and Mergers. CD&R announced the Offer on 19 August 2021. The Morrisons general meeting to approve the scheme occurred on 19 October 2021, and the court sanctioned the scheme on 25 October 2021.¹³ On 27 October 2021, the Parties completed the Merger.¹⁴
26. The Parties informed the CMA that the Merger is not subject to review by any other competition authority.¹⁵
27. The Parties submitted that the acquisition of Morrisons is consistent with CD&R Group's business strategy of acquiring controlling interests in mature and growing businesses and seeking to build value by assisting management in growing business activities. CD&R submitted that it intends to assist Morrisons in capitalising on: (i) the solid foundations the management team has built; (ii) Morrisons' heritage and strong history; and (iii) the broader evolution of the UK grocery market, so as to further accelerate Morrisons' growth and development.¹⁶ This rationale is also supported by statements included in the public announcement of the Offer.¹⁷

Procedure

28. The Merger was considered at a Case Review Meeting.¹⁸

¹² Parties' response to Q2 of the CMA's request for information dated 10 February 2022.

¹³ FMN, paragraphs 7 and 37.

¹⁴ FMN, paragraph 7.

¹⁵ FMN, paragraph 46.

¹⁶ FMN, paragraphs 44-45.

¹⁷ See 'Background to and reasons for the CD&R Offer' in Rule 2.7 announcement, pages 15-17, available at [Rule 2.7 Announcement, 19 August 2021](#)

¹⁸ See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), January 2014, from paragraph 7.34.

Jurisdiction

29. A relevant merger situation exists where two or more enterprises have ceased to be distinct and either the turnover or the share of supply test is met.¹⁹ Two or more enterprises will cease to be distinct if they are brought under common ownership or control.²⁰
30. Each of CD&R and Morrisons is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
31. The UK turnover of Morrisons exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
32. The Merger completed on 27 October 2021. The four-month clock has been stopped four times for a total of 37 calendar days, so the CMA's four-month deadline for a decision under section 24 of the Act has been extended from 27 February 2022 to 22 April 2022.
33. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
34. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 28 January 2022 and the statutory 40 working day deadline for a decision is therefore 24 March 2022.

Counterfactual

35. 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.²¹

¹⁹ See CMA2, part 4.

²⁰ Section 26(1) of the Act.

²¹ [Merger assessment guidelines – 2021 revised guidance \(CMA129\)](#), March 2021, from paragraph 3.12. See CMA2, Annex D.

Parties' submissions

36. The Parties submitted that there is no evidence to suggest that the CMA should depart from its default counterfactual of prevailing conditions of competition in this case.²²
37. In relation to auto-LPG, however, the Parties also submitted that 'the correct counterfactual is one in which MFG ceases to supply auto-LPG'.²³ Specifically, the Parties submitted that '[b]etween 2022 to 2024, MFG will remove auto-LPG from all of the remaining 49 sites'.²⁴ They noted that 'MFG plans to remove auto-LPG from all of the MFG sites which are in areas which fail the *Bellis/Asda* decision rules for auto-LPG (whether MFG or Morrisons centred) within the next 12 months (with the exception of one site)'.²⁵ MFG provided internal documents that outline its plans and timeline for removal of auto-LPG from all of its sites.²⁶ The Parties also submitted that auto-LPG is a very small, legacy part of the Parties' petrol forecourt business, accounting for less than 1% of either of the Parties' revenues at their petrol forecourts.²⁷ MFG has long regarded auto-LPG to be an ancillary product, which has been in significant decline in recent years.²⁸
38. The Parties submitted that one of the primary drivers for the removal of auto-LPG assets from MFG's sites is to respond to the rapid change in the market for electric vehicles (**EV**). MFG has developed a strategy for the development of EV services at its sites. In March 2021, MFG publicly announced that it would invest £400 million in EV charging facilities across its UK network and install EV chargers at 500 of its sites by 2030.²⁹ The Parties submitted that there are prescribed distances around auto-LPG infrastructure (blast zones) where EV chargers cannot be positioned under Health and Safety regulations. Given the space limitations at forecourts, and the need to place EV chargers outside of blast zones around road fuel dispensers, the Parties consider that it is necessary to remove auto-LPG infrastructure in order to accommodate Health and Safety compliant EV Hubs. Consequently, MFG intends to remove auto-LPG facilities at sites in order to create the necessary space for EV

²² FMN, paragraph 70.

²³ Parties' Annex 26 to the FMN, paragraph 3.

²⁴ FMN, footnote 124.

²⁵ Parties' Annex 26 to the FMN, paragraph 3.8.

²⁶ Parties' response to issues letter dated 4 March (**Issues Letter Response**), 'Theory of Harm 2 – The Retail Supply of Auto-LPG', Annex 2 and Parties' Annex 39 to the FMN.

²⁷ FMN, paragraph 190.

²⁸ Issues Letter Response, 'Theory of Harm 2 – The Retail Supply of Auto-LPG', paragraph 2.2. FMN, paragraph 104.

²⁹ [MFG Invests £400 Million in Ultra-Rapid EV Chargers - Motor Fuel Group](#).

chargers.³⁰ MFG also provided site sketches, planning applications and letters from local councils granting permission to make structural changes to PFSs.³¹

CMA's assessment

39. In assessing an exiting firm scenario, the Merger Assessment Guidelines set out the following framework for the CMA to consider:³²
- (a) the firm is likely to have exited (through failure or otherwise); and, if so
 - (b) whether there would have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question.
40. The Merger Assessment Guidelines also note that for the CMA to accept an exiting firm argument at Phase 1, it would need to see 'compelling evidence' that the factors listed above are present.³³
41. The CMA believes that, in this case, it is likely that MFG would have exited the supply of auto-LPG absent the Merger, for the following reasons.
- (a) The CMA has seen evidence that demand for auto-LPG has significantly fallen over the past few years, and continues to be in marked decline. The number of cars that run on auto-LPG,³⁴ PFSs that supply auto-LPG,³⁵ and total consumption of auto-LPG,³⁶ are all declining significantly. MFG's internal documents are consistent with the position that its auto-LPG business is of limited strategic interest (consistent with the characterisation of auto-LPG as an ancillary product that already accounts for less than 1% of their revenues at PFSs).
 - (b) Prior to the Merger, MFG had publicly indicated its commitment to increase the number of EV chargers at its PFS sites.³⁷ As outlined above, MFG submitted evidence setting out that the installation of Health and Safety-compliant EV Hubs would be likely to require the removal of any existing on-site auto-LPG facilities. MFG also submitted internal

³⁰ Issues Letter Response, 'Theory of Harm 2 – The Retail Supply of Auto-LPG', paragraphs 2.3-2.8.

³¹ Issues Letter Response, 'Theory of Harm 2 – The Retail Supply of Auto-LPG', Annex 2, Annex 3.1 and Annex 3.2.

³² CMA129, paragraphs 3.21-3.25.

³³ CMA129, paragraph 3.23.

³⁴ [Autogas hit by UK 2030 ban on gasoline, diesel engines | Argus Media](#). In 2011, there were 170,000 LPG capable vehicles in the UK. However, by 2019, there were 105,000 LPG-capable vehicles in the UK.

³⁵ For example, see [Shell axes LPG offering in UK due to low demand | Autocar](#). In 2020, Shell ceased offering auto-LPG at its PFSs in the UK.

³⁶ [Autogas hit by UK 2030 ban on gasoline, diesel engines | Argus Media](#). Auto-LPG consumption in the UK peaked at 120,000 tonnes in 2008. However, consumption had dropped to 61,000 tonnes in 2019.

³⁷ [MFG Invests £400 Million in Ultra-Rapid EV Chargers - Motor Fuel Group](#).

documents showing its general commercial strategy to remove auto-LPG facilities³⁸ and increase the number of EV chargers at its PFS sites.³⁹

- (c) In line with this strategy, MFG has been removing auto-LPG facilities over the past few years and has plans to remove all of them in the next two years.⁴⁰ MFG provided site sketches, planning applications, and letters from local councils granting permission to make structural changes to PFSs;⁴¹ the CMA considers that these planning applications show MFG's intention to update its PFSs, including replacing its auto-LPG facilities with EV chargers. The CMA also considers that there is sufficient evidence that MFG intends to continue executing this strategy, given its track record in removing auto-LPG facilities, the planning applications that it has recently submitted, and the consents that it has received to repurpose its PFSs in this way.
- (d) MFG also explained the commercial reasoning for not removing all auto-LPG facilities at once. According to MFG, auto-LPG storage infrastructure has to pass 10-year and 20-year tests, with the latter typically resulting in essential upgrade works that cost up to £25,000.⁴² The CMA understands that MFG's strategy to stagger removal of auto-LPG from PFS between now and 2024 is partly explained by the ability to keep the auto-LPG facilities active at minimal cost until essential upgrade works are required at the 20-year test.
- (e) The CMA notes that the Parties provided neither dated records nor board level documentation to evidence its plans to remove auto-LPG facilities at the specific sites that would fail the *Bellis/Asda* decision rule.⁴³ MFG explained, however, that auto-LPG has minimal impact on its PFS business, and that decisions to stop supplying auto-LPG at a site are taken by MFG's Operations Team at MFG's head office on an ongoing basis as MFG develops individual sites.⁴⁴

42. Taken in the round (and taking into account the very modest role that auto-LPG has played in MFG's business in recent years, which is consistent with the position that there is very limited analysis of the auto-LPG business within MFG's internal documents), the CMA believes that the evidence provided is

³⁸ Issues Letter Response, 'Theory of Harm 2 – The Retail Supply of Auto-LPG', Annex 2.

³⁹ Issues Letter Response, 'Theory of Harm 2 – The Retail Supply of Auto-LPG', Annex 2 and Annex 3.1

⁴⁰ FMN, footnote 124 and Issues Letter Response, 'Theory of Harm 2 – The Retail Supply of Auto-LPG', Annex 2.

⁴¹ Issues Letter Response, 'Theory of Harm 2 – The Retail Supply of Auto-LPG', Annex 2.

⁴² Parties' Annex 26 to the FMN, paragraph 2.10.

⁴³ Issues Letter Response, 'Theory of Harm 2 – The Retail Supply of Auto-LPG', paragraph 2.4.

⁴⁴ Issues Letter Response, 'Theory of Harm 2 – The Retail Supply of Auto-LPG', paragraph 2.4.

sufficiently robust and compelling to show that MFG planned to remove its auto-LPG facilities in the near future.

43. The CMA also believes that there is no alternative, less anticompetitive purchaser (eg rival PFSs) for MFG's auto-LPG facilities in the relevant local areas. The CMA notes that auto-LPG facilities are usually located within a PFS (rather than being standalone facilities). They also represent a negligible proportion of sales of an average PFS, and they are being phased out across the industry in order to repurpose the space that they currently occupy, including to install EV Hubs. Where MFG has previously removed auto-LPG facilities from its PFSs, it has not marketed or sold these assets (for continued operation in the local area) to third parties. The CMA also considers that there is little or no interest by rival PFSs in local areas in installing second-hand auto-LPG facilities in their sites. The CMA therefore considers that, absent the merger, there would have been no alternative, less anticompetitive purchaser for MFG's auto-LPG sites (or their assets).
44. On this basis, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual in relation to the Parties' products, except for auto-LPG. In relation to auto-LPG, the CMA considers that it is likely that MFG would have continued its pre-existing strategy of exiting the supply of auto-LPG absent the Merger. As a result of MFG's plans to stop supplying auto-LPG, including its plans to remove auto-LPG facilities from the sites that would otherwise fail the decision rule for auto-LPG (whether MFG or Morrisons centred), the CMA believes that there is no realistic prospect of the Merger leading to an SLC in relation to the supply of auto-LPG at a local level or at a national level.

Frame of reference

45. While market definition can sometimes be a useful tool, it is not an end in itself. The outcome of any market definition exercise does not determine the outcome of the CMA's analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.⁴⁵

⁴⁵ [CMA129](#), paragraph 9.4.

46. The Parties are active in the supply of the following in the UK:⁴⁶

- (a) retail supply of road fuel; and
- (b) retail supply of convenience groceries.

Product scope

Parties' submissions

Retail supply of road fuel

47. The Parties submitted that, in line with the CMA's previous decisions in *Bellis/Asda*, *Sainsbury's/Asda*,⁴⁷ and *MFG/MRH*,⁴⁸ the relevant product frame of reference is the retail supply of road fuel, without further segmentation between petrol and diesel.⁴⁹

Retail supply of convenience groceries

48. The Parties relied on previous CMA decisions in submitting that there are three broad product markets, with asymmetric competition between each.⁵⁰ These are:⁵¹

- (a) One-stop stores (**OSS**): those with a net sales area of more than 1,400 square metres are competitively constrained only by other OSS;
- (b) Mid-size stores (**MSS**): those with a net sales area of less than 1,400 square metres but more than 280 square metres are competitively constrained by other MSS and OSS; and
- (c) Convenience stores: those with a net sales area of less than 280 square metres are constrained by other convenience stores, MSS and OSS. This category includes convenience stores at PFSs.

⁴⁶ In addition to road fuel, the Parties also overlap in the supply of certain other services, such as EV charging and auto-LPG. However, the CMA does not consider that these overlaps give rise to a realistic prospect of an SLC independently of the SLCs considered. In relation to EV charging, according to [Zap-Map's](#) online database, there are 15,831 public charging locations across the UK. By contrast, there are only [X] MFG locations and [X] Morrisons locations. As a result, the Parties' share of supply in the UK is approximately [0-5]% of public charging sites. In relation to auto-LPG, the CMA believes that, absent the Merger, MFG would have continued its strategy of exiting the supply of this product.

⁴⁷ CMA decision of 25 April 2019, case ME/6752-18 – J Sainsbury Plc/Asda Group Ltd, (*Sainsbury's/Asda*).

⁴⁸ CMA decision of 5 October 2018, case ME/6750/18 – MFG/MRH, (*MFG/MRH*), (see FMN, paragraph 91).

⁴⁹ FMN, paragraphs 101-102.

⁵⁰ FMN, paragraph 130.

⁵¹ *Bellis/Asda*, paragraph 63; *Sainsbury's/Asda*, paragraph 7.7.

49. The Parties also submitted that all of the stores on MFG sites have a net sales area of below 280 square metres and therefore the only horizontal overlap between the Parties is in relation to the supply of convenience groceries.⁵²

CMA's assessment on product frame of reference

50. The CMA has not received any evidence to support departing from the product frame of reference adopted in previous cases in relation to:
- (a) retail supply of road fuel; and
 - (b) retail supply of convenience groceries.

Conclusion on product scope

51. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
- (a) retail supply of road fuel; and
 - (b) retail supply of convenience groceries, with asymmetric competition from OSS and MSS.

Geographic scope

Parties' submissions

Retail supply of road fuel

52. The Parties submitted that:
- (a) in its past decisions, the CMA has considered the retail supply of road fuel at both national and local level. At the local level, the CMA has previously identified the relevant catchment area around PFSs in drive-time isochrones: non-supermarket petrol stations up to 10-minutes drive-time and supermarket petrol stations up to 20-minutes drive-time. The Parties do not dispute this approach and have identified local overlaps based on these catchment areas as well as providing information on a national level;⁵³ and

⁵² FMN, paragraph 132.

⁵³ FMN, paragraphs 107-108.

(b) they set their road fuel prices by reference to the prices of local competitors.⁵⁴

Retail supply of convenience groceries

53. The Parties submitted that in its past decisions, the CMA has assessed the retail supply of convenience groceries at both a national and local level.⁵⁵ At a local level, the Parties submitted that the CMA has previously assessed the retail supply of convenience groceries based on a 5-minute drive-time.⁵⁶ The Parties submitted that since all of MFG's convenience stores are co-located with PFSs, it follows that the vast majority of customers will drive to these stores and therefore a 5-minute drive-time is an appropriate geographic frame of reference.⁵⁷
54. The Parties have submitted that a geographic frame of reference of a 1-mile radius around standalone convenience grocery stores is not an appropriate geographic frame of reference, given that the vast majority of Morrisons' standalone grocery stores have car parks, implying that customers frequently drive to these sites.⁵⁸ As such, the Parties have submitted that the CMA should focus on the use of a 5-minute drive-time catchment only, consistent with previous cases, where the CMA has used only a 5-minute drive-time catchment where customers tend to travel by car to convenience grocery stores.⁵⁹

CMA's assessment

Retail supply of road fuel

55. The CMA believes that competition for the retail supply of road fuel takes place mainly at a local level, as customers will consider options available to them in a local area when they need to buy road fuel. The CMA's assessment of the Parties' internal pricing strategies, discussed further below, indicates that the Parties set prices at a local level and with reference to local rivals. However, the CMA believes that a national dimension of competition also exists, consistent with previous cases.⁶⁰

⁵⁴ FMN, paragraphs 155-163.

⁵⁵ FMN, paragraph 100.

⁵⁶ FMN, paragraph 133, which references *Bellis/Asda*, paragraph 82.

⁵⁷ CD&R response to the CMA's s109 Notice dated 9 December 2021, 2 January 2021, paragraph 3.8.

⁵⁸ CD&R response to the CMA's s109 Notice dated 9 December 2021, 2 January 2021, paragraph 3.9.

⁵⁹ CD&R response to the CMA's s109 Notice dated 9 December 2021, 2 January 2021, paragraph 3.11.

⁶⁰ *Bellis/Asda*, paragraph 71 and *MFG/MRH*, paragraph 33.

56. The CMA therefore believes that it is appropriate to conduct the competitive assessment of the retail supply of road fuel by reference to both a national and local frame of reference. For the local assessment, the CMA believes that the appropriate catchment areas are the same as it adopted in *Bellis/Asda*, including:

(a) non-supermarket PFSs up to 10-minutes' drive-time, and

(b) supermarket PFSs up to 20-minutes' drive-time.

Retail supply of convenience groceries

57. The CMA believes that the appropriate geographic frame of reference for the retail supply of convenience groceries is local, as customers will consider options available to them in a local area. However, the CMA believes that a national dimension of competition also exists, consistent with previous cases.⁶¹

58. In *Bellis/Asda*, the CMA adopted a 5-minute drive-time catchment around each convenience store, given that all stores were co-located with a PFS and data from the Association of Convenience Stores (**ACS**) indicated the majority of PFS convenience store customers drive to the stores.⁶² The CMA also recognised that in its most recent decisions, a 1-mile catchment for convenience stores has been used, given that data from the ACS shows that a high proportion of customers walk to convenience stores.⁶³

59. In this case, where not all of the Parties' convenience stores are co-located with a PFS,⁶⁴ the CMA believes that it is not appropriate to use only a 5-minute drive-time catchment around each convenience store. Given that the Parties' operate a number of standalone stores, which are not co-located with a PFS, customers may reach them on foot, rather than by car. As such, the CMA believes that there is insufficient evidence to rule out the 1-mile catchment area for standalone convenience stores, as suggested by the Parties.

⁶¹ *Bellis/Asda*, paragraph 81 and *MFG/MRH*, paragraph 43.

⁶² *Bellis/Asda*, paragraph 82.

⁶³ *Bellis/Asda*, paragraph 82.

⁶⁴ The Parties submitted in response to RFI 4 dated 20 January 2022, that Morrisons has [redacted] standalone convenience grocery store.

60. The CMA believes the following local geographic frame of reference to be most appropriate:
- (a) for convenience stores that are co-located within a PFS, a 5-minute drive-time catchment; and
 - (b) for standalone convenience stores, both a 1-mile radius and 5-minute drive-time catchment.

Conclusion on geographic scope

61. For the reasons set out above, the CMA has considered the impact of the Merger in the following geographic frames of reference:
- (a) for the retail supply of road fuel, at both a national and local level, with the appropriate local catchment areas being: (i) for non-supermarket PFSs, up to 10-minutes' drive-time, and (ii) for supermarket PFSs, up to 20-minutes' drive-time; and
 - (b) for the retail supply of convenience groceries, at both a national and local level, with the appropriate local catchment areas being: (i) for convenience stores that are co-located within a PFS, under a 5-minute drive-time; and (ii) for standalone convenience stores, both a 1-mile radius and 5 minute drive-time.

Conclusion on frame of reference

62. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) retail supply of road fuel at a national and local level; and
 - (b) retail supply of convenience groceries at a national and local level.

Competitive assessment

Horizontal unilateral effects

63. 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.⁶⁵ 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 effects⁶⁶ in the retail supply of road fuel at a local level and the retail supply of convenience groceries at both a national and local level.

Retail supply of road fuel

Local assessment

64. The concern under this theory of harm is that the removal of one Party as a competitor could allow the Parties to increase prices (or deteriorate other elements of their offering such as quality) at certain sites. After the Merger, it is less costly for the Merged Entity to raise prices (or lower quality) because it will recoup the profit on recaptured sales from those customers who would have switched to the site of the other merging Party.

- *Use of decision rules*

65. In *Bellis/Asda*, the CMA used a decision rule to assess the competitive impact of the Merger in local areas where the Parties' activities overlap.⁶⁷ This decision rule took into account the competitive parameters in each local area, for example by incorporating the drive-time distance between PFSs, the number of alternatives available to customers, differentiation between the

⁶⁵ CMA129, paragraph 4.1.

⁶⁶ The CMA has considered whether there are input foreclosure concerns arising from the vertical links that exist between the Parties, concerning (i) MFG's wholesale supply of road fuel to rival road fuel retailers (PFSs) and (ii) Morrisons' wholesale supply of convenience groceries to rival convenience grocery retailers. The CMA found that MFG has a share of less than 5% in the wholesale supply of road fuel at a national level, and that there are a large number of credible alternative wholesale suppliers of wholesale road fuel across the UK. Consequently, the CMA believes that, post-Merger, MFG would be unlikely to have the ability to foreclose the access of rival PFSs to road fuel. Similarly, Morrisons has a share of less than [0-5]% in the wholesale supply of groceries at a national level, and the CMA found that there are a large number of credible alternative wholesale suppliers of convenience groceries across the UK. Consequently, the CMA believes that Morrisons would be unlikely to have the ability to foreclose the access of rival convenience grocery stores to groceries.

⁶⁷ *Bellis/Asda*, paragraphs 153-156.

Parties, and whether Asda had taken into account the acquirers' prices when setting its own prices in a local area.

66. The CMA has considered whether it is appropriate to apply the decision rule set out in *Bellis/Asda* in its local assessment of the retail supply of road fuel.⁶⁸
67. First, the CMA noted the similarities between the two cases, in particular as both cases involve an acquirer with a large portfolio of non-supermarket PFSs acquiring a target with a large portfolio of supermarket PFSs.
68. Second, the CMA considered whether the dynamics of competition as set out in *Bellis/Asda*⁶⁹ have changed to an extent that would merit adopting a different decision rule to assess the current Merger. The dynamics of competition used to inform the *Bellis/Asda* decision rule in relation to the retail supply of road fuel were:⁷⁰
- (a) price and location are the two most important parameters of competition;
 - (b) there are other factors affecting choice, but these are less important;
 - (c) competition is asymmetric between supermarket and non-supermarket competitors; and
 - (d) motorway PFSs do not exert a material competitive constraint on non-motorway PFSs (and vice versa).
69. In this case, the CMA gathered evidence that confirmed that location, closely followed by price, remain the two most important factors which influence customer choice.⁷¹ Furthermore, third party competitors also confirmed that, whilst other factors such as 'food-to-go' offerings, branded convenience stores, and quality of service are important in driving customer choice, these factors are still considered to be less important than location and price for the majority of respondents.⁷²

⁶⁸ *Bellis/Asda*, paragraph 156.

⁶⁹ *Bellis/Asda*, paragraphs 100-143.

⁷⁰ *Bellis/Asda*, paragraph 180-182.

⁷¹ [REDACTED] response to CMA road fuel and LPG competitor questionnaire, Q8; [REDACTED] response to CMA road fuel and LPG competitor questionnaire, Q8; [REDACTED] response to CMA road fuel and LPG competitor questionnaire, Q8; [REDACTED] response to CMA road fuel and LPG competitor questionnaire, Q8; [REDACTED] response to CMA road fuel and LPG competitor questionnaire.

⁷² [REDACTED] response to CMA road fuel and LPG competitor questionnaire, Q8; [REDACTED] response to CMA road fuel and LPG competitor questionnaire, Q8; [REDACTED] response to CMA road fuel and LPG competitor questionnaire, Q8; [REDACTED] response to CMA road fuel and LPG competitor questionnaire, Q8; [REDACTED] response to CMA road fuel and LPG competitor questionnaire.

70. The CMA's assessment of the Parties' internal documents and, in particular, the Parties' submissions on the local pricing strategies of both MFG and Morrisons, confirm that the prices of local rivals and the location of those rivals are the primary factors considered by the Parties when setting price. In particular, the Parties' submissions and internal documentary evidence confirm that:

(a) For Morrisons' PFSs, each Morrisons PFS will price match the cheapest competitor within [redacted] from the PFS;⁷³

(b) For MFG PFSs:

(i) MFG uses an '[redacted]'.⁷⁴ The main inputs to MFG's pricing system are:

a. [redacted]; and

b. [redacted].

[redacted].⁷⁵

[redacted]:⁷⁶

a. [redacted]; and

b. [redacted].

(ii) MFG's internal documents also note that:

a. [redacted];⁷⁷ and

b. [redacted].⁷⁸

71. The CMA's assessment of the Parties' internal documents also found an asymmetry in constraint between supermarket PFSs and non-supermarket PFSs, similar to that outlined in *Bellis/Asda*.⁷⁹ Morrisons' internal documents

⁷³ Parties' Annex 3 to the FMN, page 4. FMN, paragraph 176(d).

⁷⁴ Parties' response to Q9 of the CMA's request for information dated 9 December 2021.

⁷⁵ FMN, paragraph 160(d).

⁷⁶ FMN, paragraph 159.

⁷⁷ CD&R Annex 19.1 to the FMN, page 25.

⁷⁸ CD&R Annex 19.2 to the FMN, page 24.

⁷⁹ *Bellis/Asda*, paragraph 135.

show a recognition that '[<]'⁸⁰ whilst MFG monthly price monitoring documents show MFG monitoring [<].⁸¹

72. Finally, the CMA has received no evidence to suggest that it should deviate from recognising that motorway PFSs do not exert a material competitive constraint on non-motorway PFSs and *vice versa*.⁸²

- *Decision rule*

73. Considering the evidence as set out above, the CMA applied the decision rule set out in *Bellis/Asda* to identify the number of local areas where there is a realistic prospect of an SLC. The CMA made one adjustment to the final limb of that decision rule to reflect Morrisons' own pricing strategy. In relation to the final limb of the current decision rule:

(a) the CMA considers that even small increases in fuel prices of 1pplⁱⁱ could give rise to significant harm to consumers, as fuel is for many consumers a non-discretionary expenditure that accounts for a significant share of household spend.⁸³ The CMA notes that PFSs advertise their prices in fractions of a penny, which indicates that even small differences in prices matter to customers; and

(b) in line with the Parties' submissions, the CMA considers that in any areas where removing an MFG PFS as a competitor would lead to an increase of 1 ppl or more in Morrisons' predicted prices, there is a realistic prospect of an SLC.

74. On the basis of the decision rule applied by the CMA, the Merger gives rise to a realistic prospect of an SLC in the retail supply of road fuel in local areas where any of the following conditions are satisfied:

(a) *Fascia count*

(i) the Merger leads to a reduction in competing PFSs from four to three or fewer, in terms of owner (**limb 1a**); or

⁸⁰ Morrisons Annex 20.30 to the FMN, page 17.

⁸¹ CD&R Annex 19.1 to the FMN, page 25.

⁸² *Bellis/Asda*, paragraph 143.

⁸³ Office for National Statistics, [Detailed household expenditure as a percentage of total expenditure by disposable income decile group: Table 3.2](#).

- (ii) MFG is the centroid, Morrisons is located within a 5-minute drive-time, and the Merger would lead to a reduction in competing PFSs from five to four or fewer in terms of owner (**limb 1b**); or

(b) *Market shares*

- (i) the Parties' PFSs are located within a 10-minute drive-time from each other and their combined market share by volume is equal to or higher than 40%, with an increment of 5% or more (**limb 2a**); or
- (ii) the Parties are located more than a 10-minute drive-time from each other and their combined market share by volume is equal to or higher than 45%, with an increment of 5% or more (**limb 2b**);⁸⁴ or
- (iii) MFG is the centroid, Morrisons is located within a 5-minute drive-time, and the Parties' combined market share by volume is equal to or higher than 30% with an increment of 5% or more (**limb 2c**); or

(c) *Supermarket PFSs*⁸⁵

- (i) MFG is the centroid and:
 - a. there is at most one supermarket PFS (in terms of number of sites) other than Morrisons in the catchment area (**limb 3a**); or
 - b. Morrisons is the only supermarket PFS within a 5-minute drive-time, there is no other supermarket PFS within a 5-minute drive-time from Morrisons, and there are three or fewer non-supermarket PFSs within a 5-minute drive-time from MFG (**limb 3b**); or
 - c. Morrisons is the only supermarket PFS within a 10-minute drive-time, there is no other supermarket PFSs within a 5-minute drive-time from Morrisons, and there are three or fewer non-supermarket PFSs within a 10-minute drive-time from MFG (**limb 3c**); or

(d) *Morrisons' pricing strategy*

- (i) Morrisons is the centroid, MFG is in the set of PFSs that Morrisons attempts to price match within a [\times] radius and the Morrisons centroid does not attempt to price match another supermarket, the

⁸⁴ Due to the definition of catchment areas, in practice this criterion applies only in local areas where MFG is the centroid.

⁸⁵ The CMA considers Asda, Morrisons, Sainsbury's, and Tesco to be supermarket PFSs.

average difference between (i) the lowest price among the set of non-supermarket PFSs Morrisons currently price matches excluding MFG; and (ii) the lowest price among the set of non-supermarket PFSs Morrisons currently price matches including MFG (ie the value in (i) minus the value in (ii)) is equal to or higher than 1 ppl over the period June 2021 to September 2021 (**limb 4**).⁸⁶

Parties' submissions on the application of the road fuel decision rule

- *Supermarket PFSs limb*

75. The Parties submitted that the Merger should not be regarded as giving rise to competition concerns in all areas identified as failing the application of the decision rule set out above. The Parties submitted that they consider there to be no realistic prospect of an SLC in relation to local areas which fail the decision rule only on the Supermarkets PFS limb.⁸⁷ More specifically, the Parties submitted in relation to these areas that:

(a) where an area fails on **limb 3a** above, the single rival supermarket PFS is either as close, or closer, to the MFG PFS than the Morrisons PFS in the area,⁸⁸ and

(b) where an area fails on **limb 3b** or **limb 3c** above, the Parties do not necessarily have high combined market shares.⁸⁹

76. The CMA does not believe that these arguments provide a basis to change the decision rule set out above.

77. As an overarching point, the CMA considers that a local area failing only on the Supermarket PFSs limb should be classified as failing the decision rule given the importance of the constraint provided by supermarket PFSs on non-supermarket PFSs. Addressing the two specific points the Parties make in turn, the CMA considers that:

(a) **Limb 3a** identifies local areas where there is a limited number of supermarkets PFSs in the area (given the importance of supermarket PFSs in imposing a constraint in the supply of road fuel in a local area).⁹⁰ As such, regardless of the proximity of other rival supermarket PFS in the

⁸⁶ FMN, paragraph 178.

⁸⁷ Parties' Annex 25 to the FMN, pages 2-3.

⁸⁸ Parties' Annex 25 to the FMN, pages 2-3.

⁸⁹ Parties' Annex 25 to the FMN, pages 2-3.

⁹⁰ *Bellis/Asda*, paragraph 120.

area, the CMA considers that areas that fail this limb give rise to a realistic prospect of an SLC given (i) the reduction in competition between Morrisons and MFG's PFSs (and resulting upward pricing pressure), and (ii) the presence of only one rival supermarket PFSs in the area post-Merger which, without the presence of other supermarkets to exert a competitive constraint, would be more likely to follow any price increases by Morrisons.

(b) **Limbs 3b and 3c** identify local areas where the Morrisons PFS is a particularly close geographic competitor to the MFG site (given the importance of location to customers in their choice of PFS).⁹¹ As such, regardless of the number of other competitors located further away, the CMA would still consider such areas to fail the decision rule given the proximity of the Morrisons to the MFG PFS.

- *Market shares limb*

78. The Parties also submitted that they consider there is no realistic prospect of an SLC in relation to local areas which fail the decision rule only on **limb 2** (the Market Shares limb).⁹² More specifically, in relation to these areas, the Parties submitted that:

(a) Supermarket PFSs tend to sell higher volumes of road fuel. Morrisons' PFSs account for a higher proportion of the Parties' combined share than MFG PFSs. As a result, these areas may fail the market share limb even though MFG may account for very small increments.⁹³

(b) The CMA should have regard to high numbers of fasciae in any given area as evidence that there will be no SLC, even if combined shares are high.⁹⁴

(c) The CMA should not find an SLC in areas where the Parties are not each other's geographically closest competitors, by drive-time, even if combined shares are high.⁹⁵

79. The CMA does not believe that these arguments provide a basis to change the decision rule set out above.

⁹¹ *Bellis/Asda*, paragraph 103.

⁹² Parties' Annex 25 to the FMN, pages 3-4.

⁹³ Parties' Annex 25 to the FMN, pages 3-4.

⁹⁴ Parties' Annex 25 to the FMN, pages 3-4.

⁹⁵ Parties' Annex 25 to the FMN, pages 3-4.

80. In general, the CMA considers that a local area failing only the Market Shares limb raises material competition issues given that high combined market shares are indicative of weak remaining post-Merger constraints. Addressing the three specific points the Parties make in turn, the CMA considers that:

- (a) In principle, the higher the market share of one merging party (ie Morrisons), the larger the incentive of the other party (MFG) to raise prices, as it is more likely that a higher volume of its sales will be recaptured by the other merging party.⁹⁶
- (b) A high number of fasciae is not sufficient to rule out an SLC, given that some competitors may exert only a weak constraint. For example, in a hypothetical scenario where the Parties have a combined market share of 35% and there are 10 other competitors, competitors would have, on average, a 6.5% market share each. Where there are several competitors and the Parties have a significant combined market share, the CMA considers this to be evidence that not all suppliers in an area are likely to provide an equivalent competitive constraint.⁹⁷ The CMA notes that this is consistent with the position in *MFG/MRH*, in which the CMA found SLCs in areas with high market shares and a high number of fasciae.⁹⁸
- (c) Parties do not need to be the closest competitors geographically to be considered alternatives to one another by a significant proportion of customers.⁹⁹ For example, in a hypothetical scenario where merging party B is located 3 minutes' drive-time west from merging party A, and a third party competitor C is located 2 minutes' drive-time east from A, customers switching from A are likely to choose between B and C depending on the direction of their overall journey.

- *MFG Felixstowe Docks*

81. The Parties submitted that MFG Felixstowe Docks should be excluded from the set of SLC areas failing the road fuel decision rule because of its unique characteristics.¹⁰⁰ In particular, this area fails **limbs 2a, 3b and 3c** (ie the Market Shares and Supermarket PFS limbs).¹⁰¹

⁹⁶ *Bellis/Asda*, paragraph 170.

⁹⁷ *Bellis/Asda*, paragraph 169.

⁹⁸ *Bellis/Asda*, paragraph 169.

⁹⁹ *Bellis/Asda*, paragraph 169.

¹⁰⁰ Issues Letter Response, Slides from Issues Meeting of 2 March 2022, page 12.

¹⁰¹ Parties' Annex 25 to the FMN, pages 4-7.

82. The Parties submitted the relevant MFG site is located within the docks at Felixstowe and, when compared to the Morrisons located in the town of Felixstowe, these two sites serve distinctly different customer bases.¹⁰² The Parties submitted that:
- (a) There is poor substitutability between the Morrisons PFS and MFG Felixstowe Docks, both for domestic customers and commercial customers (such as HGV and LGV customers). MFG Felixstowe Docks is designed to accommodate HGVs (60% of the fuelling positions are designed to accommodate HGVs), meaning that domestic customers are unlikely to consider this an alternative to Morrisons. Morrisons' PFS, on the other hand, has only a single access point and is very compact. This makes access for HGVs difficult, meaning that they are not likely to consider it an alternative to the MFG site.¹⁰³
 - (b) The majority of MFG Felixstowe Docks customers are HGV drivers, ie commercial customers. In 2019 and 2020, [80-90]% and [90-100]% of MFG sites total fuel volumes related to low margin fuel card payments respectively. This is compared to [10-20]% of retail fuel sales at the Morrisons PFS.¹⁰⁴
83. The CMA asked the Parties to submit an appropriate adjustment to the road fuel decision rule, which would systematically take account of these factors across all local areas.¹⁰⁵ The Parties did not submit any proposed amendments on the grounds that it would be disproportionate to gather the necessary evidence to implement the amended decision rule across all local areas, particularly since the Parties' concerns were confined only to the local area of Felixstowe.¹⁰⁶
84. The CMA considers that the use of a decision rule is designed to assess all local areas of overlap systematically by reference to the same factors, rather than having regard to different factors in different local areas, unless there is evidence that certain factors are only applicable in certain local areas (eg imminent entry or exit). The decision rule in this case is being applied within the context of a Phase 1 investigation, which is intentionally a lower and more cautious threshold for an SLC finding than that applied by the CMA after a more extensive investigation at Phase 2. Within that context, the CMA has received no evidence to suggest that the factors submitted by the Parties in

¹⁰² Parties' Annex 25 to the FMN, pages 4-7.

¹⁰³ Parties' Annex 25 to the FMN, pages 4-7.

¹⁰⁴ Parties' Annex 25 to the FMN, pages 4-7.

¹⁰⁵ CMA's Issues Letter to the Parties dated 25 February 2022, paragraph 91.

¹⁰⁶ Parties' statements in Issues Meeting of 2 March 2022.

relation to MFG Felixstowe are unique to that particular area; for example, the CMA notes there are around 120 commercial ports in the UK (and that PFS located close to other industrial facilities might also raise similar considerations).¹⁰⁷

85. As such, the CMA considers that the factors identified by the Parties in relation to MFG Felixstowe docks are not unique, and there is no reason to assess this area independently of the decision rule.

- *SLC areas*

86. Using the decision rule set out above, the CMA considers that the Merger results in a realistic prospect of an SLC in 121 local areas in relation to the retail supply of road fuel. These areas are listed in Annex 1.¹⁰⁸

National assessment

87. The CMA considered whether the Merger could give rise to horizontal unilateral effects in the retail supply of road fuel on a national basis, particularly as a result of a softening of competition between the parties and rival supermarkets.

¹⁰⁷ [Ports | Maritime UK](#).

¹⁰⁸ The CMA used Catalist data to identify third-party PFSs and carry out its local area assessment. There were two notable limitations with this dataset – (i) some PFS sites had no ownership details, and (ii) some PFS sites had no road fuel volumes. In relation to (i), the CMA carried out a sensitivity analysis by excluding PFSs with no ownership details in order to mitigate the risk that these PFSs could be owned by the same owners of other PFSs in the area (rather than being independent competitors). The CMA found that this did not change the number of areas that fail either the road fuel decision rule. In relation to (ii), the CMA confirmed that sites with missing volumes in the Catalist dataset are operating and therefore should be included in the competitor set. For the purposes of the share of supply analysis, the CMA has used volume estimates for these sites based on the average volume sold at sites with the same fuel brand.

88. The Parties submitted that the national market for road fuel is highly competitive, with several big players (including Tesco, Asda/Eurogarages, Sainsbury's, Shell, and BP), and a large number of small players. The Parties submitted that, post-Merger, they would have a low combined share, of [10-20]%.¹⁰⁹

Table 1 – UK national shares of supply for the retail supply of road fuel (2019 volume)¹¹⁰

Supplier	Volume of fuel sold at all sites	% volumes
MFG	[X]	[5-10]%
Morrisons	[X]	[5-10]%
Parties' combined	[X]	[10-20]%
Tesco Stores	[X]	[10-20]%
Asda/Eurogarage	[X]	[10-20]%
Sainsbury's	[X]	[10-20]%
Shell	[X]	[5-10]%
BP Express Shopping	[X]	[5-10]%
Rontec	[X]	[0-5]%
Co-op Group	[X]	[0-5]%
Petrogas Group UK	[X]	[0-5]%
Others	[X]	[20-30]%
Total	[X]	100%

Source: Parties' estimates.

89. The CMA found that, consistent with the Parties' evidence, there are many large and small rivals present in the market for road fuel at a national level. Moreover, evidence from the Parties and their rivals showed that retail prices are predominately set at a local level, with reference to local rivals. In particular, the CMA found that other supermarkets do not have national pricing strategies that specifically reference (or are materially linked to) the pricing of Morrisons or MFG, and that Morrisons is not viewed as a price leader. Furthermore, out of 921 MFG PFSs, the CMA has found that 95 fail the road fuel decision rule and out of 339 Morrisons PFSs, the CMA has found that 26 fail the road fuel decision rule. As such, the proportion of MFG and Morrisons PFSs failing the road fuel decision rule is relatively limited, indicating that, to the extent there are national parameters of competition set by Morrisons or MFG, there is unlikely to be an incentive to degrade any such national parameters. Therefore, the CMA considers that the Merger does not give rise to competition concerns at the national level.

¹⁰⁹ FMN, paragraph 138 and Table 1.

¹¹⁰ Figures based on Parties' actual and expected volumes. Total market volume estimates are calculated as the sum of competitor volumes from Experian Catalist and the Parties' own volumes.

Retail supply of convenience groceries

Local assessment

90. In *Bellis/Asda*, the CMA applied a decision rule in its assessment of convenience groceries.¹¹¹ This decision rule adopted a weighted fascia count adjusted by the competitive constraint exerted by different types of convenience store.
91. The CMA has considered whether it is appropriate to apply the decision rule set out in *Bellis/Asda* in its local assessment of the retail supply of convenience groceries in this case.
92. The Parties made no submissions on the use of this rule to identify local areas where there is a realistic prospect of an SLC. The CMA also considers that the Parties' internal documents confirm that the main parameters of competition in the retail supply of convenience groceries are consistent with those set out in *Bellis/Asda*. The CMA found that the main factors that affect customers' choice of convenience groceries at a local level are location, size, and brand.¹¹²
93. The evidence reviewed by the CMA has not indicated any reason that it would not be appropriate to apply the decision rule set out in *Bellis/Asda* to identify the number of local areas where there is a realistic prospect of an SLC. The CMA has adopted a fascia count that is weighted as follows.
 - (a) Asda, Sainsbury's, Tesco, Morrisons, Co-Op, Waitrose, Jaks, Whole Foods, Dunnes, and McColl's were given a weight of 1 on the basis that they exert a greater competitive constraint than other types of convenience retailers.¹¹³
 - (b) Aldi, Lidl and Marks & Spencer were given a weight of 0.8 as these retailers do not sell tobacco products (evidence from the ACS indicates that, of the top ten product categories of sales at convenience stores co-located at PFSs, tobacco was the category producing the highest sales)¹¹⁴ and Aldi and Lidl's lack of focus on convenience missions.¹¹⁵

¹¹¹ *Bellis/Asda*, paragraphs 197-199.

¹¹² See for example, Annex MOR20.38 to the FMN, page 84 and Annex MOR20.43 at page 28.

¹¹³ Iceland was not counted as a fascia to reflect that it exerts a weak competitive constraint compared to convenience grocery retailers (such as Tesco, Co-Op and Sainsbury's) and Symbol group retailers due to its lack of focus on convenience missions and because it does not supply tobacco.

¹¹⁴ [ACS Forecourt Report 2020](#), page 3.

¹¹⁵ *Tesco/Booker* Final Report, paragraph 7.50.

- (c) The symbol group stores such as Spar, Nisa, Booker, Londis, Premier, Budgens, Costcutter, One Stop, Central PH Retail, Key Store, Key Shop, Best One, Centra, Mace, and CK Supermarkets were given a weight of 0.8 when assessing the local areas where Morrisons is the centroid. The symbol group stores were given a weight of 1 when MFG is the centroid, and the convenience groceries brand is a symbol brand.
- (d) Independent retailers were given a weight of 0.5 to reflect that they exert a weaker competitive constraint than convenience grocery retailers (such as Tesco, Co-Op and Sainsbury's) and symbol group retailers.
94. Accordingly, for the retail supply of convenience groceries, the CMA applied a decision rule by which the Merger gives rise to a realistic prospect of an SLC in the retail supply of convenience groceries in local areas where, after the Merger, there remain three or fewer (weighted) fascia in addition to the Parties' sites.¹¹⁶
95. Using the above decision rule, the CMA has not identified a realistic prospect of an SLC in any local area. On this basis, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in any local areas in the retail supply of convenience groceries.

National assessment

96. The Parties submitted that they have a combined share of supply by number of convenience stores of [5-10]% and [5-10]% by revenues at a national level.¹¹⁷ The Parties submitted that they will continue to face strong competition from the other 'big 4' supermarkets, as well as discounters and small players after the Merger.¹¹⁸ Consistent with this evidence, the CMA found that there are a wide range of competing convenience store providers that will continue to exert a competitive constraint on the Parties post-Merger. The evidence that the CMA received from third parties was also consistent with this position.

¹¹⁶ The CMA did not have complete information on the owners/operators of Symbol group stores or independent stores. The CMA treated stores under the same Symbol brand as a single fascia (even though they might have different owners/operators). Stores under different Symbol brands and independent stores were treated as individual fascia, although it is possible that they may have the same owner/operator. For Tesco, the CMA treated Tesco branded stores and Jacks branded stores as a single fascia as they are both owned and operated by Tesco.

¹¹⁷ FMN, Tables 3 and 4.

¹¹⁸ FMN, paragraph 146.

97. On the basis of the Parties' limited combined market position, and the availability of competing alternative suppliers, the CMA found no competition concerns in the retail supply of convenience groceries on a national basis.

Conclusion on horizontal unilateral effects

98. For the reasons set out above, the CMA believes that the Merger raises significant competitive concerns in relation to the retail supply of road fuel in the 121 local areas listed in Annex 1.

Barriers to entry and expansion

99. 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.¹¹⁹
100. The Parties submitted that entry into the retail supply of road fuel is relatively easy through the acquisition of a PFS. The Parties estimated that the cost of acquiring a single site in a good location (with annual sales of 3 million litres of fuel and turnover of around £0.5m in its shop) to be between £1.5 million and £2 million.¹²⁰ However, the Parties submitted that it was more difficult to build a new site given the planning and environmental consents required. The Parties estimated the cost of building a new site to be around £2 million. The Parties also submitted that construction could take 6-12 months, in addition to the additional time needed to obtain the necessary planning and environmental consents in certain locations.¹²¹
101. The CMA considers that change of ownership of an existing competing petrol station is unlikely to mitigate the competition concerns identified. In addition, the CMA did not receive evidence of any specific entry or expansion that would mitigate its concerns in any of the 121 local areas listed in Annex 1.
102. For the reasons set out above, in particular cost and time required for the construction of a new PFS, the CMA believes that entry or expansion would not be sufficiently timely or likely to prevent a realistic prospect of an SLC as a result of the Merger.

¹¹⁹ CMA129, from paragraphs 8.28 *et seq* and 8.40 *et seq*.

¹²⁰ FMN, paragraph 246.

¹²¹ FMN, paragraphs 247-248.

Third party views

103. The CMA contacted customers and competitors of the Parties.
104. Some competitors raised concerns that the Merged Entity would have increased buyer power in relation to the acquisition of road fuel and groceries. The CMA found, however, that the Parties have relatively small shares in both the retail supply of road fuel and the retail supply of groceries in the UK ([10-20]% and [5-10]% combined, respectively).¹²² The CMA has not received evidence to suggest that, at that level, the Parties would have sufficient market power to reduce rivals' incentives to invest or innovate, or to increase rivals' costs of purchasing road fuel or groceries.
105. Some competitors raised concerns that the Merger could foreclose other grocery wholesale suppliers' access to retailers because the Merged Entity could offer Morrisons' wholesale convenience groceries at MFG's PFSs. The CMA notes that MFG's stores account for 2% of the total number of convenience stores in the UK.¹²³ On the basis of this position, the CMA believes that the Merger is unlikely to lead to customer foreclosure.
106. One third party raised a concern regarding the [redacted] that Morrisons has for Morrisons Daily stores. The third party stated that the [redacted] could allow Morrisons to control the pricing in the market for retail groceries. The CMA found, however, that Morrisons has a negligible market share of the wholesale supply of groceries at a national level. As such, the CMA believes that there is no prospect of the Merged Entity being able to control prices in this sector.
107. Other third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on substantial lessening of competition

108. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in relation to the retail supply of road fuel in the 121 local areas listed in Annex 1.

¹²² FMN, Table 1 and Table 3.

¹²³ FMN, paragraph 242 and footnote 138. Calculation of MFG's share of the total number of convenience stores based on the reported figure of 47,079 convenience stores in the UK in total as presented in [Association of Convenience Stores Local Shop Report 2021](#), page 1.

Decision

109. Consequently, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (ii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
110. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.¹²⁴ CD&R has until 31 March 2022¹²⁵ to offer an undertaking to the CMA.¹²⁶ The CMA will refer the Merger for a phase 2 investigation¹²⁷ if CD&R does not offer an undertaking by this date; if CD&R indicates before this date that it does not wish to offer an undertaking; or if the CMA decides¹²⁸ by 7 April 2022 that there are no reasonable grounds for believing that it might accept the undertaking offered by CD&R, or a modified version of it
111. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 22 April 2022. For the avoidance of doubt, the CMA hereby gives CD&R notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by CD&R and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from CD&R stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
24 March 2022

¹²⁴ Section 22(3)(b) of the Act.

¹²⁵ Section 73A(1) of the Act.

¹²⁶ Section 73(2) of the Act.

¹²⁷ Sections 22(1) and 34ZA(2) of the Act.

¹²⁸ Section 73A(2) of the Act.

ANNEX 1: LOCAL HORIZONTAL ROAD FUEL SLC SITES

No.	Site name	MFG / Morrisons site
1	MORRISONS WINCANTON 2	Morrisons
2	MORRISONS FORT WILLIAM	Morrisons
3	MORRISONS TIVERTON	Morrisons
4	MORRISONS BUDE	Morrisons
5	MORRISONS LEOMINSTER	Morrisons
6	MORRISONS PERTH	Morrisons
7	MORRISONS EVESHAM	Morrisons
8	MORRISONS GREENOCK	Morrisons
9	MORRISONS ENTERPRISE 5	Morrisons
10	MORRISONS GLASTONBURY	Morrisons
11	MORRISONS GAINSBOROUGH	Morrisons
12	MORRISONS STAMFORD	Morrisons
13	MORRISONS KENDAL	Morrisons
14	MORRISONS DONCASTER	Morrisons
15	MORRISONS ST ANDREWS	Morrisons
16	MORRISONS ECCLESFIELD	Morrisons
17	MORRISONS VICTORIA	Morrisons
18	MORRISONS HARWICH	Morrisons
19	MORRISONS BECCLES	Morrisons
20	MORRISONS DENBIGH	Morrisons
21	MORRISONS KIRKSTALL	Morrisons
22	MORRISONS CREWE	Morrisons
23	MORRISONS THORNBURY	Morrisons
24	MORRISONS KILMARNOCK	Morrisons
25	MORRISONS SWADLINCOTE	Morrisons
26	MORRISONS BATHGATE	Morrisons
27	MFG ERITH	MFG
28	MFG FRINTON	MFG
29	MFG PORTLAND SPAR	MFG
30	MFG BUDE	MFG
31	MFG NORTHSIDE	MFG
32	MFG WEMYSSFIELD	MFG
33	QUEENBOROUGH SERVICE STATION	MFG
34	MFG CALDER	MFG
35	MFG EARNOCK	MFG
36	MFG OVERMONNOW	MFG
37	MFG STRATHTAY	MFG
38	MFG BEN	MFG
39	MFG BLACKFIELD	MFG
40	MFG ISENHURST	MFG
41	MFG BELLBROOK	MFG
42	MFG BOHEMIA	MFG
43	MFG TEESIDE	MFG
44	MFG OLD ROAD	MFG

45	MFG SCUNTHORPE	MFG
46	PEREGRINE SHERBORNE SERVICE STATION	MFG
47	MFG AMERSHAM	MFG
48	MFG ST ANDREWS	MFG
49	MFG CASTLE VIEW	MFG
50	MFG KIRKSTALL	MFG
51	MFG LOOE	MFG
52	MFG SPRINGHILL	MFG
53	MFG VINES	MFG
54	MFG CARMONDEAN SPAR	MFG
55	MFG MOUNT VERNON	MFG
56	MFG GREYSTONES	MFG
57	MFG PRIZET SOUTHBOUND	MFG
58	MFG PRIZET NORTHBOUND	MFG
59	MFG PLANTATION	MFG
60	MFG INGS	MFG
61	MFG PARKWOOD	MFG
62	MFG BURNBANK	MFG
63	MFG IMPERIAL	MFG
64	MFG SPALDING	MFG
65	MFG ST JOHNSTONE	MFG
66	MFG ROAD TO THE ISLES	MFG
67	MFG MALMESBURY	MFG
68	MFG FILLYBROOK	MFG
69	MFG SUNNYLODGE	MFG
70	MFG COASTWAYS SPAR	MFG
71	MFG TIVERTON	MFG
72	MFG FELIXSTOWE DOCK SERVICES	MFG
73	MFG WESTERHOPE	MFG
74	MFG BECCLES	MFG
75	MFG ROCK	MFG
76	MFG NORWOOD	MFG
77	MFG MANDALE ROAD	MFG
78	MFG HEMMINGFORD	MFG
79	MFG TRAFFORD WAY	MFG
80	MFG BRIGG	MFG
81	MFG WHITE ROSE	MFG
82	MFG OLD COACH ROAD SPAR	MFG
83	MFG LOWER LANE	MFG
84	MFG LEDBURY	MFG
85	MFG RUTHIN	MFG
86	MFG VIEWPARK	MFG
87	MFG BLOODY OAKS	MFG
88	MFG MALVERN SPRINGS	MFG
89	MFG LYDFORD SERVICES	MFG
90	MFG JEDBURGH	MFG
91	MFG EAST BOWLING	MFG

92	MFG ARKLE	MFG
93	MFG CHEDDAR SPAR	MFG
94	MFG PARK VIEW	MFG
95	MFG BRIDGE	MFG
96	MFG ASHINGTON	MFG
97	MFG CROWN	MFG
98	MFG THIRSK	MFG
99	MFG RUBERY	MFG
100	MFG IRON ACTON	MFG
101	MFG GRAVESEND SPAR	MFG
102	MFG BOARS HEAD	MFG
103	MFG LEOMINSTER	MFG
104	MFG OAKHAM	MFG
105	MFG BEVERLEY	MFG
106	MFG FISHGUARD	MFG
107	MFG MORESTYLE	MFG
108	MFG CREWE	MFG
109	MFG WIRRAL PARK	MFG
110	MFG CARLTON SQUARE	MFG
111	MFG SWAFFHAM	MFG
112	MFG WITTERING	MFG
113	MFG SYMONDS YAT SERVICES NORTHBOUND	MFG
114	MFG BELLSHILL	MFG
115	MFG FLEET POINT	MFG
116	MFG HAZEL GROVE	MFG
117	MFG BROXDEN A9 SERVICES	MFG
118	MFG EXPRESS PARK	MFG
119	MFG BOURNE SOUTH	MFG
120	MFG BROMSGROVE SPAR	MFG
121	MFG CORNISH GATEWAY SERVICE AREA	MFG

ⁱ 'Morrisons wholesale supplies convenience groceries to approximately 1,163 McColl's owned and 109 Morrisons Daily branded stores.' should read 'Morrisons wholesale supplies convenience groceries to approximately 1,163 McColl's owned stores (including Morrisons Daily and McColl's branded stores) and 107 Morrisons Daily branded stores owned by other franchisees.'

ⁱⁱ Price per litre.