

Completed acquisition by GB Oils Limited of Severn Fuels Limited

ME/5237/11

The OFT's decision on reference under section 22(1) given on 20 January 2012.
Full text of decision published 26 January 2012.

PARTIES

- 1. GB Oils Limited (GB Oils)** is a wholly owned subsidiary of DCC plc (DCC) and operates as DCC's oil distribution business in Great Britain, distributing oil products to domestic, commercial, industrial and agricultural customers throughout Great Britain. GB Oils operates under a number of different brands, principally: Bayford Oil, Brogan Fuels, Carlton Fuels, CPL, Emo Oil, F.Peart & Co., Gulf, Scottish Fuels, Southern Counties, Team Flitwick, and Town & Country Fuels (as well as other regional and local brands). It also supplies transport fuels for retail under brands including Gulf, Pace UK and Texaco. GB Oils' turnover for the year ended 31 March 2011 was around £3.15 billion, all of which was achieved in the UK.
- 2. DCC plc (DCC)** is an international procurement, sales, marketing, distribution and business support service group headquartered in Dublin and listed on the Irish and London Stock Exchanges. DCC has five core businesses: DCC Energy, DCC SerCom (IT and entertainment products), DCC Healthcare, DCC Food and Beverage and DCC Environmental. DCC Energy is an oil procurement, sales, marketing and distribution, liquefied petroleum gas (LPG) and fuel card services business in Great Britain, Ireland, Denmark and Austria.
- 3. Severn Fuels Limited (Severn)** is active in the distribution of oil products in the south Wales and Bristol areas, operating out of a single depot in Caldicot (near Newport). Prior to the transaction, Severn was also active in the distribution of LPG in cylinder form and provided fuel card services. Severn's accounts for the year ended 31 August 2010 showed turnover of £48.8 million, all of which was achieved in the UK.

TRANSACTION

4. By virtue of a Sale and Purchase Agreement entered into by the parties on 15 September 2011, GB Oils has acquired the entire issued share capital of Severn from the vendor shareholders of Severn.
5. The acquisition completed on 15 September 2011. The acquisition was not publicly announced. The parties confirmed the acquisition on 23 September 2011 following the launch of an own-initiative investigation by the OFT.
6. The OFT's administrative deadline for deciding whether to refer the merger to the Competition Commission (CC) is 20 January 2012 and the extended statutory deadline for a decision is 23 January 2012.

JURISDICTION

7. As a result of this transaction GB Oils and Severn ceased to be distinct.
8. The UK turnover of Severn was £48.8m for the financial year ended 31 August 2010. Consequently, the turnover test contained in section 23(1)(b) of the Enterprise Act 2002 (the Act) is not met.
9. The parties are both active in the UK in the distribution of oil products. The parties will have five out of 14 oil distribution depot locations (that is 36 per cent) within 20 miles of Caldicot (an area incorporating Bristol, Cardiff and Newport). As a result, the parties have a share of supply of the distribution of oil products measured in terms of number of depots within a 20 mile radius of Severn's depot at Caldicot that is above 25 per cent. Consequently, the share of supply test in section 23(3) of the Act is satisfied.

RATIONALE FOR THE MERGER

10. According to the parties, the acquisition enables GB Oils to improve its geographical coverage in Great Britain in relation to the distribution of oil products.

BACKGROUND

11. The OFT is also currently investigating DCC's completed acquisition of certain businesses formerly owned by Total Downstream, including the Total Butler oil distribution business.¹ In line with the approach to parallel mergers set out in the OFT's guidance,² the OFT does not treat Total Butler as an independent competitor to GB Oils for the purposes of reviewing the acquisition of Severn, but instead treats Total Butler as part of GB Oils.
12. The OFT has recently completed a market study into off-grid energy, including the retail supply of domestic heating oil (kerosene).³ It concluded that competition in the retail supply of heating oil was generally working well, although certain consumer protection issues were identified.

COUNTERFACTUAL

13. No arguments have been proposed that the counterfactual should be other than the pre-merger situation.

FRAME OF REFERENCE

14. The area of overlap between the parties relates to the distribution of oil products in parts of Wales and south west England.

Product scope

15. Both parties distribute oil products. There are four basic oil products supplied by both GB Oils and Severn: diesel, gas oil, kerosene and petrol (together 'the oil products').
16. The parties submit that there is a single market for the distribution of diesel, gas oil, kerosene and petrol on the basis of supply-side factors, such as:
 - a. all these products may be distributed using the same tankers and depot equipment
 - b. oil distributors supply the full range of oil products and can alter quantities placed on tankers in line with demand

¹ www.of.gov.uk/OFTwork/mergers/Mergers_Cases/.

² OFT1254 Merger Assessment Guidelines, paragraphs 4.3.25 and 4.3.26.

³ OFT 1380 Off-grid Energy, OFT Market Study, October 2011.

- c. distributors do not specialise in particular types of oil products, and
 - d. tankers have separate compartments allowing them to deliver different products on the same route.
17. In this case, the OFT has not had to reach a view on whether these oil types constitute separate markets or a single market given that the precise market definition taken – whether it includes all heating oils and transport fuels together or whether subdivided between heating oils and transport fuels or by reference to a particular type of fuel – does not affect the assessment of the competition effects arising from the merger. Nor has the OFT had to reach a view on whether it would be appropriate to define separate markets based on customer type given that the product scope does not impact on the outcome of the competition assessment.

Geographic scope

18. GB Oils is active in the supply of oil products throughout Great Britain, while Severn's distribution area is south Wales, Bristol and the Forest of Dean.
19. The OFT understands that suppliers typically deliver oil products direct to customers. Therefore, the boundaries of the geographic market are determined by how far suppliers are prepared to travel to deliver oil products to their customers.
20. The parties submit that the relevant geographic market is national (Great Britain). They consider that the typical supply radius from an individual supply base is at least 30 to 50 miles. The parties consider that there are a large number of small distributors that operate from a single site and which would be willing to transport oil over much greater distances. The parties also argue that the ability to transport oil products over long distances, and to compete in new areas at short notice, points to regional or national markets rather than local markets.
21. The parties also argue that they face competition from competitors from a greater distance than might be implied by basing a catchment area on the typical supply radius of GB Oils' depots. The parties argue that supplying customers cost effectively relies on the ability to establish a route of customers. Therefore, the viability of a 'milk round' does not depend on how far individual customers are located from each depot but rather on

their proximity to the distribution route and thus the incremental cost of supplying them.

22. Furthermore, the parties state that the presence or absence of a depot does not, in itself, indicate the level of constraint posed by a competitor on the parties. This is because a significant proportion of deliveries are made direct from oil refineries or terminals. The parties provided some evidence of their own deliveries from terminals in this regard, which indicated that greater supply distances were generally associated with larger volume customers.
23. In GB Oils/Pace,⁴ the OFT took the view that distributors are unlikely to be competitive in areas where they have a weak distribution network, particularly for small volume deliveries, such that specific customers are likely to consider only those suppliers with depots within their locality as potential suppliers.
24. In GB Oils/Pace, the OFT considered the overlap between the parties' substantial depot networks over a wide regional area (comprising the Midlands, southern England and East Anglia). In this case, however, the geographic overlap is much more localised given that Severn operates out of a single depot. Therefore, the OFT considered the impact of the merger at the local level only.
25. Third party views on the appropriate catchment area typically served by a given depot ranged from 30 to 40 miles, down to 15 miles for distributors with small drop sizes.
26. Catchment area data for the GB Oils and Total Butler depots indicate that the average catchment area per depot is between 20 to 30 miles. There is no evidence to suggest that the average catchment area for Severn would be significant lower.
27. Consistent with previous approaches in GB Oils/Brogan⁵ and GB Oils/Pace, the OFT considered data on the positions of the parties and their competitors (primarily in terms of number and locations of oil distribution depots) with respect to radii of 10, 20 and 30 miles from the target depot at Caldicot. Given its conclusions in relation to the level of competition that

⁴ OFT Decision, Anticipated Acquisition by GB Oils limited of Pace Fuelcare Limited, ME/4924/11, 24 June 2011.

⁵ OFT Decision, Completed acquisition by GB Oils Limited of Brogan Holdings Limited, ME/4406/10, 20 April 2010.

would be faced by the merged entity within each of these radii, the OFT has not needed in this case to reach any conclusion on the appropriate geographic frame of reference in this case.

28. The OFT has not needed to reach a definitive view on the appropriate geographic frame of reference in this case. However, for the reasons explained in the unilateral effects analysis further below, the OFT has had greater regard in the circumstances of this case to the competitive dynamic operating within the 20 and 30 mile radii, rather than within 10 miles.

Other products

29. The parties both provide fuel cards services. Fuel cards are issued to corporate customers for use by their employees to draw fuel at service stations and other fuel sites, such as truck stops. DCC act as agents to the oil companies (brand owners) for the promotion of those companies' fuel cards, as well as supplying fuel to their own fuel card customers. The OFT has considered the supply of fuel card services at national level, but, given the target's minimal presence in fuel card services, the OFT did not have to consider this market in detail.
30. Prior to the acquisition, Severn was a distributor of LPG in cylinder form on behalf of Calor. Severn continues to distribute these products on behalf of Calor, which is a competitor to Flogas, owned by DCC, in the supply of LPG within Great Britain. No horizontal concerns arise in this respect, but the OFT considered in its investigation whether any vertical concerns could arise in relation to the distribution of LPG in cylinder form.

Conclusions on frame of reference

31. For the reasons set out above, the OFT has considered the transaction by reference to the distribution of oil products.
32. It has not been necessary to conclude on whether the appropriate geographic market is local and/or wider, given that the geographic scope does not impact on the outcome of the competition assessment.

HORIZONTAL ISSUES

33. Severn has a single oil distribution depot located at Caldicot, near Newport in south Wales.⁶ GB Oils has various oil distribution depots and tanker parking locations within 10, 20, and 30 miles of the Severn depot.
34. Considering that the geographic area of overlap between the parties is limited to south Wales and part of south west England, the OFT examined the impact of the merger within the geographic area served by Severn.
35. Data on local market share by volume or value, storage capacity, or tanker numbers was not available to the OFT.
36. The OFT therefore analysed the local overlap by taking into consideration the reduction of fascia post-merger (with respect to ownership of different brands) and the concentration in depot ownership, taking account also of the strength of competition according to the wider regional presence (network of depots) of other distributors. This is consistent with the approach taken by the OFT in GB Oils/Pace.
37. The OFT recognises that depot ownership and numbers may not capture all aspects of the strength of competition in a local area. Depots are not homogenous in terms of either capacity or the number of distribution tankers operated. Severn's scale of oil distribution activity from its depot (around 70 million litres per annum) appears high relative to other data on average depot volumes. The OFT has had regard to this in its analysis.
38. The OFT considers that with the existence of the toll bridge and the proximity of oil terminals at Avonmouth, specific competition dynamics might operate in the Avonmouth area.
39. The OFT discusses below the degree of competition remaining in the local area around Severn's Caldicot depot. It starts by considering the constraint that the merged entity will face within a 10 mile radius, and then expands this outwards to consider each of 20 miles and 30 miles.

⁶ The parties clarified that other operational locations listed for Severn on its website were actually redirected telephone lines rather than storage depots.

10 mile radius

40. The overlap between the parties' depots on a 10 mile radius basis is between locations on either side of the Severn Channel – between Severn at Caldicot and Total Butler⁷ at Avonmouth. Tincknell Fuels (Tincknell) is also present within a 10 mile radius with a depot at Avonmouth.
41. The Severn depot is located in Caldicot, on the western side of the Severn Channel. Although the Severn business is also active on the eastern side of the Severn Channel, the presence of the toll bridge is relevant to considering whether the depot overlap within 10 miles raises specific concerns. The additional costs of transporting oil products across the bridge may imply that depots on either sides of the Severn are less close competitors than could be inferred from a distance analysis. Taking this factor into account, Total Butler may face a stronger constraint from Tincknell (given that they are both in Avonmouth) than from Severn (across the toll bridge in Caldicot).
42. The linear distance between the Severn depot at Caldicot and Avonmouth is eight miles, suggesting that distribution direct from Avonmouth terminal might exercise some competitive constraint on Severn. The parties suggest that competitors supplying significant volumes from Cardiff or Avonmouth terminals may need fewer or smaller wet storage depots to carry on their businesses. One third party noted that the proximity of Avonmouth means that customers can be supplied directly from oil terminals.
43. It is also relevant to note that three additional competitors are located just outside the 10 mile radius.

20 mile radius

44. Moving out to 20 mile radius captures depot locations for a significant number of other competing distributors (at least eight), including clusters at Cardiff to the west, and Bristol to the south east of the Severn depot. These include several competitors, including Watson Fuels, which operate from multiple depots in the area. As identified by the OFT in its GB Oils/Pace decision, multiple depot competitors have greater capacity

⁷ See paragraph 11, above, for an explanation of how Total Butler depots are treated by the OFT for the purposes of this review.

flexibility and may thus be able to exercise greater competitive constraints on the merged parties.

45. Clusters of depots near Cardiff and Bristol may reflect the presence of oil import terminals at Cardiff and Avonmouth respectively.
46. The merged entity's share of local depot numbers is not such as to raise concerns about the impact of depot rationalisation on overall local storage capacity. It is also relevant to note that internal documents anticipate that the Severn depot and other existing GB Oils south Wales depots will remain in operation.

30 mile radius

47. At a 30 mile radius there are relatively few additional players that are not already within the 20 mile radius. There are also no additional GB Oils depots captured.

Coordinated effects

48. No allegations of coordinated effects were made during the market investigation. The OFT off-grid energy market study found no evidence to suggest horizontal coordination in relation to the retail supply of domestic heating oil.

Conclusion

49. The transaction concerns the acquisition of a single depot.
50. The OFT considered the overlaps between the parties on a 10, 20 and 30 miles radius.
51. The OFT considered carefully what weight it should attach to the competitive dynamic operating within each of these three radii. In this regard, catchment data for the GB Oils and Total Butler depots indicate that the average catchment area per depot is at least 20 miles. Third party views confirmed that, on average, the distribution radius per depot that would be expected in this area is above 20 miles and that a materially wider geographic radius than 10 miles is relevant. Given these factors, although the OFT notes that competition would remain at the 10 mile radius, in

particular when the radius is flexed to take account of three further competitors just outside 10 miles, it has placed more weight on the 20 mile radius for its evaluation.

52. Given the significant number of competing oil distributors active and present in the local overlap area when measured at 20 miles from the Severn depot and higher, the transaction does not raise a realistic prospect of a significant lessening of competition.

Other overlaps

53. The parties both provide fuel cards services.
54. In both GB Oils/Brogan and Rontec/Total,⁸ fuel card overlaps were not considered in depth on the basis that the relevant parties had only limited positions in fuel cards on a UK-wide basis.
55. In the current transaction, the parties submit that, post-transaction, they have a low combined UK share of approximately five per cent with a very minor increment of less than one per cent. Severn provides fuel card services in respect of only around 1.5 million litres of fuel annually, compared with more than 500 million litres sold by DCC via its portfolio of fuel cards under various brands.
56. No third party concerns were raised in relation to the supply of fuel card services.
57. On the basis of the evidence available, the OFT does not regard it necessary to consider the overlap in fuel card services further and does not consider that the merger creates a realistic prospect of a substantial lessening of competition in relation to fuel card services.

VERTICAL ISSUES

58. Severn has some activity as a distributor of Calor LPG cylinders, which is a competitor to DCC's Flogas LPG business.

⁸ OFT Decision, Anticipated acquisition by Rontec Investments LLP of certain petrol forecourts, stores and other assets from Total Downstream UK plc, Total Limited and their affiliates, ME/5139/11, 20 October 2011.

59. The market investigation did not generate any indications that the transaction could create substantive vertical concerns in this regard, such as customer foreclosure targeted against Calor. No third party concerns were raised in respect of vertical issues, including no concerns from Calor itself.
60. A large number of alternative distributors of Calor LPG cylinders operate in the area, some within close proximity to Severn. This suggests that Severn is not a significant route to market.
61. Consequently, on the basis of the evidence available, the OFT does not regard it necessary to consider vertical issues resulting from this transaction further and does not consider that the merger creates a realistic prospect of a substantial lessening of competition in relation to the supply of LPG in cylinders.

BARRIERS TO ENTRY AND EXPANSION

62. In GB Oils/Pace, the OFT identified certain potential barriers to new entry into the distribution of heating oils and transport fuels in the Isle of Wight.
63. In the OFT's off-grid market study, the OFT found that barriers to entry in the retail supply of domestic heating oil were low in most areas.⁹ In the particular circumstances of this transaction, the OFT noted the presence of the nearby oil import terminals at Cardiff and Avonmouth. The market study noted that proximity to an oil terminal can facilitate entry since delivery direct from terminals may in some circumstances avoid the entry costs required to invest in new depot facilities.
64. However, as the completed merger does not give rise to concerns over unilateral effects, there is no need for the OFT to reach a conclusion regarding barriers to entry and expansion.

BUYER POWER

65. Given the above assessment, no conclusion is required on whether there is countervailing buyer power sufficient to overcome any competition concerns.

⁹ OFT 1380 Off-grid Energy, OFT Market Study, October 2011, Chapter 4, Section 4.15ff.

THIRD PARTY VIEWS

66. The OFT received a limited number of third party views regarding the merger. These included comments from competitors and customers.
67. A small number of customers expressed some concern regarding the strengthening of GB Oils' market position in the Caldicot area and that the merger reduces the overall number of oil product distributors in the south Wales region.
68. Of those customers that expressed some concerns, however, none cast doubt on the OFT's findings that there continues to be a significant number of competitor suppliers to the merged entity on a 20 mile and a wider radius. One customer, for example, noted that there were 'too many [suppliers] to mention' in Cardiff.
69. Competitors also expressed very limited concerns. As was the case with customers, some concerns over the growing size of GB Oils were expressed by a few competing third parties. Competitors, however, emphasised that a number of major as well as smaller local players continue to be active in the area. These views have been discussed above.

ASSESSMENT

70. GB Oils and Severn overlap in the distribution of oil products. The parties have a combined share of supply of over 25 per cent in the distribution of oil products, measured on a 20 mile radius from Severn's depot at Caldicot in south Wales.
71. The parties face at least one competitor on a 10 mile radius (with three further suppliers located just outside 10 miles) and a significant number of competitors on a 20 miles radius, some of which are operators of multiple site depots.
72. The OFT places particular weight on the analysis at 20 miles, given that the data available indicates a typical catchment area of at least 20 miles is relevant in this area. This approach is supported by third party views.

73. The OFT recognises that the capacity of the Severn depot is considerable. However, it considers that in the overlap areas larger than 10 miles a significant number of alternative suppliers remain, such that customers will retain the ability to switch.
74. Third parties expressed limited concerns in relation to the transaction, principally focusing on GB Oils' market position in the area and the overall reduction in the number of competitors as a result of the merger. Despite these concerns, however, third parties acknowledged that a significant number of alternative suppliers remain in the area.
75. In relation to fuel cards, the parties argue that they have a very low combined UK market share of approximately five per cent with a very minor increment of less than one per cent. No third party concerns were received in relation to the supply of fuel cards. Consequently, the OFT did not consider it necessary to consider the overlap in fuel card services further.
76. In relation to the vertical relationship that exists between the parties in relation to their LPG business, there is no evidence to suggest that the combined entity will have the ability to foreclose rivals. No third party concerns were raised.
77. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

78. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.